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Proposed Counsel for the Official Committ. Proposed Local Counsel for the  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA

In re:  
AHERN RENTALS, INC.,  
Debtor.

Case No.: BK-S-11-53860-BTB  
Chapter 11

**MOTION FOR ENTRY OF ORDER  
(A) APPROVING INFORMATION  
PROTOCOL, AND (B) AUTHORIZING  
ENGAGEMENT OF KURTZMAN  
CARSON CONSULTANTS, LLC, AS  
COMMITTEE WEBSITE  
ADMINISTRATOR, NUNC PRO TUNC  
TO JANUARY 9, 2012**

Hearing Date: OST Requested  
Hearing Time: OST Requested  
Place: 300 S. Booth Street, Reno, NV 89509  
Court Room: 2

The Official Committee of Unsecured Creditors (“Committee”) of Ahern Rentals, Inc. (“Debtor”), by and through its proposed counsel, submits this motion (“Motion”) pursuant to Sections 105, 1102(b)(3)(A) and 1103(c)(5) of Title 11 of the United States Code (“Bankruptcy Code”) for entry of an order (a) approving, *nunc pro tunc* to January 9, 2012, the information protocol proposed herein, to clarify the Committee’s responsibility to provide access to information for the Debtor’s unsecured creditors, and (b) authorizing the Committee to engage Kurtzman Carson Consultants, LLC (“KCC”) as its website administrator, in accordance with the terms set forth in the agreement (“KCC Services Agreement”) attached as Exhibit A.



1 **BACKGROUND AND JURISDICTION**

2 1. On December 20, 2011, the Debtor filed a voluntary petition for relief  
3 pursuant to chapter 11 of the Bankruptcy Code. Pursuant to Bankruptcy Code §§ 1107(a)  
4 and 1108, the Debtor manages and operates its business, properties, and assets as debtor-  
5 in-possession.

6 2. On January 6, 2012, the United States Trustee appointed Multiquip, Inc.,  
7 JLG Industries, Inc., and SkyJack Inc. to the Committee. See ECF No. 119. The  
8 Committee subsequently elected Matthew Coldsmith of JLG Industries, Inc., its Chair.  
9 On January 13, 2012, the United States Trustee appointed two additional members to the  
10 Committee, namely, P-Fleet and CMD Trucking. See ECF No. 204.

11 3. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C.  
12 §§ 157 and 1134. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

13 4. The statutory bases for the relief sought in this Motion are Bankruptcy  
14 Code §§ 105, 1102(b)(3), and 1103(c)(5). Venue of Debtor's case in this district is  
15 proper pursuant to 28 U.S.C. §§ 1408 and 1409.

16 **RELIEF REQUESTED**

17 5. The Committee seeks entry of an order, substantially in the form attached  
18 as Exhibit B, (a) approving the Information Protocol proposed herein, to clarify the  
19 Committee's responsibility to provide access to information for the Debtor's unsecured  
20 creditors, *nunc pro tunc* to January 9, 2012, and (b) authorizing the Committee to engage  
21 KCC as its website administrator, in accordance with the terms set forth in the KCC  
22 Services Agreement attached as Exhibit A.

23 **ARGUMENT**

24 6. The relief requested in this Motion (a) will ensure that confidential,  
25 privileged, proprietary, and/or material non-public information regarding the Debtor or  
26 the Committee will not be disseminated to the detriment of the Debtor's estate, and (b)  
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1 will aid the Committee in performing its statutory functions and duties, including its  
2 obligation to provide information to its constituents.

3 **I. The Committee's Function and Need for Information**

4 7. Pursuant to Bankruptcy Code § 1103(c), the Committee is authorized,  
5 *inter alia*, to consult with the Debtor, investigate the Debtor, participate in the  
6 formulation of a plan, and perform other such services as are in the interests of those  
7 represented. *See* 11 U.S.C. § 1103(c). The Committee will assess and analyze, among  
8 other things, strategic initiatives, the prospects for the Debtor's plan of reorganization,  
9 the alternatives available to maximize return to unsecured creditors, and other related  
10 duties in connection with representation of the interests of unsecured creditors.

11 8. In the course of discharging its duties, the Committee and its professionals  
12 will need to discuss sensitive operating information and other related confidential  
13 information with the Debtor. In particular, the plan negotiation process is expected to  
14 generate a significant amount of material, non-public information and privileged  
15 information to which the Committee will need unfettered access to discharge its fiduciary  
16 duties to its constituents. Moreover, in the course of its statutory duties, the Committee  
17 and its professionals will inevitably discuss, analyze, and otherwise work with  
18 confidential information provided by the Debtor.

19 9. Typically, a debtor and an official committee will enter into a  
20 confidentiality agreement to permit the debtor to share confidential and other non-public  
21 or proprietary information with the committee. The Committee and the Debtor have  
22 entered into such a confidentiality agreement in this case. In addition, like other official  
23 committees, the Committee has adopted by-laws containing restrictions on the use of  
24 certain information provided to the Committee members by virtue of their membership  
25 on the Committee. Through such agreement and by-laws, the Committee has attempted  
26 to ensure that its members will keep confidential, nonpublic or proprietary information  
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1 and will not use such information except in certain permitted circumstances in connection  
2 with the Debtor's case and on terms acceptable to both the Debtor and Committee.

