

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

In re:	§	
HII TECHNOLOGIES, INC.	§	Chapter 11
Debtor	§	Case No. 15-60070 (DRJ)
	§	(Jointly Administered)

**UNOPPOSED MOTION FOR ENTRY OF AGREED ORDER FOR RELIEF FROM
THE AUTOMATIC STAY PURSUANT TO BANKRUPTCY RULE 4001(d)**

A HEARING SHALL BE HELD ON THIS MATTER ON NOVEMBER 5, 2015 AT 10:00 AM IN COURTROOM 400, HOUSTON, TEXAS.

THIS IS A MOTION FOR RELIEF FROM THE AUTOMATIC STAY. IF IT IS GRANTED, THE MOVANTS MAY ACT OUTSIDE OF THE BANKRUPTCY PROCESS. IF YOU DO NOT WANT THE STAY LIFTED, IMMEDIATELY CONTACT THE MOVING PARTIES TO SETTLE. IF YOU CANNOT SETTLE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY AT LEAST 7 DAYS BEFORE THE HEARING. IF YOU CANNOT SETTLE, YOU MUST ATTEND THE HEARING. EVIDENCE MAY BE OFFERED AT THE HEARING AND THE COURT MAY RULE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

**To the Honorable David R. Jones,
Chief United States Bankruptcy Judge:**

Axis Capital, Inc. (“Axis”) hereby files this *Unopposed Motion for Entry of Agreed Order for Relief from the Automatic Stay Pursuant to Bankruptcy Rule 4001(d)* (this “Motion”).

In support of this Motion, Axis respectfully represents the following:

I. INTRODUCTION

1. By this Motion, Axis seeks this Court’s approval of the attached form of *Agreed Order for Relief from the Automatic Stay* (the “Agreed Order”) agreed to by and between the Debtor HII Technologies, Inc. (the “Debtor”) and Axis. A copy of the form of the Agreed Order is attached hereto as Exhibit “A”. Pursuant to the Agreed Order, the Debtor consents to relief from the automatic stay imposed under the provisions of Section 362 of the Bankruptcy Code authorizing Axis, upon entry of the Agreed Order, to retrieve the Axis Equipment (as defined

below) and dispose of same in accordance with the Axis Documents (as defined below) and applicable law.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157 and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for relief are 11 U.S.C. §§ 105, 362, and Rule 4001(d) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

III. BACKGROUND

3. On September 18, 2015 (the “Petition Date”), the Debtor filed a voluntary petition for reorganization in this Court under chapter 11 of 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”).

4. Prior to the Petition Date, the Debtor and Axis entered into that certain Master Lease Agreement #928619-0 dated 1/30/15 (as amended, restated, supplemented, or otherwise modified from time to time, the “Master Agreement”) and those certain Lease Schedule Nos. 928619-1, 928619-2, 928619-3, and 928619-4 (collectively and all as amended, restated, supplemented, or otherwise modified from time to time, the “Schedules,” and together with the Master Agreement, the “Axis Contracts”), and Axis asserts that it owns and/or possesses valid and properly perfected first-priority security interests in and liens on the equipment referred to and/or described in the Axis Contracts (collectively, the “Axis Equipment”).

5. Prior to the Petition Date, the Debtor breached the Axis Contracts by failing to make payments due thereunder.

6. Axis asserts that as of the Petition Date, the amount due and owing from the Debtor to Axis is no less than \$1,210,236.44.

7. Prior to the Petition Date, certain of the Axis Equipment was improperly used and/or stolen by non-Debtor entities without the Debtor's and Axis's consent, and the Debtor has previously agreed and continues to agree to cooperate with Axis in its attempt to locate and to retrieve the Axis Equipment.

8. Additionally, the Debtor has filed its Motion Pursuant to 11 U.S.C. § 365 to Reject Certain Executory Contracts, Effective Nunc Pro Tunc (the "Motion to Reject") [Dkt. No. 14]. The Motion to Reject seeks to reject certain executory contracts, including the Axis Contracts. Axis and the Debtor are not seeking a determination as to the nature of the Axis Contracts, but are seeking to ensure that the Axis Equipment is returned to Axis as quickly and efficiently as possible. Nothing in this Motion or the proposed Agreed Order waives or prejudices the Debtor's and/or Axis' rights and arguments with regard to whether the Axis Contracts are executory contracts or secured financing agreements.

IV. RELIEF REQUESTED

9. By this Motion, Axis respectfully requests that the Court enter the proposed Agreed Order. The proposed Agreed Order provides for immediate relief from the automatic stay to permit Axis to sell or otherwise dispose of Axis Equipment and apply any net sale or other disposal proceeds to amounts owed to Axis by the Debtor in accordance with the Axis Documents and applicable law.

