

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

In re:

PGX HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-10718 (CTG)

(Jointly Administered)

**Hearing Date & Time: August 25, 2023 at
10:00 a.m. (prevailing Eastern Time)**

Related Docket No. 66

**LIMITED OBJECTION OF CAPITOL INDEMNITY CORPORATION
TO THE DEBTORS’ MOTION FOR ENTRY OF ORDERS (I)(A) APPROVING
BIDDING PROCEDURES FOR SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS,
(B) AUTHORIZING THE DEBTORS TO ENTER INTO ONE OR MORE STALKING
HORSE AGREEMENTS AND TO PROVIDE BIDDING PROTECTIONS
THEREUNDER, (C) SCHEDULING AN AUCTION AND APPROVING THE FORM
AND MANNER OF NOTICE THEREOF, (D) APPROVING ASSUMPTION AND
ASSIGNMENT PROCEDURES, AND (E) SCHEDULING A SALE HEARING AND
APPROVING THE FORM AND MANNER OF NOTICE THEREOF; (II)(A)
APPROVING THE SALE OF THE DEBTORS’ ASSETS FREE AND CLEAR OF LIENS,
CLAIMS, INTERESTS AND ENCUMBRANCES AND (B) APPROVING THE
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES; AND (III) GRANTING RELATED RELIEF**

TO THE HONORABLE CRAIG T. GOLDBLATT,
UNITED STATES BANKRUPTCY JUDGE:

Capitol Indemnity Corporation (“CapSpecialty” or “Surety”), by its undersigned attorneys, files this limited objection (the “Objection”) to the Debtors’² *Motion for Entry of*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PGX Holdings, Inc. (2510); Credit Repair UK, Inc. (4798); Credit.com, Inc. (1580); Creditrepair.com Holdings, Inc. (7536); Creditrepair.com, Inc. (7680); eFolks Holdings, Inc. (5213); eFolks, LLC (5256); John C. Heath, Attorney At Law PC (8362); Progrexion ASG, Inc. (5153); Progrexion Holdings, Inc. (7123); Progrexion IP, Inc. (5179); Progrexion Marketing, Inc. (5073); and Progrexion Teleservices, Inc. (5110). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 257 East 200 South, Suite 1200, Salt Lake City, Utah 84111.

² The Debtors are defined in Footnote 1 above. The following Debtors (each a “Bond Principal” and collectively the “Bond Principals”) are also named as a “principal” in various surety bonds issued by CapSpecialty, as defined below: PGX Holdings, Inc., Creditrepair.com, Inc., Efolks, LLC and John C. Heath, Attorney at Law, PC (collectively, the “Debtor-Principals”). The following Bond Principals also executed Indemnity Agreements in favor



Orders (I)(A) Approving Bidding Procedures for Substantially all of the Debtors' Assets, (B) Authorizing the Debtors to Enter Into One or More Stalking Horse Agreements and to Provide Bidding Protections Thereunder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief [ECF No. 66] (the "Sale Motion"), and respectfully states as follows:

PRELIMINARY STATEMENT

1. The Debtors seek to effectuate a Sale of all of their assets in accordance with the Asset Purchase Agreements (the "APAs")³, attached to the Sale Motion [ECF No. 66], as defined below. As set forth in the APAs, the Debtors seek to effectuate a transfer of all Purchased Assets, excluding only the "Excluded Assets" identified in Article 2.2 of the APAs. The Bonds issued by CapSpecialty, and the Indemnity Agreements executed in connection therewith and as defined in paragraphs 9 and 10 below, appear to be improperly included as Purchased Assets. Pursuant to the APAs, Purchased Assets "shall mean all right, title and interest of each of the Sellers, as of the Closing, in, to and under all of the assets, properties, interests, rights and claims of the Sellers as of the Closing (whether owned, leased, licensed, used or held for use by the Sellers), wherever situated and of whatever kind and nature, real or personal, tangible or intangible, and whether or

of CapSpecialty: PGX Holdings, Inc. and John C. Heath, Attorney at Law, PC d/b/a Lexington Law (collectively, the "Indemnitors").

³ The Objection applies to both the Progexion APA and the Lexington Law APA to the extent that either or both Agreements seek to include the Indemnity Agreements or Surety Bonds in the bankruptcy estate assets.

not reflected on the books and records of the Sellers, including the assets, properties, rights and claims as of the Closing described in Section 2.1, other than the Excluded Assets.” The Bonds and Indemnity Agreements are not listed as Excluded Assets. Therefore, it appears that the Debtor-Principals are seeking to transfer the Bonds and the Indemnity Agreements under the APAs.

2. CapSpecialty objects to the Sale Motion and the form of the APAs to the extent the Debtors seek to transfer the Bonds and Indemnity Agreements, as defined herein. Such a transfer would be in contravention of CapSpecialty's rights, and would authorize a legally impermissible transfer of the Bonds and Indemnity Agreements. As discussed below, the Bonds are non-assumable financial accommodations which assure no obligations other than those which each Bond Principal may have under any specific Bond. Thus, to the extent a Sale or related APA seeks to involuntarily substitute a Stalking Horse Bidder as a new “principal” under any specific Bond, such an effort cannot be permitted without CapSpecialty's consent (which is legally required).⁴

3. In the event the Objection is overruled, CapSpecialty intends to move for relief from the automatic stay to permit it to serve notice of cancellation of the Bonds in accordance with the cancellation provisions of each Bond and applicable non-bankruptcy law.

⁴ CapSpecialty anticipates filing an objection to the *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [ECF No. 336] (the “Assumption and Assignment Notice”) and incorporates all arguments raised therein in this Objection.

RELEVANT BACKGROUND

4. On June 4, 2023 (the “Petition Date”), the Debtors each commenced a voluntary case under chapter 11 of title 11 of the United States Code. The Debtors are operating their businesses as the Debtors-in-Possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

6. On June 6, 2023, the Debtors’ filed the Sale Motion.

7. On August 4, 2023, the Court entered an *Order (I)(A) Approving Bidding Procedures for the Sale of Substantially all of the Debtors’ Assets; (B) Authorizing the Debtors to Enter Into One or More Stalking Horse Agreements and to Provide Bidding Protections Thereunder; (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof; (D) Approving Assumption and Assignment Procedures; and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [ECF No. 331] (the “Bid Procedures Order”). Pursuant to the Bid Procedures Order, the final hearing with respect to the relief requested in the Sale Motion is scheduled for August 25, 2023.

8. CapSpecialty has not yet received a claim under the Bonds from any Obligee, but it may receive claims in the future. The Surety has incurred legal fees and expenses in protecting its rights under the Bonds and Indemnity Agreements, which fees and expenses are ongoing. CapSpecialty does not hold collateral in connection with the Bonds and Indemnity Agreements.

A. The Surety's Bonds and Debtor-Principal's Indemnity Obligations

9. Prepetition, CapSpecialty issued 69 separate surety bonds on behalf of the Debtor-Principals (each a "Bond" and, collectively, the "Bonds"). The Bonds are for the benefit of certain obligees (each an "**Obligee**" and, collectively, the "**Obligees**"), which in this case are governmental entities in those states where the Debtor-Principals are required to provide bonds in order to conduct their credit-repair business in those states. The aggregate penal sum of the Bonds is \$3,780,000.00. A Schedule of Surety Bonds is attached as Exhibit "D" to ECF No. 13.

10. CapSpecialty holds two prepetition General Indemnity Agreements (collectively, the "Indemnity Agreements"), one from PGX Holdings, Inc. and one from, among others, John C. Heath, Attorney at Law, PC d/b/a Lexington Law, pursuant to which the signatories thereto agreed, among other things, to indemnify, hold harmless, and exonerate CapSpecialty from and against any and all Loss (as such term is defined in the Indemnity Agreements) arising out of or related to any Bond issued by CapSpecialty on behalf of, or at the request of, the signatories to the Indemnity Agreements or which arise as a result of CapSpecialty's acting as surety for the Indemnitor(s). Copies of the Indemnity Agreements are attached hereto as Exhibits "A" and "B," respectively.

