

RESOLUTION NO. 19-120

**A RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT  
CONDITIONAL GRANT AGREEMENT BETWEEN THE CITY  
OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT  
CORPORATION AND KEMP CORKRAN, LLC FOR  
INFRASTRUCTURE IMPROVEMENTS IN AN AMOUNT NOT TO  
EXCEED \$302,434.00, EDC ACCOUNT NO. 120-1429-582.59-01**

**WHEREAS**, the City Council deems it in the public interest to authorize the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") to enter into an Economic Development Conditional Grant Agreement (the "Agreement") with Kemp Corkran, LLC ("Kemp Corkran"); and

**WHEREAS**, PAEDC has reviewed the application presented by Kemp Corkran and the proposals for infrastructure improvements for the development of a multi-tenant development at 2550 Highway 365 in Port Arthur, Texas; and

**WHEREAS**, the PAEDC Board of Directors has concluded that the expenditures found for the infrastructure improvements will promote or develop new or expanded business enterprises and indicated that Kemp Corkran has presented an application qualifying as a Section 4A project as set forth in the Economic Development Act; and

**WHEREAS**, Kemp Corkran will make qualifying infrastructure improvements in order to construct a state of the art car wash and lube shop; and

**WHEREAS**, PAEDC at their special Board meeting of February 18, 2019 agreed on a conditional grant in the amount of \$302,434.00 for the purpose of making qualified infrastructure improvements to the property at 2550 Highway 365 based upon findings of facts of economic benefit as to the development of the property; and

WHEREAS, Kemp Corkran has reviewed and approved the Agreement attached hereto as Exhibit "A".

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR, TEXAS:

**Section 1.** That the facts and opinions in the preamble are true and correct.

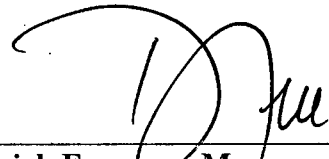
**Section 2.** That PAEDC is herein authorized to enter into the Agreement with Kemp Corkran, and the President and Secretary of PAEDC are authorized to sign the Agreement in substantially the same form attached hereto as Exhibit "A".

**Section 3.** That a copy of the caption of this Resolution be spread upon the Minutes of the City Council.

READ, ADOPTED AND APPROVED on this 26<sup>th</sup> day of March A.D., 2019, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES:

Mayor Freeman; Mayor Pro Tem Kinlan,  
Councilmembers Scott, Jones, Osceola, Moser  
and Frank.

NOES: None.

  
Derrick Freeman, Mayor

ATTEST:

  
Sherri Bellard, City Secretary

APPROVED:



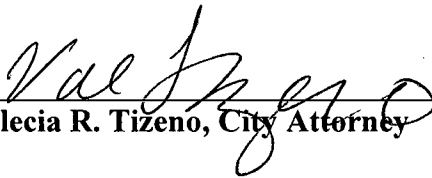
**Floyl Batiste, PAEDC CEO**

APPROVED AS TO FORM:



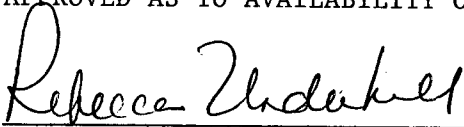
**Guy N. Goodson, PAEDC Attorney**

APPROVED AS TO FORM:



**Valecia R. Tizeno, City Attorney**

APPROVED AS TO AVAILABILITY OF FUNDS:



**Rebecca Underhill, Assistant City Manager  
Acting Finance Director**

# **EXHIBIT “A”**

**ECONOMIC DEVELOPMENT CONDITIONAL GRANT AGREEMENT  
BETWEEN  
THE CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION  
AND KEMP CORKRAN, LLC**

**Executive Summary**

The City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") finds that the construction of infrastructure improvements located at 2550 Highway 365 in the City of Port Arthur, Texas (the "City"), is beneficial for the development and expansion of new and existing business enterprises in the City. For the reason, based upon findings of economic development as set forth in this Economic Development Conditional Grant Agreement (the "Agreement"), PAEDC conditionally grants to Kemp Corkran, LLC the costs of infrastructure improvements to construct Magic Express Wash & Lube in the amount of \$350,955.00.

Kemp Corkran, LLC (the "Incentive Recipient") plans to construct infrastructure improvements (the "Improvements") for a state of the art car wash and lube shop. PAEDC shall reimburse Incentive Recipient for fifty percent (50%) of the conditional grant upon receipt of a Certificate of Occupancy for the car wash and 50% upon receipt of a Certificate of Occupancy for the lube shop.

If Incentive Recipient breaches or defaults under this Agreement, then any funds granted by PAEDC will automatically convert to a loan for a period of three (3) years from the date of default, and an interest rate of ten percent (10%) per annum.

Incentive Recipient agrees to send PAEDC reports each quarter on the construction status of the Improvements and the proposed commercial development as outlined in the Performance Milestone Schedule of this Agreement.

Incentive Recipient has agreed to provide as collateral for the performance of its obligation under the Agreement a Letter of Credit.

**ECONOMIC DEVELOPMENT CONDITIONAL GRANT AGREEMENT  
BETWEEN  
THE CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION  
AND KEMP CORKRAN, LLC**

**Recitals**

**WHEREAS**, Kemp Corkran, LLC desires to develop property (the "Property") located at 2550 Highway 365 in Port Arthur, Texas for the construction of a state of the art car wash and lube shop to be called Magic Express Wash & Lube; and

**WHEREAS**, §501.103, Texas Local Government Code authorizes expenditures on infrastructure by the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") if the PAEDC Board finds the expenditure "to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises," and

**WHEREAS**, on February 4, 2019 following presentation by Kemp Corkran, LLC of facts contained in **Exhibit "A,"** the PAEDC Board found that the facts reasonably support the finding that the infrastructure improvements for construction of Magic Express & Lube ("Magic Express") which will have two businesses, car wash and lube shop, are required in order for the two businesses to operate; and

**WHEREAS**, the PAEDC Board approved an economic development conditional grant to Kemp Corkran, LLC to redevelop and make necessary infrastructure improvements to the Property; and

**WHEREAS**, the PAEDC and Kemp Corkran, LLC desire to set forth in this Agreement the terms and conditions for PAEDC's conditional grant payments for the infrastructure improvements to the Property.

