

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)

) Hearing Date:

) March 13, 2019 at 10:00 a.m. (ET)

) Objection Deadline:

) February 14, 2019 at 4:00 p.m. (ET)

**DEBTORS' FOURTH OMNIBUS MOTION FOR ENTRY OF AN ORDER, PURSUANT
TO SECTIONS 105(a) AND 365(a) OF THE BANKRUPTCY CODE, AUTHORIZING
THE DEBTORS TO REJECT CERTAIN UNEXPIRED LEASES AND EXECUTORY
CONTRACTS *NUNC PRO TUNC* TO THE REJECTION EFFECTIVE DATE**

***ANY PARTY RECEIVING THIS MOTION SHOULD LOCATE ITS NAME
AND ITS REJECTED AGREEMENT IDENTIFIED ON SCHEDULE 1 TO
THE PROPOSED ORDER.**

**** TO ARRANGE TO PICK UP OF ANY PERSONAL PROPERTY THAT
IS THE SUBJECT OF A REJECTED AGREEMENT, PLEASE CONTACT
SUJAY CHERIAN FROM ALIXPARTNERS, VIA ELECTRONIC MAIL,
AT SUCHERIAN@ALIXPARTNERS.COM, OR THE UNDERSIGNED
COUNSEL FOR THE DEBTORS, BETSY L. FELDMAN, VIA
ELECTRONIC MAIL, AT BFELDMAN@YCST.COM, OR VIA
TELEPHONE, AT (302) 573-7780. AS SET FORTH THROUGHOUT THIS
MOTION, ANY SUCH PERSONAL PROPERTY IS HEREBY
SURRENDERED TO THE APPLICABLE COUNTERPARTY EFFECTIVE
AS OF THE DATE OF THIS MOTION.**

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, but not directing, the Debtors

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.



to reject those certain unexpired leases of personal property and certain executory contracts set forth on Schedule 1 to this Order (collectively, the “**Rejected Agreements**”),² effective as January 31, 2019 (the “**Rejection Effective Date**”). 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**”).³ 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, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

² The inclusion of any contract, lease, or agreement on Schedule 1 to the Proposed Order is not intended as, nor shall be deemed to constitute, an admission by the Debtors or their estates that such contract, lease, or agreement is or is not an executory contract or unexpired lease. The Debtors and their estates reserve any and all rights, claims, and defenses with respect to the characterization of the Rejected Agreements under section 365 of the Bankruptcy Code, applicable non-bankruptcy law, or otherwise, including, without limitation, any and all rights to argue that they do not constitute executory contracts or unexpired leases.

³ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration.

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. Rejection of the Rejected Agreements

5. The Debtors have evaluated the Rejected Agreements and determined that the Rejected Agreements are no longer necessary to the Debtors’ operations or beneficial to their estates. Thus, the Debtors submit that rejecting the Rejected Agreements is appropriate and, importantly, will avoid further risks or costs that may be associated with the Rejected Agreements on a postpetition basis, if any.

RELIEF REQUESTED

6. By this Motion, to preserve and maximize the value of their estates, the Debtors seek to reject the Rejected Agreements, effective as of the Rejection Effective Date.

BASIS FOR RELIEF

7. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor-in-possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). As courts have held, “[t]he

purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to ‘renounce title to and abandon burdensome property.’” *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993) (quoting 2 *Collier on Bankruptcy* ¶ 365.01[1] (15th ed. 1993)).

8. The standard applied to determining whether the rejection of an unexpired lease or executory contract should be authorized is the “business judgment” standard. *Sharon Steel Corp. v. Nat’l Fuel Gas Distr. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (stating that a debtor’s decision to reject an executory contract is governed by the business judgment standard and can only be overturned if the decision was the “product of bad faith, whim, or caprice”); *see also In re Tayfur*, 599 Fed. Appx. 44, 49–50 (3d Cir. 2015) (extending the standard articulated in *Sharon Steel* to unexpired leases). Once a debtor states a valid business justification, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.’” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

9. The business judgment rule is crucial in chapter 11 cases and shields a debtor’s management from judicial second-guessing. *See Comm. of Asbestos Related Litigants and/or Creditors v. Johns-Manville Corp.*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) (“The Code favors the continued operation of a business by a debtor and a presumption of reasonableness attached to a debtor’s management decisions.”). Generally, courts defer to a

debtor-in-possession's business judgment to reject a lease or an executory contract. *See, e.g., NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984), *superseded by statute on other grounds*, Bankruptcy Amendments and Federal Judgeship Act of 1984, sec. 541, § 1113, Pub. L. No. 98-353, 98 Stat. 333 (codified at 11 U.S.C. § 1113); *In re Minges*, 602 F.2d 38, 43 (2d Cir. 1979); *In re Riodizio*, 204 B.R. 417, 424–25 (Bankr. S.D.N.Y. 1997); *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994).

