IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
KP ENGINEERING, LP, *et al.*,	§	Case No. 19-34698 (DRJ)
	§	(Joint Administration Requested)
Debtors.[1]	§	(Emergency Hearing Requested)

DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING DEBTOR TO (A) OBTAIN POSTPETITION FINANCING ON A SECURED, SUPERPRIORITY BASIS AND (B) USE CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION, (III) SCHEDULING A FINAL HEARING, AND (IV) GRANTING RELATED RELIEF

EMERGENCY RELIEF HAS BEEN REQUESTED. A HEARING WILL BE CONDUCTED ON THIS MATTER ON MONDAY, AUGUST 26, 2019 AT 12:00 PM (PREVAILING CENTRAL TIME) IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION, LOCATED IN COURTROOM 400 AT 515 RUSK AVENUE, HOUSTON, TEXAS.

IF YOU OBJECT TO THE RELIEF REQUESTED HEREIN OR YOU BELIEVE THAT EMERGENCY CONSIDERATION OF THIS MATTER IS NOT WARRANTED, YOU MUST EITHER APPEAR AT THE HEARING OR FILE A WRITTEN RESPONSE PRIOR TO THE HEARING. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

RELIEF IS REQUESTED NOT LATER THAN AUGUST 26, 2019.

The above-captioned debtors and debtors in possession (the "**Debtors**"), by and through their undersigned counsel, hereby file this emergency motion (the "**Motion**") for entry of interim and final orders (i) authorizing the Debtors to obtain postpetition financing, (ii) authorizing the use of cash collateral, (iii) granting liens and superpriority administrative expense status, (iv) granting adequate protection, (v) scheduling a final hearing and (vi) granting related relief.

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: KP Engineering, LP (7785) and KP Engineering, LLC (0294). The location of the Debtors' corporate headquarters and the Debtors' service address is: 5555 Old Jacksonville Highway, Tyler, TX 75703.

PRELIMINARY STATEMENT[2]

1. As set forth in detail in the First Day Declaration, the Debtors seek approval of the DIP Facility (as defined below) and the loans thereunder for the primary purpose of providing them with sufficient postpetition liquidity to finance these Chapter 11 Cases.

2. Faced with insufficient cash and liquidity to effectuate the restructuring contemplated by these Chapter 11 Cases, the Debtors, engaged in discussions and negotiations with the Prepetition Lender (as defined below) regarding the terms of potential postpetition financing and use of cash collateral. Following extensive, good faith, and arm's-length negotiations, the Debtors ultimately agreed to the terms of a $4 million superpriority, priming, secured DIP facility (the "**DIP Facility**") with BTS Enterprises, Inc. (the "**DIP Lender**"), limited partner of KP Engineering, LP ("**KPE LP**") and sole member of KP Engineering , LLC ("**KPE LLC**"). The Prepetition Lender is providing the funds for the DIP Facility to the DIP Lender and will be the assignee of the DIP Facility.

3. The proposed DIP Facility provides $4,000,000.00 of new money, $750,000.00 on an interim basis and an additional $3,250,000.00 after entry of the Final Order on reasonable terms.

4. Entry of the Interim Order will also permit the Debtors to immediately access additional liquidity to continue to pay their operating expenses and signal to their customers and employees that operations will continue in the ordinary course during the Chapter 11 Cases. Approval of this Motion will further enable the Debtors to fund these Chapter 11 Cases and, in doing so, provide the Debtors with the critical time needed to consummate the restructuring critical to the Debtors' viability and sought by the Debtors through these Chapter 11 Cases.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in [the First Day Declaration or the Interim Order, as applicable.]

5. Absent approval of, and access to, the DIP Facility, the Debtors will have insufficient cash and liquidity to support their operations and continued business viability during these Chapter 11 Cases. Moreover, without authorization to enter into the DIP Facility, the Debtors' ability to execute the restructuring contemplated by these Chapter 11 Cases will be severely jeopardized and the Debtors' business will be irreparably harmed. Accordingly, for the reasons set forth herein, the Debtors respectfully request that the Court grant the Motion.

JURISDICTION AND VENUE

6. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and this Court may enter a final order consistent with Article III of the United States Constitution.

7. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

8. The statutory predicates for the relief requested herein are Sections 105(a), 363(b), 364, 365, 506(a), 553, 1107, and 1108 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended and modified, the "**Bankruptcy Code**"), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rules 4002-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "**Bankruptcy Local Rules**"), and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the "**Complex Case Procedures**").

BACKGROUND

9. On the date hereof (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code and commenced these chapter 11 cases (the "**Chapter 11 Cases**"). The Debtors are operating their business and managing their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

10. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no official statutory committees have been appointed or designated by the Office of the United States Trustee (the "**U.S. Trustee**").

11. A description of the Debtors' business, the reasons for commencing these Chapter 11 Cases, and the relief sought from the Court are set forth in the *Declaration of Kyle McCoy, Executive Vice President and Chief Financial Officer of Debtor KP Engineering, LP, in Support of Chapter 11 Petitions and First Day Pleadings* (the "**First Day Declaration**"), filed concurrently herewith. A description of the Debtors' business, the reasons for commencing these Chapter 11 Cases, and the relief sought from the Court are set forth in the First Day Declaration. The Debtors hereby adopt and incorporate such description as if fully set forth herein.[3]

RELIEF REQUESTED

12. The Debtors seek entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the "**Interim Order**"), and, at the Final Hearing (as defined below), a final order (the "**Final Order**," and, together with the Interim Order, the "**DIP Orders**"):

a. authorizing the Debtors to obtain the DIP Facility, a secured postpetition financing on a priming basis pursuant to the secured credit facility set forth in that certain note in substantially the form attached hereto as **Schedule 1** to **Exhibit A** (the "**DIP Note**");

b. authorizing the Debtors to use cash collateral in accordance with the DIP Orders;

c. granting liens and providing superpriority administrative expense status claims in accordance with the DIP Orders;

d. granting adequate protection in accordance with the DIP Orders;

[3] The First Day Declaration and other relevant case information is available on the following website maintained by the Debtors' proposed claims and noticing agent, Omni Agent Solutions, in connection with these Chapter 11 Cases: www.omniagentsolutions.com/KPEngineering.

e. scheduling a final hearing (the "**Final Hearing**") to consider entry of the Final Order; and

f. granting related relief.

Concise Statement Pursuant to Complex Case Procedures

13. Pursuant to paragraph 21 of the Complex Case Procedures, the proposed DIP Facility and/or Interim Order contains the following provisions:

DIP Facility Term	Relief Requested
Sale or Plan Milestones (Complex Case Procedures, ¶ 21(a)).	DIP Note contains no Sale or Plan Milestones.
Cross-Collateralization (Complex Case Procedures, ¶ 21(b)).	The Interim Order grants the DIP Liens to the DIP Lender and the Replacement Liens to the Prepetition Lender on all DIP Collateral which includes property that may have been otherwise unencumbered prior to the Petition Date. The Interim Order also provides for the DIP Lender's immediate assignment of the DIP Liens to the Prepetition Lender upon entry of the Interim Order. *See* Interim Order, ¶¶ 6, 7, 8 and 9.
Roll ups (Complex Case Procedures, ¶ 21(c)).	DIP Note contains no roll up of prepetition debt.
Liens on Avoidance Action or Proceeds of Avoidance Actions (Complex Case Procedures ¶ 21(d)).	DIP Collateral is all assets of the Debtor.
Default Provisions and Remedies (Complex Case Procedures ¶ 21(e).	The Interim Order provides for termination of the Debtors' authorization to use Cash Collateral or funds advanced from the DIP Facility after five (5) days notice of default with an opportunity to cure. *See* Interim Order, ¶ 8; DIP Note, Section 3.
Release of Claim Against Lender or Others (Complex Case Procedures ¶ 21(f)).	The Interim Order contains a release of claims in favor of the Prepetition Lender. The Debtors will provide the release upon entry of Interim Order with respect to or relating to claims arising prior to entry of the Interim Order. *See* Interim Order, ¶¶ 23, 24 and 25.

DIP Facility Term	Relief Requested
Limitations on fees for advisors to committees **(Complex Case Procedures ¶ 21(g)).**	The Interim Order does not allow proceeds to be used to investigate or challenge the Prepetition Lender's loan or liens.
Priming Liens **(Complex Case Procedures ¶ 21(h)).**	The Interim Order provides for priming of the Prepetition Liens with the consent of the Prepetition Lender. *See* Interim Order, ¶ 7.

14. The Debtors submit that each of the foregoing provisions are appropriate under the circumstances. The DIP Facility was negotiated in good faith, and at arm's length, and the foregoing provisions are part of a package deal resulting from such negotiations for the Debtors to obtain access to the DIP Facility. The DIP Facility is integral to the Debtors proposed reorganization process. Accordingly, the foregoing provisions should be approved.

15. Additionally, the following chart contains a summary of the material terms of the proposed DIP Facility, together with references to the applicable sections of source documents.[45]

Bankruptcy Rule	Summary of Material Terms/Significant Provisions
Parties to the DIP Note Bankruptcy Rule 4001(c)(1)(B)	**Borrower**: KP Engineering, LP, as debtor-in-possession in these Chapter 11 Cases. **Guarantor**: None. **Lender**: BTS Enterprises, Inc., (the "**DIP Lender**") *See* DIP Note, Preamble, § 1.1.

5 The summaries contained in this Motion are qualified in their entirety by the provisions of the documents referenced. To the extent anything in this Motion is inconsistent with such documents, the terms of the applicable documents shall control. Capitalized terms used in this summary chart but not otherwise defined have the meanings ascribed to them in the Motion, the DIP Note, the First Day Declaration, or the Interim Order, as applicable.

Bankruptcy Rule	Summary of Material Terms/Significant Provisions
Term Bankruptcy Rule 4001(b)(l)(B)(iii), 4001(c)(1)(B)	The Maturity Date with respect to the DIP Facility shall be the earlier of: (a) the date of plan of reorganization confirmed in Borrower's Bankruptcy Case becomes effective; or (b) August 15, 2020; *See* DIP Note, § 1.1.
Commitment Bankruptcy Rule 4001(c)(1)(B)	A senior secured revolving credit facility of up to $4 million. *See* DIP Note, Preamble, §§ 1.1, 2.
Conditions of Borrowing Bankruptcy Rule 4001(c)(1)(B)	Borrowings under the DIP Facility require: (i) prior written notice of borrowing; (ii) the accuracy of representations and warranties as of the date of each borrowing; (iii) availability under the DIP Facility; and (iv) absence of any default or event of default. *See* DIP Note, § 2.
Interest Rates Bankruptcy Rule 4001(c)(1)(B)	On any day, the unpaid principal of the DIP Note shall bear interest at a rate equal to the highest of: (a) the Prime Rate for such day; (b) the sum of the Federal Funds Rate for such day plus ½ of one percent (0.5%); and (c) LIBOR for such day, plus 2.00% per annum. *See* DIP Note, §§ 1.1, 2.4.
Use of DIP Facility and Cash Collateral Bankruptcy Rule 4001(b)(l)(B)(ii)	The proceeds of the DIP Facility shall be used to (a) pay transaction fees, interest and expenses associated with the DIP Facility, (b) provide for the ongoing working capital and capital expenditure needs of the Debtors during the pendency of the Chapter 11 Cases, (c) fund the costs of the administration of the Chapter 11 Cases, in each case subject to the DIP Budget and/or as otherwise permitted by the DIP Orders. *See* Interim Order, ¶ 1.
Entities with Interests in Cash Collateral Bankruptcy Rule 4001(b)(l)(B)(i)	The following secured parties have an interest in Cash Collateral: (a) the Prepetition Lender. *See* Interim Order, ¶¶ 6, 9.
Fees Bankruptcy Rule 4001(c)(1)(B)	There are no fees associated with the DIP Facility.
Budget Bankruptcy Rule 4001 (c)(1)(B)	The use of cash and proceeds from the DIP Facility is subject to the Initial Budget, attached to the Interim Order as **Schedule 2**, and any approved Updated Budget, and otherwise as permitted pursuant to the DIP Loan Documents and/or the DIP Orders. *See* Interim Order, Schedule 2.
Reporting Information Bankruptcy Rule 4001(c)(l)(B)	The Debtor shall provide monthly financial statements, monthly accounts receivable aging reports, monthly accounts payable reports, monthly backlog reports, and twice monthly 13-week cash flow statements. *See* Interim Order, ¶¶ 17.

