

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

In re:

Welded Construction, L.P., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 18-12378 (CSS)

(Jointly Administered)

Welded Construction, L.P.,

Plaintiff,

vs.

Lunda Construction Company,

Defendant.

Adv. No. 20-50935 (CSS)

**ANSWER AND AFFIRMATIVE DEFENSES OF LUNDA  
CONSTRUCTION COMPANY TO COMPLAINT TO AVOID AND  
RECOVER TRANSFERS PURSUANT TO 11 U.S.C. §§ 547, 548, AND  
550 AND TO DISALLOW CLAIMS PURSUANT TO 11 U.S.C. § 502**

Lunda Construction Company (the “Defendant”), by and through its undersigned counsel, responds as follows to Plaintiff Welded Construction, L.P.’s Complaint to Avoid and Recover Transfers Pursuant to 11 U.S.C. §§ 547, 548, and 550 And to Disallow Claims Pursuant to 11 U.S.C. § 502.

**NATURE OF THE CASE**

1. Plaintiff seeks to avoid and recover from Defendant, or from any other person or entity for whose benefit the transfers were made, all preferential transfers of property that occurred during the ninety (90) day period prior to the commencement of the bankruptcy proceedings of Welded Construction, L.P. and its affiliated debtor and debtor in possession (together, the “Debtors”)<sup>2</sup> pursuant to sections 547 and 550 of chapter 11 of title 11 of the United States Code (the Bankruptcy Code”).

<sup>1</sup> 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).

<sup>2</sup> The “Debtors” are all entities listed in footnote 1.



Subject to proof, Plaintiff also seeks to avoid and recover from Defendant or any other person or entity for whose benefit transfers were made pursuant to sections 548 and 550 of the Bankruptcy Code any transfers that may have been fraudulent conveyances.

**RESPONSE:** Paragraph 1 states a legal conclusion to which no response is required. Defendant denies Paragraph 1 to the extent it contains allegations of facts. Defendant further denies Plaintiff is entitled to the relief requested.

2. In addition, Plaintiff seeks to disallow, pursuant to sections 502(d) and (j) of the Bankruptcy Code, any claim that Defendant has filed or asserted against the Debtors or that has been scheduled for Defendant. Plaintiff does not waive but hereby reserves all of its rights to object to any such claim for any reason, including, but not limited to, any reason set forth in sections 502(a) through (j) of the Bankruptcy Code.

**RESPONSE:** Paragraph 2 states a legal conclusion to which no response is required. Defendant denies Paragraph 2 to the extent it contains allegations of facts. Defendant further denies Plaintiff is entitled to the relief requested.

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this adversary proceeding, which arises under the Bankruptcy Code and arises in and relates to cases under the Bankruptcy Code pending in the United States Bankruptcy Court for the District of Delaware (the “Court”), captioned *In re Welded Construction, L.P., et al.*, Case No. 18-12378 (CSS), pursuant to 28 U.S.C. §§ 157 and 1334(b).

**RESPONSE:** Defendant admits the allegations in Paragraph 3 of the Complaint.

4. The statutory and legal predicates for the relief sought herein are sections 502, 547, 548, and 550 of the Bankruptcy Code and Rules 3007 and 7001 of the Federal Rules of

Bankruptcy Procedure (the “Bankruptcy Rules”).

**RESPONSE:** Paragraph 4 states a legal conclusion to which no response is required.

5. This adversary proceeding is a “core” proceeding to be heard and determined by the Court pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter final orders for matters contained herein.

**RESPONSE:** Paragraph 5 states a legal conclusion to which no response is required. Pursuant to Fed. R. Bankr. P. 7012(b), Defendant states that it does not consent to entry of final orders or judgment by the Bankruptcy Court in this matter.

