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17 **UNITED STATES BANKRUPTCY COURT**

18 **FOR THE DISTRICT OF NEVADA**

19 In re: 20 AHERN RENTALS, INC., 21 Debtor.	Case No.: BK-N-11-53860-BTB Chapter 11 Date: March 8, 2013 Time: 10:00 a.m.
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23 **NOTICE OF FILING REDLINE OF [PROPOSED] DISCLOSURE STATEMENT TO**
24 **ACCOMPANY DEBTOR’S SECOND PLAN OF REORGANIZATION**

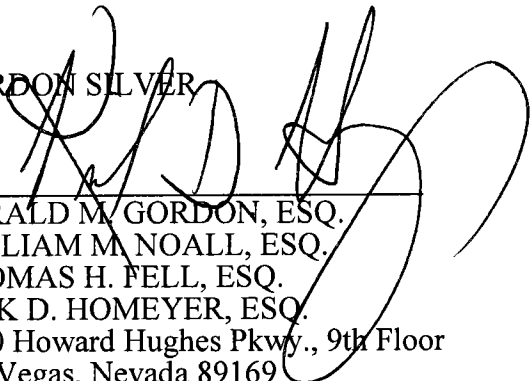
25 Attached hereto is a redline reflecting modifications made to *[Proposed] Disclosure*
26 *Statement to Accompany Debtor’s First Amended Plan of Reorganization* [ECF No. 1747] filed
27 by Ahern Rentals, Inc. (“Debtor”) on March 5, 2013, which modifications will be set forth in
28 *[Proposed] Disclosure Statement to Accompany Debtor’s Second Amended Plan of*



1 *Reorganization* [ECF No. 1747] (the "Disclosure Statement") to be filed following the
2 conclusion of the March 8, 2013 Disclosure Statement Hearing.

3 The attached redline is for information purposes only, and the Debtor reserves the right to
4 make further modifications to the Disclosure Statement.

5 DATED this 8th day of March, 2013.

6 GORDON SILVER 
7
8 By: _____
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17 Attorneys for Debtor

18 **UNITED STATES BANKRUPTCY COURT**
 19 **FOR THE DISTRICT OF NEVADA**

20 In re:

Case No.: 11-53860-BTB
 Chapter 11

21 AHERN RENTALS, INC.,

22 Debtor.

Date: March 8, 2013
 Time: 10:00 a.m.

24 **DISCLOSURE STATEMENT TO ACCOMPANY**
 25 **DEBTOR'S ~~FIRST~~SECOND AMENDED PLAN OF REORGANIZATION**

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1 THIS DISCLOSURE STATEMENT HAS NOT YET BEEN APPROVED BY THE
2 UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEVADA AS
3 COMPLYING WITH THE REQUIREMENTS OF SECTION 1125 OF THE
4 BANKRUPTCY CODE. THIS DISCLOSURE STATEMENT HAS BEEN SUBMITTED
5 TO THE BANKRUPTCY COURT FOR APPROVAL, BUT HAS NOT YET BEEN
6 APPROVED. INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS
7 SUBJECT TO COMPLETION AND AMENDMENT.

8 **DISCLAIMER**

9 THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS
10 INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE
11 DEBTOR'S ~~FIRST~~SECOND AMENDED PLAN OF REORGANIZATION (THE "DEBTOR
12 PLAN") OF AHERN RENTALS, INC. (THE "DEBTOR") AND MAY NOT BE RELIED
13 UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE
14 DEBTOR PLAN. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY
15 REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS
16 CONTAINED IN THIS DISCLOSURE STATEMENT, REGARDING THE DEBTOR PLAN
17 OR THE SOLICITATION OF ACCEPTANCES OF THE DEBTOR PLAN. ALL
18 REFERENCES TO THE DEBTOR PLAN SHOULD NOT BE CONFUSED WITH THE
19 PLAN OF REORGANIZATION FOR AHERN RENTALS, INC. PROPOSED BY CERTAIN
20 HOLDERS OF THE 9¼% SENIOR SECURED SECOND LIEN NOTES DUE 2013 (THE
21 "NOTEHOLDER PLAN") CONCURRENTLY BEING PROPOSED BY DEL MAR MASTER
22 FUND, LTD., FEINGOLD O'KEEFE CAPITAL, LLC, NOMURA CORPORATE
23 RESEARCH & ASSET MANAGEMENT, INC., OCH-ZIFF CAPITAL MANAGEMENT
24 GROUP, WAZEE STREET CAPITAL MANAGEMENT, LLC, AND SPHERE CAPITAL,
25 LLC – SERIES B (COLLECTIVELY, THE "NOTEHOLDER PROPONENTS").

26 THIS DISCLOSURE STATEMENT SETS FORTH CERTAIN INFORMATION
27 REGARDING THE DEBTOR'S PREPETITION OPERATING AND FINANCIAL HISTORY,
28 THE NEED TO SEEK CHAPTER 11 PROTECTION, SIGNIFICANT EVENTS DURING
THE CHAPTER 11 CASE, AND THE ANTICIPATED ORGANIZATION, OPERATIONS
AND FINANCING OF THE DEBTOR UPON SUCCESSFUL EMERGENCE FROM
CHAPTER 11. THIS DISCLOSURE STATEMENT ALSO DESCRIBES TERMS AND
PROVISIONS OF THE DEBTOR PLAN, CERTAIN EFFECTS OF CONFIRMATION OF
THE DEBTOR PLAN, CERTAIN RISK FACTORS, AND THE CONFIRMATION
PROCESS AND VOTING PROCEDURES THAT HOLDERS OF CLAIMS ENTITLED TO
VOTE UNDER THE DEBTOR PLAN MUST FOLLOW FOR THEIR VOTES TO BE
COUNTED.

EXCEPT AS OTHERWISE PROVIDED HEREIN, CAPITALIZED TERMS NOT
OTHERWISE DEFINED IN THIS DISCLOSURE STATEMENT HAVE THE MEANINGS
ASCRIBED TO THEM IN THE DEBTOR PLAN. UNLESS OTHERWISE NOTED, ALL
DOLLAR AMOUNTS PROVIDED IN THIS DISCLOSURE STATEMENT AND THE
DEBTOR PLAN ARE GIVEN IN UNITED STATES DOLLARS.

ALL CREDITORS ARE ADVISED AND ENCOURAGED TO READ THIS
DISCLOSURE STATEMENT AND THE DEBTOR PLAN IN THEIR ENTIRETY BEFORE

1 VOTING TO ACCEPT OR REJECT THE DEBTOR PLAN. DEBTOR PLAN SUMMARIES
2 AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN
3 THEIR ENTIRETY BY REFERENCE TO THE DEBTOR PLAN, THE EXHIBITS,
4 ANNEXES AND/OR SCHEDULES ATTACHED TO THE DEBTOR PLAN, THE PLAN
5 SUPPLEMENT DOCUMENTS ONCE FILED, AND THIS DISCLOSURE STATEMENT.
6 THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE
7 ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT
8 THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER
9 THE DATE HEREOF.

10 THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE
11 WITH SECTION 1125 OF THE UNITED STATES BANKRUPTCY CODE AND RULE
12 3016(c) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT
13 NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS
14 OR OTHER NON-BANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS BEEN
15 NEITHER APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE
16 COMMISSION (THE "SEC"), NOR HAS THE SEC PASSED UPON THE ACCURACY OR
17 ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. PERSONS OR ENTITIES
18 TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING
19 SECURITIES OR CLAIMS OF AHERN RENTALS, INC. SHOULD EVALUATE THIS
20 DISCLOSURE STATEMENT AND THE DEBTOR PLAN IN LIGHT OF THE PURPOSE
21 FOR WHICH THEY WERE PREPARED.

22 AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER
23 ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT
24 CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR
25 LIABILITY, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN
26 SETTLEMENT NEGOTIATIONS PURSUANT TO RULE 408 OF THE FEDERAL RULES
27 OF EVIDENCE AND OTHER APPLICABLE EVIDENTIARY RULES. THIS
28 DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-
BANKRUPTCY PROCEEDING NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE
ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE DEBTOR
PLAN AS TO HOLDERS OF CLAIMS AGAINST, OR EQUITY INTERESTS IN, AHERN
RENTALS, INC.

TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230,
EACH HOLDER IS HEREBY NOTIFIED THAT (A) ANY DISCUSSION OF U.S.
FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR
WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY ANY
HOLDER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED
ON A HOLDER UNDER THE TAX CODE; (B) SUCH DISCUSSION IS INCLUDED
HEREBY BY THE DEBTOR IN CONNECTION WITH THE PROMOTION OR
MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY THE DEBTOR OF THE
TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) EACH HOLDER
SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN
INDEPENDENT TAX ADVISOR.

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- APPENDIX "A": DEBTOR PLAN
- APPENDIX "B": FINANCIAL PROJECTIONS
- APPENDIX "C": LIQUIDATION ANALYSIS
- APPENDIX "D": VALUATION ANALYSIS

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I.
INTRODUCTION

Ahern Rentals, Inc., the debtor and debtor in possession in the above-referenced Chapter 11 Case (No. 11-53860-BTB), submits this disclosure statement (the “Disclosure Statement”) pursuant to Section 1125 of title 11 of the United States Code (the “Bankruptcy Code”), for use in the solicitation of votes on the Debtor Plan. **A copy of the Debtor Plan is attached as Appendix A to this Disclosure Statement. All capitalized terms used in this Disclosure Statement but not otherwise defined herein have the meanings ascribed to such terms in Section I of the Debtor Plan.**

This Disclosure Statement sets forth certain information regarding the Debtor’s pre-petition operating and financial history, its reasons for seeking protection and reorganization under Chapter 11, significant events that have occurred during the Chapter 11 Case and the anticipated organization, operations, and financing of the Debtor upon its successful emergence from Chapter 11. This Disclosure Statement also describes certain terms and provisions of the Debtor Plan, certain effects of confirmation of the Debtor Plan, certain risk factors associated with the Debtor Plan and the manner in which Distributions will be made under the Debtor Plan. In addition, this Disclosure Statement discusses the confirmation process and the voting procedures that Holders of Claims entitled to vote under the Debtor Plan must follow for their votes to be counted.

Pursuant to the provisions of the Bankruptcy Code, only classes of claims or interests that are (i) “impaired” by the Debtor Plan and (ii) entitled to receive a distribution under such Debtor Plan are entitled to vote on the Debtor Plan. In the Debtor’s case, only Claims and Equity Interests in **Classes 2, 3, 6, 7, and 8** are impaired by and entitled to receive a Distribution under the Debtor Plan, and only the Holders of Claims and Equity Interests in those Classes are entitled to vote to accept or reject the Debtor Plan. Claims and Equity Interests in **Classes 1, 4, 5, and 9** are unimpaired by the Debtor Plan, and such holders are conclusively presumed to have accepted the Debtor Plan.

FOR A DESCRIPTION OF THE DEBTOR PLAN AND VARIOUS RISKS AND OTHER FACTORS PERTAINING TO THE DEBTOR PLAN, PLEASE SEE ARTICLE V OF THIS DISCLOSURE STATEMENT, ENTITLED “SUMMARY OF THE PLAN OF REORGANIZATION” AND ARTICLE VI OF THIS DISCLOSURE STATEMENT, ENTITLED “CERTAIN RISK FACTORS TO BE CONSIDERED.”

THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE DEBTOR PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN DOCUMENTS RELATING TO THE DEBTOR PLAN, CERTAIN EVENTS THAT HAVE OCCURRED IN THE CHAPTER 11 CASE, AND CERTAIN FINANCIAL INFORMATION. ALTHOUGH THE DEBTOR BELIEVES THAT ALL SUCH SUMMARIES ARE FAIR AND ACCURATE AS OF THE DATE HEREOF, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF UNDERLYING DOCUMENTS AND TO THE EXTENT THAT THEY MAY CHANGE AS PERMITTED BY THE DEBTOR PLAN AND APPLICABLE LAW. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTOR’S MANAGEMENT, EXCEPT WHERE

1 OTHERWISE SPECIFICALLY NOTED. THE DEBTOR DOES NOT WARRANT OR
2 REPRESENT THAT THE INFORMATION CONTAINED IN THIS DISCLOSURE
3 STATEMENT, INCLUDING THE FINANCIAL INFORMATION, IS WITHOUT ANY
4 MATERIAL INACCURACY OR OMISSION.

4 NOTHING CONTAINED IN THIS DISCLOSURE STATEMENT CONSTITUTES
5 AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY. THIS DISCLOSURE
6 STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY
7 PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, NOR SHALL IT
8 BE DEEMED CONCLUSIVE ADVICE ON THE TAX OR OTHER LEGAL EFFECTS OF
9 THE REORGANIZATION AS TO HOLDERS OF ALLOWED CLAIMS OR INTERESTS.
10 YOU SHOULD CONSULT YOUR PERSONAL COUNSEL OR TAX ADVISOR WITH
11 RESPECT TO ANY QUESTIONS OR CONCERNS REGARDING TAX, SECURITIES, OR
12 OTHER LEGAL CONSEQUENCES OF THE DEBTOR PLAN.

13 CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE
14 STATEMENT IS BY ITS NATURE FORWARD LOOKING AND CONTAINS
15 ESTIMATES, ASSUMPTIONS, AND PROJECTIONS THAT MAY BE MATERIALLY
16 DIFFERENT FROM ACTUAL, FUTURE RESULTS. Except with respect to the financial
17 projections set forth in the attached Appendix B (the "Financial Projections") and except as
18 otherwise specifically and expressly stated herein, this Disclosure Statement does not reflect
19 any events that may occur subsequent to the date hereof and that may have a material impact
20 on the information contained in this Disclosure Statement. The Debtor does not undertake any
21 obligation to, and does not intend to, update the Financial Projections; thus, the Financial
22 Projections will not reflect the impact of any subsequent events not already accounted for in
23 the assumptions underlying the Financial Projections. Further, the Debtor does not anticipate
24 that any amendments or supplements to this Disclosure Statement will be distributed to reflect
25 such occurrences. Accordingly, the delivery of this Disclosure Statement will not under any
26 circumstance imply that the information herein is correct or complete as of any time
27 subsequent to the date hereof. Moreover, the Financial Projections are based on assumptions
28 that, although believed to be reasonable by the Debtor, may differ from actual results.

19 **THE DEBTOR BELIEVES THAT THE DEBTOR PLAN WILL ENABLE THE**
20 **DEBTOR TO SUCCESSFULLY REORGANIZE AND ACCOMPLISH THE**
21 **OBJECTIVES OF CHAPTER 11 AND THAT ACCEPTANCE OF THE DEBTOR**
22 **PLAN IS IN THE BEST INTERESTS OF THE DEBTOR AND ITS CREDITORS,**
23 **INCLUDING THE HOLDERS OF CLAIMS AND EQUITY INTERESTS IN CLASSES**
24 **2, 3, 6, 7, AND 8. THE DEBTOR URGES SUCH HOLDERS TO VOTE TO ACCEPT**
25 **THE DEBTOR PLAN.**

24 The Debtor believes that the Debtor Plan provides for substantially better treatment of
25 Claims and Equity Interests than the Noteholder Plan provides, because, among other things,
26 the Debtor Plan embodies a business plan that projects a significantly higher enterprise value
27 for Reorganized Ahern and provides for a one hundred percent (100%) recovery to all Classes
28 of Claims, plus interest from the Petition Date. Specifically, the Debtor Plan provides for the
payment of interest on Allowed Claims accruing after the Petition Date and a greater recovery
to the Holders of Second Lien Loan Claims, even if such Holders do not vote to accept the
Debtor Plan, than the Noteholder Plan projects for such Holders. Indeed, the Debtor Plan

1 provides Holders of Second Lien Loan Claims consideration equal to par (\$237 million) if
2 they vote in favor of the Debtor Plan (\$160 million in cash plus \$77 million of secured notes)
3 or secured notes equal to par plus accrued pre- and post-petition interest (approximately \$308
4 million) if they do not. The Noteholder Plan provides no Cash recovery to the Second Lien
5 Loan Claims and offers only equity securities with no details as to any business plan,
6 governance rights, management team, exit financing, or determination as to value. In addition
7 to the right to receive \$160 million in Cash, the Debtor Plan contemplates a Reorganized
8 Ahern in which the Junior Secured A Notes or Junior Secured B Notes are senior to all equity
9 interests and receive the benefit of a proven management team and business strategy, as most
10 recently demonstrated by pro forma LTM EBITDA (as defined below) growing during the
11 pendency of the case from approximately \$77 million at the end of 2011 to approximately
12 \$117 million at the end of 2012. Conversely, the Debtor maintains that the Noteholder Plan
13 may result in a complete change in management and, thus, is subject to greater execution risk,
14 and is not confirmable because, among other things, it improperly classifies claims, rests on
15 artificially low valuation, and has other substantive and technical flaws.

16 ~~[NOTEHOLDER STATEMENT REGARDING DEBTOR PLAN]~~

17 Notwithstanding the Noteholder Proponents' contentions regarding the Debtor Plan, the
18 Debtor believes that the Debtor Plan is the best alternative for Creditors to realize the full
19 extent of their Claims and to maximize the value for the Debtor's Estate. Therefore, the
20 Debtor urges all Creditors entitled to vote on the Debtor Plan to vote to accept the Debtor
21 Plan and to evidence such acceptance by returning properly completed ballots to the
22 appropriate voting agent as set forth on the ballots within the time stated in the notice served
23 with this Disclosure Statement.

24 The Appendices to this Disclosure Statement included in the Appendix are
25 incorporated into, and are a part of, this Disclosure Statement. The Debtor Plan is attached as
26 Appendix A. Any interested party desiring further information should contact:

27 Gordon Silver

28 Attn: William M. Noall, Esq.

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1 New York, New York 10020

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3 Email: gregg.galardi@dlapiper.com

4 Interested parties may also obtain further information from the Bankruptcy Court at the
5 following websites: <http://www.nvb.uscourts.gov>, or from the Chapter 11 Case website of
6 Kurtzman Carson Consultants, LLC located at <http://www.kccllc.net/ahern>. Each Holder of a
7 Claim entitled to vote on the Debtor Plan should read this Disclosure Statement, the
8 Appendices hereto including the Debtor Plan, and the instructions accompanying the Ballots in
9 their entirety before voting on the Debtor Plan. These documents contain important
10 information concerning the classification of Claims and Equity Interests for voting purposes
11 and the tabulation of votes.

12 II.

13 **INFORMATION REGARDING THE DEBTOR PLAN AND THIS DISCLOSURE** 14 **STATEMENT**

15 ***1. What is Chapter 11?***

16 Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code.
17 Under Chapter 11, a debtor is authorized to reorganize its business for the benefit of itself, its
18 creditors, and equity interest holders. The commencement of a Chapter 11 case creates an
19 estate that is comprised of all of the legal and equitable interests of the debtor as of the filing
20 date. The Bankruptcy Code provides that the debtor may continue to operate its business and
21 remain in possession of its property as a “debtor-in-possession.”

22 ***2. What is the objective of a Chapter 11 bankruptcy case?***

23 The objective of a Chapter 11 bankruptcy case is confirmation (i.e. approval by the
24 bankruptcy court) of a plan of reorganization.

25 ***3. What is a plan of reorganization?***

26 A plan describes in detail (and in language appropriate for a legal contract) the means
27 for satisfying claims against, and equity interests in, a debtor.

28 ***4. What happens after a plan is filed?***

After a plan has been filed, the holders of such claims and equity interests that are
impaired (as defined in Section 1124 of the Bankruptcy Code) and receiving some cash and/or
property on account of such claims or equity interests are permitted to vote to accept or reject
the plan.

5. What is a disclosure statement and its purpose?

Before a debtor or other plan proponent can solicit acceptances of a plan, Section 1125
of the Bankruptcy Code requires the debtor or other plan proponent to prepare a disclosure

1 statement containing adequate information of a kind, and in sufficient detail, to enable those
2 parties entitled to vote on the plan to make an informed voting decision about whether to
accept or reject the plan.

3 The purpose of this Disclosure Statement is to provide sufficient information about the
4 Debtor and the Debtor Plan to enable Holders of Impaired Claims to make an informed voting
5 decision about whether to accept or reject the Debtor Plan (Holders of other Claims will be
deemed to have accepted or rejected the Debtor Plan, as the case may be, without the need for
them to vote).

6
7 **6. What will happen after the Bankruptcy Court approves this Disclosure
Statement?**

8 This Disclosure Statement will be used to solicit acceptances of the Debtor Plan only
9 after the Bankruptcy Court has found that this Disclosure Statement provides adequate
10 information in accordance with Section 1125 of the Bankruptcy Code and has entered an order
11 approving this Disclosure Statement. Approval by the Bankruptcy Court is not an opinion or
12 ruling on the merits of the Debtor Plan and it does not mean that the Debtor Plan has been or
13 will be approved by the Bankruptcy Court. Further, the Bankruptcy Court may find that this
Disclosure Statement and the Noteholder Disclosure Statement (as defined below) both
provide adequate information in accordance with Section 1125 of the Bankruptcy Code. In
the event of such a finding, the Bankruptcy Court may approve both disclosure statements.

14 **7. Who may vote to accept or reject a plan?**

15 Generally, holders of allowed claims or equity interests that are “impaired” under a
16 plan of reorganization and who are receiving some cash or property on account of such claims
17 or equity interests are permitted to vote on the plan. A claim is defined by the Bankruptcy
18 Code and the Debtor Plan to include a right to payment from a debtor. In order to vote, a
19 creditor must have a Claim that is neither a Disallowed Claim nor a Claim subject to a
pending Claim objection. The solicitation of votes on the Debtor Plan will be sought only
from Holders of Claims whose Claims are Impaired and who will receive property or rights
under the Debtor Plan.

20 **8. Do I have an Allowed Claim?**

21 You have an Allowed Claim if you have a Claim against the Debtor (i) that has been
22 scheduled as a liquidated, non-contingent, and undisputed Claim in an amount greater than
23 zero on the Schedules, subject to Debtor’s right to amend the Schedules on or before the
Claims Objection Deadline, (ii) as to which no objection or request for estimation has been
24 filed on or before the Administrative Claims Objection Deadline, the Claims Objection
Deadline or the expiration of any other applicable period fixed by the Bankruptcy Court or the
25 Debtor Plan; (iii) as to which any and all objections have been settled, waived, withdrawn or
denied by a Final Order or in accordance with the Debtor Plan; or (iv) that is allowed (a) by a
26 Final Order, (b) by an agreement between the Holder of such Claim and the Debtor or
Reorganized Ahern or (c) pursuant to the terms of the Debtor Plan. Under the Debtor Plan,
27 the deadline for filing objections to Claims is the first Business Day following (i) 180 days
28 following the Effective Date; or (ii) such other date as may be established by an order of the

1 Bankruptcy Court. If your Claim is not an Allowed Claim, it is a Disputed Claim under the
2 Debtor Plan for payment purposes; however, you are still entitled to vote to accept or reject
3 the Debtor Plan if your Claim is a Disputed Claim. If you are uncertain as to the status of
4 your Claim or if you have a dispute with the Debtor, you should check the Bankruptcy Court
5 record carefully, including the Schedules of the Debtor, and seek appropriate legal advice.
6 Neither the Debtor nor its professionals can advise you about such matters.

7 **9. *Is my Claim Impaired?***

8 Holders of Impaired Claims include those whose legal, equitable, or contractual rights
9 are altered by the Debtor Plan, even if the alteration is beneficial to the Creditor, or if the full
10 amount of the Allowed Claims will not be paid under the Debtor Plan. Holders of Claims
11 which are not Impaired under the Debtor Plan will be deemed to have accepted the Debtor
12 Plan pursuant to Section 1126(f) of the Bankruptcy Code, and the Debtor need not solicit
13 acceptance of the Debtor Plan by Holders of such Unimpaired Claims. Holders of Claims
14 which are to receive nothing under the Debtor Plan will be deemed to have voted to reject the
15 Debtor Plan. Consequently, only Impaired Holders of Claims in Classes 2, 3, 6, 7, and 8 are
16 entitled to vote on the Debtor Plan.

17 **10. *How is a plan approved?***

18 Generally, in order for a plan to be confirmed, it must be accepted by at least one
19 impaired class of claims, excluding the votes of any insiders within that class. A class of
20 claims is deemed to have accepted the plan if and when allowed votes representing at least
21 two-thirds in amount and a majority in number of the claims of the class actually voting cast
22 votes in favor of the plan.

23 **11. *What happens if there are two confirmable plans of reorganization?***

24 In the event the Bankruptcy Court allows the Debtor and the Noteholder Proponents to
25 solicit their respective plans, at the Confirmation Hearing the Bankruptcy Court will determine
26 whether both plans satisfy the requirements of Section 1129 of the Bankruptcy Code such that
27 they are both confirmable. If the Bankruptcy Court determines that both plans are confirmable
28 pursuant to Section 1129 of the Bankruptcy Code, the Bankruptcy Court will choose the best
29 plan to continue to consummation.

30 **12. *Which Creditors get to vote on the Debtor Plan?***

31 Claims in **Classes 2, 3, 6, 7, and 8** are Impaired and the Holders of such Impaired
32 Claims are entitled to vote. The Debtor is soliciting votes from Holders of these Claims.
33 **Classes 1, 4, 5, and 9** will not vote on the Debtor Plan.

34 **A VOTE FOR ACCEPTANCE OF THE DEBTOR PLAN BY HOLDERS OF
35 CLAIMS WHO ARE ENTITLED TO VOTE IS MOST IMPORTANT. THE DEBTOR
36 BELIEVES THAT THE TREATMENT OF HOLDERS OF IMPAIRED CLAIMS
37 UNDER THE DEBTOR PLAN IS THE BEST ALTERNATIVE FOR EACH OF THEM,
38 AND THE DEBTOR RECOMMENDS THAT THE HOLDERS OF THOSE ALLOWED
39 CLAIMS VOTE IN FAVOR OF THE DEBTOR PLAN.**

1 **EACH HOLDER OF AN IMPAIRED CLAIM WHO IS ENTITLED TO VOTE**
2 **SHOULD CAREFULLY REVIEW THE DEBTOR PLAN, THIS DISCLOSURE**
3 **STATEMENT AND THE EXHIBITS/APPENDICES TO BOTH DOCUMENTS IN**
4 **THEIR ENTIRETY BEFORE CASTING A BALLOT.**

5 ***13. What happens after the voting is completed?***

6 After the appropriate Persons have voted to accept or reject the Debtor Plan, there will
7 be a Confirmation Hearing to determine whether the Debtor Plan should be confirmed by the
8 Bankruptcy Court. At the Confirmation Hearing, the Bankruptcy Court will consider whether
9 the Debtor Plan satisfies the requirements of the Bankruptcy Code. The Bankruptcy Court
10 will also receive and consider a ballot summary, which will present a tally of the votes cast by
11 those Classes of Creditors entitled to vote on the Debtor Plan.

12 ***14. What is the Effect of Plan Confirmation and Occurrence of the Effective***
13 ***Date?***

14 Confirmation of a plan of reorganization by the Bankruptcy Court and occurrence of
15 the effective date make the plan binding upon the debtor, any issuer of securities under the
16 plan, any person acquiring property under the plan, and any creditor of the debtor, regardless
17 of whether such creditor (i) is impaired under, or has accepted, the plan or (ii) receives or
18 retains any property under the plan. Subject to certain limited exceptions, and other than as
19 provided in the plan itself or the confirmation order, the confirmation order and occurrence of
20 the effective date discharge the debtor from any debt that arose prior to the date of
21 confirmation of the plan and substitute the obligations specified under the confirmed plan.

22 ***15. Can I rely upon the Disclosure Statement for purposes other than in***
23 ***connection with solicitation or voting on the Debtor Plan?***

24 THE INFORMATION IN THIS DISCLOSURE STATEMENT IS INCLUDED
25 HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE DEBTOR PLAN
26 AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO
27 DETERMINE HOW TO VOTE ON THE DEBTOR PLAN. THIS DISCLOSURE
28 STATEMENT THEREFORE DOES NOT CONSTITUTE, AND MAY NOT BE
29 CONSTRUED AS, AN ADMISSION OF FACT OR LIABILITY, A STIPULATION OR A
30 WAIVER IN ANY PROCEEDING OTHER THAN THE SOLICITATION OF
31 ACCEPTANCES OF THE DEBTOR PLAN AND CONFIRMATION OF THE DEBTOR
32 PLAN. FOR ALL PURPOSES OTHER THAN THE SOLICITATION OF ACCEPTANCES
33 OF THE DEBTOR PLAN, THIS DISCLOSURE STATEMENT SHOULD BE CONSTRUED
34 AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS RELATED TO
35 CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER PENDING OR
36 THREATENED LITIGATION OR ACTIONS.

37 ***16. Should I consult with my own financial and legal advisors?***

38 This Disclosure Statement does not constitute legal, business, financial, or tax advice.
39 All persons desiring such advice or any other advice should consult with their own advisors.

1 **17. I have heard statements from the media regarding the Debtor Plan. Can I**
2 **rely on these statements?**

3 The Debtor has not authorized any representations about the Debtor Plan, itself, or the
4 value of its property other than those set forth in this Disclosure Statement. Holders of
5 Claims proceed at their own risk to the extent they rely on any information, representations, or
6 inducements made or given to obtain their approval of the Debtor Plan that differ from, or are
7 inconsistent with, the information contained herein and in the Debtor Plan.

8 **18. What if there is an inconsistency between this Disclosure Statement and the**
9 **Debtor Plan?**

10 This Disclosure Statement summarizes certain provisions of the Debtor Plan and
11 certain other documents and financial information that are incorporated by reference herein
12 (collectively, the “Incorporated Documents”). The summaries contained herein are qualified in
13 their entirety by reference to the Incorporated Documents. In the event of any inconsistency or
14 discrepancy between a description in this Disclosure Statement and the actual content of any
15 of the Incorporated Documents, the Incorporated Documents shall govern for all purposes.

16 **III.**
17 **SUMMARY OF THE DEBTOR PLAN TREATMENT OF CREDITORS**

18 Section 1123 of the Bankruptcy Code provides that a plan of reorganization shall
19 classify the claims of a debtor’s creditors and equity interest holders. In compliance therewith,
20 the Debtor Plan divides Claims into various Classes and sets forth the treatment for each
21 Class. The Debtor is also required under Section 1122 of the Bankruptcy Code to place a
22 Claim into a particular Class only if such Claim is substantially similar to other Claims in
23 such Class. The Debtor believes that the Debtor Plan has classified all Claims in compliance
24 with the provisions of Section 1122 of the Bankruptcy Code, but it is possible that a Holder of
25 a Claim will challenge the Debtor Plan’s classifications and that the Bankruptcy Court will
26 find that different classifications are required in order for the Debtor Plan to be confirmed. In
27 such event, the Debtor reserves the right, to the extent permitted by the Bankruptcy Code, to
28 make reasonable modifications of the classifications under the Debtor Plan to permit
confirmation and to use the Debtor Plan acceptances received in this solicitation for the
purpose of obtaining the approval of the reconstituted Class or Classes of which the accepting
Holders are ultimately deemed members.

The following is a brief overview of the treatment of creditors under the Debtor Plan
and is qualified in its entirety by reference to the full text of the Debtor Plan. For a more
detailed description of the terms and provisions of the Debtor Plan, see Article V of this
Disclosure Statement, entitled “Summary of the Debtor Plan of Reorganization.”

The Debtor Plan designates eight (8) Classes of Claims and one (1) Class of Equity
Interests. These Classes take into account the differing nature and priority of the various
Claims and Equity Interests under the Bankruptcy Code.

The Debtor believes that the Debtor Plan provides the best means currently available
for the Debtor’s emergence from chapter 11.

1 **A. Non-Classified Claims.**

2 Pursuant to Section 1123(a)(1) of the Bankruptcy Code, Allowed Administrative
3 Claims and Priority Tax Claims are not designated as Classes under the Debtor Plan. The
4 Holders of such unclassified Claims are not entitled to vote on the Debtor Plan.

5 Each Holder of an Allowed Administrative Claim shall be paid in full and final
6 satisfaction of such Claim by Reorganized Ahern (or otherwise satisfied in accordance with its
7 terms), upon the latest of (i) the Distribution Date, (ii) the date on which its Administrative
8 Claim becomes an Allowed Administrative Claim, (iii) the date on which its Administrative
9 Claim becomes payable under any agreement with the Debtor relating thereto, (iv) in respect
of liabilities incurred in the ordinary course of business, the date upon which such liabilities
are payable in the ordinary course of the Debtor's business, consistent with past practice, or
(v) such other date as may be agreed upon between the Holder of such Allowed
Administrative Claim and the Debtor or Reorganized Ahern, as the case may be.

10 Each Holder of an Allowed Priority Tax Claim, if any, will, in full and final
11 satisfaction of such Claim, be paid in full (or be treated in compliance with Section
12 1129(a)(9)(C) of the Bankruptcy Code) by Reorganized Ahern on the later of (i) the Effective
13 Date or as soon thereafter as practicable; (ii) such date as may be fixed by the Bankruptcy
14 Court; (iii) the first Business Day following the fourteenth (14th) day after the date on which
an order allowing such Claim becomes a Final Order; or (iv) such date as is agreed to by the
Holder of such Claim and Debtor or Reorganized Ahern, as the case may be.

15 **B. Summary of Treatment of Claims and Interests under the Debtor Plan**

16 The table below summarizes the classification and treatment of the pre-petition Claims
17 and Equity Interests under the Debtor Plan. Estimated Claim amounts assume a calculation
18 date of the Petition Date. Estimated percentage recoveries are also set forth below for certain
Classes of Claims. Estimated percentage recoveries have been calculated based upon a
number of assumptions, including the estimated amount of Allowed Claims in each Class.

19 For certain Classes of Claims, the actual amounts of Allowed Claims could materially
20 exceed or could be materially less than the estimated amounts shown in the table that follows.
21 The Debtor has not yet reviewed and fully analyzed all proofs of Claim filed in the Chapter
22 11 Case. Estimated Claim amounts for each Class set forth below are based upon the
Debtor's review of its books and records and of certain proofs of Claim, and include estimates
of a number of Claims that are contingent, disputed, and/or unliquidated.

23 The foregoing estimates were compiled by combining the undisputed claims listed on
24 the Debtor's bankruptcy schedules on file as of the time of the Debtor's filing of their motion
25 to approve this Disclosure Statement with the Debtor's best estimate. As such, these amounts
26 are estimates only, and may change as more proofs of claim are filed, and the adjudication or
27 other resolution of pending contingent, unliquidated or disputed claims.
28

Description and Amount of Claims or Interests	Summary of Treatment
<p>Class 1: Term Loan Claims</p> <p>Estimated Aggregate Amount:¹ \$111.5 million</p>	<ul style="list-style-type: none"> • Unimpaired • Class 1 consists of the Term Loan Claims • The Term Loan Claims are Allowed Claims, not subject to offset, defense, counterclaim, reduction, or credit of any kind whatsoever. Unless the Holder of an Allowed Term Loan Claim and the Debtor agree to a different treatment, on the Effective Date each Holder of an Allowed Term Loan Claim shall receive, in full satisfaction, settlement, release and discharge of and in exchange for such Holder's Allowed Term Loan Claim, Cash in the full amount of such Allowed Term Loan Claim, including, but not limited to, any postpetition interest, charges, costs and other expenses accrued through the date of payment pursuant to the terms of the Majority Term Lender Cash Collateral Stipulation, as it may be amended or modified in accordance with its terms, the DIP Loan/Cash Collateral Order, and Section 506(b) of the Bankruptcy Code. • Not entitled to vote to accept or reject the Debtor Plan • Estimated Recovery: 100%
<p>Class 2: Second Lien Loan Claims</p> <p>Estimated Aggregate Amount: \$267.7 million</p>	<ul style="list-style-type: none"> • Impaired • Class 2 consists of the Second Lien Loan Claims • In the event that Class 2 votes to accept the Debtor Plan, on the Effective Date each Holder of any Allowed Second Lien Loan Claims shall receive such Holder's Pro Rata share of (i) Cash in the amount of \$160 million; and (ii) the Junior Secured A Notes, in full satisfaction, settlement, release and discharge of and in exchange for such Holder's Allowed Second Lien Loan Claim. In the event that Class 2 does not vote to accept the Debtor Plan, then on the Effective Date each Holder of any Allowed Second Lien Loan Claims shall receive such Holder's Pro Rata share of the Junior Secured B Notes, in full satisfaction, settlement, release and discharge of and in exchange for such Holder's Allowed Second Lien Loan Claim. • Entitled to vote to accept or reject the Debtor Plan • Estimated Recovery: 100%
<p>Class 3: Kubota Claims</p> <p>Estimated Aggregate Amount: \$143,500</p>	<ul style="list-style-type: none"> • Impaired • Class 3 consists of the Kubota Claims • Unless the Holder of a Kubota Claim and the Debtor agree to a different treatment, in full satisfaction, settlement, release, and discharge of, and in exchange for the Kubota Claims, the Holder of any Allowed Kubota Claims shall be paid (i) on the Effective Date, Cash in the principal amount of 5% of such Holder's Allowed Kubota Claim; (ii) 90 days after the Effective Date, Cash in the principal amount of 5% of such Holder's remaining Allowed Kubota Claim (reflecting a reduction in the

¹ Estimated Aggregate Amounts are calculated as of the Petition Date.