3 **A. The Committee's Obligation to Provide Information to Its**  
4 **Constituents**

5 10. As part of the Committee's statutory duties, the Committee is required to  
6 provide access to information to the creditors represented by the Committee. See 11  
7 U.S.C. § 1102(b)(3)(A) (requiring committee to "(A) provide access to information for  
8 creditors who (i) hold claims of the kind represented by th[e] committee; and (ii) are not  
9 appointed to the committee.")

10 11. Section 1102(b)(3)(A) does not indicate the nature, scope, or extent of the  
11 "information" that a committee must provide to its constituents, nor does the legislative  
12 history provide further guidance. See H.R. Rep. No. 109-31, 109th Cong., 1st Sess. 87  
13 (2005).

14 **B. The Conflict Between the Committee's Need for Access to**  
15 **Confidential Information and Its Obligation to Provide Information**  
16 **to Its Constituents**

17 12. Section 1102(b)(3)(A)'s ambiguity regarding the information an official  
18 committee must provide its constituents creates significant issues for debtors and  
19 committees alike.

20 13. Because § 1102(b)(3)(A) is silent as to the treatment of confidential or  
21 proprietary information, an unsecured creditor not on the committee or otherwise bound  
22 by a confidentiality agreement could contend that an official committee is required to  
23 share confidential or proprietary information with all unsecured creditors. However,  
24 nothing in the Bankruptcy Code expressly requires such a result, and nothing in the  
25 legislative history indicates that an official committee has such an obligation.

26 14. If a debtor were required to provide confidential or proprietary  
27 information to a committee without protection from its further dissemination, the debtor's  
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1 prospects for reorganization could be unnecessarily harmed by allowing competitors  
2 access to its confidential or proprietary information. Moreover, public dissemination of  
3 confidential information could potentially violate federal and state privacy laws. A  
4 debtor would be justifiably reluctant to share confidential information with a committee if  
5 the committee had an obligation to distribute such information to its constituents.  
6 Moreover, the committee, which would of course share the debtor's concerns about  
7 injury to the estate caused by disclosure of confidential or proprietary information, might  
8 refuse to accept such information if there were any risk that it would be required to  
9 provide such information to its constituents.

10 15. In the absence of appropriate protections for confidential or proprietary  
11 information, a debtor may rightly refuse to share such information with a committee.  
12 Without such information, a committee cannot discharge its statutory duties. It has,  
13 therefore, become accepted practice for an official committee to seek approval of an  
14 information-sharing protocol like the one proposed in this Motion to ensure that the  
15 committee is able to provide information to its constituents and also continue to have  
16 access to confidential or proprietary information necessary to discharge its statutory  
17 duties.

18 16. In the Debtor's case, the dissemination of confidential and proprietary  
19 information to parties who are not bound by a confidentiality agreement or joint privilege  
20 with the Committee or the Debtor could harm the Debtor, as well as impair the  
21 Committee's discharge of its statutory duties. To obtain access to material, nonpublic  
22 information concerning the Debtor and its business, the Committee was required by the  
23 Debtor to sign (and each member of the Committee has signed) a confidentiality  
24 agreement. It would breach the Committee's and each member's obligations under the  
25 confidentiality agreement to publicly disclose any confidential information, including to  
26 any unsecured creditor who is not a party to the confidentiality agreement.

27 17. Accordingly, the Committee seeks entry of an order, *nunc pro tunc* to the  
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1 date on which the Committee was formed, authorizing it to implement the below  
2 information protocol regarding the dissemination of information to the Debtor's  
3 unsecured creditors, which will authorize the Committee to withhold from the unsecured  
4 creditor body confidential, proprietary, or non-public information concerning the Debtor  
5 or the Committee, or any other information if the effect of such disclosure would  
6 constitute a waiver of any privilege or breach of any confidentiality agreement between  
7 Debtor and the Committee.

8 **II. The Information Protocol Is Justified by the Facts and by Applicable**  
9 **Authorities**

10 18. Section 1102(b)(3) is unclear and ambiguous, and, if interpreted broadly,  
11 could produce a result at odds with Congressional intent. The statute requires a  
12 committee "to provide access to information," but does not contain any guidelines as to  
13 the type, kind, and extent of the information to be provided. In its extreme,  
14 § 1102(b)(3)(A) could be read as requiring a committee to provide access to all  
15 information provided to it by a debtor, or developed through the exercise of its  
16 investigative or deliberative function, regardless of whether the information is  
17 confidential, privileged, or proprietary, and regardless of whether disseminating such  
18 information would violate federal securities laws. *See* 17 C.F.R. §§ 243.100 to 243.103  
19 (2005). If this were the intention, § 1102(b)(3) would necessarily frustrate other  
20 provisions of the Bankruptcy Code.

21 19. In particular, Bankruptcy Code § 107(b)(1) provides that "[o]n request of a  
22 party-in-interest, the bankruptcy court shall . . . protect an entity with respect to a trade  
23 secret or confidential research, development, or commercial information." As a result,  
24 under § 107(b)(1) and Federal Rule of Bankruptcy Procedure 9018, this Court is  
25 empowered and required, upon request, to protect confidential information and privileged  
26 information from disclosure to creditors. *See e.g., Video Software Dealers Ass'n v. Orion*  
27 *Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994) (providing that the protections of  
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1 § 107(b)(1) are mandatory upon request). Therefore, requiring the Committee to disclose  
2 confidential or proprietary information to its constituents would frustrate the protections  
3 of § 107(b)(1).

