

David H. Bundy  
DAVID H. BUNDY, P.C.  
310 K Street, Suite 200  
Anchorage, AK 99501  
(907) 248-8431  
Attorney for Debtor

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ALASKA**

In Re:	)	
	)	
JTS, LLC,	)	Case No. A-15-00167
d/b/a Johnson's Tire Service,	)	
	)	Chapter 11
Debtor.	)	
_____	)	

**CASH COLLATERAL AGREEMENT**

Northrim Bank ("Northrim" or the "Bank") and JTS, LLC. ("JTS"), debtor-in-possession, by and through respective undersigned counsel of record, and enter into this Cash Collateral Agreement ("Agreement").

**BACKGROUND**

A. On June 15, 2015 (the "Petition Date"), JTS filed a voluntary petition for reorganization under Chapter 11 of Title 11 U.S.C. in the District of Alaska, Case No. 15-167 (the "Bankruptcy Proceeding").

B. As of the commencement of the Bankruptcy Proceeding, Northrim contends that it held three loans to JTS, with principal and accrued interest owing by JTS to Northrim as follows:

**Real Estate Loan** #\*\*\*\*\*4712 (the "RE Loan") secured by 1<sup>st</sup> lien Deed of Trust

against JTS's business premises at 3330 Denali Street, Anchorage (the "1<sup>st</sup> DOT" and the "Denali Location"), with an approximate payoff (principal, interest, and other charges) of \$4,745,330;

**Line of Credit Loan #\*\*\*\*\*1313** (the "LOC Loan") secured by a 1<sup>st</sup> UCC lien against inventory and accounts subject only to a 1<sup>st</sup> lien purchase money security interest in Inventory securing a debt in the amount of approximately \$100,000 in favor of Continental General, (net of the Continental General PMSI inventory, the "Inventory and Accounts"), a 2<sup>nd</sup> lien against equipment, and a 4<sup>th</sup> lien Deed of Trust against the Denali Location (the "4<sup>th</sup> DOT"), with an approximate payoff (principal, interest, and other charges) of \$1,248,132; this amount includes a draw-down against the line of the LOC Loan in the amount of \$150,000 on June 2, 2015;

**Equipment Loan #\*\*\*\*\*4069** (the "Equipment Loan") secured by a 1<sup>st</sup> UCC lien against JTS's equipment (the "Equipment"), a 2<sup>nd</sup> UCC lien against the Inventory and Accounts, and a 3<sup>rd</sup> lien Deed of Trust against the Denali Location (the "3<sup>rd</sup>"), with an approximate payoff (principal, interest, and other charges) of \$761,478.

These Loans were made and secured pursuant to the documents identified in Exhibit A hereto (all together the "Loan Documents"). There is an intervening loan secured by the a 2<sup>nd</sup> Deed of Trust lien against the Denali Location held by Evergreen Business Capital with a payoff of approximately \$3.0 million (+/-).

C. The obligations of JTS to Northrim under the Loan Documents are secured by liens granted to Northrim under the deeds of trust and security agreements described above and

identified in Exhibit A (“the Security Documents”), all of which liens are valid, properly perfected and non-avoidable.

D. JTS also maintains its deposit accounts (the “Deposit Accounts”) with Northrim and, pursuant to this Agreement, will open its Debtor-In-Possession Accounts with Northrim.

E. The Denali Location is rented by JTS to a third-party tenant that pays rent in the amount of \$40,000 per month. This rent payment and any other rents received by JTS from leasing of all or any portion of the Denali Location will be referred to as the “Rents”.

F. The Rents, the proceeds of Inventory and Accounts (when Inventory is sold and Accounts are collected), and the balance in the Deposit Accounts are Cash Collateral as defined in 11 USC 363(a) and Northrim has a controlling interest in this Cash Collateral granted under Section 363.

G. JTS agrees not to challenge these assertions.

### **AGREEMENT**

1. **Acknowledgement of Existing Collateral and Other Rights.** Northrim asserts that it has valid, perfected and enforceable liens in all of JTS’s right, title and interest in, to and under the collateral referred to in the Security Documents and described above to the extent that such collateral existed at the time the Petition was filed (collectively “Pre-petition Collateral”) and that all of the Pre-petition Collateral secures all of JTS’s obligations and liability under the Loan Documents, and JTS waives the right to challenge these assertions. As used in this Agreement, the term “Cash Collateral” means all cash and cash equivalents that constitute Collateral (as defined below) or proceeds thereof.

2. **Collateral.** The debts owed by JTS to Northrim are secured by, among other

things, valid, properly perfected and non-avoidable liens against the Denali Location, the Rents, the Inventory and Accounts, and the Equipment of JTS, and proceeds thereof.

3. **Debtor's Accounts Receivable as of Petition Date.** Attached hereto as Exhibit B is an accounts receivable aging statement, showing JTS's Accounts as of June 15, 2015, to be \$292,234. The Debtor represents that the Accounts listed on Exhibit B constitute all of the Debtor's accounts as of the Petition Date, and that in the event the parties discover additional Accounts owing as of the Petition Date, such Accounts shall be included in the Cash Collateral Diminution calculation described herein.