Description and Amount of Claims or Interests	Summary of Treatment
	<p>principal amount of such Holder's Allowed Kubota Claims as a result of the first payment); and (iii) 180 days after the Effective Date, Cash in the aggregate amount of the remaining balance of such Holder's Allowed Kubota Claims (reflecting a reduction in the principal amount of such Holder's Allowed Kubota Claims as a result of the first and second payments). The Allowed Kubota Claims shall bear interest as set forth in the Kubota Flooring Agreement.</p> <ul style="list-style-type: none"> • Entitled to vote to accept or reject the Debtor Plan • Estimated Recovery: 100%
<p>Class 4: Other Secured Claims²</p> <p>Estimated Aggregate Amount: \$115,000</p>	<ul style="list-style-type: none"> • Unimpaired • Class 4 consists of the Allowed Other Secured Claims • Unless the Holder of an Allowed Other Secured Claim and the Debtor agree to a different treatment, on the Effective Date each Holder of an Allowed Other Secured Claim shall (i) have its Claim Reinstated, or (ii) receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Secured Claim, either (a) Cash in the full amount of such Allowed Other Secured Claim, including any postpetition interest accrued pursuant to Section 506(b) of the Bankruptcy Code, (b) the proceeds of the sale or disposition of the Collateral securing such Allowed Other Secured Claim to the extent of the value of the Holder's secured interest in such Collateral, (c) the Collateral securing such Allowed Other Secured Claim and any interest on such Allowed Other Secured Claim required to be paid pursuant to Section 506(b) of the Bankruptcy Code, or (d) such other distribution as necessary to satisfy the requirements of Section 1129 of the Bankruptcy Code. If the Claim of a Holder of an Allowed Other Secured Claim exceeds the value of the Collateral that secures it, such Holder will have an Other Secured Claim equal to the Collateral's value and a General Unsecured Claim for the deficiency. • Not entitled to vote to accept or reject the Debtor Plan • Estimated Recovery: 100%
<p>Class 5: Other Priority Claims</p> <p>Estimated Aggregate Amount: \$71,400</p>	<ul style="list-style-type: none"> • Unimpaired • Class 5 consists of the Allowed Other Priority Claims • Unless the Holder of an Allowed Other Priority Claim and the Debtor agree to a different treatment, each Holder of an Allowed Other Priority Claim, if any, shall, in full satisfaction, settlement, release, and discharge of, and in exchange for the Allowed Other Priority Claims, be paid in full in Cash by Reorganized Ahern upon the latest of: (i) the Effective Date; (ii) such date as may be fixed by the Bankruptcy Court; (iii) the first Business Day following the fourteenth (14th) day after such Claim is Allowed; and (iv) such date as agreed upon by the

² Secured Claims for ad valorem property taxes and Priority Claims under Section 507(a) of the Bankruptcy Code were substantially reduced by payments made by the Debtor after the Petition Date pursuant to various First Day Orders. See [ECF Nos. 333, 336, 337, and 338].

Description and Amount of Claims or Interests	Summary of Treatment
	Holder of such Claim and Debtor or Reorganized Ahern. <ul style="list-style-type: none"> • Not entitled to vote to accept or reject the Debtor Plan • Estimated Recovery: 100%
Classes 6A to 6L: Personal Injury Claims Total Number of Claims Asserted: 23 ²⁴ Total Amount of Claims Asserted: \$42,516,872.27 ^{\$42,520,872.27} Debtor's remaining liability within SIR or Deductible, subject to the SIR aggregate: \$1,856,000 ^{\$1,860,000}	<ul style="list-style-type: none"> • Impaired • Classes 6A to 6L consist of the Personal Injury Claims. Although styled as a single Class, Class 6 shall contain separate sub-Classes for the insured Personal Injury Claims arising under each individual Liability Insurance Policy in each policy year. Each separate sub-Class in Class 6 shall constitute a separate Class for voting purposes of the Debtor Plan. • Classes 6A to 6E consist of the Personal Injury Claims that are GL Claims that fall under Debtor's general and umbrella Liability Insurance Policies. <ul style="list-style-type: none"> ○ The first \$250,000 of each insured Allowed Personal Injury Claim, less defense costs expended on each such insured Allowed Personal Injury Claim (the self-insured retention, or "SIR"), will be paid in full by Reorganized Ahern up to the applicable policy's aggregate SIR limit commencing on the latter of the Effective Date and the first Business Day the Personal Injury Claim becomes an Allowed Personal Injury Claim. The Holder of each Allowed Personal Injury Claim not paid in full from the SIR shall be eligible to be paid from the policy proceeds remaining in the Liability Insurance Policies as of the Petition Date for the respective policy year only to the extent such policy proceeds have not been exhausted. ○ In the event that the Holder of an Allowed Personal Injury Claim is not paid in full by the SIR and the policy proceeds, the Holder of such Allowed Personal Injury Claim shall receive, for the portion of the Allowed Personal Injury Claim in excess of the SIR and the policy

³ This figure represents the total number of Claims asserted in Classes 6A through 6L excluding those proofs of Claim that were not timely filed by the applicable bar date.

⁴ This figure represents the total amount of Claims asserted in Classes 6A through 6L excluding those proofs of Claim that were (i) filed for unliquidated amounts; or (ii) not timely filed by the applicable bar date.

~~³ This figure represents Debtor's total SIR and Deductible liability based upon the Claims asserted against all of the Debtor's Insurance Policies for the subject years, less those sums the Debtor has already expended toward the exhaustion of the applicable SIRs or Deductibles. The Debtor's Insurance Policies, SIRs, and Deductibles are discussed in Section IV.D.3c, below.~~

⁵ This figure represents Debtor's total SIR and Deductible liability based upon the Claims asserted against all of the Debtor's Insurance Policies for the subject years, less those sums the Debtor has already expended toward the exhaustion of the applicable SIRs or Deductibles. The Debtor's Insurance Policies, SIRs, and Deductibles are discussed in Section IV.D.3c, below.

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Description and Amount of Claims or Interests	Summary of Treatment
	<p>proceeds, Cash payments in twelve (12) monthly installments over one (1) year and accrue interest at the rate of five percent (5%) per annum or such other interest rate as the Bankruptcy Court determines at the Confirmation Hearing or otherwise, including postpetition interest at the Federal Judgment Rate for the period from the Petition Date through the Effective Date, commencing on the latter of the Effective Date and the first Business Day the Personal Injury Claim becomes an Allowed Personal Injury Claim, in full satisfaction, settlement, release and discharge of and in exchange for the Holder's Allowed Personal Injury Claims.</p> <ul style="list-style-type: none"> • Classes 6F to 6L consist of the Personal Injury Claims that are Auto Claims that fall under Debtor's automobile and umbrella Liability Insurance Policies. <ul style="list-style-type: none"> ○ The first \$10,000 or \$50,000 (depending on the applicable automobile Liability Insurance Policy's deductible) of each insured Allowed Personal Injury Claim, less defense costs expended on each such insured Allowed Personal Injury Claim (the "Deductible"), will be paid in full by Reorganized Ahern commencing on the latter of the Effective Date and the first Business Day the Personal Injury Claim becomes an Allowed Personal Injury Claim. The Holder of each Allowed Personal Injury Claim not paid in full from the Deductible shall be eligible to be paid from the policy proceeds remaining in the Liability Insurance Policies as of the Petition Date for the respective policy year only to the extent such policy proceeds have not been exhausted. ○ In the event that the Holder of an Allowed Personal Injury Claim is not paid in full by the Deductible and the policy proceeds, the Holder of such Allowed Personal Injury Claim shall receive, for the portion of the Allowed Personal Injury Claim in excess of the Deductible and the policy proceeds, Cash payments in twelve (12) monthly installments over one (1) year and accrue interest at the rate of five percent (5%) per annum or such other interest rate as the Bankruptcy Court determines at the Confirmation Hearing or otherwise, including postpetition interest at the Federal Judgment Rate for the period from the Petition Date through the Effective Date, commencing on the latter of the Effective Date and the first Business Day the Personal Injury Claim becomes an Allowed Personal Injury Claim, in full satisfaction, settlement, release and discharge of and in exchange for the Holder's Allowed Personal Injury Claims. • <u>Effective as of the Effective Date of the Debtor Plan, all preference actions against current and future Holders of Allowed Personal Injury Claims arising under Section 547 of the Bankruptcy Code shall be waived.</u>

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Description and Amount of Claims or Interests	Summary of Treatment
<p><u>Class 6A</u> General Liability Claims (“GL Claims”) falling in policy year: 5/10/2007 – 5/10/2008 Carrier: <i>Chartis Insurance, f/k/a Lexington (Lexington)</i> Total Number of Claims Asserted: 2 Total Amount of Claims Asserted: \$7,000,000 Coverage: \$1,000,000 per occurrence; \$2,000,000 aggregate SIR: \$250,000 per occurrence SIR aggregate: none Debtor’s remaining liability within SIR, subject to the SIR aggregate: \$285,000 Umbrella Liability Insurance Policy limit in excess of the general Liability Insurance Policy limit: \$5,000,000</p>	<ul style="list-style-type: none"> • Classes 6A to 6L are entitled to vote to accept or reject the Debtor Plan • Estimated Recovery: 100%
<p><u>Class 6B</u> GL Claims falling in policy year: 5/10/2008 – 5/10/2009 Carrier: <i>Lexington</i> Total Number of Claims Asserted: 4 Total Amount of Claims Asserted: \$13,500,000 Coverage: \$1,000,000 per occurrence; \$2,000,000 aggregate SIR: \$250,000 per occurrence SIR aggregate: none Debtor’s remaining liability within SIR, subject to the SIR aggregate: \$598,000 Umbrella Liability Insurance Policy limit in excess of the general Liability Insurance Policy limit: \$5,000,000</p>	
<p><u>Class 6C</u> GL Claims falling in policy year: 5/10/2009 – 5/10/2010 Carrier: <i>Ironshore Specialty Insurance Company (Ironshore)</i> Total Number of Claims Asserted: 1 Total Amount of Allowed</p>	

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Description and Amount of Claims or Interests	Summary of Treatment
Claims: \$47,000 Coverage: \$1,000,000 per occurrence; \$2,000,000 aggregate SIR: \$250,000 per occurrence SIR aggregate: \$750,000 Debtor's remaining liability within SIR, subject to the SIR aggregate: \$47,000 Umbrella Liability Insurance Policy limit in excess of the general Liability Insurance Policy limit: \$5,000,000	
Class 6D GL Claims falling in policy year: 5/10/2010 – 5/10/2011 Carrier: <i>Ironshore</i> Total Number of Claims Asserted: 4 Total Amount of Claims Asserted: \$8,750,000 Coverage: \$1,000,000 per occurrence; \$2,000,000 aggregate SIR: \$250,000 per occurrence SIR aggregate: \$650,000 Debtor's remaining liability within SIR, subject to the SIR aggregate: \$535,000 Umbrella Liability Insurance Policy limit in excess of the general Liability Insurance Policy limit: \$5,000,000	
Class 6E GL Claims falling in policy year: 5/10/2011 – 5/10/2012 Carrier: <i>Ironshore</i> Total Number of Claims Asserted: <u>+2</u> Total Amount of Claims	

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Description and Amount of Claims or Interests	Summary of Treatment
<p>Asserted: \$28,583,273,000 Coverage: \$1,000,000 per occurrence; \$2,000,000 aggregate SIR: \$250,000 per occurrence SIR aggregate: \$650,000 Debtor's remaining liability within SIR, subject to the SIR aggregate: \$29,000 Umbrella Liability Insurance Policy limit in excess of the general Liability Insurance Policy limit: \$10,000,000</p>	
<p><u>Class 6F</u> Automobile Liability Claims ("Auto Claims") falling in policy year 5/10/2005 – 5/10/2006 Carrier: <i>Continental Insurance Company (CNA)</i> Total Number of Claims Asserted: 0 Total Amount of Claims Asserted: \$0 Coverage: \$1,000,000 per accident; no aggregate Deductible: \$10,000 per accident Deductible aggregate: none Debtor's remaining liability within Deductible: \$3,000 Umbrella Liability Insurance Policy limit in excess of the automobile Liability Insurance Policy limit: \$5,000,000</p>	
<p><u>Class 6G</u> Auto Claims falling in policy year 5/10/2006 – 5/10/2007 Carrier: <i>CNA</i> Total Number of Claims</p>	

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Description and Amount of Claims or Interests	Summary of Treatment
Asserted: 0 Total Amount of Claims Asserted: \$0 Coverage: \$1,000,000 per accident; no aggregate Deductible: \$10,000 per accident Deductible aggregate: none Debtor's remaining liability within Deductible: \$0.00 Umbrella Liability Insurance Policy limit in excess of the automobile Liability Insurance Policy limit: \$5,000,000	
Class 6H Auto Claims falling in policy year 5/10/2007 – 5/10/2008 Carrier: CNA Total Number of Claims Asserted: 1 Total Amount of Claims Asserted: \$2,000,000 ⁶ Coverage: \$1,000,000 per accident; no aggregate Deductible: \$10,000 per accident Deductible aggregate: none Debtor's remaining liability within Deductible: \$10,000 Umbrella Liability Insurance Policy limit in excess of the automobile Liability Insurance Policy limit: \$5,000,000	

⁶ [The Claim in this Class 6H may exceed the \\$1,000,000 per accident limit of the automobile Liability Insurance Policy if allowed in the amount asserted in the proof of Claim.](#)

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Description and Amount of Claims or Interests	Summary of Treatment
<p><u>Class 6I</u> Auto Claims falling in policy year 5/10/2008 – 5/10/2009 Carrier: <i>Liberty Mutual Fire Insurance Co. (Liberty)</i> Total Number of Claims Asserted: 0 Total Amount of Claims Asserted: \$0 Coverage: \$1,000,000 per accident; no aggregate Deductible: \$10,000 per accident Deductible aggregate: none Debtor’s remaining liability within Deductible: \$0.00 Umbrella Liability Insurance Policy limit in excess of the automobile Liability Insurance Policy limit: \$5,000,000</p>	
<p><u>Class 6J</u> Auto Claims falling in policy year 5/10/2009 – 5/10/2010 Carrier: <i>Great American Insurance Companies (Great American)</i> Total Number of Claims Asserted: 0 Total Amount of Claims Asserted: \$0 Coverage: \$1,000,000 per accident; no aggregate Deductible: \$50,000 per accident Deductible aggregate: none Debtor’s remaining liability within Deductible: \$0.00 Umbrella Liability Insurance Policy limit in excess of the automobile Liability Insurance Policy limit: \$5,000,000</p>	
<p><u>Class 6K</u> Auto Claims falling in policy year 5/10/2010 – 5/10/2011 Carrier: <i>Great American</i> Total Number of Claims Asserted: 5 Total Amount of Claims Asserted: \$4,550,000⁷</p>	

⁷ [One of the Claims in this Class 6K may exceed the \\$1,000,000 per accident limit of the automobile Liability Insurance Policy if allowed in the amount asserted in the proof of Claim.](#)

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Description and Amount of Claims or Interests	Summary of Treatment
Coverage: \$1,000,000 per accident; no aggregate Deductible: \$50,000 per accident Deductible aggregate: none Debtor's remaining liability within Deductible: \$250,000 Umbrella Liability Insurance Policy limit in excess of the automobile Liability Insurance Policy limit: \$5,000,000	
Class 6L Auto Claims falling in policy year 5/10/2011 – Petition Date Carrier: <i>Great American</i> Total Number of Claims Asserted: 1 Total Amount of Claims Asserted: unliquidated Coverage: \$1,000,000 per accident; no aggregate Deductible: \$50,000 per accident Deductible aggregate: none Debtor's remaining liability within Deductible: \$100,000 Umbrella Liability Insurance Policy limit in excess of the automobile Liability Insurance Policy limit: \$10,000,000	
Class 7: General Unsecured Claims Estimated Aggregate Amount: \$4 million - \$8 million	<ul style="list-style-type: none"> • Impaired • Class 7 consists of the General Unsecured Claims except Convenience Claims • Each Holder of a General Unsecured Claim for which the Allowed amount of such Claim is less than or equal to \$5,000 shall have the right to make the Convenience Class Election. • On the Effective Date, each Holder of any Allowed General Unsecured Claim shall receive Cash payments in the aggregate Allowed amount of such Holder's Allowed General Unsecured Claim which Claim shall be paid in twelve (12) monthly installments over one (1) year and accrue

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Description and Amount of Claims or Interests	Summary of Treatment
	<p>interest at the rate of five percent (5%) per annum or such other interest rate as the Bankruptcy Court determines at the Confirmation Hearing or otherwise, including postpetition interest at the Federal Judgment Rate for the period from the Petition Date through the Effective Date, in full satisfaction, settlement, release and discharge of and in exchange for the Holder's Allowed General Unsecured Claims.</p> <ul style="list-style-type: none"> • Effective as of the Effective Date of the Debtor Plan, all preference actions against current and future Holders of Allowed General Unsecured Claims arising under Section 547 of the Bankruptcy Code shall be waived. • Entitled to vote to accept or reject the Debtor Plan • Estimated Recovery: 100%
<p>Class 8: Convenience Claims</p> <p>Estimated Aggregate Amount: Unknown</p>	<ul style="list-style-type: none"> • Impaired • Class 8 consists of the Convenience Claims • Unless the Holder of a Convenience Claim and the Debtor agree to a different treatment, on the Effective Date, in full satisfaction, settlement, release and discharge of and in exchange for the Convenience Claims, each Holder of any Allowed General Unsecured Claims that makes the Convenience Class Election shall receive Cash in an amount equal to 85% of such Holder's Allowed Unsecured Claim. • Effective as of the Effective Date of the Debtor Plan, all preference actions against current and future Holders of Convenience Claims arising under Section 547 of the Bankruptcy Code shall be waived. • Entitled to vote to accept or reject the Debtor Plan • Estimated Recovery: 85%
<p>Class 9: Equity Interests</p>	<ul style="list-style-type: none"> • Unimpaired • Class 9 consists of the Allowed Equity Interests of the Debtor • Unless the Holder of an Allowed Equity Interest and the Debtor agree to a different treatment, the legal, equitable, contractual and ownership rights of the Holders of Allowed Equity Interests are unaltered by the Debtor Plan. Upon the Effective Date, the Holders of Allowed Equity Interests shall retain their Equity Interests. • Not entitled to vote to accept or reject the Debtor Plan • Estimated Recovery: 100%

THE DEBTOR BELIEVES THAT THE DEBTOR PLAN PROVIDES THE BEST RECOVERIES POSSIBLE FOR HOLDERS OF CLAIMS AND EQUITY INTERESTS AGAINST THE DEBTOR. THE DEBTOR BELIEVES THAT THE DEBTOR PLAN PROVIDES FOR SUBSTANTIALLY BETTER TREATMENT OF CLAIMS AND EQUITY INTERESTS THAN THE NOTEHOLDER PLAN PROVIDES, BECAUSE, AMONG OTHER THINGS, THE DEBTOR PLAN EMBODIES A BUSINESS PLAN THAT PROJECTS A SIGNIFICANTLY HIGHER ENTERPRISE VALUE FOR REORGANIZED AHERN AND PROVIDES FOR A ONE HUNDRED PERCENT (100%) RECOVERY TO ALL CLASSES

1 OF CLAIMS, PLUS INTEREST FROM THE PETITION DATE. SPECIFICALLY, THE
2 DEBTOR PLAN PROVIDES FOR THE PAYMENT OF INTEREST ON ALLOWED
3 CLAIMS ACCRUING AFTER THE PETITION DATE AND A GREATER RECOVERY TO
4 THE HOLDERS OF SECOND LIEN LOAN CLAIMS, EVEN IF SUCH HOLDERS DO NOT
5 VOTE TO ACCEPT THE DEBTOR PLAN, THAN THE NOTEHOLDER PLAN PROJECTS
6 FOR SUCH HOLDERS. INDEED, THE DEBTOR PLAN PROVIDES THAT HOLDERS OF
7 SECOND LIEN LOAN CLAIMS WILL RECEIVE NOTES AND/OR CASH, AS OPPOSED
8 TO NEW EQUITY INTERESTS ISSUED TO THEM UNDER THE NOTEHOLDER PLAN,
9 WHICH NOTES AND/OR CASH PROVIDE A GREATER LIKELIHOOD OF PAYMENT
10 AND AN IMPROVED ABILITY TO TRADE THE ISSUED SECURITY. NO OTHER
11 PROPOSED PLAN PROVIDES FOR SUCH RECOVERY AND THEREFORE THE
12 DEBTOR **STRONGLY RECOMMENDS** THAT YOU VOTE TO **ACCEPT** THE DEBTOR
13 PLAN.

9 **IV.**

10 **GENERAL INFORMATION ABOUT THE DEBTOR'S BUSINESS,**
11 **RESTRUCTURING EFFORTS AND THE FILING OF THE CHAPTER 11 CASE**

11 **A. Debtor's Business.**

12 **1. Corporate Structure.**

13 Debtor is a Nevada corporation organized on December 23, 1997 through the merger
14 of Ahern Renters Center, Inc., a Nevada corporation, and Ahern Rentals SW, Inc., a Nevada
15 corporation. Debtor's shares are held 97% by Don F. Ahern as Trustee of the DFA Separate
16 Property Trust and 3% by John Paul Ahern, Jr.

16 **2. Operations and Past Performance.**

17 Debtor operates an equipment rental company that additionally sells new and used
18 rental equipment, parts, and supplies related to its rental equipment, and merchandise used by
19 the construction industry. Further, Debtor provides maintenance and repair services. As of
20 December 31, 2012, Debtor's rental fleet contained 37,053 total rental items, including 19,683
21 high reach units, including fork lifts, boom lifts, and scissor lifts. As of that same date,
22 Debtor's rental fleet also contained 17,370 general rental units, including backhoes, skid
23 steers, skidloaders, trenchers, compressors, generators, light towers, welders, lawn and garden
24 equipment, and hand tools. Debtor's business operates through 75 rental branches located in
25 22 states.

23 Debtor's level of equipment rental revenue is sensitive to overall macro-economic
24 conditions, particularly the level of activity within the non-residential construction industry, as
25 well as to factors specific to Debtor, such as the size and condition of the Debtor's equipment
26 rental fleet, the utilization level of this rental fleet, the level of rental rates, the length of time
27 the equipment is on rent, and general weather conditions within the Debtor's geographic
28 markets.

27 The Debtor maintains a very high quality rental fleet, predominantly comprised of high
28 reach equipment, which on average have longer useful lives than general rental equipment.

1 The Debtor maintains a very rigorous focus on providing a high quality rental fleet through its
2 industry leading maintenance programs, which have enabled the Debtor to maintain high levels
3 of utilization and realize significant rental rate increases throughout the past year. In light of
4 the foregoing, the Debtor is very confident that it can continue to maintain a highly
5 competitive rental fleet at the current average fleet age.

6 The Debtor's rental fleet had an average age of approximately 71.1 months as of
7 December 31, 2012. The Debtor projects average fleet age to decrease to approximately 52.9
8 months by December 2017 based on projected increases in capital expenditures, which will be
9 funded through a combination of free cash flow, rental fleet disposition proceeds, and
10 borrowings under the Exit Financing Facility.

11 For financial reporting purposes, Debtor's revenues are divided into three categories:
12 (a) equipment rentals and related, including revenues from renting equipment and related
13 revenues such as fees charged for equipment delivery, damage waivers, repair of rental
14 equipment, and fuel; (b) sales of rental equipment; and (c) sales of new equipment and other.

15 In order to measure the health of its business, the Debtor reports and monitors its level
16 of "EBITDA" (Earnings Before Interest Expense, Income Taxes, Depreciation and
17 Amortization) generation as an important financial metric. Adjusted EBITDA represents an
18 adjustment to the company's EBITDA for items considered extraordinary and non-recurring
19 ("Adjusted EBITDA"). EBITDA is a commonly used financial metric utilized by companies
20 within the equipment rental industry. In the 2005 through 2008 timeframe, Debtor's Adjusted
21 EBITDA increased from \$80.2 million to \$150.1 million as the Debtor benefited from strong
22 growth of non-residential construction activity, particularly in the Las Vegas market.
23 Subsequent to 2008, the Debtor's financial performance was adversely impacted by the severe
24 economic recession, and resulting significant reduction in non-residential construction
25 spending, as more fully described later in this document in "Events Leading to the Chapter 11
26 Case." Debtor's Adjusted EBITDA declined from \$150.1 million in 2008 to \$67.5 million in
27 2009 and to \$52.7 million in 2010. The trough of the Debtor's financial performance was
28 realized midway through 2010 when the Debtor's Last Twelve Months ("LTM") Adjusted
EBITDA through the quarter ended June 30, 2010 bottomed at \$46.4 million.

29 In response to the economic downturn, the Debtor proactively implemented numerous
30 strategic initiatives to address the changed business environment. These initiatives included:
31 (i) significant geographic redeployment of its rental fleet from Las Vegas to other markets, (ii)
32 the opening of twenty-four (24) branches in 2009 and 2010 in new markets, (iii) cost
33 reductions, (iv) reduced capital expenditures, and (v) a focus on customers in segments other
34 than non-residential construction. These initiatives, which are also described in detail later in
35 this document, have been highly successful as demonstrated by a strong recovery in financial
36 performance by the Debtor since June 2010. Since its LTM Adjusted EBITDA bottomed at
37 \$46.4 million in June of 2010, the Debtor's Pro Forma Adjusted EBITDA has increased
38 151.9% to \$116.9⁴⁸ million for the LTM period ending December 31, 2012.

⁴⁸Adjusted for \$0.8 million non-cash lease termination cost, \$9.2 million of reorganization costs, and \$5.4 million for the YTD impact of cost savings from a reduction in force implemented in Fall 2012.

The chart below details the cycle of Debtor's revenue, Adjusted EBITDA and other key data for the fiscal years 2006 through 2012.

SUMMARY REVENUE, EBITDA AND OTHER OPERATING DATA
Fiscal Years 2006 to 2012
(In millions, rounded)

	Twelve Months Ended December 31						
	2012 ⁵⁹	2011	2010	2009	2008	2007	2006
REVENUES							
Equipment rentals and related	\$ 335.0	\$301.4	\$246.5	\$249.8	\$329.5	\$293.4	\$236.9
Sales of rental equipment	18.4	11.3	24.2	11.8	19.7	24.9	16.6
Sales of new equipment & other	26.8	20.8	21.7	22.3	32.3	21.8	12.4
Total Revenue	380.1	333.5	292.4	283.9	381.4	340.1	265.8
<i>Revenue Growth</i>	14.0%	14.0%	3.0%	(25.5%)	12.1%	27.9%	30.6%
ADJUSTED EBITDA	116.9 ⁶¹⁰	77.3 ⁷¹¹	52.7 ⁸¹²	67.5	150.1	144.7	116.5
<i>EBITDA Growth</i>	51.1%	46.6%	(21.8%)	(54.9%)	3.7%	24.2%	45.2%
ADDITIONAL INFORMATION							
Fleet Capital Expenditures (Net)	\$17.0	\$(2.2)	\$(5.1)	\$15.9	\$111.4	\$191.6	\$178.6
Average High Reach Time Utilization	65.6%	65.6%	57.3%	55.0%	67.0%	69.7%	72.5%
Dollar Utilization	45.0%	40.2%	31.0%	30.3%	41.5%	45.9%	50.0%

The Debtor also uses both "Time Utilization" and "Dollar Utilization" to measure the health of its rental business. Time Utilization measures the number of total high-reach units on rent for the Debtor's primary equipment category, compared to the total number of high-reach units available for rent. Dollar Utilization measures, for the entire rental fleet, the interaction of changes in rental rates, product mix, average length of rental and time utilization. Dollar Utilization is the annualized ratio of equipment rentals and related revenues on Debtor's entire fleet of rental equipment for a period of time compared to the average original cost of Debtor's rental fleet during the same period. Debtor's Time Utilization and Dollar Utilization metrics follow a similar pattern as its revenue and EBITDA, illustrating strength in the 2005 and 2006 timeframe, declining significantly during the economic recession, and rebounding strongly since June of 2010 as the Debtor's business has recovered.

⁵⁹ Preliminary unaudited results.

⁶¹⁰ Adjusted for \$0.8 million non-cash lease termination cost, \$9.2 million of reorganization costs, and \$5.4 million for the YTD impact of cost savings from a reduction in force implemented in Fall 2012.

⁷¹¹ Adjusted for \$0.7 million non-cash loss on aircraft sale, \$2.9 million non-cash lease termination cost and \$1.2 million of reorganization costs.

⁸¹² Adjusted for \$1.0 million litigation settlement payment in September 2010.

1 In 2011 and 2012, Debtor has realized the benefits of both its proactive response to the
2 economic recession and an ongoing cyclical recovery in the equipment rental industry as
3 demonstrated by its significant increase in both Time Utilization and Dollar Utilization, and
4 improved financial performance. In addition, the Debtor has continued to focus on additional
5 operating initiatives to enhance financial performance. As part of a continual review of costs,
6 the Debtor recently eliminated 125 positions, which results in approximately \$6.5 million of
7 lower salaries and wages on an annual basis.

8 Although Debtor's operating results have traditionally been highly dependent on the
9 strength of the economy of Las Vegas, Nevada, the Debtor has successfully diversified its
10 business as part of its expansion strategy during the economic downturn. As a result, as a
11 percentage of total revenues, Las Vegas, Nevada accounted for 14% of total revenues in 2012,
12 compared to 25% in 2009, 19% in 2010 and 12% in 2011.

13 **3. Debtor's Prepetition Equity and Management Structure.**

14 Don F. Ahern has been Debtor's President, Chief Executive Officer and a member of
15 Debtor's board of directors since February 1994. Prior to that, since 1978, Mr. Ahern was the
16 sole proprietor of Los Arcos Equipment, an equipment rental company. Mr. Ahern has over
17 thirty (30) years of experience in the equipment rental industry.

18 Evan B. Ahern has been Debtor's Executive Vice President since March 2004 and
19 joined Debtor's board of directors in April 2004. He served as Chief Information Officer
20 from 1998 to May 2007. Between 1993 and 1998, Mr. Ahern was responsible for managing
21 and implementing Debtor's technology infrastructure. From 1990 through 1993, Mr. Ahern
22 held various other positions with Debtor. Mr. Ahern has been and continues to be involved in
23 nearly every aspect of Debtor's operations. He spends much of his current time in business
24 development activities, branch level process reengineering and training, and technology
25 integration into every aspect of Debtor's business to improve operational efficiencies and
26 effectiveness.

27 Howard Brown has been Debtor's Chief Financial Officer since September 1997. He
28 joined Debtor's board of directors in April 2004. He has over thirty-five (35) years of finance
experience. Prior to joining Debtor, from October 1995 through September 1997, he was
Chief Financial Officer of the H&O Foods division of Rykoff-Sexton, Inc. (now known as
U.S. Foodservice, Inc.), the largest food service distributor in Las Vegas, Nevada. From
September 1992 through October 1995, he was Chief Financial Officer of H&O Foods, Inc.

Mark J. Wattles joined Debtor's board of directors in April 2004. Mr. Wattles founded
Hollywood Entertainment Corporation ("Hollywood"), a chain of video rental and game stores,
in June 1988, and until September 1998 he served as Hollywood's Chairman of the Board,
President, and Chief Executive Officer. From August 1998 through June 2000, Mr. Wattles
left his full-time position at Hollywood and served as Chief Executive Officer of Reel.com,
then a wholly-owned subsidiary of Hollywood. In August 2000, Mr. Wattles returned full
time to Hollywood to assist with changes in its business strategy. He served as President of
Hollywood from January 2001 until January 2004 and as Chief Executive Officer from
January 2001 until February 2005. Since January 2005, Mr. Wattles has served as President of

1 Wattles Capital Management, LLC, a capital management company that invests in public and
2 private companies providing consumer products and services.

3 P. Enoch Stiff joined Debtor's board of directors in April 2004. Mr. Stiff has been the
4 managing partner of the Executive Management Group, a consulting firm specializing in
5 effective management practices for senior executive teams of midsize businesses, since
6 November 2002. Additionally, from January 2004 through December 2007, Mr. Stiff was a
7 partner in the Value Management Group, a Chicago-based investment management company
8 that focuses on manufacturing companies. In February 2008, Mr. Stiff became President and
9 Chief Executive Officer of American Sportworks, a company that manufactures various types
10 of utility vehicles. Mr. Stiff sold his interest in American Sportworks, and resigned his
11 positions with the company, on or about November 12, 2012. From September 2000 to
12 November 2002, Mr. Stiff provided independent business consulting services to executive
management groups. From September 1996 to September 2000, Mr. Stiff was the President,
Chief Executive Officer and a member of the board of directors of OmniQuip
International, Inc., a North American manufacturer of telescopic material handlers, aerial work
platforms and other material handling equipment. From August 1989 to September 1996,
Mr. Stiff was the President and Chief Executive Officer of TRAK International, Inc.
("TRAK"), a wholly owned subsidiary of OmniQuip International, Inc. He previously served
as the Chief Operating Officer of TRAK from November 1987 to August 1989.

13 Timothy N. Lotspeich has been Debtor's Senior Vice President of Risk Management
14 and Transportation since April 2005. From December 1995 until April 2005, he served as
15 Debtor's Senior Vice President and was responsible for Debtor's floating fleet, transportation
16 and risk management. Mr. Lotspeich has over thirty (30) years of experience in the equipment
17 rental industry. From July 1986 through December 1995, Mr. Lotspeich served as Debtor's
18 California regional manager responsible for supervising operations and sales for all of
19 Debtor's California branches. From April 1983 through June 1986, Mr. Lotspeich served as
manager of Debtor's Bloomington, California branch and was responsible for operations and
sales for that branch. Prior to joining the Debtor, from 1972 through June 1982,
Mr. Lotspeich was a customer service representative for Grove Manufacturing, a large
manufacturer of high reach equipment.

20 D. Kirk Hartle has been Debtor's Senior Vice President of Finance and Treasurer since
21 March 2009; previously, Mr. Hartle served as Vice President of Finance beginning in
22 September 2007 and prior to that he served as Debtor's Director of Finance from the time he
23 was hired in February 2004. His responsibilities include oversight of all accounting and
24 financial reporting for Debtor. During his career, Mr. Hartle has held senior management
25 positions with KPMG LLP and Deloitte LLP. Prior to joining Ahern Rentals, Mr. Hartle was
chief financial officer for five years with a publicly-held golf retail and sports entertainment
company. In total, Mr. Hartle has twenty-four (24) years of finance and accounting
experience. Mr. Hartle also is a past-president of the University of Nevada, Las Vegas
Alumni Association and served on its Board of Directors for thirteen (13) years.

26 **4. Affiliated Entities and Transactions.**

27 (i) Ahern IT, LLC ("Ahern IT"). Evan Ahern owns 100% of Ahern
28 IT. Ahern IT is an information technology (IT) reseller that purchased dark fiber and other

1 equipment for Debtor, which provided Debtor improved connectivity to its data center and
2 enhanced its disaster recovery system. Ahern IT manages Debtor's bandwidth with respect to
its data and communication needs.

3 (ii) American Sportworks ("AS"). P. Enoch Stiff, a board director of
4 the Debtor, was an equity holder of AS, but sold his interest in AS on or about November 12,
5 2012. AS manufactures utility trucks similar to golf carts that transport tools and other
equipment on jobs sites. Debtor buys and sells AS vehicles for a profit.

6 (iii) A & K 67, LLC ("A&K"). Don F. Ahern, as Trustee of the
7 DFA Separate Property Trust, owns 25% of A&K. A&K owns a 77-foot boat located in the
8 San Diego Bay. As consideration for Debtor's sales force having access to the boat to
entertain and develop customer relationships, Debtor pays 25% of A&K's costs.

9 (iv) DFA, LLC ("DFA"). Don F. Ahern as Trustee of the DFA
10 Separate Property Trust owns 99% of DFA, and EBA Holdings, Inc. owns 1%. DFA locates
11 and acquires real property, arranges the financing, and leases such property under triple net
12 lease arrangements. The majority of DFA's real property is leased by Debtor. DFA locates
13 and purchases real property based on Debtor's needs, specifications, and target markets, thus
limiting Debtor's upfront capital investments in new stores and markets. Debtor's lease rates
for DFA properties are at prevailing market rates, and such leases are approved by Debtor's
independent board members.

