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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:**

**HI-WAY EQUIPMENT COMPANY  
LLC, HI-WAY HOLDINGS LLC and  
HWE REAL ESTATE LLC**

**Debtors.**

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**Chapter 11**

**Case No. 13-41498-RFN-11**

**(Jointly Administered)**

**DISCLOSURE STATEMENT IN SUPPORT OF  
JOINT CHAPTER 11 PLAN OF LIQUIDATION**

**July 9, 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 Joint Chapter 11 Plan of Liquidation* (the “**Disclosure Statement**”) describes the *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 [REDACTED], 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] at [Time] 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], 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 Disbursing Agent will pursue 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.

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 <sup>1</sup>	Paid in Full.	Unimpaired. Not entitled to vote.
3	Secured Claim of Comvest	Paid in Full.	Unimpaired. Entitled to vote.
4	Other Secured Claims	Return of Collateral.	Unimpaired. Not entitled to vote.

<sup>1</sup> 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
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.	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. Comvest has a lien on substantially all of the Debtors’ assets. 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.

**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 and owns one-hundred percent (100%) of the equity interests of HWE and ninety-eight point zero one percent (98.01%) of the equity interests of Hi-Way Equipment. Hi-Way Holdings had 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 Eules, 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 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.

#### **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.

(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.***

Pursuant to § 1123(b)(3) of the Bankruptcy Code, the Disbursing Agent 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 Disbursing Agent shall exercise these rights in his sole discretion.

#### **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 [REDACTED], 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 or calling (214) 999-4963. 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.  
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Chief Restructuring Officer of the Debtors

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**COUNSEL FOR DEBTORS AND DEBTORS  
IN POSSESSION**

# **EXHIBIT A**

**EXHIBIT A**

Gardere01 - 6319888v.18

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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**

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

**JOINT CHAPTER 11 PLAN OF LIQUIDATION**

**July 9, 2013**

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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**”), hereby file this *Joint Chapter 11 Plan of Liquidation* (the “**Plan**”) pursuant to § 1121(a) of the Bankruptcy Code.

## ARTICLE I INTRODUCTION

### 1.1 *Introduction.*

This Plan is proposed by and on behalf of the Debtors under Chapter 11 of the Bankruptcy Code. Reference is made to the Disclosure Statement accompanying the Plan for a discussion of the Debtors’ history, operations, historical financial information, assets, and for a summary and analysis of the Plan. All holders of Claims against and Interests in a Debtor are encouraged to read the Plan and the Disclosure Statement in their entirety before voting to accept or reject the Plan. Other than the Disclosure Statement and any exhibits and schedules referenced therein or herein, no materials have otherwise been approved by the Debtors for use in soliciting acceptances of this Plan.

### 1.2 *General Plan Structure; Funding Sources.*

The execution and consummation of this Plan will be facilitated through the appointment of a Disbursing Agent to administer the Debtors’ Estates, monetize residual assets, if any, investigate and pursue Causes of Action in his sole discretion, and make distributions to certain Classes under the Plan. Distributions to be made pursuant to the Plan will be funded from Cash, the Contribution by Comvest (if applicable), liquidation of any remaining Assets, and the recoveries from any Causes of Action belonging to the Debtors’ Estates. The Debtors do not anticipate that a Distribution will be made to Class 5 General Unsecured Claims except from the Contribution.

## ARTICLE II DEFINITIONS AND INTERPRETATION

In addition to such other terms as may be defined in other provisions of the Plan, the following capitalized terms shall have the following meanings:

### 2.1 *Definitions.*

“**Ad Valorem Taxing Authorities**” shall mean any Entity that has a Claim for *ad valorem* taxes that is based on or assessed against any real or personal property of the Debtors or otherwise obligated to be paid by the Debtors and is secured as of the Effective Date by a Lien or security interest against such property, which Lien or security interest is valid, perfected, and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable non-bankruptcy law.

“**Administrative Expense**” shall mean (a) any cost or expense of administration in connection with these Cases of a kind specified in §§ 503(b) or 507(a)(1), including, without

limitation, the actual, necessary costs and expenses of preserving the Estates and of operating the business of the Debtors, including wages, salaries, commissions, or any other compensation for services rendered after the commencement of the Cases; (b) compensation for legal or other services, and reimbursement of costs and expenses under §§ 330(a) or 331 or otherwise allowed by the Court; and (c) all fees and charges assessed against the Estates under 28 U.S.C. § 1930.

**“Allowed”** shall mean, with respect to Claims and Interests, (a) any Claim against or Interest in the Debtors, proof of which is timely Filed or by order of the Bankruptcy Court is not or will not be required to be Filed, (b) any Claim or Interest that has been or is hereafter listed in the Schedules as neither disputed, contingent nor unliquidated, and for which no timely Filed proof of Claim has been Filed, or (c) any Claim allowed pursuant to the Plan and, in each such case in (a), (b) and (c) above, as to which either (i) no objection to the allowance thereof has been Filed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, (ii) such an objection is so Filed and the Claim or Interest shall have been allowed pursuant to a Final Order (but only to the extent so allowed), or (iii) such an objection is so Filed and the Claim or Interest shall have been stipulated as allowed by the Disbursing Agent, (but only to the extent so stipulated).

**“Assets”** shall mean all assets of the Debtors’ Estates.

**“Ballot”** shall mean the ballot form on which holders of Impaired Claims entitled to vote on the Plan shall indicate their acceptance or rejection of the Plan.

**“Balloting Deadline”** shall mean [REDACTED] at 5:00 p.m. (CDT), which is the deadline established by the Court for the submission of Ballots to the Debtors in accordance with the Voting Procedures.

