

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF KNOTEL, INC. and KNOTEL CANADA,
INC.

APPLICATION OF KNOTEL CANADA, INC. UNDER SECTION 46 OF
THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
c. C-36, AS AMENDED

**SUPPLEMENTAL AFFIDAVIT OF JOHN M. JURELLER
(sworn March 11, 2021)**

I, John M. Jureller, of the City of Scarsdale, in the State of New York, MAKE OATH AND
SAY:

1. I am the Chief Financial Officer of Knotel, Inc. ("**Knotel Parent**"), a Delaware corporation that is the corporate parent of the Knotel group of companies ("**Knotel**" or the "**Knotel Group**"). I have served in this position since March 2, 2020. As Chief Financial Officer, I lead all finance, accounting, corporate development, financial planning and analysis, strategic planning and tax functions for the Knotel Group. As part of the Knotel Group's executive leadership team, I partner with other senior leaders, providing review and input on key business and strategic matters. Additionally, I participate in meetings of the Knotel Group's board of directors.

2. As a result of my tenure with the Knotel Group, my review of public and non-public documents, and my discussions with other senior executives, I am generally familiar with the Knotel Group's businesses, financial condition, day-to-day operations, and books and records, and, as such, have knowledge of the matters contained in this affidavit. Where I do not possess

such personal knowledge, I have stated the source of my information and, in all such cases, believe the information to be true. In preparing this affidavit, I have consulted with legal, financial and other advisors to the Knotel Group, and other members of the senior management team of the Knotel Group.

3. I swear this affidavit (the “**Supplemental Affidavit**”) to supplement my affidavit sworn March 8, 2021 (the “**Prior Affidavit**”) in support of the application of the applicant, Knotel Canada, Inc. (“**Knotel Canada**”), for certain relief for itself and Knotel Parent (collectively, the “**Canadian Filing Entities**”), pursuant to Part IV of the *Companies’ Creditors Arrangement Act* R.S.C., 1985, c. C-36, as amended (the “**CCAA**”). Knotel Canada seeks, among other things, the following relief:

- (a) an order finding that Knotel Canada is the foreign representative of itself and Knotel Parent (the “**Foreign Representative**”), finding that the centre of main interests for the Canadian Filing Entities is the United States, recognizing the cases commenced by the Canadian Filing Entities in the United States (together with the cases commenced by Knotel Parent’s other subsidiaries, the “**Chapter 11 Cases**”) as foreign main proceedings under Part IV of the CCAA and dispensing with the notice requirement under section 53(b) of the CCAA; and
- (b) an order recognizing certain orders of the United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”) made in the Chapter 11 Cases, appointing Alvarez and Marsal Canada Inc. (“**Alvarez & Marsal**”) as Information Officer in respect of these proceedings (in such capacity, the “**Information Officer**”) and granting the Administration Charge.

4. Unless indicated otherwise, capitalized terms not defined in this affidavit have the meaning given to them in the Prior Affidavit.

5. This Supplemental Affidavit provides additional information on the orders sought in the Chapter 11 Cases in respect of Knotel Canada and an update on the sales process.

6. At the time of the swearing of the Prior Affidavit, as described therein, Knotel Parent and its more than 200 subsidiaries in the United States (the “**Original Debtors**” and with Knotel Canada, the “**Debtors**”) had filed voluntary petitions for relief on January 31, 2021 and March 8, 2021, respectively, under the Bankruptcy Code in the U.S. Court, resulting in an automatic stay of proceedings.

7. On March 9, 2021, the Canadian Filing Entities sought and obtained an interim order from Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) staying proceedings in Canada and providing the Canadian Filing Entities with further protection for the Canadian Filing Entities’ Canadian assets, pending the entry of additional orders of the U.S. Court that would allow the Canadian Filing Entities to seek the Initial Order and the Supplemental Order.

I. FOREIGN REPRESENTATIVE ORDER AND OMNIBUS ORDER

8. On March 9, 2021, the Debtors filed three additional motions with the U.S. Court, each of which sought relief necessary to coordinate the Chapter 11 Cases of the Original Debtors with the Chapter 11 Case of Knotel Canada, and facilitate these CCAA proceedings.

9. On March 11, 2021, the U.S. Court granted the following orders with respect to Knotel Canada:

- (a) *Interim Order Directing Previously Entered Orders as Supplemented Shall Govern Knotel Canada, Inc. Prospectively* (Docket I.D. #405) (the “**Omnibus Order**”) (permitting the application of certain first day orders and the Bidding Procedures Order to Knotel Canada), a copy of which is attached hereto as **Exhibit “A”**;
- (b) *Order (i) Authorizing Knotel Canada, Inc. to Act as Foreign Representative and (ii) Granting Related Relief* (Docket I.D. #397), (the “**Foreign Representative Order**”)

(authorizing Knotel Canada to act as the Foreign Representative), a copy of which is attached hereto as **Exhibit “B”**; and

- (c) *Order (i) Directing Joint Administration of the Debtors’ Related Chapter 11 Cases and (ii) Granting Related Relief* (Docket I.D. #396) (permitting Knotel Canada’s Chapter 11 case to be administratively consolidated with the other Debtors’ cases), a copy of which is attached hereto as **Exhibit “C”**.

10. At the March 11, 2021 hearing, the U.S. Court expressed reservations about granting the Omnibus Order on a final basis without a more fulsome notice period for Canadian creditors. The U.S. Court granted the Omnibus Order on an interim basis and scheduled a final hearing for March 30, 2021 at 11:30 am ET. The Canadian Filing Entities intend to engage with their stakeholders and will endeavor to address any issues that arise in advance of the final hearing on the Omnibus Order.

11. Knotel Canada is seeking recognition of the Omnibus Order and the Foreign Representative Order, as set out in my Prior Affidavit.

II. ADDITIONAL INFORMATION ON THE SALE PROCESS

(a) The Stalking Horse Agreement

12. On January 31, 2021 the Original Debtors entered into a stalking horse asset purchase agreement (the “**Stalking Horse Agreement**”) with Digiatech, LLC (“**Digiatech**”), its first and second lien holder. Pursuant to the Stalking Horse Agreement, Digiatech committed to a \$70 million going concern credit bid as a “floor” for further competitive bidding. In exchange for making such a bid, the Stalking Horse Agreement provided for bid protections consisting of a termination fee (the “**Termination Fee**”) of \$2,100,000 (i.e. 3% of \$70,000,000) and an expense reimbursement of up to \$500,000 of reasonable and documented out-of-pocket fees payable to Digiatech.

13. On February 1, 2021 the Original Debtors filed a motion with the U.S. Court for entry of an order approving, among other things, the Original Debtors entry into the Stalking Horse Agreement and the bidding procedures in connection with the sale of substantially all of the Debtor's assets (the "**Bidding Procedures Motion**").

14. On February 15, 2021, the official committee of unsecured creditors (the "**Committee**") filed an objection to the Bidding Procedures Motion with the U.S. Court, arguing, among other things, that the U.S. Court should not approve (i) the Termination Fee set forth in the Stalking Horse Agreement or (ii) Digiatech's right to credit bid until the Committee had an opportunity to investigate and possibly object to such credit bidding.

15. The Original Debtors, the Committee, Digiatech, and Digiatech's parent company, Newmark Partners, L.P, entered into negotiations to address the Committee's concerns, and ultimately agreed to grant the Committee standing to challenge Digiatech's prepetition liens up until one day prior to the sale hearing (the "**Challenge Period**"). Additionally, Digiatech agreed to waive the Termination Fee contained in the Stalking Horse Agreement in exchange for the Committee's agreement not to pursue a \$1 million payment to an affiliate of Digiatech for prepetition real estate due diligence.

16. On February 22, 2021, the U.S. Court entered an order (the "**Bidding Procedures Order**"), a copy of which is attached to the Prior Affidavit as **Exhibit "J"**, reflecting the parties' agreement and, among other things, authorizing the Debtors to select Digiatech as the stalking horse bidder, setting out the bid deadline as 10:00 a.m. EST on March 12, 2021, and setting the Challenge Period as ending one day prior to the sale hearing.

(b) **Amendment to the Stalking Horse Agreement**

17. The Debtors and Digiatech filed a joint motion on March 8, 2021, seeking approval of, among other things, a settlement term sheet (the "**Settlement Term Sheet**"), amending the

Bidding Procedures Order, and setting out the terms for an amendment to the Stalking Horse Agreement. A copy of the motion to approve the Settlement Term Sheet (including exhibits) is attached hereto as **Exhibit “D”**.

18. Pursuant to the Settlement Term Sheet, Digiatech, as the stalking horse bidder (the **“Stalking Horse Bidder”**), in furtherance of its continued efforts to preserve value for the Debtors’ estates, will, among other things, (i) increase the purchase price to ensure that \$6.2 million will be available to establish a fund for distributions to unsecured creditors; (ii) increase the wind down budget to \$500,000; and (iii) confirm its commitment to assume certain Canadian tax obligations, including harmonized sales tax remittances. In exchange, the Committee will cease the costly litigation efforts and agree to waive its rights with respect to the Challenge Period and any challenge to Digiatech’s right to credit bid the full amount of its secured claims to purchase the Debtors’ assets through a substantially uncontested sale.

19. In consideration for the settlement, the Debtors are willing to provide the Stalking Horse Bidder with a topping fee or, failing that, an increase in the expense reimbursement cap subject to U.S. Court approval.

20. As set forth in the Settlement Term Sheet, the settlement increases the purchase price in the Stalking Horse Agreement which correspondingly will increase subsequent bids, thereby providing additional value to the Debtors’ estates. As consideration for this increased purchase price, the Parties have agreed to reinstate the Termination Fee provided for in the Stalking Horse Agreement.

21. The Settlement Term Sheet also provides that if the auction is cancelled, the parties will work to expedite the Sale Hearing.

22. On March 11, 2021, the U.S. Court announced that it would grant an order approving the Settlement Term Sheet (the **“Settlement Term Sheet Order”**) and a second order amending the

Bidding Procedures Order. In light of the amendment to the Bidding Procedures Order, the Canadian Filing Entities are seeking recognition of the Settlement Term Sheet Order in connection with the recognition of the previously entered Bidding Procedures Order. I understand that the Canadian Filing Entities will provide a copy of the entered Settlement Term Sheet Order and a copy of the amendment to the Bidding Procedures Order as soon as it is available.

(c) **Relevant Dates for Canadian Creditors**

23. The Bidding Procedures Order establishes a timeline for completion of the sale of Knotel's business, including procedures for the assumption and assignment of contracts. Knotel Canada's Chapter 11 Case and these proceedings under the CCAA were commenced to make the assets of Knotel Canada available to purchasers in the U.S. sales process. As such, the process set out in the Bidding Procedures Order is intended to apply to the Canadian assets.

24. The below table sets out the important sale related dates, including the deadlines to object to assumption of contracts and related cure amounts.

