

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF IDAHO**

In Re:

HIGH COUNTRY FUSION  
COMPANY, INC.

Debtor.

Case No. 17-40347-JDP

Chapter 11

ORDER APPROVING (I) FORM  
OF PURCHASE AGREEMENT,  
(II) SALE PROCEDURES, (III)  
NOTICE PROCEDURES, AND  
(IV) OTHER RELIEF

This matter came before the Court on October 2 and October 4, 2017 for an initial hearing, upon the Motion for Orders filed September 15, 2017(Docket No. 130) as amended by the Supplement To Motion filed September 26, 2017(Docket No. 154) (collectively referred to herein as the "Sale Motion") filed by High Country Fusion Company, Inc ("Debtor"), as debtor in possession. The Sale Motion has been served on all creditors and parties in interest in his bankruptcy case. The Sale Motion contained a request, among other things, for the entry of this order (the "Sale Procedures Order").

This Court having considered the Sale Motion and the exhibits attached thereto at an interim hearing on the Sale Motion to consider entry of this Sale Procedures Order and the appearances being noted on the record. At the hearing the parties appearing having made the following representations to the Court:

A. That the Debtor intends to seek confirmation of a Plan to sell the assets of the Debtor that contains the terms and conditions consistent with the Sale Motion and this Order

B. That Consolidated Supply & Pipe Company, Inc, (“Initial Bidder”), has agreed to make changes to its written bid contained in the Asset Purchase Agreement, which changes are identified in the amendments attached hereto as Exhibit “A” and incorporated herein by this reference. The Asset Purchase Agreement and the changes contained in Exhibit “A” are hereafter collectively referred to as “Stalking Horse APA”. Among those changes is its agreement to reduce the Holdback described in the Stalking Horse APA by \$150,000.00.

C. That if the Sale Motion is approved, Banner Bank has agreed to the following to occur at the Closing of the sale:

(1) It will release any claim to the \$150,000.00 generated as a result of the reduction of the holdback.

(2) It will release any claim to the total amount of \$200,000.00 of the sales proceeds, which is allocated to the inventory held by the Debtor in the Middle East and has been reserved in the prior cash collateral order of this Court (see subsection 4.F of the cash collateral order Docket No. 110).

(3) It will release any claim to the Australian note scheduled on Amended Schedule B.71 and which is an Excluded Asset under section 1.1(b) of the Stalking Horse APA.

A. If the Sale Motion is approved, and as part of the Debtor’s Plan, the Insiders of the Debtor agree as follows:

(1) Steve Wilson will release any unsecured claim held by him in this bankruptcy case.

(2) David Hanks will release any unsecured claim held by him in this bankruptcy case.

(3) Scotty & Joseph Development Company, the landlord of the Debtor's Fairfield Idaho location shall release any unsecured claim held by it and further agree to waive any monetary cure owed to it that may be required by the Stalking Horse APA and 11 USC §365.

(4) Scotty & Joseph North Dakota, the landlord of the Debtor's Dickinson North Dakota location shall release any unsecured claim held by it and further agree to waive any monetary cure owed to it that may be required by the Stalking Horse APA and 11 USC §365.

At the conclusion of the initial hearing all objections to the entry of this Order were resolved, overruled, or withdrawn; and after due deliberation and consideration and sufficient cause appear therefor,

IT IS HEREBY CONCLUDED that:

A. This Court has jurisdiction over this matter pursuant to 28 USC §§ 157 and 1334 and LR 2100.1. Consideration of the motion constitutes a core proceeding within the meaning of 28 USC § 157(b)(2), (N). Venue is proper under 28 USC § 1408.

B. Due, sufficient, and adequate notice of the relief granted herein has been given to parties in interest.

C. In the motion and supporting papers, the Debtor has established good and sufficient reasons for this Court to: (1) approve use by bidders of the form of the Stalking Horse APA; (2) approve the revised Bidding and Sale Procedures attached to this Order as Exhibit "B"; (3) fix notice procedures and approve forms of notice; and (4) grant the other relief provided for herein. The proposed Bidding and Sale Procedures, notice procedures and other relief granted in this Order are reasonable under the circumstances, are in the best

interests of the Debtor, its creditors and other parties in interest, and are reasonably

calculated to produce an arm's-length bidding process for obtaining the highest or otherwise best bid from good faith purchasers;

IT IS HEREBY ORDERED that:

1. The form of the Stalking Horse APA, as revised with the changes contained in Exhibit "A" to this Order, is approved and shall serve as the template for any competing bid pursuant to which the bidder proposes to effectuate a purchase of the Assets (each, a "Competing APA"). A bid also must include a copy of a redline (a "Redline APA") reflecting all changes to the Stalking Horse APA requested by the bidder, including those related to purchase price and to remove any provisions that apply only to the Purchaser.

2. The Bidding and Sale Procedures contained in Exhibit "B" to this Order are hereby approved and shall govern all bids and sale procedures relating to the sale contemplated by the Sale Motion (the "Sale").

3. The notice of the Sale Hearing contained in Exhibit "C" (the "Sale Notice") is hereby approved as reasonably calculated to provide creditors and other parties in interest with proper notice of the Sale and Bidding and Sale Procedures.

4. The notice described in paragraph 3 above shall be good and sufficient, and no other or further notices shall be required, if given as follows:

(a) The Debtor files with the Court and serves through the Court's ECF system copies of the Sale Notice on all parties appearing electronically in this case, including without limitation, the United States Trustee. Further the Debtor shall mail a copy of this Order and the Sales Notice to all creditors who have not received it through the Court's ECF system;

(b) The Debtor serves, by e-mail, first-class mail, postage prepaid, or other method reasonably calculated to provide notice, copies of the Sale Notice and this Order



on all parties known to the Debtor who previously expressed an interest in purchasing the Debtor's assets.

(c) The Debtor sends by e-mail, first-class mail, postage prepaid, or other method reasonably calculated to provide notice, copies of the Sale Notice and the Bidding and Sales Procedures on approximately 110 third parties whom are known to the Debtor to be participants in Debtor's industry

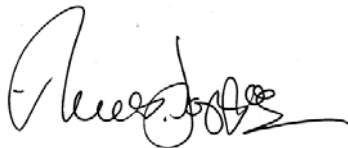
5. The Debtor is authorized to take all actions necessary to effectuate the relief granted by this Order.