**“Bankruptcy Code”** shall mean 11 U.S.C. §§ 101, *et seq.*

**“Bankruptcy Court”** or **“Court”** shall mean the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, or, if such court ceases to have jurisdiction over the Cases, such court or adjunct thereof having jurisdiction over the Cases.

**“Bankruptcy Rules”** shall mean the Federal Rules of Bankruptcy Procedure promulgated by the United States Supreme Court pursuant to 28 U.S.C. § 2075 as subsequently amended, and, where appropriate, the Local Bankruptcy Rules of the Bankruptcy Court.

**“Bar Date”** shall mean August 27, 2013, for the Filing of proofs of claim and proofs of interest by all parties other than governmental units, and shall mean Monday September 30, 2013, which is 182 days from the Petition Date, for the Filing of proofs of claims by all governmental units. The Bar Date is the last date on which proofs of claim or proofs of interest may be timely Filed against the Debtors.

**“Business Day”** shall mean any day except Saturday, Sunday, or any other day on which the law authorizes commercial banks in the State of Texas to be closed.



**“Cases”** shall mean the voluntary cases filed by the Debtors, currently pending in the Bankruptcy Court under Chapter 11 of the Bankruptcy Code and being jointly administered under Case No. 13-41498.

**“Cash”** shall mean cash and cash equivalents that evidence immediately available funds.

**“Cash Collateral”** shall mean any Cash of the Debtors or interest in Cash of the Debtors that serves as security for the repayment of a debt or the performance of an obligation owed by the Debtors to the holder of an Allowed Secured Claim.

**“Cause of Action”** shall mean any action, cause of action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, right to payment, and Claim, whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured and whether asserted or assertable directly, indirectly or derivatively, in law, equity or otherwise, including, without limitation (a) Chapter 5 Causes of Action; (b) damages (general, exemplary, or both) relating to or based on (i) fraud, negligence, gross negligence, willful misconduct, or any tort actions, (ii) violations of federal or state securities laws, (iii) violations of applicable corporate or partnership laws, (iv) breaches of fiduciary or agency duties, or (v) causes of action based upon alter ego or other liability theories; (c) damages based on any other claim of the Debtors, to the extent not specifically compromised or released pursuant to the Plan or an agreement referred to, or incorporated into, the Plan or Final Order entered after notice and opportunity for hearing; (d) any claims of the Debtors for equitable subordination under § 510(c) or under other applicable laws; (e) any claim of the Debtors to recharacterize one or more Claims as Interests; and (f) any unresolved objection to any Disputed Claim.

**“Chapter 5 Cause of Action”** shall mean any Cause of Action arising under §§ 510, 544 through 551 and 553 or otherwise arising under the Bankruptcy Code.

**“Chapter 7”** shall mean chapter 7 of the Bankruptcy Code.

**“Chapter 11”** shall mean chapter 11 of the Bankruptcy Code.

**“Claim”** shall mean a claim against the Debtors, whether or not asserted, as defined in § 101(5) of the Bankruptcy Code, by whatever right the Creditor may have against the Debtors.

**“Claim Objection Deadline”** shall be 45 days after the Bar Date.

**“Class”** shall mean any group of substantially similar Claims or Interests classified by the Plan pursuant to § 1122.

**“Collateral”** shall mean any property of the Debtors or interest in property of the Debtors that serves as security for the repayment of a debt or the performance of an obligation owed by the Debtors to the holder of an Allowed Secured Claim.

**“Comvest”** shall mean Comvest Investment Partners III, LLC.

**“Comvest Release”** shall mean the release provided by each holder of an Allowed Class 5 General Unsecured Claim who consents to the Comvest Release or is deemed to consent to the Comvest Release in exchange for Comvest making the Contribution. Each holder of an Allowed Class 5 General Unsecured Claim who consents to the Comvest Release or is deemed to consent to the Comvest Release shall forever release, waive and discharge all claims, obligations, suits, judgments, remedies, damages, demands, debts, rights, causes of action, and liabilities whatsoever against Comvest and any of its successors and assigns, arising under or in connection with or related to the Debtors, the Debtors’ Estates, the conduct of the Debtors’ business, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereunder arising, in law, equity, or otherwise.

**“Confirmation”** shall mean the entry of an order by the Court confirming this Plan.

**“Confirmation Date”** shall mean the date of the entry of the Confirmation Order by the Bankruptcy Court.

**“Confirmation Hearing”** shall mean the hearing held by the Bankruptcy Court regarding Confirmation of the Plan, as such may be continued from time to time.

**“Confirmation Order”** shall mean the order signed by the Bankruptcy Court and caused to be entered that confirms this Plan pursuant to § 1129 of the Bankruptcy Code.

**“Contribution”** shall mean cash in the amount of \$100,000 contributed by Comvest if and only if the Comvest Release is approved by the requisite amount of Class 5 General Unsecured Creditors and then only distributable to those claimants that have affirmatively consented to, or who are deemed to have consented to the Comvest Release as provided for in Section [10.2] hereof.

**“Creditor”** shall mean any Entity that is the holder of a Claim that arose on or before the Petition Date or a Claim of the kind specified in § 502(g), 502(h) or 502(i).

**“Debtors”** shall mean collectively, Hi-Way Equipment Company LLC, Hi-Way Holdings LLC and HWE Real Estate LLC.

**“Debtors Release of Comvest”** shall mean the Debtors’ release, waiver and discharge of all claims, obligations, suits, judgments, remedies, damages, demands, debts, rights, causes of action, and liabilities whatsoever against Comvest and any of its successors and assigns, arising under or in connection with or related to the Debtors, the Debtors’ Estates, the conduct of the Debtors’ business, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereunder arising, in law, equity, or otherwise. The Debtors do not believe that any such claims exist against Comvest.