10. Upon finding that the Debtors have exercised their sound business judgment in determining that the rejection of the Rejected Agreements is in the best interests of the Debtors and their estates, the Court should approve the proposed rejections under section 365(a) of the Bankruptcy Code. *See, e.g., Westbury Real Estate Ventures, Inc. v. Bradlees, Inc. (In re Bradlees Stores, Inc.)*, 194 B.R. 555, 558, n.1 (Bankr. S.D.N.Y. 1996); *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that, absent extraordinary circumstances, court approval of a debtor's decision to assume or reject an executory contract "should be granted as a matter of course"). If a debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease or executory contract. *See, e.g., Sharon Steel Corp.*, 872 F.2d at 39–40. The Debtors have determined that the Rejected Agreements are not integral to the Debtors' chapter 11 efforts, are not otherwise beneficial to the Debtors' estates, and present burdensome contingent liabilities. Accordingly, the Debtors' decision to reject the Rejected Agreements is an exercise of sound business judgment, and rejection should be approved.

11. To avoid paying any unnecessary administrative expenses related to the Rejected Agreements, the Debtors seek to reject the Rejected Agreements effective as of the Rejection Effective Date. Where requested, a court may permit retroactive rejection to avoid

unduly exposing a debtor's estate to unwarranted postpetition administrative or other expenses. *See Thinking Machs. v. Mellon Fin. Servs. Corp. (In re Thinking Machs. Corp.)*, 67 F.3d 1021, 1028 (1st Cir. 1995) ("In the section 365 context . . . bankruptcy courts may enter retroactive orders of approval, and should do so when the balance of equities preponderates in favor of such remediation."); *In re DBSI, Inc.*, 409 B.R. 720, 734 n.4 (Bankr. D. Del. 2009) ("Under appropriate circumstances, [a] Court may enter a lease rejection order with an effective date earlier than the date the order is entered."); *In re Chi-Chi's, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004) (finding that "the court's power to grant retroactive relief is derived from the bankruptcy court's equitable powers so long as it promotes the purposes of §365(a)" and granting retroactive relief to the date on which the debtors surrendered the premises to their landlords); *In re Fleming Cos., Inc.*, 304 B.R. 85, 96 (Bankr. D. Del. 2003) (noting rejection *nunc pro tunc* was permitted to the date of the motion or the date the premises was surrendered).

12. When principles of equity so dictate, courts may permit *nunc pro tunc* rejection to the date on which the counterparty to the lease was given definitive notice of the debtor's intent to reject. *See In re KDA Grp., Inc.*, No. 16-21821-GLT, 2017 WL 4216563, at *4 (Bankr. W.D. Pa. Sept. 20, 2017) ("[M]any courts within the Third Circuit have adopted the notion that a lease may be retroactively rejected when principles of equity so dictate."); *In re Fleming Cos. Inc.*, 304 B.R. at 96 ("[T]o grant *nunc pro tunc* rejection, the Debtors must have stated an unequivocal intent to reject the leases."). Courts in this jurisdiction have previously considered the question of retroactive rejection of unexpired leases. *See In re Namco Cybertainment, Inc.*, Case No. 98-00173 (PJW) (Bankr. D. Del. Feb. 6, 1998). In *Namco*, the court permitted retroactive rejection on the conditions that (a) the property (and the keys thereto) subject to a lease were surrendered with an unequivocal statement of abandonment to the

landlord or lessor, (b) the motion was filed and served on the landlord or lessor, (c) the official committee consented to the relief requested in the motion, and (d) the debtor acknowledged that it would not have the right to withdraw the motion prior to the hearing.

