

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. 581**

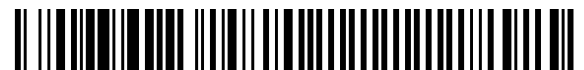
**NOTICE OF REVISED PROPOSED SALE ORDER AND AMENDMENT TO
THE AGENCY AGREEMENT**

PLEASE TAKE NOTICE that, on March 22, 2019, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed that certain *Motion of Debtors for Order under 11 U.S.C. §§ 105(a), 363, and 364, Fed. R. Bankr. P. 2002 and 6004 and Del. Bankr. L.R. 2002-1, 6004-1, and 9006-1 Authorizing (A) the Sale of Certain Assets of the Debtors Free and Clear of All Claims, Liens, Liabilities, Rights, Interests and Encumbrances; (B) the Debtors to Enter into and Perform their Obligations under the Agency Agreement; and (C) Related Relief* [Docket No. 581] (the “**Sale Motion**”)².

PLEASE TAKE FURTHER NOTICE that, subsequent to filing the Sale Motion, the Debtors received informal comments from the Office of the United States Trustee for the District of Delaware, Steve Miller, Esq., counsel to various companies, and a reservation of rights from Caterpillar Financial Services Corporation (collectively, the “**Interested Parties**”).

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 otherwise defined herein will have the meaning ascribed to them in the Sale Motion.



PLEASE TAKE FURTHER NOTICE that, subsequent to the filing of the Sale Motion, the Debtors chose to exercise the Leased Equipment Option under the Agency Agreement.

PLEASE TAKE FURTHER NOTICE that, as previously presented to the Court, the Debtors have worked to resolve the issues of the Interested Parties and have worked to document the exercise of the Leased Equipment Option. Accordingly, the Debtors hereby submit a Revised Approval Order marked against the Approval Order, attached hereto as Exhibit A and a draft of the First Amendment to the Agency Agreement, attached hereto as Exhibit B.

Dated: April 17, 2019
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Betsy L. Feldman

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EXHIBIT A

Revised Sale Order

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

In re:Chapter 11In re:Chapter 11WELDED CONSTRUCTION, L.P., *et al.*,¹

Case No. 18-12378 (KG)

Debtors.

(Jointly Administered)

Ref. Docket No. ~~581~~

**ORDER AUTHORIZING (A) THE SALE OF CERTAIN ASSETS OF THE DEBTORS
FREE AND CLEAR OF ALL CLAIMS, LIENS, LIABILITIES, RIGHTS, INTERESTS
AND ENCUMBRANCES; (B) THE DEBTORS TO ENTER INTO AND
PERFORM THEIR OBLIGATIONS UNDER THE AGENCY
AGREEMENT; AND (C) RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”), pursuant to sections 105(a), 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), as supplemented by Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of ~~orders~~an order approving, among other things, the sale ~~of certain assets~~ of the ~~Debtors~~Assets (the “**Sale**”) free and clear of all Encumbrances; and the Court having determined that the relief provided herein is in the best interest of the Debtors, their estates, their creditors and other parties in interest; and due and adequate notice of the Motion having been given under the circumstances; and upon the record of the hearing on the Motion (the “**Sale Hearing**”), and the full record of these chapter 11 cases; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby FOUND that:

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 herein but not defined shall have the meaning ascribed to such terms in the Motion or the Agency Agreement, as applicable.

A. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Except as otherwise determined in any other order of this Court, this Court has jurisdiction over the Motion and the transactions contemplated therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter a final order consistent with Article III of the United States Constitution. Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. Notice of the Motion and of the Sale Hearing was given in accordance with the applicable Bankruptcy Rules and the Local Rules.

D. The notice of the Motion and of the Sale Hearing was adequate and sufficient under the circumstances, and any otherwise applicable notice requirement is hereby waived and dispensed with.

E. A reasonable opportunity to object or be heard regarding the relief requested in the Motion and the transactions provided for therein has been afforded to all interested parties, including, without limitation, the following (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Committee; (iii) counsel to the Debtors' DIP ~~Lenders~~Lender; (iv) all persons known or reasonably believed to have asserted an interest in any of the Assets; (v) the Attorneys General in the State(s) where the Assets are located; (vi) all state and local environmental agencies in any jurisdiction where the Debtors own or have owned or used real property; (vii) all parties asserting title to, or a security interest in, any of the Assets; and (viii) all parties who, as of the filing of this Motion, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. In addition to the foregoing, (a)

electronic notification of the Motion and the Notice of Sale Hearing has been posted on: (1) the Court's website, www.deb.uscourts.gov, and (2) the case website maintained by the Debtors' claims and noticing agent, Kurtzman Carson Consultants, LLC, at <http://kccllc.net/welded>, or can be requested by calling (888) 830-4648 from within the United States or Canada or (310) 751-2642 if calling from outside the United States; and (b) the Debtors have served the Notice of Sale Hearing on all known creditors of the Debtors.

F. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Motion or the Agency Agreement between Gordon Brothers Commercial & Industrial LLC and Ritchie Bros Auctioneers (America) Inc. (collectively, the "Agent") and the Debtors ([as amended by that First Amendment to the Agency Agreement, dated as of April \[\], 2019](#), the "Agency Agreement"), a copy of which is attached hereto as **Exhibit 1**.

G. As demonstrated by the testimony and other evidence proffered or adduced at the Sale Hearing, and the representations of counsel made on the record at the Sale Hearing, the Debtors have thoroughly marketed the Assets, with adequate opportunity for parties that either expressed interest in acquiring or liquidating the Assets, or that the Debtors believed may have an interest in acquiring or liquidating the Assets, to submit bids. The Debtors and the Agent have negotiated and undertaken their respective roles leading to the Sale and entry into the Agency Agreement in a diligent, noncollusive, fair, and good faith manner.

H. The Debtors, their management, and their respective directors, employees, agents and representatives, and the Agent, its members and their respective officers, directors, employees, agents and representatives, actively participated in the bidding process administered by the Debtors prior to the entry into the Agency Agreement and the filing of the Motion, and

acted in good faith. The Agency Agreement was negotiated and entered into in good faith, based upon arm's length bargaining, and without collusion or fraud. The Debtors were free to deal with any other party interested in buying or selling on behalf of the Debtors' estates some or all of the Assets. Neither the Debtors nor the Agent have engaged in any conduct that would cause or permit the Sale, the Agency Agreement, or any related action or the transactions contemplated thereby to be avoided under section 363(n) of the Bankruptcy Code, or that would prevent the application of sections 363(m) and 364(e) of the Bankruptcy Code. The Agent has not violated section 363(n) of the Bankruptcy Code by any action or inaction. Specifically, the Agent has not acted in a collusive manner with any person and was not controlled by any agreement among bidders. The Agent's prospective performance and payment of amounts owing under the Agency Agreement are in good faith and for valid business purposes and uses.

I. Any credit extended to the Debtors pursuant to the Agency Agreement shall be deemed to have been extended, issued, or made, as the case may be, in good faith within the meaning of section 364(e) of the Bankruptcy Code.

J. The Agent is not an "insider" as that term is defined in section 101(31) of the Bankruptcy Code. No common identity of directors or controlling stockholders exists between the Agent and the Debtors.