11. It is CapSpecialty's position that the Indemnity Agreements are not executory contracts as no performance remains on behalf of CapSpecialty. All obligations flow from the Indemnitors to CapSpecialty. *See, e.g., In re THC Fin. Corp.*, 686 F.2d 799, 804 (9th Cir. 1982) (finding that an indemnity agreement is not executory).

12. CapSpecialty has filed suit under the Indemnity Agreement against John C. Heath (who is not a Debtor), individually, in the United States District Court for the District of Utah,

Case No. 2:23-cv-487, seeking specific performance of his obligations to CapSpecialty under the Indemnity Agreement he signed.

B. Surety Bonds are Financial Accommodations and are Not Transferrable

13. Surety bonds are not insurance policies. *Reginella Constr. Co., Ltd. v. Travelers Cas. and Sur. Co. of Am.*, 949 F. Supp. 2d 599, 611 (W.D. Pa. 2013); *Nat'l Am. Ins. Co. v. Boh Bros. Constr. Co., Inc.*, 700 So. 2d 1363, 1366 (Ala. 1997) (citing *Balboa Ins. Co. v. United States*, 775 F.2d 1158, 1160 (Fed. Cir. 1985)); *A.J. Kellos Constr. Co. v. Balboa Ins. Co.*, 495 F. Supp. 408, 412 (S.D. Ga. 1980) (citing Restatement of Security § 82 (1941)); *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 139 n. 19 (1962) (“Suretyship is not insurance.”); *Meyer v. Bldg. & Realty Serv. Co.*, 196 N.E. 250, 254 (Ind. 1935) (“We are clearly of the opinion that the contract here in question is a contract of suretyship and not an insurance policy.”); *Buck Run Baptist Church, Inc. v. Cumberland Sur. Ins. Co., Inc.*, 983 S.W. 2d 501, 504 (Ky. 1998) (“A contract of suretyship is not a contract of insurance.”).

14. Unlike insurance, which is a two-party arrangement between the insurer and the insured, surety bonds are three-party agreements in which the named principal is the primary obligor and the surety is the secondary obligor on the bonded obligation owing to the obligee. The Debtor-Principals here are the principal obligors and CapSpecialty is secondarily liable and assures performance, subject to the terms of the Bond and applicable law, only if the named Bond Principal fails to perform its required obligations.

15. Pursuant to 11 U.S.C. § 365(c)(2) of the Bankruptcy Code, “[t]he trustee may not assume or assign any executory contract or unexpired lease of the debtor if . . . such contract is a contract to make a loan, or extend other debt financing or financial accommodation, to or for the benefit of the debtor . . .” Surety bonds are financial accommodations. *See In re Wegner Farms*

Co., 49 B.R. 440 (Bankr. Iowa 1985); *Matter of Edwards Mobile Home Sales, Inc.*, 119 B.R. 857 (Bankr. M.D. Fla. 1990). Accordingly, the Bonds cannot be assumed and assigned by the Debtors.

16. Not only are the Bonds non-assumable financial accommodations, but they also are not property of the Debtor-Principals or their estates. “[T]he ‘overwhelming weight of authority,’ under both the Bankruptcy Act and Code holds that a contractor [principal] has no property interest in a surety bond issued by a third-party [surety] to guarantee the contractor’s performance on its commercial or personal services contracts.” *O’Malley Lumber Co. v. Lockard (In re Lockard)*, 884 F. 2d 1171, 1177 (9th Cir. 1989); *see also Ohio v. Mansfield Tire and Rubber Co. (In re Mansfield Tire and Rubber Co.)*, 660 F. 2d 1108, 1115 (6th Cir. 1981) (the debtor could not claim any legal or equitable interest in surety bonds); *McLean Trucking Co. v. Dep’t of Indus. Relations (In re McLean Trucking Co.)*, 74 B.R. 820, 826 (Bankr. W.D.N.C. 1987) (surety bond not property of the estate).

17. Because the Debtor-Principals have no property rights with respect to the Bonds, they cannot assume them, assign them, or in any way transfer them to the Stalking Horse Bidders. The Bonds do not secure performance of any party other than the named principal, and CapSpecialty cannot be required to extend surety credit to a third party (i.e. someone other than the named Bond Principal under a specific Bond) without its consent. In fact, the law of suretyship is clear that a surety is **discharged** from liability under its bond if there is an involuntary substitution of the principal under the bond, since such a change is a material modification to the underlying bonded contract and is prejudicial to the surety. *See, e.g., Bd. of Tr., Roofers Local No. 30 Combined Welfare Fund v. Int’l Fid. Ins. Co.*, 644 Fed. App’x 133, 137 (3rd Cir. 2016) (a surety is discharged where there is a material modification in the creditor-

debtor relationship, substantially different than the original agreement on which the surety accepted liability, which substantially increased the surety's risk). To the extent that the various states, which are the obligees under the Bonds, accept the Stalking Horse Bidders as new and/or interim operators under the applicable licenses without the consent of CapSpecialty, such action would constitute an involuntary substitution of principal prejudicial to CapSpecialty. *See Western Surety Co. v. Horrall*, 111 Ariz. 486 (S. Ct. Ariz. 1975). Accordingly, in that circumstance, CapSpecialty would be discharged from liability under the Bonds. Consequently, it is unlikely that any state agency would allow a buyer to operate under the existing licenses without (1) consent of the existing surety (and the surety has no obligation to provide surety bonds for the new buyer), or (2) replacement surety bonds being posted.

OBJECTION

I. The Sale Motion and the APAs Should Not be Approved to the Extent they Contemplate the Impermissible Assignment of the Surety Bonds and Indemnity Agreements.

18. As set forth above, the Bonds are non-assumable and non-assignable financial accommodations. They secure no obligations other than those of the named principal and as such are not assignable to any proposed Stalking Horse Bidder. CapSpecialty may consider consenting to the Stalking Horse Bidders becoming substitute principals under the Bonds as part of any proposed transaction; provided, of course, that the Stalking Horse Bidders execute a new Indemnity Agreement on behalf of the Surety and provide other adequate assurances as the Surety deems appropriate.⁵

⁵ CapSpecialty is currently in discussions with the Stalking Horse Bidders to see if a post-sale bonding relationship can be established on terms acceptable to the applicable interested parties; if such an agreement can be reached, this Objection, as well as the objection being filed in connection with the Assumption and Assignment Notice, will be withdrawn.

RESERVATION OF RIGHTS

CapSpecialty reserves the right to supplement this Objection at any time up to and including on the date of the hearing, and nothing herein shall be deemed to waive any rights, remedies, or defenses of the Surety under the Bonds, the Indemnity Agreements, at law, in equity or otherwise.

CONCLUSION

WHEREFORE, the Surety respectfully requests that the Debtor-Principals revise the APAs to exclude the transfer, assumption and assignment of the Bonds and Indemnity Agreements.

Dated: August 18, 2023
Wilmington, DE

Respectfully submitted,

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EXHIBIT A

Reference Number _____

GENERAL INDEMNITY AGREEMENT

THIS GENERAL INDEMNITY AGREEMENT (this "Agreement"), is made by

PGX Holdings, Inc.

on its own behalf and on behalf of any of its present or future Affiliates (as defined herein) and their successors and assigns (collectively hereinafter referred to as "Principal") and any additional undersigned persons and/or entities (collectively, and together with Principal, hereinafter referred to as "Indemnitors") in favor of Surety (as defined herein).

WHEREAS, Principal, Indemnitors and their present or future Affiliates, in the course of their business(es), the performance of contracts, and meeting various obligations, by themselves or in joint ventures or combinations with other Persons (as defined herein), may currently or in the future desire or be required to procure, provide, maintain, renew, modify or substitute surety bonds, undertakings, recognizances, instruments of guarantee, consents of surety or other surety obligations; and

WHEREAS, at the request of one or more Indemnitors or their present or future Affiliate(s), Surety has been requested to and/or has executed and/or, from time to time hereafter, may be requested to arrange for the execution of, or procure to be executed Bonds (as defined herein); and

WHEREAS, Indemnitors represent that each of them is specifically and beneficially interested in Surety's execution, procurement, continuation, renewal, modification or substitution of said Bonds.

