UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re **HUT Airport Limousine, Inc.** Debtor(s)	))))))))	Case No. **18-63699-tmr11** **Notice of Final** **Hearing on Motion** ☒ **For Use of Cash Collateral** ☐ **To Obtain Credit** (Check One)

YOU ARE NOTIFIED THAT:

1. The undersigned moving party, **HUT Airport Limousine, Inc.**, filed a Motion ☒ For Use of Cash Collateral ☐ To Obtain Credit (check one). The motion is attached and includes the statement required by Local Bankruptcy Form (LBF) 541.5.

2. The name and service address of the moving party's attorney (or moving party, if no attorney) are: **Keith Karnes; Karnes Law Offices, PC; PO Box 12604 Salem, OR 97309**.

3. A final hearing on the motion will be held as follows:

Date: **01/08/2019** **Time:** **11:00 am** **Location:** **408 E 8th Ave, Courtroom 5, Eugene, OR 97401**

Testimony will be received if offered and admissible.

4. If you wish to object to the motion, you must, within 14 days of the service date shown in paragraph 5 below, file with the clerk at 1050 SW 6th Ave. #700, Portland OR 97204 or 405 E 8th Ave. #2600, Eugene OR 97401: (1) a written response which states the facts upon which you will rely, and (2) a certificate showing the response has been served on the U.S. Trustee and the party named in paragraph 2 above.

5. On **12/07/2018** this notice and the motion were served pursuant to FRBP 7004 on the debtor(s); any debtor's attorney; any trustee; any trustee's attorney; members of any committee elected pursuant to 11 U.S.C. § 705; any creditors' committee chairperson [or, if none, on all creditors listed on the list filed pursuant to FRBP 1007(d)]; any creditors' committee attorney; the U.S. Trustee; and all affected lienholders whose names and addresses used for service are as follows: **see attachment**

/s/ Keith Karnes 03352

Signature of Moving Party or Attorney OSB #

34030 Excor Rd SW, Albany, OR 97321; 6435

(If debtor is movant) Debtor's Address & Taxpayer ID#(s) (last 4 digits)

KEITH D. KARNES, OSB # 033521
keith@keithkarnes.com
Karnes Law Offices, PC
PO Box 12604
Salem, OR 97309
Tel (503) 385-8888
Fax (503) 385-8899

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re: HUT AIRPORT LIMOUSINE, INC. Debtor-in-possession,	Case No.: 18-63699-tmr11 DEBTOR'S MOTION FOR FINAL ORDERS (I) AUTHORIZING USE OF CASH COLLATERAL; AND (II) GRANTING ADEQUATE PROTECTION IN CONNECTION THEREWITH

HUT Airport Limousine, Inc., debtor and debtor-in-possession ("Debtor") in the above-captioned case, hereby moves the Court for: (i) final orders authorizing the nonconsensual use of cash collateral pursuant to 11 U.S.C. § 363(c)(2)(B), and (ii) the granting of adequate protection pursuant to 11 U.S.C. § 361. The Debtor requires the use of cash collateral in order to reorganize or, failing reorganization, implement an orderly liquidation process and avoid a fire sale of its assets to the severe detriment of its unsecured creditors and equity holders. In support of the Motion, the Debtor respectfully states as follows:

JURISDICTION

Karnes Law Offices, PC
PO Box 12604
Salem, OR 97309
Telephone (503) 385-8888
Facsimile (503) 385-8899

1. This Court has jurisdiction over this Chapter 11 case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these proceedings and this Motion is proper under 28 U.S.C. § 1408.

INTRODUCTION

2. Debtor commenced this bankruptcy case on December 6, 2018 by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. No trustee, examiner or creditors committee has been appointed in this case. The Debtor is operating its business as debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

3. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in detail in the Declaration of Doris J Hutmacher in Support of First Day Relief (the "Hutmacher Declaration") filed contemporaneously and incorporated herein by reference. In summary, the Debtor commenced this case because Debtor was forced to over-extend itself due to the divorce of its owners which required Doris Hutmacher to buy out the ownership interest of her ex-husband. Since that time, new competition has caused Debtor to be less profitable than at the time the loan was incurred. However, Debtor is viable and Debtor's income is greater than its operating expenses. Additionally, Debtor's officers are well experience in the field as Debtor has operated since 1978, with the current owner since 1995.

4. Considering these circumstances, Debtor has determined that to remain viable it must use the cash collateral. The debtor is currently making a monthly profit when comparing operating income to operating expenses. However, the debtor needs to reorganize to allow it more time to pay its creditors.

