

the Certification of Counsel; and good and sufficient cause appearing therefor under the circumstances; it is hereby **ORDERED, ADJUDGED, AND DECREED THAT:**

1. The First Reconciliation Agreement is hereby approved, and the terms of the First Reconciliation Agreement are incorporated into this Order as if set forth fully herein.
2. The Mutual Releases set forth in the First Reconciliation Agreement are hereby approved.
3. The Debtors are authorized to take any action necessary or appropriate to implement the terms of the First Reconciliation Agreement and this Order without further order from this Court.
4. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of the First Reconciliation Agreement or this Order.

Dated: August 5th, 2019
Wilmington, Delaware



KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE
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EXHIBIT A

First Reconciliation Agreement

FIRST RECONCILIATION AGREEMENT

This First Reconciliation Agreement (the “Agreement”) is made this 1st day of August 2019 by and between 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”), and Welded Construction, L.P. and its affiliated debtors and debtors-in-possession (collectively, the “Seller”). 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). The Seller and the Agent are each a “Party”, and are collectively defined herein as the “Parties”. This Agreement is based on the following Recitals:

RECITALS

WHEREAS, the Seller and the Agent entered into a certain Agency Agreement dated as of March 22, 2019, as amended by that certain First Amendment to Agency Agreement dated as of April 18, 2019 and that certain Settlement Agreement and Second Amendment to Agency Agreement dated June 26, 2019 (the “Second Amendment”) (as so amended and as further amended from time to time, the “Agency Agreement”);

WHEREAS, on June 25, 2019, June 27, 2019 and June 28, 2019, the Agent conducted auctions for the sale of certain of the Assets (collectively, the “Auction”);

WHEREAS, prior to the date of this Agreement, the Agent has conducted private treaty sales of certain of the Assets, including without limitation certain IT equipment (the “Private Sales” and collectively with the Auction, the “Initial Sales”);

WHEREAS, in accordance with the Agency Agreement, the Agent and Seller have prepared a reconciliation of the results of the Initial Sales (the “First Reconciliation”), which First Reconciliation is summarized in the document attached to this Agreement as Exhibit A. The calculations, determinations, reconciliations, and accountings upon which the First Reconciliation is based include mutually agreed upon compromises and/or adjustments, such that the Parties have agreed that none of the calculations, determinations, reconciliations, and accountings shall for any purpose be considered on an isolated or stand-alone basis; and

WHEREAS, the remaining unsold Assets to be sold as part of the Sale are set forth on Exhibit B attached to this Agreement (collectively, the “Unsold Assets”).

WHEREAS, the Unsold Assets include certain “Titled Assets” as such term is defined in the Second Amendment, which assets have been cured of their respective deficiencies and can be sold in the Sale.

WHEREAS, the Parties agree that the “Missing Assets” as such term is defined in the Second Amendment have not been located as of the date hereof, and are not reasonably likely to hereinafter be located, and therefore waive the continued applicability of provisions of Section 1(g) and (h) thereof with respect to the Missing Assets.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the Seller and the Agent, intending to be legally bound, hereby agree and stipulate as follows.

AGREEMENT

1. First Reconciliation; Payment. (a) The Parties agree (i) they shall be deemed to have timely completed the First Reconciliation of the results of the Initial Sales, including, without limitation, as to (1) reimbursement to Agent of the Guaranteed Amount; (2) payment to Agent of the Agent's Base Fee; (3) calculation of the Seller's Owned Equipment Sharing Amount and Agent's Owned Equipment Sharing Amount solely as to the Assets (other than the Caterpillar Equipment) sold in the Initial Sales (and not any Unsold Assets); and (4) calculation of the Seller's Caterpillar Equipment Sharing Amount and the Agent's Caterpillar Equipment Sharing Amount, which First Reconciliation is summarized in the document attached to this Agreement as Exhibit "A"; and (ii) the First Reconciliation results in an aggregate payment due to the Agent of \$59,040,275 (the "Agent Reconciliation Payment Amount") and to the Seller in the amount of \$10,599,476 ("Seller Reconciliation Payment Amount"). For purposes of clarity, the Seller's Owned Equipment Sharing Amount and the Agent's Owned Equipment Sharing Amount with respect to the Unsold Assets will be determined and paid after the sale thereof in accordance with the terms of the Agency Agreement, and the Parties shall thereafter execute a Final Reconciliation Agreement in connection therewith.

(b) The Agent Reconciliation Amount shall be retained by the Agent from the Proceeds collected from the Initial Sales. The Seller Reconciliation Payment Amount shall be paid by the Agent to the Seller's account identified below by wire transfer of immediately available funds within two (2) business days following the Parties' execution and delivery of this Agreement:

Bank:	Huntington Bancshares, Inc.
ABA No.:	044000024
Account No.	01479600247
Ref.:	Welded Construction, L.P.