Bankruptcy Rule	Summary of Material Terms/Significant Provisions
Variance Covenant Bankruptcy Rule 4001(c)(l)(B)	The Companies shall not pay any expenses or make any other operating disbursements (exclusive of (x) professional fees and restructuring charges arising on account of the Bankruptcy Cases (including Chapter 11 Trustee fees and professional fees and expenses incurred by the DIP Lender and Prepetition Lender) and (y) disbursements made on account of pre-petition claims pursuant to any customary first day orders) other than as set forth in the Initial Budget (subject to a 10% aggregate variance). *See* Interim Order, ¶¶ 8.
Chapter 11 Milestones Bankruptcy Rule 4001(c)(1)(B)	None.
Liens and Priorities Bankruptcy Rule 4001(c)(l)(B)(i)	Pursuant to the Bankruptcy Code sections 364(c) and (d), the DIP Lien shall be a first priority senior and priming lien. The DIP Lien shall not be subject or subordinate to any lien which is avoided and which would otherwise be preserved for the benefit of the Debtor's estate under Bankruptcy Code section 551, and in no event shall any person or entity who pays (or causes to be paid) any of the obligations under the Prepetition Loan Documents be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens, or security interests granted to or in favor of, or conferred upon, the DIP Lender, who has assigned such to the Prepetition Lender by the terms of the Collateral Assignment of Note until such time as the obligations under the DIP Note and the Interim Order (and any Final Order) are indefeasibly paid in full, in cash. The DIP Lien shall not be subject or subordinate to liens arising after the Petition Date, other than liens granted pursuant to the Interim Order (or any Final Order) to the extent set forth in such Orders. The Interim Order also provides for the DIP Lender's immediate assignment of the DIP Liens to the Prepetition Lender upon entry of the Interim Order. *See* Interim Order, ¶¶ 6-7.
Challenge Period Bankruptcy Rule 4001(c)(l)(B)	None.
Adequate Protection Bankruptcy Rules 4001(b)(l)(B)(iv), 4001(c)(1)(B)(ii)	The Prepetition Lender is entitled to receive adequate protection to the extent of any Diminution in Value of its interests in the collateral securing the Debtors' obligations under the Pre-Petition Loan Documents and/or in exchange for their consent to the priming of its liens by the DIP Liens. Pursuant to sections 361, 363 and 507(b) of the Bankruptcy Code, as adequate protection the Prepetition Lender will receive (a) the Replacement Liens; and (b) the Adequate Protection Superpriority Claim. As further adequate protection to the Prepetition Lender, KPE LP requests the Court to authorize the assumption of its leases with its nondebtor, affiliate landlords, KPR Realty, LLC, and KPE Realty II, LLC. *See* Interim Order, ¶ 9.
Events of Default Bankruptcy Rule 4001(c)(l)(B)	The DIP Note and Interim Order contain events of default that are usual and customary for debtor-in-possession financings. *See* Interim Order, ¶ 8; DIP Note, Section 3.

Bankruptcy Rule	Summary of Material Terms/Significant Provisions
Waiver/Modification of Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)	The automatic stay provisions are modified to permit (a) the Debtors and the Prepetition Lender, as assignee of the DIP Lender, to implement and perform the DIP Facility and the DIP Note, including without limitation the provisions thereof with respect to the collection of Proceeds, and the maintenance and implementation of the Collection Accounts and the Collection Procedures (as such terms are defined below), and (b) the creation and perfection of all liens granted or permitted by the interim Order. *See* Interim Order, ¶ 13.
Waiver/Modification of Applicability of Non-bankruptcy Law Relating to Perfection or Enforceability of Liens Bankruptcy Rule 4001(c)(1)(B)(vii)	The Debtors request that the Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted, the Professional Fee Reserve, the DIP Liens and the Replacement Liens, without the necessity of filing or recording any financing statement, mortgage, deed of trust, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Replacement Liens or to entitle the DIP Lender and the Prepetition Lender to the priorities granted by the DIP Orders. *See* Interim Order, ¶ 13.
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	None.

THE DEBTORS' PRE-PETITION CAPITAL STRUCTURE.

16. In or around May 11, 2017, Debtor KPE LP executed that certain Promissory Note in the original principal amount of $12,000,000.00 (the "**Revolving Note**") along with that certain Credit Agreement (the "**Revolving Credit Agreement**") and that certain Cash Collateral Agreement (the "**Revolving Cash Collateral Agreement**" and together with all other documents, instruments, and agreements delivered in connection with the foregoing agreements, the "**Revolving Loan Documents**") between Debtor KPE LP, as borrower, and Texas Capital Bank, NA, as lender (the "**Prepetition Lender**").

17. In or around May 15, 2017, Debtor KPE LP executed that certain Promissory Note in the original principal amount of $16,000,000.00 (the "**2017 Note**") along with that certain Credit Agreement (the "**2017 Credit Agreement**") and that certain Security Agreement (the "**2017 Security Agreement**" and together with all other documents, instruments, and agreements

delivered in connection with the foregoing agreements, the "**2017 Loan Documents**") between Debtor KPE LP, as borrower, and the Prepetition Lender, as lender. The Prepetition Note, and related prepetition obligations, was secured by a valid and enforceable lien encumbering substantially all assets of Debtor KPE LP, as set forth in the Prepetition Loan Documents (the "**2017 Collateral**"). The 2017 Note bears interest at LIBOR plus 3.5%, or 5.06%, and is payable in monthly installments of $266,667 (plus variable interest calculated monthly) with the final installment due May 14, 2022. Debtor KPE LLC was also party to the 2017 Pledge Agreement. Mr. Steele, individually, guaranteed the 2017 Note.

18. In or around June 8, 2018, Debtor KPE LP executed that certain Loan Modification Agreement and that certain Promissory Note in the original principal amount of $25,000,000.00 (the "**2018 Note**") along with that certain Credit Agreement (the "**2018 Credit Agreement**") and that certain Security Agreement (the "**2018 Security Agreement**" and together with all other documents, instruments, and agreements delivered in connection with the foregoing agreements, the "**2018 Loan Documents**" and together with the 2017 Loan Documents, the "**Prepetition Loan Documents**") between Debtor KPE LP, as borrower, and the Prepetition Lender, as lender. The Prepetition Note, and related prepetition obligations, was secured by a valid and enforceable lien encumbering substantially all assets of Debtor KPE LP, as set forth in the Prepetition Loan Documents (the "**2018 Collateral**"). The 2018 Note paid and replaced the 2017 Note and terminated the Revolving Loan Documents.

19. Prior to the Petition Date, Brandon T. Steele ("**Mr. Steele**"), individually, owed Debtor KPE LP the sum of $13,169,773.12 (the "**Partner Receivable**") in connection with certain prepetition transactions between Mr. Steele and the Debtors. Immediately prior to the Petition Date, Mr. Steele repaid the Partner Receivable, the proceeds of which were paid by the Debtors to

the Prepetition Lender after receipt of the proceeds of the Partner Receivable and the Petition Date, the outstanding balance under the prepetition Loan Documents is $8,743,207.21.

THE DEBTORS HAVE A NEED FOR
DEBTOR-IN-POSSESSION FINANCING AND USE OF CASH COLLATERAL

20. The Debtors require immediate access to the DIP Facility in addition to continued use of the Prepetition Lender's cash collateral (the "**Cash Collateral**"). As of the Petition Date, the Debtors' total unrestricted cash balance is approximately $10,000.00, which is insufficient to operate their enterprise and continue paying their debts as they come due. During these Chapter 11 Cases, the Debtors will need access to the DIP Facility to help satisfy payroll issuance, pay dealers, suppliers, and subcontractors, meet overhead, and make any other payments that are essential for the continued management, operation, and preservation of the Debtors' business. The ability to satisfy these expenses when due is essential to the Debtors' continued operation of their business during the pendency of these cases. As such, and due to their current limited liquidity, the Debtors require immediate access to the DIP Facility and the use of Cash Collateral to operate their business, preserve value, and avoid irreparable harm.

21. The Debtors also require immediate access to the DIP Facility and continued use of Cash Collateral in order to finance the fees, costs and expenses associated with these Chapter 11 Cases. The proposed DIP Financing and use of Cash Collateral are vital to providing the Debtors the runway necessary to successfully consummate their restructuring strategy.

ALTERNATIVE SOURCES OF FINANCING ARE
NOT AVAILABLE ON BETTER TERMS.

22. As set forth in the McCoy Declaration, the Debtors reviewed alternative options to finance its operations, including requests to the Prepetition Lender to use cash collateral. At the conclusion of this process and following extensive discussions and negotiations with the Prepetition Lender and, eventual, DIP Lender, the Debtors concluded, in consultation its advisors,

that the DIP Facility represents the best postpetition financing alternative available to the Debtors under the circumstances and that alternative sources of financing with overall terms as favorable as those of the DIP Facility are not available to the Debtors.

BASIS FOR RELIEF

I. The Debtors Should Be Authorized to Obtain Postpetition Financing Pursuant to the DIP Loan Documents.

A. Entering into the DIP Note Is an Exercise of the Debtors' Sound Business Judgment.

23. The Court should authorize the Debtors, as an exercise of their sound business judgment, to enter into the DIP Note, obtain access to the DIP Facility, and continue using the Cash Collateral. Courts grant considerable deference to a debtor's business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.").

24. Specifically, to determine whether a debtor has met this business judgment standard, a court need only "examine whether a reasonable business person would make a similar decision under similar circumstances." *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor's business decision when that decision involves "a

business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor's] authority under the [Bankruptcy] Code").

25. Further, in considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.),* 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into "hard bargains" to acquire funds for its reorganization).

26. The Debtors' determination to move forward with the DIP Facility is a sound exercise of their sound business judgment. The Debtors specifically sought postpetition financing that would serve two primary purposes: (i) to fund the continued management, operation, and preservation of the Debtors' business; and (ii) to finance the fees, costs and expenses associated with the Chapter 11 Cases and, by doing so, permit the Debtors to consummate a restructuring. As discussed above, the Debtors ultimately determined that the DIP Facility was the best available option to satisfy these purposes and negotiated the terms of the DIP Note with the DIP Lender in good faith. Accordingly, the Court should authorize the Debtors' entry into the DIP Note as a reasonable exercise of the Debtors' business judgment.

B. The Debtors Should Be Authorized to Grant Liens and Superpriority Administrative Expense Status as Contemplated Under the DIP Orders.

27. The Debtors propose to obtain financing under the DIP Facility, in part, by providing superpriority claims and liens pursuant to section 364(c) of the Bankruptcy Code and as authorized and provided in the DIP Orders. Significantly, the Debtors propose to provide first priority liens on substantially all of the Debtors' assets, including previously unencumbered property and "priming" liens on all of the Debtors' collateral except where excluded.

28. In the event that a debtor demonstrates that it is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, section 364(c) provides that a court:

> [M]ay authorize the obtaining of credit or the incurring of debt (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code]; (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c); *see also In re Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained). Courts have articulated a three-part test to determine whether a debtor is entitled to financing pursuant to section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

a. the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code, *i.e.*, by allowing a lender only an administrative claim;

b. the credit transaction is necessary to preserve the assets of the estate; and

c. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

See In re Ames Dep't Stores, 115 B.R. at 37–40; *see also In re St. Mary Hosp.*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988); *Crouse Group*, 71 B.R. at 549.

29. The Debtors received no proposals for postpetition financing on an unsecured or junior priority basis. Indeed, no constituency or potential third-party funding source was willing to propose postpetition financing on anything other than a senior secured priming basis with respect to substantially all of the Debtors' assets. Put simply, the DIP Lender was not willing to provide the DIP Facility on any terms other than those negotiated and reflected in the existing DIP

Note, and no other existing stakeholder or third-party has proposed alternative postpetition financing on preferable terms. Further, the Debtors do not possess sufficient unencumbered assets to secure sufficient debtor-in-possession financing to fund a non-consensual case. Accordingly, the DIP Facility's structure is appropriate in light of the Debtors' financing needs and the lack of viable non-priming debtor-in-possession financing alternatives.

30. Further, section 364(d) provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien where the debtor is "unable to obtain such credit otherwise" and "there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 U.S.C. § 364(d)(1). Accordingly, the Debtors may incur "priming" liens under the DIP Facility if they are unable to obtain unsecured or junior secured credit and either (a) pre-petition secured parties have consented or (b) the pre-petition secured parties' interests in collateral are adequately protected.

31. Here, subject to approval of the relief sought by this Motion and entry of the DIP Orders, the Prepetition Lender has consented to being primed and agreed to the adequate protection of their interests authorized by the DIP Orders. Therefore, the relief requested pursuant to section 364(d)(1) of the Bankruptcy Code is warranted and appropriate under the circumstances.

C. No Comparable Alternative to the DIP Facility Is Reasonably Available.

32. A debtor need only demonstrate "by a good faith effort that credit was not available without" the protections afforded to potential lenders by sections 364(c) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." *Sky*

Valley, Inc., 100 B.R. at 113; *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court's finding that the refusal of two national banks to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met); *In re Ames Dep't Stores*, 115 B.R. at 37–39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

33. As described above, the Debtors conducted a review process for methods of financing this bankruptcy process and concluded that the most cost effective option for financing these Chapter 11 Cases was the DIP Facility and that no better alternatives were available under the specific facts and circumstances of the Debtors' Chapter 11 Cases.

II. The Debtors Should Be Authorized to Continue to Use the Cash Collateral and Grant Adequate Protection as Contemplated Under the DIP Orders.

34. The Debtors' use of property of their estates, including the Cash Collateral, is governed by section 363 of the Bankruptcy Code,[6] which provides in relevant part that:

> If the business of the debtor is authorized to be operated under section . . . 1108 . . . of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

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[6] Section 363(a) of the Bankruptcy Code defines "cash collateral" as follows:

> Cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

11 U.S.C. § 363(a).

11 U.S.C. § 363(c)(1). Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor may not use cash collateral unless "(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2).

35. Generally, what constitutes adequate protection is decided on a case-by-case basis. *See In re Columbia Gas Sys., Inc.*, No. 91-803, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) ("the determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case"); *see also In re Realty Southwest Assocs.*, 140 B.R. 360, 366 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (the application of adequate protection "is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process") (citation omitted); *see also In re Cont'l Airlines Inc.*, 154 B.R. 176, 180–81 (Bankr. D. Del. 1993).

36. Here, the Debtors' proposed use of Cash Collateral is in furtherance of the restructuring efforts contemplated by these Chapter 11 Cases. Preservation of the Debtors' business as a going concern in and of itself serves to provide such parties "adequate protection" for Bankruptcy Code purposes. *See 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (noting that, in determining whether protection is "adequate," courts consider "whether the value of the debtor's property will increase as a result of the" use of collateral or provision of financing); *In re Sky Valley, Inc.*, 100 B.R. 107, 114 (Bankr. N.D. Ga. 1988) ("an increase in the value of the collateral . . . resulting from superpriority financing could result in adequate protection." (citation omitted)), *aff'd sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117 (N.D. Ga. 1989).

