

Continued hearing shall be held on 1/22/2018 at 01:30 PM in Austin Courtroom 1. Movant is responsible for notice.



IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.

Dated: January 17, 2018

TONY M. DAVIS
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

In re:

KRK CP, LLC
d/b/a KIDS R KIDS CEDAR PARK
Debtor.

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Case No. 18-10002-tmd
(Chapter 11)

**INTERIM ORDER AUTHORIZING USE OF
CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION**

Came on for consideration the *Debtor's Motion to Use Cash Collateral* (the "**Application**") filed on January 5, 2018 by KRK CP, LLC (the "**Debtor**") pursuant to Section 363(c) 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**"); After consideration of the Application, the file and record in this chapter 11 case (the "**Case**"), and sufficient cause appearing;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACTS AND CONCLUSIONS OF LAW¹:

A. Petition. On January 1, 2018 (the “**Petition Date**”), the Debtor filed its voluntary petition under Chapter 11 of the Bankruptcy Code (the “**Petition**”). The Debtor is a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtor filed an amended petition on January 8, 2018.

B. Jurisdiction. The Court has jurisdiction over this proceeding and the parties and property affected by this interim order (the “**Interim Order**”) pursuant to 28 U.S.C. §§ 157(b) and 1334. The Application is a “core” proceeding as defined in 28 U.S.C. § 157(b). Venue of this Case and the Application in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice. The Debtor gave sufficient notice of the Application. Notice of this Order and the related hearing has also been given to the Debtor’s 20 largest unsecured creditors and to the United States Trustee for the Western District of Texas. Such notice complies with Bankruptcy Rule 4001(c).

D. Adequate Protection of TransPecos Banks. TransPecos Banks (“**TransPecos**” or “**Lender**”) asserts that it is the holder of security interests, liens and mortgages in all or substantially all of the property of the Debtors², including, but not limited to: (i) the real property and improvements thereon and the tuition and proceeds thereof owned by the Trimur Debtor; (ii) all of the rights, title and interests of the Debtors in all accounts, escrow funds, deposits and reserves that relate to, are derived from or are used in connection with the property of the Debtor;

¹ To the extent any of the following findings of fact are determined to be conclusions of law, they are adopted, and shall be construed and deemed conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure. To the extent any of the following conclusions of law are determined to be findings of fact, they are adopted, and shall be construed and deemed, as findings of fact pursuant to Rule 7052.

² Trimur Partners, Inc., an affiliate of the Debtor, also has a case pending before this Court, Case No. 18-10001 (the “**Trimur Debtor**”; and along with this Debtor collectively, the “**Debtors**”).

(iii) all of the rights, title and interests of the Debtors in all machinery, equipment, and fixtures; and (iv) all contracts, leases, documents and agreements to which the Debtors are a party including rents received by the Debtors (collectively the “**Collateral**”) pursuant to that certain (i) Loan Agreement dated November 25, 2014 (the “**Loan Agreement**”), (ii) U.S. Small Business Administration (the “**SBA**”) Note dated November 25, 2014, in the amount of \$3,405,000 by and between TransPecos Banks as Lender and Trimur Partners Inc. and KRK CP LLC as borrowers (the “**Trimur Note**”), (iii) SBA Note dated November 25, 2014, in the amount of \$67,000 by and between TransPecos Banks as Lender and Cedar Park Transport and KRK CP LLC as borrowers (the “**Cedar Park Transport Note**”; and collectively with the Trimur Note, the “**Notes**”), (iv) Deed of Trust dated November 25, 2014 by and between Trimur Partners Inc. as grantor and Steven J. Skinner as Trustee for the benefit of TransPecos Banks recorded in the real property records of Williamson County, Document Number 2014095152, (v) Security Agreement dated November 25, 2014 by Trimur Partners Inc. and KRK CP LLC as borrowers for the benefit of TransPecos Banks, (vi) Security Agreement dated November 25, 2014 by Cedar Park Transport LLC and KRK CP LLC as borrowers for the benefit of TransPecos Banks, (vii) pledged vehicles including two (2) 2009 Collins Buses and one (1) 2013 Collins Bus, (viii) the SBA Unconditional Guarantees regarding the Trimur Note of Thomas Murphey, Patrick Murphey, Alicia G. Murphey, and Cedar Park Transport LLC, (ix) the Standby Creditor’s Agreements of (a) Thomas Murphey, Patrick Murphey, Trimur Partners, Inc. regarding KRK CP LLC as Borrower and (b) Thomas Murphey, Patrick Murphey and Trimur Profit Sharing Plan & Trust regarding Trimur Partners as Borrower; (x) Subordination Agreement - Lease dated November 25, 2014, by and between Trimur Partners Inc. as borrower, KRK CP LLC a co-borrower and tenant for the benefit of TransPecos Banks, and (xi) UCC-1