K. The offer of the Agent, embodied in the terms and conditions set forth in the Agency Agreement, including the form and total consideration to be realized by the Debtors pursuant to the Agency Agreement, (i) is the highest and best offer received by the Debtors; (ii) is fair and reasonable; and (iii) is in the best interests of the Debtors' creditors and estates. There is no legal or equitable reason to delay entry into the Agency Agreement, and the transactions contemplated therein, including, without limitation, the Sale.

L. The Debtors' decisions to (i) enter into the Agency Agreement and (ii) perform thereunder are a reasonable exercise of the Debtors' sound business judgment consistent with their fiduciary duties and are in the best interests of the Debtors, their estates, their creditors and all other parties in interest.

M. Conducting the Sale as set forth in the Agency Agreement and this Order will provide an efficient means for the Debtors to sell and dispose of the Assets.

N. The Debtors have represented to this Court that they are neither selling nor leasing personally identifiable information, as such term is defined in section 101(41A) of the Bankruptcy Code, (or assets containing personally identifiable information) pursuant to the Motion or the Agency Agreement.

O. Time is of the essence in effectuating the Agency Agreement and proceeding with the Sale contemplated therein without interruption. Based on the record of the Sale Hearing and the Motion, the Sale must be commenced as soon as practicable to maximize the value that the Agent may realize from the Sale and the value that the Debtors may realize from entering into the Agency Agreement. Accordingly, cause exists to modify the stay to the extent necessary, as contemplated by Bankruptcy Rule 6004(h), and permit the immediate effectiveness of this Order.

P. A sale of the Assets, other than one free and clear of liens, claims, encumbrances, defenses (including, without limitation, rights of setoff and recoupment) and interests, including, without limitation, security interests of whatever kind or nature, mortgages, conditional sales or title retention agreements, pledges, deeds of trust, hypothecations, liens, encumbrances, assignments, preferences, debts, easements, charges, suits, licenses, options, rights-of-recovery, judgments, orders and decrees of any court or foreign or domestic

governmental entity, taxes (including foreign, state and local taxes), licenses, covenants, restrictions, indentures, instruments, leases, options, off-sets, claims for reimbursement, contribution, indemnity or exoneration, successor, product, environmental, tax, labor, ERISA, CERCLA, alter ego and other liabilities, causes of action, contract rights and claims, to the fullest extent of the law, in each case, of any kind or nature (including, without limitation, all “claims” as defined in section 101(5) of the Bankruptcy Code and the liens and security interests of the ~~Lender~~ DIP Lender or any interests of Caterpillar Financial Services Corporation (“CFSC”), whether arising by agreement, any statute or otherwise and whether arising before, on or after the date on which these chapter 11 cases were commenced), known or unknown, whether pre-petition or post-petition, secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, statutory or non-statutory, matured or unmatured, legal or equitable (collectively, “**Encumbrances**”) and without the protections of this Order would hinder the Debtors’ ability to obtain the consideration provided for in the Agency Agreement and, thus, would impact materially and adversely the value that the Debtors’ estates would be able to obtain for the sale of the Assets. But for the protections afforded to the Agent under the Bankruptcy Code and this Order, the Agent would not have offered to pay the consideration contemplated in the Agency Agreement. In addition, each entity with an Encumbrance upon the Assets; (i) has consented to the Sale or is deemed to have consented to the Sale; (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such interest; or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code, and therefore, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Additionally, any valid and

perfected liens against the Assets, including, without limitation, the DIP Liens (as such term is defined in the *Final Order (I) Authorizing the Debtors to Obtain Postpetition Secured Financing, (II) Authorizing the Use of Cash Collateral, (III) Granting Liens and Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, and (V) Modifying the Automatic Stay* [Docket No. 291] (the “**Final DIP Order**”)) shall attach to the ~~amounts to be paid to the Debtors~~ Owned Assets Guaranteed Amount and the Seller’s Sharing Amount under the Agency Agreement, to the same extent and priority as before such sale and subject to the liens of the Agent to the extent provided in this Order. Those holders of Encumbrances who did not object to the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Therefore, approval of the Agency Agreement and consummation of the ~~Sales~~ Sale free and clear of Encumbrances is appropriate pursuant to section 363(f) of the Bankruptcy Code and is in the best interests of the Debtors’ estates, their creditors and other parties in interest.

Q. The consideration to be paid by the Agent to the Debtors under the Agency Agreement was negotiated at arm’s length and constitutes reasonably equivalent value and fair and adequate consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and the laws of the United States, any state, territory, possession thereof, or the District of Columbia. The terms and conditions set forth in the Agency Agreement are fair and reasonable under these circumstances and were not entered into for the purpose of, nor do they have the effect of, hindering, delaying or defrauding the Debtors or their creditors under any applicable laws.

R. The security interests and liens provided to the Agent in the Agency Agreement and this Order to secure the Debtors’ obligations under the Agency Agreement to the

Agent are necessary to induce the Agent to agree to terms for the Agency Agreement that maximize value for the Debtors' estates. The absence of such protections would impact materially and adversely the value available to the Debtors in the sale of their Assets in partnership with the Agent. But for the protections afforded to the Agent under the Bankruptcy Code, this Order, and the Agency Agreement, the Agent would not have agreed to pay the Debtors the compensation provided for under the Agency Agreement. In addition, the DIP Lender, which holds a security interest in the ~~Assets~~Owned Equipment to which the Agent's security interests attach, has consented to the security interests provided for in the Agency Agreement, as a portion of the Owned Assets Guaranteed Amount will be paid to the DIP Lender in full and final satisfaction of the DIP Obligations advanced under the DIP Facility (as such terms are defined in the Final DIP Order).

S. Except as otherwise provided in the Agency Agreement, no sale, transfer, or other disposition of the Assets pursuant to the Agency Agreement or the Agent's entry into the Agency Agreement will subject the Agent to any liability for claims, obligations, Encumbrances, or interests asserted against the Debtors by reason of such transfer under any laws, including, without limitation, any bulk-transfer laws or any theory of successor or transferee liability, antitrust, environmental, product line, de facto merger or substantial continuity or similar theories. The Agent is not a successor to the Debtors or their estates.

T. Each of the Debtors (i) has full corporate or other power to execute, deliver and perform its obligations under the Agency Agreement and all other transactions contemplated thereby, and entry into the Agency Agreement has been duly and validly authorized by all necessary corporate or similar action~~;~~ (ii) has all of the corporate or other power and authority necessary to consummate the transactions contemplated by the Agency Agreement~~;~~

and (iii) has taken all actions necessary to authorize and approve the Agency Agreement and the transactions contemplated thereby. No consents or approvals, other than those expressly provided for herein or in the Agency Agreement, are required for the Debtors to consummate such transactions.

U. Entry into the Agency Agreement and the transactions contemplated thereby neither impermissibly restructure the rights of the Debtors' creditors, nor impermissibly dictate the terms of a chapter 11 plan for the Debtors. Entry into the Agency Agreement does not constitute a *sub rosa* chapter 11 plan.

V. In the event any of the provisions of this Order are modified, amended or vacated by a subsequent order of the Bankruptcy Court or any other court, the Agent shall be entitled to the protections provided in section 363(m) and 364(e) of the Bankruptcy Code, and no such appeal, modification, amendment or vacatur shall affect the validity and enforceability of the Sale, the liens, or priority authorized or created under the Agency Agreement or ~~the~~this Order.

W. The Debtors timely and properly exercised the option (the "Leased Equipment Option") with respect to the Leased Equipment in accordance with Section 18.1 of the Agency Agreement. The exercise of the Leased Equipment Option represents a reasonable exercise of the Debtors' sound business judgment consistent with their fiduciary duties and is in the best interest of the Debtors, their estates, their creditors and all other parties in interest.