37. The Debtors believe that the proposed adequate protection in the proposed Interim Order is necessary and sufficient for the Debtors to continue to use Cash Collateral. Moreover, the Prepetition Lender has consented to the use of Cash Collateral subject to approval of the relief sought by this Motion and entry of the DIP Orders. Thus, the Debtors submit that the adequate protection proposed by the Motion and contained in the DIP Orders is (a) fair and reasonable, (b) necessary to satisfy the requirements of sections 363(c)(2) and 363(e) of the Bankruptcy Code, and (c) in the best interests of the Debtors and their estates.

III. The Debtors Should Be Authorized to Pay the Interest Required by the DIP Lender under the DIP Loan Documents.

38. Under the DIP Loan Documents, the Debtors have agreed, subject to Court approval, to pay certain interest to the DIP Lender. The Debtors believe that the interest to be paid under the DIP Facility is within the range of market rates and is reasonable, particularly in light of the credit profile of the Debtors, the nature and extent of the collateral securing the DIP Facility, and the relevant risks associated with lending in the postpetition context. The Debtors considered the interest described herein when determining in their sound business judgment that the DIP Facility constituted the best, and only, actionable terms on which the Debtors could obtain the postpetition financing necessary to continue their operations and consummate their reorganization. Accordingly, the Court should authorize the Debtors to pay the interest provided under the DIP Note in connection with the DIP Facility.

IV. The DIP Lender Should Be Afforded Good-Faith Protection under Section 364(e).

39. Section 364(e) of the Bankruptcy Code protects a good-faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

> The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

40. The DIP Facility is the result of (i) the Debtors' reasonable and informed determination that the DIP Lender, through the DIP Facility, offered the most favorable terms on which to obtain postpetition financing, and (ii) extensive arm's-length, good-faith negotiations between the Debtors and the DIP Lender. The Debtors submit that the terms and conditions of the DIP Facility are reasonable and appropriate under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Accordingly, the Debtors submit that the Court should find that the obligations arising under the DIP Facility and other financial accommodations made to the Debtors have been extended by the DIP Parties in "good faith" within the meaning of section 364(e) of the Bankruptcy Code and therefore the DIP Parties are entitled to all of the protections afforded thereby.

V. The Automatic Stay Should Be Modified on a Limited Basis.

41. The proposed DIP Orders provide that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to allow the DIP Lender and Prepetition Lender to file any financing statements, security agreements, notices of liens, and other similar instruments and documents in order to validate and perfect the liens and security interests granted to them under the DIP Orders. The proposed DIP Orders further provide that the automatic stay is modified to the extent necessary to implement and effectuate the terms of the DIP Orders.

42. Stay modifications of this kind are ordinary and standard features of debtor-in-possession financing arrangements, and, in the Debtors' business judgment, are reasonable and fair under the circumstances of these Chapter 11 Cases.

VI. Failure to Obtain Immediate Interim Access to the DIP Facility and Cash Collateral Would Cause Immediate and Irreparable Harm.

43. The Debtors require immediate access to the DIP Facility and the use of Cash Collateral to operate their business, preserve value, and administer these Chapter 11 Cases pending the Final Hearing. Moreover, the Debtors seek to use proceeds of the DIP Facility and Cash Collateral only for the purposes specifically set forth in the DIP Note, the DIP Orders, and in compliance with the Initial Budget (and any Updated Budget). Failure to obtain access to the DIP Facility and Cash Collateral will result in immediate and irreparable harm to the Debtors and their stakeholders, will diminish the value of the Debtors' estates, and will put the Debtors' prospects of reorganization in severe jeopardy. Without the approval of the DIP Facility and use of Cash Collateral, the Debtors will be unable to continue to operate in the ordinary course of business or to preserve and maximize the value of their assets for the benefit of all creditors and parties-in-interest.

44. Accordingly, the Debtors respectfully request that the Court conduct an expedited hearing on this Motion and enter the proposed DIP Orders authorizing the Debtors to enter into the DIP Facility and use the Cash Collateral.

REQUEST FOR FINAL HEARING

45. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the applicable Local Bankruptcy Rules, the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)

46. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

EMERGENCY CONSIDERATION

47. The Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Local Rule 9013-1(i) and Bankruptcy Rule 6003, which authorizes a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." The Debtors believe that an immediate and orderly transition into chapter 11 is critical to the viability of their operations and the success of these Chapter 11 Cases. As set forth in this Motion and in the First Day Declaration, the Debtors believe an immediate and orderly transition into operations under chapter 11 is in the best interest of the Debtors. Furthermore, failure to receive the requested relief during the first twenty-one days of these Chapter 11 Cases would disrupt the Debtors' operations and restructuring efforts. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003, and the Debtors believe that emergency consideration is necessary and request that this Motion be heard at the first day hearing.

RESERVATION OF RIGHTS

48. Nothing contained herein is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against any of the Debtors under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of any Debtor's or any other party-in-interest's rights to dispute any claim; (c) an assumption, adoption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code; (d) an admission as to the validity,

enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of any Debtor's estate; or (e) a waiver of any claims or causes of action which may exist against any entity.

NOTICE

49. The Debtors have provided notice of this Motion to (a) the Office of the United States Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors; (c) Texas Capital Bank, as Prepetition Lender; (d) counsel for Texas Capital Bank; (e) BTS Enterprises, Inc., as proposed DIP Lender; (f) the United States Attorney's Office for the Southern District of Texas; (g) the Internal Revenue Service; (h) the United States Securities and Exchange Commission; (i) the state attorneys general for states in which the Debtors conduct business; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice is required or needed under the circumstances.

[*Remainder of page intentionally left blank.*]

WHEREFORE, the Debtors respectfully request that the Court enter the DIP Orders, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: August 23, 2019
Houston, Texas

Respectfully submitted,

/s/ Gregory G. Hesse
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Proposed Counsel for the Debtor and Debtor in Possession KP Engineering LLC

CERTIFICATE OF SERVICE

I certify that on August 23, 2019, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Gregory G. Hesse
Gregory G. Hesse

Exhibit A

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
KP ENGINEERING, LP, *et al.*,	§	Case No. 19-34698 (DRJ)
	§	(Joint Administration Requested)
Debtors.[1]	§	(Emergency Hearing Requested)

AGREED INTERIM ORDER (I) AUTHORIZING DEBTOR TO (A) OBTAIN POSTPETITION FINANCING ON A SECURED, SUPERPRIORITY BASIS AND (B) USE CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION, (III) SCHEDULING A FINAL HEARING, AND (IV) GRANTING RELATED RELIEF
[Related Docket No. 9]

CAME ON FOR HEARING, the motion (the "Motion") of the Debtor for interim and final orders, under sections 105, 361, 362, 363, 364, and 365, of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002 and 4001 of Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Southern District of Texas (the "Local Bankruptcy Rules") seeking, among other things:

(1) authority pursuant to Bankruptcy Code sections 363 and 364(c) and (d) to obtain an interim debtor-in-possession secured financing (the "DIP Facility") pursuant to the following terms and agreements (collectively, the "DIP Facility Documents"): (a) this Order, and any final order entered by this Court approving the DIP Facility (the "Final Order"), and (b) the Terms and Conditions of proposed Promissory Note and Security Agreement, attached to the Motion as Schedule 1, as amended, modified, and/or supplemented at or before the final hearing on the Motion to be conducted on the date described in Paragraph 36 herein (the "Final Hearing") and there presented to this Court (the "DIP Note"),[2] with BTS Enterprises, Inc. ("DIP Lender"), as DIP Lender; and (c) the terms and conditions described in the summary of transactions between the Debtor, Brandon Steele ("Steele"), the Debtor's principal, and DIP Lender, an entity wholly-

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: KP Engineering, LP (7785) and KP Engineering, LLC (0294). The location of the Debtors' corporate headquarters and the Debtors' service address is: 5555 Old Jacksonville Highway, Tyler, TX 75703.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the DIP Note or the Motion, as applicable.

owned by Steele, and Texas Capital Bank, National Association (the "Prepetition Lender"), attached to the Motion as Exhibit B, as amended, modified and/or supplemented at or before the Final Hearing(the "DIP Restructuring Summary Sheet") (collectively, the DIP Note and the DIP Restructuring Summary Sheet are the "Summary Sheets"), respectively;

(2) the grant to the DIP Lender, for the benefit of itself, of superpriority administrative claim status pursuant to Bankruptcy Code sections 346(c)(1) and 507(b) in accordance with the terms of this order, such status will be assigned to the Prepetition Lender who shall have such rights herein;

(3) authorization for the Debtor's use of cash collateral whenever or wherever acquired, and the proceeds of all collateral pledged to the Prepetition Lender, as contemplated by Bankruptcy Code section 363, in accordance with the terms set forth herein;

(4) a partial grant of adequate protection to the Prepetition Lender by the Debtor assuming its non-residential real property leases with KPE Realty and KPE Realty II pursuant to Section 365 of the Bankruptcy Code;

(5) a grant of adequate protection to the Prepetition Lender under and in connection with the Prepetition Loan Documents (as defined below) in accordance with the terms set forth herein;

(6) modification of the automatic stay to the extent hereinafter set forth and waiving the 14-day stay provisions of Bankruptcy Rules 4001(a)(3) and 6004(h); and

(7) a Final Hearing on the Motion for entry of an order authorizing the DIP Facility and use of cash collateral on a final basis.

Notice of the Motion, the relief requested therein, and the Interim Hearing (as defined below) (the "Notice") having been served by the Debtor in accordance with Rule 4001(c) on: (i) the counsel for the DIP Lender and counsel for the Prepetition Lender; (ii) the United States Trustee for the Southern District of Texas (the "U.S. Trustee"); (iii) the holders of the thirty (30) largest unsecured claims against the Debtor's estate; (iv) all parties known to the Debtor who hold any liens or security interests in the Debtor's assets who have filed UCC-1 financing statements against the Debtor, or who, to the Debtor's knowledge, have asserted any liens on any of the Debtor's assets; (vi) the Internal Revenue Service and all taxing authorities of states in which the Debtor is doing business; and (vii) certain other parties identified in the certificates of service filed with this Court.

Pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2, this Court held an interim hearing with respect to the Motion on August 26, 2019 (the "Interim Hearing").

After the Motion and the proceedings before this Court at the Interim Hearing; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved, or overruled by this Court as reflected on the record established by the Debtor at the Interim Hearing;

THIS COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

A. On August 22, 2019 (the "Petition Date"), the Debtor commenced a case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code;[4]

B. The Debtor continues to operate its business and manage its properties as a debtor and debtor in possession pursuant to Bankruptcy Code sections 1107(a) and 1108, and no trustee or examiner has been appointed;

C. Proper, timely, adequate, and sufficient notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules, and no other or further notice of the Motion with respect to the relief requested at the Interim Hearing or the entry of this Order shall be required.

D. This Court has core jurisdiction over the Debtor's bankruptcy case, the Motion, and the parties and property affected by this Order pursuant to 28 U.S.C. §§ 157(b) and 1334, and venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409;

[3] To the extent any findings of act constitute conclusions of law, they are adopted as such, and vice versa, pursuant to Fed. R. Bankr. P. 7052.
[4] Unless otherwise noted all statutory references are to the Bankruptcy Code.

E. As of the date hereof, the United States Trustee has not yet appointed an official committee of unsecured creditors in this matter pursuant to Bankruptcy Code section 1102 (a "Statutory Committee");

F. The Debtor has admitted, represented, and stipulated the following (collectively, the "Stipulations"):

(1) as of the Petition Date: Debtor was party to that certain Promissory Note, Credit Agreement, and Security Agreement dated May 15, 2017: Steele was a party to the Pledge Agreement and Guaranty Agreement dated May 15, 2017; KP Engineering, LLC was a party to the Pledge Agreement dated May 15, 2017; and Debtor was party to that certain Promissory Note dated June 8, 2018 (such agreements as amended and existing immediately prior to the Petition Date, and together with all other documents, instruments, and agreements delivered in connection with those agreements (the "Prepetition Loan Documents"), pursuant to which (a) the Debtor was indebted to the Prepetition Lender, without defense, counterclaim, recoupment, or offset of any kind, in the approximate non-contingent liquidated amount of no less than $21,250,000.00 just prior to the Petition Date, plus prepetition interest, fees, expenses, and other amounts arising in respect of such obligations existing immediately prior to the Petition Date (such obligations, the "Prepetition Obligations"), and (b) such Prepetition Obligations were secured by valid, enforceable, properly perfected, first priority, and unavoidable liens on and security interests (the "Prepetition Liens") encumbering substantially all assets of the Debtor, as set forth in the Prepetition Loan Documents (the "Prepetition Collateral");

(2) Prior to the Petition Date, Steele owed the Debtor the sum of $13,169,773.12 (the "Partner Receivable") in connection with certain prepetition transactions between them. The Partner Receivable is Prepetition Collateral that secured the Prepetition Obligations. In consideration for the accommodations herein, the Prepetition Lender lent the DIP Lender and the DIP Lender lent Steele the funds necessary for Steele to pay the Partner Receivable, Steele paid the Partner Receivable to the Debtor, and the Debtor paid the funds from the Partner Receivable to the Prepetition Lender in partial satisfaction of the Prepetition Obligations (the "Prepetition Debt Reduction Payment"). Because of the Prepetition Debt Reduction Payment, the amount owing by the Debtor to the Prepetition Lender on the Petition Date is $8,743,207.21plus prepetition interest, fees, expenses, and other amounts. The Prepetition Debt Reduction Payment is an essential element of the Prepetition Lender's financial accommodations to the Debtor and it should not be subject to avoidance because the Partner Receivable was Prepetition Collateral and the Prepetition Debt Reduction Payment was a liquidation of that Prepetition Collateral;