6. Venue is proper in the District of Delaware pursuant to 28 U.S.C. § 1409.

**RESPONSE:** Defendant admits the allegations in Paragraph 6 of the Complaint.

7. Pursuant to Local Bankruptcy Rule 7008-1, Plaintiff states that it does consent to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

**RESPONSE:** Paragraph 7 states a legal conclusion to which no response is required. Pursuant to Fed. R. Bankr. P. 7012(b), Defendant states that it does not consent to entry of final orders or judgment by the Bankruptcy Court in this matter.

### **PROCEDURAL BACKGROUND**

8. On October 22, 2018 (the “Petition Date”), the Debtors each commenced a case by filing a voluntary petition for relief in this Court under chapter 11 of the Bankruptcy Code.

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in Paragraph 8 and, therefore, denies same.

9. On October 23, 2018, this Court entered an order authorizing the joint

administration of the chapter 11 cases for procedural purposes pursuant to Bankruptcy Rule 1015(b). [D.I. 33].

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in Paragraph 9 and, therefore, denies same.

10. On June 25, 2020, this Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming the Amended Chapter 11 Plan of Welded Construction, L.P. and Welded Construction Michigan, LLC* (the “Confirmation Order” and “Plan,” respectively). [D.I. 1505].

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in Paragraph 10 and, therefore, denies same.

11. The effective date of the Plan (the “Effective Date”) occurred on July 31, 2020. [D.I. 1555].

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in Paragraph 11 and, therefore, denies same.

12. On the Effective Date, pursuant to Article V, Section 5.1 of the Plan, the Retained Causes of Action,<sup>4</sup> including actions arising under chapter 5 of the Bankruptcy Code, were retained by or vested in the Plaintiff. [D.I. 1505-1].

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in Paragraph 12 and, therefore, denies same.

13. Pursuant to Article II, Section 2.3 of the Plan, General Unsecured Claims comprise an impaired class of claims and are not expected to be paid in full.

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in Paragraph 13 and, therefore, denies same.

**THE PARTIES**

14. Pursuant to the Plan and the Confirmation Order, Plaintiff is authorized and has standing to, among other things, pursue, prosecute, compromise, release, settle, or otherwise dispose of this avoidance action.

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in Paragraph 14 and, therefore, denies same.

15. Upon information and belief, Defendant was, at all relevant times, a vendor or creditor that provided construction services to or for the Debtors. Upon further information and belief, at all relevant times, Defendant's principal place of business is located at 620 Gebhardt Road, Black River Falls, Wisconsin 54615. Plaintiff is informed and believes and on that basis alleges that Defendant is a corporation residing in and subject to the laws of the State of Wisconsin.

**RESPONSE:** Defendant admits the allegations in Paragraph 15 of the Complaint.

**FACTUAL BACKGROUND**

16. As more fully discussed in the *Declaration of Frank Pometti in Support of Debtors' Chapter 11 Petitions and First-Day Motions*<sup>5</sup> and the Disclosure Statement,<sup>6</sup> as of the Petition Date, the Debtors were a mainline pipeline construction contractor headquartered in Perrysburg, Ohio.

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in Paragraph 16 and, therefore, denies same.

17. Prior to the Petition Date, the Debtors, as a mainline pipeline construction contractor, maintained business relationships with various business entities, through which the Debtors regularly purchased, sold, received, and/or delivered goods and services.

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in Paragraph 17 and, therefore, denies same.

18. As a mainline pipeline construction contractor, the Debtors regularly purchased goods from various entities including vendors, creditors, suppliers and distributors. The Debtors also regularly paid for services used to facilitate their business.

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in Paragraph 18 and, therefore, denies same.

19. As of the Petition Date, the Debtors issued disbursements to vendors from the Debtors' account ending 0247 at Huntington Bank (the "Disbursement Account").

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in Paragraph 19 and, therefore, denies same.

20. The Debtors drew upon the Disbursement Accounts to pay for their operational costs, including payment to their vendors, suppliers, distributors, and other creditors, including Defendant.

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in Paragraph 20 and, therefore, denies same.