<u>Bid Procedures Step</u>	<u>Date</u>
List of Potential Assumption of Executory Contracts or Unexpired Leases and Cure Amounts	February 22, 2021
Supplemental List of Potential Assumption of Executory Contracts or Unexpired Leases and Cure Amounts (including certain Knotel Canada Contracts)	March 8, 2021
Bid Deadline	March 12, 2021 at 10:00 am
Auction	March 12, 2021 at 2:00 pm
Cure Objections Deadline	March 12, 2021 at 5:00 pm
Assumption and Assignment Objections Deadline	March 16, 2021 at 12:00 pm

Sale Objection Deadline (and Objections to Adequate Assurance)	March 16, 2021 at 12:00 pm
Deadline to Schedule Additional Subsequently Designated Assigned Contracts and Cure Amounts	March 17, 2021 (one day prior to the Sale Hearing)
Sale Hearing	March 18, 2021 at 2:00 pm
Hearing on Cure and Assumption Objections	March 23, 2021 at 2:00 pm
Objection Deadline for Subsequently Designated Assigned Contracts	March 24, 2021 at 4:00 pm (with a hearing to be scheduled)

List of Potential Assumption of Executory Contracts or Unexpired Leases and Cure Amounts Filed

25. The list of Potential Assumption of Executory Contracts or Unexpired Leases and Cure Amounts sets out the executory contracts and unexpired leases proposed to be assumed by the Debtors and assigned to the bidder (the “**Assigned Contracts**”) who is selected to purchase Knotel’s business (the “**Successful Bidder**”, and their bid, the “**Successful Bid**”), as well as the amounts of any payments necessary to cure any defaults arising under any of the Assigned Contracts (“**Cure Amounts**”). An initial list of Assigned Contracts and Cure Amounts was filed with the U.S. Court on February 22, 2021, prior to Knotel Canada’s CCAA filing. The list is redacted to protect customer information, but I am advised that the list contains no Canadian creditors of the Original Debtors.

26. A copy of the supplemental list of Assumed Contracts and Cure Amounts that was filed with the U.S. Court on March 8, 2021 is attached hereto as **Exhibit “E”**. This supplemental list of Assigned Contracts and Cure Amounts identifies certain Canadian contracts that may be assumed and assigned.

Cure Objections Deadline

27. The Cure Objections Deadline (March 12) is the deadline by which objections to any Cure Amounts must be received by the applicable parties. Objections must be in the form described in the Bidding Procedures Order.

28. Canadian creditors, like U.S.-based creditors, were given notice of the filing of the supplemental list of contracts by mail and by email, where possible. In light of the expedited timelines under this sales process, the Debtors are endeavouring to work with each of their contract counterparties in Canada. To the extent any Canadian contract counterparty has not received actual notice of the potential assumption and assignment of their contract to date, they are encouraged to contact the proposed Information Officer or the Debtors to resolve any outstanding issues.

Subsequently Designated Assigned Contracts and Cure Amounts Filed

29. Up until one day prior to the Sale Hearing (March 17), the Debtors may designate additional Assigned Contracts and related Cure Amounts or modify the previously stated Cure Amount associated with any of these Assigned Contracts. Objections to these subsequently designated Assigned Contracts or Cure Amounts must be filed by the Objection Deadline for Subsequently Designated Assigned Contracts (March 24).

Assumption and Assignment, Sale, and Adequate Assurance Objections Deadline

30. The Assumption and Assignment Sale, and Adequate Assurance Objections Deadline (March 16) is the deadline by which objections to either the entry of an order by the U.S. Court approving a sale of Knotel's business, including to the Stalking Horse Agreement, the conduct of the auction and the assumption of any Assigned Contracts, or the adequate assurance of future performance by the Successful Bidder to counterparties to Assigned Contracts, must be received

by the applicable parties. Such objections must be in the form described in the Bidding Procedures Order.

Sale Hearing

31. The Sale Hearing is the date and time for the hearing where the U.S. Court will consider the Successful Bid and will be requested to grant an order approving a sale of Knotel's business (the "**Sale Order**").

32. The Canadian Filing Entities anticipate seeking recognition of the Sale Order in Canada as quickly as possible after the Sale Order is granted.

Hearing on Cure and Assumption Objections

33. If the parties are unable to consensually resolve an objection to a Cure Amount prior to the Sale Hearing, such an objection will be heard at the Sale Hearing or, if necessary, at the Hearing on Cure and Assumption Objections (March 23). At such time, the Sale Hearing will have been conducted and, if the Sale Order is granted, the issues to be determined at this hearing will be limited to determining whether the Cure Amounts are appropriate and whether any Assigned Contract is a contract that cannot be assumed.

34. The Debtors continue to believe that a sale of the business to a purchaser identified through the auction is in the best interests of all stakeholders, including Canadian stakeholders.

III. CONSENT OF ALVAREZ & MARSAL TO ACT AS INFORMATION OFFICER

35. Alvarez & Marsal has consented to act as Information Officer in respect of these CCAA proceedings, a copy of which is attached hereto as **Exhibit "F"**.

IV. CONCLUSION


36. I believe the relief set out herein and in the proposed orders is necessary for the protection of the Canadian Filing Entities' property and the interests of creditors of the Canadian Filing Entities and the Knotel Group.

SWORN BEFORE ME by video conference
by John M. Jureller at the City of Scarsdale
in the State of New York, before me at the
City of Toronto in the Province of Ontario
on March 11, 2021 in accordance with O.
Reg. 431/20, Administering Oath of
Declaration Remotely.



A commissioner for Taking Affidavits
(or as may be)

Kieran May
LSO# 79672P



John M. Jureller

This is Exhibit “**A**” referred to in the Affidavit of John M. Jureller sworn before me March 11, 2021 by videoconference in accordance with O. Reg 431/20.

A handwritten signature in black ink, appearing to read 'Kieran May', positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Kieran May
LSO# 79672P

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

Knotel, Inc., *et al.*,

Debtors.¹

Chapter 11

Case No. 21-10146 (MFW)

Jointly Administered

Re: D.I. 383

**INTERIM ORDER DIRECTING PREVIOUSLY ENTERED ORDERS AS
SUPPLEMENTED SHALL GOVERN KNOTEL CANADA, INC., PROSPECTIVELY**

Upon the motion (the “Motion”)² of Knotel Canada, Inc. (“Knotel Canada”) and Knotel, Inc., and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), for entry of an interim order (this “Interim Order”) to have certain orders previously entered by this Court, as supplemented by **Exhibit 1** attached hereto, govern in the chapter 11 case of Knotel Canada prospectively, as more fully described in the Motion; and upon consideration of the First Day Declaration; and adequate notice of the Motion having been given; and it appearing that the relief requested by the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.omniagentsolutions.com/knotel> or, alternatively, via the Bankruptcy Court at <https://ecf.deb.uscourts.gov/cgi-bin/login.pl> with a Public Access to Court Electronic Records (“PACER”) account, which may be obtained at <https://pacer.uscourts.gov>. The location of Debtor Knotel, Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 5-9 Union Square West, New York, NY 10003

² Capitalized terms not defined herein are defined in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The orders listed in **Exhibit 1** attached hereto (the “Original Orders”), as supplemented therein, are applicable to the chapter 11 case of Knotel Canada to the extent the relief granted in each of the Original Orders is relevant to Knotel Canada’s case.
3. The Original Orders shall be made applicable to Knotel Canada’s chapter 11 cases *nunc pro tunc* to March 8, 2021.
4. With respect to the Original Orders, the terms “Petition Date,” “prepetition,” and “postpetition” shall refer to March 8, 2021, as applicable to Knotel Canada.
5. The Debtors are authorized, but not directed, to file a notice with an amended **Exhibit 1** identifying any additional prior orders that they desire to be made applicable to Knotel Canada. Such notice shall be provided to: (i) the Office of the United States Trustee; (ii) counsel to the DIP Lender and Prepetition Lender; (iii) counsel to the Committee; and (iv) all parties requesting notice pursuant to Bankruptcy Rule 2002. Absent any objection within seven (7) calendar days of service of such notice, the newly identified orders shall be deemed effective and applicable to Knotel Canada *nunc pro tunc* to March 8, 2021.
6. The Debtors and the Clerk of the Court are authorized to take all actions necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion.
7. Responses or objections to the Motion and entry of a final order with respect to the Motion must: (a) be made in writing; (b) state with particularity the grounds therefor; (c) conform to the Bankruptcy Rules and the Local Rules; and (d) be served upon (i) counsel to the Debtors, Milbank LLP, 2029 Century Park East, 33rd Floor, Los Angeles, California 90067,

Attn: Mark Shinderman (mshinderman@milbank.com) and Daniel B. Denny (ddenny@milbank.com) and Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware, 19899-1347, Attn: Robert J. Dehney (rdehney@morrisnichols.com), Matthew B. Harvey (mharvey@morrisnichols.com), Matthew O. Talmo (mtalmo@morrisnichols.com), and Eric W. Moats (emoats@morrisnichols.com); (ii) counsel to the Debtors' postpetition agent, Sullivan & Worcester LLP, 1633 Broadway, New York, New York 10019, Attn: Jeffrey Gleit (jgleit@sullivanlaw.com); (iii) counsel to the Official Committee of Unsecured Creditors, Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, New Jersey 07068, Attn: Michael S. Etkin, Esq. (metkin@lowenstein.com); and (iv) the Office of the United States Trustee for the District of Delaware, 844 N. King Street, Wilmington, Delaware 19801, Attn: Joseph J. McMahon, Jr. (joseph.mcmahon@usdoj.gov) (the "Notice Parties").

8. The deadline by which responses or objections to the Motion and the final order must be filed and received by counsel to the Debtors is March 23, 2021, at 4:00 p.m. (prevailing Eastern Time). A final hearing, if required, on the Motion will be held on March 30, 2021, at 11:30 a.m. (prevailing Eastern Time). If no responses or objections are filed to the Motion and entry of this Interim Order on a final basis, the Court may enter a final order without further notice or a hearing.

9. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Interim Order shall be immediately effective and enforceable upon its entry.

10. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Interim Order.

