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COUNSEL FOR DEBTORS AND DEBTORS IN POSSESSION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	**Chapter 11**
HI-WAY EQUIPMENT COMPANY LLC, HI-WAY HOLDINGS LLC and HWE REAL ESTATE LLC	§	**Case No. 13-41498-RFN-11**
	§	**(Jointly Administered)**
Debtors.	§	

DISCLOSURE STATEMENT IN SUPPORT OF ~~FIRST~~SECOND AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION

August ~~23~~29, 2013

This Disclosure Statement and the documents accompanying it contain a number of defined terms, which are denoted with capital letters. Please refer to Section 2.1 of the Plan (defined below) for a complete listing and definitions of the capitalized terms used herein.

This *Disclosure Statement in Support of ~~First~~Second Amended Joint Chapter 11 Plan of Liquidation* (the "**Disclosure Statement**") describes the ~~*First*~~*Second Amended Joint Chapter 11 Plan of Liquidation* as may be supplemented or amended (the "**Plan**"), a copy of which is attached as **Exhibit A**.

If you have a Claim against the Debtors, you should read the Disclosure Statement and the Plan carefully. The Debtors urge all holders of Claims in Impaired Classes receiving Ballots to accept the Plan.

This Disclosure Statement (and the other appendices hereto), the Plan, the accompanying forms of Ballot, if any, and the related materials delivered together herewith are being furnished by the Debtors to holders of Impaired Claims and Impaired Interests pursuant to § 1125 of the Bankruptcy Code in connection with the solicitation by the Debtors of votes to accept or reject the Plan (and the transactions contemplated thereby), as described herein.

This Disclosure Statement is designed to provide adequate information to enable holders of Claims against and Interests in the Debtors to make an informed decision whether to vote in favor of or against the Plan that the Debtors are proposing. All Creditors are encouraged to read this Disclosure Statement and the Plan in their entirety before voting to accept or reject the Plan. Be advised that because the holders of equity interests in the Debtors are not receiving any distribution under the Plan, they are deemed to reject the Plan. The statements made in this Disclosure Statement are qualified in their entirety by reference to the Plan and other documents referenced as filed with the Bankruptcy Court before or concurrently with the filing of this Disclosure Statement. Furthermore, the projected financial information contained herein has not been the subject of an audit. Subsequent to the date hereof, there can be no assurance (i) that the information and representations contained herein will continue to be materially accurate, or (ii) that this Disclosure Statement contains all material information.

All holders of Impaired Claims should read and consider carefully the matters described in the Plan and Disclosure Statement as a whole, including Article V, entitled "RISK FACTORS," prior to voting on the Plan. In making a decision to accept or reject the Plan, each Creditor must rely on its own examination of the Debtors as described in this Disclosure Statement and the terms of the Plan, including the merits and risks involved. You are encouraged to seek the advice of qualified legal counsel with respect to the legal effect of any aspect of the Plan or Disclosure Statement. In addition, Confirmation and consummation of the Plan are subject to conditions precedent that could lead to delays in consummation of the Plan. There can be no assurance that each of these conditions precedent will be satisfied or waived (as provided in the Plan) or that the Plan will be consummated as to the Debtors. Even after the Effective Date, Distributions under the Plan may be subject to substantial delays for holders of Claims that are Disputed.

Additionally, Distributions to holders of General Unsecured Claims are largely contingent on acceptance of the Comvest Release. If the Comvest Release is not accepted

by at least sixty-six and two third percent (66 2/3%) of the holders of General Unsecured Claims who vote on the Plan, the Debtors anticipate that there will be no Distribution to holders of General Unsecured Claims. Only holders of General Unsecured Claims who consent to the Comvest Release or are deemed to consent will share in the Contribution made by Comvest and described herein and in the Plan.

~~This Disclosure Statement has not been approved by order of the Bankruptcy Court as containing adequate information of a kind and in sufficient detail to enable holders of Claims to make an informed judgment with respect to voting to accept or reject the Plan.~~

With the exception of historical information, some matters discussed herein, including the projections and valuation analysis described herein are "forward looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward looking statements are subject to risks, uncertainties and other factors which could cause actual results to differ materially from future results expressed or implied by such forward looking statements.

No party is authorized by the Debtors to give any information or make any representations with respect to the Plan other than that which is contained in this Disclosure Statement. No representation or information concerning the Debtors, or the value of their assets, has been authorized by the Debtors, other than as set forth herein. Any information or representation given to obtain your acceptance or rejection of the Plan that is different from or inconsistent with the information or representations contained herein and in the Plan should not be relied upon.

This Disclosure Statement has been prepared in accordance with § 1125 of the Bankruptcy Code and not in accordance with federal or state securities laws or other applicable nonbankruptcy law. Entities holding or trading in or otherwise purchasing, selling or transferring Claims against, Interests in or securities of, the Debtors should evaluate this Disclosure Statement only in light of the purpose for which it was prepared.

This Disclosure Statement has not been approved or disapproved by the Securities and Exchange Commission (the "**Commission**") or by any state securities commission or similar public, governmental or regulatory authority, and neither such Commission nor any such authority has passed upon the accuracy or adequacy of the statements contained herein.

With respect to contested matters, adversary proceedings and other pending or threatened actions (whether or not pending), this Disclosure Statement and the information contained herein shall not be construed as an admission or stipulation by any Entity, but rather as statements made in settlement negotiations governed by Rule 408 of the Federal Rules of Evidence and any other rule or statute of similar import.

This Disclosure Statement shall neither be admissible in any other proceeding involving the Debtors or any other party nor be construed to be providing any legal, business, financial or tax advice. Each holder of a Claim or Interest should, therefore, consult with its own legal, business, financial and tax advisors as to any such matters concerning the solicitation, the Plan or the transactions contemplated thereby.

The terms of the Plan shall govern in the event of any inconsistency between the Plan and the summaries thereof contained in this Disclosure Statement.

INCORPORATION OF DOCUMENTS BY REFERENCE

This Disclosure Statement incorporates by reference certain documents relating to the Debtors that are not presented herein or delivered herewith. The following documents are incorporated by reference herein in their entirety:

The Debtors' *Schedules of Assets and Liabilities*, filed April 29, 2013, including all amendments and restatements thereto filed through the date of the approval of this Disclosure Statement.

The Debtors' Monthly Operating Reports, including all amendments thereto filed through the date of the approval of this Disclosure Statement.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein, or contained in this Disclosure Statement, shall be deemed to be modified or superseded for purposes of this Disclosure Statement to the extent that a statement contained herein modifies or supersedes such statement.

AVAILABLE INFORMATION

Certain documents Filed in the Cases are available at the following website: http://www.txnb.uscourts.gov/ or http://www.upshotservices.com/hi-way.

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I. INTRODUCTION AND SUMMARY

The following introduction and summary is qualified in its entirety by, and should be read in conjunction with, the more detailed information and financial statements and notes appearing elsewhere in this Disclosure Statement. References herein to a "fiscal" year refer to the fiscal year of the Debtors ending the last day of December in the calendar year indicated.

A. The Solicitation.

On July 9, 2013, the Debtors Filed the Plan with the Bankruptcy Court. This Disclosure Statement is submitted by the Debtors to be used in connection with the solicitation of votes on the Plan.

~~This Disclosure Statement has not been approved by the Bankruptcy Court. The Bankruptcy Court will hold a hearing on August 26, 2013, to determine whether this Disclosure Statement contains "adequate information" in accordance with § 1125 of the Bankruptcy Code. Pursuant to § 1125(a)(1), "adequate information" is defined as "information of a kind, and in sufficient detail, as far as reasonably practicable in light of the nature and history of the Debtors and the condition of the Debtors' books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant Class to make an informed judgment about the Plan. A proposed form of order approving this Disclosure Statement is attached as **Exhibit B**.~~

The Bankruptcy Court has scheduled a hearing to consider Confirmation of the Plan before the Honorable Russell F. Nelms, United States Bankruptcy Judge on ~~[Date]~~October 8, 2013 at ~~[Time]~~10:30 a.m. in Fort Worth, Texas. The hearing may be adjourned from time to time without further notice other than by announcement in the Bankruptcy Court on the scheduled date of such hearing. Any objections to Confirmation of the Plan must be in writing and must be Filed with the Clerk of the Bankruptcy Court and served on the counsel listed below to ensure receipt by them on or before ~~[DATE]~~October 1, 2013 at 5:00 p.m. Central Time. Bankruptcy Rule 3007 governs the form of any such objection. Counsel on whom objections must be served are:

Counsel for the Debtors:
Gardere Wynne Sewell LLP
1601 Elm Street, Suite 3000
Dallas, Texas 75201
(214) 999-3000
Attn: Holland N. O'Neil, Esq.

Office of the U.S. Trustee
1100 Commerce Street, Room 976
Dallas, TX 75242
(214) 767-8967
Attn: Elizabeth Ziegler, Esq.

B. Recommendation.

THE DEBTORS URGE ALL CREDITORS TO VOTE TO ACCEPT THE PLAN.

The Debtors believe that (i) the Plan provides the best possible result for the holders of Claims against and Interests in the Debtors; (ii) with respect to each Impaired Class of Claims or

Interests, the Distributions under the Plan are greater than the amounts that would be received if the Debtors were to liquidate under Chapter 7; and (iii) acceptance of the Plan is in the best interest of holders of Claims and Interests.

In arriving at their conclusions, the Debtors considered (i) the limited alternatives available to the Debtors to restructure their debts; (ii) the Debtors' estimated liquidation value; and (iii) the rights, in both payment and security position, of the Debtors' creditors.

C. Summary of the Plan.

To provide a meaningful distribution to holders of Class 5 General Unsecured Claims, the Plan contemplates the resolution of certain Claims through a series of mechanisms described more fully in the Plan and this Disclosure Statement. The Debtors have sold substantially all of their assets. While the distribution of proceeds and credits from this sale resulted in approximately $30,058,051.00 in debt reduction, the proceeds from the sale were insufficient to provide a Distribution to holders of Class 5 General Unsecured Claims. In exchange for approval of the Comvest Release, Comvest will provide the Contribution to be shared ratably among holders of Allowed Class 5 General Unsecured Claims who consent to the Comvest Release or who are deemed to consent to the Comvest Release. The Debtors do not anticipate that a Distribution will be made to holders of Class 5 General Unsecured Claims who do not consent to the Comvest Release. Additionally, the Litigation Agent will pursue, on behalf of the Debtors, any Causes of Action that belong to the Debtors that may result in additional recoveries; however, the Debtors do not believe that there are any meaningful Causes of Action. All recoveries from the Causes of Action will be for the sole benefit of Allowed Class 5 General Unsecred Claimholders. Neither the ~~the~~ Official Committee of Unsecured Creditors (the "Committee") nor the Litigation Agent have had an opportunity to review the existing Causes of Action to determine the value of the Causes of Action. No Cause of Action or any other Claim will be pursued against Comvest.

The following chart sets forth a summary of the classification and treatment of Allowed Claims against and Allowed Interests in the Debtors.

Class	Type of Allowed Claim or Interest	Treatment	Status
1	Priority Non-Tax Claims	Paid After Payment in full of Administrative Expenses and Claims in Classes 2-4.	Impaired. Entitled to vote.
2	Secured Claims of Ad Valorem Taxing Authorities[1]	Paid in Full.	Unimpaired. Not entitled to vote.

[1] The Debtors believe that all claims of Ad Valorem Taxing Authorities have been paid in full from the proceeds of the sale of their collateral. To the extent any Allowed Secured Claims of Ad Valorem Taxing Authorities have not been previously paid, the claims shall be paid in Class 2.

Class	Type of Allowed Claim or Interest	Treatment	Status
3	Secured Claim of Comvest	Paid from proceeds of the sale of its Collateral.	Unimpaired. Entitled to vote.
4	Other Secured Claims	Return of Collateral.	Unimpaired. Not entitled to vote.
5	General Unsecured Claims	Pro Rata Share of the Contribution, for those Claimants who consent to the Comvest Release or are deemed to consent to the Comvest Release if the Comvest Release is approved pursuant to Section 10.2 of the Plan. If Comvest has a General Unsecured Claim it shall not share in the Contribution or the proceeds from the Causes of Action.	Impaired. Entitled to vote.
6	Interests	No distribution. Interests shall be cancelled on the Effective Date.	Impaired. Deemed to reject the Plan.

Pursuant to section 1123(b)(6) of the Bankruptcy Code, the Plan treats the Debtors as having a single Estate, comprised of all three Estates, solely for purposes of voting on the Plan, confirmation of the Plan, and making Distributions under the Plan in respect to Claims against the Debtors. Such treatment shall not affect any Debtor's status as a separate legal entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal entities, nor cause the transfer of any assets; and, except as otherwise provided by or permitted in the Plan, each Debtor shall continue to exist as a separate legal entity. The Debtors will tabulate all votes on the Plan on a consolidated basis by Class for the purpose of determining whether the Plan satisfies sections 1129(a)(8) and/or (10) of the Bankruptcy Code.

The Debtors believe that the Plan treats the respective Classes of Creditors and Interest holders of the Debtors fairly and equitably in observance of the absolute priority rule of § 1129(b)(2) of the Bankruptcy Code. The Debtors believe that the Plan provides each Creditor and Interest holder with at least as much as it would receive if the Debtors were liquidated under Chapter 7.

The Debtors believe that the following overview of what Creditors and Interest holders will receive under the Plan will be helpful in your consideration of whether you wish to accept or

reject the Plan. This summary does not purport to be complete and should only be relied upon for voting purposes when read in conjunction with the Plan and the Disclosure Statement in their entirety. In the event of any inconsistency between the Plan and the Plan Documents, on the one hand, and this Disclosure Statement, on the other hand, the Plan and the Plan Documents shall control and take precedence with respect to such inconsistency.