14 (v) The DFA Family Limited Partnership (the "DFA LP"). Don F.
15 Ahern, as Trustee of the DFA Separate Property Trust, is a general partner owning 1% of
16 DFA LP, and Evan Ahern and Ryan Ahern are both limited partners each owning 49.5%.
17 DFA LP owns the real property located at 4241 S. Arville in Las Vegas, Nevada, which
property is a maintenance, paint, and cosmetic machine shop leased to Debtor. DFA LP also
owns life insurance policies insuring Don F. Ahern.

18 (vi) Diamond A Equipment, LLC ("Diamond A"). Don F. Ahern, as
19 Trustee of the DFA Separate Property Trust, owns 99% of Diamond A, and EBA Holdings,
20 Inc. owns 1%. Diamond A is a case tractor dealership located in Oxnard, California, and also
21 sells Debtor's equipment at book value plus a reasonable mark-up, resulting in a profit for
22 Debtor. As a case tractor dealer, Diamond A can buy parts and has access to technical
services that support Debtor's rental fleet. Diamond A sells such parts to Debtor at below list
price.

23 (vii) Don and Paul, LLC ("D&P"). Don F. Ahern, as Trustee of the
24 DFA Separate Property Trust, owns 85.5% of D&P, and John Paul Ahern, Jr. owns 14.5%.
25 D&P owns various parcels of real property located on West Bonanza in Las Vegas, Nevada,
which property includes a high reach and general rental store, dispatch center, and repair
facilities leased to Debtor.

26 (viii) Equipment Connections, LLC ("EC"). Janis Ahern owns 100%
27 of EC. EC performs consulting work and special projects for Debtor, and uses its
28 relationships to sell and rent Debtor's equipment.

1 (ix) Fanterior, LLC (“Fanterior”). Don F. Ahern, as Trustee of the
2 DFA Separate Property Trust, owns 49% of Fanterior. Fanterior imports promotional items
3 such as plastic cups and other products displaying Debtor’s name(s) and logo(s). Debtor
obtains promotional items from Fanterior at a discount.

4 (x) Hutt Aviation, Inc. (“Hutt”). Don F. Ahern, as Trustee of the
5 DFA Separate Property Trust, owns 50% of Hutt. Hutt operates a facility at the Minden-
6 Tahoe airport in Minden, Nevada, where it provides aircraft fuel pumping and other aircraft
7 support. Approximately 1% of Hutt’s sales are to Debtor. In addition, Debtor receives a
discount on aircraft fuel, and from time to time, Hutt rents snow removal equipment from
Debtor.

8 (xi) XFS, Inc. d/b/a Xtreme Financial Services (“XFS”). Don F.
9 Ahern, as Trustee of the DFA Separate Property Trust, owns 100% of XFS. XFS provides
10 financing for customers who do not qualify under Debtor’s credit specifications. XFS
ordinarily provides financing on transactions of approximately \$10,000. XFS allows Debtor to
make sales and/or rent equipment to less credit-worthy customers without risk to Debtor.

11 (xii) Xtreme Manufacturing, LLC (“Xtreme”). Don F. Ahern owns
12 96.74% as Trustee of the DFA Separate Property Trust of Xtreme. Xtreme is a manufacturer
13 of forklifts, related parts, and heavy duty steel cubes for offices, housing, and other uses that
14 require reinforced structure for remote operations. Xtreme is an original equipment
manufacturer (an “OEM”), and thus has access to parts from other OEMs that Debtor would
15 not ordinarily have access to as a rental operation. Xtreme sells forklifts and metal cubes to
Debtor at or near cost, and sells parts to Debtor at slightly above cost but well below the
standard mark-up. Debtor sells forklifts manufactured by Xtreme at a profit for Debtor.

16 (xiii) EBA Holdings, Inc. (“EBA”). Don F. Ahern, as Trustee of the
17 DFA Separate Property Trust, owns 100% of EBA. EBA was organized in order to hold the
one-percent (1%) interests of DFA and Diamond A.

18 In 2008 and 2009, the Debtor’s shareholders received dividends in the amount of
19 \$9,914,080 and \$2,350,633, respectively and no dividends have been made since 2009. These
20 dividends were in compliance with the Second Lien Indenture and were approved by the
21 participants in the Revolving Credit Facility. Additionally, other than ordinary course
22 purchase and sale transactions with its affiliates, and compensation, the Debtor does not
believe that there have been transfers to insiders or shareholders within the last five (5) years.
Finally, there have been no loans to insiders or shareholders in the last five (5) years.

23 The Debtor has not fully investigated any claims or Causes of Action against any
24 insider because the Debtor believes that its enterprise value exceeds its liabilities and that the
25 benefit the Debtor would receive from pursuing and such claims or Causes of Action would
26 inure directly or indirectly to the benefit of its shareholders which is the same the party from
27 whom such recoveries would be obtained.
28

1 **B. Debtor's Prepetition Capital Structure.**

2 **1. Credit Facility and Term Loan.**

3 On August 18, 2005, Debtor, as borrower, entered into an Amended and Restated Loan
4 and Security Agreement (the "2005 Loan Agreement") among certain lenders named therein
5 (the "Initial Lenders"), Bank of America, National Association ("Bank of America"), as
6 administrative agent, Wachovia Bank, National Association ("Wachovia") as collateral agent
7 and as syndication Agent, and Bank of America Securities LLC and Wachovia Capital
8 Markets, LLC, as co-lead arrangers. The 2005 Loan Agreement provided for a revolving
9 credit facility (as thereafter amended, the "Revolving Credit Facility"), consisting of certain
10 revolving loans and letters of credit with a "Maximum Revolver Amount" (as therein defined)
11 of \$175,000,000, which Revolving Credit Facility incurred interest at the "Base Rate" (defined
12 therein as the greater of Bank of America's prime rate or the Federal Funds Rate plus .5% per
13 annum) plus the "Applicable Margin" (defined therein as initially 0.375% per annum with
14 respect to "Base Rate Revolving Loans" (as defined therein), but varying between 0.125% to
15 0.625% per annum based upon a "Leverage Ratio" (as defined therein) and initially 2.2125%
16 with respect to "LIBOR Rate Revolving Loans" (as therein defined), but varying between
17 0.125% to 0.625% per annum based upon a Leverage Ratio) for all Base Rate Revolving
18 Loans and at the LIBOR Rate plus the Applicable Margin for all LIBOR Rate Revolving
19 Loans.

20 On August 18, 2005, Debtor, as borrower, entered into an Intercreditor Agreement (as
21 amended, supplemented or otherwise modified, the "Intercreditor Agreement") among
22 Wachovia, as First Lien Collateral Agent and Control Agent for the First Lien Collateral
23 Agent and the Second Lien Collateral Agent (each as defined therein) and Wells Fargo Bank,
24 National Association ("Wells Fargo Bank"), as Trustee under the Indenture and as Second
25 Lien Collateral Agent (each as defined therein), providing the Revolving Credit Facility in
26 connection with the 2005 Loan Agreement, which Intercreditor Agreement made the
27 Revolving Credit Facility available to Debtor consisting of a \$175,000,000 revolving credit
28 facility.

On August 21, 2006, Debtor entered into an Amendment No. 1 to Amended and
Restated Loan Security Agreement (the "2006 Loan Amendment") with lenders as denoted
therein, Bank of America, as Administrative Agent, and Wachovia, as Collateral Agent.
Under the 2006 Loan Amendment, the Revolving Credit Facility's maximum was increased to
\$250,000,000, the maturity date on the Revolving Credit Facility was set at August 21, 2011,
and the Applicable Margin was adjusted to .5% and 2.25% for Base Rate Revolving Loans
and LIBOR Rate Revolving Loans at greater than a 4.75:1.00 leverage ratio respectively,
.250% and 2.0% for between a 4.75:1.00 and 3.50:1.00 leverage ratio respectively, and 0.0%
and 1.75% for leverage ratios less than 3.50:1.00 respectively.

On October 24, 2007, Debtor entered into an Amendment No. 3 and Consent to
Amended and Restated Loan and Security Agreement (the "2007 Loan Amendment") with
lenders as denoted therein, Bank of America, as Administrative Agent, and Wachovia, as
Collateral Agent. Under the 2007 Loan Amendment, the Revolving Credit Facility's
maximum was increased to \$300,000,000.

1 On December 23, 2009, Debtor entered into an Amendment No. 1 to Intercreditor
2 Agreement (the “2009 First Intercreditor Amendment”) with Wachovia and Wells Fargo Bank,
3 which 2009 First Intercreditor Amendment permitted credit facilities available to Debtor
4 consisting of a maximum \$396,000,000 revolving credit facility.

4 On January 8, 2010, Debtor, as “Borrower” (as defined therein), entered into a Second
5 Amended and Restated Loan and Security Agreement (as amended, supplemented or otherwise
6 modified, the “First Lien Credit Agreement”; and, together with all security, pledge and
7 guaranty agreements and all other documentation executed and/or delivered in connection
8 with any of the foregoing, including without limitation, the Intercreditor Agreement, each as
9 amended, supplemented, or otherwise modified, the “First Lien Documents”) with Bank of
10 America, as administrative agent (in such capacity, the “First Lien Agent”), Wells Fargo Bank,
11 as collateral agent (in such capacity, the “First Lien Collateral Agent”) and certain Revolving
12 Lenders (as defined therein) and “last out” Term Lenders (as defined therein, and, collectively
13 with the Revolving Lenders, the “First Lien Lenders”). The First Lien Credit Agreement made
14 credit facilities available to Debtor consisting of a \$350,000,000 revolving credit facility and a
15 \$95,000,000 term loan (as thereafter amended, the “Term Loan” and, together with the
16 Revolving Credit Facility, as amended, restated, supplemented, or otherwise modified, the
17 “First Lien Credit Facility”). Pursuant to the First Lien Documents, in certain circumstances,
18 the “Revolving Obligations” under, and as defined in, the First Lien Credit Agreement are
19 payable prior to the “Term Loan Obligations” under, and as defined in, the First Lien Credit
20 Agreement.

14 The First Lien Credit Agreement provides that the Revolving Credit Facility shall be
15 limited to:

16 (a) an amount equal to the lesser of (i) the Maximum Revolver Amount or (ii)
17 the sum of, without duplication, (1) up to eighty-five percent (85%) of the Net
18 Amount of Eligible Accounts, plus (2) up to the lesser of (A) ninety-five
19 percent (95%) of the Net Book Value of Eligible Rental and Sale Equipment
20 and (B) eighty-five percent (85%) of the Net Orderly Liquidation Value of
21 Eligible Rental and Sale Equipment, plus (3) up to the lesser of (A) ninety-five
22 percent (95%) of the Net Book Value of Eligible Transportation Equipment and
23 (B) eighty-five percent (85%) of the Net Orderly Liquidation Value of Eligible
24 Transportation Equipment, plus (4) up to the lesser of (A) sixty percent (60%)
25 of the value (at the lower of cost, on an average cost basis, or market) of
26 Eligible Spare Parts Inventory and (B) eighty-five percent (85%) of the Net
27 Orderly Liquidation Value of Eligible Spare Parts Inventory, minus (5) if the
28 sum of the Aggregate Revolver Outstanding and the aggregate unpaid principal
balance of the Term Loans exceeds or will exceed the difference of
\$435,000,000 minus the Supplemental Blocked Availability Amount as in effect
from time to time, the amount of such excess, minus (6) the aggregate amount,
if any, by which the Revolving Credit Commitments and the Maximum
Revolver Amount have been permanently reduced in accordance with Section
4.3(f) or the Term Loans have been paid in accordance with Section 4.3(f),
minus (b) such Reserves as are established from time to time by either or both
of the Agents in its or their reasonable credit judgment (including in any event
the Reserve established pursuant to the last sentence of the definition of

1 Reserves) minus (c) the sum of the Blocked Availability Amount and the
2 Supplemental Blocked Availability Amount.

3 This provision generally serves to provide for a functional limitation on the Revolving Credit
4 Facility as the lesser of \$310,000,000 or the borrowing base.

5 The Revolving Credit Facility and the Term Loan are both secured by a first lien on
6 substantially all of Debtor's assets and property (as defined in the First Lien Credit
7 Agreement, the "Collateral"). Interest rates applicable to the Revolving Credit Facility are a
8 fluctuating per annum rate equal to the lesser of (A) a rate selected by Debtor of either (i) the
9 Base Rate, plus the Applicable Margin (250 to 300 basis points), or (ii) the LIBOR Rate, plus
10 the Applicable Margin (350 to 400 basis points), or (B) the Maximum Rate (maximum
11 allowed under law). As of September 30, 2011, the Revolving Credit Facility had a weighted
12 average interest rate of 6.25% per annum. Non-default interest rates applicable to the Term
13 Loans and other Term Loan Obligations (as defined in the First Lien Credit Agreement) are a
14 per annum rate equal to the lesser of (A) 16% per annum, or (B) the Maximum Rate (the
15 maximum allowed under law). Default interest rates applicable to the Term Loans and other
16 Term Loan Obligations are a per annum rate equal to the lesser of (A) 18% per annum, or (B)
17 the Maximum Rate.

18 Pursuant to the First Lien Credit Agreement, the original maturity date for the
19 Revolving Credit Facility was August 21, 2011 (the "Revolving Maturity Date"), at which
20 time all outstanding principal and interest amounts became due, subject to Debtor's attempts
21 to obtain an extension on this date from creditors. Pursuant to the First Lien Credit
22 Agreement, the maturity date for the Term Loan was December 15, 2012.

2. Second Lien Loan Notes.

23 The Debtor is also a party to that certain Indenture, dated as of August 18, 2005 (as
24 amended, supplemented or otherwise modified, the "Second Lien Indenture"; the notes issued
25 thereunder; and together with the Second Lien Indenture and all security, pledge and guaranty
26 agreements and all other documentation executed and/or delivered in connection with the
27 foregoing, including without limitation, the Intercreditor Agreement, each as amended,
28 supplemented or otherwise modified, the "Second Lien Documents" and the indebtedness
owed to the Second Lien Lenders pursuant to the Second Lien Documents, plus accrued and
unpaid interest thereon and fees and expenses as provided in the Second Lien Documents,
collectively, the "Second Lien Obligations") among Debtor, as borrower, and Wells Fargo
Bank, as collateral agent and trustee (in such capacity, the "Second Lien Agent"), and the
Lenders (collectively, the "Second Lien Lenders"; and together with the Revolving Lenders
and the Term Lenders, the "Lenders"). Under the Second Lien Indenture, second priority
senior secured notes (the "Second Lien Loan Notes") are due August 15, 2013, bearing
interest at 9.25% payable semi-annually on February 15 and August 15. Pursuant to the
Second Lien Indenture, the Second Lien Loan Notes were sold in two tranches for an
aggregate purchase price of \$200,000,000 in the first tranche and \$90,000,000 in the second
tranche. The Second Lien Loan Notes are secured on a second-priority basis by liens on all of
Debtor's assets that secure Debtor's obligations under the Revolving Credit Facility.

1 On December 23, 2009, Debtor and Wells Fargo Bank entered into that certain First
2 Supplemental Indenture. Through the First Supplemental Indenture, the holders of 87% of the
3 aggregate principal amount of notes outstanding approved an increase of the minimum
“Priority Lien Cap” (as defined therein) from \$175,000,000 to \$396,000,000.

4 As of December 31, 2009, the outstanding principal of the Second Lien Loan Notes
5 amounted to \$290,000,000, after which \$53,300,000 in Second Lien Loan Notes were
6 exchanged at 75% of par value for \$40,000,000 in the Term Loan in January 2010. As of
7 September 30, 2011, outstanding liabilities from Second Lien Loan Notes payable totaled
\$236,666,667 in actual principal outstanding. As of the Petition Date, outstanding liabilities
8 from the Second Lien Loan Notes in actual principal outstanding plus accrued and unpaid
interest totaled \$267.7 million.

9 **C. Events Leading to the Chapter 11 Case.**

10 **1. Economic Pressures and Debtor’s Responses.**

11 Through Debtor’s primary business of equipment rental, Debtor undertakes the risk of
12 capital investment to expand its rental fleet in exchange for the potential rental revenue
13 streams generated from customers including construction and industrial companies,
14 municipalities, manufacturers, utilities and homeowners for whom the purchase of equipment
15 is economically unwarranted or who prefer to rent equipment as an alternative to buying the
16 equipment. To generate rental revenue streams in excess of the capital invested into the
17 continually depreciating equipment so as to turn a profit, Debtor is consequently dependent
18 upon its customers’ continuing demand for the rental of such equipment over the lifetime of
that equipment. As such, Debtor’s business is highly dependent on the level of equipment
19 utilization, at acceptable rates, in order to generate ongoing rental revenue and operating
20 profitability. In addition, Debtor attempts to balance capital expenditures in new equipment to
21 meet increases in demand for new rental opportunities with the risk of reduced demand for
22 such equipment before the value of that equipment has been recouped through rental revenue.

23 Because of its dependence on rental revenue from the non-residential construction
24 industry, Debtor was adversely impacted by the severity and depth of the downturn in
25 construction activity during the recent economic recession. Specifically, Debtor was impacted
26 by a dramatic reduction in both new construction projects as well as the often-abrupt
27 cancellation of projects for which construction had already begun, which caused the return to
28 the Debtor of a significant amount of equipment on rent, resulting in a significant decline in
equipment utilization compounded by pressure on rental rates, which in turn resulted in
reduced revenues and levels of operating performance. Debtor’s revenues were necessarily
harmful in the wake of economic concerns both nationally and to a greater extent in the Las
Vegas market as Debtor’s ability to successfully rent its equipment inventory purchased during
periods of growth in the construction industry was adversely impacted during the recession.

To adapt to the construction downturn, Debtor has proactively employed a number of
strategies since 2009 to both retain and develop new rental streams. Among these strategies,
Debtor redeployed unutilized rental units to existing branch locations with higher demand and
also opened branches in new geographies with high growth potential. Debtor opened
seventeen (17) new rental branches in 2009, seven (7) new rental branches in both 2010 and

1 2011. Such branch openings required limited capital expenditure because Debtor was able to
2 redeploy its existing rental units to these new locations from existing branch locations, and not
3 purchase new equipment. This strategy was used in part to relocate rental equipment
4 following the completion of the City Center project in Las Vegas, which was completed in
5 late 2009 and resulted in a surplus of rental units in Las Vegas.

6 By redeploying existing rental fleet and opening new branches in 2009 and 2010,
7 Debtor was able to actively reduce capital expenditures directed for purchases of new rental
8 equipment. Additionally, Debtor was able to limit new capital expenditures by selling excess
9 rental fleet as market conditions warranted. In 2007 and 2008, Debtor invested \$191.6 million
10 and \$178.6 million, respectively, in net purchases of rental equipment, which investments were
11 reduced to \$15.9 million in 2009 and negative \$5.1 million in 2010. This significant
12 reduction in capital expenditures, coupled with the redeployment of Debtor's existing rental
13 fleet inventory to stronger existing and new markets, has subsequently resulted in a significant
14 increase in Debtor's fleet utilization, improvements in rental rates, and improvements in
15 operating performance since the Debtor's business cycle bottomed in the second quarter of
16 2010. This is demonstrated by increases in revenues as well as by the 151.9% improvement
17 in Pro Forma Adjusted EBITDA to \$116.9⁹¹³ million for the LTM period ending December 31,
18 2012 from the trough Adjusted EBITDA of \$46.4 million for the LTM period ended June 30,
19 2010, as described earlier in this Disclosure Statement.

20 Debtor's equipment rental fleet has a large concentration of aerial equipment, which
21 has both longer useful lives and superior value retention characteristics than general rental
22 equipment. As a consequence of the reduced capital expenditures, however, the average age
23 of the rental fleet has increased, which has led and will continue to lead to increased repair,
24 maintenance and equipment replacement costs. Debtor believes, however, that the quality of
25 its rental fleet continues to be high and in a similar overall condition as the rental fleets of its
26 industry competitors.

27 Additionally, in response to the economic downturn, Debtor has undertaken cost
28 containment through reductions in personnel and employee benefits, renegotiation of vendor
pricing structures, reduced commissions and bonuses for senior management, and increased
scrutiny of all operational and administrative processes to reduce expenses. To maintain and
increase equipment utilization, Debtor has also expanded its customer base into infrastructure-
related industries, alternative energy, and other end-user markets to participate in rental
demand distinct from the non-residential construction sector.

2. Financial Performance.

As a result of the significant actions taken by Debtor to respond to the economic
downturn, including the redeployment of rental equipment, the opening of multiple new rental
locations, the reduction in capital expenditures for new equipment and the implementation of
cost containment measures, the Debtor's financial performance has improved. Revenues for

⁹¹³ Adjusted for \$0.8 million non-cash lease termination cost, \$9.2 million of reorganization costs, and \$5.4 million for the YTD impact of cost savings from a reduction in force implemented in Fall 2012.

1 the twelve months ended December 31, 2012 have increased to \$380.1 million from \$333.5
2 million compared to the twelve month period ended December 31, 2011 and from \$292.4
3 million compared to the twelve month period ended December 31, 2010. Further evidence of
4 the ongoing recovery in Debtor's business is the significant improvement in Debtor's Adjusted
5 EBITDA. From a trough Adjusted EBITDA of \$46.4 million for the LTM period ended June
6 30, 2010, Debtor's Adjusted EBITDA for the LTM period ended December 31, 2012 has
7 improved to \$116.9⁺⁰¹⁴ million, an increase of 151.9%.

8 In 2011 and 2012, Debtor has realized the benefits of both its proactive response to the
9 economic recession and an ongoing cyclical recovery in the equipment rental industry as
10 demonstrated by its significant increase of utilization, rental rates, and improved financial
11 performance. In addition, the Debtor has continued to focus on additional operating initiatives
12 to enhance financial performance. As part of a continual review of costs, the Debtor recently
13 implemented a 125 person reduction in headcount, which results in approximately \$6.5 million
14 of lower salaries and wages on an annual basis.

15 The chart below details Debtor's revenue, Adjusted EBITDA and additional financial
16 data for the three and twelve months ending December 31, 2012 and 2011.

17 **SUMMARY FINANCIAL AND OTHER OPERATING DATA (unaudited)**
18 **Three And Twelve Months Ended December 31, 2011 and 2012**
19 **(In millions, rounded)**

20
21
22
23
24
25
26
27 ⁺⁰¹⁴ Adjusted for \$0.8 million non-cash lease termination cost, and \$9.2 million of reorganization costs, and
28 \$5.4 million for the YTD impact of cost savings from a reduction in force implemented in Fall 2012.

	<u>Three Months</u>		<u>Twelve Months</u>	
	<u>Dec-12</u>	<u>Dec-11</u>	<u>Dec-12</u>	<u>Dec-11</u>
REVENUES				
Equipment rentals and related	\$ 87.0	\$ 83.8	\$ 335.0	\$301.4
Sales of rental equipment	8.2	3.2	18.4	11.3
Sales of new equipment & other	10.2	5.3	6.8	20.8
Total Revenue	105.3	92.4	380.1	333.5
<i>Revenue Growth</i>	<i>14.0%</i>	<i>-</i>	<i>14.0%</i>	<i>-</i>
ADJUSTED EBITDA	32.8 ⁺⁺¹⁵	22.9 ⁺⁺¹⁶	116.9 ⁺⁺¹⁷	77.3 ⁺⁺¹⁸
<i>EBITDA Growth</i>	<i>43.1%</i>	<i>-</i>	<i>51.1%</i>	<i>-</i>
ADDITIONAL INFORMATION				
Fleet Capital Expenditures (Net)	\$3.4	(\$0.3)	\$17.0	\$(2.2)
High Reach Time Utilization	64.2%	66.5%	65.6%	65.6%
Dollar Utilization	46.5%	44.9%	45.0%	40.2%

Since the Petition Date, the Debtor's business has improved significantly and its performance has flourished as described below:

- The Debtor achieved its highest rental revenue month ever recorded in October 2012.
- The Debtor achieved its highest total revenue month ever in November 2012.
- The Debtor achieved its highest rental rates ever recorded during the past several months.
- Since the Petition Date the Debtor has generated and expects to continue to generate significant positive cash flow and as a result:
 - The Debtor has collected over \$460 million in total receipts as February 21, 2013, an 8.5% increase over the agreed DIP Budget.

⁺⁺¹⁵ Adjusted for \$3.0 million of reorganization costs associated with the Debtor's bankruptcy filing and \$0.1 million non-cash lease termination costs.

⁺⁺¹⁶ Adjusted for \$1.2 million of reorganization costs associated with the Debtor's bankruptcy filing and \$2.0 million non-cash lease termination costs.

⁺⁺¹⁷ Adjusted for \$0.8 million non-cash lease termination cost, and \$9.2 million of reorganization costs, and \$5.4 million for the YTD impact of cost savings from a reduction in force implemented in Fall 2012.

⁺⁺¹⁸ Adjusted for \$0.7 million non-cash loss on aircraft sale, \$2.9 million non-cash lease termination cost and \$1.2 million of reorganization costs.

- 1 ○ The Debtor has paid over \$100 million in payroll costs and related taxes
2 and benefits for its nearly 1700 employees located in twenty-two (22)
3 states.
4 ○ The Debtor paid its vendors nearly \$230 million during 2012 in support
5 of its increasingly improving operations.
6 ○ The Debtor has paid sixteen percent (16%) interest each month to the
7 Term Lenders during the Chapter 11 Case amounting to almost \$18
8 million.
9 • The Debtor has been able to deleverage its business by over approximately \$28
10 million by reducing its asset-based loans from \$256 million at the Petition Date
11 to approximately \$228 million as of December 31, 2012.
12 • The Debtor's LTM EBITDA has improved from \$46 million in June 2010 to
13 approximately \$111.3 million for the full year of 2012. Additionally, on a pro
14 forma basis the LTM EBITDA as of December 31, 2012 is \$116.9 million after
15 taking into account certain staff reductions completed in the fourth quarter of
16 2012, which is an increase of 51.1% over 2011 Adjusted EBITDA and a
17 151.9% from the June 30, 2010 trough Adjusted EBITDA.
18 • The Debtor's total debt to LTM Adjusted EBITDA has gone down from
19 approximately 8.3x as of December 31, 2011 to 5.5x as of December 31, 2012.
20 Moreover, the DIP Loan (as defined below) debt to LTM Adjusted EBITDA
21 has decreased from 3.3x as of December 31, 2011 to 2.0x as of December 31,
22 2012.
23 • The Debtor's business is strong and is expected to continue improving at a
24 stable rate that fully supports the feasibility of the Debtor's Plan. The Debtor
25 believes that its growth assumptions, which are all benchmarked by market
26 against independent market statistics, are conservative, as they are at about half
27 of what independent sources predict for the market's underlying growth rates.
28 • The Debtor maintains that it is not currently over-leveraged and that it is at a
leverage point similar to where many of the Debtor's competitors are either
currently operating, or have operated in the recent past prior to having
deleveraged through growth.

3. Attempts to Reorganize Debt Outside of Bankruptcy.

On July 1, 2010, Debtor engaged Oppenheimer & Co. Inc. ("Oppenheimer") to assist Debtor in obtaining a one-year extension of its Revolving Credit Facility. Thereafter, Debtor and Oppenheimer engaged in negotiations with Debtor's creditors to obtain the requisite approval of all Lenders for an extension of the Revolving Maturity Date.

As part of the negotiations, Debtor did not make a February 15, 2011 interest payment on the Second Lien Notes or monthly interest payments on the Term Loan. On February 14, 2011, Debtor entered into forbearance agreements with the Lenders, Liberty Harbor Master

1 Fund I, L.P. (as Term Loan Lender) and Platinum Equity (as majority Second Lien Notes
2 Holder). On February 15, 2011, Debtor failed to make a \$10,945,833 interest payment on the
3 Second Lien Notes. On August 15, 2011, Debtor failed to make a \$10,945,833 interest
4 payment on the Second Lien Notes, and no payments have been made on the Second Lien
5 Notes since that time. On March 1, 2011, Debtor failed to make a \$1,266,667 monthly
6 interest payment on the Term Loan, and no further payments were made on the Term Lender
7 until the Petition Date, after which the Debtor began making monthly cash payments of
8 interest to the Term Lender pursuant to the Final DIP Order.

9 By June 2011, Debtor had received preliminary approval for the one year extension
10 from all but three of the Revolving Lenders and from all of the Term Lenders. The three
11 holdout Revolving Lenders represented approximately 25% of the Revolving Credit Facility
12 and approximately 10% of the total debt of Debtor. In order to effectuate the one-year
13 extension, Debtor needed 100% of the Revolving Lenders to approve it. Notwithstanding
14 Debtor's improving financial performance and the Revolving Lenders being substantially over-
15 collateralized based on improving asset appraisals, the three holdout Revolving Lenders would
16 not consent.

17 On August 21, 2011, the Revolving Credit Facility matured. At this time, Bank of
18 America began to make advances to Debtor as Agent (the "Agent Advances") to fund
19 Debtor's continuing operations. Debtor continued to negotiate with Bank of America, the
20 Term Lenders and the Second Lien Lenders for the four months leading up to the Petition
21 Date to effectuate the extension of the Revolving Credit Facility and agreed upon the DIP
22 Loan (defined below) to essentially effectuate the terms of the extension in bankruptcy.

23 Ahern's financial performance continues to improve. Ahern was forced to seek
24 bankruptcy protection to address the maturity of its Revolving Credit Facility despite the fact
25 that approximately 90% of Ahern's creditors would have consented to an extension.

26 **D. Significant Events During the Chapter 11 Case.**

27 **1. First Day Motions.**

28 Concurrently with the filing of the petition, the Debtor filed various first day motions
designed to assist the Debtor in making a smooth transition into Chapter 11, including:

(i) Application for Order Authorizing the Employment of Kurtzman
Carson Consultants LLC as Claims and Noticing Agent for Debtor [ECF No. 9];

(ii) Emergency Motion for Order Authorizing Maintenance of
Prepetition Cash Management System and Bank Accounts [ECF No. 4];

(iii) Emergency Motion for Order (i) Authorizing Debtor to Pay
Wages, Salaries, Benefits, Reimbursable Business Expenses, and Other Employee Obligations,
and (ii) Authorizing and Directing Financial Institutions to Honor and Process Checks and
Transfers Related to Such Obligation [ECF No. 5];

1 (iv) Emergency Motion Pursuant to 11 U.S.C. §§ 105(A) and 366 for
2 an Order Determining that Adequate Assurance Has Been Provided to Debtor’s Utility
3 Providers [ECF No. 6];

4 (v) Emergency Motion for Order Authorizing Debtor to (i) Honor its
5 Prepetition Obligations to its Customers and to (ii) Continue its Customer and Rental
6 Programs in the Ordinary Course of Business [ECF No. 7];

7 (vi) Motion for Order Pursuant to 11 U.S.C. §§ 105(a) and 363
8 Authorizing Debtor to Pay Prepetition Claims of Warehousemen, Distributors, Shippers,
9 Freight Brokers, and Other Logistics Providers [ECF No. 8];

10 (vii) Emergency Motion for Interim and Final Orders (i) Authorizing
11 Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3),
12 364(d)(1) and 364(e), Use of Cash Collateral Pursuant to 11 U.S.C. § 363, and Adequate
13 Protection Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364, (II) Approving Related
14 Stipulation(s), and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and
15 (c), [ECF No. 17]; and

16 (viii) Omnibus Declaration of Howard L. Brown in Support of
17 Debtor’s First Day Motions [ECF No. 16].

18 These first day motions were heard on December 23, 2011, and were approved on an
19 interim basis with the final hearings held on January 27, 2012. Corresponding orders have
20 been subsequently entered by the Bankruptcy Court. See ECF Nos. 333, 336, 337, 338, 339,
21 and 381 (the “First Day Orders”).

22 **2. The DIP Loan and Cash Collateral**

23 Concurrently with the above-mentioned first day motions, Debtor filed a motion to
24 approve post-petition financing under, *inter alia*, Section 364 of the Bankruptcy Code (the
25 “DIP Financing Motion”) [ECF No. 17]. On January 3, 2012, an interim order was entered
26 [ECF No. 95].

27 Following the filing of the DIP Financing Motion and prior to the hearing on January
28 27, 2012, the Debtor negotiated with the DIP Lenders⁺⁵¹⁹ regarding the terms of the final order
on the DIP Financing Motion. The Debtor also extensively negotiated the terms of a
stipulation with the Majority Term Lenders⁺⁶²⁰ regarding the relief requested in the DIP
Financing Motion and the provision of adequate protection to the Term Lenders. On January
31, 2012, the Court entered a final order approving the DIP Financing Motion [ECF No. 329]
(the “Final DIP Order”) and the stipulation with the Majority Term Lenders regarding the

⁺⁵¹⁹ As defined in the DIP Financing Motion, and including, without limitation, Bank of America, N.A., as
administrative agent, for itself and the DIP Lenders, and Wells Fargo Bank, N.A., as collateral agent.

⁺⁶²⁰ Liberty Harbor Master Fund I, L.P., and Goldman Sachs Palmetto State Credit Fund, L.P., and any successors
thereto or assigns thereof.

1 Debtor's use of cash collateral and adequate protection (i.e., the Majority Term Lender Cash
2 Collateral Stipulation). The Final DIP Order authorized the Debtor to obtain postpetition
3 financing under an asset-based revolving credit facility in an amount up to the aggregate
4 principal amount of \$350 million outstanding at any time on a final basis (including a \$10
5 million sub-limit for letters of credit) (the "DIP Loan").

6 Under the Final DIP Order, the Revolving Credit Facility was repaid in full and
7 replaced by the DIP Loan. The Debtor expects that at the time of the Confirmation Hearing,
8 the aggregate outstanding liability under the DIP Loan will be approximately \$222.2 million.

9 On or about March 1, 2013, the Debtor and the DIP Lenders entered into the
10 *Amendment No. 2 and Waiver to Debtor-in-Possession Loan and Security Agreement* (the
11 "DIP Amendment"), pursuant to which the maturity of the DIP Loan will be extended to
12 September 23, 2013, and the DIP Lenders will waive certain Events of Default presently
13 existing under the DIP Agreement, subject to the payment of certain fees and other conditions
14 precedent.

15 On or about March 1, 2013, the Debtor and the Majority Term Lenders entered into the
16 *Stipulation and Amendment No. 1 to Stipulation between Debtor and Majority Term Lenders
17 Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 552 and Fed. R. Bankr. P. 4001(b) and
18 (c) Regarding Debtor's Use of Term Lenders' Cash Collateral, Entry Into DIP Agreement,
19 and Adequate Protection* (the "Amendment to Majority Term Lender Cash Collateral
20 Stipulation"), pursuant to which the Majority Term Lenders have agreed in exchange for
21 certain consideration to, among other things (i) waive the "Termination Events" existing under
22 the Majority Term Lender Cash Collateral Stipulation as of the date of the Amendment to
23 Majority Term Lender Cash Collateral Stipulation, and (ii) consent to the Debtor's continued
24 use of the Term Lenders' cash collateral.

25 As an integral part of the Amendment to Majority Term Lender Cash Collateral
26 Stipulation and DIP Amendment, the Debtor, the Majority Term Lenders, and the Term Loan
27 Agents have agreed to an amendment to the First Lien Credit Agreement (the "Prepetition
28 Credit Agreement Amendment," and collectively with the Amendment to Majority Term
29 Lender Cash Collateral Stipulation and DIP Amendment, the "Amendments") with respect to
30 the minimum amounts that may be assigned by a Term Lender (i) to an affiliate of such
31 assigning Term Lender or (ii) when such Term Lender intends to assign all of its Term
32 Loans. ~~Among other things, the Prepetition Credit Agreement Amendment modifies the
33 assignment provisions of the First Lien Credit Agreement.~~

34 The Debtor has sought approval of the Amendments in the *Motion for Order:
35 Authorizing and Approving (I) Stipulation and Amendment No. 1 to Stipulation Between
36 Debtor and Majority Term Lenders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and
37 Fed. R. Bankr. P. 4001(b) and (c) Regarding Debtor's Use of Term Lenders' Cash Collateral,
38 Entry into DIP Agreement, and Adequate Protection and (II) Amendment No. 2 and Waiver to
39 Debtor-in-Possession Loan and Security Agreement* [ECF No. 1734] (the "Motion to Approve
40 Financing Amendments"). Additional information regarding the Amendments, including the
41 Debtor's duties thereunder, may be found in the Motion to Approve Financing Amendments.

1 **3. Other Significant Motions and Post-Petition Events.**

2 a. Retention and Employment of Professionals.