**NOW THEREFORE**, the parties agree as follows:

**AGREEMENT DATES**

**AGREEMENT START DATE**

1. This Economic Development Conditional Grant Agreement (the "Agreement") is entered into with an effective date of \_\_\_\_\_, 2019, but in no case later than \_\_\_\_\_, 2019, by and between the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") and Incentive Recipient.

## **AGREEMENT END DATE**

2. This Agreement expires 30 days after Incentive Recipient either performs fully or breaches the Agreement, subject to earlier termination or extension, voluntary or involuntary, as provided herein.

## **PARTIES**

3. City of Port Arthur Section 4A Economic Development Corporation ("PAEDC"), located at 501 Procter Street, Port Arthur, Texas 77640, is a corporation. It is duly authorized to do business in the State of Texas under Chapter 501, 504 Texas Local Government Code (the "Act" or "Development Corporation Act") and duly authorized by Resolution of the City Council of the City of Port Arthur to enter into this Agreement. So authorized and as provided by the PAEDC bylaws, the President and Secretary of the PAEDC Board have the authority to execute this Agreement.
4. Kemp Corkran, LLC, a Texas limited liability company located at 3015 Nederland Avenue, Suite B, Nederland, Texas 77627. The registered agent for Kemp Corkran, LLC is Greg Corkran.

## **CONDITIONS PRECEDENT**

5. This Agreement has no legal consequences unless and until:
  - a. Both the PAEDC Board and the City of Port Arthur City Council approve the Agreement in its final form; and
  - b. Incentive Recipient delivers to PAEDC quarterly status reports reflecting the progress of construction improvements to the infrastructure and provides PAEDC certificates of occupancy for the car wash and lube shop.

## **PROMISED PERFORMANCE**

6. The parties agree to perform as follows:
  - a. **Performance by PAEDC**
    - i. PAEDC shall conditionally grant Incentive Recipient not to exceed \$350,955.00 for the purpose of making qualified infrastructure improvements for the construction of the Magic Express;
    - ii. Incentive Recipient will provide PAEDC a Certificate of Occupancy for the car wash and upon receipt of the Certificate of Occupancy, PAEDC will reimburse Incentive Recipient fifty percent (50%) of the Conditional Grant; and

- iii. Incentive Recipient will provide PAEDC a Certificate of Occupancy for the lube shop and upon receipt of the Certificate of Occupancy, PAEDC will reimburse Incentive Recipient fifty percent (50%) of the Conditional Grant.

These are PAEDC's only obligations.

**b. Performance by Incentive Recipient**

- i. Incentive Recipient shall make infrastructure improvements to the Property as outlined in the Grant Application referenced in **Exhibit "B."**
- ii. Incentive Recipient shall provide PAEDC with quarterly reports detailing the progress of the infrastructure improvements.
- iii. Incentive Recipient shall provide PAEDC certificates of occupancy for the car wash and lube shop in order to receive the reimbursable percentage that coincides with the completion of the car wash and lube shop respectively.
- iv. Incentive Recipient shall use its best efforts to hire architect(s), engineer(s), and general subcontractor(s) from the Nine-County Southeast Texas Region for the construction of the Building;
- v. Incentive Recipient will use its best efforts to ensure that Port Arthur, Texas residents are hired for the construction of the Building to the maximum extent feasible.
- vi. Incentive Recipient must complete the infrastructure improvements and receive certificate of occupancy for each retail space in Section 6.a. above within 18 months from the date this Agreement is executed.
- vii. On written demand by PAEDC and in response to Incentive Recipient's failure to achieve a performance milestone, Incentive Recipient shall provide PAEDC within 10 business days following receipt of such written demand with assurances that it has both the intention and capabilities to perform fully its Agreement dual obligations.

**INCENTIVE RECIPIENT'S PERFORMANCE MILESTONE SCHEDULE**

- 7. Although failure to achieve a performance milestone is not a breach of Agreement, a failure is grounds for PAEDC to demand reasonable assurances<sup>1</sup> from Incentive Recipient that it can and will fully perform its Contractual obligations. Failure to provide demanded assurances is a breach of Agreement.

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<sup>1</sup> Examples of reasonable assurances are copies of pending Agreement s and commitment letters.



8. Incentive Recipient's performance milestones are contained in **Exhibit "C."**

#### **PAEDC'S CONDITIONAL OBLIGATIONS AND LIMITED LIABILITY**

9. The PAEDC's sole liability/obligations, if any, shall be to Incentive Recipient and shall be limited to the conditional incentive obligations detailed in this Agreement. The PAEDC shall not be liable, in Agreement or otherwise, to Incentive Recipient, or to any person or entity claiming by or through Incentive Recipient., for any expense, expenditure or cost incurred by or on behalf of Incentive Recipient related to the construction of the Building made the basis of this Agreement.

#### **LIQUIDATED DAMAGES FOR BREACH OF AGREEMENT BY INCENTIVE RECIPIENT.**

10. In the event Incentive Recipient breaches this Agreement or does not fulfill its obligation to complete infrastructure improvements in order to provide PAEDC certificates of occupancy, Incentive Recipient will not be reimbursed for costs incurred by them for infrastructure improvements.
11. It is expressly understood and agreed by the parties that any right or remedy shall not preclude the exercise of any other right or remedy under this Agreement or under any provision of law, nor shall any action taken in the exercise of any right or remedy by deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right o exercise that or any other right or remedy at any time.

#### **RECORDS/INSPECTION/PAEDC AUDIT**

12. Incentive Recipient shall maintain records as necessary to allow the PAEDC to audit in compliance with this Agreement and the representations and warranties contained herein and in Incentive Recipient's application.
13. Incentive Recipient shall give the PAEDC, or any of its duly authorized representatives, access to and right to examine all books, accounts, records, reports, files and other papers, things or property belonging to or in use by Incentive Recipient pertaining to this Agreement. Such rights to access shall continue as long as the records are maintained by Incentive Recipient. Incentive Recipient agrees to maintain such records in and accessible location. Driver's license information is appropriate for interim reporting of Port Arthur residents hired. The reporting objective is to include documentation necessary for PAEDC to verify Incentive Recipient's reports without further outside inquiry.
14. All records pertinent to this Agreement shall be retained by Incentive Recipient at least three (3) years following the date of termination of this Agreement, whether said termination is a result of default or whether said termination is a result of final submission of a close out report by Incentive Recipient detailing Incentive Recipient's compliance with its obligations provided herein. Further, in the event any litigation,

claim or audit arising out of or related to this Agreement is instituted before the expiration of the three (3) year period and extends beyond the tree (3) year period, the records will be maintained until all litigation, claims, or audit findings involving this Agreement and the records made the basis of same has been resolved.