X. CFSC has consented to the Leased Equipment Option and the transactions associated therewith, including, without limitation, the termination of the Leases associated with the Leased Equipment, the inclusion of the Leased Equipment as Assets in the Sale and the release of claims by CFSC as provided in this Order. The consideration paid on account of and

in connection with the exercise of the Leased Equipment Option, the termination of the Leases and the release of claims were negotiated at arm's length and constitutes reasonably equivalent value and fair and adequate consideration under the Bankruptcy Code, the Uniform Fraudulent Conveyance Act and the laws of the United States, any state, territory, possession thereof or the District of Columbia.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein. All objections to the Motion to the extent not previously withdrawn or resolved or sustained as set forth herein are denied, and all reservations of rights included in such objections are overruled in all respects and denied.

2. The Debtors and the Agent are hereby authorized, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to conduct the Sale of the Assets in accordance with the Agency Agreement and the provisions of this Order. ~~Subject to paragraph 10 below, no law shall prohibit the Debtors or the Agent from taking any action contemplated by the Agency Agreement.~~

3. The Debtors are hereby authorized and empowered to enter into the Agency Agreement (and each of the transactions contemplated therein). All amounts payable by the Debtors to the Agent under the Agency Agreement shall be payable to the Agent without the need for any application of the Agent therefor or a further order of the Court. The failure to include specifically any particular provision of the Agency Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Agency Agreement and all of its provisions, payments and transactions, be authorized and

approved in their entirety. Likewise, all of the provisions of this Order are nonseverable and mutually dependent.

4. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors, the Agent, and each of their respective officers, employees, and agents are hereby authorized to execute such documents and to do such acts as are necessary or desirable to carry out the Sale and effectuate the Agency Agreement and each of the transactions contemplated therein.

5. The Agency Agreement is approved pursuant to section 363 of the Bankruptcy Code. The Debtors are hereby authorized and empowered to perform under the Agency Agreement.

6. As set forth in Section 5.1 of the Agency Agreement, upon satisfaction of all conditions precedent to payment of the Guaranteed Amount within two (2) Business Days of the entry of this Order, the Agent shall pay to the Debtors the Owned Assets Guaranteed Amount by wire transfer of immediately available funds, a portion of which Owned Assets Guaranteed Amount, ~~in the manner and as directed by the Debtors~~ (i) as provided in paragraph [23] of this Order, shall be paid to the DIP Lender in full and final satisfaction of the DIP Obligations advanced under the DIP Facility (as such terms are defined in the Final DIP Order); and (ii) the balance of the Owned Assets Guaranteed Amount to the Debtors. On the date of Closing, the Agent shall pay to CSFC the Caterpillar Equipment Purchase Price in the amount of \$30,500,000 by wire transfer of immediately available funds, and the Debtors shall pay to CFSC the April Rental Payment in the amount of \$257,000 by wire transfer of immediately available funds.

7. This Order shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies,

governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Assets.

8. This Order and the terms and provisions of the Agency Agreement shall be binding on all of the Debtors' creditors, the Debtors, the Agent, and their respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting an interest in the Assets, notwithstanding any subsequent appointment of any trustee, party, entity or other fiduciary under any section of the Bankruptcy Code with respect to the forgoing parties, and as to such trustee, party, entity or other fiduciary, such terms and provisions likewise shall be binding.

9. The Agent shall be granted a limited license and right to use until the Sale Termination Date the Debtors' trade names, and logos relating to and used in connection with the operation of the Assets, solely for the purpose of advertising the Sale in accordance with the terms of the Agency Agreement.

10. Subject to applicable state and local public health and safety laws ("**Safety Laws**"), and applicable criminal, tax, labor, employment, environmental, antitrust, fair competition, traffic and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, "**General Laws**"), the Debtors and the Agent are hereby authorized to take such actions necessary and appropriate to implement the Agency Agreement and to conduct the Sale without the necessity of a further order of this Court as provided by the Agency Agreement.

11. Pursuant to section 363(f) of the Bankruptcy Code, the Assets sold pursuant to the Agency Agreement shall be sold free and clear of any and all Encumbrances, with such Encumbrances on the Assets (other than the Caterpillar Equipment), if any, attaching only to the Owned Assets Guaranteed Amount and ~~other amounts received by the Debtors from the Agent under the Agency Agreement~~ the Seller's Sharing Amount with the same validity, force and effect as the same had with respect to the Owned Assets at issue, subject to any and all defenses, claims and/or counterclaims or setoffs that may exist.

12. Except as expressly provided in the Agency Agreement, nothing in this Order or the Agency Agreement and none of the Agent's actions taken in respect of the Sale shall be deemed to constitute an assumption by the Agent of any of the Debtors' obligations relating to any of the Debtors' employees, nor shall Agent become liable under any collective bargaining or employment agreement or be deemed a joint or successor employer with respect to such employees.

13. Entry into the Agency Agreement was undertaken by the Debtors and the Agent in good faith, as that term is used in sections 363(m) and 364(e) of the Bankruptcy Code, and the Agent shall be protected by the provisions of sections 363(m) and 364(e) of the Bankruptcy Code in the event that this Order is reversed or modified on appeal. The reversal or modification on appeal of the approval of the Agency Agreement and to consummate the transactions contemplated thereby shall not affect the validity of such transactions, unless such approval is duly stayed pending such appeal. The transactions contemplated by the Agency Agreement are not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code.

14. The provisions of this Order shall be self-executing notwithstanding any restrictions in the Agency Agreement (other than the need for the Debtors' prior consent) on the

Agent's ability to conduct the Sale in compliance with applicable laws. All newspapers and other advertising media in which the Sale may be advertised are ~~directed~~authorized to accept this Order as binding authority so as to authorize the Debtors and the Agent to consummate the transactions contemplated by the Agency Agreement and to conduct the Sale, including, without limitation, conducting and advertising of the Sale in accordance with the Agency Agreement and this Order; and no further approval, license or permits of any governmental authority shall be required.

15. If any person or entity that has filed financing statements, mortgages, construction or mechanic's liens, *lis pendens* or other documents or agreement evidencing Encumbrances on or interests in the Assets shall not have delivered to the Debtors, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of any Encumbrances which the person or entity has with respect to the Assets, each such person or entity is hereby directed to deliver all such statements, instruments and releases and the Debtors and the Agent are hereby granted power of attorney and authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity asserting the same and the Agent is authorized to file a copy of this Order which, upon filing, shall be conclusive evidence of the release and termination of such interest. Each and every federal, state and local governmental unit is hereby ~~directed~~authorized to accept any and all documents and instruments necessary or appropriate to give effect to the Sale and related transactions.

16. All entities that are presently in possession of some or all of the Assets or other property in which the Debtors hold an interest that are or may be subject to the Agency Agreement hereby are directed to surrender possession of such Assets.