3 Various applications were filed, and subsequently approved, for employment of
4 professionals in connection with the Chapter 11 Case. Such applications included:

5 (i) Debtor's application to employ Gordon Silver as its general
6 bankruptcy counsel [ECF No. 126];

7 (ii) Debtor's application to employ CRG Partners Group, LLC as its
8 financial and restructuring advisor [ECF No. 128];

9 (iii) Debtor's application to employ Piercy Bowler Taylor & Kern as
10 its auditor and accountant [ECF No. 96];

11 (iv) Debtor's application to employ Stoel Rives LLP as its special
12 counsel [ECF No. 132];

13 (v) Debtor's application to employ Oppenheimer & Co., Inc., as its
14 financial advisor and investment banker [ECF No. 162];

15 (vi) Debtor's application to employ Sea Port Group Securities, LLC
16 as its financial advisor and investment banker [ECF No. 164];

17 (vii) Debtor's application to employ DLA Piper LLP (US) as its
18 bankruptcy co-counsel [ECF No. 429]; and

19 (viii) Debtor's application to employ and compensate certain
20 professionals in the ordinary course of business [ECF No. 76] (professionals covered by this
21 application consist of various outside professionals whom the Debtor employed prior to filing
22 its Chapter 11 petition, including law firms and accountants in various non-bankruptcy matters
23 ranging from defending personal injury and workers' compensation suits, to providing advice
24 on various general litigation and corporate related issues).

25 b. Schedules and Statements

26 On January 26, 2012, the Debtor filed its schedules of assets and liabilities and
27 statements of financial affairs, other than Schedule F. On January 27, 2012, the Debtor filed
28 Schedule F.

 c. Administration of Personal Injury Claims

 The Debtor maintains automobile, general liability, and umbrella policies covering
personal injury liability. The Debtor renews its policies or purchases new policies on or about
May 10 of each year. Generally, the Debtor's automobile policies have a coverage limit of \$1
million per accident, with no aggregate limits. Up to and including the 2007-2008 policy
year, Debtor's per-accident deductible under its automobile policies was \$10,000. For the
2008-2009 through 2011-2012 policy years, the Debtor's per-accident deductible under its

1 automobile policies was \$50,000. The present automobile policy does not have a deductible
2 requirement.

3 The Debtor's general liability policies have \$1,000,000 per-occurrence limits with
4 \$2,000,000 aggregate limits. The SIR obligation under the general liability policies is
5 \$250,000 per-occurrence. The 2009-2010 general liability policy limited the Debtor's
6 aggregate SIR obligation to a maximum of \$750,000. For the 2010-2011 through 2011-2012
7 policy years, the general liability policies limited Debtor's aggregate SIR obligation to a
8 maximum of \$650,000. The present general liability policy limits Debtor's aggregate SIR
9 obligation to a maximum of \$750,000.

10 The Debtor also maintains umbrella insurance, which policies provide coverage for
11 personal injury liability that exceeds the automobile or general liability policy coverage. Up to
12 and including the 2010-2011 policy year, the umbrella policies had \$5,000,000 coverage
13 limits. The 2011-2012 and present umbrella policies have \$10,000,000 coverage limits. The
14 Debtor's coverage for personal injury claims from May 10, 2005 to the present is summarized
15 in the following tables:

16 Auto Policies

Policy Year	Carrier	Deductible – per occurrence	Limit – per occurrence
5/10/2005–5/10/2006	CNA	\$10,000	\$1,000,000
5/10/2006–5/10/2007	CNA	\$10,000	\$1,000,000
5/10/2007–5/10/2008	CNA	\$10,000	\$1,000,000
5/10/2008–5/10/2009	Liberty Mutual	\$50,000	\$1,000,000
5/10/2009–5/10/2010	Great American	\$50,000	\$1,000,000
5/10/2010–5/10/2011	Great American	\$50,000	\$1,000,000
5/10/2011–Petition Date	Great American	\$50,000	\$1,000,000

17 General Liability Policies

Policy Year	Carrier	SIR – per occurrence / maximum	GL limit – per occurrence	GL limit - aggregate	Umbrella limit
5/10/2005–5/10/2006	Lexington	None active	None active	None active	None active
5/10/2006–5/10/2007	Lexington	None active	None active	None active	None active
5/10/2007–5/10/2008	Lexington	\$250,000	\$1,000,000	\$2,000,000	\$5,000,000
5/10/2008–5/10/2009	Lexington	\$250,000	\$1,000,000	\$2,000,000	\$5,000,000
5/10/2009–5/10/2010	Ironshore	\$250,000 / \$750,000	\$1,000,000	\$2,000,000	\$5,000,000
5/10/2010–5/10/2011	Ironshore	\$250,000 / \$650,000	\$1,000,000	\$2,000,000	\$5,000,000
5/10/2011–Petition Date	Ironshore	\$250,000 / \$650,000	\$1,000,000	\$2,000,000	\$10,000,000

23 Total claims against each of the Debtor's policies in each of the above policy years
24 range from \$0 to \$13.5 million, or more. Except with respect to the 2007-2008, 2008-2009,
25 and 2010-2011 policy periods, the Debtor faces no real risk of liability in excess of its policy
26 limits even if the plaintiffs' claims were allowed in full. Moreover, the Debtor believes many
27 of the asserted claims, including the claims in the 2007-2008, 2008-2009, and 2010-2011
28 policy periods, are without merit.

1 In order to centralize and streamline the process of liquidating these personal injury
2 claims, the Debtor moved for implementation of alternative dispute resolution (“ADR”)
3 procedures pursuant to Bankruptcy Rule 9019(b). On March 12, 2012, the Debtor filed its
4 *Amended Motion for Order, Pursuant to Section 105(a) of the Bankruptcy Code and Local*
5 *Rule 9019, Requiring Each Personal Injury Claimant Attend and Participate in a Settlement*
6 *Conference as a Condition Precedent to Relief from the Automatic Stay* [ECF No. 721] (the
7 “ADR Motion”). Pursuant to the Order approving the ADR Motion, with certain limited
8 exceptions, each personal injury claimant is required to participate in a settlement conference
9 as a condition precedent to relief from the automatic stay to liquidate his or her personal
10 injury claim in a non-bankruptcy forum. See *id.* In total, ~~twenty-three~~twenty-four (23~~24~~)
11 proofs of Claim were filed by the relevant bar date(s) for a total asserted amount of
12 ~~\$42,516,872.27~~\$42,520,872.27. This figure does not include eight (8) late-filed proofs of
13 Claim. Moreover, as a result of the ADR settlement conferences, three (3) Creditors’ Claims
14 resulted in the filing of settlement motions pursuant to Bankruptcy Rule 9019. Other than one
15 Allowed General Unsecured Claim in the amount of \$47,000, the remaining Claims that were
16 settled, assuming an order is entered approving each settlement, will result in payment from an
17 insurer, withdrawal of the Claims, or the Claims becoming Disallowed Claims. Three
18 individuals have filed Personal Injury Claims well in excess of the policy limits (\$7 million;
19 \$10 million; and \$12.5 million). See Claim Numbers 501, 534-35, 708-13, and 577.

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d. Affiliated Leases

The Debtor is a lessee under numerous leases (the “Affiliated Leases”) with DFA and other entities that are Affiliates of the Debtor by virtue of ownership interests held therein by Don F. Ahern. The Affiliated Leases expire in October of 2014 and the locations of the Affiliated Leases include, among other things, branch locations, administrative offices, storage locations, aircrafts hangers and a ranch intended to be used as a training facility for employees of the Debtor. The Debtor has not performed an analysis of whether the Affiliated Leases are above or below market. Because of the value of the Affiliated Leases to the Debtor’s business operations and the impact that rejection of some of the Affiliated Leases would have on Mr. Ahern, the Debtor sought to assume the Affiliated Leases. Accordingly, on July 2, 2012 the Debtor filed its *Motion to Assume Certain Affiliated Nonresidential Real Property Leases*, [ECF No. 806] (the “Affiliated Leases Motion”), pursuant to which the Debtor sought approval from the Bankruptcy Court to, among other things, assume, and in some cases modify the terms of, certain of the Affiliated Leases. Subsequent to the filing of the Affiliated Leases Motion, several parties objected to the relief requested therein and the hearing on such motion was adjourned several times. After reviewing the matter with the DFA, the landlord, the Debtor determined to withdraw the Affiliated Leases Motion with prejudice, but nonetheless DFA voluntarily reduced the aggregate monthly lease payments owed by the Debtor by \$50,000 per month beginning in August 2012. The Debtor intends to assume the Affiliated Leases in connection with confirmation of the Debtor Plan. The Noteholder Proponents have not disclosed their intentions with respect to assuming or rejecting the Affiliated Leases.

e. Mediation

In conjunction with Debtor’s request to extend its exclusive right to file a plan, by order entered on August 10, 2012, [ECF No. 959], the Bankruptcy Court ordered Debtor and

1 various parties in interest to participate in a settlement conference pertaining to plan
2 confirmation issues. The settlement conference was conducted on September 6-7, 2012 by
3 Judge William T. Thurman of the United States Bankruptcy Court for the District of Utah and
4 several parties in interest attended including the Debtor, the Majority Term Lenders, the
5 Committee, Sphere Capital LLC – Series B, certain noteholders, the Second Lien Indenture
6 Trustee, certain of the DIP Loan Agents and Kubota. Although all parties participated in good
7 faith, no consensual resolution was reached concerning plan issues; however, the parties did
8 agree to further mediation with Judge Thurman, which was conducted on September 27, 2012.
9 Again, the parties were unable to resolve their disagreements regarding plan confirmation
10 issues.

11
12 f. Exclusivity

13 Under the Bankruptcy Code, a debtor has the exclusive right to file a plan or plans of
14 reorganization for an initial period of 120 days from the date on which the debtor filed a
15 petition for voluntary relief (which may be extended by the Court for a period of up to 18
16 months from the petition date). If a debtor files a plan within this exclusive period, then the
17 debtor has the exclusive right for 180 days from the petition date to solicit acceptances to the
18 plan (which may be extended by the Court for a period of up to 20 months from the petition
19 date). During a debtor's exclusive periods, no other party in interest may file a competing
20 chapter 11 plan; however, a court may terminate the debtor's exclusive periods upon request
21 of a party in interest and "for cause." During the Chapter 11 Case the Debtor requested, and
22 was granted, extensions of the exclusivity period to file the Debtor Plan and Disclosure
23 Statement, up to and including November 30, 2012.

24 At a hearing before the Bankruptcy Court held on November 30, 2012 (the "November
25 Hearing") to consider the Debtor's *Second Motion for Order Extending the Exclusive Periods*
26 *to File and Secure Acceptance of Debtor's Plan of Reorganization Pursuant to 11 U.S.C. §*
27 *1121(d)* [ECF Dkt. No. 877] (the "Second Exclusivity Motion"), the Bankruptcy Court further
28 extended the Debtor's exclusivity to a hearing on December 7, 2012 (the "December
Hearing"). Furthermore, at that same hearing, the Bankruptcy Court asked the parties to
submit briefing as to whether the Debtor Plan, which had not yet been filed, violated the
absolute priority rule set forth in 11 U.S.C. § 1129(b)(2)(B). At the hearing on December 7,
2012, the Bankruptcy Court entered an order terminating the Debtor's exclusive periods (the
"Termination Order") and denied the Debtor's oral request for a stay pending appeal.

On December 20, 2012, the Debtor filed a notice of appeal with respect to the seven
orders entered by the Bankruptcy Court in connection with the Second Exclusivity Motion.
On that same date, the Debtor filed a motion for stay pending appeal of the Termination Order
(the "Initial Stay Motion") with the United States District Court for the District of Nevada (the
"District Court"). On December 21, 2012, the District Court entered an order granting the
Initial Stay Motion, which order was subsequently modified that same day. On January 4,
2013, the Noteholder Proponents filed a motion to vacate the stay and dismiss the appeal. On
January 14, 2013, the District Court vacated the stay and dismissed the Debtor's appeal for
lack of jurisdiction (the "Dismissal Order"). On January 15, 2013, the Debtor filed a notice of
appeal of the Dismissal Order to the United States Court of Appeals for the Ninth Circuit (the
"Ninth Circuit"). On January 17, 2013, as required by the Ninth Circuit, the Debtor first filed
a motion with the District Court (the "District Court Stay Motion") to stay the Dismissal

1 Order pending the Debtor's appeal to the Ninth Circuit. On January 23, 2013, the District
2 Court denied the District Court Stay Motion. On January 25, 2013, the Debtor filed a motion
3 with the Ninth Circuit to stay the Dismissal Order pending the Debtor's appeal to the Ninth
4 Circuit. On January 29, 2013, the Ninth Circuit denied the Debtor's motion to stay the
5 Dismissal Order. The Debtor's appeal to the Ninth Circuit remains pending with initial
6 briefing currently due in April. If the Ninth Circuit finds that the District Court had
7 jurisdiction to hear the Debtor's appeal and the District Court ultimately reverses the
8 Termination Order, the Debtor's exclusivity might be reinstated and the Debtor Plan could be
9 the only plan of reorganization capable of being confirmed.

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11 If the Ninth Circuit finds, on the other hand, that the District Court did not have
12 jurisdiction to hear the Debtor's appeal and the Noteholder Plan is confirmed, the Debtor
13 might appeal any order of the Bankruptcy Court confirming the Noteholder Plan because the
14 Debtor believes the Termination Order was entered in error. The Debtor believes that the
15 Noteholder Proponents will argue that any such appeal is moot at that time; however, the
16 Debtor does not agree with that argument.

17
18 g. Statements by Don Ahern

19 The Noteholder Proponents have brought to the Bankruptcy Court's attention a
20 statement made by Don Ahern to the media that "[i]f somebody else owns Ahern Rentals, I
21 will be Ahern Rentals' biggest competitor." See *Status Report of Holders of the Second Lien*
22 *Notes* [ECF No. 1545]. This statement was taken out of context and was directed at the
23 execution risk that the Noteholder Plan would face if confirmed and consummated in light of
24 the fact that Mr. Ahern is not subject to a covenant not to compete. Indeed, the Debtor has no
25 knowledge of any attempts by Mr. Ahern to solicit business and upon inquiry was informed by
26 Mr. Ahern that no solicitation has occurred. More importantly, under Mr. Ahern's direction
27 and the other management's efforts, the Debtor's business performance has continued to
28 improve during the course of the Chapter 11 Case and the last few months.

The Debtor has also inquired of Mr. Ahern and others about whether there has been
any solicitation of management and key employees to join a competing business and whether
Mr. Ahern has arranged for financing for a competing entity. Mr. Ahern and others responded
that no such solicitation has occurred and there has been no arrangement for financing a
competing entity.

Therefore, the Debtor maintains that Mr. Ahern's statement should not be construed as
any attempt by Mr. Ahern to undermine operations or to provide any support for an allegation
that Mr. Ahern has not discharged his fiduciary obligations to the Debtor and its creditors to
maximize value.

h. The Debtor Plan

On November 30, 2012 the Debtor filed the *Debtor's Plan of Reorganization* [ECF
No. 1334] (the "First Plan") and the *Disclosure Statement to Accompany Debtor's Plan of*
Reorganization [ECF No. 1335] (the "First Disclosure Statement"), which were amended by
the Debtor Plan and this Disclosure Statement. As described in detail herein, the Debtor Plan
provides payment in full to all Classes of Creditors as required by the Bankruptcy Code.

1 Although some of the payments are deferred, the Debtor believes that the payment scheme
2 provides the best option for the Creditors and importantly, allows the Debtor to continue
operating its business.

3 The Debtor Plan significantly alters the treatment to various Classes of Creditors set
4 forth in the First Plan due to concerns raised by the Bankruptcy Court at the November
Hearing and the December Hearing. Specifically, the Term Loan Claims are now being paid
5 in full in Cash. Additionally, the Second Lien Loan Claims are now treated as fully Secured
due to a modified valuation analysis. Finally, the treatment of Personal Injury Claims has
6 been clarified and now provides interest where appropriate.

7 In order to assess whether the Second Lien Loan Claims were fully Secured, the
8 Debtor relied on Section 506(a) of the Bankruptcy Code. The proper method for valuing
collateral pursuant to Section 506(a) of the Bankruptcy Code depends on the actual situation
9 presented. Ninth Circuit case law suggests that, in a Chapter 11 reorganization case, collateral
should be valued using the going-concern/value in use/enterprise valuation method for
10 determining the extent of a secured creditor's claim. The result of a going-concern valuation
of collateral is that a claim secured by the assets of a debtor is secured up to the debtor's
11 enterprise value, and thus fully secured if the enterprise value exceeds the value of the debt.
Here, in the event the Bankruptcy Court determines that the proper method for valuing the
12 Collateral is enterprise value and agrees with the Valuation Analysis attached hereto as
Appendix D, the Second Lien Loan Claims will be fully Secured.

14 Although collateral should be valued using the enterprise valuation method, the
Bankruptcy Court may disagree and look at the liquidation value of collateral to determine the
15 extent to which a creditor's claim is secured. Section 506(a) of the Bankruptcy Code provides
for the bifurcation of an undersecured claim, giving a creditor a secured claim to the extent of
16 the value of the collateral on which the lien is fixed, and an unsecured, deficiency claim for
the remainder. Here, in the event the Bankruptcy Court determines that the liquidation
17 valuation method is appropriate, based on the Liquidation Analysis attached hereto as
Appendix C, the Second Lien Loan Claims will not be fully secured (i.e., they will be
18 undersecured). Therefore, under a liquidation valuation scenario, the Holders of Second Lien
Loan Claims will have Secured Claims against the Debtor's estate up to the value of the
19 Second Lien Collateral and the remaining value of their Claims will be Unsecured, deficiency
20 Claims.

21 Finally, the Bankruptcy Court may value the Collateral based on a different
22 methodology than those discussed above. In the plan of reorganization filed by the Debtor on
November 30, 2012, the Debtor used the orderly liquidation value to value the Collateral.
23 Upon further review, based on the relevant case law and in light of the significant
improvement in the Debtor's business since the Petition Date, the Debtor now believes that
24 appropriate valuation method is that of enterprise value. As a result, although the Noteholder
Proponents have taken the position that the Second Lien Loan Claims are not fully Secured,
25 the Debtor does not agree with such an assessment. Regardless of which valuation method
the Court uses, the Debtor believes the Debtor Plan is feasible.
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1 i. The Noteholder Plan

2 On February 8, 2013, the Noteholder Proponents filed the Noteholder Plan and the
3 *Disclosure Statement for the Plan of Reorganization for Ahern Rentals, Inc. Proposed by*
4 *Certain Holders of the 9¼% Senior Secured Second Lien Notes Due 2013* [ECF No. 1592]
5 (the “Noteholder Disclosure Statement”). The Noteholder Plan classifies Creditors into eight
6 (8) Classes of Claims and Interest as follows: Class 1: Other Secured Claims; Class 2: Other
7 Priority Claims; Class 3: First Lien Term Loan Claims; Class 4: Second Lien Note Claims;
8 Class 5: Insider Claims; Class 6: Personal Injury Claims; Class 7: General Unsecured Claims;
9 and Class 8: Equity Interests. Under the Noteholder Plan Class 4: Second Lien Note Claims;
10 Class 5: Insider Claims, and Class 8: Equity Interests are all Impaired.

11 The Debtor believes that the Debtor Plan provides for substantially better treatment of
12 Claims and Equity Interests than the Noteholder Plan provides, because, among other things,
13 the Debtor Plan embodies a business plan that projects a significantly higher enterprise value
14 for Reorganized Ahern and provides for a one hundred percent (100%) recovery to all Classes
15 of Claims, plus interest from the Petition Date. Specifically, the Debtor Plan provides for the
16 payment of interest on Allowed Claims accruing after the Petition Date and a greater recovery
17 to the Holders of Second Lien Loan Claims, even if such Holders do not vote to accept the
18 Debtor Plan, than the Noteholder Plan projects for such Holders. Indeed, the Debtor Plan
19 provides Holders of Second Lien Loan Claims consideration equal to par (\$237 million) if
20 they vote in favor of the Debtor Plan (\$160 million in cash plus \$77 million of secured notes)
21 or secured notes equal to par plus accrued pre- and post-petition interest (approximately \$308
22 million) if they do not. The Noteholder Plan provides no Cash recovery to the Second Lien
23 Loan Claims and offers only equity securities with no details as to any business plan,
24 governance rights, management team, exit financing, or determination as to value. In addition
25 to the right to receive \$160 million in Cash, the Debtor Plan contemplates a Reorganized
26 Ahern in which the Junior Secured A Notes or Junior Secured B Notes are senior to all equity
27 interests and receive the benefit of a proven management team and business strategy, as most
28 recently demonstrated by pro forma LTM EBITDA growing during the pendency of the case
from approximately \$77 million at the end of 2011 to approximately \$117 million at the end
of 2012. Conversely, the Debtor maintains that the Noteholder Plan may result in a complete
change in management and, thus, is subject to greater execution risk, and is not confirmable
because, among other things, it improperly classifies claims, rests on artificially low valuation,
and has other substantive and technical flaws.

V.

SUMMARY OF THE DEBTOR PLAN OF REORGANIZATION

24 THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE AND
25 IMPLEMENTATION OF THE DEBTOR PLAN AND THE CLASSIFICATION AND
26 TREATMENT OF CLAIMS UNDER THE DEBTOR PLAN AND IS QUALIFIED IN ITS
ENTIRETY BY REFERENCE TO THE DEBTOR PLAN, WHICH ACCOMPANIES THIS
DISCLOSURE STATEMENT, AND TO THE EXHIBITS ATTACHED THERETO.

27 THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT
28 INCLUDE SUMMARIES OF THE PROVISIONS CONTAINED IN THE DEBTOR PLAN

1 AND IN DOCUMENTS REFERRED TO THEREIN. THE STATEMENTS CONTAINED IN
2 THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE PRECISE OR COMPLETE
3 STATEMENTS OF ALL THE TERMS AND PROVISIONS OF THE DEBTOR PLAN OR
4 DOCUMENTS REFERRED TO THEREIN, AND REFERENCE IS MADE TO THE
DEBTOR PLAN AND TO SUCH DOCUMENTS FOR THE FULL AND COMPLETE
STATEMENTS OF SUCH TERMS AND PROVISIONS.

5 THE DEBTOR PLAN ITSELF AND THE DOCUMENTS REFERRED TO THEREIN
6 WILL CONTROL THE TREATMENT OF CLAIMS AGAINST, AND INTERESTS IN, THE
7 DEBTOR UNDER THE DEBTOR PLAN AND WILL, UPON THE EFFECTIVE DATE, BE
8 BINDING UPON HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTOR,
9 REORGANIZED AHERN, AND OTHER PARTIES IN INTEREST. IN THE EVENT OF
ANY CONFLICT BETWEEN THIS DISCLOSURE STATEMENT AND THE DEBTOR
PLAN OR ANY OTHER OPERATIVE DOCUMENT, THE TERMS OF THE DEBTOR
PLAN AND/OR SUCH OTHER OPERATIVE DOCUMENT WILL CONTROL.

10 **A. Overall Structure of the Debtor Plan.**

11 Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code.
12 Under Chapter 11, a debtor is authorized to reorganize its business for the benefit of its
13 creditors and shareholders. Upon the filing of a petition for relief under Chapter 11, Section
14 362 of the Bankruptcy Code provides for an automatic stay of substantially all acts and
proceedings against the debtor and its property, including all attempts to collect claims or
enforce liens that arose prior to the commencement of a Chapter 11 case.

15 The consummation of a plan of reorganization is the principal objective of a Chapter
16 11 case. A plan of reorganization sets forth the means for satisfying claims against the
17 interests in a debtor. Confirmation of plan of reorganization by the Bankruptcy Court and
18 occurrence of the effective date make the plan binding upon the debtor, any issuer of
19 securities under the plan, any person acquiring property under the plan, and any creditor of, or
20 equity security holder in, the debtor, whether or not such creditor or equity security holder (i)
21 is impaired under or has accepted the plan or (ii) receives or retains any property under the
22 plan. Subject to certain limited exceptions, and other than as provided in the plan itself or the
confirmation order, the confirmation order and occurrence of the effective date discharges the
debtor from any debt that arose prior to the date of confirmation of the plan and substitutes
for such debt the obligations specified under the confirmed plan, and terminates all rights and
interests of equity security holders.

23 The terms of the Debtor Plan are the result of negotiations between and among the
24 Debtor and certain of the Debtor's creditors. Accordingly, the Debtor Plan reflects the
25 Debtor's best assessment of its ability to achieve the goals of its business plan, to offer
26 creditors and equity interest holders the significant and substantial recoveries set forth more
fully in the Debtor Plan, and to pay its continuing obligations in the ordinary course of its
business.

27 Under the Debtor Plan, Claims against and Equity Interests in the Debtor are divided
28 into Classes according to their relative seniority and other criteria. If the Debtor Plan is
confirmed by the Bankruptcy Court and consummated, (i) the Claims in certain Classes will

1 be reinstated or modified and receive Distributions equal to the full amount of such Claims,
2 and (ii) the Claims of certain other Classes will be modified and receive Distributions
3 constituting a partial recovery on such Claims. On the date of Distribution and at certain
4 times thereafter, the Disbursing Agent will distribute Cash and other property in respect of
5 certain Classes of Claims as provided in the Debtor Plan. The Classes of Claims against and
6 Equity Interests in the Debtor created under the Debtor Plan, the treatment of those Classes
7 under the Debtor Plan, and the other property to be distributed under the Debtor Plan, are
8 described below.

9 **B. Classification and Treatment of Claims and Interests.**

10 Section 1122 of the Bankruptcy Code provides that a plan of reorganization must
11 classify the claims and interests of a debtor's creditors and equity interest holders. In
12 accordance with Section 1122 of the Bankruptcy Code, the Debtor Plan divides Claims and
13 Equity Interests into Classes and sets forth the treatment for each Class (other than
14 Administrative Claims and Priority Tax Claims, which, pursuant to Section 1123(a)(1) of the
15 Bankruptcy Code, do not need to be classified). The Debtor also is required, under Section
16 1122 of the Bankruptcy Code, to classify Claims against and Equity Interests in the Debtor
17 into Classes that contain Claims and Equity Interests that are substantially similar to the other
18 Claims and Interests in such Class.

19 The Debtor believes that the Debtor Plan has classified all Claims and Equity Interests
20 in compliance with the provisions of Section 1122 of the Bankruptcy Code and applicable
21 case law, but it is possible that a Holder of a Claim or Equity Interest may challenge the
22 Debtor's classification of Claims and Equity Interests and that the Bankruptcy Court may find
23 that a different classification is required for the Debtor Plan to be confirmed. In that event,
24 the Debtor intends, to the extent permitted by the Bankruptcy Code, the Debtor Plan, and the
25 Bankruptcy Court, to make such reasonable modifications of the classifications under the
26 Debtor Plan to permit confirmation and to use the Debtor Plan acceptances received for
27 purposes of obtaining the approval of the reconstituted Class or Classes of which each
28 accepting Holder ultimately is deemed to be a member. Any such reclassification could
adversely affect the Class in which such Holder initially was a member, or any other Class
under the Debtor Plan, by changing the composition of such Class and the vote required of
that Class for approval of the Debtor Plan.

The amount of any Impaired Claim that ultimately is allowed by the Bankruptcy Court
may vary from any estimated allowed amount of such Claim and, accordingly, the total Claims
ultimately allowed by the Bankruptcy Court with respect to each Impaired Class of Claims
may also vary from any estimates contained herein with respect to the aggregate Claims in any
Impaired Class. Thus, the value of the property that ultimately will be received by a particular
Holder of an Allowed Claim under the Debtor Plan may be adversely (or favorably) affected
by the aggregate amount of Claims ultimately allowed in the applicable Class.

The classification of Claims and Equity Interests and the nature of Distributions to
members of each Class are summarized below. The Debtor believes that the consideration, if
any, provided under the Debtor Plan to Holders of Claims and Equity Interests reflects an
appropriate resolution of their Claims and Equity Interests, taking into account the differing
nature and priority (including applicable contractual and statutory subordination) of such

1 Claims and Equity Interests and the fair value of the Debtor's assets. To the extent necessary,
2 the Debtor will request confirmation of the Debtor Plan, as it may be modified from time to
3 time, under Section 1129(b) of the Bankruptcy Code. Specifically, Section 1129(b) of the
4 Bankruptcy Code permits confirmation of a Chapter 11 plan in certain circumstances even if
5 the plan has not been accepted by all impaired classes of claims and interests. Although the
6 Debtor believes that the Debtor Plan can be confirmed under Section 1129(b) of the
7 Bankruptcy Code, there can be no assurance that the Bankruptcy Court will find that the
8 requirements to do so have been satisfied.

9 **1. Treatment of Administrative Claims.**

10 a. General.

11 Pursuant to Section 1123(a)(1) of the Bankruptcy Code, the Claims against Debtor set
12 forth in this Article 2 are not classified within any Classes. The Holders of such Claims are
13 not entitled to vote on the Debtor Plan. The treatment of the Claims set forth below is
14 consistent with the requirements of Section 1129(a)(9)(A) of the Bankruptcy Code.

15 b. Treatment of Administrative Claims.

16 Except with respect to Administrative Claims that are Professional Fee Claims, each
17 Holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement,
18 release and discharge of and in exchange for its Allowed Administrative Claim, on the latest
19 of (i) the Distribution Date, (ii) the date on which its Administrative Claim becomes an
20 Allowed Administrative Claim, (iii) the date on which its Administrative Claim becomes
21 payable under any agreement with the Debtor relating thereto, (iv) in respect of liabilities
22 incurred in the ordinary course of business, the date upon which such liabilities are payable in
23 the ordinary course of the Debtor's business, consistent with past practice, or (v) such other
24 date as may be agreed upon between the Holder of such Allowed Administrative Claim and
25 the Debtor or Reorganized Ahern, as the case may be, (i) Cash equal to the unpaid portion of
26 its Allowed Administrative Claim or (ii) such other treatment as to which the Holder of such
27 Allowed Administrative Claim may agree.

28 (i) Professional Compensation.

(a) Claims for Accrued Professional Compensation.

Professionals or other Persons asserting a Professional Fee Claim for services rendered before
the Effective Date must file and serve on the Debtor and such other Persons who are
designated by the Bankruptcy Rules, the Confirmation Order, the Interim Compensation Order
or other order of the Bankruptcy Court an application for final allowance of such Professional
Claim for accrued professional compensation no later than forty-five (45) days after the
Effective Date. Objections to any Claim for accrued professional compensation must be filed
and served on Reorganized Ahern and the Office of the U.S. Trustee and the requesting party
no later than sixty-five (65) days after the Effective Date. Allowed Professional Fee Claims
shall be paid in full.

(b) Post-Effective Date Fees and Expenses. Upon the
Effective Date, any requirement that Professionals comply with Sections 327 through 331 and

1 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after
2 such date shall terminate, and Reorganized Ahern may employ and pay any Professional for
3 services rendered or expenses incurred after the Effective Date in the ordinary course of
4 business without any further notice to any party or action, order or approval of the Bankruptcy
5 Court. After the Effective Date, Reorganized Ahern shall pay the reasonable fees and
6 expenses incurred by the Committee's Professionals solely in connection with efforts relating
7 to the final fee applications for the Committee's Professionals.

8 (ii) DIP Loan Claims.

9 All DIP Loan Claims shall be Allowed, and on the Effective Date each Holder of an Allowed
10 DIP Loan Claim shall receive, (i) payment in full in Cash of such Allowed DIP Loan Claim in
11 full and final satisfaction thereof other than the obligations under the indemnity and other
12 provisions of the DIP Loan Agreement that by their terms survive the termination of the DIP
13 Loan Agreement or (ii) such other treatment as to which the Debtor and the Holder of such
14 Allowed DIP Loan Claim may agree in writing. Also on the Effective Date, all commitments
15 under the DIP Loan Agreement shall terminate and all letters of credit outstanding under the
16 DIP Loan Agreement shall be treated in accordance with the terms of the DIP Loan
17 Agreement.

18 c. Allowed Priority Tax Claims.

19 Each Holder of an Allowed Priority Tax Claim, if any, will, in full and final
20 satisfaction of such Claim, be paid in full (or be treated in compliance with Section
21 1129(a)(9)(C) of the Bankruptcy Code) by Reorganized Ahern on the later of (i) the Effective
22 Date or as soon thereafter as practicable; (ii) such date as may be fixed by the Bankruptcy
23 Court; (iii) the first Business Day following the fourteenth (14th) day after the date on which
24 an order allowing such Claim becomes a Final Order; or (iv) such date as is agreed to by the
25 Holder of such Claim and Debtor or Reorganized Ahern, as the case may be.

26 **2. Treatment of Classes of Claims and Equity Interests.**

27 a. Class 1: Term Loan Claims.

28 (i) *Claims in Class:* Class 1 consists of the Term Loan Claims.

(ii) *Treatment:* The Term Loan Claims are Allowed Claims, not subject to offset, defense, counterclaim, reduction, or credit of any kind whatsoever. Unless the Holder of an Allowed Term Loan Claim and the Debtor agree to a different treatment, on the Effective Date each Holder of an Allowed Term Loan Claim shall receive, in full satisfaction, settlement, release and discharge of and in exchange for such Holder's Allowed Term Loan Claim, Cash in the full amount of such Allowed Term Loan Claim, including, but not limited to, any postpetition interest, charges, costs and other expenses accrued through the date of payment pursuant to the terms of the Majority Term Lender Cash Collateral Stipulation, as it may be amended or modified in accordance with its terms, the DIP Loan/Cash Collateral Order, and Section 506(b) of the Bankruptcy Code.

1 The Holders of Term Loan Claims are Unimpaired under the Debtor
2 Plan and are not entitled to vote to accept or reject the Debtor Plan.

3 b. Class 2: Second Lien Loan Claims.

4 (i) *Claims in Class:* Class 2 consists of the Second Lien Loan
5 Claims.

6 (ii) *Treatment:* In the event that Class 2 votes to accept the Debtor
7 Plan, on the Effective Date each Holder of any Allowed Second Lien Loan Claims shall
8 receive such Holder's Pro Rata share of (i) Cash in the amount of \$160 million; and (ii) the
9 Junior Secured A Notes, in full satisfaction, settlement, release and discharge of and in
10 exchange for such Holder's Allowed Second Lien Loan Claim. In the event that Class 2 does
11 not vote to accept the Debtor Plan, then on the Effective Date each Holder of any Allowed
12 Second Lien Loan Claims shall receive such Holder's Pro Rata share of the Junior Secured B
13 Notes, in full satisfaction, settlement, release and discharge of and in exchange for such
14 Holder's Allowed Second Lien Loan Claim.

15 In the event Class 2: Second Lien Loan Claims votes to accept the
16 Debtor Plan, the Junior Secured A Notes shall be issued by Reorganized Ahern pursuant to
17 the Junior Secured A Note Indenture on the Effective Date of the Debtor Plan. The Junior
18 Secured A Notes shall be in the principal amount of \$77 million, bear interest at the rate of
19 ten percent (10%) per annum and shall mature on the first Business Day following the date
20 that is the sixth (6th) anniversary of the Effective Date. Interest on the Junior Secured A
21 Notes shall be paid in Cash to the extent permitted by the Exit Financing Facility and
22 otherwise shall be paid in kind.

23 In the event Class 2: Second Lien Loan Claims does not vote to accept
24 the Debtor Plan, the Junior Secured B Notes shall be issued by Reorganized Ahern pursuant to
25 the Junior Secured B Note Indenture on the Effective Date of the Debtor Plan. The Junior
26 Secured B Notes shall be in the principal amount of \$307.4 million, bear interest at the rate of
27 seven and one-half percent (7.5%) per annum, or such other interest rate as determined by the
28 Bankruptcy Court at the Confirmation Hearing or such other hearing prior to the Confirmation
Hearing, and shall mature on the first Business Day following the date that is the sixth (6th)
anniversary of the Effective Date.

On the Effective Date, as applicable, the Liens in the Junior Secured A
Note Collateral to secure the Junior Secured A Notes or the Liens in the Junior Secured B
Note Collateral to secure the Junior Secured B Notes, shall be expressly junior and
subordinate in all respects to the Liens in the Exit Financing Facility.

The Holders of Second Lien Loan Claims are Impaired under the Debtor
Plan and are entitled to vote to accept or reject the Debtor Plan.

c. Class 3: Kubota Claims.

(i) *Claims in Class:* Class 3 consists of the Kubota Claims.