(3) As further accommodation to the Debtor, the Prepetition Lender is willing to loan to the DIP Lender the funds necessary for the DIP Lender to provide the postpetition financing to the Debtor described herein and in the DIP Note provided, however, the DIP Lender will assign to the Prepetition Lender all of its rights, title, and interests, as DIP Lender under this Order, the DIP Facility Documents and the Bankruptcy Code;

(4) As further accommodation to the Debtor, the Prepetition Lender is willing to provide to the DIP Lender and Steele financing and other financial accommodations as described in the DIP Restructuring Summary Sheet such financing necessary to permit them to provide working capital to support the Debtor;

(5) the Prepetition Lender consents to the Debtor's use of the Prepetition Collateral and cash collateral (as such term is defined in Bankruptcy Code section 363(a)) only upon the conditions contained in this Order and the Summary Sheets;

(6) the Debtor possesses no claims, offsets, or other rights, or causes of action against the Prepetition Lender that would in any manner impair, reduce, or otherwise modify the Prepetition Obligations or the validly perfected Prepetition Liens upon the Prepetition Collateral;

(7) the Prepetition Obligations constitute valid, binding obligations of the Debtor, enforceable in accordance with their terms, and the Debtor will not assert any claims, counterclaims, setoffs, or defenses of any kind or nature, which in any way would affect the validity and enforceability of any of the Prepetition Obligations and/or the Prepetition Liens of the Prepetition Lender upon the Prepetition Collateral, or which would in any way reduce the obligation of the Debtor to pay in full all of the Prepetition Obligations; and

(8) the Debtor is a duly organized, validly existing limited liability partnership and has the requisite power and authority to own, lease, and operate its property, including, without limitation, the DIP Collateral. The Debtor has the requisite power and authority to enter into, execute, deliver, and perform its obligations under the Summary Sheets and this Order and to incur the obligations provided for thereon. No consent or waiver of, filing with, authorizing, approval or other action by any shareholder, any federal, state, or other governmental authority or regulatory body or any other person (other than the DIP Lender), which has not already been obtained or done, is required in connection with the execution, delivery, and performance by the Debtor of any of the documents required as a condition to the validity or enforceability of the DIP Note, other than entry by this Court of this Order;

G. Based on the record at the Interim Hearing, the Debtor is unable to obtain sufficient levels of unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense necessary to maintain and conduct its business;

H. Based on the record at the Interim Hearing, the Debtor is unable to obtain secured credit on more favorable terms than under the terms and conditions provided in this Order;

I. All cash of the Debtor, wherever located on the Petition Date, represents (i) proceeds of loans or other financial accommodations provided to the Debtor by the Prepetition Lender under Prepetition Loan Documents; or (ii) proceeds of Prepetition Collateral. Such funds

(the "Cash Collateral") constitute such cash collateral within the meaning of Bankruptcy Code section 363;

J. It is in the best interest of Debtor's estate that the Debtor be allowed to enter into the DIP Facility in order to obtain postpetition secured financing from the DIP Lender (through the Prepetition Lender), and use the Prepetition Collateral and Cash Collateral subject to and in accordance with the terms of this Order and the Summary Sheets and to grant adequate protection to the Prepetition Lender on account of the Prepetition Obligations on an interim basis under the terms and conditions set forth herein and in the Summary Sheets, as such is necessary to avoid immediate and irreparable harm to the Debtor's estate pending Final Hearing;

K. The extension of credit and financial accommodations under the DIP Note are fair, reasonable, in good faith, negotiated at arm's length, reflect the Debtor's exercise of prudent business judgment, and are supported by reasonable equivalent value and fair consideration and the DIP Lender is entitled to the protections of Bankruptcy Code section 364(e), which rights it will assign to the Prepetition Lender;

L. The Debtor requires access to the funding available under the DIP Facility and the DIP Note in order to satisfy administrative expenses associated with the operation of its business as a going concern and other costs relating to the administration of the Chapter 11 Case, and in order to avoid immediate and irreparable harm to the Debtor's estate pending the Final Hearing;

M. The Prepetition Lender is unwilling to consent to use of the Prepetition Collateral by the Debtor, except as provided under the terms of the Summary Sheets and this Order assuring that the liens and the various claims, superpriority claims, transfers, and other protections granted in this Order will not be affected by any subsequent reversal or modification of this order or any other order, as provided in Bankruptcy Code section 364(e), which is applicable to the postpetition

financing arrangement contemplated in the DIP Note and the use of Cash Collateral contemplated by this Order; and

N. Good and sufficient cause has been shown for immediate entry of this Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Bankruptcy Rules. Absent granting the relief set forth is in this Order, the Debtor and its estate will be immediately and irreparably harmed. Entry of this Order, consummation of the financing under the DIP Facility and the use of the Prepetition Collateral, including Cash Collateral, in accordance with this Order and the Summary Sheets are in the best interests of the Debtor, its estate, and its creditors.

Based upon the foregoing, and after due consideration and good cause appearing therefore; **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that:

1. The Motion is granted on an interim basis effective as of the Petition Date. The Debtor is authorized, pursuant to Bankruptcy Code sections 363 and 364, to enter into the DIP Facility and the DIP Note, to execute such other and additional documents necessary or desired to implement the DIP Facility and the DIP Note, to obtain postpetition secured financing from the DIP Lender in the amount of $750,000 on an interim basis pending the Court conducting the Final Hearing and entering a Final Order, with funds provided by the Prepetition Lender, and to use the Prepetition Collateral, Cash Collateral, and the proceeds and products thereof, pursuant to the terms and conditions of the DIP Note and this Order (with such changes, if any, as were made prior to or as a result of the Interim Hearing or are otherwise authorized to be made as amendments to the DIP Note in accordance with this Order) to avoid immediate and irreparable harm to the Debtor's estate pending the Final Hearing. It is expressly understood that such financing is being provided by the Prepetition Lender to the DIP Lender for loan to the Debtor only upon the condition that the terms and conditions of the DIP Restructuring Summary Sheet are met and only

upon entry of an Interim Order on terms satisfactory to the Prepetition Lender. The Debtor shall use the advance obtained under the DIP Facility and the DIP Collateral (including Cash Collateral) only for the purposes and in the amounts set forth in the DIP Note attached hereto as Schedule 1, the DIP Restructuring Summary Sheet attached to the Motion as Exhibit B, and the Initial Budget attached hereto as Schedule 2, and any Updated Budget. The Prepetition Lender shall have no obligation to make any further advances to the DIP Lender unless and until the entry of a Final Order on terms acceptable to the Prepetition Lender. Upon entry of such Final Order, the Prepetition Lender may then make a final advance of no more than $3,250,000 to the DIP Lender. The DIP Lender shall fund the Debtor all of the total of $4,000,000 that it receives from the Prepetition Lender immediately upon its receipt of those funds from the Prepetition Lender. The Prepetition Lender shall have no obligation to make the advance to the DIP Lender unless and until all the transactions contemplated in the DIP Restructuring Summary Sheet, are finalized.

2. In furtherance of the foregoing and without further approval of this Court, the Debtor is authorized to perform all acts, to make, execute, and deliver all instruments, documents, and agreements (including, without limitation, the execution or recordation of security agreements, mortgages, deeds of trust, and financing statements), and to pay all fees that may reasonably be required or necessary for the Debtor to implement the terms of, perform its obligations under or effectuate the purposes of and transactions contemplated by this Order or the DIP Note.

3. No proceeds of the DIP Facility or Cash Collateral shall be used to (a) permit the Debtor, or any other party-in-interest or their representatives to challenge or otherwise contest or institute any proceeding to determine (i) the validity, perfection, or priority of any security interests in favor of the Prepetition Lender or the DIP Lender, or (i) the enforceability of the obligations of the Debtor under the Prepetition Loan Documents, or the DIP Note, or the DIP Restructuring

Summary Sheet (b) investigate, commence, prosecute, or defend any claim, motion, proceeding, or cause of action against the Prepetition Lender or the DIP Lender and their agents, attorneys, advisors, or representatives including, without limitation, any lender liability claims or subordinations claims, (c) investigate, commence, prosecute, or defend any claim or proceeding or cause of action to disallow or challenge the obligations of the Debtor under the Prepetition Loan Documents or the Summary Sheets, or (d) fund acquisitions, capital expenditures, capital leases, or any other similar expenditure other than capital expenditures specifically set forth in the Initial Budget and approved by the Prepetition Lender.

4. Pursuant to Bankruptcy Code sections 363 and 364(c) and (d), the DIP Facility Funds advanced pursuant to the terms of this Order and the Summary Sheets (collectively, the "DIP Facility Advance") shall be allowed administrative expenses of the Debtor's estate, which shall have priority in payment over any other indebtedness and/or obligations now in existence or incurred hereafter by the Debtor and over all administrative expenses or charges against property arising in the Chapter 11 Case and any superseding Chapter 7 case including, without limitation, those specified in Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114, (such claim, the "DIP Facility Superpriority Claim"). The DIP Facility Advance shall not be recharacterized as equity or subordinated to any other claims for any reason. The time of payment of the DIP Facility Advance or its characterization under this Order shall not be altered, extended, or impaired by any plan or plans of reorganization that may hereafter be accepted or confirmed or any further orders of this Court, which hereafter may be entered.

5. Interest on the Prepetition Obligations shall accrue from and after the Petition Date at the rate set forth in the Prepetition Loan Documents. Pursuant to the applicable agreements between the DIP Lender and the Prepetition Lender, the reasonable prepetition and postpetition

legal and other fees and expenses of the Prepetition Lender are payable to the Prepetition Lender by the DIP Lender without further notice, motion, or application to, order of, or hearing before this Court without regard to whether the Prepetition Lender is fully secured or permissible under Bankruptcy Code section 506 and payable within fifteen (15) days of submission of invoices to the DIP Lender. To the extent permissible under Bankruptcy Code section 506, the Debtor shall remain responsible for payment of all prepetition and postpetition legal and other fees and expenses of the Prepetition Lender upon notice and motion to the Court.

6. Pursuant to Bankruptcy Code sections 363, 364(c), and 364(d), as security for the DIP Facility Advance and other postpetition costs payable under the DIP Note, the Debtor is hereby authorized to and is hereby deemed to grant to the DIP Lender, who is deemed to have immediately assigned to the Prepetition Lender, a valid, binding, and enforceable lien, mortgage and/or security interest (a "Lien" and, as granted to the DIP Lender and assigned to the Prepetition Lender, the "DIP Lien,") in all of the Debtor's presently owned or hereafter acquired property and assets, whether such property and assets were acquired before or after the Petition Date, of any kind or nature, whether real or personal, tangible or intangible, wherever located, and the proceeds and products thereof (collectively, the "DIP Collateral").

7. Pursuant to the Bankruptcy Code sections 364(c) and (d), the DIP Lien shall be a first priority senior and priming lien. The DIP Lien shall not be subject or subordinate to any lien which is avoided and which would otherwise be preserved for the benefit of the Debtor's estate under Bankruptcy Code section 551, and in no event shall any person or entity who pays (or causes to be paid) any of the obligations under the Prepetition Loan Documents be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens, or security interests granted to or in favor of, or conferred upon, the DIP Lender, who has assigned such to the Prepetition Lender by

the terms of the Collateral Assignment of Note, until such time as the obligations under the DIP Note and this Order are indefeasibly paid in full, in cash The DIP Lien shall not be subject or subordinate to liens arising after the Petition Date, other than liens granted pursuant to this Order to the extent set forth in this Order.

8. All rents, income, profits, cash in accounts and deposits derived from the Prepetition Collateral constitute Cash Collateral. Provided that each of the conditions set forth in this Paragraph are satisfied, the Debtor shall be authorized to use the Cash Collateral only in accordance with the terms of the Initial Budget (or the Updated Budget, as applicable), this Order, and the Summary Sheets. Subject to the notice requirements below, the Debtor's authorization to use Cash Collateral or funds advanced from the DIP Facility shall cease on the occurrence of the earliest of the following: (a) the Debtor's failure to comply with any of the terms of this Order (or any subsequent interim or Final Order); (b) the occurrence of an Event of Default under the DIP Note; (c) the Debtor's failure to comply with the Initial Budget or the Updated Budget, as applicable *provided, however,* the Debtor will be permitted a ten percent (10%) total variance in the aggregate for expenses reflected in the budget *provided, however,* that the line items for employee healthcare costs will not be subject to the variance limitations but the Debtor shall provide documentary evidence supporting the employee healthcare costs upon the Prepetition Lender's request; (d) the Debtor's failure to comply with the Summary Sheets; (e) upon the entry of an order: (i) converting this case to a case under Chapter 7 of the Bankruptcy Code; (ii) dismissing this case; (iii) appointing a trustee under chapter 7 or 11 of the Bankruptcy Code; (iv) reversing or vacating this Order; or (f) upon the filing of any other application by the Debtor for entry of an order for financing or loans secured by liens which are senior to the Prepetition Liens or the DIP Lien. Except for Item (g) above, the Prepetition Lender or DIP Lender must give five

(5) business days' notice (which must be delivered by electronic mail, facsimile, or hand delivery to the Debtor, its counsel, the U.S. Trustee and counsel for a Statutory Committee, if appointed) and opportunity to cure or obtain relief from the Bankruptcy Court (the "Cure Period"). If, upon the expiration of the Cure Period, any of such conditions is not satisfied or, if the Debtor or other party seeks relief from the Bankruptcy Court within the Cure Period and such relief is denied (the last such date being the "Termination Date") , then: a) the Debtor shall not be authorized to use any Cash Collateral or any funds advanced under the DIP Facility after the Termination Date unless and until such use is consented to by the Prepetition Lender or otherwise authorized by the Bankruptcy Court; b) the Prepetition Lender may declare that; i) all DIP obligations owing under the DIP Note or this Order to be immediately due and payable, ii) any further commitment to extend credit to the DIP Lender is terminated, restricted or reduced, to the extent that any obligation remains; and iii) the DIP Facility is terminated with no future liability for funding, *provided, however*, such will not affect the DIP Facility Superpriority Claim, the DIP Liens, the Replacement Liens, the Adequate Protection Superpriority Claims or any adequate protection granted herein; and c) all interest including, where applicable, default interest shall accrue and be paid as set forth in the DIP Note. The DIP Lender and the Prepetition Lender may not repossess, foreclose or seize any DIP Collateral without filing a motion on expedited notice and obtaining an order from the Bankruptcy Court authorizing such acts. The burden of proof in such proceeding shall not be affected by the terms of this Order or the DIP Note *provided, however,* the Stipulations shall constitute findings in such proceeding. If the Termination Date occurs: (a) to the extent that there are sufficient funds in the DIP Collateral, the Debtor shall establish a reserve in the amount of $250,000 for the payment of professional fees solely to the Debtor's counsel (the "Professional Fee Reserve"); and (b) after establishment of the Professional Fee Reserve, the Debtor shall (i)

remit to the Prepetition Lender any Cash Collateral and DIP Collateral then in the Debtor's possession for application to the DIP Facility obligations and Prepetition Obligations; and (ii) repay the aggregate principal amount of all advances outstanding under the DIP Facility plus the sum of any accrued but unpaid interest and fees as of such Termination Date. No distributions to the Debtor's counsel may be made from the Professional Fee Reserve except upon motion and order of this Court. Upon the payment of all approved fee awards to the Debtor's counsel, the balance of the Professional Fee Reserve shall be submitted to the Prepetition Lender.

