

1 GORDON SILVER
GERALD M. GORDON, ESQ.
2 Nevada Bar No. 229
E-mail: ggordon@gordonsilver.com
3 WILLIAM M. NOALL, ESQ.
Nevada Bar No. 3549
4 E-mail: wnoall@gordonsilver.com
THOMAS H. FELL, ESQ.
5 Nevada Bar No. 3717
E-mail: tfell@gordonsilver.com
6 3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
7 Telephone (702) 796-5555
Facsimile (702) 369-2666
8 [Proposed] Attorneys for Debtor

9 UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF NEVADA

11 In re:
12 AHERN RENTALS, INC.
13 Debtor.

Case No.: 11-53860-BTB
Chapter 11
Date: December 23, 2011
Time: 9:30 a.m.
Place: Clifton Young Federal Bldg.
300 S. Booth Street
Reno, NV 89509
Court Room: 2

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17 OMNIBUS DECLARATION OF HOWARD L. BROWN IN SUPPORT
OF DEBTOR'S FIRST DAY MOTIONS

18 I, Howard L. Brown, hereby declare as follows:

19 1. I am over the age of 18 and am mentally competent. I make this declaration (the
20 "Declaration") in support of the motions and applications requesting various types of
21 immediate relief (collectively, the "First Day Motions") filed by Ahern Rentals, Inc. ("Debtor"
22 or "Borrower") in the above-captioned case (the "Chapter 11 Case").

23 2. I am the Chief Financial Officer ("CFO") of Debtor and have served in that
24 capacity since 1997. In my capacity as CFO, I am familiar with the Debtor's daily business,
25 operational, and financial affairs.

26 3. Except as otherwise indicated, all facts set forth in this Declaration are based upon
27 my personal knowledge of the Debtor's operations and finances, information learned from my
28



1 review of relevant documents, and information supplied to me by other members of the
2 Debtor's management and the Debtor's various business and legal advisors. If called upon to
3 testify as to the content of this Declaration, I could and would do so.

4 4. This Declaration is filed on the same date (the "Petition Date") that the Debtor has
5 filed a voluntary petition for relief under Chapter 11, Title 11 of the U.S. Code (the
6 "Bankruptcy Code"). Debtor has filed its various First Day Motions¹ (as defined herein) to
7 allow them to operate effectively in their respective Chapter 11 Cases. The relief sought in the
8 First Day Motions is critical to the Debtor's business operations, will allow for a
9 comprehensive and smooth transition into Chapter 11, and will ensure that the Debtor is
10 provided the opportunity to reorganize successfully.

11 5. This Declaration provides the Court with background information regarding the
12 Debtor as well as the context for the initial relief sought by the Debtor. Accordingly, the
13 Declaration is organized into three parts: (a) an overview of Debtor, its business, its
14 organizational structure, its capital structure, and the events leading up to the Chapter 11
15 Cases; (b) an explanation of the relief sought in the First Day Motions, which relief I believe is
16 critical to the Debtor's reorganization; and (c) an explanation of the relief sought in certain
17 other motions Debtor intends to file in the ordinary course of the Chapter 11 Case.

18 **I.**
19 **BACKGROUND**

20 **A. Debtor's Business**

21 **1. Corporate Structure**

22 6. Debtor is a Nevada corporation organized on December 23, 1997 through the
23 merger of Ahern Renters Center, Inc., a Nevada corporation, and Ahern Rentals SW, Inc., a
24 Nevada corporation.

25 7. Debtor's shares are held 97% by Don F. Ahern as Trustee of the DFA Separate
26 Property Trust and 3% by John Paul Ahern, Jr.

27 _____
28 ¹ All capitalized terms not otherwise defined herein shall have those meanings ascribed to them in the relevant
Motions, all of which are being filed contemporaneously herewith.

1 **2. Operations and Past Performance**

2 8. Debtor operates an equipment rental company that additionally sells new and used
3 rental equipment, parts and supplies related to its rental equipment, and merchandise used by
4 the construction industry. Further, Debtor provides maintenance and repair services.

5 9. As of November 30, 2011, Debtor's rental fleet contains 37,320 total rental items,
6 including 20,042 high reach units, including fork lifts, boom lifts, and scissor lifts. Debtor's
7 rental fleet also contains 17,278 general rental units, including backhoes, skid steers,
8 skiploaders, trenchers, compressors, generators, light towers, welders, lawn and garden
9 equipment, and hand tools.

10 10. Debtor's business operates through 74 branches located in 22 states.

11 11. Debtor's level of equipment rental revenue is sensitive to overall macro-economic
12 conditions, particularly the level of activity within the non-residential construction industry, as
13 well as to factors specific to Debtor, such as the size and condition of the Debtor's equipment
14 rental fleet, the utilization level of this rental fleet, the level of rental rates, the length of time
15 the equipment is on rent, and general weather conditions within the Debtor's geographic
16 markets.

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

21 13. In order to measure the health of its business, the Debtor reports and monitors its
22 level of EBITDA (Earnings Before Interest Expense, Income Taxes, Depreciation and
23 Amortization) generation as an important financial metric. Adjusted EBITDA represents an
24 adjustment to the company's EBITDA for items considered extraordinary and non-recurring.
25 EBITDA is a commonly used financial metric utilized by companies within the equipment
26 rental industry. In the 2005 through 2008 timeframe, Debtor's Adjusted EBITDA increased
27 from \$80.2 million to \$150.1 million as the Debtor benefited from strong growth of non-
28 residential construction activity, particularly in the Las Vegas market. Subsequent to 2008, the

1 Debtor's financial performance was adversely impacted by the severe economic recession, and
 2 resulting significant reduction in non-residential construction spending, as more fully described
 3 later in this document in "Events Leading to the Chapter 11 Case." Debtor's Adjusted
 4 EBITDA declined from \$150.1 million in 2008 to \$67.7 million in 2009 and to \$53.0 million in
 5 2010. The trough of the Debtor's financial performance was realized midway through 2010
 6 when the Debtor's LTM ("Last Twelve Months") Adjusted EBITDA through the quarter ended
 7 June 30, 2010 bottomed at \$46.7 million.

8 14. In response to the economic downturn, the Debtor proactively implemented
 9 numerous strategic initiatives to address the changed business environment. These initiatives
 10 included: (i) significant geographic redeployment of its rental fleet from Las Vegas to other
 11 markets, (ii) the opening of 24 branches in 2009 and 2010 in new markets, (iii) cost reductions,
 12 (iv) reduced capital expenditures and (v) a focus on customers in segments other than non-
 13 residential construction. These initiatives, which are also described in detail later in this
 14 document, have been highly successful as demonstrated by a strong recovery in financial
 15 performance by the Debtor in the past 18 months. Since its LTM Adjusted EBITDA bottomed
 16 at \$46.7 million in June of 2010, the Debtor's Adjusted EBITDA has increased 63.8% to \$76.5
 17 million for the LTM period ending November 30, 2011 (based on a preliminary close of the
 18 Debtor's November 2011 financial statements).

19 15. The chart below details the cycle of Debtor's revenue, Adjusted EBITDA and other
 20 key data for the fiscal years 2005 through 2010, and the LTM period ending November 30,
 21 2011.

22 **SUMMARY REVENUE, EBITDA AND OTHER OPERATING DATA**
 23 **Twelve Months Ended November 30, 2011 and Fiscal Years 2005 to 2010**
 24 **(In millions, rounded)**

	<u>LTM</u>	<u>Twelve Months Ended December 31,</u>					
	<u>Nov-11</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>	<u>2005</u>
REVENUES							
Equipment rentals and related	\$ 295.8	\$ 246.8	\$ 250.1	\$ 329.5	\$ 293.4	\$ 236.9	\$ 179.9
Sales of rental equipment	13.3	24.2	11.8	19.7	24.9	16.6	11.4
Sales of new equipment & other		<u>21.7</u>	<u>22.3</u>	<u>32.3</u>	<u>21.8</u>	<u>12.4</u>	<u>12.4</u>

1		<u>20.7</u>						
2	Total Revenue	329.8	292.7	284.2	381.4	340.1	265.8	203.6
3	Revenue Growth	12.6% ²	3.0%	(25.5%)	12.1%	27.9%	30.6%	
4	ADJUSTED EBITDA	76.5 ³	53.0 ⁴	67.7	150.1	144.7	116.5	80.2
5	EBITDA Growth	44.3% ⁵	(21.7%)	(54.9%)	3.7%	24.2%	45.2%	
6	ADDITIONAL INFORMATION							
7	Fleet Capital Expenditures (Net)	\$ (4.2)	\$ (5.1)	\$ 15.9	\$ 111.4	\$ 191.6	\$ 178.6	\$ 116.2
8	Average High Reach Time Utilization	65.1%	57.3%	55.0%	67.0%	69.7%	72.5%	72.9%
9	Dollar Utilization	37.2%	31.0%	30.3%	41.5%	45.9%	50.0%	50.8%

10 16. The Debtor also uses both “Time Utilization” and “Dollar Utilization” to measure
11 the health of its rental business. Time Utilization measures the number of total high-reach
12 units on rent for the Debtor’s primary equipment category, compared to the total number of
13 high-reach units available for rent. Dollar Utilization measures, for the entire rental fleet, the
14 interaction of changes in rental rates, product mix, average length of rental, and time
15 utilization. Dollar Utilization is the annualized ratio of equipment rentals and related revenues
16 on Debtor’s entire fleet of rental equipment for a period of time compared to the average
17 original cost of Debtor’s rental fleet during the same period. Debtor’s Time Utilization and
18 Dollar Utilization metrics follow a similar pattern as its revenue and EBITDA, illustrating
19 strength in the 2005 and 2006 timeframe, declining significantly during the economic
20 recession, and rebounding strongly over the past 18 months as the Debtor’s business has
21 recovered.

22 17. In 2011, Debtor has realized the benefits of both its proactive response to the
23 economic recession and an ongoing cyclical recovery in the equipment rental industry as
24 demonstrated by its significant increase in both Time and Dollar Utilization, and improved
25 financial performance.

26 ² LTM November 2011 growth over full-year 2010

27 ³ Adjusted for \$0.7 million non-cash loss on aircraft sale in April 2011 and \$0.9 million non-cash lease termination
cost in June 2011

28 ⁴ Adjusted for \$1.0 million litigation settlement payment in September 2010

⁵ LTM November 2011 growth over full-year 2010

1 18. Debtor's operating results have traditionally been highly dependent on the strength
2 of the economy of Las Vegas, Nevada, accounting for approximately 18.7% of revenues in
3 2010 and 25% of revenues in 2009, and the rapid growth of the Las Vegas population and
4 accompanying economic growth contributed significantly to Debtor's growth in revenues over
5 years prior.

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

7 19. Don F. Ahern has been Debtor's President, Chief Executive Officer and a member
8 of Debtor's board of directors since February 1994. Prior to that, since 1978, Mr. Ahern was
9 the sole proprietor of Los Arcos Equipment, an equipment rental company. Mr. Ahern has over
10 30 years of experience in the equipment rental industry. He receives an annual base salary of
11 \$824,000 without an employment contract.

12 20. Evan B. Ahern has been Debtor's Executive Vice President since March 2004 and
13 joined Debtor's board of directors in April 2004. He served as Chief Information Officer from
14 1998 to May 2007. Between 1993 and 1998, Mr. Ahern was responsible for managing and
15 implementing Debtor's technology infrastructure. From 1990 through 1993, Mr. Ahern held
16 various other positions with Debtor. Mr. Ahern has been and continues to be involved in nearly
17 every aspect of Debtor's operations. He spends much of his current time in business
18 development activities, branch level process reengineering and training, and technology
19 integration into every aspect of Debtor's business to improve operational efficiencies and
20 effectiveness. He receives an annual base salary of \$400,000 without an employment contract.

21 21. I have been Debtor's Chief Financial Officer since September 1997. I joined
22 Debtor's board of directors in April 2004. I have over 35 years of finance experience. Prior to
23 joining Debtor, from October 1995 through September 1997, I was Chief Financial Officer of
24 the H&O Foods division of Rykoff-Sexton, Inc. (now known as U.S. Foodservice, Inc.), the
25 largest food service distributor in Las Vegas, Nevada. From September 1992 through
26 October 1995, I was Chief Financial Officer of H&O Foods, Inc. I receive an annual base
27 salary of \$180,000 without an employment contract.

28 22. Mark J. Wattles joined Debtor's board of directors in April 2004. Mr. Wattles

1 founded Hollywood Entertainment Corporation (“Hollywood”), a chain of video rental and
2 game stores, in June 1988, and until September 1998 he served as Hollywood’s Chairman of
3 the Board, President, and Chief Executive Officer. From August 1998 through June 2000,
4 Mr. Wattles left his full-time position at Hollywood and served as Chief Executive Officer of
5 Reel.com, then a wholly owned subsidiary of Hollywood. In August 2000, Mr. Wattles
6 returned full time to Hollywood to assist with changes in its business strategy. He served as
7 President of Hollywood from January 2001 until January 2004 and as Chief Executive Officer
8 from January 2001 until February 2005. Since January 2005, Mr. Wattles has served as
9 President of Wattles Capital Management, LLC, a capital management company that invests in
10 public and private companies providing consumer products and services. In April 2005,
11 Ultimate Acquisition Partners, L.P., an entity owned by Wattles Capital Management, LLC,
12 purchased from Ultimate Electronics, Inc. the assets associated with 32 Ultimate Electronics
13 and SoundTrack stores. Since that time, Mr. Wattles has served as Chairman of Ultimate
14 Acquisition Partners, L.P., which does business as Ultimate Electronics, a retailer of home
15 entertainment and consumer electronics products.

16 23. P. Enoch Stiff joined Debtor’s board of directors in April 2004. Mr. Stiff has been
17 the managing partner of the Executive Management Group, a consulting firm specializing in
18 effective management practices for senior executive teams of midsize businesses, since
19 November 2002. Additionally, since January 2004, Mr. Stiff has been a partner in the Value
20 Management Group, a Chicago-based investment management company that focuses on
21 manufacturing companies. In February 2008, Mr. Stiff became President and Chief Executive
22 Officer of American Sportworks, a company that manufactures various types of utility
23 vehicles. From September 2000 to November 2002, Mr. Stiff provided independent business
24 consulting services to executive management groups. From September 1996 to
25 September 2000, Mr. Stiff was the President, Chief Executive Officer and a member of the
26 board of directors of OmniQuip International, Inc., a North American manufacturer of
27 telescopic material handlers, aerial work platforms and other material handling equipment.
28 From August 1989 to September 1996, Mr. Stiff was the President and Chief Executive Officer

1 of TRAK International, Inc. (“TRAK”), a wholly owned subsidiary of OmniQuip
2 International, Inc. He previously served as the Chief Operating Officer of TRAK from
3 November 1987 to August 1989.

4 24. Timothy N. Lotspeich has been Debtor’s Senior Vice President of Risk
5 Management and Transportation since April 2005. From December 1995 until April 2005, he
6 served as Debtor’s Senior Vice President and was responsible for Debtor’s floating fleet,
7 transportation and risk management. Mr. Lotspeich has approximately 23 years of experience
8 in the equipment rental industry. From July 1986 through December 1995, Mr. Lotspeich
9 served as Debtor’s California regional manager responsible for supervising operations and
10 sales of all of Debtor’s California branches. From April 1983 through June 1986,
11 Mr. Lotspeich served as manager of Debtor’s Bloomington, California branch and was
12 responsible for operations and sales of that branch. Prior to joining us, from 1972 through
13 June 1982, Mr. Lotspeich was a customer service representative for Grove Manufacturing, a
14 large manufacturer of high reach equipment. He receives an annual base salary of \$130,000
15 without an employment contract.

16 25. D. Kirk Hartle has been Debtor’s Senior Vice President of Finance and Treasurer
17 since March 2009; previously, Mr. Hartle served as Vice President of Finance since
18 September 2007 and prior to that he served as Debtor’s Director of Finance from the time he
19 was hired in February 2004. His responsibilities include oversight of all accounting and
20 financial reporting for Debtor. During his career, Mr. Hartle has held senior management
21 positions with KPMG LLP and Deloitte LLP. Prior to joining Ahern Rentals, Mr. Hartle was
22 chief financial officer for five years with a publicly held golf retail and sports entertainment
23 company. Mr. Hartle also is a past-president of the University of Nevada, Las Vegas Alumni
24 Association and served on its Board of Directors for 13 years. He receives an annual base
25 salary of \$200,000 without an employment contract.

26 **B. Debtor’s Prepetition Capital Structure**

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

28 26. On August 18, 2005, Debtor as Borrower entered into an Amended and Restated

1 Loan and Security Agreement (“2005 Loan Agreement”) among certain as lenders named
2 therein (the “Initial Lenders”), Bank of America, N.A. (“Bank of America”) as administrative
3 agent, Wachovia Bank, National Association (“Wachovia”) as collateral agent and as
4 syndication Agent, and Bank of America Securities LLC and Wachovia Capital Markets, LLC
5 as co-lead arrangers. A true and correct copy of the 2005 Loan Agreement is attached hereto
6 as **Exhibit “1.”** The 2005 Loan Agreement provided for a revolving credit facility (as
7 thereafter amended, the “Revolving Credit Facility”), consisting of certain revolving loans and
8 letters of credit with a “Maximum Revolver Amount” (as therein defined) of \$175,000,000,
9 which Revolving Loan incurred interest at the “Base Rate” (defined therein as the greater of
10 Bank of America’s prime rate or the Federal Funds Rate plus .5% per annum) plus the
11 “Applicable Margin” (defined therein as initially 0.375% per annum with respect to “Base Rate
12 Revolving Loans” (as defined therein), but varying between 0.125% to 0.625% per annum
13 based upon a “Leverage Ratio” (as defined therein) and initially 2.2125% with respect to
14 “LIBOR Rate Revolving Loans” (as therein defined)), but varying between 0.125% to 0.625%
15 per annum based upon a Leverage Ratio)) for all Base Rate Revolving Loans and at the LIBOR
16 Rate plus the Applicable Margin for all LIBOR Rate Revolving Loans.

17 27. On August 18, 2005, Debtor as Borrower entered into an Intercreditor Agreement
18 (as amended, supplemented or otherwise modified, the “Intercreditor Agreement”) among
19 Wachovia, as First Lien Collateral Agent and Control Agent for the First Lien Collateral Agent
20 and the Second Lien Collateral Agent (each as defined therein) and Wells Fargo Bank, N.A.
21 (“Wells Fargo Bank”) as Trustee under the Indenture and as Second Lien Collateral Agent
22 (each as defined therein) providing the Revolving Credit Facility in connection with the 2005
23 Loan Agreement, which Intercreditor Agreement made the Revolving Credit Facility available
24 to Debtor consisting of a \$175,000,000 Revolving Credit Facility. A true and correct copy of
25 the Intercreditor Agreement is attached hereto as **Exhibit “2.”**

26 28. On August 21, 2006, Debtor entered into an Amendment No. 1 to Amended and
27 Restated Loan Security Agreement (“2006 Loan Amendment”) with lenders as denoted
28 therein, Bank of America as Administrative Agent and Wachovia as Collateral Agent. A true

1 and correct copy of the 2006 Loan Amendment is attached hereto at **Exhibit “3.”** Under the
2 2006 Loan Amendment, the Revolving Credit Facility’s maximum was increased to
3 \$250,000,000, the maturity date on the Revolving Credit Facility was set at August 21, 2011,
4 and the Applicable Margin was adjusted to .5% and 2.25% for Base Rate Revolving Loans and
5 LIBOR Rate Revolving Loans at greater than 4.75:1.00 leverage ratio respectively, .250% and
6 2.0% for between 4.75:1.00 and 3.50:1.00 leverage ratio respectively, and 0.0% and 1.75% for
7 leverage ratios less than 3.50:1.00 respectively.

8 29. On October 24, 2007, Debtor entered into an Amendment No. 3 and Consent to
9 Amended and Restated Loan and Security Agreement (“2007 Loan Amendment”) with lenders
10 as denoted therein, Bank of America as Administrative Agent and Wachovia as Collateral
11 Agent. A true and correct copy of the 2007 Loan Amendment is attached hereto as **Exhibit**
12 **“4.”** Under the 2007 Loan Amendment, the Revolving Credit Facility’s maximum was
13 increased to \$300,000,000.