17. Any third party holding documents of title to any of the Assets shall (a) immediately relinquish such title documents to the Debtors, in no event later than three (3) Business Days after the Debtors² request such title, and shall otherwise cooperate with the Debtors to deliver such title documents to the Debtors free and clear of such third party's liens, charges, security interests and other Encumbrances, or (b) in the event any such title documents have been lost or cannot be delivered to the Debtors within the timeframe set forth in the preceding clause (a), cooperate with the Debtors in good faith to (i) assist the Debtors in obtaining replacement title documents in an expeditious manner and (ii) take such other steps such that the Debtors can transfer the titled assets, including, without limitation, providing a release of lien letter with detailed information about the vehicle and the title and stating that such party releases its liens, charges, security interests and other Encumbrances and completing any necessary forms. In addition, any third party, including CFSC, who holds title documents to any of the Assets shall promptly take such other steps reasonably requested by the Debtors to enable the Debtors to facilitate the timely sale of the titled Assets. Any third party, including CFSC, who holds title documents to any of the Assets or has a lien, charge, security interest or other Encumbrance on any titled Asset hereby appoints the Agent as such party's true and lawful proxy and attorney in connection with the release of any such lien, charge, security interest or other Encumbrance and the sale or transfer of such Assets, with full power of substitution, to execute and deliver lien releases and other transfer documents (including, without limitation, title documents) in connection with the sale and/or transfer of any of the Assets on behalf of the Debtors pursuant to the Agency Agreement, provided, however, that notwithstanding the provision of such materials, including releases by third parties, no liens or Encumbrances shall be

released until the sale of such asset. The proxies and powers granted by each third party pursuant to this paragraph are coupled with an interest.

18. If any parties or persons, including but not limited to utilities, landlords, creditors, and all those acting for or on their behalf, believe that cause exists to: (a) prohibit the Agent from advertising the Sale, to the extent same is consistent with the Agency Agreement; (b) in any way interfere with or otherwise impede the conduct of the Sale or the use or maintenance of the Assets and other assets of the Debtors located at the Seller Locations; or (c) institute any action or proceeding in any court or other administrative body having as its objective the obtaining of an order or judgment against the Debtors, the Agent or a third party which might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Sale and/or seek to recover damages for breach(es) of covenants or provisions in any lease or sublease based upon any relief authorized herein, this Court shall retain exclusive jurisdiction to resolve such dispute, and such parties or persons shall take no action against the Debtors, the Agent, any third party or the Sale until this Court has resolved such dispute. This Court shall hear the request of such persons or parties with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

~~19. — The Agent shall not be liable for any claims (other than its fraud, gross negligence and willful misconduct) against either Debtor other than as expressly provided for in the Agency Agreement, and Agent shall have no successor liabilities whatsoever.~~

19. ~~20.~~ Nothing in this Order or the Agency Agreement releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) that any entity would be subject to as the owner, lessor, lessee, or operator of the property

after the date of entry of this Order. Nothing contained in this Order or in the Agency Agreement shall in any way (i) diminish the obligation of any entity to comply with environmental laws, or (ii) diminish the obligations of the Debtors to comply with environmental laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. Nothing herein shall be construed to be a determination that the Agent is an operator with respect to any environmental law or regulation. Moreover, the Sale shall not be exempt from, and the Agent shall be required to comply with Safety Laws and General Laws. Nothing in this Order shall alter or affect the Debtors' and Agent's obligations to comply with all applicable federal safety laws and regulations. Nothing in this Order shall be deemed to bar any Governmental Unit (as defined in Bankruptcy Code section 101(27)) from enforcing General Laws in the applicable non-bankruptcy forum, subject to the Debtors' or the Agent's right to assert in that forum or before this Court that any such laws are not in fact General Laws or that such enforcement is impermissible under the Bankruptcy Code, this Order, or otherwise. Notwithstanding any other provision in this Order, no party waives any rights to argue any position with respect to whether the conduct was in compliance with this Order and/or any applicable law, or that enforcement of such applicable law is preempted by the Bankruptcy Code. Nothing in this Order shall be deemed to have made any rulings on any such issues.

20. ~~21.~~ Except to the extent the rights of Governmental Units are expressly reserved elsewhere in this Order, the Debtors and the Agent are hereby authorized to take such actions as may be necessary and appropriate to implement the Agency Agreement and to conduct the Sale without necessity of further order of this Court as provided in the Agency Agreement.

21. ~~22.~~ This Court shall retain exclusive jurisdiction with regard to all issues or disputes in connection with the Order and the relief provided for herein, including, without

limitation, to protect the Debtors and/or the Agent from interference with the Sale, and to resolve any disputes related to the Sale, the Assets or arising under the Agency Agreement or the implementation thereof.

22. ~~23.~~ Pursuant to section 554(a) of the Bankruptcy Code, the Debtors and the Agent, as applicable, are permitted to abandon property of the Debtors' estates in accordance with the terms and provisions of the Agency Agreement, and the Debtors, the Agent and each of their respective officers, employees and agents are hereby authorized to execute such documents and to do such acts as are necessary or desirable to carry out the Sale and effectuate the Agency Agreement and the related actions set forth therein.

23. ~~24.~~ The Agent shall pay \$8,792,537 (the "DIP Payoff Amount") to the DIP Lender from the proceeds representing the ~~Guaranteed Amount~~ Owned Assets Guaranteed Amount in full and final satisfaction of the DIP Obligations advanced under the DIP Facility (as such terms are defined in the Final DIP Order). Notwithstanding the DIP Payoff Amount, the Debtors shall remain obligated to pay all accrued and unpaid attorneys' fees and expenses incurred by counsel to the DIP Lender through the date the DIP Payoff Amount is funded, subject to the fee review provisions of the Final DIP Order. Upon the payment by the Agent of the ~~portion of the Guaranteed Amount directed by the Debtors (consulting with the Committee) and authorized by this Order to be paid~~ DIP Payoff Amount to the DIP Lender, the Agent shall have a first priority, valid duly perfected lien and security interest (the "**Agent's Lien**") in (x) the Assets (other than the Caterpillar Equipment), (y) any Proceeds (other than from the Caterpillar Equipment) (but only up to the amount which the Agent is entitled to receive pursuant to the terms of the Agency Agreement, including, without limitation, any amounts owed to the Agent pursuant to Section 5 of the Agency Agreement) and (z) all "proceeds" (within the meaning of

Section 9-102(a)(64) of the Uniform Commercial Code as in effect in the State of Delaware (the “UCC”) of each of the foregoing, which Agent’s Lien is senior to all persons, including all creditors of the Debtors without the need for any filing under the UCC being noted on any certificate of title or otherwise, which lien shall be granted the status of superpriority claims in the chapter 11 cases pursuant to section 364(c) of the Bankruptcy Code senior to all other superpriority claims, and which lien shall be free of any potential rights of the Debtors or any Chapter 7 or Chapter 11 trustee to surcharge against the Assets and the Proceeds pursuant to section 506(c) of the Bankruptcy Code; *provided* that, (1) the Agent’s Lien shall not be junior or subordinate to or *pari passu* with the Encumbrances or claims of any Person (as defined in the Agency Agreement), whether under section 364(d) of the Bankruptcy Code or otherwise, including without limitation any Encumbrance that is avoided or preserved for the benefit of the Debtors’ estates under section 551 of the Bankruptcy Code, (2) the Agent’s Lien, which shall be senior to all other persons, cannot be primed without the prior written consent of the Agent, which may be granted or withheld in the sole discretion of the Agent, and (3) the Agent’s Lien shall not attach or extend to cash held by the Debtors, including cash comprising the Owned Assets Guaranteed Amount or the Seller’s s Sharing Amount.

