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Attorneys for Debtor in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

In Re:

HIGH COUNTRY FUSION
COMPANY, INC

Debtor.

Chapter 11
Case No. 17-40347

**SECOND MOTION SEEKING
AUTHORITY TO USE CASH
COLLATERAL AND APPLICATION
FOR AUTHORITY TO GRANT LIEN;
NOTICE OF HEARING; AND NOTICE
OF TIME FOR OBJECTIONS**

High Country Fusion Company, Inc., a debtor-in-possession (hereinafter “Debtor”) files this second motion for an order approving the use of cash collateral. Debtor has previously requested and has obtained authority to use cash collateral through September 30, 2017. In this motion Debtor seeks authority to use cash collateral commencing October 1, 2017 after the original approval expires through the date debtor closes on the sale of its assets, confirmation of its filed chapter 11 plan or November 30, 2017 which ever first occurs. Further, Debtor applies for permission to obtain secured credit. This motion is made pursuant to 11 U.S.C. § §363, 364, Rule 4001(b) and (c), Rule 9014 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 4001.1. In support of this motion Debtor asserts as follows:

1. This proceeding was filed on April 27, 2017 (“Petition Date”).

2. The Debtor has obtained final order allowing the use of cash collateral from April 27, 2017 through September 30, 2017. In this prior order Banner Bank was granted a lien in accounts receivable and inventory generated after the Petition for the amount of cash collateral used during the period April 27, 2017 to September 30, 2017.

3. The Debtor has filed a motion seeking authority to sell substantially all of its assets. During the term of the first order Debtor has been negotiating with two potential buyers. Debtor has also filed a disclosure statement and plan.

4. The Debtor also paid Banner Bank the following adequate protection payments after the Petition Date to be applied to the operating loan of Banner Bank:

- a. \$10,000.00 before June 8, 2017;
- b. \$200,000.00 on June 20, 2017; and
- c. \$30,000.00 on or before July 5, 2017
- d. \$30,000.00 in August 2017
- e. \$30,000 in September 2017.
- f. Certain monies related to liquidation of McElroy inventory were paid.

5. The Debtor has filed its schedules. The assets which Debtor desires to use under this motion existing as of the time of the Petition Date are:

A. Proceeds from Accounts Receivables consisting of the approximate sum of **\$1,959,000.00**. There are \$2,159,000 (rounded to nearest \$1,000) in listed accounts but of this amount up to \$200,000 may be uncollectible due to litigation or pending claims. Thus the cash collateral amount is described as \$1,959,000. These accounts are described in the exhibit attached as Exhibit "1" which was attached to the initial motion to use cash collateral and is incorporated herein by this reference.

B. Inventory consisting of approximately **\$4,361,976**.

- C. Proceeds of accounts receivable contained in the following Bank accounts:
- (1) Proceeds located in US Bank account of **\$327,096.17**.
 - (2) Proceeds located in Zions Bank account of **\$830.17**.
 - (3) Proceeds in Banner Bank Intern.'l acct ending 0711 of **\$2,995.00**.

The total of this cash collateral (described in subparagraphs A to C) is **\$6,651,897.34**.

6. The following creditors claim a lien in the cash collateral or were discovered to claim a lien by virtue of a lien search conducted with the Secretary of State of the State of Idaho:

A. Banner Bank claims a lien on all accounts, inventory, contracts receivable, chattel paper and proceeds among other collateral including equipment. In 2015 it filed with the Idaho Secretary of State as follows: UCC-1 filed April 9, 2015 as instrument no. B201511549877 and an UCC-1 filed April 10, 2015 as instrument no B201511550558. The Debtor's records reflect that it is indebted to Banner Bank in the amount of approximately \$3,192,255 (Banner Bank has alleged the claim exceeds \$3,300,000.00, which amount is disputed and is referred to herein as "Banner Bank Operating Loan"). This creditor's lien also describes equipment. As indicated above by virtue of prior order Banner Bank has received \$10,000, \$200,000, \$30,000, \$30,000 and \$30,000 to be applied to this indebtedness. By court order Banner Bank should have applied \$290,000 of the amounts paid to the principal on the operating loan.

7. The Debtor owns equipment, titled vehicles, office equipment and vehicles subject to liens held by Banner Bank. Also there are three pickups secured by Ford Motor Credit and one pickup held by Idaho Central Credit Union, but in this motion Debtor is not seeking to use cash collateral related to these other assets. As stated above, Banner Bank also claims a lien in the other assets of the Debtor, which are also encumbered with two term loans owed to Banner Bank, which are a term loan of approximately \$136,404.92 and \$970,032.68 that totals

\$1,106,437.00. These two loans are hereinafter collectively called “Banner Equipment Debt”. According to the terms of the two interim Orders, Debtor has continued to pay the monthly installments due on these loans. Debtor has described these other assets as the follows:

- A. Misc. equipment totaling: \$1,273,152.00 (Schedule B.50.1).
- B. Misc. equipment totaling: \$3,047,906.00 (Schedule B.50.2).
- C. Leasehold improvements totaling: \$74,216.12 (Schedule B.50.3).
- D. Office equipment exceeding \$252,446 (Schedule B.39 and B.41).
- E. Titled Vehicles secured by Banner Bank, wherein it appears as a lienholder on the title: \$145,400 (Schedule B.47.1). There are other titled vehicles that secure several debts of Ford Motor Credit and Idaho Central Credit Union that are not included in this value.

F. The total of these assets is \$4,793,120. The total owed to Banner Bank on the Banner Equipment Debt is \$1,106,437.00. Thus the net value of this equipment after application of the Banner Equipment Debt is \$3,686,683.10. This net value is further security for the operating loan of Banner Bank.