15. Upon written request, Incentive Recipient shall provide PAEDC with all reports reasonably necessary for PAEDC to comply with the Development Corporation Act.
16. It is expressly understood and agreed by the parties hereto that if Incentive Recipient fails to submit to PAEDC in a timely and satisfactory manner any report required by this Agreement, PAEDC, may at its sole discretion, demand assurances that Incentive Recipient can and will fully perform its Contractual obligations. If Incentive Recipient fails to provide adequate assurances in ten (10) business days then Incentive Recipient is in breach and PAEDC is not obligated to reimburse Incentive Recipient for expenses incurred for infrastructure improvements.
17. The PAEDC reserves the right, from time to time, to carry out field inspections/audits to ensure compliance with the requirements of this Agreement. After completion of any such audit, the PAEDC, at its option, may provide Incentive Recipient with a written report of the audit findings. If the audit report details deficiencies in Incentive Recipient performance under the terms and conditions of this Agreement, the PAEDC may establish requirements for the timely correction of any such deficiencies by Incentive Recipient.

#### **HOLD HARMLESS**

18. INCENTIVE RECIPIENT SHALL INDEMNIFY, DEFEND AND HOLD THE PAEDC AND THE CITY (TOGETHER THE "INDEMNIFIED PARTIES") HARMLESS FROM ALL INJURIES, CLAIMS, LIABILITIES, COSTS OR DAMAGES (INCLUDING COURT COSTS AND REASONABLE ATTORNEY'S FEES) SUSTAINED BY OR THREATENED AGAINST ANY OF THE INDEMNIFIED PARTIES FOR INJURY OR DEATH TO PERSONS OR PHYSICAL DAMAGE TO PROPERTY ARISING OUT OR RELATING TO THE PERFORMANCE BY INCENTIVE RECIPIENT OF ITS OBLIGATION UNDER THIS AGREEMENT.

#### **SUBCONTRACTORS**

19. Incentive Recipient may subcontract obligations under this Agreement; however, Incentive Recipient, in subcontracting for any performances described in this Agreement, expressly understands that PAEDC is in no way liable to Incentive Recipient's subcontractor(s).
20. Incentive Recipient is responsible for performances, as if such performances rendered were rendered by Incentive Recipient. PAEDC maintains any right of action which may exist or which may be subsequently accrue to PAEDC under this Agreement.

21. Incentive Recipient, as well as all of its subcontractors, shall comply with all applicable federal, state, and local laws, regulations, and ordinances relating to the operations and activities of the redevelopment of the Building.

#### **CONFLICT OF INTEREST/DISCLOSURE OBLIGATION**

22. Conflict of Interest: No employee, agent, officer or elected or appointed official of the City of Port Arthur or the PAEDC who has participated in a decision making process related to this Agreement (without recusing him/herself and executing a conflict affidavit) may obtain a personal or financial interest or benefit from an PAEDC assisted activity, or have an interest in any Agreement, subcontractors, or agreement (or proceeds thereof) with respect to an PAEDC assisted activity, during their tenure or for one (1) year thereafter. Incentive Recipient shall ensure compliance with applicable provisions of the Act and Chapter 171, Local Government Code.
23. Disclosure: In conjunction with execution of this Agreement, Incentive Recipient has fully disclosed to PAEDC all known and potential owners of interests in Incentive Recipient and its general partner (whether stockholder, manager, member or otherwise). In the event of any change in ownership or control of Incentive Recipient of five percent (5 %) or greater, Incentive Recipient shall notify PAEDC in writing. Further, Incentive Recipient shall be obligated to notify in writing the PAEDC in the event any time prior to, during or one (1) year after the term of this Agreement, any City or PAEDC employee or representative or any third party with a conflict of interest obtains or proposes to obtain a financial benefit, direct or indirect, from Incentive Recipient or its general partner. Failure to provide said notice immediately or no later than five (5) business days after receipt of information shall constitute a default herein.

#### **NONDISCRIMINATION/EMPLOYMENT/REPORTING**

24. Incentive Recipient shall ensure that no person shall on the grounds of race, color, religion, sex, handicap, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any construction activity. Additionally:
- a. To the greatest extent feasible, opportunities for training and employment arising in connection with the redevelopment of the Building will be given to Port Arthur residents;
  - b. To the greatest extent feasible, Agreements for work to be performed in connection with the construction of the Building will be awarded first to Port Arthur residents and businesses, then to the residents and businesses of the nine-county Southeast Texas Region; and
  - c. If Incentive Recipient advertises for workers in any media then it will advertise in the "Port Arthur News."

## **LEGAL AUTHORITY**

25. Incentive Recipient assures and guarantees that Incentive Recipient possesses legal and/or corporate authority to enter into this Agreement, and to perform the services Incentive Recipient has obligated to perform hereunder and has provided, and will in the future provide, as requested by the PAEDC, such corporate resolutions necessary to evidence this authority.
26. The person or persons signing and executing this Agreement on behalf of Incentive Recipient, or representing themselves as signing and executing this Agreement on behalf of Incentive Recipient, do hereby warrant and guarantee that he, she or they have been duly authorized by Incentive Recipient to execute this Agreement on behalf of Incentive Recipient and to validly and legally bind Incentive Recipient to all terms, performances, and provisions herein set forth.

## **NOTICE OF LEGAL OR REGULATORY CLAIMS AGAINST INCENTIVE RECIPIENT.**

27. Incentive Recipient shall give PAEDC immediate notice in writing of 1) any legal or regulatory action, including any proceeding before an administrative agency filed against Incentive Recipient, directly or indirectly; and 2) any material claim against Incentive Recipient or its general partner, which may impact continued operations. For purposes herein, "material" claims shall mean claims in excess of \$15,000. Except as otherwise directed by PAEDC, Incentive Recipient shall furnish immediately to PAEDC copies of all pertinent documentation of any kind received by Incentive Recipient with respect to such action or claim.