24. ~~25.~~ Valid, perfected, enforceable and non-avoidable liens on the Assets (other than the Caterpillar Equipment), which are senior in priority to the Encumbrances securing the DIP Obligations may only attach to the Owned Assets Guaranteed Amount and the Seller’s s Owned Equipment Sharing Amount received by the Debtors. Upon the receipt by the Agent of all amounts due to the Agent pursuant to ~~Section 5~~ Sections 5.2 and 5.3(1) of the Agency Agreement, the Agent’s Lien shall be released and, to the extent necessary, the Agent shall sign any release documents reasonably requested by the Debtors.

25. ~~26.~~ The provisions of this Order and the Agency Agreement and any actions taken pursuant hereto or thereto shall survive entry of any order which may be entered confirming or consummating any plan of reorganization of the Debtors, or which may be entered converting the Debtors' cases from chapter 11 to chapter 7, and the terms and provisions of the Agency Agreement as well as the rights and interests granted pursuant to this Order and the Agency Agreement shall continue in this or any successor case and shall be binding upon Debtors, the Agent and their respective successors and permitted assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors under chapter 7 or 11 of the Bankruptcy Code. Any trustee appointed in these chapter 11 cases shall be and hereby is authorized and directed to comply with the terms of this Order and the Agency Agreement, and the Agent and the trustee shall be and hereby are authorized to perform under the Agency Agreement upon the appointment of a trustee without the need for further order of this Court.

26. ~~27.~~ The Assets shall be sold by the Agent on behalf of the Debtors, and any buyer thereof shall acknowledge that the Assets are being purchased on an "AS IS, WHERE IS" and "WITH ALL FAULTS" basis, based solely on such buyer's own investigation of the Asset, without any representation or warranty other than those specifically made by the Debtors in ~~section~~Section 12.1(g) of the Agency Agreement.

27. ~~28.~~ This Order constitutes an authorization of conduct by the Debtors and nothing contained herein shall be deemed to constitute a ruling with regard to the sovereign immunity of any state, and the failure of any state to object to the entry of this Order shall not operate as a waiver with respect thereto.

28. ~~29.~~ During the Sale Term, all sales, excise, gross receipts and other taxes attributable to sales of Assets (other than the Caterpillar Equipment) payable to any taxing

authority having jurisdiction (collectively, “**Sales Taxes**”) shall be payable by and be the responsibility of the Seller. The Agent shall make commercially reasonable efforts to collect applicable Sales Taxes from each purchaser in each Sale and shall promptly remit all Sales Taxes to the extent actually received by Agent to the Seller. The Seller shall be responsible for the preparation of any reports or tax returns required to be filed with any governmental authority in connection with any Sales Tax and the Agent shall reasonably cooperate in providing the Seller with the information necessary to prepare such reports and tax returns. The Seller shall sign such tax returns and promptly file the same with the appropriate governmental authority. The Seller shall promptly pay all such Sales Taxes to the appropriate governmental authority. Without limiting the generality of Section 9.1 of the Agency Agreement, as the Agent is conducting the Sale solely as agent for the Seller, various payments that the Agency Agreement contemplates that one party may make to the other party (including the payment by Agent of the Guaranteed Amount) do not represent the sale of tangible personal property and, accordingly, shall not be subject to Sales Taxes. All sales, excise, gross receipts and other taxes attributable to sales by Agent to third parties of the Caterpillar Equipment payable to any taxing authority having jurisdiction shall be payable by and be the responsibility of the Agent and the Agent shall be responsible for the preparation of any reports or tax returns required to be filed with any governmental authority in connection with any such taxes due on account of sales by Agent to third parties.

29. ~~30.~~ The Agent shall not be liable for any claims (other than its fraud, gross negligence and willful misconduct) against the Debtors, and the Debtors shall not be liable for any claims (other than their fraud, gross negligence and willful misconduct) against the Agent, in

each case, other than as expressly provided for in the Agency Agreement. The Agent shall have no successor liability whatsoever.

30. ~~31.~~ Nothing contained in any plan confirmed in the Debtors' chapter 11 cases or any order of this Court confirming such plan or in any other order in this chapter 11 cases (including any order entered after any conversion of this case to a case under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from, the provisions of the Agency Agreement or the terms of this Order.

31. ~~32.~~ The Agency Agreement and related documents may be modified, amended or supplemented by the Debtors and the Agent in accordance with the terms thereof. No further notice or further order of this Court shall be required with respect to any such modification, amendment or supplement that is not material and adverse to the Debtors.

32. ~~33.~~ The Court shall retain jurisdiction with respect to any matters, claims, rights, or disputes arising from or related to the implementation of this Order and the Agency Agreement.

33. ~~34.~~ The transactions contemplated by the Agency Agreement are not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code.

34. At Closing, (i) the Leases shall be deemed voluntarily terminated by the Debtors and CFSC and (ii) CFSC shall be deemed to have consented to the inclusion of the Caterpillar Equipment as Assets in the Sale and the sale of the Caterpillar Equipment free and clear of any and all Encumbrances. All original documents of title relating to the Caterpillar Equipment shall be delivered to the Agent or its designee within three (3) business days of the Closing and the Caterpillar Equipment shall be transferred to the Agent or its designee by CFSC free and clear of any and all Encumbrances.

35. [Upon payment of the Caterpillar Equipment Purchase Price in the amount of \$30,500,000 and the April Rent Payment in the amount of \$257,000, CFSC, for itself, and on behalf of its respective predecessors, successors, assigns, and any controlled subsidiary or controlled affiliate thereof (collectively, the “CFSC Releasors”), shall be deemed to completely release, waive, and forever discharge the Debtors, their estates, affiliates, predecessors, successors, assigns, officers, directors, employees, shareholders, lenders, agents, professionals, representatives, attorneys and beneficiaries, past, present and future (collectively, the “Debtor Released Parties”), from any and all actions, complaints, attorneys’ fees, charges, claims (whether they be unsecured, secured, priority, and/or administrative, including crossclaims, counterclaims, rights of setoff or recoupment), costs, obligations, demands, damages, debts, expenses, judgments, liabilities and causes of action of any kind, nature or description, whether matured or unmatured, contingent or absolute, liquidated or unliquidated, known or unknown, which the CFSC Releasors may now have, have ever had, or may in the future have against the Debtor Released Parties, based on or in any way relating to, or in any manner arising from, in whole or in part, the Caterpillar Equipment. Without limiting the generality of the foregoing, the CFSC Releasors further release, waive, and forever discharge the Debtors and their estates from any claims related to any payments made to the CFSC Releasors pursuant to the Agency Agreement and this Order with respect to the Caterpillar Equipment. To the extent that any proofs of claim have been filed with respect to the Caterpillar Equipment, or are at any point in the future filed in the chapter 11 cases by or on behalf of the CFSC Releasors, such claims shall be deemed disallowed and expunged without further order of the Court.]

36. ~~35.~~ Notwithstanding Bankruptcy Rules 6004, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the

absence of any person or entity obtaining a stay pending appeal, the Debtors and the Agent are free to perform under the Agency Agreement at any time, subject to the terms of the Agency Agreement, and the Agent shall be afforded the protections of section 363(m) and 364(e) of the Bankruptcy Code as to all aspects of the transactions under and pursuant to the Agency Agreement if this Order or any authorization contained herein is reversed or modified on appeal.

37. ~~36.~~ The Agent is a party in interest and shall have the ability to appear and be heard on all issues related to or otherwise connected to this Agency Agreement and the conduct of the Sale.