Dated: March 11th, 2021
Wilmington, Delaware

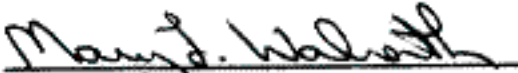

MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Original Orders
(As Supplemented Herein)

D.I.	Date	Order	Supplement ¹
57	2/3/21	Order Authorizing the Debtors to (I) File (A) a Consolidated List of Creditors and (B) a Consolidated List of Debtors' Top Thirty Creditors, (II) Provide Notices, Including Notices of Commencement of Cases and Section 341 Meeting, and (III) Granting Related Relief	
59	2/3/21	Order Approving Debtors' Application for an Order Appointing Omni Agent Solutions as Claims and Noticing Agent for the Debtors <i>Nunc Pro Tunc</i> to the Petition Date	
227	2/22/21	Order Approving (I) the Debtors' Entry into the Stalking Horse Agreement and Related Expense Reimbursement (II) the Bidding Procedures in Connection with the Sale of All or Substantially All of the Debtors' Assets, (III) the Procedures for the Assumption and Assignment Of Executory Contracts and Unexpired Leases, (IV) the Form and Manner of Notice of the Sale Hearing, Assumption Procedures, and Auction Results, (V) Dates for an Auction and Sale Hearing and (VI) Granting Related Relief	
253	2/24/21	Order Approving Employment and Retention of Milbank LLP as Attorneys for Debtors and Debtors in Possession <i>Nunc Pro Tunc</i> to the Petition Date	
263	2/24/21	Order Authorizing the Retention and Employment of Morris, Nichols, Arsht & Tunnel LLP as Delaware Bankruptcy Co-counsel for the Debtors <i>Nunc Pro Tunc</i> to the Petition Date	
264	2/24/21	Order Authorizing the Debtors to File Under Seal Portions of Their Creditor Matrix and Other Filings Containing Certain Confidential Commercial Information	

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Capitalized terms used but not defined are defined in the respective orders.

Order			Supplement ¹
D.I.	Date		
266	2/24/21	Order Authorizing the Retention and Employment of Omni Agent Solutions as Administrative Agent for the Debtors and Debtors in Possession <i>Nunc Pro Tunc</i> to the Petition Date	
267	2/24/21	Final Order (I) Authorizing the Debtors to Pay Certain Prepetition Taxes and Fees, (II) Authorizing Banks and Financial Institutions to Honor and Process Checks and Transfers Related Thereto, and (III) Granting Related Relief	
278	2/25/21	Order (I) Approving Procedures for (A) Interim Compensation and Reimbursement of Expenses of Retained Professionals and (B) Expense Reimbursement for Official Committee Members and (II) Granting Related Relief	
279	2/25/21	Final Order (I) Authorizing Payment of Prepetition Claims of Certain Critical Vendors and (II) Granting Related Relief	
280	2/25/21	Final Order (I) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Utility Services, (II) Approving Proposed Adequate Assurance of Payment to Utility Providers and Authorizing Debtors to Provide Additional Assurance, (III) Establishing Procedures to Resolve Requests for Additional Assurance and (IV) Granting Related Relief	

D.I.	Date	Order	Supplement ¹
281	2/25/21	Final Order (I) Authorizing Continued Use of Cash Management System, (II) Authorizing Use of Prepetition Bank Accounts, Account Control Agreements, and Payment Methods, (III) Authorizing Use of Existing Business Forms, (IV) Authorizing Continuation of Ordinary Course Intercompany Transactions, (V) Granting Administrative Priority to Postpetition Intercompany Claims, and (VI) Extending Time to Comply With the Requirements of 11 U.S.C. § 345(b)	<ul style="list-style-type: none"> Additional Bank Account Acct. Holder: Knotel Canada, Inc. Bank Name: JPMorgan Chase 9154 Last Four Digits of Acct. No: 9154 Acct. Type/Purpose: Operating Acct.
282	2/25/21	Final Order (I) Authorizing the Debtors to Pay Certain Prepetition Wages, Benefits and Other Compensation Obligations, (II) Authorizing Financial Institutions to Honor All Obligations Related Thereto, and (III) Granting Related Relief	
283	2/25/21	Final Order Authorizing Debtors to (A) Continue Insurance Policies and Agreements Relating Thereto, (B) Honor Certain Prepetition Obligations in Respect Thereof, (C) Renew, Revise, Extend, Supplement, Change or Enter Into New Insurance Coverage as Needed in Their Business Judgment and (D) Continue to Honor Insurance Premium Finance Obligations	
299	2/25/21	Order Pursuant to 11 U.S.C. §§ 327(e) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014(a), and Local Rule 2014-1 Authorizing Retention and Employment of Fenwick & West, LLP as Corporate Counsel for the Debtors <i>Nunc Pro Tunc</i> to the Petition Date	

This is Exhibit **"B"** referred to in the Affidavit of John M. Jureller sworn before me March 11, 2021 by videoconference in accordance with O. Reg 431/20.

A handwritten signature in black ink, appearing to read 'Kieran May', positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Kieran May
LSO# 79672P

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re Knotel, Inc., <i>et al.</i> , Debtors. ¹	Chapter 11 Case No. 21-10146 (MFW) Jointly Administered
In re Knotel Canada, Inc., Debtor. ²	Chapter 11 Case No. 21-10540 (MFW) Joint Administration Requested

**ORDER (I) AUTHORIZING KNOTEL CANADA, INC., TO ACT AS FOREIGN
REPRESENTATIVE AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)³ of Knotel Canada, Inc. (“Knotel Canada”), and Knotel, Inc., and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), for entry of an order (this “Order”) (a) authorizing Knotel Canada to act as foreign representative on behalf of the Debtors’ estates pursuant to section 1505 of the Bankruptcy Code and (b) granting related relief, all as more fully set forth in the Motion;

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.omniagentsolutions.com/knotel> or, alternatively, via the Bankruptcy Court at <https://ecf.deb.uscourts.gov/cgi-bin/login.pl> with a Public Access to Court Electronic Records (“PACER”) account, which may be obtained at <https://pacer.uscourts.gov>. The location of Debtor Knotel, Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 5-9 Union Square West, New York, NY 10003

² The last four digits of Knotel Canada, Inc.’s business number are 0136 and its service address in these chapter 11 cases is 5-9 Union Square West, New York, NY 10003.

³ Capitalized terms not defined herein are defined in the Motion.

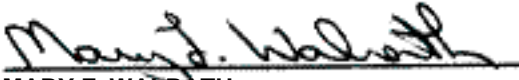
and adequate notice of the Motion having been given; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Knotel Canada is hereby authorized to act as the Foreign Representative on behalf of the Debtors' and their estates, including for itself and Knotel, Inc., in connection with the Canadian Proceeding. As Foreign Representative, Knotel Canada shall be authorized and shall have the power to act in any way permitted by applicable foreign law, including (a) seeking recognition of any of the Debtors' chapter 11 cases in the Canadian Proceeding, (b) requesting that the Canadian Court lend assistance to this Court in protecting the Debtors' property located within the territorial jurisdiction of Canada, (c) seeking any other appropriate relief from the Canadian Court that Knotel Canada deems just and proper in furtherance of the protection of the Debtors' estates and (d) consistent with any orders of the Canadian Court, retaining Canadian professionals on behalf of itself and Knotel, Inc., and paying the costs of the Court-appointed information officer and its counsel, each without further order of this Court.
3. This Court requests the aid and assistance of the Canadian Court to recognize the Debtors' chapter 11 cases as a "foreign main proceeding" and Knotel Canada as a "foreign representative" pursuant to the CCAA, and to recognize and give full force and effect in all provinces and territories of Canada to this Order.
4. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

5. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: March 11th, 2021
Wilmington, Delaware


MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

This is Exhibit “C” referred to in the Affidavit of John M. Jureller sworn before me March 11, 2021 by videoconference in accordance with O. Reg 431/20.

A handwritten signature in black ink, appearing to read 'Kieran May', positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Kieran May
LSO# 79672P

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

<p>In re Knotel, Inc., <i>et al.</i>,</p> <p style="text-align: center;">Debtors.¹</p>	<p>Chapter 11</p> <p>Case No. 21-10146 (MFW)</p> <p>Jointly Administered</p>
<p>In re Knotel Canada, Inc.,</p> <p style="text-align: center;">Debtor.</p> <p>Canadian Business No: 79746 0136</p>	<p>Chapter 11</p> <p>Case No. 21-10540 (MFW)</p> <p>Joint Administration Requested</p>

**ORDER (I) DIRECTING JOINT ADMINISTRATION OF THE DEBTORS' RELATED
CHAPTER 11 CASES AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² by Knotel Canada, Inc. (“Knotel Canada”) and Knotel, Inc., and its affiliated debtors and debtors in possession (the “Original Debtors” and, together with Knotel Canada, the “Debtors”), for entry of an order (this “Order”) pursuant to section 105(a) of the Bankruptcy Code, Bankruptcy Rule 1015(b) and Local Rule 1015-1, directing joint administration of Knotel Canada’s chapter 11 case with the Original Debtors’ chapter 11 cases; and upon consideration of the First Day Declaration; and notice of the Motion not having been required pursuant to Local Rule 1015-1; and it appearing that the relief requested by the

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.omniagentsolutions.com/knotel> or, alternatively, via the Bankruptcy Court at <https://ecf.deb.uscourts.gov/cgi-bin/login.pl> with a Public Access to Court Electronic Records (“PACER”) account, which may be obtained at <https://pacer.uscourts.gov>. The location of Debtor Knotel, Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 5-9 Union Square West, New York, NY 10003.

² Capitalized terms not defined herein are defined in the Motion.

Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The above-captioned cases are consolidated for procedural purposes only and shall be jointly administered under Case No. 21-10146 (MFW).
3. The Clerk of Court shall maintain one file and one docket for these jointly administered cases, which file and docket shall be the file and docket for Knotel, Inc., Case No. 21-10146 (MFW).
4. The caption of the jointly administered cases shall read as follows:

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

Knotel, Inc., *et al.*,

Debtors.¹

Chapter 11

Case No. 21-10146 (MFW)

Jointly Administered

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://www.omniagentsolutions.com/knotel> or, alternatively, via the Bankruptcy Court at <https://ecf.deb.uscourts.gov/cgi-bin/login.pl> with a Public Access to Court Electronic Records ("PACER") account, which may be obtained at <https://pacer.uscourts.gov>. The location of Debtor Knotel, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 5-9 Union Square West, New York, NY 10003.

5. All pleadings and other papers filed in these chapter 11 cases shall bear the foregoing consolidated caption.
6. The foregoing consolidated caption satisfies the requirements of section 342(c)(1) of the Bankruptcy Code.

7. A docket entry shall be made in the Knotel Canada chapter 11 case substantially as follows:

An Order has been entered in accordance with rule 1015(b) of the Federal Rules of Bankruptcy Procedure and rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware directing joint administration of the chapter 11 cases of Knotel, Inc. and its affiliated debtors, including Knotel Canada, Inc. The docket in the chapter 11 case of Knotel, Inc., Case No. 21-10146 (MFW), should be consulted for all matters affecting these cases.

8. Nothing contained in the Motion or this Order shall be deemed or construed as directing or otherwise effecting a substantive consolidation of the Debtors or the Debtors' estates.

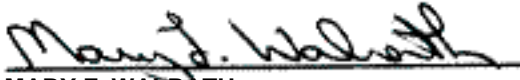
9. The Debtors are authorized to utilize a combined service list for the Debtors' jointly-administered cases and may send combined notices to creditors of the Debtors and other parties in interest where appropriate.

10. The Debtors and the Clerk of the Court are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

11. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Order shall be immediately effective and enforceable upon its entry.

12. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Dated: March 11th, 2021
Wilmington, Delaware


MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

This is Exhibit “D” referred to in the Affidavit of John M. Jureller sworn before me March 11, 2021 by videoconference in accordance with O. Reg 431/20.



Commissioner for Taking Affidavits (or as may be)

Kieran May
LSO# 79672P

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

KNOTEL, INC., *et al.*,

Debtors.¹

)
) Chapter 11
)
) Case No. 21-10146 (MFW)
)
) (Jointly Administered)
)
)

**JOINT MOTION OF THE DEBTORS AND DIGIATECH, LLC PURSUANT
TO SECTION 105 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE
9019 FOR ENTRY OF AN ORDER (I) APPROVING COMPROMISE AND
SETTLEMENT TERM SHEET AMONG THE DEBTORS, THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS, DIGIATECH, LLC, AND
NEWMARK PARTNERS, L.P.; (II) AMENDING BIDDING PROCEDURES
ORDER; (III) AUTHORIZING AMENDMENTS TO THE STALKING
HORSE AGREEMENT; AND (IV) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) and the stalking horse bidder and DIP lender, Digiatech, LLC (“*Digiatech*”), hereby file this motion (the “*Motion*”), pursuant to section 105 of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), for entry of an order (I) approving the compromise set forth in the settlement term sheet (the “*Term Sheet*”) by and among: (i) the Debtors; (ii) the Official Committee of Unsecured Creditors (the “*Committee*”); (iii) Digiatech; and (iv) Newmark Partners, L.P.² (“*Newmark Partners*” and collectively, the “*Parties*”); (II) in connection therewith, amending the Bidding Procedures Order

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.omniagentsolutions.com/knotel> or, alternatively, via the Bankruptcy Court at <https://ecf.deb.uscourts.gov/cgi-bin/login.pl> with a Public Access to Court Electronic Records (“*PACER*”) account, which may be obtained at <https://pacer.uscourts.gov>. The location of Debtor Knotel, Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 5-9 Union Square West, New York, NY 10003.

² Digiatech is a wholly-owned subsidiary of Newmark Partners which is the guarantor under the Stalking Horse Agreement.

(as defined herein); (III) authorizing the Debtors and Digiatech to amend the Stalking Horse Agreement in conformity with the Term Sheet, and (IV) granting related relief. In support of this Motion, the movants respectfully represent:

PRELIMINARY STATEMENT

1. The proposed settlement set forth in the Term Sheet will allow the Debtors to avoid costly litigation while expediting a sale of their assets and providing more than \$6.2 million of value and other material benefits to holders of allowed general unsecured claims.

2. In addition to the \$6.2 million fund dedicated to unsecured creditors, the Parties have agreed that Digiatech, in furtherance of its continued efforts to preserve value for the Debtors' estates, as Stalking Horse Bidder, will, *inter alia*, (i) relinquish its entitlement to distributions on any deficiency claim remaining after its credit bid, (ii) transfer its right to assert potential claims to a Liquidating Trustee for the benefit of creditors, (iii) increase funding for preparing and confirming a combined liquidating plan and disclosure statement from \$100,000 to \$500,000, (iv) agree not to pursue Avoidance Actions against non-insider creditors, and (v) guarantee offers of employment to a significant number of the Debtors' current employees. In exchange, the Committee will cease the costly litigation efforts that recently began and agree to waive its Challenge Rights and any challenge to Digiatech's right to credit bid the full amount of its secured claims to purchase the Debtors' assets through a substantially uncontested sale.

3. In consideration for the settlement, the Debtors are willing to provide the Stalking Horse Bidder with a topping fee or, failing that, an increase in the expense reimbursement cap, subject to Court approval (although the settlement is not conditioned on the Court's approval of same). The proposed settlement agreement preserves the auction and the possibility of overbidding, but a higher or otherwise better bid will now need to consider the price of

consideration provided by Digiotech under the settlement agreement in order to “top” the Stalking Horse Bidder.

4. The Parties, after significant negotiation, have crafted this agreement to provide significant value to the Debtors’ estates and to expedite closing of the sale which will preserve the Debtors’ business, and save a significant number of jobs. As the Parties recognize, and the Court is aware, the Debtors’ business is inherently at odds with the nature of a pandemic. Constant cash burn has continued into these Chapter 11 Cases in an amount exceeding \$3 million per week.

5. As set forth in the Term Sheet, the settlement increases the Purchase Price in the Stalking Horse Agreement which correspondingly will increase subsequent bids, thereby providing additional value to the Debtors’ estates. As consideration for this increased Purchase Price, the Parties have agreed to reinstate the Termination Fee provided in the Stalking Horse Agreement.

6. The Term Sheet is the product of hard fought negotiations between the Parties in recognition of the limited time available to reach consensus. The settlement is designed to provide substantial value to the Debtors’ estates and creditors, and provide significant job security for the Debtors’ employees, and should be approved.

JURISDICTION AND VENUE

7. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Parties consent to the entry of a final order by the Court in connection with this Motion to the

extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

8. The bases for the relief requested herein are section 105 of the Bankruptcy Code and Rule 9019 of the Bankruptcy Rules.

BACKGROUND

Parties and Chapter 11 Filing

9. On January 31, 2021 (the “*Petition Date*”), the Debtors filed voluntary petitions for relief in this Court, commencing cases (the “*Chapter 11 Cases*”) under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases.

10. Digiatech is, *inter alia*, the prepetition secured lender to the Debtors. As of the Petition Date, Digiatech’s first lien loan to the Debtors (purchased from Bridge Bank) had an outstanding balance of principal and interest totaling approximately \$18.55 million and its second lien loan to the Debtors (purchased from TriplePoint Capital) had an outstanding principal balance of \$50.0 million.

11. On February 8, 2021, the United States Trustee (the “*U.S. Trustee*”) appointed the Committee comprising seven of the Debtors’ unsecured creditors [D.I. 122]. The Committee thereafter selected Potter Anderson & Corroon LLP and Lowenstein Sandler LLP as its proposed counsel, whose retention applications are currently pending before the Court.

Stalking Horse Agreement and Bidding Procedures

12. On January 31, 2021, the Debtors and Digiatech entered into the Stalking Horse Agreement (the “***Stalking Horse Agreement***”) contemplating the sale of substantially all of the Debtors’ assets to Digiatech. Pursuant to the Stalking Horse Agreement, Digiatech committed to a \$70 million going concern credit bid as a “floor” for further competitive bidding. To protect Digiatech in exchange for making such a bid, the Stalking Horse Agreement provided for bid protections consisting of a termination fee (the “***Termination Fee***”) of \$2,100,000 (*i.e.* 3% of \$70,000,000) and an expense reimbursement of up to \$500,000 of reasonable and documented out-of-pocket fees.

13. On February 1, 2021, the Debtors filed the *Debtors’ Motion for Entry of an Order Approving (I)(A) the Debtors’ Entry into Stalking Horse Agreement and Related Bid Protections; (B) the Bidding Procedures in Connection with the Sale of Substantially All of the Debtors’ Assets; (C) the Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) the Form and Manner of Notice of the Sale Hearing, Assumption Procedures, and Auction Results, and (E) Dates for an Auction and Sale Hearing; (II)(A) the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Claims, Liens, Liabilities, Rights, Interests, and Encumbrances and (B) the Debtors’ Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [D.I. 16] (the “***Bidding Procedures Motion***” or “***Sale Motion***”).

14. On February 15, 2021, the Committee filed an objection to the Bidding Procedures Order [D.I. 162] arguing, among other things, that the Court should not approve (i) the Termination Fee set forth in the Stalking Horse Agreement or (ii) Digiatech’s right to credit bid until the Committee had an opportunity to investigate and possibly object to such credit bidding.

15. The Parties negotiated to address the Committee's concerns, ultimately agreeing to grant the Committee standing to challenge Digiatech's prepetition liens up until one day prior to the sale hearing (the "**Challenge Period**"). Additionally, Digiatech agreed to waive the \$2.1 million Termination Fee contained in the Stalking Horse Agreement, approval of which had been sought in the Bidding Procedures Motion, in exchange for the Committee's agreement not to pursue a \$1 million payment to an affiliate of Digiatech for prepetition real estate due diligence. The Court entered an order [D.I. 227] (the "**Bidding Procedures Order**") reflecting the Parties' agreement and, *inter alia*, (i) authorized the Debtors to select Digiatech, together with any designated affiliate thereof, as the stalking horse bidder; (ii) scheduled for the Qualified Bid Deadline of March 12, 2021 at 10:00 a.m. EST, an auction that same day at 2:00 p.m. EST, and a Sale Hearing on March 18, 2021; and (iii) set forth the Challenge Period as running until one day prior to the Sale Hearing.

DIP Financing

16. On February 1, 2021, the Debtors filed the *Debtors' Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, and 507 (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing, (B) Grant Senior Secured Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Prepetition Secured Lender; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief* [D.I. 15] (the "**DIP Motion**") seeking to obtain DIP financing from Digiatech through a combination of new money loans and a roll-up of a portion of the Debtors' prepetition secured debt.

17. On February 3, 2021, the Court entered an interim order granting the DIP Motion [D.I. 72] (the "**Interim DIP Order**").

18. On February 22, 2021, the Committee objected to the DIP Motion. After out-of-Court negotiations between the Parties and a hearing held on February 26, 2021, the Parties resolved the majority of the issues in the Committee's objection. The Court entered a final order on March 2, 2021 granting the DIP Motion [D.I. 330] (the "***Final DIP Order***") that, *inter alia*, granted the relief sought in the DIP Motion, including the roll-up loans, subject to the Committee's Challenge Period, and Digiatech's right to credit bid at the anticipated auction (discussed below).

Discovery

19. On February 22, 2021, the Committee filed notices indicating that it had served written discovery requests on both the Debtors [D.I. 231] and Digiatech [D.I. 232].

20. On March 2, 2021, the Committee filed notices of deposition as to the Debtors [D.I. 336], Digiatech [D.I. 337], Newmark Group Inc. [D.I. 338], and Howard Lutnick [D.I. 339].

SUMMARY OF SETTLEMENT TERM SHEET

21. In order to avoid the cost of litigation to the Debtors' estates, allow for an expeditious sale and transition of the Debtors' business, and provide certainty to the Parties and the Debtors' employees, the Parties entered into the Term Sheet which provides for a global resolution of outstanding issues. The following is a summary of the pertinent terms of the Term Sheet:³

- **Cash for distribution to Holders of General Unsecured Claims:** The amount of \$6.2 million (the "***GUC Fund***") shall be available for distribution to holders of allowed general unsecured claims pursuant to a Plan of Liquidation (the "***Plan***"). To the extent the Debtors' cash on hand is in an amount less than the GUC Fund, Digiatech and/or Newmark Partners shall fund the difference.
- **Waiver of Avoidance Actions by Digiatech:** Insider Avoidance Actions shall not be included in the sale to Digiatech. Digiatech shall agree not to sell, transfer,

³ The following is provided for summary purposes only. If there are any discrepancies between this summary and the Term Sheet, the Term Sheet shall control as the binding operative document. A copy of the executed Term Sheet is attached as Exhibit 1 to the Settlement Order (defined below), filed simultaneously herewith.

assign, or convey the non-Insider Avoidance Actions or pursue collections under the Avoidance Actions for 6 years and 5 days.

