

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE: KAPPA DEVELOPMENT & GENERAL CONTRACTING, INC.

NO. 17-51155-KMS

CHAPTER 11

**DEBTOR'S EMERGENCY MOTION PURSUANT TO SECTION 364(c) and (d) OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULE 4001(c) FOR ORDER
AUTHORIZING POST-PETITION FINANCING ON AN INTERIM AND FINAL BASIS
AND GRANTING ADEQUATE PROTECTION FOR SAME**

COMES NOW, KAPPA DEVELOPMENT & GENERAL CONTRACTING, INC.
("Kappa"), (referred to herein as the "Debtor"), as debtor and debtor in possession, files this emergency motion pursuant to § 364(c) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") and Rule 4001(c) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for an order authorizing the use of cash collateral on an interim and final basis (the "Motion"), and respectfully represent as follows:

Jurisdiction

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. §364 and Rule 4001 of the Federal Rules of Bankruptcy Procedure, together with other related Bankruptcy Code sections and rules.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (D), (M), and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. On June 12, 2017, (the “Petition Date”), the Debtor voluntarily filed a petition (the “Petition”) for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business as debtor in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.
4. To date, no trustee, examiner or official committee has been appointed in the case.
5. The Debtor, **KAPPA DEVELOPMENT & GENERAL CONTRACTING, INC.**, (“Kappa”) is a general contracting and construction firm organized and existing under the laws of the State of Mississippi. The Debtor is wholly owned by Raymond “Randy” Blackledge, Robert Allen and Katherine Marie Clark Parker.
6. Kappa is a general contractor licensed by the State of Mississippi.

STATEMENT OF RELIEF REQUESTED

7. Pursuant to § 364 of the Bankruptcy Code and Bankruptcy Rule 4001(c), the Debtor seeks an order authorizing the Debtor to obtain post-petition financing, on an interim and permanent basis. The funds are to be used by the Debtor according to the attached Budget attached hereto as Exhibit 1 (the “Budget”).

8. The Debtor has negotiated with one of its owners, Randy Blackledge, in good faith to supply certain Debtor-in-Possession loans in order to maintain payroll and to allow for compliance with some negotiated aspects of the disputed construction contract with the City of Waveland that will allow the Debtor-in-Possession to receive certain funds presently due and owing from the City of Waveland. On the Budget attached hereto, the cost of performing the remaining work to trigger these payments is shown, together with the anticipated payments that would be received from the City of Waveland and the Perry County Bridge Project. This work must be completed by November 30, 2017, and therefore the Debtor-in-Possession requests his DIP financing Motion be heard on an emergency basis.
9. Blackledge is willing to loan the sum of \$25,000.00 to the Debtor-in-Possession to allow payroll and to permit completion of these contract funds conditioned upon his receiving a super-priority lien on any of the contract proceeds until his loan has been repaid. The Debtor is asking for the Court to approve this DIP lending procedure to allow the Debtor access to funds to pay for completion of the contracts and receipt of monies thereunder.

Relevant Debt

10. As of the Petition Date, the Debtor is obligated to three Creditors, each of whom asserts claims to cash collateral and contract proceeds belonging to the Debtor-in-Possession, The

First, Charter Bank and Hanover Insurance. This indebtedness is secured, *inter alia*, by a lien upon all contract proceeds.

The First

11. For the purposes of this motion only, as of the Petition Date, the Debtor admits and stipulates that it is indebted to The First for Pre-Petition Indebtedness in the aggregate amount of approximately \$1,117,715.06, comprised of unpaid principal and interest accrued through the date of the filing of the Petition. The Debtor acknowledges for the purposes of this Motion that as security for the Pre-Petition Indebtedness, The First holds valid, perfected and enforceable liens on the real property.

The First Documents and Provisions:

12. For the purposes of this Motion, the Debtor does not dispute the Proofs of Claim that have been filed by and on behalf of the First and would incorporate said Proofs of Claim into this Motion.

Charter Bank Debt and Liens:

13. For the purposes of this Motion only, as of the Petition Date, the Debtor admits and stipulates that it is indebted to Charter for Pre-Petition Indebtedness in the aggregate amount of approximately \$433,739.95, comprised of unpaid principal and interest accrued through the date of the filing of the Petition. The Debtor acknowledges for the purposes of this

Motion that as security for the Pre-Petition Indebtedness, Charter holds valid, perfected and enforceable liens on the real property.