6. This Order shall be effective and enforceable immediately upon entry. Time is of the essence in obtaining the highest and best value for the Debtor's assets.

7. The provisions of this Order are non-severable and mutually dependent.

8. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order. //end of text//

Dated: October 19, 2017



Honorable Jim D. Pappas  
United States Bankruptcy Judge



Submitted by Cosho Humphrey, LLP, attorney for Debtor-in-Possession

Approved:

GIVENS PURSLEY, LLP

/s/ Randall A. Peterman

By Randall A. Peterman

Attorneys for Banner Bank

Foley Freeman. PLLC

/s/ Patrick Geile

By: Patrick Geile

Attorneys for Unsecured Creditors Committee

GAIL BREHM GEIGER

Acting United States Trustee in Region 18

/s/ Mary P. Kimmel

By: Mary P. Kimmel

Attorneys for Acting United States Trustee

MAYNARD COOPER GALE

/s/ Jayna Lamar

By: Jayna Lamar

Attorneys for Consolidated Pipe & Supply, Inc

**Proposed Amendments to the Asset Purchase Agreement**

1. Section 2.1 (Consideration) will be revised to delete the phrase “subject to reduction if the aggregate Cure Costs is less than the Cure Cap.”

2. Section 2.2(b) (Holdback Amount) will be revised to (a) delete the reference to “\$300,000” in the first sentence and to substitute “\$150,000” in lieu thereof, and (b) delete the reference to “Section 2.2(c)” in the second sentence and to substitute “Section 2.2(b)” in lieu thereof.

3. Section 2.2(c) (Closing Payment) will be deleted in its entirety and replaced with the following:

(c) *Closing Date Payment.* On the Closing Date, Purchaser shall deliver to Seller, by wire transfer of immediately available funds, payment in an amount equal to the Purchase Price *minus* the Escrow Amount and the Holdback Amount (the “Closing Date Payment”).

4. Section 2.2(d) (Cure Costs) will be deleted in its entirety and replaced with the following:

(d) *Cure Costs.* Upon payment of the Closing Date Payment, or as soon as practicable thereafter, Purchaser shall instruct Seller as to the portion of the Purchase Price, up to the Cure Cap, that is to be used by Seller to pay the Cure Costs owed with respect to each Assigned Contract, and Seller shall immediately comply with such instruction. Seller shall retain the Cure Cap for payment of Cure Costs until Purchaser has designated all Assigned Contracts and a determination has been made whether Cure Costs are owed. If total Cure Costs for all Assigned Contracts exceed the Cure Cap, Purchaser will have no obligation to fund amounts above the Cure Cap, though it may elect to do so in its sole discretion. If total Cure Costs are less than the Cure Cap, the balance of the Cure Cap will be disbursed to Seller.

5. Section 2.3 (Actual Asset Value) will be deleted in its entirety and replaced with the following:

2.3 Actual Asset Value. The Actual Asset Value shall be determined in accordance with this Section 2.3. As soon as practical after the Closing but in no event later than thirty (30) days after the Closing, Purchaser shall conduct a physical inventory (at which representatives of Seller may elect to be present) of the Inventory and Equipment included in the Purchased Assets. Each item of Scheduled Inventory and Equipment included in the Purchased Assets and on the lists of Inventory and Equipment attached hereto as composite Exhibit A (the “Inventory and Equipment List”) shall be assigned the “inventory value” or “net book value”, as applicable, set forth for such item on the Inventory and Equipment List. Any item of Inventory or Equipment that (a) is not listed on the Inventory and Equipment List and (b) was not acquired between August 11, 2017



and the Closing Date shall not be assigned any value for purposes of determining the Actual Asset Value.

6. Section 3.4 (Termination) will be amended to add a subsection (l) that provides as follows:

(l) by Purchaser, if the Scheduled Inventory value drops below the MSIV and Seller fails to replenish the Scheduled Inventory to bring the value back up to at least the MSIV within the three-day cure period as set forth in Section 8.13.

7. Section 7.4 (Break-Up Fee/Expense Reimbursement) will be deleted in its entirety and replaced by the following:

7.4. Break-Up Fee / Expense Reimbursement. In consideration for the Purchaser's expenditure of time, energy and resources in performing due diligence and formulating its offer for the Purchased Assets, and the benefit to the estate created by the Purchaser's willingness to submit an offer that will enable Seller's competitive sale process, the Purchaser shall, subject to approval of the Bankruptcy Court, be entitled to a compensatory payment in an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000) (the "Break-Up Fee") in the event the Purchaser is not the Successful Bidder. In the event Seller becomes obligated to pay the Break-Up Fee, the Break-Up Fee shall be payable: (a) from the proceeds of a closing on a competing bid for the Purchased Assets and (b) from the forfeited Good Faith Deposit of a Successful Bidder if: (i) such Successful Bidder is not the Purchaser, (ii) such Successful Bidder does not close on a transaction for the Purchased Assets and forfeits its Good Faith Deposit under the terms of the Successful Bidder's Asset Purchase Agreement, and (iii) the Purchaser is not the Backup Bidder (as defined herein); provided, however, that if an approved Break-Up Fee is not fully paid pursuant to (a) and (b), above, nothing herein shall prohibit the Purchaser from otherwise seeking payment of the Break-Up Fee in the Bankruptcy Case. Each Party acknowledges that the agreements contained in this Section 7.4 are an integral part of the transactions contemplated by this Agreement, that without these agreements such Party would not have entered into this Agreement, and that any amounts payable pursuant to this Section 7.4 do not constitute a penalty.

8. Section 8.1(f) will be revised to delete the phrase "except for the sale of Inventory in the Ordinary Course of Business that does not exceed \$10,000 for any single sale of \$200,000 in the aggregate" and substitute the following in lieu thereof: "except for the sale of Inventory in the Ordinary Course of Business, subject to Section 8.13 below."