NOW, THEREFORE, as an inducement to Surety to execute, procure, renew, continue, modify or substitute any and all Bonds on behalf of or at the request of any Indemnitor(s) or their present or future Affiliate(s), Indemnitors for themselves, their successors and assigns, jointly and severally, hereby covenant as follows:

Section 1. Recitals Incorporated – The above recitals are incorporated herein. Indemnitors agree that their representations to Surety in the said recitals are intended to induce Surety to execute, procure, maintain, renew, modify or substitute any and all Bonds, both currently and in the future. Indemnitors further agree that Surety's continuing reliance upon those representations is justified and reasonable, and Indemnitors expressly waive any claim or defense to the contrary.

Section 2. Definitions - Indemnitors agree that the following definitions shall apply to this Agreement, which meanings shall be equally applicable to both the singular and plural forms of such terms:

a. "Person" means any person or entity, whether an individual, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, joint-stock company, trust, estate, unincorporated organization, business association, firm, joint venture, or any other form of business or entity, whether now in existence or hereafter formed:

b. an "Affiliate" of a Person means another Person that directly or indirectly controls, is controlled by or is under common control of such Person. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of voting securities, by contract, as trustee or executor or otherwise.

c. "Surety" means any one or more, individually and collectively, of Capitol Indemnity Corporation and/or Platte River Insurance Company, their Affiliates, reinsurers, and any Person executing any Bond or joining with any of the aforesaid companies in executing any Bond at the request of any Indemnitor or its Affiliate, together with their respective successors and assigns.

d. "Indemnitors" - All Persons who sign this Agreement or whose representatives sign this Agreement, or any other agreement or addendum by which such Person agrees to be bound in whole or in part by this Agreement, as well as such Persons' successors or assigns.

e. "Bond" means any surety bond, undertaking, recognizance, instrument of guarantee, consent of surety or other surety obligation, issued in the name(s) or at the request of any Indemnitor or its Affiliate, solely or as a co-venturer with others, whether issued before or after the date of this Agreement by Surety.

f. "Bonded Contract" means any existing or future contract referenced in any Bond, or with respect to which any Bond is issued.

g. "Claim" means any notice of default, notice of claim, request for a pre-default meeting, pre-termination letter, notice of non-payment or non-performance, demand, request for financing or forbearance of any kind, or suit received by, or asserted against, Surety in connection with any Bond.

h. "Loss" means any and all payments, expenses or liability incurred or anticipated by Surety arising from or related to any Bond or this Agreement, including but not limited to attorney's fees, consultant's fees, expert fees, and court costs incurred by Surety arising from or related to a Claim and/or enforcing this Agreement, as well as any and all unpaid premiums for any Bond.

i. "Good Faith" means the absence of dishonesty in fact, intentional fraud or actual malice that directly results in demonstrable and material economic harm to an Indemnitor.

j. the term "Event of Default" shall have the meaning set forth in Paragraph 8 of this Agreement.

Section 3. Premiums - Indemnitors shall pay or cause to be paid promptly on demand each annual premium, and all costs and charges of Surety at its agreed, or in the absence of agreement, at its customary rates, for any and all Bonds issued by Surety, which premiums shall continue to be incurred until all potential liability of Surety under such Bond is extinguished. Indemnitors agree that premium for a Bond is fully earned upon execution of a Bond and is not refundable.

Section 4. Indemnity - Indemnitors shall exonerate, reimburse, indemnify, keep indemnified and hold harmless Surety from and against any and all Loss. In any accounting or suit between Surety and Indemnitors, vouchers or other evidence of any payments made by Surety shall be prima facie evidence of the fact and amount of Indemnitors' liability to Surety; and Surety shall be entitled to reimbursement for all disbursements made under the Good Faith belief that Surety is, was, or might be liable for the sums and amounts so disbursed or that it was necessary or expedient to make such disbursements, whether or not such liability, necessity or expediency actually existed. All such amounts shall bear interest at the rate of 9% per annum from the date of Surety's payment until Surety is fully reimbursed.

Section 5. Collateral Deposit - Upon written demand by Surety, Indemnitors agree to deposit with Surety cash or an irrevocable letter of credit from a bank approved by Surety and in a form acceptable to Surety (hereinafter "Collateral Deposit"). Such Collateral Deposit shall be in the amount that Surety, in its sole discretion, in Good Faith deems sufficient to hold it harmless from and against any potential Loss. It is agreed that the failure of Indemnitors to make any Collateral Deposit demanded by Surety shall cause irreparable harm to Surety for which Surety has no adequate remedy at law, and that Surety shall be entitled to preliminary and final injunctive relief for specific performance of Indemnitors' Collateral Deposit obligation.

Section 6. Surety's Use Of Collateral - Except as may otherwise be agreed in writing by Surety, all collateral of any kind or nature deposited with, and/or assigned or pledged to Surety, including but not limited to any Collateral Deposits, may be held by Surety, without any obligation to earn interest thereupon, until Surety is fully discharged from all potential liability under any and all Bonds. Surety may, at its option and in its sole discretion, and without notice to any Indemnitor, use any and all such collateral, or the proceeds thereof, including any Collateral Deposit(s), in payment of or reimbursement for any Loss.

Section 7. Settlements - Surety shall have the exclusive right, in Good Faith and in its sole discretion, to adjust, pay, compromise, defend or appeal any Claim; and Surety's determination of whether to defend or settle any such Claim shall be binding and conclusive upon the Indemnitors. Indemnitors further agree that Surety's right to compromise Claims under this paragraph shall extend to and include Surety's right to settle and compromise any and all affirmative claims, counterclaims, crossclaims, setoffs, recoupments or rights of any kind or nature that any Indemnitor may have or allege against any Person asserting a Claim and/or whose rights are affected by any Claim.

Section 8. Event Of Default - "Event of Default" shall mean the occurrence of any one or more of the following events: (1) any abandonment, default or declaration of default, material breach, or failure or inability to perform, any Bonded Contract or any obligation under any Bond; (2) the failure or inability of Indemnitors to pay bills or other indebtedness incurred in, or in connection with, the performance of any Bonded Contract; (3) any material breach of any of the terms or provisions of this Agreement; (4) the failure of Indemnitors to pay or discharge, when due, any amounts due to Surety; (5) the insolvency of, or the filing of a voluntary or involuntary petition under the United States Bankruptcy Code or any similar laws of any other jurisdiction with respect to, any Indemnitor, or the filing of any assignment for the benefit of creditors by any Indemnitor, or of the appointment, or of any application for the appointment, of a receiver or trustee for any Indemnitor; (6) any Indemnitor makes or has made any materially false representation to Surety in connection with the request for the issuance, continuation or modification of any Bond, or in connection with any Claim; (7) any Indemnitor is convicted of a felony; or (8) any Indemnitor, if an individual, disappears or absconds.

Section 9. Assignment - Indemnitors hereby assign, pledge and set over to Surety, effective as of the date of execution of any Bond, all rights, title and interests of the Indemnitors, including but not limited to rights acquired after the date of this Agreement, in all real property, and all assets and personal property in which the Indemnitors have an interest, including but not limited to all Accounts; Contracts; inventory; Equipment; General Intangibles and Intellectual Property Rights; Chattel Paper; Commercial Tort Claims; Deposit Accounts; Payment Intangibles; Documents; Goods (including all of its Equipment, Fixtures and Inventory), and all accessions, additions, attachments, improvements, substitutions and replacements thereto and therefor; Instruments; Financial Assets; Fixtures; Letter of Credit Rights; Certificated Securities; Security Entitlements; Investment Property; and to the extent not otherwise included in the foregoing, all other real or personal property of the Indemnitors, whether tangible or intangible, whether now owned or hereafter acquired and wherever located; and all Proceeds of the foregoing. Capitalized terms in the foregoing sentence shall have the meanings ascribed to them in the Uniform Commercial Code as in effect in any applicable jurisdiction. This Agreement shall constitute a security agreement and financing statement and Surety may, at its option and in its sole discretion, without notice to any Indemnitors, perfect its security interest in such assigned assets by filing a UCC-1 financing statement and/or a copy of this Agreement with the appropriate filing offices or registries, as well as any and all other forms of mortgages, liens or deeds authorized by law for giving notice of and/or perfecting Surety's security interest. Upon the occurrence of an Event of Default, Surety, or any Person designated by Surety, may enforce the aforesaid assignments and security interests, and is hereby authorized and empowered by Indemnitors to take any action that Surety may deem appropriate or expedient to obtain possession of the subject assets and personal property.

