

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

WELDED CONSTRUCTION, L.P., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 18-12378 (KG)
)
) (Jointly Administered)
)
) **Proposed Hearing Date:**
) **January 3, 2019 at 10:00 a.m. (ET)**
)
) **Proposed Objection Deadline:**
) **December 31, 2018 at 10:00 a.m. (ET)**
)
) **Proposed Bid Deadline:**
) **December 31, 2018 at 10:00 a.m. (ET)**
)
)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACT
PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE**

The above-captioned debtors and debtors in possession (together, the “**Debtors**”) hereby file this motion (this “**Motion**”) for entry of an order (the “**Proposed Order**”), substantially in the form attached hereto as **Exhibit A**, authorizing the assumption and assignment of that certain *Contract for Pipeline Construction for the Saginaw Trail Pipeline Project: Phases 2, 3 and 4* of (the “**Consumers Contract**”). In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Frank Pometti in Support of Debtors' Chapter 11 Petitions and First-Day Motions* [Docket No. 4] (the “**First Day Declaration**”) and the *Declaration of Charles Boguslaski in Support of Debtors' Motion for Entry of an Order Authorizing Assumption and Assignment of Certain Executory Contract*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is 26933 Eckel Road, Perrysburg, OH 43551.



Pursuant to Section 365 of the Bankruptcy Code (the “**Boguslaski Declaration**”), attached hereto as **Exhibit B**. In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over these chapter 11 cases and this Motion pursuant to 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 (the “**Amended Standing Order**”). This is a core proceeding pursuant to 28 U.S.C. § 157(b) and this is a proceeding for which the Court may enter a final order under Article III of the U.S. Constitution. Venue of these chapter 11 cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a) and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”), and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

BACKGROUND

I. General

3. On October 22, 2018 (the “**Petition Date**”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner. An official committee of unsecured creditors (the “**Committee**”) was appointed on October 30, 2018.

4. Additional information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the filing of these chapter 11 cases is set forth in the First Day Declaration.

II. Assumption and Assignment of the Consumers Contract

5. On November 9, 2018, the Court entered that certain *Order Approving the Consumers Project Completion Agreement with Consumers Energy Company* [Docket No. 181] (the “**Consumers Order**”).² Attached as Exhibit 1 to the Consumers Order is the *Customer Project Completion Agreement with Consumers Energy Company* (the “**Consumers Project Completion Agreement**”). As described further in the Consumers Project Completion Agreement, the Debtors and Consumers Energy Company (“**Consumers**”) agreed that Consumers would pay the Debtor for work associated with Phase 2 of the Saginaw Trail Pipeline Project. The Consumers Completion Agreement further provided that, upon entry of the Consumers Order, the Consumers Agreement would be terminated for convenience, Consumers would pay a Termination Fee to the Debtors on account of Phases 3 and 4 of the Consumers Agreement. In addition, with respect to the prospective work on Phases 3 and 4, the Debtors were granted a period of forty-five (45) days from the date of the Consumers Order to market such prospective work and to ultimately exercise the Assignment Option or the Going-Concern Option.

III. The Marketing Process

6. As further detailed in the Boguslaski Declaration, Teneo Capital, LLC (“**Teneo**”), in consultation with the Committee and Debtors, began the marketing process by contacting fourteen (14) potential pipeline contracting companies. In connection with the solicitation, Teneo worked in conjunction with the Debtors and their advisors to prepare for potentially interested parties a “teaser” document summary, confidentiality agreement, electronic data room, and process letter with bid deadline information. During the process, six (6) parties

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Consumers Order.

executed confidentiality agreements and were granted access to an electronic data room containing confidential information about the Consumers Contract, and received a copy of the process letter explaining the requirements for submitting an offer.

7. Pursuant to that process, on December 14, 2018, the Debtors received an initial qualifying letter of intent (“LOI”) from PLH Group, Inc. (“PLH”) on behalf of its wholly-owned subsidiary, Snelson Companies, Inc. (the “**Purchaser**”), for the opportunity to assume the Consumers Contract for an all-cash offer of \$2,500,000 (the “**Purchase Price**”). Teneo, with the Debtors and their advisors, evaluated Purchaser’s LOI for, among other things: (i) cash consideration, (ii) financial wherewithal (iii) safety record, and (iv) ability to close the transaction. To date, the Purchase Price represents the highest and best offer for the Consumers Contract. On December 20, 2018, the Debtors, in consultation with the Committee, and the Purchaser reached an agreement (the “**Agreement**”), whereby the Debtors assume the Consumers Contract pursuant to section 365(a) of the Bankruptcy Code, without modification of its economic terms, and assign it to the Purchaser, with the consent of Consumers in its sole discretion, pursuant to section 365(f) of the Bankruptcy Code.