Karnes Law Offices, PC
PO Box 12604
Salem, OR 97309
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5. Assuming that Debtor obtains the use of cash collateral and sufficient postpetition trade credit to continue operating, it hopes to maximize payments to its creditors, preserve more than 46 jobs in the Albany area.

6. While Debtor is optimistic that it can reorganize, it also is prepared, if necessary, to use its bankruptcy case to affect an orderly liquidation of its assets. The Debtor believes that an orderly liquidation process under the Court's supervision will net money for the benefit of its unsecured creditors that would be lost in a forced sale of its assets.

7. The Debtor requires the use of cash collateral pursuant to 11 U.S.C. § 363(c)(2)(B) in either scenario for continued operation in an effort to reorganize, or in order to implement an orderly liquidation process if reorganization is not possible. All of Debtor's cash on the Petition Date constitutes cash collateral, so the Debtor can neither continue to operate nor liquidate its business in an orderly manner without the use of cash collateral.

8. Debtor believes that the use of cash collateral will not harm its primary lender, Columbia State Bank, because if Debtor cannot reorganize, its use of cash collateral will result in an increase in the liquidation value of the Bank's collateral. Further, Debtor's secondary secured creditors (Fundation Group and Expansion Capital) likely do not have a secured claim pursuant to 11 U.S.C. § 506. To the extent that the secondary creditors have either a secured or unsecured claim, use of the cash collateral will produce income needed to pay creditors and a liquidation would likely pay the secondary creditors nothing. The Debtor proposes to provide further adequate protection to the secured creditors in the form of a replacement lien on postpetition accounts.

DEBTOR'S SECURED DEBT STRUCTURE

A. Columbia State Bank's lien

Karnes Law Offices, PC
PO Box 12604
Salem, OR 97309
Telephone (503) 385-8888
Facsimile (503) 385-8899

9. As of the Petition Date, Debtor owes Columbia State Bank approximately $1,192,903.28 pursuant to the terms of that certain Credit and Security Agreement dated on or about September 15, 2015.

10. The Columbia State Bank loan is secured by (i) a security interest in substantially all of Debtor's personal property (including among other things its accounts receivable, inventory and equipment); and (ii) and a lien on the real estate of the Debtor's President, Doris Hutmacher located at 34030 Excor Rd. SW, Albany, Oregon with an assessed real market value of $719,620.00 Columbia State Bank recorded a UCC Financing Statement with the Oregon Secretary of State on September 17, 2015.

B. Fundation Group, LLC lien

11. As of the Petition Date, Debtor owes Fundation Group, LLC approximately $45,000.00 pursuant to the terms of that certain Credit and Security Agreement dated on or about February 25, 2018.

12. The Fundation Group, LLC loan is secured by a security interest in substantially all of Debtor's personal property (including among other things its accounts, inventory and equipment). Fundation Group, LLC recorded a UCC Financing Statement with the Oregon Secretary of State on March 5, 2018.

C. Expansion Capital Group, LLC lien

13. As of the Petition Date, Debtor owes Expansion Capital Group, LLC approximately $98,001.00 pursuant to the terms of that certain Credit and Security Agreement dated on or about October 5, 2018.

14. The Expansion Capital Group, LLC loan is secured by a security interest in substantially all of Debtor's personal property (including among other things its accounts,

Karnes Law Offices, PC
PO Box 12604
Salem, OR 97309
Telephone (503) 385-8888
Facsimile (503) 385-8899

inventory and equipment). Expansion Capital Group recorded a UCC Financing Statement with the Oregon Secretary of State on October 30, 2018.

D. PMSI Interest in Vehicles

14. As of the Petition Date, Debtor owed various creditors which are not the Secured Creditors listed above, who hold a purchase money security interest in Debtor's vehicles.

15. Debtor believes each vehicle is fully secured under 11 U.S.C. § 506 and that there is not excess equity to secure the interest of creditors that do no hold a PMSI in Debtor's vehicles.

RELIEF REQUESTED

16. By this Motion, the Debtor seeks entry of interim and final orders (i) authorizing the Debtor to use cash collateral as provided in the proposed Interim Cash Collateral Order, (ii) granting Columbia State Bank, Fundation Group, and Expansion Captial (collectively "Secured Creditors") adequate protection as described herein and as set forth in the proposed Interim Cash Collateral Order, (iii) approving the form of notice of the final hearing on the use of cash collateral, (iv) approving the adequacy of the proposed service thereof, and (v) scheduling the final hearing.

PROPOSED USE OF CASH COLLATERAL

17. The Debtor's reorganization or, if needed, orderly liquidation efforts require access to working capital and specifically, access to cash on hand and the cash proceeds received from collection of its accounts receivable (collectively, the "Cash Collateral"). Use of Cash Collateral is necessary to provide the Debtor with the liquidity to operate and, if its operations prove unsuccessful, to wind-down its business in an orderly fashion.