38. ~~37.~~ The Debtors are authorized and directed to perform their obligations under the Agency Agreement.

39. If there is any direct conflict between the Agency Agreement and related documents and this Order, the terms of this Order shall control.

EXHIBIT 1

Agency Agreement

Document comparison by Workshare Compare on Wednesday, April 17, 2019
11:50:58 AM

Input:	
Document 1 ID	interwovenSite://WORKSITE02/YCST01/24340324/1
Description	#24340324v1<YCST01> - Welded - Sale Order [As Filed]
Document 2 ID	interwovenSite://WORKSITE02/YCST01/24340324/8
Description	#24340324v8<YCST01> - Welded - Sale Order
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	63
Deletions	52
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	123

EXHIBIT B

Revised Amended Agency Agreement

FIRST AMENDMENT TO AGENCY AGREEMENT

THIS FIRST AMENDMENT TO AGENCY AGREEMENT (this “Amendment”) is made and entered into as of April __, 2019, by and among Gordon Brothers Commercial & Industrial, LLC, a Delaware limited liability company with a principal place of business at 800 Boylston Street, 27th Floor, Boston, MA 02199 (“GBCI”), Ritchie Bros. Auctioneers (America) Inc., a Washington corporation with a principal place of business at 4000 Pine Lake Road, Lincoln, NE 68516 (“RB”, and collectively with GBCI, the “Agent”), Welded Construction, L.P. and its affiliated debtors and debtors-in-possession (collectively, the “Seller”) and solely for the purposes of Section 1 hereof, [CAT], a [_____] [_____] with a principal place of business at [_____] (the “Caterpillar”). Initial capitalized terms used herein and not otherwise defined shall have the meanings respectively ascribed to such terms in the Agency Agreement (as hereinafter defined).

WHEREAS, Seller and Agent entered into a certain Agency Agreement (the “Agency Agreement”) dated as of March 22, 2019;

WHEREAS, Seller, Agent, and Caterpillar desire to incorporate certain assets currently owned by Caterpillar and leased to Seller into the Sale by conveying title to such assets to Agent at the Closing of the Agency Agreement as set forth below; and

WHEREAS, Seller and Agent now desire to amend the Agency Agreement to reflect the inclusion of such assets in the Sale as set forth below;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller, Agent, and as to Section 1 hereof, Caterpillar hereby agree as follows:

1. Caterpillar Equipment. In exchange for Agent paying to Caterpillar the purchase price agreed to by Agent and Caterpillar as reflected in the bill of the sale (the “Caterpillar Equipment Purchase Price”), and Seller paying to Caterpillar the rental amount agreed to by Seller and Caterpillar in the amount of \$257,000 (the “April Rental Payment”) by wire transfer of immediately available funds at Closing, Caterpillar hereby (a) consents to the inclusion of the equipment set forth on Exhibit E to the Agency Agreement (collectively, the “Caterpillar Equipment”) in the Sale, (b) consents to the voluntary termination of the leases associated with the Caterpillar Equipment including those set forth on Exhibit A hereto (collectively, the “Leases”) simultaneously at Closing, (c) agrees to transfer title to such Caterpillar Equipment to the Agent or to a designee or assignee of Agent at Closing, which entity is acknowledged to be a tax-exempt reseller thereof, (d) represents and warrants that it has good and marketable title to the Caterpillar Equipment and that the Caterpillar Equipment is being transferred by it free and clear of any liens, claims or encumbrances of any kind thereon, (e) agrees that payment of the Caterpillar Equipment Purchase Price and April Rental Payment shall be in full and final satisfaction of (1) any and all claims against or obligations of Seller to Caterpillar arising from or related to the Caterpillar Equipment and the Leases, including all amounts due under the Leases, and (2) any and all amounts due by Agent or its designee or assignee in connection with its

acquisition of the Caterpillar Equipment, (f) agrees to execute and deliver a bill of sale in the form attached hereto as Exhibit B to the Agent or its designee or assignee and to deliver all original documents of title relating to the Caterpillar Equipment subject to a document of title (duly endorsed and in a form suitable for transfer) at Closing, (g) agrees to the inclusion in the order approving the Sale the release in the form attached hereto as Exhibit C, and (h) execute such further documentation as is reasonably requested by Agent or Seller as is necessary to effectuate the foregoing.

2. Amendment to Agency Agreement. The Agency Agreement is hereby amended as follows:

a. The Seller and Agent hereby agree that (x) the Caterpillar Equipment shall be included in the Sale, (y) such Caterpillar Equipment shall not be Excluded Assets but shall be deemed “Assets” for all purposes of the applicable sections of the Agency Agreement, except as otherwise specifically addressed herein, and (z) for purposes of the Agency Agreement the defined term “Caterpillar Equipment” shall be as defined in this Amendment.

b. Section 2.3 of the Agency Agreement are hereby amended by deleting the date “April 15, 2019” set forth therein and inserting the date “April [19], 2019” in lieu thereof.

c. Section 2.4(c) of the Agency Agreement is hereby amended and restated in its entirety as follows:

(c) the Agent shall be entitled to sell all of the Assets hereunder free and clear of all liens, claims and encumbrances thereon (collectively, “Liens”), with any presently existing Liens against the Seller’s property encumbering all or any portion of the Assets or the Proceeds attaching only to the Owned Assets Guaranteed Amount and Seller’s Sharing Amount payable to the Seller under this Agreement from the Sale of Assets;

d. Section 2.4(i) of the Agency Agreement is hereby amended and restated in its entirety as follows:

(i) upon the payment by the Agent of the portion of the Owned Assets Guaranteed Amount directed by the Seller and authorized by the Approval Order to be paid to the DIP Lender, the Agent shall have a first priority, valid duly perfected lien and security interest (the “Agent’s Lien”) in (x) the Assets (other than the Caterpillar Equipment), (y) any Proceeds (other than from the Caterpillar Equipment) (but only up to the amount which the Agent is entitled to receive pursuant to the terms of this Agreement, including, without limitation, any amounts owed to the Agent pursuant to Section 5 of this Agreement) and (z) all “proceeds” (within the meaning of Section 9-102(a)(64) of the Uniform Commercial Code as in effect in the State of Delaware (the “UCC”) of each of the foregoing, which Agent’s Lien is senior to all persons, including all creditors of the Seller without the need for any filing under the UCC being noted on any certificate of title or otherwise, which lien shall be granted the status of superpriority claims in the Chapter 11 Cases pursuant to section 364(c) of the Bankruptcy Code senior to all other superpriority claims, and which lien shall be free of any potential rights of the Seller or

any Chapter 7 or Chapter 11 trustee to surcharge against the Assets (other than the Caterpillar Equipment) and the Proceeds (other than from the Caterpillar Equipment) pursuant to section 506(c) of the Bankruptcy Code; *provided* that, (1) the Agent's Lien shall not be junior or subordinate to or *pari passu* with the Liens or claims of any person, whether under section 354(d) of the Bankruptcy Code or otherwise, including without limitation any Lien that is avoided or preserved for the benefit of the Seller's estates under section 551 of the Bankruptcy Code, (2) the Agent's Lien, which shall be senior to all other persons, cannot be primed without the prior written consent of the Agent, which may be granted or withheld in the sole discretion of the Agent, and (3) the Agent's Lien shall not attach or extend to cash held by the Debtors, including cash comprising the Owned Assets Guaranteed Amount or the Seller's Sharing Amount. Valid, perfected, enforceable and non-avoidable liens, which are senior in priority to the Liens securing the DIP Obligations may only attach to the Owned Assets Guaranteed Amount and the Seller's Sharing Amount received by the Seller. Upon the receipt by the Agent of all amounts due to the Agent pursuant to Sections 5.2 and 5.3(1) of this Agreement, the Agent's Lien shall be released and, to the extent necessary, the Agent shall sign any release documents reasonably requested by the Seller.