- **Estate Causes of Action:** Any potential claims and causes of action against the Debtors' current and former directors and/or officers and other potential estates' claims shall not be included in the sale to Digiatech and shall be transferred to a Liquidating Trust for the benefit of creditors in accordance with the Plan.
- **Waiver of Committee Challenge, Withdrawal of Objections and General Release:** All ongoing discovery will cease immediately. Upon entry of the Settlement Order (as defined herein), ongoing discovery, including document requests and notices of depositions, will be withdrawn immediately. The Committee shall (i) withdraw the Hilco objection [D.I. 347], and (ii) waive and release its Challenge Rights as defined in the Bidding Procedures Order and the Final DIP Order. Digiatech shall be entitled to credit bid the full amount of the obligations owing to it under the prepetition credit agreements and the DIP credit agreement.
- **Waiver of Digiatech/Newmark Partners Claims:** Digiatech and Newmark Partners and their respective parents, subsidiaries and affiliates shall waive and release any and all claims against the estates, including any deficiency claims they may have, other than in connection with a breach of Stalking Horse Agreement and DIP Facility.
- **Wind-Down Matters:** Digiatech and/or Newmark Partners shall fund the estates with \$500,000 which shall be used to prepare and obtain confirmation of a combined Disclosure Statement and Plan and the wind-down of the Debtors' estates pursuant to a Wind-Down Budget. The Debtors shall file the combined Plan and Disclosure Statement shortly after closing of the Sale.
- **Amendments to Stalking Horse Agreement and Bidding Procedures Order:** The Stalking Horse Agreement shall be amended as necessary to reflect the terms of the Term Sheet and the settlement, including, without limitation, to provide that the Purchase Price shall be increased to reflect (i) the funding of the \$6.2 million GUC Fund, (ii) the increase in the wind-down budget from \$100,000 to \$500,000 (a \$400,000 increase) and (iii) the settlement of the Employment Claim (as defined in the Term Sheet) in the amount of \$110,000 (such amounts, collectively, the "Settlement Amounts"). In addition, Digiatech and the Debtors shall apply to the Bankruptcy Court through this Motion to amend the Stalking Horse Agreement and the Bidding Procedures Order to (i) reinstate the Termination Fee in the amount of \$2,100,000 as set forth in the Stalking Horse Agreement, or, alternatively, approve an increase of the Expense Reimbursement cap by \$250,000 to a total of \$750,000; and (ii) provide that any Overbid (as defined therein) must include the Settlements Amounts, the Expense Reimbursement, and the Termination Fee. The Committee does not oppose such amendment and reinstatement.

- **Employee Issues:** Digiatech shall provide the Debtors with a list of Offer Employees (as defined in the Stalking Horse Agreement) no later than March 8, 2021, together with written offers of employment to certain officers of the Debtors. Digiatech shall have the right to supplement the list of Offer Employees to add additional employees at any time on or before the Closing Date.

22. While the Parties are seeking approval of the Term Sheet at this time, the Term Sheet is subject to definitive documentation, including any necessary amendments to the Stalking Horse Agreement.

RELIEF REQUESTED

23. The Parties seek entry of an order, substantially in the form attached hereto as Exhibit A (the “**Settlement Order**”), (i) approving the settlement set forth in the Term Sheet attached as Exhibit 1 to the Settlement Order, (ii) amending the Bidding Procedures Order in connection therewith, (iii) authorizing amendments to the Stalking Horse Agreement in connection therewith, and (iv) granting related relief.

BASIS FOR RELIEF

I. THE SETTLEMENT IS FAIR, REASONABLE, AND IN THE INTEREST OF THE ESTATE

24. Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may, after appropriate notice and a hearing, approve a compromise or settlement so long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See* Fed. R. Bankr. P. 9019(a); *In re Marvel Entm’t Grp, Inc.*, 222 B.R. 243, 249 (D. Del. 1998) (“[T]he ultimate inquiry [is] whether ‘the compromise is fair, reasonable, and in the interest of the estate.’” (citation omitted)); *In re Key3Media Grp., Inc.*, 336 B.R. 87, 92 (Bankr. D. Del. 2005) (“[T]he bankruptcy court has a duty to make an informed, independent judgment that the compromise is fair and equitable.”). Compromises are favored in bankruptcy in order to “minimize litigation and expedite the administration of a bankruptcy estate.” *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir.

1996); *see also Will v. Northwestern Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006) (“[s]ettlements are favored [in bankruptcy]”); *In re Adelpia Commc’n Corp.*, 361 B.R. 337, 348 (Bankr. D. Del. 2007) (same). Ultimately, the decision whether or not to approve a settlement agreement lies within the sound discretion of the Court.” *In re Nortel Networks, Inc.*, 522 B.R. 491, 510 (Bankr. D. Del. 2014).

25. The Third Circuit applies a four-factor balancing test under which proposed settlements are analyzed. These factors are: (1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors. *In re Martin*, 91 F.3d at 393. Consideration of these factors requires the Court to make an objective, informed comparison of the results of litigation versus the benefits of compromise. *Protective Comm. for Indep. Shareholders of TMT Trailer Ferry Inc. v. Anderson*, 390 U.S. 414, 424 (1968). A settlement need not be the best possible compromise, but only that it falls “within the reasonable range of litigation possibilities somewhere above the lowest point in the range of reasonableness.” *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 833 (Bankr. D. Del. 2008); *see also In re W.R. Grace & Co.*, 475 B.R. 34, 77-78 (Bankr. D. Del. 2012) (“In analyzing the compromise or settlement agreement under the Martin factors, courts should not have a ‘mini-trial’ on the merits, but rather should canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness.”).

26. The Parties respectfully submit that the settlement set forth in the Term Sheet constitutes a fair and reasonable compromise that is in the best interests of the Debtors’ estates. The unusual exigencies of this case require expedited action by the Debtors and all involved parties to avoid a freefall liquidation and preserve value for the Debtors’ estates. Digiatech has provided

significant benefits to the Debtors' estates by funding these cases, preserving jobs, preserving value and by agreeing, in the Term Sheet, to provide meaningful benefits to unsecured creditors, including \$6.2 million in cash. As the Court is well aware, the Debtors' weekly burn rate exceeds \$3 million in the midst of a global pandemic. Each week that this case continues the Debtors become closer to an uncontrolled liquidation.

27. The Parties recognize that the any litigation brought by the Committee would be costly. Even success by the Committee – which the Debtors and Digiatech dispute – in any potential litigation could have the unintended consequence of jeopardizing a going concern sale and its intended benefits. The settlement, therefore, is in the best interests of the Debtors' estates by, among other things, (i) creating the GUC Fund for unsecured creditors, (ii) eliminating costs of discovery, (iii) waiving non-insider Avoidance Actions; and (iv) providing a larger budget for wind-down proceedings.

28. Indeed, approval of the settlement proposed by the Term Sheet benefits all parties in interest by preserving value and expediting the anticipated sale of the Debtors' assets. After difficult good faith negotiations, the Parties believe the resolution set forth in the Term Sheet is reasonable, appropriate, and in the best interests of the Debtors' estates. By virtue of the settlement, Digiatech is preserving a significant number of jobs in the midst of the pandemic and enabling the Debtors to proceed with a Plan that provides millions of dollars to unsecured creditors and other benefits, instead of a liquidating freefall with little available cash.

II. AMENDING THE BIDDING PROCEDURES ORDER AND AUTHORIZING AMENDMENTS TO THE STALKING HORSE AGREEMENT IS APPROPRIATE AND NECESSARY TO EFFECTUATE THE SETTLEMENT

29. If the Court grants the relief requested in approving the Term Sheet pursuant to Bankruptcy Rule 9019, it follows that the Bidding Procedures Order and Stalking Horse Agreement will need to be amended to reflect and effectuate the settlement terms.

30. It is within the Court's inherent powers and the scope of section 105(a) of the Bankruptcy Code for the Court to amend its own orders for cause. *See, e.g., In re John Clay & Co.*, 43 B.R. 797, 806-07 (Bankr. D. Utah 1984) ("A bankruptcy court has continuous power to vacate or modify its own orders."). Here, the requisite cause exists because the settlement cannot be properly implemented without such amendments.

31. With respect to the Bidding Procedures Order, because as part of the settlement in the Term Sheet, the movants agreed (and the Committee does not oppose), to seek to reinstate the Termination Fee (as defined in the Stalking Horse Agreement) in the amount of \$2,100,000, as provided in the Stalking Horse Agreement, and previously waived in connection with the Bidding Procedures Order negotiations, the Bidding Procedures Order should be amended to provide that the Termination Fee is approved in its entirety. Moreover, to the extent this request is denied, the movants request (and the Committee does not oppose), an increase in the Debtors' Expense Reimbursement (as defined in the Stalking Horse Agreement) from a cap of \$500,000 to \$750,000.

32. Additionally, the Bidding Procedures Order should be amended to provide that any Overbid must include the Settlement Amounts as additional consideration to be paid by Digiatech, the Expense Reimbursement, and the Termination Fee, if approved by the Court. As such, for the avoidance of doubt, any Overbid by a subsequent successful bidder must assume and include the Settlement Amounts, Expense Reimbursement, and, if applicable, the Termination Fee.

33. Similarly, if the settlement is approved, certain corresponding amendments will be required to conform the Stalking Horse Agreement. Although paragraph 15 of the Bidding Procedures Order provides for amendment of the Stalking Horse Agreement without further order of the Court, given the nature of the settlement, the Debtors and Digiatech seek confirmation from the Court that they may enter into further important amendments to the Stalking Horse Agreement as necessary to effectuate the settlement.

34. If the Bidding Procedures Order is amended as requested herein, the Debtors propose to provide notice of the Settlement Order to, as set forth below, all recipients of the Bidding Procedures Order.

35. Digiatech has provided significant benefits to the Debtors' estates by funding these cases, ensuring the employment of a significant number of the Debtors' employees, and by providing funds sufficient for unsecured creditor recoveries and a liquidating plan in these cases. For these reasons, among others, movants' requested modifications to the Bidding Procedures Order and Stalking Horse Agreement should be approved.

WAIVER OF BANKRUPTCY RULE 6004(A) AND 6004(H)

36. To implement the foregoing successfully, the Parties seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of estate property under Bankruptcy Rule 6004(h).