4 20. Although the Committee does not believe such an interpretation of  
5 § 1102(b)(3)(A) can be supported, the scope of the section should be clarified to ensure  
6 that the Committee has not and will not violate § 1102(b)(3)(A) by limiting the access of  
7 its constituents to confidential and proprietary information.

8 21. When a statute is clear and unambiguous, “the sole function of the courts  
9 is to enforce it according to its terms.” *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241  
10 (1989) (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)). Alternatively, in  
11 “rare cases [in which] the literal application of a statute will produce a result  
12 demonstrably at odds with the intention of its drafters . . . the intention of the drafters,  
13 rather than the strict language, controls.” *Id.* at 242-43 (citing *Griffin v. Oceanic*  
14 *Contractors, Inc.*, 458 U.S. 564 (1982) (internal citations omitted)).

15 22. In this case, the Court should not require a literal application of  
16 § 1102(b)(3) because a literal application will produce a result at odds with  
17 Congressional intent . This Court has previously issued orders similar to the one  
18 requested by this Motion, clarifying that official committees are not authorized or  
19 required to provide access to confidential and privileged information. *See, e.g., In re*  
20 *Nevada Cancer Institute*, Case No. 11-28676 (Bankr. D. Nev. 2011); *In re Station*  
21 *Casinos, Inc.*, Case No. 09-52477-GWZ (Bankr. D. Nev. 2009); *In re USA Commercial*  
22 *Mortgage Co.*, Case No. 06-10725-LBR (Bankr. D. Nev. 2006). Courts in other districts  
23 have also regularly granted this relief. *See, e.g., In re LG Philips Displays USA, Inc.*,  
24 Case No. 06-10245-BLS (Bankr. D. Del. 2006); *In re Calpine Corp.*, Case No. 05-60200-  
25 BRL (Bankr. S.D.N.Y. 2006); *In re Refco, Inc.*, 336 B.R. 187, 197-98 (Bankr. S.D.N.Y.  
26 2006); *In re FLYi, Inc.*, Case No. 05-20110-MFW (Bankr. D. Del. 2005).

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1           23.    The Committee proposes to satisfy the requirements of § 1102(b)(3) by  
2 instituting the following information protocol (“**Information Protocol**”):

3           a.    Access to Information: In satisfaction of the Committee’s  
4 obligations to provide access to information to and to solicit and receive  
5 comments from persons that hold claims of the type the Committee represents in  
6 accordance with 11 U.S.C. § 1102(b)(3)(A) and (B), the Committee shall, until  
7 the earlier to occur of (i) dissolution of the Committee, (ii) dismissal of the  
8 Debtor’s case, or (iii) conversion of the Debtor’s case, establish and maintain an  
9 Internet-accessed website (“**Committee Website**”) to provide, without limitation:

10           i.    a link to the Debtor’s website, at which general information  
11 concerning the Debtor’s Chapter 11 case, including case dockets, access to  
12 docket filings, the claims docket as and when established, answers to  
13 frequently asked questions, and general information concerning significant  
14 parties in the case, is available;

15           ii.   contact information for the Debtor (and any hotlines it may  
16 establish), the Debtor’s counsel, and counsel for the Committee;

17           iii.   a general overview of the Chapter 11 reorganization  
18 process (or a link to any such overview on the Debtor’s site);

19           iv.   periodic written reports by the Committee, summarizing  
20 recent proceedings, significant events, and public financial information;

21           v.    a calendar of upcoming significant events in the Debtor’s  
22 Chapter 11 case; copies of monthly operating reports filed by the Debtor;  
23 when appropriate, a copy of any plan of reorganization and disclosure  
24 statement, and any voting deadlines (or a link to any such calendar on the  
25 Debtor’s site);

26           vi.   press releases (if any) issued by the Committee and/or the  
27 Debtor;

28           vii.   an electronic mail address through which individuals of the  
Committee’s constituency may submit questions, comments, and requests  
for more information;

          viii.   responses to questions, comments, and requests for access  
to information from the Committee’s constituency; provided that the



1 Committee or its professionals may provide such responses privately in  
2 the exercise of its discretion,

3 ix. answers to frequently asked questions;

4 x. links to other relevant websites, including, but not limited  
5 to the Bankruptcy Court's website and the United States Trustee's  
6 website; and

7 xi. any other public and non-privileged information that the  
8 Committee or its professionals, at their sole discretion, deem appropriate.

9 b. Committee Website Administrator: The Committee will engage  
10 KCC to establish and maintain, subject to the terms of any order of this Court, the  
11 Committee Website to provide access to the information listed above in part  
12 (a) for unsecured creditors. The reasonable fees and expenses of KCC incurred  
13 by the Committee under the terms of the KCC Services Agreement ("**Committee  
14 Website Expenses**") shall be paid directly to KCC by the Debtor's estate without  
15 further order of the Court upon the service of appropriate invoices by KCC upon  
16 counsel to the Debtor, the United States Trustee, and counsel to the Committee.  
17 The Committee Website Expenses shall be treated as administrative expense  
18 claims against the Debtor's estate pursuant to Bankruptcy Code § 503(b).

