

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

IN RE:)	CHAPTER 11
)	
WELDED CONSTRUCTION, L.P., et al.,)	CASE NO. 18-12378 (KG)
)	
DEBTORS.)	JOINT ADMINISTRATION REQUESTED
)	

FEDERAL INSURANCE COMPANY’S OBJECTION TO DEBTORS’ MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING 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

Federal Insurance Company, for itself and on behalf of its affiliated sureties (collectively, “Federal”) by and through counsel, files this Objection to the Debtors’ Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Secured Financing, (II) Authorizing the Use of Cash Collateral, (III) Granting Liens and Superpriority Administrative Expense Status, (II) Granting Adequate Protection, (V) Modifying The Automatic Stay, and (VI) Scheduling a Final Hearing (Docket No. 17) (the “Motion”), and in support of its Objection, states as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion and this Objection pursuant to 28 U.S.C. § 1334. The Motion and the Objection are core proceedings pursuant to 28 U.S.C. § 157. Venue for the Motion and the Objection is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. BACKGROUND



2. On October 22, 2018, Welded Construction, L.P. and Welded Construction Michigan, LLC (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of Title 11 of the Bankruptcy Code.

3. The Debtors are mainline pipeline construction contractors with five currently open pipeline construction contracts. In conjunction with obtaining certain of these contracts, the Debtors were required to provide payment and performance assurances to their contract counterparties in the form of surety bonds.

4. Prior to the Petition Date, Federal issued certain payment and performance bonds in connection with certain construction contracts/projects on behalf of certain of the Debtors. Specifically, Federal issued a Performance and Payment Bond on the Williams/ASR Project in the gross penal amount of \$454,471,254 and Performance and Payment Bonds on the 2018 Consumers Project in the penal amount of \$55,897,580 (collectively, the “Construction Bonds”). The Williams/ASR Project and the 2018 Consumers Project are referred to, collectively, as the “Bonded Contracts.” Additionally, Federal has issued a Wage Payment Surety Bond on behalf of Welded Construction, L.P. in the penal amount of \$14,500,000, securing that entity’s compliance with certain West Virginia statutes protecting employees (the “Wage Payment Bond”; collectively, with the Construction Bonds, the “Bonds”).

5. Federal issued the Bonds as consideration for the Debtors’ execution of that certain General Indemnity Agreement dated February 28, 2017 (the “Indemnity Agreement”). A true and correct copy of the Indemnity Agreement is attached as **Exhibit**

A. Paragraph B of the Indemnity Agreement provides, *inter alia*, as follows:

B - INDEMNITY TO SURETY: Undersigned agree to pay to Surety upon demand:

- 1) All loss and expense, including attorney fees, incurred by Surety by reason of having executed any Bond, or incurred by it on account of any breach of this agreement by any of the Undersigned or in enforcing any of the covenants of this agreement.
- 2) An amount sufficient to discharge any claim or demand made against Surety on any Bond. The Undersigned further agree to pay Surety upon demand an amount equal to the value of any assets or contract funds improperly diverted by the Undersigned. These sums may be used by Surety to pay such claim or be held by Surety as collateral security against any loss, claim, liability, or unpaid premium on any Bond. Surety shall have no duty to invest or provide interest on the deposit.

Therefore, the Indemnity Agreement creates a contractual right of indemnification and/or right to exoneration (in the form of collateral) on behalf of Federal. These rights are in addition to Federal's common law equitable subrogation rights, which are explained in more detail below.

6. Additionally, paragraph D of the Indemnity Agreement provides additional rights to the Federal related to the Bonded Contracts, as follows:

D – SECURITY TO SURETY: As security to Surety for the obligations of the Undersigned hereunder, the Undersigned:

- 1) Convey and assign to Surety, as of the date of execution of any Bond, all rights of the Principal in any manner growing out of
 - a) any Contract or modification thereof;
 - b) any subcontract and against any legal entity and its surety who has contracted with Principal to furnish labor, materials, equipment and supplies in connection with any Contract;
 - c) Monies due or to become due Principal on any Contract, including all monies earned or unearned which are unpaid at the time of notification by Surety to the Obligee of Surety's rights hereunder; . . .
- 5) Agree that all monies earned by Principal under any Contract are trust funds, whether in the possession of Principal or otherwise, for the benefit of, and for payment of Principal's obligations for,[sic] labor, material, and supplies furnished to Principal in performance of such Contract for which Surety would be liable under any Bond on such Contract . . .”