14. For the purposes of this Motion, the Debtor does not dispute the Proofs of Claim that have been filed by and on behalf of Charter Bank and would incorporate said Proofs of Claim into this Motion.

Hanover Debt and Liens:

15. As of the Petition Date, the Debtor is obligated to Hanover in an amount that is uncertain and undetermined. This Court has ruled that any contract proceeds from any job bonded by Hanover do, in fact, constitute property of the estate, but has left unresolved the issue of the extent and priority of any lien which Hanover may have on such proceeds. Again, the Debtor does not seek, nor does the Debtor feel at this time it is necessary, to adjudicate the extent and priority of such liens, other than to say that the Debtor will be entitled to use the case proceeds to repay Randy Blackledge for funds loaned to the Debtor.

Lien priority

16. While the Debtor makes no claim at this time as to which of the three entities potentially having claims on contract proceeds have priority, it is respectfully submitted that allowing the Debtor to borrow these funds post-petition would enhance the contract proceeds that would be coming in to the Debtor-in-Possession, and other than the repayment of funds

loaned by Blackledge, the cash position of the Debtor will be enhanced. The Debtor will seek future Court approval for any use of cash collateral coming in for these cased proceeds.

The DIP Facility

17. As more particularly described in the DIP Facility Term Sheet attached as Exhibit “__” hereto, the most significant terms and conditions of the DIP Facility are as follows:

Borrowers: Kappa Development & General Contracting, Inc.

Lenders: Raymond “Randy” Blackledge

Amount and Type of DIP Facility: Blackledge proposes to loan the sum of \$25,000.00 to the Debtor-in-Possession upon the entry of the final order (the “Final Order”) by the Bankruptcy Court approving said DIP loan.

Term: Funds shall be due to be repaid to Blackledge upon receipt of funds from the three construction projects which the Debtor wishes to finish:

1. City of Waveland Channel 44G-1
2. City of Waveland Phase II and III
3. Perry County Bridge

Closing Date: Immediately upon approval and entry of the Final Order allowing Post-Petition Financing and authorizing the Debtor to use the cash collateral created by the completion of the construction projects to first repay the indebtedness to Randy Blackledge.

Non-Default Interest Rate: 10% per annum.

Loan Payments: Immediately upon receipt of funds from the various project owners, but in no event longer than 90 days from the date of the loan.

Prepayment: No.

Use of Proceeds: The Debtor intends to use the proceeds in accordance with the Budget as shown attached hereto.

Priority: All amounts owing by the Borrowers under the DIP Facility and by the Guarantors in respect thereof at all times will constitute allowed super-priority

administrative expense claims in the bankruptcy cases, having priority over all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, subject only to a carve-out for (i) professional fees incurred in the bankruptcy cases approved by the Court and (ii) the payment of fees pursuant to 28 U.S.C. § 1930 (collectively, the “Carve-out”).

Security: A super-priority lien on all contract proceeds received by the Debtor as a result of the performance of the work as shown on the Budget.

Conditions Precedent to Closing: The loan documentation will contain conditions to the closing of the DIP Facility customarily found in loan agreements for similar debtor in possession financings and other conditions. All documentation relating to the DIP Facility shall be in form and substance satisfactory to the Borrowers and its counsel and each Lender and its counsel.

Events of Default: The loan documentation will contain events of default appropriate to the specific transaction on terms no more restrictive than those found in the Indenture and ancillary documents and events of default customarily found in loan agreements for similar debtor in possession financings.

Indemnification: The loan documentation will contain customary indemnification provisions found in loan agreements for similar debtor in possession financings.

Rule 4001(c)(1)(B) Disclosures:

18. To the extent that the proposed Order contains any of the below items, the following disclosures are made:

(i) a grant of priority or a lien on property of the estate under § 364(c) or (d);

Yes. Order - P. 6 - 7 (¶ 19).

(ii) the providing of adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on account of the claim;

Yes. Order - P.5 (¶16).

(iii) a determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim;

No. All creditors shall be given a period of 90 days within which to contest the secured claims of The First, Charter Bank and Hanover Insurance.

(iv) a waiver or modification of Code provisions or applicable rules relating to the automatic stay;

Yes. The stay is modified to allow receipt by Randy Blackledge of payments on the DIP loan.

(v) a waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364;

No.

(vi) the establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order;

No.

