

So Ordered.

Dated: December 7th, 2017



Frank L. Kurtz  
Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON AT YAKIMA**

In re:

47 HOPS LLC,

Debtor.

No. 17-02440

AGREED ORDER APPROVING FINAL USE  
OF CASH COLLATERAL AND GRANTING  
REPLACEMENT LIENS

THIS MATTER having been presented to the above-signed Judge of the above-entitled Court upon the Debtor's Motion to Approve Final Use of Cash Collateral, Grant Replacement Liens, and Set Final Hearing. The Debtor's secured lender Columbia State Bank objected. This agreed order resolves the objection of Columbia State Bank. Now, Therefore,

The Court finds as follows:

A. On August 11, 2017 (the "Petition Date"), Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "Code"). No trustee has been requested or appointed. Debtor is currently operating its business and managing its property as a debtor-in-possession under Sections 1107 and 1108 of the Code.

B. On or about August 24, 2015, the Debtor executed and delivered to Columbia State

AGREED ORDER APPROVING FINAL USE OF CASH COLLATERAL  
AND GRANTING REPLACEMENT LIENS

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206.903.0401 (RIORDAN)

1 Bank (the “Bank”) a Business Loan Agreement and Commercial Line of Credit Agreement and  
2 Note (the “Note”) with an initial credit limit of \$2,500,000.00, subsequently modified by a Change  
3 in Terms Agreement dated June 13, 2016 which increased the credit limit to \$4,000,000.00 and  
4 subsequently modified by a Change in Terms Agreement dated April 25, 2017 which increased the  
5 credit limit to \$4,500,000.00.

6 C. As security for the Note, the Debtor executed and delivered to the Bank a  
7 Commercial Security Agreement pursuant to which it granted the Bank an interest in all inventory  
8 and accounts (the “Prepetition Collateral”). The Bank asserts it properly perfected its security  
9 interest on September 1, 2015 by filing financing statement number 2015-244-8573-5 with the  
10 Washington Department of Licensing.

11 D. The Bank asserts the Debtor’s obligations under the Note were unconditionally,  
12 absolutely and irrevocably guaranteed by Douglas MacKinnon and Anastasia McKinnon pursuant  
13 to Unlimited Continuing Payment Guaranties.

14 NOW THEREFORE IT IS HEREBY ORDERED as follows:

15 1. That the Debtor may spend the amounts contained in Exhibit A through the date of  
16 the Final Hearing, unless earlier terminated by order of this court, in accordance with the provisions  
17 of this Order, and the amounts spent may not vary therein by more than 10% for each line item and  
18 in aggregate on a monthly basis; provided, however, that the foregoing cap on expenditures shall  
19 not apply to administrative expense claims allowed pursuant to court-approved fee applications of  
20 professionals employed by the Debtor’s bankruptcy estate.

21 2. On or before fourteen (14) days after the end of each month, the Debtor shall  
22 provide the Bank, the Unsecured Creditors’ Committee, and the U.S. Trustee, with a report  
23 comparing, on a cumulative and aggregate basis, the Debtor’s actual income and expenses to

1 Budget. In addition, on or before fourteen (14) days after the end of each month, the Debtor shall  
2 provide the Bank with the financials for such month including a balance sheet, profit & loss  
3 statement, A/R & A/P Aging reports and inventory reports. On a bi-weekly basis, the Debtor shall  
4 additionally provide the Bank, subject to the terms of the protective order entered with this court,  
5 a report detailing specific hops purchases and sales and deliveries of pre-paid hops held for  
6 customers over the prior two weeks including information on the costs of the hops sold for purposes  
7 of calculating profit margins with the first report due December 15, 2017.

