

EXHIBIT A – Proposed Interim DIP Financing Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:

SOUTHERN SEASON, INC..

Debtor.

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Case No: 16-80558

Chapter 11

**INTERIM ORDER GRANTING AUTHORITY TO OBTAIN POST-PETITION
FINANCING FROM SILK ROUTE CAPITAL CORPORATION, LLC**

This matter came before the Court after due notice and hearing on _____ to consider the Motion for Authority to Obtain Post-Petition Financing from Silk Route Capital Corporation, LLC (the “Motion”), filed by Southern Season, Inc. (the “Debtor”), pursuant to § 364 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure.

After considering the matters set forth in the Motion, the evidence presented, and the arguments of counsel, the Court makes the following findings, conclusions and Orders, as follows:

1. On June 24, 2016 (the “Petition Date”), the Debtor filed a voluntary petition seeking relief under Chapter 11 of the Bankruptcy Code. The Debtor continues in possession of its assets as debtor-in-possession. No official committee of unsecured creditors has been appointed.

2. The Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§151, 157 and 1334 and Local Rule 83.11 adopted by the United States District Court for the Middle District of North Carolina, and this is a core proceeding within 28 U.S.C. §157(b)(2). Venue is proper pursuant to 28 U.S.C. §§1408 and 1409.

3. The Debtor was founded in 1975 and is a premier retail destination for specialty food and gifts. The Debtor currently operates five (5) retail stores located in Chapel Hill, Asheville, and Raleigh, North Carolina and Charleston and Mount Pleasant, South Carolina.

4. Since its creation in 1975, Southern Season has been known for the breadth and quality of its gourmet foods, wines, housewares and cookware. The Debtor offers numerous items sold in-store and online with an emphasis on local products. At the Chapel Hill location the Debtor operates a full scale indoor/outdoor restaurant trading as the Weathervane and until recently operated a restaurant within the Mount Pleasant location.. All stores operated by the Debtor are located upon leased premises.

5. The Debtor has a local and national reputation for its specialty products and has been featured in national publications. It was honored by the National Association for Specialty Food as its Outstanding Retailer of the Year and by Gourmet News receiving its Retail Achievement Award for its success in food education.

6. In 2012, the Debtor entered in an aggressive expansion plan and subsequently opened two locations similar to its successful “flagship” store in Chapel Hill. The locations chosen for this expansion were in Richmond, Virginia and Mount Pleasant, South Carolina. After opening, sales revenue at each of the locations proved insufficient to support the costs of operations. Prior to the Petition Date, the Debtor recently closed and liquidated its inventory of the store located in Richmond, Virginia, and began the process of closing its store located in Mount Pleasant, South Carolina.

7. The Debtor intends to reorganize its business by closing these large format stores, and focusing its business on three profit centers: (i) its very successful, 60,000 square foot flagship

retail location in Chapel Hill, NC, (ii) its Digital eCommerce Store, and (iii) its “Taste of Southern Season” stores.

8. The new Digital eCommerce Store, to be completed this year, will allow customers to order from the 80,000 items carried in the flagship location and will allow the Debtor to capture younger customers. Customers today expect the ability to place all their orders electronically with ease, same day order fulfillment and the receipt of immediate tracking numbers. Southern Season’s new eCommerce Store will allow the Company to capitalize on this trend and drive sales.

9. In response to the current trends in retail sales, the Debtor has developed its growth plan to focus on a smaller store concept. The Debtor has three “Taste of Southern Season” stores on Market Street in Charleston, at Biltmore Center in Asheville, and at Cameron Village in Raleigh, NC. This format has proven successful, and the Debtor plans to open two additional Taste of Southern Season stores in Southern Pines, and Wilmington, NC over the next few months.

Security Interests in the Debtor’s Assets

10. Pre-petition, on or about June 27, 2014, the Debtor and CertusBank, N.A., entered into a certain Amended and Restated Loan and Security Agreement (the “Loan Agreement”), amending and replacing that certain Loan and Security Agreement dated September 4, 2013, pursuant to which CertusBank agreed to issue one or more letters of credit for the account of the Debtor and its subsidiaries, in an amount not to exceed \$750,000, and made a revolver loan in an amount of up to \$5,000,000, with the total combined amount of letters of credit and advances under the revolver loan not to exceed \$5,000,000. Under the Loan Agreement, CertusBank, N.A., was granted a security interest in substantially all of the Debtor’s assets, including but not limited to its inventory, accounts receivable, equipment and other tangible personal property, and deposit accounts. CertusBank filed a UCC Financing Statement with the North Carolina

Secretary of State on August 30, 2013, File No. 20130083814A, identifying its collateral to include all of the Debtor's personal property.