(c) The Parties further agree that (i) the First Reconciliation is a true, complete and accurate accounting of the result of the Initial Sales and amounts due under the Agency Agreement in connection with the Initial Sales inclusive of adjustments and or compromises mutually agreed upon, and (ii) subject to payment of the Agent Reconciliation Payment Amount and the Seller Reconciliation Payment Amount and subject to payment of Sales Taxes and indemnification payments set forth in the Agency Agreement:

(i) all calculations, determinations, reconciliations, and accountings set forth on, underlying, and/or reasonably construed to be a part of the First Reconciliation (including without limitation all component and related determinations and calculations thereof) shall be deemed irrevocable and final;

(ii) all covenants and agreements related to such calculations, determinations, reconciliations, and accountings shall be terminated and shall not survive the mutual execution of this Agreement;

(iii) no Party to this Agreement shall have the right to seek or in any manner obtain a further reconsideration of such calculations, determinations, reconciliations, and accountings;

(iv) the Parties acknowledge that included in such calculations, determinations, reconciliations, and accountings there may be mutually agreed upon compromises and/or adjustments (which adjustments and/or compromises they each believe are reasonable in the context of the transactions provided for in the Agency Agreement), and therefore, they have agreed that none of the calculations, determinations, reconciliations, and accountings shall for any purpose be considered on an isolated or stand-alone basis.

2. Mutual Releases. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties each covenant and agree:

a) The Seller, on behalf of itself and its successors, assigns, and other legal representatives including its bankruptcy estate, hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges the Agent and its successors and assigns, and its present and former shareholders, affiliates, trustees, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives, of and from all demands, actions, causes of action, suits, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a "Claim" and collectively, "Claims") of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, which such Seller or any of its successors, assigns or other legal representatives may now or hereafter own, hold, have or claim to have against the Agent or any of them pursuant to the Agency Agreement with respect to the Assets and the Initial Sales; provided, however, nothing herein shall release any Claims arising from or related to the Agency Agreement with respect to the Unsold Assets. The Seller understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release. The Seller agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered shall affect in any manner the final, absolute and unconditional nature of the release set forth herein.

b) Agent, on behalf of itself and its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges the Seller and its successors and assigns including its bankruptcy estate, and its present and former shareholders, affiliates, trustees, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives, of and from all Claims of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, which such Agent or any of its successors, assigns or other legal representatives may now or hereafter own, hold, have or claim to have against the Seller or any of them pursuant to the Agency Agreement with respect to the Assets and the Initial Sales; provided, however, nothing herein shall release any Claims arising from or related to the Agency Agreement with respect to the Unsold Assets. The Agent understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release. The Agent agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered shall affect in any manner the final, absolute and unconditional nature of the release set forth herein.

3. Representations and Warranties. Each Party represents and warrants to the other Party that the following statements are true and correct with respect to such Party as of the date hereof:

a) Power, Authority and Authorization. Each Party has the requisite power and corporate, limited liability company, limited partnership or similar authority to enter into this Agreement and perform all of the obligations under this Agreement, and the execution, delivery and performance of this Agreement by such Party has been duly authorized by all necessary corporate, limited liability company, limited partnership or similar action on the part of such Party, and the person executing this Agreement on behalf of such Party is duly authorized to do so and thereby bind that Party.

b) No Conflicts. The execution, delivery and performance of this Agreement by such Party does not and shall not (i) violate any provision of law, rule or regulation applicable to it or its organizational documents or (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, any material contractual obligations to which it is a party or under its organizational documents.

c) Binding Obligation. This Agreement is a legally valid and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws, both foreign and domestic, relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4. Further Assurances. From and after the execution and delivery hereof by the Parties hereto, each Party shall act reasonably and in good faith to take all actions necessary to consummate this Agreement and the transactions contemplated hereby in accordance with its terms and to promptly execute and deliver any and all such further instruments and documents and to take all such further actions as may be reasonably required by the Parties to effectuate the terms and conditions of this Agreement; provided, however, no such instrument, document or other action need be executed, delivered or taken if it imposes any material liability or obligation on any Party not expressly contemplated by this Agreement.