**“Disallowed”** shall mean with respect to a Claim, or any portion thereof, that (a) has been disallowed by either a Final Order or pursuant to a settlement, or (b)(i) is set forth in the Schedules at zero or as contingent, disputed, or unliquidated and (ii) as to which a Bar Date has been established but no proof of claim has been Filed or deemed timely Filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely Filed under applicable law.

**“Disbursing Agent”** shall mean Charles W. Reeves, Jr., the Chief Restructuring Officer of the Debtors.

**“Disclosure Statement”** shall mean that certain *Disclosure Statement in Support of Joint Plan of Liquidation* accompanying this Plan, as approved by the Bankruptcy Court for distribution pursuant to § 1125 of the Bankruptcy Code, together with any amendments or modifications thereto.

**“Disputed Claim”** shall mean the portion (including, when appropriate, the whole) of a Claim that is not an Allowed Claim as to which: (a) a proof of Claim has been Filed, or deemed Filed under applicable law or order of the Bankruptcy Court; (b) an objection has been or may be timely Filed; and (c) such objection has not been: (i) withdrawn, (ii) overruled or denied in whole or in part pursuant to a Final Order, or (iii) granted in whole or part pursuant to a Final Order. Before the time that an objection has been or may be Filed, a Claim shall be considered a Disputed Claim (a) if the amount or classification of the Claim specified in the proof of Claim exceeds the amount or classification of any corresponding Claim scheduled by the Debtors in their Schedules, to the extent of such excess; (b) in its entirety, if any corresponding Claim scheduled by the Debtors has been scheduled as disputed, contingent or unliquidated in their Schedules; or (c) in its entirety, if no corresponding Claim has been scheduled by the Debtors in their Schedules.

**“Effective Date”** shall mean the first Business Day on which all conditions to the occurrence of the Effective Date have been satisfied or duly waived.

**“Entity”** shall mean any individual, corporation, partnership, joint venture, association, joint stock company, unincorporated organization, estate, trust, governmental unit, or other entity including the Debtors and the United States Trustee, whether singular or plural.

**“Equity”** shall mean the existing shares of stock of the Debtors.

**“Estates”** shall mean the bankruptcy estates created in these Cases pursuant to § 541 of the Bankruptcy Code.

**“Executory Contract”** shall mean any prepetition executory contract or unexpired lease governed by § 365 of the Code.

**“Face Amount”** shall mean (a) with respect to a particular Claim, (i) if the Claim is listed in the Schedules and the holder of such Claim has not Filed a proof of Claim within the applicable period of limitation fixed by the Bankruptcy Court pursuant to the Bankruptcy Code,

the Bankruptcy Rules or other applicable law, the amount of such Claim that is listed in the Schedules as not disputed, contingent or unliquidated; or (ii) if the holder of such Claim has Filed a proof of Claim with the Bankruptcy Court within the applicable period of limitation fixed by the Bankruptcy Court pursuant to the Bankruptcy Code, the Bankruptcy Rules or other applicable law, the liquidated amount stated in such proof of Claim, or such amount as is determined by the Final Order of the Bankruptcy Court; (b) in the case of an Administrative Expense, the liquidated amount set forth in any application Filed with respect thereto, or the amount set forth in the Debtors' books and records or such amount as is determined pursuant to a Final Order; or (c) in all other cases, zero or such amount as shall be fixed or estimated pursuant to a Final Order.

**"Fee Claim"** means a Claim by a Professional or any other party-in-interest pursuant to §§ 327, 328, 330, 331, 363, 503(b) or 1103 of the Bankruptcy Code or otherwise relating to services performed after the Petition Date and prior to and including the Effective Date.

**"File"** or **"Filed"** or **"Filing"** shall mean file or filed or filing with the Bankruptcy Court in these Cases.

**"Final Decree"** shall mean an Order of the Bankruptcy Court closing the Cases.

**"Final Order"** shall mean an Order or judgment of the Bankruptcy Court, which has not been reversed, vacated or stayed.

**"General Unsecured Claim"** shall mean a Claim against the Debtors that is not an Administrative Expense, a Priority Tax Claim, a Priority Non-Tax Claim, or a Secured Claim.

**"Impaired"** shall have the meaning as set forth in § 1124 of the Bankruptcy Code.

**"Interest"** shall mean an Equity interest in the Debtors, including, without limitation, all options or other rights to obtain such an interest or share of the Debtors.

**"Lien"** shall mean any security interest, charge against, encumbrance on or other interest in property, the purpose of which is to secure payment of a debt or performance of an obligation.

**"Order"** shall mean any mandate, precept, command, or direction given by a court.

**"Petition Date"** shall mean April 1, 2013, the date on which the Cases were commenced.

**"Plan"** shall mean this *Joint Chapter 11 Plan of Liquidation*, dated July 9, 2013, including any amendments or modifications hereto.

**"Plan Documents"** shall mean the agreements, documents and instruments entered into on or as of the Effective Date as contemplated by, and in furtherance of, the Plan (including all documents necessary to consummate the transactions contemplated in the Plan), copies of which shall be available to Creditors upon request to Debtors' counsel.

**“Priority Non-Tax Claim”** shall mean a Claim, other than an Administrative Expense Claim or a Priority Tax Claim, entitled to priority in payment under § 507(a).

**“Priority Tax Claim”** shall mean a Claim entitled to priority in payment pursuant to §§ 502(i) and 507(a)(8).

**“Professional”** shall mean each Entity that is either (a) employed pursuant to an order of the Court in accordance with §§ 327 or 1103 providing for compensation for services rendered prior to the Effective Date pursuant to §§ 327, 328, 329, 330 and 331, or (b) seeking compensation and reimbursement pursuant to §§ 503(b)(2) or (4).

**“Pro Rata Share”** shall mean, at any time, the proportion that the Face Amount of the Allowed Claim in a particular Class bears to the aggregate Face Amount of all Allowed Claims in such Class.

