

**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. 1088**

**ORDER APPROVING STIPULATION MODIFYING AUTOMATIC
STAY AND AUTHORIZING AGREED SETOFF**

The Court having considered the *Stipulation Modifying Automatic Stay and Authorizing Agreed Setoff* attached hereto as **Exhibit 1** (the “**Stipulation**”)² by and among the above-captioned debtors and debtors in possession (together, the “**Debtors**”) and Mount Joy Holding Company (“**Mount Joy**”), and the related certification of counsel (the “**Certification of Counsel**”) submitted by the Debtors; and it appearing that the Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 1334 and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and it appearing that this matter is core pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Stipulation and the relief provided for herein has been given under the circumstances, and that no other or further notice need be given under the circumstances; and based on the representations of the Debtors in the Certification of Counsel; and after due deliberation and good and sufficient cause appearing therefor; it is hereby

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

² Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Stipulation.



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ORDERED, ADJUDGED AND DECREED THAT:

1. The Stipulation is APPROVED, as provided for herein.
2. The automatic stay imposed by section 362 of the Bankruptcy Code is lifted for the sole and express purpose of effectuating the Setoff (as defined below).
3. In full and final satisfaction and resolution of the claims asserted in the Proof of Claim and any and all other claims that have been, could have been or could be asserted by Mount Joy (and any person or entity claiming by or through Mount Joy) against the Debtors and their estates, their insurers and their sureties as of the entry of this Order or thereafter arising from or related to the Proof of Claim, any contracts or leases between the Debtors and Mount Joy (including, without limitation, the Lease), or the Debtors' business relationship with Mount Joy, including, without limitation, any and all administrative expense claims of Mount Joy in these chapter 11 cases pursuant to section 365 or 503 of the Bankruptcy Code or otherwise and any and all claims of Mount Joy arising out of the Debtors' rejection of the Lease, the Security Deposit shall be deemed setoff against the CAM Fees (the "**Setoff**").
4. The claims agent for these chapter 11 cases is authorized and directed to modify the official claims register maintained by the claims agent for such cases to reflect the Proof of Claim as withdrawn with prejudice.
5. Notwithstanding anything to the contrary in the Federal Rules of Bankruptcy Procedure or otherwise this Order shall be effective immediately and enforceable upon its entry, and shall not be subject to any stay in its implementation.
6. This Court shall retain jurisdiction and power to enforce and interpret the provisions of this Order.

Dated: November 12th, 2019
Wilmington, Delaware



KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE
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EXHIBIT 1

Stipulation

**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)

**STIPULATION MODIFYING AUTOMATIC STAY
AND AUTHORIZING AGREED SETOFF**

This stipulation (this “**Stipulation**”) is entered into by and among the above-captioned debtors and debtors in possession (together, the “**Debtors**”) and Mount Joy Holding Company (“**Mount Joy**”). The parties hereto are individually referred to in this Stipulation as a “**Party**” and collectively referred to herein as the “**Parties.**”

RECITALS

A. On October 22, 2018 (the “**Petition Date**”), each of the Debtors filed a voluntary petition in the United States Bankruptcy Court for the District of Delaware (the “**Court**”) for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), thereby commencing the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. Prior to the Petition Date, Debtor Welded Construction, L.P. leased from Mount Joy certain property located at 1000 Cornerstone Drive, Mount Joy, Pennsylvania 17552 (the “**Property**”) pursuant to that certain *Lease Agreement* dated June 6, 2017 (as amended,

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modified or supplemented from time to time, the “**Lease**”). Pursuant to the Lease, as of the Petition Date, Mount Joy was holding a security deposit for the Property in the amount of \$8,900 (the “**Security Deposit**”).

C. On December 11, 2018, the Court entered that certain *Order, Pursuant to Sections 105(a), 365(a), and 554(a) of the Bankruptcy Code, Authorizing the Debtors to Reject Certain Unexpired Leases of Nonresidential Real Property and Executory Contracts Nunc Pro Tunc to the Rejection Date* [Docket No. 324], rejecting the Lease effective as of December 4, 2018.

D. On February 26, 2019, Mount Joy filed proof of claim number 525 (the “**Proof of Claim**”) in the Chapter 11 Cases, asserting a general unsecured claim of \$10,463.01 for unpaid prepetition common area maintenance fees under the Lease (the “**CAM Fees**”).