Section 10. Right Of Immediate Possession And Control - Upon any Event of Default, Surety shall have the right, at its option and in its sole discretion, and without notice to Indemnitors, to take immediate possession and control of Indemnitors' real and personal property, facilities and rights relating to any part or all of the work under any Bonded Contract, including but not limited to (a) any and all amounts due or to become due on account of any such Bonded Contract, including but not limited to progress payments, retention, change orders, proposed change orders, actual or potential requests for additional compensation or equitable adjustments, and rights of setoff or recoupment; (b) any and all supplies, equipment, machinery, tools, materials, plans, specifications, project records, trailers, computers, data and electronically stored information, and intellectual property; (c) any and all rights, title and interest of any Indemnitor(s) in or growing out of any and all contracts, subcontracts, purchase orders, or agreements, and any and all surety bonds or insurance policies associated with such contracts, subcontracts, purchase orders, or agreements; and (d) any and all rights, actions, causes of actions, liens, claims and demands of any kind or nature that any Indemnitor(s) may have or acquire against any Person or property in any way arising under or related to any Bond or Bonded Contract. It is agreed that, upon any Event of Default, and upon written demand by Surety, Indemnitors shall promptly peacefully surrender and transfer to Surety possession and control of any and all such items requested by Surety, and shall execute all instruments requested by Surety to facilitate and document such transfer of possession and control of such items to Surety. Indemnitors further acknowledge that any breach of Indemnitors' obligations under this paragraph shall cause irreparable harm to Surety for which Surety has no adequate remedy at law, and that Surety shall be entitled to preliminary and final injunctive relief for specific performance of such obligations.

Section 11. Appointment Of Surety As Indemnitors' Attorney-In-Fact - Indemnitors hereby irrevocably nominate and appoint Surety, and any Person designated by Surety, as the true and lawful attorney-in-fact of Indemnitors, with full right and authority, but not the obligation, to execute on behalf of, and sign the name of, any Indemnitors to any voucher, release, satisfaction, check, bill of sale, letter of direction and/or any other document or agreement with respect to any and all rights and property assigned and/or transferred by Indemnitors to Surety under this Agreement. Indemnitors hereby ratify and confirm all that such attorney-in-fact or Surety may do for the purposes set forth in this Agreement and/or to facilitate or implement any right granted to Surety hereunder. Indemnitors specifically agree to protect, indemnify and save and hold harmless Surety and such attorney-in-fact against any and all claims, damages, costs and expenses that may in any way arise due to the exercise of the assignments and rights contained in this Agreement and the powers herein granted, specifically waiving any claim that Indemnitors have or might hereafter have against Surety or its attorney-in-fact on account of anything done in enforcing the terms of this Agreement.

Section 12. Trust Fund - Indemnitors designate, set aside and declare as an express trust, and shall hold, treat and honor as a trust, all interest, title and rights in all monies paid, due or to become due under any Bonded Contracts, whether in the possession of any Indemnitor or any other Person, for the benefit and payment of all obligations for which Surety may be liable under any Bond, including but not limited to the payment of Persons supplying labor and materials in the prosecution of work under any Bonded Contract. Surety may, in its sole discretion, open a trust account or accounts ("Trust Accounts") with a bank designated by Surety for the deposit of such trust funds. Upon written demand by Surety, Indemnitors shall deposit in such Trust Accounts any and all such trust funds received by them, and upon the request of Surety shall issue irrevocable letters of direction to other Persons requiring that all future payments arising from or relating to any Bonded Contracts be made into such Trust Accounts. Withdrawals or payments from such Trust Accounts shall require the express written consent of Surety.

Section 13. Surety's Discretion With Respect To Bonds - Surety is authorized and empowered, without notice to or knowledge of Indemnitors, notice being hereby expressly waived, to issue or refrain from issuing any Bonds (including final Bond(s) where Surety has furnished a bid bond or consent of surety), to assent, or to refuse to assent, to any change whatsoever in any Bonds, or to cancel or refrain from cancelling any Bonds, without impairing the validity of this Agreement, and Indemnitors hereby waive any and all claims or defenses against Surety due to its refusal or failure to execute any Bond or to modify, renew, continue, cancel or refrain from cancelling, any Bond under any applicable law pertaining to the release of sureties. Each Indemnitor acknowledges that the Surety has no duty, express or implied, to review any contract, Bond or other form of document by or on behalf of any Indemnitor or its Affiliate, and that the Surety's execution of any Bond is not to be construed as a representation of any kind, express or implied, as to the reasonableness of the terms and conditions contained therein or within any Bonded Contract, the risks of which are the responsibility of the Indemnitors.

Section 14. Access To Financial Information - Indemnitors shall provide Surety or any Person designated by Surety with unrestricted access at any time upon reasonable notice to the financial statements, books, records, electronically-stored information and/or accounts of Indemnitors for the purpose of inspection, copying or reproduction. This access will continue until such time as the liability of Surety under all Bonds is terminated and Surety is fully reimbursed for all amounts due under this Agreement. In addition, each Indemnitor hereby specifically authorizes any financial institution or depository in which its funds or securities may be held to furnish any information requested by Surety relating to such accounts. Indemnitors hereby waive as to Surety any privilege in any accountant's work papers and any other documents or communications that may be subject to any privilege related to the preparation of any financial statements and further agree to provide any additional releases, requests, waivers or any other documents required in order to allow Surety access to the requested information. Indemnitors further expressly authorize Surety to access credit reports and to make such pertinent inquiries as Surety may deem appropriate for any purpose whatsoever, including but not limited to debt collection. Indemnitors acknowledge that Surety may share copies of any and all financial statements, financial documents and any and all other financial information which Surety now has or may hereafter obtain concerning Indemnitors with governmental regulators, auditors, co-sureties, fronting companies and/or reinsurers.

Section 15. Advances - Surety is authorized and empowered, at Surety's option and at its sole and absolute discretion, and without notice to Indemnitors, to guarantee loans, and/or to advance or lend money to or on behalf of any Indemnitor, for the purpose of facilitating the completion of any Bonded Contract(s) and/or in a Good Faith effort to mitigate Surety's possible exposure to Loss under any Bond(s). Indemnitors agree that any and all such money advanced by Surety shall be at its sole and absolute discretion and shall constitute Loss for which Indemnitors are responsible to indemnify Surety under this Agreement, unless and until all such advances and all other Loss is repaid in full with interest.

Section 16. Non-Impairment Of Indemnitors' Obligations - The obligations of the Indemnitors under this Agreement shall not be impaired by, and Surety shall incur no liability on account of: (a) Surety's taking, failure to take, or release of security, collateral, assignment, other indemnity agreements and the like; (b) the release by Surety, on terms satisfactory to it, of any Indemnitors; and/or (c) Surety's enforcement or non-enforcement of any right or cause of action against any Indemnitor or other Person.

Section 17. Surety's Priority - Indemnitors waive and subordinate all rights of indemnity, subrogation and contribution, each against the other, until all obligations to Surety have been first satisfied in full. Further, Indemnitors shall not waive any claim or right of indemnity, subrogation or contribution with regard to any Person, pursuant to any contract, insurance policy, settlement, or otherwise, without the prior written consent of Surety until the obligations of the Indemnitors to Surety under this Agreement have been satisfied in full.