**“Record Date”** shall mean the date the Court fixes for the determination of holders of Claims entitled to vote on the Plan.

**“Rejection Claim”** shall mean any Claim arising from the rejection of any executory contract or unexpired lease. A Rejection Claim shall constitute a General Unsecured Claim.

**“Schedules”** shall mean the Schedules of Assets and Liabilities Filed by the Debtors under § 521 and Bankruptcy Rule 1007 on April 29, 2013, as amended from time to time.

**“Secured Claim”** shall mean a Claim that arose before the Petition Date, to the extent secured by a lien or other security interest on property of the Debtors, which lien is valid, perfected, and enforceable under applicable law and which is not subject to avoidance under the Bankruptcy Code or other applicable non-bankruptcy law and which is duly established in the Cases.

**“Unimpaired”** shall mean not Impaired.

**“Voting Procedures”** means the procedures for submitting a Ballot in which a holder of a Claim votes for or against the Plan as described in Section VI of the Disclosure Statement.

**“Voting Period”** means the period from the date of approval of the Disclosure Statement by the Bankruptcy Court through and including the Balloting Deadline, during which time holders of Claims or Interests must submit a Ballot.

## ***2.2 Interpretation, Rules of Construction, and Other Terms.***

(a) Any term used in this Plan that is not defined herein but that is used in the Bankruptcy Code or the Bankruptcy Rules, has the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules and shall be construed in accordance with the rules of construction thereunder.

(b) In the event of a conflict between the Plan and the Disclosure Settlement, the Plan will govern over the Disclosure Statement. In the event of a conflict between the Plan and any document implementing the Plan arises, the document shall govern. In the event a conflict between the Plan and the Confirmation Order arises, the Confirmation Order shall govern.

(c) The words “herein,” “hereto,” “hereunder,” and others of similar import, refer to the Plan as a whole and not to any particular article, section, or clause contained in this Plan.

(d) Unless specified otherwise in a particular reference, a reference in this Plan to an article or section is a reference to that article or section of this Plan.

(e) Unless otherwise provided for herein, any reference in this Plan to an existing document or instrument means such document or instrument as it may have been amended, modified, or supplemented from time to time.

(f) As contextually appropriate, each term stated in either the singular or plural shall include both the singular and the plural.

(g) In addition to the foregoing, the rules of construction set forth in § 102 of the Bankruptcy Code shall apply to this Plan.

(h) In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

(i) All exhibits to this Plan are incorporated into this Plan, and shall be deemed to be included in this Plan, regardless of when filed with the Court.

### **ARTICLE III CLASSIFICATION OF CLAIMS AND INTERESTS**

#### **3.1 *Administrative Expenses and Priority Tax Claims.***

As provided in § 1123(a), Administrative Expenses and Priority Tax Claims shall not be classified for purposes of voting or receiving distributions under the Plan. Rather, all such claims shall be treated separately as unclassified claims on the terms set forth in Article IV.

#### **3.2 *Classes of Claims and Interests.***

A Claim or Interest is in a particular Class only to the extent the Claim or Interest is an Allowed Claim or Allowed Interest as defined herein. For purposes of organization, voting, and all confirmation matters, except as otherwise provided herein, all Claims (except for Administrative Expenses and Priority Tax Claims) and Interests shall be classified as follows:

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 <sup>1</sup>	Paid in Full.	Unimpaired. Not entitled to vote.
3	Secured Claim of Comvest	Paid in Full.	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.	Impaired. Entitled to vote.
6	Interests	No distribution. Interests shall be cancelled on the Effective Date.	Impaired. Deemed to reject the Plan.

### 3.3 Tabulation of Votes on a Consolidated Basis.

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.

<sup>1</sup> 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.

**ARTICLE IV  
TREATMENT OF CERTAIN UNCLASSIFIED CLAIMS**

**4.1 Administrative Expenses.**

**(a) Time for Filing Administrative Expenses.**

The holder of any Administrative Expense other than (i) a Fee Claim, or (ii) an Allowed Administrative Expense must file with the Bankruptcy Court and serve on all parties required to receive such notice an application for the allowance of such Administrative Expense on or before thirty (30) days after the Effective Date. Such notice must include, at a minimum (i) the name of the holder of the Claim, (ii) the amount of the Claim, and (iii) the basis of the Claim. Failure to timely and properly file and serve the application required under this subsection shall result in the Administrative Expense being forever barred and discharged. Any party in interest may file an objection to an Administrative Expense filed pursuant to this subsection, but any objection must be filed within twenty (20) days after the date the Administrative Expense is served. No hearing may be held until the twenty (20) day objection period has terminated.

**(b) Time for Filing Fee Claims.**

Each Professional who holds or asserts an Administrative Expense that is a Fee Claim for compensation for services rendered and reimbursement of expenses incurred prior to the Effective Date shall be required to file with the Bankruptcy Court and serve on all parties entitled to receive such notice a fee application within sixty (60) days after the Effective Date. Failure to timely and properly file and serve a fee application as required under this Section shall result in the Fee Claim being forever barred and discharged. No Fee Claim will be deemed Allowed until an order allowing the Fee Claim becomes a Final Order. Any party in interest may file an objection to a Fee Claim, but any objection must be filed within twenty (20) days after the date the fee application is served. No hearing may be held until the twenty (20) day objection period has terminated.

**(c) Allowance of Administrative Expenses.**

An Administrative Expense with respect to which notice has been properly filed pursuant to this Article of the Plan shall become an Allowed Administrative Expense if no timely objection is filed. If a timely objection is filed, the Administrative Expense shall become an Allowed Administrative Expense only to the extent Allowed by a Final Order. An Administrative Expense that is a Fee Claim, and with respect to which a Fee Application has been properly filed and served pursuant to Section 4.1(b) of the Plan, shall become an Allowed Administrative Expense only to the extent Allowed by a Final Order.