D. Voting Eligibility and Procedures.

Some Creditors may hold Impaired Claims in more than one Class and must vote separately for each Class. If you hold Claims in more than one Class, or multiple Claims in the same Class, you must cast a separate vote based on each individual Claim.

Please do not return any other documentation with your Ballot. For further information on casting a Ballot to vote on the Plan, please see Article VI of this Disclosure Statement.

E. Votes Required for Acceptance; Confirmation.

The Bankruptcy Code defines acceptance of a plan by an impaired class of claims as acceptance by holders of at least two-thirds in dollar amount, and more than one-half in number, of the claims of that class which actually cast ballots. The vote of a holder of a claim may be disregarded if the Bankruptcy Court determines, after notice and hearing, that the acceptance or rejection was not solicited or procured in good faith.

In addition to this voting requirement, § 1129 of the Bankruptcy Code requires that a plan be accepted by each holder of a claim in an impaired class or that the plan be found by the Bankruptcy Court to provide the holder with at least as much value on account of its claim as it would receive in a liquidation of the debtor under Chapter 7.

Confirmation will make the Plan binding upon the Debtors, holders of Claims against and Interests in the Debtors, and all other parties in interest regardless of whether they have accepted the Plan, and such holders of Claims and Interests will be prohibited from receiving payment from, or seeking recourse against, any assets that are distributed to other holders of Claims or Interests under the confirmed Plan. In addition, Confirmation will serve to enjoin Creditors and Interest holders from taking a wide variety of actions on account of any debt, Claim, liability, Interest or right that arose prior to the Confirmation Date.

Confirmation of the Plan will serve to enjoin Creditors and Interest holders from seeking to enforce Claims against and Interests in the Debtors, whether or not a proof of Claim based on such debt is Filed or deemed Filed, whether or not such Claim is Allowed, and whether or not the holder of such Claim has accepted the Plan.

F. Effective Date of the Plan.

Because of the conditions to the occurrence of the Effective Date provided in the Plan, a delay will occur between Confirmation of the Plan and the Effective Date of the Plan. There is no assurance that the conditions to the Effective Date will be fulfilled. The Plan provides that it

is a condition to the occurrence of the Effective Date of the Plan that each of the conditions precedent to the occurrence of the Effective Date has been satisfied. Those conditions precedent are described more fully in Article VII of the Plan. If any condition to the Effective Date cannot be fulfilled, the Effective Date will not occur.

G. Sources of Information

Except as otherwise expressly indicated, the portions of this Disclosure Statement describing the Debtors, their business, properties and management, and the Plan have been prepared from information furnished by the Debtors.

The statements contained in this Disclosure Statement are made as of the date hereof unless another time is specified, and neither the delivery of this Disclosure Statement nor any exchange of rights made in connection with it shall, under any circumstances, create an implication that there has been no change in the facts set forth herein since the date of this Disclosure Statement.

No statements concerning the Debtors, the value of their property, or the value of any benefit offered to any Creditor or Interest holder in connection with the Plan should be relied on other than as set forth in this Disclosure Statement. In arriving at a decision, parties should not rely on any representation or inducement made to secure their acceptance or rejection that is contrary to information contained in this Disclosure Statement. Any such additional representations or inducements should be reported immediately to the Debtors' counsel, Gardere Wynne Sewell LLP, 1601 Elm Street, Suite 3000, Dallas, Texas 75201, Attention: Virgil Ochoa.

II. BACKGROUND

A. Hi-Way Equipment

Hi-Way Equipment provided rental and sales of equipment since 1948. In 2008, Hi-Way Equipment acquired Equipment Support Services, Inc. ("**ESS**"). As part of that acquisition, Hi-Way Equipment expanded to become a dealer of Case and Case IH equipment through CNH America LLC ("**Case**"). With the acquisition of ESS, Hi-Way Equipment acquired ESS' subsidiaries: CDI Equipment, Ltd., Carruth-Doggett Industries Partners Acquisition, LLC, Future Equipment Holdings, LLC, Future Equipment Partners, LLC, Equipment Support Services, Inc., ESS Acquisition LLC, Carruth-Doggett Industries Holdings Acquisition, LLC and Southern Power Acquisition, Inc. (collectively, the "**Subsidiaries**"). In 2011, Hi-Way Equipment merged with the Subsidiaries and Hi-Way Equipment was the sole surviving entity. Hi-Way Equipment served as the non-exclusive dealer of Case and Case IH equipment in numerous counties across Texas.

Hi-Way Equipment also sold and rented numerous other brands of equipment, including Wirtgen, Gradall, Kawasaki, Astec, and Pettibone, among others. The numerous products that Hi-Way Equipment sold and rented included wheel loaders, crawler excavators, full-sized excavators, skid steers, loader backhoes, crawler dozers, forklifts, agricultural tractors and combines. In addition, Hi-Way Equipment provided parts and repair services, including

scheduled maintenance, warranty services, inspections, undercarriage maintenance, remanufacturing and on-site services.

In delivering a full range of services to its customers, Hi-Way Equipment had an extensive selection of parts available and provided same day delivery. If customers wanted assistance installing parts, Hi-Way Equipment had certified technicians available to perform installations and repairs. Hi-Way Equipment operated eleven (11) locations throughout Texas, serving customers throughout southeast, central and north Texas. Hi-Way Equipment had full-service locations in Euless, Alvin, Beaumont, Brenham, Bryan, Gainesville, Houston (two locations), Longview, Sherman and Tyler, Texas. Spread among its eleven (11) locations, Hi-Way Equipment had approximately one-hundred and thirty (130) employees.

Hi-Way Equipment also provided financing services to its customers through agreements with CNH Capital America LLC ("**CNH Capital**") and various other lenders. Hi-Way Equipment also floor plan financed machinery inventory through a number of agreements with CNH Capital, U.S. Bancorp Equipment Finance, Inc. ("**U.S. Bank**"), GE Capital Commercial Inc. ("**G.E. Capital**"), and Kawasaki Construction Machinery Corp. of America ("**KCMA**"). Hi-Way Equipment also received financing through Comvest Investment Partners ("**Comvest**," collectively with CNH Capital, U.S. Bank, G.E. Capital, and KCMA the "**Pre-Petition Lenders**").

B. Hi-Way Equipment's Primary Secured Creditors

(a) *Case/CNH Capital*

Hi-Way Equipment sold Case and Case IH equipment pursuant to (a) an Agricultural Equipment Sales and Service Agreement, which related to agricultural related equipment, parts, and service, and (b) a Construction Equipment Sales and Service Agreement, which related to construction equipment, parts, and service (collectively, the "**CNH Dealer Agreements**").

Hi-Way Equipment financed its purchases of Case and Case IH equipment and parts from Case through a Wholesale Financing and Security Agreement (the "**CNH Financing Agreement**") with CNH Capital. Under the CNH Financing Agreement, CNH Capital extended credit to Hi-Way Equipment to acquire machinery and parts inventory, among other things, for retail sale as well as financing of machinery for rentals.

On December 31, 2012, Hi-Way Equipment, Hi-Way Holdings and CNH Capital entered into a Ratification and Forbearance Agreement (the "**CNH Forbearance Agreement**," collectively, with the CNH Financing Agreement, the "**CNH Agreements**").

Under the CNH Agreements, Hi-Way Equipment owed CNH Capital not less than $30,165,085.00 as of the Petition Date (the "**CNH Debt**"). This debt had been reduced prior to the sale of the Debtors' assets through the sale of the underlying collateral. At the time the Debtors sold substantially all their assets, the CNH Debt had been reduced to approximately $24,608,556.00. The proceeds of the sale related to the collateral securing the CNH Debt satisfied the remaining CNH Debt.

(b) ***G.E. Capital***

Hi-Way Equipment also financed purchases through a Security Agreement, Special Finance Plan Supplemental Agreement B.R. Lee Industries, Inc., and a Gradall Industries, Inc. Special Finance Plan Supplemental Agreement (collectively, the "**G.E. Agreements**") with G.E. Capital (as successor-in-interest by merger with CitiCapital Commercial Corporation). Under the G.E. Agreements, Hi-Way Equipment financed purchases of allied suppliers Wirtgen America, VT LeeBoy, Rosco and Gradall Industries, Inc. equipment (collectively, the "**Allied Suppliers Equipment**"). Under the G.E. Agreements, Hi-Way Equipment owed G.E. Capital approximately $3,704,308.00 as of the Petition Date (the "**G.E. Capital Debt**"). G.E. Capital had a secured lien in the Allied Suppliers Equipment. At the time the Debtors sold substantially all their assets, the G.E. Capital Debt had been reduced to $3,100,303.00. The proceeds of the sale related to the collateral securing the G.E. Capital Debt further reduced the G.E. Capital Debt to $384,559.00. The G.E. Capital Debt was also secured by a Letter of Credit issued by Comvest and G.E. Capital has drawn on that Letter of Credit thereby satisfying the G.E. Capital Debt.

(c) ***Comvest***

On October 5, 2007, Hi-Way Equipment entered into a Promissory Note (the "**Wachovia Note**") in favor of Wachovia Bank, National Association ("**Wachovia**") in the original principal amount of $4,500,000.00. The Wachovia Note was later modified by the Assumption of Loan Documents and Modification No. 1 to Promissory Note and Loan Agreement dated December 30, 2008 (the "**Wachovia Modification**"). The Wachovia Note and the Wachovia Modification as well as all related loan documents (collectively, the "**Wachovia Agreements**") were purchased by Comvest from Wachovia pursuant to a Loan Sale Agreement and an Absolute Assignment and Assumption of Mortgage and Loan Documents both dated February 25, 2010 (the "**Comvest Loan Purchase**"). At the time of the Comvest Loan Purchase, Hi-Way Equipment owed approximately $2,200,000.00 under the Wachovia Agreements. Hi-Way Equipment subsequently entered into further loan modification agreements extending the Wachovia Agreements and obtaining additional financing from Comvest. Comvest and Hi-Way Equipment entered into a Loan Documents Modification Agreement dated March 9, 2011, and a Subordination of Debt Agreement dated May 27, 2011 (collectively, with the Wachovia Agreements, and the letter agreements, the "**Comvest Agreements**"). Hi-Way Equipment owed Comvest approximately $8,357,355.04 as of the Petition Date. The Debtors were unable to service the payments to Comvest under the Comvest Agreements or the Wachovia Agreements.

Comvest contractually agreed to subordinate its liens to G.E. Capital with respect to the Allied Suppliers Equipment. Comvest contractually agreed to subordinate its liens to CNH Capital on all inventory financed by CNH Capital. The Comvest Debt, similarly was subordinated to CNH Capital by virtue of the execution of two separate Subordination of Debt Agreements dated October 28, 2010 and May 27, 2011 respectively in favor of CNH Capital. The Debtors assert that they have reviewed the Wachovia Agreements, the Comvest Loan Purchase, and the Comvest Agreements and Comvest has valid, properly perfected, unavoidable liens on substantially all the Debtors' assets.

Comvest, in addition to being a secured creditor of the Debtors, is also the primary equity holder of the Debtors. Comvest indirectly owns the Debtors through its ownership of Hi-Way Holdings. Hi-Way Holdings is a holding company that owns one-hundred percent (100%) of HWE and ninety-eight point zero one percent (98.01%) of Hi-Way Equipment. Midwest Real Estate Investments LLC owns one point five seven percent (1.57%) of Hi-Way Equipment and the remaining point zero four two percent (.042%) of Hi-Way Equipment is owned by Daniel J. Blade.

ComVest owns ninety-nine percent (99%) of Hi-Way Holdings. The remaining one-percent (1%) of Hi-Way Holdings is owned by Brent Mumford, who is Hi-Way Equipment's former Chief Executive Officer. Comvest acquired its ownership interest in the Debtors in October 2007.

Robert Priddy, a managing partner of Comvest, and Cecilio Rodriguez, the Chief Financial Officer of Comvest are directors of HWE and Hi-Way Equipment.

(d) *Gradall and the Alamo Group*

Prior to the Petition Date, Hi-Way Equipment sold Gradall parts pursuant to the terms of a *Distributor Agreement* entered into by and between Hi-Way Equipment and Gradall Industries, Inc. ("**Gradall**") and Hi-Way Equipment sold Rhino parts pursuant to a *Dealer Sales Agreement* (collectively, with the Distributor Agreement, the "**Alamo Agreements**") entered into by and between Hi-Way Equipment and Alamo Group (IL) Inc. ("**Alamo**," collectively, with Gradall, the "**Alamo Group**"). Pursuant to the Alamo Agreements, Hi-Way Equipment granted the Alamo Group a purchase money security interest in Gradall's and Alamo's respective equipment and parts that were not otherwise financed through G.E. Capital. Alamo and Gradall each filed UCC-1 Financing Statements with the Texas Secretary of State. Alamo filed proof of claim No. 26-1 in the amount of $112,073.98 (the "**Alamo Claim**"). Gradall filed proof of claim No. 27-1 in the amount of $223,903.32 (the "**Gradall Claim**," collectively, with the Alamo Claim, the "**Alamo Group Claims**"). The Alamo Group Claims were filed as secured claims.