8. Section 8.1(o) will be revised to delete the reference to "Section 4.17" and substitute "Section 4.16" in lieu thereof.

9. The following covenant will be added as Section 8.13:



8.13. Minimum Scheduled Inventory Value. From the Amendment Date through the Closing, Seller agrees to maintain a minimum Scheduled Inventory value of \$3,200,000 based on Seller's cost (the "MSIV"). Any and all items of Scheduled Inventory purchased between the Amendment Date and the Closing shall be of a type, size, quantity and quality that causes such Scheduled Inventory to be in good and marketable condition when purchased, readily saleable by Seller in the Ordinary Course of Business. No less frequently than weekly from the Amendment Date to the Closing, Seller shall provide to Purchaser updated Inventory and Equipment List, which shall include a description of each item of Scheduled Inventory and its value; however, if there has been no change to the list of Equipment attached as part of Exhibit A to this Agreement on any reporting date, Seller shall not be required to update the list of Equipment. In addition to any required weekly reporting, Seller shall monitor the Scheduled Inventory value daily and provide Purchaser immediate notice at any point that the Scheduled Inventory value is (or is expected to be) lower than the MSIV. If the value of Scheduled Inventory drops below the MSIV, Seller shall have a three-day cure period during which it shall replenish Scheduled Inventory to increase the value of the Scheduled Inventory to or above the MSIV. Notwithstanding Seller's right to cure, if any transaction contemplated by Seller is expected to reduce the Scheduled Inventory value by \$100,000 or more below the MSIV, then Seller shall not consummate such transaction, or obligate itself to sell such Scheduled Inventory to any third party, without the prior written consent of Purchaser; provided, however, that Purchaser shall provide or refuse such consent by 5 p.m. prevailing Mountain Time on the next Business Day following Seller's request, or Purchaser shall be deemed to have consented to such transaction. For purposes of determining Seller's satisfaction of any obligation to cure noncompliance with the MSIV, Seller may include the value of new Inventory (a) that has been acquired by, and is in the possession of, Seller, or (b) the cost of which has been fully paid by Seller, though the Inventory has not yet been received by Seller, or (c) is reported as work-in-progress (and not Inventory), but only at the cost of such Inventory being included in the work in process and only up to its point of sale to a third party.

10. The Definitions on Annex I to the Asset Purchase Agreement will be amended to add, in alphabetical order, the following definition:

"Amendment Date" means October \_\_, 2017.

11. The Definitions on Annex I to the Asset Purchase Agreement will be amended to add, in alphabetical order, the following definition:

"Scheduled Inventory" means Seller's Inventory listed on the Inventory and Equipment List, as it may be updated by Seller prior to Closing to account for additions to or deletions from Seller's Inventory resulting from Seller's operations in the Ordinary Course of Business.

12. The Definitions on Annex I to the Asset Purchase Agreement will be amended to delete the definition of “Actual Asset Value” in its entirety and replace it with the following:

“Actual Asset Value” means the aggregate value of the Scheduled Inventory and the Equipment included in the Purchased Assets actually acquired by Purchaser and transferred by Seller at Closing. Actual Asset Value shall be determined in accordance with Section 2.3.

13. The Definitions on Annex I to the Asset Purchase Agreement will be amended to delete the definition of “Estimated Asset Value” in its entirety and replace it with the following:

“Estimated Asset Value” means an amount established by combining the “inventory values” as of August 11, 2017 and the “net book values” as of December 31, 2016, ascribed by Seller to that Scheduled Inventory and Equipment, respectively, described on the Inventory and Equipment List attached as Exhibit A, recognizing that the “Estimated Asset Value” represents only a comparative amount to be used to calculate the disbursement of the Holdback Amount under Section 2.2(b) and does not represent an agreement by the parties as to fair market value of the Scheduled Inventory or the Equipment as of August 11, 2017, December 31, 2016 or any other date.

14. The “Bidding Procedures” attached to the Asset Purchase Agreement as Exhibit D will be deleted in their entirety and replaced by the Bidding and Sale Procedures attached hereto as Exhibit D.



### Bidding and Sale Procedures (Revised)

By Motion dated September 15, 2017 (the "Sale Motion"), High Country Fusion Company, Inc. ("Debtor") sought approval of, among other things, the procedures through which it will determine the highest or otherwise best offer to sell all of Debtor's right, title and interest in substantially all assets of Debtor for the benefit of Debtor's bankruptcy estate (the "Estate"), including without limitation: (i) all intellectual property rights, including all trade names, trademarks and the like, which relate to or are used in the business conducted by Debtor; (ii) all of Debtor's personal property, inventory, equipment, fixtures, and other assets, including titled vehicles; (iii) all deposits and prepaid or deferred charges; (iv) all right, title, and interest of Debtor in certain real property leases, (v) all of the documents that are used or useful, held for use, or intended to be used, in or that arise primarily out of, Debtor's business, including any customer lists, vendor lists or supplier lists and financial and/or accounting books and records, (vi) all right, title, and interest of Debtor in certain contracts associated with Debtor's business, (vii) all insurance proceeds, including any insurance proceeds from or with respect to any third party property or casualty insurance, to the extent received or receivable by Debtor in respect of Debtor's business; (viii) all general intangibles of Debtor; (ix) all goodwill associated with Debtor's business or the assets to be purchased in connection with the Sale Motion; (x) all claims, causes of action, and rights of recovery related to the assets to be purchased in connection with the Sale Motion, including against counterparties to any contracts assumed and assigned in connection with the Sale Motion; (xi) any permits, licenses, certificates or similar documents from any governmental entity related to the assets to be purchased, in each case, to the extent transferrable; and (xii) all rights under any non-competition, confidentiality and non-disclosure agreements and similar proprietary rights agreements in favor of Debtor to the extent related to Debtor's business or the assets to be purchase in connection with the Sale Motion (collectively, the "Purchased Assets") to the party that submits, in Debtor's business judgment, the highest or otherwise best offer for the Purchased Assets (a "Sale Transaction"). Assets that are not being purchased are accounts receivable, cash and a note receivable from Australia.

