

**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. 17, 44 & 228

**NOTICE OF FILING OF MODIFICATIONS TO
DEBTOR IN POSSESSION CREDIT AGREEMENT**

PLEASE TAKE NOTICE that, on October 22, 2018, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Motion of the Debtors for Interim and Final Orders (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, (V) Modifying the Automatic Stay, and (VI) Scheduling a Final Hearing* [Docket No. 17] (the “**DIP Motion**”).

PLEASE TAKE FURTHER NOTICE that, on October 23, 2018, the Court entered the *Interim 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, (V) Modifying the Automatic Stay, and (VI) Scheduling A Final Hearing* [Docket No. 44] (the “**Interim DIP Order**”). Attached as Exhibit A to the Interim DIP Order was a copy of the DIP Credit Agreement.

PLEASE TAKE FURTHER NOTICE that, ON November 15, 2018, the Debtors filed a proposed form of order approving the DIP Motion on a further interim basis (the “**Proposed Second Interim DIP Order**”), along with a redline of the Proposed Second Interim DIP Order to the Interim DIP Order [Docket No. 228].

PLEASE TAKE FURTHER NOTICE that in connection with the Proposed Second Interim DIP Order, the Debtors have made certain modifications to the DIP Credit Agreement, which modifications are attached hereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that the Debtors reserve their rights to further revise, modify, supplement or amend the the DIP Credit Agreement in all respects prior to, at, or as a result of the Hearing.

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.



Dated: November 16, 2018
Wilmington, Delaware

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EXHIBIT A

Modifications to DIP Credit Agreement

relieve or discharge the obligation or liability of any Person not an express party to this Agreement; or (c) give any Person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

24. Expenses

Whether or not the transactions contemplated hereby are consummated, the Debtors agree to pay promptly (a) all the actual and reasonable costs and expenses of the Lender incurred in connection with the negotiation, preparation and execution of the Loan Documents, the Interim Order, the Final Order, the “first day orders” and any other documents in connection with the Bankruptcy Cases and any consents, amendments, waivers or other modifications thereto (whether or not any of the transactions contemplated hereby or thereby shall be consummated); (b) all the actual and reasonable fees, costs and expenses of counsel to the Lender (in each case including allocated costs of internal counsel) in connection with the negotiation, preparation, execution and administration of the Loan Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Debtors; (c) all the actual and reasonable costs and expenses of creating, perfecting, recording, maintaining and preserving Liens in favor of the Lender, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements of counsel to the Lender; (d) all the actual and reasonable costs and expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by the Lender and its counsel) in connection with the custody or preservation of any of the Collateral; (e) all other actual and reasonable costs and expenses incurred by the Lender in connection with the transactions contemplated by the Loan Documents and any consents, amendments, waivers or other modifications thereto; and (f) all the actual and reasonable costs and expenses, including reasonable attorneys’ fees and costs of settlement, incurred by the Lender in enforcing any Obligations of or in collecting any payments due from any Debtor hereunder or under the other Loan Documents, including fees and expenses incurred by such parties in connection with the monitoring and participating in the Bankruptcy Cases. Notwithstanding the foregoing, with respect to the actual and reasonable costs and expenses of the Lender incurred prior to the Closing Date in connection with the negotiation, preparation and execution of the Loan Documents (including the actual and reasonable fees, costs and expenses of counsel to the Lender), the Debtors shall only be required to pay an aggregate amount up to \$200,000.

25. Indemnification

In addition to the payment of expenses pursuant to Section 24, whether or not the transactions contemplated hereby are consummated, each Debtor, jointly and severally with the other Debtors, agrees to defend (subject to Indemnitees’ selection of counsel), indemnify, pay and hold harmless, (x) the Lender and the officers, partners, members, directors, trustees, advisors, employees, agents, sub-agents and Affiliates of the Lender solely in its role and capacity as the Lender hereunder, and (y) each officer, partner, member, director, trustee, advisor or employee of the Lender, solely in the role and capacity of each such Person as an officer, partner, member, director, trustee, advisor

or employee of the Lender in its role and capacity as the Lender hereunder) (each, an “**Indemnitee**”), from and against any and all Indemnified Liabilities; provided, no Debtor shall have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence or willful misconduct of that Indemnitee, in each case, as determined by a final, non-appealable judgment of a court of competent jurisdiction. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 25 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Debtor shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

26. Release

No Debtor has any defense, counterclaim, offset, recoupment, cross-complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all of any part of the Debtors’ liability to repay the Lender as provided in this Agreement, or to seek affirmative relief or damages of any kind or nature from the Lender relating to this Agreement. Subject to entry of the Financing Order, the Debtors, each in their own right and with respect to the Debtors, on behalf of their bankruptcy estates, and on behalf of all their successors, assigns, Subsidiaries and any Affiliates and any Person acting for and on behalf of, or claiming through them, (collectively, the “**Releasing Parties**”), hereby fully, finally and forever release and discharge (x) the Lender ~~and all of the Lender’s past and present officers, directors, servants, agents, attorneys, assigns, parents, subsidiaries, and each Person acting for or on behalf of any of them~~ solely in its role and capacity as the Lender hereunder, and (y) each officer, partner, member, director, trustee, advisor or employee of the Lender, solely in the role and capacity of each such Person as an officer, partner, member, director, trustee, advisor or employee of the Lender in its role and capacity as the Lender hereunder) (collectively, the “**Released Parties**”) of and from any and all past, present and future actions, causes of action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise (including, without limitation, those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may heretofore accrue against any of the Released Parties, whether held in a personal or representative capacity, and which are based on any act, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, directly or indirectly arising out of, connected with or relating to this Agreement, the other Loan Documents, the Financing Order and the transactions contemplated hereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing, provided that solely in the case of attorneys, the provisions of this Section 26 shall be limited to the extent that any such

release would violate any professional disciplinary rules, including Disciplinary Rule 6-102 of the Code of Professional Conduct, to the extent applicable, and, for the avoidance of doubt, all Parties hereto expressly agree and acknowledge that nothing provided for herein or in any other Loan Document (including, without limitation, in any Financing Order) shall entitle any Person (including any Person who is also the Lender) to any release with respect to any actions, causes of action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations relating to such Person's role or capacity as the direct or indirect holder of any Equity Interest in either Debtor (or as any officer, partner, member, director, trustee, advisor or employee acting for or on behalf of any of them, of such Person in its role and capacity as direct or indirect holder of any Equity Interest in either Debtor).

27. Specific Performance

The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to specific performance of the terms hereof, this being in addition to any other remedy to which they are entitled at law or in equity.

28. No Marshalling; Payments Set Aside

The Lender shall not be under any obligation to marshal any assets in favor of any Debtor or any other Person or against or in payment of any or all of the Obligations. To the extent that any Debtor makes a payment or payments to the Lender, or the Lender enforces any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

29. Parties Including Trustees; Bankruptcy Court Proceedings

This Agreement, the other Loan Documents, and all Liens and other rights and privileges created hereby or pursuant hereto or to any other Loan Document shall be binding upon each Debtor, the estate of each Debtor, and any trustee, other estate representative or any successor in interest of any Debtor in any Bankruptcy Case or any case under Chapter 7 of the Bankruptcy Code, and shall not be subject to Section 365 of the Bankruptcy Code. This Agreement and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of the Lender and its respective assigns, transferees and endorsees. The Liens created by this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or