A dispute has arisen between the Debtors and the Alamo Group relating to the amounts secured under the Alamo Group Claims. For some time, the Debtors and the Alamo Group have been involved in negotiations to settle their disputes related to, the amounts due under the Alamo Group Claims and the extent of the Alamo Group's security interests. After good faith, arms' length negotiations, and to avoid the expense, inconvenience, delay, and uncertainty of prosecuting, disputing, or pursuing the claims by the Alamo Group, the Debtors and the Alamo Group have agreed to fully and completely resolve the Alamo Group Claims. Significant terms of that compromise and settlement (the "**Alamo Settlement**") are as follows:[2]

- The Alamo Claim shall be allowed as a Class 4 Other Secured Claim in the amount of $50,000.00 and a Class 5 General Unsecured Claim in the amount of $62,073.98. The secured portion of the Alamo Claim shall be paid in full, on or

[2] This following is intended only as a summary of the terms of the Alamo Settlement, which shall be included as an amendment to the Plan.

before the Effective Date, through the return of approximately $30,000.00 of equipment and parts and a Cash payment of $20,000.00.[3]

- The Gradall Claim shall be allowed as a Class 4 Other Secured Claim in the amount of $75,000.00 and a Class 5 General Unsecured Claim in the amount of $148,903.32. The secured portion of the Gradall Claim shall be paid in full, on or before the Effective Date, through Cash.

- Upon complete satisfaction of the allowed secured portions of the Alamo Group Claims, the Alamo Group shall release all Claims of whatever kind, existing now or in the future, known or unknown, fixed or contingent, liquidated or unliquidated, common-law or statutory based, matured or unmatured, secured or unsecured, asserted or assertable, directly, indirectly, or derivatively, in law, equity or otherwise, against the Debtors, their Estates, and any of their officers, directors, employees, agents, assigns, attorneys, and affiliates. Notwithstanding the foregoing, the Alamo Group shall be entitled to a ratable distribution as holders of Class 5 General Unsecured claims for the unsecured portions of the Alamo Group Claims.

The Court has the discretionary authority to approve a settlement under Bankruptcy Rule 9019(a). *See Protective Comm. of Stockholders of TMT Trailer Ferry, Inc. v. Anderson (In re TMT Trailer Ferry, Inc.),* 390 U.S. 414, 424 (1968), on remand, *TMT Trailer Ferry, Inc. v. Kirkland*, 471 F.2d 10 (5th Cir. 1972); *Continental Airlines, Inc. v. Air Line Pilots' Ass'n Int'l, (In re Continental Airlines, Inc.),* 907 F.2d 1500, 1508 (5th Cir. 1990). After notice and a hearing, a trustee or debtor may compromise or settle claims against the estate with the approval of the court. *See* Fed. R. Bankr. P. 9019(a). Whether to approve a compromise is a matter within the sound discretion of the bankruptcy court. *See In re Aweco, Inc.*, 725 F.2d 293 (5th Cir. 1984). When determining whether to approve a proposed settlement, courts should consider the following factors:

a. The probability of success in litigation;

b. The likely difficulties in collection;

c. The complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and

d. The paramount interest of the creditors.

[3] The amount of the secured portion of the Alamo Claim to be satisfied by return of equipment and parts is subject to approval and verification by Alamo. The Debtors agree to provide Alamo with a complete list of all equipment and parts the Debtors intend to return to Alamo and such inventory list shall include the corresponding value assigned to each item described therein. The Debtors and Alamo have agreed to assign value to such equipment and parts based on the face amount of the corresponding invoice for those items previously sold by Alamo to the Debtors. To the extent an invoice cannot be located for the specific items to be returned, the parties agree that they will use commercially reasonable efforts to assign value to such items based on the invoice amount for a new substantially similar replacement thereof.

See Myers v. Martin (In re Martin), 91 F.3d 389, 393 (3rd Cir. 1996); *see also In re TMT Trailer Ferry, Inc.*, 390 U.S. at 424-25; *Connecticut Gen. Life Ins. Co. v. Untied Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1994); *Jones v. Cage (In re W J Services, Inc.)*, 140 B.R. 190, 191 (S.D. Tex. 1991). This standard balances the risks and benefits associated with pursuing a potential claim against the costs associated with the proposed settlement.

The Debtors believe that the Alamo Settlement satisfies this standard because, although the Debtors are confident in their position related to the validity and amount of the Alamo Group Claims, they recognize that the probability of success for the Estates is uncertain. Second, given the amount of money involved, and the number of transactions that occurred between the Alamo Group and Hi-Way Equipment, any litigation could involve complex calculations of amounts due, testimony by multiple parties and complex legal issues. Such litigation would likely be time consuming, costly, and could result in a significant delay in making distributions to other creditors. The Alamo Settlement benefits creditors because it prevents the Estates from incurring additional costs and expenses in litigating the Alamo Group Claims. Finally, the Alamo Settlement is a product of good faith, arms' length negotiations between the Debtors and the Alamo Group. Accordingly, the Debtors believe that the terms of the Alamo Settlement are fair and equitable and in the best interests of the Estates and the creditors thereof. As such, the Alamo Settlement should be approved by the Court in the Confirmation Order pursuant to Bankruptcy Rule 9019(a).

C. Unsecured Debt

Hi-Way Equipment has a large number of general unsecured creditors. These creditors supplied parts, materials, operating supplies, and numerous services to Hi-Way Equipment. Hi-Way Equipment scheduled unsecured claims of $2,533,676.40. However, a number of Creditors scheduled with unsecured debts later established a security interest and were paid for their claims from the proceeds of the sale of the Debtors' assets, or have agreed to take back their collateral in satisfaction of their debts and a number of unscheduled creditors have since filed claims. Additionally a number of unscheduled creditors have since filed proofs of claims. Notably, BG Strategic Advisers, LLC has filed a proof of claim for $3,747,309.00 based on its pre-petition services marketing Hi-Way Equipment's assets. The Debtors believe that this claim is greatly inflated if valid at all. At this time, the total of all scheduled and filed claims is approximately $6,891,017.26.

D. HWE

HWE owned real property located at 6203 Long Drive, Houston, Texas 77087 (the "**Real Property**") totaling approximately 5.03 acres. Hi-Way Equipment leased the Real Property from HWE and utilized the Real Property for one of its locations. Hi-Way Equipment rented the Real Property for $10,000.00 per month. HWE financed the purchase of the Real Property through Wachovia (Wachovia was later acquired by Wells Fargo & Company ("**Wells Fargo**")) pursuant to a Promissory Note dated October 5, 2007, a Deed of Trust Security Agreement and Fixture Filing dated October 5, 2007, and an Absolute Assignment of Lessor's Interests in Leases and Rents (the "**Wells Fargo Agreements**"). HWE owed approximately $760,667.10

under the Wells Fargo Agreements as of the Petition Date. Wells Fargo and Comvest both had *pari passu* liens on the Real Property. In conjunction with the distribution of the sale proceeds, Wells Fargo received $204,820.24 for its *pari passu* lien. Wells Fargo contends it is owed a remaining balance of $555,846.86.

E. Hi-Way Holdings

Hi-Way Holdings is a holding company that has no assets and no liabilities other than guarantees to several of Hi-Way Equipment's lenders.

F. Events Leading to the Bankruptcy Filings

Because of the economic recession starting in 2008, Hi-Way Equipment's sales dropped dramatically as construction projects were curtailed. In an effort to remain in business, Hi-Way Equipment reduced its costs structure significantly; nonetheless, it remained burdened by legacy operating problems created by the recession, which resulted in ongoing liquidity issues. Although sales began to stabilize in 2010, and improved in 2011-2012, low margins and lack of capital available to invest and grow the business made it difficult for Hi-Way Equipment to emerge from its liquidity issues.

In April 2012, Hi-Way Equipment undertook to explore various strategic alternatives for the business. In June 2012, Hi-Way Equipment engaged an investment banker, BG Strategic Advisors, to undertake a process to market the business for sale. This process resulted in limited interest in the business under its current capital and operating structure. During this period, Hi-Way Equipment's liquidity problems continued to mount. Prior to the Petition Date, the majority of its vendors and suppliers refused to provide Hi-Way Equipment with any payment terms and only continued to conduct business with Hi-Way Equipment on C.O.D. or cash in advance conditions.

On March 16, 2013, CNH Capital sent Hi-Way Equipment a Notice of Default and Demand of Payment alleging a default under the CNH Agreements and demanding a payment of $478,077.04 for past-due debt service payments. CNH Capital also placed Hi-Way Equipment on "no ship" status for parts, effectively limiting Hi-Way Equipment's ability to obtain parts for Case equipment. Hi-Way Equipment later reached an agreement with CNH Capital to ship parts by posting a $100,000.00 advance payment against which future parts orders were credited.

On March 18, 2013, Case sent Hi-Way Equipment two letters, each asserting a default had occurred under the respective CNH Dealer Agreements based on Hi-Way Equipment's alleged default to CNH Capital.

Hi-Way Equipment had also been unable to pay all rent due on its leases. Hi-Way Equipment had separate leases for its locations and on March 8, 2013, Highway Equipment received two letters from landlords noticing Hi-Way Equipment of defaults. CDE Corp. ("**CDE**") asserted a failure to pay past due rent on Hi-Way Equipment's locations in Houston, Alvin and Bryan, Texas. CDE noticed a default and demanded that Hi-Way Equipment make a payment of $58,119.00 by March 23, 2013, or vacate the premises. The Debtors negotiated a

$19,373.00 payment to CDE in exchange for an agreement to not terminate the leases or require Hi-Way Equipment to vacate the property until April 1, 2013, at 3:00 p.m. Hi-Way Equipment remained in arrears on rent payment on these facilities for the months of January and February 2013.

Additionally, M. Runnels Investments, Ltd. ("**Runnels**") asserted a failure to pay rents on Hi-Way Equipment's locations in Euless, Tyler, Sherman, Gainesville and Longview, Texas. Runnels asserted that it is owed approximately $45,711.00 for past due rent for the months of January - March 2013.

G. The Bankruptcy Cases

1. Postpetition Financing

During the Cases, the Debtors primarily focused on locating competing bidders for substantially all of their assets. To fund their operations after the Petition Date, the Debtors negotiated to receive debtor-in-possession financing from Hi-Way Equipment's' primary existing secured lender, CNH Capital. On April 24, 2013, the Bankruptcy Court entered its *Joint Stipulation and Agreed Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (1) Approving Postpetition Financing, (2) Authorizing Use of Cash Collateral, (3) Granting Liens and Providing Superpriority Administrative Expense Status, (4) Granting Adequate Protection, and (5) Modifying Automatic Stay* [Docket No. 128] (the "**DIP/Cash Collateral Order**"). Through the DIP/Cash Collateral Order, the Bankruptcy Court authorized the Debtors to borrow an amount not to exceed $2,000,000.00 from CNH Capital and to use cash collateral of the secured lenders. The Debtors stipulated to the validity, perfection and priority of CNH Capital's liens and to the CNH Debt. The stipulations were subject to the rights of any other party in interest to challenge the stipulations until June 24, 2013. The Debtors were able to continue their operations using only cash collateral, and did not borrow from CNH Capital. On June 6, 2013, the Debtors entered into a stipulation with CNH Capital, through which the parties stipulated that the debtor-in-possession financing was terminated.

2. Retention of Chief Restructuring Officer

On March 18, 2013, the Debtors retained Charles W. Reeves, Jr. of Mostar Partners LLC as the Chief Restructuring Officer of the Debtors. Mr. Reeves was retained to assist the Debtors with, *inter alia*, providing financial oversight of the Debtors, providing and recommending restructuring or liquidation advice, and negotiating a sale of the Debtors' assets. Prior to the Petition Date, the Debtors' Chief Executive Officer resigned, and Mr. Reeves' duties were expanded to include managing the day-to-day activities of the Debtors. After the Petition Date, the Debtors requested, and the Court approved the retention of Mr. Reeves as the Chief Restructuring Officer. *See Final Order Granting Employment of Charles W. Reeves, Jr., From the Petition Date, as Chief Restructuring Officer to the Debtors Pursuant to 11 U.S.C. § 363* [Docket No. 158].

3. Sale of the Assets

The Debtors began marketing their assets over nine months before the Petition Date. Although some third parties expressed interest in the Debtors' business, this interest was limited and the Debtors had been unable to negotiate an acceptable out-of-court transaction under their capital and operating structure.

The Debtors requested, and the Bankruptcy Court authorized the Debtors to sell substantially all their assets through an auction process. *See Order Approving Emergency Motion for Order (I) Approving Bid Procedures Relating to Sale of Substantially All of the Estates' Assets; (II) Approving Bid Protections; (III) Scheduling a Hearing to Approve the Sale; (IV) Approving the Form and Manner of Notices; (V) Establishing Procedures Relating to Assumption and Assignment of Certain Contracts, Including Notice of Proposed Cure Amounts; and (VI) Granting Related Relief* [Docket No. 68] (the "**Bid Procedures Order**"). As part of the bid process, the Debtors selected Associated Supply Company, Inc. ("**Asco**") to serve as a "stalking-horse bidder," setting a floor bid. The Debtors also solicited bids from parties that had previously expressed interest in the Debtors' assets.

In addition to the solicitations by the Debtors, the Debtors received inquiries from a number of parties interested in purchasing the Debtors' assets and the Debtors set up an electronic data base for those parties to acquire information regarding the Debtors' assets, liabilities and operations. Prior to the deadline to submit bids, the Debtors received a bid from Hlavinka Equipment Company ("**Hlavinka**") that the Debtors believed represented a higher and better offer than the offer by Asco. The bid by Hlavinka was subject to Case's approval of Hlavinka as a dealer of Case equipment. Case did not approve Hlavinka as a dealer, and the Debtors, left with only the Asco bid, cancelled the auction and requested Bankruptcy Court approval of a sale to Asco.