## **CHANGES AND AMENDMENTS**

28. Except as specifically provided otherwise in this Agreement, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment in writing and executed by all parties to this Agreement.
29. It is understood and agreed by the parties hereto that performances under this Agreement must be rendered in accordance with the Act, the regulations promulgated under the Act, the assurances and certifications made to PAEDC by Incentive Recipient, and the assurances and certifications made to the City of Port Arthur with regard to the construction of the car wash and lube shop. Based on these considerations, and in order to ensure the legal and effective performance of this Agreement by all parties, it is agreed by the parties hereto that the performances under this Agreement may be amended in the following manner: PAEDC may from time to time during the period of performance of this Agreement issue policy directives which serve to establish interpret or clarify performance requirements under this Agreement consistent with the intent of the parties. Such policy directives shall be promulgated by the PAEDC Board of Directors in the form of PAEDC issuances shall be approved by the City Council and shall have the effect of qualifying the terms of this Agreement and shall be binding upon Incentive Recipient, as if written herein.

30. Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in federal, state, or local law are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation. Incentive Recipient agrees to comply with all federal, state, and local laws whether existing or hereinafter enacted.

#### **DEFAULT/TERMINATION**

31. In the event of default of any of the obligations of Incentive Recipient detailed herein or in the event of breach of any of the representations of or warranties of Incentive Recipient either detailed herein or in Incentive Recipient's application to the PAEDC, the PAEDC may, at its sole and exclusive option and remedy, terminate this Agreement, in whole or in part. In the event of such termination, but subject to the provisions hereof, in addition to (i) any other remedies available to the PAEDC as provided by the laws of the State of Texas or (ii) any other remedies available to the PAEDC as provided herein, the PAEDC may, at its sole option:
- a. Withhold and/or disallow further PAEDC grant payments or incentives to Incentive Recipient, including funds to be advanced to Incentive Recipient hereunder.
32. In addition to the foregoing, the parties agree that this Agreement may be terminated at any time when both parties agree, in writing, to the terms and conditions of any such voluntary termination.

#### **INCENTIVE RECIPIENT AUDITS**

33. If directed by the PAEDC Board, Incentive Recipient shall arrange for a compliance audit by a certified public accountant to verify performances reported under this Agreement.
34. Incentive Recipient shall take all necessary actions to facilitate the performance of any and all such audits, whether annual, mandatory, or otherwise requested under this Agreement.
35. Subject to financial privacy requirements of Incentive Recipient and properly designated requests for non-disclosure due to proprietary reasons, all approved audit reports may be made available for public disclosure to the extent required by the Public Information Act.

#### **ENVIRONMENTAL CLEARANCE REQUIREMENTS**

36. Incentive Recipient understands and agrees that by execution of this Agreement, Incentive Recipient shall be responsible for making all reasonable efforts in providing to PAEDC all information, concerning this PAEDC funded project, required for PAEDC to meet its responsibilities for environmental review, decision making, and other action which applies to PAEDC in accordance with and to the extent specified in federal, state,

and local law. Incentive Recipient further understands and agrees that Incentive Recipient shall make all reasonable efforts to assist PAEDC in handling inquiries and complaints from persons and agencies seeking redress in relation to environmental reviews covered by approved certifications.

#### **ORAL AND WRITTEN CONTRACTS/PRIOR AGREEMENTS**

37. All oral and written contracts between the parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Contract have been reduced to writing and are contained in this Contract.
38. The documents listed below are hereby made a part of this Agreement for all purposes, and constitute promised performances by Incentive Recipient and/or PAEDC, as the case may be, in accordance with this Agreement:
- a. **Exhibit "A"** Findings of Fact for Infrastructure Improvements
  - b. **Exhibit "B"** Kemp Corkran, LLC Grant Application for PAEDC for funding
  - c. **Exhibit "C"** Performance Milestones
  - d. **Exhibit "D"** Certification Regarding Lobbying
  - e. **Exhibit "E"** Compliance Statement
  - f. **Exhibit "F"** Commercial Promissory Note
  - g. **Exhibit "G"** Letter of Credit

#### **VENUE**

39. For purposes of litigation that may accrue under this Agreement, venue shall lie in Jefferson County, Texas where substantially all the performance will occur.

#### **ADDRESS OF NOTICE AND COMMUNICATIONS**

City of Port Arthur Section 4A Economic Development Corporation  
501 Procter Street  
Port Arthur, Texas 77640  
ATTN: Floyd Batiste, Chief Executive Officer

Kemp Corkran, LLC  
P.O. Box 1262  
Nederland, Texas 77627  
ATTN: Greg Corkran

#### **CAPTIONS**

40. This Agreement has been supplied with captions to serve only as a guide to the contents. The captions does not control the meaning of any paragraph or in any way determine its interpretation or application.

## **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

41. Incentive Recipient shall comply with all federal, state, and local laws, statutes, ordinances, resolutions, rules, regulations, orders and decrees of any court or administrative body or tribunal related to Incentive Recipient's performance under this Agreement. Upon request by PAEDC or by the City of Port Arthur, Incentive Recipient shall furnish reasonable satisfactory proof of its compliance herewith including execution of the Certification Regarding Lobbying attached hereto as **Exhibit "D"** and the Compliance Statement attached hereto as **Exhibit "E"**.

## **ASSIGNMENT**

42. This Agreement may not be assigned by Incentive Recipient to another entity unless and until the PAEDC, by the action of the PAEDC Board, approves the assignment.

## **SUPPLEMENTAL COVENANT**

43. Incentive Recipient and any branch, division or department of Incentive Recipient certifies that they have not and will not knowingly employ an "undocumented worker" which means "an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States."

44. Incentive Recipient acknowledges that it has reviewed Chapter 2264, Texas Government Code and hereby affirmatively agrees by execution of this Agreement to repay the amount of any incentive with interest at the rate of ten (10%) percent per annum not later than the 120<sup>th</sup> day after the date PAEDC notifies Incentive Recipient of a violation.

45. Incentive Recipient acknowledges PAEDC may bring a civil action or cover any amounts owed under this Chapter and further acknowledges that PAEDC may recover court costs and reasonable attorneys' fees incurred in an action brought under §2264.101(a). Incentive Recipient is not liable for a violation of this Chapter by a subsidiary, affiliate or franchisee of the Incentive Recipient or by a person with whom the Incentive Recipient contracts.