Financing Statements filed with the Texas Secretary of State against Cedar Park Transport LLC, KKK CP and Trimur Partners by TransPecos Banks.

E. TransPecos asserts that as of the Petition Date, Debtors were indebted and liable to TransPecos under the Loan Agreement, the Notes and all documents, instruments, and agreements related to or entered into in connection with the foregoing (collectively, the “**Prepetition Loan Documents**”) in the principal amount of \$3,238,010.36 plus interest of \$141,585.33 as of the Petition Date (not including fees, costs or expenses), the “**Prepetition Loan Debt**”).

F. TransPecos asserts that the Prepetition Loan Debt is (A) legal, valid, binding, and enforceable against Debtors and (B) not subject to any contest, objection, recoupment, defense, counterclaim, offset, claim of subordination, claim of re-characterization, claim of avoidance of any nature, attack, or challenge under the Bankruptcy Code, other applicable non-bankruptcy law, or otherwise.

G. TransPecos asserts that as security for the payment of the Prepetition Loan Debt, Debtors granted to TransPecos security interests in and liens upon all or substantially all of Debtors’ tangible and intangible personal property and assets, wherever located and whether then owned or thereafter arising or acquired by Debtors, including, without limitation, all of Debtors’ accounts, inventory, equipment, software, books and records, securities, chattel paper, deposit accounts, documents, financial assets, general intangibles, goods, instruments, intellectual property, investment property, letter-of-credit rights and commercial tort claims, all as more fully described in the Prepetition Loan Documents (all such property, as the same existed on or at any time prior to the Petition Date, together with all proceeds thereof, including, without limitation, the Cash Collateral (as defined below), being referred to herein as, the “**Prepetition Collateral**”

and such liens thereon shall be referred to as, the “**Prepetition Liens**”), pursuant to the Prepetition Loan Documents.

H. TransPecos asserts that the Prepetition Liens are legal, valid, enforceable, non-avoidable, and duly and properly perfected security interests in and liens upon the Prepetition Collateral and, as of the Petition Date and without giving effect to this Interim Order. Debtors are not aware of any liens or security interests having priority over the Prepetition Liens, except for the liens of TaxEase Funding 2016-I, LLC and ad valorem taxing authorities.

I. TransPecos asserts that the Prepetition Liens on the Prepetition Collateral were granted to TransPecos for fair consideration and reasonably equivalent value, and were granted contemporaneously with the making of the loans and financial accommodations secured thereby. All cash owned by Debtor, cash proceeds, and all other cash collateral of the Debtor wherever located that constitutes original collateral, or proceeds of the Prepetition Collateral, are encumbered by the Prepetition Liens and constitute “cash collateral” of Lender (as such term is defined in section 363(a) of the Bankruptcy Code) (all such cash, cash proceeds, and other “cash collateral”, the “**Cash Collateral**” and together with the Prepetition Collateral, the “**Collateral**”). Without limiting the generality of the foregoing, the Cash Collateral shall include all of the cash proceeds of the Prepetition Collateral in which Lender has an interest, whether such interest existed as of the Petition Date or arises pursuant to this Interim Order, any other order of this Court, applicable law, or otherwise.

J. By the Application, the Debtor asserts that TransPecos will receive adequate protection of its interests in the Collateral in the form of replacement liens on all post-petition proceeds and cash generated by the Debtor, the right to copy and inspect the Debtor’s books and records and the adequate protection payments set out in the Debtor’s proposed Budget (as defined

herein). Nothing herein is intended or shall be construed as a determination of the value of the Collateral. TransPecos reserves all of its rights including the right to (i) contest the sufficiency of the adequate protection proposed by the Debtor, and (ii) assert that this Case was filed in bad faith.