The sale was approved by the Bankruptcy Court on May 9, 2013, through the Bankruptcy Court's *Order Approving Motion for Order(s) Approving/Authorizing (a) Sale(s) of Certain or Substantially All of the Estates' Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests and (b) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale(s)* [Docket No. 187] (the "**Sale Order**"). On May 10, 2013, the Debtors closed the sale to Asco. As part of the sale to Asco, the Debtors assumed and assigned to Asco a number of executory contracts. These executory contracts primarily consisted of rental agreements with third parties. The Debtors' received $23,814,853.00 in debt reduction related to the CNH Debt and paid CNH an additional $793,703.00. In addition to the payment to Wells Fargo, described above, the Debtors paid G.E. Capital $2,715,744.00 from the proceeds of the sale of G.E. Capital's collateral. The Debtors segregated funds to pay *ad valorem* taxes, and on June 5, 2013 paid $103,140.83 to the taxing authorities. An additional $68,185.00 was allocated for the Debtors' pro rata share of 2013 *ad valorem* taxes. The Debtors have not made additional payments to secured creditors at this time. The remaining Cash is subject to liens held by Comvest. While the sale greatly reduced the Debtors' secured debt, the proceeds are insufficient to provide a Distribution to Class 5 General Unsecured Creditors.

Because the Debtors were still operating at the time of the sale, a number of items, including accounts receivables, could not be finalized at closing. On August 7, 2013, the Debtors entered into a *Stipulation and Agreement Related to Post Closing Matters* [Docket No. 278] (the "**Asco Stipulation**") with Asco, which finalized the reconciliation of the purchase price under the sale. Pursuant to the Asco Stipulation, the Debtors returned $473,659.51 to Asco from the sale proceeds. At this time, the Debtors currently have approximately $2,187,000 in cash, which is subject to the liens of secured lenders, including Comvest.

H. Rejection of Executory Contracts

On May 13, 2013, the Debtors filed their *Expedited Motion for an Order Pursuant to 11 U.S.C. §§ 105(a) and 365(a) Authorizing Rejection of Certain Executory Contracts and Unexpired Leases, and Setting Deadline for Filing Claims for Rejection Damages and Barring Future Rejection Claims* [Docket No. 190]. On June 4, 2013, the Bankruptcy Court entered its *Order Granting Expedited Motion for an Order Pursuant to 11 U.S.C. §§ 105(a) and 365(a) Authorizing Rejection of Certain Executory Contracts and Unexpired Leases, Setting Deadline for Filing Claims for Rejection Damages and Barring Future Rejection Claims* [Docket No. 214] (the "**Rejection Order**") authorizing the Debtors to reject contracts and unexpired real property leases effective as of the dates set forth in the Rejection Order.

III. CLAIMS PROCESS AND BAR DATE

The Bankruptcy Court established August 27, 2013 as the deadline (or "**Bar Date**") for Filing proofs of Claim.

The Debtors will review all Claims Filed and develop and analyze a database of all Claims asserted against the Debtors. The Debtors will analyze proofs of Claim and proofs of Interest to determine whether to object to the allowance of such Claims or Interests.

IV. THE PLAN

The following is a summary of certain significant provisions of the Plan. This summary is qualified in its entirety by reference to the more detailed information set forth in the Plan. To the extent that the terms of the Disclosure Statement vary from the terms of the Plan or the Plan Documents, the terms of the Plan and the Plan Documents shall control.

A. General.

Chapter 11 does not require each holder of a Claim or Interest to vote in favor of the Plan in order for the Bankruptcy Court to confirm the Plan. However, the Plan must be accepted by the holders of at least one Class of Claims that is Impaired without considering the votes of "insiders" within the meaning of the Bankruptcy Code.

Distributions to be made under the Plan will be made after Confirmation of the Plan, on the Effective Date or as soon thereafter as is practicable, or at such other time or times specified in the Plan.

B. Classification and Treatment of Claims and Interests Generally.

Section 1123(a)(1) of the Bankruptcy Code requires that the Plan classify all Claims (other than Administrative Expenses and Priority Tax Claims) and Interests. Section 1122 provides that, except for certain Claims classified for administrative convenience, the Plan may place a Claim or Interest in a particular Class only if such Claim or Interest is substantially similar to the other Claims or Interests of such Class. The Debtors believe they have classified all Claims and Interests in compliance with the provisions of § 1122. If a Creditor or Interest holder challenges such classification of Claims or Interests and the Bankruptcy Court finds that a different classification is required for the Plan to be confirmed, the Debtors, to the extent permitted by the Bankruptcy Court, intend to make such reasonable modifications to the classification of Claims or Interests under the Plan to provide for whatever classification might be required by the Bankruptcy Court for Confirmation.

Except to the extent that such modification of classification adversely affects the treatment of a holder of a Claim or Interest and requires resolicitation, acceptance of the Plan by any holder of a Claim or Interest pursuant to this solicitation will be deemed to be a consent to the Plan's treatment of such holder of a Claim or Interest regardless of the Class to which such holder of a Claim or Interest is ultimately deemed to belong.

The Bankruptcy Code also requires that the Plan provide the same treatment for each Claim or Interest in a particular Class unless the holder of a particular Claim or Interest agrees to a less favorable treatment of its Claim or Interest. The Debtors believe that the Plan complies with this standard. If the Bankruptcy Court finds that the Plan does not comply with this standard, it could deny Confirmation of the Plan if the holders of Claims or Interests affected do not consent to the treatment afforded them under the Plan.

The Plan categorizes Claims against and Interests in the Debtors under the Plan into six Classes. In accordance with the Bankruptcy Code, Administrative Expenses and Priority Tax Claims are not classified into Classes. The Plan also provides that expenses incurred by the Debtors during the Cases will be paid in full and specifies the manner in which the Claims and Interests in each Class are to be treated.

C. Classification and Treatment of Claims and Interests Under the Plan.

1. *CLASS 1 — Priority Non-Tax Claims*

(a) Class 1 shall consist of all Priority Non-Tax Claims. Unless otherwise agreed to by the holder of an Allowed Priority Non-Tax Claim and the Debtors or, following the Effective Date, the Disbursing Agent, each holder of an Allowed Priority Non-Tax Claim against the Debtors shall be entitled to receive a Cash distribution up to 100% of the amount

of such Allowed Priority Non-Tax Claim on or as soon as practicable after the later of (i) the Effective Date, (ii) the date on which such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, and (iii) payment in full of Administrative Expenses and Claims in Classes 2-4. The Debtors can make no assurances that there will be sufficient Cash available to make payment in full to Allowed Claims in Class 1.

(b) As more specifically set forth in, and without any way limiting, Article 10 of the Plan, the distributions, if any, provided in the Plan are in full settlement, release and discharge of each such holder's Priority Non-Tax Claim.

(c) Class 1 is Impaired. Holders of Allowed Claims in Class 1 shall be entitled to vote to accept or reject the Plan.

2. ***CLASS 2 — Secured Claims of Ad Valorem Taxing Authorities***

(a) Class 2 shall consist of the Secured Claims of Ad Valorem Taxing Authorities. Holders of the Claims in Class 2 shall receive Cash from the sale of the Collateral securing their liens, equal to the Allowed Amount of their Secured Claims.

(b) The Ad Valorem Taxing Authorities shall be deemed to release any and all Liens affecting the Debtors' Assets.

(c) As more specifically set forth in, and without any way limiting, Article 10 of the Plan, the distributions provided in the Plan are in full settlement, release and discharge of each such holder's Class 2 Claim.

(d) Class 2 is Unimpaired. Holders of Claims in Class 2 shall be deemed to have accepted the Plan.

3. ***CLASS 3 — Secured Claim of Comvest***

(a) Class 3 shall consist of Secured Claims of Comvest against the Debtors. Comvest shall receive remaining Cash after payment of Administrative Expenses and Priority Tax Claims (if any), minus the Contribution (if applicable).

(b) Comvest shall release any and all Liens affecting the Debtors' Assets.

(c) As more specifically set forth in, and without any way limiting, Article 10 of the Plan, the distributions are in full settlement, release and discharge of Comvest's Class 3 Claim.

(d) Class 3 is Unimpaired. Class 3 shall be deemed to accept the Plan.

4. ***CLASS 4 — Other Secured Claims***

(a) Class 4 shall consist of Other Secured Claims against the Debtors. Each holder of an Allowed Class 4 Other Secured Claim shall, at the option of the Debtors, receive assignment of the Collateral securing such Secured Claim, which assignment shall occur on or as soon as practicable after the later of (x) the Effective Date and (y) the date on which such Secured Claim becomes an Allowed Claim. To the extent the value of the Collateral securing an Allowed Secured Claim is less than the Face Amount of the total Allowed Claim of such Creditor, the deficiency created thereby shall be treated as a General Unsecured Claim under Class 5.

(b) Holders of Class 4 Claims shall release any and all Liens affecting the Debtors' Assets.

(c) As more specifically set forth in, and without any way limiting, Article 10 of the Plan, the distributions provided in the Plan are in full settlement, release and discharge of each such holder's Class 4 Claim.

(d) Class 4 is Unimpaired. Class 4 shall be deemed to accept the Plan.

5. ***CLASS 5 —General Unsecured Claims***

(a) Class 5 shall consist of Allowed General Unsecured Claims not otherwise classified herein. If the requirements set forth in Section 10.2 are met and the Comvest Release is approved, each holder of a Class 5 General Unsecured Claim who consents to provide the Comvest Release or is deemed to consent to the Comvest Release shall receive a Pro Rata Share of the Contribution. **Any holder of a Class 5 General Unsecured Claim who does not elect to provide the Comvest Release or is not deemed to consent to the Comvest Release will not share in the Contribution.**

(b) As more specifically set forth in, and without any way limiting, Article 10 of the Plan, the distributions provided in the Plan are in full settlement, release and discharge of each such holder's Class 5 Claim.

(c) Class 5 is Impaired. Class 5 shall be entitled to vote to accept or reject the Plan.

6. ***CLASS 6 — Holders of Interests in the Debtors***

(a) Class 6 shall consist of all Interests in the Debtors.

(b) No distribution will be made to holders of Interests.

(c) All Interests shall be canceled and extinguished on the Effective Date.

(d) Class 6 is Impaired. Holders of Class 6 Claims shall be deemed to have rejected the Plan.

7. *Effectiveness of Instruments and Agreements.*

On the Effective Date, the Disbursing Agent shall be authorized to take all actions necessary to execute and deliver all Plan Documents issued or entered into pursuant to the Plan.

8. *Cancellation and Surrender of Existing Securities.*

On the Effective Date, all promissory notes, stock certificates or other instruments evidencing a Claim or Interest shall be canceled and the holders thereof shall have no rights by reason thereof, and such instruments shall evidence no rights, except the right to receive the Distributions, if any, to be made to holders of such instruments under the Plan.

As a condition to receiving any Distribution under the Plan, each holder of a promissory note, stock certificate, or other instrument evidencing a Claim or Interest must surrender such promissory note, stock certificate, or other instrument to the Disbursing Agent at his request.

D. Executory Contracts and Unexpired Leases.

1. *Executory Contracts and Unexpired Leases to be Rejected.*

On the Effective Date, all executory contracts and unexpired leases to which the Debtors are parties that have not been previously assumed or rejected by the Debtors shall be deemed rejected. To the best of the Debtors' knowledge, all executory contracts and unexpired leases have already been either assumed and assigned to Asco, or rejected pursuant to an order by the Bankruptcy Court. The Confirmation Order shall constitute an order of the Bankruptcy Court approving such rejections, pursuant to § 365 of the Bankruptcy Code, effective as of the Petition Date. Any party to an executory contract or unexpired lease identified for rejection may, within the same deadline and in the same manner established for Filing objections to Confirmation, file any objection thereto. Failure to file any such objection within the time period set forth above shall constitute consent and agreement to the rejection.

E. Conditions to Occurrence of the Effective Date of the Plan.

Under the terms of the Plan, the following are conditions precedent to the occurrence of the Effective Date:

- The Confirmation Order, in form and substance satisfactory to the Debtors, shall have been entered and become a Final Order; and

- All documents effectuating the Plan and the transactions thereunder shall have been executed and delivered by the parties thereto, and all conditions to the effectiveness of such documents shall have been satisfied or waived as provided therein.

The Debtors believe that all conditions to the Effective Date of the Plan will likely be satisfied within thirty (30) days of the Confirmation Date. The Debtors will file a Notice of the Effective Date promptly after its occurrence.

F. Good Faith Solicitation Under § 1125.

The Plan provides that the Debtors, upon Confirmation of the Plan, shall be deemed to have solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code and that the Debtors (and their affiliates, agents, directors, officers, employees, members, advisors and attorneys) have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code and therefore are not, and will not be, liable at any time for the violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of the Plan.

G. Effect of Confirmation of the Plan.

1. *Releases.*

Refer to Article X of the Plan for a detailed description of the proposed releases to be granted pursuant to the Plan. Releases are being provided on behalf of the Debtors to their current officers, consultants, financial advisors, attorneys, accountants and other representatives for any and all claims, obligations, suits and judgments, from the Petition Date through the Effective Date. No releases are given for acts or omissions which are the result of willful misconduct or fraud.

The Comvest Release is effective if and only if sixty-six and two thirds percent (66 2/3%) in dollar amount of all holders of Allowed Class 5 General Unsecured Claims who vote on the Plan vote to accept the Comvest Release. **Each holder of an Allowed Class 5 General Unsecured Claim who submits a Ballot and does not vote to accept or reject the Comvest Release shall be deemed to vote to accept the Comvest Release.**

If the foregoing condition is satisfied, each holder of an Allowed Class 5 General Unsecured Claim that affirmatively checks the box on their Ballot titled "Release of Comvest Pursuant to Plan," shall consent to the Comvest Release. **Each holder of an Allowed Class 5 General Unsecured Claim who does not return a Ballot either voting to accept or reject the Plan shall be deemed to consent to the Comvest Release. Each holder of an Allowed Class 5 General Unsecured Claim who submits a Ballot and does not vote to accept or reject the Comvest Release shall be deemed to consent to the Comvest Release.**

IF THE COMVEST RELEASE IS APPROVED BY THE REQUISITE NUMBER OF CLASS 5 GENERAL UNSECURED CLAIMANTS VOTING ON THE PLAN, IN

EXCHANGE FOR THE COMVEST RELEASE, COMVEST SHALL MAKE THE CONTRIBUTION TO BE SHARED RATABLY AMONG ALL HOLDERS OF ALLOWED CLASS 5 GENERAL UNSECURED CLAIMS THAT CONSENT OR ARE DEEMED TO CONSENT TO THE COMVEST RELEASE. ANY HOLDER OF AN ALLOWED CLASS 5 GENERAL UNSECURED CLAIM THAT DOES NOT AFFIRMATIVELY AGREE TO THE COMVEST RELEASE OR IS NOT DEEMED TO CONSENT TO THE COMVEST RELEASE SHALL NOT SHARE IN ANY DISTRIBUTION FROM THE CONTRIBUTION.