5. Miscellaneous.

a) No Waiver. Each of the Parties hereto acknowledges and agrees that neither (i) a Party's executing and delivering of this Agreement, or (ii) any omission or delay in the exercise of any one or more of such Party's remedies under contract or applicable law shall operate as a waiver of any of its rights or remedies, it being expressly understood and agreed that any such waiver(s) may only occur in accordance with the terms of a written document executed and delivered by the Parties hereto.

b) Severability. Any determination that any provision of this Agreement or any application thereof is invalid, illegal, or unenforceable in any respect in any instance shall not affect the validity, legality, or enforceability of such provision in any other instance, or the validity, legality, or enforceability of any other provision of this Agreement.

c) No Modification; Amendment. No modification, amendment, or waiver of any provision of this Agreement or of any provision of any other agreement between Agent and Seller shall be effective unless executed in writing by the Party to be charged with such modification, amendment and waiver.

d) No Third Party Beneficiaries. No person other than a Party hereto is intended to be a beneficiary hereof, and no person other than a Party hereto shall be authorized to rely upon or enforce the contents of this Agreement.

e) Counterparts. It is the intention of the Parties hereto that this Agreement may be executed in any number of counterparts (including by facsimile or e-mail transmission of an adobe file format document (also known as a PDF file)), and by the different Parties hereto on the same or separate counterparts, each of which shall be deemed to be an original instrument but all of which together shall constitute one and the same agreement.

f) Integration. This Agreement, together with the Agency Agreement, set forth the entire agreement among the Parties regarding the compromise and settlement embodied in this Agreement. This Agreement, when interpreted together with the foregoing, supersede any and all prior or contemporaneous agreements or understandings, whether written or oral, among the Parties regarding the matters addressed in this Agreement, except as expressly preserved pursuant to the terms of this Agreement. Each Party represents and warrants that it has not been induced into executing this Agreement or its exhibit by any representation or statements of any other Party except as expressly set forth in this Agreement.

g) Advice of Counsel. Each Party represents and warrants that (i) it has, in fact, reviewed this entire Agreement and its exhibit, including each and every one of its terms, conditions, provisions, and limitations, with independent counsel of its own choosing; (ii) it has been fully and completely advised of its rights in connection with entering into this Agreement; and (iii) it voluntarily, knowingly, and without duress enters into this Agreement as a complete, final, and binding resolution of the matters that are the subject of this Agreement.

h) Construction. This Agreement shall be interpreted in accordance with the fair meaning of its language and to implement the intent of the Parties. No Party or its attorneys shall be deemed to be the drafter of this Agreement for purposes of interpreting or construing any of the provisions of this Agreement. Without limiting the foregoing, no statutory or other rule of interpretation shall be used based on the identity, or supposed identity, of the drafter of this Agreement.

i) Titles and Captions. The Parties have inserted the section titles in this Agreement only as a matter of convenience and for reference, and the section titles in no way define, limit, extend, or describe the scope of this Agreement or the intent of the Parties in including any particular provision in this Agreement.

j) Surviving Provisions; Rights and Obligations. Anything in this Agreement to the contrary notwithstanding, nothing in this Agreement shall be deemed to terminate the Agent's or the Seller's rights and/or obligations to each other under Section 14 of the Agency Agreement which, by their nature, were intended to survive the Sale Termination Date and any reconciliation.

k) Disputes; Submission to Jurisdiction. In the event that there is a dispute or breach of the terms of this Agreement, each Party consents and submits to the jurisdiction of the Bankruptcy Court for the adjudication of such disputes.

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[Signatures Appear Next Page]

WHEREFORE, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first written above.

AGENT:

**GORDON BROTHERS COMMERCIAL &
INDUSTRIAL, LLC**

By: 

Name: Robert M. Himmel

Title: Senior Managing Director

**RITCHIE BROS. AUCTIONEERS (AMERICA)
INC.**

By: _____

Name: Zachary S. Dalton

Title: Director – Finance & Insolvency

[Signatures continued next page]

WHEREFORE, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first written above.

AGENT:

**GORDON BROTHERS COMMERCIAL &
INDUSTRIAL, LLC**

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

**RITCHIE BROS. AUCTIONEERS (AMERICA)
INC.**

By: Zachary S. Dalton
Name: Zachary S. Dalton
Title: Director – Finance & Insolvency

SELLER:

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

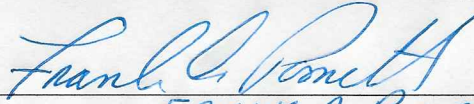
By: 
Name: FRANK A. POMETTI
Its: CRO

EXHIBIT A

FIRST RECONCILIATION

[See Attached]

Exhibit A

Welded Construction LLP
 First Reconciliation Agreement
 August 1, 2019

Proceeds (Section 5.3(1), 5.3(2)):

Private Sales					
Auction Sales					
Total Proceeds To Date					
	Owned Assets	Caterpillar Equipment	Total		
	\$ 4,733,000	\$ 10,945,000	\$ 15,678,000		
	\$ 26,416,751	\$ 27,545,000	\$ 53,961,751		
	\$ 31,149,751	\$ 38,490,000	\$ 69,639,751		

Guaranteed Amount (Section 5.3(1)(a), 5.3(2)(a)):