Debtor filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") on April 27, 2017, in the United States Bankruptcy Court for the District of Idaho (the "Bankruptcy Court"). Debtor's chapter 11 case is being administered under Case No. 17-40347-JDP (the "Bankruptcy Case").

As referenced in the Sale Motion, an asset purchase agreement (collectively with all exhibits and schedules, as it has been or may be amended, the "Stalking Horse APA"), dated as of September 8, 2017, has been entered into between Debtor and Consolidated Pipe & Supply Company, Inc. (the "Stalking Horse Bidder"). The Stalking Horse APA contemplates (i) a sale of Debtor's right, title and interests in the Purchased Assets and (ii) a transfer, assumption and assignment of Debtor's rights and obligations related to the Purchased Assets to the Stalking Horse Bidder or its designees on the terms set forth in the Stalking Horse APA under sections 105, 363 and 365 of the Bankruptcy Code (the "Stalking Horse Bid"). A copy of the Stalking Horse APA is attached as an exhibit to the Sale Motion, and amendments to the Stalking Horse APA are attached as an exhibit to the Order Approving (I) Form of Purchase Agreement, (II) Sale Procedures, (III) Notice Procedures and (IV) Other Relief entered by the Bankruptcy Court in October 2017 (the "Sale Procedures Order"). The Sale Procedures Order, among other things, authorized Debtor to determine the highest or otherwise best offer for the Purchased Assets





through the process and procedures set forth below (these “Bidding and Sale Procedures”).

### **Access to Diligence Materials**

To participate in the bidding process and to receive access to due diligence (the “Diligence Materials”), a party must submit to Debtor an executed confidentiality agreement in a form acceptable to Debtor (the “Confidentiality Agreement”). Parties interested in receiving access to the Diligence Materials should contact counsel to Debtor, Joseph M. Meier, at (i) Cosh Humphrey, LLP, 1501 S. Tyrell Lane, Boise, Idaho 83706, (ii) 208-639-5610, or (iii) (jmeier@coshlaw.com).

A party who qualifies for access to Diligence Materials shall be an “Interested Bidder.” Debtor will afford any Interested Bidder the time and opportunity to conduct reasonable due diligence under the time constraints provided herein; provided, however, that Debtor shall not be obligated to furnish any due diligence information after the Bid Deadline (as defined below). Debtor reserves the right to withhold any Diligence Materials that Debtor, in consultation with its advisors, determines are business-sensitive or otherwise not appropriate for disclosure to an Interested Bidder. Neither Debtor nor its representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be an Interested Bidder.

Each Interested Bidder and Qualified Bidder (as defined below) shall comply with all reasonable requests for additional information by Debtor or its advisors regarding such Interested Bidder or Qualified Bidder, as applicable, and its contemplated transaction for the Purchased Assets. Failure by an Interested Bidder or Qualified Bidder to comply with requests for additional information may be a basis for Debtor to determine that any Bid (as defined below) submitted by such Interested Bidder or Qualified Bidder is not a Qualified Bid (as defined below). Bidders (as defined below) must complete all due diligence by no later than the Bid Deadline (as defined below).

### **Assets to Be Sold Free and Clear**

Except as otherwise provided in the asset purchase agreement submitted by a Successful Bidder (as defined below) (including any exhibits or schedules thereto), Debtor will seek to sell all of Debtor’s right, title and interest in and to the Purchased Assets free and clear of any and all claims, pledges, liabilities, interests, encumbrances, security interests, liens, financing statements, mortgages, mechanics’ liens, lis pendens, or other interests in and/or claims against the Purchased Assets (collectively, “Encumbrances”) to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Encumbrances to attach to the net proceeds of the sale of the Purchased Assets with the same validity and priority as such Encumbrances applied against the Purchased Assets.

### **Bidding Process**

Debtor and its advisors shall (i) determine whether any person is a Qualified Bidder (as defined below), (ii) coordinate the efforts of Interested Bidders in conducting their due diligence investigations, (iii) receive offers from Bidders (as defined below), and (iv) negotiate any offers made to purchase the Purchased Assets.



*Key Dates For Potential Competing Bidders*

<b><u>Bid Deadline:</u></b>	<b>November 27, 2017 at 5:00 p.m. (MST)</b>
<b><u>Auction</u><sup>1</sup>:</b>	<b>December 1, 2017 at 10:00 a.m. (MST)</b>
<b><u>Sale Hearing:</u></b>	<b>December 6, 2017 at 1:30 p.m. (MST)</b>
<b><u>Return of Deposits:</u></b>	<b>December 11, 2017 (other than for the Successful Bidder and the Backup Bidder)</b>

*Bid Submission Process*

To be eligible to be considered by Debtor in the bid submission process, each offer, solicitation or proposal (each, a Bid”), and each party submitting such a Bid (each, a “Bidder”), must be determined by Debtor, in consultation with its advisors, to satisfy each of the following conditions:

- (a) Good Faith Deposit: A Bid must be accompanied by a deposit in the amount of five percent (5%) of the purchase price contained in the Asset Purchase Agreement (as defined below), to an escrow account to be identified and established by Debtor (the “Good Faith Deposit”). Each submitted Asset Purchase Agreement must provide a representation that the Good Faith Deposit shall be subject to all of the terms of these Bidding and Sale Procedures.
  
- (b) Executed Agreement: A Bid must be based on the Stalking Horse APA<sup>2</sup> and must include binding, executed transaction documents, signed by an authorized representative of such Bidder, pursuant to which the Bidder proposes to effectuate a Sale Transaction (an “Asset Purchase Agreement”). A Bid also must include a copy of a redline (a “Redline APA”) reflecting all of the changes to the Stalking Horse APA (including all exhibits and schedules thereto) requested by the Bidder, including those changes related to purchase price and to remove any provisions that apply only to the Stalking Horse Bidder, such as the Stalking Horse Protections (described below), which shall not be in any Asset Purchase Agreement other than the Stalking Horse APA. **To be considered a Qualified Bid, such Bid must have a value that, in Debtor’s reasonable business judgment, is at least equal to or otherwise better than (i) the Purchase Price provided for and defined in the Stalking Horse APA,(ii) the Assumed Liabilities (as defined in the Stalking Horse APA), and (iii) \$200,000.00. For the avoidance of doubt, the cash consideration of any Bid other than the Stalking Horse Bid must exceed the Stalking Horse Bid by no less than \$200,000 to be considered a Qualified Bid.**

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<sup>1</sup> An auction will only be held if there is one or more Qualified Bidder, other than the Stalking Horse Bidder.