In consideration of Comvest being willing to make the Contribution, the Debtors shall grant the Debtors' Release of Comvest. The Debtors' Release of Comvest shall apply regardless of whether holders of Allowed Class 5 General Unsecured Claims reject the Comvest Release. The Debtors have investigated the actions of Comvest and do not believe that they have any claims or causes of action against Comvest.

2. *Binding Effect.*

Upon Confirmation of the Plan and pursuant to § 1141(a) of the Bankruptcy Code, the provisions of the Plan shall bind the Debtors and all holders of Claims against or Interests in the Debtors, including their successors and assigns, whether or not they vote to accept the Plan. The Distributions made under the Plan are in full and complete settlement of all Claims and Interests against the Debtors.

3. *Injunction.*

(a) Except as otherwise provided in the Plan, the Confirmation Order shall provide, among other things, that all Entities who have held, hold or may hold Claims against or Interests in a Debtor are, with respect to any such Claims or Interests, or as released in Sections 10.1 and 10.2 of the Plan, permanently enjoined from and after the Confirmation Date from: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtors, the Released Parties, Comvest, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, the Debtors, or any property of any such transferee or successor; (ii) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, of any judgment, award, decree or order against the Debtors, the Released Parties, Comvest, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, the Debtors, or any property of any such transferee or successor; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors, the Released Parties, Comvest, any of their property, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing Entities; (iv) asserting any right of setoff, subrogation, or recoupment of any kind, directly or indirectly, against any obligation due to the Debtors, the Released Parties, Comvest any of their property, or any direct or indirect transferee of any property of, or successor in interest to, any Debtors; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or

comply with the provisions of the Plan. **Notwithstanding the foregoing, the injunction applies to Comvest only to the extent of section 10.2(d) of the Plan, and to the extent the Comvest Release is approved.**

(b) Notwithstanding any other term or provision in the Plan, the IRS shall not be enjoined from reviewing, investigating, assessing, or pursuing collection from, or criminal fines against, responsible persons (as defined in the Internal Revenue Code § 6672(a)) for trust fund taxes due the IRS under Internal Revenue Code § 6672.

4. *Revesting.*

Unless otherwise dealt with under the Plan, any remaining property of the Debtors' Estates, including all property of the estate under § 541 of the Bankruptcy Code shall revest in the Debtors on the Effective Date.

5. *Retention and Enforcement of Causes of Action.*

(i) Pursuant to § 1123(b)(3) of the Bankruptcy Code, the Litigation Agent, on behalf of the Debtors, shall retain and have the exclusive right to enforce against any Entity any and all Causes of Action (including Chapter 5 Causes of Action) that otherwise belong to the Debtors and arose before the Effective Date, including all Causes of Action of a trustee and debtor-in-possession under the Bankruptcy Code, other than those expressly released or compromised as part of or pursuant to the Plan. The Litigation Agent will also be granted unimpeded access to the Debtors' books and records.

(ii) Except as otherwise provided in the Plan, the Litigation Agent shall have the authority to (1) investigate, analyze, commence, prosecute, litigate, compromise and otherwise administer the Causes of Action and take all other necessary and appropriate steps to collect, recover, settle, liquidate, or otherwise reduce to cash the Causes of Action, and to negotiate and effect settlements and lien releases with respect to all related claims and liens; (2) review all Claims and object to same; (3) employ such attorneys, accountants, auctioneers, engineers, agents, brokers managers, consultants, investigators, expert witnesses, tax specialists, other professionals, and clerical assistants as the Litigation Agent may deem necessary; (4) distribute the proceeds from the Causes of Action to the professionals retained by the Litigation Agent and to the Distribution Agent; and (5) execute any documents, instruments, contracts, and agreements necessary and appropriate to carry out the powers and duties of the Litigation Agent.

(iii) The Litigation Agent shall be entitled to rely reasonably upon the advice of retained professionals and shall not be liable for any action taken in reliance on such advice. The reasonable and necessary fees and expenses of the Litigation Agent and all professionals employed by the Litigation Agent shall be paid from the recoveries of the Causes of Action, which payments shall not require approval or an order of the Bankruptcy Court. The Litigation Agent shall not be liable for actions taken or omitted in his capacity as the Litigation Agent, except those acts arising out of his own fraud, willful misconduct, or gross negligence. The Litigation Agent shall be entitled to indemnification and reimbursement for all losses, fees, and expenses in defending any and all of his actions or inactions in his capacity as the Litigation

Agent, except for any actions or inactions involving his own fraud, willful misconduct, or gross negligence. Any indemnification claim of the Litigation Agent shall be satisfied from the recoveries of the Causes of Action.

(iv) The Litigation Agent shall collect all proceeds from the Causes of Action and shall deposit such funds with a federally insured financial institution with a minimum of $200 million in capital and that provides banking services. The Litigation Agent will deposit such funds so that they are adequately insured. The Litigation Agent shall hold all such funds until they are distributed pursuant to the Plan to Creditors with Allowed Class 5 General Unsecured Claims or to other parties provided in the Plan.

(v) The Litigation Agent may resign at any time by giving written notice to the Bankruptcy Court, and such resignation shall be effective upon the date provided in such notice. In the case of the resignation of the Litigation Agent, the resigning Litigation Agent shall appoint a successor Litigation Agent. Without further act, deed or conveyance, a successor Litigation Agent shall be vested with all the rights, privileges, powers and duties of the Litigation Agent, except that the successor Litigation Agent shall not be liable for the acts or omissions of his predecessor(s). Each succeeding Litigation Trustee may in like manner resign and another may in like manner be appointed in his place.

(vi) At any time before the Effective Date, notwithstanding anything in the Plan to the contrary, the Debtors may settle any Cause of Action pursuant to Bankruptcy Rule 9019 with the approval of the Bankruptcy Court and upon notice as provided in the Bankruptcy Rules. From and after the Effective Date, the Litigation Agent, in accordance with the terms of the Plan, will determine whether to bring, settle, release, compromise, enforce or abandon such rights (or decline to do any of the foregoing).

(vii) Any and all Causes of Action that may exist against any Person, except as specifically released in the Plan, may be pursued by the Litigation Agent regardless of whether, or the manner in which, such Causes of Action are identified or described in the Disclosure Statement and/or the Schedules. The failure of the Debtors to describe or identify a claim, right, Cause of Action, suit or proceeding in the Disclosure Statement or the Schedules shall not constitute a waiver, forfeiture, or release by the Debtors their Estates or the Litigation Agent of such claim, right, Cause of Action, suit or proceeding. Such Causes of Action shall survive entry of the Confirmation Order for the benefit of the Debtors and their Estates.

6. ***Limitation of Liability.***

(a) Neither the Debtors, nor any of their respective officers, directors, partners, employees, members, agents, attorneys, accountants, advisors, affiliates, nor any other professional persons employed by any of them (collectively, the "**Exculpated Persons**"), shall have or incur any liability to any Entity for any Claim, liability, cause of action, right, damage, cost or obligation held by any party against any Exculpated Person, whether known or unknown, matured or contingent, liquidated or unliquidated, existing, arising or accruing, whether or not yet due in any manner, relating to any act taken or omitted to be taken on or after the Petition Date in connection with, related to, or arising out of the Cases, the formulation, preparation,

dissemination, implementation, confirmation, approval, or administration of the Plan or any compromises or settlements contained therein, the Disclosure Statement related thereto, the property to be distributed under the Plan, or any contract, instrument, release or other agreement or document provided for or contemplated in connection with the consummation of the transactions set forth in the Plan, and all such shall be deemed fully waived, barred, released and discharged in all respects; provided, however, that nothing herein shall release or exculpate any Exculpated Person to the extent that such claims arise from the gross negligence, willful misconduct or fraud of such Exculpated Person, in each case subject to determination of such final order of a court of competent jurisdiction.

(b) Without limiting the generality of the foregoing, no Exculpated Party shall have or incur any liability to any Entity for its role, if any, in soliciting acceptance or rejection of the Plan in good faith, and shall be entitled to and granted all the protections and benefits of § 1125(e).

(c) Each party to which this section applies shall be deemed to have granted the releases set forth in this section notwithstanding that it may hereafter discover facts in addition to, or different from, those which it now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and such party expressly waives any and all rights that it may have under any statute or common law principle, which would limit the effect of such releases to those claims or causes of action actually known or suspected to exist.

H. Distributions Under the Plan.

The Disbursing Agent shall make distributions to the holders of Allowed Claims on the terms set forth herein. Any holder of an Allowed Claim may receive, instead of the Distribution or treatment to which it is entitled under this Plan, any other Distribution or treatment which it and the Disbursing Agent may agree in writing, so long as such alternative treatment is substantially the same or less favorable to the Claimant than the treatment otherwise prescribed herein. The Disbursing Agent shall not distribute proceeds to claimants in any class unless and until such claimant's claims become Allowed Claims.

Except as otherwise provided in the Plan, all Distributions constituting a partial payment to holders of Allowed Claims within a specific Class shall be made on a Pro Rata basis to the holders of Allowed Claims in such Class.

Amounts paid under this Plan to holders of Allowed Claims in satisfaction thereof shall be allocated first to the principal amounts of such Claims, with any excess allocated to interest that has accrued on such Claims but remains unpaid.

No distributions will be made on a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim. In determining the amount of distributions to be made under the Plan to the holders of Allowed Claims on the Effective Date or a distribution date, the appropriate distributions shall be made as if all the Disputed Claims as of such distribution date were Allowed Claims in the full amount claimed by the holders thereof, unless otherwise ordered or estimated by the Bankruptcy Court.

I. Other Provisions of the Plan.

1. *Retention of Jurisdiction.*

Notwithstanding entry of the Confirmation Order, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, and related to the Cases and the Plan to the fullest extent permitted by law, including, without limitation, as permitted by §§ 105(a) and 1142 of the Bankruptcy Code.

2. *Amendment and Modification to the Plan.*

The Debtors reserve the right, in accordance with the Bankruptcy Code, to amend or modify the Plan prior to the Confirmation Date. After the Confirmation Date, the Debtors may, upon order of the Court, amend or modify the Plan in accordance with § 1127(b) of the Bankruptcy Code, remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purposes and intent of the Plan.

3. *Withdrawal and Revocation of the Plan.*

The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Plan is revoked or withdrawn by the Debtors, or if the Confirmation Date does not occur with respect to the Debtors, the Plan shall be of no further force or effect.

V. RISK FACTORS

Holders of Claims should read and consider carefully the factors set forth below, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference herein), prior to voting to accept or reject the Plan.

A. Risks Related to Projections and Estimates.

This Disclosure Statement and the materials incorporated by reference herein (the "**Incorporated Materials**") include "forward-looking statements" as defined in Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. All statements other than statements of historical facts included in this Disclosure Statement and the Incorporated Materials regarding the Debtors' financial positions, business strategies, plans and objectives of management and indebtedness covenant compliance, including but not limited to words such as "anticipates," "expects," "estimates," "believes" and "likely," are forward-looking statements. The Debtors believe that their current views and expectations are based on reasonable assumptions; however, there are significant risks and uncertainties that could significantly affect expected results. Important factors that could cause actual results to differ materially from those in the forward-looking statements ("**Cautionary Statements**") are disclosed throughout this Disclosure Statement. All subsequent written and oral forward-looking statements attributable to the Debtors, or persons acting on their behalf, are expressly qualified in their entirety by the Cautionary Statements. The Debtors do not intend to update or otherwise

revise the forward-looking statements contained herein to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

B. Objection to Classifications.

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class. The Debtors believe that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, there can be no assurance that the Bankruptcy Court or other parties-in-interest will reach the same conclusion.

C. Risk of Nonconfirmation of the Plan.

Even if all Classes of Claims or Interests that are entitled to vote accept the Plan, the Plan might not be confirmed by the Bankruptcy Court. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, that the Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors, and that the value of Distributions to dissenting Creditors and Interest holders not be less than the value of Distributions such Creditors and Interest holders would receive if the Debtors were liquidated under Chapter 7. The Debtors believe that the Plan satisfies all the requirements for Confirmation under the Bankruptcy Code. There can be no assurance, however, that the Bankruptcy Court will also conclude that the requirements for Confirmation of the Plan have been satisfied.

D. Nonoccurrence of Effective Date of the Plan.

Even if all Classes of Claims and Interests that are entitled to vote accept the Plan, the Effective Date for the Plan may not occur. The Plan sets forth conditions to the occurrence of the Effective Date of the Plan which may not be satisfied by the Effective Date. The Debtors believe that they will satisfy all requirements for consummation required under the Plan. There can be no assurance, however, that the Bankruptcy Court will also conclude that the requirements for consummation of the Plan have been satisfied. There can be no assurance that each and every one of these necessary components will be approved. If any of these components is not approved by the Bankruptcy Court in connection with the Confirmation of the Plan, the Effective date may not occur.