**ATTORNEY APPROVALS**

APPROVED AS TO FORM:

\_\_\_\_\_  
Guy Goodson, General Counsel for PAEDC

VERIFIED AS CONSISTANT

WITH CITY COUNCIL RESOLUTION: Resolution Number : \_\_\_\_\_

\_\_\_\_\_  
Valencia Tizeno, City Attorney



**CONTRACT EXECUTION**

**CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION**

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 2019.

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Secretary

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**KEMP CORKRAN, LLC**

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 2019.

By: \_\_\_\_\_  
Greg Corkran, \_\_\_\_\_

\_\_\_\_\_  
Witness

## **EXHIBIT “A”**

### **FINDINGS OF FACT FOR INFRASTRUCTURE IMPROVEMENTS**

#### **Facts:**

- Kemp Corkran, LLC has requested an incentive agreement from the PAEDC for infrastructure improvements to construct Magic Express & Lube at 2550 Highway 365 in Port Arthur, Texas.
- Kemp Corkran, LLC wants to make infrastructure improvements in order to make it suitable for commercial tenant space which will house a car wash and a lube shop.

#### **Findings:**

- The PAEDC Board of Directors has found that constructing infrastructure improvements at 2550 Highway 365 in Port Arthur, Texas would lead to the development of new and expanded business enterprises in the City of Port Arthur.
- The infrastructure improvements may lead to the opening of two new businesses in the City of Port Arthur.
- The opening of such businesses would increase sales tax revenues for the City of Port Arthur and add to the City ad valorem tax base.

## **EXHIBIT “B”**

### **Kemp Corkran, LLC Grant Application**

**City of Port Arthur Section 4A Economic Development Corporation  
Grant/Loan Incentive Application**

Date: December 18, 2018

Please complete the following information and return along with the requested documents.  
We will review the information that you provide to determine if you are eligible for assistance from the PAEDC.

<b>SECTION A: BUSINESS INFORMATION</b>	
Business Name: Kemp Corkran, LLC.	
Business Address: P.O. Box 1262 Nederland, TX 77627	
Business Phone: 409-728-1369	Business Fax: 409-853-1216
Email and/or Website Information: <u>Bkemp@kempproperties.org</u>	

Owners: Please list all owners with Five (5%) Percent or Greater Ownership of the Company

Name	SSN #	Date of Birth	Home Address	% Ownership
Greg Corkran	<u>                    </u>	9/18/1957	2274 HWY 69 North Nederland, TX 77627	33.33%
Brian Kemp	<u>                    </u>	8/28/1973	7567 Holmes Rd. Nederland, TX 77627	33.33%
Marilyn Borque	<u>                    </u>	1/3/1952	412 Nederland Avenue Nederland, TX 77627	33.33%

Type of Business Organization:  
(Please Check One)

<input type="checkbox"/>	Not Established
<input type="checkbox"/>	Sole Proprietorship
<input type="checkbox"/>	Partnership
<input type="checkbox"/>	S. Corp.
<input type="checkbox"/>	C. Corp.
<input checked="" type="checkbox"/>	LLC
<input type="checkbox"/>	HUB/MWBE
<input type="checkbox"/>	Non-Profit

 **SCANNED**

Please describe the type of business (product or service):  
Kemp Corkran, LLC. proposes to build a state-of-the-art express carwash and oil change facility located at 2550 HWY 365 Port Arthur, TX 77642. Our facility will be modern with the most high-quality equipment and the first Express Wash and Lube in this area.

Date Business Established: 16-Sep-15 Federal Tax ID Number: 82-2140101

Has the business, or any principals of the business been involved in bankruptcy or insolvency proceedings?  
☐ Yes ☒ No If yes, please explain:

Are there any personal/business judgments, liens, unsettled lawsuits or major disputes?  
☐ Yes ☒ No If yes, please explain:

Have you taken any business development classes? ☐ Yes ☒ No

Are you working with a counselor at the Small Business Development Center?  
☐ Yes ☒ NO

Name of Counselor: Phone Number:

Are you working with a counselor at the Service Corps or Retired Executive (SCORE)?  
☐ Yes ☒ No

Name of Counselor: Phone Number:

Have you completed a Business Plan? ☒ Yes ☐ No  
If yes, when/by whom was the Business Plan prepared?

Name: Wendell Meaux Phone Number: 409-861-7270

Type of Business:  
(Please Check One)

- |                                     |  |
|-------------------------------------|--|
| <input type="checkbox"/>            | Industrial/Manufacturing (Fill Out Sections A-H) |
| <input type="checkbox"/>            | Recycling (Fill Out Sections A-H)                |
| <input type="checkbox"/>            | Distribution (Fill Out Sections A-H)             |
| <input type="checkbox"/>            | Warehouse (Fill Out Sections A-H)                |
| <input checked="" type="checkbox"/> | Commercial (Fill Out Sections A-H)               |
| <input checked="" type="checkbox"/> | Infrastructure (Fill Out Sections A-C)           |
| <input type="checkbox"/>            | Land Purchase (Fill Out Section A Only)          |
| <input type="checkbox"/>            | Training (Fill Out Sections A & C)               |

Please note that the following industrial complexes in our area are not within the City limits of Port Arthur and are therefore appropriately considered in the regional market:  
TOTAL complex (including the BASF joint venture), Valero, Motiva, Chevron Phillips and Chevron USA, Golden Pass LNG, OxBow Calcining, BASF (W. Port Arthur Road) and Flint Hills Resources.

**100 %**

We propose to provide services to local citizens as well as out of town workers and travelers for all their carwash and oil change needs.

100 %

We propose to provide services to local citizens as well as out of town workers and travelers for all their carwash and oil change needs.

100 %

We propose to provide services to local citizens as well as out of town workers and travelers for all their carwash and oil change needs.

For assistance, please see <http://www.census.gov/epcd/naics02/naicode02.htm>

**Example:** 322222/Coated/Laminated Paper Manufacturing

**SECTION C: PROJECT COST**

**PROJECT**

Please, briefly describe your project:

Kemp Corkran, LLC. proposes to build a state-of-the-art express carwash and oil change facility located at 2550 HWY 365 Port Arthur, TX 77642. Our facility will be modern with the most high-quality equipment and the first Express Wash and Lube in this area.