V. BASIS FOR RELIEF REQUESTED

10. Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay is appropriate "for cause, including the lack of adequate protection of an interest in property...." 11 U.S.C. § 362(d)(1). Here, cause exists to grant Axis relief from the automatic stay because Axis's interest in the Axis Equipment is not being adequately protected. The Debtor has no equity in the Axis Equipment, portions of the Axis Equipment are missing and

other portions are at risk of disappearing, the Debtor is unable to make any post-petition payments, and persons to whom the Debtor previously provided access to the Axis Equipment have improperly absconded with certain portions of the Axis Equipment.

11. The approval of agreements providing for consensual relief from the automatic stay is governed by Bankruptcy Rule 4001(d).

12. Bankruptcy Rule 4001(d)(1)(C) directs that notice of a motion filed under Bankruptcy Rule 4001(d) be served on (a) the 20 largest unsecured creditors, and (b) on any other entity the Court directs.

13. This Motion is being filed with the proposed Agreed Order attached hereto as Exhibit "A". Moreover, as indicated on the Certificate of Service, notice of this Motion is being made in accordance with the requirements of Bankruptcy Rule 4001(d)(1)(C) and Local Bankruptcy Rule 4001.1.

14. Accordingly, Axis submits that the requirements under Bankruptcy Rule 4001(d) have been met.

WHEREFORE, for the foregoing reasons, Axis respectfully requests that the Court grant this Motion, enter the proposed Agreed Order attached as Exhibit "A", and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

CHAFFE MCCALL, L.L.P.

/s/ Kevin P. Walters

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Attorneys for Axis Capital, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of October, 2015, I served a true and correct copy of the foregoing Unopposed Motion for Entry of Agreed Order for Relief from the Automatic Stay Pursuant to Bankruptcy Rule 4001(d) via electronic means through the Court's CM/ECF system or by pre-paid regular first class U.S. Mail to the following:

HII Technologies, Inc.
8588 Katy Freeway, Suite 430
Houston, Texas 77024
(Debtor)

Apache Energy Services, LLC
793 Charco Street
Goliad, Texas 77963
(Joint Debtor)

Aqua Handling of Texas, LLC
1551 Damron Street
Beeville, Texas 78102
(Joint Debtor)

Hamilton Investment Group, Inc.
210 N. Buffalo Ave.
Guthrie, OK 73044
(Joint Debtor)

Christopher Donald Johnson
Hugh Massey Ray, III
McKool Smith P.C.
600 Travis, Suite 7000
Houston, Texas 77002
(Counsel for Debtors)

Office of the U.S. Trustee
515 Rusk Ave., Suite 3516
Houston, Texas 77002

Sage Power Solutions, Inc.
1551 Damron Street
Beeville, Texas 78102
(Joint Debtor)

/s/ Kevin P. Walters

Kevin P. Walters

**IN THE UNITED STATES BANKRUPTCY COURT
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In re:	§	
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Debtor	§	Case No. 15-60070 (DRJ)
	§	(Jointly Administered)

AGREED ORDER FOR RELIEF FROM THE AUTOMATIC STAY

Axis Capital, Inc. (“Axis”), having filed an *Unopposed Motion for Entry of Agreed Order for Relief from the Automatic Stay Pursuant to Bankruptcy Rule 4001(d)* (the “Motion”),¹ and based on all of the pleadings filed with the Court and sufficient cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

Grounds exist for modification of the automatic stay under Section 362(d) of the Bankruptcy Code; it is further

ORDERED that the automatic stay is modified to allow Axis to sell or otherwise dispose of the Axis Equipment and apply any net sale or other disposal proceeds to amounts owed to Axis by the Debtor in accordance with the Axis Contracts and applicable law; it is further

ORDERED that nothing in this Order waives or prejudices the Debtor’s and/or Axis’ rights and arguments with regard to whether the Axis Contracts are executory contracts or secured financing agreements; it is further

ORDERED that the fourteen (14) day stay required under Bankruptcy Rule 4001(a)(3) is hereby waived; it is further

ORDERED that the Bankruptcy Court shall retain jurisdiction over any and all disputes arising from the entry of this Agreed Order.

¹ Capitalized terms used herein have the same meanings as set forth in the Motion.

SIGNED this ____ day of _____, 2015.

DAVID R. JONES
CHIEF UNITED STATES BANKRUPTCY JUDGE

AGREED AND ENTRY REQUESTED:

McKOOL SMITH

By: /s/ Christopher D. Johnson
Christopher D. Johnson
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Attorneys for the Debtor HII Technologies, Inc.

-AND-

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