19 c. Privileged and Confidential Information: The Committee shall not  
20 be required to disseminate to any entity: (i) without further order of the Court,  
21 confidential information, privileged information, proprietary information, or other  
22 non-public information concerning the Debtor or the Committee, including,  
23 without limitation, with respect to the acts, conduct, assets, liabilities and  
24 financial condition of the Debtor, the operation of the Debtor's business, any  
25 other matter relevant to the case or to the formulation of a Chapter 11 plan  
26 (including any and all confidential, proprietary or other non-public materials of  
27 the Committee) whether provided by or on behalf of the Debtor, the Committee or  
28 by any third party or prepared by or for the Committee, or (ii) any other  
information if the effect of such disclosure would constitute a general waiver of  
the attorney-client, work product or other applicable privilege possessed by the  
Committee. The Debtor shall assist the Committee in identifying any confidential  
information concerning the Debtor that is provided by the Debtor or their agents  
or professionals, or by any third party, to the Committee, its agents and  
professionals.

d. Information Requests: If a member of the Committee's  
constituency ("**Requesting Constituent**") submits a written request (including by  
electronic mail) ("**Information Request**") the Committee shall as soon as  
practicable provide a response to the Information Request ("**Response**"),  
including by providing access to the information requested or the reasons why the  
Committee cannot provide the requested information. If the Response is to deny  
the Information Request because the Committee believes that the Information

1 Request implicates confidential, privileged, or proprietary information that may  
2 not or should not be disclosed, the Requesting Constituent, after a good faith  
3 effort to meet and confer with an authorized representative of the Committee  
4 regarding the Information Request and the Response, may seek to compel such  
5 disclosure for cause pursuant to a motion presented to this Court. Such motion  
6 shall be served, and a hearing on such motion shall be noticed, pursuant to any  
7 applicable Federal Rules of Bankruptcy Procedure and this Court's local rules.

8 e. Limitation on Access to Information: Nothing set forth herein shall  
9 require the Committee to provide access to information or solicit comments from  
10 any person or entity that has not demonstrated to the satisfaction of the  
11 Committee, in its sole discretion, that it holds a claim in connection with the  
12 Debtor's case. Likewise, nothing herein shall prejudice the rights of the  
13 Committee, in its sole discretion (i) to provide access to information to its  
14 constituency, or (ii) to solicit and receive comments from its constituents, except  
15 as otherwise restricted in any confidentiality agreements or joint privilege  
16 agreements entered into between the Committee and the Debtor, in the  
17 Committee's by-laws or in applicable law.

18 f. Exculpation: None of the Debtor, the Committee, KCC, or any of  
19 their respective directors, officers, employees, members, attorneys, consultants,  
20 advisors, and agents (acting in such capacity) (collectively, "**Exculpated  
21 Parties**") shall have or incur any liability to any entity (including the Debtor) for  
22 any act taken or omitted in connection with the preparation, dissemination, or  
23 implementation of the Information Protocol, the Committee Website, or any  
24 information to be provided pursuant to Bankruptcy Code § 1102(b)(3). Without  
25 limiting the foregoing, the exculpation provided in this paragraph shall be co-  
26 extensive with any Exculpated Party's qualified immunity under applicable law.

27 g. Retroactivity: Any conduct taken by the Committee since its  
28 formation that is consistent with the relief sought herein shall be ratified by the  
entry of an order approving this protocol.

21 24. The Committee believes that engaging KCC to run the Committee  
22 Website would be beneficial to the estate. KCC is already the Debtor's notice, claims  
23 and solicitation agent, and currently maintains a website on the Debtor's behalf. If the  
24 Committee also employs KCC, the additional cost of establishing a second website will  
25 be eliminated. The Committee proposes that KCC be compensated for professional  
26 services rendered in connection with the Committee Website in accordance with the  
27 terms set forth in the agreement ("**KCC Services Agreement**") attached as Exhibit A.

1 KCC will invoice the Debtor on a monthly basis in accordance with the pricing structure  
2 set forth in the KCC Services Agreement.

3 **NOTICE**

4 25. The Committee has given notice of this Motion to the United States  
5 Trustee, counsel to the Debtor, and all parties that, as of the filing of this Motion, have  
6 requested notice in this case. The Committee submits that no other or further notice is  
7 required.

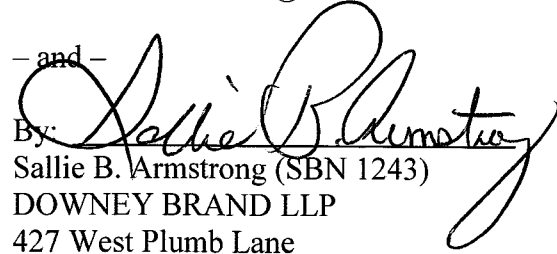
8 **CONCLUSION**

9 For the reasons set forth above, the Committee requests that the Court enter an  
10 order substantially in the form attached as Exhibit B (a) approving the Information  
11 Protocol *nunc pro tunc* to January 9, 2012, and (b) authorizing the Committee to engage  
12 KCC as its website administrator.

13 Dated: February 6, 2012

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28 *Proposed Counsel for the Official  
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# **EXHIBIT A**

# **EXHIBIT A**



## KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the \_\_\_ day of \_\_\_\_\_, 2012, between the Official Committee of Unsecured Creditors (the "Committee") appointed in the chapter 11 case (the "Case") of Ahern Rentals, Inc. (the "Debtor"), and Kurtzman Carson Consultants LLC (together with its affiliates and subcontractors, "KCC").