7. As part of their first day motions, the Debtors filed the Motion seeking approval of a debtor-in-possession financing facility (the “DIP Facility”) under which North American Pipeline Equipment Company, LLC (the “DIP Lender”) is to provide \$10 million on an interim basis and a total of \$20 million on a final basis in DIP term loan financing in exchange for, *inter alia*, certain priming liens on property of the estate as well as well as other accommodations.

OBJECTION

8. Federal objects to approval of the Motion and approval of the DIP Facility to the extent the DIP Facility impairs Federal’s rights of equitable subrogation or provides priming liens on assets of the Debtors or any non-Debtors that are subject to materialmen’s liens that may be asserted by unpaid subcontractors and suppliers, to which Federal may be subrogated.

9. Federal has an equitable subrogation right that arises by common law to the extent that Federal pays claims under the Bonds. The courts have recognized that a surety on a construction contract, upon payment of bond claims, is subrogated to the rights of the principal on the bond, the owner/obligee on the bond, and the subcontractor that was paid by the surety. *See Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 135-36 (1962); *Henningsen v. United States Fid. & Guar. Co.*, 208 U.S. 404, 410 (1908); *Prairie State Nat’l Bank v. United States*, 164 U.S. 227, 232-33 (1896); *Ky. Cent. Ins. Co. v. Brown (In re Larbar Corp.)*, 177 F.3d 439, 443 (6th Cir. 1999); *Nat’l Shawmut Bank of Boston v. New Amsterdam Cas. Co.*, 411 F.2d 843, 848-49 (1st Cir. 1969); *Mendelsohn v. The Dormitory Authority of N.Y. (In re QC Piping Installations, Inc.)*, 225 B.R. 553, 562 (Bankr. E.D.N.Y. 1998); *John’s Insulation, Inc. v. Hartford Accident & Indem. Co. (In re*

John's Insulation, Inc.), 221 B.R. 683, 688 (Bankr. E.D.N.Y. 1998). In other words, the surety may step into the shoes of these entities and enforce the claims they may have against each other, or other third parties.

10. Pursuant to its rights of equitable subrogation, upon any default by the Debtors in regards to any agreement or obligations bonded by Federal, and upon the satisfaction of any such bonded obligations in accordance with any surety bonds issued by Federal, Federal is equitably subrogated to the rights of those claimants or bond obligees whose claims Federal satisfies. *See Pearlman v. Reliance Ins. Co.*, 371, US 132, 83 S. Ct. 232, 9 L.Ed. 190 (1962); *In re QC Piping Installations, Inc.*, 225 B.R. 553 (Bankr. E.D.N.Y. 1998); *In re Cone Constr., Inc.*, 265 B.R. 302 (Bankr. N.D. Fla. 2001).

11. To the extent that any bonded contract balances, proceeds, or retainages remain outstanding at the time of a bond principal's default and the surety's satisfaction of its obligations under its bond, said outstanding contract balances, proceeds, and retainages are not property of the bankrupt principal's estate. Instead, all right thereto vests in the surety to the extent it has satisfied claims. *See In re QC Piping*, 225 B.R. at 568-69; *In re Padulah Constr. Co., Inc.*, 118 B.R. 143 (Bankr. S.D. Fla. 1990); *In re Cone Constr.*, 265 B.R. at 308-10.