**(d) Payment of Allowed Administrative Expenses.**

Each holder of an Allowed Administrative Expense shall be paid by the Disbursing Agent the amount of such holder's Allowed Administrative Expense in Cash within thirty (30) days after such Claim is Allowed by a Final Order, or receive such other treatment as otherwise specified in the Plan or agreed upon in writing by the Disbursing Agent and such holder;



provided, however, that an Administrative Expense representing a liability incurred in the ordinary course of business by the Debtors may be paid in the ordinary course of business by the Debtors or the Disbursing Agent. Each Allowed Fee Claim, after deducting any retainer, shall be paid within five (5) Business Days after such Claim is Allowed by a Final Order.

#### **4.2 *Priority Tax Claims.***

At the option of the Disbursing Agent, each holder of an Allowed Priority Tax Claim shall receive on account of such Allowed Priority Tax Claim either (i) payment in full in Cash of such Allowed Priority Tax Claim on or as soon as practicable after the later of (a) the Effective Date, (b) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, and (c) payment in full of Administrative Expenses, Non-Tax Priority Claims with claims higher in priority under § 507(a); (ii) regular installment payments in Cash, over a period ending not later than one (1) year after the Petition Date, of a total value, as of the Effective Date, equal to the Allowed amount of such Priority Tax Claim; or (iii) such other treatment agreed to by the holder of such Allowed Priority Tax Claim and the Disbursing Agent. To the extent interest is required to be paid on any Allowed Priority Tax Claim, the rate of such interest shall be the rate provided in § 511. Notwithstanding the foregoing, any penalty arising with respect to or in connection with an Allowed Priority Tax Claim shall be treated as a Class 5 General Unsecured Claim. **The Debtors can make no assurances that there will be sufficient cash available to make payment in full to Allowed Priority Tax Claims. However, to the extent there exists funds available for distribution after payment in full of all Allowed Administrative Expenses, Allowed Claims in Classes 1 through 4, and statutory fees described below, all such Allowed Priority Tax Claims shall be paid in full prior to the payment of any Allowed Claims in Class 5, except to the extent Allowed Claims in Class 5 are paid from the Contribution.**

#### **4.3 *Payment of Statutory Fees.***

All fees due and payable on or before the Effective Date (i) pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, and (ii) to the United States Trustee, shall be paid by the Debtors on or before the Effective Date. All such fees payable after the Effective Date shall be paid by the Disbursing Agent.

### **ARTICLE V TREATMENT OF CLAIMS AND INTERESTS**

#### **5.1 *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 this Section 5.1 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.

**5.2 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 this Section 5.2 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.

**5.3 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 provided in this Section 5.3 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.

**5.4 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 this Section 5.4 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.

#### **5.5 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 this Section 5.5 are in full settlement, release and discharge of each such holder's Class 5 General Unsecured Claim.

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

#### **5.6 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.

**ARTICLE VI  
MEANS FOR IMPLEMENTATION OF THE PLAN**

**6.1 *General Company Matters.***

The Debtors shall take such action as is necessary under the laws of the State of Texas, federal law and other applicable law to effect the terms and provisions of the Plan and the Plan Documents.

**6.2 *Continuing Existence; Timing of Dissolution.***

(a) From and after the Confirmation Date, the Debtors shall continue in existence, to the extent necessary, for the purpose of facilitating the efforts of the Disbursing Agent, including to (i) wind up the Debtors' affairs, (ii) liquidate any remaining assets of the Estates as expeditiously as reasonably possible, (iii) enforce and prosecute claims, interests, rights and privileges of the Debtors, (iv) resolve Disputed Claims, (v) administer the Plan, and (vi) file appropriate tax returns.

(b) Upon the disposition of all Assets of the Debtors' Estates pursuant to the Plan and the filing by or on behalf of the Debtors of a certification to that effect with the Bankruptcy Court, the Debtors shall be deemed dissolved for all purposes without the necessity for any further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith; provided, however, that the Disbursing Agent shall file with the appropriate state authority a certificate of cancellation, if necessary.

**6.3 *Disbursing Agent.***

(a) Charles W. Reeves, Jr. shall be appointed as the Disbursing Agent. The Disbursing Agent shall be deemed appointed upon entry of the Confirmation Order, without further motion, application, notice, hearing or other order of the Bankruptcy Court.

(b) The Plan will be administered by the Disbursing Agent and all actions taken thereunder in the name of the Debtors shall be taken through the Disbursing Agent. As of the Effective Date, the Disbursing Agent shall be an officer and the sole director of the Debtors.

(c) After the Effective Date, all remaining property of the Estates shall be managed under the direction of the Disbursing Agent as provided by the terms of the Plan. In the performance of his duties hereunder, the Disbursing Agent shall have the rights and powers of a debtor in possession under § 1107 of the Bankruptcy Code, and such other rights, powers and duties incident to causing performance of the obligations under the Plan or otherwise as may be reasonably necessary, including, without limitation, the filing of any necessary tax returns.

(d) The Confirmation Order shall provide the Disbursing Agent with express authority to convey, transfer and assign any and all property of the Estates consistent with the terms of the Plan and to take all actions necessary to effectuate same, without further approval by the Bankruptcy Court.

(e) The Disbursing Agent shall have the authority to settle, dismiss, non-suit, or pursue any Cause of Action without further order by the Bankruptcy Court.

#### **6.4 *Liquidation of Assets.***

On and after the Effective Date, without additional authorization by the Bankruptcy Court, the Disbursing Agent may use, sell, assign, transfer, abandon or otherwise dispose of at a public or private sale any remaining Assets of the Debtors or their Estates for the purpose of liquidating and converting such assets to Cash, making distributions, and administering and fully consummating the Plan.