8. The cash collateral, which Debtor desires to use, consists of \$6,651,897.34 described in subparagraph 5. A through C. above. As disclosed on the budget attached hereto as Exhibit “A” and incorporated herein by this reference, Debtor shall use the proceeds from the Accounts Receivable to pay expenses as more particularly described in the attached exhibit. Further Debtor shall generate new receivables and purchase new inventory after the Petition. In further support of the application to use this cash collateral the Debtor represents as follows:

- A. Debtor has exhausted all potential sources of secured or unsecured indebtedness enabling it to pay its ongoing operating expenses.

B. The creditors known to the Debtor who are claiming liens in the cash collateral are disclosed above.

Exhibit "A" also sets forth the cash collateral, which the Debtor requests to be used through the date a plan is confirmed; further order of the Court; or November 30, 2017, whichever first occurs. Without the payment of the expenses identified in the budget, immediate and irreparable harm shall occur as the employees may be required to obtain other employment.

9. Pursuant to Local Bankruptcy Rule 4001.1 Debtor states as follows:

A. The amount of cash collateral that was estimated to be on hand on the Petition Date is: **\$6,651,897.34**

B. The amount of the replacement lien, offered as adequate protection to Banner Bank, and any other creditor that claims a lien in the cash collateral shall not exceed the amount of cash collateral requested and shall be a lien on the following: Accounts Receivable and Inventory and proceeds acquired after April 27, 2017. The priority of the lien shall be in the same priority as existed in the Petition date.

C. The financial and other information demonstrating the need for and projected use and disposition of the cash collateral is described on Exhibit "A" attached to this Motion.

D. The creditors claiming liens against the cash collateral are identified above.

E. The adequate protection to be provided to Banner Bank and any other entity proving an interest in the cash collateral shall be the grant of a post petition lien in the post petition accounts receivable, inventory and proceeds. Further Debtor shall provide to Banner Bank and any other creditor who requests the same a copy of all monthly reports filed by it with the US Trustee. Further it shall provide a report every two weeks showing income projected as

well as income received and expenses requested vs. expenses incurred. The Debtor shall not vary in any expense category by more than 10% but in any event the total monthly expenses shall not exceed the total monthly expenses projected. Further in any given month Debtor may carryover unused expenses to use in the next month

F. Additional adequate protection being offered to Banner Bank to be applied to principal:

(1) Debtor shall pay Banner Bank \$30,000 in October, 2017.

(2) Debtor shall pay Banner Bank \$30,000 in November 2017.

(3) Debtor agrees that upon the sale of the inventory currently located in the Middle East that it will pay \$217,000, which is 100% of the cost, to Banner Bank within 5 business days of receipt of those proceeds. Debtor shall keep the balance of proceeds received over \$217,000.00 In the event Debtor cannot sell the inventory for at least \$217,000 then it may only sell for a lesser amount if it first obtains the written consent of Banner Bank to such lesser price. Debtor shall pay Banner Bank all of the proceeds received for the sale at such approved lesser price. These proceeds shall be applied to the principal of the Banner Bank operating debt. These proceeds and the disbursements of these proceeds are not described in the budget attached hereto as Exhibit "A".

(4) The Debtor has agreed to attempt to liquidate or return \$500,000 of the inventory described on Exhibit "B" attached hereto and called "McElroy Inventory". When Debtor is paid for this McElroy Inventory, Debtor agrees to pay Banner Bank 80% of its cost of that inventory to be applied to principal on the operating note held by Banner Bank. If Debtor cannot locate buyer(s) for this inventory then Debtor shall also approach the supplier McElroy to request McElroy to buy back the inventory for a credit of 80% on Debtor's cost of this inventory. If McElroy will take back this inventory and give credit of 80% then Debtor shall utilize this

credit against future purchases of inventory from McElroy. When Debtor is paid for these future purchases of inventory, which sales were generated using the credit on hand with McElroy, it shall pay the same amount used in credit to Banner Bank within 5 business days of receipt of the proceeds from the customer. Debtor will not be authorized, without Banner Bank's written consent, to sell the McElroy Inventory for less than 80% of its cost. In the event Banner Bank consents to such a sale for less than 80% of the cost then Debtor shall pay all proceeds, less freight to Banner Bank within 5 days of the receipt of those proceeds from the Buyer. These proceeds and the disbursements of these proceeds are not described in the budget attached hereto as Exhibit "A".

DATED this 15th day of September 2017.

COSHO HUMPHREY, LLP

/s/ Joseph M. Meier
By: Joseph M. Meier
Attorneys for Debtor

NOTICE OF HEARINGS

You are hereby notified that hearings on the Debtor's Motion shall be heard at the United States Bankruptcy Court for the District of Idaho on the Fifth Floor of the James McClure Federal Building located at 550 W. Fort Street Boise, Idaho. The following hearings shall be conducted:

A final hearing shall be conducted at **9:00 o'clock a.m. on October 4, 2017** to consider Debtor's request for use of cash collateral and to grant a lien in post-petition accounts receivables and inventory.

NOTICE OF TIME FOR WRITTEN OBJECTIONS

In the event you object to the Debtor's motion to be heard at the final hearing you must file a written objection on or before five days before the hearing. Service of a copy of that written objection shall be made on the attorney for the Debtor described above.

DATED this 15th day of September 2017.

COSHO HUMPHREY, LLP.

/s/ Joseph M. Meier

By: Joseph M. Meier

Attorneys for Debtor-in-Possession