K. The Cash Collateral shall be maintained in accounts with an approved depository (the “**Cash Collateral Account**”). To the extent it is available, Lender shall be given “read only” electronic access to the Cash Collateral Account.

L. For the avoidance of doubt, pursuant to the Prepetition Loan Documents and section 552(b) of the Bankruptcy Code, Lender has a valid, duly perfected, first-priority lien upon and security interest in and to all of the cash of Debtors derived from Prepetition Liens, whether obtained on, prior to, or after the Petition Date (which liens and security interests constitute and are included in the term “Prepetition Liens” as used herein); provided, however, that nothing in the foregoing paragraph is intended to preclude the ability of the Court to limit the rights of TransPecos pursuant to the equities of the case exception of section 552(b).

M. Use of Prepetition Collateral. Debtors are hereby authorized, pursuant to sections 361 and 363 of the Bankruptcy Code, to use the Cash Collateral of Lender only through the date of the Final Hearing (as defined herein) (in accordance with the Budget) and may not be extended other than on the express written consent of Lender or order of the Court.

N. Immediate Entry. Sufficient cause exists for immediate entry of this Order pursuant to Bankruptcy Rule 4001(c)(2). No party appearing in this Case has filed or made an objection to the relief sought in the Application and the entry of this Order, or any objections that were made are hereby overruled, or have been resolved by agreement.

O. Based upon the foregoing, and after due consideration and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

I. AUTHORIZATION AND CONDITIONS TO USE OF CASH COLLATERAL

1. Application Granted. TransPecos does not consent to the use of its Cash Collateral, except upon the express terms of this Interim Order. Except as modified herein, the Application is granted pursuant to Bankruptcy Rule 4001(c)(2) to the extent that the Debtor is authorized to use Cash Collateral to pay actual expenses in accordance with the Budget annexed hereto as **Exhibit A** (the “**Budget**”). The expenses of the Debtor shall not exceed the budgeted amount by more than 10% per line item, and 5% in the cumulative aggregate level of expenses authorized in the Budget through the end of any particular week, absent the written consent of TransPecos or further order of the Court. This Order shall control the operations of the Debtor until entry of a subsequent order. The Debtor shall have the right to seek authority to use Cash Collateral on an expedited basis from the Court and any party, including TransPecos, may oppose such request. All parties, including TransPecos, reserve their rights with respect to entry of a Final Order (as defined herein).

2. Reporting Obligations.

(a) Monthly Operating Reports. The Debtor shall timely file its Monthly Operating Reports and provide a copy to counsel for TransPecos by email upon filing of such.

(b) Financial Reports and Access To Books and Records. During the term of this Order, the Debtor shall provide to TransPecos all reports, documents, materials including financial reports as may be required in this Interim Order, the Loan Documents and such other and further access to the Debtor’s books and records, advisors and professionals as may be reasonably requested by TransPecos from time to time. In addition, the Debtor shall furnish

TransPecos with (i) a 13-week cash flow forecast (by week) as of the Petition Date by no later than January 15, 2018, (ii) weekly actual-to-budget reporting each Wednesday for the week prior starting on January 17, 2018, and (iii) an aged report on accounts receivable within 5 business days of the end of the Budget.

II. POSTPETITION LIEN; ADEQUATE PROTECTION

3. Postpetition Lien of TransPecos. As adequate protection for any diminution in the value of TransPecos's interest in the Collateral caused by the Debtor's use of Cash Collateral generated by its Collateral, TransPecos is hereby granted valid, perfected, and enforceable replacement security interests in and liens and mortgages upon all categories of property of the Debtor and its estate, whether now existing or hereafter acquired or arising, upon which TransPecos held valid, perfected and enforceable prepetition liens, security interests, and mortgages, and all proceeds, rents, products, or profits thereof, including, without limitation, the Collateral owned by the Debtor as of the Petition Date (collectively, the "**Postpetition Collateral**"). The security interests, liens and mortgages herein granted (referred to herein collectively as the "**Adequate Protection Liens**") (i) are and shall be in addition to all security interests, liens, mortgages, and rights to set off existing in favor of TransPecos on the Petition Date; (ii) in the same priority as prepetition to the extent that prepetition liens, security interests, and mortgages are valid, perfected, enforceable and nonavoidable; and (iii) are and shall be valid, perfected, enforceable, and effective as of the Petition Date without any further action by the Debtor or TransPecos and without the execution, filing, or recordation of any financing statements, security agreements, mortgages, or other documents. In addition, TransPecos shall receive, as adequate protection to the extent of the diminution in value of its perfected interests in the Cash Collateral, a claim pursuant to Section 507(b) of the Bankruptcy Code.