In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### Terms and Conditions

#### I. SERVICES

A. KCC agrees to provide the Committee with technology and other services in connection with the Committee's involvement in the Case.

B. KCC may upon request provide a communications plan including but not limited to preparation of communications materials, dissemination of information and a call center staffed by KCC.

C. KCC agrees to provide copy and notice services consistent with the applicable Local Rules of the United States Bankruptcy Court (the "Bankruptcy Court") and as requested by the Committee and/or the Bankruptcy Court.

D. The Committee agrees and understands that KCC shall not provide the Committee with any legal advice.

#### II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge the Debtor and the Committee agrees to use its reasonable efforts to cause the Debtor to pay KCC for its services, expenses and supplies at the rates or prices outlined in the pricing schedule provided to the Committee and the Debtor (the "KCC Fee Structure"). KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment. KCC reserves the right to reasonably increase its prices, charges and rates annually. If any price increases exceed 10%, KCC will give thirty (30) days written notice to the Committee.

B. KCC agrees to charge the Debtor and the Committee agrees to use its reasonable efforts to cause the Debtor to pay expenses incurred by KCC related to transportation, lodging, meals, publications, postage and other third-party charges, in addition to the hourly consulting fees and any other fees set forth in the KCC Fee Structure.

C. KCC agrees to submit its invoice to the Committee and the Debtor monthly. The Committee agrees that the amount invoiced is due and payable upon its receipt of the invoice. However, where total fees and expenses are expected to exceed \$10,000 in any single month, KCC may require advance payment prior to the performance of services. If any amount is unpaid



## KCC AGREEMENT FOR SERVICES

as of thirty (30) days from the receipt of the invoice, the Committee further agrees to use its reasonable efforts to cause the Debtor to pay a late charge, in addition to the fees and expenses due and owing to KCC, calculated as one and one-half percent (1-1/2%) of the amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, the Committee shall give KCC written notice within ten (10) days of receipt of the invoice by the Committee. Late charges shall not accrue on any amounts in dispute. The undisputed portion of the invoice amount is due and payable in the normal course. Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) as well as certain expenses must be paid at least three (3) days in advance of those fees and expenses being incurred.

D. As full compensation for the services to be provided by KCC and in conjunction with the Committee's efforts to cause the Debtor to pay KCC for its services, the Committee agrees to file an application with the Bankruptcy Court to require the Debtor to pay KCC its fees and expenses as outlined in the KCC Fee Structure through submission by KCC to the Committee and the Debtor of monthly invoices summarizing in reasonable detail the services rendered and expenses incurred in connection therewith and without the need of KCC to file formal fee applications. It is understood and agreed that in no event shall the Committee be responsible for the payment of KCC's fees.

### III. RIGHTS OF OWNERSHIP

A. The parties understand that the software programs and other materials furnished by KCC pursuant to this Agreement and/or developed during the course of this Agreement by KCC are the sole property of KCC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Committee agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement.

B. The Committee further agrees that any ideas, concepts, know-how or techniques relating to data processing or KCC's performance of its services developed during the course of its Agreement with KCC shall be the exclusive property of KCC.

C. Furthermore, upon the Committee's request, KCC shall immediately deliver to the Committee, at the Committee's sole expense, any or all of the non-proprietary data and records held by KCC pursuant to this Agreement, in the form requested by the Committee.

### IV. CONFIDENTIALITY

KCC, on behalf of itself and its employees, agrees to keep confidential all records and other information with respect to the Committee. The Committee, on behalf of itself and its employees, agrees to keep all proprietary, non-public information with respect to KCC's system, procedures and software confidential. However, if either party is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.



## **KCC AGREEMENT FOR SERVICES**

### **V. SUSPENSION OF SERVICE AND TERMINATION**

A. This Agreement shall remain in force until terminated or suspended by either party upon thirty (30) days' written notice to the other party, or for Cause (as defined herein), in which event no notice shall be required. The term "Cause" means an act or omission to act by KCC performed with either gross negligence or willful misconduct that causes, or an act or omission with the intent to cause, harm to the Committee's efforts in the Case. The term "Cause" also means failure of the Committee or the Debtor to pay KCC invoices for more than sixty (60) days from the date of invoice, or the accrual of invoices or unpaid services in excess of any retainer held by KCC where KCC has a reasonable fear of non-payment.

B. The Committee agrees to support KCC's reasonable efforts to establish its entitlement to an administrative expense claim for all fees and expenses outstanding at the time of termination.

C. In the event that this contract is terminated, regardless of the reason for such termination; KCC shall cooperate with the Committee to maintain an orderly transfer of record keeping functions and KCC shall provide all necessary staff, services and assistance required for an orderly transfer (collectively, "Wind-Down Services"). The Committee agrees to use its reasonable efforts to cause the Debtor to pay for all of KCC's fees and expenses outstanding at the time of termination as well as fees and expenses incurred in the performance of Wind-Down Services at KCC's then existing prices for such services.

### **VI. SYSTEM IMPROVEMENTS**

KCC strives to provide continuous improvements in the quality of service to the Committee. Therefore, KCC reserves the right to make changes in its operating procedures, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the KCC data center serving the Committee, so long as any such changes do not materially interfere with ongoing services provided to the Committee.

### **VII. INDEPENDENT CONTRACTORS**

The Committee and KCC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this Agreement.