9. Until the indefeasible payment in full of the Prepetition Obligations, the Prepetition Lender is entitled to adequate protection of its interest in the Prepetition Collateral (including Cash Collateral) as a result of (a) the provisions of this Order granting first priority and/or priming liens on such Prepetition Collateral to the Prepetition Lender, (b) the Debtor's use of the Prepetition Collateral (including Cash Collateral), (c) the imposition of the automatic stay pursuant to Bankruptcy Code section 362, or (d) otherwise, pursuant to Bankruptcy Code sections 361(a), 363(c), and 364(d)(1). The Prepetition Lender is hereby granted, solely to the extent of diminution in value of the Prepetition Liens in the Prepetition Collateral from and after the Petition Date, the following:

A. a Lien in all DIP Collateral (including all assets of the Debtor upon which the Prepetition Liens would otherwise attach under applicable nonbankruptcy law and all proceeds, rents, products or profits thereof acquired by the Debtor after the Petition Date (the "Replacement Lien") junior only to the DIP Lien; and

B. a postpetition superpriority administrative expense claim (the "Adequate Protection Superpriority Claim") against the Debtor with recourse to all prepetition and postpetition property of the Debtor and all proceeds thereof under Bankruptcy Code

sections 503 and 507 against the Debtor's estate, in each case to the extent the Replacement Lien does not adequately protect against the diminution in value of the Prepetition Liens, which shall have priority in payment over any other indebtedness and/or obligations now in existence or incurred hereafter by the Debtor or its estate and over all other administrative expenses of any kind, including, without limitation, those specified in Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, or 1114, or otherwise and including those resulting from the conversion of a Chapter 11 Case pursuant to Bankruptcy Code section 1112, subject and junior only to the DIP Facility Advance. Notwithstanding the foregoing, the Replacement Lien and Adequate Protection Superpriority Claim will be subordinate to the payment of professional fees from the Professional Fee Reserve, to the extent a Professional Fee Reserve is created under Paragraph 8.

10. Nothing herein shall be deemed to be a waiver by the Prepetition Lender of its right to request additional or further protection of its interests in any property of the Debtor, to move for relief from the automatic stay (if such relief is required), to seek the appointment of a trustee or examiner or the dismissal of the Debtor's bankruptcy case, or to request any other relief.

11. The Prepetition Debt Reduction Payment was the proceeds of a liquidation of Prepetition Collateral and is not subject to avoidance. *Gardner v. Knoll (In re TUSA-Expo Holdings)*, 811 F.3d 786,793 (5th Cir. 2016).

12. As further adequate protection to the Prepetition Lender, pursuant to Section 365 of the Bankruptcy Code, the Debtor's leases of non-residential real property with KPE Realty, LLC and KPE Realty II, LLC are hereby assumed.

13. The automatic stay provisions of Bankruptcy Code section 362 are hereby modified to permit (a) the Debtor and the Prepetition Lender, as assignee of the DIP Lender, to implement and perform the DIP Facility and the DIP Note, including without limitation the provisions thereof with respect to the collection of Proceeds, and the maintenance and implementation of the Collection Accounts and the Collection Procedures (as such terms are defined below), and (b) the creation and perfection of all liens granted or permitted by this Order. The Debtor, the DIP Lender and the Prepetition Lender shall not be required to enter into any additional security agreements to create, memorialize, and/or perfect any such Liens, or to file UCC financing statements, mortgages, or other instruments with any other filing authority to take any other action to perfect such Liens, which shall be and are deemed valid, binding, enforceable, and automatically perfected by the docket entry of this Order by the Clerk of the Court. If, however, the Prepetition Lender in its sole and absolute discretion shall elect for any reason to enter into, file, record, or serve any such financing statements or other documents with respect to any such Lien, then the Debtor shall execute same upon request and the filing, recording, or service thereof (as the case may be) shall be deemed to have been made at the time and on the date of the docket entry of this Order by the Clerk of the Court. The Debtor, the DIP Lender and the Prepetition Lender are hereby relieved of any requirement to file proofs of claim in the Debtor's bankruptcy case with respect to any such Liens and the claims secured thereby, but any such holder may in its sole and absolute discretion file any such proof of claim.

14. Cash Collateral may not be used for payment of any fees or expenses, directly or indirectly, in respect of, arising from or relating to:

A. the initiation, joinder, or prosecution of any action contesting the indebtedness owed to the DIP Lender or the Prepetition Lender, or the validity of any liens granted to any of such parties;

B. preventing, hindering or otherwise delaying, whether directly or indirectly, the exercise by the Prepetition Lender or the DIP Lender of any of their rights and remedies under this Interim Order, the Final Order, or the Summary Sheets;

C. the commencement or prosecution of any action or proceeding of any claims, causes of action, or defenses against the Prepetition Lender or the DIP Lender or any of their respective officers, directors, employees, agents, attorneys, affiliates, successors, or assigns, including, without limitation, any attempt to recover or avoid any claim or interest from the Prepetition Lender or the DIP Lender under Chapter 5 of the Bankruptcy Code including, without limitation, the Prepetition Debt Reduction Payment; and

D. any request to borrow money other than pursuant to the terms of the Interim Order, the Final Order, or the Summary Sheets.

15. Subject to the entry of the Final Order, effective as of the time of commencement of the Debtor's bankruptcy case on the Petition Date:

A. the Debtor waives irrevocably all claims and rights, if any, it or its estate might otherwise assert against the Prepetition Collateral or the DIP Collateral pursuant to Bankruptcy Code sections 506(c), 105(a), or any other applicable law;

B. no entity in the course of the Debtor's bankruptcy case shall be permitted to recover from the DIP Collateral (whether directly or through the grant of derivative or equitable standing in the name of the Debtor or the Debtor's estate) any cost or expense of

preservation or disposition of the Prepetition Collateral or the DIP Collateral, including, without limitation, expenses and charges as provided in Bankruptcy Code sections 506(c), 105(a), or any other applicable law;

C. no entity shall be permitted to recover from the DIP Collateral or the Prepetition Collateral, or assert against the Prepetition Lender or the DIP Lender, any claim with respect to any unpaid administrative expense of the Debtor's bankruptcy case, whether or not the Debtor's payment of such administrative claim was contemplated by or included in the Initial Budget or the Updated Budget, as applicable; and

D. the Prepetition Lender or the DIP Lender shall not be subject to the "equities of the case" exception of Bankruptcy Code section 552(b), or to the equitable doctrines of "marshaling" or any similar claim or doctrine, with respect to any DIP Collateral or the Prepetition Collateral.

16. So long as the DIP Facility obligations remain outstanding, unless consented to in writing by the Prepetition Lender or the Debtor has sought and obtained relief from the Bankruptcy Court as permitted in Paragraph 8 above, the Debtor shall not seek entry of any further orders in its Chapter 11 Case which authorize (a) under Bankruptcy Code section 363, the use of Cash Collateral; (b) the obtaining of credit or the incurring of indebtedness pursuant to Bankruptcy Code sections 364(c) or 364(d) that does not repay the DIP Facility in full, in cash, (c) the return of goods pursuant to Bankruptcy Code section 546(h) to any creditor of the Debtor or to consent to any creditor taking any setoff against any of such creditor's prepetition indebtedness based upon any such return pursuant to Bankruptcy Code section 553 or otherwise, or (d) any other grant of rights against the Debtor and/or its estate that is secured by a Lien in the DIP Collateral or is entitled to superpriority administrative status that does not repay the DIP Facility in full, in cash.

17. The Debtor shall provide the Prepetition Lender, as assignee of the DIP Lender, with (i) all financial statements, certificates, and reports required pursuant to the DIP Note in accordance with the timeframes specified therein and (ii) such additional information as the Prepetition Lender, as assignee of the DIP Lender, shall request from the Debtor. These shall include, at a minimum, monthly financial statements, monthly accounts receivable aging reports, monthly accounts payable reports, monthly project reports, monthly backlog reports and twice-monthly 13-week cash flow statements. To the extent not already provided, these must be brought current within twenty (20) days following the Petition Date and thereafter be provided to the Prepetition Lender within twenty (20) days following the end of the applicable reporting period. The Prepetition Lender shall have reasonable access to the Debtor's business premises and to the DIP Collateral in order to review and evaluate the physical condition of any of the DIP Collateral and/or to inspect the financial records and other records of the Debtor concerning the operation of the Debtor's business.

18. For purposes of this Order, (a) "Proceeds" shall mean both (i) proceeds (as defined in the Uniform Commercial Code for the State of Texas) and (ii) any and all payments, proceeds, or other consideration realized upon the sale, liquidation, realization, collection, or other manner of disposition of the DIP Collateral, whether in the ordinary course of the Debtor's business (including without limitation accounts, receivables, and other proceeds arising from the Debtor's sales of goods and/or performance of services) or other than in the ordinary course of the Debtor's business, and (b) "Disposition" shall mean any sale, liquidation, realization, collection, or other manner of disposition of DIP Collateral other than in the ordinary course of the Debtor's business, including without limitation any sale authorized pursuant to Bankruptcy Code section 363.

19. The Debtor shall maintain in full force and effect the deposit, clearing, dominion, lockbox, and similar accounts maintained by or on behalf of the Debtor pursuant to the Prepetition Loan Documents for the collection of Proceeds obtained in the ordinary course of the Debtor's business (the "Collection Accounts"), and the cash management systems, treasury management systems, and payment procedures under which such accounts and systems are administered (the "Collection Procedures"). In furtherance of the foregoing, the Prepetition Lender shall be deemed to have control of all of Debtor's bank accounts (including, without limitation, all deposit accounts and blocked accounts), and any financial institutions in which such accounts of Debtor are located are hereby ordered and directed to act in accordance with any request of the Prepetition Lender concerning such accounts, including, without limitation, requests to turnover funds therein without offset or deduction of any kind.

20. After the Termination Date, the Debtor and any successor to the Debtor, including without limitation any successor trustee or trustees, shall assign or direct to the Prepetition Lender any and all Proceeds realized in any Disposition of any DIP Collateral and immediately deliver any and all such Proceeds which come into their possession to the Prepetition Lender, as assignee of the DIP Lender in the form received. The Prepetition Lender is hereby authorized to credit-bid all or any of the applicable obligations under the DIP Facility and the Prepetition Loan Documents at any Disposition of any Prepetition Collateral and/or DIP Collateral.

22. All Proceeds retained by the Prepetition Lender shall be applied to the repayment of the Prepetition Obligations and DIP Facility obligations, until such obligations are paid in full. Such applications of proceeds shall be free and clear of any claim, charge, assessment, or other liability.

23. Upon entry of this Order:

A. the Stipulations shall be binding upon the Debtor and all other persons, entities, and/or parties in all circumstances and shall constitute findings of this Court;

B. the validity, extent, priority, perfection, enforceability, and non-avoidability of the Prepetition Lender's validly perfected prepetition claims and liens against the Debtor and the Prepetition Collateral shall not be subject to challenge by the Debtor or any other person, entity, or party; and

C. neither the Debtor, nor any other person, entity, or party shall seek to avoid or challenge (whether pursuant to Chapter 5 of the Bankruptcy Code or otherwise) any transfer made by or on behalf of the Debtor to or for the benefit of any of the Prepetition Lenders prior to the Petition Date including, without limitation, the Prepetition Debt Reduction Payment.

24. In consideration of and as a condition to the Prepetition Lender, as assignee of the DIP Lender or otherwise, making the DIP Facility Advance and providing credit and other financial accommodations to the Debtor pursuant to the terms of this Order and the Summary Sheets, the Debtor, subject to Paragraph 25 herein, absolutely releases, forever discharges and acquits the Prepetition Lender, and its successors and assigns, affiliates, officers, directors, employees, attorneys, and other representatives (the "Releasees") of and from any and all claims, demands, causes of action, damages, choses in action, and all other claims, counterclaims, defenses, setoff rights, and other liabilities whatsoever (the "Prepetition Released Claims") of every kind, name, nature, and description, whether known or unknown, both at law and equity (including, without limitation, any "lender liability" claims) that the Debtor may now or hereafter own, hold, have, or claim against each and every of the Releasees arising at any time prior to the entry of this Order (including, without limitation, claims relating to the Debtor, the Prepetition

Loan Documents, and other documents executed in connection therewith, and the obligations thereunder). In addition, upon the indefeasible payment, in full, in cash, of all the obligations owed under the DIP Note and this Order, the Prepetition Lender shall be released from any and all obligations, actions, duties, responsibilities, and causes of action arising or occurring in connection with or related to the DIP Note.