11. On September 24, 2015, CertusBank, N.A. assigned the Loan Agreement, together with all related documents, to SummitBridge National Investments IV, LLC ("SummitBridge"). SummitBridge filed a UCC Financing Statement with the North Carolina Secretary of State on October 12, 2015, File No. 20150097227G, identifying that the Loan Agreement had been assigned to SummitBridge.

12. On April 15, 2016, the Debtor, its affiliates, and SummitBridge entered into a certain Forbearance Agreement pursuant to which, *inter alia*, the Debtor acknowledged that the total outstanding indebtedness under the Loan Agreement was \$4,496,742.61, consisting of principal of \$4,450,000, and accrued interest of \$46,742.61, as of April 1, 2016.

13. SummitBridge asserts a first priority security interest in the Debtor's accounts receivable and inventory, as well as a first priority security interest in the Debtor's equipment, and other tangible and intangible assets. The amount outstanding on the SummitBridge indebtedness as of the Petition Date is approximately \$4,450,000.00.

14. On February 24, 2015, U.S. Foods, Inc. filed a UCC Financing Statement with the North Carolina Secretary of State, File No. 20150016195A, which asserted a security interest in all of the Debtor's personal property. However, as of the Petition Date, the Debtor does not have any indebtedness to U.S. Foods, Inc.

15. On June 7, 2016, Sysco Raleigh, LLC filed a UCC Financing Statement with the North Carolina Secretary of State, File No. 20160057908K, which asserted a security interest in substantially all of the Debtor's personal property. As of the Petition Date, the Debtor's indebtedness Sysco Raleigh, LLC ("Sysco") totaled approximately \$142,700. However, since its

UCC Financing Statement was filed within ninety (90) days prior to the Petition Date, the Debtor contends that the perfection of its security interest is avoidable under 11 U.S.C. § 547.

16. The Debtor is not aware of any other liens or security interests against accounts receivable or inventory, the proceeds of which would constitute “cash collateral” as that term is defined in the Bankruptcy Code.

10. The Debtor will need post-petition financing to supplement revenues and timely pay the on-going costs of operating, preserving, and protecting the business and property of the estate, as well as to pay any costs of administration which may not be paid from cash collateral. Post-petition financing is thus necessary to preserve the going-concern value of the business for the benefit of creditors and the estate.

11. The Motion sought authority to obtain post-petition financing on an interim basis from the Silk Route Capital Corporation, LLC (the “Lender”), pending a final hearing regarding the Debtor’s request for a final financing order, in accordance with the proposed Post-Petition Credit Agreement and Budget that were attached to the Motion.

12. As more specifically set forth in the Post-Petition Credit Agreement, the post-petition financing would be a revolving credit facility in an amount not to exceed \$6,000,000 upon the following terms:

- a. The outstanding principal balance would bear interest at the rate of percent (6%) per annum.
- b. The financing is subject to a loan commitment fee of \$200,000, and original issue discount (“OID”) of six (6) points, which equals \$300,000.
- c. The financing would be used to fund the Debtor’s operating expenses, costs of administration, and other expenses pursuant to a budget approved by the Lender.

- d. Pursuant to 11 U.S.C. §§ 364(c) and (d), the Lender shall be granted a security interest in all real and personal property of the Borrower and its estate of any kind or nature whatsoever, tangible, intangible or mixed, now existing or hereafter acquired or created, whether existing before or arising after the commencement of the bankruptcy case, including the Debtor's cash and including all proceeds, products, replacements, additions, substitutions, renewals, and accessions of any of the foregoing (collectively, the "Collateral"). The lien in favor of Lender will be subordinate only to the lien of Summit Bridge National Investments, IV, LLC (the "Secured Lender") and will prime any other security interests in the Collateral.
- e. Upon the Maturity Date,¹ the entire principal amount of the Loan plus all accrued and unpaid interest, OID and the DIP Financing Commitment Fee shall, at Lender's option, either (i) be paid in cash, or (ii) convert to 100% of the outstanding stock of the reorganized Debtor.
- f. The Lender would be entitled to a Cash Breakup Fee of \$300,000, plus reimbursement of up to \$35,000 of reasonable documented attorneys' fees and other expenses incurred by Lender in connection with this transaction, if the Debtor (i) consummates a sale of any of its IP rights or other assets which is not approved by Lender, (ii) consummates a sale of all or substantially all of its assets or common stock which is not approved by Lender, (iii) accepts an alternative debtor-in-possession financing proposal to that contemplated by the Post-Petition Credit Agreement, or (iv) consummates a plan of reorganization which is not approved by Lender.