#### **6.5 *Accounts/Investments.***

The Disbursing Agent may establish one or more interest-bearing accounts as he determines may be necessary or appropriate to effectuate the provisions of the Plan. All Cash held by the Disbursing Agent in any accounts or otherwise shall be invested in accordance with § 345 of the Bankruptcy Code or as otherwise permitted by a Final Order of the Bankruptcy Court, and such account shall be held for the benefit of holders of Allowed Claims in the Cases.

#### **6.6 *Indemnification.***

The Debtors and their Estates shall, to the fullest extent permitted by Texas law, indemnify and hold harmless the Disbursing Agent and his agents, representatives, attorneys, professionals and employees (each an “**Indemnified Party**”), from and against any and all liabilities, losses, damages, claims, costs and expenses, including, without limitation, attorneys’ fees and costs, arising out of or due to their actions or omissions with respect to the implementation or administration of the Plan, if the Indemnified Party acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Debtors or their Estates, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

#### **6.7 *Effectiveness of Securities, 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, including, without limitation, any agreement entered into or instrument issued or in connection with any of the foregoing or any other Plan Document.

#### **6.8 *Approval of Agreements.***

The solicitation of votes on the Plan shall be deemed a solicitation for the approval of the Plan Documents and all transactions contemplated by the Plan. Entry of the Confirmation Order shall constitute approval of the Plan Documents and such transactions and authorization for the Disbursing Agent and the Debtors, as appropriate, to execute and deliver each of the Plan Documents.

**6.9 Cancellation and Surrender of Existing Securities; Cancellation of Indentures.**

(a) *Cancellation of Existing Securities and Agreements.* 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.

(b) *Surrender of Existing Securities.* 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.

**6.10 Release of Liens and Perfection of Liens.**

Except as otherwise provided in the Plan, any Plan Document or the Confirmation Order, each holder of a Secured Claim, or a judgment, shall, on the Effective Date (x) turn over and release to the Disbursing Agent any and all Collateral that secures or purportedly secures such Claim, as they pertain to the properties currently owned or leased by the Debtors or such Lien shall automatically, and without further action by the Debtors or the Disbursing Agent, be deemed released, and (y) execute such documents and instruments as the Debtors or the Disbursing Agent may request to evidence such Creditor's release of such property or Lien. Any such holder that fails to execute and deliver such release of Liens within thirty (30) days of the Effective Date shall be deemed to have no further Claim against the Debtors or their Assets or property in respect of such Claim and shall not participate in any distribution hereunder. Notwithstanding the immediately preceding sentence, any holder of a Disputed Claim shall not be required to execute and deliver such release until such time as the holder's Claim is Allowed or Disallowed.

**6.11 Entry of Final Decree.**

As soon as is practicable after the Effective Date, the Disbursing Agent shall File an application with the Clerk of the Court requesting the entry of a Final Decree closing the Cases; provided, however, the Disbursing Agent shall not File an application for Final Decree in these Cases until and unless the conditions to the Plan becoming effective in Article VII herein have been fully met, and objections to Disputed Claims have been resolved by Final Order of the Bankruptcy Court.

**6.12 Retention of Rights to Pursue Causes of Action.**

(a) Pursuant to § 1123(b)(3), as of the Effective Date, the Disbursing Agent 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 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 or by other order of the Bankruptcy Court entered prior to the Effective Date. The Disbursing Agent shall exercise those rights in his sole discretion.

Except as otherwise provided herein, all Causes of Action that the Debtors and their Estates may hold against any Person or Entity shall automatically vest in the Debtors or their Estates. The Disbursing Agent shall have the exclusive right, authority, and discretion to institute, prosecute, abandon, settle, or compromise any and all such Causes of Action without the consent or approval of any third party and without any further order of the Bankruptcy Court, except as otherwise provided herein.

On the Effective Date all Causes of Action shall vest in the existing Debtors or their Estates, which shall hold and possess all rights on behalf of the Debtors or their Estates, to commence and pursue any and all Causes of Action (under any theory of law, including, without limitation, the Bankruptcy Code, and in any court or other tribunal). The failure to list or describe any unknown Cause of Action herein is not intended to limit the rights of the Disbursing Agent, to pursue any unknown Cause of Action. Unless Causes of Action against a Person or Entity are expressly waived, relinquished, released, compromised or settled herein or through any Final Order, the Debtors, their Estates and the Disbursing Agent expressly reserve all Causes of Action (including the unknown Causes of Action) for later adjudication and therefore, no preclusion doctrine or other rule of law, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such Causes of Action upon, after, or as a result of the Confirmation or Effective Date of the Plan, or the Confirmation Order. In addition, the Debtors, their Estates and the Disbursing Agent expressly reserve the right to pursue or adopt any claims not so waived, relinquished, released, compromised or settled that are alleged in any lawsuit in which the Debtors or their Estates are defendants or interested parties, against any Person or Entity, including, without limitation, the plaintiffs and co-defendants in such lawsuits. Such retained potential causes of action include, without limitation (i) any potential Causes of Action against any past or present insider of the Debtors, (ii) any causes of action related to the extent, validity and priority of any liens, (iii) any actions for breach of contract, and (iv) any actions arising in tort. The Disbursing Agent shall have the right to identify any additional Causes of Action prior to the Effective Date of the Plan.

(b) The Disbursing Agent shall also retain and may prosecute and enforce all defenses, counterclaims, and rights that have been asserted or could be asserted on behalf of the Debtors against or with respect to all Claims asserted against the Debtors or property of the Estates. No claim, right, Cause of Action, or other Asset shall be deemed waived or otherwise forfeited by virtue of the Debtors' failure to identify such property in the Debtors' Schedules or the Disclosure Statement accompanying the Plan unless otherwise ordered by the Bankruptcy Court.