8 3. The Debtor shall cooperate with Bank in providing full and reasonable access to  
9 information respecting the Bank's Collateral and cash collateral, and the Debtor's financial  
10 conditions, assets and liabilities, including without limitation, permitting the Bank to inspect upon  
11 reasonable notice the Bank's Collateral and replacement collateral and the Debtor's books and  
12 records. The Debtor shall further cooperate with the Bank by physically segregating the Bank's  
13 inventory collateral and any inventory held for customers that have paid for the inventory in  
14 advance, not later than December 31, 2017.

15 4. As adequate protection for any Cash Collateral used by the Debtor, the Bank is  
16 hereby granted, pursuant to Sections 361(1), 361(2) and 363(e) of the Bankruptcy Code,  
17 replacement security interests and perfected liens upon all property acquired by the Debtor after  
18 the Petition Date of the same type, kind, character and description as the property in which the  
19 Bank held a lien or security interest on the Petition Date, with the same validity and priority and to  
20 the same extent that it had valid, enforceable liens and security interests prior to the Petition Date  
21 (the "Replacement Lien") in and to the following (collectively the "Postpetition Collateral"): (a)  
22 all proceeds from the disposition of all or any portion of the Prepetition Collateral, (b) all property  
23 of the Debtor and the Debtor's estate of the same kind, type and nature as the Prepetition Collateral

1 that is acquired after the Petition Date, and (c) all proceeds of the foregoing. The Replacement  
2 Liens are and shall be in addition to the prepetition liens evidenced by the Commercial Security  
3 Agreement, and shall remain in full force and effect notwithstanding any subsequent conversion  
4 or dismissal of this case. The Replacement Lien granted to the Bank shall have the same priority  
5 position as existed in the Prepetition Collateral prior to the Petition Date and shall be valid and  
6 enforceable as of the Petition Date. No other lien of any type or nature shall become prior to the  
7 Replacement Lien granted herein as to the Prepetition Collateral or Postpetition Collateral. The  
8 granting of such Replacement Lien shall be in addition to Lender's rights in the Prepetition  
9 Collateral, and nothing contained herein shall constitute a waiver of Lender's rights and priority in  
10 the Prepetition Collateral. The Replacement Liens shall secure the prepetition obligations owed to  
11 the Bank and adequately protect it from any diminution in value of its interests in property of the  
12 Debtor's estate as a result of the use of the Cash Collateral as authorized by this Order. Nothing  
13 herein shall prevent the Unsecured Creditors' Committee from investigation and/or challenging  
14 the validity, perfection, or other issues pertaining to the Bank's liens and security interests in the  
15 Prepetition Collateral and Additional Collateral.

16 5. As further adequate protection, the Debtor grants to the Bank a lien on (a) the  
17 Debtors' contracts with brewers for the sale of hops, (b) the Debtor's pellet mill and line, and (c)  
18 the promissory note owed by Doug MacKinnon to the Debtor. The Debtor offers a lien ("Additional  
19 Lien") on the foregoing property (the "Additional Collateral") only to the extent of any diminution  
20 of the value of the Bank's collateral as of the Petition Date.

21 6. This Order shall be deemed to constitute a security agreement under the applicable  
22 provisions of the Uniform Commercial Code ("UCC") in effect in states where the Debtor (a) is  
23 domiciled, (b) operates its business, and (c) maintains its principal place of business. Subject to

1 the rights of the Unsecured Creditors' Committee set forth above in Paragraph 5, the Replacement  
2 Lien granted hereby shall be a valid, perfected and enforceable security interest and lien on the  
3 property of the Debtor and the Debtor's estate without further filing or recording of any document  
4 or instrument or any other action, but only to the extent of the enforceability of the Bank's security  
5 interests in the Prepetition Collateral. Notwithstanding the foregoing, the Debtor is authorized and  
6 directed to execute and deliver to the Bank such financing statements, instruments and other  
7 documents as the Bank may deem necessary or desirable from time to time. To the extent  
8 necessary, the automatic stay in effect pursuant to 11 U.S.C. § 362 is hereby modified and lifted to  
9 permit the granting of the Replacement Lien as set forth herein.