13. Here, the Debtors submit that the Court should authorize the rejection of each of the Rejected Agreements effective as of the Rejection Effective Date. *First*, the Rejected Agreements provide no benefit to the Debtors' estates because they are no longer necessary to the Debtors. On the other hand, requiring the Debtors to continue to perform under the Rejected Agreements after the Rejection Effective Date could impose onerous obligations on the Debtors and their estates, potentially forcing the Debtors to incur unnecessary administrative charges for the Rejected Agreements that do not provide a benefit to the estate that is equal to or greater than the cost to the estate.

14. *Second*, the Debtors believe that the filing and service of this Motion fulfills the purpose of the *Namco* factors under the circumstances here—establishing an unequivocal relinquishment. The filing of this Motion serves to underscore and reiterate the Debtors' unequivocal intent to abandon their interest in the Rejected Agreements effective as of the Rejection Effective Date. Additionally, the counterparties under the Rejected Agreements will not be unduly prejudiced if the Rejected Agreements are rejected as of the Rejection Effective Date because, on the date hereof, the Debtors have served this Motion on the counterparties to the Rejected Agreements and/or their agents or representatives (the "**Counterparties**") by overnight delivery, electronic mail, and/or facsimile, thereby advising such counterparties that the Debtors intend to reject the Rejected Agreements effective as of the Rejection Effective Date.

15. In light of the foregoing facts and circumstances, the Debtors respectfully submit that their rejection of each of the Rejected Agreements under section 365 of the Bankruptcy Code as of the Rejection Effective Date, is a sound exercise of their business judgment and is necessary, prudent, and in the best interests of the Debtors, their estates, and their creditors.

RESERVATION OF RIGHTS

16. Nothing contained herein should be construed as a waiver of any of the Debtors' rights, defenses, or counterclaims with respect to the Rejected Agreements, nor does anything contained herein constitute an acknowledgement that any of the Rejected Agreements constitute an unexpired lease or an executory contract under section 365 of the Bankruptcy Code, and have not otherwise expired by its own terms or upon agreement of the parties.

NOTICE

17. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Committee; (iii) counsel to the Debtors' post-petition lenders; (iv) the Counterparties; and (v) all parties who, as of the filing of this Motion, have filed a notice of appearance and request for service of papers in these chapter 11 cases pursuant to Bankruptcy Rule 2002. 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 enter the Proposed Order, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: January 31, 2019
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Betsy L. Feldman

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:

WELDED CONSTRUCTION, L.P., *et al.*,¹

Debtors.

) Chapter 11

) Case No. 18-12378 (KG)

) (Jointly Administered)

) **Hearing Date:**

) **March 13, 2019 at 10:00 a.m. (ET)**

) **Objection Deadline:**

) **February 14, 2019 at 4:00 p.m. (ET)**

NOTICE OF MOTION

***ANY PARTY RECEIVING THE MOTION SHOULD LOCATE ITS NAME AND ITS REJECTED AGREEMENT IDENTIFIED ON SCHEDULE 1 TO THE PROPOSED ORDER.**

**** TO ARRANGE TO PICK UP OF ANY PERSONAL PROPERTY THAT IS THE SUBJECT OF A REJECTED AGREEMENT, PLEASE CONTACT SUJAY CHERIAN FROM ALIXPARTNERS, VIA ELECTRONIC MAIL, AT SUCHERIAN@ALIXPARTNERS.COM, OR THE UNDERSIGNED COUNSEL FOR THE DEBTORS, BETSY L. FELDMAN, VIA ELECTRONIC MAIL, AT BFELDMAN@YCST.COM, OR VIA TELEPHONE, AT (302) 573-7780. AS SET FORTH THROUGHOUT THE MOTION, ANY SUCH PERSONAL PROPERTY IS HEREBY SURRENDERED TO THE APPLICABLE COUNTERPARTY EFFECTIVE AS OF THE DATE OF THE MOTION.**

TO: (I) THE OFFICE OF THE UNITED STATES TRUSTEE FOR THE DISTRICT OF DELAWARE; (II) COUNSEL TO THE COMMITTEE; (III) COUNSEL TO THE DEBTORS' POST-PETITION LENDERS; (IV) THE COUNTERPARTIES; AND (V) ALL PARTIES WHO, AS OF THE FILING OF THE MOTION, HAVE FILED A NOTICE OF APPEARANCE AND REQUEST FOR SERVICE OF PAPERS IN THESE CHAPTER 11 CASES PURSUANT TO BANKRUPTCY RULE 2002.