<sup>2</sup> To obtain a Word copy of the Stalking Horse APA, contact counsel to Debtor-in-Possession.

- (c) Same or Better Terms: Any Bid for the Purchased Assets must be on terms that Debtor, in its business judgment, determines are the same or better for the Estate than the terms of the Stalking Horse APA.
- (d) Designation of Contracts and Leases: A Bid must identify with particularity each and every contract and lease with respect to which the Bidder seeks assignment from Debtor (collectively, "Assigned Contracts").
- (e) Designation of Assumed Liabilities: A Bid must identify with particularity any and all liabilities that the Bidder proposes to assume, including, but not limited to, any cure costs associated with the assumption and assignment of the Bidder's Assigned Contracts, pursuant to section 365 of the Bankruptcy Code.
- (f) Corporate Authority: A Bid must include written evidence reasonably acceptable to Debtor demonstrating appropriate corporate authorization to consummate the proposed Sale Transaction; provided that, if the Bidder is an entity specially formed for the purpose of effectuating the Sale Transaction, then the Bidder must furnish written evidence reasonably acceptable to Debtor of the approval of the Sale Transaction by the equity holder(s) of such Bidder.
- (g) Disclosure of Identity of Bidder: A Bid must fully disclose the identity of each entity that will be bidding for or purchasing the Purchased Assets, including any equity holders, in the case of a Bidder which is an entity specially formed for the purpose of effectuating the Sale Transaction, or otherwise participating in connection with such Bid, and the complete terms of any such participation, including any agreements, arrangements or understandings concerning a collaborative or joint bid or any other combination concerning the proposed Bid. A Bid must also fully disclose any connections or agreements with Debtor, or any other known, potential or prospective Bidder or Qualified Bidder, and/or any officer, director or equity holder of Debtor.
- (h) Proof of Financial Ability to Perform: A Bid must include written evidence that demonstrates, as determined by Debtor in consultation with its advisors, that the Bidder has the necessary financial ability to close the Sale Transaction and provide adequate assurance of future performance under all Assigned Contracts.
- (i) Contact Information and Affiliates: The Bid must provide the identity and contact information for the Bidder and full disclosure of any affiliates of the Bidder.
- (j) No Contingencies: A Bid may not (i) contain representations and warranties, covenants or termination rights which Debtor, in its business judgment, determines to be more onerous than those set forth in the Stalking Horse APA (when considering all such provisions as a whole) or (ii) be conditioned on obtaining financing, any internal approvals or credit committee approvals, or on the outcome or review of unperformed due diligence.
- (k) Irrevocable: A Bid must be irrevocable until five (5) business days after the Sale Hearing, provided that if such Bid is accepted as the Successful Bid or the Backup



Bid (each as defined herein), such Bid shall continue to remain irrevocable, subject to the terms and conditions of these Bidding and Sale Procedures.

- (l) Cooperation with Debtor: A Bidder submitting a Bid must have complied with reasonable requests for additional information from Debtor to the satisfaction of Debtor.
- (m) Confidentiality Agreement: To the extent not already executed, the Bid must include an executed Confidentiality Agreement.
- (n) Stalking Horse Protections Exclusive; No Breakup Fees, Expense Reimbursements or Termination Fees for other Bidders: Other than with respect to the Stalking Horse Bidder, the Bid must not entitle the Bidder to any of the Stalking Horse Protections (defined below) or any other similar protections, including, without limitation, any breakup fee, termination fee, expense reimbursement or similar type of payment or reimbursement and, by submitting the Bid, the Bidder further waives the right to pursue a substantial contribution claim under 11 U.S.C. § 503 related in any way to the submission of its Bid or participation in the Auction.
- (o) Submission of Bids: The following parties must receive a Bid in writing (in both PDF and Word format), on or before the Bid Deadline: Debtor's counsel, Joseph M. Meier, Cosho Humphrey, LLP, 1501 S. Tyrell Lane, Boise, Idaho 83706, (jmeier@cosholaw.com) or facsimile (208) 338-3290.
- (p) Cash Bids Only: Except as set forth in the Stalking Horse APA, all Bids must provide for an all cash purchase price.
- (q) **Bid Deadline: Bids must be submitted on or before November 27, 2017 at 5:00 p.m. (MST)**

A Bid received from a Bidder on or before the Bid Deadline that meets the requirements of paragraphs a-q above, as determined by Debtor after consultation with its advisors, shall constitute a "Qualified Bid," and such Bidder shall constitute a "Qualified Bidder"; provided, that, if any Qualified Bidder fails to comply with reasonable requests for additional information from the Debtor to the satisfaction of Debtor, Debtor may, after consulting with its advisors, disqualify any Qualified Bidder and Qualified Bid, in Debtor's discretion, and such Qualified Bidder shall not be entitled to attend or participate in the Auction. Debtor shall make a determination of which Bidders have been qualified as a Qualified Bidder no later than two (2) days after the Bid Deadline and shall immediately provide notice of the Qualified Bidders to the Stalking Horse Bidder and any other Qualified Bidder(s). Within one (1) day after determining the Qualified Bidders, Debtor shall provide the Stalking Horse Bidder and any other Qualified Bidder with a copy of such Qualified Bid.

For the avoidance of doubt, the Stalking Horse Bid is a Qualified Bid and the Stalking Horse Bidder is a Qualified Bidder for all purposes and requirements pursuant to the Bidding and Sale Procedures.

Each Qualified Bidder, by submitting a Bid, shall be deemed to acknowledge and agree



that it is not relying upon any written or oral statements, representations, promises, warranties or guarantees of any kind whether expressed or implied, by operation of law or otherwise, made by any person or party, including Debtor and its agents and representatives (other than as may be set forth in a definitive agreement executed by Debtor), regarding Debtor, the Purchased Assets, these Bidding and Sale Procedures or any information provided in connection therewith.