12. Accordingly, in this case, Federal has a right of equitable subrogation with respect to any contract funds or retainages owed to the Debtors in connection with any obligations bonded by Federal, upon any default of the Debtors and performance by the Federal of its obligations under any bond issued by it. This right of equitable subrogation is, as a matter of law, superior to any interest that the debtors-in-possession may claim in the outstanding contract funds, balances, proceeds, accounts receivables, or retainages, to

the extent of the Federal's performance. *See In re Cone Const.*, 265 B.R. at 310. Accordingly, the surety's equitable subrogation right is superior to any rights derivative of the Debtors' rights, including any lien rights granted by the Debtors.

13. Furthermore, Federal has an express right pursuant to paragraph D-1 of the Indemnity Agreement to "[m]onies due or to become due [Debtors] on any Contract, including all monies earned or unearned which are unpaid at the time of notification by Surety to the Obligee of Surety's rights hereunder." This granted right in the Bonded Contract balances reinforces Federal's equitable subrogation rights.

14. Federal objects to the entry of any order and the authorization of the Debtors to enter into the postpetition financing documents to the limited extent that the same purport to grant to any entity any lien, security interest, or any other interest in any of the Debtors' contract balances, proceeds, retainages, accounts receivable, or other contract rights to which Federal may be, or may become, entitled to pursuant to its rights of equitable subrogation ("the Contract Balances"), and to the extent that the Loan Documents and proposed order do not expressly reserve or protect Federal's rights of equitable subrogation in the Contract Balances.

15. Federal further objects to the DIP Financing to the extent that the liens granted therein purport to prime the lien rights of unpaid subcontractors and suppliers under applicable law. As surety, Federal has the right to subrogate to the rights of, among others, any subcontractor or supplier it pays in connection with the Bonds.

16. Finally, Federal objects to the proposed authorization to utilize cash collateral to the extent that such cash collateral is proceeds of Bonded Contracts. Pursuant to the trust fund provisions of the Indemnity Agreement, all proceeds of Bonded

Contracts are to be held in trust by the Debtors for the payment of subcontractors and suppliers on the Bonded Contracts. As noted above, Paragraph D-5 of the Indemnity Agreement provides as follows:

D – SECURITY TO SURETY: As security to Surety for the obligations of the Undersigned hereunder, the Undersigned: . . . 5) Agree that all monies earned by Principal under any Contract are trust funds, whether in the possession of Principal or otherwise, for the benefit of, and for payment of Principal’s obligations for,[sic] labor, material, and supplies furnished to Principal in performance of such Contract for which Surety would be liable under any Bond on such Contract . . .”

Additionally, applicable state laws place obligations on the Debtors to treat the proceeds of construction contracts as trust funds for the benefit of subcontractors and suppliers or otherwise to promptly pay such subcontractors and suppliers. The Motion provides no evidence that the Debtors intend to comply with the obligations to subcontractors and suppliers under the Indemnity Agreement and applicable law. Specifically, while the Motion discusses whether the sureties have perfected lien rights, there is no discussion of the rights of the sureties and the unpaid subcontractors and suppliers in the proceeds of Bonded Contracts. To the extent that the proposed authorization to use cash collateral contemplates using the proceeds of Bonded Contracts for purposes other than payment of direct expenses (including claims of subcontractors and suppliers) of the Bonded Contracts or reimbursement of Federal for any surety loss incurred on the Bonded Contracts, the Motion should be denied.

RESERVATION OF RIGHTS

17. The submission of this Objection by Federal is not intended as, and shall not be construed as: (a) Federal’s admission of any liability or waiver of any defenses or limitation of any rights of Federal with respect to any claims against any one or more of

the Bonds or under the Indemnity Agreement; (b) Federal's waiver or release of any right to exoneration it may have against anyone with respect to its obligations pursuant to the Bonds; (c) Federal's waiver or release of its right to be subrogated to the rights of, among others, one or more of the parties paid pursuant to the Bonds, including, but not limited to, any right of setoff and/or recoupment; (d) an election of remedy; or (e) consent to the determination of the Debtors' liability to the Surety by any particular court, including, without limitation, the Bankruptcy Court.

18. Federal reserves the right to raise any arguments raised by any other party in their pleadings relating to the Debtors' motion.

