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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	§	(* • (* A * a t t t a a a a a a a a a a a a a a a
HWE REAL ESTATE LLC,	§	(Jointly Administered)
	§	
Debtors.	§	

## STIPULATION TO CONTINUE USE OF CASH COLLATERAL

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"), and Comvest Investment Partners III, LLC ("Comvest,") hereby agree and stipulate as follows:

1. On April 2, 2013, the Debtors filed their Emergency Motion for Interim and Final Orders 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, (5) Modifying Automatic Stay and (6) Scheduling a Final Hearing [Docket No. 25] (the "DIP/Cash Collateral")

**Motion**") requesting, *inter alia*, Court authorization to use cash collateral as defined in section 363 of the Bankruptcy Code<sup>1</sup> ("Cash Collateral").

- 2. On April 24, 2013, the 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") authorizing the Debtors to enter into a debtor in possession financing agreement with CNH Capital America LLC ("CNH") to use Cash Collateral until the earlier of the "Maturity Date (as defined in the DIP Loan Documents) or the Termination Date." See Cash Collateral Order ¶ 14. Pursuant to the DIP Loan Documents (as defined in the Cash Collateral Order), the Maturity Date was "the earliest to occur of: (i) May 10, 2013, or such other date as may be subsequently agreed to in writing between Lender and Debtor Parties, (ii) the date the Sale Transaction is consummated...." See Debtor in Possession Credit and Security Agreement ¶ 2.1(b).
- 3. On May 10, 2013 (the "Closing Date"), the Debtors closed the sale of substantially all of their assets to Associated Supply Company, Inc. ("Asco"). On the Closing Date, the Debtors paid outstanding real property taxes of HWE, paid the secured claims of certain secured creditors, segregated the proceeds attributable to certain secured creditors' collateral, and segregated the proceeds necessary to satisfy certain outstanding *ad valorem* taxes.<sup>2</sup> After payments of certain secured claims and the real property taxes, the Debtors had

<sup>&</sup>lt;sup>1</sup> References to the Bankruptcy Code mean 11 U.S.C. §§ 101, et seq.

<sup>&</sup>lt;sup>2</sup> Pursuant to the 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 Debtors were authorized to distribute the sales proceeds to the respective secured creditors, to the extent the proceeds received were attributable to their respective collateral, or to segregate such proceeds pending final calculation of amounts due. Once final calculations are determined, the Debtors will distribute the segregated sales proceeds to the applicable secured creditors. The Debtors anticipate filing a Notice with the Court

\$4,583,114 in cash from the sale proceeds, and operations of their businesses. Of this amount, \$968,434 has been segregated for various secured lenders of Hi-Way Equipment, \$103,024 has been segregated for *ad valorem* taxes, and \$2,167,410 has been segregated from the sale of HWE's real property.

- 4. Approximately \$1,344,246 in unsegregated cash remains. This remaining cash is subject to the remaining liens of Comvest and constitutes Comvest's cash collateral ("Comvest Cash Collateral"). Since the Closing Date, Comvest has authorized the Debtors to use the Comvest Cash Collateral.
- 5. Following the sale, the Debtors are proceeding to formulate a plan of liquidation to wind down the Debtors and make final distributions. Comvest has stipulated to the Debtors' use of Comvest Cash Collateral pursuant to the amount set forth in the Budget attached hereto as **Exhibit A**, subject to further updates and modifications as agreed to by Comvest and the Debtors.

Agreed to by:

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COUNSEL FOR DEBTORS AND DEBTORS IN POSSESSION

and

with a full accounting of the secured creditors and taxing authorities paid from the sales proceeds once all calculations are finalized and agreed to by the parties.

COMVEST INVESTMENT PARTNERS III,

LLC

Pelee He Velecces By:\_\_ Name: Cecilio M. Rodriguez

Its: Chief Financial Officer

## **EXHIBIT A**

Hi-Way Equipment Company Post-Closing Budget Week Ending May 17 - August 30, 2013