14 30. On December 23, 2009, Debtor entered into an Amendment No. 1 to Intercreditor
15 Agreement (“2009 First Intercreditor Amendment”) with Wachovia and Wells Fargo Bank,
16 which 2009 First Intercreditor Amendment permitted credit facilities available to Debtor
17 consisting of a maximum \$396,000,000 revolving credit facility. A true and correct copy of
18 the 2009 First Intercreditor Amendment is attached hereto as **Exhibit “5.”**

19 31. On January 8, 2010, Debtor, as “Borrower” (as defined therein), entered into a
20 Second Amended and Restated Loan and Security Agreement (as amended, supplemented or
21 otherwise modified, “First Lien Credit Agreement”; and, together with all security, pledge and
22 guaranty agreements and all other documentation executed and/or delivered in connection
23 with any of the foregoing, including without limitation, the Intercreditor Agreement, each as
24 amended, supplemented, or otherwise modified, the “First Lien Documents”) with Bank of
25 America as administrative agent (in such capacity, the “First Lien Agent”), Wells Fargo Bank
26 as collateral agent (in such capacity, the “First Lien Collateral Agent”) and certain Revolving
27 Lenders (as defined therein) and “last out” Term Lenders (as defined therein, and, collectively
28 with the Revolving Lenders, the “First Lien Lenders”) The First Lien Credit Agreement made

1 credit facilities available to Debtor consisting of a \$350,000,000 Revolving Credit Facility and
2 a \$95,000,000 term loan (as thereafter amended, the “Term Loan” and, together with the
3 Revolving Credit Facility, as amended, restated, supplemented, or otherwise modified, the
4 “First Lien Credit Facility”). Pursuant to the First Lien Documents, the “Revolving
5 Obligations” under, and as defined in, the First Lien Credit Agreement are payable prior to the
6 Term Loan Obligations under, and as defined in, the First Lien Credit Agreement. A true and
7 correct copy of the First Lien Credit Agreement is attached hereto as **Exhibit “6.”**

8 32. The First Lien Credit Agreement provides that the Revolving Credit Facility shall
9 be limited to:

10 (a) an amount equal to the lesser of (i) the Maximum Revolver
11 Amount or (ii) the sum of, without duplication, (1) up to eighty-
12 five percent (85%) of the Net Amount of Eligible Accounts, plus
13 (2) up to the lesser of (A) ninety-five percent (95%) of the Net
14 Book Value of Eligible Rental and Sale Equipment and (B) eighty-
15 five percent (85%) of the Net Orderly Liquidation Value of
16 Eligible Rental and Sale Equipment, plus (3) up to the lesser of (A)
17 ninety-five percent (95%) of the Net Book Value of Eligible
18 Transportation Equipment and (B) eighty-five percent (85%) of the
19 Net Orderly Liquidation Value of Eligible Transportation
20 Equipment, plus (4) up to the lesser of (A) sixty percent (60%) of
21 the value (at the lower of cost, on an average cost basis, or market)
22 of Eligible Spare Parts Inventory and (B) eighty-five percent
23 (85%) of the Net Orderly Liquidation Value of Eligible Spare Parts
24 Inventory, minus (5) if the sum of the Aggregate Revolver
25 Outstandings and the aggregate unpaid principal balance of the
26 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 Reserves) minus (c) the sum of the
Blocked Availability Amount and the Supplemental Blocked
Availability Amount.

27 This provision generally serves to provide for a functional limitation on the Revolving Credit
28

1 Facility as the lesser of \$310,000,000 or the borrowing base.

2 33. The Revolving Credit Facility and the Term Loan are both secured by a first lien on
3 substantially all of Debtor's assets and property (as defined in the First Lien Credit Agreement,
4 the "Collateral").

5 34. Interest rates applicable to the Revolving Credit Facility are a fluctuating per annum
6 rate equal to the lesser of (A) a rate selected by Debtor of either (i) the Base Rate, plus the
7 Applicable Margin (250 to 300 basis points), or (ii) the LIBOR Rate, plus the Applicable
8 Margin (350 to 400 basis points) or (B) the Maximum Rate (maximum allowed under law).
9 As of September 30, 2011, the Revolving Credit Facility had a weighted average interest rate
10 of 6.25% per annum.

11 35. Interest rates applicable to the Term Loans and other Term Loan Obligations (as
12 defined in the First Lien Credit Agreement) are a per annum rate equal to the lesser of (A) 16%
13 per annum or (B) the Maximum Rate (the maximum allowed under law).

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

18 37. Pursuant to the First Lien Credit Agreement, the maturity date for the Term Loan is
19 December 15, 2012.

20 **2. Second Priority Notes**

21 38. Under the Indenture, dated as of August 18, 2005 (as amended, supplemented or
22 otherwise modified, the "Second Lien Indenture"; the notes issued thereunder; and together
23 with the Second Lien Indenture and all security, pledge and guaranty agreements and all other
24 documentation executed and/or delivered in connection with the foregoing, including without
25 limitation, the Intercreditor Agreement, each as amended, supplemented or otherwise modified,
26 the "Second Lien Documents" and the indebtedness owed to the Second Lien Lenders pursuant
27 to the Second Lien Documents, plus accrued and unpaid interest thereon and fees and expenses
28 as provided in the Second Lien Documents, collectively, the "Second Lien Obligations")

1 among Debtor, as Borrower, and Wells Fargo Bank, as collateral agent and trustee (in such
2 capacity, the "Second Lien Agent") and the lenders (collectively, the "Second Lien Lenders").
3 Under the Second Lien Indenture, second priority senior secured notes (the "Second Priority
4 Senior Secured Notes") are due August 15, 2013, bearing interest at 9.25% payable semi-
5 annually on February 15 and August 15. A true and correct copy of the Second Lien Indenture
6 is attached hereto as **Exhibit "7."** Pursuant to the Second Lien Indenture, the Second Priority
7 Senior Secured Notes were sold in two tranches for an aggregate purchase price of
8 \$200,000,000 in the first tranche and \$90,000,000 in the second tranche. The Second Priority
9 Senior Secured Notes are secured on a second-priority basis by liens on all of Debtor's assets
10 that secure Debtor's obligations under the Revolving Credit Facility.

11 39. On December 23, 2009, Debtor and Wells Fargo Bank entered into that certain First
12 Supplemental Indenture. A true and correct copy of the First Supplemental Indenture is
13 attached hereto as **Exhibit "8."** Through the First Supplemental Indenture, the holders of 87%
14 of the aggregate principal amount of notes outstanding approved an increase of the minimum
15 Priority Lien Cap (as defined therein) from \$175,000,000 to \$396,000,000.

16 40. As of September 30, 2011, outstanding liabilities from Second Priority Senior Notes
17 payable totaled \$236,666,667 in actual principal outstanding.. As of December 31, 2009, the
18 outstanding principal of the Second Priority Senior Secured Notes amounted to \$290,000,000,
19 after which \$53,300,000 in Second Priority Senior Secured Notes were exchanged at 75% of
20 par value for \$40,000,000 in the Term Loan in January 2010.

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

22 **1. Economic Pressures and Debtor's Responses**

23 41. Through Debtor's primary business of equipment rental, Debtor undertakes the risk
24 of capital investment to expand its rental fleet in exchange for the potential rental revenue
25 streams generated from customers including construction and industrial companies,
26 municipalities, manufacturers, utilities, and homeowners for whom the purchase of equipment
27 is economically unwarranted or who prefer to rent equipment as an alternative to buying the
28 equipment. To generate rental revenue streams in excess of the capital invested into the

1 continually depreciating equipment so as to turn a profit, Debtor is consequently dependent
2 upon its customers' continuing demand for the rental of such equipment over the lifetime of
3 that equipment. As such, Debtor's business is highly dependent on the level of equipment
4 utilization, at acceptable rates, in order to generate ongoing rental revenue and operating
5 profitability. In addition, Debtor attempts to balance capital expenditures in new equipment to
6 meet increases in demand for new rental opportunities with the risk of reduced demand for
7 such equipment before the value of that equipment has been recouped through rental revenue.

8 42. Because of its dependence on rental revenue from the non-residential construction
9 industry, Debtor was adversely impacted by the severity and depth of the downturn in
10 construction activity during the recent economic recession. Specifically, Debtor was impacted
11 by a dramatic reduction in both new construction projects as well as the often-abrupt
12 cancellation of projects for which construction had already begun, which caused the return to
13 the Debtor of a significant amount of equipment on rent, causing a significant decline in
14 equipment utilization compounded by pressure on rental rates, leading to reduced revenues and
15 levels of operating performance. Debtor's revenues were necessarily harmed in the wake of
16 economic concerns both nationally and to a greater extent in the Las Vegas market as Debtor's
17 ability to successfully rent its equipment inventory purchased during periods of growth in the
18 construction industry was adversely impacted during the recession.

19 43. To adapt to the construction downturn, Debtor has proactively employed a number
20 of strategies since 2009 to both retain and develop new rental streams. Among these strategies,
21 Debtor redeployed unutilized rental units to existing branch locations with higher demand and
22 also opened branches in new geographies with high growth potential. Debtor opened 17 new
23 rental branches in 2009, and opened 7 new rental branches in 2010. Such branch openings
24 required limited capital expenditure because Debtor was able to redeploy its existing rental
25 units to these new locations from existing branch locations, and not purchase new equipment.
26 This strategy was used in part to relocate rental equipment following the completion of the City
27 Center project in Las Vegas, which was completed in late 2009 and resulted in a surplus of
28 rental units in Las Vegas.

1 44. By redeploying existing rental fleet and opening new branches in 2009 and 2010,
2 Debtor was able to actively reduce capital expenditures directed for purchases of new rental
3 equipment. Additionally, Debtor was able to limit new capital expenditures by selling excess
4 rental fleet as market conditions warranted. In 2007 and 2008, Debtor invested \$191.6 million
5 and \$178.6 million, respectively, in net purchases of rental equipment, which investments were
6 reduced to \$15.9 million in 2009 and negative \$5.1 million in 2010. This significant reduction
7 in capital expenditures, coupled with the redeployment of Debtor's existing rental fleet
8 inventory to stronger existing and new markets, has subsequently resulted in a significant
9 increase in Debtor's fleet utilization, improvements in rental rates, and improvements in
10 operating performance since the Debtor's business cycle bottomed in the second quarter of
11 2010. This is demonstrated by increases in revenues as well as by a significant improvement in
12 the Debtor's level of Adjusted EBITDA throughout 2011, as described earlier in this
13 document.

14 45. Debtor's equipment rental fleet has a large concentration of aerial equipment, which
15 has both longer useful lives and superior value retention characteristics than general rental
16 equipment. As a consequence of the reduced capital expenditures, however, the average age of
17 the rental fleet has increased and will likely continue to increase, which has led and will
18 continue to lead to increased repair, maintenance, and equipment replacement costs. Debtor
19 believes, however, that the quality of its rental fleet continues to be high and within a similar
20 range by age as the rental fleets of its industry competitors.

21 46. Additionally, in response to the economic downturn, Debtor has undertaken cost
22 containment through reductions in personnel and employee benefits, renegotiation of vendor
23 pricing structures, reduced commissions and bonuses for senior management, and increased
24 scrutiny of all operational and administrative processes to reduce expenses.

25 47. To maintain and increase equipment utilization, Debtor has also expanded its
26 customer base into infrastructure-related industries, alternative energy, and other end-user
27 markets to participate in rental demand distinct from the non-residential construction sector.

28 **2. Financial Performance**

48. 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 the nine months ended September 30, 2011 have increased to \$241.1 million from \$213.0 million compared to the nine month period ended September 30, 2010. Further evidence of the ongoing recovery in Debtor's business is the significant improvement in Debtor's Adjusted EBITDA. From a trough Adjusted EBITDA of \$46.7 million for the LTM period ended June 30, 2010, Debtor's Adjusted EBITDA for the LTM period ended September 30, 2011 has improved to \$71.4 million, and has continued to increase in the period leading up to the date of this filing. Subsequent to the quarter ended September 30, 2011, Debtor's Adjusted EBITDA has improved to \$76.5 million based on preliminary closing of Debtor's most recent monthly financial statements.⁶

49. In 2011, Debtor has realized the benefits of both its proactive response to the economic recession and an ongoing cyclical recovery in the equipment rental industry as demonstrated by its significant increase of utilization, rental rates, and improved financial performance.

50. The chart below details Debtor's revenue, EBITDA and additional financial data for the nine months and three months ending September 30, 2011 and 2010.

SUMMARY FINANCIAL AND OTHER OPERATING DATA (unaudited)
Three And Nine Months Ended September 30, 2011 and 2010
(In millions, rounded)

	<u>Three Months</u>		<u>Nine Months</u>	
	<u>Sep-11</u>	<u>Sep-10</u>	<u>Sep-11</u>	<u>Sep-10</u>
REVENUES				
Equipment rentals and related	\$ 82.3	\$ 68.1	\$ 217.6	\$ 179.1
Sales of rental equipment	1.9	6.3	8.1	16.8
Sales of new equipment & other	<u>6.0</u>	<u>5.8</u>	<u>15.4</u>	<u>17.1</u>

⁶ These statements closed on November 30, 2011.

1	Total Revenue	90.1	80.2	241.1	213.0
2	<i>Revenue Growth</i>	<i>12.4%</i>	-	<i>13.2%</i>	-
3	ADJUSTED EBITDA	22.8	19.2 ⁷	54.4 ⁸	36.0
4	<i>EBITDA Growth</i>	<i>19.1%</i>	-	<i>51.2%</i>	-
5	ADDITIONAL INFORMATION				
6	Fleet Capital Expenditures (Net)	\$ 0.5	\$ (1.3)	\$ (1.9)	\$ (0.9)
7	High Reach Time Utilization	69.7%	62.7%	65.3%	56.1%
8	Dollar Utilization	44.0%	34.5%	38.6%	29.7%

3. Attempts to Reorganize Debt Outside of Bankruptcy

51. 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.

52. As part of the negotiations, Debtor did not make a February 15, 2011 interest payment on Second Lien Notes as well as monthly interest payments on the Term Loan. On February 14, 2011, Debtor entered into forbearance agreements with the Lenders, Liberty Harbor (as Term Loan Lender) and Platinum (as majority Second Lien Notes Holder). On February 15, 2011, Debtor failed to make a \$10,945,833 interest payment on the Second Lien Notes. On March 1, 2011, Debtor failed to make a \$1,266,667 monthly interest payment on the Term Loan, and no monthly payments have been made since this time. On August 15, 2011, Debtor failed to make a \$10,945,833 interest payment on the Second Lien Notes.

53. By June 2011, Ahern had received preliminary approval for the one year extension from all but three of the Revolving Lenders, from all of the Term Lenders and from almost 90% of the Second Lien Lenders. The three holdout Revolving Lenders represent approximately 25% of the Revolving Credit Facility and approximately 10% of the total debt of Ahern. In order to effectuate the one-year extension, Ahern needed 100% of the Revolving

⁷ Adjusted for \$1.0 million litigation settlement payment in September 2010

⁸ Adjusted for \$0.7 million non-cash loss on aircraft sale in April 2011 and \$0.9 million non-cash lease termination cost in June 2011

1 Lenders to approve it. Notwithstanding Ahern's improving financial performance and the
2 Revolving Lenders being substantially over-collateralized based on improving asset appraisals,
3 the three holdout Revolving Lenders would not consent.

4 54. On August 21, 2011, the Revolving Credit Facility matured. At this time, Bank of
5 America began to make advances to Debtor as Agent (the "Agent Advances") to fund Debtor's
6 continuing operations. Ahern continued to negotiate with Bank of America, the Term Lenders
7 and the Second Lien Lenders for the past four months to effectuate the extension of the
8 Revolving Credit Facility and agreed upon the proposed DIP financing to essentially effectuate
9 the terms of the extension in bankruptcy.

10 55. Ahern's financial performance continues to improve. Ahern has been forced to seek
11 bankruptcy protection to address the maturity of its Revolving Credit Facility despite the fact
12 that approximately 90% of Ahern's creditors would have consented to an extension.

13 **II.**
14 **FIRST DAY MOTIONS**

15 56. The Debtor's transition into Chapter 11 proceedings must be comprehensively and
16 effectively organized to ensure that it will be able to operate smoothly in bankruptcy and be
17 afforded the opportunity to successfully emerge from this Chapter 11 Case. Accordingly, it is
18 critical that Debtor maintain strong relationships with its customers, employees, partners,
19 vendors, creditors, and such other parties that enable Debtor to conduct its business. To
20 maintain and foster these relationships, it is important to minimize the distractions to the
21 Debtor's business operations that could result from Debtor's petitioning for Chapter 11 relief.

22 57. I have reviewed and am generally familiar with the contents of each of the First Day
23 Motions. Based on that familiarity and information supplied to me by other members of
24 Debtor's staff and Debtor's legal advisors, I believe that the relief sought in each of the First
25 Day Motions is necessary to enable the Debtor to operate in this Chapter 11 Case with minimal
26 disruption or loss of productivity or value. I also believe that the First Day Motions are vital to
27 Debtor's successful reorganization and are in the best interests of the Debtor and its creditors.

28 **A. Emergency Motion for Order (i) Authorizing Debtor to Pay Wages, Salaries,
Benefits, Reimbursable Business Expenses, and Other Employee Obligations, and**

1 **(ii) Authorizing and Directing Financial Institutions to Honor and Process Checks**
2 **and Transfers Related to Such Obligations.**

3 58. As of the Petition Date, Debtor employed approximately 1,800 people (the
4 “Employees”) in the ordinary course of its business. Of the Employees, approximately 500 are
5 paid on salary and 1,300 are paid hourly. In addition, Debtor also utilizes the services of
6 approximately 15 independent contractors (the “Independent Contractors”). Continued service
7 by the Employees and Independent Contractors is vital to Debtor’s ongoing operations; their
8 skills, knowledge, and understanding of Debtor’s operations, customer relations, and
9 infrastructure are essential to the effective reorganization of Debtor.

10 59. Just as Debtor depends on its Employees to operate, the vast majority of the
11 Employees depend on Debtor for their livelihood. In this current economic climate, and with
12 the bulk of the Employees relying exclusively on their compensation from Debtor to continue
13 to pay their daily living expenses, the Employees would be exposed to significant financial
14 hardships if Debtor is not permitted to pay them.

15 60. Debtor pays its salaried and hourly Employees on a weekly basis. Debtor’s payrolls
16 are paid one week in arrears. The average gross payroll per period is approximately
17 \$1,715,000; \$1,045,000 for hourly Employees and \$655,000 for salaried Employees.
18 Additionally, vacation payout for hourly Employees is included in payroll the first week of the
19 month, increasing the average gross payroll in that first week of each month by approximately
20 \$125,000. The total estimated amount of wages, salaries, and vacation payouts⁹ (collectively,
21 the “Wages”) that will have accrued but remain unpaid as of the Petition Date is approximately
22 \$2,800,000.

23 61. Three additional forms of performance-based compensation (collectively,
24 “Performance-Based Compensation”) are paid on the fifteenth of each month. Sales
25 commissions of approximately \$500,000 are paid out for rental and retail sales made by sales
26 Employees in the prior month; approximately 220 Employees are eligible to receive sales

27 ⁹ Vacation payouts are amounts paid to hourly employees in the month of their anniversary of employment with
28 Debtor. Hourly employees do not get paid for any vacation time when taken. Rather, after one year of employment
with Debtor, Debtor pays the Employee its accrued vacation pay for that year.

1 commissions. Referral bonuses of approximately \$3,300 are paid out to Employees who refer
2 customers to the sales department; on average, approximately 13 Employees receive referral
3 bonuses each month. Lastly, profit commissions of approximately \$100,000 are paid to branch
4 managers and others for meeting various profit requirements; approximately 25 Employees
5 received profit commissions for November 2011. As of the Petition Date, Debtor owed its
6 Employees approximately \$400,000 in Performance-Based Compensation.

7 62. In the ordinary course of Debtor's business, Employees are compensated by the
8 payment of Wages and Performance-Based Compensation and Independent Contractors are
9 compensated by the payment of commissions ("Commissions").¹⁰ As of the Petition Date,
10 Employees and Independent Contractors were owed, or had accrued in their favor, various
11 sums of Wages, Performance-Based Compensation, and Commissions, including prepetition
12 amounts (collectively, the "Wage Obligations"). As of the Petition Date, the total estimated
13 amount of Wage Obligations that will have accrued but remain unpaid is approximately
14 \$3,300,000.

15 63. Debtor is required by law to withhold from the Employees' Wages amounts related
16 to federal, state, and local income taxes, as well as social security and Medicare taxes and to
17 remit the same to the appropriate taxing authorities. To the extent Debtor has deducted funds
18 from the Employees' Wages sufficient to pay prepetition taxes, withholding taxes, and FICA
19 contributions attributable to Wage Obligations which are due but have not yet been paid to any
20 governmental entity, Debtor seeks authorization to continue to deduct these funds and pay
21 them to such governmental entities in the ordinary course of business.

22 64. In addition, Debtor is required to make matching payments from its own funds on
23 account of social security and Medicare taxes, and to pay, based on a percentage of gross
24 payroll (and subject to state-imposed limits), additional amounts to the taxing authorities for,
25 among other things, state and federal unemployment insurance. Debtor seeks authorization to
26 continue to pay these funds in the ordinary course of business.

27 ¹⁰ As of the Petition Date, the total estimated amount of Commissions that will have accrued but remain unpaid to
28 Independent Contractors is approximately \$100,000.

1 65. In the ordinary course of processing payroll checks for its Employees, Debtor also
2 withholds certain amounts for various garnishments (such as tax levies, child support,
3 payments to bankruptcy trustees, and student loans) (collectively, the "Garnishments"), which
4 amounts have not yet been forwarded to the respective law firms and government agencies
5 who are tasked with collecting the funds. As of the Petition Date, Debtor estimates
6 approximately \$25,000 in Garnishments have been withheld. Debtor requests permission to
7 pay over any such withholdings in the ordinary course of business.

8 66. Debtor has also accrued, in the ordinary course of its business, amounts for
9 contributions (the "Employee Benefit Contributions") to 401(k) retirement plans, health and
10 benefit programs, and voluntary insurance plans (collectively, the "Employee Benefit Plans")
11 pertaining to services rendered by the Employees prior to the Petition Date. Specifically, the
12 Employee Benefit Plans include, but are not limited to, 401(k) contributions, medical and
13 dental benefits, life insurance, long-term and short-term disability insurance, flexible spending
14 accounts for health care and dependent care, and employee assistance program benefits. The
15 Employee Benefit Contributions include (i) monies withheld from the Employees' Wages and
16 (ii) monies contributed by the Debtor on behalf of the Employees in accordance with the
17 Employee Benefit Plans. The Employee Benefit Contributions are an integral part of the
18 compensation to which the Employees are entitled. The amount of Employee Benefit
19 Contributions which will have accrued, but will remain unpaid, prior to the Petition Date are
20 estimated to be \$500,000 in nonunion contributions and \$25,000 in union contributions, for a
21 total of \$525,000.

22 67. Certain authorized Employees may have used their own personal credit cards or
23 expended their own personal funds, in the ordinary course of their employment, on behalf of
24 and for the benefit of Debtor ("Reimbursable Business Expenses"). As of the Petition Date,
25 Employees may not have been reimbursed by Debtor for these Reimbursable Business
26 Expenses. Debtor cannot provide a definitive amount of Reimbursable Business Expenses as
27 of the Petition Date, but based upon prior business practices, Debtor estimates that such
28 amount does not exceed \$100,000. Debtor seeks authorization to pay such Reimbursable

1 Business Expenses in the ordinary course of business.

2 68. This Chapter 11 Case was filed during Debtor's normal payroll periods for hourly
3 and salaried Employees and during its normal reimbursement cycle for Reimbursable Business
4 Expenses. Employees rendered services and incurred Reimbursable Business Expenses in
5 anticipation of receiving their standard compensation and reimbursements; however, as of the
6 Petition Date, such obligations are unpaid and unreimbursed.

7 69. If Debtor is unable to take the necessary steps to ensure that Wage Obligations,
8 Employee Benefit Contributions, and Reimbursable Business Expenses are paid for the pay
9 period commencing immediately prior to the Petition Date and concluding post-petition, there
10 is a significant risk that a large number of essential Employees will resign and remaining
11 Employees will be discontented and demoralized, thus negatively affecting a successful
12 reorganization.

13 70. Debtor also provides workers' compensation benefits to its Employees at the
14 statutorily-required levels (the "Workers' Compensation System"). Debtor maintains the
15 Workers' Compensation System through Zurich American Insurance Company, subject to a
16 \$500,000 self-insured retention per occurrence.

17 71. Debtor expects that it will have ample liquidity, based upon cash flow from
18 operations and available postpetition liquidity under Debtor's proposed debtor-in-possession
19 financing, to pay the Wage Obligations, Employee Benefit Contributions, and Reimbursable
20 Business Expenses.

21 **B. Emergency Motion for Order Authorizing Maintenance of Prepetition Cash**
22 **Management System and Bank Accounts.**

23 72. Debtor has an elaborate centralized cash management system (the "Cash
24 Management System") to collect and transfer funds generated by its operations and disburse
25 those funds to satisfy the obligations required to operate its business. As is typical with most
26 large corporate enterprises, in the ordinary course of its business, Debtor utilizes the Cash
27 Management System to efficiently collect, transfer, and disburse funds generated through
28 Debtor's operations and to accurately record such collections, transfers, and disbursements as

1 they are made.

2 73. Debtor's master depository operating account is located at Bank of America (the
3 "Master Account") (Acct. No. ****9787). Debtor generates revenue and cash primarily
4 through the sale and rental of construction equipment and related contractor supplies at stores
5 located in 22 states.

6 74. Any sale proceeds or payments made by cash or check and received at Ahern's
7 corporate offices are deposited into the Master Account each business day. Any sale proceeds
8 or payments made by cash or check and received at an Ahern operating branch location (except
9 Utah, Colorado, Nebraska, and North Dakota branch locations) are deposited each business day
10 into that branch's specific Bank of America sub-deposit account (collectively, the "BofA Sub-
11 Deposit Accounts"). Bank of America sweeps all funds in the BofA Sub-Deposit Accounts
12 into the Master Account every day. Any sale proceeds or payments made by cash or check and
13 received at an Ahern operating branch location in Utah, Colorado, Nebraska, or North Dakota
14 are deposited each business day into a Wells Fargo sub-deposit account (the "WF Sub-Deposit
15 Account"). A standing wire of all funds in the WF Sub-Deposit Account is made each day to
16 the Master Account. Sales proceeds or payments received by wire or ACH are deposited
17 electronically into the Master Account.

18 75. Sales proceeds or payments received by credit card are processed through First
19 National Merchant Services and are electronically deposited directly into the applicable
20 Debtor-maintained deposit account based on the type of credit card used, i.e., Visa/Mastercard,
21 American Express, or Discover. All deposits into the credit card deposit accounts are swept to
22 a master credit card deposit account and then swept to the Master Account.

23 76. The foregoing deposit accounts are not used to pay operating expenses and serve
24 only as temporary holding accounts (often referred to as "zero balance accounts"). Moreover,
25 funds held in the Master Account are then automatically swept and applied to Debtor's
26 outstanding prepetition revolving loan to reduce the balance on a daily basis.

27 77. Debtor also maintains a master funding account (the "Master Funding Account") to
28 facilitate the outflow of funds. Debtor uses the Master Funding Account to make necessary

1 and periodic disbursements of funds into Debtor's accounts payable account (the "AP
2 Account"), payroll account (the "Payroll Account"), and petty cash account (the "Petty Cash
3 Account").

4 78. Specifically, Debtor uses the AP Account to satisfy all accounts payable obligations
5 as they become due. Debtor utilizes the Payroll Account to satisfy Debtor's payroll
6 obligations; the Payroll Account is funded on a weekly basis. Debtor's Gross payroll averages
7 approximately \$1,715,000 per pay period. Debtor also maintains the Petty Cash Account in
8 order to pay small miscellaneous expenses arising from time to time.

9 79. Debtor also maintains a few bank accounts for insurance purposes only (the
10 "Insurance Accounts"). The Insurance Accounts pay Debtor's insurance premium obligations
11 such as employees' medical and dental claims under Ahern's existing medical and dental
12 insurance policies.

13 80. Debtor proposes to maintain its Cash Management System and Bank Accounts
14 postpetition, as they are essential to Debtor's continued operations.

15 81. Debtor's Cash Management System is an ordinary, usual, and important business
16 practice. The Cash Management System enables Debtor to maintain control over the receipt
17 and disbursement of cash, and to generate timely and accurate financial information critical to
18 managing Debtor's business during the pendency of this Chapter 11 Case. If these practices
19 and procedures are disrupted, Debtor's effort to reorganize may be jeopardized.

20 82. Debtor's Cash Management System is similar to those commonly employed by
21 corporate enterprises of comparable size and complexity. Many corporate enterprises use these
22 cash management systems because such systems provide numerous benefits. Among the most
23 important of these benefits is the ability to control corporate funds and ensure cash availability,
24 to reduce the cost of borrowed funds, to reduce administrative expenses, and to have easy
25 access to timely and accurate financial information.

26 83. Establishing a new cash management system would entail significant delay and
27 cost. At a minimum, substantial disruptions to Debtor's business would occur by, among other
28 things, delaying collection and disbursement of the payments to vendors, lessees, employees,

1 and customers. This would in turn harm stakeholder confidence, thus disrupting mutually
2 beneficial relationships with trade creditors, customers, and employees, among others. Such a
3 negative impact on Debtor's operations would hinder a successful reorganization.

4 84. Further, maintaining the existing Cash Management System would not prejudice
5 any party. Debtor will maintain strict records with respect to all transfers of cash so that they
6 are able to readily account for all transactions. Debtor's maintenance of its existing Cash
7 Management System is not only of critical importance to Debtor's business operations, but is
8 also in the best interests of Debtor's estate and creditors.

9 C. **Emergency Motion for Order Authorizing Debtor to Honor its Prepetition**
10 **Obligations to its Customers and to Continue its Customer and Rental Programs in**
11 **the Ordinary Course of Business.**

12 85. As of the Petition Date, Debtor has been in the equipment rental business for more
13 than 50 years and remains one of the largest and leading equipment rental companies in the
14 United States, particularly in the Southwest. As stated previously, through 74 branches located
15 throughout 22 states, Debtor has available for rent more than 37,000 different pieces of
16 equipment ranging from high reach equipment such as boom lifts and scissor lifts, heavy
17 equipment, lawn and garden equipment, and hand tools. To accommodate its customers'
18 needs, Debtor offers daily, weekly, and monthly rental terms and rates.

19 86. Debtor's equipment rentals and related revenues generate approximately \$285
20 million in annual revenue, 89% of Debtor's total revenue. Debtor's other revenue is derived
21 from the sale of rental equipment (5%) and sales of new equipment and other (6%).

22 87. Debtor's business remains operationally sound and generates significant EBITDA
23 and positive cash flow before debt service. However, with approximately \$620,000,000 in
24 funded debt, Debtor's business is over-leveraged. Debtor's leverage issue became problematic
25 as a result of the severe downturn in the United States economy and resultant decrease in
26 construction activity (both residential and commercial), which negatively impacted customer
27 demand for rental equipment and the value of Debtor's rental fleet. As a consequence, over the
28 last few years, Debtor has experienced lower equipment rental volumes, operating cash flows,
and borrowing capacity.

1 88. As Debtor operates in a highly competitive industry, Debtor must actively cultivate
2 customer support and constantly work to ensure that it is able to respond to its customers'
3 rental equipment needs. Over the course of its history, Debtor has developed a number of
4 programs to help develop customer loyalty and maximize efficient use of its assets, including
5 rebates, re-rentals, rental splits, and credits (collectively, the "Customer and Rental
6 Programs"), each of which are described in greater detail below.

7 89. Debtor maintains approximately 165 rebate and discount programs (collectively, the
8 "Rebate Programs") with certain of its customers, particularly with larger regional or national
9 accounts. Each Rebate Program is generally based on the volume of business the customer
10 transacts with Debtor and tailored to the specific pricing and rental needs of the customer.
11 Certain Rebate Programs may also be provided pursuant to a pricing agreement between
12 Debtor and the particular customer.

13 90. Debtor implements the Rebate Programs by issuing checks or credits in respect of
14 past business (collectively, the "Rebates"). Debtor will typically accrue obligations to its
15 customers on account of the Rebate Programs over the course of the year, with Rebates being
16 paid to or credited against a particular account on an annual basis. Debtor estimates that the
17 obligations arising under Rebate Programs from the prepetition period is approximately
18 \$415,000.

19 91. Occasionally, Debtor is unable to meet a particular customer's rental needs for
20 equipment because the requested equipment is not in stock. In such instances, Debtor may rent
21 equipment from a third party (each, a "Third Party," and in reference to more than one Third
22 Party, "Third Parties")¹¹ and then re-rent such equipment (the "Re-Rentals") to the customer.
23 Debtor generally returns the equipment to the respective Third Party upon the customer's rental
24 expiration in the ordinary course of business. Debtor will typically execute short-term rental
25 agreements with the applicable Third Party in connection with these transactions. Generally,
26

27 ¹¹ The primary Third Parties Debtor has Re-Rentals arrangements with are Acme Lift Company, Allied Rent-All,
28 JLG Industries, Inc., and Xtreme Manufacturing, LLC. Debtor notes that Xtreme Manufacturing, LLC an affiliated
entity to Debtor.

1 the rates charged by Third Parties under these agreements are significantly discounted when
2 compared with retail rental rates. Re-Rentals enable Debtor to retain its customer base and
3 maintain its rental business on profitable terms even when its own inventory may not be readily
4 available or would require Debtor to incur significant shipping costs.

5 92. Debtor believes that customers holding Re-Rentals could be irreparably harmed if
6 Debtor was not able to honor prepetition obligations to Third Parties arising from Re-Rentals
7 (collectively, the “Re-Rental Obligations”). As of the Petition Date, Debtor anticipates that
8 certain equipment rented from Third Parties may be in the possession of its customers. If
9 Debtor cannot, and does not, honor the Re-Rental Obligations, the Third Parties may seek to
10 repossess this equipment notwithstanding their being subject to the automatic stay. Although
11 Debtor would vigorously oppose any such actions and seek to enforce the automatic stay
12 against the Third Parties, such Third Parties’ attempts to repossess equipment in the possession
13 of Debtor’s customers could significantly damage Debtor’s reputation and invaluable customer
14 relationships, thus jeopardizing Debtor’s potential for a successful reorganization.

15 93. Moreover, Debtor’s ability to profitably meet its customer needs depends on
16 reciprocal relationships and associated goodwill from Third Parties—many of whom are also
17 competitors. The favorable rates offered by Third Parties are often based on strong
18 professional relationships and “handshake” understandings between Debtor and the Third
19 Parties. Debtor also generates significant revenue from renting equipment to Third Parties
20 under reciprocal re-rental arrangements with the Third Parties, making these mutually
21 beneficial relationships even more important to the success of Debtor’s reorganization efforts.

22 94. Because these relationships and agreements with the Third Parties are not governed
23 by long-term contracts, the Third Parties are under no obligation to continue to provide
24 discounted rental rates to Debtor in the future; nor are Third Parties under any binding
25 obligation to provide future Re-Rentals. As such, the Third Parties may refuse to provide
26 Debtor with either customary discounts and/or in-demand and on-demand equipment if Debtor
27 fails to satisfy the Re-Rental Obligations. Third Parties might also view Debtor’s failure to
28 honor Re-Rental Obligations and the negative stigmas associated with the seeking of a Chapter

1 11 reorganization as motivation to aggressively capture market share at Debtor's expense.
2 Accordingly, failure to honor prepetition Re-Rental Obligations could severely, if not fatally,
3 damage vital commercial relationships that otherwise represent a profitable element of
4 Debtor's operations.

5 95. Debtor estimates it remits \$1,200,000 per month to Third Parties in Re-Rental
6 Obligations. As of the Petition Date, Debtor estimates that certain Third Parties were entitled
7 to approximately \$1,000,000 in Re-Rental Obligations. Re-Rental Obligations arise only
8 where Debtor is already set, based on a rental agreement with one of its own customers, to
9 receive rental receipts in excess of the costs associated with the corresponding Re-Rentals. As
10 such, payment of the Re-Rental Obligations as provided herein will not impose any net cost on
11 Debtor's estate.

12 96. Debtor also partners with original equipment manufacturers and other parties
13 (collectively, the "OEMs") under which Debtor takes possession of certain equipment owned
14 by the OEMs, which Debtor then leases to customers (the "Rental Split Program"). Instead of
15 purchasing rental equipment from the OEM, Debtor merely takes possession and control of the
16 equipment and splits the rental income with the OEM supplying the equipment (the "Rental
17 Splits").

18 97. The specific legal structure around Rental Splits can vary significantly by
19 transaction. In certain instances, Rental Splits will be documented by short form agreements
20 between Debtor and the applicable OEM, through which Debtor will hold possession of the
21 equipment and is required to pay a monthly fee to the OEM. This fee may be structured as
22 either a flat monthly fee or a percentage of the rent paid by Debtor's customers for the use of
23 such equipment. In other instances, agreements governing the Rental Splits are not
24 comprehensively documented, and Debtor may simply hold and rent the equipment through
25 either purchase orders or informal arrangements with the OEM. Debtor often has the non-
26 binding option to purchase equipment subject to Rental Splits. Under those circumstances,
27 amounts paid to OEMs as part of the Rental Split will generally be credited against the ultimate
28

1 purchase price of the equipment.¹² Nevertheless, OEMs are generally under no continuing
2 obligation to supply Debtor with rental equipment on the highly favorable terms provided
3 through the Rental Splits.

4 98. Rental Splits provide Debtor and its customers substantial benefits. Debtor can
5 obtain access to expensive equipment without the burden of making a large, up-front capital
6 expenditure, which, in turn, allows Debtor to offer its customers a wider variety of rental
7 equipment at competitive pricing terms. If Debtor is not authorized to perform its obligations
8 under the Rental Splits, its cost structure, access to new and expensive rental equipment, and
9 customer relationships would all suffer substantially at a time most critical for Debtor to
10 maintain operational stability and customer relationships. Debtor would also forfeit substantial
11 savings on the purchase price of equipment if it was unable to continue operating under its
12 current Rental Splits because, if forced to purchase similar equipment from alternative sources,
13 Debtor would not receive the benefit of amounts that would otherwise be credited against the
14 purchase price of such rental equipment through the Rental Splits. Debtor's inability to
15 continue the Rental Splits or otherwise honor prepetition obligations arising from the Rental
16 Splits could also severely damage Debtor's relationships with OEMs, which could result in
17 Debtor losing the opportunity to provide necessary rental equipment at favorable rates to its
18 customers.

19 99. As of the Petition Date, certain OEMs were entitled to proceeds from Rental Splits
20 based on equipment held by Debtor. The estimated value of prepetition Rental Splits proceeds
21 that are outstanding is approximately \$450,000.

22 100. In the ordinary course of business, Debtor offers credits for, among other things,
23 refunds and billing adjustments (each, a "Credit," and collectively, the "Credits"). Such
24 Credits may occur, for example, when a customer leases equipment from Debtor for a specific
25 project, pays Debtor a deposit in advance based on an estimated time of use, and the deposit
26 exceeds the actual charge. Sometimes Debtor's payment of such Credit is necessary to obtain

27 ¹² When Debtor does not exercise this option, Debtor will generally return the rental equipment to the OEM in the
28 ordinary course of business.

1 lien releases from the customer's lenders and/or subcontractors. Additionally, Credits may be
2 given when a customer disputes a particular charge on a billing statement or simply overpays
3 on its account for any number of reasons. On average, Debtor processes approximately 50
4 Credits per month, each Credit averaging approximately \$600.

5 101. Without doubt, the Customer and Rental Programs generate customer loyalty and
6 goodwill, increase Debtor's competitive position, and ensure customer satisfaction. Moreover,
7 the Customer and Rental Programs enable Debtor to utilize equipment fleet in an efficient
8 manner in response to customer demand. Debtor believes ongoing business relationships and
9 market share may deteriorate if customers, Third Parties, or OEMs perceive that Debtor is
10 unable or unwilling to fulfill prepetition promises made through the Rental Programs. The
11 same would be true if customers perceived that Debtor will no longer be offering the types or
12 quality of services upon which its customers have come to rely. Further, Debtor's competitors
13 will likely increase their efforts to lure away customers and to create doubts as to Debtor's
14 ability to successfully emerge from Chapter 11.

15 **D. Motion for Order Pursuant to 11 U.S.C. §§ 105(a) and 363 Authorizing Debtor to**
16 **pay Prepetition Claims of Warehousemen, Distributors, Shippers, Freight Brokers,**
and Other Logistics Providers.