19. Federal expressly reserves, and does not waive, any and all of its rights, claims, defenses, limitations, and/or exclusions in connection with its and the Debtors' rights and obligations under any of the Bonds, applicable law, or otherwise. Federal further reserves all rights to assert any and all such rights, claims, defenses, limitations and/or exclusions in any appropriate manner or forum whatsoever (including, without limitation, any of its rights to have any non-core matter relating to the interpretation of its contractual rights and Debtors' contractual obligations adjudicated by the United States District Court).

20. Federal further reserves all of its rights to raise any issues contained in this Objection and any other related issues in any procedurally-appropriate contested matter and/or adversary proceeding, including, without limitation, (i) objections to confirmation of any plan; (ii) a separate adversary proceeding requesting any appropriate declaratory and/or injunctive relief; (iii) or an objection to any subsequent motion

WHEREFORE, Federal respectfully requests that the Court deny the Motion unless the relief granted is tailored to adequately address the objections set forth herein.

Dated: October 22, 2018

Respectfully submitted,

**McELROY, DEUTSCH, MULVANEY
& CARPENTER, LLP**

/s/ Gary D. Bressler

Gary D. Bressler, Esq. (No. 5544)
300 Delaware Avenue, Suite 770
Wilmington, DE 19801
Telephone: 302-300-4515
Facsimile: 302-645-4031
gbressler@mdmc-law.com

-and-

MANIER & HEROD, P.C.
Sam H. Poteet, Jr. (*pro hac vice to be filed*)
Michael E. Collins (*pro hac vice to be filed*)
Scott C. Williams (*pro hac vice to be filed*)
150 Fourth Avenue, North Suite 2200
Nashville, Tennessee 37215
Telephone: (615) 742-9350
Fax: (615) 242-4203

EXHIBIT A

CHUBB

436 Walnut Street, Philadelphia, PA 19106, US

GENERAL INDEMNITY AGREEMENT*Sent to court
we 3/17/17*

THIS AGREEMENT is made by the Undersigned in favor of Surety (as hereinafter defined) for the purpose of, among other things, indemnifying Surety from all loss and expense in connection with any and all Bonds executed by the Surety on behalf or at the request of a Principal (as hereinafter defined) prior to, simultaneously with or after the execution of this Agreement.

In consideration of the execution of any such Bonds and as an inducement to such execution by Surety, the Undersigned for themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, hereby covenant and agree as follows:

A - DEFINITIONS. Where they appear in this agreement, the following terms shall have the meaning set forth in this paragraph:

Principal: Any one or combination of the Undersigned or their present or future subsidiaries, and/or successors, whether directly or indirectly held, acting alone, altogether or in any combination or joint venture with each other or others not named herein, and/or any person or entity for or on behalf of whom a Bond is executed or procured by the Surety.

Bond: Any and all bonds, undertakings or instruments of guarantee and any renewals or extensions thereof executed by the Surety prior to, simultaneously with or after the execution of this Agreement.

Surety: Federal Insurance Company, Pacific Indemnity Company, Vigilant Insurance Company, Westchester Fire Insurance Company, any of their direct or indirect subsidiaries or affiliates, whether in existence now or formed or acquired hereafter, co-sureties, and fronting companies, any persons or entities which any of them may procure to execute or deliver any Bonds, any persons or entities that join any of them in executing or delivering any Bonds, and any persons or entities providing reinsurance with respect to any Bond, and the successors and assigns of each of them.

Contract: Any agreement between Principal and a third party, the performance of which is guaranteed by any Bond for which Surety is surety.

Default: Principal shall be deemed to be in default (Default) in the event:

- 1) It is declared to be in default by the Oblige of any Bond;
- 2) It breaches or abandons any Contract;
- 3) It fails to pay, when due, anyone who has supplied labor, material or supplies used in the performance of a Contract;
- 4) It becomes the subject of any agreement or proceeding of liquidation, receivership, trusteeship or bankruptcy, or otherwise becomes insolvent;
- 5) An individual indemnitor dies, is adjudged mentally incompetent, is convicted of a felony, becomes a fugitive from justice or disappears and cannot be found by Surety after reasonably diligent inquiry;
- 6) It breaches any provision of this agreement.