8. Given the totality of the circumstances, including Teneo’s marketing efforts, the interest in the Consumers Project, as well as the informal marketing and negotiation process run during the 45-day time period within which the Debtors must decide whether to assume and assign the Consumers Contract (as set forth in the Consumers Project Completion Agreement) (the “**Assignment Deadline**”), the Debtors believe it is both necessary and appropriate to proceed with the assignment of the Consumers Project without conducting further marketing efforts or employing a formal auction process. This decision was made after conferring with the Committee and is a sound exercise of the Debtors’ business judgment.

Proceeding with the private sale of the Consumers Project ensures a significant recovery to the Debtor's estate and complies with the deadlines in the Consumers Order. Moreover, the Purchase Price represents a fair and reasonable offer for the Consumers Contract, and will result in \$2,500,000 of unencumbered funds being paid to the Debtors' estates by the Purchaser without any restrictions thereon. The Debtors believe that the Agreement will provide the Debtors with maximum value for the Consumers Contract, for the benefit of the Debtors' estates and creditors, and this value risks being eroded if the Debtors do not move to assign the Consumers Contract prior to the Assignment Deadline and obtain prompt approval of the assignment that allows the assignee to timely commence planning and work on Phase 3 of the Consumers Agreement. Nevertheless, the Debtor understands that it has a fiduciary duty to maximize value for the Consumers Contract and must necessarily entertain other offers acceptable to Consumers for the Consumers Contract to the extent they arise prior to the objection deadline set by this Motion. Accordingly, Debtors will serve this Motion on all parties who have executed an NDA to conduct diligence on the Consumers Agreement.

RELIEF REQUESTED

9. The Debtors request entry of an order (i) authorizing assumption and assignment of the Consumers Contract to the Purchaser or such other party who the Debtors determine has timely submitted a higher and better offer acceptable to Consumers, (ii) finding that there is no cure amount due and owing under the Consumers Contract, (iii) barring any party from asserting as against the Debtors and the Purchaser any default or unpaid obligation allegedly arising or occurring before the date of assumption and assignment of the Consumers Contract (or as determined by the Court at the hearing on this Motion), (iv) authorizing the Debtors to enter into an assumption and assignment agreement with the Purchaser to effectuate

the relief requested herein, and (v) waiving the ten-day stay imposed by Bankruptcy Rule 6006(d).

BASIS FOR RELIEF

10. Section 105(a) of the Bankruptcy Code provides that “the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). In addition, section 365(a) of the Bankruptcy Code permits a debtor-in-possession, “subject to the court’s approval, [to] assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). By enacting section 365(a) of the Bankruptcy Code, Congress intended to allow a debtor to assume those contracts that benefit the estate, and to reject those that are of no value to, or that are burdensome to, the estate. *See, e.g., In re Whitcomb & Keller Mortg. Co.*, 715 F.2d 375, 379 (7th Cir. 1983); *In re Sandman Assocs., L.L.C.*, 251 B.R. 473, 480 (W.D. Va. 2000) (“The authority granted by section 365 allows the trustee or debtor in possession to pick and choose among contracts, assuming those that are favorable and rejecting those that are not.”).

11. It is well-established in the Third Circuit, as well as in other jurisdictions, that decisions to assume or reject executory contracts or unexpired leases are matters within the “business judgment” of the debtor. *Sharon Steel Corp. v. Nat’l Fuel Gas Dist. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989); *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *In re Fed. Mogul Glob., Inc.*, 293 B.R. 124, 126 (D. Del. 2003) (“The business judgment test dictates that a court should approve a debtor’s decision to reject a contract unless that decision is the product of bad faith or gross abuse of discretion.”); *In re Orion Pictures Corp.*, 4 F.3d 1095, 1099 (2d Cir. 1993), *cert. dismissed*, 511 U.S. 1026 (1994). Accordingly, courts approve the assumption of an executory contract unless evidence is presented that the debtor’s decision to assume or reject

“was so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.” *In re Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986).

12. Here, the Consumers Project Completion Agreement, as approved by the Court, contemplated the Debtors exercising the Assignment Option, for the assumption and assignment of the Consumers Contract. As such, the Court has already determined that the assumption of the Consumers Contract in the context of the Consumers Project Completion Agreement is a sound exercise of the Debtors’ business judgment.