(vii) a waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien;

Yes. Blackledge's lien shall be first in priority to be paid from any contract proceeds received by the Debtor-in-Possession.

P. 7 (¶20).

(viii) a release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action;

No.

(ix) the indemnification of any entity;

No.

(x) a release, waiver, or limitation of any right under § 506(c); or

No.

(xi) the granting of a lien on any claim or cause of action arising under §§ 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a).

No.

Proposed Order:

19. Attached hereto and marked as Exhibit 2 is a proposed Order.

General Discussion, Background and Authorities

20. Kappa has made known its cash requirements to The First and to Charter, but other than the release of \$5,000.00 to make Worker's Compensation insurance payments, neither Hanover nor the two secured lenders have indicated a willingness to allow Kappa to use the approximately \$62,500.00 presently being held as contract proceeds. Based upon this lack of funds, Randy Blackledge, the President of Kappa, has agreed to loan to Kappa the sum of \$25,000.00 contingent upon being granted a super-priority lien in accordance with the provisions of 363(d) and 364(c) of the United States Bankruptcy Code.

21. Section 364(c) of the Bankruptcy Code governs obtaining financing, post-petition. Under §363(d), a debtor may incur debt secured by a senior or equal lien on property of the estate that is subject to a lien, only if "(A) the trustee is unable to obtain such credit otherwise; and (B) 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. The Debtor is unable to obtain credit without such a senior lien. Therefore, the Court finds itself within the purview of § 362(d)(1).

Adequate Protection

22. Section 363(e) of the Bankruptcy Code provides that, "on request of an entity that has an interest in property used . . . or proposed to be used . . . by the [debtor in possession], the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e). Section 361 of the Bankruptcy Code

delineates the forms of adequate protection, which include periodic cash payments, additional liens, replacement liens, and other forms of relief. See 11 U.S.C. § 361.

23. What constitutes adequate protection must be decided on a case-by-case basis. See, e.g., *MBank Dallas v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1396 (10th Cir. 1987) (citing *I*, 761 F.2d 472, 474 (8th Cir. 1985)); *Metro. Life Ins. Co. v. Monroe Park (In re Monroe Park)*, 17 B.R. 934, 940 (D. Del. 1982) (citations omitted); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); *In re Realty Southwest Assocs.*, 140 B.R. 360, 366 (Bankr. S.D.N.Y. 1992) (citing *Martin*, 761 F.2d at 474); *In re Selby Farms, Inc.*, 15 B.R. 372, 374 (Bankr. S.D. Miss. 1981); *Kimbrough Inv. Co. v. Royal d'Iberville Corp., (In re Royal d'Iberville)*, 10 B.R. 37, 39 (Bankr. S.D. Miss. 1981) ("Opinions as to what is adequate protection must be determined on a case-by-case basis and opinions will vary greatly from court-to-court because adequate protection is not defined in the Bankruptcy Code.") The focus of the requirement is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. See, e.g., *In re First S. Savings Assoc.*, 820 F.2d 700, 701 (5th Cir. 1987); *In re Hubbard Power & Light*, 202 B.R. 680, 685 (Bankr. E.D.N.Y. 1996) (citing *In re 495 Central Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (citations omitted); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986)); *In re Kain*, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988).
24. The Debtor requires use of post-petition credit to complete contracts as shown on the Budget attached to this Motion as Exhibit "1" ("Budget"). The Debtor is entitled to an opportunity

to reorganize and thereby fulfill the purpose of the business's existence – a contracting firm.

The Debtors' completion of the present work is necessary to accomplish this goal.

25. The Debtors believe that the purported interest in the Cash Collateral (which is non-existent at the present time) is adequately protected by 1) the fact that absent the DIP loan by Randy Blackledge, funds will not be coming into the Debtor-in-Possession, 2) after the payment of the funds from the three existing contracts as shown on the Budget, the case position of the Debtor will be increased even following the payment by the Debtor of the super-priority lien granted to Randy Blackledge so that the position of the secured lenders will not be harmed.
26. Additionally, the Debtor believes that the Secured Creditors' purported interest in the Collateral is further adequately protected by the anticipated cash revenues which will exceed the amount of the loan from Blackledge.
27. As the Debtor will demonstrate at the hearing on this Motion, the Debtor's rebuilding efforts and use of the DIP funds should preserve and enhance the value of its overall business without diminishing the value of the Secured Creditors' purported interest in the Pre-petition Collateral.