### **VIII. LIMITATIONS OF LIABILITY**

A. Except as provided herein, KCC's liability to the Committee or any person claiming through or under the Committee for any losses, claims, damages, judgments, liabilities and/or expenses (including reasonable counsel fees and expenses) (collectively, "Losses"), even if KCC has been advised of the possibility of such Losses, whether direct or indirect and unless due to gross negligence or willful misconduct of KCC, shall be limited to the total amount billed or billable to the Committee for the portion of the particular work which gave rise to the alleged Loss. In no event shall KCC's liability to the Committee or any person claiming through or under the Committee for any Losses, whether direct or indirect, arising out of this



## KCC AGREEMENT FOR SERVICES

Agreement exceed the total amount billed to the Committee and actually paid to KCC for the services contemplated under the Agreement. In no event shall KCC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement.

B. The Committee is responsible for the accuracy of the programs, data and information it or any representative of the Committee submits for processing to KCC and for the output of such information. KCC does not verify information provided by the Committee. The Committee agrees to initiate and maintain backup files that would allow the Committee to regenerate or duplicate all programs and data submitted by the Committee to KCC.

C. The Committee agrees that except as expressly set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

### IX. FORCE MAJEURE

Whenever performance by KCC of any of its obligations hereunder is substantially prevented by reason of any act of God, strike, lock-out or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war conditions or by reason of any other matter beyond KCC's reasonable control, then such performance shall be excused and this Agreement shall be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

### X. NOTICES

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by facsimile or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth below:

Kurtzman Carson Consultants LLC  
2335 Alaska Ave.  
El Segundo, CA 90245  
Attn: Drake D. Foster  
Tel: (310) 823-9000  
Fax: (310) 823-9133

Committee  
Address  
City, ST, Zip  
Attn:  
Tel:  
Fax:

Or to such other address as the party to receive the notice or request so designates by written notice to the other.





## KCC AGREEMENT FOR SERVICES

### XI. APPLICABLE LAW

The validity, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

### XII. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and other agreements, oral and written between the parties relating to the subject matter of this Agreement. The Committee represents that it has the authority to enter into this Agreement, and this Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be modified only by a written instrument duly executed by an authorized representative of the Committee and an officer of KCC.

### XIII. COUNTERPARTS; EFFECTIVENESS

This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, which delivery may be made by exchange of copies of the signature page by facsimile or electronic mail.

### XIV. ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned by KCC to a wholly-owned subsidiary or affiliate of KCC.

### XV. ARBITRATION

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) shall be entered in any court having jurisdiction thereof. For that purpose, the parties hereto consent to the jurisdiction and venue of an appropriate court located in Los Angeles County, State of California.

### XVI. ATTORNEYS' FEES

In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance or interpret the provisions of this Agreement, the parties agree to reimburse the prevailing party's reasonable attorneys' fees, Court costs, and all other related expenses, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.



**KCC AGREEMENT FOR SERVICES**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the first date mentioned above.

Kurtzman Carson Consultants LLC

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BY:  
TITLE:

Committee

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BY:  
TITLE:



## KCC OFFICIAL COMMITTEE FEE STRUCTURE

### WEBSITE ADMINISTRATION

#### KCC CaseView

Creation of case-specific public website	Waived
Hosting case-specific public website	\$200.00 per month

### OPTIONAL SERVICES<sup>1</sup>

#### Consulting Services & Rates

<u>Position</u>	<u>Hourly Rate</u>	<u>15% Discounted Rate</u>
Clerical	\$40.00-\$60.00	\$34.00-\$51.00
Project Specialist	\$80.00-\$140.00	\$68.00-\$119.00
Technology/Programming Consultant	\$100.00-200.00	\$85.00-\$170.00
Consultant	\$125.00-200.00	\$106.25-\$170.00
Senior Consultant	\$225.00-\$275.00	\$191.25-\$233.75
Senior Managing Consultant	\$295.00	\$250.75
Weekend, holidays and overtime	Waived	Waived
Travel expenses and working meals	Waived	Waived

#### Notice Printing & Publication Services

Set-up	Waived
Printing and photocopies	\$0.10 per image
Labels	\$0.05 per image
Electronic noticing (e-mail)	\$50.00 per 1,000 <sup>2</sup>
Electronic noticing (domestic facsimile)	\$0.10 per page
Claim Acknowledgement Card	\$0.10 per notice
Insert creditor information into customized documents	Waived
Document folding and inserting	Waived
Legal notice publishing	Quote prior to publishing

<sup>1</sup> Expenses shall be consistent with the general practice procedures authorized in the District of Nevada.

<sup>2</sup> Expense waived for the first 5,000 emails.



## KCC OFFICIAL COMMITTEE FEE STRUCTURE

### Document Management/Imaging

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Electronic imaging (scanning & bar-coding)	\$0.12 per imaged page
Virtual data room	Quote prior to VDR set-up
CD-ROMs (Mass Document Storage)	Varies upon requirements

# **EXHIBIT B**

# **EXHIBIT B**

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COVINGTON & BURLING LLP  
MICHAEL ST. PATRICK BAXTER\*  
1201 Pennsylvania Avenue NW  
Washington, DC 20004-2401  
Telephone: (202) 662-6000  
Facsimile: (202) 662-6291  
Email: mbaxter@cov.com  
*\*Admitted pro hac vice*

DOWNEY BRAND LLP  
SALLIE B. ARMSTRONG (SBN 1243)  
427 West Plumb Lane  
Reno, NV 89509  
Telephone: (775) 329-5900  
Fax: (775) 786-5443  
Email: reno@downeybrand.com

*Proposed Counsel for the Official Committee  
of Unsecured Creditors*

*Proposed Local Counsel for the  
Official Committee of Unsecured Creditors*

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

In re  
AHERN RENTALS, INC.,  
  
Debtor.