	Actual	Actual	Actual				THE PERSON NAMED IN										Post Sale
WEEKENDING Beginning Bank Cash After Closing Distributions Ousstanding Hens	\$ 4,973,481 \$ (390,367) \$ 4 583 114	5/24/13	5/31/13	6/7/13	6/14/13 6	6/21/13 6	6/28/13	7/5/13 7.	7/12/13	7/19/13	7/26/13	8/2/13 8	8/9/13 8	8/16/13 8	8/23/13 8	8/30/13	Budget
Deginning Available Casii	110001																
CASH INFLOWS:						11	19		,		,	,	,				
EQUIPMENT SALES												•	1	1	'	<u>'</u>	
KEIN JAL, PAKIS & SERVICE FUNDINGS	1	'	.	. 	. 	 	١.		١.	١.	   '					•	
Whole Goods - Terms				i				,	1	ï	Ĭ	,	ć	4		,	,
WINDE GOODS - TEILIS	188.396	64.748	5.927				•	ì	ı	ï	í		ı			•	259,071
Retirmed ACH Payments/Deposits	(1,047)	(4,000)															(5,047)
Total Inflows	187,349	60,748	5,927					ı		r	,	ï			·		254,024
CASH OUTLOWS (EXPENSES) <u>Non-discretionary Items:</u>																	
PAYROLL & EMPLOYER TAXES (CK)	316,524	,	14,554	,	13,200	£	7,535	ć	3,600		,	7	,	ï	¢		355,413
PROFESSIONAL FEES/US TRUSTEE FEES	27,935	17,485	196,358	27,233	18,750	18,750	10,000	154,615	9,250	34,250	76,750	17,000	000'6	9,000	73,800	64,951	765,126
DOCUMENT RETENTIONW2 PRE-FUNDING				•	30,000	2,000							5	ı			32,000
PROPERTY TAXES (Ck)	r		ē			,	ì									. ,	37.518
MED, COMIL, WC INSUR, 401K FUNDING (Ck)	12,447			25,071										,			204,820
PAYMENT OF ESCROW HEMS			489				ī		1	1		ī	1	æ		ì.	489
OPEN LEASES - OFFICE EQUIT (CA) OTHER DAVAMENTS. (Final ACH/R) DG ACH/ CanEx (Ck)	4.931	810	? ,			,		1		ı	·	ı		·		7	5,741
ST SALES TAX/HEAVY EQUIP, INV. TAX (ACH)		191,156	3,560	,	,		ï		ï	ç				ı		r	194,716
TEXAS MARGIN TAX (CK) (Due May 15th)			1			1	ï	t		. 1				' '		. 4	- 0 645
BANK FEES (Autodraft)	3,295		,	2,900		200	,	1,000		200		09/		200		2000	1 605 468
SUBTOTAL- NON-DISCRETIONARY ITEMS	365,132	209,451	214,961	260,024	61,950	21,250	17,535	155,615	12,850	34,750	76,750	17,750	9,000	9,200	/3,800	02,431	1,003,400
SEMI-DISCRETIONARY AP ITEMS: OPPRATING EXPENSES AND SGRA	51.026	10,956	(300)	200	900	200	200	200	250	250	250	100	100	100	100	100	65,432
STIPLING EXILENSES WAS SOME.	51 026	10.956	(300)	200	200	200	200	200	250	250	250	100	100	100	100	100	65,432
SUBJUINE OF ENALTH SUBJUINE EXPENSES)	416.158	220.407	214,661	260,524	62,450	21,750	18,035	156,115	13,100	35,000	77,000	17,850	9,100	9,300	73,900	65,551	1,670,900
CASH OUTFLOWS (OTHER)																	
REIMBURSEMENTS OWED FROM ASCO	(161)	(663)	(489)			,	,	ī			T.	010			•		(1,643)
COLLECTIONS OWED TO CASE/GE/ASCO	84,961	22,357	5,927														15,240
SUBTOTAL - CASH OUTFLOWS (OTHERS)	84,800	21,364	5,438		ú	•		ï		•	1					1	111,602
ESCROWED AND ACCRUED ITEMS			(1)0 000	(000 3)				(60.745)		,						•	1
ACCRUED PROFESSIONAL FEES (NET OF RETAINERS)	245,000	- 000	(179,255)	(000,0)				(00,100)			ij	·			,	,	•
SALES, TERP AND HE IAXES	103,000	(100,000)					,	ì	,	č	ę	i	1			•	103,150
PROPERTY TAXES	1 962 590		- 5			,		ī				ì	*		·		1,962,590
HWE REALESTATE - WELLS FARGO	204,820	9	7	(204,820)				·			•	ï	·	ï			. 000
SECURED CREDITOR'S COLLATERAL	968,434	1	i	į	ï	¢		•	,	1	·	ı		í.			72 248
ACCRUED OPERATING EXPENSES	84,204	(10,956)	ï	ę	i			ì				ř.					0,5,5
US TRUSTEE FEES	25,000	1				-				(25,000)							
TOTAL ESCROWED AND ACCRUED ITEMS	3,773,198	(190,956)	(179,255)	(209,820)	1		1	(60,745)		(25,000)	1	1	1	1	1	1	3,107,422
TOTAL CASH OUTFLOWS	4,274,156	50,815	40,844	50,704	62,450	21,750	18,035	95,370	13,100	10,000	77,000	17,850	9,100	9,300	73,900	65,551	4,889,924
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