Section 18. Waiver Of Notice By Indemnitors - Indemnitors waive any and all rights to any form notice from or disclosure by Surety with respect to any Claim, or any act, fact, or information coming to the notice or knowledge of Surety concerning their rights or liabilities under this Agreement, any Bonds executed, procured, continued, renewed, modified or substituted by Surety on behalf of any Indemnitor or its Affiliate, any Loss, and any and all other rights or liabilities of Indemnitors, whether Surety has such knowledge or notice before or after the execution of this Agreement. Indemnitors agree that they shall continue to be liable hereunder, notwithstanding any notice to which they might otherwise have been or be entitled, and notwithstanding any defenses they might otherwise have been entitled to assert as a result of lack of notice.

Section 19. Surety's Rights Are Cumulative - Indemnitors shall continue to remain bound under the terms of this Agreement even though Surety may have from time to time heretofore or hereafter, with or without notice to or knowledge of Indemnitors, accepted other agreements of indemnity or collateral, it being expressly understood and agreed that any and all other rights which Surety may have or acquire with respect to Indemnitors and/or others under this Agreement and any such other or additional agreements of indemnity, collateral or rights shall be cumulative and in addition to, not in lieu of, the rights afforded Surety under this Agreement. The rights granted in favor of Surety in this Agreement shall not be deemed a waiver of Surety's common law rights, equitable subrogation rights, statutory rights, or any other rights or remedies to which Surety is or may become entitled. In addition, no failure or delay by Surety in seeking to enforce any right shall be deemed a waiver of that right, nor any other right which Surety is or may become entitled to enforce.

Section 20. Effectiveness Of Agreement - This Agreement shall be liberally construed so as to protect, hold harmless, exonerate, reimburse and indemnify Surety. No modification to this Agreement shall be effective unless made by written endorsement executed by Surety, except that, notwithstanding any language herein to the contrary, the addition to this Agreement of any Indemnitor or Principal, including entities acquired after the date of execution of this Agreement, may be affected by written amendment executed by such Indemnitor or Principal only. Each Indemnitor hereby waives notice of, consents to, and waives all defenses arising from, the addition to this Agreement of any new Principal or Indemnitor, as well as the release of any Principal or Indemnitor, at any time. If any provision of this Agreement is deemed unenforceable, the remainder of this Agreement shall continue in full force and effect.

Section 21. Termination - This Agreement may be terminated prospectively, but not retroactively, as to any Indemnitors upon thirty (30) days' written notice sent by registered or certified mail to Surety at: 1600 Aspen Commons, Middleton, WI 53562. Any such notice of termination shall not discharge any obligations as to Bonds executed, or which Surety had become obligated to execute, prior to the effective date of termination, and shall apply only as to the respective Indemnitors executing and delivering such written notice of termination.

Section 22. Execution - This Agreement shall be effective as to each Indemnitor when it has been executed by such Indemnitor. Facsimile, emailed signatures or electronic signatures shall be deemed to have the same effect as original signatures. INDEMNITORS REPRESENT THAT THEY HAVE CAREFULLY READ AND UNDERSTAND EVERY PROVISION OF THIS AGREEMENT, AND EXPRESSLY DISCLAIM RELIANCE UPON ANY REPRESENTATION NOT EXPRESSLY SET FORTH HEREIN.

IN WITNESS WHEREOF, the Indemnitors who are individuals have hereunder set their hands and the Indemnitors which are partnerships, corporations, or unincorporated associations have caused this Agreement to be duly executed by their authorized representatives on this _____ day of April, in the year 2021.

Indemnitor:

PGX Holdings, Inc. [REDACTED]
 (Type or Print Full Name) (FEIN / SSN)

257 E 200 S, Ste 1200, Salt Lake City, UT 84111
 (Address)

By: *Chad Wallace*
 Chad Wallace / CFO
 (Name/Title)

Indemnitor:

 (Type or Print Full Name) (FEIN / SSN)

 (Address)

By: _____
 (Name/Title)

Indemnitor:

 (Type or Print Full Name) (FEIN / SSN)

 (Address)

By: _____
 (Name/Title)

Indemnitor:

 (Type or Print Full Name) (FEIN / SSN)

 (Address)

By: _____
 (Name/Title)

Indemnitor:

 (Type or Print Full Name) (FEIN / SSN)

 (Address)

By: _____
 (Name/Title)

Indemnitor:

 (Type or Print Full Name) (FEIN / SSN)

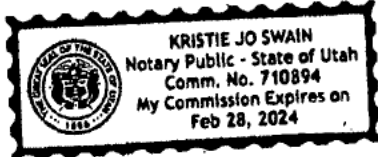
 (Address)

By: _____
 (Name/Title)

ENTITY ACKNOWLEDGMENT

STATE OF Utah)
) SS:)
 COUNTY OF Salt Lake)

On this 12 day of April, in the year 2021, before me personally appeared Chad Wallace, known or proven to me to be the Chief Financial Officer of PGX Holdings, Inc., the company executing the above instrument; who acknowledged to me that said instrument is the free and voluntary act and deed of said company, for the uses and purposes therein mentioned and on oath stated (s) he executed said instrument by authority of the Board of Directors or other applicable governing body of said company, and (if applicable) affixed the seal of said company hereto.



Kristie Jo Swain (Seal)
 Notary Public
 My Commission expires: 2-28-2024

ENTITY ACKNOWLEDGMENT

STATE OF _____)
) SS:)
 COUNTY OF _____)

On this _____ day of _____, in the year _____, before me personally appeared _____, known or proven to me to be the _____ of _____, the company executing the above instrument; who acknowledged to me that said instrument is the free and voluntary act and deed of said company, for the uses and purposes therein mentioned and on oath stated (s) he executed said instrument by authority of the Board of Directors or other applicable governing body of said company, and (if applicable) affixed the seal of said company hereto.

 Notary Public (Seal)
 My Commission expires: _____

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____)
) SS:)
COUNTY OF _____)

On this ____ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known to or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

Notary Public (Seal)
My Commission expires: _____

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____)
) SS:)
COUNTY OF _____)

On this ____ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known to or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

Notary Public (Seal)
My Commission expires: _____

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____)
) SS:)
COUNTY OF _____)

On this ____ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known to or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

Notary Public (Seal)
My Commission expires: _____

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____) -
) SS:)
COUNTY OF _____)

On this ____ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known to or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

Notary Public (Seal)
My Commission expires: _____

EXHIBIT B

Reference Number _____

GENERAL INDEMNITY AGREEMENT

THIS GENERAL INDEMNITY AGREEMENT (this "Agreement"), is made by

John C. Heath, Attorney at Law, PC

John C. Heath, Attorney at Law, PC DBA Lexington Law Firm

John C. Heath

on its own behalf and on behalf of any of its present or future Affiliates (as defined herein) and their successors and assigns (collectively hereinafter referred to as "Principal") and any additional undersigned persons and/or entities (collectively, and together with Principal, hereinafter referred to as "Indemnitors") in favor of Surety (as defined herein).

WHEREAS, Principal, Indemnitors and their present or future Affiliates, in the course of their business(es), the performance of contracts, and meeting various obligations, by themselves or in joint ventures or combinations with other Persons (as defined herein), may currently or in the future desire or be required to procure, provide, maintain, renew, modify or substitute surety bonds, undertakings, recognizances, instruments of guarantee, consents of surety or other surety obligations; and

WHEREAS, at the request of one or more Indemnitors or their present or future Affiliate(s), Surety has been requested to and/or has executed and/or, from time to time hereafter, may be requested to arrange for the execution of, or procure to be executed Bonds (as defined herein); and

WHEREAS, Indemnitors represent that each of them is specifically and beneficially interested in Surety's execution, procurement, continuation, renewal, modification or substitution of said Bonds.