### **Stalking Horse Protections**

**Break-Up Fee.** In consideration for the Stalking Horse Bidder's expenditure of time, energy and resources in performing due diligence and formulating its offer for the Purchased Assets, and the benefit to the estate created by the Stalking Horse Bidder's willingness to submit an offer that will enable Debtor's competitive sale process, the Stalking Horse Bidder shall, subject to approval of the Bankruptcy Court, be entitled to a compensatory payment in an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000) (the "**Break-Up Fee**") in the event the Stalking Horse Bidder is not the Successful Bidder. In the event Debtor becomes obligated to pay the Break-Up Fee, the Break-Up Fee shall be payable : (a) from the proceeds of a closing on a competing bid for the Purchased Assets and (b) from the forfeited Good Faith Deposit of a Successful Bidder if: (i) such Successful Bidder is not the Stalking Horse Bidder, (ii) such Successful Bidder does not close on a transaction for the Purchased Assets and forfeits its Good Faith Deposit under the terms of the Successful Bidder's Asset Purchase Agreement, and (iii) the Stalking Horse Bidder is not the Backup Bidder (as defined herein); provided, however, that if an approved Break-Up Fee is not fully paid pursuant to (a) and (b), above, nothing herein shall prohibit the Stalking Horse Bidder from otherwise seeking payment of the Break-Up Fee in the Bankruptcy Case.

**Stalking Horse Bidder Right to Match Overbid.** At and during the Auction (as defined below), the Stalking Horse Bidder shall have the right, but not the obligation, in its sole and absolute discretion, to match Overbids (defined below) made by any other Qualified Bidder (the "**Matching Rights**", and all other exclusive rights, protections and privileges afforded to the Stalking Horse Bidder under these Bidding and Sale Procedures and the Stalking Horse APA, the "**Stalking Horse Protections**").

### **The Auction**

If at least one Qualified Bid other than that of the Stalking Horse Bidder is received by the Bid Deadline, Debtor will hold an auction to determine the highest or otherwise best Qualified Bid (the "**Auction**") on **December 1, 2017 at 10:00 a.m. (MST)** at 1501 S. Tyrell Lane, Boise, Idaho 83706, or such other place in Boise Idaho as shall be provided by Debtor prior to that date to all Qualified Bidders. Only Debtor, the Stalking Horse Bidder, the Office of the United States Trustee and any other Qualified Bidder, and their representatives and counsel may participate in the Auction. The Stalking Horse Bidder and all other Qualified Bidders at the Auction shall be deemed to have (a) consented to the jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to Debtor, the Estate, the Bidding and Sale Procedures, the Stalking Horse APA, any Asset Purchase Agreement submitted by a Qualified Bidder, the Purchased Assets, the Auction, or the construction of any Qualified Bid or related documents and (b) waived any right to a jury trial in connection with any disputes relating to Debtor, the Estate, the Bidding and Sale Procedures, the Stalking Horse APA, any Asset Purchase

Agreement submitted by a Qualified Bidder, the Purchased Assets, the Auction, or the construction of any Qualified Bid or related documents.

At the Auction, participants will be permitted to increase their bids and improve their terms. Bidding for the Purchased Assets will start at the purchase price and terms proposed in the Baseline Bid (as defined below).

The Baseline Bid. The Stalking Horse Bid shall serve as the starting point at the Auction (the “Baseline Bid”), which shall be \$3,500,000.00 plus the other terms specified in the Stalking Horse APA.

Overbids. An “Overbid” is any bid made at the Auction, in accordance with the requirements set forth herein. All bidding at the Auction is subject to the following terms:

- (a) Initial Overbid. The initial Overbid, if any, shall provide for total consideration with a value that exceeds the value of the consideration in the Baseline Bid by an incremental amount that is not less than \$200,000.
- (b) Successive Overbids. Subject to the Stalking Horse Bidder’s Matching Rights, each successive Overbid after the initial Overbid, if any, shall exceed the then-existing Overbid by an incremental amount of not less than \$25,000.
- (c) Description of Consideration and Changes to Asset Purchase Agreement. Qualified Bidders, in connection with any Overbid, must describe all cash and non-cash consideration, as well as all other changes, if any, to the Asset Purchase Agreement the Qualified Bidder previously submitted with its Bid.
- (d) Overbids Irrevocable. Any Overbid shall be irrevocable and shall remain open and binding upon the Qualified Bidder in accordance with the terms of these Bidding and Sale Procedures.
- (e) Proof of Financial Ability to Perform: At Debtor’s discretion, and to the extent not previously provided (which shall be determined by Debtor in consultation with its advisors), a Qualified Bidder submitting an Overbid must submit written evidence in a form acceptable to Debtor, demonstrating such Qualified Bidder’s ability to consummate the Sale Transaction proposed by such Overbid.

Debtor, after consultation with its advisors, may at any time adopt rules for the Auction that Debtor reasonably determines to be appropriate to promote the goals of the sale process, provided that such rules are not in conflict with these Bidding and Sale Procedures or the Sale Procedures Order and are disclosed to each Qualified Bidder participating in the Auction.

If Debtor does not receive any Qualified Bids other than the Stalking Horse Bid by the Bid Deadline: (a) Debtor will not hold an Auction; (b) the Stalking Horse Bid will be the Successful Bid (as defined below) and the Stalking Horse Bidder will be named the Successful Bidder (as defined below); and (c) Debtor will proceed to request at the Sale Hearing (as defined below) that the Court enter an order approving the Sale Transaction in accordance with the Stalking Horse APA.