17 102. Debtor's equipment inventory and delivery system depends upon a network of
18 third-party warehousemen, distributors, shippers, freight brokers, and other logistic providers
19 (collectively, the "Freight Claimants") that transport and store equipment throughout the
20 United States on behalf of Debtor. Debtor's 2011 average monthly expenses with respect to
21 the Freight Claimants was approximately \$1,400,000.

22 103. Debtor's business operations primarily consist of the sale or rental of construction
23 equipment. Debtor's ability to satisfy its customer obligations depends on the frequent, and
24 often daily, delivery of equipment to Debtor, customers, or Third Parties.¹³ Debtor employs
25

26 ¹³ Third Parties are defined and described more fully in Debtor's *Emergency Motion for Order Authorizing Debtor*
27 *to Honor its Prepetition Obligations to its Customers and to Continue its Customer and Rental Programs in the*
28 *Ordinary Course of Business*, filed contemporaneously with this Motion. Therein, Third Parties are defined as those
entities with which Debtor rents equipment from so that it can, in turn, re-rent such equipment to its own customers.
Third Parties may also rent equipment from Debtor and then re-rent such equipment to their own customers.

1 numerous parties, including the Freight Claimants, to ensure that its supply-chain system runs
2 smoothly. Specifically, Debtor contracts with warehousemen to store equipment after its sale
3 or rental to and from customers or Third Parties; Debtor engages distributors, shippers, and
4 other logistic providers to transport, store, and deliver equipment to Debtor's customers.

5 104. As a result, in the ordinary course of business, the Freight Claimants regularly
6 have possession of equipment being provided to Debtor as well as equipment intended for
7 delivery to its customers and Third Parties. As of the Petition Date, certain of the Freight
8 Claimants have outstanding invoices for, and are in possession of, equipment that was, or is to
9 be, delivered to Debtor, its customers, or Third Parties prior to the Petition Date. Debtor
10 estimates the total outstanding amount owed to the Freight Claimants as of the Petition Date
11 does not exceed \$1,300,000.¹⁴

12 105. Under state laws, Freight Claimants may have a lien¹⁵ on the equipment in their
13 possession, which lien secures the charges or expenses incurred in connection with the
14 transportation or storage of such equipment.¹⁶ Additionally, pursuant to Section 363(e) of the
15 Bankruptcy Code, certain of the Freight Claimants, as bailees, may be entitled to adequate
16 protection in the form of a possessory lien. As a result, these Freight Claimants may refuse to
17 deliver or release equipment in their possession or control before the prepetition amounts owed
18 to them by Debtor (collectively, the "Freight Claims") have been satisfied and any applicable
19 liens revoked.

20 106. It is essential for Debtor's business operations and reorganization efforts that

21 ¹⁴ Due to the nature of the Freight Claimants' and Debtor's invoicing procedures, there is a 3-week delay before
22 invoices are entered into Debtor's accounts payable system. As such, Debtor expects there will be amounts owed to
23 the Freight Claimants for prepetition services that were not in Debtor's accounts payable system and thus not
included in this amount.

24 ¹⁵ By this Motion, Debtor does not concede that any liens (contractual, common law, statutory, or otherwise)
25 described in this Motion are valid. To the extent that Debtor makes any payments with respect to Freight Claims, no
such payment shall be deemed a waiver of any of Debtor's rights, and Debtor expressly reserves the right to contest
the extent, validity, and perfection of all such liens, and/or to seek avoidance thereof.

26 ¹⁶ For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part, that a "carrier has a lien
27 on the equipment covered by a bill of lading for charges subsequent to the date of its receipt of the equipment for
storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of
28 the equipment incident to their transportation or reasonably incurred in their sale pursuant to law." See U.C.C. § 7-
307(1) (2003).

1 Debtor maintains a reliable and efficient supply and distribution network. If Debtor's
2 customers and Third Parties are unable to receive equipment on a timely and uninterrupted
3 basis, Debtor likely will suffer, at a minimum, a significant loss of revenue and customer
4 goodwill, thereby causing substantial and potentially irreparable harm to its businesses and
5 reorganization efforts. Indeed, even if the Freight Claimants did not have valid liens under
6 applicable state law, their control, possession, and retention of Debtor's equipment would
7 severely disrupt the flow of equipment between Debtor and its customers and Third Parties.

8 107. Debtor believes that the value of the equipment in the Freight Claimants'
9 possession, and the potential injury to Debtor if such equipment is not timely released, is likely
10 to substantially exceed the amount of Freight Claims asserted by such parties. Finally, Debtor
11 believes that, in most instances, there are no viable, timely, and cost-effective alternatives to
12 the Freight Claimants. Thus, for the foregoing reasons, Debtor believes that it is necessary and
13 essential to its reorganization efforts and the enhancement and preservation of the value of its
14 estate that it be permitted to make payments, in its sole discretion, on account of certain Freight
15 Claims.

16 **E. Motion Pursuant to 11 U.S.C. §§ 105(a) and 366 for an Order Determining that**
17 **Adequate Assurance has been Provided to Debtor's Utility Providers.**

18 108. In the ordinary course of its business, Debtor incurs utility expenses for water,
19 sewer service, electricity, gas, telephone service, internet service, cable television, and waste
20 management. These utility services are provided by the utilities (as such term is used in
21 Section 366, collectively, the "Utility Providers") and limited to those listed on Exhibit "2"
22 (the "Utility Service List") to the *Emergency Motion Pursuant to 11 U.S.C. §§ 105(a) and 366*
23 *for Order Determining That Adequate Assurance Has Been Provided to Debtor's Utility*
24 *Providers* (the "Utilities Motion").¹⁷

25 _____
26 ¹⁷ Although the Debtor believes that the Utility Service List includes all of its Utility Providers, the Debtor reserves
27 the right, without the need for further order of the Court, to supplement the Utility Service List if any Utility
28 Provider has been omitted. Additionally, the listing of an entity on the Utility Service List is not an admission that
such entity is a utility within the meaning of Section 366, and the Debtor reserves the right to contest any such
characterization in the future.

1 109. On average, Debtor spends approximately \$416,000 each month on utility service
2 costs. As of the Petition Date, Debtor believes it is substantially current on its utility service
3 payments.

4 110. Preserving utility services on an uninterrupted basis is essential to Debtor's
5 ongoing operations and, therefore, to the success of its reorganization. Any interruption of
6 utility services, even for a brief period of time, would disrupt Debtor's ability to continue
7 servicing its customers, thereby negatively impacting customer relationships, revenues, and
8 profits. Such a result could jeopardize Debtor's reorganizations efforts and, ultimately,
9 decrease the value of the estate and creditor recoveries. It is therefore critical that utility
10 services continue uninterrupted during this Chapter 11 Case.

11 111. Debtor intends to pay postpetition obligations owed to the Utility Providers in a
12 timely manner. Debtor expects that it will have ample liquidity, based upon cash flow from
13 operations and available postpetition liquidity under Debtor's proposed debtor-in-possession
14 financing, to pay its postpetition obligations to its Utility Providers.

15 112. To provide additional assurance of payment to the Utility Providers, Debtor
16 proposes to deposit \$208,000 (a sum equal to more than 50% of Debtor's estimated cost of its
17 monthly utility consumption) into a separate, interest-bearing account (the "Utility Deposit
18 Account") for the benefit of any Utility Provider, unless (a) a Utility Provider agrees to a lesser
19 amount or (b) a Utility Provider currently holds a security deposit or surety bond in an amount
20 equal to or greater than 50% of Debtor's average monthly cost of utility service from that
21 Utility Provider. The Utility Deposit Account will provide still further assurance of future
22 payment, over and above Debtor's ability to pay for future utility services in the ordinary
23 course of business based upon its cash flow from operations and available postpetition liquidity
24 under Debtor's proposed debtor-in-possession financing (collectively with the Utility Deposit
25 Account, the "Proposed Adequate Assurance"). Debtor submits that the Proposed Adequate
26 Assurance provides protection well in excess of that required to grant sufficient adequate
27 assurance to the Utility Providers.

28 **F. Application for Order Authorizing the Employment of Kurtzman Carson**

1 **Consultants LLC as Claims and Noticing Agent for Debtor.**

2 113. The Debtor has determined that in order to carry out its duties as provided for
3 under Sections 1107 and 1108 of the Bankruptcy Code, it is necessary and in the best interest
4 of the estates to employ an experienced claims and noticing agent. The Debtor desires to
5 employ KCC as its claims and notice agent.

6 114. Debtor believes that engaging KCC in such capacity will expedite the service of
7 Rule 2002 notices, streamline the claims administration process, and permit the Debtor to focus
8 on its reorganization efforts.

9 115. Debtor respectfully submits that KCC's rates for its services in connection with
10 the notice, claims processing and solicitation services are competitive and comparable to the
11 rates charged by their competitors for similar services.

12 **G. Motion for Interim and Final Orders (I) Authorizing Debtor to: (A) Obtain**
13 **Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2),**
14 **364(c)(3), 364(d)(1) and 364(e), (B) Utilize Cash Collateral Pursuant to 11 U.S.C. §**
15 **363, and (C) Grant Adequate Protection to Prepetition Secured Parties Pursuant to**
16 **11 U.S.C. §§ 361, 362, 363, and 364, and (II) Scheduling Final Hearing Pursuant to**
17 **Bankruptcy Rules 4001(b) and (c).**

18 116. I participated in the negotiation of the DIP Credit Agreement and am familiar
19 with its material terms. The Debtor's Board of Directors discussed the proposed DIP Loan at
20 length in consultation with our professionals. After these deliberations, the Board unanimously
21 agreed that the DIP Credit Agreement was reasonable, that entering into the DIP Credit
22 Agreement would be in the best interests of the Debtor and a vital component of the Debtor's
23 ability to reorganize, and that entering into the DIP Credit Agreement represented a proper
24 business judgment of the Debtor.

25 117. The use of cash collateral and the interim availability under the DIP Credit
26 Agreement as reflected in the Initial Budget, attached hereto as **Exhibit "9,"** is necessary to
27 ensure the Debtor's liquidity through approximately March 17, 2012, and is essential from the
28 Debtor's perspective. The interim availability will allow for the orderly transition into the
Chapter 11 Case and provide assurances to the Debtor's suppliers, vendors, and employees that
they will be paid for postpetition services. These assurances will be vital to the Debtor's

1 efforts to persuade our vendors to continue shipping goods and providing services to the
2 Debtor on customary trade credit. The liquidity provided by the DIP Financing will permit the
3 Debtor to, among other things, sustain its operations, purchase new inventory and provide
4 assurances to the Debtor's customers that the Debtor will be able to deliver products and
5 services during this Chapter 11 Case. The interim financing will also permit the Debtor to
6 begin the process of restructuring through evaluation of executory contracts and operational
7 restructuring in conjunction with its outside advisors, steps which are an important component
8 of an overall restructuring plan.

9 118. With the funds from the DIP Loan, together with cash collateral, the Debtor will
10 have sufficient time and breathing room to adjust its capital structure, address its operational
11 issues, realign cash flows and business cycles, and achieve EBITDA that will allow it to
12 emerge from Chapter 11 as strong, viable operating enterprise, better equipped to survive in
13 this changed economic environment. The DIP Loan allows the Debtor to continue operations
14 and adjust its capital, and will result in an increase in the going-concern value of the Debtor's
15 business and the value of the Prepetition Lenders' liens.

16 119. [Paragraph 119 intentionally omitted.]

17 120. By contrast, absent immediate access to cash collateral and the working capital
18 that will be available to the Debtor under the DIP Loan, as provided in the Initial Budget, the
19 Debtor will have insufficient cash to continue its business operations. Absent immediate
20 access to cash, the Debtor will be unable to meet payroll, honor its Customer and Rental
21 Programs, maintain a reliable and efficient supply and distribution network, maintain its
22 equipment, purchase new inventory, or preserve utility services on an uninterrupted basis, all
23 of which are critical to the Debtor's ability to assure its suppliers, vendors, and employees that
24 they will be paid for postpetition services and assure its customers that the Debtor will be able
25 to deliver products and services during this Chapter 11 Case, which are critical to preserve the
26 Debtor's going-concern value for the benefit of its Estate and its creditors. A failure to secure
27 the DIP Loan and the use of the cash collateral would likely result in liquidation, severe
28 employee dislocation, including the layoffs of over 1,000 employees, and losses for vendors
and customers. In sum, the denial of the Motion would result in immediate and irreparable

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harm to the Debtor.

121. I understand that the effect of the March 2013 Maturity Date is that the Debtor will have to meet deadlines for the filing of its disclosure statement and plan of reorganization. Provided that no atypical delays in the Chapter 11 Case occur, we believe that these are achievable deadlines, in part because the Debtor began working with its financial advisors several months before the commencement of the Chapter 11 Case and a significant amount of work has already been completed.

I declare under penalty of perjury of the laws of the United States that these facts are true to the best of my knowledge and belief.

DATED this 22 day of December, 2011.



HOWARD L. BROWN

EXHIBIT
1

EXHIBIT
1

EX-4.3 6 a05-16694_2ex4d3.htm EX-4.3

EXHIBIT 4.3

AMENDED AND RESTATED
LOAN AND SECURITY AGREEMENT

Dated as of August 18, 2005

among

THE FINANCIAL INSTITUTIONS NAMED HEREIN,
as the Lenders,

BANK OF AMERICA, N.A.,
as Administrative Agent,

WACHOVIA BANK, NATIONAL ASSOCIATION,
as Collateral Agent and as Syndication Agent,

AHERN RENTALS, INC.,
as the Obligated Party,

and

BANC OF AMERICA SECURITIES LLC and
WACHOVIA CAPITAL MARKETS, LLC,
as Co-Lead Arrangers

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AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

This Amended and Restated Loan and Security Agreement, dated as of August 18, 2005, is among the lending institutions from time to time party hereto (such financial institutions, together with their respective successors and assigns, are referred to hereinafter each individually as a “Lender” and collectively as the “Lenders”), Bank of America, N.A. (“BofA”), as administrative agent for the Lenders (in such capacity, the “Administrative Agent”), Wachovia Bank, National Association (“Wachovia”), as collateral agent for the Lenders (in such capacity, the “Collateral Agent”), Ahern Rentals, Inc. (“Ahern”), each of its subsidiaries party from time to time hereto that becomes a borrower hereunder with the prior written consent of all the Lenders (such subsidiaries, together with Ahern, are referred to hereinafter each individually as a “Borrower” and collectively as the “Borrowers”) and each of the other Obligated Parties (as hereinafter defined) signatory to this Agreement.

RECITALS:

WHEREAS, the Borrowers, the Agents and certain of the Lenders party hereto are party to a certain Loan and Security Agreement, dated as of October 29, 2004, as amended through but excluding the date hereof (as so amended, the “Original Loan and Security Agreement”); and

WHEREAS, the parties hereto desire to amend and restate the Original Loan and Security Agreement in its entirety, but not as a novation, on the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth in this Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree that the Original Loan and Security Agreement shall be, and hereby is, amended and restated in its entirety as follows, effective on and as of the Closing Date.

ARTICLE 1

DEFINITIONS, ACCOUNTING TERMS, AND INTERPRETIVE PROVISIONS

Section 1.1 Definitions. Capitalized terms wherever used in this Agreement and the other Loan Documents, unless otherwise defined therein, shall have the meanings specified in this Section 1.1.

“Accelerated Delivery Date” means any date on which the Unused Availability is less than \$5,000,000.

“Accelerated Delivery Period” means the period commencing on an Accelerated Delivery Date and ending on the first day after any full Fiscal Quarter of Ahern, occurring after an Accelerated Delivery Date, during which the Unused Availability equals or exceeds \$5,000,000 for each day during such Fiscal Quarter and no Event of Default has occurred or existed.

“Accommodation Payment” has the meaning specified in Section 15.19.

“Account Debtor” means each Person obligated in any way on or in connection with an Account, Chattel Paper, or General Intangible (including a payment intangible).

“Accounts” means “accounts”, as such term is defined in the UCC, and any rights to payment for the sale or lease of goods or rendition of services, whether or not they have been earned by performance.

“Accounts Payable” means all trade accounts payable of the Obligated Parties and all Debt and other obligations owing by the Obligated Parties with respect to Inventory or Equipment.

“ACH Transactions” means any cash management, disbursement, or related services, including overdrafts and the automated clearinghouse transfer of funds, by BofA or Wachovia for the account of any Obligated Party.

“Additional Mortgaged Property” has the meaning specified in Section 8.28.

“Adjusted Net Earnings from Operations” means, with respect to any fiscal period of Ahern, net income of Ahern and its Subsidiaries on a consolidated basis after provision for state and local income taxes (if any) for such fiscal period, as determined in accordance with GAAP and reported on the Financial Statements for such fiscal period, excluding any and all of the following included in the determination of such net income: (a) gain or loss arising from the sale of any capital assets (which shall not include, in any event, Inventory); (b) gain arising from any write-up in the book value of any asset or non-cash loss arising from any write-down or write-off in the book value of any non-operating asset; (c) earnings of any other Person, substantially all the assets of which have been acquired by Ahern or any of its Subsidiaries in any manner, to the extent realized by such other Person prior to the date of acquisition; (d) earnings of any other Person (other than a Subsidiary of Ahern) in which Ahern or any of its Subsidiaries has an ownership interest unless (and only to the extent) such earnings shall actually have been received by Ahern or any of its Subsidiaries in the form of cash distributions; (e) earnings of any Person to which assets of Ahern or any of its Subsidiaries shall have been sold, transferred, or disposed of, or into which Ahern or any of its Subsidiaries shall have been merged, or which has been a party with Ahern or any of its Subsidiaries to any consolidation or other form of reorganization, prior to the date of such transaction; (f) gain arising from the acquisition of debt or equity securities of Ahern or any of its Subsidiaries or from cancellation or forgiveness of Debt; and (g) gain or non-cash loss generated or arising from extraordinary items, as determined in accordance with GAAP, or from any other non-recurring transaction; provided that any non-cash loss generated from the write-down or write-off of operating assets shall not be included in this clause (g).

“Administrative Agent” means BofA, solely in its capacity as administrative agent for the Lenders, and any successor administrative agent.

“Affiliate” means, as to any Person (the “subject Person”), any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, the subject Person or which owns, directly or indirectly, 5.0% or more of the outstanding Capital Stock of the subject Person. A Person shall be deemed to control another Person if the

controlling Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, by contract, or otherwise.

“Agent” means each of the Administrative Agent and the Collateral Agent, individually, and “Agents” means both of such Persons, collectively.

“Agent Advances” has the meaning specified in Section 2.2(j).

“Agent-Related Persons” means the Collateral Agent and the Administrative Agent, together with their respective Affiliates, and the officers, directors, employees, counsel, representatives, agents, and attorneys-in-fact of the Collateral Agent and the Administrative Agent and their respective Affiliates.

“Agent’s Liens” means the Liens in the Collateral granted to the Collateral Agent, for the benefit of the Credit Providers, pursuant to the terms of this Agreement and the other Loan Documents.

“Aggregate Revolver Outstandings” means, at any time, the sum of (a) the aggregate unpaid balance of the Revolving Loans, (b) the aggregate undrawn amount of all outstanding Letters of Credit, and (c) the aggregate amount of any unpaid reimbursement obligations in respect of Letters of Credit.

“Agreement” means this Amended and Restated Loan and Security Agreement, as it may be further amended, restated, or otherwise modified from time to time.

“Ahern” means Ahern Rentals, Inc., a Nevada corporation.

“Aircraft Mortgage” means the Aircraft Security Agreement, dated as of the Original Closing Date, by and between Ahern and the Collateral Agent, by which the Collateral Agent, for the benefit of the Credit Providers, acquires a Lien on a certain 1979 Hughes model 369D helicopter bearing Serial Number 790544D and FAA Registration Number N58341.

“Allocable Amount” has the meaning specified in Section 15.19.

“Anniversary Date” means an anniversary of the Closing Date.