10 7. The Debtor shall at all times keep the Prepetition Collateral and Additional  
11 Collateral and the properties to which the Replacement Lien and Additional Liens attach free and  
12 clear of all other liens, encumbrances and security interests, other than those in existence on the  
13 Petition Date, and shall pay and discharge when due all taxes, levies and other charges arising or  
14 accruing from and after the Petition Date.

15 8. As additional adequate protection, the Debtor will make a monthly adequate  
16 protection payment to the Bank in the amount of \$18,750.00 per month, with the first payment to  
17 be made on or before December 20, 2017, and continuing so long as this Order is in effect, and,  
18 the amount of the adequate protection payments may be ordered to be increased by the Court in an  
19 amount deemed reasonable and not burdensome to the Debtor, in the event that, in the Court's  
20 opinion, the Debtor's revenues and cash flow have deviated substantially higher than the amounts  
21 shown on Exhibit A.

22 9. Within ten (10) days of the date of entry of this Order, the Bank and the Debtor shall  
23 propose amendments to the budget that will provide for payment to professionals such as Debtor's

1 counsel, Debtor's accounting firm, the examiner and the attorneys for the unsecured creditors  
2 committee. If the foregoing professionals are unable to reach agreement on the amended budget,  
3 the Court will consider a motion to approve same on shortened notice.

4 10. The Examiner appointed on October 4, 2017 shall continue to have unrestricted  
5 access to the Debtor's books, records and record keeping processes. The Debtor and its  
6 representatives and professionals shall continue to cooperate and provide the Examiner with any  
7 requested information. The Examiner shall: (1) review and monitor the Debtor's monthly operating  
8 reports and monthly financials prepared and produced pursuant to paragraph 2 of this Order; (2)  
9 compare the Debtor's monthly operating financial reports to the cash collateral budget and report  
10 on any concerns raised by any party or variances greater than those allowed under paragraph 1 of  
11 this Order to counsel for the Debtor, the Bank, the Committee and the United States Trustee; (3)  
12 perform such additional investigative or reporting tasks as may be requested by mutual agreement  
13 of the Debtor, the Bank, the Committee and the United States Trustee, or, if there is no mutual  
14 agreement, perform such additional tasks as may be ordered by this Court. As to any motion under  
15 this paragraph time for notice of the motion shall be shortened to five (5) business days with  
16 responses due one (1) day prior to the hearing.

17 11. No payments to professionals can be made except pursuant to approved fee  
18 applications. No salary payments shall be made to the Debtor's principals until the notice  
19 provisions of the local rules are satisfied.

20 12. In the event Debtor defaults on any of its obligations under this Order and such  
21 default is not cured within ten (10) days of receipt of notice from the Bank, the Bank may seek  
22 relief from the Court to terminate Debtor's authority to use all or any portion of the Cash Collateral.  
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1           13.     In the event that an adverse fact or circumstance (“Adverse Fact or Circumstance”)  
2 arises or is discovered by or disclosed to the Bank or the examiner, and the Bank believes that such  
3 Adverse Fact or Circumstance demonstrates that (i) the Bank is not adequately protected; (ii) the  
4 Debtor has failed to accurately report or disclose its financial performance in a manner which  
5 materially impacts the Debtor’s ability to operate pursuant to the budget attached as Exhibit A; or  
6 (iii) the Debtor has knowingly falsely or fraudulently reported its income, expenses, assets or  
7 liabilities in a material manner. The Bank may provide notice to the Debtor of such Adverse Fact  
8 or Circumstance along with a description of the Adverse Fact or Circumstance and a description  
9 of the basis for the Bank’s position. If, within ten (10) days of receipt of notice from the Bank, the  
10 Debtor has not, in the Bank’s opinion, sufficiently addressed the Adverse Fact or Circumstance,  
11 the Bank may seek relief from the Court to terminate Debtor's authority to use all or any portion of  
12 the Cash Collateral.