B - INDEMNITY TO SURETY: Undersigned agree to pay to Surety upon demand:

- 1) All loss and expense, including attorney fees, incurred by Surety by reason of having executed any Bond, or incurred by it on account of any breach of this agreement by any of the Undersigned or in enforcing any of the covenants of this agreement.
- 2) An amount sufficient to discharge any claim or demand made against Surety on any Bond. The Undersigned further agree to pay Surety upon demand an amount equal to the value of any assets or Contract funds improperly diverted by the Undersigned. These sums may be used by Surety to pay such claim or be held by Surety as collateral security against any loss, claim, liability, or unpaid premium on any Bond. Surety shall have no duty to invest or provide interest on the deposit.
- 3) Any premium due for any Bond, computed according to the rates currently charged by Surety, including additional premium on any Bond based on any increase in contract price at the completion of the contract, and including renewal premiums, until proof satisfactory to Surety is furnished of its discharge from liability under any Bond.
- 4) Interest on all sums paid by Surety for which it is entitled to indemnification hereunder from the

date of such payment at the rate of 2% over and above the Prime Rate published in The Wall Street Journal.

With respect to claims against Surety:

- a) Surety shall have the exclusive right for itself and the Undersigned to determine in good faith whether any claim or suit upon any Bond shall be paid, compromised, defended or appealed. Undersigned agrees that Surety is not obligated to undertake completion of bonded contracts or to provide financial assistance through a loan or guarantee of a loan to the Undersigned or a Principal.
- b) Surety may incur such expenses, including attorney fees, as it, in its sole discretion, deems necessary or advisable in the investigation, defense and payment of such claims.
- c) Surety's determination of the foregoing made by it in good faith under the belief that it is or was 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 existed, shall be final and conclusive upon the Undersigned.
- d) An itemized statement of loss and expense incurred by Surety, sworn to by an officer of Surety, shall be prima facie evidence of the fact and extent of the liability of Undersigned to Surety in any claim or suit by Surety against Undersigned.

C - SURETY'S REMEDIES IN EVENT OF DEFAULT: In event of default by Principal, Surety shall have the right, at its sole discretion, to:

- 1) Take possession of the work under any and all Contracts and to arrange for their completion by others or by the Obligee of any Bond;
- 2) Take possession of Principal's equipment, books and records, drawings, plans, patents, materials and supplies at the site of the work, or elsewhere, if needed for prosecution of the work, as well as Principal's office equipment, books and records, and utilize the same in completion of the work under the Contract without payment of any rental for such use;
- 3) Loan, or guarantee a loan to Principal, of such money as Surety shall see fit, for the purposes of completing any Contract, or for discharging Principal's obligations for labor, material, equipment, supplies and other charges, incurred in connection with any Contract;

- 4) Require Undersigned, or any of them, to defend Surety as to any claim, demand or cause arising under the Bond or any matter in connection therewith.

Undersigned waive all notice of such default, of the payment of any claim or of the making of any loan to Principal or guarantee of same by Surety. Should Undersigned learn of any claim or suit against Principal for which Surety may be held liable, Undersigned shall give prompt notice to Surety of such claim or suit.

Separate suits may be brought under this agreement as causes of action accrue, and the pendency or termination of any such suit shall not bar any subsequent action by Surety.