VI. CONFIRMATION OF THE PLAN

A. Voting Procedures and Requirements.

The Debtors are providing copies of this Disclosure Statement and Ballots to all known holders of Impaired Claims who are entitled to vote on the Plan.

Pursuant to the provisions of the Bankruptcy Code, only Classes of Claims in the Debtors that are "Impaired" under the terms and provisions of the Plan and entitled to receive a

Distribution thereunder are entitled to vote to accept or reject the Plan. Accordingly, Classes of Claims or Interests that are not Impaired under the terms and provision of the Plan are *not* entitled to vote on the Plan. In addition, Classes of Claims or Interests that are not entitled to a Distribution under the terms and provisions of the Plan are deemed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

If you hold an Impaired Claim against the Debtors, you are entitled to vote on the Plan. If you hold more than one Impaired Claim, you are entitled to cast a vote on account of each such Claim. Some Creditors may therefore be entitled to cast more than one Ballot.

Under the Plan, holders of Claims in Classes 2 - 4 are Unimpaired and are deemed to have accepted the Plan. The holders of Claims, if any, in each of Classes 1 and 5 are Impaired and, therefore, are entitled to vote to accept or reject the Plan. The holders of Claims and Interests in Class 6 do not vote and are deemed to have rejected the Plan.

Some holders of Claims may hold Claims in more than one Impaired Class and must vote separately for each Class. The following voting procedures (the "**Voting Procedures**") have been established with respect to the amount and classification of Claims and Interests, and the determination of the validity of Ballots submitted, for voting purposes:

1. With respect to a Claim as to which a proof of Claim has not been Filed as of the Record Date, the voting amount of such Claim (subject to any applicable limitations set forth below) shall be equal to the amount listed, if any, in respect of such Claim in the Debtors' Schedules to the extent such Claim is not listed as contingent, unliquidated, undetermined or disputed. Such Claim shall be placed in the appropriate Class based upon the applicable Debtors' records and the classification scheme set forth in the Plan.

2. With respect to a proof of Claim which, according to the Clerk of the Bankruptcy Court's records, was not Filed as of the Record Date and is not subject to the provisions of the immediately preceding paragraph, such Claim shall be provisionally disallowed for voting purposes.

3. With respect to a liquidated, non-contingent, undisputed Claim as to which (i) a proof of Claim has been Filed as of the Record Date, (ii) a Claim has been listed in the Debtors' Schedules that conflicts in amount with such proof of Claim, and (iii) an objection has not been Filed, the classification of such Claim shall be that specified in such proof of Claim shall be accorded one vote and assigned a value, for purposes of § 1126(c) of the Bankruptcy Code (subject to any applicable limitations set forth below), equal to the lesser of (*x*) the amount of such Claim as listed in the Debtors' Schedules and (*y*) the amount of the proof of Claim.

4. With respect to a liquidated, non-contingent, undisputed Claim as to which (i) a proof of Claim has been Filed as of the Record Date, (ii) a Claim is not listed in the Debtors' Schedules that conflicts in amount with such proof of Claim, and (iii) an objection has not been Filed, the classification of such Claim shall be that specified in such proof of Claim and that

proof of Claim shall be accorded one vote and assigned a value of one dollar for purposes of § 1126(c), subject to any applicable limitations set forth below.

5. With respect to a proof of Claim which is the subject of an objection Filed by a Debtor, the Claim represented by such proof of Claim shall be provisionally disallowed for voting purposes, except to the extent and in the manner that (i) the Debtors indicate in their objection the extent to which such Claim should be allowed; or (ii) the Bankruptcy Court otherwise orders.

6. A timely Filed proof of Claim that is designated as wholly unliquidated or contingent shall be accorded one vote and assigned a value of one dollar for purposes of § 1126(c) of the Bankruptcy Code, unless the Claim is disputed as set forth in the immediately preceding paragraph.

7. With respect to a Claim that has been estimated or otherwise allowed for voting purposes by order of the Bankruptcy Court, the amount and classification of such Claim shall be that set by the Bankruptcy Court.

8. With respect to a Claim, any portion of which is unliquidated, contingent or disputed, the holder of the Claim shall be entitled to vote that portion of the Claim that is liquidated, non-contingent and undisputed, subject to any limitations set forth herein and unless otherwise ordered by the Bankruptcy Court.

9. Holders of Claims shall not be entitled to vote Claims to the extent such Claims duplicate or have been superseded by other Claims of such holders of Claims.

10. If the holder of a Claim submits more than one Ballot voting the same Claim or Interest prior to the deadline for submission of Ballots, the first of such Ballots Filed (and only such Ballot) shall be counted in accordance with the Voting Procedures unless either (i) the Debtors consent to the Filing and counting of a superseding Ballot, or (ii) the Bankruptcy Court, after notice and a hearing, orders otherwise.

11. The authority of the signatory of each Ballot to complete and execute such Ballot shall be presumed.

12. A holder of a Claim must vote all of its Claim within a particular Class under the Plan either to accept or reject the Plan and may not split its vote. Accordingly, a Ballot (or multiple Ballots with respect to separate Claims within a single Class) that partially rejects and partially accepts the Plan or that indicates both a vote for and against the Plan will not be counted.

13. Any Ballot which is executed and returned, but does not indicate an acceptance or rejection of the applicable Plan, shall be deemed to be an acceptance of the Plan.

14. Any Ballot that is not signed will not be counted.

15. For the purpose of voting on the Plan, the Debtors will be deemed to be in constructive receipt of any Ballot timely delivered to any address designated for the receipt of Ballots cast in connection with the Plan.

16. Any Ballot received by the Debtors after the end of the Voting Period shall not be accepted or used by the Debtors in connection with the Debtors' request for Confirmation of the Plan unless the Debtors, in their sole discretion, consent to the counting of such Ballot or the Bankruptcy Court orders such Ballot to be counted.

17. All Ballots must be cast using the Ballots distributed to the holders of Claims. Votes cast in any manner other than by using such Ballots will not be counted.

18. Each holder of an Allowed Class 5 General Unsecured Claim who submits a Ballot and does not vote to accept or reject the Comvest Release shall be deemed to consent to the Comvest Release.

IN ORDER TO BE COUNTED, EXCEPT TO THE EXTENT THE DEBTORS SO DETERMINE OR AS PERMITTED BY THE BANKRUPTCY COURT PURSUANT TO BANKRUPTCY RULE 3018, BALLOTS MUST BE SIGNED AND RETURNED SO THAT THEY ARE RECEIVED NO LATER THAN 5:00 P.M. CENTRAL TIME, ON [_____] OCTOBER 1, 2013 AT THE FOLLOWING ADDRESS:

Hi-Way Ballot Processing Center c/o Upshot Services LLC
7808 Cherry Creek South Drive, Suite 112
Denver, CO 80231

BALLOTS WILL NOT BE ACCEPTED BY FACSIMILE OR EMAIL

As mentioned above, if your Ballot is not signed and returned as described, it will not be counted. If your Ballot is damaged or lost, or if you do not receive a Ballot, you may request a replacement by addressing a written request to counsel for the Debtors Upshot Services LLC or calling (214855) 999812-49636112. Please follow the directions contained on the Ballot carefully.

The process of soliciting acceptance of the Plan must be fair and open without outside influence in the form of representations, inducements or duress of any kind. To the extent that you believe solicitation of your vote from any party is being sought outside of the judicially-approved and statutorily-defined disclosure requirements and Voting Procedures, please contact counsel for the Debtors.

B. Acceptance.

Acceptance of the Plan requires that each Impaired Class of Claims or Interests (as classified therein) accepts the Plan, with certain exceptions hereinafter discussed below. Thus, acceptance of the Plan requires acceptance by each of the Impaired Classes.

The Bankruptcy Code defines acceptance of the Plan by a Class of Claims as acceptance by the holders of at least two-thirds (2/3) in dollar amount and a majority in number of Claims of that class, but for that purpose, only those Claims, the holders of which actually vote to accept or reject the Plan, are counted.

C. Confirmation of the Plan.

To confirm the Plan, § 1129 of the Bankruptcy Code requires the Bankruptcy Court to make a series of determinations concerning the Plan, including, without limitation: (i) that the Plan has classified Claims and Interests in a permissible manner; (ii) that the contents of the Plan complies with the technical requirements of the Bankruptcy Code; (iii) that the Debtors have proposed the Plan in good faith; and (iv) that the Debtors have made disclosures concerning the Plan which are adequate and include information concerning all payments made or promised in connection with the Plan and the Case. The Debtors believe that all of these conditions have been or will be met with respect to the Plan.

The Bankruptcy Code requires that, unless the "cramdown" provisions of the Bankruptcy Code (as discussed below) are utilized, as a condition precedent to confirmation, the Plan be accepted by the requisite votes of each Class of Claims and Interests voting as separate Classes. Therefore, the Bankruptcy Court must find, in order to confirm the Plan, that the Plan has been duly accepted. In addition, the Bankruptcy Court must find that the Plan is feasible and that the Plan is in the "best interests" of all holders of Claims and Interests. Thus, even if holders of Claims were to accept the Plan by the requisite number of votes, the Bankruptcy Court is still required to make independent findings respecting the Plan's feasibility and whether the Plan is in the best interests of holders of Claims and Interests before it can confirm the Plan.

1. *The Best Interests Test.*

Whether or not the Plan is accepted by each Impaired Class of Claims entitled to vote on the Plan, in order to confirm the Plan the Bankruptcy Court must independently determine, pursuant to § 1129(a)(7) of the Bankruptcy Code, that the Plan is in the best interests of each holder of an Impaired Claim or Interest that has not voted to accept the Plan. This requirement is satisfied if the Plan provides each non-accepting holder of a Claim or Interest in such Impaired Class a recovery on account of such holder's Claim or Interest that has a value, as of the Effective Date, at least equal to the value of the Distribution each such holder would receive in a liquidation of the Debtors under Chapter 7.

To determine the value that holders of Impaired Claims and Interests would receive if the Debtors were liquidated under Chapter 7, the Bankruptcy Court must determine the aggregate dollar amount that would be generated from the liquidation of the Debtors' assets if the Cases were converted to Chapter 7 liquidation cases and the Debtors' assets were liquidated by a Chapter 7 trustee (the "**Liquidation Value**"). The Liquidation Value would consist of the net proceeds from the disposition of the Debtors' assets, augmented by cash held by the Debtors and reduced by certain increased costs and Claims that arise in Chapter 7 liquidation cases that do not arise in Chapter 11 reorganization cases. Because the Debtors have already liquidated substantially all their assets, a conversion to Chapter 7 would only incur additional costs to the

Debtors' Estates and therefore the Debtors believe that the Plan provides recoveries to Creditors not less than — and likely greater than — the recoveries to Creditors in a Chapter 7 liquidation and, therefore, satisfies § 1129(a)(7). The Debtors believe that there will be no distribution to Class 5 General Unsecured creditors based on the liquidation of their assets. The Contribution under the Plan represents the only recovery for Class 5 General Unsecured Claims and the Contribution is not available in a Chapter 7 liquidation.

2. *Feasibility.*

Even if the Plan is accepted by each Class of Claims and Interests voting on the Plan, and even if the Bankruptcy Court determines that the Plan satisfies the "best-interests" test, the Bankruptcy Code requires that, in order for the Plan to be confirmed by the Bankruptcy Court, it must be demonstrated that consummation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors. For purposes of determining whether the Plan meets this requirement, the Debtors have analyzed the Debtors' ability to meet their obligations under the Plan and determined that the Debtors and the Disbursing Agent will be able to make all payments required to be made pursuant to the Plan.

D. Non-Acceptance and Cramdown.

Pursuant to § 1129(b) of the Bankruptcy Code, the Bankruptcy Court may confirm the Plan despite the non-acceptance of the Plan by an Impaired Class. This procedure is commonly referred to as a "cramdown." Section 1129(b) provides that, upon request of the proponent of the Plan, the Bankruptcy Court shall confirm the Plan despite the lack of acceptance by an Impaired Class or Classes if the Bankruptcy Court finds that (a) the Plan does not discriminate unfairly with respect to each non-accepting Impaired Class, (b) the Plan is "fair and equitable" with respect to each non-accepting Impaired Class, (c) at least one Impaired Class has accepted the Plan (without counting acceptances by insiders), and (d) the Plan satisfies the requirements set forth in § 1129(a) other than § 1129(a)(8). In general, § 1129(b) permits Confirmation notwithstanding non-acceptance by an Impaired Class if that Class and all more junior Classes are treated in accordance with the "absolute priority" rule, which requires that the dissenting Class be paid in full before a junior Class may receive anything under the Plan.

E. Confirmation Hearing.

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a Confirmation Hearing. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation of a Plan. Notice of the Confirmation Hearing will be provided to all holders of Claims and Interests and other parties in interest (the "**Confirmation Notice**"). The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment thereof. Objections to Confirmation of the Plan must be made in writing, specifying in detail the name and address of the person or Entity objecting, the grounds for the objection, and the nature and amount of the Claim or Interest held by the objector. Objections must be Filed with the Bankruptcy Court, together with proof of service, and served upon the parties so designated in the Confirmation Notice, on or before the time and

date designated in the Confirmation Notice as being the last date for serving and filing objections to Confirmation of the Plan. Objections to Confirmation of the Plan are governed by Bankruptcy Rule 9014 and the local rules of the Bankruptcy Court.

VII. ALTERNATIVES TO CONFIRMATION OF THE PLAN

If the Plan is not confirmed by the Bankruptcy Court and consummated, the alternatives to the Plan include (a) the liquidation of the Debtors under Chapter 7 or (b) an alternative Plan under Chapter 11.