PLEASE TAKE NOTICE that the above captioned debtors and debtors in possession (collectively, the "**Debtors**") have filed the *Debtors' Fourth Omnibus Motion For Entry Of An*

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.

Order, Pursuant To Sections 105(a) and 365(a) of the Bankruptcy Code, Authorizing the Debtors to Reject Certain Unexpired Leases and Executory Contracts Nunc Pro Tunc to the Rejection Effective Date (the “Motion”).

PLEASE TAKE FURTHER NOTICE that any objections or responses to the relief requested in the Motion must be filed on or before **February 14, 2019 at 4:00 p.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 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. Questions about the Motion or Schedule 1 to the Proposed Order should be directed to Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Betsy L. Feldman, Esq.).

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON MARCH 13, 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: January 31, 2019
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Betsy L. Feldman

M. Blake Cleary (No. 3614)
Sean M. Beach (No. 4070)
Allison S. Mielke (No. 5934)
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Rodney Square
1000 North King Street
Wilmington, DE 19801
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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, PURSUANT TO SECTIONS 105(a) AND 365(a) OF THE BANKRUPTCY
CODE, AUTHORIZING THE DEBTORS TO REJECT CERTAIN UNEXPIRED
LEASES AND EXECUTORY CONTRACTS *NUNC PRO TUNC* TO THE
REJECTION EFFECTIVE DATE**

Upon the motion [Docket No. ____] (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 reject those certain unexpired leases of personal property and certain executory contracts set forth on Schedule 1 to this Order (collectively, the “**Rejected Agreements**”), effective as of January 31, 2019 (the “**Rejection Effective Date**”); and upon consideration of the First Day 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

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.

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

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, their creditors, and other parties in interest, and an appropriate exercise of the Debtors' business judgment; and after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Pursuant to sections 105(a) and 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the Rejected Agreements, to the extent not previously terminated in accordance with their applicable terms or upon agreement of the parties, are hereby rejected by the Debtors, with such rejection being effective as of the Rejection Effective Date.
3. Nothing herein shall prejudice the rights of the Debtors to: (a) assert that the Rejected Agreements (i) were terminated prior to the Rejection Effective Date, or (ii) are not executory contracts or unexpired leases under 365 of the Bankruptcy Code or otherwise valid contractual agreements; (b) assert that any claim for damages arising from the rejection of the Rejected Agreements is limited to the remedies available under any applicable termination provision of the Rejected Agreements; (c) assert that any such claim is an obligation of a third party and not that of the Debtors or their estates; or (d) otherwise contest any claims that may be asserted in connection with the Rejected Agreements.
4. Effective as of the Rejection Effective Date, all personal property leased by the Debtors pursuant to a Rejected Agreement, including equipment (the "**Rejected Property**"), is no longer property of the Debtors' bankruptcy estates in accordance with section 365(p)(1) of the Bankruptcy Code, the automatic stay under section 362(a) of the Bankruptcy Code is terminated in accordance with section 365(p)(1) of the

Bankruptcy Code, and the non-Debtor party to such Rejected Agreement shall have all rights, legal and equitable, in and to the respective Rejected Property, free and clear of all liens, claims, and encumbrances. Nothing herein shall prejudice the rights of any non-Debtor party to a Rejected Agreement to assert an administrative expense claim related to a Rejected Agreement, including, without limitation, on account of repairs to the Rejected Property required under the Rejected Agreement and charges related to taking possession of the Rejected Property, and all rights of the Debtors, their estates, and interested parties in these chapter 11 cases shall be reserved with respect to any such asserted administrative expense claims.

5. Pursuant to that certain *Order Establishing Deadlines for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [Docket No. 403], any claims arising out of the rejection of the Rejected Agreements must be filed on or before 5:00 p.m. (prevailing Eastern Time) on the date that is thirty-five (35) days after the entry of this Order. This Order shall be served on the counterparties to the Rejected Agreements no later than the date that is five (5) days after the entry of this Order.

6. The Debtors are authorized to execute and deliver all instruments and documents, and take such other actions as may be necessary or appropriate, to implement and effectuate the relief granted by this Order.