e. Section 3 of the Agency Agreement is hereby amended and restated in its entirety as follows:

Section 3. Sale Term. The Sale shall commence on the first calendar day following the satisfaction of the conditions precedent set forth in **Error! Reference source not found.** (the "Sale Commencement Date"), and shall terminate 150 days thereafter (the "Sale Termination Date" (subject to Sections 10 and 12.1(i)); the period from the Sale Commencement Date to the Sale Termination Date being the "Sale Term"); provided that the Sale Term may be extended upon the mutual agreement of the Seller, in consultation with the Official Committee of Unsecured Creditors of Welded Construction, L.P., *et al.* (the "Committee"), and the Agent. The Agent may, in its discretion, terminate the Sale in respect of Assets upon prior written notice to Seller (a "Sale Termination Notice"). The parties acknowledge and agree that in the event the Agent delivers to the Seller a Sale Termination Notice, the Agent (i) shall release the Agent's Lien, to the extent not previously released and subject to the Agent's receipt of all amounts owing to the Agent under this Agreement, (ii) except in connection with indemnification pursuant to Section 14, shall not request any portion of the Owned Assets Guaranteed Amount be returned to the Agent, and (iii) shall be deemed to have abandoned all rights to any Assets (other than the Caterpillar Equipment) referred to in the Sale Termination Notice as of the date the Sale Termination Notice is delivered to the Seller and the Seller shall be thereafter free to dispose of any such abandoned assets. Upon receipt of the Sale Termination Notice, the Seller shall have no obligation or liability under this Agreement or otherwise to the Agent with respect to such Assets. For the avoidance of doubt, the Agent shall not be responsible for any costs, expenses or liabilities associated with any such abandoned assets not located at the Agent Facility; provided, however, the Agent shall be responsible for any costs, expenses or liabilities associated with any Caterpillar Equipment and such abandoned assets located at the Agent Facility.

f. Section 3 of the Agency Agreement is hereby amended by inserting the phrase “(other than the Caterpillar Equipment)” after the reference to the word “Assets” in the second to last sentence thereof.

g. Section 4.4 of the Agency Agreement is hereby amended by deleting the second sentence thereof and replacing it with “Title to the Assets shall remain with the Seller and/or Agent, as applicable, throughout the Sale Term, unless and until paid for by, and transferred to, a purchaser through a Sale.”

h. Section 4.6 of the Agency Agreement is hereby amended by inserting the phrase “or those specifically made by [CAT] in any amendment to this Agreement” at the end of the first sentence of such Section.

i. Section 4.8 of the Agency Agreement is hereby amended by (x) inserting the phrase “(other than the Caterpillar Equipment)” after the word “Asset” and (y) deleting “Guaranteed Amount” and replacing it with “Owned Assets Guaranteed Amount.”

j. Section 4.11 of the Agency Agreement is hereby amended and restated in its entirety as follows:

Section 4.11 The Seller and Agent, as applicable, agree to make the Assets available for sale as contemplated herein.

k. Section 5.1 of the Agency Agreement is hereby amended and restated in its entirety as follows:

“5.1 Guaranteed Amount. Subject to Section 6 hereof, as a guaranty of the Agent’s performance hereunder on or before two (2) Business Days after entry of the Approval Order, provided that the conditions precedent set forth in Section 11 have been satisfied, the Agent shall pay to the Seller or its designee \$20,000,000 (the “Ow ned Assets Guaranteed Amount”) plus pay to Caterpillar the Caterpillar Equipment Purchase Price (as defined in the First Amendment to Agency Agreement dated April [___], 2019, among Agent, Seller and [___]) by wire transfer of immediately available funds. The Ow ned Assets Guaranteed Amount and the Caterpillar Equipment Purchase Price shall collectively be referred to herein as the “Guaranteed Amount”.

l. Section 5.2 of the Agency Agreement is hereby amended and restated in its entirety as follows:

“5.2 Agent’s Fee. In consideration of the Agent’s obligations hereunder, the Agent shall be entitled to (1) a base fee of (x) \$2,000,000 with respect to the Assets (other than the Caterpillar Equipment) (the “Agent’s Ow ned Assets Base Fee”) plus (y) \$3,965,000 with respect to the Caterpillar Equipment (the “Agent’s Caterpillar Equipment Base Fee,” and collectively with the Agent’s Ow ned Assets Base Fee, the “Agent’s Base Fee”), plus (2) the Agent’s Sharing Amount (as defined below). Agent’s Base Fee and Agent’s Sharing Amount are collectively referred to herein as “Agent’s Fee.”

m. Section 5.3 of the Agency Agreement is hereby amended and restated in its entirety as follows:

“5.3 Proceeds of the Sale. On a monthly basis, or at such shorter intervals as determined by Agent, Proceeds will be distributed in the following order of priority:

(1) With respect to Proceeds attributable to all Assets (other than the Caterpillar Equipment):

(a) FIRST: To Agent, for reimbursement of the Owned Assets Guaranteed Amount until paid in full;

(b) SECOND: To Agent, for Agent's Owned Assets Base Fee until paid in full; and

(c) THEREAFTER: To the extent that Proceeds with respect to the Assets (other than the Caterpillar Equipment) exist after the payments set forth in Sections 5.3(1)(a) and 5.3(1)(b), such excess Proceeds shall be shared: (x) 75.0% to the Seller (the “Seller’s Owned Equipment Sharing Amount”) and (y) 25.0% to the Agent (the “Agent’s Owned Equipment Sharing Amount”); and

(2) With respect to Proceeds attributable to the Caterpillar Equipment:

(a) FIRST: To Agent, for reimbursement of the Caterpillar Equipment Purchase Price until paid in full;

(b) SECOND: To Agent, for Agent's Caterpillar Equipment Base Fee until paid in full; and

(c) THEREAFTER: To the extent that Proceeds with respect to the Caterpillar Equipment exist after the payments set forth in Sections 5.3(2)(a) and 5.3(2)(b), such excess Proceeds shall be shared: (x) 75% to the Seller (the “Seller’s Caterpillar Equipment Sharing Amount,” and collectively with the Seller’s Owned Equipment Sharing Amount, the “Seller’s Sharing Amount”) and (y) 25% to the Agent (the “Agent’s Caterpillar Equipment Sharing Amount,” and collectively with the Agent’s Owned Equipment Sharing Amount, the “Agent’s Sharing Amount”).

(3) For the avoidance of doubt, at Closing, Agent shall be solely responsible for payment of the Caterpillar Equipment Purchase Price to Caterpillar, and Seller shall be solely responsible for payment of the April Rental Payment to Caterpillar, the latter of which may be paid by Seller either from its existing cash on hand or by instructing Agent to redirect a portion of the Owned Assets Guaranteed Amount to Caterpillar on account thereof.