NOW, THEREFORE, as an inducement to Surety to execute, procure, renew, continue, modify or substitute any and all Bonds on behalf of or at the request of any Indemnitor(s) or their present or future Affiliate(s), Indemnitors for themselves, their successors and assigns, jointly and severally, hereby covenant as follows:

Section 1. Recitals Incorporated – The above recitals are incorporated herein. Indemnitors agree that their representations to Surety in the said recitals are intended to induce Surety to execute, procure, maintain, renew, modify or substitute any and all Bonds, both currently and in the future. Indemnitors further agree that Surety's continuing reliance upon those representations is justified and reasonable, and Indemnitors expressly waive any claim or defense to the contrary.

Section 2. Definitions - Indemnitors agree that the following definitions shall apply to this Agreement, which meanings shall be equally applicable to both the singular and plural forms of such terms:

a. "Person" means any person or entity, whether an individual, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, joint-stock company, trust, estate, unincorporated organization, business association, firm, joint venture, or any other form of business or entity, whether now in existence or hereafter formed.

b. an "Affiliate" of a Person means another Person that directly or indirectly controls, is controlled by or is under common control of such Person. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of voting securities, by contract, as trustee or executor or otherwise.

c. "Surety" means any one or more, individually and collectively, of Capitol Indemnity Corporation and/or Platte River Insurance Company, their Affiliates, reinsurers, and any Person executing any Bond or joining with any of the aforesaid companies in executing any Bond at the request of any Indemnitor or its Affiliate, together with their respective successors and assigns.

d. "Indemnitors" - All Persons who sign this Agreement or whose representatives sign this Agreement, or any other agreement or addendum by which such Person agrees to be bound in whole or in part by this Agreement, as well as such Persons' successors or assigns.

e. "Bond" means any surety bond, undertaking, recognizance, instrument of guarantee, consent of surety or other surety obligation, issued in the name(s) or at the request of any Indemnitor or its Affiliate, solely or as a co-venturer with others, whether issued before or after the date of this Agreement by Surety.

f. "Bonded Contract" means any existing or future contract referenced in any Bond, or with respect to which any Bond is issued.

g. "Claim" means any notice of default, notice of claim, request for a pre-default meeting, pre-termination letter, notice of non-payment or non-performance, demand, request for financing or forbearance of any kind, or suit received by, or asserted against, Surety in connection with any Bond.

h. "Loss" means any and all payments, expenses or liability incurred or anticipated by Surety arising from or related to any Bond or this Agreement, including but not limited to attorney's fees, consultant's fees, expert fees, and court costs incurred by Surety arising from or related to a Claim and/or enforcing this Agreement, as well as any and all unpaid premiums for any Bond.

i. "Good Faith" means the absence of dishonesty in fact, intentional fraud or actual malice that directly results in demonstrable and material economic harm to an Indemnitor.

j. the term "Event of Default" shall have the meaning set forth in Paragraph 8 of this Agreement.

Section 3. Premiums - Indemnitors shall pay or cause to be paid promptly on demand each annual premium, and all costs and charges of Surety at its agreed, or in the absence of agreement, at its customary rates, for any and all Bonds issued by Surety, which premiums shall continue to be incurred until all potential liability of Surety under such Bond is extinguished. Indemnitors agree that premium for a Bond is fully earned upon execution of a Bond and is not refundable.

Section 4. Indemnity - Indemnitors shall exonerate, reimburse, indemnify, keep indemnified and hold harmless Surety from and against any and all Loss. In any accounting or suit between Surety and Indemnitors, vouchers or other evidence of any payments made by Surety shall be prima facie evidence of the fact and amount of Indemnitors' liability to Surety; and Surety shall be entitled to reimbursement for all disbursements made under the Good Faith belief that Surety is, was, or might be liable for the sums and amounts so disbursed or that it was necessary or expedient to make such disbursements, whether or not such liability, necessity or expediency actually existed. All such amounts shall bear interest at the rate of 9% per annum from the date of Surety's payment until Surety is fully reimbursed.

Section 5. Collateral Deposit - Upon written demand by Surety, Indemnitors agree to deposit with Surety cash or an irrevocable letter of credit from a bank approved by Surety and in a form acceptable to Surety (hereinafter "Collateral Deposit"). Such Collateral Deposit shall be in the amount that Surety, in its sole discretion, in Good Faith deems sufficient to hold it harmless from and against any potential Loss. It is agreed that the failure of Indemnitors to make any Collateral Deposit demanded by Surety shall cause irreparable harm to Surety for which Surety has no adequate remedy at law, and that Surety shall be entitled to preliminary and final injunctive relief for specific performance of Indemnitors' Collateral Deposit obligation.

Section 6. Surety's Use Of Collateral - Except as may otherwise be agreed in writing by Surety, all collateral of any kind or nature deposited with, and/or assigned or pledged to Surety, including but not limited to any Collateral Deposits, may be held by Surety, without any obligation to earn interest thereupon, until Surety is fully discharged from all potential liability under any and all Bonds. Surety may, at its option and in its sole discretion, and without notice to any Indemnitor, use any and all such collateral, or the proceeds thereof, including any Collateral Deposit(s), in payment of or reimbursement for any Loss.

Section 7. Settlements - Surety shall have the exclusive right, in Good Faith and in its sole discretion, to adjust, pay, compromise, defend or appeal any Claim; and Surety's determination of whether to defend or settle any such Claim shall be binding and conclusive upon the Indemnitors. Indemnitors further agree that Surety's right to compromise Claims under this paragraph shall extend to and include Surety's right to settle and compromise any and all affirmative claims, counterclaims, crossclaims, setoffs, recoupments or rights of any kind or nature that any Indemnitor may have or allege against any Person asserting a Claim and/or whose rights are affected by any Claim.

Section 8. Event Of Default - "Event of Default" shall mean the occurrence of any one or more of the following events: (1) any abandonment, default or declaration of default, material breach, or failure or inability to perform, any Bonded Contract or any obligation under any Bond; (2) the failure or inability of Indemnitors to pay bills or other indebtedness incurred in, or in connection with, the performance of any Bonded Contract; (3) any material breach of any of the terms or provisions of this Agreement; (4) the failure of Indemnitors to pay or discharge, when due, any amounts due to Surety; (5) the insolvency of, or the filing of a voluntary or involuntary petition under the United States Bankruptcy Code or any similar laws of any other jurisdiction with respect to, any Indemnitor, or the filing of any assignment for the benefit of creditors by any Indemnitor, or of the appointment, or of any application for the appointment, of a receiver or trustee for any Indemnitor; (6) any Indemnitor makes or has made any materially false representation to Surety in connection with the request for the issuance, continuation or modification of any Bond, or in connection with any Claim; (7) any Indemnitor is convicted of a felony; or (8) any Indemnitor, if an individual, disappears or absconds.

Section 9. Assignment - Indemnitors hereby assign, pledge and set over to Surety, effective as of the date of execution of any Bond, all rights, title and interests of the Indemnitors, including but not limited to rights acquired after the date of this Agreement, in all real property, and all assets and personal property in which the Indemnitors have an interest, including but not limited to all Accounts; Contracts; Inventory; Equipment; General Intangibles and Intellectual Property Rights; Chattel Paper; Commercial Tort Claims; Deposit Accounts; Payment Intangibles; Documents; Goods (including all of its Equipment, Fixtures and Inventory), and all accessions, additions, attachments, improvements, substitutions and replacements thereto and therefor; Instruments; Financial Assets; Fixtures; Letter of Credit Rights; Certificated Securities; Security Entitlements; Investment Property; and to the extent not otherwise included in the foregoing, all other real or personal property of the Indemnitors, whether tangible or intangible, whether now owned or hereafter acquired and wherever located; and all Proceeds of the foregoing. Capitalized terms in the foregoing sentence shall have the meanings ascribed to them in the Uniform Commercial Code as in effect in any applicable jurisdiction. This Agreement shall constitute a security agreement and financing statement and Surety may, at its option and in its sole discretion, without notice to any Indemnitors, perfect its security interest in such assigned assets by filing a UCC-1 financing statement and/or a copy of this Agreement with the appropriate filing offices or registries, as well as any and all other forms of mortgages, liens or deeds authorized by law for giving notice of and/or perfecting Surety's security interest. Upon the occurrence of an Event of Default, Surety, or any Person designated by Surety, may enforce the aforesaid assignments and security interests, and is hereby authorized and empowered by Indemnitors to take any action that Surety may deem appropriate or expedient to obtain possession of the subject assets and personal property.