Owned Assets Guaranteed Amount (Adjusted Second Amendment)					
Caterpillar Equipment Purchase Price					
Total Guaranteed Amount					
	\$ 19,000,000	\$	\$ 19,000,000		
	\$	\$ 30,500,000	\$ 30,500,000		
	\$ 19,000,000	\$ 30,500,000	\$ 49,500,000		Due To Agent

Total Net Proceeds Available After Guaranteed Amount Reimbursement

\$ 12,149,751	\$ 7,990,000	\$ 20,139,751		
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less Agent's Owned Assets Base Fee (Section 5.3(1)(b))

less Agent's Caterpillar Equipment Base Fee (Section 5.3(2)(b))

\$ 2,000,000	\$ 3,965,000			
				Due To Agent
\$ 10,149,751	\$ 4,025,000	\$ 14,174,751		
		\$ 5,965,000		

Total Net Proceeds Available for Sharing After Agent's Base Fee**Seller's Sharing Amount (Section 5.3(1)(c), 5.3(2)(c))**

less Seller's Liability Insurance Cost (Section 13.1)

add Agent Transportation Cost (Section 4.9)

75.0%	\$ 7,612,313	\$ 3,018,750	\$ 10,631,063		
			(34,902)		Due To Agent
			3,315		
			\$ 10,599,476		

Seller Reconciliation Payment Amount**Agent's Sharing Amount (Section 5.3(1)(c), 5.3(2)(c))**

25.0%	\$ 2,537,438	\$ 1,006,250	\$ 3,543,688		Due To Agent
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Agent Reconciliation Payment Amount

\$ 59,040,275					
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Seller	\$ 10,599,476
Agent	\$ 59,040,275
Proceeds	\$ 69,639,751
Balance	\$ -

EXHIBIT B

UNSOLD ASSETS

[See Attached]

Exhibit B - First Reconciliation Agreement

<u>Owner Code</u>	<u>Schedule #</u>	<u>Lot Number</u>	<u>Description</u>	<u>Reason</u>
J02	250		2016 Shopmade Pipe Trailer	title now in hand
J02	265		2008 International 4300 Flatbed Dump Truck	title now in hand
J02	266		2008 International 4300 Flatbed Dump Truck	title now in hand
J02	267		2008 International 4300 Flatbed Dump Truck	title now in hand
J02	273		2005 Shopmade Pipe Trailer	title now in hand
R02	304	5209	Qty Of Misc Supplies- Ladders	No Bids
R02	712	5148	Qty of Traffic Barrels	No Bids
J02	3820	112	D8K	Collapse
J02	3808	113	D8K	Collapse
F04	1106	5481	1989 International 1853	Collapse
F04	1111	5482	1997 International 3800	Collapse
F03	97	1143	TT Technologies Grundomudd 500 Gqllon Skid Mounted	Collapse
F03	98	1144	TT Technologies Grundomudd 500 Gqllon Skid Mounted	Collapse
F03	79	5101	Quantity of Oversize Load Signs	Collapse
F03	129	5102	Quantity of Pickup Truck Boxes	Collapse
F03	217	5103	Quantity of Pickup Truck Boxes	Collapse
F03	220	5106	Quantity of Pickup Truck Boxes	Collapse
F03	222	5108	Quantity of Pickup Truck Boxes	Collapse
F03	225	5111	TFP Electric Hydraulic Pump	Collapse
F03	229	5115	Quantity of Pickup Truck Boxes	Collapse
F03	233	5122	Quantity of Fuel Transfer Tanks	Collapse
F03	237	5132	Quantity of Fuel Transfer Tanks	Collapse
F03	252	5146	Miller XMT 304 Welder	Collapse
F03	49	5150	Champion Air Compressor	Collapse
F03	258	5153	Quantity of Honda 3 In. Trash Pumps	Collapse
F03	255	5156	Quantity of Honda 3 In. Trash Pumps	Collapse
F03	149	5158	Quantity of Honda 3 In. Trash Pumps	Collapse
F03	262	5165	Quantity of Honda 3 In. Trash Pumps	Collapse
F03	34	5205	Quantity of Containment Pallets	Collapse
F03	295	5213	Quantity of Contractor Items	Collapse
F03	299	5222	Quantity of Work Gloves	Collapse
F03	45	5228	Quantity of 18 In. Tie Down Pins	Collapse
F03	199	5253	Quantity of Bentomat Clay Liners	Collapse
F03	200	5254	Quantity of Bentomat Clay Liners	Collapse
F03	201	5255	Quantity of Bentomat Clay Liners	Collapse
F03	202	5256	Quantity of Bentomat Clay Liners	Collapse
F03	203	5257	Quantity of Bentomat Clay Liners	Collapse
F03	204	5258	Quantity of Bentomat Clay Liners	Collapse
F03	159	5260	Quantity of Bentomat Clay Liners	Collapse