21. During the ninety (90) days before the Petition Date, that is between July 24, 2018 and October 22, 2018 (the "Preference Period"), the Debtors continued to operate their business affairs, including the transfer of property, either by checks, cashier checks, wire transfers, ACH transfers, direct deposits or otherwise to various entities.

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in Paragraph 21 and, therefore, denies same.

22. Upon information and belief, during the course of their relationship, the Defendant

and one or more of the Debtors entered into agreements, which are evidenced by invoices, communications and other documents (collectively, the “Agreements”). The Agreements concerned and related to the goods and/or services provided by Defendant or the debt otherwise incurred by one or more of the Debtors to the Defendant as described in the “Parties” section of this Complaint. The details of each of the transfers under the Agreements made during the Preference Period are set forth on the Statement of Account, which is attached hereto and incorporated by reference as Exhibit A. Such details include “Invoice Number,” “Invoice Date,” and “Invoice Amount.”

**RESPONSE:** Paragraph 22 of the Complaint and the associated Exhibit A contains various allegations of fact for which Defendant is without knowledge, therefore, Defendant denies Paragraph 22.

23. Defendant conducted business with one or more of the Debtors through and including the Petition Date pursuant to the Agreements or otherwise held a debt owed by one or more of the Debtors.

**RESPONSE:** Paragraph 23 of the Complaint contains certain allegations of fact for which Defendant is without knowledge, therefore, Defendant denies Paragraph 23.

24. As identified in the Agreements identified on Exhibit A, one or more of the Debtors purchased goods and/or services from Defendant.

**RESPONSE:** Defendant admits the allegations in Paragraph 24 of the Complaint.

25. Plaintiff has completed an analysis of all readily available information of the Debtors and is seeking to avoid all of the transfers of an interest of the Debtors’ property made by the applicable Debtor(s) to Defendant within the Preference Period.

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in

Paragraph 25 and, therefore, denies same. Defendant further denies that Plaintiff is entitled to relief sought in this Complaint.

26. Plaintiff has determined that one or more of the Debtors made transfer(s) of an interest of the Debtors' property to or for the benefit of Defendant during the Preference Period through payments aggregating to an amount not less than \$154,789.60 (the "Transfer" or "Transfers"). The details of each Transfer are set forth on Exhibit A attached hereto and incorporated by reference. Such details include "Check Number," "Check Amount," "Check Clear Date," and "Debtor Transferor(s)."

**RESPONSE:** Paragraph 26 of the Complaint and the associated Exhibit A contains various allegations of fact for which Defendant is without knowledge and, therefore, Defendant denies Paragraph 26.

27. On or about September 11, 2020, Plaintiff, through counsel, sent a demand letter (the "Demand Letter") to Defendant, seeking a return of the Transfer(s). The Demand Letter indicated the potential statutory defenses available to Defendant pursuant to 11 U.S.C. § 547(c), and requested that if Defendant had evidence to support any affirmative defenses, it provide this evidence so Plaintiff could review the same. Plaintiff also performed its own due diligence evaluation of the reasonably knowable affirmative defenses available to Defendant.

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in Paragraph 27 and, therefore, denies same.

28. Based upon Plaintiff's review of the information, if any, provided by Defendant prior to filing this Complaint, and after performing its own due diligence evaluation of the reasonably knowable affirmative defenses to avoidance of the Transfer(s), Plaintiff has determined that Plaintiff may avoid some or all of the Transfers, even after taking into account Defendant's



alleged affirmative defenses.

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in Paragraph 28 and, therefore, denies same. Defendant further denies that Plaintiff is entitled to relief sought in this Complaint.