(4) For the avoidance of doubt, only Proceeds of Caterpillar Equipment may be used to make the payments contemplated by subparagraph (2) of this Section 5.3 and only Proceeds of Assets

(other than the Caterpillar Equipment) may be used to make payments contemplated by subparagraph (1) of this Section 5.3.

n. Section 5.4 of the Agency Agreement is hereby amended by deleting the date “April 16, 2019” set forth therein and inserting the date “April [22], 2019” in lieu thereof.

o. Section 6 of the Agency Agreement is hereby amended by deleting the term “Assets” wherever used in such section and replacing it with “Assets (other than the Caterpillar Equipment)”.

p. Sections 6.4 and 11(c) of the Agency Agreement are hereby amended by deleting “Guaranteed Amount” and replacing with “Owned Assets Guaranteed Amount”.

q. Section 9.1 of the Agency Agreement is hereby amended by (x) inserting the phrase “(other than the Caterpillar Equipment)” after the word “Assets” in the first sentence and (y) inserting the following language at the end of such section:

“During the Sale Term, all sales, excise, gross receipts and other taxes attributable to sales of the Caterpillar Equipment by Agent to third parties and payable to any taxing authority having jurisdiction (collectively, the “Caterpillar Equipment Sales Taxes”) shall be payable by and be the responsibility of the Agent. The Agent shall make commercially reasonable efforts to collect applicable Caterpillar Equipment Sales Taxes from each purchaser in each such Sale of Caterpillar Equipment. The Agent shall be responsible for the preparation of any reports or tax returns required to be filed with any governmental authority in connection with any Caterpillar Equipment Sales Tax and the Seller shall reasonably cooperate in providing the Agent with the information necessary to prepare such reports and tax returns. The Agent shall sign such tax returns and promptly file the same with the appropriate governmental authority. The Agent shall promptly pay all such Caterpillar Equipment Sales Taxes to the appropriate governmental authority.”

r. Sections 11(c) and 12.1(b) of the Agency Agreement are hereby amended by deleting the term “Assets” wherever used in such section and replacing it with “Assets (other than the Caterpillar Equipment)”.

s. Section 11(f) of the Agency Agreement is hereby amended by deleting the date “April 15, 2019” set forth therein and inserting the date “April [19], 2019” in lieu thereof.

t. Section 11 of the Agency Agreement is hereby amended by adding a new section (g) thereof, which shall state as follows:

(g) Caterpillar shall have executed the bill of sale and release agreement.

u. Section 12.1(g) of the Agency Agreement is hereby amended by deleting the term “Assets” in the first sentence thereof and replacing it with “Assets (other than the Caterpillar Equipment)”.

v. Section 12.1(h) of the Agency Agreement is hereby amended by deleting the term “Assets” and replacing it with “Assets (other than the Caterpillar Equipment)”.

w. Section 12.1(n) of the Agency Agreement is hereby amended by deleting the term “Assets” in the first sentence thereof and replacing it with “Assets (other than the Caterpillar Equipment)”.

x. Section 12.1(o) of the Agency Agreement is hereby amended by deleting such section in its entirety and replacing it with the following language: “To the extent that the Seller has contractual rights against any third party (other than [CAT]) with respect to the Caterpillar Equipment, the Seller will use its best efforts to pursue those rights and the remedies related thereto to the extent reasonably requested by, and at the reasonable direction of, Agent.”

y. Section 12.1(r) of the Agency Agreement is hereby amended by adding the phrase “other than as to the Caterpillar Equipment” after the word “Sale” in the first sentence.

z. Section 13.1 of the Agency Agreement is hereby amended (x) by inserting the phrase “(other than the Caterpillar Equipment)” after each reference to the word “Assets” and (y) to add at the end of such Section the following: “Notwithstanding anything else set forth herein, to the extent the Seller currently insures the Caterpillar Equipment, the Seller shall not cancel or terminate such insurance prior to April 30, 2019. Thereafter, the Seller shall have no responsibility for insuring the Caterpillar Equipment.”

aa. Section 13.2 of the Agency Agreement is hereby amended by (x) inserting the phrase “(other than the Caterpillar Equipment)” after each reference to the word “Assets” and (y) deleting “Guaranteed Amount” and replacing it with “Owned Assets Guaranteed Amount” in the first sentence thereof.

bb. Section 13.3 of the Agency Agreement is hereby amended by inserting the following language at the end of the first sentence thereof “, and beginning as soon as practicable after Closing, shall include the Caterpillar Equipment under the coverage provided by such insurance policies.”

cc. Section 13.4(i) of the Agency Agreement is hereby amended by deleting the term “Assets” set forth therein and replacing it with “Assets (other than the Caterpillar Equipment)”.

dd. Section 18.1 of the Agency Agreement is hereby amended and restated in its entirety as follows:

18.1 As of the date hereof, the Seller leases certain equipment identified on Exhibit E attached hereto (collectively, the “Leased Equipment”) pursuant to those certain lease agreements identified on such exhibit (collectively, the “Leases” and each a “Lease”). At the Seller’s option, which option shall be exercised by no later than the commencement of the Sale Hearing by delivery of written notice to the Agent, which notice shall be provided by the Seller no less than contemporaneously to the Committee, the Seller may request to include the

Leased Equipment in the Sale, subject to the terms and conditions set forth herein (hereinafter, the “Leased Equipment Option”). If such request is accepted by the Agent in its sole discretion, such Leased Equipment shall be included in the Sale subject to the terms of an agreement between the Seller, Agent and the non-debtor lessor and the Agent shall pay an additional amount agreed to pursuant to the terms of such agreement at Closing (such amount, the “Additional Guaranteed Amount”). For the avoidance of doubt, the Additional Guaranteed Amount shall be in addition to, and not in lieu of, the “Owned Assets Guaranteed Amount” set forth in Section 5.1 above.

ee. Section 18.3 of the Agency Agreement is hereby deleted and superseded by this Amendment.

3. Miscellaneous. The parties hereby acknowledge and agree that, as specifically amended by the terms of this Amendment, all of the terms, covenants and provisions of the Agency Agreement are hereby ratified and confirmed and shall remain in full force and effect. From and after the date hereof, all references to the Agency Agreement shall be deemed references thereto as amended hereby. This Amendment may be executed in multiple counterparts each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument; sets forth the entire agreement between the parties; merges all prior and contemporaneous agreements, understandings, discussions, writings, warranties, and representations; shall be binding upon and inure to the benefit of parties hereto and their respective successor and assigns; and may be canceled, modified or amended only by a written instrument executed by both Seller and Agent. The captions and section headings are used only as a matter of convenience and are not to be considered a part of this Amendment or to be used in determining the intent of the parties. This Amendment may be executed and delivered by facsimile or computer-scanned image signatures. This Amendment shall be governed and construed in accordance with the laws of the State of Delaware without regard to conflicts of laws principles thereof except where governed by the Bankruptcy Code. In the event of any conflict or inconsistency between the terms of this Amendment and the terms of the Agency Agreement, the terms of this Amendment shall govern and control.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Seller and Agent have executed this Amendment as of the date first above written to take effect as an instrument under seal.

AGENT:

GORDON BROTHERS COMMERCIAL &
INDUSTRIAL, LLC

By: _____
Name: Robert M. Himmel
Title: Senior Managing Director

RITCHIE BROS. AUCTIONEERS (AMERICA)
INC.

By: _____
Name:
Title:

SELLER:

WELDED CONSTRUCTION, L.P. and its affiliated
debtors and debtors-in-possession

By: _____
Name:
Title:

Solely for the purposes of Section 1 hereof:

[_____]

By: _____
Name:
Title: