

ERIC A LIEPINS
ERIC A. LIEPINS, P.C.
12770 Coit Road
Suite 1100
Dallas, Texas 75251
(972) 991-5591
(972) 991-5788 – telecopier

ATTORNEY FOR DEBTOR

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

In Re:

FOCUS LEARNING ACADEMY, INC.,

DEBTOR.

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Case No. 17-34564-sgj-11

**DEBTOR'S MOTION FOR AUTHORITY TO SELL
PROPERTY OF THE ESTATE UNDER 11 U.S.C. § 363(b)&(f)**

COMES NOW, Focus Learning Academy, Inc., debtor-in-possession in this Chapter 11 case (the "Debtor") and files this *Motion for Authority to Sell Property of the Estate 11 U.S.C. § 363(b) and (f)* (the "Motion") and would respectfully show this Court as follows:

Jurisdiction & Venue

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (b)(2)(A) and (N). Venue is proper under 28 U.S.C. §§ 1408 and 1409.

Background

2. The Debtor is a non-profit corporation that previously operated a Texas Education Agency (“TEA”) authorized charter school on a 10-acre parcel of land in southwest Dallas more particularly described as follows and to be referred to throughout this Motion as the “Property”:

The tract of land more commonly known as 2524 W. Ledbetter Drive, Dallas, Texas located in Dallas County, Texas, being more fully described as:

Being all of Lot 2C, Block A/6051, being a re-plat of Lots 2A & 2B, Block A/6051 of Focus Center Addition, an addition to the City of Dallas, Dallas County, Texas according to the plat recorded under Instrument No. 201400322473, now known as Focus Center Addition No. 2, an addition to the City of Dallas, Dallas County, Texas according to the plat recorded under Instrument No. 201600177428, Plat Records, Dallas County, Texas,

together with all improvements thereon, if any, and all rights, privileges, tenements, hereditaments, rights-of-way, appendages and appurtenances, in any way appertaining thereto and all right, title, and interest of Debtor in and to any streets, ways, alleys, strips or gores of land adjoining the above described property or any part thereof.

3. The Property is subject to a recently renewed specific use permit (“SUP”), which is a 5-year permit issued by the City of Dallas allowing for the operation of a charter school on the Property.

4. The Debtor ceased operations of its charter school at the end of the 2017 school year, and its TEA charter was revoked in August of 2017.

5. As the end of the 2017 school year was approaching, the Debtor was negotiating a sale of the Property with two area charter school entities.

6. On April 5, 2017, the Debtor entered into a Purchase and Sale Agreement with Trinity Basin Preparatory, Inc. (“Trinity Basin”), a non-profit corporation that operates five TEA-authorized charter schools in the Dallas/Fort Worth area and would like to use the Property to open a sixth TEA-authorized charter school.

7. After the April 5, 2017 Purchase and Sale Agreement was executed and Trinity Basin took over the process of renewing the SUP for the Property with the City of Dallas. The

City of Dallas renewed the SUP effective September 26, 2017 for a 5-year period ending September 26, 2022.

8. Before a sale could be consummated, the Property was posted for foreclosure causing the Debtor to file its voluntary petition under Chapter 11 on December 4, 2017 (the “Petition Date”).

9. Since the Petition Date, the Debtor, Trinity Basin and the secured lender on the Property have been negotiating the terms of a sale of the Property.

Proposed Sale

10. Subject to this Court’s approval, the Debtor now desires to sell the Property, free and clear of all liens, claims and encumbrances (save and except the lien and collateral rights of the Successor Trustee (defined below) and the 2018 ad valorem taxes which have accrued), to Trinity Basin and Trinity Basin has agreed to purchase from the Debtor all of the bankruptcy estate’s interest in the Property, which includes, in addition to the legal description referenced above, the Debtor’s arguably nominal reversionary interest in amounts held in trust by UMB Bank, N.A. (the “Successor Trustee”) pursuant to the financing documents for the Bonds (as defined below), hereinafter referred to as the “Trust Estate for the Bonds.” Funds held in the Trust Estate for the Bonds will, post transfer, remain subject to the interests of the Successor Trustee pursuant to the financing documents for the Bonds.

11. Generally speaking, the sale price is \$6,400,000.00, subject to the terms and conditions shown on the Term Sheet attached hereto as **Exhibit A** (the “Term Sheet”), as agreed between the Debtor, Trinity Basin, and the Successor Trustee.

12. The proposed form of Purchase and Sale Agreement between the Debtor and Trinity Basin, consistent with the Term Sheet, will be filed with the Court no later than five days prior to the hearing on this Motion.

13. The Successor Trustee holds a lien on the Property. The Successor Trustee is the successor Master Trustee under the *Master Trust Indenture and Security Agreement* and *Supplemental Master Trust Indenture No. 1*, each dated May 1, 2011 (collectively, the “Note Indentures”), between Wells Fargo Bank National Association (“Wells Fargo”) and the Debtor, and is also the successor trustee for the Bonds¹ issued pursuant to the *Trust Indenture and Security Agreement* dated May 1, 2011 between Wells Fargo and Beasley Higher Education Finance Corporation (“Beasley”).

14. As the Successor Trustee under the Note Indentures, the Successor Trustee is the owner and holder of two secured debts in the original principal amount of (a) \$8,835,000 and (b) \$625,000 (collectively, the “Notes”) for the benefit of the owners of the Bonds (the “Bondholders”). As of the Petition Date, the unpaid principal and interest asserted to be due under the Notes was \$9,038,069.47.

15. The Notes are secured by (a) a *Deed of Trust and Security Agreement (with Assignment of Rents and Leases)*, dated effective May 2, 2011, and recorded in the deed records of Dallas County, Texas on May 31, 2011 (Instrument No. 201100135992) (the “Deed of Trust”); (b) *Loan Agreement* dated May 1, 2011 by and between Beasley and the Debtor (the “Loan Agreement”); and (c) various UCC-1 Financing Statements for Public Finance Transactions filed with the Secretary of State of the State of Texas beginning with the UCC-1 filed on June 2, 2011

¹ Beasley Higher Education Finance Corporation (FOCUS Learning Academy Incorporated) \$8,835,000 Tax-Exempt Education Revenue Bonds, Series 2011A (the “Series 2011A Bonds”) and \$625,000 Taxable Education Revenue Bonds, Series 2011B (the “Series 2011B Bonds” and together with the Series 2011A Bonds, the “Bonds”).

and subsequent ones filed on June 30, 2011 (collectively, the “Lien Documentation” and together with the Deed of Trust and the Loan Agreement, the “Loan Documents”).

16. The Loan Documents are attached to the Successor Trustee’s pending *Motion for Relief from Automatic Stay* filed on January 24, 2018 [Docket No. 23].

17. As detailed in the Term Sheet, in addition to obtaining this Court’s approval of the sale proposed herein, the Successor Trustee needs authorization for its consent to the proposed sale pursuant to Minn. Stat. § 501c.0202 (the “Minnesota Order”). The parties therefore agree that any order granting this Motion be effective only upon the Successor Trustee’s receipt of the Minnesota Order.

18. The Debtor now seeks authority to sell the Property to Buyer free and clear of liens, claims, and encumbrances, *except for the claims of the Successor Trustee pursuant to the Loan Documents and the Deed of Trust*, under 11 U.S.C. § 363(b) and (f), which are to remain on the Property and on the Trust Estate for the Bonds. Any liens, claims, and encumbrances on the Property, other than the claims of the Successor Trustee pursuant to the Loan Documents and the Deed of Trust, will attach to the proceeds of the sale of the Property.

19. All but \$50,000.00 of the funds currently held by the Successor Trustee in the Trust Estate for the Bonds will be retained by the Successor Trustee. The referenced \$50,000.00 (the “Proceeds”), is sought to be contributed to the Debtor following closing.

20. Other usual and customary closing costs will be paid by the Buyer. This will include the cost of title insurance and the year of closing *ad valorem* taxes on the Property, but will not include any attorneys’ fees of the Debtor or the Successor Trustee.

21. The year of closing *ad valorem* tax lien shall be expressly retained on the Property until payment by the Buyer of the year of closing taxes, plus any penalties or interest which may ultimately accrue thereon, in the ordinary course of business.

22. The Debtor would show that the sale proposed herein is in the best interests of creditors of this estate and will benefit the estate by infusing cash into the estate, which will allow the Debtor to press ahead with the remaining issues in its chapter 11 case. The Debtor is not operating, has no unencumbered assets, and has no unencumbered cash.

23. The Debtor, along with the Successor Trustee and Trinity Basin, believes that the highest and best use for the Property is operation of a TEA-approved charter school. There is no equity in the Property.

24. The Debtor would further show that it has performed extensive marketing of the Property both pre and post Petition and believes the sale contemplated in this Motion is the highest and best price for the Property. The Debtor reserves the right to present to the Court in connection with the sale, any offer it might receive for the Property which exceeds the benefits to the estate of the sale contemplated herein provided such offer can either secure the consent of the Successor Trustee or meets the requirements of §363(f)(3).

25. The Debtor requests that the Court specifically order that the provisions of Bankruptcy Rule 6004(h) do not apply to any order approving the sale of this Property.

WHEREFORE, the Debtor prays for the approval of the sale of the Property under the terms set forth in this Motion and the attached Exhibit and for such other relief as the Debtor may be justly entitled.

Respectfully submitted,

____/s/ Eric Liepins____
Eric Liepins, SBN 12338110
Eric A. Liepins, P.C.
12770 Coit Road
Suite 1100
Dallas, Texas 75251
(972) 991-5591
(972) 991-5788 – telecopier
CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the foregoing Motion was sent to all creditors on the attached matrix on this the ____ day of March, 2018.

____/s/ Eric Liepins____
Eric Liepins

TERM SHEET
FOCUS/TRINITY BASIN
(BONDHOLDER DRAFT: FEBRUARY 28, 2018)

General Information

Parties: FOCUS Learning Academy, Incorporated ("*FOCUS*")
Trinity Basin Preparatory, Inc. ("*TBP*")
UMB Bank, N.A.
("*Trustee*," and together with FOCUS and TBP, the "*Parties*")

The Property

Property: The land, improvements and various items of equipment on which the Trustee has a first priority lien pursuant to the Financing Documents¹ (the "*Property*").

Property Transfer FOCUS will by means of a Section 363 sale motion, seek authority to sell to TBP, *via* a final, non-appealable Section 363 sale order (which order will note the conditions detailed hereinafter) in Focus' pending Chapter 11 case, the Property and, subject to the terms set forth below, TBP will receive assignment of any rights and assume any obligations set forth in the Financing Documents for the Series 2011 Bonds. Focus' sale and TBP's purchase of the Property is contingent upon: a) TBP's inspection of the Property prior to the hearing on the Section 363 sale motion; b) receipt by the Trustee of an order pursuant to Minn. Stat. § 501c.0202 in the administration the trust estate for the Series 2011 Bonds authorizing the Trustee to consent to the proposed Section 363 sale and enter into the to-be drafted Forbearance Agreement; and c) execution by TBP, contemporaneously with closing, of the hereinafter referenced Restructuring Agreement, and receipt of a "no adverse effect" opinion from an attorney experienced tax matters relating to the Series 2011 Bonds.

Condition of Property The Property shall be sold to TBP in its "AS IS", "WHERE IS" condition.

Transition Period

Transition Period: Subject to the terms set forth in the final Forbearance Agreement,² the Parties agree that the Transition Period shall run from the date of the closing on the sale until the earlier of: (i) the first date on

¹ "Financing Documents" shall mean collectively those documents in the closing transcript for the Series 2011 Bonds. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Financing Documents.

² To be incorporated in the Sale and Purchase Agreement.

which TBP fails to comply with any covenant, agreement or other obligation under the Forbearance Agreement or Financing Documents (subject to the Forbearance Agreement); (ii) TBP is the subject of an adverse event materially affecting its credit or ability to conduct business (*e.g.* an adverse credit event, bankruptcy or receivership, recording or material construction/supplier liens not discharged by TBP, judgments or order of a court, adverse governmental action, reorganization or dissolution); (iii) sale of any portion of the Property; (iv) refinancing of the Series 2001 Bonds; or (v) twenty-four (24) months from the date of closing on the sale to TBP (such earlier date of (i) through (iv) being referred to as the "*Transition Termination Date*").

The period from the closing date of sale through the Transition Termination Date shall be referred to as the "*Transition Period*."

Transition Period Payments

From the date of closing on the sale to July 31, 2018, TBP will pay to Trustee Five Thousand Dollars (\$5,000) per month; for the period of August 1, 2018, to the Transition Termination Date, TBP will pay to Trustee Twenty Thousand Dollars (\$20,000) per month.

Call Protection

Any call protection set forth in the Financing Documents for the Series 2011 Bonds will be waived, thereby allowing TBP to refund the Series 2011 Bonds at any time, without premium. For purposes of the to-be drafted documents, the refunding will be treated as a default liquidation of the asset for the benefit of the owners of the Series 2011 Bonds or payment of a deferred purchase price (the "*Refunding*").

Transition Period Refunding

In the event TBP opts to proceed with a Refunding during the Transition Period, the principal amount to be refunded shall be \$6,400,000, less any Transition Payments made by TBP through the Refunding date. There will be no additional offset for monies on deposit in the Series 2011 Trust Estate.

*Transition Period
Termination*

A Transition Termination Date resulting from items (i) – (iii) above will result in the Trustee's exercise of its rights and remedies under the financing documents for the Series 2011 Bonds and the to-be negotiated Forbearance Agreement.

Upon expiration of the Transition Period on the basis of (v) above, TBP will have the following options: (a) transfer possession of the Property, by warranty deed and with clean and insurable title, to the Trustee or to such other entity as directed by the Trustee; (b) consummate a Refunding of the outstanding Series 2011 Bonds for an agreed upon principal amount of \$6,400,000, less the aggregate amount of Transition Period Payments, or (c) assume debt service on \$6,400,000, less any Transition Period Payments, in outstanding principal amount of Series 2017 Bonds on the same terms (*e.g.*, interest rate, maturity, etc.) as set forth in the current financing

documents. In the event that TBP does not notify the Trustee of its election on or before the sixtieth (60th) day preceding expiration of the twenty-four (24) months referenced in the Transition Period section above, TBP shall be deemed to have elected option (c) above. For (b) and (c) above, there will be no additional offset for monies on deposit in the Series 2011 Trust Estate.

*Resolution of Trustee's
Pending Motion to Lift
Automatic Stay*

Focus and Trustee shall agree and shall file, in a manner consistent with the requirements of F.R.B.P. Rule 4001, an agreement to the lifting of the automatic stay, which results in: a) the Trustee being able to post the Property for foreclosure and to foreclose under otherwise applicable state law; b) a release of any of Focus's arguably nominal reversionary interest in amounts held in trust by Trustee pursuant to the financing documents for the Bonds (as "Bonds" are defined in the *Motion for Authority to Sell Property of the Estate 11 U.S.C. § 363(b) and (f)*) and referred to as the "Trust Estate for the Bonds;" and c) approval of the prior use of monies on deposit in the Series 2011 Trust Estate for the purchase of commercial insurance for the Property after Focus filed for relief under Chapter 11 of Title 11 of the U. S. Code. *Notwithstanding* same, Trustee will only be able to exercise its remedies in sub parts a) and b) if all of the conditions for the Property Transfer do not occur in a reasonably timely manner.