

SO ORDERED.

SIGNED this 16th day of August, 2016.



A handwritten signature in black ink, reading "Benjamin A. Kahn", is written over a horizontal line.

BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

**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

**ORDER APPROVING BIDDING PROCEDURES, BREAK-UP FEE, AND FORM AND
MANNER OF NOTICE THEREOF WITH RESPECT TO THE PROPOSED SALE OF
ASSETS BY THE DEBTOR TO THE FOCUS PROPERTIES, INC.**

This matter came before the Court on August 15, 2016, upon the Debtor's Motion to (A) Approve Sale Of Substantially All Assets, (B) Establish Related Sale Procedures, (C) Transfer Any and All Claims, Liens, Encumbrances And Interests In Sale Assets To Proceeds of Sale, (D) Approve Form And Manner Of Notice Of Sale, (E) Assume and Assign Certain Real Property Leases, and (F) Schedule Hearings, dated August 12, 2016, filed in the Bankruptcy Case as Docket No. 163 (the "Sale Motion"). Based upon the evidence presented, the arguments of counsel, and the entire official record in this case, the Court hereby makes the following findings of fact and conclusions of law:

A. The Debtor has established good and sufficient reasons for approving the Sale Procedures attached hereto as Exhibit A;

B. A break-up fee of \$150,000 (the “Break-Up Fee”), is appropriate under the circumstances. The Debtor’s obligation to The Focus Properties, Inc. (“Focus”) to pay the Break-Up Fee, under the conditions set forth in the attached Sale Procedures, is (a) an actual and necessary cost and expense of preserving the Debtor’s bankruptcy estate, within the meaning of section 503(b) of the Bankruptcy Code, (b) of substantial and commensurate benefit to the Debtor’s bankruptcy estate, (c) reasonable and appropriate, in light of the size and nature of the transaction and the efforts that have been and will be expended by Focus, and (d) necessary to ensure that Focus will continue to pursue its proposed acquisition of the Debtor’s assets.

C. The Sale Procedures are reasonable and appropriate and represent the best method for maximizing the value of the Sale Assets for the benefit of the Debtor’s bankruptcy estate.

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

1. Notice of the Sale Motion was good and sufficient under the circumstances for the purposes of the relief granted in this Order, and no other or further notice of the same shall be required except as set forth herein.

2. The Break-Up Fee provided in the Asset Purchase Agreement and Sale Procedures, including the circumstances under which the Break-Up Fee is payable, as more fully described in the Sale Procedures, are approved in all respects and shall be payable as provided therein.

3. The Sale Procedures attached hereto as Exhibit A are hereby approved and shall govern all proceedings related to the Asset Purchase Agreement and any subsequent bids for the Sale Assets.

4. On August 19, 2016 at 4:00 p.m. Eastern, in the U.S. Bankruptcy Court, 101 S. Edgeworth St., Greensboro, NC 27401, the Court will hold a hearing on the approval of the asset sale, at which time the Debtor will present the results of the auction to the Court and request that the Court enter an Order approving the sale to Focus or such other Highest Bidder as the case may be.

5. This Order shall become effective immediately upon its entry.

6. On or before August 16, 2016, Counsel for the Debtor shall serve, via U.S. Mail, a copy of this Order, and the notice approved by the Court (the "Sale Notice"), on the following: the Bankruptcy Administrator, the Unsecured Creditors' Committee, the creditors on the list under Rule 1007(d), the parties to any leases or executory contracts contemplated to be assumed and assigned in the Sale Motion, and their counsel of record, if any, and anyone who has filed a notice of appearance in the case. The foregoing entities that do not receive notice by CM/ECF shall be served by electronic mail or facsimile in addition to U.S. Mail. Counsel for the Debtor shall also serve the Sale Notice on all creditors and parties in interest by U.S. Mail.

7. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order or the Sale Procedures.

[END OF DOCUMENT]

EXHIBIT A

SALE PROCEDURES

The following procedures (the "Sale Procedures") have been approved and authorized by order (the "Sale Procedures Order") of the United States Bankruptcy Court for the Middle District of North Carolina (the "Bankruptcy Court") in the chapter 11 case of Southern Season, Inc. (the "Debtor"), and shall govern the proposed sale (the "Sale"), including any auction (the "Auction") conducted in connection therewith, of certain assets of the Debtor, pursuant to Debtor's motion for an order authorizing the Sale and granting related relief (the "Sale Motion").

1. Sale Assets. The assets to be purchased pursuant to these Sales Procedures (the "Sale Assets") consist of all of the Debtor's (i) inventory whether on location, in transit or in storage off-site, including off-site at the Seller's distribution center, and supplies and materials used in connection with the operation of the business, (ii) equipment, machinery, smallwares, instruments, vehicles, furniture, fixtures, leasehold improvements and all other tangible property, including any furniture, fixtures, removeable leasehold improvements, equipment and machinery located off-site or at the Seller's distribution center (including (A) smallwares formerly located in the Mt. Pleasant store or restaurant, and (B) all fixed assets listed under the column Distribution Center on the Valuation-Fixed Assets page of Exhibit A, with an original book value of \$234,883), (iii) prepaid expenses, credit card processing reserves and security deposits, (iv) accounts receivable, (v) proprietary information, intellectual property, trade secrets and confidential information, technical information and data, trademarks, trade names, and service marks, including but not limited to the "A Southern Season" (and any versions, derivatives or similar variations) name and logo, any other logos, symbols, emblems, insignia or similar names and or any other related service marks or marks, including but not limited to any name or mark or logo confusingly similar thereto, and the rights to any claims and causes of action of the Seller with respect to any of such intellectual property rights, (vi) machinery and equipment warranties and service contracts and any other covenants, representations, warranties and contractual rights and indemnification, including any confidentiality agreements, related to any of the purchased assets or the Assumed Liabilities or Assumed Leases, (vii) all other documentation related to the operation of the Store, including all licenses and permits necessary to the operation, (viii) all books and records related to the Sale Assets and the operation of the Seller's stores, including all financial, accounting and property tax records, computer data and programs, market data, research, marketing, promotional and sales materials, customer lists, and records and all correspondence with and documents pertaining to suppliers, governmental authorities and other third parties, and any rights belonging to the Seller related to contract bids in process, (ix) the Seller's e-commerce online store and platform, to include www.SouthernSeason.com, the Holiday Season print magazine and telephone call center, and associated goodwill and IP and all telephone numbers and email addresses, and (x) all other assets, tangible and intangible, used in or generated in connection with, the operation of the stores and not specifically excluded as the Excluded Assets "Sale Assets"). Notwithstanding any provision herein to the contrary, the Sale Assets shall not include (i) the Seller's cash, cash equivalents, bank deposits, funds in transit or tax refunds, but excluding from such assets, any security deposits held by landlords in connection with any Assumed Liabilities or Assumed Leases, (ii) any causes of action that are pending or may be brought by or on behalf of the Seller, including those that may be brought by the Seller pursuant to Chapter 5 of the Bankruptcy Code, (iii) any of the equipment or

machinery, and in all cases such exclusion shall not apply to any inventory, where such equipment or machinery was previously located at the Seller's stores in Richmond, VA or Mount Pleasant, SC, and is currently located in the Seller's distribution center, or (iv) security deposit(s) with respect to any lease(s) not assumed by the Purchaser at Closing, and (iv) all tangible assets located at the Seller's stores in Mount Pleasant, SC and Charleston, SC (collectively, the "Excluded Assets").

2. Free of Liabilities and Liens. The Sale Assets shall be sold without assumption of liabilities and free of liens. The Sale Assets shall be sold pursuant to, and to the fullest extent permitted by, 11 U.S.C. § 363(f) and all other applicable laws free and clear of any and all liens, security interests, encumbrances and claims (including, but not limited to, any "claims" as defined in 11 U.S.C. § 101(5)), reclamation claims, mortgages, deeds of trust, pledges, covenants, restrictions, hypothecations, charges, indentures, loan agreements, causes of action, instruments, contracts, leases, licenses, options, rights of first refusal, offsets, recoupment, rights of recovery, judgments, orders and decrees of any court or foreign or domestic governmental entity, claims for reimbursement, successor liability, contribution, indemnity or exoneration, assignment, preferences, debts, charges, suits, rights of recovery, interests, products liability, alter-ego, environmental, tax and other liabilities, and in each case whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, or known or unknown, whether arising prior to, on, or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity or otherwise (collectively, the "Liens and Claims"), with any Liens and Claims to attach only to the proceeds of sale of the Sale Assets with the same priority, validity, force and effect as they existed with respect to the Sale Assets before the Closing Date. Any party holding a secured claim and electing to exercise its right to credit bid pursuant to 11 U.S.C. § 363(k), must make such credit bid in the context of a bid on all of the Sale Assets.

3. Sale Means. The Auction Sale shall be an absolute auction subject only to confirmation by the Court at the Final Hearing that the Auction and Sale Procedures Order was followed and that an Acceptable Bidder was the Highest Bidder.

4. Time and Date of Auction. The Auction Sale shall commence at later of (i) 9:30 a.m. Eastern, on August 19, 2016, or (ii) one hour following the completion of any hearing conducted pursuant to paragraph 14 below.

5. Location of Auction. The Auction Sale shall take place in Creditors' Meeting Room, U.S. Bankruptcy Court, 101 S. Edgeworth St., Greensboro, NC 27401.

6. Purchase Price. The Purchase Price offered by The Focus Properties, Inc. ("Focus") in the Asset Purchase Agreement is Three Million Five Hundred Thousand Dollars and No Cents (\$3,500,000.00).

7. Breakup Fee. A fee (the "Breakup Fee") shall be paid to Focus at closing as a breakup fee in the amount of \$150,000, in the event the Sale Assets are (i) sold at the Auction Sale and Focus is not the Highest Bidder, or new Highest Bidder, as provided in paragraph 21 below, and

(ii) Focus does not submit an Acceptable Upset Bid at the Auction Sale. The Breakup Fee is deemed earned and shall be paid in consideration of the substantial costs and expense incurred by Focus to move forward with the negotiation and preparation of the Asset Purchase Agreement and other definitive agreements and with all other pleadings and hearings necessary to obtain Court approval of the Asset Purchase Agreement, the Auction and Sale Procedures Order and the conduct of the Auction Sale; and in recognition of the benefit gained by the Debtor in allowing Focus's offer, as set forth herein, to be subject to a higher bid pursuant to the Auction Procedures.

8. No Financing Contingency. The Auction Sale is not subject to Focus or any Acceptable Bidder obtaining financing.

9. No Due Diligence Contingency. Focus and any other Acceptable Bidders shall complete any and all due diligence prior to the Auction Sale, and the sale to Focus or any other Acceptable Bidder shall not be subject to the completion of any due diligence after the Auction Sale.

10. Acceptable Bidder.

(1) An Acceptable Bidder is a party who has provided all of the following to the Debtor's counsel, John Paul H. Cournoyer, Northern Blue, LLP, 1414 Raleigh Road, Suite 435, Chapel Hill, NC, 27517, on or before 4:00 p.m. Eastern on August 18, 2016:

- (a) A bid (an "Acceptable Qualifying Bid") for all the Sale Assets shall be in the minimum amount of \$3,800,000, which is equal to the Focus bid of \$3,500,000 plus the sum of (i) the Breakup Fee, and (ii) \$150,000.
- (b) A cash deposit in the amount of \$100,000 (the "Acceptable Bidder Deposit"), which shall be placed in the Debtor's counsel's trust account. Because it is possible that the Highest Bidder (as defined infra) may default and fail to close, any deposit paid by an Acceptable Bidder shall not be returned to such Acceptable Bidder until the sale of the Debtor's assets is closed. The deposit shall be returned by first-class mail to the address and entity which the Acceptable Bidder in writing has instructed the attorney for the Debtor to return the deposit. If an Acceptable Bidder desires that the deposit be returned by wire transfer, then said instructions for said wire transfer shall be provided to the Debtor's attorney upon submission of the deposit. Failure of the Acceptable Bidder to provide proper instructions for the return of deposit will authorize Debtor's attorney to hold said deposit pending written instructions.
- (c) An executed asset purchase agreement including terms that are substantially similar to, and no less favorable to the Debtor than, the terms in the Asset Purchase Agreement and is a firm offer not containing any contingencies to the validity, effectiveness or binding nature of the offer, including, without limitation, contingencies for financing or due diligence past the Auction Sale.

(d) A signed confidentiality agreement, to the extent not previously provided.

(2) Upon timely receipt by the Debtor of a signed confidentiality agreement from a prospective Acceptable Bidder, the Debtor shall promptly provide to such person such financial information as the Debtor believes to be reasonably appropriate, but not less than such financial information that has been provided to Focus.

(3) Counsel for the Debtor shall promptly, and in no event later than one business day after receipt of all of the documents and the deposit described in paragraph 10(1) above, provide counsel for Focus, counsel for the Unsecured Creditors' Committee, the Bankruptcy Administrator, counsel for SummitBridge National Investments IV, LLC ("SummitBridge"), and any secured creditor who has requested notification in writing (or their counsel if they have appeared through counsel), the name of each Acceptable Bidder and a copy of its bid.

(4) The Debtor shall promptly, but no later than 5:00 p.m. Eastern on August 18, 2016, inform the prospective Acceptable Bidder whether the Debtor designates the prospective Acceptable Bidder as an Acceptable Bidder or takes the position, based upon evidence presented, that said party should not be so designated.

(5) Focus shall be deemed to be an Acceptable Bidder based upon its execution of the Asset Purchase Agreement. SummitBridge shall also be deemed an Acceptable Bidder with the authority to credit bid the full value of its pre and post-petition loan balance at the Auction, except for the disbursements set forth in paragraphs 34(a), (b), (d), (e) and (f) of the Sale Motion, which shall be paid in cash.

11. No Auction if No Acceptable Bidder Other than Focus. If there is no Acceptable Bidder other than Focus, then the bid/offer by Focus pursuant to the Asset Purchase Agreement shall be deemed the highest and best offer for the Purchased Assets and there shall be no Auction Sale. In such event, Focus shall be deemed the Highest Bidder as defined infra.

12. Opening Bid. The Opening Bid shall be deemed the highest Acceptable Qualifying Bid. To the extent that two Acceptable Qualifying Bids are identical in amount, then the first in time, determined by the receipt of the Acceptable Bid Deposit, shall be deemed the Opening Bid at the Auction Sale.

13. Acceptable Upset Bids. At the Auction Sale, an Acceptable Upset Bid may be made by any Acceptable Bidder. The first Acceptable Upset Bid must be in an amount equal to or greater than \$50,000 in excess of the Opening Bid. Thereafter, Acceptable Upset Bids must exceed the previous Acceptable Upset Bid by an amount equal to or greater than \$50,000. The ultimate highest bidder shall be referred to herein as the "Highest Bidder" and its bid the "Highest Upset Bid."

14. Acceptable Bidder Dispute Resolution. In the event there is a dispute between a prospective Acceptable Bidder and the Debtor as to whether said prospective Acceptable Bidder should be designated an Acceptable Bidder, the parties shall notify the Court, and the Court shall hold a hearing to determine whether said prospective Acceptable Bidder should be designated an Acceptable Bidder. This hearing may be held upon an emergency telephonic notice basis as deemed appropriate in the sole discretion of the Court.

15. How to Make an Upset Bid. A valid Acceptable Upset Bid may be made only by a person who satisfies the conditions set forth in these Auction and Sale Procedures to qualify as an Acceptable Bidder.

16. Irrevocable Nature of Bids. The Acceptable Upset Bid made by the Highest Bidder shall remain open and be irrevocable through the Final Hearing and, if the Highest Bid is determined at such hearing to be approved as the final Acceptable Bid, the Highest Bid shall remain open and be irrevocable through the Closing Date.

17. Finality of Auction Process. The Highest Upset Bid of the Highest Bidder is not subject to any upset bid after the close of the Auction Sale or at the Final Hearing.

18. Highest Bidder Deposit. The Highest Bidder shall cause to be deposited with the Debtor an amount in addition to its Acceptable Bidder Deposit such that the total amount of such deposit is equal to ten percent (10%) of the Highest Bid (the "Highest Bidder Deposit"). The Highest Bidder Deposit shall be submitted and shall represent good funds on deposit with the Debtor on or before Noon of the first business day following the Auction Sale. If SummitBridge is the Highest Bidder, it shall not be required to post a deposit.