“Applicable Margin” means, as of the Closing Date,

(a) with respect to Base Rate Revolving Loans and all other Obligations (other than LIBOR Rate Revolving Loans), .375% per annum, and

(b) with respect to LIBOR Rate Revolving Loans, 2.125%,

in each case subject to adjustment from time to time thereafter to the applicable percentage specified corresponding to the Leverage Ratio, as set forth below, respectively:

<u>Leverage Ratio</u>	<u>Base Rate Revolving Loans and other Obligations (other than LIBOR Rate Revolving Loans)</u>	<u>LIBOR Rate Revolving Loans</u>
greater than 4.75:1.00	.625%	2.375%
4.75:1.00 to 3.50:1.00	.375%	2.125%
less than 3.50:1.00	.125%	1.875%

For the purpose of determining any such adjustments to the Applicable Margin, the Leverage Ratio shall be determined, beginning with the Fiscal Quarter ending March 31, 2006, based upon the Financial Statements of Ahern and its Subsidiaries for the immediately preceding four (4) Fiscal Quarters of Ahern, and for each Fiscal Quarter of Ahern ending thereafter, delivered to the Agents as required by Section 6.2(a) (with respect to the Financial Statements as of the last day of each Fiscal Year) or Section 6.2(b)(i) (with respect to the Financial Statements for each of the other Fiscal Quarters of each Fiscal Year), and any such adjustment, if any, shall become effective prospectively on and after the first day of the calendar month following the date of delivery of such Financial Statements to the Agents. Concurrently with the delivery of such Financial Statements, Ahern shall deliver to the Agents a certificate, signed by a Responsible Officer, setting forth in reasonable detail the basis for the continuance of, or any change in, the Applicable Margin. In the event the Obligated Parties fail to timely deliver any such Financial Statements, in addition to any other remedy provided for in this Agreement, the Applicable Margin shall be deemed to be equal to the highest level set forth in the preceding table, until the first day of the calendar month following the date of delivery of such Financial Statements to the Agents, at which time the Applicable Margin shall be determined, prospectively, in accordance with the terms hereof. If a Default or an Event of Default exists at the time any reduction in the Applicable Margin is to be implemented, such reduction shall not occur until the first day of the calendar month following the date on which such Default or Event of Default is Waived or cured.

“Assigned Contracts” means, collectively, all of each Obligated Party’s rights and remedies under, and all moneys and claims for money due or to become due to such Obligated Party under, those contracts set forth on Schedule 1.1(D) and any other material contracts, and any and all amendments, supplements, extensions, renewals, and other modifications thereof including all rights and claims of such Obligated Party now or hereafter existing: (a) under any insurance, indemnities, warranties, and guaranties provided for or arising out of or in connection with any of the foregoing agreements; (b) for any damages arising out of or for breach or default under or in connection with any of the foregoing contracts; (c) to all other amounts from time to time paid or payable under or in connection with any of the foregoing agreements; or (d) to exercise or enforce any and all covenants, remedies, powers, and privileges thereunder.

“Assignee” has the meaning specified in Section 13.2(a).

“Assignment and Acceptance” has the meaning specified in Section 13.2(a).

“Attorney Costs” means and includes (a) all reasonable fees, expenses, and disbursements of (i) any law firm or other counsel engaged by the Collateral Agent or the Administrative Agent and (ii) one law firm or other external counsel engaged by the Lenders and (b) the reasonably allocated costs and expenses of internal legal services of the Collateral Agent and the Administrative Agent.

“Bank Product Reserves” means all reserves which either or both of the Agents from time to time establish in its or their reasonable credit judgment for the Bank Products then provided or outstanding.

“Bank Products” means each and any of the following types of services or facilities extended to any of the Obligated Parties by (I) in the case of (b) below, BofA or Wachovia or any Affiliate of BofA or Wachovia and (II) in the case of (a), (c) and (d) below, any Lender or any Affiliate of any Lender: (a) commercial credit cards; (b) cash management services (including controlled disbursement services, ACH Transactions, and interstate depository network services), (c) Hedge Agreements; and (d) foreign exchange.

“Bankruptcy Code” means Title 11 of the United States Code (11 U.S.C. § 101 *et seq.*).

“Base Rate” means, for any day, the greater of (a) the rate of interest in effect for such day as publicly announced from time to time by BofA in Charlotte, North Carolina as its “prime rate” (the “prime rate” being a rate set by BofA based upon various factors including BofA’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate) or (b) the Federal Funds Rate in effect for such day, plus 0.50% per annum, provided, that, in the Agents’ sole discretion, such amount is subject to change at any time without notice to the Borrowers. With respect to any determination of any Interest Rate which is based on the Base Rate, any change in the prime rate announced by BofA shall take effect at the opening of business on the day specified in the public announcement of such change, and any change in the Federal Funds Rate shall take effect as of the date of such change.

“Base Rate Revolving Loan” means any portion of the Revolving Loans during any period in which such portion bears interest based on the Base Rate.

“Blocked Availability Amount” means \$10,000,000.

“BofA” has the meaning specified in the introductory paragraph of this Agreement.

“Borrower” means, separately and individually, any of Ahern and any other Person who becomes a party to this Agreement as a “Borrower” pursuant to the terms hereof, jointly, severally, and collectively, and “Borrowers” means more than one or all of the foregoing Persons, jointly, severally, and collectively, as the context requires.

“Borrowing” means (a) a borrowing hereunder consisting of Revolving Loans made available to the Borrowers, or any of them, on the same day (i) by the Lenders, (ii) by BofA (in the case of a Borrowing funded as a Non-Ratable Loan), or (iii) by the Administrative Agent (in

the case of a Borrowing consisting of an Agent Advance), or (b) the issuance of a Letter of Credit hereunder.

“Borrowing Base” means, at any time, (a) an amount equal to the least of (i) the Maximum Revolver Amount, (ii) the sum of, without duplication, (1) up to eighty-five percent (85%) of the Net Amount of Eligible Accounts, plus (2) up to the lesser of (A) ninety-five percent (95%) of the Net Book Value of Eligible Rental and Sale Equipment and (B) eighty-five percent (85%) of the Net Orderly Liquidation Value of Eligible Rental and Sale Equipment, plus (3) up to the lesser of (A) ninety-five percent (95%) of the Net Book Value of Eligible Transportation Equipment and (B) eighty-five percent (85%) of the Net Orderly Liquidation Value of Eligible Transportation Equipment, plus (4) up to the lesser of (A) sixty percent (60%) of the value (at the lower of cost, on an average cost basis, or market) of Eligible Spare Parts Inventory and (B) eighty-five percent (85%) of the Net Orderly Liquidation Value of Eligible Spare Parts Inventory, minus (5) the Blocked Availability Amount minus (6) the aggregate amount, if any, by which the Commitments and the Maximum Revolver Amount have been permanently reduced in accordance with Section 4.3(f), and (iii) the maximum amount of Aggregate Revolver Outstandings permitted to be outstanding under Section 4.09(b)(1) of the Second Lien Debt Agreement 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.

“Borrowing Base Certificate” means a certificate by a Responsible Officer of the Borrowers, or Ahern on behalf of the Borrowers, substantially in the form of Exhibit B (or another form acceptable to the Agents) setting forth the calculation of the Borrowing Base, including a calculation of each component thereof (including to the extent a Borrower has received notice of any Reserve from an Agent, any of the Reserves included in such calculation pursuant to clause (b) of the definition of Borrowing Base), all in such detail as shall be satisfactory to the Agents. All calculations of the Borrowing Base in connection with the preparation of any Borrowing Base Certificate shall originally be made by the Borrowers, or Ahern on behalf of the Borrowers, and certified to the Agents; provided that each of the Agents shall have the right to review and adjust, in the exercise of its credit judgment, any such calculation (a) to reflect its estimate of declines in value of any of the Collateral described therein, (b) to reflect the receipt of proceeds of the Collateral, and (c) to the extent that such calculation is not made in accordance with the terms of this Agreement.

“Business Day” means (a) any day that is not a Saturday, Sunday, Nevada Day or a day on which banks in New York, New York or Charlotte, North Carolina are required or permitted to be closed and (b) with respect to all notices, determinations, fundings, and payments in connection with the LIBOR Rate or LIBOR Rate Revolving Loans, any day that is a Business Day pursuant to clause (a) preceding and that is also a day on which trading in Dollars is carried on by and between banks in the London interbank market. “Nevada Day” means the holiday celebrating the admission of Nevada into statehood, which occurs on or about October 31st of each year.

“Capital Adequacy Regulation” means any guideline, request, or directive of any central bank or other Governmental Authority, or any other law, rule, or regulation, whether or not having the force of law, in each case, regarding capital adequacy of any bank or of any corporation controlling a bank.

“Capital Expenditures” means, with respect to any Person, all payments made by such Person with respect to the cost of any Inventory (other than spare parts Inventory and other than Inventory at all times held for sale and not rental), Fixed Asset or improvement, or replacement, substitution, or addition thereto, which has a useful life of more than one year, including those costs arising in connection with the direct or indirect acquisition of such asset or improvement by way of increased product or service charges or in connection with a Capital Lease, excluding (a) expenditure of insurance proceeds to rebuild or replace any asset or improvement after a casualty loss and (b) leasehold improvement expenditures for which such Person is reimbursed promptly by the lessor. Without limiting the foregoing and in any event, any and all payments and purchases of Inventory made by or on behalf of Ahern under or with respect to the GE Sale and Leaseback Agreement permitted under Section 8.13(d) shall constitute Capital Expenditures made by Ahern; provided that the purchase of any such Inventory (and the related payment of the purchase price therefor) which is held by Ahern, at all times after such purchase, for sale and not rental shall not constitute Capital Expenditures under this sentence.

“Capital Lease” means any lease of property by a Person which, in accordance with GAAP, should be reflected as a capital lease on the balance sheet of such Person.

“Capital Stock” means any and all corporate stock, units, shares, partnership interests, membership interests, equity interests, rights, securities, or other equivalent evidences of ownership (howsoever designated) issued by any Person.

“Change of Control” means the occurrence of any of the following: (a) except as allowed by Section 8.9, the adoption of a plan relating to the liquidation or dissolution of any Obligated Party; (b) (i) Don Ahern shall cease to own, directly or indirectly, at least 51% of the outstanding voting Capital Stock of Ahern, (ii) Don Ahern, any member of his immediate family and any trust established for the benefit of Don Ahern and/or any member of his immediate family shall cease to own, directly or indirectly, at least 75.0% of the outstanding voting Capital Stock of Ahern, (iii) Don Ahern shall, by agreement or otherwise, cease to have the right to exercise voting control of Ahern or (iv) Don Ahern shall die or shall become incapacitated or disabled such that Don Ahern is unable to properly perform the duties for Ahern that he performs for Ahern on the Original Closing Date; provided, that if Don Ahern shall die or become so incapacitated or disabled, a Change of Control under this clause (b) shall not occur as a result of such death, incapacitation or disability if, within 90 days after the occurrence of his death or such incapacity or disability and at all times thereafter, Ahern shall have employed one or more Persons with requisite experience that are reasonably satisfactory to the Agents to perform those duties for Ahern that Don Ahern performs for Ahern on the Original Closing Date; (c) except as allowed by Section 8.9, any Obligated Party (other than Ahern) shall cease to be a Wholly-Owned Subsidiary of Ahern or (d) there shall occur a “Change of Control” or a “Change in Control” as defined in any Second Lien Debt Document, any Refinancing Second Lien Debt Document or any other document governing material Debt of any Obligated Party.

“Chattel Paper” means “chattel paper”, as such term is defined in the UCC, and any electronic chattel paper.

“Clearing Account” means each bank account maintained with BofA or a Clearing Bank, subject to a Deposit Account Control Agreement providing for the Collateral Agent’s dominion

and control of such bank account, to which the funds of an Obligated Party (including proceeds of Accounts and other Collateral) are deposited or credited, and which is maintained in the name of the Collateral Agent or such Obligated Party (as the Agents may determine) on terms acceptable to the Agents. For purposes of this Agreement, "Clearing Account" includes any Clearing Accounts opened by any Obligated Party with BofA and pledged in accordance with Article 10, and any renewals or rollovers thereof, any successor or substitute deposit accounts, including any such deposit account as it may have been renumbered or retitled, any proceeds thereof (including any interest paid thereon), and any general intangibles and choses in action arising therefrom or related thereto. Whenever there is more than one Clearing Account, the term "Clearing Account" shall refer to all such Clearing Accounts, collectively.

"Clearing Bank" means any banking institution reasonably acceptable to the Agents with whom a Clearing Account has been established.

"Closing Date" means the date of this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended.

"Co-Lead Arrangers" means Banc of America Securities LLC and Wachovia Capital Markets, LLC, solely in their respective capacities as co-lead arrangers.

"Collateral" has the meaning specified in Section 10.1.

"Collateral Agent" means Wachovia, solely in its capacity as collateral agent for the Lenders, and any successor collateral agent.

"Collateral Documents" means this Agreement, the Intercreditor Agreement, the Proprietary Rights Security Agreements, any Mortgages, any Aircraft Mortgage, any Guaranty Agreements, and any other agreements, instruments, and documents heretofore, now or hereafter executed and delivered in connection with this Agreement or the Original Loan and Security Agreement, pursuant to which liens and security interests are granted to the Collateral Agent in the Collateral for the benefit of the Credit Providers.

"Collateral Waiver Agreement" means any agreement, in form and substance reasonably satisfactory to the Agents, between the Collateral Agent (or the Collateral Agent and the Second Lien Agent) and any landlord of any Obligated Party for any Real Estate where any Collateral is located or any third party (including any bailee, consignee, customs broker, processor, warehouseman, or other similar Person) in possession of any Collateral, as such agreement may be amended, restated, or otherwise modified from time to time.

"Commitment" means, at any time with respect to a Lender, the principal amount set forth beside such Lender's name under the heading "Revolving Commitment" on Schedule 1.1(A) or as set forth in the most recent Assignment and Acceptance to which such Lender is a party, as such Commitment may be (i) increased (or, in the case of a new Lender, established) as a result of such Lender providing Incremental Commitment(s) after the Closing Date and/or (ii) otherwise adjusted from time to time in accordance with the provisions of this Agreement, and "Commitments" means, collectively, the aggregate amount of the Commitment of each of the Lenders, collectively.

“Compliance Certificate” has the meaning specified in Section 6.2(d).

“Contaminant” means any material defined as waste, pollutant, hazardous substance, toxic substance, hazardous waste, or special waste under any Environmental Law (including petroleum or petroleum-derived substance or waste, asbestos in any form or condition, and polychlorinated biphenyls), or any constituent of any such substance or waste.

“Continuation/Conversion Date” means the effective date of (a) any continuation of LIBOR Rate Revolving Loans as LIBOR Rate Revolving Loans and (b) any conversion of LIBOR Rate Revolving Loans to Base Rate Revolving Loans or of Base Rate Revolving Loans to LIBOR Rate Revolving Loans.

“Credit Providers” means, collectively, the Collateral Agent, the Administrative Agent (in its capacity as administrative agent for the Lenders and, additionally, as provider of Agent Advances), the Lenders, BofA, in its capacity as provider of Non-Ratable Loans, each of BofA, Wachovia and each other Lender and their respective Affiliates as a provider of Bank Products, the Letter of Credit Issuer, and the Indemnified Persons, and “Credit Provider” means any of the foregoing, individually.

“Debt” means, without duplication, with respect to any Person (the “subject Person”) all liabilities, obligations, and indebtedness of the subject Person to any other Person, of any kind or nature, now or hereafter owing, arising, due, or payable, howsoever evidenced, created, incurred, acquired, or owing, whether primary, secondary, direct, contingent, fixed, or otherwise, consisting of indebtedness for borrowed money or the deferred purchase price of property, excluding trade payables and the endorsement of checks and other similar instruments in the ordinary course of business, but including, in any event and without in any way limiting the generality of the foregoing: (a) in the case of the Obligated Parties, the Obligations; (b) all such indebtedness, liabilities, and obligations of any Person secured by any Lien on the subject Person’s property, even if the subject Person shall not have assumed or become liable for the payment thereof; provided that all such indebtedness, liabilities, and obligations which are limited in recourse to such property shall be included in Debt only to the extent of the book value of such property as would be shown on a balance sheet of the subject Person prepared in accordance with GAAP; (c) all such indebtedness, liabilities, and obligations created or arising under any Capital Lease or conditional sale or other title retention agreement with respect to property used or acquired by the subject Person, even if the rights and remedies of the lessor, seller, or lender thereunder are limited to repossession of such property; provided that all such indebtedness, liabilities, and obligations which are limited in recourse to such property shall be included in Debt only to the extent of the book value of such property as would be shown on a balance sheet of the subject Person prepared in accordance with GAAP; (d) all indebtedness, liabilities, and obligations under Guaranties of Debt; (e) the present value (discounted at the implicit interest rate in such transaction) of lease payments due under synthetic leases; (f) net obligations in respect of Hedge Agreements; (g) all indebtedness, liabilities and obligations of the subject Person evidenced by notes, bonds, debentures or similar instruments; (h) all preferred capital stock issued by the subject Person that is required to be repurchased or redeemed by the subject Person or is repurchaseable or redeemable at the option of the holder thereof; and (i) all indebtedness, liabilities and obligations of the subject Person in respect of letters of credit or instruments serving a similar function issued or accepted for the account of the subject Person

(whether or not representing obligations for borrowed money). Debt of any Person shall include all obligations of such Person of the character described in clauses (a) through (i) to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is deemed to be extinguished under GAAP. Debt of any Person shall include the Debt of any partnership or Joint Venture in which such Person is a general partner or a joint venturer, unless such Debt is, by its terms, non-recourse to the assets of such Person other than as a result of customary exclusions.

“Default” means any event or circumstance which, with the giving of notice, the lapse of time, or both, would (if not cured, Waived, or otherwise remedied during such time) constitute an Event of Default.

“Default Rate” means a fluctuating per annum interest rate at all times equal to the sum of (a) the otherwise applicable Interest Rate, plus (b) 2.00% per annum. The Default Rate shall be adjusted simultaneously with any change in the applicable Interest Rate.

“Defaulting Lender” has the meaning specified in Section 14.15(c).

“Deposit Account Control Agreement” means an agreement, including a blocked account agreement, in form and substance satisfactory to each Agent, among an Obligated Party, a banking institution holding funds of such Obligated Party, the Collateral Agent (or the Collateral Agent and the Second Lien Agent) and the Administrative Agent with respect to collection and control of all deposits and balances held in a Deposit Account maintained by such Obligated Party with such banking institution.

“Deposit Accounts” means “deposit accounts”, as such term is defined in the UCC.

“Dilution” means, at the time of any relevant determination, the average amount for the twelve (12) consecutive Fiscal Month period most recently ended prior to such time of determination, by which the amount of Eligible Accounts is reduced due to returns, discounts, claims, credits, allowances, accrued rebates, offsets, deductions, counterclaims, disputes and other defenses of any nature at any time issued, owing, granted, outstanding, available or claimed.

“Disposition” or “Dispose” means the sale, transfer, license, lease, or other disposition (including any sale and leaseback transaction) of any property by any Person.

“Distribution” means, with respect to any Person (other than a natural person) (a) the payment or making of any dividend or other distribution of property by such Person in respect of its Capital Stock (or any options or warrants for, or other rights with respect to, such Capital Stock), other than distributions solely in such Person’s Capital Stock (or any options or warrants for, or other rights with respect to, such Capital Stock) of the same class or (b) the redemption, repurchase, retirement, or other acquisition by such Person of any Capital Stock (or any options or warrants for, or other rights with respect to, such Capital Stock) of such Person.

“Documents” means “documents”, as such term is defined in the UCC, and bills of lading, warehouse receipts, and other documents of title.

“DOL” means the United States Department of Labor or any successor department or agency.

“Dollar” and “\$” mean dollars in the lawful currency of the U.S. Unless otherwise specified, all payments under any Loan Document shall be made in Dollars.

“Early Termination Fee” has the meaning specified in Section 4.2.

“EBITDA” means, with respect to any fiscal period of Ahern, Adjusted Net Earnings from Operations, plus, to the extent deducted in the determination of Adjusted Net Earnings from Operations for such fiscal period, (a) Interest Expense, (b) federal, state, local, and foreign income taxes, and (c) depreciation and amortization, in each case for Ahern and its Subsidiaries on a consolidated basis.