13. Additionally, as a precondition to the assumption and assignment of the Consumers Contract, the Debtors must cure, or provide adequate assurance that they promptly will cure, any defaults existing under the Consumers Contract. The cure and compensation requirements of section 365(b)(1) have been fully satisfied in this case through the Consumers Project Completion Agreement. As such, no further amounts must be paid to cure any defaults under the Consumers Agreement.

14. In addition, the Debtors request that they be authorized to enter into an assignment and assumption agreement with the Purchaser (the “Assignment and Assumption Agreement”) to effectuate the assumption and assignment of the Additional Contracts.

15. Finally, the Debtors request that the relief requested herein be effective immediately upon the entry of an order granting such relief and that the fourteen (14) day stay provided under Bankruptcy Rule 6006(d) be waived.

NOTICE

16. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Office of the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) counsel to the Committee; (v) counsel to the Debtors' post-petition lenders; (vi) all parties that have filed a financing statement asserting a lien in any of the Debtors' assets; (vii) the Purchaser; (viii) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002; and (ix) all parties who have executed an NDA to conduct diligence on the Consumers Agreement. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: December 20, 2018
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Allison S. Mielke

M. Blake Cleary (No. 3614)

Sean M. Beach (No. 4070)

Allison S. Mielke (No. 5934)

Betsy L. Feldman (No. 6410)

Rodney Square

1000 North King Street

Wilmington, DE 19801

Telephone: (302) 571-6600

Facsimile: (302) 571-1253

Counsel to the Debtors

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

In re:)	
)	Chapter 11
)	
WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹)	Case No. 18-12378 (KG)
)	
)	(Jointly Administered)
Debtors.)	
)	<u>Proposed Hearing Date:</u>
)	January 3, 2019 at 10:00 a.m. (ET)
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)	<u>Proposed Objection Deadline:</u>
)	December 31, 2018 at 10:00 a.m. (ET)
)	
)	<u>Proposed Bid Deadline:</u>
)	December 31, 2018 at 10:00 a.m. (ET)
)	

NOTICE OF MOTION

TO: (I) THE OFFICE OF THE UNITED STATES TRUSTEE FOR THE DISTRICT OF DELAWARE; (II) THE OFFICE OF THE UNITED STATES ATTORNEY FOR THE DISTRICT OF DELAWARE; (III) THE INTERNAL REVENUE SERVICE; (IV) COUNSEL TO THE COMMITTEE; (V) COUNSEL TO THE DEBTORS' POST-PETITION LENDERS; (VI) ALL PARTIES THAT HAVE FILED A FINANCING STATEMENT ASSERTING A LIEN IN ANY OF THE DEBTORS' ASSETS; (VII) THE PURCHASER; (VIII) ALL PARTIES WHO HAVE FILED A NOTICE OF APPEARANCE AND REQUEST FOR SERVICE OF PAPERS PURSUANT TO BANKRUPTCY RULE 2002; AND (IX) ALL PARTIES WHO HAVE EXECUTED AN NDA TO CONDUCT DILIGENCE ON THE CONSUMERS AGREEMENT

PLEASE TAKE NOTICE that, the above captioned debtors and debtors in possession (collectively, the "**Debtors**") have filed the *Debtors' Motion for Entry of an Order Authorizing Assumption and Assignment of Certain Executory Contract Pursuant to Section 365 of the Bankruptcy Code* (the "**Motion**").

PLEASE TAKE FURTHER NOTICE that, contemporaneously with the filing of the Motion, the Debtors have also filed a motion (the "**Motion to Shorten**") requesting that any objections to the Motion be filed on or before **December 31, 2018 at 10:00 a.m. (ET)** (the "**Objection Deadline**") with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, copies of any

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responses or objections to the Motion must be served upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT, PURSUANT TO THE MOTION TO SHORTEN, THE DEBTORS HAVE REQUESTED THAT A HEARING TO CONSIDER THE MOTION BE HELD ON JANUARY 3, 2019 AT 10:00 A.M. (ET) BEFORE THE HONORABLE KEVIN GROSS IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 6TH FLOOR, COURTROOM NO. 3, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS OR RESPONSES TO THE MOTION ARE TIMELY FILED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED THEREIN WITHOUT FURTHER NOTICE OR A HEARING.