(c) The Disbursing Agent will continue to review payments made by and transactions involving the Debtors prior to the Petition Date to determine whether preference and other actions to avoid such payments and transactions should be brought. Failure to specifically identify potential actions in the Plan shall not be deemed a waiver of any such action by the Debtors or any other party.

**ARTICLE VII  
CONDITIONS PRECEDENT TO EFFECTIVE DATE;  
EFFECT OF PLAN CONFIRMATION**

**7.1 *Conditions to Confirmation.***

The Confirmation Order shall have been entered in form and substance reasonably acceptable to Debtors.

**7.2 *Conditions Precedent to the Effective Date.***

The occurrence of the Effective Date of the Plan is subject to the occurrence of the following conditions precedent:

(a) 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; and

(b) The Confirmation Order shall have become a Final Order and shall authorize and direct the Debtors and the Disbursing Agent to take all actions necessary or appropriate to implement and consummate the provisions of, and transactions described or contemplated in, the Plan.

**ARTICLE VIII  
CLAIM OBJECTIONS, AND  
MISCELLANEOUS DISTRIBUTION PROVISIONS**

**8.1 *Objections.***

An objection to the allowance of a Claim (other than an Administrative Expense) shall be in writing and may be Filed only by the Disbursing Agent at any time on or before the Claims Objection Deadline. The Disbursing Agent will prosecute any such objection until determined by a Final Order unless the Disbursing Agent (i) compromises and settles such objection to a Claim or Interest by written stipulation, or (ii) withdraws such objection.

**8.2 *Distributions/Alternative Treatment.***

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.



**8.3 Distributions Under the Plan.**

(a) **Distributions to be Pro Rata Within a Class.** 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.

(b) **Allocation of Payments.** 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.

**8.4 No Distributions on Account of Disputed Claims.**

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.

**ARTICLE IX  
EXECUTORY CONTRACTS**

**9.1 Rejection of Executory Contracts.**

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. All claims based on the rejection of any contract must be filed by the Bar Date.

**ARTICLE X  
RELEASES; INDEMNIFICATION; PLAN INJUNCTION**

**10.1 General Releases.**

(a) Except as otherwise specifically provided by the Plan, the distributions and rights that are provided in the Plan shall be in complete satisfaction and release, effective as of the Confirmation Date (but subject to the occurrence of the Effective Date) of (i) all Claims and Causes of Action against, liabilities of, liens on, obligations of and Interests in the Debtors

and the assets and properties of the Debtors, whether known or unknown, and (ii) all Causes of Action against, Claims against, liabilities (as guarantor of a Claim or otherwise) of, Liens on the direct or indirect assets and properties of, the Debtors and their successors and assigns based on the same subject matter as any Claim or Interest or based on any act or omission, transaction or other activity or security, instrument or other agreement of any kind or nature occurring, arising or existing prior to the Effective Date that was or could have been the subject of any Claim or Interest, in each case regardless of whether a proof of Claim or Interest was Filed, whether or not Allowed and whether or not the holder of the Claim or Interest has voted on the Plan.

(b) On the Effective Date, the Debtors shall be deemed to release unconditionally each present officer (including, without limitation Charles, W. Reeves, Jr. and John Koskiewicz), consultant, financial advisor, attorney, accountant and other representative of the Debtors (the “**Released Parties**”), from any and all claims, obligations, suits, judgments, damages, rights, causes of action and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, based in whole or in part upon or related to any act or omission, transaction, event or other occurrence taking place on or at any time from the Petition Date through and including the Effective Date in any way relating to the Debtors, the Cases or the Plan, except that no Released Party shall be released from acts or omissions which are the result of willful misconduct or fraud.

## **10.2 Releases of Comvest.**

(a) The Comvest Release shall be 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.**

(b) If the foregoing condition in Section 10.2(a) is satisfied, each holder of an Allowed Class 5 General Unsecured Claim that affirmatively votes to accept the Comvest Release 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.**

(c) **IF THE CONDITION IN SECTION 10.2(A) IS SATISFIED, THEN, 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.**

(d) 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.

### **10.3 Provisions Applying to All Releases.**

(a) The foregoing release provisions are an integral part of the Plan and are essential to its implementation. If, and to the extent that the Bankruptcy Court concludes that the Plan cannot be confirmed with any portion of the foregoing releases, the Debtors reserve the right to amend the Plan so as to give effect as much as possible to the foregoing releases, or to delete them.

(b) Nothing in the Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies, including, without limitation, any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States against any party or person other than the Debtors, nor shall anything in the Confirmation Order or the Plan enjoin the United States Government from bringing any claim, suit, action, or other proceedings against any non-Debtor party or person for any liability of such persons whatever, including without limitation any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States against such persons, nor shall anything in the Confirmation Order or the Plan exculpate any non-Debtor party or person from any liability to the United States Government or any of its agencies, including any liabilities arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States against any non-Debtor party or person.

### **10.4 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, 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.

(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.

## **ARTICLE XI MISCELLANEOUS**

### ***11.1 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.

### ***11.1 Successors and Assigns.***

The rights, benefits, and obligations of any Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Entity.

### ***11.2 Cram Down.***

If all the applicable requirements for Confirmation of the Plan are met as set forth in § 1129(a) of the Bankruptcy Code, except subsection (8) thereof, the Debtors may request the Bankruptcy Court to confirm the Plan pursuant to § 1129(b), notwithstanding the requirements of § 1129(a)(8), on the basis that the Plan is fair and equitable as to that Debtors' Creditors and does not discriminate unfairly with respect to any Impaired Class of Claims against the Debtors that does not vote to accept the Plan as described in the Disclosure Statement. The Debtors reserve the right to alter the treatment of any Class in order to effectuate a cram down under § 1129(b).