25. The Debtor hereby absolutely, unconditionally, and irrevocably covenants and agrees with each Releasee that it will not sue (at law, in equity, or in any other proceeding) any Releasee on the basis of any Prepetition Released Claims released and discharged by such Releasor pursuant to this Order. If the Debtor violates this covenant, the Debtor agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all reasonable attorneys' fees and costs incurred by any Releasee as a result of such violation.

26. This Order shall be binding upon and inure to the benefit of the Prepetition Lender, the Debtor, and the DIP Lender, and their respective successors and assigns, including, without limitation, any trustee, responsible officer, examiner, estate administrator, or representative, or similar person appointed in a case for any Debtor under any chapter of the Bankruptcy Code. No rights are created under this Order for the benefit of any creditor of the Debtor, any other party in interest in the Debtor's bankruptcy case, or any other person or entities, or any direct, indirect or incidental beneficiaries thereof.

27. Any order dismissing any of the Chapter 11 Cases under Bankruptcy Code section 1112 or otherwise shall be deemed to provide (in accordance with Bankruptcy Code sections 105 and 349) that (a) the DIP Lien and the Prepetition Liens and security interests in the DIP Collateral shall continue in full force and effect notwithstanding such dismissal until the DIP Facility obligations are indefeasibly paid and satisfied in full, in cash; and (b) this Court shall retain

jurisdiction, to the extent permissible under applicable law, notwithstanding such dismissal, for the purposes of enforcing the DIP Facility Superpriority Claim, the DIP Lien, the Replacement Liens, and the Adequate Protection Superpriority Claims.

28. To the extent that any of the provisions of this Order shall conflict with any provisions of the DIP Note, or with any order of this Court authorizing the Debtor to continue the use of prepetition bank accounts, cash management systems, treasury management systems, or business forms, or any similar orders, this Order is deemed to control and supersede the conflicting provisions therein.

29. The terms and conditions of this Order shall be effective and immediately enforceable upon its entry by the Clerk of the Court notwithstanding any potential application of Bankruptcy Rule 6004(h) or otherwise. Furthermore, to the extent applicable, the notice requirements and/or stays imposed by Bankruptcy Rules 4001(a)(3), 6003(b), and 6004(a) are hereby waived for good and sufficient cause.

30. Nothing in this Order shall preclude this Court from entering a Final Order containing provisions inconsistent with or contrary to the provisions of this Order, provided, however, that the DIP Lender and the Prepetition Lender shall be entitled to the benefits and protections of this Order, including (a) the adequate protection afforded to the Prepetition Lender set forth in this Order, and (b) the protections afforded pursuant to Bankruptcy Code section 364(e), with respect to all loans, advances, and other financial, accommodations made by them pursuant to this Order.

31. The Debtor and the Prepetition Lender may implement non-material modifications of the DIP Note without the need for notice or further approval of this Court.

32. The Debtor is authorized to do and perform all acts, to make, execute, and deliver all instruments and documents, and to pay all fees and expenses that may be required or necessary for the Debtor's performance under this Order or the DIP Note, including, without limitation, (a) the execution of the DIP Note or of any acts contemplated in the DIP Restructuring Summary Sheet, (b) the payment of the fees and other expenses described herein or in the DIP Note as such become due, including, without limitation, agent fees, commitment fees, letter of credit fees, and facility fees.

33. The requirements of Bankruptcy Rules 4001, 6003, and 6004, in each case to the extent applicable, arc satisfied by the contents of the Motion.

34. This Court shall retain jurisdiction to enforce the provisions of this Order, the DIP Facility and the Summary Sheets, and this Court shall retain jurisdiction over all matters pertaining to the implementation, interpretation and enforcement of this Order, the DIP Facility and the Summary Sheets.

35. This Court has considered and determined the matters addressed herein pursuant to its powers under the Bankruptcy Code, including the power to authorize the Debtor to obtain credit on terms and conditions to which the Debtor and the Prepetition Lender have agreed. Thus, each of the terms and conditions constitutes a part of the authorization under Bankruptcy Code section 364, and is, therefore, subject to the protections contained in Bankruptcy Code section 364(e), regardless of (i) any stay, modification, amendment, vacation, or reversal of this Order or the DIP Note or any term hereunder or thereunder; (ii) the failure to obtain a final order pursuant to Bankruptcy Rule 4001(c)(2); or (iii) the dismissal or conversion of the Chapter 11 Case.

36. The Final Hearing with respect to the Motion is scheduled for _____, 2019 at ____:____ __.m. (CST) before the Honorable

_____, United States Bankruptcy Judge. The Debtor shall promptly mail copies of this Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing and to any other party that has filed a Bankruptcy Rule 2002 request for service. Any party in interest objecting to the relief sought at the Final Hearing shall file written objections, and serve them on (i) the Debtor's proposed counsel, Gregory G. Hesse, Hunton Andrews Kurth LLP, 1445 Ross Avenue, Suite 3700, Dallas, Texas 75202; (ii) the Prepetition Lender's counsel, Russell W. Mills, Bell, Nunnally & Martin, LLP, Suite 1900, 2323 Ross Avenue, Dallas, Texas 75201 on or before ____:____ __.m. (CST) on _____, 2019.

Dated: _____, 2019.
_____, Texas

_____
THE HONORABLE _____
UNITED STATES BANKRUPTCY JUDGE

AGREED:

BTS ENTERPRISES, INC.

By: _____

Its: _____

PROPOSED ATTORNEYS FOR KP ENGINEERING, LTD.

By: _____
Gregory G. Hesse
Texas Bar No. 09549419

HUNTON ANDREWS KURTH LLP
1445 Ross Avenue, Suite 3700
Dallas, Texas 75201
(214) 979-3000 (Telephone)
214 880-0011 (Facsimile)

ATTORNEYS FOR TEXAS CAPITAL BANK, NATIONAL ASSOCIATION

By: _____
Russell W. Mills
Texas Bar No. 007846089
R. Kent Love
Texas State Bar No. 24102114

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2323 Ross Avenue, Suite 1900
Dallas, Texas 75201
(214) 740-1400 (Telephone)
(214) 740-1999 (Facsimile)

Schedule 1

DIP Note

PROMISSORY NOTE

$4,000,000 August 22, 2019

FOR VALUE RECEIVED, **KP ENGINEERING, L.P.**, a Texas limited partnership ("***Borrower***"), having an address at 5555 Old Jacksonville Hwy, Tyler, Texas 75703, hereby promises to pay to the order of **BTS ENTERPRISES, INC.**, a Texas corporation (together with its successors and assigns and any subsequent holders of this Note, "***Lender***"), having an address at 5555 Old Jacksonville Highway, Tyler, Texas 75703, as hereinafter provided, the principal sum of FOUR MILLION AND 00/100 DOLLARS ($4,000,000), or so much thereof as may be advanced by Lender from time to time hereunder to or for the benefit or account of Borrower, together with interest thereon at the Note Rate (as hereinafter defined), and otherwise in strict accordance with the terms and provisions hereof.

1. DEFINITIONS

1.1 **Definitions**. As used in this Note, the following terms shall have the following meanings:

"***Applicable Margin***" means 2.00% per annum.

"***Applicable Rate***" means the Base Rate plus the "Applicable Margin."

"***Bankruptcy Case***" means that certain bankruptcy case pending in the Bankruptcy Court, such case style *In re KP Engineering, L.P.*, Case No. _____.

"***Bankruptcy Court***" shall means the United States Bankruptcy Court for the Southern District of Texas.

"***Base Rate***" means for any day, a rate of interest equal to the highest of: (a) the Prime Rate for such day; (b) the sum of the Federal Funds Rate for such day plus ½ of one percent (0.5%); and (c) LIBOR for such day.

"***Borrower***" has the meaning set forth in the introductory paragraph of this Note.

"***Business Day***" means a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Dallas, Texas are authorized or required by law to be closed. Unless otherwise provided, the term "*days*" when used herein means calendar days.

"***Change***" means (a) any change after the date of this Note in the risk-based capital guidelines applicable to Lender, or (b) any adoption of or change in any other law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) after the date of this Note that affects capital adequacy or the amount of capital required or expected to be maintained by Lender or any entity controlling Lender; *provided that* notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "*Change*," regardless of the date enacted, adopted or issued.

"***Charges***" means all fees, charges and/or any other things of value, if any, contracted for, charged, taken, received or reserved by Lender in connection with the transactions relating to this Note and the other Loan Documents, which are treated as interest under applicable law.

"***Debtor Relief Laws***" means Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or similar laws affecting the rights of creditors.

"***Default Interest Rate***" means a rate per annum equal to the Note Rate plus four percent (4%), but in no event in excess of the Maximum Rate.

"***Event of Default***" means (a) Borrower shall fail to pay the indebtedness, obligations and liabilities hereunder or any part thereof shall not be paid when due or declared due; (b) Borrower shall breach any provision of any Loan Document; (c) the Termination Date in any order relating to cash collateral and/or DIP financing entered in the Bankruptcy Case; (d) any representation or warranty made or deemed made by Borrower (or any of its officers or shareholders) herein or in any Loan Document or in any certificate, report, notice, or financial statement furnished at any time in connection with this Note or any Loan Documents shall be false, misleading, or erroneous in any material respect when made or deemed to have been made; (e) Borrower shall fail to perform, observe, or comply with any covenant, agreement, or term contained herein or in any Loan Document; (f) this Note or any Loan Document shall cease to be in full force and effect or shall be declared null and void or the validity or enforceability thereof shall be contested or challenged by Borrower or any of its officers or shareholders, or Borrower shall deny that it has any further liability or obligation hereunder or under any of the Loan Documents, or any lien or security interest created by the Loan Documents shall for any reason cease to be a valid, first priority perfected security interest in and lien upon the assets of the Borrower; or (g) any of the record or beneficial ownership of the Borrower shall have been transferred, assigned or hypothecated to any Person, when compared to such ownership as of the date of this Note.

"***Federal Funds Rate***" means, for any day, an interest rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published for such day (or if such day is not a Business Day, for the immediately preceding Business Day) by the Federal Reserve Bank of New York, or if such rate is not so published for any day that is a Business Day, the average of the quotations at approximately 10:00 a.m., (Dallas, Texas time) on such day on such transactions received by Lender from three (3) Federal funds brokers of recognized standing selected by Lender in its sole discretion.

"***Funding Loss***" means the amount (which shall be payable on demand by Lender) necessary to promptly compensate Lender for, and hold it harmless from, any loss, cost or expense incurred by Lender as a result of:

(a) any payment or prepayment of any Portion bearing interest based upon LIBOR on a day other than the last day of the relevant LIBOR Interest Period (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or

(b) any failure by Borrower to prepay, borrow, continue or convert a Portion bearing or selected to bear interest based upon LIBOR on the date or in the amount selected by Borrower;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Portion or from fees payable to terminate the deposits from which such funds were obtained. Borrower shall also pay any customary administrative fees

charged by Lender in connection with the foregoing. For purposes of calculating amounts payable by Borrower to Lender hereunder, Lender shall be deemed to have funded the Portion based upon LIBOR by a matching deposit or other borrowing in the London inter-bank market for a comparable amount and for a comparable period, whether or not such Portion was in fact so funded.]

"***Lender***" has the meaning set forth in the introductory paragraph of this Note.

"***LIBOR***" means, with respect to each LIBOR Interest Period, the rate (expressed as a percentage per annum and adjusted as described in the last sentence of this definition of LIBOR) for deposits in United States dollars (commonly known as "*LIBOR*") for a term equal to the LIBOR Interest Period that is published or announced on Bloomberg BTMM as calculated by Intercontinental Exchange (ICE) Benchmark Administration Limited ("*ICE*") (or any successor thereto) as of 11:00 a.m., London, England time, on the related LIBOR Determination Date. If such rate shall cease to be published or announced on Bloomberg BTMM or if Lender determines (which determination shall be conclusive absent manifest error) that the rate calculated by ICE no longer accurately reflects the rate available to Lender in the London interbank market and, that such circumstance is likely to be temporary, LIBOR shall be determined by Lender to be the offered rate as announced by a recognized commercial service as representing the average LIBOR rate for deposits in United States Dollars for a term equal to the LIBOR Interest Period as of 11:00 a.m. on the relevant LIBOR Determination Date.

(a) Notwithstanding the foregoing or any other provision of this Note and subject to *clause (b)* below, if Lender determines (which determination shall be conclusive absent manifest error) that (i) ICE (or any successor thereto) has ceased to calculate LIBOR, (ii) deposits in United States dollars are not being offered to banks in the London interbank market for the applicable amount and requested LIBOR Interest Period, (iii) adequate and reasonable means do not exist for determining LIBOR for any requested LIBOR Interest Period, (iv) LIBOR for any requested LIBOR Interest Period does not accurately reflect the rate available to Lender in the London interbank market, (v) any applicable law or regulation or any change therein or the interpretation or application thereof or compliance therewith by Lender prohibits, restricts or makes impossible the charging of interest based on LIBOR or shall make it unlawful for Lender to make or maintain the indebtedness evidenced by this Note in euro-dollars, or (vi) LIBOR does not adequately and fairly reflect the cost to Lender of making or maintaining the Loan, due to changes in administrative costs, fees, tariffs and taxes and other matters outside of Lender's reasonable control, then Lender may notify Borrower of such circumstance. Following such notice, this Note shall bear interest (and continue to bear interest) at the Base Rate (with LIBOR no longer being used to determine the Base Rate) plus the Applicable Margin and any obligation of Lender to maintain the indebtedness under this Note at a rate based on LIBOR and Borrower's option to elect LIBOR shall be suspended unless and until Lender determines that the applicable circumstance described in the foregoing *clauses (a)(i)-(a)(vi)* no longer pertains.