4. **Debtor's Inventory.** Attached hereto as Exhibit C is a report of Debtor's Inventory, showing JTS's Inventory (including the Continental PMSI Inventory as of June 15, 2015, to be \$1,390,431.74. The Debtor represents that the Inventory reported on Exhibit C constitutes all of the Debtor's Inventory as of the Petition Date, and that in the event the parties discover additional Inventory as of the Petition Date, such accounts shall be included in the Cash Collateral Diminution calculation described herein.

5. **Debtor's Cash as of Petition Date.** JTS and the Bank stipulate that the Debtor's cash on hand as of the Petition Date, as summarized on Exhibit D and as reflected by the Debtor's bank statements, was \$104,357, in the Northrim Deposit Accounts. The Debtor represents that as of the Petition Date, and except for a credit card account at Wells Fargo, from which all receipts are automatically transferred to Northrim, the Debtor held no other cash, bank account, brokerage account, escrow account, or the like, and that in the event an additional bank account, etc., is discovered, those funds shall be included in the Cash Collateral Diminution calculation described herein.

6. **Cash Collateral.** As used in this Agreement, the term "Cash Collateral" means all cash and cash equivalents that constitute collateral, or proceeds thereof, as defined in 11 U.S.C. § 363(a). The parties stipulate that the Bank's Cash Collateral as of the Petition Date consisted of the Accounts, the Rents, and cash totaling \$397,000, as detailed above, plus any other accounts, and cash that the parties may subsequently discover.

7. **Need for Use of Cash Collateral.** Debtor has an immediate need to use Cash Collateral in order to permit, among other things, the orderly continuation of the operation of its business, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures and to satisfy other working capital needs. The Debtor is unable to obtain financing from sources other than Bank on more favorable terms and is unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. Debtor is unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the granting of the liens and claims described herein. The Debtor will suffer irreparable harm if the order pursuant to this Stipulation is not entered.

8. **Use of Cash Collateral.** Subject to the terms of this Agreement, specifically including Section 12 hereof, Northrim permits JTS to use Cash Collateral from and after the date of approval of this Agreement by the Court through July 31, 2015 (the "Interim Period"), subject to each of the following conditions:

8.1 A bank account shall be established by JTS at Northrim, as follows: JTS, LLC Debtor-in-Possession Account.

8.2 From and after the execution of this Agreement, all post-petition revenues

received (whether due pre-petition or post-petition, and from any source) shall be deposited into the JTS Debtor-in-Possession Account. During the Interim Period, JTS shall be permitted to use Cash Collateral from the JTS Debtor-in-Possession Account solely to pay expenses incurred in the ordinary course of its business, including necessary fees and expenses of professionals employed by JTS and/or the estate, and for fees and expenses payable to the Office of the United States Trustee, as such expenses and fees are actually incurred, provided that the expenses JTS is authorized to pay shall not exceed by more than 10%, either in gross amount, or by category, the expenses set forth on the cash collateral budget which is attached hereto as Exhibit E, and provided further that payment of professional fees and expenses shall be subject to approval by the Court in accordance with applicable rules. Cash collateral shall not be used to pay expenses outside of the ordinary course of JTS's business unless, after application and notice to Northrim and a hearing, the Bankruptcy Court grants such authority.

8.3 JTS shall pay to Northrim on the first day of each month regular monthly payments of \$43,855.00 (principal plus interest) on the RE loan; regular monthly payments of \$17,937.00 (principal plus interest) on the Equipment Loan; monthly payments of interest at the contract rate of 6% in amount of \$6,197.88 (based on a loan balance of \$1,239,576) on the LOC Loan. Northrim is authorized to withdraw these payments from the JTS Debtor-in-Possession Account.

**9. Reporting Requirements and Access to Collateral and Financial Information.**

In addition to providing Northrim with a copy of all monthly operating reports prepared for the Office of the U.S. Trustee, JTS shall provide to the Bank on Monday of each week a report showing:

9.1 The amount and use of Cash Collateral existing as of the preceding Friday, showing:

9.1.1 for each account not maintained with Northrim (if any), cash balances in the bank accounts owned by JTS, and a reconciliation of those balances with the most recently available bank statement for the account, together with copies of such bank statements.

9.1.2 an accounts receivable listing, showing both pre-Petition and post-Petition receivables, on a format similar to Exhibit B.

9.1.3 The amounts of cash received and accounts generated since the preceding Monday, the amount proposed and projected to be used in the week then starting.

9.1.4 A cash flow projection for the week then starting and each of the next six weeks.

9.1.5 A statement showing actual cash flow for the immediately preceding week and a variance report identifying and stating the reasons for any material variances between projected and actual cash flow for such preceding week.

9.1.6 A list of all post-Petition accounts payable and professional fees owing.

These weekly reports shall be either hand delivered or sent by e-mail to the Bank in care of Mildred Sy at [Mildred.sy@nrim.com](mailto:Mildred.sy@nrim.com) and to the Bank's counsel at [fenertyd@groheggers.com](mailto:fenertyd@groheggers.com).