18. In the continued operations/reorganization context, Debtor will use Cash Collateral for payment of its ordinary operating expenses, including principally the purchase of fuel,

Karnes Law Offices, PC
PO Box 12604
Salem, OR 97309
Telephone (503) 385-8888
Facsimile (503) 385-8899

maintenance of vehicles, payment of insurance, and the payment of employee wages, benefits and taxes, as shown in detail in the budget annexed to the Hutmacher Declaration as Exhibit A (the “Budget”).

In this context the Debtor projects substantial earnings and positive cash-flow in 2018 after the reorganization of Debtor’s obligations. The Debtor currently has a positive cash flow; therefore, there is little chance of loss to Secured Creditors.

19. In the event Debtor cannot obtain sufficient trade credit to continue its manufacturing operations, or if its projections prove substantially too optimistic, or if for any other reason it becomes apparent to the Debtor or the Court determines for any reason that Debtor should cease its normal operations, then Debtor will require the use of Cash Collateral to conduct an orderly liquidation of its assets. Cash Collateral will be required, among other things, to take Debtor’s equipment Collateral out of operation and maintain it pending sale; to clean and repair such equipment as appropriate to maximize its value and to pay employees, taxes, utilities and other necessary costs of conducting an orderly sale process.

20. Absent immediate access to Cash Collateral for continued operations, Debtor would have no alternative to liquidation. If it were not permitted to use Cash Collateral to conduct an orderly liquidation process, then the Debtor would be compelled to rapidly liquidate assets at fire-sale prices. Any liquidation would jeopardize payment of priority creditors, and preclude payment of general unsecured creditors. A significant further loss of value would be likely if Debtor were denied the use of Cash Collateral needed to conduct a full and orderly liquidation process.

For the reasons set forth above, to meet its immediate cash requirements and facilitate a reorganization or an orderly liquidation, the Debtor requires the use of Cash Collateral. Because

Karnes Law Offices, PC
PO Box 12604
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Secured Creditor's liens encumber the only cash available to Debtor at this time (i.e., the cash proceeds of Debtor's accounts receivable and inventory) and Secured Creditors have not consented, the Debtor seeks permission to make non-consensual use of Cash Collateral pursuant to 11 U.S.C. § 363(c)(2)(B). As described above, the Debtor concluded in its sound business judgment, and after having investigated and solicited other sources of other financing, that seeking approval of the use of Cash Collateral under the terms set forth herein was the most reasonable solution under the circumstances and addressed the Debtor's reasonably foreseeable needs.

A. Overview of the Cash Collateral Terms

21. Debtor is seeking authority to use cash that constitutes Secured Creditor's Cash Collateral. In order to do so, the Debtor must demonstrate that Secured Creditors are adequately protected against the anticipated short-term diminution in the amount of such Collateral as a result of its use. The Debtor submits that its burden of proving adequate protection is satisfied here because, the Debtor is also prepared to provide the following additional adequate protection:

i) Creditors who hold a right to cash collateral should be granted a post-petition security interest in an amount equal to the diminution in the value of their interest in cash collateral and the collateral, with the same relative priorities as between the Secured Creditors as they enjoyed in such cash collateral at the beginning of this case, if any.

ii) Cash Collateral shall be used only in accordance with the Budget.

iii) Debtor shall timely file its monthly operating reports.

iv) Debtor expects to have a plan of reorganization filed promptly.

Karnes Law Offices, PC
PO Box 12604
Salem, OR 97309
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22. The Debtor believes that the Cash Collateral terms are fair and reasonable under the circumstances and that authorizing Debtor to use Cash Collateral serves the best interests of the Debtor, its creditors, and estate.

B. Secured Creditors are Adequately Protected

23. Prior to granting permission to use cash collateral, a Court must find either that the secured creditor consents to such use or is otherwise adequately protected. 11 U.S.C. § 363. Section 361 of the Bankruptcy Code provides that adequate protection can be provided by, among other things, the making of periodic cash payments, the granting of replacement liens, or the granting of such other relief as will provide the indubitable equivalent of the secured creditor's interest in the relevant property. 11 U.S.C. § 361.

24. Columbia Bank will receive additional adequate protection in the form of the payments Debtor pays in rent in the amount of $4,110.14 per month. The loan of Columbia Bank is secured not only by the cash of the Debtor, but also the real estate owned by Doris Hutchinson. Debtor proposes to continue paying Hutchinson for the use of the real estate. Hutchinson will in turn continue making payments to Columbia Bank. If required, Debtor will make the rental payments directly to Columbia Bank so that the payments remain under the jurisdiction of this Court.