¹ Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the Post-Petition Credit Agreement.

13. As set forth in the budget attached to the Motion and the testimony at the hearing, the Debtor anticipates that it will need to draw up to \$1,606,304 from its line of credit with the Lender by the week ending August 5, 2016, in connection with its operations and in order to maintain and preserve the value of its assets and its going concern value.

Based on the foregoing findings, the Court concludes that an order granting such relief would not prejudice the rights of creditors in this proceeding, and the use of such funds is necessary to continue operations without interruption and preserve the value of the estate for creditors.

NOW, THEREFORE, it is hereby ORDERED as follows:

1. The Motion is granted and the Debtor is authorized to obtain post-petition financing from the Lender upon the terms set forth in this Order and the Post-Petition Credit Agreement. The financing shall be used to fund the Debtor's operating expenses, costs of administration, and other expenses.

2. The Debtor is authorized to enter into the Post-Petition Credit Agreement, and the terms of the Post-Petition Credit Agreement are fully incorporated herein by reference; provided however, to the extent that any provision in the Post-Petition Credit Agreement conflicts with any provision in this Order, the terms of this Order shall control.

3. Pursuant to 11 U.S.C. §§ 364(c) and (d), the Lender shall be granted a security interest in all real and personal property of the Borrower and its estate of any kind or nature whatsoever, tangible, intangible or mixed, now existing or hereafter acquired or created, whether existing before or arising after the commencement of the bankruptcy case, including the Debtor's cash and including all proceeds, products, replacements, additions, substitutions, renewals, and accessions of any of the foregoing (collectively, the "Collateral"). The lien in favor of Lender

will be subordinate only to the lien of Summit Bridge National Investments, IV, LLC (the “Secured Lender”) and will prime any other security interests in the Collateral.

4. The validity, enforceability, and perfection of the aforesaid post-petition lien on the Collateral shall not depend upon filing, recordation, or any other act required under applicable state or federal law, rule, or regulation. At the request of the Lender, the Debtor is authorized and directed to execute and deliver such loan documents, financing statements or other instruments or documents reasonably considered by the Lender to be necessary or desirable to further evidence the indebtedness and perfection of its liens and security interests herein granted, without further notice, hearing, or order.

5. In the event of a default under the Post-Petition Credit Agreement, the Lender shall be entitled to an expedited hearing on a motion requesting relief from the automatic stay to exercise its rights, within ten (10) days of the filing of such motion.

6. The terms of this Order shall be binding upon any official committee and any trustee subsequently appointed, including but not limited to a Chapter 7 trustee upon conversion of this case to a case under Chapter 7 of the Bankruptcy Code.

7. Notwithstanding the foregoing, the findings, conclusions, or orders set forth herein are made on an interim basis, shall not constitute a final decision on any legal or factual issue, and are without prejudice to the right of any party to raise, contest, or seek the same or different outcome at any subsequent hearing; provided however, that based on the findings set forth in this Order and the reliance of the Lender in good faith on the terms thereof, (i) if any of the provisions of this Order are hereafter modified, vacated or stayed by an order of this Court or another court, such stay, modification or vacation shall not affect the validity and enforceability of any lien, security interest or priority authorized for the benefit of the Lender

that is granted or attaches prior to the effective date of such stay, modification or vacation, and (ii) any financing provided by the Lenders to the Debtor pursuant to this Order prior to the effective date of such modification, stay or vacation shall be governed in all respects by the original provisions of this Order. Upon the entry of and effect of any stay, modification of vacation of this Order, the Debtor's ability to obtain post-petition financing hereunder, shall be deemed immediately terminated without further order of the Court.

8. A Final Hearing on the Motion will be held at _____ on _____, in the U.S. Bankruptcy Court, Venable Center, Dibrell Building - Suite 280, 302 East Pettigrew Street, Durham, NC 27701.

9. Debtor's counsel shall serve within five (5) days a copy of this Order upon the Bankruptcy Administrator, the creditors asserting a lien on any property of the estate or an interest in cash collateral, and the creditors holding the 20 largest unsecured claims, and shall file a certificate of such service with the Clerk.

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