10. **Current Report Prior to Any Hearing on Cash Collateral.** No later than two days prior to the date scheduled for any hearing on Cash Collateral use after approval of this Stipulation, the Debtor shall furnish to the Bank a final report showing the accurate amounts for

cash collections and account generated for the period between the date the Petition was filed and the third business day prior to the date scheduled for said hearing.

11. **Other Reports to Northrim.** On or before the fifteenth day of each month, JTS shall provide Northrim with (1) an income and expense budget for the next calendar month and (2) an income and expense report for the preceding calendar month showing variances from the budget previously submitted for that month. Each monthly report shall show aged pre-and post-petition accounts receivable and accounts payable for JTS and its affiliates. JTS shall also provide to Northrim a copy of all monthly operating reports prepared for the Office of the United States Trustee. JTS shall give Northrim, its agents and retained professionals, reasonable access to examine and copy JTS's books and records, including, without limitation, accounts receivable aging, accounts payable aging, general ledger, profit and loss statements, balance sheets, the maintenance records of any equipment or vehicles which constitute Collateral as well as all information relating to claims and litigation, as well as new contracts bid and awarded. JTS shall also afford Northrim (including any appraisers or other consultants retained by Northrim) reasonable access to any inventory, equipment or vehicles which constitute Collateral.

12. **Post-Petition Lien.** To provide adequate protection to Northrim for the use of Cash Collateral after commencement of the bankruptcy case, JTS hereby grants to Northrim a post-petition lien, retroactive to the petition date, in all of Northrim 's collateral referred to in the Security Documents. Further, JTS hereby grants to Northrim a security interest in all of JTS' equipment, inventory, accounts, general intangibles, and other rights to payment (however arising, including without limitation from services rendered or to be rendered), deposit accounts, cash and cash equivalents, or goods sold or leased or to be sold or leased, whether now or



hereafter owned by JTS, to the extent the same arose or were acquired by JTS after the filing of the petition. The post-petition liens granted herein (a) are in addition to those existing in favor of Northrim on the petition date; and (b) shall secure all indebtedness and liabilities of JTS to Northrim, whether direct or contingent, now existing or hereafter incurred, including Northrim's reasonable legal costs and fees.

13. **Conditions Precedent.** This Agreement shall become effective upon being approved by the Court pursuant to an order in form satisfactory to Northrim.

14. **Termination of Agreement.** This agreement, and the right to use cash collateral pursuant hereto, shall terminate at midnight on July 31, 2015, unless either (a) Northrim in its sole and absolute discretion grants further use of cash collateral or (b) the Court enters an order authorizing further use of cash collateral pursuant hereto. If Northrim grants further use of cash collateral without any order of the Court, then the post-petition lien rights and other protections afforded to Northrim shall continue, without further order of the Court, unless and until the Court enters a final order expressly terminating such rights and protections. Absent such an order by the Court, which JTS and Northrim agree they will oppose, the Post-Petition liens granted hereunder shall be and remain effective, valid and non-avoidable regardless of any termination of this Agreement or conversion of this bankruptcy proceeding to Chapter 7 and will be binding on the Trustee in any Chapter 7 case.

15. **Events of Default.** JTS's right to use Cash Collateral shall terminate immediately upon the occurrence of any one or more of the following events of default:

15.1 Upon the expiration of a period of five days after Northrim serves JTS with a notice of default due to JTS' failure to comply with any provision of this Agreement, unless,

within such five day period, JTS cures such default; or

15.2 The bankruptcy case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code or a trustee or interim trustee is appointed in this Chapter 11 proceeding.

16 **Further Acts.** JTS shall take all further actions reasonably requested by Northrim to effect the intent of this Agreement, including without limitation, executing security agreements and including moving for approval of this agreement by the Court. JTS hereby authorizes the filing by Northrim of financing statements implementing this Agreement. Nothing contained herein shall limit any rights of Northrim to seek further adequate protection under Bankruptcy Code §§ 361 or 363, seek relief from the automatic stay under Bankruptcy Code § 362, or seek any other relief whatsoever at any future time.

17. **Miscellaneous.** This Agreement may not be amended except by a writing signed by all affected parties hereto. This Agreement shall be binding upon the parties hereto and respective successors and assigns, and in the case of JTS, upon the creditors and other parties in interest in the bankruptcy proceeding and any trustee, receiver or examiner appointed therein, including, without limitation, upon (a) any trustee appointed in any Chapter 7 proceeding to which the current JTS Chapter 11 case may be converted, and upon (b) the Chapter 7 estate represented by the trustee.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date and year first above written.

Dated this 17<sup>th</sup> day of June, 2015.

GROH EGGERS, LLC

Attorneys for Northrim Bank

By: /s/ / Dennis G. Fenerty  
Dennis G. Fenerty

Dated this 17th day of June, 2015.

DAVID H. BUNDY, P.C.  
Attorney for JTS, LLC

By: /s/ / David H. Bundy  
David H. Bundy

Exhibit A	Loan Documents
Exhibit B	Accounts Receivable as of Petition Date
Exhibit C	Inventory
Exhibit D	Cash and Bank Balances as of Petition Date
Exhibit E	Budget through July 31, 2015