“Eligible Accounts” means the Accounts of the Borrowers that both of the Agents in the exercise of their reasonable credit judgment determine to be Eligible Accounts. Without limiting the discretion of the Agents to establish other criteria of ineligibility, Eligible Accounts shall not include any Account (except as may be otherwise specified below):

(a) that does not arise from the sale or lease of Goods or rendition of services in the ordinary course of business of a Borrower;

(b) that is not subject to the Agent’s Liens which are perfected as to such Account, or that is subject to any other Lien (other than the Lien permitted under clause (i) of the defined term Permitted Liens);

(c) with respect to which either (i) any payment, or part thereof, remains unpaid for more than 90 days from the original due date therefor, or (ii) more than 120 days have elapsed from the date of the original invoice therefor, or no invoice has been issued;

(d) with respect to which any of the representations, warranties, covenants, and agreements contained in this Agreement are incorrect or have been breached;

(e) with respect to which (or any other Account due from the applicable Account Debtor), in whole or in part, a check, promissory note, draft, trade acceptance, or other instrument for the payment of money has been received, presented for payment, and returned uncollected for any reason;

(f) that is the subject of any debit memo or charge-back, but only to the extent of such debit memo or charge-back;

(g) that represents a progress billing (for the purposes hereof, “progress billing” means any invoice for goods sold or leased or services rendered under a contract or agreement pursuant to which the Account Debtor’s obligation to pay such invoice is conditioned upon such Borrower’s completion of any further performance under such contract or agreement, other than, in the case of a lease of Inventory in the ordinary course of business, the performance of any covenant of quiet enjoyment);

(h) with respect to which any one or more of the following events has occurred to the Account Debtor on such Account: (i) death or judicial declaration of incompetency of such Account Debtor who is a natural person; (ii) the filing by or against such Account Debtor of a request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as a bankrupt, winding-up, or other relief under the Bankruptcy Code or any other Requirement of Law, now or hereafter in effect; (iii) the making of any general assignment by such Account Debtor for the benefit of creditors; (iv) the appointment of a receiver or trustee for such Account Debtor or for any of the assets of such Account Debtor, including the appointment of or taking possession by a "custodian," as defined in the Bankruptcy Code; (v) the institution by or against such Account Debtor of any other type of insolvency proceeding (under the Bankruptcy Code or otherwise) or of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against, or winding up of affairs of, such Account Debtor; (vi) the sale, assignment, or transfer of all or any material part of the assets of such Account Debtor; (vii) the nonpayment generally by such Account Debtor of its debts as they become due; or (viii) the cessation of the business of such Account Debtor as a going concern;

(i) with respect to which 50% or more of the aggregate Dollar amount of outstanding Accounts owed at such time to the Borrowers by the Account Debtor thereon is classified as ineligible pursuant to the other provisions of this definition;

(j) owed by an Account Debtor that: (i) does not maintain its chief executive office in the U.S.; (ii) is not organized under the laws of the U.S. or any political subdivision, state or territory thereof; or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, except to the extent that such Account is secured or payable by a letter of credit the terms of which are satisfactory to the Agents in their reasonable credit judgment and which is in the possession of the Collateral Agent and which, together with all related Letter-of-Credit Rights, is subject to a first priority Lien in favor of the Collateral Agent, for the benefit of the Credit Providers;

(k) owed by an Account Debtor that is an Affiliate, officer, director, or employee of any Borrower or any Affiliate of any Borrower;

(l) except as provided in clause (n) following, with respect to which either the perfection or validity of the Agent's Liens in such Account, or the Collateral Agent's right or ability to obtain direct payment to the Collateral Agent of the proceeds of such Account, is governed by any federal, state, or local statutory requirements other than those of the UCC;

(m) owed by an Account Debtor to which an Obligated Party or any of its Affiliates, is indebted in any way (including accrued liabilities), or which is subject to any right of setoff or recoupment by the Account Debtor, unless the Account Debtor has entered into an agreement acceptable to the Agents to waive setoff rights, or if the Account Debtor thereon has disputed liability or made any claim with respect to any

other Account due from such Account Debtor, but in each such case only to the extent of such indebtedness, setoff, recoupment, dispute, or claim;

(n) owed by (i) the government of the U.S., or any department, agency, public corporation, or other instrumentality thereof, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 et seq.), and any other steps necessary to perfect the Agent's Liens therein, have been complied with to the Agents' reasonable satisfaction with respect to such Account or (ii) any state, municipality, or other political subdivision of the U.S., or any department, agency, public corporation, or other instrumentality thereof and as to which either of the Agents determines that the Agent's Lien therein is not or cannot be perfected;

(o) that represents a sale on a (i) cash or C.O.D. basis or (ii) bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment, or other repurchase or return basis;

(p) that is owed by an Account Debtor either (i) in respect of Inventory subject to the GE Sale and Leaseback Agreement or any related document or (ii) who is also an Account Debtor in respect of Inventory subject to the GE Sale and Leaseback Agreement or any related document (unless, in the case of this clause (ii), the Inventory subject to the GE Sale and Leaseback Agreement or any related document is invoiced to such Account Debtor pursuant to different invoices than those used for any other Inventory);

(q) that is evidenced by a promissory note or other instrument or by Chattel Paper;

(r) with respect to which either Agent believes, in the exercise of its reasonable credit judgment, that the prospect of collection of such Account is impaired or that such Account may not be paid by reason of the Account Debtor's financial inability to pay;

(s) except as may be permitted by the Agents in their reasonable credit judgment, with respect to which the Account Debtor is located in any state requiring the filing of a Notice of Business Activities Report or similar report in order to permit the applicable Borrower to seek judicial enforcement in such state of payment of such Account, unless such applicable Borrower has qualified to do business in such state or has filed a Notice of Business Activities Report or equivalent report for the then current year;

(t) to the extent constituting finance or similar charges or sales or use tax;

(u) with respect to which the goods giving rise to such Account have not been shipped and delivered to and accepted by, or have been rejected or objected to by, the Account Debtor or to the extent the services giving rise to such Account have not been performed by the applicable Borrower, and, if applicable, accepted by the Account Debtor, or the Account Debtor revokes its acceptance of such goods or services;

(v) owed by an Account Debtor, or group of affiliated Account Debtors, which is obligated to the Borrowers respecting Accounts the aggregate unpaid balance of which exceeds 10% of the aggregate unpaid balance of all Eligible Accounts owed to the

Borrowers at such time by all of the Borrowers' Account Debtors, but only to the extent of such excess;

(w) that is the subject of any unreconciled variance between the aging of Accounts delivered to either Agent, the general ledger of the applicable Borrower, and the applicable Borrowing Base Certificate; or

(x) that either of the Agents determines in its reasonable credit judgment is ineligible for any other reason.

"Eligible Assignee" means (a) a commercial bank, commercial finance company, or other asset based lender having total assets in excess of One Billion Dollars (\$1,000,000,000), (b) any Lender, (c) any Affiliate of any Lender, and (d) if an Event of Default has occurred and is continuing, any Person reasonably acceptable to the Agents.

"Eligible Inventory" means Inventory of the Borrowers which both of the Agents, in their reasonable credit judgment, determine to be Eligible Inventory. Without limiting the discretion of the Agents to establish other criteria of ineligibility, Eligible Inventory shall not include any Inventory (except as may be otherwise specified below):

(a) that is not owned by a Borrower, including goods held by a Borrower on consignment;

(b) that is not subject to the Agent's Liens, which are perfected as to such Inventory, or that is subject to any Liens pursuant to the GE Sale and Leaseback Agreement or any related document or any other Lien (other than the Liens described in clauses (a), (c), (e) and (i) of the definition of Permitted Liens; provided that such Permitted Liens (i) are junior in priority to the Agent's Liens or subject to Reserves and (ii) do not impair directly or indirectly the ability of the Collateral Agent to realize on or obtain the full benefit of the Collateral);

(c) that is not finished goods or raw materials;

(d) that consists of work-in-process, chemicals, samples, prototypes, supplies, or packing and shipping materials;

(e) that is not in good condition, is unmerchantable or not rentable in the ordinary course of business of a Borrower, or does not meet all standards imposed by any Governmental Authority having regulatory authority over such goods or their use or sale;

(f) that is obsolete or defective;

(g) consisting of airplanes, helicopters or other aircraft or spare parts therefor;

(h) that is located outside the U.S. or that is in transit from vendors or suppliers or to buyers; provided that the Agents may in their discretion include as Eligible Inventory any Inventory which is in transit within the U.S. or Canada to a Borrower's place of business and any Inventory held for lease which is in transit to lessees shall not be

excluded by this clause (h), provided that upon the request of either Agent the Borrowers shall deliver to the Agents a listing of all such Inventory and its location;

(i) that is consigned to third parties or is subject to any bill-and-hold, guaranteed sale, sale on approval, or other repurchase or return basis;

(j) that is located in a public warehouse or in possession of a bailee or in a facility leased by a Borrower, if the applicable warehouseman, bailee, or lessor has not delivered to the Agents a Collateral Waiver Agreement or if, in lieu of such Collateral Waiver Agreement, a Reserve for rents or storage charges (in an amount for any location not to exceed at any time three (3) months' rent or storage charges plus any then unpaid rent or storage charges owing with respect to such location) has not been established to the extent the Agents deem appropriate in their reasonable credit judgment for Inventory at that location;

(k) that contains or bears any Proprietary Rights licensed to a Borrower by any Person, if either of the Agents is not satisfied that the Collateral Agent may sell or otherwise dispose of such Inventory in accordance with the terms of this Agreement (including Section 11.2) without infringing the rights of the licensor of such Proprietary Rights or violating any contract with such licensor (and without payment of any royalties other than any royalties due with respect to the sale or disposition of such Inventory pursuant to the existing license agreement), and, if either of the Agents deems it necessary, as to which such Borrower has not delivered to the Agents a consent or sublicense agreement from such licensor in form and substance acceptable to the Agents;

(l) that is not reflected in the details of a current perpetual inventory report;

(m) that is leased to any Person which is not in compliance with the terms of the lease agreement relating to such lease and as to which there is any restriction or impediment (legal or otherwise), as determined by either of the Agents in its reasonable credit judgment, on the ability of the Collateral Agent to obtain access thereto in order to repossess same; or

(n) that either of the Agents determines in its reasonable credit judgment is ineligible for any other reason.

Notwithstanding that any Inventory acquired as a result of the termination of the GE Sale and Leaseback Agreement would, absent this sentence, be considered Eligible Inventory, no such Inventory shall be Eligible Inventory unless and until such Inventory is included in an Inventory Appraisal delivered pursuant to Section 10.4.

“Eligible Rental and Sale Equipment” means Eligible Inventory consisting of Inventory (other than spare parts and merchandise Inventory) held for sale or lease in the ordinary course of a Borrower's business, which is marked with an identifiable serial number.

“Eligible Spare Parts Inventory” means Eligible Inventory consisting of unused spare parts and merchandise inventory located on premises owned or leased by a Borrower, which spare parts and merchandise inventory are held for sale by a Borrower in the ordinary course of

its business or for the repair or maintenance of Inventory of a Borrower that is held for sale or lease by such Borrower in the ordinary course of its business.

“Eligible Transportation Equipment” means Transportation Equipment of the Borrowers marked with an identifiable serial number which both of the Agents, in their reasonable credit judgment, determine to be Eligible Transportation Equipment. Without limiting the discretion of the Agents to establish other criteria of ineligibility, Eligible Transportation Equipment shall not include any Transportation Equipment (except as may be otherwise specified below):

- (a) that is not owned by a Borrower, including goods held by a Borrower on consignment;
- (b) that is not subject to the Agent’s Liens, which are perfected as to such Transportation Equipment, or that is subject to any Lien (other than the Liens described in clauses (a), (c), (e) and (i) of the definition of Permitted Liens; provided that such Permitted Liens (i) are junior in priority to the Agent’s Liens or subject to Reserves and (ii) do not impair directly or indirectly the ability of the Collateral Agent to realize on or obtain the full benefit of the Collateral);
- (c) that is not in good condition or does not meet all standards imposed by any Governmental Authority having regulatory authority over such goods or their use or sale;
- (d) that is obsolete or defective;
- (e) consisting of airplanes, helicopters or other aircraft or spare parts therefore;
- (f) that is located outside the U.S.; provided that the Agents may in their discretion include as Eligible Transportation Equipment any Transportation Equipment which is in transit within Canada moving Inventory to or from a customer of a Borrower in the ordinary course of such Borrower’s business;
- (g) that is consigned to third parties or is subject to any bill-and-hold, guaranteed sale, sale on approval, or other repurchase or return basis;
- (h) that is located in a public warehouse or in possession of a bailee or in a facility leased by a Borrower, if the applicable warehouseman, bailee, or lessor has not delivered to the Agents a Collateral Waiver Agreement or if, in lieu of such Collateral Waiver Agreement, a Reserve for rents or storage charges (in an amount for any location not to exceed at any time three (3) months’ rent or storage charges plus any then unpaid rent or storage charges owing with respect to such location) has not been established to the extent the Agents deem appropriate in their reasonable credit judgment for Transportation Equipment at that location;
- (i) that contains or bears any Proprietary Rights licensed to a Borrower by any Person, if either of the Agents is not satisfied that the Collateral Agent may sell or otherwise dispose of such Transportation Equipment in accordance with the terms of this Agreement (including Section 11.2) without infringing the rights of the licensor of such Proprietary Rights or violating any contract with such licensor (and without payment of

any royalties), and, if either of the Agents deems it necessary, as to which such Borrower has not delivered to the Agents a consent or sublicense agreement from such licensor in form and substance acceptable to the Agents; or

(j) that either of the Agents determines in its reasonable credit judgment is ineligible for any other reason.

“Environmental Claim” means any claim, however asserted, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for a Release or injury to the environment.

“Environmental Compliance Reserve” means any reserve that either of the Agents establishes from time to time in its reasonable credit judgment after prior written notice to the Borrowers for amounts that are reasonably likely to be expended by an Obligated Party in order for such Obligated Party and its operations and property (a) to comply with any notice from a Governmental Authority asserting non-compliance with any Environmental Law or (b) to correct any non-compliance identified in a report delivered to the Agents pursuant to Section 8.7.

“Environmental Law” means any Requirement of Law relating to environmental, health, safety, and land use matters.

“Environmental Lien” means a Lien in favor of any Governmental Authority or any other Person for (a) any liability under any Environmental Law or (b) damages arising from, or costs incurred by such Governmental Authority or other Person in response to, a Release or threatened Release of a Contaminant into the environment.

“Equipment” means “equipment”, as such term is defined in the UCC, and all machinery, equipment, furniture, furnishings, fixtures, and other tangible personal property (except Inventory), including embedded software, motor vehicles with respect to which a certificate of title has been issued, aircraft, dies, tools, jigs, molds, and office equipment, as well as all of such types of property leased by the applicable Person and all of such Person’s rights and interests with respect thereto under such leases (including options to purchase), together with all present and future additions and accessions thereto, replacements therefor, component and auxiliary parts and supplies used or to be used in connection therewith, and all substitutes for any of the foregoing, and all manuals, drawings, instructions, warranties and rights with respect thereto.

“Equipment Appraisal” means, with respect to a Borrower, the most recently delivered appraisal of the Transportation Equipment of such Borrower delivered to the Agents pursuant to Section 10.4.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with an Obligated Party within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code). Any former ERISA Affiliate of a Person or any of its Subsidiaries shall continue to be considered an ERISA Affiliate of such Person or such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of such Person or such

Subsidiary and with respect to liabilities arising after such period for which such Person or such Subsidiary could be liable under the Code or ERISA.

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan, (b) a withdrawal by an Obligated Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA, (c) a complete or partial withdrawal by an Obligated Party or any ERISA Affiliate from a Multiemployer Plan, (d) the filing of a notice of intent to terminate, or the commencement of proceedings by the PBGC to terminate a Pension Plan or the termination, insolvency, or reorganization of a Multiemployer Plan, (e) the occurrence of an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon an Obligated Party or any ERISA Affiliate.

“Event of Default” has the meaning specified in Section 11.1.

“Excess Availability” means Unused Availability determined without giving effect to the deduction of the Blocked Availability Amount in the calculation of the Borrowing Base.

“Exchange Act” means the Securities Exchange Act of 1934.

“Excluded Asset” means any lease (including any fixtures or improvements on the property subject to the lease), license, contract or agreement to which Ahern or any Guarantor is a party or any of its rights or interests thereunder (including any rights or interests in tangible property in which Ahern or any Guarantor grants a Lien pursuant to any such agreement), in each instance, if and only for so long as the grant of a security interest under this Agreement therein shall constitute or result in a breach, termination or default under any such lease, license, contract or agreement (other than to the extent that any such term would be rendered ineffective pursuant to the Uniform Commercial Code of any relevant jurisdiction (including, without limitation, under Sections 9-406, 9-407, 9-408 or 9-409 thereof) or any other applicable law or principles of equity); provided that notwithstanding the foregoing (i) no lease, license, contract or agreement or any right or interest thereunder, in each instance, existing on the Closing Date shall constitute an Excluded Asset unless described on Schedule 1.1(E), (ii) no Account or money or other amounts due or to become due to Ahern or any Guarantor under or with respect to any such lease, license, contract or agreement or right or interest thereunder (other than amounts constituting proceeds from the sale of Inventory (other than Eligible Inventory) or Equipment (other than Eligible Transportation Equipment), in each instance, subject to purchase money financing permitted hereunder) shall constitute an Excluded Asset, (iii) no item of tangible property owned by Ahern or any Guarantor shall constitute an Excluded Asset unless such item is subject to purchase money Debt or other financing permitted under this Agreement or is an aircraft (other than the helicopter subject to the Aircraft Mortgage), (iv) any interest of Ahern or any Guarantor, as lessee, in a lease of real property shall constitute an Excluded Asset and (v) such lease, license, contract or agreement or right or interest thereunder shall be an Excluded Asset only to the extent and for so long as the consequences specified above shall

result and shall cease to be an Excluded Asset and shall become subject to the security interest granted under this Agreement, immediately and automatically, at such time as such consequences shall no longer result (including, without limitation and in any event, in the case of any item of tangible property which is the subject of purchase money Debt or other financing permitted hereunder when such financing has been paid in full). The parties hereto acknowledge that Inventory that is leased to Ahern under the GE Sale and Leaseback Agreement is an Excluded Asset.

“FDIC” means the Federal Deposit Insurance Corporation, and any Governmental Authority succeeding to any of its principal functions.

“Federal Funds Rate” means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/8th of 1.00%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to BofA on such day on such transactions as determined by BofA.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System or any successor thereto.

“Fee Letters” means that certain fee and payment agreement entered into among BofA, Wachovia and the Borrowers and that certain fee and payment agreement entered into between BofA and the Borrowers, each dated the Closing Date, in each case, as amended, supplemented or otherwise modified from time to time.

“Financial Statements” means, according to the context in which used, the financial statements referred to in Section 6.2 and Section 7.6 or any other financial statements required to be given to either of the Agents pursuant to this Agreement.

“Fiscal Month” means a calendar month. There are twelve Fiscal Months in each Fiscal Year.

“Fiscal Quarter” means a period of three calendar months (with respect to Ahern beginning on the first day of each January, April, July, and October) constituting a Person’s fiscal quarter for financial accounting purposes, with the first of such measurement periods beginning on the first day of each Fiscal Year and the last of such measurement periods ending on the last day of such Fiscal Year.

“Fiscal Year” means, with respect to any Person, such Person’s fiscal year for financial accounting purposes. The current Fiscal Year of Ahern will end on December 31, 2005, and each Fiscal Year of Ahern is the relevant calendar year.

“Fixed Assets” means, with respect to any Person, the Equipment and Real Estate of such Person.

“Fixed Charge Coverage Ratio” means, as of the end of any Fiscal Quarter of Ahern, determined for Ahern and its Subsidiaries on a consolidated basis for the preceding four Fiscal Quarters, the ratio of EBITDA, divided by Fixed Charges.

“Fixed Charge Rental Fleet CapEx Percentage” means, at any time, that percentage which is (x) 100% minus (y) 85% of the Net Orderly Liquidation Percentage at such time with respect to rental fleet Inventory.

“Fixed Charge Rental Fleet Depreciation Percentage” means, at any time, that percentage which is (x) 100% minus (y) the Fixed Charge Rental Fleet CapEx Percentage at such time.