### ***11.3 Modification of the Plan.***

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

**11.4 *Withdrawal or 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.

**11.5 *Notices.***

All notices, requests, elections, or demands in connection with the Plan shall be in writing and shall be deemed to have been given when received or, if mailed, five (5) days after the date of mailing provided such writing shall have been sent by registered or certified mail, postage prepaid, return receipt requested, and sent to the following:

To the Debtors:                   Hi-Way Equipment Company, LLC  
Hi-Way Holdings LLC and  
HWE Real Estate LLC  
Attn: Charles W. Reeves, Jr.  
926 N Sam Houston Pkwy E.  
Houston, TX 77032

Counsel for the Debtors:       Holland N. O'Neil  
3000 Thanksgiving Tower  
1601 Elm Street  
Dallas, Texas 75201  
Telephone: (214) 999-3000  
Facsimile: (214) 999-3961

To the Disbursing Agent:       Charles W. Reeves, Jr.  
926 N Sam Houston Pkwy E.  
Houston, TX 77032

All notices and requests to Creditors and Interest holders shall be sent to their last known addresses. The Debtors and the Disbursing Agent may designate in writing any other address for purposes of this Section, which designation shall be effective upon receipt.

**11.6 *Implementation of Plan.***

The parties shall use reasonable efforts and shall cooperate with one another to effect the transactions contemplated by the Plan. Each of the parties hereto shall execute such documents and other papers and take such further actions as may be reasonably required or desirable to carry out the provisions hereof and the transactions contemplated hereby.

**11.7 *Governing Law.***

Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas.

### **11.8 Severability.**

Should any term or provision of the Plan be determined the Bankruptcy Court to be invalid, void or unenforceable, such determination shall in no way limit or affect the enforceability or operative effect of any other provision of the Plan. If any term or provision of the Plan is of such a character as to deny Confirmation, the Debtors reserve the right to strike such provisions from the Plan and seek Confirmation of the Plan as modified. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

### **11.9 Exculpation.**

(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 hereto, 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.

**11.10 Binding Effect.**

This Plan shall be binding upon and inure to the benefit of the Debtors, the Disbursing Agent, all present and future holders of Claims and Interests, and their respective successors and assigns, and all other parties in interest in the Cases.

Date: July 9, 2013

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  
Holland N. O'Neil (TX 14864700)  
Virgil Ochoa (TX 24070358)  
**GARDERE WYNNE SEWELL LLP**  
3000 Thanksgiving Tower  
1601 Elm Street  
Dallas, TX 75201-4761  
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[honeil@gardere.com](mailto:honeil@gardere.com)  
[vochoa@gardere.com](mailto:vochoa@gardere.com)

**COUNSEL FOR DEBTORS AND DEBTORS  
IN POSSESSION**

# **EXHIBIT B**

**EXHIBIT B**

Gardere01 - 6319888v.18



**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.**

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**Chapter 11**

**Case No. 13-41498-RFN-11**

**(Jointly Administered)**

**ORDER APPROVING DISCLOSURE STATEMENT WITH RESPECT TO DEBTORS’  
JOINT CHAPTER 11 PLAN OF LIQUIDATION**

Upon the record of the hearing held on [DATE], 2013, (the “**Disclosure Statement Hearing**”) to consider the *Disclosure Statement in Support of 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 [REDACTED], 2013 at [REDACTED] 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

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[honeil@gardere.com](mailto:honeil@gardere.com)

[vochoa@gardere.com](mailto:vochoa@gardere.com)

**COUNSEL FOR DEBTORS AND DEBTORS IN POSSESSION**

**ORDER APPROVING DISCLOSURE STATEMENT WITH RESPECT  
TO DEBTORS' JOINT CHAPTER 11 PLAN OF LIQUIDATION – Page 8**



# **EXHIBIT 1**

**EXHIBIT 1**

Gardere01 - 6319888v.18

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

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

**CLASS [INSERT] – [INSERT PLAN CLASS]  
BALLOT FOR ACCEPTING OR REJECTING 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 *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 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](http://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](mailto: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’ 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.

<b>Balloting Deadline:</b>	[INSERT] at 5:00 p.m. (CST)
<b>Balloting Agent:</b>	UpShot Services LLC

**[See next page]**

**DELIVER BALLOTS TO:**

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

**EXHIBIT 2**

Gardere01 - 6319888v.18

Holland N. O’Neil (TX 1486 4700)  
Virgil Ochoa (TX 24070358)  
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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** § **Case No. 13-41498-RFN-11**  
**LLC, HI-WAY HOLDINGS LLC and** §  
**HWE REAL ESTATE LLC,** § **(Jointly Administered)**  
§  
**Debtors.** §

**NOTICE OF HEARING ON CONFIRMATION OF DEBTORS’ JOINT CHAPTER 11  
PLAN OF LIQUIDATION**

**PLEASE TAKE NOTICE** that a hearing (the “**Confirmation Hearing**”) has been scheduled for [redacted] 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 *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’ Joint Chapter 11 Plan of Liquidation* [Docket No. [redacted]] (the “**Disclosure Statement**”). The Bankruptcy Court approved the Disclosure Statement on [redacted], 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

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

Office of the United States Trustee

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](mailto:Hi-WayInfo@upshotservices.com). Copies of the Plan and

Disclosure Statement are also available on the Debtors' website at [www.upshotservices.com/highway and are](http://www.upshotservices.com/highwayandare) 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](http://www.txnb.uscourts.gov)).

DATED: July [ ], 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  
Dallas, TX 75201-4761  
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**COUNSEL FOR DEBTORS AND DEBTORS  
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