Valuation of the Secured Creditors' Collateral

28. As of the Petition Date, the aggregate outstanding amount of principal and accrued interest owing to the Secured Creditors was approximately \$1,500,000.00. The capitalized value of the Pre-petition Collateral, as of the Petition Date, is approximately \$2,500,000.00.
29. It is estimated that under those capitalization calculations, the addition of the additional tenant and the tenant restructure which would be permitted by the use of the Cash Collateral, together with the DIP financing which is the subject of a separate motion, should increase the value of the center and the secured lender's collateral by an additional \$1,000,000.00 - \$1,500,000.00.
30. The DIP lending facility as requested herein will provide adequate protection to the Secured Creditor, preserve and maintain the value of the collateral, and facilitate the Debtors' financial rehabilitation.
31. Courts repeatedly have recognized that use of cash collateral is appropriate where necessary to preserve a debtor's ability to reorganize and thus maximize the value of an estate for all interested parties. See, *MBank Dallas, N.A. v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1397-98 (10th Cir. 1987); *Chrysler Credit Corp. v. Ruggiere (In re George Ruggiere Chrysler-Plymouth, Inc.)*, 727 F.2d 1017 (11th Cir. 1984); *In re Dynaco*, 162 B.R. at 389 (Bankr. D. N.H. 1993); *Stein v. FHA (In re Stein)*, 19 B.R. 458 (Bankr. E.D. Pa. 1982).

Request for a Final Hearing

32. The Debtor has limited funds with which to preserve and protect its assets or to operate its business absent the relief requested herein. The amount of DIP financing that is being requested is relatively minimal and the anticipated results will exceed the amount of the funds loaned. Therefore, the Debtor requests that the Court schedule an emergency hearing to consider the immediate approval of the DIP loan in accordance with the Budget as soon as practicable after 15 days after the date of this Motion.
33. The Debtor requests the Court set a 60 day deadline for the Debtor and any other creditors to object to the lien positions of The First, Charter Bank and Hanover.

Notice

34. As of the filing of this Motion, no trustee, examiner or creditors' committee has been appointed in this Chapter 11 case. Notice of this Motion has been given via facsimile, hand delivery, electronic or overnight mail to those parties listed on the Certificate of Service attached hereto. Because of the exigencies of the circumstances and the irreparable harm to the Debtor, its estates, and all parties in interest that will ensue if the relief requested herein is not granted, the Debtor submits that no other notice need be given.
35. No previous motion for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtor respectfully requests entry of an order granting the relief requested herein and such other or further relief as is just.

Date: November 14, 2017.

Respectfully submitted,

**BY: KAPPA DEVELOPMENT & GENERAL
CONTRACTING, INC.**

BY: BYRD & WISER

**BY: S/Nicholas Van Wiser
NICHOLAS VAN WISER, MSB#7339**

CERTIFICATE

I, NICHOLAS VAN WISER, Attorney for the Debtor, do hereby certify that I have this day caused to be delivered via the Court's ECF system a copy of the above and foregoing to Henry Hobbs, U.S. Trustee, 501 E. Court Street - Suite 6-430, Jackson, MS 39201 , and a copy has been transmitted electronically to Charter Bank's counsel of record, Robert T. Schwartz, Email: robert@sojlaw.net, The First's counsel of record, Paul Murphy, Email: paul.murphy@butlersnow.com, and Hanover's counsel of record, James A. McCullough, II, Esq., Email: jmccullough@brunini.com .

This the 14th day of November, 2017.

**BY: S/Nicholas Van Wiser
NICHOLAS VAN WISER, MSB#7339**

Prepared by:

Nicholas Van Wiser, MSB No. 7339

BYRD & WISER

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KAPPA DEVELOPMENT & GENERAL CONTRACTING, INC.
 10480 REICHOLD RD.
 GULFPORT, MS 39503