“Fixed Charges” means, with respect to any fiscal period, determined for Ahern and its Subsidiaries on a consolidated basis, without duplication, the sum of:

- (a) cash Interest Expense,
- (b) an amount equal to the product of (x) the Fixed Charge Rental Fleet CapEx Percentage in effect on the last day of such fiscal period times (y) the aggregate amount of Capital Expenditures made or incurred during such fiscal period with respect to Inventory which was in the rental fleet of Ahern or any of its Subsidiaries at any time on or prior to the last day of such fiscal period (excluding, in the case of the Obligated Parties, any such Capital Expenditures to the extent funded with proceeds from the sale of Inventory in the rental fleet of any Obligated Party permitted hereunder),
- (c) an amount equal to the product of (x) the Fixed Charge Transportation CapEx Percentage in effect on the last day of such fiscal period times (y) the aggregate amount of Capital Expenditures made or incurred during such fiscal period with respect to Transportation Equipment (excluding, in the case of the Obligated Parties, any such Capital Expenditures to the extent (1) funded with Debt other than Revolving Loans, but including, without duplication, principal payments with respect to any such Debt or (2) funded with proceeds from the sale of Transportation Equipment of any Obligated Party permitted hereunder),
- (d) an amount equal to the product of (x) the Fixed Charge Rental Fleet Depreciation Percentage in effect on the last day of such fiscal period times (y) depreciation expense taken in such fiscal period with respect to any Inventory which was in the rental fleet of Ahern or any of its Subsidiaries at any time on or prior to the last day of such fiscal period,
- (e) an amount equal to the product of (x) the Fixed Charge Transportation Depreciation Percentage in effect on the last day of such fiscal period times (y) depreciation expense taken in such fiscal period with respect to Transportation Equipment owned by Ahern or any of its Subsidiaries at any time on or prior to the last day of such fiscal period,
- (f) cash Distributions in respect of any Capital Stock,
- (g) scheduled principal payments of Debt, plus

(h) federal, state, local, and foreign cash income taxes (not less than zero), excluding deferred taxes.

“Fixed Charge Transportation CapEx Percentage” means, at any time, that percentage which is (x) 100% minus (y) 85% of the Net Orderly Liquidation Percentage at such time with respect to Transportation Equipment (it being agreed that until the first Equipment Appraisal is delivered to the Agents pursuant to Section 10.4, the Net Orderly Liquidation Percentage shall be deemed to be 100%).

“Fixed Charge Transportation Depreciation Percentage” means, at any time, that percentage which is (x) 100% minus (y) the Fixed Charge Transportation CapEx Percentage at such time.

“Funding Account” has the meaning specified in Section 2.2(d).

“Funding Date” means the date on which a Borrowing occurs.

“GAAP” means, subject to the limitations on the application thereof set forth in Section 1.2, generally accepted accounting principles and practices set forth from time to time in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession) that are applicable to the circumstances as of the date of determination.

“GE Intercreditor Agreement” has the meaning specified in Section 9.1(r).

“GE Sale and Leaseback Agreement” means that certain Master Lease Agreement, dated as of February 14, 2003, by and between Ahern and General Electric Capital Corporation, together with all annexes, exhibits and schedules thereto, including without limitation any equipment schedules and inventory addenda, as amended, supplemented or otherwise modified from time to time.

“General Intangibles” means, with respect to any Person, “general intangibles”, as such term is defined in the UCC, and all other choses in action and causes of action, intangible personal property of every kind and nature (other than Accounts), including all contract rights, payment intangibles, Proprietary Rights, corporate or other business records, inventions, designs, blueprints, plans, specifications, patents, patent applications, trademarks, service marks, trade names, trade secrets, goodwill, copyrights, computer software, customer lists, registrations, licenses, franchises, tax refund claims, any funds that may become due to such Person in connection with the termination of any Plan or other employee benefit plan or any rights thereto and any other amounts payable to such Person from any Plan or other employee benefit plan, rights and claims against carriers and shippers, rights to indemnification, business interruption insurance and proceeds thereof, property, casualty or any similar type of insurance and any proceeds thereof, proceeds of insurance covering the lives of key employees on which such Person is beneficiary, rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged equity interests or Investment Property and any

letter of credit, guarantee, claim, security interest or other security held by or granted to such Person.

“Goods” means “goods” as such term is defined in the UCC.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing, and any department, agency, board, commission, tribunal, committee, or instrumentality of any of the foregoing.

“Guarantor” means each of (a) the Borrowers and (b) each other Person who becomes a party to any Guaranty Agreement pursuant to the terms of this Agreement, and “Guarantors” means two or more of the foregoing Persons, collectively.

“Guaranty” means, with respect to any Person, all obligations of such Person that in any manner directly or indirectly guarantee or assure, or in effect guarantee or assure, the payment or performance of any indebtedness, dividend, or other obligations of any other Person (the “guaranteed obligations”), or assure or in effect assure the holder of the guaranteed obligations against loss in respect thereof, excluding the endorsement of checks and other similar instruments in the ordinary course of business, but including any such obligations incurred through an agreement, contingent or otherwise: (a) to purchase the guaranteed obligations or any property constituting security therefor; (b) to advance or supply funds for the purchase or payment of the guaranteed obligations or to maintain a working capital or other balance sheet condition; or (c) to lease property or to purchase any debt or equity securities or other property or services. In any computation of the indebtedness or other liabilities of the obligor under any Guaranty, the indebtedness or other obligations that are the subject of such Guaranty shall be assumed to be direct obligations of such obligor.

“Guaranty Agreement” means each guaranty agreement in favor of the Collateral Agent to which any Person becomes a party pursuant to the terms of this Agreement, and “Guaranty Agreements” means all of such agreements, collectively.

“Hedge Agreement” means any and all transactions, agreements, or documents now existing or hereafter entered into, which provide for an interest rate, credit, commodity, or equity swap, cap, floor, collar, forward foreign exchange transaction, currency swap, cross currency rate swap, currency option, or any combination of, or option with respect to, these or similar transactions, for the purpose of hedging a Person’s exposure to fluctuations in interest or exchange rates, loan, credit exchange, security, or currency valuations, or commodity prices.

“Incremental Commitment” means, for each Incremental Lender, any commitment by such Incremental Lender to make Revolving Loans pursuant to Section 2.1(b) as agreed to by such Incremental Lender in the respective Incremental Commitment Agreement delivered pursuant to Section 2.1(c)(i); it being understood, however, that on each date upon which an Incremental Commitment of any Incremental Lender becomes effective, such Incremental Commitment of such Incremental Lender shall be added to (and thereafter become a part of) the

Commitment of such Incremental Lender for all purposes of this Agreement as contemplated by Section 2.1(b).

“Incremental Commitment Agreement” means an Incremental Commitment Agreement substantially in the form of Exhibit G (appropriately completed and with such modifications as may be acceptable to the Administrative Agent).

“Incremental Lender” has the meaning specified in Section 2.1(c)(i).

“Incremental Revolving Loan” has the meaning specified in Section 2.1(b)(vii).

“Indemnified Liabilities” has the meaning specified in Section 15.11(a).

“Indemnified Person” has the meaning specified in Section 15.11(a).

“Instruments” means “instruments”, as such term is defined in the UCC.

“Intercompany Accounts” means all assets and liabilities, however arising, which are due to Ahern or a Subsidiary of Ahern from, which are due from Ahern or a Subsidiary of Ahern to, or which otherwise arise from any transaction by Ahern or a Subsidiary of Ahern with, any Affiliate of Ahern or a Subsidiary of Ahern.

“Intercreditor Agreement” means an Intercreditor Agreement in form and substance satisfactory to the Agents and their respective counsel, dated as of the Closing Date, by and among the Obligated Parties, the Collateral Agent, the Second Lien Agent and Wachovia, as control agent, as amended, restated, supplemented or otherwise modified from time to time.

“Interest Expense” means with respect to Ahern and its Subsidiaries for any fiscal period, the aggregate amount of interest required to be paid or accrued on all Debt of Ahern and its Subsidiaries during such period, whether such interest was or is required to be reflected as an item of expense or capitalized, including payments consisting of interest in respect of Capital Leases or synthetic leases, and including unused commitment fees, facility fees, and similar fees and expenses in connection with the borrowing of money (including all fees and expenses incurred in connection with Hedge Agreements entered into with respect to any Debt).

“Interest Payment Date” means (a) the first day of each calendar month and (b) the Termination Date.

“Interest Period” means, with respect to any LIBOR Rate Revolving Loan, the period commencing on the Funding Date of such Loan or on the Continuation/Conversion Date on which such Loan is continued as or converted into a LIBOR Rate Revolving Loan, and ending on the date one, two, or three months thereafter as selected by a Borrower in a Notice of Borrowing or Notice of Continuation/Conversion, provided that:

(a) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the following Business Day unless the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Stated Termination Date.

“Interest Rate” means each or any of the interest rates, including the Default Rate, set forth in Section 3.1.

“Inventory” means “inventory”, as such term is defined in the UCC, and inventory, goods, and merchandise to be furnished under any contract of service or held for sale or lease, returned goods, raw materials, work-in-process, finished goods (including embedded software), other materials and supplies of any kind, nature, or description which are used or consumed in a Person’s business or used in connection with the packing, shipping, advertising, selling, or finishing of such goods, merchandise, and all documents of title or other Documents representing them.

“Inventory Appraisal” means with respect to a Borrower (a) on the Closing Date and until the first appraisal of the relevant class of Inventory of such Borrower is delivered to the Agents pursuant to Section 10.4, (i) the appraisal of Inventory of such Borrower consisting of spare parts and merchandise inventory or (ii) the appraisal of Inventory of such Borrower (other than Inventory consisting of spare parts and merchandise inventory), or both such appraisals, as the context may require, in each case prepared by Rouse Asset Services and dated June 30, 2005 and (b) thereafter, each appraisal of the relevant class of Inventory of such Borrower delivered to the Agents pursuant to Section 10.4.

“Investment” means any acquisition by an Obligated Party of property in exchange for cash or other property, whether in the form of an acquisition of Capital Stock, Debt, or other indebtedness or obligation, or the purchase or acquisition of any other assets or property, or a loan, advance, capital contribution, or subscription, excluding acquisitions in the ordinary course of business of such Obligated Party of Real Estate, Equipment, and Inventory to be used in the business of such Obligated Party. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment (other than adjustments for the repayment of, or the refund of capital with respect to, the original principal amount of any such Investment).

“Investment Property” means “investment property”, as such term is defined in the UCC, and any (a) securities, whether certificated or uncertificated, (b) securities entitlements, (c) securities accounts, (d) commodity contracts, and (e) commodity accounts.

“IRS” means the Internal Revenue Service and any Governmental Authority succeeding to any of its principal functions under the Code.

“Joint Venture” means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form.

“Junior Lien Debt” means all obligations of Ahern or any of the other Obligated Parties under or in connection with the term debt issued by Ahern to the Junior Lien Lenders on the Original Closing Date in the original principal amount of \$90,000,000 and secured by a junior Lien on the Collateral.

“Junior Lien Lenders” means Special Value Opportunities Fund, LLC and Special Value Expansion Fund, LLC and their respective successors and assigns.

“Latest Projections” means: (a) on the Closing Date and thereafter until the Agents receive new projections pursuant to Section 6.2(e), the monthly projections of the Obligated Parties’ financial condition, results of operations, cash flow, Borrowing Base, and Unused Availability, in each case for the period commencing on January 1, 2005 and ending on December 31, 2006 and the annual financial projections for Fiscal Years 2007-2010, each as delivered to the Agents prior to the Closing Date; and (b) thereafter, the projections most recently received by the Agents pursuant to Section 6.2(e).

“Leasehold Property” means any leasehold interest of any Obligated Party as lessee under any lease of real property.

“Lender” means any of the lending institutions signatory to this Agreement as specified on the signature pages hereto or in any Assignment and Acceptance as a “Lender”, the Incremental Lenders, the Administrative Agent to the extent of any Agent Advance outstanding, and BofA to the extent of any Non-Ratable Loan outstanding, and “Lenders” means any two or more of such Persons, collectively.

“Letter of Credit” has the meaning specified in Section 2.4(a).

“Letter of Credit Fee” has the meaning specified in Section 3.5.

“Letter of Credit Fee Percentage” means with respect to any Letter of Credit, on any date of determination, a per annum percentage equal to the Applicable Margin for LIBOR Rate Revolving Loans as of such date of determination, plus, during the existence of any Event of Default, an additional 2.00% per annum.

“Letter of Credit Issuer” means BofA or Wachovia or any Affiliate of BofA or Wachovia.

“Letter-of-Credit Rights” means “letter-of-credit rights”, as such term is defined in the UCC, and any rights to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is entitled to demand payment or performance.

“Letter of Credit Subfacility” means \$10,000,000.

“Leverage Ratio” means, as of the end of any Fiscal Quarter of Ahern, determined for Ahern and its Subsidiaries on a consolidated basis, the ratio of (a) outstanding Debt of Ahern and its Subsidiaries as of the last day of such Fiscal Quarter, divided by (b) EBITDA for the four Fiscal Quarters most recently completed.

“LIBOR Rate” means, for any Interest Period, with respect to LIBOR Rate Revolving Loans, the rate of interest per annum determined pursuant to the following formula:

$$\text{LIBOR Rate} = \frac{\text{Offshore Base Rate}}{1.00 - \text{Eurodollar Reserve Percentage}}$$

Where,

“Eurodollar Reserve Percentage” means, for any day during any Interest Period, the reserve percentage (expressed as a decimal, rounded upward to the next 1/8th of 1.00%) in effect on such day applicable to member banks under regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, supplemental, or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as “Eurocurrency liabilities”). The LIBOR Rate for each outstanding LIBOR Rate Revolving Loan shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

“Offshore Base Rate” means the rate per annum appearing on Telerate Page 3750 (or any successor page) as the London interbank offered rate for deposits in Dollars at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period. If for any reason such rate is not available, the Offshore Base Rate shall be, for any Interest Period, the rate per annum appearing on Reuters Screen LIBO Page as the London interbank offered rate for deposits in Dollars at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period; provided, however, if more than one rate is specified on Reuters Screen LIBO Page, the applicable rate shall be the arithmetic mean of all such rates. If for any reason none of the foregoing rates is available, the Offshore Base Rate shall be, for any Interest Period, the rate per annum determined by the Administrative Agent as the rate of interest at which Dollar deposits in the approximate amount of the LIBOR Rate Revolving Loan comprising part of such Borrowing would be offered by BofA’s London Branch to major banks in the offshore Dollar market at their request at or about 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period.

“LIBOR Rate Revolving Loan” means any portion of the Revolving Loans during any period in which such portion bears interest based on the LIBOR Rate.

“Lien” means (a) any interest in property securing an obligation owed to, or a claim by, a Person other than the owner of the property, whether such interest is based on the common law, statute, or contract, and including a security interest, charge, claim, or lien arising from a mortgage, deed of trust, encumbrance, pledge, hypothecation, assignment, deposit arrangement, agreement, security agreement, conditional sale or trust receipt or a lease, consignment, or bailment for security purposes, (b) to the extent not included under clause (a) preceding, any reservation, exception, encroachment, easement, right-of-way, covenant, condition, restriction,

lease, or other title exception or encumbrance affecting property, and (c) any contingent or other agreement to provide any of the foregoing.

“Loan Account” means the loan account of the Borrowers, which account shall be maintained by the Administrative Agent.

“Loan Documents” means, collectively, this Agreement, the Intercreditor Agreement, the GE Intercreditor Agreement, the Proprietary Rights Security Agreements, any Mortgages, any Aircraft Mortgage, any Guaranty Agreements, any agreements providing for Bank Products, the Fee Letters, any Incremental Commitment Agreement, and any other agreements, instruments, and documents heretofore, now or hereafter evidencing, securing, guaranteeing, or otherwise relating to any of the Obligations, any of the Collateral, or any other aspect of the transactions contemplated by this Agreement.

“Loans” means, collectively, all loans and advances provided for in Article 2.

“Majority Lenders” means, at any time, Lenders whose Pro Rata Shares aggregate more than 50.0% of the Commitments (or, if no Commitments are outstanding, of the Loans); provided, that the Commitment and Loans of any Defaulting Lender and such Defaulting Lender’s right to vote on any issue shall be excluded for the purpose of making any determination of Majority Lenders; provided, that so long as BofA and Wachovia are the Agents and the Pro Rata Shares of BofA and Wachovia aggregate more than 50.0% of the Commitments (or, if no Commitments are outstanding, of the Loans), “Majority Lenders” means at least three (3) Lenders whose Pro Rata Shares aggregate more than 50.0% of the Commitments (or, if no Commitments are outstanding, of the Loans).

“Management Agreement” means (a) with respect to any corporation, its bylaws, (b) with respect to any limited liability company or other similar entity, its operating agreement, (c) with respect to any limited partnership, its partnership agreement, and (d) with respect to any other entity, any agreement or other document similar in nature to any of the foregoing.

“Margin Stock” means “margin stock” as such term is defined in Regulation T, U, or X of the Federal Reserve Board.

“Material Adverse Effect” means: (a) a material adverse change in, or a material adverse effect upon, (i) the Collateral or (ii) the operations, business, properties, prospects or condition (financial or otherwise) of Ahern and its Subsidiaries, taken as a whole; (b) a material impairment of the ability of any Obligated Party or any Affiliate of any Obligated Party to perform under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect, or enforceability against any Obligated Party or any Affiliate of any Obligated Party of any Loan Document to which it is a party.

“Material Contract” means any contract or other arrangement to which Ahern or any of its Subsidiaries is a party (other than the Loan Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

“Maximum Rate” means, at any time, the highest rate of interest the Lenders may legally contract for, charge, or receive in respect of the Obligations as allowed by any Requirement of Law.

“Maximum Revolver Amount” means \$175,000,000 as such amount shall be increased by the aggregate amount of Incremental Commitments, if any, and as reduced in accordance with Section 4.3(f).

“Mortgage” means and includes any mortgage, deed of trust, deed to secure debt, assignment, or other instrument executed and delivered by any Obligated Party to or for the benefit of the Collateral Agent by which the Collateral Agent, for the benefit of the Credit Providers, acquires a Lien on any Real Estate of such Obligated Party, and all amendments, modifications, and supplements thereto, and “Mortgages” means two or more of such mortgages, deeds of trust, deeds to secure debt, assignments, and other instruments, as the context requires.

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA that is or was at any time during the current calendar year or the immediately preceding six calendar years contributed to by an Obligated Party or any ERISA Affiliate.

“Negative Pledge” means any agreement, contract, or other arrangement whereby any Obligated Party is prohibited from, or would otherwise be in default as a result of, creating, assuming, incurring, or suffering to exist, directly or indirectly, any Lien on any of its assets in favor of the Collateral Agent under the Loan Documents.

“Net Amount of Eligible Accounts” means, at any time, without duplication, the gross amount of Eligible Accounts, less sales, excise, or other similar taxes, and less returns, discounts, claims, credits, allowances, accrued rebates, offsets, deductions, counterclaims, disputes, and other defenses of any nature at any time issued, owing, granted, outstanding, available, or claimed.

“Net Book Value” means, with respect to any item of Eligible Rental and Sale Equipment or Eligible Transportation Equipment of a Borrower, the cost to such Borrower of such item of Eligible Rental and Sale Equipment or Eligible Transportation Equipment, as the case may be, less the accumulated depreciation taken by such Borrower thereon, all as reflected in the books and records of such Borrower.

“Net Orderly Liquidation Percentage” means (a) with respect to any class of Inventory of a Borrower at any time, the ratio (expressed as a percentage) computed by dividing (i) (x) if such percentage is being determined on the Closing Date or on any date prior to the first delivery of an Inventory Appraisal of such Borrower’s Inventory (containing such class of Inventory) required pursuant to Section 10.4, the net recovery value of such class of Inventory of such Borrower (which in any event shall give effect to all costs and expenses of liquidation), as set forth in the Inventory Appraisal of such Borrower’s Inventory (containing such class of Inventory) delivered to the Agents prior to the Closing Date and (y) if such percentage is being determined on or after the date of the first delivery of an Inventory Appraisal of such Borrower’s Inventory (containing such class of Inventory) required pursuant to Section 10.4, the net recovery value of such class of Inventory of such Borrower (which in any event shall give effect to all costs and expenses of

liquidation), as set forth in the Inventory Appraisal of such Borrower's Inventory (containing such class of Inventory) most recently delivered to the Agents pursuant to Section 10.4 by (ii) the value of such class of Inventory of such Borrower, valued at net book value, as set forth in the corresponding Inventory Appraisal and (b) with respect to Transportation Equipment of a Borrower at any time, (x) on the Closing Date or on any date prior to the first delivery of an Equipment Appraisal of such Borrower's Transportation Equipment pursuant to Section 10.4, zero, and (y) if such percentage is being determined on or after the date of the first delivery of an Equipment Appraisal of such Borrower's Transportation Equipment pursuant to Section 10.4, the ratio (expressed as a percentage) computed by dividing (i) the net recovery value of the Transportation Equipment of such Borrower (which in any event shall give effect to all costs and expenses of liquidation), as set forth in the Equipment Appraisal of such Borrower's Transportation Equipment most recently delivered to the Agents pursuant to Section 10.4 by (ii) the value of the Transportation Equipment of such Borrower, valued at net book value, as set forth in the corresponding Equipment Appraisal.