D - SECURITY TO SURETY: As security to Surety for the obligations of the Undersigned hereunder, the Undersigned:

- 1) Convey and assign to Surety, as of the date of execution of any Bond, all rights of the Principal in any manner growing out of:
 - a) Any Contract or modification thereof;
 - b) Any subcontract and against any legal entity and its surety who has contracted with Principal to furnish labor, materials, equipment and supplies in connection with any Contract;
 - c) Monies due or to become due Principal on any Contract, including all monies earned or unearned which are unpaid at the time of notification by Surety to the Obligee of Surety's rights hereunder;
- 2) Irrevocably nominate and appoint any officer of Surety as the true and lawful attorney-in-fact of the Undersigned with full right and authority in event of Principal's default to:
 - a) Sign the name of the Undersigned to any voucher, release, financing statement, satisfaction, check, bill of sale of property referred to herein, or any other paper or contract necessary or desired to carry into effect the purposes of this agreement;
 - b) Perform any Contract by subletting it in Principal's name or otherwise;
- 3) Authorize Surety to join any and all of the Undersigned as parties defendant in any action, regardless of venue, against Surety on account of any Bond and to enforce the obligations hereunder directly against any of the Undersigned without the necessity of first proceeding against the Principal;

- 4) Waive all right to claim any property, including homestead, as exempt from legal process under any applicable law as against the rights of Surety, and authorize any attorney in any state of the United States where such procedure is permitted by state law, at the request of Surety, to waive the issuing and service of process and to appear for and confess judgment against Undersigned for any sum due under this agreement;
- 5) Agree that all monies earned by Principal under any Contract are trust funds, whether in the possession of Principal or otherwise, for the benefit of, and for payment of Principal's obligations for, labor, material, and supplies furnished to Principal in performance of such Contract for which Surety would be liable under any Bond on such Contract;
- 6) Grant to Surety a security interest under the Uniform Commercial Code in all of the foregoing;
- 7) Agree that this agreement may, at any time be completed and filed by Surety in such a manner that it will qualify as a financing statement under the applicable provisions of any statute of any state which has adopted The Uniform Commercial Code, and that Surety may add such schedules to this agreement, describing specific items of security covered hereunder as shall be necessary under such statutes. Further, Surety is authorized to file a standard form Financing Statement, including continuation statements and amendments thereto, without the necessity of signature by Undersigned in those jurisdictions permitting same.

E - GENERAL PROVISIONS:

- 1) Undersigned will, upon written request of Surety, promptly procure the full and complete discharge of Surety from any Bond specified in such request and all liability by reason thereof. If such full and complete discharge is unattainable, the Undersigned will, if requested by Surety, promptly make provisions acceptable to Surety, in its sole and absolute discretion, to fully collateralize the undischarged liability. The Undersigned further agrees that, in the event of its breach of its obligation to collateralize the undischarged liability under all specified Bonds, Surety will have no adequate remedy at law and shall therefore be entitled to specific performance of the Undersigned's obligation to collateralize such undischarged liability.
- 2) Surety's failure to act to enforce its right to specific performance hereunder shall not be construed as a waiver of that right, which right may be enforced at any time at Surety's sole discretion.
- 2) Surety's rights hereunder shall be deemed to be cumulative with and in addition to all other rights of Surety, however derived.
- 3) Assent by Surety to changes in any Contract or Bond or refusal so to assent shall not release or affect the obligations of Undersigned to Surety.
- 4) Surety shall have the right to decline to execute any Bond, including any Bond required in connection with a project on which it has furnished a bid or proposal Bond.
- 5) Surety shall have every right, defense or remedy which a personal surety without compensation would have including the right of exoneration and the right of subrogation.
- 6) Until Surety shall have been furnished with competent evidence of its discharge without loss from any Bonds, Surety shall have the right to free access at reasonable times to the books, records, and accounts of each of the Undersigned for the purpose of examining them. Each one of the Undersigned hereby authorizes any depositories in which funds of any of the Undersigned may be deposited to furnish to Surety the amount of such deposits as of any date requested, and any legal entity doing business with the Undersigned is authorized to furnish any information requested by Surety concerning any transaction. Surety may furnish in confidence copies of any information which it now has or may hereafter obtain concerning each of the Undersigned to other persons or companies for the purpose of procuring co-suretyship or reinsurance or of advising interested persons or companies.
- 7) Undersigned warrant that each of them is specifically and beneficially interested in the obtaining of such bond.
- 8) In case the execution hereof by any of the Undersigned may be defective or invalid for any reason, such defect or invalidity shall not in any manner affect the validity of this obligation or the liability hereunder of any other of the Undersigned. Invalidity of any provision of this agreement by reason of the laws of any state or for any reason shall not render the other provisions hereof invalid.