FOR:
 OFFICE OF STATE AID ROAD CONSTRUCTION
 PERRY COUNTY MS
 PROJECT NO. SAP-56-(8)-0056-20-008-10

QUANTITIES FOR WORK TO BE PERFORMED

Item no	Quantity	Unit	Description	Unit price	COST		
					22.50%	Amount of work	
618-A	LS	LS	Maint. Of traffic	\$3,500.00		\$1,963.50	
212A	4	TN	Agr. Limestone	\$800.00		\$3,200.00	
212B	2	TN	Com. Fertilizer	\$1,000.00		\$2,000.00	
212F	0.2	TN	Ammonium nit.	\$1,500.00		\$300.00	
214A	2	AC	Seeding	\$1,000.00		\$2,000.00	
215A	4	TN	veg. materials (mulch)	\$900.00		\$3,600.00	
226A	50	SY	solid sod	\$12.00		\$600.00	
233A	100	LF	Silt fence	\$6.00		\$600.00	
815F	25	TN	sediment control stone	\$100.00		\$2,500.00	
237A	400	FT	wattles	\$16.00		\$6,400.00	
247B	65		Remove and reset RipRap	\$70.00		\$4,550.00	
815A	532	TN	Loose rip-rap	\$70.00		\$37,240.00	
815E	818	SY	Geotextile	\$6.00		\$4,908.00	
TOTAL AMOUNT WORK REMAINING						\$69,861.50	

TOTAL AMOUNT DUE	\$69,861.50
TOTAL COST	\$54,142.67
PROFIT (22.5%)	\$15,718.83



KAPPA DEVELOPMENT & GENERAL CONTRACTING, INC.
10480 REICHOLD RD.
GULFPORT, MS 39503

FOR:

CITY OF WAVELAND MS
HMGP DRAINAGE IMPROVEMENTS PROJECT
FEMA HMGP GRANT NO. 1604-MS-0420

QUANTITIES FOR WORK TO BE PERFORMED

Item no	Quantity	Unit	Description	Unit price	cost	Amount of work	
4	260	SY	Fertilizing - Channel 44G-1 extension	\$0.20	\$39.00	\$52.00	
5	260	SY	Seeding - Channel 44G-1 extension	\$0.30	\$58.50	\$78.00	
6	260	SY	Mulching - Channel 44G-1 extension	\$30.00	\$58.50	\$78.00	
8	66	SY	Ditch Liner - Channel 44G-1 extension	\$5.50	\$271.25	\$363.00	
10	250	SY	Clearing and Grubbing	\$1.30	\$253.50	\$338.00	
11	22	CY	Removal of Debris in existing Ditch Areas - Channel 44G-1	\$30.00	\$495.00	\$660.00	
29	80	CY	Unclassified Excavation (FM) Channel 44G-1 extension	\$4.00	\$240.00	\$320.00	
30A	65	CY	Foundation Sand - Channel 44G-1 extension	\$11.67	\$568.91	\$758.55	
95	18	CY	Concrete Paved Ditch Channel 44G-1 extension	\$371.16	\$5,010.66	\$6,680.88	
97	160	SY	Geotextile Fabric for RipRap or Concrete Paved Ditch	\$2.00	\$240.00	\$320.00	
98	1	LS	Access to Channel 44G-1 extension area for construction	\$2,500.00	\$1,875.00	\$2,500.00	
					\$9,110.32	\$12,148.43	

TOTAL AMOUNT FOR THIS WORK FOR CHANNEL 44G-1

CITY OF WAVELAND MS
HMGP DRAINAGE IMPROVEMENTS PROJECT
FEMA HMGP GRANT NO. 1604-MS-0420

QUANTITIES FOR WORK TO BE PERFORMED

Item no	Quantity	Unit	Description	Unit price	cost	Amount of work
11	12	CY	Removal of Debris in existing Drainage Ditch Areas	\$30.00	\$270.00	\$360.00
29	104	CY	Unclassified Excavation (FM)	\$4.00	\$312.00	\$416.00
96	110	SY	Loose RipRap	\$50.00	\$4,125.00	\$5,500.00
97	110	SY	Geotextile Fabric for RipRap or Concrete Paved Ditch	\$2.00	\$165.00	\$220.00
29	5	CY	Unclassified Excavation (FM)	\$4.00	\$15.00	\$20.00
30	10	CY	Foundation Gravel	\$35.00	\$262.50	\$350.00
33	13	SY	Asphalt Driveway or Road repair	\$130.00	\$1,267.50	\$1,690.00
35	38	LF	Concrete Curb & Gutter repair	\$60.00	\$1,710.00	\$2,280.00
					\$8,127.00	\$10,836.00