Section 10. Right Of Immediate Possession And Control - Upon any Event of Default, Surety shall have the right, at its option and in its sole discretion, and without notice to Indemnitors, to take immediate possession and control of Indemnitors' real and personal property, facilities and rights relating to any part or all of the work under any Bonded Contract, including but not limited to (a) any and all amounts due or to become due on account of any such Bonded Contract, including but not limited to progress payments, retention, change orders, proposed change orders, actual or potential requests for additional compensation or equitable adjustments, and rights of setoff or recoupment; (b) any and all supplies, equipment, machinery, tools, materials, plans, specifications, project records, trailers, computers, data and electronically stored information, and intellectual property; (c) any and all rights, title and interest of any Indemnitor(s) in or growing out of any and all contracts, subcontracts, purchase orders, or agreements, and any and all surety bonds or insurance policies associated with such contracts, subcontracts, purchase orders, or agreements; and (d) any and all rights, actions, causes of actions, liens, claims and demands of any kind or nature that any Indemnitor(s) may have or acquire against any Person or property in any way arising under or related to any Bond or Bonded Contract. It is agreed that, upon any Event of Default, and upon written demand by Surety, Indemnitors shall promptly peacefully surrender and transfer to Surety possession and control of any and all such items requested by Surety, and shall execute all instruments requested by Surety to facilitate and document such transfer of possession and control of such items to Surety. Indemnitors further acknowledge that any breach of Indemnitors' obligations under this paragraph shall cause irreparable harm to Surety for which Surety has no adequate remedy at law, and that Surety shall be entitled to preliminary and final injunctive relief for specific performance of such obligations.

Section 11. Appointment Of Surety As Indemnitors' Attorney-In-Fact - Indemnitors hereby irrevocably nominate and appoint Surety, and any Person designated by Surety, as the true and lawful attorney-in-fact of Indemnitors, with full right and authority, but not the obligation, to execute on behalf of, and sign the name of, any Indemnitors to any voucher, release, satisfaction, check, bill of sale, letter of direction and/or any other document or agreement with respect to any and all rights and property assigned and/or transferred by Indemnitors to Surety under this Agreement. Indemnitors hereby ratify and confirm all that such attorney-in-fact or Surety may do for the purposes set forth in this Agreement and/or to facilitate or implement any right granted to Surety hereunder. Indemnitors specifically agree to protect, indemnify and save and hold harmless Surety and such attorney-in-fact against any and all claims, damages, costs and expenses that may in any way arise due to the exercise of the assignments and rights contained in this Agreement and the powers herein granted, specifically waiving any claim that Indemnitors have or might hereafter have against Surety or its attorney-in-fact on account of anything done in enforcing the terms of this Agreement.

Section 12. Trust Fund - Indemnitors designate, set aside and declare as an express trust, and shall hold, treat and honor as a trust, all interest, title and rights in all monies paid, due or to become due under any Bonded Contracts, whether in the possession of any Indemnitor or any other Person, for the benefit and payment of all obligations for which Surety may be liable under any Bond, including but not limited to the payment of Persons supplying labor and materials in the prosecution of work under any Bonded Contract. Surety may, in its sole discretion, open a trust account or accounts ("Trust Accounts") with a bank designated by Surety for the deposit of such trust funds. Upon written demand by Surety, Indemnitors shall deposit in such Trust Accounts any and all such trust funds received by them, and upon the request of Surety shall issue irrevocable letters of direction to other Persons requiring that all future payments arising from or relating to any Bonded Contracts be made into such Trust Accounts. Withdrawals or payments from such Trust Accounts shall require the express written consent of Surety.

Section 13. Surety's Discretion With Respect To Bonds - Surety is authorized and empowered, without notice to or knowledge of Indemnitors, notice being hereby expressly waived, to issue or refrain from issuing any Bonds (including final Bond(s) where Surety has furnished a bid bond or consent of surety), to assent, or to refuse to assent, to any change whatsoever in any Bonds, or to cancel or refrain from cancelling any Bonds, without impairing the validity of this Agreement, and Indemnitors hereby waive any and all claims or defenses against Surety due to its refusal or failure to execute any Bond or to modify, renew, continue, cancel or refrain from cancelling, any Bond under any applicable law pertaining to the release of sureties. Each Indemnitor acknowledges that the Surety has no duty, express or implied, to review any contract, Bond or other form of document by or on behalf of any Indemnitor or its Affiliate, and that the Surety's execution of any Bond is not to be construed as a representation of any kind, express or implied, as to the reasonableness of the terms and conditions contained therein or within any Bonded Contract, the risks of which are the responsibility of the Indemnitors.

Section 14. Access To Financial Information - Indemnitors shall provide Surety or any Person designated by Surety with unrestricted access at any time upon reasonable notice to the financial statements, books, records, electronically-stored information and/or accounts of Indemnitors for the purpose of inspection, copying or reproduction. This access will continue until such time as the liability of Surety under all Bonds is terminated and Surety is fully reimbursed for all amounts due under this Agreement. In addition, each Indemnitor hereby specifically authorizes any financial institution or depository in which its funds or securities may be held to furnish any information requested by Surety relating to such accounts. Indemnitors hereby waive as to Surety any privilege in any accountant's work papers and any other documents or communications that may be subject to any privilege related to the preparation of any financial statements and further agree to provide any additional releases, requests, waivers or any other documents required in order to allow Surety access to the requested information. Indemnitors further expressly authorize Surety to access credit reports and to make such pertinent inquiries as Surety may deem appropriate for any purpose whatsoever, including but not limited to debt collection. Indemnitors acknowledge that Surety may share copies of any and all financial statements, financial documents and any and all other financial information which Surety now has or may hereafter obtain concerning Indemnitors with governmental regulators, auditors, co-sureties, fronting companies and/or reinsurers.

Section 15. Advances - Surety is authorized and empowered, at Surety's option and at its sole and absolute discretion, and without notice to Indemnitors, to guarantee loans, and/or to advance or lend money to or on behalf of any Indemnitor, for the purpose of facilitating the completion of any Bonded Contract(s) and/or in a Good Faith effort to mitigate Surety's possible exposure to Loss under any Bond(s). Indemnitors agree that any and all such money advanced by Surety shall be at its sole and absolute discretion and shall constitute Loss for which Indemnitors are responsible to indemnify Surety under this Agreement, unless and until all such advances and all other Loss is repaid in full with interest.

Section 16. Non-Impairment Of Indemnitors' Obligations - The obligations of the Indemnitors under this Agreement shall not be impaired by, and Surety shall incur no liability on account of: (a) Surety's taking, failure to take, or release of security, collateral, assignment, other indemnity agreements and the like; (b) the release by Surety, on terms satisfactory to it, of any Indemnitors; and/or (c) Surety's enforcement or non-enforcement of any right or cause of action against any Indemnitor or other Person.

Section 17. Surety's Priority - Indemnitors waive and subordinate all rights of indemnity, subrogation and contribution, each against the other, until all obligations to Surety have been first satisfied in full. Further, Indemnitors shall not waive any claim or right of indemnity, subrogation or contribution with regard to any Person, pursuant to any contract, insurance policy, settlement, or otherwise, without the prior written consent of Surety until the obligations of the Indemnitors to Surety under this Agreement have been satisfied in full.