29. During the course of this proceeding, Plaintiff may learn (through discovery or otherwise) of additional transfers made to Defendant during the Preference Period. It is Plaintiff's intention to avoid and recover all transfers made by the Debtors of an interest of the Debtors in property and to or for the benefit of Defendant or any other transferee. Plaintiff reserves its right to amend this original Complaint to include: (i) further information regarding the Transfer(s), (ii) additional transfers, (iii) modifications of and/or revision to Defendant's name, (iv) additional defendants, and/or (v) additional causes of action authorized by the Plan, if applicable (collectively, the "Amendments"), that may become known to Plaintiff at any time during this adversary proceeding, through formal discovery or otherwise, and for the Amendments to relate back to this original Complaint.

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in Paragraph 29 and, therefore, denies same. Defendant further denies that Plaintiff is entitled to relief sought in this Complaint.

30. Plaintiff acknowledges that some of the Transfers might be subject to defenses under Bankruptcy Code section 547(c), for which Defendant bears the burden of proof under Bankruptcy Code section 547(g).

**RESPONSE:** Paragraph 30 states a legal conclusion to which no response is required. Defendant further states that all of the alleged transfers are protected by defenses under 11 U.S.C. § 547 (c).

**CLAIMS FOR RELIEF**

**COUNT I**

**(Avoidance of Preference Period Transfers – 11 U.S.C. § 547)**

31. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

**RESPONSE:** Defendant incorporates its responses to all preceding paragraphs as if fully set forth herein.

32. As more particularly described on Exhibit A attached hereto and incorporated herein, during the Preference Period, the Debtor(s) identified on Exhibit A made Transfers to or for the benefit of Defendant in an aggregate amount not less than \$154,789.60.

**RESPONSE:** Defendant asserts that Exhibit A contains certain information for which Defendant lacks knowledge and, therefore, Defendant denies Paragraph 32.

33. Each Transfer was made from the Disbursement Account described *supra*, and constituted transfers of an interest in property of the transferring Debtor(s) as identified on Exhibit A.

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in Paragraph 33 and, therefore, denies same.

34. Defendant was a creditor at the time of each Transfer by virtue of supplying the Debtor(s) identified on Exhibit A goods and/or services identified in this Complaint and in the Agreements, as more fully set forth on Exhibit A hereto, for which the Debtor(s) identified on Exhibit A were obligated to pay following delivery in accordance with the Agreements, or by virtue of otherwise holding a debt owed by one or more of the Debtors.

**RESPONSE:** Defendant admits the allegations in Paragraph 34 of the Complaint.

35. Each Transfer was to or for the benefit of a creditor within the meaning of 11 U.S.C. § 547(b)(1) because each Transfer either reduced or fully satisfied a debt or debts then

owed by the Debtor(s) identified on Exhibit A to Defendant.

**RESPONSE:** Defendant admits the allegations in Paragraph 35 of the Complaint.

36. Each Transfer was made for, or on account of, an antecedent debt or debts owed by the Debtor(s) identified on Exhibit A to Defendant before such Transfers were made, as asserted by Defendant and memorialized in the Agreements, each of which constituted a “debt” or “claim” (as those terms are defined in the Bankruptcy Code) of Defendant prior to being paid by the transferring Debtor(s) as set forth on Exhibit A hereto.

**RESPONSE:** Defendant admits the allegations in Paragraph 36 of the Complaint.

37. Each Transfer was made while the Debtors were insolvent. Plaintiff is entitled to the presumption of insolvency for each Transfer made during the Preference Period pursuant to 11 U.S.C. § 547(f).

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in the first sentence of Paragraph 37 and, therefore, denies same. Further, the second sentence of Paragraph 37 states a legal conclusion which no response is required.

38. Each Transfer was made during the Preference Period, as set forth on Exhibit A.

**RESPONSE:** Defendant admits the allegations in Paragraph 38 of the Complaint.

39. As a result of each Transfer, Defendant received more than Defendant would have received if: (i) the Debtors’ cases were under chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) Defendant received payments of its debts under the provisions of the Bankruptcy Code. As evidenced by the Debtors’ schedules filed in the applicable underlying bankruptcy case as well as the proofs of claim that have been received to date, the Debtors’ liabilities exceed their assets to the point that unsecured creditors will not receive a full payout of their claims from the Debtors’ bankruptcy estates.