NOTICE

37. Notice of this Motion will be given to: (a) the U.S. Trustee for the District of Delaware; (b) counsel to the Committee, Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, New Jersey 07068, Attn: Michael S. Etkin, Esq. (email metkin@lowenstein.com); (c) counsel to the Stalking Horse Bidder, Sullivan & Worcester LLP, 1633 Broadway, New York, New York 10019, Attn: Jeffrey R. Gleit, Esq (email jgleit@sullivanlaw.com); (d) any parties

known or reasonably believed to have expressed an interest in the Debtors' assets; (e) all parties that received notice of the Bidding Procedures Order, and (f) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Parties submit that, under the circumstances, no other or further notice is required.

NO PRIOR REQUEST

38. No prior request for the relief sought in this motion has been made to this or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, the Parties respectfully request that the Court enter the Settlement Order, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: March 8, 2021
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT &
TUNNELL LLP

/s/ Robert J. Dehney
Robert J. Dehney (No. 3578)
Matthew B. Harvey (No. 5186)
Matthew O. Talmo (No. 6333)
Andrew R. Workman (No. 6710)
1201 N. Market Street, 16th Floor
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Facsimile: (302) 658-3989
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mharvey@mnat.com
mtalmo@mnat.com
aworkman@mnat.com

-and-

Mark Shinderman (admitted *pro hac vice*)
Daniel B. Denny (admitted *pro hac vice*)
MILBANK LLP
2029 Century Park East
33rd Floor
Los Angeles, CA 90067
Telephone: (424) 386-4000
Facsimile: (213) 629-5063
Email: mshinderman@milbank.com
ddenny@milbank.com

*Counsel to the Debtors and
Debtors in Possession*

Dated: March 8, 2021
Wilmington, Delaware

GREENBERG TRAURIG, LLP

/s/ Dennis A. Meloro

Dennis A. Meloro (DE Bar No. 4435)
1007 North Orange Street, Suite 1200
Wilmington, DE 19801
Telephone: 302-661-7000
Facsimile: 302-661-7360
Email: melorod@gtlaw.com

-and-

SULLIVAN & WORCESTER LLP

Jeffrey R. Gleit (*pro hac vice*)
Allison H. Weiss (*pro hac vice*)
1633 Broadway
New York, NY 10019
Telephone: 212-660-3043
Facsimile: 212-660-3001
Email: jgleit@sullivanlaw.com
aweiss@sullivanlaw.com

Amy A. Zuccarello (*pro hac vice*)
One Post Office Square
Boston, MA 02109
Telephone: 617-338-2988
Facsimile: 617-338-2880
Email: azuccarello@sullivanlaw.com

Counsel for Digiatech, LLC

Exhibit A

Proposed Settlement Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

KNOTEL, INC., *et al.*,

Debtors.¹

)
) Chapter 11
)
) Case No. 21-10146 (MFW)
)
) (Jointly Administered)
)
)

**ORDER PURSUANT TO SECTION 105 OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULE 9019 APPROVING COMPROMISE AND SETTLEMENT TERM
SHEET AMONG THE DEBTORS, THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS, AND DIGIATECH, LLC; (II) AMENDING BIDDING PROCEDURES
ORDER; (III) AUTHORIZING AMENDMENTS TO THE STALKING HORSE
AGREEMENT; AND (IV) GRANTING RELATED RELIEF**

Upon the joint motion [D.I. •] (the “*Motion*”)² of the above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) and the stalking horse bidder and DIP lender Digiatech, LLC (“*Digiatech*”), for entry of an order pursuant to section 105 of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), (I) approving the compromise set forth in the settlement term sheet (the “*Term Sheet*”) by and among: (i) the Debtors; (ii) the Committee; and (iii) Digiatech (collectively, the “*Parties*”) attached hereto as Exhibit 1; (II) in connection therewith, amending the Bidding Procedures Order; (III) authorizing the Debtors and Digiatech to amend the Stalking Horse Agreement in conformity with the proposed settlement, and (IV) granting related relief, all as more

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.omniagentsolutions.com/knotel> or, alternatively, via the Bankruptcy Court at <https://ecf.deb.uscourts.gov/cgi-bin/login.pl> with a Public Access to Court Electronic Records (“PACER”) account, which may be obtained at <https://pacer.uscourts.gov>. The location of Debtor Knotel, Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 5-9 Union Square West, New York, NY 10003.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion or the Bidding Procedures Order, as applicable.

fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having reviewed the Motion and any objections thereto; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.
2. Pursuant to section 105 of the Bankruptcy Code and Bankruptcy Rule 9019, the settlement evinced by the Term Sheet, a copy of which is attached hereto as Exhibit 1, is approved in all respects and incorporated herein as if set forth at length.
3. The Bidding Procedures Order is hereby amended to provide that the Termination Fee in the amount of \$2,100,000 is approved as set forth in the Stalking Horse Agreement.
4. The terms and conditions set forth in the Term Sheet shall be binding for all purposes in these cases and upon all of the Parties.
5. The Debtors and Digiatech are authorized to enter into such amendments to the Stalking Horse Agreement as necessary to reflect the terms and conditions of the settlement set forth in the Term Sheet with the consent of the Committee, which consent shall not be unreasonably withheld.

6. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

8. The Debtors are authorized to take all reasonable actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

9. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of the Term Sheet, subsequent settlement agreement, and this Order.

Exhibit 1

Term Sheet

IN RE KNOTEL, INC., *ET AL.*
COMMITTEE SETTLEMENT TERM SHEET

THIS COMMITTEE SETTLEMENT TERM SHEET (THE “TERM SHEET”) SUMMARIZES CERTAIN KEY TERMS OF A GLOBAL RESOLUTION WITH RESPECT TO A SETTLEMENT AND COMPROMISE OF ALL CLAIMS AND CAUSES OF ACTION ASSERTED BY AND AMONG THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS (THE “COMMITTEE”), DIGIATECH, LLC (“DIGIATECH”), NEWMARK PARTNERS, L.P. (“NEWMARK”), AND THE DEBTORS, INCLUDING, WITHOUT LIMITATION, A RELEASE AND WAIVER OF THE COMMITTEE’S CHALLENGE RIGHTS (AS DEFINED IN THE BIDDING PROCEDURES ORDER AND FINAL DIP ORDER) THAT THE COMMITTEE HAS OR COULD HAVE ASSERTED IN RESPECT OF THE PREPETITION SECURED DEBT OBLIGATIONS AND DIP OBLIGATIONS AND THE RELATED PREPETITION LIENS OF THE PREPETITION SECURED LENDER AND THE DIP LIENS OF THE DIP LENDER (EACH AS DEFINED IN THE FINAL DIP ORDER), THE DEBTORS’ MOTION TO SELL SUBSTANTIALLY ALL OF ITS ASSETS (THE “SALE MOTION”), AND DIGIATECH’S STALKING HORSE AGREEMENT AND CREDIT BID, AND SHALL BE SUBJECT TO THE COMPLETION OF DEFINITIVE DOCUMENTS INCORPORATING THE TERMS SET FORTH HEREIN, INCLUDING ANY NECESSARY AMENDMENTS TO THE STALKING HORSE AGREEMENT.

THIS TERM SHEET SHALL BE BINDING AS TO THE KEY TERMS REFLECTED HEREIN BUT SHALL OTHERWISE BE SUBJECT TO THE EXECUTION OF DEFINITIVE DOCUMENTATION. THIS TERM SHEET DOES NOT CONTAIN ALL OF THE TERMS OF A PROPOSED PLAN OF LIQUIDATION OR AMENDMENT TO THE STALKING HORSE AGREEMENT.

Unless otherwise indicated, capitalized terms used but not defined in this Term Sheet shall have the meanings ascribed to them in the Sale Motion and Bidding Procedures Order, as applicable.

<u>SUMMARY OF KEY TERMS</u>	
Cash for Distribution to Holders of General Unsecured Claims	The sum of \$6.2 million (the “ <u>GUC Fund</u> ”) shall be set aside for distribution to holders of allowed general unsecured claims pursuant to a Plan of Liquidation (the “ <u>Plan</u> ”) at the Committee’s direction; <i>provided</i> that the Committee may elect to reallocate any portion of the GUC Fund to fund costs associated with administering the wind-down of the Debtors’ estates. The GUC Fund shall be funded first from available cash-on-hand in the Debtors’ estates (including the Settlement Proceeds previously received by the Debtors and Digiatech’s cash collateral) and second, to the extent that \$6.2 million does not remain in the Debtors’ estates at Closing, Digiatech will cause Newmark and Newmark agrees to fund the shortfall in accordance with its parent guarantee under Section 10.17 of the Stalking Horse Agreement, which guarantee shall be deemed to apply to the additional economic obligations under this Term Sheet and any definitive documents with respect thereto. To the extent that Digiatech breaches the Stalking Horse Agreement by not Closing as required, the releases set forth herein are void.

Waiver of Avoidance Actions by Digiatech	<p>Section 2.01(r) of the Stalking Horse Agreement shall be amended to provide for the sale of Avoidance Actions to Digiatech, excluding any Avoidance Actions against Insiders. In addition, the Stalking Horse Agreement shall be Amended to provide that Digiatech shall not sell, transfer, assign or convey the Avoidance Actions to any other person or entity and that Digiatech covenants and agrees that it will not pursue or attempt in any manner to collect on the Avoidance Actions, and that these provisions will survive the closing for a period of 6 years and 5 days.</p>
Claims against the Debtors' Directors and Other Estates' Claims Excluded from Sale and Transferred to Liquidating Trust	<p>The Stalking Horse Agreement shall be amended to exclude from the definition of Purchased Assets any claims and causes of action against the Debtors' current and former directors and/or officers (the "<u>D&O Claims</u>") and other estates' claims (together with the D&O Claims, the "<u>Estates Causes of Action</u>"). The Estates Causes of Action shall be conveyed and transferred to the Liquidating Trust under the Plan. The Plan will provide for a release of the sole independent director. Any D&O Claims against the current CIO, the COO, the CFO, and the GC will be limited to all available insurance proceeds; provided, however that if any of these individuals knowingly, recklessly, or through gross negligence take or took any action or fail or failed to act which jeopardizes insurance coverage and the insurance carrier therefore declines coverage, this limitation will no longer apply. The Plan will not otherwise limit the liability of or release any other current or former director and/or officer of the Debtors. For the avoidance of doubt, all cross claims, counterclaims, defenses and offsets of the potential defendants remain and are not waived. Potential defendants, if any, retain their rights of indemnity and advancement, if any and subject to the Bankruptcy Code. To the extent there is a joint or common interest privilege, that privilege, if any, is not being waived by the transfer of the potential causes of action.</p>
Waiver of Committee Challenge, withdrawal of objections and General Release	<p>All discovery in connection with the Committee's Challenge Rights will cease immediately upon the execution of this Term Sheet. Upon entry of an order by the Bankruptcy Court approving the settlement in this Term Sheet, the Committee agrees to immediately withdraw all outstanding discovery requests and deposition notices.</p> <p>Upon approval of this Term Sheet the Committee agrees to withdraw the Hilco objection [Docket No. 347].</p> <p>The Committee agrees to waive and release its Challenge Rights as defined under the Bidding Procedures Order [Docket No. 227] and the Final DIP Order [Docket No. 330], as well as any other claims, causes of action, or challenges against Digiatech, Newmark and any of its affiliates, representatives, etc. to the fullest extent permitted by law. The form and substance of such release shall be fully set forth in the definitive documents and shall be reasonably acceptable to the parties to this Term Sheet. Digiatech shall be entitled as the Buyer under the Stalking Horse Agreement to credit bid the full amount of the indebtedness and the obligations owing to it under the Prepetition Credit Agreements and the DIP Credit Agreement pursuant to 363(k) of the Bankruptcy Code and the Stalking Horse Bid shall be deemed a Qualified Bid at the Auction and the Committee agrees to waive all rights with respect thereto.</p> <p>Nothing in this Section shall in any way limit or release the obligations of Digiatech and Newmark under this Term Sheet and any definitive documents with respect thereto, under the Stalking Horse Agreement (as may be amended), the DIP Facility</p>