Dated: December 20, 2018
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Allison S. Mielke

M. Blake Cleary (No. 3614)
Sean M. Beach (No. 4070)
Allison S. Mielke (No. 5934)
Betsy L. Feldman (No. 6410)
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1000 North King Street
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Telephone: (302) 571-6600
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Counsel to the Debtors

EXHIBIT A

Proposed Order

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

In re:

WELDED CONSTRUCTION, L.P., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 18-12378 (KG)
)
) (Jointly Administered)
)
) **Ref. Docket No.** ____
)

**ORDER AUTHORIZING ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACT PURSUANT TO
SECTION 365 OF THE BANKRUPTCY CODE**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for the entry of an order, pursuant to sections 105(a) and 365 of the Bankruptcy Code, authorizing the Debtors to assume the Consumers Contract; and upon consideration of the First Day Declaration, the Boguslaski Declaration and the record of these chapter 11 cases; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334 and 157, and the Amended Standing Order; and it appearing that this is a core matter pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of these chapter 11 cases and of the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Motion has been given under the circumstances, and that no other or further notice need be given; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors and is an appropriate

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² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

exercise of the Debtors' business judgment; and the Purchaser having demonstrated adequate assurance of future performance; 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 Debtors are authorized to assume the Consumers Contract and assign the same to the Purchaser, and no default requiring a cure exists with respect to the Consumers Contract prohibiting such assumption and assignment.
3. The Debtors are authorized to enter into an assignment and assumption agreement, in substantially the form attached hereto as Exhibit 1, in order to effectuate the assumption and assignment of the Consumers Contract.
4. All persons are barred from asserting as against the Debtors and/or the Purchaser any default or unpaid obligation allegedly arising or occurring before the date of assumption and assignment of the Consumers Contract.
5. The Purchase Price shall constitute property of the debtors' estate immediately upon payment and shall not be subject to the payment application waterfall or disbursement restrictions described in paragraphs six and seven of the Consumers Project Completion Agreement.
6. Notwithstanding the provisions of Bankruptcy Rule 6006(d), this Order shall not be stayed for fourteen (14) days after the entry hereof, but shall be effective and enforceable immediately upon issuance hereof.
7. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

EXHIBIT 1

Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSUMPTION AND ASSIGNMENT AGREEMENT (this "Agreement"), dated as of December ²⁰~~5~~, 2018, is by and between Welded Construction Michigan, LLC (the "Assignor") and Snelson Companies, Inc. ("Assignee" and collectively, the "Parties" and each a "Party").

RECITALS

WHEREAS, on October 22, 2018 (the "Petition Date"), Assignor, along with its affiliated debtor and debtor in possession (collectively, the "Debtors"), filed a voluntary petition for relief pursuant to chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), jointly administered under Case No. 18-12378 (KG); and

WHEREAS, the Debtors will move the Bankruptcy Court for entry of Order Authorizing Assumption and Assignment of Certain Executory Contract Pursuant to Section 365 of the Bankruptcy Code (the "Order"), seeking approval of, among other things, the Debtors' assumption and assignment of that certain *Contract for Pipeline Construction for the Saginaw Trail Pipeline Project: Phases 2, 3 and 4* (the "Contract") and the Debtors' ability to enter into this Agreement; and

WHEREAS, the Contract and assignment thereof relates solely to prospective work on project phases to be performed under the Contract and not to work completed previously by Assignor;

WHEREAS, Assignor has now agreed to designate the Contract for assumption and assignment to Assignee, and Assignee has agreement to assume the Contract, all pursuant to the terms and conditions of the Order and this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the Parties hereby agree as follows:

AGREEMENT

1. Assignment and Assumption. Subject to entry of the Order and the conditions set forth in this Agreement:

a. Assignor hereby sells, transfers, conveys, assigns, and sets over to Assignee, or its designee, successors, and assigns, all of Assignor's right, title, and interest in and to the Contract.

b. Assignee hereby assumes and undertakes to pay, perform, and discharge all of Assignor's obligations and duties with respect to the Contract.

2. Payment of Purchase Price. Assignee shall, by close of business (Eastern Time) on the next business day following the Effective Date (as defined below) of this Agreement, deliver to Assignor the purchase price for the Contract in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000) (the "Purchase Price") in immediately available funds wired to the account specified by Assignor.

3. No Further Liability of Assignor. Effective as of the Effective Date (as defined below), Assignor shall not have any further obligations or duties with respect to the Contract.

4. Effectiveness of this Agreement. This Agreement shall be effective as of the date of entry of the Order (the "Effective Date"); provided, however, that prior to the Effective Date:

- a. the Parties shall have executed this Agreement,
- b. the Assignor shall have timely filed a motion in the Bankruptcy Court seeking to assume the Contract pursuant to 11 U.S.C. § 365 in accordance with the terms of that certain *Customer Project Completion Agreement with Consumers Energy Company* dated November 8, 2018, and

c. Consumers Energy Company ("Consumers") shall have delivered to Assignee its written authorization and express consent to Assignee's assumption of the Contract.