C. Use of Cash Collateral is Necessary

25. As set forth above in this Motion, Debtor requires use of the Secured Creditors' Cash Collateral both for continued operation in an effort to reorganize, and in order to implement an orderly liquidation process if reorganization is not possible. All of Debtor's cash constitutes cash collateral, so Debtor can neither operate nor liquidate in an orderly manner without the use of such Cash Collateral. Section 363(c)(2) of the Bankruptcy Code prohibits a debtor from

Karnes Law Offices, PC
PO Box 12604
Salem, OR 97309
Telephone (503) 385-8888
Facsimile (503) 385-8899

using cash collateral without the consent of the secured party or court approval. 11 U.S.C. § 363(c)(2). In the absence of consent, § 363(c)(2)(B) permits the court, after notice and a hearing, to authorize the debtor to use cash collateral. See In re ProAlert, 314 B.R. at 441. The debtor is required to provide adequate protection in order for a court to authorize the use of cash collateral over a secured party's objection. See id. at 442 (stating that the court may authorize the use of cash collateral only if there exists adequate protection). See also In re Patrician St. Joseph Partners, 169 B.R. at 677; In re Whittenmore, 37 B.R. at 94.

26. Debtor's need to use Secured Creditors' Cash Collateral is immediate. Granting such relief will minimize disruption of the Debtor's business and thereby further its efforts to reorganize. In the worst case, if Debtor cannot reorganize, the use of Cash Collateral will allow the Debtor to prepare its property for sale, will preserve the value of the Collateral, and is in the best interests of the Debtor, its creditors and the estate.

LBF 541.5 CERTIFICATION

31. The Debtor certifies that this Motion does not contain any of the provisions on use of cash collateral which the Court usually will not approve, as set forth in Local Bankruptcy Form 541.5.

NOTICE

32. Notice of the hearing on this Motion has been provided to: (a) all creditors, (b) the Office of the United States Trustee, and (c) all counsel who have appeared or who are known to represent any creditor in this case. The Debtor submits that under the circumstances, no other or further notice is necessary.

NO PRIOR REQUEST

Karnes Law Offices, PC
PO Box 12604
Salem, OR 97309
Telephone (503) 385-8888
Facsimile (503) 385-8899

34. No prior request for the relief sought in the Motion has been made to this Court or any other court.

WHEREFORE, Debtor respectfully requests that the Court enter the order attached hereto as Exhibit A authorizing the use of cash collateral.

DATED December 7, 2018.

/s/ Keith D. Karnes
Keith D. Karnes OSB # 03352
Attorney for debtor-in-possession

Karnes Law Offices, PC
PO Box 12604
Salem, OR 97309
Telephone (503) 385-8888
Facsimile (503) 385-8899

1st Source Bank
PO Box 783
South Bend, IN 46624-0783

Jason M Ayres
121 SW Morrison #600
Portland, OR 97204-3136

Advantage Funding
1111 Marcus Avenue, Suite M27
Lake Success, NY 11042-1034

Ally Financial Inc
PO Box 380901
Minneapolis, MN 55438-0901

American Express
PO Box 981535
El Paso, TX 79998-1535

Ascentium Capital LLC
23970 Hwy 59 North
Kingwood, TX 77339-1535

Chrysler Capital
PO Box 961272
Fort Worth, TX 76161-0272

Columbia Bank
2820 Harrison Ave NW
Central Point, OR 97502

Columbia Bank
2820 Harrison Ave NW
Olympia, WA 98502-2502

Costco / Citi Cards
PO Box 6704
Sioux Falls, SD 57117-6704

Doris Hutmacher
7873 Parker Lane SE
Turner, OR 97392-9790

Doris Jean Hutmacher
7873 Parker Lane
Turner, OR 97392-9790

Eric Hutmacher
7873 Parker Lane SE
Turner, OR 97392-9790

Expansion Capital Group
5020 S Broadband Lane, Suite 100
Sioux Falls, SD 57108-2319

Fundation Group LLC
11501 Sunset Hills Rd, Suite 100
Reston, WA 20190-6700

HUT Airport Limousine, Inc.
34030 Excor Rd SW
Albany, OR 97321-9464

IRS
Central Insolvency Operation
PO Box 7317
Philadelphia, PA 19101-7317

Oregon Dept. of Revenue
955 Center St. NE
Salem, OR 97301-2554

US Bank
PO Box 5229
Cincinnati, OH 45201-5229

US Bank Cash Flow
PO Box 790179
Saint Louis, MO 63179-0179

US Trustee, Eugene
405 E 8th Ave #1100
Eugene, OR 97401-2728