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in in Paragraph 39 and, therefore, denies same.

40. In accordance with the foregoing, each Transfer is avoidable pursuant to 11 U.S.C. § 547(b).

**RESPONSE:** Defendant denies the allegations set forth in Paragraph 40 of Plaintiff's Complaint.

## **COUNT II**

### **(Avoidance of Fraudulent Conveyances – 11 U.S.C. § 548(a)(1)(B))**

41. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

**RESPONSE:** Defendant incorporates its responses to all preceding paragraphs as if fully set forth herein.

42. To the extent one or more of the Transfers identified on Exhibit A was not made on account of an antecedent debt, or was a prepayment for goods and/or services subsequently received, or was a transfer made by one Debtor without a corresponding transfer into the payment account by the Debtor incurring the debt, Plaintiff pleads in the alternative that the Debtor(s) making such transfer(s) did not receive reasonably equivalent value in exchange for such transfer(s) (the "Potentially Fraudulent Transfers"); and

A. The Debtors were insolvent as of the date of the Transfer(s), or became insolvent as a result of the Transfer(s); or

B. The Debtors were engaged, or about to engage, in business or a transaction for which any property remaining with the Debtors or for whose benefit the Transfer(s) was made was an unreasonably small capital; or

C. The Debtors intended to incur, or believed they would incur, debts beyond their

ability to pay upon maturity.

**RESPONSE:** Defendant denies the allegations in Paragraph 42.

43. Based upon the foregoing, the Potentially Fraudulent Transfers are avoidable pursuant to 11 U.S.C. § 548(a)(1)(B).

**RESPONSE:** Defendant denies the allegations set forth in Paragraph 43.

### **COUNT III**

#### **(Recovery of Avoided Transfers – 11 U.S.C. § 550)**

44. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein, to the extent they are not inconsistent with allegations contained in this Count.

**RESPONSE:** Defendant incorporates its responses to all preceding paragraphs as if fully set forth herein.

45. Plaintiff is entitled to avoid the Transfer(s) pursuant to 11 U.S.C. § 547(b) and any Potentially Fraudulent Transfers pursuant to 11 U.S.C. § 548 (collectively, the “Avoidable Transfers”).

**RESPONSE:** Defendant denies the allegations set forth in Paragraph 45.

46. Defendant was the initial transferee of the Avoidable Transfer(s) or the immediate or mediate transferee of such initial transferee or the person for whose benefit the Avoidable Transfer(s) were made.

**RESPONSE:** Defendant is without knowledge regarding the allegations set forth in Paragraph 46 and, therefore, denies same.

47. Pursuant to 11 U.S.C. § 550(a), Plaintiff is entitled to recover from Defendant the Avoidable Transfer(s), plus interest thereon to the date of payment and the costs of this action.

**RESPONSE:** Defendant denies the allegations set forth in Paragraph 47 of Plaintiff’s

Complaint.

**COUNT IV**

**(Disallowance of all Claims – 11 U.S.C. § 502(d) and (j))**

48. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

**RESPONSE:** Defendant incorporates its responses to all preceding paragraphs as if fully set forth herein.

49. Defendant is a transferee of transfers avoidable under sections 547 and/or 548 of the Bankruptcy Code, which property is recoverable under section 550 of the Bankruptcy Code.

**RESPONSE:** Defendant denies the allegations set forth in Paragraph 49 of Plaintiff's Complaint.

50. Defendant has not paid the amount of the Avoidable Transfer(s), or turned over such property, for which Defendant is liable under 11 U.S.C. § 550.

**RESPONSE:** Defendant admits Defendant has not paid the amounts at issue because it is not legally obligated to do so. Defendant denies the remaining allegations in Paragraph 50 of Plaintiff's Complaint.