	and the Final DIP Order.
Waiver of Digiatech/Newmark Claims	Digiatech and Newmark and their respective parents, subsidiaries and affiliates agree to waive and release any and all claims for distributions against the estates, including any deficiency claims they may have, other than claims in connection with any breach of the Stalking Horse Agreement, and the DIP Facility (except as modified by this Term Sheet and any definitive documents with respect thereto).
Wind-Down Matters	<p>The Stalking Horse Agreement shall be amended to increase the wind-down budget from \$100,000 to \$500,000 (the “<u>Wind-Down Amount</u>”) which shall be funded by Digiatech as part of its Purchase Price (as defined in the Stalking Horse Agreement). Newmark agrees to guarantee Digiatech’s obligation to fund the Wind-Down Amount in accordance with its parent guarantee under Section 10.17 of the Stalking Horse Agreement.</p> <p>The Wind-Down Amount shall be used by the Debtors to prepare and obtain confirmation of a combined Disclosure Statement and Plan and the wind-down of the Debtors’ estates pursuant to a Wind-Down Budget, which shall be in form and substance reasonably acceptable to the Committee. The Committee shall select the Liquidating Trustee who shall be charged with the winding down of the Chapter 11 Cases. The Liquidating Trustee shall be responsible for filing the final tax returns and otherwise discharging the responsibilities set forth in the Plan and Liquidating Trust Agreement. This amount is in addition to the assumption of liabilities set forth in section 2.03(f) of the Stalking Horse Agreement and as clarified in the Bid Procedures Order.</p>
Plan of Liquidation	Shortly after the closing of the Sale to Digiatech, but without any cost or expense to Digiatech except as set forth in this Term Sheet, any definitive documents with respect thereto, the Stalking Horse Agreement, as may be amended, the DIP Facility, and the Final DIP Order, the Debtors shall file a combined Plan and Disclosure Statement, which will establish a Liquidating Trust, and proceed with a joint hearing consistent with the terms of this Term Sheet and otherwise subject to consent of the parties, which consent shall not be withheld unreasonably.
Amendments to Stalking Horse Agreement and Bidding Procedures Order	The Stalking Horse Agreement shall be amended as necessary to reflect the terms of this Term Sheet and the Global Settlement, including, without limitation, to provide that the Purchase Price shall be increased to reflect (i) the funding of the \$6.2m GUC Fund, (ii) the increase in the wind-down budget from \$100,000 to \$500,000 (a \$400,000 increase) and (iii) the settlement of the Employment Claim (as defined below) in the amount of \$110,000 (such amounts, collectively, the “ <u>Settlement Amounts</u> ”). In addition, Digiatech and the Debtors shall apply to the Bankruptcy Court to amend the Stalking Horse Agreement and the Bid Procedures Order to (i) reinstate the Termination Fee in the amount of \$2,100,000 as set forth in the Stalking Horse Agreement prior to its deemed amendment in connection with the entry of the Bidding Procedures Order; and (ii) provide that any Overbid (as defined therein) must include the Settlements Amounts, the Expense Reimbursement, and the Termination Fee, as applicable and subject to the approval of the Bankruptcy Court. If the Bankruptcy Court denies the Debtors and Digiatech’s request for the reinstatement of the Termination Fee, the Debtors and Digiatech shall seek approval of an increase of the Expense Reimbursement cap to \$750,000. For the avoidance of doubt, any Overbid by a subsequent successful bidder must assume and include the Settlement Amounts, Expense

	<p>Reimbursement, and, if applicable, the Termination Fee. In view of the concessions made by Digiatech and Newmark in connection with this Term Sheet, the Committee agrees to support such application. The Court's failure to grant such application for any reason will have no impact on this Term Sheet.</p> <p>On or before March 8, 2021, provided that the parties hereto shall have agreed upon a form of amendment to the Stalking Horse Agreement resolving the Offer Employees issues contemplated by this Term Sheet, the Debtors shall seek authority to approve this Term Sheet and the transactions contemplated hereby and the corresponding amendments to the Stalking Horse Agreement and the Bid Procedures Order.</p>
Canadian Insolvency Filings	Digiatech reaffirms its obligation under the Stalking Horse Agreement to pay Taxes (as defined in the Stalking Horse Agreement) of the Debtors which may become due and payable or otherwise arising in connection with the filing or administration of insolvency proceedings of the Debtors' direct Canadian subsidiaries, to the extent that such Taxes constitute Personal Liability Taxes (as defined in the Stalking Horse Agreement).
Employee Issues	<p>Notwithstanding anything set forth in Section 7.17 of the Stalking Horse Agreement to the contrary, Digiatech agrees to provide a list of Offer Employees (as defined in the Stalking Horse Agreement) to the Debtors no later than March 8, 2021 along with written offers of employment to certain officers of the Debtors. Digiatech shall have the right to supplement the list of Offer Employees to add additional employees at any time on or before the closing date.</p> <p>Section 7.17(a) of the Stalking Horse Agreement shall be amended to reflect this change.</p>
Counterparties	Digiatech is authorized to contact all landlords and contract counterparties in connection with negotiating proposed cure amounts and any other potential disputes.
Settlement of Employment Claim	Digiatech authorizes the Debtors to use available cash-on-hand in the Debtors' estates, if any, to pay the settlement of a threatened action by a former employee (the " <u>Employment Claim</u> ") in the amount of \$110k. This obligation will be considered payable under the Stalking Horse Agreement, and as such will be contingent upon Digiatech being the winning bidder and the Closing of the transactions contemplated under the Stalking Horse Agreement and subject to Newmark's parent guarantee under the Stalking Horse Agreement and this Term Sheet and any definitive documents with respect thereto.
Funding	Newmark agrees to provide Digiatech with the necessary funding in accordance with its parent guarantee under Section 10.17 of the Stalking Horse Agreement which shall be deemed to apply to the additional economic obligations under this Term Sheet and any definitive documents with respect thereto in order for Digiatech to fulfill its obligations under this Term Sheet and the Stalking Horse Agreement as of and after the closing date.
Sale Hearing; Request to Reschedule	In the event that no qualified bids are received by noon on March 12, 2021, the Committee will agree to the cancelling of the auction and will support a request by the Debtors and Digiatech to schedule the Sale Hearing as soon after noon on March 12 as practicable.

Closing	<p>The Debtors shall cooperate to close the transaction as soon as possible following the entry of the Sale Order in form and substance satisfactory to Digiatech on a date to be selected by Digiatech.</p> <p>At Closing the fees and expenses set forth and included in the DIP Budget for the DIP Lender and the Prepetition Secured Lender (as adequate protection) shall be paid for the period through and including the Closing Date.</p>
Preservation of Defenses and Set-Off Rights	For the avoidance of doubt, all defenses and set-off rights in connection with Digiatech's or any transferee of Digiatech's assertion of claims being transferred to Digiatech by the Debtors under the Stalking Horse Agreement are expressly preserved.
Access to Debtors' Books and Records	Section 7.06 of the Stalking Horse Agreement will be amended to provide the Committee, access to the Debtors' books and records and appropriate transition services subsequent to the closing of the Stalking Horse Agreement. ¹

Agreed and accepted by:

On behalf of Digiatech, LLC

By: 

Name: Michael Rispoli

Title: Chief Financial Officer

On behalf of Newmark Partners, L.P.

By: 

Name: Michael Rispoli

Title: Chief Financial Officer

On behalf of the Official Committee of Unsecured Creditors

By: _____

Name:

Title:

On behalf of Knotel, Inc. and its applicable affiliates

By: _____

Name:

Title:

¹ For the avoidance of doubt, section 7.06 of the Stalking Horse Agreement already provides these rights to the Debtors and any subsequently identified estate fiduciaries.

Closing	<p>The Debtors shall cooperate to close the transaction as soon as possible following the entry of the Sale Order in form and substance satisfactory to Digiatech on a date to be selected by Digiatech.</p> <p>At Closing the fees and expenses set forth and included in the DIP Budget for the DIP Lender and the Prepetition Secured Lender (as adequate protection) shall be paid for the period through and including the Closing Date.</p>
Preservation of Defenses and Set-Off Rights	For the avoidance of doubt, all defenses and set-off rights in connection with Digiatech's or any transferee of Digiatech's assertion of claims being transferred to Digiatech by the Debtors under the Stalking Horse Agreement are expressly preserved.
Access to Debtors' Books and Records	Section 7.06 of the Stalking Horse Agreement will be amended to provide the Committee, access to the Debtors' books and records and appropriate transition services subsequent to the closing of the Stalking Horse Agreement. ¹

Agreed and accepted by:

On behalf of Digiatech, LLC

By: _____

Name: _____

Title: _____

On behalf of Newmark Partners, L.P.

By: _____

Name: _____

Title: _____

**On behalf of the Official Committee of
Unsecured Creditors.**

By: _____

Name: *Michael Etkin*

Title: *Counsel to the Committee*

**On behalf of Knotel, Inc. and its applicable
affiliates**

By: _____

Name: _____

Title: _____

¹ For the avoidance of doubt, section 7.06 of the Stalking Horse Agreement already provides these rights to the Debtors and any subsequently identified estate fiduciaries.

Closing	<p>The Debtors shall cooperate to close the transaction as soon as possible following the entry of the Sale Order in form and substance satisfactory to Digiatech on a date to be selected by Digiatech.</p> <p>At Closing the fees and expenses set forth and included in the DIP Budget for the DIP Lender and the Prepetition Secured Lender (as adequate protection) shall be paid for the period through and including the Closing Date.</p>
Preservation of Defenses and Set-Off Rights	For the avoidance of doubt, all defenses and set-off rights in connection with Digiatech's or any transferee of Digiatech's assertion of claims being transferred to Digiatech by the Debtors under the Stalking Horse Agreement are expressly preserved.
Access to Debtors' Books and Records	Section 7.06 of the Stalking Horse Agreement will be amended to provide the Committee, access to the Debtors' books and records and appropriate transition services subsequent to the closing of the Stalking Horse Agreement. ¹

Agreed and accepted by:

On behalf of Digiatech, LLC

By: _____
Name: _____
Title: _____

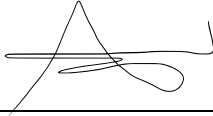
On behalf of Newmark Partners, L.P.