7. This Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.

8. The requirements in Bankruptcy Rule 6006 are satisfied.

9. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Schedule 1

Rejected Agreements

WELDED CONSTRUCTION
SCHEDULE 1

Counterparty Name	Counterparty Address	City	State	Zip	Serial Number	Description
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	MP200723	Cat 349 w/ Hammer
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	FJH01461	12-3024 - Cat 336EL Excavator-Thumb
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	KSB01425	13-6005 Cat D6T LGP PAT Dozer
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	KSB01300	13-6006 - Cat D6T LGP PAT Dozer
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	KSB01360	13-6011 - Cat D6T LGP PAT Dozer W/Winch
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	FJH01361	Cat 336
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	FJH01417	Cat 336
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	FJH01510	Cat 336
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	FJH01628	Cat 336
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	FJH01662	Cat 336
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	FJH01508	Cat 336 w/ Hammer
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	FJH01761	Cat 336 w/ Hammer
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	FJH01763	Cat 336 w/ Thumb
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	KSB01629	D6T Dozer
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	KSB01631	D6T Dozer
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	KSB01759	D6T Dozer
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	KSB01841	D6T Dozer
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	KSB01842	D6T Dozer
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	KSB01975	D6T Dozer
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	KSB01364	D6T Dozer
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	KSB01426	D6T Dozer
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	KSB00452	D6T Dozer
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	FMC1113	D8T Dozer
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	FMC1118	D8T Dozer
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	935200574	Panther T8 Tac Rigs
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	935200578	Panther T8 Tac Rigs
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	935200566	Panther T8 Tac Rigs
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	935200573	Panther T8 Tac Rigs
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	KSB01835	D6T Dozer
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	FMC1116	D8T Dozer
Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37076	FMC1128	D8T Dozer
Modular Space Corporation	1200 Swedesford Rd	Berwyn	PA	19312	692435	Modspace Unit Contract Number: 1617332
Modular Space Corporation	1200 Swedesford Rd	Berwyn	PA	19312	694932	Modspace Unit Contract Number: 1673690

Counterparty Name	Counterparty Address	City	State	Zip	Serial Number	Description
Modular Space Corporation	1200 Swedesford Rd	Berwyn	PA	19312	691989	Modspace Unit Contract Number: 1627695
Modular Space Corporation	1200 Swedesford Rd	Berwyn	PA	19312	602436	Modspace Unit Contract Number: 1624353
Modular Space Corporation	1200 Swedesford Rd	Berwyn	PA	19312	692432	Modspace Unit Contract Number: 1744932
Modular Space Corporation	1200 Swedesford Rd	Berwyn	PA	19312	692446	Modspace Unit Contract Number: 1744927
Modular Space Corporation	1200 Swedesford Rd	Berwyn	PA	19312	1744916	Modspace Unit Contract Number: 1744916
Modular Space Corporation	1200 Swedesford Rd	Berwyn	PA	19312	694476, 693148	Modspace Unit Contract Number: 60834
Paccar Financial Corp.	777 106 Avenue NE	Bellevue	WA	98009	1XPXP4EX0FD270286	Peterbilt
Paccar Financial Corp.	777 106 Avenue NE	Bellevue	WA	98009	1XPTD40X3FD270295	Peterbilt
Paccar Financial Corp.	777 106 Avenue NE	Bellevue	WA	98009	1XPTD40X6FD270291	Peterbilt
Paccar Financial Corp.	777 106 Avenue NE	Bellevue	WA	98009	1XPTD40X8FD270289	Peterbilt
Paccar Financial Corp.	777 106 Avenue NE	Bellevue	WA	98009	1XPCP4EX9GD345891	Peterbilt
Paccar Financial Corp.	777 106 Avenue NE	Bellevue	WA	98009	1XPXP4EX5JD433183	Peterbilt
Williams Scotsman	901 S. Bond Street, Suite 600	Baltimore	MD	21231-3357	693148	Storage/Office Unit Contract Number: 1608657
Williams Scotsman	901 S. Bond Street, Suite 600	Baltimore	MD	21231-3357	694476	Storage/Office Unit Contract Number: 1608657
Williams Scotsman	901 S. Bond Street, Suite 600	Baltimore	MD	21231-3357	690974	Storage/Office Unit Contract Number: 1621950
Williams Scotsman	901 S. Bond Street, Suite 600	Baltimore	MD	21231-3357	692431	Storage/Office Unit Contract Number: 1621950