4. **Lien On Postpetition Collateral Subordinated to U.S. Trustee's Fees.** The liens on the Postpetition Collateral are subordinated to fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6).

5. **Maintenance of Property.** The Debtor shall maintain and keep the property and all other property constituting the Collateral in good repair and condition, make all necessary replacements thereof, operate the property safely, efficiently, and in compliance with all applicable laws, codes and ordinances, and not commit any waste in connection with any Collateral or operation of the property.

6. **Defaults.** Unless specifically waived in writing by TransPecos, the Debtor's right and authority to use Cash Collateral shall immediately terminate upon the occurrence of any of the following (each a "**Default**"): (i) five (5) business days following delivery of a notice (either written or via email) of a breach by the Debtor of any obligation under this Interim Order which breach remains uncured or otherwise continues to exist at the end of such five day notice period; (ii) conversion of the Debtor's chapter 11 case to a case under chapter 7 of the Bankruptcy Code; (iii) the entry of any order, other than a subsequent interim or final cash collateral order or any other order authorizing the use of cash collateral, modifying, reversing, revoking, staying, rescinding, vacating or amending this Interim Order without the express prior written consent of TransPecos; (iv) the lifting of the automatic stay for any party other than TransPecos and/or any party foreclosing or otherwise seeking to enforce any lien or other right such other party may have in and to any property of the Debtor's estate upon which TransPecos holds or asserts a lien or security interest; (v) termination or expiration of this Interim Order, unless a subsequent cash collateral order has been entered by the Bankruptcy Court; (vi) five (5) business days following delivery of a notice (either written or via email)

regarding the failure of the Debtor to pay all of its administrative expenses in full in accordance with and subject to the terms as provided for in the Budget, including fees under 28 U.S.C. § 1930, (vii) the closing of a sale of all or substantially all of the Debtor's assets, exclusive of the sale of the vacant three acre tract owned by the Trimur Debtor adjacent to the school operated by KRK CP, LLC (the "**Parcel**"); provided, however, that contemporaneously with a closing of the sale of the Parcel, the Debtors shall pay to TransPecos the net proceeds of sale after direct closing costs and associated property taxes, (viii) the dismissal of this Case, or suspension of the Case pursuant to section 305 of the Bankruptcy Code, (ix) the appointment of a chapter 11 trustee or an examiner with enlarged powers (beyond those set forth in sections 1104(c) and 1106(a)(3) and (4) of the Bankruptcy Code); or (x) five (5) business days following delivery of a notice (either written or via email) regarding any default or event of default under the Interim Order.

7. **No Control.** TransPecos shall not be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person," "managing agent" or "owner or operator" (as such terms or any similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar Federal or state statute) with respect to the operation or management of the Debtor, notwithstanding its consent to this Interim Order and extending financial accommodations of any type, kind or nature under this Interim Order.

8. **Without Prejudice.** Except as specifically provided herein the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights of TransPecos under the Loan Documents or under the Bankruptcy Code or under non-bankruptcy law.

9. **Immediate Effect.** The findings of fact and conclusions of law contained in this Interim Order shall take effect immediately upon entry hereof.

10. **Binding on Successors.** The provisions of this Interim Order shall be binding upon and inure to the benefit of the Debtor and its successors and assigns (including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtor or with respect to the property of the estate of the Debtor).

III. **FINAL HEARING**

7. A final hearing to consider entry of a final order (the “**Final Order**”) on the Application is set on the date and time noted above (the “**Final Hearing**”). Counsel for Debtor is responsible for notice.

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Order prepared by:

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