TOTAL AMOUNT FOR THIS WORK REMAINING FOR PHASE 11

Item no	Quantity	Unit	Description	Unit price	cost	Amount of work
96	85	SY	Loose Rip-Rap	\$50.00	\$3,187.50	\$4,250.00
97	95	SY	Geotextile Fabric for Rip-Rap of concrete paved ditch	\$2.00	\$127.50	\$170.00
96	55	SY	Loose Rip-Rap	\$50.00	\$2,062.50	\$2,750.00
97	55	SY	Geotextile Fabric for Rip-Rap for Concrete paved ditch	\$2.00	\$82.50	\$110.00
					\$5,460.00	\$7,280.00

TOTAL AMOUNT FOR THIS WORK REMAINING FOR PHASE III

TOTAL AMOUNT DUE	\$30,264.43
TOTAL COST	\$22,697.32
PROFIT	\$7,667.11

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE: KAPPA DEVELOPMENT & GENERAL CONTRACTING, INC.

NO. 17-51155-KMS

CHAPTER 11

**ORDER GRANTING DEBTOR'S EMERGENCY MOTION PURSUANT TO
SECTION 364(c) and (d) OF THE BANKRUPTCY CODE AND BANKRUPTCY
RULE 4001(c) FOR ORDER AUTHORIZING POST-PETITION FINANCING ON AN
INTERIM AND FINAL BASIS AND GRANTING ADEQUATE PROTECTION FOR
SAME (DKT#_____)**

THIS MATTER COMES before the Court upon Emergency Motion for an Interim and Final Order for (i) Obtaining Post-Petition Credit, (ii) Modifying Automatic Stay, and (iii) Granting Post-Petition Liens (Docket No. _____) filed by **KAPPA DEVELOPMENT & GENERAL CONTRACTING, INC.** ("Kappa"). After reviewing the facts and considering the same the Court finds that the Motion is well taken and should be granted on an interim and final basis. The Court finds as follows:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, 28 U.S.C. § 1557, 11 U.S.C. § 364, 11 U.S.C. § 362, Rule 4001 of the Federal Rules of Bankruptcy Procedure and other related code sections and rules.

2. This matter is a core proceeding.

3. On June 12, 2017, (the "Petition Date"), the Debtor filed with this Court its Voluntary Petition (the "Petition") for relief under Chapter 11, United States Code (the "Bankruptcy

EXHIBIT

2

No. 17-51155-KMS

Code"). The Debtor is the debtor-in-possession in this Chapter 11 case, and it remains in possession of its assets and properties as debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

4. To date, no trustee, examiner or official committee has been appointed in this case.

5. The Debtor, **KAPPA DEVELOPMENT & GENERAL CONTRACTING, INC.**, ("Kappa") is a general contracting and construction firm organized and existing under the laws of the State of Mississippi. The Debtor is wholly owned by Raymond "Randy" Blackledge, Robert Allen and Katherine Marie Clark Parker.

6. Kappa is a general contractor licensed by the State of Mississippi.

7. On November 8, 2017, the Debtor filed its Emergency Motion for (i) Obtaining Post-Petition Credit; (ii) Modifying Automatic Stay, and (iii) Granting Post-Petition Liens. A hearing was scheduled and held on _____ for approval of the Debtor's Motion on an interim basis. The hearing was held pursuant to the authorization of Rule 4001 (c)(2) and was noticed to all secured creditors, the 20 largest unsecured creditors, U.S. Trustee, all taxing authorities, the U.S. Attorney and counsel of record.

8. The Debtor is requesting authority to obtain credit from one of its owners, Randy Blackledge, in good faith to supply certain Debtor-in-Possession loans in order to maintain payroll

and to allow for compliance with some negotiated aspects of the disputed construction contract with the City of Waveland that will allow the Debtor-in-Possession to receive certain funds presently due and owing from the City of Waveland.

On the Budget attached hereto, the cost of performing the remaining work to trigger these payments is shown, together with the anticipated payments that would be received from the City of Waveland and the Perry County Bridge Project.. The funds are to be used by the Debtor according to the attached Budget (Exhibit "1").

9. As of the Petition Date, the Debtor is obligated to three Creditors, each of whom asserts claims to cash collateral and contract proceeds belonging to the Debtor-in-Possession, The First, Charter Bank and Hanover Insurance. This indebtedness is secured, *inter alia*, by a lien upon all contract proceeds. While the Debtor makes no claim at this time as to which of the three entities potentially having claims on contract proceeds have priority, it is respectfully submitted that allowing the Debtor to borrow these funds post-petition would enhance the contract proceeds that would be coming in to the Debtor-in-Possession, and other than the repayment of funds loaned by Blackledge, the cash position of the Debtor will be enhanced. The Debtor will seek future Court approval for any use of cash collateral coming in for these cased proceeds.