Total amount requested: 480,000.00

**Project Cost**

	AMOUNT	SOURCE OF FUNDS
LAND	928,000.00	Purchased by Kemp Corkran, LLC.
BUILDING/RENOVATIONS	1,638,831.00	Community Bank-Loan
EQUIPMENT	1,289,452.00	Community Bank-Loan
FURNITURE/FIXTURES	190,000.00	Community Bank-Loan
INVENTORY	145,000.00	Community Bank-Loan
JOB TRAINING	35,000.00	Community Bank-Loan
INFRASTRUCTURE	1,157,114.00	Community Bank-Loan/ Kemp Cork
*OTHER (Please Specify)		
TOTAL:	5,383,397.00	

\*WORKING CAPITAL IS NOT ELIGIBLE FOR FUNDING

Personal cash available to invest in project: \$ \_\_\_\_\_ Source: \_\_\_\_\_

What bank have you contacted for financing: Community Bank of Texas located at 4749 Twin City HWY PA,

Name of Banker: Wendell Meaux Phone Number: 409-861-7270

Please list all request and/or approvals of funds from other sources (e.g., banks, credit unions, governmental entities, etc.) together with dates of application, status and funding source contact information:

Wendell Meaux at Community Bank of Texas. Loan amount of 4,035,283.47 was approved.



**SECTION D: PAYROLL**

Number of Current Employees:

FT 3 PT       

Please list current Job Classifications &amp; Wage Scales:

Job Classification	Wage Scale	Total Number of Employees in this Classification
Owner/Operator	40,000/YR	2
Business Manager	40,000/YR	1

Current Total Payroll: \$ 120,000/YR

Number of New Hires after completion of Project:

FT 15-20 PT       

Please list future New Hires Job Classifications &amp; Wage Scales after completion of Project:

Job Classification	Wage Scale	Total Number of Employees in this Classification	Estimated Number of Port Arthur Residents to be hired in this
Carwash Manager	80,000/YR	1	
Carwash Assistant Manager	40,000/YR	1	
Lube Manager	80,000/YR	1	
Lube Assistant Manager	40,000/YR	1	
Mechanical Technicians	28,000/YR	8	4
Sales Associates	28,000/YR	6	3

Total Projected Payroll: \$ 436,000.00/YR

Is the company taxes current?

☒ X Yes☐ No

What is the company's accounts receivable collection terms? (ex. 30,60,90 days)

30 Days

What is the company's accounts payable payment terms? (ex. 30,60,90 days)

30 Days

What is the company's inventory cycle? (ex. 7,28,50 days)

7 Days

What is the company's payroll cycle? (ex. 7,14,30 days)

14 Days

**SIGNATURES OF OFFICERS, SHAREHOLDERS, AND/OR PRINCIPALS OF KEMP CORKRAN, LLC**

The undersigned, as officers, shareholders, and/or principals of Kemp Corkran, LLC ("Applicant"), acknowledge that:

☒

there are no elected or appointed public officials with any ownership interest in said company ("Applicant")

☐

there are elected or appointed public officials with ownership interest in said company ("Applicant"), listed as below:

NAME	ENTITY	%OWNERSHIP

Name (Printed): \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_

Name (Printed): \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_

Name (Printed): \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_

Name (Printed): \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_

Name (Printed): \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_

Name (Printed): \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_

## SECTION E: CREDIT REPORT

**CERTIFICATION:** Please read the following and sign the application form below. All owners, officers, partners and/or principals must sign this application.

This is an Equal Opportunity Program. Discrimination is prohibited by Federal Law. Complaints of discrimination may be filed with the appropriate authorities.

The information in this application is provided for the purpose of applying for funds under the City of Port Arthur Section 4A Economic Development Corporation's incentive programs. The information in this application is accurate to the best of my knowledge. I understand that personal and/or business information may be requested pursuant to this application and I hereby give consent for such information to be provided to the City of Port Arthur Section 4A Economic Development Corporation and the City of Port Arthur. I also understand that the City of Port Arthur retains the sole decision as to whether or not this application is approved, disapproved or modified. The approval of this application is subject to the City of Port Arthur as well as the Port Arthur Section 4A Economic Development Corporation. It is my right to accept or decline the grant and/or loan amount, rate and terms as approved by the Program.

I authorize the City of Port Arthur Section 4A Economic Development Corporation to obtain a credit report on me through the credit reporting agency of its choice. If an adverse credit decision is made due totally or partly to the information on the credit report, the City or Port Arthur Section 4A Economic Development Corporation will give me a copy of the credit report, a summary of my rights under the Fair Credit Reporting Act, and the source of the credit report so that I may contact them if I wish.

I UNDERSTAND THAT ALL INFORMATION SUBMITTED TO THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION WILL BE KEPT ON FILE ACCORDING TO THE RECORDS RETENTION LAWS OF THE STATE OF TEXAS. IF I DO NOT REQUEST THE RETURN OF CERTAIN PRIVILEGED INFORMATION, IT WILL BE DISPOSED ON IN THE MANNER REQUIRED BY LAW.

Name (Printed): Greg Corkran  
Signature: [Signature]  
Date: 12-19-18

Name (Printed): \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

Name (Printed): Brian Kemp  
Signature: [Signature]  
Date: 12-19-18

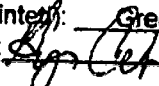
Name (Printed): \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

Name (Printed): Marilyn Borque  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

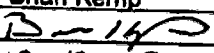
Name (Printed): \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**SECTION 4A GRANT INCENTIVE POLICY PROCEDURES**

The undersigned, as officers, shareholders, and/or principals of Kemp Corkran, LLC ("Applicant"), acknowledge that in conjunction with the Applicant's application for economic incentive assistance from the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC"), the PAEDC may require that one or more officers, shareholders and/or principals of applicant execute personal guarantees and/or security agreement-pledge agreements whereby said officer, shareholder and/or principal may be called upon to either guarantee all or a portion of the obligations of the Applicant and/or pledge all or portion of the officer, shareholder and/or principal's ownership interest in the Applicant in order to secure performance of the Applicant's obligations. Said potential guarantee and/or pledge may be in addition to any corporate obligation and/or pledge of corporate assets provided by the Applicant in conjunction with its execution of any future Grant Incentive and Loan Agreement. I acknowledge that I have been advised, in advance, of the potential request by the PAEDC for personal liability, whether direct or indirect, and with full knowledge of said potential, I am requesting that the PAEDC continue its investigation, review and consideration of the application filed on behalf of Applicant.