E. The Parties agree that the CAM Fees are valid and obligations of the Debtors, and that Mount Joy is entitled to set off the CAM Fees against the Security Deposit pursuant to section 553 of the Bankruptcy Code. Accordingly, the Parties have agreed to allow Mount Joy to set off the CAM Fees against the Security Deposit, and to modify the automatic stay imposed by section 362 of the Bankruptcy Code in connection therewith, as provided for herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Stipulation and with the intent to be legally bound, the Parties do hereby stipulate and agree as follows:

1. This Stipulation shall become effective upon the date (the “**Effective Date**”) on which each of the following conditions to the effectiveness of this Stipulation has been satisfied: (a) this Stipulation has been fully executed by the Parties; and (b) the entry of an

order by the Court approving this Stipulation (the “**Approval Order**”). The Parties shall use their commercially reasonable efforts to obtain entry of the Approval Order, on such notice and hearing as the Court may require. In the event that the Court enters an order denying approval of this Stipulation, this Stipulation shall be void and of no force or effect.

2. In full and final satisfaction and resolution of the claims asserted in the Proof of Claim (including, without limitation, the CAM Fees) and any and all other claims that have been, could have been or could be asserted by Mount Joy (and any person or entity claiming by or through Mount Joy) against the Debtors and their estates, their insurers and their sureties as of the entry of the Approval Order or thereafter arising from or related to the Proof of Claim, any contracts or leases between the Debtors and Mount Joy (including, without limitation, the Lease), or the Debtors’ business relationship with Mount Joy, including, without limitation, any and all administrative expense claims of Mount Joy in these chapter 11 cases pursuant to section 365 or 503 of the Bankruptcy Code or otherwise and any and all claims of Mount Joy arising out of the Debtors’ rejection of the Lease, the Security Deposit shall be deemed setoff against the CAM Fees (the “**Setoff**”), and Mount Joy shall be entitled to retain the Security Deposit free and clear. The automatic stay imposed by section 362 of the Bankruptcy Code shall be lifted for the sole and express purpose of effectuating the Setoff.

3. Mount Joy represents and warrants that it has not sold, assigned, pledged or otherwise transferred the Proof of Claim or any part of it.

4. On the Effective Date, the claims agent for the Chapter 11 Cases is authorized and directed to modify the official claims register maintained by the claims agent for such cases to reflect the Proof of Claim as withdrawn with prejudice.

5. The recitals stated above constitute and form an integral part of this Stipulation and are incorporated by reference as if set forth herein in full.

6. The undersigned are duly authorized and empowered to execute this Stipulation on behalf of the respective Parties.

7. The Parties have participated in and jointly consented to the drafting of this Stipulation, and any claimed ambiguity shall not be construed for or against either of the Parties on account of such drafting.

8. This Stipulation and all of its terms shall be binding upon and shall inure to the benefit of the Parties and each of their respective permitted successors and assigns and all persons and entities claiming by or through the Parties.

9. During the pendency of the Chapter 11 Cases, the Parties expressly consent and submit to the exclusive jurisdiction of the Court over any actions or proceedings relating to the enforcement or interpretation of this Stipulation and the Approval Order and any Party bringing such action or proceeding shall bring such action or proceeding in the Court. The Parties consent to the Court entering a final judgment determining such matter and agree that a final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

10. This Stipulation and all claims and disputes arising out of or in connection with this Stipulation shall be governed by and construed in accordance with the laws of the State of Delaware and the Bankruptcy Code, as applicable, without regard to choice of law principles to the extent such principles would apply a law other than that of the State of Delaware or the Bankruptcy Code, as applicable.

11. Except as otherwise provided herein, this Stipulation constitutes the entire agreement of the Parties concerning the subject matter hereof, and supersedes any and all prior or contemporaneous agreements among the Parties concerning such subject matter. The Parties acknowledge that this Stipulation is not being executed in reliance on any oral or written agreement, promise or representation not contained herein. Any amendment to this Stipulation must be in a writing signed by both of the Parties.

12. Each Party shall each bear its own attorneys' fees, costs, and expenses in connection with the matters set forth in this Stipulation, including, but not limited to, the negotiations and preparation of this Stipulation and obtaining the entry of the Approval Order.

13. This Stipulation may be executed in counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of both of the Parties need not appear on the same counterpart.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the undersigned have made and entered into this

Stipulation as of the respective dates set forth below.

WELDED CONSTRUCTION, L.P., on behalf of the Debtors

By: 

Name: Frank A. Pometti

Its: Chief Restructuring Officer

Dated: November 8, 2019

MOUNT JOY HOLDING COMPANY

By: _____

Name: _____

Its: _____


Dated: November ____, 2019

IN WITNESS WHEREOF, the undersigned have made and entered into this
Stipulation as of the respective dates set forth below.

WELDED CONSTRUCTION, L.P., on behalf of the Debtors

By: _____
Name: Frank A. Pometti
Its: Chief Restructuring Officer
Dated: November ____, 2019

MOUNT JOY HOLDING COMPANY

By:  _____
Name: Kevin L. Manmiller
Its: Facility Manager
Dated: November 8th, 2019