19. Final Hearing. A final hearing will be held on August 19, 2016 at 4:00 p.m. Eastern, in the U.S. Bankruptcy Courtroom, 101 S. Edgeworth St., Greensboro, NC 27401 (the "Final Hearing"). It shall be the purpose of the Final Hearing to confirm that the procedures as set forth in the Auction and Sale Procedures have been followed by the Debtor and the Auction Sale conducted in accordance with the same, to approve the sale of the Sale Assets, to approve the proposed distributions of the proceeds of the Sale Assets, and to make such findings as are necessary to provide the purchaser with proper title in accordance with the terms and conditions of the Asset Purchase Agreement and the Sale Procedures Order.

20. Closing Date. The Closing Date shall be deemed to be the date upon which the consideration is paid and all closing documents are signed. This may take place immediately after the Final Hearing but must occur no later than August 22, 2016, provided that the Sale Approval Order has been entered by August 19, 2016, unless the Sale Approval Order is subject to a stay, in which case, closing shall occur within three (3) business days after such stay is terminated and the Sale Approval Order remains effective.

21. Failure of Highest Bidder to Close. In the event there is an Auction Sale and the Highest Bidder defaults or fails to close the sale transaction, then the Acceptable Upset Bid that is the prior high bid for the Sale Assets shall be deemed to be the new Highest Bidder and the purchase price shall be the amount of such prior high bid. The new Highest Bidder shall be required to comply with the deposit requirements outlined in paragraph 19 and shall be bound through closing at its prior high bid, with the deposit to remain on hand. The Closing Date for such new Highest Bidder shall be no later than August 23, 2016.

22. Payment of Breakup Fee. If the Breakup Fee is payable under the provisions of Paragraph 7 above, then at the closing of such sale, the Debtor shall pay, or cause to be paid, to Focus the Breakup Fee in immediately available funds.

23. Absolute Sale. The Court, pursuant to Bankruptcy Rule 6004(h), will authorize the Debtor to close the sale of the Sale Assets immediately upon entry of the Sale Approval Order following the Final Hearing.

24. Necessary Findings for Purchaser. Subject to Court approval, a sale conducted pursuant to the procedures set forth herein shall result in the Sale Assets being sold to the Highest Bidder as a good-faith purchaser. Said purchaser shall acquire all rights as can be conveyed pursuant to 11 U.S.C. § 363, including but not limited to the rights of a good faith purchaser under 11 U.S.C. § 363(m), and a finding, based upon the sworn representation of the Highest Bidder that the bidding was not pursuant to any improper collusive bidding practices, which would not allow for the sale to be avoided for reasons which would include 11 U.S.C. § 363(n).

25. Dispute Resolution. The Court shall retain exclusive jurisdiction to resolve any disputes that may arise concerning these Auction and Sale Procedures or other issues relevant to the Debtor's sale of the Sale Assets as set forth herein.

26. Business Judgment. The Debtor, upon consultation with the Committee and SummitBridge, may exercise its reasonable business judgment in conducting the Auction Sale and in allowing a reasonable time for bids by Acceptable Bidders once the Auction Sale is commenced; however, it is intended that once commenced, the Auction Sale shall proceed to its conclusion without being continued to a subsequent day, and the Debtor upon consultation with the Committee and SummitBridge may determine in its business judgment when to close the Auction Sale, declare the Highest Bid, and preclude further bids. The Debtor may exercise its reasonable business judgment to recommend to the Court the Highest Bid.

27. Executory Contracts. The Assigned Leases, as defined and set forth in the Asset Purchase Agreement, shall be assumed by the Debtor and assigned to Focus, or such other Highest Bidder, at closing pursuant to order of the Court, with all cure amounts to be paid by the Debtor from the sale proceeds as Permitted Trailing Expenses under the existing cash collateral orders of the Court.

28. No Representations or Warranties. The Purchased Assets are being sold "as is" and "where is" and Focus, or any ultimate Highest Bidder, hereby acknowledges and agrees that, except as otherwise expressly provided in the Asset Purchase Agreement, the Debtor makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Sale Assets. Without in any way limiting the foregoing, the Debtor hereby disclaims any warranty, expressed or implied, of merchantability or fitness for any particular purpose as to any portion of the Sale Assets. Focus and/or any ultimate Highest Bidder further acknowledges that said party has conducted (or will have conducted prior to the Auction Date) an independent inspection and investigation of the physical condition of the Sale Assets as said party deems necessary or appropriate to the extent that they desire such. Focus or the Highest Bidder will accept the Sale Assets at closing "as is" and "where is."