1 (ii) *Treatment:* Unless the Holder of a Kubota Claim and the Debtor
2 agree to a different treatment, in full satisfaction, settlement, release, and discharge of, and in
3 exchange for the Kubota Claims, the Holder of any Allowed Kubota Claims shall be paid (i)
4 on the Effective Date, Cash in the principal amount of 5% of such Holder's Allowed Kubota
5 Claim; (ii) 90 days after the Effective Date, Cash in the principal amount of 5% of such
6 Holder's remaining Allowed Kubota Claim (reflecting a reduction in the principal amount of
7 such Holder's Allowed Kubota Claims as a result of the first payment); and (iii) 180 days
8 after the Effective Date, Cash in the aggregate amount of the remaining balance of such
9 Holder's Allowed Kubota Claims (reflecting a reduction in the principal amount of such
10 Holder's Allowed Kubota Claims as a result of the first and second payments). The Allowed
11 Kubota Claims shall bear interest as set forth in the Kubota Flooring Agreement.

12 The Holders of Kubota Claims are Impaired under the Debtor Plan and are
13 entitled to vote to accept or reject the Debtor Plan.

14 The Noteholder Proponents have taken the position that the Kubota Claims are
15 being artificially impaired and separately classified solely for the purpose of creating an
16 impaired, accepting class.

17 d. Class 4: Other Secured Claims.

18 (i) *Claims in Class:* Class 4 consists of the Allowed Other Secured
19 Claims.

20 (ii) *Treatment:* Unless the Holder of an Allowed Other Secured
21 Claim and the Debtor agree to a different treatment, on the Effective Date each Holder of an
22 Allowed Other Secured Claim shall (i) have its Claim Reinstated, or (ii) receive, in full
23 satisfaction, settlement, release, and discharge of, and in exchange for, such Secured Claim,
24 either (a) Cash in the full amount of such Allowed Other Secured Claim, including any
25 postpetition interest accrued pursuant to Section 506(b) of the Bankruptcy Code, (b) the
26 proceeds of the sale or disposition of the Collateral securing such Allowed Other Secured
27 Claim to the extent of the value of the Holder's secured interest in such Collateral, (c) the
28 Collateral securing such Allowed Other Secured Claim and any interest on such Allowed
Other Secured Claim required to be paid pursuant to Section 506(b) of the Bankruptcy Code,
or (d) such other distribution as necessary to satisfy the requirements of Section 1129 of the
Bankruptcy Code. If the Claim of a Holder of an Allowed Other Secured Claim exceeds the
value of the Collateral that secures it, such Holder will have an Other Secured Claim equal to
the Collateral's value and a General Unsecured Claim for the deficiency.

The Holders of Other Secured Claims are Unimpaired under the Debtor Plan
and are not entitled to vote to accept or reject the Debtor Plan.

e. Class 5: Other Priority Claims.

(i) *Claims in Class:* Class 5 consists of the Allowed Other Priority
Claims.

(ii) *Treatment:* Unless the Holder of an Allowed Other Priority
Claim and the Debtor agree to a different treatment, each Holder of an Allowed Other Priority

1 Claim, if any, shall, in full satisfaction, settlement, release, and discharge of, and in exchange
2 for the Allowed Other Priority Claims, be paid in full in Cash by Reorganized Ahern upon the
3 latest of: (i) the Effective Date; (ii) such date as may be fixed by the Bankruptcy Court; (iii)
4 the first Business Day following the fourteenth (14th) day after such Claim is Allowed; and
5 (iv) such date as agreed upon by the Holder of such Claim and Debtor or Reorganized Ahern.

6 The Holders of Other Priority Claims are Unimpaired under the Debtor Plan
7 and are not entitled to vote to accept or reject the Debtor Plan.

8 f. Classes 6A to 6L: Personal Injury Claims.

9 (i) *Claims in Classes 6A to 6L:* Classes 6 consist of the Personal
10 Injury Claims.

11 (ii) *Treatment:* Although styled as a single Class, Class 6 shall
12 contain separate sub-Classes for the insured Personal Injury Claims arising under each
13 individual Liability Insurance Policy in each policy year. Each separate sub-Class in Class 6
14 shall constitute a separate Class for voting purposes of the Debtor Plan.

15 Classes 6A to 6E consist of the Personal Injury Claims that are GL Claims that fall
16 under Debtor's general and umbrella Liability Insurance Policies.

- 17 ○ The first \$250,000 of each insured Allowed Personal Injury Claim, less defense
18 costs expended on each such insured Allowed Personal Injury Claim (i.e., the
19 SIR), will be paid in full by Reorganized Ahern up to the applicable policy's
20 aggregate SIR limit commencing on the latter of the Effective Date and the first
21 Business Day the Personal Injury Claim becomes an Allowed Personal Injury
22 Claim. The Holder of each Allowed Personal Injury Claim not paid in full
23 from the SIR shall be eligible to be paid from the policy proceeds remaining in
24 the Liability Insurance Policies as of the Petition Date for the respective policy
25 year only to the extent such policy proceeds have not been exhausted.
- 26 ○ In the event that the Holder of an Allowed Personal Injury Claim is not paid in
27 full by the SIR and the policy proceeds, the Holder of such Allowed Personal
28 Injury Claim shall receive, for the portion of the Allowed Personal Injury Claim
in excess of the SIR and the policy proceeds, Cash payments in twelve (12)
monthly installments over one (1) year and accrue interest at the rate of five
percent (5%) per annum or such other interest rate as the Bankruptcy Court
determines at the Confirmation Hearing or otherwise, including postpetition
interest at the Federal Judgment Rate for the period from the Petition Date
through the Effective Date, commencing on the latter of the Effective Date and
the first Business Day the Personal Injury Claim becomes an Allowed Personal
Injury Claim, in full satisfaction, settlement, release and discharge of and in
exchange for the Holder's Allowed Personal Injury Claims.

Classes 6F to 6L consist of the Personal Injury Claims that are Auto Claims that fall
under Debtor's automobile and umbrella Liability Insurance Policies.

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- The first \$10,000 or \$50,000 (depending on the applicable automobile Liability Insurance Policy’s deductible) of each insured Allowed Personal Injury Claim, less defense costs expended on each such insured Allowed Personal Injury Claim (i.e., the Deductible), will be paid in full by Reorganized Ahern commencing on the latter of the Effective Date and the first Business Day the Personal Injury Claim becomes an Allowed Personal Injury Claim. The Holder of each Allowed Personal Injury Claim not paid in full from the Deductible shall be eligible to be paid from the policy proceeds remaining in the Liability Insurance Policies as of the Petition Date for the respective policy year only to the extent such policy proceeds have not been exhausted.
- In the event that the Holder of an Allowed Personal Injury Claim is not paid in full by the Deductible and the policy proceeds, the Holder of such Allowed Personal Injury Claim shall receive, for the portion of the Allowed Personal Injury Claim in excess of the Deductible and the policy proceeds, Cash payments in twelve (12) monthly installments over one (1) year and accrue interest at the rate of five percent (5%) per annum or such other interest rate as the Bankruptcy Court determines at the Confirmation Hearing or otherwise, including postpetition interest at the Federal Judgment Rate for the period from the Petition Date through the Effective Date, commencing on the latter of the Effective Date and the first Business Day the Personal Injury Claim becomes an Allowed Personal Injury Claim, in full satisfaction, settlement, release and discharge of and in exchange for the Holder’s Allowed Personal Injury Claims.

Effective as of the Effective Date of the Debtor Plan, all preference actions against current and future Holders of Allowed Personal Injury Claims arising under Section 547 of the Bankruptcy Code shall be waived.

The Holders of Personal Injury Claims in Classes 6A to 6L are Impaired under the Debtor Plan and are entitled to vote to accept or reject the Debtor Plan.

g. Class 7: General Unsecured Claims.

(i) *Claims in Class:* Class 7 consists of the General Unsecured Claims except Convenience Claims.

(ii) *Treatment:* Each Holder of a General Unsecured Claim for which the Allowed amount of such Claim is less than or equal to \$5,000 shall have the right to make the Convenience Class Election.

On the Effective Date, each Holder of any Allowed General Unsecured Claim shall receive Cash payments in the aggregate Allowed amount of such Holder’s Allowed General Unsecured Claim which Claim shall be paid in twelve (12) monthly installments over one (1) year and accrue interest at the rate of five percent (5%) per annum or such other interest rate as the Bankruptcy Court determines at the Confirmation Hearing or otherwise, including postpetition interest at the Federal Judgment Rate for the period from the Petition Date through the Effective Date, in full satisfaction, settlement, release and discharge

1 of and in exchange for the Holder's Allowed General Unsecured Claims.

2 Effective as of the Effective Date of the Debtor Plan, all preference
3 actions against current and future Holders of Allowed General Unsecured Claims arising under
4 Section 547 of the Bankruptcy Code shall be waived.

5 The Holders of General Unsecured Claims are Impaired under the
6 Debtor Plan and are entitled to vote to accept or reject the Debtor Plan.

7 h. Class 8: Convenience Claims.

8 (i) *Claims in Class:* Class 8 consists of the Convenience Claims.

9 (ii) *Treatment:* Unless the Holder of a Convenience Claim and the
10 Debtor agree to a different treatment, on the Effective Date, in full satisfaction, settlement,
11 release and discharge of and in exchange for the Convenience Claims, each Holder of any
12 Allowed General Unsecured Claims that makes the Convenience Class Election shall receive
13 Cash in an amount equal to 85% of such Holder's Allowed Unsecured Claim.

14 Effective as of the Effective Date of the Plan, all preference actions
15 against current and future Holders of Convenience Claims arising under Section 547 of the
16 Bankruptcy Code shall be waived.

17 The Holders of Convenience Claims are Impaired under the Debtor Plan
18 and are entitled to vote to accept or reject the Debtor Plan.

19 i. Class 9: Equity Interests.

20 (i) *Claims in Class:* Class 9 consists of the Allowed Equity
21 Interests.

22 (ii) *Treatment:* Unless the Holder of an Allowed Equity Interest and
23 the Debtor agree to a different treatment, the legal, equitable, contractual and ownership rights
24 of the Holders of Allowed Equity Interests are unaltered by the Debtor Plan. Upon the
25 Effective Date, the Holders of Allowed Equity Interests shall retain their Equity Interests.

26 The Holders of Equity Interests are Unimpaired under the Debtor Plan
27 and are not entitled to vote to accept or reject the Debtor Plan.

28 **3. Allowed Claims.**

Notwithstanding any provision herein to the contrary, the Debtor and/or Reorganized
Ahern shall make Distributions only to Holders of Allowed Claims. No Holder of a Disputed
Claim will receive any Distribution on account thereof unless and until and only to the extent
that its Disputed Claim becomes an Allowed Claim.

1 **4. Postpetition Interest.**

2 In accordance with Section 502(b)(2) of the Bankruptcy Code, the amount of all
3 Claims against the Debtor shall be calculated as of the Petition Date. Except as otherwise
4 explicitly provided herein, in the DIP Loan/Cash Collateral Order, the Majority Term Lender
5 Cash Collateral Stipulation, in an order of the Bankruptcy Court or in a section of the
6 Bankruptcy Code, no Holder of a Claim shall be entitled to or receive interest accruing from
7 the Petition Date through the Effective Date. Term Loan Claims shall receive such interest as
8 set forth in the DIP Loan/Cash Collateral Order and the Majority Term Lender Cash Collateral
9 Stipulation. Second Lien Loan Claims shall receive interest accruing at the default contract
10 rate, under certain circumstances, from the Petition Date through the Effective Date unless
11 their Class votes to accept the Debtor Plan in which case they will get the treatment described
12 above. Personal Injury Claims and General Unsecured Claims that are Allowed shall receive
13 interest accruing from the Petition Date through the Effective Date at the Federal Judgment
14 Rate. As of March 1, 2013 the Federal Judgment Rate was 0.17%. Subsequent to the
15 Effective Date, all Allowed Claims will accrue interest at the rates set forth in the Debtor Plan
16 until such Claims receive the full amount of the payments that they are entitled to receive
17 under the Debtor Plan.

12 **5. Special Provision Regarding Unimpaired Claims.**

13 Except as otherwise provided in the Debtor Plan, and to the extent permitted by the
14 Bankruptcy Code, nothing shall affect the Debtor's rights and defenses, both legal and
15 equitable, with respect to any Unimpaired Claim (including Claims that are Allowed pursuant
16 to the Debtor Plan), including, without limitation, all rights with respect to legal and equitable
17 defenses to setoffs or recoupments against Unimpaired Claims, and the Debtor's failure to
18 object to such Claims in the Chapter 11 Case shall be without prejudice to Reorganized
19 Ahern's right to contest or defend against such Claims in (i) any appropriate non-bankruptcy
20 forum as if such Chapter 11 Case had not been commenced or (ii) the Bankruptcy Court (such
21 forum to be selected at the Debtor's or Reorganized Ahern's option).

19 **C. Means for Implementation.**

20 a. Debtor Plan Funding

21 Cash payments under the Debtor Plan shall be funded from existing Cash balances,
22 earnings from the operations of Reorganized Ahern after the Effective Date, and borrowings
23 under the Exit Financing Facility. The Debtor is currently pursuing a number of financing
24 alternatives for the Exit Financing Facility, each of which would permit the Debtor Plan to be
25 implemented. Indeed, several of these financing alternatives permit the Debtor to pay off the
26 Term Loan, provide Cash payments to Holders of the Second Lien Loan Claims, and pay off
27 other expenses required by the Bankruptcy Code in connection with the Secured Claims.

26 b. Reorganized Ahern.

27 On or before the Effective Date, the Reorganized Ahern Organizational Documents
28 shall be executed and, to the extent required, filed with the Nevada Secretary. The
Reorganized Ahern Organizational Documents shall (i) include, pursuant to Section 1123(a)(6)

1 of the Bankruptcy Code, a provision prohibiting the issuance of non-voting equity securities,
2 but only to the extent required by Section 1123(a)(6) of the Bankruptcy Code; and (ii) to the
3 extent necessary or appropriate, include such provisions as may be needed to effectuate and
4 consummate the Debtor Plan and the transactions contemplated herein. After the Effective
5 Date, Reorganized Ahern shall be responsible for the preparation of all reports, tax returns and
6 other governmental filings required to be filed by the Debtor and Reorganized Ahern and all
7 obligations related thereto.

8
9 c. Additional Reorganized Ahern Provisions.

10 The Reorganized Ahern Organizational Documents, and resolutions or similar
11 documents related to the formation and governance of Reorganized Ahern under the Debtor
12 Plan, shall be subject to applicable bankruptcy and/or Nevada law.

13
14 d. New Financing.

15 On the Effective Date, the Exit Financing Facility, together with new promissory notes
16 and guarantees evidencing the obligations of Reorganized Ahern thereunder, and all other
17 documents, instruments, mortgages, and agreements to be entered into, delivered, or confirmed
18 thereunder on the Effective Date, shall become effective. The obligations incurred by
19 Reorganized Ahern pursuant to the Exit Financing Facility and related documents shall be paid
20 as set forth in the Exit Financing Facility Documents. A commitment letter or term sheet with
21 respect to the Exit Financing Facility shall be attached to the Plan Supplement as **Exhibit D**.

22
23 e. Effective Date Events.

24 On the Effective Date, or as soon as reasonably practicable thereafter:

25 (i) The DIP Loan Notes, Term Loan Notes and Second Lien Loan
26 Notes shall be cancelled and extinguished and of no further force or effect.

27 (ii) Reorganized Ahern shall execute and deliver, as applicable, the
28 Junior Secured A Note Documents to the Junior Secured A Note Agents or the Junior Secured
B Note Documents to the Junior Secured B Note Agents.

(iii) In the event that Class 2: Second Lien Loan Claims votes to
accept the Debtor Plan, the Junior Secured A Note Agents shall distribute the Junior Secured
A Notes to the parties legally entitled thereto, including Holders of Allowed Claims in Class 2
of the Debtor Plan in accordance with the provisions of Sections 3.4.2 of the Debtor Plan.

(iv) In the event that Class 2: Second Lien Loan Claims does not
vote to accept the Debtor Plan, the Junior Secured B Note Agents shall distribute the Junior
Secured B Notes to the parties legally entitled thereto, including Holders of Allowed Claims in
Class 2 of the Debtor Plan in accordance with the provisions of Section 3.4.2 of the Debtor
Plan.

(v) The DIP Loan Documents, Term Loan Documents and Second
Lien Loan Documents shall be of no further effect except as otherwise provided in the Debtor
Plan, for the purpose of effectuating the Distributions under the Debtor Plan and allowing the

1 DIP Loan Agents, Term Loan Agents and Second Lien Indenture Trustee with respect to the
2 Distributions required to be made by any of them pursuant to the Debtor Plan and/or the DIP
3 Loan Documents, Term Loan Documents and Second Lien Loan Documents and allowing and
4 preserving the rights of the DIP Loan Agents and the DIP Lenders to seek and obtain
reimbursement for any expenses (including attorneys' fees) or indemnity to the extent
permitted by the DIP Loan Documents.

5 f. Post-Effective Date Officers and Directors of Reorganized Ahern.

6 On the Effective Date, the initial board of directors of Reorganized Ahern shall include
7 the five (5) individuals serving on Debtor's Board of Directors on the Confirmation Date.
8 Thereafter, members of the Board of Directors shall be selected pursuant to the Reorganized
9 Ahern Organizational Documents. The initial officers shall be comprised of the individuals
10 employed as officers on the Confirmation Date, pursuant to each such individual's
employment agreement, if any, as may have been modified, amended or extended prior to
Confirmation. Debtor will disclose, at or prior to the Confirmation Hearing, the identity of
such individuals.

11 Reorganized Ahern shall be responsible for the payment of all Allowed Claims to be
12 paid pursuant to the Debtor Plan that are not paid on or before the Effective Date, as well as
13 all Allowed Claims, including Taxes and Professional Fees, incurred by Debtor in operating its
14 business up to and including the Effective Date, whether due and payable before or after the
Effective Date.

15 g. Establishment of Professional Fee Reserve.

16 Under the Debtor Plan, the Debtor or Reorganized Ahern will create and fund the
17 Professional Fee Reserve on the Effective Date (or as soon thereafter as is practicable) in the
18 estimated amount of accrued and unpaid Professional Fees through the Effective Date, which
19 amount will be used to pay Allowed Professional Fee Claims held by (i) any Professionals
20 working on behalf of the Debtor and (ii) counsel and any advisors to the Committee.
21 Reorganized Ahern will be obligated to pay all such Allowed Professional Fee Claims
designated to be paid from the proceeds of the Professional Fee Reserve in excess of the
amounts actually deposited in the Professional Fee Reserve. In the event that any Cash
remains in the Professional Fee Reserve after payment of all such Allowed Professional Fee
Claims, such Cash will be returned to the operating accounts of Reorganized Ahern.

22 h. No Corporate Action Required.

23 As of the Effective Date: (i) the adoption, execution, delivery and implementation or
24 assignment of all contracts, leases, instruments, releases and other agreements related to or
25 contemplated by the Debtor Plan; and (ii) the other matters provided for under or in
26 furtherance of the Debtor Plan involving corporate action to be taken by or required of Debtor,
27 shall be deemed to have occurred and be effective as provided herein, and shall be authorized
28 and approved in all respects without further order of the Bankruptcy Court or any requirement
of further action by Reorganized Ahern's Board of Directors or officers of Debtor. In
particular, the adoption of the Reorganized Ahern Organizational Documents, the selection of
directors and officers of Debtor or Reorganized Ahern, and all other actions contemplated by

1 or described in the Debtor Plan with respect thereto, shall be authorized and approved and be
2 binding and in full force and effect in all respects (subject to the provisions of the Debtor Plan
3 and the Confirmation Order), in each case without further notice to or order of the Bankruptcy
4 Court, act or action under applicable law, regulation, order, or rule (other than filing such
5 organizational documents with the applicable governmental unit as required by applicable law)
6 or the vote, consent, authorization, or approval of any Person. Notwithstanding the forgoing,
7 Reorganized Ahern shall take all action required to effectuate the Exit Financing Facility
8 Documents, the Junior Secured A Note Documents, and the Junior Secured Note B
9 Documents and any other action required to implement the Debtor Plan.

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i. Effectuation of Transactions.

On the Effective Date, the appropriate officers of Debtor and Reorganized Ahern, as applicable, and members of the applicable Board of Directors are authorized to issue, execute, and deliver the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions, and instruments contemplated by or described in the Debtor Plan in the name of and on behalf of Debtor and Reorganized Ahern, and to otherwise fully consummate the transactions contemplated by the Debtor Plan, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote, or other approval or authorization by any Person.

j. Filing with Nevada Secretary.

To the extent applicable, in accordance with NRS 78.622, on the Effective Date a certified copy of the Debtor Plan and the Confirmation Order shall be filed with the Nevada Secretary. Debtor, from the Confirmation Date until the Effective Date, is authorized and directed to take any action or carry out any proceeding necessary to effectuate the Debtor Plan pursuant to NRS 78.622.

D. Executory Contracts and Unexpired Leases.

a. Executory Contracts.

Except for Executory Contracts and Unexpired Leases specifically addressed in the Debtor Plan or set forth on the schedule of Rejected Executory Contracts and Unexpired Leases attached as **Exhibit E** to the Plan Supplement (which may be supplemented and amended up to the date the Bankruptcy Court enters the Confirmation Order and thereafter pursuant to **Section 5.3** of the Debtor Plan), all Executory Contracts and Unexpired Leases that exist on the Confirmation Date shall be deemed assumed by Reorganized Ahern on the Effective Date.

b. Approval of Assumption or Rejection.

Entry of the Confirmation Order shall constitute as of the Effective Date: (i) approval, pursuant to Section 365(a) of the Bankruptcy Code, of the assumption by Debtor of each Executory Contract and Unexpired Lease to which Debtor is a party and which is not listed on **Exhibit E** to the Plan Supplement, not otherwise provided for in the Debtor Plan and neither assumed, assumed and assigned, nor rejected by separate order prior to the Effective Date; and

1 (ii) rejection by Debtor of each Executory Contract and Unexpired Lease to which Debtor is a
2 party listed on **Exhibit E** to the Plan Supplement. Upon the Effective Date, each counter
3 party to an assumed Executory Contract or Unexpired Lease listed shall be deemed to have
4 consented to assumption contemplated by Section 365(c)(1)(B) of the Bankruptcy Code, to the
5 extent such consent is necessary for such assumption. To the extent applicable, all Executory
6 Contracts or Unexpired Leases of Reorganized Ahern assumed pursuant to **Section 5** of the
7 Debtor Plan shall be deemed modified such that the transactions contemplated by the Debtor
8 Plan shall not be a “change of control,” however such term may be defined in the relevant
9 Executory Contract or Unexpired Lease and any required consent under any such Executory
10 Contract or Unexpired Lease shall be deemed satisfied by entry of the Confirmation Order.
11 Also, to the extent applicable, all Executory Contracts or Unexpired Leases of Debtor assumed
12 pursuant to **Section 5** of the Debtor Plan shall be assigned to Reorganized Ahern on the
13 Effective Date, and such assignment shall not be a “change of control,” however such term
14 may be defined in the relevant Executory Contract or Unexpired Lease, and any required
15 consent under any such Executory Contract or Unexpired Lease shall be deemed satisfied by
16 entry of the Confirmation Order.

11 c. Cure of Defaults.

12 Debtor or Reorganized Ahern shall Cure any defaults respecting each Executory
13 Contract or Unexpired Lease assumed pursuant to **Section 5** of the Debtor Plan upon the latest
14 of (i) the Effective Date or as soon thereafter as practicable; (ii) such date as may be fixed by
15 the Bankruptcy Court or agreed upon by Debtor, and after the Effective Date, Reorganized
16 Ahern; or (iii) the first Business Day following the fourteenth (14th) day after the entry of a
17 Final Order resolving any dispute regarding (a) a Cure amount; (b) the ability of Debtor or
18 Reorganized Ahern to provide adequate assurance of future performance under the Executory
19 Contract or Unexpired Lease assumed pursuant to the Debtor Plan in accordance with Section
20 365(b)(1) of the Bankruptcy Code; *provided, however*, that upon resolution of a dispute over a
21 Cure amount, Reorganized Ahern may reject the Executory Contract or Unexpired Lease
22 notwithstanding a previous listing as assumed; or (c) any other disputed matter pertaining to
23 assumption, assignment or the Cure of a particular Executory Contract or an Unexpired Lease.
24 **Exhibit F** to the Plan Supplement lists Debtor’s proposed Cure amounts, if any, that will be
25 paid as provided for above, which **Exhibit F** to the Plan Supplement may be amended up to
26 and including five (5) days prior to the Confirmation Hearing. Any such modifications to
27 **Exhibit F** to the Plan Supplement shall be filed with the Bankruptcy Court up to and
28 including five (5) days prior to the Confirmation Hearing.

22 d. Objection to Cure Amounts.

23 Any party to an Executory Contract or Unexpired Lease who objects to the Cure
24 amount(s) with respect to such party’s Executory Contract(s) or Unexpired Lease(s) listed on
25 **Exhibit F** to the Plan Supplement must file and serve an objection on Debtor’s counsel no
26 later than the deadline set by the Bankruptcy Court for filing Debtor Plan objections. Failure
27 to file and serve a timely objection shall be deemed consent to the Cure amounts listed on
28 **Exhibit F** to the Plan Supplement. Any Cure Amounts shall be the responsibility of
Reorganized Ahern. If there is a dispute regarding: (i) the amount of any Cure payment; (ii)
the ability of Reorganized Ahern to provide “adequate assurance of future performance” under
the Executory Contract or Unexpired Lease to be assumed or assigned; or (iii) any other

1 matter pertaining to assumption, the Cure payments required by Section 365(b)(1) of the
2 Bankruptcy Code will be made following the entry of a Final Order resolving the dispute and
3 approving the assumption, except as provided in Section 5.3 of the Debtor Plan.

4 e. Confirmation Order.

5 The Confirmation Order will constitute an order of the Bankruptcy Court approving the
6 assumptions described in Section 5 of the Debtor Plan, pursuant to Section 365 of the
7 Bankruptcy Code, as of the Effective Date. Notwithstanding the foregoing, if, as of the date
8 the Bankruptcy Court enters the Confirmation Order, there is pending before the Bankruptcy
9 Court a dispute concerning the Cure amount or adequate assurance for any particular
10 Executory Contract or Unexpired Lease (or if the time period for a non-Debtor to object to the
11 Cure has not yet lapsed), the assumption of such Executory Contract or Unexpired Lease shall
12 be effective as of the date the Bankruptcy Court enters an order resolving any such dispute
13 and authorizing assumption by Debtor.

14 f. Post-Petition Date Contracts and Leases.

15 Each Executory Contract and Unexpired Lease entered into by the Debtor after the
16 Petition Date shall be performed by Debtor or Reorganized Ahern, as applicable, in the
17 ordinary course of its business.

18 g. Rejection Claims Bar Date.

19 All proofs of Claims with respect to Claims arising from the rejection of any
20 Executory Contract or Unexpired Lease shall be filed no later than thirty (30) days after the
21 Effective Date. Any Claim not filed within such time shall be forever barred.

22 h. Director and Officer Liability Insurance.

23 Debtor will assume and, if applicable, assign to Reorganized Ahern all of its existing
24 D&O Liability Insurance Policies pursuant to Section 365(a) of the Bankruptcy Code as of the
25 Effective Date. Entry of the Confirmation Order will constitute approval by the Bankruptcy
26 Court of Debtor's foregoing assumption and assignment by Debtor to Reorganized Ahern of
27 each of the D&O Liability Insurance Policies. Notwithstanding anything to the contrary
28 contained in the Debtor Plan, entry of the Confirmation Order shall not discharge, impair, or
otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O
Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as
an Executory Contract that has been assumed by Debtor and assigned to Reorganized Ahern
under the Debtor Plan as to which no proof of Claim need be filed.

i. Indemnification.

All indemnification obligations currently in place (whether in the bylaws, articles or
certificates of incorporation, articles of limited partnership, limited liability company
agreements, board resolutions (or resolutions of similar bodies), or employment contracts) for
the directors, officers, employees, attorneys, or other Professionals and agents of Debtor (from
the Petition Date forward) shall be assumed as of the Effective Date, and shall survive
effectiveness of the Debtor Plan. All indemnification provisions in place on and prior to the

1 Effective Date for current directors and officers of Debtor (from the Petition Date forward)
2 shall (i) survive the Effective Date of the Debtor Plan for Claims related to or in connection
3 with any actions, omissions, or transactions occurring prior to the Effective Date, and (ii)
4 remain liabilities of Reorganized Ahern specifically on behalf of Debtor.

4 **E. Manner of Distribution of Property Under the Debtor Plan.**

5 a. Distributions.

6 Except as otherwise explicitly provided for in the Debtor Plan, the Disbursing Agent
7 shall be responsible for making Distributions described in the Debtor Plan. Except as
8 otherwise provided in the Debtor Plan or the Confirmation Order, all Cash necessary for
9 Reorganized Ahern to make payments pursuant to the Debtor Plan shall be obtained from
existing Cash balances, earnings from the operations of Reorganized Ahern after the Effective
Date, and borrowings under the Exit Financing Facility.

10 b. Timing and Calculation of Amounts to Be Distributed.

11 Whenever payment under the Debtor Plan is said to be on the Effective Date, such
12 payment shall be made on the Effective Date or as soon thereafter as is practicable but in no
13 event more than fifteen (15) days after the Effective Date (or if a Claim is not an Allowed
14 Claim on the Effective Date, on the date that such a Claim becomes an Allowed Claim, on the
15 next Distribution Date or as soon as reasonably practicable thereafter). On such date each
16 Holder of an Allowed Claim against the Debtor shall receive the full amount of the
17 Distributions that the Debtor Plan provides for Allowed Claims in the applicable Class and in
18 the manner provided herein. All Distributions provided for in the Debtor Plan shall be made
19 only to the extent permitted by applicable law. In the event that any payment or act under the
20 Debtor Plan is required to be made or performed on a date that is not a Business Day, then
21 the making of such payment or the performance of such act may be completed on the next
22 succeeding Business Day, but shall be deemed to have been completed as of the required date.
23 If and to the extent that there are Disputed Claims, Distributions on account of any such
24 Disputed Claims shall be made pursuant to the provisions set forth in Article VII hereof.
25 Except as otherwise provided herein, Holders of Claims shall not be entitled to interest,
26 dividends or accruals on the Distributions provided for herein, regardless of whether such
27 Distributions are delivered on or at any time after the Effective Date.

21 c. Rights and Powers of Disbursing Agent.

22 The Disbursing Agent shall be empowered to: (a) affect all actions and execute all
23 agreements, instruments and other documents necessary to perform its duties under the Debtor
24 Plan; (b) make all Distributions contemplated hereby; (c) employ Professionals to represent it
25 with respect to its responsibilities; and (d) exercise such other powers as may be vested in the
26 Disbursing Agent by order of the Bankruptcy Court, pursuant to the Debtor Plan, or as
27 deemed by the Disbursing Agent to be necessary and proper to implement the provisions
28 hereof. Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable
fees and expenses incurred by the Disbursing Agent on or after the Effective Date (including
taxes) and any reasonable compensation and expense reimbursement claims (including

1 reasonable attorney fees and expenses) made by the Disbursing Agent shall be paid in Cash by
2 Reorganized Ahern in its reasonable discretion.

3 With respect to a Holder of a Claim or Equity Interest whose Distribution is governed
4 by an agent or other agreement which is administered by an indenture trustee, agent or
5 servicer, such Distributions shall be deposited with the appropriate agent or servicer, who shall
6 then deliver such Distributions to the Holders of Claims or Equity Interests in accordance with
7 the provisions of the Debtor Plan and the terms of the relevant indenture or other governing
8 agreement; *provided, however*, that Distributions to the Disbursing Agent (other than the
9 Debtor or Reorganized Ahern) under the Debtor Plan will be deemed payment in full,
10 regardless of whether such agent (other than the Debtor or Reorganized Ahern) ultimately
11 distributes such Distribution to the appropriate Claim or Interest Holder.

12 d. Providing for Claims Payments.

13 Distributions to Holders of Allowed Claims shall be made by the Disbursing Agent: (i)
14 at the addresses set forth on the proofs of Claim filed by such Holders (or at the last known
15 addresses of such Holders if no proof of Claim is filed or if Debtor has not been notified of a
16 change of address); (ii) at the addresses set forth in any written notices of address changes
17 delivered to the Disbursing Agent after the date of any related proof of Claim; or (iii) at the
18 addresses reflected in the Schedules if no proof of Claim has been filed and the Disbursing
19 Agent has not received a written notice of a change of address. If any Holder's Distribution is
20 returned as undeliverable, no further Distributions to such Holder shall be made unless and
21 until the Disbursing Agent is notified of such Holder's then-current address, at which time all
22 returned Distributions shall be made to such Holder without interest. Amounts in respect of
23 undeliverable Distributions made through the Disbursing Agent shall be returned to
24 Reorganized Ahern until such Distributions are claimed. All claims for undeliverable
25 Distributions shall be made on or before the second (2nd) anniversary of the Effective Date.
26 After such date, all unclaimed property shall revert to Reorganized Ahern and the Claim of
27 any Holder or successor to such Holder with respect to such property shall be discharged and
28 forever barred notwithstanding any federal or state escheat laws to the contrary. Nothing
contained in the Debtor Plan shall require Reorganized Ahern or the Disbursing Agent to
attempt to locate any Holder of an Allowed Claim.

e. Means of Cash Payment.

Payments of Cash made pursuant to the Debtor Plan shall be in U.S. dollars and shall
be made, at the option and in the discretion of the Debtor or the Disbursing Agent, as the case
may be, by (a) checks drawn on, or (b) wire transfer from, a domestic bank selected by the
Debtor or the Disbursing Agent, as the case may be. Cash payments to foreign Creditors may
be made, at the option of the Debtor or the Disbursing Agent, in such funds and by such
means as are necessary or customary in the applicable foreign jurisdiction.

f. Application of Record Date.

At the close of business on the Record Date, the claims registers for all Claims shall
be closed, and there shall be no further changes in the record holders of Claims. Except as
provided in the Debtor Plan, the Debtor, Reorganized Ahern, the Disbursing Agent, and each

1 of their respective agents, successors, and assigns shall have no obligation to recognize any
2 transfer of Claims occurring after the Record Date and shall be entitled instead to recognize
3 and deal for all purposes under the Debtor Plan with only those record holders stated on the
4 claims registers as of the close of business on the Distribution Date irrespective of the number
of Distributions to be made under the Debtor Plan to such Persons or the date of such
Distributions.

5 g. Claims Paid or Payable by Third Parties.

6 (i) Claims Paid by Third Parties.

7 The Debtor, or the Disbursing Agent, as applicable, shall reduce in part or in full a
8 Claim to the extent that the Holder of such Claim receives payment in part or in full on
9 account of such Claim from a party that is not the Debtor or the Disbursing Agent. To the
10 extent a Holder of a Claim receives a Distribution on account of such Claim from a party that
11 is not the Debtor or the Disbursing Agent on account of such Claim, such Holder shall, within
12 two weeks of receipt thereof, repay or return the Distribution to Reorganized Ahern, to the
13 extent the Holder's total recovery on account of such Claim from the third party and under the
14 Debtor Plan exceeds the amount of such Claim as of the date of any such Distribution under
15 the Debtor Plan.

13 (ii) Insurance Claims.

14 Except as otherwise provided in the Debtor Plan, no Distributions under the Debtor
15 Plan shall be made on account of Allowed Claims covered by the Debtor's Insurance Policies
16 until the insurance coverage with respect to such Allowed Claims has been exhausted. To the
17 extent that the Debtor's insurers agree to satisfy in full a Claim (if and to the extent
18 adjudicated by a court of competent jurisdiction), then immediately upon the insurer's payment
of the Allowed Claim, such Allowed Claim may be deemed satisfied without a Claims
objection having to be filed and without any further notice to or action, order or approval of
the Bankruptcy Court.

19 (iii) Applicability of Insurance Policies.

20 Except as otherwise provided in Section 3.4.6 of the Debtor Plan, Distributions to
21 Holders of Allowed Claims shall be made in accordance with the provisions of any applicable
22 Insurance Policy. Nothing contained in the Debtor Plan shall constitute or be deemed a
23 waiver of any Cause of Action that the Debtor or any Person may hold against any other
24 Person, including insurers under any of the Debtor's Insurance Policies. Nor shall anything
25 contained herein constitute or be deemed a waiver by any insurer under the Debtor's Insurance
26 Policies, whether defenses, including coverage and other defenses, or of other rights, including
27 the right to assert affirmative claims, including for subrogation, indemnity, and contribution.

28 h. Allocation of Debtor Plan Distributions Between Principal and Interest.

To the extent that any Allowed Claim entitled to a Distribution under the Debtor Plan
is comprised of principal and accrued but unpaid interest thereon, such Distribution shall, for
the Debtor's federal income tax purposes, be allocated on the Debtor's books and records to

1 the principal amount of the Claim first and then, to the extent the consideration exceeds the
2 principal amount of the Claim, to accrued but unpaid interest.

3 i. Setoffs.

