

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF PUERTO RICO

IN RE:

ALCO CORPORATION

Debtor

CASE NO. 12-00139-MCF11

CHAPTER 11

**STIPULATION FOR THE RELEASE OF CASH COLLATERAL SUBJECT  
TO SECURITY INTEREST HELD BY MAPFRE**

**TO THE HONORABLE COURT:**

**COME NOW**, Debtor Alco Corporation (“Alco”), secured creditor MAPFRE PRAICO Insurance Company (“MAPFRE”) and the Puerto Rico Highway and Transportation Authority (“PRHTA”) through their respective attorneys, submit this Stipulation for this Honorable Court’s approval, as follows:

1. On January 12, 2012, Alco filed a Petition under Chapter 11 of the Bankruptcy Code (“Petition Date”).
2. On September 26, 2007, Alco and other named indemnitors subscribed an Agreement of Indemnity (“AI”), in favor of MAPFRE, in which they agreed to exonerate, hold harmless and indemnify the Sureties from and against any and all claims, demands and liability for losses, costs and expenses in connection with the execution of bonds. In addition, Alco and the other indemnitors agreed to assign to MAPFRE the contract funds for all of Alco’s projects bonded by MAPFRE as collateral to secure any and all of their obligations under the AI, as well as any other indebtedness and/or liabilities sustained by MAPFRE and in connection to bonds subscribed by MAPFRE on Alco’s behalf.

3. In accordance with paragraph nine (9) of the AI, the same constitutes a Security Agreement and a Financing Statement for the benefit of MAPFRE and on November 7, 2007, it was filed in accordance with the Uniform Commercial Code (hereinafter the "UCC"), under registry number 2007055348 at the State Department of Puerto Rico.

4. On January 3, 2008, Alco subscribed a contract as a general contractor with the PRHTA for the project "*Reparación de Pavimentos Asfálticos en Carreteras Regional Norte, Varios Municipios ACT-801262, Subasta Formal P-08-010 Proy. Fed. LP-9999(77)*" ("Project or Contract").

5. On October 27, 2010, MAPFRE issued performance and payment bond number 1301430800002 ("Bond") for the Project. The PRHTA is the owner of the Project and named obligee in the Bond.

6. On October 13, 2010, Parking and Traffic Lines Corp. ("PTLC") submitted an extrajudicial claim against the PRHTA for the amount of \$146,869.34, allegedly owed by Alco in connection with labor and materials supplied in the Project, pursuant to the provisions of Article 1489 of the Civil Code of Puerto Rico.

7. On November 18, 2010, PTLC submitted to MAPFRE an extrajudicial claim under the Bond, for the total amount of \$146,869.34, allegedly owed by Alco for labor and materials supplied by PTLC in the Project ("PTLC's Claim"). On same date, pursuant to its rights under the AI, MAPFRE requested to the PRHTA that any pending payments in connection with the Project be issued to the order of Alco and MAPFRE.

8. On or around March 18, 2011, Alco subscribed with PTLC an agreement denominated "Assignment of Rights", in which it acknowledged the amount claimed by

PTLC and assigned to PTLC all payments to be issued by the PRHTA in connection with the Project, up to the amount of \$146,869.34.

9. On August 9, 2011, MAPFRE denied PTLC's Claim in view of the Assignment Agreement executed between Alco and PTLC, and the fact that PRHTA had confirmed the availability of contract funds in connection with the Project to satisfy PTLC's Claim.

10. Subsequently, on or around January 10, 2012, PRHTA issued a joint check to the order of MAPFRE and Alco, in the amount of \$123,884.26 ("PRHTA Payment Check") to partially cover PTLC's Claim. However, upon the filing of the bankruptcy petition by Alco in this case, PRHTA did not deliver the PRHTA Payment Check to MAPFRE.

11. The Parties agree that the PRHTA Payment Check, which is currently in PRHTA's possession, constitutes cash collateral in accordance with Section 363(a)<sup>1</sup> of the Bankruptcy Code and it is not property of the estate under section 541(a)(1) of the Bankruptcy Code and the AI<sup>2</sup>, as it has been established by the applicable case law<sup>3</sup>.

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<sup>1</sup>Section 363(a) of the Bankruptcy Code provides:

"(a) In this section, cash collateral means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title."

<sup>2</sup> Paragraph 8 of the AI, at page 4, states in relevant part as follows:

"8. All payments received for or on account of any CONTRACT **shall be held in a trust fund to assure the payment of obligations incurred or to be incurred in the performance of any CONTRACT and for labor, materials, and services furnished in the prosecution of the work in any CONTRACT** or any extension or modification thereof. ..." (Emphasis added.)

<sup>3</sup> The funds subject to this trust are not considered estate property under Section 541, and may be used only after authorized by its rightful owner — the Surety. Begier v. I.R.S., 496 U.S. 53, 59 (1990) (trust

12. Accordingly, PRHTA agrees to deliver the PRHTA Payment Check directly to MAPFRE to partially cover PTLC's Claim, upon this Court's approval of this Stipulation.

13. The parties acknowledge and agree that Stipulation is written under a full reservation of rights and privileges afforded to MAPFRE and Alco under the terms of the Contract, the Bond, the AI, at law and in equity.

14. The parties acknowledge that this Stipulation constitutes the entire agreement between them, that there are no contradictory terms and conditions in this Stipulation, and that other than the paragraphs contained herein, there are no additional or separate understandings or agreements.

**WHEREFORE**, Alco, MAPFRE and PRHTA respectfully request this Honorable Court to approve this Stipulation, since it is in the best interest of the estate and the related parties; to approve the direct delivery to MAPFRE of the PRHTA Payment Check to be used as a partial payment to PTLC's Claim, and to make such other determination that this Honorable Court deems just and appropriate under the law and equity.

#### **NOTICE TO CREDITORS AND PARTIES IN INTEREST**

Within ten (10) days after service as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail, any party against whom this motion has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's office of the U.S. Bankruptcy Court

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funds not property of the estate); Pearlman v. Reliance Insurance Co., 371 U.S. 132 (1962); American Fire & Casualty Co. v. First National City Bank of New York, 411 F2d 755, 758 (1st Cir. 1969); Framingham Trust Co. v. Gould-National Batteries, Inc., 427 F2d 856, 857-58 (1st Cir. 1970); and In Re: Pipe & Technology Builders, Inc., Case 02-04288(GAC), Decision and Order of 9/9/2002 (Docket 41A), among others.

for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the motion will be deemed unopposed.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this same date, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the United States Trustee and all CM/ECF participants.

### **RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 5<sup>th</sup> day of April, 2012.

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