Case No.: BK-S-11-53860-BTB  
Chapter 11

**[PROPOSED] ORDER REGARDING  
MOTION FOR ENTRY OF *NUNC PRO  
TUNC* ORDER (I) CLARIFYING AND  
CONFIRMING THAT THE COMMITTEE  
IS NOT AUTHORIZED OR REQUIRED  
TO PROVIDE ACCESS TO (A)  
CONFIDENTIAL INFORMATION AND  
OTHER NON-PUBLIC PROPRIETARY  
INFORMATION, AND (B) PRIVILEGED  
INFORMATION AND (II)  
AUTHORIZING ENGAGEMENT OF  
KURTZMAN CARSON CONSULTANTS  
LLC AS COMMITTEE WEBSITE  
ADMINISTRATORS**

Hearing Date:  
Hearing Time:  
Place: 300 S. Booth Street, Reno, NV 89509  
Court Room: 2

1 The Court has reviewed and considered the motion (“**Motion**”) dated February 6,  
2 2012, filed by the Official Committee of Unsecured Creditors (“**Committee**”) of Ahern  
3 Rentals, Inc. (“**Debtor**”) for entry of an order (“**Order**”) pursuant to sections 107(b),  
4 1102(b)(3)(A) and 1103(c) of title 11 of the United States Code (“**Bankruptcy Code**”)  
5 (i) establishing certain procedures by which the Committee may provide information to  
6 and solicit and receive comments from its constituency and thereby satisfy its duty under  
7 section 1102(b)(3) of the Bankruptcy Code; (ii) clarifying and confirming that the  
8 Committee is not authorized or required, pursuant to section 1102(b)(3)(A) of the  
9 Bankruptcy Code, to provide access to (a) confidential and other non-public proprietary  
10 information, and (b) privileged information, to its constituency; and (iii) approving the  
11 retention of a third party website manager; as well as all pleadings related to the Motion;

12 And it appearing that the Court has jurisdiction to hear the Motion, pursuant to 28  
13 U.S.C. § 1334 and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2);

14 And notice of this Motion having been provided to (i) the Office of the United  
15 States Trustee for the District of Nevada (“**Trustee**”); (ii) the Debtor; (iii) counsel to the  
16 Debtor; and (iv) all other parties that have filed a notice of appearance in the above  
17 captioned chapter 11 case;

18 And it appearing that no other or further notice of this Motion need be provided;

19 And good and sufficient cause appearing therefor;

20 IT IS HEREBY ORDERED that the Motion is granted;

21 IT IS FURTHER ORDERED, pursuant to sections 105(a), 107(b), 1102(b)(3)(A)  
22 and 1103(c) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy  
23 Procedure (“**Rules**”) and Rule 2014 of the Local Rules of Bankruptcy Practice and  
24 Procedure for the United States Bankruptcy Court for the District of Nevada (“**Local**  
25 **Rules**”), on a *nunc pro tunc* basis, that;

26 (i) Bankruptcy Code Section 1102(b)(3)(A) does not authorize or require the  
27 Committee to provide access to Confidential Information to its constituency;

28

1 (ii) the Committee is not authorized or required to provide access to Privileged  
2 Information to its constituency;

3 (iii) certain procedures are hereby established, as set forth herein, by which the  
4 Committee may provide information to and solicit and receive comments from its  
5 constituency and thereby satisfy its duties under Bankruptcy Code Sections  
6 1102(b)(3)(A) and (B);

7 IT IS FURTHER ORDERED that the Committee shall have satisfied the  
8 requirements of Bankruptcy Code Section 1102(b)(3)(A) by instituting the information  
9 protocol ("**Information Protocol**") substantially in the following form:<sup>1</sup>

10 a. Access to Information: In satisfaction of the Committee's  
11 obligations to provide access to information to and to solicit and receive  
12 comments from persons that hold claims of the type the Committee represents in  
13 accordance with 11 U.S.C. §1102(b)(3)(A) and (B), the Committee shall, until the  
14 earlier to occur of (i) dissolution of the Committee, (ii) dismissal of the Chapter  
15 11 case, or (iii) conversion of the Chapter 11 case, establish and maintain an  
16 Internet-accessed website ("**Committee Website**") which would provide, without  
17 limitation:

- 18 i. a link to the Debtor's website, at which general information  
19 concerning the Debtor's Chapter 11 case, including case dockets,  
20 access to docket filings, the claims docket as and when  
21 established, answers to frequently asked questions, and general  
22 information concerning significant parties in the case, is available;
- 23 ii. contact information for the Debtor (and any hotlines they may  
24 establish), the Debtor's counsel and counsel for the Committee;
- 25 iii. a general overview of the Chapter 11 reorganization process (or a  
26 link to any such overview on the Debtor's site);
- 27 iv. periodic written reports by the committee summarizing recent  
28 proceedings, significant events, and public financial information;
- v. a calendar of upcoming significant events in the Debtor's Chapter  
11 case; copies of monthly operating reports filed by the Debtor;

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<sup>1</sup> The Information Protocol is subject to amendment and/or change due to any subsequent agreements between the Committee and the Debtor.



1 when appropriate, a copy of any plan of reorganization and  
2 disclosure statement, and any voting deadlines (or a link to any  
such calendar on the Debtor's site);

- 3 vi. press releases (if any) issued by the Committee and/or the Debtor;
- 4
- 5 vii. an electronic mail address through which individuals of the  
6 Committee's constituency may submit questions, comments and  
requests for more information;
- 7
- 8 viii. responses to questions, commence and requests for access to  
9 information from the Committee's constituency; provided that the  
Committee may provide such responses privately in the exercise  
of its discretion,
- 10
- 11 ix. answers to frequently asked questions;
- 12
- 13 x. links to other relevant websites, including but not limited to, the  
14 Bankruptcy Court's website and the United States Trustee's  
15 website; and
- 16
- 17 xi. any other public and non-privileged information, that the  
18 Committee or its counsel, at their sole discretion, deems  
19 appropriate.

20 b. Committee Website Administrator: The Committee will engage  
21 KCC to establish and maintain, subject to the terms of any order of this Court, the  
22 Committee Website to provide access to the information listed above in part (a)  
23 for unsecured creditors. The reasonable fees and expenses of KCC incurred by  
24 the Committee under the terms of the KCC Services Agreement ("**Committee  
25 Website Expenses**") shall be paid directly to KCC by the Debtor's estate without  
26 further order of the Court upon the service of appropriate invoices by KCC upon  
27 counsel to the Debtor, the UST and counsel to the Committee. The Committee  
28 Website Expenses shall be treated as administrative expense claims against the  
Debtor's estate pursuant to section 503(b) of the Bankruptcy Code.

22 c. Privileged and Confidential Information: The Committee shall not  
23 be required to disseminate to any entity: (i) without further order of the Court,  
24 confidential information, privileged information, proprietary information, or other  
25 non-public information concerning the Debtor or the Committee including  
26 without limitation with respect to the acts, conduct, assets, liabilities and financial  
27 condition of the Debtor, the operation of the Debtor's business, any other matter  
28 relevant to the case or to the formulation of a Chapter 11 plan (including any and  
all confidential, proprietary or other non-public materials of the Committee)  
whether provided by or on behalf of the Debtor, the Committee or by any third  
party or prepared by or for the Committee, or (ii) any other information if the  
effect of such disclosure would constitute a general waiver of the attorney-client,

1 work product or other applicable privilege possessed by the Committee. The  
2 Debtor shall assist the Committee in identifying any Confidential Information  
3 concerning the Debtor that is provided by the Debtor or their agents or  
professionals, or by any third party, to the Committee, its agents and  
professionals.

4 d. Information Requests: if a member of the Committee's  
5 constituency ("**Requesting Constituent**") submits a written request (including by  
6 electronic mail) ("**Information Request**") the Committee shall as soon as  
7 practicable provide a response to the Information Request ("**Response**"),  
8 including by providing access to the information requested or the reasons why the  
9 Committee cannot provide the requested information. If the Response is to deny  
10 the Information Request because the Committee believes that the Information  
11 Request implicates confidential, privileged or proprietary information that may  
12 not or should not be disclosed, the Requesting Constituent, after a good faith  
effort to meet and confer with an authorized representative of the Committee  
regarding the Information Request and the Response, may seek to compel such  
disclosure for cause pursuant to a motion. Such motion shall be served and a  
hearing on such motion shall be noticed pursuant to any applicable Bankruptcy  
Rules and Local Rules.

13 e. Limitation on Access to Information: Nothing set forth herein  
14 shall require the Committee to provide access to information or solicit comments  
15 from any person or entity that has not demonstrated to the satisfaction of the  
16 Committee, in its sole discretion, that it holds a claim in connection with the  
17 Debtor's case. Likewise, nothing herein shall prejudice the rights of the  
18 Committee, in its sole discretion (i) to provide access to information to its  
constituency, or (ii) to solicit and receive comments from its constituents, except  
as otherwise restricted in any confidentiality agreements or joint privilege  
agreements entered into between the Committee and the Debtor, in the  
Committee's by-laws or in applicable law.

19 f. Exculpation: None of the Debtor, the Committee, KCC or any of  
20 their respective directors, officers, employees, members, attorneys, consultants,  
21 advisors, and agents (acting in such capacity) (collectively, "**Exculpated  
22 Parties**") shall have or incur any liability to any entity (including the Debtor) for  
23 any act taken or omitted in connection with the preparation, dissemination, or  
24 implementation of the Information Protocol, the Committee Website, or any  
information to be provided pursuant to Section 1102(b)(3) of the Bankruptcy  
Code. Without limiting the foregoing, the exculpation provided in this paragraph  
shall be co-extensive with any Exculpated Party's qualified immunity under  
applicable law.

25 g. Retroactivity: Any conduct taken by the Committee since its  
26 formation that is consistent with the relief sought herein shall be ratified by the  
27 entry of the requested Order.  
28

1 IT IS FURTHER ORDERED that any modifications to this Order shall only  
2 affect information provided by the Debtor to the Committee after the date of any such  
3 modifications to this Order; and

4 IT IS FURTHER ORDERED that the terms and conditions of this Order shall be  
5 immediately effective and enforceable upon its entry.

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