A. Liquidation Under Chapter 7.

If the Plan cannot be confirmed, the Cases may be converted to cases under Chapter 7. In that event, a trustee would be appointed to liquidate any remaining assets of the Debtors for distribution to holders of Claims and Interests in accordance with the priorities established by the Bankruptcy Code. Because the Debtors' assets have been substantially liquidated, the Debtors believe that a conversion to Chapter 7 would only increase administrative costs, and the Debtors believe that Confirmation of the Plan will provide each holder of a Claim entitled to receive a Distribution under the Plan with a recovery that is not less than it would receive if the Debtors were liquidated under Chapter 7. The Debtors believe that there will be no distribution to Class 5 General Unsecured creditors based on the liquidation of their assets. The Contribution under the Plan represents the only recovery for Class 5 General Unsecured Claims and the Contribution is not available in a Chapter 7 liquidation.

Accordingly, the Debtors recommend that all Creditors vote to accept the Plan.

B. Alternative Plan.

If the Plan is not confirmed, the Debtors (or if the Debtors' exclusive period in which to File a plan or plan of reorganization has expired, any other party in interest) may be entitled to File a different plan. However, in light of the fact that the Debtors have already liquidated their assets, the Debtors believe that no feasible plan structure could be proposed other than that contained in the Plan. The Debtors therefore believe that the Plan provides Creditors and Interest holders with the greatest value possible under the circumstances. Furthermore, the Debtors believe that any subsequently-proposed plan would likely provide a less favorable treatment than the Plan by further delaying the payment of Distributions.

Accordingly, the Debtors recommend that all Creditors vote to accept the Plan.

VIII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES

The Plan provides for the distribution of the proceeds of the sale of the Debtors' assets to creditors pursuant to the terms of the Plan. The federal income tax consequences of the Plan to a Creditor will depend upon several factors, including, without limitation: (i) whether the Creditor's Claim (or portion thereof) constitutes a Claim for principal or interest; (ii) the type of consideration received by the Creditor in exchange for the Claim; (iii) whether the Creditor is a

resident of the United States for tax purposes (or falls into any of the special classes of taxpayers excluded from this discussion as noted above); (iv) whether the Creditor has taken a bad debt deduction or worthless security deduction with respect to his Claim; and (v) whether the Creditor receives Distributions under the Plan in more than one taxable year. **CREDITORS ARE STRONGLY ADVISED TO CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE TAX TREATMENT UNDER THE PLAN OF THEIR PARTICULAR CLAIMS.**

IX. SECURITIES LAWS CONSEQUENCES OF PLAN

The Plan provides for a sale of substantially all of the Debtors' assets, and the distribution of the proceeds of that sale to the Debtors' creditors pursuant to the terms of the Plan. Holders of Interests should consult their own advisors regarding any security law consequences of the treatment of their Interests under the Plan.

X. CONCLUSION AND RECOMMENDATION

The Debtors believe that Confirmation of the Plan is desirable and in the best interests of all holders of Claims and Interests. The Debtors therefore urge you to vote to accept the Plan.

Respectfully submitted,

HI-WAY EQUIPMENT COMPANY LLC
HI-WAY HOLDINGS LLC
HWE REAL ESTATE LLC

By: */s/ Charles W. Reeves, Jr.*
Charles W. Reeves, Jr.
Chief Restructuring Officer of the Debtors

Prepared by:

/s/ Holland N. O'Neil

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COUNSEL FOR DEBTORS AND DEBTORS IN POSSESSION

EXHIBIT A

~~EXHIBIT B~~

IN THE UNITED STATES BANKRUPTCY COURT **FOR THE NORTHERN DISTRICT OF TEXAS** **FORT WORTH DIVISION**		
IN RE: **HI-WAY EQUIPMENT COMPANY LLC, HI-WAY HOLDINGS LLC and HWE REAL ESTATE LLC** **Debtors.**	§ § § § § § § §	**Chapter 11** **Case No. 13-41498-RFN-11** **(Jointly Administered)**

ORDER APPROVING DISCLOSURE STATEMENT WITH RESPECT TO DEBTORS' FIRST AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION

Upon the record of the hearing held on August 26, 2013, (the "**Disclosure Statement Hearing**") to consider the *Disclosure Statement in Support of First Amended Joint Chapter 11 Plan of Liquidation* as amended from time to time (the "**Disclosure Statement**") of Hi-Way Equipment Company LLC ("**Hi-Way Equipment**"), Hi-Way Holdings LLC ("**Hi-Way Holdings**"), and HWE Real Estate LLC ("**HWE**"), the debtors and debtors-in-possession (collectively, the "**Debtors**") in the above-captioned, jointly administered bankruptcy cases (collectively, "**Bankruptcy Cases**"), for entry of an order approving the Disclosure Statement, the Court finds, after due deliberation and consideration of the record before it, that: (i) good and sufficient notice of the hearing on, and of the deadline for objections to, the Disclosure Statement has been given under the particular circumstances and that no other or further notice is required; (ii) the Disclosure Statement contains "adequate information" as required by 11 U.S.C. § 1125; and (iii) good and sufficient cause exists to grant the relief requested in the Motion. Accordingly, pursuant to 11 U.S.C. §§ 105(a), 1125, 1126, and 1128 and Fed. R. Bankr. P. 2002, 3017, and 3018, it is hereby:

NOW THEREFORE, IT IS HEREBY:

ORDERED that the Disclosure Statement is approved as containing "adequate information" within the meaning of 11 U.S.C. § 1125, and that any Objections to approval of the Disclosure Statement, to the extent not withdrawn, settled, or otherwise resolved, are overruled for the reasons stated by the Court on the record; it is further

ORDERED that the Debtors are hereby authorized to make technical, conforming, and other non-material changes to the Disclosure Statement prior to its transmittal to holders of Claims without the necessity of any further order of this Court; it is further

ORDERED that a hearing to consider the approval of the Plan is scheduled for _____, **2013 at _:__ p.m. (CST)**, before the Honorable Russell F. Nelms, United States Bankruptcy Judge for the Northern District of Texas, at Eldon B. Mahon U.S. Courthouse, 501 W. 10th Street, Fort Worth, Texas 76102; it is further

ORDERED that the proposed form of the Ballot attached hereto as **Exhibit 1,** is hereby approved for use in soliciting votes on the Plan; it is further

ORDERED that UpShot Services LLC, who this Court previously approved as the Debtors' official balloting agent (the "**Balloting Agent**") [*see* Docket No. 166], will accordingly serve as the party responsible for receiving completed Ballots, determining and tabulating votes on the Plan, and determining whether each particular Class of Claims under the Plan has accepted or rejected the Plan (subject to final determination by this Court at the Confirmation Hearing); it is further

ORDERED that the deadline for the receipt of completed and duly executed Ballots by the Balloting Agent is hereby fixed as _____, **2013 at 5:00 p.m. (CST)** (the "**Balloting Deadline**"). In the absence of entry of an order hereafter extending the Balloting Deadline or

otherwise permitting the late submission of a particular Ballot, all properly completed Ballots must be actually received by the Balloting Agent by no later than the Balloting Deadline in order for them to be deemed timely submitted, and counted; it is further

ORDERED that the deadline for filing and serving Objections to confirmation of the Plan is hereby fixed as _____, **2013 at 5:00 p.m. (CST)** (the "**Confirmation Objection Deadline**"). Objections must (a) be in writing; (b) state with particularity the grounds (including any applicable legal authority) for objection, identifying the specific section and/or text of the Plan to which the objection is directed; and (c) be filed with this Court (either electronically through ECF filing or by delivery to the Clerk of the Bankruptcy Court) and served on each of the following parties by no later than the Confirmation Objection Deadline:

The Debtors
Charles W. Reeves, Jr.
926 N Sam Houston Pkwy E
Houston, TX 77032

with copies to:

Holland N. O'Neil, Esq.
Gardere Wynne Sewell LLP
1601 Elm Street, Suite 3000
Dallas, TX 75201

United States Trustee
Office of United States Trustee
Attn: Elizabeth Ziegler
1100 Commerce Street, Room 976
Dallas, Texas 75242

Untimely and non-compliant Objections may be summarily stricken and/or overruled by this Court; it is further

ORDERED that the record date for determining the identity of holders of claims entitled

to vote on the Plan (the "**Record Date**") is hereby established as _____, **2013**; it is further

ORDERED that, the form of the notice of the hearing to consider confirmation of the Debtors' Plan, among other things, attached hereto as **Exhibit 2** (the "**Confirmation Hearing Notice**") is hereby approved; it is further

ORDERED that, by no later than four (4) business days after entry of this Order, the Debtors will cause to be mailed or otherwise delivered (subject to the exceptions set forth below) a copy of the following materials (collectively, the "**Solicitation Package**") to each of the record holders of claims in Voting Classes, determined as of the Record Date:

(a) The approved Disclosure Statement (with the Plan);

(b) This Order;

(c) An approved Ballot or Ballots;

(d) The Confirmation Hearing Notice; and

(f) A pre-addressed return envelope for use in returning the completed Ballot(s) to the Balloting Agent (the "**Return Envelope**").

It is further

ORDERED that the following classes of claims under the Plan are unimpaired and are deemed to have accepted the Plan pursuant to 11 U.S.C. § 1126(f):

Unclassified Claims: Allowed Administrative Claims and Allowed Priority Tax Claims.

Classes 2 – 4.

Accordingly, the Debtors need not serve any Solicitation Package on the holders of such claims. Rather, the Debtors shall serve the Confirmation Hearing Notice on such holders; it is further

ORDERED that the Debtors need not serve a Solicitation Package on the holders of Class 6 Interests because these parties are not receiving any distribution under the Plan and are

deemed to have voted against the Plan, but the Debtors shall serve the Confirmation Hearing Notice on the holders of Equity Interests in these Classes; it is further

ORDERED that the Debtors shall not be required to mail a Solicitation Package to the holder of any Claim (on account of such Claim) that has been (a) disallowed, (b) withdrawn or otherwise expunged, or (c) listed on the Debtor's Schedules as disputed, contingent or unliquidated for which a proof of claim has not been filed, but shall serve the Confirmation Hearing Notice on such holders; it is further

ORDERED that the Debtors' compliance with the foregoing means of transmitting Solicitation Packages to holders of Claims in the Bankruptcy Cases will constitute adequate and proper notice of the Confirmation Hearing, the Balloting Deadline, and the Confirmation Objection Deadline, consistent with the requirements of Fed. R. Bankr. P. 2002 and 3017; it is further

ORDERED that the following procedures (collectively, the "**Voting Procedures**") are hereby approved and shall apply to the determination and tabulation of votes on the Plan:

(a) With respect to a Claim as to which a proof of Claim has not been Filed as of the Record Date, the voting amount of such Claim (subject to any applicable limitations set forth below) shall be equal to the amount listed, if any, in respect of such Claim in the Debtors' Schedules to the extent such Claim is not listed as contingent, unliquidated, undetermined or disputed. Such Claim shall be placed in the appropriate Class based upon the applicable Debtors' records and the classification scheme set forth in the Plan.

(b) With respect to a proof of Claim which, according to the Clerk of the Bankruptcy Court's records, was not Filed as of the Record Date and is not subject to the provisions of the immediately preceding paragraph, such Claim shall be provisionally disallowed for voting purposes.

(c) With respect to a liquidated, non-contingent, undisputed Claim as to which (i) a proof of Claim has been Filed as of the Record Date, (ii) a Claim has been listed in the Debtors' Schedules that conflicts in amount with such proof of Claim, and

(iii) an objection has not been Filed, the classification of such Claim shall be that specified in such proof of Claim shall be accorded one vote and assigned a value, for purposes of § 1126(c) of the Bankruptcy Code (subject to any applicable limitations set forth below), equal to the lesser of (x) the amount of such Claim as listed in the Debtors' Schedules and (y) the amount of the proof of Claim.

(d) With respect to a liquidated, non-contingent, undisputed Claim as to which (i) a proof of Claim has been Filed as of the Record Date, (ii) a Claim is not listed in the Debtors' Schedules that conflicts in amount with such proof of Claim, and (iii) an objection has not been Filed, the classification of such Claim shall be that specified in such proof of Claim and that proof of Claim shall be accorded one vote and assigned a value of one dollar for purposes of § 1126(c), subject to any applicable limitations set forth below.

(e) With respect to a proof of Claim which is the subject of an objection Filed by a Debtor, the Claim represented by such proof of Claim shall be provisionally disallowed for voting purposes, except to the extent and in the manner that (i) the Debtors indicate in their objection the extent to which such Claim should be allowed; or (ii) the Bankruptcy Court otherwise orders.

(f) A timely Filed proof of Claim that is designated as wholly unliquidated or contingent shall be accorded one vote and assigned a value of one dollar for purposes of § 1126(c) of the Bankruptcy Code, unless the Claim is disputed as set forth in the immediately preceding paragraph.

(g) With respect to a Claim that has been estimated or otherwise allowed for voting purposes by order of the Bankruptcy Court, the amount and classification of such Claim shall be that set by the Bankruptcy Court.

(h) With respect to a Claim, any portion of which is unliquidated, contingent or disputed, the holder of the Claim shall be entitled to vote that portion of the Claim that is liquidated, non-contingent and undisputed, subject to any limitations set forth herein and unless otherwise ordered by the Bankruptcy Court.

(i) Holders of Claims shall not be entitled to vote Claims to the extent such Claims duplicate or have been superseded by other Claims of such holders of Claims.

(j) If the holder of a Claim submits more than one Ballot voting the same Claim or Interest prior to the deadline for submission of Ballots, the first of such Ballots Filed (and only such Ballot) shall be counted in accordance with the Voting Procedures unless either (i) the Debtors consent to the Filing and counting of a superseding Ballot, or (ii) the Bankruptcy Court, after notice and a hearing, orders otherwise.

(k) The authority of the signatory of each Ballot to complete and execute such Ballot shall be presumed.