4 Except as provided in the Debtor Plan, the Debtor or Reorganized Ahern may, but
5 shall not be required to, set off or offset against any Claim, and the payments or other
6 Distributions to be made pursuant to the Debtor Plan in respect of such Claim, Claims of any
7 nature whatsoever that the Debtor may have against the Claim's Holder; *provided, however,*
8 that neither the failure to do so nor the allowance of any Claim under the Debtor Plan shall
constitute a waiver or release by the Debtor or Reorganized Ahern of any claim that the
Debtor may have against such Holder. Nothing in the Debtor Plan shall be deemed to expand
rights to setoff under applicable law.

9 j. Fractional Distributions.

10 Notwithstanding any other provision of the Debtor Plan to the contrary, no payment of
11 fractional cents will be made pursuant to the Debtor Plan. Whenever any payment of a
12 fraction of a cent under the Debtor Plan would otherwise be required, the actual Distribution
13 made will reflect a rounding of such fraction to the nearest whole penny (up or down), with
half cents or more being rounded up and fractions less than half of a cent being rounded
down.

14 k. De Minimis Distributions.

15 Notwithstanding anything to the contrary contained in the Debtor Plan, the Disbursing
16 Agent will not be required to distribute, and will not distribute, Cash or other property to the
17 Holder of any Allowed Claim or Equity Interest if the amount of Cash or other property to be
18 distributed on account of such Claim or Equity Interest is less than \$25. Any Holder of an
19 Allowed Claim or Equity Interest on account of which the amount of Cash or other property
20 to be distributed is less than \$25 will have such Claim or Equity Interest discharged and will
be forever barred from asserting such Claim or Equity Interest against the Debtor, Reorganized
Ahern, or their respective property. Any Cash or other property not distributed pursuant to
this provision will be the property of Reorganized Ahern, free of any restrictions thereon.

21 l. Prepayment.

22 Except as otherwise provided in the Debtor Plan, any ancillary documents entered into
23 in connection with the Debtor Plan, or the Confirmation Order, Reorganized Ahern will have
24 the right to prepay, without penalty, all or any portion of an Allowed Claim entitled to
25 payment in Cash at any time; *provided, however,* that any such prepayment will not be
26 violative of, or otherwise prejudice, the relative priorities and parities among the Classes of
Claims.

27 m. No Distribution in Excess of Allowed Amounts.

28 Notwithstanding anything to the contrary set forth in the Debtor Plan, no Holder of an
Allowed Claim or Equity Interest will receive in respect of such Claim or Equity Interest any
Distribution of a value as of the Effective Date in excess of the Allowed amount of such

1 Claim or Equity Interest (excluding payments on account of interest due and payable from and
2 after the Effective Date pursuant to the Debtor Plan, if any).

3 n. Joint Distributions.

4 The Debtor or the Disbursing Agent may, in their sole discretion, make Distributions
5 jointly to any Holder of a Claim or Equity Interest and any other entity who has asserted, or
6 whom the Debtor has determined to have, an interest in such Claim or Equity Interest. Except
7 as otherwise provided in the Debtor Plan or in the Confirmation Order, and notwithstanding
8 the joint nature of any Distribution, all Distributions made by the Debtor or the Disbursing
9 Agent will be in exchange for, and in complete satisfaction, settlement, discharge, and release
10 of, all Claims and Equity Interests of any nature whatsoever against the Debtor and
11 Reorganized Ahern or any of its assets or properties as set forth in Section III of the Debtor
12 Plan.

13 o. No Recourse.

14 No recourse shall ever be had, directly or indirectly, against Debtor or Reorganized
15 Ahern or against any director, agent, attorney, accountant, or other professional for Debtor or
16 Reorganized Ahern, by legal or equitable proceedings or by virtue of any statute or otherwise,
17 nor upon any promise, contract, instrument, undertaking, obligation, covenant, or agreement
18 whatsoever executed by Debtor or Reorganized Ahern under the Debtor Plan, or by reason of
19 the creation of any indebtedness by Debtor or Reorganized Ahern under the Debtor Plan for
20 any purpose authorized by the Debtor Plan, it being expressly understood and agreed that all
21 such liabilities, covenants, and agreements of Debtor and Reorganized Ahern, whether in
22 writing or otherwise, shall be enforceable only against and be satisfied only out of the Assets
23 or such part thereof as shall under the terms of any such agreement be liable therefore or shall
24 be evidence only of a right of payment out of the Assets.

25 p. Statements.

26 Debtor and the Disbursing Agent shall maintain a record of the names and addresses of
27 all Holders of Allowed General Unsecured Claims as of the Effective Date for purposes of
28 mailing Distributions to them. Debtor and Reorganized Ahern shall file all tax returns and
other filings with governmental authorities on behalf of Debtor and Reorganized Ahern and
the Assets it holds.

q. Further Authorization.

Reorganized Ahern shall be entitled to seek such orders, judgments, injunctions, and
rulings as it deems necessary to carry out the intentions and purposes, and to give full effect to
the provisions of the Debtor Plan.

F. Procedures for Resolving Disputed Claims.

a. Resolution of Disputed Claims.

Holders of Claims generally must file proofs of Claims on or prior to the applicable
Bar Date. No later than the Claims Objection Deadline (unless extended by an order of the

1 Bankruptcy Court), the Debtor or Reorganized Ahern, as the case may be, shall file objections
2 to Claims that were required to be filed by the applicable Bar Date with the Bankruptcy Court
3 and serve such objections upon the Holders of such Claims to which objections are made.
4 Nothing contained herein, however, shall limit Reorganized Ahern's right to object to Claims,
5 if any, filed or amended after the Claims Objection Deadline.

6 Holders of Administrative Claims must file a request for payment on or prior to the
7 Administrative Claims Bar Date. No later than the Administrative Claims Objection Deadline
8 (unless extended by an order of the Bankruptcy Court), the Debtor or Reorganized Ahern, as
9 the case may be, shall file objections to the Administrative Claims with the Bankruptcy Court
10 and serve such objection upon the Holders of such Administrative Claims to which objections
11 are made. Nothing contained herein, however, shall limit Reorganized Ahern's right to object
12 to Administrative Claims, if any, filed or amended after the Administrative Claims Objection
13 Deadline.

14 b. No Distribution Pending Allowance.

15 No payments or Distributions, if any contemplated by the Debtor Plan, will be made
16 with respect to all or any portion of a Disputed Claim or interest unless and until all
17 objections to such Disputed Claims or interests have been settled or withdrawn or have been
18 determined by Final Order, and the Disputed Claim, or some portion thereof, has become an
19 Allowed Claim or interest.

20 c. Resolution of Objections After Effective Date.

21 From and after the Effective Date, Reorganized Ahern may litigate to judgment,
22 propose settlements of, or withdraw objections to, all pending or filed Disputed Claims and
23 may settle or compromise any Disputed Claim without notice and a hearing and without
24 approval of the Bankruptcy Court.

25 d. Resolution of Objections After Effective Date.

26 From and after the Effective Date, Reorganized Ahern may propose settlements of, or
27 withdraw objections to, all pending or filed Disputed Claims and may settle or compromise
28 any Disputed Claim without notice and a hearing and without approval of the Bankruptcy
Court.

e. Distributions After Allowance.

On each Quarterly Distribution Date (or such earlier date as determined by the
Disbursing Agent in its sole discretion but subject to Section 7.2 of the Debtor Plan), the
Disbursing Agent will make Distributions (a) on account of any Disputed Claim that has
become an Allowed Claim during the preceding calendar quarter, and (b) on account of
previously Allowed Claims that would have been distributed to the Holders of such Claims or
Equity Interests on the dates Distributions previously were made to Holders of Allowed
Claims and Equity Interests in such Class had the Disputed Claims or Equity Interests that
have become Allowed Claims or Equity Interests been Allowed on such dates. Such

1 Distributions will be made pursuant to the applicable provisions of Section 6 of the Debtor
2 Plan.

3 f. Estimation of Claims.

4 The Debtor (before the Effective Date) or Reorganized Ahern (on or after the Effective
5 Date) may, at any time, and from time to time, request that the Bankruptcy Court estimate any
6 Disputed Claim pursuant to Section 502(c) of the Bankruptcy Code regardless of whether an
7 objection was previously filed with the Bankruptcy Court with respect to such Claim, or
8 whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will
9 retain jurisdiction to estimate any Claim at any time during litigation concerning any objection
10 to any Claim, including during the pendency of any appeal relating to any such objection. In
11 the event that the Bankruptcy Court estimates any Disputed Claim, that estimated amount will
12 constitute either the Allowed amount of such Claim or a maximum limitation on such Claim
13 against any party or Person, as determined by the Bankruptcy Court. If the estimated amount
14 constitutes a maximum limitation on such Claim, the Debtor (before the Effective Date) or
15 Reorganized Ahern (after the Effective Date), may elect to pursue any supplemental
16 proceedings to object to any ultimate Distribution on such Claim. All of the objection,
17 estimation, settlement and resolution procedures set forth in the Debtor Plan are cumulative
18 and not necessarily exclusive of one another. Claims may be estimated and subsequently
19 compromised, objected to, settled, withdrawn or resolved by any mechanism approved by the
20 Bankruptcy Court.

14 g. Deadline to File Objections to Claims.

15 The Debtor reserves its right to file objections to Claims, if any, on or before the
16 applicable Claim Objection Deadline.

17 h. Late-Filed Claims.

18 Except with respect to Claims, proof of which is made in compliance with the
19 requirements of Sections 502(e) and 509 of the Bankruptcy Code, no Claim filed after the Bar
20 Date or, as applicable, the Administrative Claims Bar Date, shall be allowed, and all such
21 Claims are hereby disallowed in full. After the Bar Date or the Administrative Claim Bar
22 Date, as applicable, no Creditor shall be permitted to amend any claim to increase the claimed
23 amount, unless permitted by the Bankruptcy Court, subject to the Debtor's or Reorganized
24 Ahern's right to object to such increase; and any such amendment shall be disallowed, unless
25 permitted by the Bankruptcy Court, subject to the Debtor's or Reorganized Ahern's right to
26 object to such increase, to the extent of the late-filed increase in the claimed amount.

24 i. Reservation of Right to Object to Allowance or Asserted Priority of
25 Claims.

26 Nothing herein will waive, prejudice or otherwise affect the rights of the Debtor,
27 Reorganized Ahern or the Holders of any Claim to object at any time, including after the
28 Effective Date, to the allowance or asserted priority of any Claim, except with respect to any
29 Allowed Claim.

1 **G. Conditions Precedent to Confirmation and the Effective Date.**

2 a. Conditions to Confirmation.

3 As a condition precedent to entry of the Confirmation Order, the Confirmation Order
4 shall be in form and substance acceptable to Debtor and the DIP Loan Agents. The
5 Bankruptcy Court shall have entered an order, which shall not be subject to any stay or subject
6 to an unresolved request for revocation under Section 1144 of the Bankruptcy Code, approving
7 the Disclosure Statement with respect to the Debtor Plan, as containing adequate information
8 within the meaning of Section 1125 of the Bankruptcy Code, in form and substance acceptable
9 to the Debtor.

8 b. Conditions to Effectiveness.

9 The following are conditions precedent to the occurrence of the Effective Date:

10 (i) No request for revocation of the Confirmation Order under
11 Section 1144 of the Bankruptcy Code shall have been made, or, if made, shall remain
12 pending, including any appeal;

13 (ii) The Exit Financing Facility shall have been executed and
14 delivered by all of the Persons that are parties thereto, and all conditions precedent to the
15 consummation thereof shall have been waived, or satisfied in accordance with the terms
16 thereof (but for the occurrence of the Effective Date).

17 (iii) All documents necessary to implement the transactions
18 contemplated by the Debtor Plan shall be in form and substance acceptable to Debtor and
19 approved by the Bankruptcy Court.

20 (iv) All actions, documents, certificates, and agreements necessary to
21 implement the Debtor Plan shall have been effected or executed and delivered to the required
22 parties and, to the extent required, filed with the applicable governmental units in accordance
23 with applicable laws.

24 (v) The Bankruptcy Court shall have entered one or more orders
25 (which may include the Confirmation Order) authorizing the assumption and rejection of
26 Executory Contracts and Unexpired Leases by the Debtor as contemplated herein in form and
27 substance acceptable to the Debtor.

28 (vi) Sufficient Cash and other Assets shall be set aside, reserved and
withheld by Debtor to make the Distributions required to be paid on the Effective Date or
within sixty (60) days thereafter by the Bankruptcy Code and the Debtor Plan.

(vii) All actions reasonably necessary to establish the Professional Fee
Reserve as set forth in Section 4.7 of the Debtor Plan shall have been effectuated to the extent
necessary to establish the Professional Fee Reserve on the Effective Date (or as soon thereafter
as is practicable).

1 c. Notice of Effectiveness.

2 When all of the steps contemplated by Section 8.2 of the Debtor Plan have been
3 completed, Debtor shall file with the Bankruptcy Court and serve upon all Creditors and all
4 potential Holders of Administrative Claims known to Debtor (whether or not disputed), a
5 Notice of Effective Date of Debtor Plan. The Notice of Effective Date of Debtor Plan shall
6 include notice of the Administrative Claims Bar Date.

7 d. Waiver of Conditions.

8 The Debtor, and if applicable, Reorganized Ahern, may waive (each for themselves but
9 not for others) any or all of the other conditions set forth in Article 8 of the Debtor Plan and
10 specifically Sections 8.2.1, 8.2.3, 8.2.5, and 8.2.7 of the Debtor Plan without leave of or order
11 of the Bankruptcy Court and without any formal action. The failure of a party to exercise any
12 of the foregoing rights shall not be deemed a waiver of any other rights, and each right shall
13 be deemed an ongoing right that may be asserted at any time prior to the filing of the Notice
14 of Effectiveness described in Section 8.3.

15 **H. Title to Property; Discharge; and Injunction.**

16 a. Vesting of Assets.

17 Subject to and as provided for in the Debtor Plan, the Assets shall be vested and/or
18 transferred to Reorganized Ahern on the Effective Date, subject to any Liens granted under the
19 Debtor Plan. On and after the Effective Date, Reorganized Ahern may operate its business
20 and may use, acquire, and dispose of property and compromise or settle any Claims without
21 supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of
22 the Bankruptcy Code or the Bankruptcy Rules, other than restrictions expressly imposed by the
23 Debtor Plan or the Confirmation Order.

24 b. Preservation of Litigation Claims.

25 In accordance with Section 1123(b)(3) of the Bankruptcy Code, and except as
26 otherwise expressly provided herein, on the Effective Date all Litigation Claims shall be
27 assigned to Reorganized Ahern, and Reorganized Ahern shall have the exclusive right to
28 enforce, prosecute, settle, compromise, transfer, or assign (or decline to do any of the
29 foregoing) any or all of the Litigation Claims, including, without limitation, any and all
30 derivative actions pending or otherwise existing against the Debtor as of the Effective Date;
31 *provided, however*, effective as of the Effective Date of the Debtor Plan, all preference actions
32 against current and future Holders of Allowed Unsecured Claims arising under Section 547 of
33 the Bankruptcy Code shall be waived.

34 c. Settlement of Litigation Claims.

35 At any time after the Confirmation Date and before the Effective Date, notwithstanding
36 anything in the Debtor Plan to the contrary, Debtor may settle any or all of the Litigation
37 Claims with the approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019. After
38 the Effective Date, Reorganized Ahern may, and shall have the exclusive right to, compromise
39 and settle any Claims against it and claims it may have against any other Person, including,

1 without limitation, the Litigation Claims, without notice to or approval from the Bankruptcy
2 Court, including, without limitation, any and all derivative actions pending or otherwise
3 existing against Debtor as of the Effective Date.

4 d. Discharge.

5 On the Effective Date, except as otherwise provided in the Debtor Plan, Debtor shall
6 be discharged from any and all Claims in **Classes 1, 2, 3, 4, 5, 6, 7, 8, and 9** to the fullest
7 extent provided in Sections 524 and 1141 of the Bankruptcy Code. The discharge shall be to
8 the fullest extent provided under Section 1141(d)(1)(A) and other applicable provisions of the
9 Bankruptcy Code, and, except as otherwise expressly provided by the Debtor Plan or the
10 Confirmation Order, all consideration distributed under the Debtor Plan shall be in exchange
11 for, and in complete satisfaction, settlement, discharge, and release of, all Claims of any kind
12 or nature whatsoever against Debtor or any of its assets or property, including, but not limited
13 to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind
14 specified in Section 502(g), 502(h), or 502(i) of the Bankruptcy Code, regardless of whether
15 any property shall have been distributed or retained pursuant to the Debtor Plan on account of
16 such Claims.

17 e. Compromise and Settlement.

18 The allowance, classification, and treatment of all Allowed Claims and their respective
19 Distributions under the Debtor Plan take into account and/or conform to the relative priority
20 and rights of the Claims in each Class in connection with any contractual, legal, and equitable
21 subordination rights relating thereto whether arising under general principles of equitable
22 subordination, Section 510(c) of the Bankruptcy Code, or otherwise, including without
23 limitation, the subordination provisions of the Intercreditor Agreement. As of the Effective
24 Date, any and all such rights described in the preceding sentence will be settled, compromised,
25 and released pursuant to the Debtor Plan and any and all such Causes of Action related thereto
26 are settled, compromised, and released pursuant to the Debtor Plan.

27 f. Releases.

28 **On the Effective Date and effective as of the Effective Date, for good and valuable
consideration, the adequacy of which is hereby confirmed, including, but not limited to:
(i) the discharge of debt and all other good and valuable consideration provided
pursuant to the Debtor Plan ; and (ii) the services of Debtor's officers and directors
serving on and since the Petition Date in facilitating the expeditious implementation of
the reorganization contemplated by the Debtor Plan, Debtor and Reorganized Ahern
shall provide a full discharge and release to the Released Parties (and each such
Released Party so released shall be deemed released and discharged by Debtor and
Reorganized Ahern) and their respective properties from any and all Causes of Action,
whether known or unknown, whether for torts, including fraud, contract, violations of
federal or state securities laws, or otherwise, arising from or related in any way to
Debtor or Reorganized Ahern, including, without limitation, those that either Debtor or
Reorganized Ahern would have been legally entitled to assert in its own right (whether
individually or collectively) or that any Holder of a Claim or other Person would have
been legally entitled to assert on behalf of Debtor or its Estate but for this release and**

1 further including those in any way related to the Chapter 11 Case, the Debtor Plan, the
2 DIP Loan/Cash Collateral Order, or the Majority Term Lender Cash Collateral
3 Stipulation, to the fullest extent of the law; *provided, however*, that the foregoing releases
4 shall not operate to waive or release any Released Party from (a) any Causes of Action
expressly set forth in and preserved by the Debtor Plan, any Plan Supplement, or related
documents or (b) as a result of actual fraud, gross negligence, or willful misconduct.

5 g. Injunction.

6 From and after the Effective Date, and except as provided in the Debtor Plan, the
7 Confirmation Order and any orders of the Bankruptcy Court implementing the
8 provisions of the Debtor Plan and Confirmation Order, all entities that have held,
9 currently hold, or may hold a Claim that is terminated, modified or restructured
10 pursuant to the terms of the Debtor Plan are permanently enjoined from taking any of
11 the following actions on account of such Claims: (i) commencing or continuing in any
12 manner any action or other proceeding against Reorganized Ahern or its property; (ii)
13 enforcing, attaching, collecting, or recovering in any manner any judgment, award,
14 decree, or order against Reorganized Ahern or its property; (iii) creating, perfecting or
15 enforcing any Lien or encumbrance against Reorganized Ahern or its property; (iv)
16 asserting a setoff, right of subrogation, or recoupment of any kind against any debt,
17 liability, or obligation due to Reorganized Ahern or its property; and (v) commencing or
18 continuing any action, in any manner or any place, that does not comply with or is
19 inconsistent with the provisions of the Debtor Plan or the Bankruptcy Code. By
20 accepting Distributions pursuant to the Debtor Plan, each Holder of an Allowed Claim
21 will be deemed to have specifically consented to the injunctions set forth in Section 9.7 of
22 the Debtor Plan.

23 h. Exculpation.

24 From and after the Effective Date, none of Debtor, Reorganized Ahern, the DIP
25 Loan Agents, solely in their capacity as agents for the DIP Loan, the DIP Lenders, solely
26 in their capacity as DIP Loan Lenders, the Majority Term Lenders, solely in their
27 capacity as Term Lenders, and the Committee, nor any of their respective directors,
28 officers, managers, employees, advisors, attorneys, Professionals, or agents on and from
the Petition Date forward, shall have or incur any liability to any Holder of a Claim or
any other party-in-interest, or any of their respective agents, employees, representatives,
financial advisors, attorneys, Affiliates, professionals, or any of their successors or
assigns, for any act or omission in connection with, relating to, or arising out of (from
the Petition Date forward) the Chapter 11 Case, Reorganized Ahern, the pursuit of
confirmation of the Debtor Plan, the DIP Loan/Cash Collateral Order, the Majority
Term Lender Cash Collateral Stipulation, or the Substantial Consummation of the
Debtor Plan, including the issuance and distribution of the Exit Financing Facility
Documents, the Junior Secured A Note Documents, or the Junior Secured B Note
Documents as provided for in the Debtor Plan or any orders of the Bankruptcy Court,
except for gross negligence and willful misconduct, and in all respects shall be entitled to
reasonably rely upon the advice of counsel with respect to their duties and
responsibilities under the Debtor Plan or in the context of the Chapter 11 Case. No
Holder of a Claim, nor any other party-in-interest, including their respective agents,

1 employees, representatives, financial advisors, attorneys, Affiliates, professionals, or their
2 successors and assigns, shall have any right of action against Debtor, Reorganized Ahern,
3 the DIP Loan Agents, the DIP Lenders, and the Committee, or any of their respective
4 present or former members, officers, directors, managers, employees, advisors, attorneys,
5 Professionals, or agents, relating to, or arising out of (from the Petition Date forward)
6 the Chapter 11 Case, the pursuit of Confirmation of the Debtor Plan, the Substantial
7 Consummation of the Debtor Plan, including the issuance and distribution of the Exit
8 Financing Facility Documents, the Junior Secured A Note Documents, or the Junior
9 Secured B Note Documents as provided for in the Debtor Plan or any orders of the
10 Bankruptcy Court, or the administration of the Debtor Plan, except for: (i) their willful
11 misconduct and gross negligence; (ii) matters specifically contemplated by either the
12 Debtor Plan or Reorganized Ahern; and (iii) any liability of an attorney to its client not
13 subject to exculpation under the Bankruptcy Code.

9 **I. Retention of Jurisdiction.**

10 a. Jurisdiction.

11 Notwithstanding the entry of the Confirmation Order and the occurrence of the
12 Effective Date, the Bankruptcy Court shall retain such jurisdiction over the Chapter 11 Case
13 and Reorganized Ahern after the Effective Date as is legally permissible, including jurisdiction
14 to:

14 (i) Allow, disallow, determine, liquidate, classify, estimate, or
15 establish the priority or secured or unsecured status of any Claim or Disputed Claim, including
16 the resolution of any request for payment of any Administrative Claim and the resolution of
17 any and all objections to the allowance or priority of Claims or Disputed Claims;

17 (ii) Grant or deny any applications for allowance of compensation or
18 reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Debtor Plan for
19 periods ending on or before the Effective Date;

19 (iii) Resolve any matters related to the assumption, assignment, or
20 rejection of any Executory Contract or Unexpired Lease to which Debtor or Reorganized
21 Ahern is a party and to hear, determine and, if necessary, liquidate any Claims arising
22 therefrom or Cure amounts related thereto;

22 (iv) Ensure that Distributions to or for the benefit of Holders of
23 Allowed Claims are accomplished pursuant to the provisions of the Debtor Plan;

24 (v) Decide or resolve any motions, adversary proceedings, contested
25 or litigated matters, and any other matters, and grant or deny any applications or motions
26 involving Debtor or Reorganized Ahern that may be pending on the Effective Date or
27 commenced thereafter as provided for by the Debtor Plan;

26 (vi) Enter such orders as may be necessary or appropriate to
27 implement or consummate the provisions of the Debtor Plan and all contracts, instruments,
28 releases, and other agreements or documents created in connection with the Debtor Plan, the

1 Disclosure Statement, or the Confirmation Order except as otherwise provided in the Debtor
2 Plan;

3 (vii) Decide or resolve any cases, controversies, suits, or disputes that
4 may arise in connection with the consummation, interpretation, or enforcement of any Final
5 Order, the Debtor Plan, the Confirmation Order, or obligations of any Persons incurred in
6 connection with such Final Order, the Debtor Plan, or the Confirmation Order;

7 (viii) Modify the Debtor Plan before or after the Effective Date
8 pursuant to Section 1127 of the Bankruptcy Code and Section 11 of the Debtor Plan or
9 modify any contract, instrument, release, or other agreement or document created in
10 connection with the Debtor Plan, the Disclosure Statement, the Confirmation Order, or
11 Reorganized Ahern; or remedy any defect or omission or reconcile any inconsistency in any
12 Final Order, the Debtor Plan, the Confirmation Order, or any contract, instrument, release, or
13 other agreement or document created in connection with the Debtor Plan, the Disclosure
14 Statement or the Confirmation Order, in such manner as may be necessary or appropriate to
15 consummate the Debtor Plan, to the extent authorized by the Bankruptcy Code;

16 (ix) Issue injunctions, enter and implement other orders, or take such
17 other actions as may be necessary or appropriate to restrain interference by any Person with
18 consummation, implementation, or enforcement of any Final Order, the Debtor Plan, or the
19 Confirmation Order, except as otherwise provided in the Debtor Plan;

20 (x) Enter and implement such orders as are necessary or appropriate
21 if a Final Order or the Confirmation Order is for any reason modified, stayed, reversed,
22 revoked, or vacated;

23 (xi) Determine any other matters that may arise in connection with or
24 relate to the Debtor Plan, any Final Order, the Disclosure Statement, the Confirmation Order
25 or any contract, instrument, release, or other agreement or document created in connection
26 with the Debtor Plan, the Disclosure Statement, any Final Order or the Confirmation Order
27 (unless such contract, instrument, release, or other agreement or document expressly provides
28 otherwise), except as otherwise provided in the Debtor Plan;

(xii) Enter an order closing the Chapter 11 Case;

(xiii) Hear and decide Litigation Claims and any other Claim or Cause
of Action of Debtor and Reorganized Ahern pending on the Effective Date; and

(xiv) Decide or resolve any matter over which the Bankruptcy Court
has jurisdiction pursuant to Section 505 of the Bankruptcy Code.

J. Modification and Amendment of the Debtor Plan.

Prior to Confirmation, Debtor may alter, amend, or modify the Debtor Plan under
Section 1127(a) of the Bankruptcy Code at any time. After the Confirmation Date and prior
to the Effective Date, Debtor may, under Sections 1127(b), (c), and (d) of the Bankruptcy
Code, alter, amend, or modify the Debtor Plan or institute proceedings in the Bankruptcy
Court to remedy any defect or omission or reconcile any inconsistencies in the Debtor Plan or

1 the Confirmation Order, and to make appropriate adjustments and modifications to the Debtor
2 Plan or the Confirmation Order as may be necessary to carry out the purposes and effects of
3 the Debtor Plan, so long as such proceedings do not materially adversely affect the treatment
4 of Holders of Claims under the Debtor Plan.

4 **K. Miscellaneous.**

5 a. Effectuating Documents; Further Transactions; and Timing.

6 Each of the officers of Debtor and Reorganized Ahern are authorized to execute,
7 deliver, file, or record such contracts, instruments, releases, and other agreements or
8 documents and to take such actions as may be necessary or appropriate to effectuate and
9 further evidence the terms and conditions of the Debtor Plan and any obligations issued,
10 transferred, or cancelled pursuant to the Debtor Plan and transactions contemplated by the
11 Debtor Plan. All transactions that are required to occur on the Effective Date under the terms
12 of the Debtor Plan shall be deemed to have occurred simultaneously. Debtor and Reorganized
13 Ahern are authorized and directed to do such acts and execute such documents as are
14 necessary to implement the Debtor Plan.

12 b. Cancellation of Existing Agreements.

13 On the latest to occur of (i) the Effective Date; (ii) the entry of a Final Order resolving
14 all Claims in the Chapter 11 Case; and (iii) the final Distribution made to Holders of Allowed
15 Claims in accordance with the terms of the Debtor Plan, unless otherwise provided in the
16 Debtor Plan, any document, agreement, or instrument evidencing any Disputed Claim that is
17 disallowed shall be deemed automatically cancelled and terminated without further act or
18 action under any applicable agreement, law, regulation, order, or rule and the obligations of
19 Debtor under such documents, agreements, or instruments evidencing such Claims shall be
20 discharged.

18 c. Exemption from Transfer Taxes.

19 Pursuant to Section 1146(a) of the Bankruptcy Code, (i) the issuance, distribution,
20 transfer, or exchange of Estate property; (ii) the creation, modification, consolidation, or
21 recording of any deed of trust or other interest, or the securing of additional indebtedness by
22 such means or by other means in furtherance of, or in connection with the Debtor Plan or the
23 Confirmation Order; (iii) the making, assignment, modification, or recording of any lease or
24 sublease; or (iv) the making, delivery, or recording of a deed or other instrument of transfer
25 under, in furtherance of, or in connection with, the Debtor Plan, Confirmation Order, or any
26 transaction contemplated above, or any transactions arising out of, contemplated by, or in any
27 way related to the foregoing shall not be subject to any document recording tax, stamp tax,
28 conveyance fee, intangibles or similar tax, mortgage tax, stamp act or real estate transfer tax,
mortgage recording tax, or other similar tax or governmental assessment and the appropriate
state or local government officials or agents shall be, and hereby are, directed to forego the
collection of any such tax or assessment and to accept for filing or recordation any of the
foregoing instruments or other documents without the payment of any such tax or assessment.

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d. Revocation or Withdrawal of the Debtor Plan.

Debtor reserves the right to revoke or withdraw the Debtor Plan at any time prior to the Confirmation Date. If the Debtor Plan is withdrawn or revoked or if the Bankruptcy Court denies confirmation of the Debtor Plan, then the Debtor Plan shall be deemed null and void and nothing contained in the Debtor Plan shall be deemed to constitute a waiver or release of any Claims by or against Debtor or any other Person, nor shall the withdrawal or revocation of the Debtor Plan prejudice in any manner the rights of Debtor or any Person in any further proceedings involving Debtor. In the event the Debtor Plan is withdrawn or revoked, nothing set forth in the Debtor Plan shall be deemed an admission of any sort and the Debtor Plan and any transaction contemplated thereby shall be inadmissible into evidence in any proceeding.

In the event that the Effective Date does not occur, upon notification submitted by Debtor to the Bankruptcy Court: (i) the Confirmation Order shall be vacated; (ii) no Distributions under the Debtor Plan shall be made; (iii) Debtor and all Holders of Claims shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred, and (iv) Debtor's obligations with respect to the Claims shall remain unchanged and nothing contained in the Debtor Plan shall constitute or be deemed a waiver or release of any Claims by or against Debtor or any other Person or to prejudice in any manner the rights of Debtor or any Person in any further proceedings involving Debtor.

e. Term of Bankruptcy Injunction or Stays.

All injunctions or stays provided for in the Chapter 11 Case under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. Upon the Effective Date, the injunction provided in Section IX of the Debtor Plan shall apply.

f. Enforcement of Subordination.

Unless otherwise set forth herein, in accordance with Section 510(a) of the Bankruptcy Code, all subordination rights that the Debtor or a Holder of a Claim or Equity Interest may have with respect to any Claim or Distribution to be made pursuant to the Debtor Plan will not be discharged and terminated, except to the extent that such subordination rights conflict with other provisions of the Bankruptcy Code. All actions to request or direct subordination arising in law or in equity, including rights under Section 510(b) of the Bankruptcy Code, are not waived and expressly preserved.

g. Binding Effect.

The Debtor Plan shall be binding upon and inure to the benefit of the Debtor and the Estate, Reorganized Ahern and all present and former Holders of Claims against and interests in the Debtor, whether or not such Holders will receive or retain any property or interest in property under the Debtor Plan, their respective successors and assigns, including, without limitation, all other parties in interest in the Chapter 11 Case.

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h. Plan Supplement.

The Plan Supplement shall be filed with the Bankruptcy Court no later than ten (10) Business Days before the Voting Deadline, and additional Plan Supplement documents shall be filed before the Effective Date as amendments to the Plan Supplement. Any document included in the Plan Supplement (and amendments thereto) filed by the Debtor shall be deemed an integral part of the Debtor Plan and shall be incorporated by reference as if fully set forth in the Debtor Plan. To the extent any exhibit or schedule to the Debtor Plan is inconsistent with the terms of the Debtor Plan, the Debtor Plan shall control.

i. Committees.

On the Effective Date, the Committee shall cease to exist, except with respect to any application for compensation or reimbursement of costs and expenses in connection with services rendered prior to the Effective Date.

j. Governing Law.

Except to the extent that the Bankruptcy Code or other federal law is applicable or as provided in any contract, instrument, release, or other agreement entered into in connection with the Debtor Plan or in any document which remains unaltered by the Debtor Plan, the rights, duties, and obligations of Debtor and any other Person arising under the Debtor Plan shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Nevada without giving effect to Nevada choice of law provisions.

k. Modification of Payment Terms.

Reorganized Ahern reserves the right to modify the treatment of any Allowed Claim in any manner adverse only to the Holder of such Allowed Claim at any time after the Effective Date upon the prior written consent of the Holder whose Allowed Claim treatment is being adversely affected.

l. Notices.

Any notice required or permitted to be provided under the Debtor Plan shall be in writing and served by either: (a) certified mail, return receipt requested, postage prepaid; (b) hand delivery, or (c) reputable overnight courier service, freight prepaid, to be addressed as follows:

If to Debtor or Reorganized Ahern: Ahern Rentals, Inc.
Attn: Howard Brown, Chief Financial Officer
1401 Mineral Avenue
Las Vegas, NV 89106-4342
Tel: (702) 362-0623
Fax: (702) 367-7652

With a Copy to: GORDON SILVER
Attn: William M. Noall, Esq.
3960 Howard Hughes Pkwy, 9th Floor

1 Las Vegas, NV 89109
2 Tel: (702) 796-5555
3 Fax: (702) 369-2666

4 and

5 DLA PIPER LLP (US)
6 Attn: Gregg M. Galardi, Esq.
7 1251 Avenue of the Americas
8 New York, New York 10020
9 Tel: (212) 335-4640
10 Fax: (212) 884-8680

11 m. Severability.

12 If any provision of the Debtor Plan is determined by the Bankruptcy Court to be
13 invalid, illegal, or unenforceable or the Debtor Plan is determined to be not confirmable
14 pursuant to Section 1129 of the Bankruptcy Code, the Bankruptcy Court, at the request of
15 Debtor or Reorganized Ahern, as applicable, shall have the power to alter and interpret such
16 term to make it valid or enforceable to the maximum extent practicable, consistent with the
17 original purpose of the term or provision held to be invalid, void, or unenforceable, and such
18 term or provision shall then be applicable as altered or interpreted. Notwithstanding any such
19 holding, alteration, or interpretation, the remainder of the terms and provisions of the Debtor
20 Plan shall remain in full force and effect and will in no way be affected, impaired, or
21 invalidated by such holding, alteration, or interpretation. The Confirmation Order shall
22 provide and shall constitute a judicial determination that each term and provision of the
23 Debtor Plan, as it may have been altered or interpreted in accordance with the foregoing, is
24 valid and enforceable pursuant to its terms.

25 n. Withholding and Reporting Requirements.

26 In connection with the Debtor Plan and all instruments issued in connection therewith
27 and Distributions thereon, Reorganized Ahern shall comply with all withholding and reporting
28 requirements imposed by any federal, state, local, or foreign taxing authority and all
Distributions under the Debtor Plan shall be subject to any such withholding and reporting
requirements. Reorganized Ahern shall be authorized to take any and all action that may be
necessary to comply with such withholding and recording requirements. Notwithstanding any
other provision of the Debtor Plan, each Holder of an Allowed Claim that has received a
Distribution pursuant to the Debtor Plan shall have sole and exclusive responsibility for the
satisfaction or payment of any tax obligation imposed by any governmental unit, including
income, withholding, and other tax obligation on account of such Distribution.

29 o. Post Confirmation Reporting and Quarterly Fees to the United States
30 Trustee.

