

So Ordered.

Signed this 14 day of October, 2016.



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Robert E. Littlefield, Jr.  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re:

PALOSKI SALON & SPA, LLC,  
d/b/a Shapes & Colours Day Spa,

Case No. 16-11325  
Chapter 11

Debtor.

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**ORDER APPROVING DEBTOR'S USE OF CASH COLLATERAL**

Upon the Application of Paloski Salon & Spa d/b/a Shapes & Colours Day Spa, the Debtor herein, through its attorneys, Hodgson Russ LLP, Richard L. Weisz, Esq. of Counsel, and the Cash Collateral Stipulation and Agreement between the Debtor and its secured creditor American Express Bank, FSB, and upon proof of service of said Application, and the matter having come before the Court at a hearing on October 13, 2016, and there being no opposition thereto, and for good cause shown, it is hereby

**ORDERED**, that the Debtor is authorized to use cash collateral pursuant to the terms of the Stipulation with American Express Bank, FSB, and it is further

**ORDERED**, that the terms of said Stipulation, a copy of which is annexed to this Order, are hereby approved by the Court and incorporated herein by this reference.

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re:

PALOSKI SALON & SPA, LLC,  
d/b/a Shapes & Colours Day Spa,

Debtor.

Case No. 16-11325

Chapter 11

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**CASH COLLATERAL STIPULATION  
AND AGREEMENT**

**WHEREAS**, Paloski Salon & Spa, LLC d/b/a Shapes & Colours Day Spa filed for voluntary relief under Chapter 11 on July 20, 2016; and

**WHEREAS**, at the time of the filing of the bankruptcy petition, the Debtor was indebted to American Express Bank, FSB (the "Bank") in the amount of \$19,041.35; and

**WHEREAS**, the Debt is secured by all assets of the Debtor, including accounts receivable, which constitute cash collateral ("Cash Collateral") under §363 of the Bankruptcy Code and the Debtor requires the consent of the Bank to the use of the Cash Collateral or an Order of the Court authorizing the use of the Bank's Cash Collateral pursuant to §363(c)(2) of the Bankruptcy Code; and

**WHEREAS**, American Express Bank, FSB is willing to consent to the Debtor's use of its cash collateral pursuant to the provisions set forth below; and

**WHEREAS**, the Debtor has indicated that it desires to continue in business and therefore needs authority to use cash collateral.

**NOW, THEREFORE**, in consideration of the foregoing, the Debtor and American Express Bank, FSB hereby agree and stipulate as follows:

1. The Debtor acknowledges that as of July 20, 2016, it is indebted to American Express Bank, FSB in the amount of \$19,041.35 (hereinafter the "Pre-Petition Debt"), and that the Pre-Petition Debt is valid and enforceable and owing to the Bank and that there are no setoffs, counterclaims, deductions or other charges to or against the Pre-Petition or the Bank.

2. The Debtor acknowledges that the Bank has a valid security interest on all of its assets, including inventory and accounts receivable (the "Pre-Petition Collateral").

3. Subject to the terms of this Stipulation and to any further restrictions set forth in the Order approving this Stipulation, the Bank agrees that the Debtor may use Cash Collateral, but only in and for the ordinary course of their business, and subject to the following conditions:

a) The Debtor may use Cash Collateral from the filing date of the bankruptcy petition through confirmation of the Debtor's Plan of Reorganization.

b) The Debtor will make adequate protection payments in the amounts of Six Hundred Dollars (\$600.00) to American Express Bank, FSB commencing <sup>Order</sup> September <sup>1</sup> \_\_, 2016. <sup>12/2016</sup>

c) The Debtor shall provide American Express Bank, FSB through its attorneys with copies of its operating reports.

4. In order to provide the Bank with adequate protection for the Debtor's continuing use of Cash Collateral and as security for the payment of the Pre-Petition Debt and of the Debtor's debts, liabilities and obligations to the Bank now existing or hereinafter arising (whether mature or immature, direct or contingent, joint or several, due or to become due), the Debtor hereby grants to American Express Bank, FSB a continuing lien and security interest in the Debtor's assets acquired post petition to the same extent, validity and priority as the Bank held prior to the Petition Date (together with the Pre-Petition Collateral, hereinafter referred to as the "Collateral"). The Debtor acknowledges that the Bank held a first lien on the Pre-Petition Collateral.

5. The Debtor shall execute and deliver to the Bank all instruments, agreements and documents as the Bank may reasonably request to perfect and protect the Bank's liens on and security interest in the Collateral, if any.

6. The parties hereto agree that this Stipulation and any Order entered in respect hereof shall be deemed to be a security agreement for the purpose of perfecting the Bank's liens on and security interests in the Collateral and a photocopy or other reproduction thereof may be filed as a financing statement in all appropriate places.

7. Notwithstanding the date of this Stipulation or any Order approving same, the Bank's security interest in the Collateral granted under this Stipulation is deemed effective from the Petition Date.

8. The liens and security interests in the Collateral which are granted to the Bank under this Stipulation shall constitute at all times valid, binding and enforceable liens and security interests upon all of the Collateral.

9. All liens and security interests of the Bank in the Pre-Petition Collateral are acknowledged by the Debtor as being perfected liens on all of the Debtor's hereinabove described assets, subject only to other valid and enforceable liens, if any, on the Debtor's assets existing as of the Petition Date.