(l) A holder of a Claim must vote all of its Claim within a particular Class under the Plan either to accept or reject the Plan and may not split its vote. Accordingly, a Ballot (or multiple Ballots with respect to separate Claims within a single Class) that partially rejects and partially accepts the Plan or that indicates both a vote for and against the Plan will not be counted.

(m) Any Ballot which is executed and returned, but does not indicate an acceptance or rejection of the applicable Plan, shall be deemed to be an acceptance of the Plan.

(n) Any Ballot that is not signed will not be counted.

(o) For the purpose of voting on the Plan, the Debtors will be deemed to be in constructive receipt of any Ballot timely delivered to any address designated for the receipt of Ballots cast in connection with the Plan.

(p) Any Ballot received by the Debtors after the end of the Voting Period shall not be accepted or used by the Debtors in connection with the Debtors' request for Confirmation of the Plan unless the Debtors, in their sole discretion, consent to the counting of such Ballot or the Bankruptcy Court orders such Ballot to be counted.

(q) All Ballots must be cast using the Ballots distributed to the holders of Claims. Votes cast in any manner other than by using such Ballots will not be counted.

(r) Each holder of an Allowed Class 5 General Unsecured Claim who submits a Ballot and does not vote to accept or reject the Comvest Release shall be deemed to consent to the Comvest Release.

END OF ORDER

Order Approved and Submitted By:

/s/ Virgil Ochoa
Holland N. O'Neil (TX 14864700)
Virgil Ochoa (TX 24070358)
GARDERE WYNNE SEWELL LLP
3000 Thanksgiving Tower
1601 Elm Street
Dallas, TX 75201-4761
Telephone: (214) 999-3000
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COUNSEL FOR DEBTORS AND DEBTORS IN POSSESSION

~~EXHIBIT 1~~

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	**Chapter 11**
HI WAY EQUIPMENT COMPANY LLC, HI WAY HOLDINGS LLC and HWE REAL ESTATE LLC	§	**Case No. 13-41498-RFN-11**
	§	**(Jointly Administered)**
Debtors.	§	

CLASS [INSERT] – [INSERT PLAN CLASS]
BALLOT FOR ACCEPTING OR REJECTING FIRST AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION

Hi Way Equipment Company LLC ("**Hi Way Equipment**"), Hi Way Holdings LLC ("**Hi Way Holdings**"), and HWE Real Estate LLC ("**HWE**"), the debtors and debtors in possession in the above captioned cases (collectively, the "**Debtors**") jointly filed (as an exhibit to their Disclosure Statement, defined below) their *First Amended Joint Chapter 11 Plan of Liquidation* (the "**Plan**") in their bankruptcy cases. This Ballot has been provided to you for your use in voting on the Plan.

In relation to your vote, on [INSERT DATE], the Bankruptcy Court approved the Debtors' *Disclosure Statement in Support of First Amended Joint Chapter 11 Plan of Liquidation* (the "**Disclosure Statement**"). The Disclosure Statement provides information to assist you in deciding how to vote your Ballot. A copy of the Disclosure Statement has been provided to you along with this Ballot. If you do not have a copy of the Disclosure Statement, you may obtain a copy from UpShot Services LLC's ("**Upshot**") website www.upshotservices.com/hi-way, or from counsel for the Debtors: Gardere Wynne Sewell LLP, Attn: Karen Oliver, 1601 Elm Street, Suite 3000, Dallas, Texas 75201 koliver@gardere.com. Please note that the Bankruptcy Court's approval of the Disclosure Statement does not constitute the Bankruptcy Court's approval or disapproval of the Plan.

YOU SHOULD REVIEW THE DISCLOSURE STATEMENT AND PLAN BEFORE YOU VOTE. YOU SHOULD ALSO REVIEW THE ENCLOSED *ORDER APPROVING DISCLOSURE STATEMENT WITH RESPECT TO DEBTORS' FIRST AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION* ("DISCLOSURE STATEMENT ORDER"), PRIOR TO COMPLETING THIS BALLOT. YOU MAY ALSO WISH TO SEEK LEGAL ADVICE CONCERNING THE PLAN AND THE CLASSIFICATION AND TREATMENT OF YOUR CLAIM UNDER THE PLAN BEFORE COMPLETING THIS BALLOT. IF YOU HOLD CLAIMS IN MORE THAN ONE CLASS UNDER THE PLAN YOU HAVE BEEN PROVIDED A SEPARATE BALLOT FOR EACH SUCH CLASS. THIS BALLOT IS TO BE USED SOLELY FOR VOTING IN RELATION TO YOUR CLASS [INSERT] CLAIM.

BALLOTING DEADLINE

To have your vote on the Plan count, you must complete, sign and return this Ballot to the Balloting Agent so that it is **actually received** by the Balloting Agent by no later than the Balloting Deadline.

Balloting Deadline: [INSERT] at 5:00 p.m. (CST)

Balloting Agent: UpShot Services LLC

[See next page]

DELIVER BALLOTS TO:

By Overnight Carrier, United States Postal Service or Hand Delivery:
Hi-Way Ballot Processing Center c/o UpShot Services LLC 7808 Cherry Creek South Drive, Suite 112 Denver, CO 80231

If your Ballot is not received by the Balloting Agent on or before the Balloting Deadline, and such deadline is not extended, your vote will not be counted. Ballots received by facsimile or other means of electronic submission other than the approved e-mail delivery will not be counted. If the Bankruptcy Court confirms the Plan, the Plan will be binding on you whether or not you vote.

ITEM 1. AGGREGATE AMOUNT OF CLAIMS IN CLASS [INSERT]. The undersigned certifies that as of [INSERT DATE], the Record Date, the undersigned was the Holder of an Allowed [INSERT PLAN CLASS] Claim in the aggregate amount set forth below:

AGGREGATE AMOUNT OF [PLAN CLASS] CLAIM: $ [Pre-printed]

RECORD HOLDER: [Pre-printed]

If you disagree with the information set forth above as to the present holder or the amount of this Claim, you must seek relief from the Bankruptcy Court to correct that information.

ITEM 2. VOTE ON THE PLAN. The Holder of the Claims set forth in Item 1 above, hereby votes with respect to his, her or its Claim as follows (check ONE box only):

☐ to ACCEPT the Plan ☐ to REJECT the Plan

ITEM 3. RELEASE OF COMVEST PURSUANT TO PLAN. The Holder of the Claims set forth in Item 1 above, hereby votes with respect to his, her or its Claim as follows (check ONE box only):

☐ to ACCEPT the Comvest Release ☐ to REJECT the Comvest Release

[See next page]

CLAIMANT CERTIFICATIONS AND SIGNATURE

[You **MUST** complete the following section of this Ballot in order for the Ballot to be valid and counted]

By signing this Ballot, the undersigned certifies the following:

A. I am the holder of a Claim within Class [INSERT] of the Plan ([INSERT CLASS NAME) or am an authorized signatory for such holder having full power and authority to vote and to make or forego the election as set forth herein.

B. I have been provided with a copy of the Plan, Disclosure Statement and Disclosure Statement Order and acknowledge that the vote set forth on this Ballot is subject to all the terms and conditions set forth in the Plan, Disclosure Statement and Disclosure Statement Order; and

C. I have not submitted any other Ballots relating to this Class of [INSERT CLASS NAME] that are inconsistent with the votes as set forth in this Ballot or that, if such other Ballots were previously submitted, they either have been or are hereby revoked or changed to reflect the vote set forth herein.

Dated: _____

Signature: _____

Printed Name: _____

Title: _____
(if signing on behalf of the holder of the claim)

Address: _____

_____

_____

Telephone No.: _____

Email Address: _____

Tax ID No.: _____

RETURN THIS BALLOT SO THAT IT IS RECEIVED ON OR BEFORE 5:00 p.m. (CST), on [INSERT DATE], by UpShot, at the appropriate address indicated in the preceding instructions.

~~EXHIBIT 2~~

Holland N. O'Neil (TX 1486 4700)
Virgil Ochoa (TX 24070358)
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3000 Thanksgiving Tower
1601 Elm Street
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COUNSEL FOR DEBTORS AND DEBTORS IN POSSESSION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	§	**Chapter 11**
	§	
HI-WAY EQUIPMENT COMPANY LLC, HI-WAY HOLDINGS LLC and HWE REAL ESTATE LLC,	§	**Case No. 13-41498-RFN-11**
	§	
	§	**(Jointly Administered)**
	§	
Debtors.	§	

NOTICE OF HEARING ON CONFIRMATION OF DEBTORS' FIRST AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION

PLEASE TAKE NOTICE that a hearing (the "**Confirmation Hearing**") has been scheduled for _____ before the Honorable Russell F. Nelms, United States Bankruptcy Judge for the Northern District of Texas, at Eldon B. Mahon U.S. Courthouse, 501 W. 10th Street, Fort Worth, Texas 76102 (the "**Bankruptcy Court**"), on the confirmation of the *First Amended Joint Chapter 11 Plan of Liquidation* [Docket No. 240] (the "**Plan**") filed by Hi-Way Equipment Company LLC ("**Hi-Way Equipment**"), Hi-Way Holdings LLC ("**Hi-Way Holdings**"), and HWE Real Estate LLC ("**HWE**"), the debtors and debtors-in-possession in the above-captioned cases (collectively, the "**Debtors**"). The Confirmation Hearing may be continued from time to time without further notice to parties in interest. Additionally, the Plan may be modified, pursuant to section 1127 of the Bankruptcy Code, prior to or as a result of the Confirmation Hearing, without further notice to parties in interest. Capitalized terms used, but not defined, herein have the meanings ascribed to such terms in the *Disclosure Statement in Support of the Debtors' First Amended Joint Chapter 11 Plan of Liquidation* [Docket No. __] (the "**Disclosure Statement**"). The Bankruptcy Court approved the Disclosure Statement on _____, 2013.

Your rights may be "impaired" by the Plan. If you hold a Claim that the Plan classifies in

Classes 1 or 5 (collectively the "**Voting Classes**"), you may be entitled to vote to accept or reject the Plan. The Debtors are mailing to all known creditors in the Voting Classes a complete solicitation package, which includes a ballot, a copy of the Plan, a copy of the Disclosure Statement, a copy of the Bankruptcy Court's order approving the Disclosure Statement and a copy of this Notice (the "**Solicitation Package**"). If you hold a Claim in the Voting Classes, please review and consider the Solicitation Package carefully, follow the instructions to complete your ballot, and timely return your ballot.

If you hold a claim that the Plan classifies in Classes 2 – 4, you will not receive a ballot because your class is unimpaired under the Plan and presumed to accept the Plan.

If you hold an equity interest in Plan Class 6, you will not receive a ballot as your class has been deemed to reject the Plan.

Balloting Deadline: The deadline to submit a ballot voting to accept or reject the Plan is **_____, 2013, at 5:00 PM (CST)** (the "**Balloting Deadline**"). For a Ballot to be counted, it must be received by UpShot Services LLC (the "**Balloting Agent**") prior to the Balloting Deadline at the following address:

Hi-Way Ballot Processing Center c/o UpShot Services LLC
7808 Cherry Creek South Drive, Suite 112
Denver, CO 80231
Toll-free: (855) 812-6112

Confirmation Objection Deadline: Any objection to Confirmation must conform with the Local Rules of the United States Bankruptcy Court for the Northern District of Texas, including, without limitation, attaching declarations and copies of all documentary evidence on which the objecting party intends to rely, and be filed with the Bankruptcy Court, and copies must be served on each of the following parties and any other party to whom the objection is addressed or responsive (the "**Notice Parties**") so that such objection is received by the Bankruptcy Court and served on the Notice Parties on or before **_____, 2013**:

Debtors' Reorganization Counsel	Office of the United States Trustee
Holland N. O'Neil Gardere Wynne Sewell LLP 1601 Elm Street, Suite 3000 Dallas, TX 72501	Elizabeth Ziegler Office of the United States Trustee Asst. US Trustee – Region 6 1100 Commerce Street Room 976 Dallas, TX 75242

Any untimely or non-compliant objections to Confirmation of the Plan may be summarily stricken or overruled by the Court.

Claim Estimation Procedures: If you seek to challenge the disallowance of your claim for voting purposes, you must serve on the Debtors and file with the Court a motion for an order pursuant to Federal Rule of Bankruptcy Procedure 3018(a) temporarily allowing such claim in a

different Class and/or amount for purposes of voting to accept or reject the Plan by _____, 2013.

Copies of the Plan and/or Disclosure Statement will be provided upon request to the Debtors' Balloting Agent at Hi-WayInfo@upshotservices.com. Copies of the Plan and Disclosure Statement are also available on the Debtors' website at www.upshotservices.com/hi-way and are on file with the Clerk of the Bankruptcy Court, and may be reviewed during the regular hours of the Bankruptcy Court, or by accessing them on-line through the Interest website of the United States Bankruptcy Court for the Northern District of Texas (www.txnb.uscourts.gov).

DATED: August [___], 2013

Respectfully submitted by:

/s/ Virgil Ochoa
Holland N. O'Neil (TX 14864700)
Virgil Ochoa (TX 24070358)
GARDERE WYNNE SEWELL LLP
3000 Thanksgiving Tower
1601 Elm Street
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COUNSEL FOR DEBTORS AND DEBTORS IN POSSESSION

Summary Report: **Litéra® Change-Pro TDC 7.0.0.375 Document Comparison done on 8/29/2013 11:12:53 AM**	
Style Name: Default Style	
Original DMS:iw://gDocs/Gardere01/6349547/8	
Modified DMS: iw://gDocs/Gardere01/6354997/6	
Changes:	
Add	17
~~Delete~~	177
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Move To	1
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~~Table Delete~~	9
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format Changes	0
Total Changes:	205