(b) If at any time Lender determines (which determination shall be conclusive absent manifest error) that (i) any circumstance described in *clauses (a)(i)-(a)(vi)* has arisen and is not likely to be temporary, or (ii) if (x) ICE or the Alternative Reference Rates Committee convened by the Board of Governors of the Federal Reserve System has announced a commercial loan index as an alternative to LIBOR and commercial banks in the United States are using such alternative loan index for new commercial loans, (y) LIBOR is no longer being widely used by commercial banks as a loan index in the United States for new commercial loans similar to the loan to Borrower, or (z) a governmental authority having jurisdiction over Lender has made a public statement identifying a specific date after which LIBOR shall no longer be used for determining interest rates for new commercial loans originated in the United States, then Lender may notify Borrower of such circumstance. Following such notice, any obligation of Lender to maintain any indebtedness under this Note at a rate based on LIBOR and Borrower's option to elect a rate based on LIBOR shall terminate; *provided, however*, Lender may establish an alternate index rate of

interest to LIBOR (and an interest rate margin) after giving due consideration to the then-prevailing market convention for determining an index rate of interest for new commercial loans originated by commercial banks in the United States as determined by Lender (the "***Alternative Rate***"). If requested by Lender, Borrower shall enter into an amendment to this Note to reflect the Alternative Rate and such other related changes to this Note as may be applicable. If no Alternative Rate has been established and Lender has notified Borrower that any circumstance under *clauses (b)(i) or (b)(ii)* has arisen, then any indebtedness under this Note shall bear interest (and continue to bear interest) at the Base Rate (with LIBOR no longer being used to determine the Base Rate) plus the Applicable Margin unless and until an Alternative Rate is established.

Notwithstanding anything herein to the contrary, in no event shall LIBOR (or any Alternative Rate) ever be less than 0%. LIBOR and any Alternative Rate may be adjusted from time to time in Lender's sole discretion for then-applicable, but actual, reserve requirements, deposit insurance assessment rates, marginal emergency, supplemental, special and other reserve percentages, and other actual regulatory costs.

"***LIBOR Banking Day***" means a day on which commercial banks in the City of London, England are open for business and dealing in offshore dollars.

"***LIBOR Determination Date***" means a day that is two (2) LIBOR Banking Days prior to the beginning of the relevant LIBOR Interest Period.

"***LIBOR Interest Period***" means a period of one (1) month. The first day of the interest period must be a LIBOR Banking Day. The last day of the interest period and the actual number of days during the interest period will be determined by Lender using the practices of the London inter-bank market.

"***Loan Documents***" means the Note and Security Agreement.

"***Maturity Date***" means the earlier of the date of plan of reorganization confirmed in Borrower's Bankruptcy Case becomes effective or (b) August 15, 2020.

"***Maximum Rate***" means, at all times, the maximum rate of interest which may be charged, contracted for, taken, received or reserved by Lender in accordance with applicable Texas law (or applicable United States federal law to the extent that such law permits Lender to charge, contract for, receive or reserve a greater amount of interest than under Texas law). The Maximum Rate shall be calculated in a manner that takes into account any and all fees, payments, and other charges in respect of the Loan Documents that constitute interest under applicable law. Each change in any interest rate provided for herein based upon the Maximum Rate resulting from a change in the Maximum Rate shall take effect without notice to Borrower at the time of such change in the Maximum Rate.

"***Note***" means this Note, as may be amended from time to time.

"***Note Rate***" means the rate equal to the lesser of (a) the Maximum Rate or (b) the Applicable Rate.

"***Payment Date***" means the first day of each and every January, April, July, and October during the term of this Note.

"***Prime Rate***" means, a variable rate, as of any date of determination, equal to the "Prime Rate" as published by *The Wall Street Journal*. If the Prime Rate becomes unavailable during the term of this Note, Lender may designate a substitute rate of interest after notifying Borrower.

"***Security Agreement***" means the Security Agreement between Borrower and Lender.

1.2 **Rules of Construction**. Any capitalized term used in this Note and not otherwise defined herein shall have the meaning ascribed to such term in the Security Agreement. All terms used herein, whether or not defined in ***Section 1.1*** hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require. All personal pronouns used herein, whether used in the masculine, feminine or neutral gender, shall include all other genders; the singular shall include the plural and vice versa.

2. PAYMENT TERMS

2.1 **Payment of Principal and Interest**.

All accrued but unpaid interest on the principal balance of this Note outstanding from time to time shall be payable on each Payment Date. The then outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable on the Maturity Date. The unpaid principal balance of this Note at any time shall be the total amount advanced hereunder by Lender less the amount of principal payments made hereon by or for Borrower, which balance may be endorsed hereon from time to time by Lender or otherwise noted in Lender's records, which notations shall be, absent manifest error, conclusive evidence of the amounts owing hereunder from time to time.

2.2 **Application**. Except as expressly provided herein to the contrary, all payments on this Note shall be applied in the following order of priority: (a) the payment or reimbursement of any expenses, costs or obligations (other than the outstanding principal balance hereof and interest hereon) for which either Borrower shall be obligated or Lender shall be entitled pursuant to the provisions of this Note or the other Loan Documents; (b) the payment of accrued but unpaid interest hereon; and (c) the payment of all or any portion of the principal balance hereof then outstanding hereunder, in the direct order of maturity. If an Event of Default exists under this Note, then Lender may, at the sole option of Lender, apply any such payments, at any time and from time to time, to any of the items specified in ***clauses (a)***, ***(b)*** or ***(c)*** above without regard to the order of priority otherwise specified in this ***Section 2.2*** and any application to the outstanding principal balance hereof may be made in either direct or inverse order of maturity.

2.3 **Payments**. All payments under this Note made to Lender shall be made in immediately available funds at 5555 Old Jacksonville Highway, Tyler, Texas 75703 (or at such other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower from time to time), without offset, in lawful money of the United States of America, which shall at the time of payment be legal tender in payment of all debts and dues, public and private. Payments by check or draft shall not constitute payment in immediately available funds until the required amount is actually received by Lender in full. Payments in immediately available funds received by Lender in the place designated for payment on a Business Day prior to 11:00 a.m. (Dallas, Texas time) at such place of payment shall be credited prior to the close of business on the Business Day received, while payments received by Lender on a day other than a Business Day or after 11:00 a.m. (Dallas, Texas time) on a Business Day shall not be credited until the next succeeding Business Day. If any payment of principal or interest on this Note shall become due and payable on a day other than a Business Day, then such payment shall be made on the next succeeding Business Day. Any such extension of time for payment shall be included in computing interest which has accrued and shall be payable in connection with such payment.

2.4 **Rate; Etc**. Subject to the terms and conditions set forth below, the unpaid principal of this Note shall bear interest at the Note Rate. If an Event of Default has occurred and is continuing, this Note shall bear interest in accordance with ***Section 2.8*** of this Note. The determination by Lender of the Note Rate shall, in the absence of manifest error, be conclusive and binding in all respects.

2.5 **Computation Period**. Interest on the indebtedness evidenced by this Note shall be computed on the basis of a three hundred sixty (360) day year and shall accrue on the actual number of days elapsed for any whole or partial month in which interest is being calculated. In computing the number of days during which interest accrues, the day on which funds are initially advanced shall be included regardless of the time of day such advance is made, and the day on which funds are repaid shall be included unless repayment is credited prior to the close of business on the Business Day received as provided in ***Section 2.3*** hereof. Each determination by Lender of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.5 **Prepayment**. Borrower shall have the right to prepay, at any time and from time to time, without fee, premium or penalty, all or any portion of the outstanding principal balance hereof; ***provided, however,*** that (a) such prepayment shall also include any and all accrued but unpaid interest on the amount of principal being so prepaid through and including the date of prepayment, plus any other sums which have become due to Lender under the other Loan Documents on or before the date of prepayment, but which have not been fully paid and (b) such prepayment shall also include any Funding Loss. Prepayments of principal shall be applied in inverse order of maturity.

2.6 **Unconditional Payment**. Borrower is and shall be obligated to pay all principal, interest and any and all other amounts which become payable under this Note or under any of the other Loan Documents absolutely and unconditionally and without any abatement, postponement, diminution or deduction whatsoever and without any reduction for counterclaim or setoff whatsoever. If at any time any payment received by Lender hereunder shall be deemed by a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under any Debtor Relief Law, then the obligation to make such payment shall survive any cancellation or satisfaction of this Note or return thereof to Borrower and shall not be discharged or satisfied with any prior payment thereof or cancellation of this Note, but shall remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof, and such payment shall be immediately due and payable upon demand.

2.7 **Partial or Incomplete Payments**. Remittances in payment of any part of this Note other than in the required amount in immediately available funds at the place where this Note is payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in full in accordance herewith and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the full amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default in the payment of this Note.

2.8 **Default Interest Rate**. For so long as any Event of Default exists under this Note or under any of the other Loan Documents, regardless of whether or not there has been an acceleration of the indebtedness evidenced by this Note, and at all times after the maturity of the indebtedness evidenced by this Note (whether by acceleration or otherwise), and in addition to all other rights and remedies of Lender hereunder, interest shall accrue on the outstanding principal balance hereof at the Default Interest Rate, and such accrued interest shall be immediately due and payable. Borrower acknowledges that it would be extremely difficult or impracticable to determine Lender's actual damages resulting from any late payment or Event of Default, and such late charges and accrued interest are reasonable estimates of those damages and do not constitute a penalty

2.9 **Late Charge.** At the option of Lender, Borrower will pay Lender, on demand, (i) a "*late charge*" equal to five percent (5%) of the amount of any installment on this Note when such installment is not paid within fifteen (15) days following the date such installment is due and (ii) a processing fee in the amount of $25.00 for each check which is provided to Lender by Borrower in payment for an obligation

owing to Lender under any Loan Document but is returned or dishonored for any reason, in order to cover the additional expenses involved in handling delinquent and returned or dishonored payments.

2.10 **Change**. If Lender determines that the amount of capital required or expected to be maintained by Lender or any entity controlling Lender, is increased as a result of a Change, then, within fifteen (15) days of demand by Lender, Borrower shall pay to Lender the amount necessary to compensate Lender for any shortfall in the rate of return on the portion of such increased capital that Lender determines is attributable to this Note or the principal amount outstanding hereunder (after taking into account Lender's policies as to capital adequacy).

3. EVENT OF DEFAULT AND REMEDIES

3.1 **Remedies**. Upon the occurrence of an Event of Default, Lender shall have the immediate right, at the sole discretion of Lender and without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action (ALL OF WHICH BORROWER HEREBY EXPRESSLY WAIVES AND RELINQUISHES): (a) to declare the entire unpaid balance of the indebtedness evidenced by this Note (including, without limitation, the outstanding principal balance hereof, all sums advanced or accrued hereunder or under any other Loan Document, and all accrued but unpaid interest thereon) at once immediately due and payable (and upon such declaration, the same shall be at once immediately due and payable) and may be collected forthwith, whether or not there has been a prior demand for payment and regardless of the stipulated date of maturity; (b) to foreclose any Liens and security interests securing payment hereof or thereof (including, without limitation, any Liens and security interests); and (c) to exercise any of Lender's other rights, powers, recourses and remedies under the Loan Documents or at law or in equity, and the same (i) shall be cumulative and concurrent, (ii) may be pursued separately, singly, successively, or concurrently against Borrower or others obligated for the repayment of this Note or any part hereof, or against any one or more of them, at the sole discretion of Lender, (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (iv) are intended to be, and shall be, nonexclusive. All rights and remedies of Lender hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise.

3.2 **WAIVERS**. EXCEPT AS SPECIFICALLY PROVIDED IN THE LOAN DOCUMENTS TO THE CONTRARY, BORROWER AND ANY ENDORSERS OR GUARANTORS HEREOF SEVERALLY WAIVE AND RELINQUISH PRESENTMENT FOR PAYMENT, DEMAND, NOTICE OF NONPAYMENT OR NONPERFORMANCE, PROTEST, NOTICE OF PROTEST, NOTICE OF INTENT TO ACCELERATE, NOTICE OF ACCELERATION OR ANY OTHER NOTICES OR ANY OTHER ACTION. BORROWER AND ANY ENDORSERS OR GUARANTORS HEREOF SEVERALLY WAIVE AND RELINQUISH, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO THE BENEFITS OF ANY MORATORIUM, REINSTATEMENT, MARSHALING, FORBEARANCE, VALUATION, STAY, EXTENSION, REDEMPTION, APPRAISEMENT, EXEMPTION AND HOMESTEAD NOW OR HEREAFTER PROVIDED BY THE CONSTITUTION AND LAWS OF THE UNITED STATES OF AMERICA AND OF EACH STATE THEREOF, BOTH AS TO ITSELF AND IN AND TO ALL OF ITS PROPERTY, REAL AND PERSONAL, AGAINST THE ENFORCEMENT AND COLLECTION OF THE OBLIGATIONS EVIDENCED BY THIS NOTE OR BY THE OTHER LOAN DOCUMENTS.

4. GENERAL PROVISIONS

4.1 **No Waiver; Amendment**. No failure to accelerate the indebtedness evidenced by this Note by reason of an Event of Default hereunder, acceptance of a partial or past due payment, or indulgences granted from time to time shall be construed (a) as a novation of this Note or as a reinstatement of the indebtedness evidenced by this Note or as a waiver of such right of acceleration or of the right of Lender thereafter to insist upon strict compliance with the terms of this Note, or (b) to prevent the exercise of such right of acceleration or any other right granted under this Note, under any of the other Loan Documents or by any applicable laws. Borrower hereby expressly waives and relinquishes the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing. The failure to exercise any remedy available to Lender shall not be deemed to be a waiver of any rights or remedies of Lender under this Note or under any of the other Loan Documents, or at law or in equity. No extension of the time for the payment of this Note or any installment due hereunder, made by agreement with any person now or hereafter liable for the payment of this Note, shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part, unless Lender specifically, unequivocally and expressly agrees otherwise in writing.