13           14.     Unless earlier terminated or extended by further Court order, the Debtor’s  
14 authorization to use Cash Collateral pursuant to this Order shall expire on the close of business on  
15 the date set for the Final Hearing; provided, however, that all rights and interests created or  
16 preserved hereunder shall survive such termination.

17           15.     The provisions of this Order and the effect of any actions taken hereunder shall  
18 survive issuance and entry of any order converting this case to one under Chapter 7 of the  
19 Bankruptcy Code or dismissing this Chapter 11 case. The priorities, liens and security interests  
20 granted herein shall continue in this or any superseding case under the Bankruptcy Code, and any  
21 such liens and security interests shall maintain their priority as provided herein until satisfied and  
22 discharged subject to the Bankruptcy Code.  
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1 16. Until further order of this court, the Debtor may purchase hops on the spot market.  
2 To fulfill all spot purchases the Debtor shall seek to fulfill such purchases from growers with whom  
3 it is currently a party to existing pre-petition contracts for the same hops variety (“Grower” or  
4 “Growers”). Growers shall have one business day to respond to a fulfillment request from the  
5 Debtor. The Debtor shall fulfill the purchase in accordance with Appendix A attached to this  
6 Order. No Grower would be able to supply more than the amount for which they had contracted  
7 pre-petition to provide to the Debtor. If the Debtor is unable to fulfill its spot purchases in  
8 accordance with Appendix A, or if no Growers respond within the one day response time, the  
9 Debtor may look to any other sources of supply. In the event that any Grower Contracts are rejected  
10 prior to the expiration of this Order and before confirmation of a plan of reorganization, the Debtor  
11 will continue to honor the terms of this paragraph as if the Grower Contract were not rejected.

12 17. Nothing in this Order or the Debtor’s subsequent operations shall prejudice the right  
13 of any party to challenge the nature of the Debtor’s activities as outside of the ordinary course of  
14 business; and no act or omission by any party shall be deemed to waive that party’s right to  
15 challenge the nature of the Debtor’s activities as outside of the ordinary course of business.

16 */// End of Order ///*

17 Presented by:

18 WENOKUR RIORDAN PLLC

19 */s/ Nathan T. Riordan*

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Attorney for Debtor 47 Hops LLC



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Agreed as to form:

FARLEIGH WADA WITT

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Attorney for The Unsecured Creditors Committee

1 **Appendix A**

2 **Allocation of Spot Purchases**

3 1. All Growers participate: Each Grower's individual percentage shall be its total contracted  
4 pound by year and variety at the time of the bankruptcy filing (the Original Grower Percentage")  
5 multiplied by the number of pounds of the proposed spot purchases.

6 2. Less than all Growers participate: the Original Grower Percentage adjusted by dividing  
7 each participating Grower's original percentage by the total of the Original Grower Percentages of  
8 the participating growers (the "adjusted" percentage) multiplied by the number of pounds of spot  
9 purchases (the "adjusted pounds")

10 2a. If a participating Grower's adjusted pounds results in more hops than an individual  
11 participating Grower has available, the remaining participating Growers may deliver the additional  
12 pounds based upon their adjusted percentages divided by the total adjusted percentages of the  
13 remaining participating Growers.

14 3. If the original Growers do not have sufficient hops to fill the total of the spot purchase, 47  
15 Hops may spot purchase the additional pounds needed from other growers.

16 4. All participating Growers shall be paid the same spot purchase price on a raw hop per pound  
17 basis.