By: _____
Name: _____
Title: _____

On behalf of the Official Committee of Unsecured Creditors

By: _____
Name: _____
Title: _____

On behalf of Knotel, Inc. and its applicable affiliates

By:  _____
Name: Amit Khanna
Title: General Counsel

¹ For the avoidance of doubt, section 7.06 of the Stalking Horse Agreement already provides these rights to the Debtors and any subsequently identified estate fiduciaries.

This is Exhibit “E” referred to in the Affidavit of John M. Jureller sworn before me March 11, 2021 by videoconference in accordance with O. Reg 431/20.

A handwritten signature in black ink, appearing to read 'K May', is positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Kieran May
LSO# 79672P

EXHIBIT 1
KNOTEL, INC., et al.
SUPPLEMENTAL ASSIGNED CONTRACT SCHEDULE

Counterparty	Counterparty Address	Contract Type	Cure Amount
110 William Street Property Investors III, LLC	110 William Street, New York, NY 10038 430 Park Avenue, 12th Floor, New York, NY 10022	Lease Agreement for 110 William Street, New York, NY 10038	\$531,101.86
121 King Street West Ltd.	10 Carlson Ct., Suite 500, Etobicoke, ON M9W 6L2	Lease Agreement for 121 King Street West, Suite 400, Toronto ON M5H 3T9	\$0.00
220 KSW Inc.	c/o Equity ICI Real Estate Services, 1240 Bay Street, Suite 601, Toronto ON M5R 2A7	Lease Agreement for 220 King Street West, Suites 400 and 500, Toronto ON M5V 3M2	\$0.00
Allstream Business Inc.	5160 Orbitor Drive, Mississauga Ontario L4W 5H2	ISP Agreement	\$0.00
Ambius	99 Locke St., Unit 9, Concord, Ontario L4K 0J2	Plant Vendor Agreement	\$0.00
Aptum Technologies (Canada) Inc.	191 The West Mall, Floor 2, Etobicoke, Ontario M9C 5K8	ISP Agreement	\$0.00
Axxys Construction	9680 St. Laurent Blvd, Montreal, Quebec H3L 2M9	Construction Vendor Agreement	\$0.00
Canon Canada Inc.	175 Bloor St. E, Toronto, Ontario M4W 3R8	Equipment Lease	\$0.00
CBSC Capital, Inc.	3450 Superior Ct., Oakville, Ontario L6L 0C4	Finance Agreement	\$0.00
New York Business Systems (NYBS)	150 Fulton Avenue, New Hyde Park, NY 11040	Equipment Contract [No. 2GH04036] for 320 S. Lincoln Boulevard, Los Angeles, CA 90291	\$0.00
New York Business Systems (NYBS)	150 Fulton Avenue, New Hyde Park, NY 11040	Equipment Contract [No. XTK02030] for 41 Union Square West, New York, NY 10003	\$0.00
New York Business Systems (NYBS)	150 Fulton Avenue, New Hyde Park, NY 11040	Equipment Contract [No. XTK07217] for 41 Union Square West, New York, NY 10003	\$0.00
New York Business Systems (NYBS)	150 Fulton Avenue, New Hyde Park, NY 11040	Equipment Contract [No. XTK08256] for 41 Union Square West, New York, NY 10003	\$0.00
New York Business Systems (NYBS)	150 Fulton Avenue, New Hyde Park, NY 11040	Equipment Contract [No. XTK09152] for 5-9 Union Square West, New York, NY 10003	\$0.00
New York Business Systems (NYBS)	150 Fulton Avenue, New Hyde Park, NY 11040	Equipment Contract [No. 2GH05325] for 5-9 Union Square West, New York, NY 10003	\$0.00
New York Business Systems (NYBS)	150 Fulton Avenue, New Hyde Park, NY 11040	Equipment Contract [No. 2GH00719] for 17 West 20th Street, New York, NY 10011	\$0.00
New York Business Systems (NYBS)	150 Fulton Avenue, New Hyde Park, NY 11040	Equipment Contract [No. QTV12043] for 475 Park Avenue South, New York, NY 10022	\$0.00
New York Business Systems (NYBS)	150 Fulton Avenue, New Hyde Park, NY 11040	Equipment Contract [No. QTV12077] for 475 Park Avenue South, New York, NY 10022	\$0.00
New York Business Systems (NYBS)	150 Fulton Avenue, New Hyde Park, NY 11040	Equipment Contract [No. XTK04403] for 475 Park Avenue South, New York, NY 10022	\$0.00
New York Business Systems (NYBS)	150 Fulton Avenue, New Hyde Park, NY 11040	Equipment Contract [No. 2GH06384] for 17 West 20th Street, New York, NY 10011	\$0.00
New York Business Systems (NYBS)	150 Fulton Avenue, New Hyde Park, NY 11040	Equipment Contract [No. XTK13681] for 17 West 20th Street, New York, NY 10011	\$0.00
New York Business Systems (NYBS)	150 Fulton Avenue, New Hyde Park, NY 11040	Equipment Contract [No. 2GH00712] for 17 West 20th Street, New York, NY 10011	\$0.00

Counterparty	Counterparty Address	Contract Type	Cure Amount
New York Business Systems (NYBS)	150 Fulton Avenue, New Hyde Park, NY 11040	Equipment Contract [No. XTK06886] for 551 Fifth Avenue, New York, NY 10176	\$0.00
New York Business Systems (NYBS)	150 Fulton Avenue, New Hyde Park, NY 11040	Equipment Contract [No. 2GH00698] for 17 West 20th Street, New York, NY 10011	\$0.00
New York Business Systems (NYBS)	150 Fulton Avenue, New Hyde Park, NY 11040	Equipment Contract [No. QTV12070] for 5-9 Union Square West, New York, NY 10003	\$0.00
New York Business Systems (NYBS)	150 Fulton Avenue, New Hyde Park, NY 11040	Equipment Contract [No. WSE08079] for 5-9 Union Square West, New York, NY 10003	\$0.00
Quench Canada	1795 Powell St. Unit 1, Vancouver, British Columbia V5L 1H6	Equipment Leases	\$0.00
Quench USA, Inc.	630 Allendale Road, Suite 200, King of Prussia, PA 19406	Equipment Lease [No. 107514] for 105 Madison Avenue, New York, NY 10016	\$0.00
Quench USA, Inc.	630 Allendale Road, Suite 200, King of Prussia, PA 19406	Equipment Lease [No. 122578] for 110 William Street, New York, NY 10038	\$0.00
Quench USA, Inc.	630 Allendale Road, Suite 200, King of Prussia, PA 19406	Equipment Lease [No. 079140] for 115 West 30th Street, New York, NY 10001	\$0.00
Quench USA, Inc.	630 Allendale Road, Suite 200, King of Prussia, PA 19406	Equipment Lease [No. 105320] for 17 West 20th Street, New York, NY 10011	\$0.00
Quench USA, Inc.	630 Allendale Road, Suite 200, King of Prussia, PA 19406	Equipment Lease [No. 112305] for 17 West 20th Street, New York, NY 10011	\$0.00
Quench USA, Inc.	630 Allendale Road, Suite 200, King of Prussia, PA 19406	Equipment Lease [No. 131651] for 240 West 40th Street, New York, NY 10018	\$0.00
Quench USA, Inc.	630 Allendale Road, Suite 200, King of Prussia, PA 19406	Equipment Lease [No. 109922] for 320 Lincoln Boulevard, Los Angeles, CA 90291	\$0.00
Quench USA, Inc.	630 Allendale Road, Suite 200, King of Prussia, PA 19406	Equipment Lease [No. 131412] for 36 West 14th Street, New York, NY 10011	\$0.00
Quench USA, Inc.	630 Allendale Road, Suite 200, King of Prussia, PA 19406	Equipment Lease [No. 097410] for 475 Park Avenue South, New York, NY 10022	\$0.00
Quench USA, Inc.	630 Allendale Road, Suite 200, King of Prussia, PA 19406	Equipment Lease [No. 106234] for 5-9 Union Square West, New York, NY 10003	\$0.00
Quench USA, Inc.	630 Allendale Road, Suite 200, King of Prussia, PA 19406	Equipment Lease [No. 123067] for 5-9 Union Square West, New York, NY 10003	\$0.00
Quench USA, Inc.	630 Allendale Road, Suite 200, King of Prussia, PA 19406	Equipment Lease [No. 111664] for 5-9 Union Square West, New York, NY 10003	\$0.00
Quench USA, Inc.	630 Allendale Road, Suite 200, King of Prussia, PA 19406	Equipment Lease [No. 130734] for 5-9 Union Square West, New York, NY 10003	\$0.00
Quench USA, Inc.	630 Allendale Road, Suite 200, King of Prussia, PA 19406	Equipment Lease [No. 071049] for 5-9 Union Square West, New York, NY 10003	\$0.00
Scryer, Inc. (d/b/a Reonomy)	37 West 26th Street Suite 318 New York, NY 10010	Data License Agreement (September 27, 2018)	\$0.00
Stantec Consulting Ltd.	10220 103 Ave NW, Suite 400, Edmonton, Alberta	Consulting Services Agreement	\$0.00
Sycomp Technologies Canada, Inc.	4170 Still Creek #200, Burnaby, British Columbia V5C 6C6	IT Equipment Lease	\$0.00

Counterparty	Counterparty Address	Contract Type	Cure Amount
Uhuru Design LLC	185 Van Dyke St., Brooklyn, NY 11231	Design Supply Agreement for Desk System Development (December 19, 2018)	\$0.00
Uhuru Design LLC	185 Van Dyke St., Brooklyn, NY 11231	Design Supply Agreement for Wall System Development (December 19, 2018)	\$0.00

This is Exhibit “**F**” referred to in the Affidavit of John M. Jureller sworn before me March 11, 2021 by videoconference in accordance with O. Reg 431/20.

A handwritten signature in black ink, appearing to read 'Kieran May', positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Kieran May
LSO# 79672P

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF KNOTEL, INC. and KNOTEL
CANADA, INC.

APPLICATION OF KNOTEL CANADA, INC. UNDER SECTION 46
OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED

CONSENT

ALVAREZ AND MARSAL CANADA INC. hereby consents to act as Information
Officer in the above-captioned proceeding in accordance with the terms of an order substantially
in the form attached hereto.

DATED at Toronto, this 11 day of March, 2021

ALVAREZ AND MARSAL CANADA INC.

Per: 

Name: Stephen Ferguson

Title: Senior Vice-President

I have authority to bind the company

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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Court File No.: CV-21-00658434-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**SUPPLEMENTARY AFFIDAVIT OF JOHN M. JURELLER
(sworn March 11, 2021)**

CASSELS BROCK & BLACKWELL LLP

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