5. "As Is, Where Is" Transaction. Assignee hereby acknowledges and agrees that Assignor makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Contract. Without limiting the foregoing, Assignor hereby disclaims any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Contract. Assignee further acknowledges that it will accept the Contract "AS IS" and "WHERE IS."

6. Further Assurances. At any time and from time to time after the date hereof, at the request of Assignee, and without further consideration, Assignor shall execute and deliver such other instruments of sale, transfer, conveyance, assignment and confirmation or consents and take such other action as Assignee may reasonably request as necessary or desirable in order to more effectively transfer, convey and assign to Assignee Assignor's rights to the Contract.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to principles of conflicts of law.

8. Jurisdiction. The Parties consent to the exclusive jurisdiction of the Bankruptcy Court with respect to all matters arising under or relating to this Agreement. The Parties hereby irrevocably waive any objection on the grounds of venue, forum non conveniens, or any similar grounds and irrevocably consent to service of process by mail or in any other manner permitted by applicable law. The Parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.

9. No Reliance. Each Party represents and warrants that in entering into this Agreement, it is relying on its own judgment, belief and knowledge and, as applicable, on that of any attorney it has retained to represent it in this matter. In entering into this Agreement, no Party is relying on any representation or statement made by any other Party or any person representing such other Party.

10. Construction. This Agreement has been drafted through a cooperative effort of all Parties, and no single Party shall be considered the drafter of this Agreement so as to give rise to any presumption of convention regarding construction of this document. All terms of this Agreement were negotiated in good faith and at arm's length, and this Agreement was prepared and executed without fraud, duress, undue influence, or coercion of any kind exerted by any of the Parties upon the other. The execution and delivery of this Agreement is the free and voluntary act of the Parties.

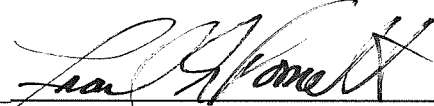
11. Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the Parties to this Agreement may be transmitted by facsimile or by electronic mail, and such transmission will, for all purposes, be deemed to be the original signature of such Party whose signature it reproduces, and will be binding upon such Party.

[Signature page follows]

IN WITNESS WHEREOF, intending to be legally bound, the Parties have executed this Agreement as of the Effective Date.

ASSIGNOR:

Welded Construction Michigan, LLC

By: 

Name: Frank Pometti

Title: Chief Restructuring Officer

ASSIGNEE:

Snelson Companies, Inc.

By:  12/20/18

Name: Alex R. Epstein

Title: President

EXHIBIT B

Boguslaski Declaration

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

In re:)	
)	Chapter 11
)	
WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹)	Case No. 18-12378 (KG)
)	
)	(Jointly Administered)
Debtors.)	

**DECLARATION OF CHARLES BOGUSLASKI IN SUPPORT OF DEBTORS' MOTION
FOR ENTRY OF AN ORDER AUTHORIZING
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACT
PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE**

I, Charles Boguslaski, am over the age of eighteen years, of sound mind, and competent to testify to the matters contained herein. I make this Declaration pursuant to 28 U.S.C. § 1746 and in support of the Debtors' motion for entry of an authorizing the assumption and assignment of that certain *Contract for Pipeline Construction for the Saginaw Trail Pipeline Project: Phases 2, 3 and 4* (the "Consumers Contract").

1. I am a Senior Managing Director with Teneo Capital, LLC, the financial advisor to the Official Committee of Unsecured Creditors appointed in these cases (the "Committee").

2. In that capacity, my colleagues and I implemented a marketing process for the Consumers Contract last month. This process included soliciting indications of interest from fourteen (14) potential pipeline contracting companies concerning a possible assignment of the Consumers Contract. In connection with the solicitation, I worked with the Debtors and their

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advisors to prepare a “teaser” document summary, a confidentiality agreement, an electronic data room, and a process letter with bid deadline information.

3. During this process, six (6) parties executed confidentiality agreements and were granted access to the electronic data room containing confidential information about the Consumers Contract, and received a copy of the process letter explaining the requirements for submitting an offer.

4. On December 14, 2018, PLH Group, Inc. submitted an initial qualifying letter of intent on behalf of its wholly-owned subsidiary, Snelson Companies, Inc., for the opportunity to assume the Consumers Contract for an all-cash offer of \$2,500,000.

5. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: December 20, 2018

/s/ Charles Boguslaski
Charles Boguslaski