51. Pursuant to 11 U.S.C. § 502(d), any and all Claims of Defendant and/or its assignee, against the Debtors' chapter 11 estates or Plaintiff must be disallowed until such time as Defendant pays to Plaintiff an amount equal to the aggregate amount of the Avoidable Transfer(s), plus interest thereon and costs.

**RESPONSE:** Paragraph 51 states a legal conclusion to which no response is required.

52. Pursuant to 11 U.S.C. § 502(j), any and all Claims of Defendant, and/or its assignee, against the Debtors' chapter 11 estates or Plaintiff previously allowed by the Debtors or by Plaintiff, must be reconsidered and disallowed until such time as Defendant pays to Plaintiff an

amount equal to the aggregate amount of the Avoidable Transfer(s).

**RESPONSE:** Defendant denies the allegations set forth in Paragraph 52 of Plaintiff's Complaint.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court grant him the following relief against Defendant:

A. On Plaintiff's First, Second and Third Claims for Relief, judgment in favor of Plaintiff and against Defendant, avoiding all of the Avoidable Transfers and directing Defendant to return to Plaintiff the amount of the Avoidable Transfers, pursuant to 11 U.S.C. §§ 547(b) and/or 548 and 550(a), plus interest from the date of demand at the maximum legal rate and to the fullest extent allowed by applicable law, together with the costs and expenses of this action including, without limitation, attorneys' fees;

B. On Plaintiff's Fourth Claim for Relief, judgment in favor of Plaintiff and against Defendant disallowing any claims held or filed by Defendant against the Plaintiff until Defendant returns the Avoidable Transfers to Plaintiff pursuant to 11 U.S.C.

§ 502(d) and (j); and

C. Granting Plaintiff such other and further relief as this Court may deem just and proper.

**RESPONSE:** Defendant denies Plaintiff is entitled to the relief sought in the Prayer for Relief.

### **AFFIRMATIVE DEFENSES**

As a preliminary matter, Defendant reserves the right to amend its answers above and/or assert any additional affirmative defenses and/or assert any additional counterclaims or third-party claims that currently may exist if and when additional information pertaining to such answers, affirmative defenses, counterclaims and/or third-party claims becomes available. Defendant further gives notice that it intends to rely upon any and all other defenses that may become available or apparent during discovery. Additionally, Defendant asserts the following affirmative defenses:

1. The Complaint fails to state a claim upon which relief may be granted.
2. The Complaint fails to comply with Fed. R. Bankr. P. 7008 which incorporates Fed. R. Civ. P. 8's pleading requirements as set forth in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and therefore must be dismissed.
3. Pursuant to 11 U.S.C. § 547(b), the Plaintiff cannot avoid the transfers because the Plaintiff has failed to conduct reasonable due diligence and has failed to take into account key factual information which Defendant has provided to Plaintiff regarding Defendant's 11 U.S.C. § 547(c) defenses.
4. The transfer(s) alleged in the Complaint cannot be avoided to the extent that the Debtor was solvent at the time the transfer(s) were made.
5. The transfer(s) alleged in the Complaint, to the extent they occurred, are not avoidable pursuant to the 11 U.S.C. § 547(c)(1). Defendant's work was done in the capacity as a sub-contractor for Plaintiff. When Defendant accepted funds from Plaintiff it contemporaneously gave up any lien rights and/or bond claim rights that it had related to the projects. The exchange of value between the parties was intended to be, and in fact actually was, contemporaneous



exchanges. As such, the alleged transfers cannot be avoided.

6. The transfer(s) alleged in the Complaint, to the extent they occurred, were on account of a debt incurred by the Debtor in the ordinary course of business or financial affairs of the Debtor and Defendant, and were made in the ordinary course of business or financial affairs of the Debtor and Defendant or according to ordinary business terms. Such transfer(s), therefore, are not subject to avoidance as provided by 11 U.S.C. § 547(c)(2).