The First:

10. As of the Petition Date, the Debtor admits and stipulates that it is indebted to The First for Pre-Petition Indebtedness in the aggregate amount of approximately \$1,117,715.06, comprised

of unpaid principal and interest accrued through the date of the filing of the Petition. The Debtor acknowledges for the purposes of this Motion that as security for the Pre-Petition Indebtedness, The First holds valid, perfected and enforceable liens on the real property.

The First Documents and Provisions:

11. For the purposes of this Motion, the Debtor does not dispute the Proofs of Claim that have been filed by and on behalf of the First and would incorporate said Proofs of Claim into this Motion.

Charter Debt and Liens:

12. As of the Petition Date, the Debtor is obligated to Charter Bank. In accordance with the terms of the Proofs of Claim that Charter Bank has filed, the Debtor-in-Possession is indebted to Charter Bank in the amount of \$433,739.95. This indebtedness is secured, *inter alia*, by a lien upon all contract proceeds.

13. For the purposes of this Motion only, the Debtor admits and stipulates that as of the Petition Date, it is indebted to Charter for Pre-Petition Indebtedness in the aggregate amount of approximately \$433,739.95, comprised of unpaid principal and interest accrued through the date of the filing of the Petition. The Debtor acknowledges for the purposes of this Motion that as security for the Pre-Petition Indebtedness, Charter holds valid, perfected and enforceable liens on the real property.

Charter Documents and Provisions:

14. For the purposes of this Motion, the Debtor does not dispute the Proofs of Claim that have been filed by and on behalf of Charter Bank and would incorporate said Proofs of Claim into this Motion.

Hanover Debt and Liens:

15. As of the Petition Date, the Debtor is obligated to Hanover in an amount that is uncertain and undetermined. This Court has ruled that any contract proceeds from any job bonded by Hanover do, in fact, constitute property of the estate, but has left unresolved the issue of the extent and priority of any lien which Hanover may have on such proceeds. Again, the Debtor does not seek, nor does the Debtor feel at this time it is necessary, to adjudicate the extent and priority of such liens, other than to say that the Debtor will be entitled to use the cash proceeds to repay Randy Blackledge for funds loaned to the Debtor.

16. The Debtor is unable to obtain unsecured credit allowable under Section 503(b)(1) as an administrative expense. The Debtor must obtain financing in order to preserve and maintain the assets of the estate. The Debtor is unable to obtain the post-petition financing without granting the liens provided under this Motion.

17. The Post-Petition Financing has been negotiated in good faith and at arms-length between the Debtor and Blackledge, and any credit extended and loans made to the Debtor ("DIP Loans") have been extended, issued or offered to be made, as the case may be, in good faith as required by

and within the meaning of, Bankruptcy Code §364(e) and Blackledge is entitled to the protections of Bankruptcy Code §364(e).

18. The terms of the proposed Post-Petition Financing are fair and reasonable, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and that the lien security interest and administrative claim granted to Blackledge in conjunction with the Post-Petition Financing are supported by reasonably equivalent value and fair consideration. The post petition or DIP Financing shall be according to the terms of the Proposed Note and Security Documents submitted to this Court prior to the final hearing.

19. The Debtor has requested the entry of an Order pursuant to Bankruptcy Rules 4001(c)(2) approving post-petition financing. The authorization requested herein is necessary to avoid immediate and irreparable harm to the Debtor and its estate.

20. The Debtor has requested authority to borrow from Blackledge, on the terms and subject to the conditions and limitations in availability set forth in the this Motion. The Debtor is authorized to use the loan proceeds in the operation of the Debtor's business, provided that

a. the proposed use or borrowing is in compliance with the terms of the Proposed Note and this Order, and

b. the Debtor's use of funds is in accordance with the budget prepared by the Debtor (the "Budget"), a copy of which is attached hereto and incorporated herein by reference as Exhibit "1".