10. No costs or expenses of administration which have been or may be incurred in these proceedings, any conversion of these proceedings pursuant to §1112 of the Bankruptcy Code, or in any other proceeding relating thereto, and no priority claims, are or will be, prior to or on a parity with the security interests and liens of the Bank upon the Collateral, and no such costs or administration expenses shall be imposed upon the Bank, its claims or its Collateral.

11. The Bank shall not be required to file financing statements or other documents in any jurisdiction or take any action to validate or perfect the security interests or liens granted to it hereunder. The Debtor shall execute such agreements, instruments and documents as the Bank may require in connection herewith. If, however, the Bank shall, in its sole discretion, chooses to file this Stipulation and Order or such financing statements or other documents or otherwise confirm perfection of such security interests and liens, all such financing statements or similar documents and liens shall be deemed to have been filed or recorded at the time of entry of an Order approving the Stipulation.

12. The occurrence of any of the following shall constitute an event of default ("Event of Default"):

- a) The Debtor fails to keep, observe or perform any of their agreements or undertakings under this Stipulation;

b) The Order of the Bankruptcy Court approving this Stipulation, or the provisions, operation or effect of such Order, is terminated, revoked, suspended, discontinued, amended, modified or appealed; The appointment of a Trustee for the Debtor, or the appointment of an Examiner with operating authority;

c) The Debtor's Chapter 11 case is dismissed or is converted to a case under Chapter 7 of the Bankruptcy Code; and

d) The Debtor ceases operation of its business or commences a liquidation of its assets in this Chapter 11 case without the Bank's consent.

13. Upon occurrence of any Event of Default as described in Paragraph "12" which is not cured within ten (10) days of written notice of such default, provided pursuant to Paragraph "18" (with such notice filed with the Clerk of the Court and given to the United States Trustee and to counsel for any committee appointed herein), the Bank shall be entitled to submit an *ex parte* Order (on notice only to the United States Trustee and the Debtor's counsel), granting it relief from the automatic stay imposed by 11 U.S.C. §362 of the Bankruptcy Code or other restrictions on enforcement of its liens and security interests under state law and the Loan Documents, and under this Stipulation, and thereafter the Bank shall be permitted, at its option, to take all steps which may be appropriate to proceed against and/or realize upon the Collateral to obtain repayment of the Indebtedness, in accordance with state law, the Loan Documents and this Stipulation. If however, within the ten (10) day notice period outlined above in this Paragraph "13", the Debtor contests in good faith the occurrence of the alleged default by filing a

motion with the Bankruptcy Court, and scheduling a hearing for the first available hearing date, on notice to the Bank and its counsel, the automatic stay shall continue until such hearing. Nothing herein shall be deemed to modify the relief provided the Bank.

14. In the event that the automatic stay is terminated in favor of the Bank, the Debtor retains its right, if any, to seek to have the stay reimposed under Bankruptcy Code §105.

15. The Debtor retains its right to oppose an Application by the Bank for allowance of attorneys' fees pursuant to 11 U.S.C. §506(b).

16. No rights are intended to be created hereunder for the benefit of any third party donee, creditor or incidental beneficiary. This Stipulation shall inure to the benefit of the Bank, its successors and assigns, and shall be binding upon the Debtor and its successors and assigns (including any Trustee hereafter appointed as a representative of the Debtor's bankruptcy estate).

17. In the event the Bank does not exercise one or more of its rights and remedies under this Stipulation, the Bank shall not be deemed to have waived its rights to exercise any such rights or remedies in the future or any other rights and remedies it holds under this Stipulation.

18. Any notice required to be given under this Stipulation shall be effective immediately if delivered by email or by facsimile transmission, the business day immediately following deposit with a recognized form of overnight delivery service, or five (5) days following deposit with the United States Post Office for delivery by first class. Notices shall be addressed as follows:

If to the Debtor:

Paloski Salon & Spa, LLC  
d/b/a Shapes and Colours Day Spa  
Attention: Kelly Paloski  
Managing Member  
65 Wolf Road  
Albany, New York 12205

with a copy to:

Hodgson Russ LLP  
Attention: Richard L. Weisz, Esq.  
677 Broadway, Suite 301  
Albany, New York 12207  
Phone: (518) 465-2333  
Facsimile: (518) 465-1567

If to American Express Bank, FSB:

American Express Bank, FSB  
P.O. Box 981555  
El Paso, Texas 79998-1555

with a copy to:

Becket and Lee LLP  
Attention: Crystal Jones Oswald, Esq.  
16 General Warren Boulevard  
P.O. Box 3001  
Malvern, Pennsylvania 19355  
Phone: (610) 644-7800  
Facsimile: (610) 993-8493

19. This Stipulation represents the entire understanding of the parties hereto regarding the subject matter hereof and may not be amended or modified without the written consent of the parties and approval of the Bankruptcy Court.

20. This Stipulation may be executed in counterparts which together shall constitute one original document.



IN WITNESS WHEREOF, the parties have executed this Stipulation as of the date first  
written above.

DATED: September 20, 2016

HODGSON RUSS LLP  
Attorneys for Paloski Salon & Spa, LLC  
d/b/a Shapes & Colours Day Spa

By: 

Richard L. Weisz, Esq.

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