4.2 **Interest Provisions**.

(a) **Savings Clause**. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply strictly with the applicable Texas law governing the Maximum Rate or amount of interest payable on the indebtedness evidenced by this Note and the related indebtedness (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to this Note, any of the other Loan Documents or any other communication or writing by or between Borrower and Lender related to the transaction or transactions that are the subject matter of the Loan Documents, (ii) contracted for, charged, taken, reserved or received by reason of Lender's exercise of the option to accelerate the maturity of this Note and/or the related indebtedness, or (iii) Borrower will have paid or Lender will have received by reason of any voluntary prepayment by Borrower of this Note and/or the related indebtedness, then it is Borrower's and Lender's express intent that all amounts charged in excess of the Maximum Rate shall be automatically canceled, ab initio, and all amounts in excess of the Maximum Rate theretofore collected by Lender shall be credited on the principal balance of this Note and/or the related indebtedness (or, if this Note and all related indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; *provided, however*, that if this Note has been paid in full before the end of the stated term of this Note, then Borrower and Lender agree that Lender shall, with reasonable promptness after Lender discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Rate, either refund such excess interest to Borrower and/or credit such excess interest against this Note and/or any related indebtedness then owing by Borrower to Lender. Borrower hereby agrees that as a condition precedent to any claim seeking usury penalties against Lender, Borrower will provide written notice to Lender, advising Lender in reasonable detail of the nature and amount of the violation, and Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against this Note and/or the related indebtedness then owing by Borrower to Lender. All sums contracted for, charged, taken, reserved or received by Lender for the use, forbearance or detention of any debt evidenced by this Note and/or the related indebtedness shall, to the extent permitted by applicable law, be

amortized or spread, using the actuarial method, throughout the stated term of this Note and/or the related indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of this Note and/or the related indebtedness does not exceed the Maximum Rate from time to time in effect and applicable to this Note and/or the related indebtedness for so long as debt is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

(b) **Ceiling Election**. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Rate payable on the Note and/or any other portion of the Obligations, Lender will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Lender will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, utilize any other method of establishing the Maximum Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect.

4.3 **WAIVER OF JURY TRIAL**. THE PARTIES ACKNOWLEDGE THAT THE RIGHT TO A TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT SUCH RIGHT MAY BE WAIVED. LENDER AND BORROWER, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, HEREBY KNOWINGLY, VOLUNTARILY, IRREVOCABLY, AND EXPRESSLY WAIVE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING IN ANY WAY TO ANY OF THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY OR THE CONDUCT, ACTS OR OMISSIONS OF LENDER OR ANY OBLIGATED PARTY IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT THEREOF. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS ***SECTION 4.3***.

4.4 **GOVERNING LAW; VENUE; SERVICE OF PROCESS**. THIS NOTE AND ANY CONTROVERSY, DISPUTE, CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATING TO THIS NOTE, THE OTHER LOAN DOCUMENTS, ANY BREACH THEREOF, THE TRANSACTIONS CONTEMPLATED THEREBY, OR ANY OTHER DISPUTE BETWEEN OR AMONG THE PARTIES HERETO (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH AND INTERPRETED PURSUANT TO THE LAWS OF THE STATE OF TEXAS; ***PROVIDED THAT*** LENDER SHALL RETAIN ALL RIGHTS UNDER FEDERAL LAW. THIS AGREEMENT HAS BEEN ENTERED INTO IN HARRIS COUNTY, TEXAS, AND IS PERFORMABLE FOR ALL PURPOSES IN HARRIS COUNTY, TEXAS. THE PARTIES HEREBY AGREE THAT ANY LAWSUIT, ACTION, OR PROCEEDING THAT IS BROUGHT (WHETHER IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS, THE TRANSACTIONS CONTEMPLATED THEREBY, OR THE ACTS, CONDUCT, OR OMISSIONS OF LENDER OR ANY OF ITS AGENTS, SUCCESSORS OR ASSIGNS IN THE

NEGOTIATION, ADMINISTRATION OR ENFORCEMENT OF ANY OF THE LOAN DOCUMENTS SHALL BE BROUGHT IN THE BANKRUPTCY COURT. BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY (A) SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, (B) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH LAWSUIT, ACTION, OR PROCEEDING BROUGHT IN ANY SUCH COURT, AND (C) FURTHER WAIVES ANY CLAIM THAT IT MAY NOW OR HEREAFTER HAVE THAT ANY SUCH COURT IS AN INCONVENIENT FORUM.

4.5 **Successors and Assigns**. The terms and provisions hereof shall be binding upon and inure to the benefit of Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, whether by voluntary action of the parties, by operation of law or otherwise, and all other persons claiming by, through or under them. The terms "*Borrower*" and "*Lender*" as used hereunder shall be deemed to include their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, whether by voluntary action of the parties, by operation of law or otherwise, and all other persons claiming by, through or under them.

4.6 **Time is of the Essence**. Time is of the essence with respect to all provisions of this Note and the other Loan Documents.

4.7 **Headings**. The Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify, define, limit, amplify or be used in construing the text, scope or intent of such Sections or Subsections or any provisions hereof.

4.8 **Controlling Agreement**. In the event of any conflict between the provisions of this Note and the Security Agreement, it is the intent of the parties hereto that the provisions of the Note shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of this Note and the other Loan Documents and that this Note and the other Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same.

4.9 **Notices**. Whenever any notice is required or permitted to be given under the terms of this Note, the same shall be given in accordance with ***Section 11.11*** of the Security Agreement.

4.10 **Severability**. If any provision of this Note or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of this Note nor the application of such provision to other persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by applicable law.

4.11 **Right of Setoff**. In addition to all Liens upon and rights of setoff against the money, securities, or other property of Borrower given to Lender that may exist under applicable law, Lender shall have and Borrower hereby grants to Lender a Lien upon and a right of setoff against all money, securities, and other property of Borrower, now or hereafter in possession of or on deposit with Lender, whether held in a general or special account or deposit, for safe-keeping or otherwise, and every such Lien and right of setoff may be exercised without demand upon or notice to Borrower. No Lien or right of setoff shall be deemed to have been waived by any act or conduct on the part of Lender, or by any neglect to exercise such right of setoff or to enforce such Lien, or by any delay in so doing, and every right of setoff and Lien shall continue in full force and effect until such right of setoff or Lien is specifically waived or released by an instrument in writing executed by Lender.

4.12 **Costs of Collection**. If any holder of this Note retains an attorney-at-law in connection with any Event of Default or at maturity or to collect, enforce, or defend this Note or any part hereof, or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy or other proceeding, or if Borrower sues any holder in connection with this Note or any other Loan Document and does not prevail, then Borrower agrees to pay to each such holder, in addition to the principal balance hereof and all interest hereon, all costs and expenses of collection or incurred by such holder or in any such suit or proceeding, including, but not limited to, reasonable attorneys' fees.

4.13 **Statement of Unpaid Balance**. At any time and from time to time, Borrower will furnish promptly, upon the request of Lender, a written statement or affidavit, in form satisfactory to Lender, stating the unpaid balance of the indebtedness evidenced by this Note and the related indebtedness and that there are no offsets or defenses against full payment of the indebtedness evidenced by this Note and the related indebtedness and the terms hereof, or if there are any such offsets or defenses, specifying them.

4.14 **FINAL AGREEMENT**. THIS NOTE AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

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SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has duly executed this Note as of the day and year first written above.

BORROWER:

KP ENGINEERING L.P.
a Texas Limited Partnership

By: **KP Engineering LLC**
A Delaware Limited Liability Company
Its: General Partner

By:_____
Brandon T. Steele, President

Schedule 2

Initial Budget

KP Engineering LP
Cash Flow Projection

	WE 8/23/19	WE 8/30/19	WE 9/6/19	WE 9/13/19	WE 9/20/19	WE 9/27/19	WE 10/4/19	WE 10/11/19	WE 10/18/19	WE 10/25/19	WE 11/1/19	WE 11/8/19	WE 11/15/19	WE 11/22/19	WE 11/29/19	WE 12/6/19	WE 12/13/19	WE 12/20/19	WE 12/27/19	WE 1/3/2020
Sources:																				
Beginning Cash	0	0	907,629	503,918	513,550	3,499,351	3,613,395	3,260,121	3,490,182	3,162,303	3,220,141	2,883,325	3,237,273	2,827,093	3,095,926	2,665,839	3,020,985	2,672,706	2,894,281	2,327,506
Cash Receipts from Billings	0	333,215	0	293,041	0	350,623	0	437,328	0	469,621	0	507,135	0	507,135	0	610,167	0	610,167	0	0
Total Cash	0	333,215	907,629	796,960	513,550	3,849,974	3,613,395	3,697,449	3,490,182	3,631,924	3,220,141	3,390,460	3,237,273	3,334,229	3,095,926	3,276,005	3,020,985	3,282,872	2,894,281	2,327,506
Uses:																				
Pre-Petition Salary and Wages	0	0	98,769	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Post-Petition Salary and Wages	0	0	111,431	0	192,233	0	209,071	0	192,233	0	192,233	0	192,233	0	192,233	0	192,233	0	192,233	0
Pre-Petition Employment Taxes	0	2,215	0	51,712	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Post-Petition Employment Taxes	0	4,533	0	61,491	0	104,510	0	114,585	0	104,510	0	104,510	0	104,510	0	104,510	0	104,510	0	104,510
Post-Petition Contract Labor	0	6,922	6,922	6,922	6,922	6,922	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Employment Costs	0	375	375	375	375	375	375	375	375	375	375	375	375	375	375	375	375	375	375	375
Total Employment Costs	0	14,046	217,497	120,500	199,530	111,807	209,446	114,960	192,608	104,885	192,608	104,885	192,608	104,885	192,608	104,885	192,608	104,885	192,608	104,885
Occupancy Costs	0	0	110,988	0	25,024	0	101,766	0	25,024	0	101,766	0	0	25,024	0	101,766	0	243,432	0	101,766
Commercial Insurances	0	85,673	0	0	0	68,750	0	0	0	68,750	0	0	0	68,750	0	0	0	0	68,750	0
Debt Service	0	0	0	0	0	6,344	0	0	0	0	0	0	0	0	0	0	0	0	75,773	0
Professional Fees	0	0	0	45,825	0	0	0	45,825	0	190,000	0	0	45,825	0	190,000	0	45,825	0	190,000	0
Income / Franchise Taxes	0	0	0	0	0	0	0	0	0	0	0	0	61,500	0	0	0	0	0	0	0
Utilities	0	8,504	1,820	1,300	0	8,504	1,820	0	1,300	8,504	0	1,820	1,300	0	8,504	1,820	0	1,300	0	6,970
Utility Adequate Assurance Payment	0	0	6,305	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pre-Petition Employee Reimbursements	0	6,086	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Post-Petition All Other Operating Expenses	0	6,175	5,911	24,814	4,644	6,175	5,242	11,483	17,975	4,644	7,442	11,483	17,975	4,644	3,975	11,550	18,875	3,975	4,644	4,942
Total Cash Outflows	0	120,484	342,521	192,438	229,199	201,580	318,273	172,267	236,907	376,783	301,816	118,187	319,208	203,303	395,087	220,020	257,308	353,591	531,775	218,562
Net Cash Flow (Deficit) Before Healthcare	0	212,732	565,108	604,521	284,351	3,648,395	3,295,121	3,525,182	3,253,274	3,255,141	2,918,325	3,272,273	2,918,065	3,130,926	2,700,839	3,055,985	2,763,677	2,929,281	2,362,506	2,108,944
Healthcare Self Funded Claims	0	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000
Pre-Petition Healthcare Premiums and Fees	0	26,190	26,190	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Post-Petition Healthcare Premiums and Admin Fees	0	0	0	55,972	0	0	0	0	55,972	0	0	0	55,972	0	0	0	55,972	0	0	0
Total Healthcare	0	61,190	61,190	90,972	35,000	35,000	35,000	35,000	90,972	35,000	35,000	35,000	90,972	35,000	35,000	35,000	90,972	35,000	35,000	35,000
DIP Note Draw	0	750,000	0	0	3,250,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ending Cash	0	907,629	503,918	513,550	3,499,351	3,613,395	3,260,121	3,490,182	3,162,303	3,220,141	2,883,325	3,237,273	2,827,093	3,095,926	2,665,839	3,020,985	2,672,706	2,894,281	2,327,506	2,073,944
DIP Note Oustanding	0	750,000	750,000	750,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000

Exhibit B

DIP Restructuring Summary Sheet

Exhibit "B" to Motion
DIP Restructuring Summary Sheet

1. **TCB $12.25MM loan to Mr. Steele** payable at a market rate of a credit facility of this nature

    i. $4.06MM to be advanced at closing to pay Bank of Tyler

    ii. $8.19MM to be deposited with TCB as security

2. **TCB $24.0MM loan to BTS** payable at a market rate of a credit facility of this nature

    i. $7.0MM revolver available at closing for working capital and general corporate purposes

    ii. $17.0MM advancing term note
        1. $13.0MM to repay the Steele AP to KPE; KPE repays TCB $13.0MM prepetition
        2. $4.0MM DIP loan from BTS to KPE (to be assigned to TCB as additional collateral for the BTS loan)

3. **$8.75MM loan balance and $4.0MM DIP Loan** owing to TCB by BTS is paid in full through a plan of reorganization or liquidation.