Section 18. Waiver Of Notice By Indemnitors - Indemnitors waive any and all rights to any form notice from or disclosure by Surety with respect to any Claim, or any act, fact, or information coming to the notice or knowledge of Surety concerning their rights or liabilities under this Agreement, any Bonds executed, procured, continued, renewed, modified or substituted by Surety on behalf of any Indemnitor or its Affiliate, any Loss, and any and all other rights or liabilities of Indemnitors, whether Surety has such knowledge or notice before or after the execution of this Agreement. Indemnitors agree that they shall continue to be liable hereunder, notwithstanding any notice to which they might otherwise have been or be entitled, and notwithstanding any defenses they might otherwise have been entitled to assert as a result of lack of notice.

Section 19. Surety's Rights Are Cumulative - Indemnitors shall continue to remain bound under the terms of this Agreement even though Surety may have from time to time heretofore or hereafter, with or without notice to or knowledge of Indemnitors, accepted other agreements of indemnity or collateral, it being expressly understood and agreed that any and all other rights which Surety may have or acquire with respect to Indemnitors and/or others under this Agreement and any such other or additional agreements of indemnity, collateral or rights shall be cumulative and in addition to, not in lieu of, the rights afforded Surety under this Agreement. The rights granted in favor of Surety in this Agreement shall not be deemed a waiver of Surety's common law rights, equitable subrogation rights, statutory rights, or any other rights or remedies to which Surety is or may become entitled. In addition, no failure or delay by Surety in seeking to enforce any right shall be deemed a waiver of that right, nor any other right which Surety is or may become entitled to enforce.

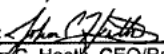
Section 20. Effectiveness Of Agreement - This Agreement shall be liberally construed so as to protect, hold harmless, exonerate, reimburse and indemnify Surety. No modification to this Agreement shall be effective unless made by written endorsement executed by Surety, except that, notwithstanding any language herein to the contrary, the addition to this Agreement of any Indemnitor or Principal, including entities acquired after the date of execution of this Agreement, may be affected by written amendment executed by such Indemnitor or Principal only. Each Indemnitor hereby waives notice of, consents to, and waives all defenses arising from, the addition to this Agreement of any new Principal or Indemnitor, as well as the release of any Principal or Indemnitor, at any time. If any provision of this Agreement is deemed unenforceable, the remainder of this Agreement shall continue in full force and effect.

Section 21. Termination - This Agreement may be terminated prospectively, but not retroactively, as to any Indemnitors upon thirty (30) days' written notice sent by registered or certified mail to Surety at: 1600 Aspen Commons, Middleton, WI 53562. Any such notice of termination shall not discharge any obligations as to Bonds executed, or which Surety had become obligated to execute, prior to the effective date of termination, and shall apply only as to the respective Indemnitors executing and delivering such written notice of termination.

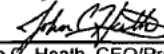
Section 22. Execution - This Agreement shall be effective as to each Indemnitor when it has been executed by such Indemnitor. Facsimile, emailed signatures or electronic signatures shall be deemed to have the same effect as original signatures. **INDEMNITORS REPRESENT THAT THEY HAVE CAREFULLY READ AND UNDERSTAND EVERY PROVISION OF THIS AGREEMENT, AND EXPRESSLY DISCLAIM RELIANCE UPON ANY REPRESENTATION NOT EXPRESSLY SET FORTH HEREIN.**

IN WITNESS WHEREOF, the Indemnitors who are individuals have hereunder set their hands and the Indemnitors which are partnerships, corporations, or unincorporated associations have caused this Agreement to be duly executed by their authorized representatives on this _____ day of _____, in the year 2021.

Indemnitor:

John C. Heath, Attorney at Law, PC
 (Type or Print Full Name) (FEIN / SSN)
 2875 South Decker Lake Drive Suite 200, West Valley City, UT 84119
 (Address)
 By: 
 John C. Heath, CEO/President
 (Name/Title)

Indemnitor:

John C. Heath, Attorney at Law, PC DBA Lexington Law Firm
 (Type or Print Full Name) (FEIN / SSN)
 2875 South Decker Lake Drive Suite 200, West Valley City, UT 84119
 (Address)
 By: 
 John C. Heath, CEO/President
 (Name/Title)

Indemnitor:

John C. Heath, individually
 (Type or Print Full Name) (FEIN / SSN)

(Address)

By: John C. Heath
 John C. Heath
 (Name/Title)

Indemnitor:

(Type or Print Full Name) (FEIN / SSN)

(Address)

By: _____
 (Name/Title)

Indemnitor:

(Type or Print Full Name) (FEIN / SSN)

(Address)

By: _____
 (Name/Title)

Indemnitor:

(Type or Print Full Name) (FEIN / SSN)

(Address)

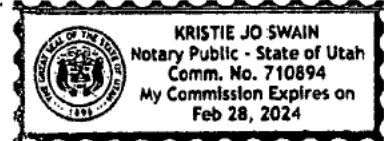
By: _____
 (Name/Title)

ENTITY ACKNOWLEDGMENT

STATE OF UTAH)
 COUNTY OF Salt Lake) SS:)

On this 10 day of May, in the year 2021, before me personally appeared John C. Heath, known or proven to me to be the CEO/President of John C. Heath, Attorney at Law, PC, the company executing the above instrument; who acknowledged to me that said instrument is the free and voluntary act and deed of said company, for the uses and purposes therein mentioned and on oath stated (s) he executed said instrument by authority of the Board of Directors or other applicable governing body of said company, and (if applicable) affixed the seal of said company hereto.

Kristie Jo Swain (Seal)
 Notary Public
 My Commission expires:

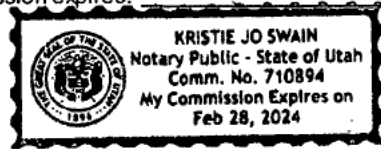


ENTITY ACKNOWLEDGMENT

STATE OF UTAH)
 COUNTY OF Salt Lake) SS:)

On this 10 day of May, in the year 2021, before me personally appeared John C. Heath, known or proven to me to be the CEO/President of John C. Heath, Attorney at Law, PC DBA Lexington Law Firm, the company executing the above instrument; who acknowledged to me that said instrument is the free and voluntary act and deed of said company, for the uses and purposes therein mentioned and on oath stated (s) he executed said instrument by authority of the Board of Directors or other applicable governing body of said company, and (if applicable) affixed the seal of said company hereto.

Kristie Jo Swain (Seal)
 Notary Public
 My Commission expires:

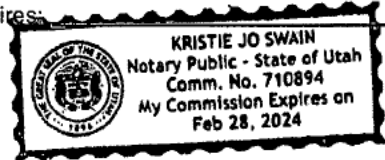


INDIVIDUAL ACKNOWLEDGMENT

STATE OF UTAH)
) SS:)
COUNTY OF Salt Lake)

On this 10 day of May, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared John C. Heath, known to or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

Kristie Jo Swain (Seal)
Notary Public
My Commission expires: _____



INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____)
) SS:)
COUNTY OF _____)

On this ____ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known to or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

Notary Public (Seal)
My Commission expires: _____

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____)
) SS:)
COUNTY OF _____)

On this ____ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known to or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

Notary Public (Seal)
My Commission expires: _____

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____)
) SS:)
COUNTY OF _____)

On this ____ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known to or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

Notary Public (Seal)
My Commission expires: _____

CERTIFICATE OF SERVICE

I, Thomas J. Francella, Jr, do hereby certify that on August 18, 2023, I caused a copy of the foregoing *Limited Objection of Capitol Indemnity Corporation to the Debtor's Motion for Entry of Orders (I)(A) Approving Bidding Procedures for Substantially all of the Debtors' Assets, (B) Authorizing the Debtors to Enter Into One or More Stalking Horse Agreements and to Provide Bidding Protections Thereunder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* to be served upon the Court's CM/ECF System which reflects that an electronic notification of filing was served on all registered users of the CM/ECF System that have requested such notification in this proceeding, and on the parties on the attached service list by electronic mail, or in the manner indicated.

/s/ Thomas J. Francella, Jr.

Thomas J. Francella, Jr. (No. 3835)

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257 East 200 South
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Salt Lake City, Utah 84111
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Overnight Delivery

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