Name (Printed): Greg Corkran  
Signature:   
Date: 12-18-18

Name (Printed): \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

Name (Printed): Brian Kemp  
Signature:   
Date: 12-18-18

Name (Printed): \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

Name (Printed): Marilyn Borque  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

Name (Printed): \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**SECTION II DOCUMENTATION**

Please submit the following information along with your application.

	Information Enclosed	on Not Applicable
Business and Marketing Plan	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Business Financial Statements for last 3 years	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ProForma Financial Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Existing Business:</b> At least one year profit/loss & cash flow on a monthly basis, but not less than the period covered by the grant.		
<b>Start-Up Business:</b> At least two years profit/loss & cash flow on a monthly basis, but not less than the period covered by the grant.		
Business Tax Returns for the last three years Must be signed and dated. If past April 15th, please include prior year copy of extension.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Interim Business Financial Statement Within the last 90 days.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Resumes on the principals of the business Owners with 20% ownership or greater	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Personal Financial Statements of the principals Owners with 20% ownership or greater	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Personal Tax Return for each principal Owners with 20% ownership or greater for last 3 years	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Anticipated Environmental Impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Economic Impact Analysis	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Certificates of Good Standing Secretary of State State Comptroller	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Acknowledgement of Conflict of Interest Policy	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Acknowledgement of Grant Incentive Policy & Procedures	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Copies of all licenses and permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Proof of Insurance Coverage	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dun & Bradstreet Report	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## EXHIBIT "C"

### PERFORMANCE MILESTONE SCHEDULE KEMP CORKRAN, LLC

	DATE	MILESTONE
(a)	March 31, 2019	Review approved infrastructure plans by the City of Port Arthur and projected costs with PAEDC for the construction of the project at 2550 Highway 365, Port Arthur, Texas
(b)	April 30, 2019	Kemp Corkran LLC will issue a status report to PAEDC on Project construction at 2550 Highway 365, Port Arthur, Texas
	May 31, 2019	Kemp Corkran LLC will provide evidence of completion of the qualifying infrastructure improvements.
(c)	April 30, 2020	Kemp Corkran LLC will obtain Certificate of Occupancy for the first retail tenant space and provide a copy to the PAEDC PAEDC will issue 50% of Economic Incentive Grant
(d)	October 31, 2020	Kemp Corkran LLC will issue a status report to PAEDC on remaining project construction at 2550 Highway 365, Port Arthur, Texas
(e)	April 30, 2021	Kemp Corkran LLC will obtain Certificate of Occupancy for the second retail tenant space and provide a copy to the PAEDC. PAEDC will issue the remaining 50% of Economic Incentive Grant
(f)	April 30, 2021	Kemp Corkran LLC meets all of their contractual agreement. File is closed.
(g)	April 30, 2021	PAEDC Board of Directors release Letter of Credit to Kemp Corkran LLC

## **EXHIBIT "D"**

### **CERTIFICATION REGARDING LOBBYING**

For Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his knowledge and belief, that:

1. No funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of the City or of the PAEDC in connection with the awarding of any contract, the making of any grant, the making of any loan, the entering into of any cooperative agreement, or modification of any contract, grant, loan, or cooperative agreement.
2. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all Subs shall certify and disclose accordingly.

This certification is material representation of fact which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction.

**KEMP CORKRAN, LLC**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Greg Corkran, \_\_\_\_\_

**EXHIBIT "E"**  
**COMPLIANCE STATEMENT**

Kemp Corkran, LLC hereby certifies that it has fully complied with Local Government Code §176.006, as amended, which mandates the disclosure requirements for persons who contract or seek to contract with a local governmental entity.

**KEMP CORKRAN, LLC**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Greg Corkran, \_\_\_\_\_



**EXHIBIT "F"**  
**CONDITIONAL COMMERCIAL PROMISSORY NOTE**

Port Arthur, Texas

This COMMERCIAL PROMISSORY NOTE becomes effective on the date when **Kemp Corkran, LLC**, a limited partnership (hereinafter called "Maker") breaches that certain Economic Incentive Contract and Loan Agreement between the **City of Port Arthur Section 4A Economic Development Corporation** (hereinafter called "Lender") and Maker, dated \_\_\_\_\_, 2019

**Effective Date of Note:** The Note shall be dated effective the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ which is the date upon which Lender provided notification to Maker of its default under the Economic Incentive Contract & Loan Agreement (the "Agreement") by and between Lender and Maker dated \_\_\_\_\_, 2019 ("Date of Default").

**Principal Amount:** Principal amount is \$ \_\_\_\_\_, which is \$ \_\_\_\_\_ less the incentive credits earned by Maker according to the Agreement (described hereinabove).

**Term of the Loan:** From the Date of Default, Maker shall thereafter make equal monthly installments of principal and interest (interest being calculated as hereinafter specified at the rate of 10% per annum) until \_\_\_\_\_ (the "Final Payment Date"). Lender shall provide to Maker, a payment amortization schedule for the monthly installments due hereunder. Maker agrees that all principal and interest on this Note shall be due and payable by the Final Payment Date.

FOR VALUE RECEIVED, the undersigned "Maker", promises to pay to Lender, at its office at P.O. Box 1089, Port Arthur, Texas, 77640-1089, or such other place or places as the holder hereof shall from time to time designate in written notice to Maker, the principal amount, in legal and lawful money of the United States of America, together with interest thereon from the date hereof until maturity at the rate of **ten percent (10%)** per annum as detailed herein.

All past due principal and interest shall bear interest from date of maturity until paid at the rate of **fifteen percent (15%)** per annum, or to the maximum extent allowed by law (whichever is greater) as may hereafter be in effect, payable on demand after maturity.