### **Selection of a Successful Bid and a Backup Bid**

At the conclusion of the Auction, Debtor, after consultation with its advisors, will determine the highest or otherwise best Qualified Bid for the Purchased Assets (the “Successful Bid,” and the Bidder submitting such Successful Bid, the “Successful Bidder”) and the next highest or best Qualified Bid (the “Backup Bidder”). There shall only be one Backup Bidder. This determination shall take into account any factors Debtor reasonably deems relevant to the value of the Qualified Bid to the Estate and may include, but are not limited to, the following: (a) the amount of the consideration and the resulting recovery to creditors; (b) the number, type and nature of any changes to the Stalking Horse APA requested by each Bidder; (c) the extent to which such modifications are likely to delay closing of the sale of the Purchased Assets and the cost to the Estate of such modifications or delay; (d) the total consideration to be received by the Estate, including the assumption of any liabilities of the Estate; (e) the Bidder’s ability to close a transaction and the timing thereof; and (f) the net benefit to the Estate (collectively, the “Bid Assessment Criteria”).

The Backup Bidder shall be required to keep its Bid (the “Backup Bid”) open and irrevocable until the earlier of: (i) the closing of the transaction with the Successful Bidder; or (ii) 30 days after the Sale Hearing.

Within twenty-four (24) hours after the close of the Auction, Debtor shall file with the Bankruptcy Court a notice of the Successful Bid and Successful Bidder and such Successful Bidder’s Asset Purchase Agreement.

Following the Sale Hearing, if the Successful Bidder fails to consummate the purchase of the Purchased Assets, Debtor may deem the Backup Bidder to have the new prevailing bid, and Debtor will be authorized, without further order of the Bankruptcy Court, to consummate the transaction with the Backup Bidder. In such case of a failure to consummate the purchase of the Purchased Assets on the part of such Successful Bidder (including any Backup Bidder designated as a Successful Bidder), the defaulting Successful Bidder’s Good Faith Deposit shall be forfeited to Debtor for the benefit of Debtor’s Estate, subject to payment of the Break-Up Fee on the terms described above. In addition, Debtor specifically reserves the right to seek all available damages, including specific performance, from any defaulting Successful Bidder (including any Backup Bidder designated as a Successful Bidder) in accordance with the terms of the Bidding and Sale Procedures.

### **Sale Is As Is/Where Is**

Except as otherwise set forth in the Asset Purchase Agreement of the Successful Bidder or an order of the Bankruptcy Court approving the Sale Transaction, the sale of the Purchased Assets pursuant to the Bidding and Sale Procedures shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by Debtor, its agents or the Estate. By submitting a Bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Purchased Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its Bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties



whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in these Bidding and Sale Procedures or as set forth in the Asset Purchase Agreement of a Successful Bidder or the Sale Order. By submitting a Bid, each Qualified Bidder shall be deemed to be familiar with the Purchased Assets, be a knowledgeable, experienced and sophisticated investor in Debtor's business, and to understand and accept the risks inherent in ownership of the Purchased Assets.

### **Sale Hearing**

The Successful Bid and the Backup Bid will be subject to approval by the Bankruptcy Court. A hearing to approve the Successful Bid and any Backup Bid (the "Sale Hearing") shall take place on **December 6, 2017 at 1:30 p.m. (MST) at the United States Bankruptcy Court for the District of Idaho, 5<sup>th</sup> Floor of the James A. McClure Federal Building, 550 W. Fort Street, Boise, Idaho.** The Sale Hearing may be adjourned by Debtor from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a notice on the docket of Debtor's Bankruptcy Case.

### **Return of Good Faith Deposits**

The Good Faith Deposits of all Qualified Bidders shall be held in one or more escrow accounts by Debtor. The Good Faith Deposit of any Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after the Sale Hearing. The Good Faith Deposit of the Backup Bidder, if any, shall be returned to the Backup Bidder the earlier of: (i) two (2) business days after the closing of the transaction with the Successful Bidder; or (ii) forty-five (45) days after the Sale Hearing. If the Successful Bidder timely closes the Sale Transaction, its Good Faith Deposit shall be credited towards the purchase price, in accordance with the Successful Bidder's Asset Purchase Agreement.

### **Reservation of Rights of Debtor**

Except as otherwise provided in the Stalking Horse APA, the Bidding and Sale Procedures or the Bidding and Sale Procedures Order, Debtor reserves the right as it may reasonably determine to be in the best interest of the Estate, to: (a) determine which bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) determine which Qualified Bid is the highest or best proposal and which is the next highest or best proposal; (d) reject any Bid that is (1) inadequate or insufficient, (2) not in conformity with the requirements of the Bidding and Sales Procedures or the requirements of the Bankruptcy Code or (3) contrary to the best interests of Debtor and its Estate; (e) waive non-compliance with any of the terms and conditions set forth herein as it determines to be in the best interests of Debtor and its Estate, its creditors, and other parties in interest; (f) impose additional terms and conditions with respect to all potential bidders; (g) extend the deadlines set forth herein; (h) continue or cancel the Sale Hearing in open court, or by filing a notice on the docket of the Debtor's Bankruptcy Case, without further notice to creditors or other parties in interest; and (i) implement additional procedural rules that Debtor determines, in its business judgment, will better promote the goals of the bidding process and discharge Debtor's fiduciary duties; provided, however, that any modification or additions to the Bidding

and Sale Procedures shall not be materially inconsistent with the Sale Procedures Order.



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Attorneys for Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF IDAHO**

In Re:

HIGH COUNTRY FUSION COMPANY,  
INC.

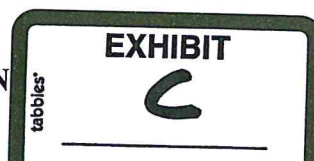
Debtor.