18 5. Participating Growers who have converted their 2017 crop hops into pellets may deliver  
19 the pellets in place of the raw hops and shall receive an additional \$0.40/lb.  
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# **EXHIBIT A**

<b>47HOPS</b>							
<b>DEC 2017 - MAY 2018</b>	<b>DECEMBER</b>	<b>JANUARY</b>	<b>FEBRUARY</b>	<b>MARCH</b>	<b>APRIL</b>	<b>MAY</b>	<b>TOTAL</b>
<b>HOP SALES REVENUE</b>	<b>\$750,000</b>	<b>\$500,000</b>	<b>\$500,000</b>	<b>\$500,000</b>	<b>\$300,000</b>	<b>\$250,000</b>	<b>\$2,800,000</b>
<b>ADMINISTRATIVE EXPENSES</b>							
Salary - Doug	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$45,000
Salary - Anastasia	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$45,000
Salary - CFO	\$0	\$8,000	\$8,000	\$8,000	\$8,000	\$8,000	\$40,000
Salary - Office	\$17,000	\$17,000	\$17,000	\$17,000	\$17,000	\$17,000	\$85,000
Salary - Warehouse	\$11,500	\$11,500	\$11,500	\$11,500	\$11,500	\$11,500	\$69,000
Wage Tax	\$4,350	\$4,950	\$4,950	\$4,950	\$4,950	\$4,950	\$29,100
Employee Health Insurance	\$4,000	\$4,500	\$4,500	\$4,500	\$4,500	\$4,500	\$26,500
<b>SUBTOTAL</b>	<b>\$51,850</b>	<b>\$60,950</b>	<b>\$60,950</b>	<b>\$60,950</b>	<b>\$60,950</b>	<b>\$60,950</b>	<b>\$339,600</b>
<b>HOP PURCHASES &amp; RELATED</b>							
Hop purchases	\$375,000	\$375,000	\$250,000	\$200,000	\$200,000	\$0	\$1,400,000
Shipping & Transport	\$22,500	\$22,500	\$22,500	\$22,500	\$22,500	\$22,500	\$135,000
Packaging Materials	\$10,000	\$10,000	\$5,000	\$0	\$0	\$5,000	\$30,000
<b>SUBTOTAL</b>	<b>\$407,500</b>	<b>\$407,500</b>	<b>\$277,500</b>	<b>\$222,500</b>	<b>\$222,500</b>	<b>\$27,500</b>	<b>\$1,565,000</b>
<b>OPERATING EXPENSES</b>							
Accounting & Legal	\$30,000	\$20,000	\$20,000	\$20,000	\$10,000	\$10,000	\$110,000
Examiner & UCC Professional Fees							
Advertising & Marketing	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$30,000
B&O Tax	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$18,000
Insurance	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$30,000
Interest on LOC	\$18,750	\$18,750	\$18,750	\$18,750	\$18,750	\$18,750	\$112,500
Truck Payment - Banner Bank	\$696	\$696	\$696	\$696	\$696	\$696	\$4,177
Misc. Expense	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$7,500
Office Expenses	\$2,500	\$2,500	\$2,000	\$2,000	\$2,000	\$2,000	\$13,000
Office Lease	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$24,000
Repairs & Maintance	\$20,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$35,000
Travel M&E	\$2,000	\$2,000	\$2,000				\$6,000
Utilities	\$12,500	\$12,500	\$12,500	\$12,500	\$12,500	\$12,500	\$75,000
Warehouse Lease	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$120,000
<b>SUBTOTAL</b>	<b>\$124,696</b>	<b>\$97,696</b>	<b>\$97,196</b>	<b>\$95,196</b>	<b>\$85,196</b>	<b>\$85,196</b>	<b>\$585,177</b>
<b>TOTAL EXPENSES</b>	<b>\$584,046</b>	<b>\$566,146</b>	<b>\$435,646</b>	<b>\$378,646</b>	<b>\$368,646</b>	<b>\$173,646</b>	<b>\$2,489,777</b>
<b>PROJECTED NET PROFITS</b>	<b>\$165,954</b>	<b>-\$66,146</b>	<b>\$64,354</b>	<b>\$121,354</b>	<b>-\$68,646</b>	<b>\$76,354</b>	<b>\$310,223</b>