Any notices required or permitted to be given by the holder hereof to Maker pursuant to the provisions of this note shall be in writing and shall be either personally delivered or transmitted by first class United States mail, addressed to Maker at the address designated below for receipt of notice (or at such other address as Maker may, from time to time, designate in writing to the holder hereof for receipt of notices hereunder). Any such notice personally delivered shall be effective as of the date of delivery, and any notice transmitted by mail, in accordance with the foregoing provisions, shall be deemed to have been given to and received by Maker as of the date on which such notice was deposited with the United States Postal Service, properly addressed and with postage prepaid.

This note is also secured by and entitled to the benefits of all other security agreements, pledges, collateral assignments, deeds of trust, guaranties, mortgages, assignments, and lien instruments, if any, of any kind executed by Maker or by any other party as security for any loans owing by Maker to the Lender. Such lien instruments shall include those executed simultaneously herewith, those heretofore executed, and those hereafter executed.

If any installment or payment of principal or interest of this note is not paid when due or any drawer, acceptor, endorser, guarantor, surety, accommodation party or other person now or hereafter primarily or secondarily liable upon or for payment of all or any part of this note (each hereinafter called an "other liable party") shall die, or become insolvent (however such insolvency may be evidenced); or if any proceeding, procedure or remedy supplementary to or in enforcement of

judgment shall be resorted to or commenced against Maker or any other liable party, or with respect to any property of any of them; or if any governmental authority or any court at the instance thereof shall take possession of any substantial part of the property of or assume control over the affairs or operations of, or a receiver shall be appointed for or take possession of the property of, or a writ or order of attachment or garnishment shall be issued or made against any of the property of Maker or any other liable party; or if any indebtedness for which Maker or any other liable party is primarily or secondarily liable shall not be paid when due or shall become due and payable by acceleration of maturity thereof, or if any event or condition shall occur which shall permit the holder of any such indebtedness to declare it due and payable upon the lapse of time, giving of notice or otherwise; or if Maker or any other liable party (if other than a natural person) shall be dissolved, wound up, liquidated or otherwise terminated, or a party to any merger or consolidation without the written consent of Lender; or if Maker or any other liable party shall sell substantially all or an integral portion of its assets without the written consent of Lender; or if Maker or any other liable party fails to furnish financial information requested by Lender; or if Maker or any other liable party furnishes or has furnished any financial or other information or statements which are misleading in any respect; or if a default occurs under any instrument now or hereafter executed in connection with or as security for this note; or any event occurs or condition exists which causes Lender to in good faith deem itself insecure or in good faith believe the prospect of payment or performance by Maker or any other liable party under this note, under any instrument or agreement executed in connection with or as security for this note, or under any other indebtedness of Maker or any other liable party to Lender is impaired; thereupon, at the option of Lender, the principal balance and accrued interest of this note and any and all other indebtedness of Maker to Lender shall become and be due and payable forthwith without demand, notice of default, notice of acceleration, notice of intent to accelerate the maturity hereof, notice of nonpayment, presentment, protest or notice of dishonor, all of which are hereby expressly waived by Maker and each other liable party. Lender may waive any default without waiving any prior or subsequent default.

If this note is not paid at maturity whether by acceleration or otherwise, and is placed in the hands of any attorney for collection, or suit is filed hereon, or proceedings are had in probate, bankruptcy, receivership, reorganization, arrangement or other legal proceedings for collection hereof, Maker and each other liable party agree to pay Lender its collection costs, including court costs and a reasonable amount for attorney's fees.

It is the intention of Maker and Lender to conform strictly to applicable usury laws. Accordingly, if the transaction contemplated hereby would be usurious under applicable law, then, in that event, notwithstanding anything to the contrary herein or in any agreement entered into in connection with or as security for this note, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under applicable law that is taken, reserved, contracted for, charged or received under this note or under any of the other aforesaid agreements or otherwise in connection with this note shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on this note by the holder hereof (or, if this note shall have been paid in full, refunded to Maker); (ii) in the event that maturity of this note is accelerated by reason of an election by the holder hereof resulting from any default hereunder or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest may never include more than the maximum amount allowed by applicable law, and excess interest, if any, provided for in this note or otherwise shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore prepaid, shall be credited on this note (or if this note shall have been paid in full, refunded to Maker); and (iii) all calculations of the rate of interest taken, reserved, contracted for, charged or received under this note or under any of the other aforesaid agreements or otherwise in connection with this note, that are made for the purpose of determining whether such rate exceeds the maximum lawful rate shall be made, to the extent permitted by applicable law, by amortizing, prorating, allocating, and spreading such interest over the entire term of the loan evidenced by this note (including all renewal and extended terms).

Maker may prepay all or any part of the principal of this note before maturity without penalty. No partial prepayment shall reduce, postpone or delay the obligation of Maker to continue

paying the installments herein provided on their respective due dates following any such partial prepayment until this note is fully paid.

The Maker shall be directly and primarily liable for the payment of all sums called for hereunder; and, except for notices specifically required to be given by the holder hereof to Maker pursuant to the earlier provisions of this note, Maker and each other liable party hereby expressly waive demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intention to accelerate maturity, notice of acceleration of maturity, and all other notice, filing of suit and diligence in collecting this note or enforcing or handling any of the security therefor, and do hereby agree to any substitution, exchange or release, in whole or in part, of any security here-for or the release of any other liable party, and do hereby consent to any and all renewals or extensions from time to time, of this note, or any part hereof, either before or after maturity, all without any notice thereof to any of them and without affecting or releasing the liability of any of them. Each holder hereof, in order to enforce payment of this note by any other liable party, shall be required to first institute suit or exhaust its remedies against Maker and to enforce its rights against any security therefor prior to enforcing payment of this Note by any other liable party.

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 2019.

**Kemp Corkran, LLC**

By: \_\_\_\_\_  
Greg Corkran

**THE STATE OF TEXAS**

**COUNTY OF JEFFERSON**

§  
§  
§

**ACKNOWLEDGEMENT**

**BEFORE ME, THE UNDERSIGNED** Notary Public, on this day personally appeared Greg Corkran, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of **Kemp Corkran, LLC** for the purposes and consideration therein expressed, and the Capacities therein stated.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this the \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public, State of Texas

**MAKERS' ADDRESS FOR RECEIPT OF NOTICE:**

Kemp Corkran, LLC


ATTN: Greg Corkran

**EXHIBIT "G"**  
**LETTER OF CREDIT**