- 9) Execution by Principal or any of the Undersigned of any application for any Bond or of any other agreement of indemnity on behalf of Principal, or the taking of indemnity of any other person by Surety with respect to any Bond of Principal, shall in no way be deemed to waive, diminish or abrogate any rights of Surety under this agreement.
- 10) The obligation of each of the Undersigned hereunder is joint and several. Partial or complete release by Surety of any of Undersigned shall not release any other of Undersigned.
- 11) Each of the Undersigned hereby agree that this Agreement shall be deemed to have been executed in the State of New Jersey, and the rights and liabilities of the parties hereto shall be determined in accordance with the laws of the State of New Jersey. Any action or proceeding of any kind against any of Undersigned arising out of or by reason of this Agreement may be brought in any state or federal court of competent jurisdiction in the State of New Jersey, in addition to any other court in which such action might properly be brought and each of Undersigned hereby submits to the jurisdiction of any such court and agrees that service of process may be effected by certified mail sent to the address shown below, unless written notification of another address is given.

12) This agreement may not be changed or modified orally. No change or modification shall be effective unless made in writing executed by Surety which specifically refers to and changes or modifies this agreement.

F - TERMINATION: This agreement is a continuing obligation of the Undersigned unless terminated as provided in this paragraph. An Undersigned desiring to terminate liability as to future Bonds of Principal must give written notice to Surety, certified mail, return receipt requested, at its home office, 202B Halls Mill Road, P.O. Box 1650, Whitehouse Station, New Jersey 08889-1650, Attention Surety Department, stating in such notice the effective date (not less than thirty days after the actual receipt of such written notice by Surety) of termination of such Undersigned's liability for future Bonds.

After the effective date of termination, the Undersigned giving notice shall remain liable hereunder for Bonds executed or authorized prior to such date, and renewals and extensions thereof and Bonds executed pursuant to a bid or proposal bond executed or authorized prior to such date, and renewals and extensions thereof.

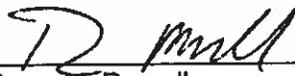
Such termination of liability as to an Undersigned shall in no way affect the obligation of any other Undersigned who has not given notice as herein provided.

G - SPECIAL PROVISIONS:

IN WITNESS WHEREOF the Undersigned have signed this instrument this 28th day of February, 2017.

WELDED CONSTRUCTION, L.P.

By: 
 Name: Stephen Hawkins
 Title: Chief Executive Officer

By: 
 Name: Dean McDowell
 Title: Chief Financial Officer

ACKNOWLEDGMENT OF PARTNERSHIP

STATE OF OHIO

COUNTY OF WOOD

On this 28th day of February, 2017, before me personally appeared Stephen Hawkins, to me known and known to me to be the Chief Executive Officer of Welded Construction, L.P., executing the above General Indemnity Agreement, and acknowledged said Instrument to be the free and voluntary act and deed of said co-partnership for the purposes, considerations and uses therein set forth.

Notary Public:
Commission expires:



Diane L. Ingmire
DIANE L. INGMIRE
Notary Public - State of Ohio
My Commission Expires
August 29, 2020

ACKNOWLEDGMENT OF PARTNERSHIP

STATE OF OHIO

COUNTY OF WOOD

On this 28th day of February, 2017, before me personally appeared Dean McDowell, to me known and known to me to be the Chief Financial Officer of Welded Construction, L.P., executing the above General Indemnity Agreement, and acknowledged said instrument to be the free and voluntary act and deed of said co-partnership for the purposes, considerations and uses therein set forth.

Notary Public:
Commission expires:



Diane L. Ingmire
DIANE L. INGMIRE
Notary Public - State of Ohio
My Commission Expires
August 29, 2020