31 Prior to the Effective Date, Debtor, and after the Effective Date, Reorganized Ahern,
32 shall pay all quarterly fees payable to the U.S. Trustee consistent with the sliding scale set
33 forth in 28 U.S.C. § 1930(a)(6) and the applicable provisions of the Bankruptcy Code and
34

1 Bankruptcy Rules. These fees accrue throughout the pendency of the Chapter 11 Case, until
2 entry of a final decree. U.S. Trustee fees paid prior to confirmation of the Debtor Plan will be
3 reported in operating reports required by Sections 704(8), 1106(a)(1), and 1107(a) of the
4 Bankruptcy Code, as well as the United States Trustee Guidelines. All U.S. Trustee quarterly
5 fees accrued prior to confirmation of the Debtor Plan will be paid on or before the Effective
6 Date pursuant to Section 1129(a)(12) of the Bankruptcy Code. All U.S. Trustee fees accrued
7 post-confirmation will be timely paid on a calendar quarterly basis and reported on post-
8 confirmation operating reports. Final fees will be paid on or before the entry of a final decree
9 in the Chapter 11 Case.

10 p. Section 1125(e) of the Bankruptcy Code.

11 As of the Confirmation Date, the Debtor shall be deemed to have acted in good faith
12 and in compliance with Section 1125(e) of the Bankruptcy Code.

13 **VI.**

14 **CERTAIN RISK FACTORS TO BE CONSIDERED**

15 The Holders of Claims and Equity Interests in Classes **2, 3, 6, 7, and 8** should read
16 and carefully consider the following factors, as well as the other information set forth in this
17 Disclosure Statement (and the documents delivered together herewith and/or incorporated by
18 reference herein), before deciding whether to vote to accept or reject the Debtor Plan. These
19 risk factors should not, however, be regarded as constituting the only risks associated with the
20 Debtor Plan and its implementation.

21 **A. General Considerations**

22 The Debtor Plan sets forth the means for satisfying the Claims against the Debtor. The
23 reorganization of the Debtor's business and operations under the proposed Debtor Plan avoids
24 the potentially adverse impact of a sale or liquidation on the Debtor's customers, suppliers,
25 employees, communities, and the recoveries that Creditor and Equity Interests are projected to
26 receive under the Debtor Plan.

27 **B. Certain Bankruptcy Considerations**

28 Even if all voting Impaired Classes vote in favor of the Debtor Plan, the Bankruptcy
Court, which, as a court of equity, may exercise substantial discretion, may choose not to
confirm the Debtor Plan and choose to confirm the Noteholder Plan. Section 1129 of the
Bankruptcy Code requires, among other things, a showing that confirmation of the Debtor
Plan will not be followed by liquidation or the need for further financial reorganization of the
Debtor, see Article XI hereto, and that the value of distributions to dissenting Holders of
Claims and Equity Interests will not be less than the value such Holders would receive if the
Debtor was liquidated under chapter 7 of the Bankruptcy Code. See Article XI hereto.
Although the Debtor believes that the Debtor Plan meets such tests, there can be no assurance
that the Bankruptcy Court will reach the same conclusion. See Appendix C for a liquidation
analysis of the Debtor (the "Liquidation Analysis").

The Debtor's future results are dependent upon the successful confirmation and
implementation of a plan of reorganization. Failure to obtain this approval in a timely manner

1 could adversely affect the Debtor's operating results materially, as the Debtor's ability to
2 obtain financing to fund its operations and its relations with customers and suppliers may be
3 harmed by protracted bankruptcy proceedings. Furthermore, the Debtor cannot predict the
4 ultimate amount of all settlement terms for its liabilities that will be subject to a plan of
5 reorganization. Once a plan of reorganization is approved and implemented, the Debtor's
operating results may be adversely affected by the possible reluctance of prospective lenders,
customers, and suppliers to do business with a company that recently emerged from
bankruptcy proceedings.

6 **C. Class Estimations**

7 There can be no assurance that any estimated Claim amounts set forth in this
8 Disclosure Statement are correct. The actual allowed amount of Claims might differ
9 materially in some respect from the estimates as the estimated amounts are subject to certain
10 risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties
materialize, or should the underlying assumptions prove incorrect, the actual allowed amount
of Claims may vary materially from those estimated herein.

11 **D. Conditions Precedent to Consummation; Timing**

12 The Debtor Plan provides for certain conditions that must be satisfied (or waived) prior
13 to the Confirmation Date and for certain other conditions that must be satisfied (or waived)
14 prior to the Effective Date. As of the date of this Disclosure Statement, there can be no
15 assurance that any or all of the conditions in the Debtor Plan will be satisfied (or waived).
Accordingly, even if the Debtor Plan is confirmed by the Bankruptcy Court, there can be no
assurance that the Debtor Plan will be consummated and the restructuring completed.

16 **E. DIP Default/Majority Term Lender Cash Collateral Stipulation**

17 Based on the proposed treatment of the claims of the Term Lenders in the First Plan, a
18 Termination Event under paragraph 8(n) of the Majority Term Lender Cash Collateral
19 Stipulation occurred (the "Plan Treatment Termination Event"). Subsequently, on December
20 4, 2012, the Majority Term Lenders sent the Debtor correspondence (the "Notice of
21 Termination Event") advising the Debtor of the occurrence of a Termination Event under
22 section 8(n) of the Stipulation, which occurred as early as August 6, 2012 (the "Identified
23 Termination Event" and together with the Plan Treatment Termination Event, the "Applicable
24 Termination Events").

25 As a result, pursuant to the terms of the Majority Term Lender Cash Collateral
26 Stipulation, the Applicable Termination Events effectively terminated Debtor's authorization to
27 use the Term Lenders' cash collateral and also constituted cross-defaults under the DIP
28 Agreement.

Notwithstanding the Applicable Termination Events and consequent termination of
Debtor's use of cash collateral, the Majority Term Lenders forbore from requiring a further
Court order authorizing the continued use of their Cash Collateral based upon the Applicable
Termination Events. Such forbearance was subject to automatic termination, however, upon
the occurrence of either (i) the Majority Term Lenders providing further notice that such

1 forbearance is terminated or (ii) a new default or Termination Event occurs under the Majority
2 Term Lender Cash Collateral Stipulation. Similarly, the Exclusivity Termination likely
3 constituted an Event of Default under section 11.1(cc) of the DIP Agreement.

4 In order to avoid termination of the Debtor's ability to use the Cash Collateral and
5 preserve the liquidity necessary to sustain its operations in the Chapter 11 Case and effectuate
6 its reorganization, the Debtor believed it necessary to obtain the Term Lenders' waiver of the
7 Applicable Termination Events and any other Termination Events existing under the Majority
8 Term Lender Cash Collateral Stipulation.

9 The Applicable Termination Events under the Majority Term Lender Cash Collateral
10 Stipulation also caused the DIP Lenders to declare an Event of Default under the DIP
11 Agreement, precluding the Debtor from obtaining an extension of the DIP Loan maturity,
12 which is necessary for the Debtor's continued use of the LIP Loan funds for operations and to
13 allow the Debtor the requisite time to solicit acceptance and seek confirmation of the Debtor
14 Plan prior to termination of the DIP Loan. The DIP Lenders were not willing to grant an
15 extension to the DIP Loan without an order from the Court authorizing the Debtor's use of the
16 Term Lenders' cash collateral.

17 Therefore, in order to ensure the Debtor's continued use of the cash collateral during
18 the Chapter 11 Case and an extension of the DIP Loan, the Debtor entered into the Term
19 Lender to Majority Term Lender Cash Collateral Stipulation and the DIP Amendment, along
20 with the Prepetition Credit Agreement Amendment.

21 **F. Competition**

22 As did the Debtor, Reorganized Ahern will face intense competition that could
23 adversely affect its operations and harm financial condition. For example, Reorganized Ahern
24 cannot ensure that a new equipment rental or sales company will not commence operations in
25 the same markets in which the Debtor currently operates or that an existing competitor will
26 not increase capacity or lower prices in such markets.

27 **G. Retention of Management**

28 None of the Debtor's senior management, including Don Ahern, the Debtor's
President, Chief Executive Officer and a member of the Debtor's board of directors, is party
to a covenant not to compete. Thus, even if the Debtor Plan is confirmed, there can be no
assurances that Don Ahern or any other member of management will remain in their current
positions and/or not start a new competing company that competes with Reorganized Ahern.
Additionally, given Mr. Ahern's experience running the Debtor's business and the goodwill
the he has developed in the industry, the Debtor believes that Reorganized Ahern would lose
value if Don Ahern chooses to leave. Mr. Ahern, however, is not currently setting up a
competing business and has no intention of doing so absent being removed from his current
position with the Debtor.

H. Environmental and Other Regulations

The Debtor is not aware of any environmental condition at any of its properties that it
considers material. It is possible, however, that future environmental laws and regulations, or

1 new interpretations of existing environmental laws, will impose material environmental
2 liabilities on the Debtor, or that current environmental conditions of properties that the Debtor
3 owns or operates will be adversely affected by hazardous substances associated with other
4 nearby properties or the actions of unrelated third parties. The cost to defend any future
5 environmental claims, perform any future environmental remediation, satisfy any
6 environmental liabilities, or respond to changed environmental conditions could have a
7 material adverse effect on the Debtor's financial condition and operating results.

8 **I. Leverage**

9 The Debtor believes that Reorganized Ahern will emerge from Chapter 11 with a
10 reasonable level of debt that can be effectively serviced in accordance with its business plan.
11 Circumstances, however, may arise which might cause the Debtor to conclude that it is
12 overleveraged, which could have significant negative consequences, including:

13 (i) it may become more difficult for Reorganized Ahern to satisfy its
14 obligations with respect to all of its obligations;

15 (ii) Reorganized Ahern may be vulnerable to a downturn in the
16 markets in which it operates or a downturn in the economy in general;

17 (iii) Reorganized Ahern may be required to dedicate a substantial
18 portion of its cash flow from operations to fund working capital, capital expenditures, and
19 other general corporate requirements;

20 (iv) Reorganized Ahern may be limited in its flexibility to plan for,
21 or react to, changes in its business and the industry in which it operates or entry of new
22 competitors into its markets;

23 (v) Reorganized Ahern may be placed at a competitive disadvantage
24 compared to its competitors that have less debt, including with respect to implementing
25 effective pricing and promotional programs; and

26 (vi) Reorganized Ahern may be limited in borrowing additional
27 funds.

28 Additionally, there may be factors beyond the control of Reorganized Ahern that could
impact its ability to meet debt service requirements. The ability of Reorganized Ahern to
meet debt service requirements will depend on its future performance, which, in turn, will
depend on Reorganized Ahern's ability to sustain sales or rental conditions in the markets in
which Reorganized Ahern operates, the economy generally, and other factors that are beyond
its control. The Debtor can provide no assurance that the business of Reorganized Ahern will
generate sufficient cash flow from operations or that future borrowings will be available in
amounts sufficient to enable Reorganized Ahern to pay its indebtedness or to fund its other
liquidity needs. Moreover, Reorganized Ahern may need to refinance all or a portion of its
indebtedness on or before maturity. The Debtor cannot make assurances that Reorganized
Ahern will be able to refinance any of its indebtedness on commercially reasonable terms or at
all. If Reorganized Ahern is unable to make scheduled debt payments or comply with the
other provisions of its debt instruments, its various lenders will be permitted under certain

1 circumstances to accelerate the maturity of the indebtedness owing to them and exercise other
2 remedies provided for in those instruments and under applicable law.

3 **J. Litigation**

4 Reorganized Ahern will be subject to various claims and legal actions arising in the
5 ordinary course of its business. The Debtor is not able to predict the nature and extent of any
6 such claims and actions, including the Personal Injury Claims discussed above for which an
7 adverse judgment could exceed the Debtor's policy limits. Therefore, the Debtor cannot
8 guarantee that the ultimate resolution of such claims and actions will not have a material
9 adverse effect on Reorganized Ahern.

10 **K. Liability Insurance**

11 The Debtor Plan provides no greater liability insurance coverage than existed prior to
12 the Petition Date. Holders of Personal Injury Claims bear the same risk that the Debtor's
13 Liability Insurance Policies do not cover their Claims, in part or in whole, as existed prior to
14 the Petition Date. The coverage provided under each of the Liability Insurance Policies is
15 defined by the terms, definitions, conditions, limitations, and exclusions set forth in that
16 particular Liability Insurance Policy. Each Holder of a Personal Injury Claim has a risk that
17 his or her claim is not covered, in part or in whole, by the Debtor's applicable Liability
18 Insurance Policies.

19 **L. Adverse Publicity**

20 Adverse publicity or news coverage relating to Reorganized Ahern, including but not
21 limited to publicity or news coverage in connection with the Chapter 11 Case, may negatively
22 impact Reorganized Ahern's efforts to establish and promote name recognition and a positive
23 image after the Effective Date.

24 **M. Certain Tax Considerations**

25 There are a number of income tax considerations, risks, and uncertainties associated
26 with (i) the consummation of the Debtor Plan or (ii) in the alternative, if the Debtor Plan is
27 not confirmed, the liquidation of the Debtor under Chapter 7 of the Bankruptcy Code.
28 Interested parties should carefully read (i) the discussions set forth in Article VII of this
Disclosure Statement regarding certain U.S. federal income tax consequences of the
transactions proposed by the Debtor Plan to the Debtor and Reorganized Ahern and to certain
Holders of Claims or Equity Interests who are entitled to vote to accept or reject the Debtor
Plan and (ii) the Liquidation Analysis set forth in Appendix C to this Disclosure Statement.

29 **VII.**
30 **U.S. SECURITIES LAW MATTERS**

31 Any and all debt instruments to be issued in conjunction with the Debtor Plan will be
32 issued without registration under the Securities Act or any similar federal, state, or local law
33 in reliance upon the exemptions set forth in Section 1145 of the Bankruptcy Code.

VIII.
CERTAIN FEDERAL INCOME TAX CONSEQUENCES

A. Introduction

The following discussion summarizes certain U.S. federal income tax consequences of the implementation of the Debtor Plan to the Debtor and certain Holders of Claims. The following summary does not address the U.S. federal income tax consequences to Holders whose Claims are unimpaired or otherwise entitled to payment in full in Cash under the Debtor Plan. The following summary is based on the Internal Revenue Code of 1986, as amended (the “IRC”), the U.S. Department of the Treasury (“Treasury”) regulations promulgated thereunder, judicial decisions, and published administrative rules and pronouncements of the Internal Revenue Service (the “IRS”), all as in effect on the date hereof and all of which are subject to change. Changes in such rules or new interpretations thereof may have a retroactive effect and could significantly affect the tax consequences described below.

The U.S. federal income tax consequences of the Debtor Plan are complex and are subject to substantial uncertainties due to the lack of definitive judicial and administrative authority in a number of areas. Substantial amount of time may elapse between the date of this Disclosure Statement and the receipt of a final distribution under the Debtor Plan. No assurance can be given that legislative or administrative changes or court decisions will not be forthcoming which would require significant modification of the statements in this Section. The Debtor has not requested a ruling from the IRS or an opinion of counsel with respect to any tax aspects of the Debtor Plan. Therefore, no assurance can be given as to the position the IRS will take on the tax consequences of the transactions that are to occur in connection with the Debtor Plan.

This summary does not address foreign, state or local tax consequences of the Debtor Plan, nor does it address the U.S. federal income tax consequences of the Debtor Plan to the particular circumstances of any Holder or to Holders subject to special income tax rules (such as regulated investment companies, insurance companies, financial institutions, small business investment companies, broker-dealers, tax-exempt organizations (including pension funds), Persons holding a Claim as part of an integrated constructive sale or straddle or part of a conversion transaction, and investors in pass-through entities). In addition, the summary does not include a full summary of the consequences to Holders of Claims who are not “U.S. Persons” (as defined in the IRC) or who are tax-exempt Holders. However, there may be some potentially significant consequences to non-U.S. Persons which are not discussed below, and such non-U.S. Persons are encouraged to carefully consider their particular tax consequences with their own tax advisers.

This discussion assumes that the various debt and other arrangements to which the Debtor is a party will be respected for federal income tax purposes in accordance with their form.

The following discussion is a general summary of certain U.S. federal income tax aspects of the Debtor Plan and should not be relied upon for purposes of determining the specific tax consequences of the Debtor Plan with respect to a particular Holder of a Claim.

1 Each Holder of a Claim affected by the Debtor Plan should consult its own tax advisor
2 regarding the specific tax consequences of the Debtor Plan with respect to that Holder's
3 Claim, including under any applicable state, local or foreign law.

4 **IRS CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH**
5 **REQUIREMENTS IMPOSED BY THE IRS, ANY TAX ADVICE CONTAINED IN**
6 **THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED,**
7 **AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING**
8 **TAX-RELATED PENALTIES UNDER THE IRC. THE TAX ADVICE CONTAINED**
9 **IN THIS DISCLOSURE STATEMENT WAS WRITTEN TO SUPPORT THE**
10 **PROMOTION OR MARKETING OF THE TRANSACTIONS DESCRIBED IN THIS**
11 **DISCLOSURE STATEMENT. EACH TAXPAYER SHOULD SEEK ADVICE BASED**
12 **ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN**
13 **INDEPENDENT TAX ADVISOR.**

14 **B. Tax Consequences to the Debtor**

15 Set forth below in this Section is a discussion of certain tax consequences to the
16 Debtor in connection with the effectuation of the Debtor Plan.

17 **1. COD Income – General Rule**

18 Upon the exchange of Second Lien Loan Claims, the Debtor will recognize
19 cancellation of indebtedness income ("COD Income"). In general, a debtor realizes COD
20 Income upon satisfaction of its outstanding indebtedness for total consideration less than the
21 amount of such indebtedness. For this purpose, the amount of the indebtedness cancelled is
22 the adjusted issue price of such indebtedness (plus any accrued but unpaid interest). The
23 consideration received for the debt is the sum of (i) any Cash received and the fair market
24 value of any property (other than debt) received and (ii) the issue price of any debt
25 instruments received. Applying these rules to the current transactions, the amount of COD
26 Income realized by the Debtor will equal the excess of the adjusted issue price of the Claims
27 immediately prior to the time such Claims are cancelled (including any of the Debtor's debt
28 that is cancelled without payment and any accrued but unpaid interest) over the issue price of
the applicable notes received and the Cash received. The concept of adjusted issue price is
discussed below.

2. COD Income – Issue Price and Adjusted Issue Price

The computation of the amount of COD Income to be recognized by the Debtor with
respect to the Second Lien Loan Claims depends on the adjusted issue price of the debt
represented by such claims immediately prior to their cancellation. These concepts are related
to the original issue discount ("OID") rules of the IRC.

Under the OID rules, the "issue price" of debt depends on how the debt is issued. The
issue price of debt issued for Cash is the price at which a substantial amount of the debt is
sold. The issue price of a publicly-traded debt instrument issued for property is the fair
market value of the debt instrument determined as of the issue date. If a debt instrument that

1 is not publicly traded is issued for publicly-traded property, the issue price of the debt
2 instrument is equal to its fair market value determined with respect to the trading prices of the
3 publicly traded property. The issue price of a debt instrument that is not publicly traded and
4 that is issued in exchange for property that is not publicly traded is the stated principal amount
of such debt instrument as long as the instrument provides for adequate interest (i.e., interest
at least equal to certain rates published monthly by the IRS).

5 A debt instrument is considered publicly traded if it is traded on an “established
6 securities market” at any time during the 60-day period ending 30 days after the Effective
7 Date. In general, a debt instrument (or the property exchanged therefor) will be treated as
8 traded on an established securities market if: (i) it is listed on (a) a qualifying national
9 securities exchange, (b) certain qualifying interdealer quotation systems, or (c) certain
10 qualifying foreign securities exchanges; (ii) it appears on a system of general circulation
11 (including a computer listing disseminated to subscribing brokers, dealers or traders) that
12 provides a reasonable basis to determine fair market value by disseminating either recent price
13 quotations or actual prices of recent sales transactions; or (iii) the price quotations are readily
available from dealers, brokers or traders. In general, an issuer’s determination of issue price
is binding on all holders of the relevant debt, other than a holder that explicitly discloses its
inconsistent treatment in a statement attached to its timely filed tax return for the taxable year
in which it is issued the debt. While a complete analysis has not been completed at this point
in time, it does not appear that the Junior Secured A Notes or the Junior Secured B Notes will
be considered to be publicly traded.

14 **3. Interest and Original Issue Discount**

15 The adjusted issue price of debt is the issue price of the debt as adjusted for OID.
16 Generally, a debt instrument is treated as having OID if its “stated redemption price at
17 maturity” exceeds its “issue price” by more than a de minimis amount. A debt instrument’s
18 stated redemption price at maturity includes all principal and interest payable over the term of
19 the debt, other than qualified stated interest. Stated interest is “qualified stated interest” if it is
20 payable in Cash at least annually. Holders of a debt instrument that is issued with OID are
21 generally required to include any OID in income over the term of the instrument in accordance
22 with a constant yield-to-maturity method, regardless of whether the holder is a cash or accrual
method taxpayer, and regardless of whether and when the holder receives Cash payments of
interest on the note (other than Cash attributable to qualified stated interest). The adjusted
issue price of debt is the debt’s issue price as increased by any OID that has accrued with
respect to such debt and decreased by any payments on the debt other than payments of
qualified stated interest.

23 Thus, with respect to the Second Lien Loan Notes which were issued without OID, the
24 adjusted issue price of that debt is its stated principal amount.

25 **4. Exceptions to COD Income Inclusion**

26 The Debtor will be able to take advantage of two exceptions of being required to
27 realize COD Income. First, COD Income is not realized to the extent that the payment of the
28 tax liability would have given rise to a deduction. Thus, the Debtor will not be required to

1 recognize COD Income with respect to accrued but unpaid interest to the extent that it has not
2 deducted such interest.

3 Second, a debtor is not required to include any COD Income in gross income if the
4 debtor is under the jurisdiction of a court in a bankruptcy case and the discharge of debt
5 occurs pursuant to that proceeding. As a consequence of such exclusion, a debtor in
6 bankruptcy that recognizes COD Income is required to reduce its tax attributes by the amount
7 of COD Income that it excluded from gross income. Such COD Income will reduce certain
8 tax attributes of the debtor generally in the following order: (i) net operating losses (“NOLs”);
9 (ii) general business credits; (iii) tax credits; (iv) capital loss carryovers; (v) tax basis of
10 property; (vi) passive loss and credit carryovers; and (vii) foreign tax credits. The reduction to
11 basis is made after the determination of tax for the taxable year in which the discharge of
12 indebtedness occurs.

13 In the case of a discharge of indebtedness by the Debtor, which is an S corporation, the
14 Debtor will be able to take advance of the bankruptcy exception to taking COD income, as
15 well as take advance of the reductions of attributes which are generally applied at the
16 corporate level, not the shareholder level. An S corporation is generally not a taxable entity,
17 and thus is not entitled to NOLs. However, in the case of COD Income of an S corporation,
18 the COD Income can reduce certain losses allocated to the S corporation’s shareholders that
19 the shareholders were not entitled to claim because of the rule that limits an S corporation’s
20 shareholder’s ability to claim such losses in excess of the shareholder’s basis in the stock or
21 debt of the S corporation.
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1 **C. Tax Consequences to Certain Holders of Claims**

2 **1. Term Loan Claims (Class 1)**

3 Pursuant to the Debtor Plan, a Holder of Allowed Term Loan Claims will receive
4 Cash. The receipt of Cash in satisfaction of its Term Loan Claim should be treated as a
5 taxable exchange under IRC section 1001, and such Holder should recognize capital gain or
6 loss (subject to the “market discount” rules discussed in Article VIII.B.8 below) equal to the
7 difference between (x) the amount of Cash received in exchange for its Allowed Term Loan
8 Claim, and (y) the Holder’s tax basis in its Term Loan Claim. Any such capital gain or loss
9 should be long-term capital gain or loss if such Holder has held its Term Loan Claim for more
than one year. To the extent that Cash received in the exchange is allocable to accrued
interest that has not already been taken into income by the Holder of the Term Loan Claim,
the Holder may recognize ordinary interest income. (See Article VIII.B.7 below for a further
discussion regarding such income).

10 **2. Second Lien Loan Claims (Class 2)**

11 **a. Class 2 Votes to Accept the Debtor Plan**

12 In the event that Class 2 votes to accept the Debtor Plan, each Holder of an Allowed
13 Second Lien Loan Claim will receive (i) Cash in an amount equal to such Holder’s Pro Rata
14 share of \$160 million for the Second Lien Loan Claim and (ii) Junior Secured A Notes in an
15 amount equal to such Holder’s Pro Rata share of \$77 million for each dollar of such Holder’s
Allowed Senior Lien Loan Claim.

16 In such case, the Holders of Allowed Second Lien Loan Claims shall be treated as
17 exchanging their Second Lien Loan Notes for their share of Cash and Junior Secured A Notes
18 and property in a taxable exchange under IRC section 1001. Accordingly, such Holders of
19 Allowed Second Lien Loan Claims should recognize gain or loss equal to the difference
20 between (i) such Holders’ adjusted tax basis in the Allowed Second Lien Loan Secured Claim
(other than any tax basis attributable to accrued but unpaid interest) and (ii) Cash and the fair
market value of the Junior Secured A Note that such Holders receive (other than any such
amounts treated as received with respect to a claim for accrued but unpaid interest).

21 Such gain or loss should be capital in nature so long as the Second Lien Loan Claims
22 were held as a capital asset (subject to the “market discount” rules described below) and
23 should be long-term capital gain or loss if such Holders have a holding period for the Allowed
24 Second Lien Loan Claim of more than one year. A Holder of Second Lien Loan Claim may
recognize ordinary income to the extent that the property received is treated as received in
satisfaction of accrued but untaxed interest on Second Lien Loan Claim.

25 A Holder’s tax basis in the Junior Secured A Note should equal the fair market value
26 of the Junior Secured A Note as of the Effective Date and the holding period in such assets
27 should commence on the day following the Effective Date. The issue price of each Junior
28 Secured A Note generally should equal the stated principal amount of such Junior Secured A
Note if such Junior Secured A Note is not considered publicly-traded property for U.S. federal
income tax purposes. The issue prior of the Junior Secured A Note would be equal to its fair

1 market value as determined as of the Effective Date.

2 b. Class 2 Does Not Vote to Accept the Debtor Plan

3 In the event that Class 2 does not vote to accept the Debtor Plan, each Holder of an
4 Allowed Second Lien Loan Claim will receive Junior Secured B Notes in an amount equal to
5 such Holder's Pro Rata share of the aggregate amount of the Allowed Second Lien Loan
6 Claims as set forth in the Debtor Plan.

6 In such case, each Holder of any Second Lien Loan Claim shall be treated as
7 exchanging its Second Lien Loan Notes in a taxable exchange under IRC section 1001.
8 Accordingly, such Holder should recognize gain or loss equal to the difference between (i) its
9 adjusted tax basis in the Allowed Second Lien Loan Claim (other than any tax basis
10 attributable to accrued but unpaid interest) and (ii) the fair market value of the Junior Secured
11 B Note that it is deemed to receive (other than any such amounts treated as received with
12 respect to a claim for accrued but unpaid interest). The fair market value of the Junior
13 Secured B Note shall be determined in the same manner as a Junior Secured B Note (as
14 discussed above in Section VIII.B.3 above).

12 3. Kubota Claims (Class 3)

13 In connection with the Kubota Claims, the Holder of a Kubota Claim will receive a
14 principal payment and other payments as reflected in the Debtor Plan. The allocation of the
15 payments first to principal should be respected. However, the extent to which the
16 consideration received by a Holder of a surrendered Claim will be attributable to accrued
17 interest on the debts constituting the surrendered Claim is unclear. Certain Treasury
18 regulations generally treat a payment under a debt instrument first as a payment of accrued
19 and untaxed interest and then as a payment of principal. Application of this rule to a final
20 payment on an obligation which is a debt instrument being discharged at a discount in
21 bankruptcy is unclear. The Debtor intends to take the position that payments are applied first
22 to principal as provided in the Debtor Plan. At this point in time, the Holder of a Kubota
23 Claim may recognize gain or loss in the event that modification to the Kubota Claim is
24 considered obligation which constitutes a "significant modification" within the meaning of
25 Treasury regulations promulgated under IRC section 1001.

21 4. Other Secured Claims (Class 4)

22 Pursuant to the Debtor Plan, each Allowed Other Secured Claim will either be
23 Reinstated or paid in full in Cash. If a Holder receives Cash in satisfaction of its Claim, such
24 Holder will generally recognize income, gain or loss for U.S. federal income tax purposes in
25 an amount equal to the difference between (i) the amount of Cash or the fair market value of
26 any property received and (ii) the Holder's adjusted tax basis in the Claim. The character of
27 such gain or loss as capital gain or loss or as ordinary income or loss will be determined by a
28 number of factors, including: (a) the tax status of the Holder; (b) the nature of the Claim in
such Holder's hands; (c) whether the Claim constitutes a capital asset in the hands of the
Holder; (d) whether the Claim was purchased at a discount; and (e) whether and to what
extent the Holder has previously claimed a bad debt deduction with respect to its Claim. If an
Allowed Other Secured Claim is Reinstated, the Holder of such Claim should not recognize

1 gain or loss except to the extent that the collateral securing such Claim is changed, and that
2 the change in collateral constitutes a “significant modification” of the Allowed Other Secured
3 Claim within the meaning of Treasury regulations promulgated under IRC section 1001. In
4 this case, the collateral securing any Allowed Other Secured Claim should not result in a
5 significant modification.

5. Personal Injury Claims (Class 6)

6 Each Holder of Personal Injury Claim will be satisfied in Cash subject to any amounts
7 in excess of (i) \$250,000 not paid in full by the SIR for Classes 6A through 6A, (ii) the
8 applicable automobile policy’s Deductible for Classes 6F through 6L, and (iii) the proceeds
9 from the Liability Insurance Policies, payable over one (1) year with interest accruing at a rate
10 of five percent (5%) per annum or as determined by the Bankruptcy Court, including
11 postpetition interest at the Federal Judgment Rate for the period from the Petition Date
12 through the Effective Date. The federal income tax treatment of a receipt of payments of a
13 Holder of a Personal Injury Claim generally will depend upon the nature of the Claim.
14 Amounts received by a Holder for a physical injury or physical sickness generally should not
15 be taxable to such Holder. Because the tax treatment of any amounts received by a Holder
16 under the Debtor Plan will depend on facts to each Holder, all Holders of Personal Injury
17 Claims are urged to consult their own tax advisors as to the proper tax treatment of such
18 receipts in relation to their particular facts and circumstances.

6. General Unsecured Claims (Class 7)

19 A Holder of General Unsecured Claim will receive Cash payments over one (1) year
20 with interest accruing at a rate of five percent (5%) per annum or as determined by the
21 Bankruptcy Court pursuant to the Debtor Plan, including postpetition interest at the Federal
22 Judgment Rate for the period from the Petition Date through the Effective Date (such
23 obligations of repayments referred to as the “Obligations”). The federal income tax treatment
24 of a receipt of payments of a Holder of a General Unsecured Claim will depend upon the
25 nature of the Claim. The character of such loss as capital or ordinary in nature will be
26 determined by a number of factors, including: (i) the tax status of the Holder; (ii) the nature of
27 the Claim in such Holder’s hands; (iii) whether the Claim constitutes a capital asset in the
28 hands of the Holder; and (iv) whether and to what extent the Holder has previously claimed a
bad debt deduction with respect to its Claim. The deductibility of any loss for U.S. federal
income tax purposes may be subject to certain limitations.

In general, the receipt of Cash in satisfaction of a General Unsecured Claim may be
treated as a taxable exchange under IRC section 1001, except to the extent that any amount
received by a Holder of a surrendered claim under the Debtor Plan is attributable to accrued
but unpaid interest (as discussed in Section VIII.B.7 below). Such Holder will generally
recognize loss for U.S. federal income tax purposes in an amount equal to the difference
between the amount of Cash plus the fair market value of the Obligation and the Holder’s
adjusted tax basis in the Claim. The issue price of the Obligation is the stated principal
amount (i.e., the amount of the Allowed General Secured Claim), provided that the debt
instrument terms provide for adequate stated interest.

1 7. **Accrued Interest**

2 To the extent that any amount received by a Holder of a surrendered Claim under the
3 Debtor Plan is attributable to accrued but unpaid interest and such amount has not previously
4 been included in the Holder's gross income, such amount would be taxable to the Holder as
5 ordinary interest income. Conversely, a Holder of a surrendered Claim may be able to
6 recognize a deductible loss (or, possibly, a write-off against a reserve for worthless debts) to
7 the extent that any accrued interest on the debt instruments constituting such Claim was
8 previously included in the Holder's gross income but was not paid in full by the Debtor. Such
9 loss may be ordinary, but the tax law is unclear on this point. The extent to which the
10 consideration received by a Holder of a surrendered Claim will be attributable to accrued
11 interest on the debts constituting the surrendered Claim is unclear. Certain Treasury
12 regulations generally treat a payment under a debt instrument first as a payment of accrued
13 and untaxed interest and then as a payment of principal. Application of this rule to a final
14 payment on a debt instrument being discharged at a discount in bankruptcy is unclear. The
15 Debtor intends to take the position that payments are applied first to principal.

11 8. **Market Discount**

12 Under the "market discount" provisions of IRC sections 1276 through 1278, some or
13 all of any gain realized by a Holder exchanging the debt instruments constituting its Claim
14 may be treated as ordinary income (instead of capital gain), to the extent of the amount of
15 "market discount" on the debt constituting the surrendered Claim.

16 In general, a debt instrument is considered to have been acquired with "market
17 discount" if the Holder's adjusted tax basis in the debt instrument is less than (a) the sum of
18 all remaining payments to be made on the debt instrument, excluding "qualified stated
19 interest" or (b) in the case of a debt instrument issued with original issue discount, its adjusted
20 issue price, by at least a de minimis amount (equal to 0.25% of the sum of all remaining
21 payments to be made on the debt instrument, excluding qualified stated interest, multiplied by
22 the number of remaining whole years to maturity).

23 Any gain recognized by a Holder on the taxable disposition (as discussed above) of a
24 debt that it acquired with market discount should be treated as ordinary income to the extent
25 of the market discount that accrued thereon while such debt was considered to be held by the
26 Holder (unless the Holder elected to include market discount in income as it accrued).

22 9. **Consequences of Holding Junior Secured A Notes or Junior Secured B
23 Notes**

24 Stated interest on the Junior Secured A Notes or Junior Secured B Notes (the "Junior
25 New Notes") will generally be taxable to the Holder as ordinary income at the time the
26 interest is paid or accrues in accordance with the Holder's method of accounting for U.S.
27 federal income tax purposes. In the event that such Junior New Notes are issued with OID, a
28 Holder will generally be required to report the excess of the stated principal amount of its
share of the Junior New Notes over the issue price of its share of the Junior New Notes as
OID on a constant yield basis over the term of the Junior New Notes.

1 **10. Consequences of Holding Junior New Notes and Other Obligations**

2 Holders of Junior New Notes and other Obligations will be required to include
3 qualified stated interest (stated interest that is required to be paid in Cash at least annually) in
4 income in accordance with the Holders' regular method of accounting.

5 As discussed in Section VIII.B.2 above, a debt instrument will be treated as issued
6 with OID if its "stated redemption price at maturity" exceeds its "issue price" by more than a
7 *de minimis* amount. The Holders of Junior New Notes and other Obligations will be treated
8 as issued with OID if such debt is treated as being publicly traded and the public trading price
9 is less than the stated redemption price of the Junior New Notes by more than a *de minimis*
10 amount. Holders of debt instruments with OID are generally required to include any OID in
11 income over the term of the debt in accordance with a constant yield-to-maturity method,
12 regardless of whether the Holder is a cash or accrual method taxpayer, and regardless of
13 whether and when the Holder receives Cash payments of interest on the debt (other than Cash
14 attributable to qualified stated interest). Accordingly, a Holder of such debt instrument could
15 be treated as receiving interest income in advance of a corresponding receipt of Cash. Any
16 OID that a Holder includes in income will increase the Holder's tax basis in its debt. A
17 Holder of debt with OID will not be separately taxed on the receipt of any Cash payments
18 with respect to previously taxed OID, but will reduce its tax basis in such debt by the amount
19 of such payments.

20 In compliance with applicable Treasury regulations, if the Junior New Notes or
21 Obligations are treated as issued with OID, Reorganized Ahern will furnish annually to the
22 IRS and the indenture trustee information describing the amount of any accrued OID.

23 Unless a non-recognition provision applies, a Holder generally will recognize gain or
24 loss upon the sale, exchange or redemption of its New Senior Notes equal to the difference, if
25 any, between the Holder's adjusted tax basis in New Senior Notes and the amount realized on
26 the sale, exchange or redemption. For this purpose, a Holder's adjusted tax basis generally
27 will equal the Holder's initial tax basis, increased by the amount of any OID accrued up
28 through the date of the sale, exchange or redemption, and decreased by the amount of any
Cash payments (other than qualified stated interest). Subject to the market discount rules
discussed in Section VIII.B.6 above, any gain or loss generally will be capital gain or loss, and
generally should be long-term if the Holder's holding period in its debt is more than one year
at that time.