Case No. 17-40347-JDP

Chapter 11

**NOTICE OF SALE, SALE HEARING AND DEADLINES FOR OBJECTIONS TO  
SALE PLEASE TAKE NOTICE OF THE FOLLOWING:**

**1. Sale Motion and Proposed Sale:** High Country Fusion Company, Inc. as debtor in possession, ("Debtor") filed a Motion For Orders Pursuant To 11 U.S.C. §§ 105(A) And 363(B) And Fed. R. Bankr. P. 2002, 6004, And 9014 (I) Approving (A) Sale Procedures And (B) The Form And Manner Of Notice Of The Sale Of Certain Assets And (II) Granting Related Relief; Authorizing And Approving The Sale Of Certain Assets; And (III) Waiving The 14-Day Stay Of Fed. R. Bankr. P. 6004(H) on September 15, 2017 (Docket No. 130) which was supplemented on September 26, 2017 (Docket No. 154) (the Motion and the Supplement is collectively referred to herein as the "Sale Motion"). In the Sale Motion, the Debtor seeks, among other relief, authority to sell its assets to the highest bidder, recognizing that



Consolidated Pipe and Supply Co., Inc. (the "Stalking Horse") has submitted an initial acceptable bid pursuant to that certain Asset Purchase Agreement (as has been amended as described in the Sales Procedures Order and which is hereinafter called the "Stalking Horse APA"), to the Stalking Horse or another purchaser pursuant to a higher or otherwise better offer (in either case, the "Purchaser") received pursuant to bid procedures approved by the United States Bankruptcy Court for the District of Idaho (the "Bankruptcy Court"). The assets the Debtor desires to sell are essentially all of the assets of the Debtor except its accounts receivable, cash and a note receivable from an Australian company. You should inspect the Stalking Horse APA and the Bidding and Sale Procedures (Revised) for a complete description of the assets. Pursuant to the terms of the Stalking Horse APA, Debtor proposes to sell all assets to the Purchaser free and clear of all interests pursuant to Sections 363(f)(2) and (3) of the Bankruptcy Code for at least \$3.5 million. The liens shall attach to the proceeds. Copies of the Sale Motion, including the Stalking Horse APA, are available on the Bankruptcy Court's electronic docket or from counsel for the Debtor-in-Possession at the contacts described above on the top of page one.

**2. Sale Procedures Order.** On October \_\_\_\_, 2017, the Bankruptcy Court entered its Order Approving (I) Form Of Stalking Horse APA, (II) Sale Procedures, (III) Notice Procedures, And (IV) Other Relief (the "Sale Procedures Order") (ECF No. \_\_\_\_). A copy of the Sale Procedures Order is attached to this notice as Exhibit "1". **Please Note attached to that Order are additional modifications to the Stalking Horse APA as well as the Bidding and Sale Procedures (Revised).**

**3. Solicitation for Additional Bids.** Interested parties are invited to make competing offers to purchase the assets described in the Stalking Horse APA pursuant to and in accordance with the Sale Procedures Order. Terms not otherwise defined in this

notice shall have the meanings ascribed to them in the Sale Procedures Order (including the Bidding and Sale Procedures attached to the Order).

**4. Deadline for Submission of Alternative Qualified Bids; Auction.** Pursuant to the Sale Procedures Order, competing bids must be submitted to counsel for Debtor on or before November 27, 2017 at 5:00 pm MST. If Debtor receives one or more Alternative Qualified Bids, as defined in the Sale Procedures Order, Debtor will conduct an auction on December 1, 2017 at 10:00 am MST at the offices of Cosho Humphrey, LLP, 1501 S. Tyrell Lane, Boise, Idaho 83706. If this location is changed all Qualified Bidders shall receive notice of that location change. If no Alternative Qualified Bids are received, Debtor will not conduct an auction and will request the Bankruptcy Court to approve the transactions contemplated in the Stalking Horse APA with the Stalking Horse as Purchaser.

**5. Notice of the Sale Hearing.** The Bankruptcy Court has scheduled a final hearing on the Sale Motion on December 6, 2017, commencing at 1:30 p.m. MST, to consider any unresolved, timely filed and properly-served objections to the Sale Motion or the Sale or the conduct of the Auction, and for the purpose of considering entry of an order approving the Sale and the Sale Motion.

All hearings will be held in a Courtroom of the United States Bankruptcy Court, 550 W. Fort Street, Boise, Idaho 83724. At the hearing, the Court will, among other things, consider approval of the proposed sale to the Stalking Horse or, if an Auction under the Sale Procedures Order is conducted, to the Successful Bidder at the Auction.

**6. Objections to the Sale and/or Sale Motion.** Any party in interest wishing to object to any aspect of the Sale Motion must both (i) on or before 5:00 p.m. (MST) on November 27, 2017, file a written response stating the specific grounds for the objection and such party's relation to this case (other than objections to the conduct of the Auction, which objections may



be asserted at any time prior to or at the Auction), and (ii) attend the final hearing on the Sale Motion. Any such objections must be filed in writing or electronically through the Bankruptcy Court's ECF system (other than objections to the conduct of the Auction, which objections may be asserted at any time prior to or at the Auction). If filed in writing, such objection must be filed with the clerk of the United States Bankruptcy Court, 550 W. Fort Street, 4th Floor, Boise, Idaho 83724. **The failure of any objecting party to timely file and serve its objection shall be a bar to the assertion by such party at the Sale Hearing or thereafter of any objection to the Sale Motion, the Sale, or Debtor's consummation and performance of the Sale with the Stalking Horse or the Successful Bidder, as applicable.**

**7. Sale in Conjunction with Plan.** The Debtor has also filed a plan, which will be served on Creditors when permitted by the Bankruptcy Code. Debtor is seeking to conduct a confirmation hearing on the plan on the same date as the Sale Hearing, which plan adopts the sale and proposes payments. Debtor believes the following are the advantages of approving this sale, even if the plan cannot be confirmed on December 6, 2017:

- a. Debtor believes this sale is the best way to generate the most for both secured and unsecured creditors.
- b. Debtor does not believe that a straight liquidation which is not a going concern will generate as much as this Sale, even if no other bids are received.
- c. The Bidding and Sale Procedures permit other interested parties the opportunity to compete for the going concern assets of the Debtor and thus increase the sale price.
- d. The Debtor believes that a plan which pursues reorganization rather than the going concern sale would be strenuously opposed by its major secured creditor.
- e. In addition to the benefit to creditors, Debtor believes this Sale benefits not only the employees of Debtor but also the community of Fairfield, Idaho, in that, at least if the

Stalking Horse is the ultimate Purchaser, a large employer would remain at that location after the Sale closes.

f. Debtor believes it has explored every potential purchaser and that this sale process presents the best opportunity to bring those other purchasers forward.

DATED this \_\_\_\_\_ day of October, 2017.

COSHO HUMPHREY, LLP

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By Joseph M. Meier  
Attorneys for Debtor-in-Possession