21. Any funds borrowed from Blackledge under this Motion shall be referred to as "New Obligations," In accordance with Bankruptcy Code §§ 364(c)(1) and 507(b), the New Obligations shall constitute claims with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, (except for UST fees, wages or salaries, and professionals' fees as approved by the Court), and shall at all times be senior to the rights of the Debtor, and any successor trustee or any other creditor in the Bankruptcy Case or any subsequent proceedings under the Bankruptcy Code, including, without limitation, any Chapter 7 proceedings in the Debtor's case is converted to a case under Chapter 7 of the Bankruptcy Code (the "Super-Priority Claims").

22. As security for the New Obligations, and as provided in the Blackledge Note, Blackledge shall have and is hereby granted (effective and continuing without the necessity of the execution, filing and/or recordation of mortgages, security agreements, patent security agreements, trademarks security agreements, pledge agreements, financing statements or otherwise), valid and perfected security interests and liens (the "Liens") in Kappas pre-petition collateral and on property of the estate that is not otherwise subject to a lien pursuant to 11 U.S.C. §364(c)(2), (collectively "Collateral"), provided, however, that the Collateral does not include any avoidance actions pursuant to Bankruptcy Code §§544, 545, 547, 548, 549 and 553(b) and any proceeds therefrom.

23. The Liens and Super-Priority Claims granted to Blackledge pursuant to the DIP Loan Documents and this Motion shall be subject only to the payment of allowed professional fees and disbursements incurred by the professionals retained, pursuant to Bankruptcy Code §§ 327 or

1103(a), by the Debtor, and any unpaid fees of the United States Trustee;

24. Without limiting the rights of access and information afforded pre-petition Secured Creditors under the pre-petition First or Charter Notes or Blackledge, under the Blackledge Note, the Debtor shall be required to provide representatives, agents and/or employees of Blackledge, Charter and The First access to the Debtor's premises and records shall otherwise cooperate, consult with, and provide to such persons all such non-privileged information and information not subject to a binding confidentiality agreement as they may reasonably request.

25. The Debtor shall be liable for all New Obligations.

26. Randy Blackledge is extending credit and making the DIP Loans to the Debtor in good faith. Accordingly, Blackledge is entitled to the full protection of Bankruptcy Code §364(e) with respect to the New Obligations and the Liens created, adjudicated or authorized by an Order granting the Motion in the event that any Order granting this Motion or any finding, adjudication, or authorization contained herein is stayed, vacated, reversed or modified on appeal.

27. Nothing in the DIP Loan Documents or any Order granting the Motion shall be construed as a consent by The First, Charter Bank or Hanover, or an approval by The First, Charter Bank or Hanover of the terms of any plan or any amendment or modification thereto.

28. The Debtor requests the Court to set a period of time in its Final Order for the Debtor,

creditors or parties-in-interest to challenge Charter Bank and The First's pre-petition secured positions.

THEREFORE. IT IS ORDERED that based upon the record presented to the Court by the Debtor, it appears that the Debtor's Motion for an Interim and Final Order for (i) Obtaining Credit, (ii) Modifying Automatic Stay, and (iii) Granting Post-Petition Liens is well taken and should be granted. The terms and provisions of this Order are hereby approved on an interim basis. The Court is not precluded from entering a final order containing provisions inconsistent with or contrary to any of the terms of the interim order, subject to Blackledge's §364(e) protection with respect to monies advanced during the interim period. The Debtor is authorized to borrow funds from Blackledge pursuant to the terms of this interim order. The Debtor is only authorized to utilize such funds available to it to fund essential aspects of the Debtor's operation, specifically the payment and redemption of the ad valorem taxes and the build-out of tenant improvements as specified in the Budget.

IT IS FURTHER ORDERED that the Court will hear the Debtor's Motion, on a final basis on _____, 20__ at ____:00 a.m./p.m. at the United States Bankruptcy Court, 7th Floor, Gulfport, Mississippi. Objections to the Motion shall be filed with Danny L. Miller, Clerk of the Court, on or before ____:00 a.m./p.m. on _____, 20__ with a copy to Nicholas Van Wiser, Attorney at Law, Post Office Box 1939, Biloxi, MS 39533; the United States Trustee, 501 E. Court Street - Suite 6-430, Jackson, MS 39201. Counsel for the Debtor is hereby directed to serve this order on all secured creditors, the 20 largest unsecured creditors, the U.S.

Trustee, all taxing authorities. the U.S. Attorney and counsel of record.

SO ORDERED.

##END OF ORDER##

Submitted by:

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