1 **D. Information Reporting and Backup Withholding**

2 Certain payments, including payments in respect of accrued interest or OID, are
3 generally subject to information reporting by the payer to the IRS. Moreover, such reportable
4 payments are subject to backup withholding under certain circumstances. Under the IRC’s
5 backup withholding rules, a Holder may be subject to backup withholding at the applicable
6 rate with respect to certain distributions or payments pursuant to the Debtor Plan, unless the
7 Holder (i) falls within certain exempt categories (which generally include corporations) and,
8 when required, demonstrates this fact or (ii) provides a correct U.S. taxpayer identification
9 number and certifies under penalty of perjury that the Holder is a U.S. Person, the taxpayer
10 identification number is correct and that the Holder is not subject to backup withholding
11 because of a failure to report all dividend and interest income.

12 Backup withholding is not an additional tax. Amounts withheld under the backup
13 withholding rules may be credited against a Holder’s U.S. federal income tax liability, and a
14 Holder may obtain a refund of any excess amounts withheld under the backup withholding
15 rules by filing an appropriate claim for refund with the IRS.

16 ALL HOLDERS OF CLAIMS SHOULD CONSULT THEIR TAX ADVISORS TO
17 DETERMINE THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE
18 TRANSACTIONS CONTEMPLATED BY THE DEBTOR PLAN, INCLUDING, WITHOUT
19 LIMITATION, THE AMOUNT AND TIMING OF ANY INCOME OR LOSS SUFFERED
20 AS A RESULT OF ANY CANCELLATION OF THE CLAIMS HELD BY SUCH PERSON,
21 WHETHER SUCH INCOME OR LOSS IS ORDINARY OR CAPITAL, AND THE TAX
22 EFFECT OF ANY RIGHT TO, AND RECEIPT OF, ANY EQUITY INTERESTS IN
23 EXCHANGE FOR SUCH CLAIMS.

24 THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS
25 NOT TAX ADVICE. THE TAX CONSEQUENCES ARE, IN MANY CASES, UNCERTAIN
26 AND MAY VARY DEPENDING ON A HOLDER’S INDIVIDUAL CIRCUMSTANCES.
27 ACCORDINGLY, ALL HOLDERS SHOULD CONSULT THEIR TAX ADVISORS ABOUT
28 THE U.S. FEDERAL, STATE, LOCAL AND NON-U.S. INCOME TAX AND OTHER TAX
CONSEQUENCES OF THE DEBTOR PLAN.

IX.
CONFIRMATION OF THE DEBTOR PLAN

22 **A. Confirmation Hearing.**

23 Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after
24 appropriate notice, to hold a hearing on confirmation of a plan of reorganization. As of the
25 date of the filing of the Debtor Plan and Disclosure Statement, the Debtor has requested,
26 pursuant to the requirements of the Bankruptcy Code and the Bankruptcy Rules, that the
27 Bankruptcy Court schedule the Confirmation Hearing. Notice of the Confirmation Hearing
28 will be provided to all known creditors, equity holders or their representatives. The
Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without

1 further notice except for an announcement of the adjourned date made at the Confirmation
2 Hearing or any subsequent adjourned Confirmation Hearing.

3 Pursuant to Section 1128(b) of the Bankruptcy Code, any party in interest may object
4 to confirmation of a plan of reorganization. Any objection to Confirmation of the Debtor Plan
5 must be in writing, must conform to the Bankruptcy Rules, must set forth the name of the
6 objector, the nature and amount of Claims or Equity Interests held or asserted by the objector
7 against the Debtor, the basis for the objection and the specific grounds of the objection, and
8 must be filed with the Bankruptcy Court, with a copy to chambers, together with proof of
9 service thereof, and served upon: (i) Ahern Rentals, Inc., 1401 Mineral Avenue, Las Vegas,
10 NV 89106 (Attn: Howard L. Brown), Debtor; (ii) Gordon Silver, 3960 Howard Hughes
11 Parkway, 9th Floor, Las Vegas, NV 89160 (Attn: Thomas H. Fell, Esq.), attorneys for the
12 Debtor; (iii) DLA Piper LLP (US), 1251 Avenue of the Americas, New York, NY 10020
13 (Attn: Gregg M. Galardi, Esq.), attorneys for the Debtor; (iv) Office of the United States
14 Trustee for the District of Nevada, C. Clifton Young Federal Building, 300 Booth Street,
15 Room 3009, Reno, NV 89509 (Attn: William B. Cossitt, Esq., Trial Attorney); (v) Covington
16 & Burling LLP, 1201 Pennsylvania Avenue, NW, Washington, DC 20004 (Attn: Michael St.
17 Patrick Baxter, Esq.), attorneys for the Committee; (vi) Downey Brand LLP, 100 W. Liberty
18 Street, Suite 900, Reno, NV 89501-1958 (Attn: Sallie B. Armstrong, Esq.), attorneys for the
19 Committee; (vii) Kaye Scholer LLP, 425 Park Avenue, New York, NY 10022 (Attn: Marc. D.
20 Rosenberg, Esq.), attorneys for the DIP Agent and First Lien Agent; (viii) Milbank, Tweed,
21 Hadley & McCloy LLP, 601 South Figueroa Street, 30th Floor, Los Angeles, CA 90017 (Attn:
22 Robert J. Moore, Esq.), attorneys for the Majority Term Lenders; and (ix) such other parties as
23 the Bankruptcy Court may order.

24 Bankruptcy Rule 9014 governs objections to confirmation of the Debtor Plan.
25 **UNLESS AN OBJECTION TO CONFIRMATION OF THE DEBTOR PLAN IS
26 TIMELY SERVED UPON THE PARTIES LISTED ABOVE AND FILED WITH THE
27 BANKRUPTCY COURT, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY
28 COURT IN DETERMINING WHETHER TO CONFIRM THE DEBTOR PLAN.**

B. Plan Confirmation Requirements Under the Bankruptcy Code.

At the Confirmation Hearing, the Bankruptcy Court will consider the terms of the Debtor Plan and determine whether the Debtor Plan terms satisfy the requirements set out in Section 1129 of the Bankruptcy Code. The Debtor believes that the Debtor Plan satisfies or will satisfy the following requirements of Section 1129 of the Bankruptcy Code, certain of which are discussed in more detail below:

- The Debtor Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtor, as a proponent of the Debtor Plan, has complied with the applicable provisions of the Bankruptcy Code.
- The Debtor Plan has been proposed in good faith and not by any means forbidden by law.

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- Any payment made or promised by the Debtor or by a person acquiring property under the Debtor Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Debtor Plan and incident to the Chapter 11 Case, has been disclosed to the Bankruptcy Court, and any such payment: (i) made before the confirmation of the Debtor Plan is reasonable; or (ii) is subject to the approval of the Bankruptcy Court as reasonable, if such payment is to be fixed after Confirmation of the Debtor Plan.
- Each Holder of an Impaired Claim or Equity Interest either has accepted the Debtor Plan or will receive or retain under the Debtor Plan, on account of such Holder's Claim or Equity Interest, property of a value as of the Effective Date that is not less than the amount such Holder would receive or retain if the Debtor was liquidated on the Effective Date under Chapter 7 of the Bankruptcy Code.
- Except to the extent the Debtor Plan meets the requirements of Section 1129(b) of the Bankruptcy Code, each Class of Claims or Equity Interests either has accepted the Debtor Plan or is not an Impaired Class under the Debtor Plan.
- Except to the extent that the Holder of a particular Claim has agreed to a different treatment of such Claim, the Debtor Plan provides that Allowed Administrative Expense Claims, Allowed Priority Tax Claims and Allowed Other Priority Claims will be paid in full as required by the Bankruptcy Code.

C. Plan Consummation.

Upon Confirmation of the Debtor Plan by the Bankruptcy Court, the Debtor Plan will be deemed consummated on the Effective Date. Distributions to Holders of Claims receiving a Distribution pursuant to the terms of the Debtor Plan will follow consummation of the Debtor Plan.

D. Feasibility of the Debtor Plan

In connection with confirmation of the Debtor Plan, the Bankruptcy Court will be required to determine that the Debtor Plan is feasible pursuant to Section 1129(a)(11) of the Bankruptcy Code, which means that the confirmation of the Debtor Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor. The Debtor believes that the Debtor Plan is feasible.

To support its belief in the feasibility of the Debtor Plan, the Debtor has relied upon the Financial Projections, which are annexed to this Disclosure Statement as Appendix B.

The Financial Projections indicate that Reorganized Ahern should have sufficient cash flow to pay and service its debt obligations and to fund its operations. Accordingly, the Debtor believes that the Debtor Plan complies with the financial feasibility standard of Section 1129(a)(11) of the Bankruptcy Code.

The Financial Projections are based on numerous assumptions, including confirmation and consummation of the Debtor Plan in accordance with its terms; realization of the operating strategy of Reorganized Ahern; industry performance; no material adverse changes in

1 applicable legislation or regulations, or the administration thereof, or generally accepted
2 accounting principles; no material adverse changes in general business and economic
3 conditions; no material adverse changes in competition; Reorganized Ahern's retention of key
4 management and other key employees; adequate financing; the absence of material contingent
or unliquidated litigation, indemnity, or other claims; and other matters, many of which will be
beyond the control of Reorganized Ahern and some or all of which may not materialize.

5 To the extent that the assumptions inherent in the Financial Projections are based upon
6 future business decisions and objectives, they are subject to change. In addition, although they
7 are presented with numerical specificity and are based on assumptions considered reasonable
8 by the Debtor, the assumptions and estimates underlying the Financial Projections are subject
9 to significant business, economic, and competitive uncertainties and contingencies, many of
10 which will be beyond the control of Reorganized Ahern. Additionally, the Bankruptcy Court
11 could increase the interest rates set forth in the Debtor Plan, which might affect the Debtor's
12 ability to make payments under the Debtor Plan. Accordingly, the Financial Projections are
13 only estimates and are necessarily speculative in nature. It can be expected that some or all of
14 the assumptions in the Financial Projections will not be realized and that actual results will
15 vary from the Financial Projections, which variations may be material and are likely to
16 increase over time. In light of the foregoing, readers are cautioned not to place undue reliance
17 on the Financial Projections. The Financial Projections were not prepared in accordance with
18 standards for projections promulgated by the American Institute of Certified Public
Accountants or with a view to compliance with published guidelines of the SEC regarding
projections or forecasts. The Financial Projections have not been audited, reviewed, or
compiled by the Debtor's independent public accountants. The Debtor will be required to
adopt a "fresh start" accounting upon its emergence from Chapter 11. The actual adjustments
for "fresh start" accounting that the Debtor may be required to adopt upon emergence, may
differ substantially from those "fresh start" adjustments in the Financial Projections. The
projected financial information contained in this Disclosure Statement should not be regarded
as a representation or warranty by the Debtor, the Debtor's advisors, or any other Person that
Financial Projections can or will be achieved.

19 The Financial Projections should be read together with the information in Article VI of
20 this Disclosure Statement entitled "Certain Risk Factors to be Considered," which sets forth
21 important factors that could cause actual results to differ from those in the Financial
Projections.

22 The Debtor does not intend to update or otherwise revise the Financial Projections,
23 including any revisions to reflect events or circumstances existing or arising after the date of
24 this Disclosure Statement or to reflect the occurrence of unanticipated events, even if any or
all of the underlying assumptions do not come to fruition. Furthermore, the Debtor does not
intend to update or revise the Financial Projections to reflect changes in general economic or
industry conditions.

25 The Debtor will face a number of risks with respect to its continuing business
26 operations upon emergence from Chapter 11, including but not limited to the following: the
27 Debtor's ability to improve profitability and generate positive operating cash flow; the
28 Debtor's ability to sustain sales and rental increases in the 2013 fiscal year; the Debtor's
ability to increase capital expenditures in the future to invest in its inventory; the Debtor's

1 response to the entry of new competitors into its markets; the Debtor's ability to upgrade its
2 information systems and implement new technology and business processes; the Debtor's
3 ability to implement new customer service programs; the Debtor's ability to implement
4 effective pricing and promotional programs; the Debtor's ability to successfully implement
5 effective business continuity and IT recovery planning; the Debtor's ability to reserve
6 appropriately for self-insurance liabilities; changes in federal, state or local laws or regulations;
7 general economic conditions in the Debtor's operating regions; stability of product costs;
8 increases in labor and employee benefit costs, such as health care and pension expenses; or
9 changes in accounting standards, taxation requirements and bankruptcy laws.

10 **E. Acceptance of the Debtor Plan**

11 As a condition to Confirmation, the Bankruptcy Code requires that each Class of
12 Impaired Claims or Equity Interests vote to accept the Debtor Plan, except under certain
13 circumstances. Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a
14 class of impaired claims as acceptance by holders of at least two-thirds (2/3) in dollar amount
15 and more than one-half (1/2) in number of claims in that class, but for that purpose counts
16 only those who actually vote to accept or to reject the Debtor Plan. Thus, Holders of Claims
17 or Equity Interests in each of **Class 2, 3, 6, 7, and 8** will have voted to accept the Debtor
18 Plan only if two-thirds (2/3) in amount and a majority in number of the Claims or Interests
19 actually voting in each Class cast their ballots in favor of acceptance. Holders of Claims or
20 Equity Interests who fail to vote are not counted as either accepting or rejecting the Debtor
21 Plan.

22 **F. Best Interests Test**

23 As noted above, even if a plan is accepted by each class of claims and interests, the
24 Bankruptcy Code requires a bankruptcy court to determine that the plan is in the best interests
25 of all holders of claims or interests that are impaired by the plan and that have not accepted
26 the plan. The "best interests" test, as set forth in Section 1129(a)(7) of the Bankruptcy Code,
27 requires a bankruptcy court to find either that all members of an impaired class of claims or
28 interests have accepted the plan or that the plan will provide a member who has not accepted
the plan with a recovery of property of a value, as of the effective date of the plan, that is not
less than the amount that such holder would recover if the debtor were liquidated under
Chapter 7 of the Bankruptcy Code.

To calculate the probable distribution to holders of each impaired class of claims and
interests if a debtor were liquidated under Chapter 7, a bankruptcy court must first determine
the aggregate dollar amount that would be generated from the debtor's assets if its Chapter 11
case were converted to a Chapter 7 case under the Bankruptcy Code. This "liquidation value"
would consist primarily of the proceeds from a forced sale of the debtor's assets by a Chapter
7 trustee.

The amount of liquidation value available to unsecured creditors would be reduced by,
first, the claims of secured creditors to the extent of the value of their collateral and, second,
by the costs and expenses of liquidation, as well as by other administrative expenses and costs
of both the Chapter 7 case and the Chapter 11 case. Costs of liquidation under Chapter 7 of
the Bankruptcy Code would include the compensation of a trustee, as well as of counsel and

1 other professionals retained by the trustee, asset disposition expenses, all unpaid expenses
2 incurred by the debtor in its Chapter 11 case (such as compensation of attorneys, financial
3 advisors, and accountants) that are allowed in the Chapter 7 cases, litigation costs, and claims
4 arising from the operations of the debtor during the pendency of the Chapter 11 case. The
5 liquidation itself would trigger certain priority payments that otherwise would be due in the
6 ordinary course of business. Those priority claims would be paid in full from the liquidation
7 proceeds before the balance would be made available to pay general unsecured claims or to
8 make any distribution in respect of equity security interests. The liquidation would also
9 prompt the rejection of a large number of executory contracts and unexpired leases and
10 thereby significantly enlarge the total pool of unsecured claims by reason of resulting rejection
11 damages claims.

12 Once the bankruptcy court ascertains the recoveries in liquidation of secured creditors
13 and priority claimants, it must determine the probable distribution to general unsecured
14 creditors and equity security holders from the remaining available proceeds in liquidation. If
15 such probable distribution has a value greater than the distributions to be received by such
16 creditors and equity security holders under the plan, then the plan is not in the best interests of
17 creditors and equity security holders.

18 **G. Liquidation Analysis**

19 The Liquidation Analysis prepared with respect to the Debtor is attached to this
20 Disclosure Statement as Appendix C. The Debtor believes that any liquidation analysis is
21 inherently speculative. For example, the Liquidation Analysis for the Debtor necessarily
22 contains estimates of the net proceeds that would be received from a forced sale of assets
23 and/or business units, as well as the amount of Claims that will ultimately become Allowed
24 Claims. The estimate of the amount of Allowed Claims set forth in the Liquidation Analysis
25 should not be relied on for any other purpose, including, without limitation, any determination
26 of the value of any distribution to be made on account of Allowed Claims and Interests under
27 the Debtor Plan.

28 **H. Valuation of Reorganized Ahern**

Solely for purposes of the Debtor Plan, the Debtor has estimated that the enterprise
value of Reorganized Ahern falls in a range from \$730 million to \$845 million and that the
equity value falls in a range from \$90.2 million to \$205.2 million. These estimated ranges of
values represent hypothetical values that reflect the estimated intrinsic value of Reorganized
Ahern derived through the application of various valuation techniques.

The valuation of Reorganized Ahern is based on a number of assumptions as set forth
in the Valuation Analysis attached hereto as Appendix D.

I. Application of the “Best Interests” of Creditors Test to the Liquidation Analysis and the Valuation

It is impossible to determine with any specificity the value each Holder of an
Unsecured Claim will receive as a percentage of its Allowed Claim. Notwithstanding the
difficulty in quantifying recoveries with precision, the Debtor believes that the financial

1 disclosures and projections contained in this Disclosure Statement imply a greater or equal
2 recovery to Holders of Claims in Impaired Classes than the recovery available in a Chapter 7
3 liquidation. Accordingly, the Debtor believes that the “best interests” test of Section 1129 of
the Bankruptcy Code is satisfied.

4 **J. Confirmation Without Acceptance of All Impaired Classes: The “Cramdown”**
5 **Alternative**

6 The Debtor reserves the right to seek a “cramdown” confirmation of the Debtor Plan
7 with respect to the Claims and Equity Interests in Classes **2, 3, 6, 7, and 8** in the event the
8 Holders of such Claims or Equity Interests vote to reject the Debtor Plan. Specifically,
9 Section 1129(b) of the Bankruptcy Code provides that a plan can be confirmed even if the
10 plan is not accepted by all impaired classes, as long as at least one impaired class of claims
11 has accepted it. The Bankruptcy Court may confirm a plan at the request of the debtor if the
plan “does not discriminate unfairly” and is “fair and equitable” as to each impaired class that
has not accepted the plan. A plan does not discriminate unfairly within the meaning of the
Bankruptcy Code if a dissenting class is treated equally with respect to other classes of equal
rank.

12 A plan is fair and equitable as to a class of unsecured claims that rejects a plan if the
13 plan provides (i) for each holder of a claim included in the rejecting class to receive or retain
14 on account of that claim property that has a value, as of the effective date of the plan, equal to
15 the allowed amount of such claim or (ii) that the holder of any claim or interest that is junior
to the claims of such class will not receive or retain on account of such junior claim or
interest any property at all.

16 A plan is fair and equitable as to a class of equity interests that rejects a plan if the
17 plan provides (i) that each holder of an interest included in the rejecting class receive or retain
18 on account of that interest property that has a value, as of the effective date of the plan, equal
19 to the greatest of the allowed amount of any fixed liquidation preference to which such holder
is entitled, any fixed redemption price to which such holder is entitled or the value of such
interest or (ii) that the holder of any interest that is junior to the interests of such class will
not receive or retain under the plan on account of such junior interest any property at all.

20 The Debtor believes the Debtor Plan does not discriminate unfairly with respect to the
21 Claims and Equity Interests in Classes **2, 3, 6, 7, and 8**. In the event it becomes necessary to
22 “cramdown” the Debtor Plan over the rejection of any such Classes, the Debtor will
23 demonstrate at the Confirmation Hearing that the Debtor Plan does not discriminate unfairly
24 and is fair and equitable with respect to such Classes. The fair and equitable tests set forth
25 above for unsecured claims and interests applies to Classes **6, 7, and 8**. The fair and
26 equitable test for secured claims, which is applicable to **Classes 2 and 3** is that the Debtor
27 Plan provides (i) that the holders of secured claims retain the liens in the property securing
28 such claims to the extent of the allowed amount of such claims, and that the holders of such
claims receive on account of such claims deferred cash payments totaling at least the allowed
amount of such claims, of a value, as of the effective date of the plan, of at least the value of
such holders’ interest in the estate’s interest in such property; (ii) for the sale of any property
subject to the liens securing such claims, free and clear of such liens, with the liens attaching
to the proceeds of such sale, and such liened proceeds being treated either pursuant to (i) or

1 (ii); or (iii) for the realization by such holders of the indubitable equivalent of such claims.
2 The treatment proposed for **Classes 2 and 3** satisfies the fair and equitable test and can be
3 crammed down, if necessary.

4 **K. Notice to Holders of Claims and Interests.**

5 Approval by the Bankruptcy Court of this Disclosure Statement means that the
6 Bankruptcy Court has found that this Disclosure Statement contains information of a kind and
7 in sufficient and adequate detail to enable Holders of Claims and Equity Interests entitled to
8 vote on the Debtor Plan to make an informed judgment about whether to accept or reject the
9 Debtor Plan. THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE
10 STATEMENT DOES NOT CONSTITUTE EITHER A GUARANTEE OF THE ACCURACY
11 OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN OR THEREIN OR
12 AN ENDORSEMENT OF THE DEBTOR PLAN BY THE BANKRUPTCY COURT.

13 IF THE DEBTOR PLAN IS APPROVED BY THE REQUISITE VOTE OF
14 HOLDERS OF CLAIMS OR EQUITY INTERESTS ENTITLED TO VOTE AND IS
15 SUBSEQUENTLY CONFIRMED BY THE BANKRUPTCY COURT, THE DEBTOR PLAN
16 WILL BIND ALL HOLDERS OF CLAIMS AGAINST, AND INTEREST IN, THE DEBTOR,
17 WHETHER OR NOT THEY WERE ENTITLED TO VOTE OR DID VOTE ON THE
18 DEBTOR PLAN AND WHETHER OR NOT THEY RECEIVE OR RETAIN ANY
19 DISTRIBUTIONS OR PROPERTY UNDER THE DEBTOR PLAN. THUS ALL HOLDERS
20 OF CLAIMS OR INTERESTS AGAINST THE DEBTOR ENTITLED TO VOTE ARE
21 ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND ITS APPENDICES,
22 SUPPLEMENTS AND/OR EXHIBITS CAREFULLY AND IN THEIR ENTIRETY BEFORE
23 DECIDING TO VOTE EITHER TO ACCEPT OR REJECT THE DEBTOR PLAN.

24 THIS DISCLOSURE STATEMENT AND THE DEBTOR PLAN ARE THE ONLY
25 DOCUMENTS AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN
26 CONNECTION WITH THE SOLICITATION OF VOTES TO ACCEPT OR REJECT THE
27 DEBTOR PLAN. No solicitation of votes may be made except after distribution of this
28 Disclosure Statement, and no person has been authorized to distribute any information
concerning the Debtor other than the information contained herein or therein. No such
information should be relied upon in making a determination to vote to accept or reject the
Debtor Plan.

29 **L. Voting Rights.**

30 Pursuant to the provisions of the Bankruptcy Code, only holders of claims and
31 interests, established as of the record date, in classes that are (a) treated as "impaired" by a
32 plan of reorganization and (b) entitled to receive a distribution under such plan, are entitled to
33 vote on the Debtor Plan. Under the Debtor Plan, only Holders of Claims and Equity Interests
34 in **Classes 2, 3, 6, 7, and 8** established as of the Record Date, are entitled to vote on the
35 Debtor Plan. Claims in other Classes are Unimpaired and their Holders are deemed to have
36 accepted the Debtor Plan.

37 Only Holders of Claims and Equity Interests in the voting Classes are entitled to vote
38 on the Debtor Plan. Pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rule

1 3003(c)(2), any Holder of a Claim (a) that is either (i) not scheduled or (ii) scheduled in the
2 schedules and statements at zero, as unknown or as disputed, contingent or unliquidated, and
3 (b) that is not the subject of a proof of Claim filed by the applicable Bar Date set by the Court
4 will not be treated as a creditor with respect to such Claim for purposes of voting on or
5 objecting to the Debtor Plan.

6 **M. Solicitation Materials.**

7 In soliciting votes for the Debtor Plan pursuant to this Disclosure Statement, the
8 Debtor, through its balloting agent, Kurtzman Carson Consultants, LLC (the "Balloting
9 Agent"), will send to Holders of Claims and Equity Interests who are entitled to vote copies of
10 (a) the Disclosure Statement and Debtor Plan, (b) the notice of, among other things, (i) the
11 date, time, and place of the hearing to consider confirmation of the Debtor Plan and related
12 matters and (ii) the deadline for filing objections to confirmation of the Debtor Plan (the
13 "Confirmation Hearing Notice"), (c) one or more Ballots (and return envelopes) to be used in
14 voting to accept or to reject the Debtor Plan, and (d) other materials as authorized by the
15 Bankruptcy Court.

16 If you are the Holder of a Claim or Equity Interest who believes you are entitled to
17 vote on the Debtor Plan, but you did not receive a Ballot or your Ballot is damaged or
18 illegible, or if you have any questions concerning voting procedures, you should contact the
19 following:

20 Ahern Equipment Rentals Ballot Processing Center
21 c/o Kurtzman Carson Consultants LLC
22 2335 Alaska Avenue
23 El Segundo, California 90245
24 Tel: (877) 606-7652

25 After carefully reviewing the Debtor Plan, this Disclosure Statement, and the detailed
26 instructions accompanying your Ballot, you are asked to indicate your acceptance or rejection
27 of the Debtor Plan by voting in favor of or against the Debtor Plan on the accompanying
28 Ballot. You should complete and sign your original Ballot (copies will not be accepted) and
return it as instructed in the envelope provided.

Each Ballot has been coded to reflect the Class of Claims or Equity Interests it
represents. Accordingly, in voting to accept or reject the Debtor Plan, you must use only the
coded Ballot(s) sent to you with this Disclosure Statement.

All votes to accept or reject the Debtor Plan must be cast by using the Ballot enclosed
with the Disclosure Statement. IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR
BALLOT MUST BE PROPERLY COMPLETED AS SET FORTH ABOVE AND IN
ACCORDANCE WITH THE VOTING INSTRUCTIONS ON THE BALLOT AND
RECEIVED NO LATER THAN [MAY 20], AT [4:00] P.M. PACIFIC TIME (THE
"VOTING DEADLINE").

1 UNLESS OTHERWISE PROVIDED IN THE INSTRUCTIONS ACCOMPANYING
2 THE BALLOTS, BALLOTS CAST BY FACSIMILE, E-MAIL OR OTHER ELECTRONIC
3 MEANS WILL NOT BE ACCEPTED. BALLOTS THAT ARE RECEIVED BUT NOT
4 SIGNED WILL NOT BE COUNTED. DO NOT RETURN ANY STOCK CERTIFICATES,
DEBT INSTRUMENTS, OR OTHER EVIDENCES OF YOUR CLAIM WITH YOUR
BALLOT.

5 If you have any questions about (a) the procedure for voting your Claim or Equity
6 Interest, (b) the packet of materials that you have received, or (c) the amount of your Claim,
7 or if you wish to obtain, at your own expense unless otherwise specifically required by
8 Bankruptcy Rule 3017(d), an additional copy of the Debtor Plan, this Disclosure Statement, or
9 any appendices or exhibits to such documents, please contact:

10 Ahern Rentals, Inc. Ballot Processing Center
11 c/o Kurtzman Carson Consultants LLC
12 2335 Alaska Avenue
13 El Segundo, California 90245
14 Tel: (877) 606-7652

15 For further information and general instruction on voting to accept or reject the Debtor
16 Plan, see the instructions accompanying your Ballot.

17 THE DEBTOR URGES ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS
18 ENTITLED TO VOTE TO EXERCISE THEIR RIGHT TO ACCEPT THE DEBTOR PLAN
19 BY COMPLETING THEIR BALLOTS AND RETURNING THEM BY THE VOTING
20 DEADLINE.

21 **X.**
22 **PREFERENCE AND OTHER AVOIDANCE ACTIONS**

23 A bankruptcy trustee (or the debtor as a debtor-in-possession) may avoid as a
24 preference a transfer of property made by a debtor to a creditor on account of an antecedent
25 debt while a debtor was insolvent, where that creditor receives more than it would have
26 received in a liquidation of the entity under Chapter 7 had the payment not been made, if (i)
27 the payment was made within ninety (90) days before the date the bankruptcy case was
28 commenced or (ii) the creditor is found to have been an “insider,” as defined in the
Bankruptcy Code, within one year before the commencement of the bankruptcy case. A
debtor is presumed to have been insolvent during the ninety (90) days preceding the
commencement of the case.

A bankruptcy trustee (or the debtor as a debtor-in-possession) may avoid as a
fraudulent transfer a transfer of property made by a debtor within two years (and under
applicable Nevada law, four years) before the date the bankruptcy case was commenced if the
debtor (i) received less than reasonably equivalent value in exchange for such transfer and (ii)
was insolvent on the date of such transfer or became insolvent as a result of such transfer,

1 such transfer left the debtor with an unreasonably small capital, or the debtor intended to incur
2 debts that would be beyond the debtor's ability to pay as such debts matured.

3 Although the Debtor has not fully analyzed various potential preference or other
4 Avoidance Actions, it is possible that some pre-petition transactions may be avoidable.
5 Moreover, the Debtor has not fully investigated any claims or Causes of Action against any
6 insider because the Debtor believes that its enterprise value exceeds its liabilities and that the
7 benefit the Debtor would receive from pursuing and such claims or Causes of Action would
8 inure directly or indirectly to the benefit of its shareholders which is the same the party from
9 whom such recoveries would be obtained. The Debtor thus hereby expressly reserves its right
10 to commence any appropriate actions pursuant to Chapter 5 of the Bankruptcy Code, including
11 but not limited to Avoidance Actions against Persons listed in (i) items 3(b) and 3(c) of the
12 Debtor's Statement of Financial Affairs [ECF No. 303] (the "SOFA"); (ii) schedule 3(b) to the
13 SOFA [ECF No. 303-6]; (iii) schedules 3(c)(i)-(vii) to the SOFA [ECF No. 303-7]; and (iv)
14 any exhibit to the Plan Supplement; *provided, however*, effective as of the Effective Date of
15 the Debtor Plan, all preference actions against Holders of Unsecured Claims arising under
16 Section 547 of the Bankruptcy Code shall be waived.

11 XI.

12 ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE DEBTOR 13 PLAN

14 The Debtor believes that the Debtor Plan affords Holders of Claims and Equity
15 Interests in Classes **2, 3, 6, 7, and 8** the potential for the greatest realization on the Debtor's
16 assets and, therefore, is in the best interests of such Holders. If, however, the requisite
17 acceptances are not received or the Debtor Plan is not confirmed and consummated, the
18 theoretical alternatives include (a) formulation and confirmation of an alternative plan or plans
19 of reorganization such as the Noteholder Plan or (b) liquidation of the Debtor under Chapter 7
20 or Chapter 11 of the Bankruptcy Code.

18 A. Alternative Plan(s) of Reorganization

19 If the requisite acceptances are not received or if the Debtor Plan is not confirmed, the
20 Debtor or any other party in interest could attempt to formulate and propose a different plan or
21 plans of reorganization. Such a plan or plans might involve either a reorganization and
22 continuation of the Debtor's business or an orderly liquidation of assets. As discussed above,
23 the Noteholder Proponents are seeking to have the Noteholder Plan confirmed.

24 The Debtor believes that the Debtor Plan provides for substantially better treatment of
25 Claims and Equity Interests than the Noteholder Plan provides, because, among other things,
26 the Debtor Plan embodies a business plan that projects a significantly higher enterprise value
27 for Reorganized Ahern and provides for a one hundred percent (100%) recovery to all Classes
28 of Claims, plus interest from the Petition Date. Specifically, the Debtor Plan provides for the
29 payment of interest on Allowed Claims accruing after the Petition Date and a greater recovery
30 to the Holders of Second Lien Loan Claims, even if such Holders do not vote to accept the
31 Debtor Plan, than the Noteholder Plan projects for such Holders. Indeed, the Debtor Plan
32 provides Holders of Second Lien Loan Claims consideration equal to par (\$237 million) if
33 they vote in favor of the Debtor Plan (\$160 million in cash plus \$77 million of secured notes)

1 or secured notes equal to par plus accrued pre- and post-petition interest (approximately \$308
2 million) if they do not. The Noteholder Plan provides no Cash recovery to the Second Lien
3 Loan Claims and offers only equity securities with no details as to any business plan,
4 governance rights, management team, exit financing, or determination as to value. In addition
5 to the right to receive \$160 million in Cash, the Debtor Plan contemplates a Reorganized
6 Ahern in which the Junior Secured A Notes or Junior Secured B Notes are senior to all equity
7 interests and receive the benefit of a proven management team and business strategy, as most
8 recently demonstrated by pro forma LTM EBITDA growing during the pendency of the case
9 from approximately \$77 million at the end of 2011 to approximately \$117 million at the end
10 of 2012. Conversely, the Debtor maintains that the Noteholder Plan may result in a complete
11 change in management and, thus, is subject to greater execution risk, and is not confirmable
12 because, among other things, it improperly classifies claims, rests on artificially low valuation,
13 and has other substantive and technical flaws.

14 No other proposed plan provides for such recovery and therefore the Debtor strongly
15 recommends that you vote to accept the Debtor Plan.

16 **B. Liquidation under Chapter 7 or Chapter 11**

17 If no plan is confirmed, the Debtor's case may be converted to a case under Chapter 7
18 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to
19 liquidate the Debtor's assets for distribution in accordance with the priorities established by
20 the Bankruptcy Code. It is impossible to predict precisely how the proceeds of the liquidation
21 would be distributed to the respective Holders of Claims against or Equity Interests in the
22 Debtor.

23 The Debtor believes that in a liquidation under Chapter 7, additional administrative
24 expenses involved in the appointment of a trustee or trustees and attorneys, accountants, and
25 other professionals to assist such trustees would cause a substantial diminution in the value of
26 the Debtor's Estate. The assets available for distribution to creditors would be reduced by
27 such additional expenses and by Claims, some of which would be entitled to priority, arising
28 by reason of the liquidation and from the rejection of leases and other executory contracts in
connection with the cessation of operations and the failure to realize the greater going concern
value of the Debtor's assets. More importantly, conversion to Chapter 7 liquidation would
likely result in the immediate cessation of the Debtor's business, as most Chapter 7 trustees
are disinclined to continue operations.

29 The Debtor could also be liquidated pursuant to the provisions of a Chapter 11 plan of
30 liquidation. In a liquidation under Chapter 11, the Debtor's assets theoretically could be sold
31 in an orderly fashion over a more extended period of time than in a liquidation under Chapter
32 7, thus resulting in a potentially greater recovery. Conversely, to the extent the Debtor's
33 business incurs operating loss, the Debtor's effort to liquidate its assets over a longer period of
34 time theoretically could result in a lower net distribution to creditors than they would receive
35 through Chapter 7 liquidation. Nevertheless, because there would be no need to appoint a
36 Chapter 7 trustee and to hire new professionals, Chapter 11 liquidation might be less costly
37 than Chapter 7 liquidation and thus provide larger net distributions to creditors than in Chapter
38 7 liquidation. Any recovery in a Chapter 11 liquidation, while potentially greater than in a
Chapter 7 liquidation, would also be highly uncertain. Although preferable to a Chapter 7

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liquidation, the Debtor believes that any alternative liquidation under Chapter 11 is a much less attractive alternative to creditors than the Debtor Plan because of the greater return anticipated by the Debtor Plan.

The full Liquidation Analysis is annexed as Appendix C to this Disclosure Statement.

XII.
RECOMMENDATION AND CONCLUSION

The Debtor Plan provides the best possible recovery for all parties-in-interest. Accordingly, the Debtor recommends that all Creditors who are entitled to vote on the Debtor Plan should vote to accept the Debtor Plan.

1 DATED this ~~5~~8th day of March, 2013.

2 GORDON SILVER

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APPENDIX A
DEBTOR PLAN

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APPENDIX B
FINANCIAL PROJECTIONS

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APPENDIX C
LIQUIDATION ANALYSIS

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APPENDIX D

VALUATION ANALYSIS

Summary Report:	
Litéra® Change-Pro TDC 7.0.0.375 Document Comparison done on 3/8/2013 10:31:56 AM	
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Modified DMS: iw://EASTDMS/EAST/55270691/1	
Changes:	
Add	185
Delete	137
Move From	1
Move To	1
Table Insert	0
Table Delete	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format Changes	0
Total Changes:	324