7. Pursuant to 11 U.S.C. § 547(c)(4), the transfer(s) alleged in the Complaint, to the extent they occurred, are not avoidable because, after one or more of the transfers, Defendant subsequently provided new value to the Plaintiff

8. The Plaintiff cannot avoid and recover the transfers alleged in the Complaint because Plaintiff received either direct or indirect reasonably equivalent value in exchange for each transfer.

9. To the extent Defendant acted as a mere conduit between the Debtor and a third-party and/or did not have dominion and control over the transfer(s) alleged in the Complaint, Defendant was not an initial transferee pursuant to § 550 of the Bankruptcy Code. Such transfer(s), therefore, are not subject to avoidance.

10. To the extent any issues raised in the Complaint or at the trial thereon are deemed to be non-core, Defendant does not consent to the Bankruptcy Court entering a final order on such issues.

**DEFENDANT'S FED. R. BANKR. P. 7012(b) STATEMENT**

Pursuant to Fed. R. Bankr. P. 7012(b), Defendant states that it does not consent to entry of final orders or judgment by the Bankruptcy Court in this matter.

**REQUESTED RELIEF**

**WHEREFORE**, Defendant requests entry of an Order and Judgment:

- (i) dismissing the Complaint with prejudice;
- (ii) granting the Defendant costs of suit, including all reasonable counsel fees; and
- (iii) for such other and further relief as the Court deems just, proper and equitable.

Dated: February 10, 2021

**AUSTRIA LEGAL, LLC**

By: /s/ Matthew P. Austria  
Matthew P. Austria (DE No. 4827)  
1007 N. Orange Street, 4<sup>th</sup> Floor  
Wilmington, DE 19801  
Telephone: (302) 521-5197  
Fax: (302) 291-1772  
Email: maustria@austriallc.com

-and-

**HUSCH BLACKWELL LLP**

Michael D. Fielding  
IA #AT0013551, KS #20562, MO #53124  
*Pro hac motion pending*  
4801 Main Street, Suite 1000  
Kansas City, Missouri 64112  
Telephone: 816.983.8000  
Email: Michael.Fielding@huschblackwell.com

*Attorneys for Defendant Lunda Construction Company*

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

In re:	Chapter 11
Welded Construction, L.P., <i>et al.</i> ,	Case No. 18-12378 (CSS)
Debtors. <sup>1</sup>	(Jointly Administered)
Welded Construction, L.P.,	Adv. No. 20-50935 (CSS)
Plaintiff,	
vs.	
Lunda Construction Company,	
Defendant.	

**CERTIFICATE OF SERVICE**

I, Matthew P. Austria, hereby certify that on the 10th day of February, 2021, I caused a true and correct copy of the foregoing ***Answer and Affirmative Defenses of Lunda Construction Company to Complaint to Avoid and Recover Transfers Pursuant to 11 U.S.C. §§ 547, 548, and 550 and to Disallow Claims Pursuant to 11 U.S.C. § 502*** to be served on the parties receiving electronic notice in this adversary proceeding through the Electronic Case Filing (ECF) system as well as by e-mail on the below parties:

Joseph L. Steinfeld, Jr., Esq. Brigitte McGrath, Esq. ASK LLP 2600 Eagan Woods Drive, Suite 400 St. Paul, MN 55121 E-mail: <a href="mailto:jsteinfeld@askllp.com">jsteinfeld@askllp.com</a> E-mail: <a href="mailto:bmcgrath@askllp.com">bmcgrath@askllp.com</a>	Josef W. Mintz, Esq. Blank Rome LLP 1201 Market Street, Suite 800 Wilmington, DE 19801 E-mail: <a href="mailto:mintz@blankrome.com">mintz@blankrome.com</a>
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Date: February 10, 2021

**AUSTRIA LEGAL, LLC**

/s/Matthew P. Austria  
Matthew P. Austria (No. 4827)