"Net Orderly Liquidation Value" means (x) with respect to the applicable class of Eligible Inventory of a Borrower at any time, an amount equal to the product of (i) the value of such class of Eligible Inventory of such Borrower at such time valued at the lower of Net Book Value (or average cost in the case of Eligible Spare Parts Inventory) or market, multiplied by (ii) the Net Orderly Liquidation Percentage for such class of Eligible Inventory of such Borrower in effect at such time and (y) with respect to the Eligible Transportation Equipment of a Borrower at any time, an amount equal to the product of (i) the value of the Eligible Transportation Equipment of such Borrower at such time valued at the lower of Net Book Value or market, multiplied by (ii) the Net Orderly Liquidation Percentage for the Eligible Transportation Equipment of such Borrower in effect at such time.

"New Aircraft" means a Cessna Citation CJ3 that was ordered by Ahern prior to the Original Closing Date, with a purchase price of approximately \$6,000,000.

"Non-Consenting Lender" has the meaning specified in Section 13.1(d).

"Non-Ratable Loan" and "Non-Ratable Loans" have the meanings specified in Section 2.2(i).

"Notice of Borrowing" has the meaning specified in Section 2.2(c).

"Notice of Continuation/Conversion" has the meaning specified in Section 3.2(b).

"Obligated Party" means each of the Borrowers and the Guarantors, individually, and "Obligated Parties" means two or more of such Persons, collectively.

"Obligations" means (a) all present and future loans, advances, liabilities, obligations, covenants, duties, and debts owing by the Obligated Parties, or any of them, to the Administrative Agent, the Collateral Agent, BofA, Wachovia, the Letter of Credit Issuer, each Indemnified Person, and the Lenders, or any of them, arising under or pursuant to this Agreement or any of the other Loan Documents, whether or not evidenced by any note, or other instrument or document, whether arising from an extension of credit, opening of a letter of credit, loan, guaranty, indemnification, or otherwise, whether direct or indirect, absolute or contingent,

due or to become due, primary or secondary, as principal or guarantor, and including all principal, interest, charges, expenses, fees, attorneys' fees (including Attorney Costs), filing fees, and any other sums chargeable to any Obligated Party hereunder or under any of the other Loan Documents, including, without limitation, post-petition interest whether or not such interest is an allowable claim in a bankruptcy, (b) all debts, liabilities, and obligations owing by the Obligated Parties, or any of them, now or hereafter arising from or in connection with the Letters of Credit and (c) all debts, liabilities, and obligations owing by the Obligated Parties, or any of them, now or hereafter arising from or in connection with Bank Products.

“Operating Lease”, as applied to any Person, means any lease (including leases that may be terminated by the lessee at any time) of any property (whether real, personal or mixed) that is not a Capital Lease other than any such lease under which that Person is the lessor and excluding Re-Rental Leases.

“Organization Certificate” means, (a) with respect to any corporation, its articles or certificate of incorporation, (b) with respect to any limited liability company or other similar entity, its certificate of formation or organization, (c) with respect to any limited partnership, its certificate of limited partnership, and (d) with respect to any other entity, any certificate or other document similar in nature to any of the foregoing.

“Original Closing Date” means October 29, 2004.

“Original Loan and Security Agreement” has the meaning specified in the recitals of this Agreement.

“Other Taxes” means any present or future stamp or documentary taxes or any other excise or property taxes, charges, or similar levies (excluding, in the case of each Lender and each Agent, such taxes (including income taxes or franchise taxes) as are imposed on or measured by such Lender's or such Agent's gross or net income) that arise from any payment made hereunder or from the execution, delivery, or registration of, or otherwise with respect to, this Agreement or any other Loan Documents.

“Participant” means any commercial bank, financial institution, or other Person that is not an Affiliate of the Obligated Parties who shall have been granted the right by any Lender to participate in the financing provided by such Lender under this Agreement, and who shall have entered into a participation agreement in form and substance satisfactory to such Lender.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. No. 107-56, 115 Stat. 272 (Oct. 26, 2001)).

“PBGC” means the Pension Benefit Guaranty Corporation or any Governmental Authority succeeding to the functions thereof.

“Pension Plan” means a pension plan (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA that any Obligated Party or any ERISA Affiliate sponsors, maintains, or to which it makes, is making, or is obligated to make contributions, or in the case of a

Multiemployer Plan has made contributions at any time during the immediately preceding five plan years.

“Permitted Distributions” means with respect to a period during which Ahern is or was an S Corporation or a substantially similar pass-through entity for federal income tax purposes, the making of any Distribution in an amount equal to the aggregate net federal, state and local income and alternative minimum taxes (including federal and state estimated income taxes then payable) attributable to income from Ahern and any Subsidiaries for such period allocated to the holders of Capital Stock of Ahern (after taking into account the reduction in (i) federal income tax liability that will result from the payment of such state and local income taxes, and (ii) federal, state and local income and alternative minimum tax liability that has previously, or will for such tax period, result from the utilization of losses from prior periods attributable to the operations of Ahern and any Subsidiaries that has been allocated to the holders of Capital Stock of Ahern) and, if required to maintain such S Corporation or similar pass-through status, a proportionate distribution to all such holders.

“Permitted Investment” means any Investment made by an Obligated Party at a time when no Default or Event of Default exists or would result therefrom consisting of: (a) Investments in direct obligations of the U.S., or any agency thereof, or obligations guaranteed by the U.S., provided that such obligations mature within one year from the date of acquisition thereof; (b) Investments in certificates of deposit maturing within one year from the date of investment, bankers’ acceptances, Eurodollar bank deposits, or overnight bank deposits, in each case issued by, created by, or with, a bank or trust company organized under the laws of the U.S. or any state thereof having capital and surplus aggregating at least One Hundred Million Dollars (\$100,000,000); (c) Investments in commercial paper given a rating of “A2” or better by Standard & Poor’s Corporation or “P2” or better by Moody’s Investors Service, Inc. and maturing not more than 90 days from the date of creation thereof; (d) Investments in Hedge Agreements entered into for the purpose of limiting the amount of interest payable under this Agreement; (e) Investments in mutual funds substantially all of the assets of which are comprised of securities of the types described in clause (a), clause (b), and clause (c) preceding; (f) Investments by any Obligated Party in any Borrower; (g) existing Investments listed on Schedule 1.1(B); (h) loans to executive officers and employees of the Obligated Parties (that are not also holders of equity of any Obligated Party); provided that (x) at the time of such loan no Default or Event of Default shall exist or result therefrom, (y) the aggregate amount of such loans made by the Obligated Parties and outstanding at any one time does not exceed \$100,000, and (z) such loan does not violate any Requirement of Law; and (i) other Investments not included in clause (a) through clause (h) preceding in an aggregate amount at any time not exceeding \$100,000.

“Permitted Liens” means:

- (a) the Agent’s Liens;
- (b) Liens, if any, that are described on Schedule 1.1(C) and Liens that secure Debt permitted pursuant to clause (c) of Section 8.12, provided that any Liens securing refunded, renewed, or extended Debt pursuant to such clause (c) shall not attach to any assets other than those assets securing the Debt being refunded, renewed, or extended;

(c) Liens for (i) taxes, fees, assessments, or other charges of a Governmental Authority that are not delinquent and (ii) taxes, fees, assessments, or other charges of a Governmental Authority in an amount not in excess of \$250,000, provided that the payment of such taxes, fees, assessments, or other charges of a Governmental Authority referenced in this clause (ii) that are due and payable is being contested in good faith and by appropriate proceedings diligently pursued and as to which adequate financial reserves have been established in accordance with GAAP on the applicable Obligated Party's books and records and a stay of enforcement of any such Lien is in effect;

(d) Liens consisting of deposits made in the ordinary course of business in connection with, or to secure payment of, obligations under worker's compensation, unemployment insurance, social security, and other similar laws, or to secure the performance of bids, tenders, or contracts (other than for the repayment of Debt) or to secure indemnity, performance, or other similar bonds for the performance of bids, tenders, or contracts (other than for the repayment of Debt) or to secure statutory obligations (other than Liens arising under ERISA or Environmental Liens) or surety or appeal bonds, or to secure indemnity, performance, or other similar bonds;

(e) Liens securing the claims or demands of materialmen, mechanics, carriers, warehousemen, landlords, and other similar Persons, provided that if any such Lien arises from the nonpayment of such claims or demands when due, such claims or demands do not exceed \$250,000 in the aggregate and are being contested in good faith and by appropriate proceedings diligently pursued and as to which adequate financial reserves have been established in accordance with GAAP on the applicable Obligated Party's books and records and a stay of enforcement of any such Lien is in effect;

(f) Liens constituting encumbrances in the nature of reservations, exceptions, encroachments, easements, rights of way, covenants running with the land, and other similar title exceptions or encumbrances affecting any Real Estate, provided that any such Liens do not in the aggregate materially interfere with the use of such Real Estate in the ordinary conduct of an Obligated Party's business;

(g) Liens (i) arising from rights of setoff, but excluding any requirement for provision of cash collateral, in favor of BofA or Wachovia or any of their respective Affiliates arising from any agreement entered into in connection with any Obligated Party obtaining Bank Products from BofA or Wachovia or any of their respective Affiliates and (ii) arising in favor of the Letter of Credit Issuer under the applicable application and reimbursement agreement delivered to the Letter of Credit Issuer in connection with each Letter of Credit;

(h) Liens arising from judgments and attachments in connection with court proceedings, provided that (i) the attachment or enforcement of such Liens would not otherwise result in an Event of Default hereunder, (ii) such Liens are being contested in good faith by appropriate proceedings diligently pursued, (iii) adequate financial reserves have been established on the applicable Obligated Party's books and records in accordance with GAAP, (iv) no material Collateral is subject to a material risk of loss or

forfeiture, and (v) a stay of execution pending appeal or proceeding for review is in effect;

(i) Liens granted in favor of the Second Lien Agent to secure the repayment of the Second Lien Debt (or if all of the Second Lien Debt is repaid with proceeds of Refinancing Second Lien Debt, in favor of the holders of the Refinancing Second Lien Debt or an agent or trustee therefor to secure the repayment of the Refinancing Second Lien Debt), which Liens are junior and subordinate to the Agent's Liens and are subject to the terms of the Intercreditor Agreement (or in the case of Liens securing Refinancing Second Lien Debt, an intercreditor agreement substantially identical to the Intercreditor Agreement or otherwise satisfactory to the Agent and the Majority Lenders);

(j) Liens granted in favor of General Electric Capital Corporation pursuant to the terms of the GE Sale and Leaseback Agreement;

(k) Liens that constitute purchase money Liens and secure Debt permitted under clause (h) of Section 8.12 including the lessors' interests under Capital Leases permitted under clause (h) of Section 8.12, but only to the extent such Liens attach only to the Transportation Equipment, aircraft or computer or office equipment acquired by the incurrence of such Capital Leases and purchase money secured Debt, and Liens securing refinancings of such Debt permitted under clause (c) of Section 8.12; provided that such Liens are not extended to property other than the Transportation Equipment, aircraft or computer or office equipment securing the Debt being refinanced; and

(l) Liens that constitute purchase money Liens and secure Debt permitted under clause (i) of Section 8.12, but only to the extent such Liens attach only to the Inventory acquired by the incurrence of such purchase money secured Debt and not to any Account, including, in any event, any rental proceeds of any such Inventory;

provided that (i) none of such Liens listed in clause (b) through clause (h) or clause (k) through clause (l) preceding may attach to any Accounts of a Borrower, (ii) none of such Liens listed in clause (b) through clause (h) or clause (k) preceding, other than such Liens of a type and to the extent provided by clause (c) and clause (e) preceding, may attach to any Inventory owned by a Borrower and (iii) none of such Liens listed in clause (b) through clause (h), clause (j) or clause (l) preceding, other than such Liens of a type and to the extent provided by clause (c) and clause (e) preceding, may attach to any Transportation Equipment owned by a Borrower.

"Person" means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, Governmental Authority, or any other entity.

"Plan" means an employee benefit plan (as defined in Section 3(3) of ERISA) that any Obligated Party sponsors or maintains or to which any Obligated Party makes, is making, or is obligated to make contributions and includes any Pension Plan.

"Pro Rata Share" means, with respect to a Lender, a fraction (expressed as a percentage), the numerator of which is the amount of such Lender's Commitment and the denominator of which is the sum of the amounts of all of the Lenders' Commitments, or if no Commitments are

outstanding, a fraction (expressed as a percentage), the numerator of which is the amount of Loans owed to such Lender and the denominator of which is the aggregate amount of the Loans owed to all Lenders, in each case giving effect to a Lender's participation in Non-Ratable Loans and Agent Advances.

"Proprietary Rights" means licenses, franchises, permits, patents, patent rights, copyrights, works that are the subject matter of copyrights, trademarks, service marks, trade names, trade styles, patent applications, copyright applications, trademark and service mark applications, and licenses and rights related to any of the foregoing, and any other rights under any of the foregoing, extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing, and any rights to sue for past, present and future infringement of any of the foregoing. With respect to the Obligated Parties, "Proprietary Rights" includes, without limitation, all of the items listed on Schedule 7.11.

"Proprietary Rights Security Agreements" means the assignments for security and special powers of attorney executed and delivered by one or more of the Obligated Parties to the Collateral Agent, for the benefit of the Credit Providers, to evidence the Agent's Liens in each such Obligated Party's present and future patents, trademarks, copyrights and related licenses and rights and/or provide certain rights with respect to such Liens.

"Real Estate" means, with respect to any Person, such Person's now or hereafter owned or leased estates in real property (as applicable), including fees, leaseholds, and future interests, together with such Person's now or hereafter owned or leased interests in the improvements thereon, the fixtures attached thereto, and the easements appurtenant thereto.

"Refinancing Second Lien Debt" has the meaning specified in Section 8.12.

"Refinancing Second Lien Debt Documents" has the meaning specified in Section 8.12.

"Release" means a release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, or migration of a Contaminant into the indoor or outdoor environment or into or out of any Real Estate or other property, including the movement of Contaminants through or in the air, soil, surface water, groundwater, or Real Estate or other property.

"Report" has the meaning specified in Section 14.18(a).

"Reportable Event" means any of the events set forth in Section 4043(b) of ERISA or the regulations thereunder, other than any such event for which the 30 day notice requirement under ERISA has been waived in regulations issued by the PBGC.

"Requirement of Law" means, as to any Person, any law (statutory or common), treaty, rule, or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject.

“Re-Rental Lease” means any lease of property entered into by Ahern as lessee which property is immediately subleased by Ahern to another Person in the ordinary course of business of Ahern.

“Reserves” means any and all reserves that either of the Agents deems necessary in the exercise of its reasonable credit judgment to maintain with respect to the Collateral or any Obligated Party that limit the availability of Borrowings hereunder or that represent amounts the Administrative Agent, the Collateral Agent or any Lender may be obligated to pay in the future on behalf of an Obligated Party (including, without limitation, (a) Bank Product Reserves, (b) reserves for accrued, unpaid interest on the Obligations, (c) reserves for rent at each leased location where any Collateral or the books and records of an Obligated Party are maintained or kept, except to the extent a Collateral Waiver Agreement is delivered to the Agents for such leased location, (d) reserves for Inventory shrinkage, (e) Environmental Compliance Reserves, (f) reserves for customs charges and shipping charges relating to any Inventory in transit, (g) reserves for warehousemen’s or bailees’ charges, except to the extent a Collateral Waiver Agreement is delivered to the Agents by the applicable warehouseman or bailee, (h) reserves for taxes, fees, assessments, and other governmental charges, (i) a dilution reserve equal to the difference (if a positive number) between Dilution and 5% of the Net Amount of Eligible Accounts and (j) reserves for any amounts reflected in any Borrower’s ledger accounts under any of the following categories: “Equipment Down Long Term” or “Rebate Accrual”).

“Responsible Officer” means, with respect to any Obligated Party, the chief executive officer, the president, the chief financial officer, the treasurer, the director of finance, any vice president, or any other officer having substantially the same authority and responsibility as any of the foregoing.

“Revolving Loans” has the meaning specified in Section 2.2(a) and includes each Agent Advance, Non-Ratable Loan and Incremental Revolving Loan.

“Second Lien Agent” means Wells Fargo Bank, N.A., as Trustee, in its capacity as collateral trustee for the Second Lien Lenders and its successors and assigns in such capacity from time to time.

“Second Lien Debt” has the meaning set forth in Section 9.1(q) hereof.

“Second Lien Debt Agreement” means the Indenture, dated as of August 18, 2005, between Ahern and Wells Fargo Bank, N.A., as Trustee, providing for the issuance by Ahern of the Second Lien Notes, as such agreement may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof.

“Second Lien Debt Documents” means the Second Lien Debt Agreement, the Second Lien Notes, any security agreements in favor of the Second Lien Agent securing the payment of the Second Lien Debt and any other agreements between any of the Obligated Parties and the Second Lien Agent executed from time to time in connection with the Second Lien Debt Agreement, if any.

“Second Lien Lenders” means the holders of the Second Lien Debt.

“Second Lien Notes” means the senior secured notes due 2013 issued by Ahern pursuant to the Second Lien Debt Agreement, as amended, restated, supplemented or substituted for from time to time in accordance with the terms thereof and hereof.

“Settlement” has the meaning specified in Section 14.15(a)(i).

“Settlement Date” has the meaning specified in Section 14.15(a)(i).

“Software” means “software”, as such term is defined in the UCC, other than software embedded in any category of Goods, including all computer programs and all supporting information provided in connection with a transaction related to any program.

“Solvent” means, when used with respect to any Person, that at the time of determination:

- (a) the assets of such Person, at a fair valuation, are in excess of the total amount of its debts (including contingent liabilities);
- (b) the present fair saleable value of its assets is greater than its probable liability on its existing debts as such debts become absolute and matured;
- (c) it is then able and expects to be able to pay its debts (including contingent debts and other commitments) as they mature; and
- (d) it has capital sufficient to carry on its business as conducted and as proposed to be conducted.

For purposes of determining whether a Person is Solvent, the amount of any contingent liability shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Stated Termination Date” means the fifth Anniversary Date.

“Subsidiary” means, with respect to any Person (the “subject Person”), any corporation, association, partnership, limited liability company, joint venture, or other business entity of which more than 50.0% of the voting Capital Stock is owned or controlled directly or indirectly by the subject Person, or one or more of the Subsidiaries of the subject Person, or a combination thereof. Unless the context otherwise clearly requires, references herein to a “Subsidiary” refer to a Subsidiary of an Obligated Party.

“Supporting Cash Deposit” has the meaning specified in Section 2.4(g).

“Supporting Letter of Credit” has the meaning specified in Section 2.4(g).

“Supporting Obligations” means “supporting obligations”, as such term is defined in the UCC, including letters of credit and guaranties issued in support of Accounts, Chattel Paper, Documents, General Intangibles, Instruments, or Investment Property.

“Syndication Agent” means Wachovia, solely in its capacity as a syndication agent.

“Taxes” means any and all present or future taxes, levies, imposts, deductions, charges, or withholdings, and all liabilities with respect thereto, excluding, in the case of the Administrative Agent, each Lender and the Collateral Agent, such taxes (including income taxes or franchise taxes) as are imposed on or measured by the Administrative Agent’s, such Lender’s or the Collateral Agent’s net income (or on gross income where such tax is in lieu of a tax on net income and is not a withholding tax) in any jurisdiction (whether federal, state, or local and including any political subdivision thereof) under the laws of which the Administrative Agent, such Lender or the Collateral Agent, as the case may be, is organized or maintains a lending office or where the contacts with such jurisdiction (other than the Loan Documents or events contemplated by the Loan Documents) would otherwise subject the Administrative Agent, such Lender or the Collateral Agent, as the case may be, to taxes on such net income.

“Termination Date” means the earliest to occur of (a) the Stated Termination Date, (b) the date the Commitments are terminated (i) by the Borrowers pursuant to Section 4.2 or (ii) pursuant to Section 11.2, and (c) the date this Agreement is otherwise terminated for any reason whatsoever pursuant to the terms of this Agreement.

“Test Period” means, if a Trigger Event shall occur, each period of four consecutive fiscal quarters of Ahern (taken as one accounting period) ending on each of (x) the last day of the fiscal quarter of Ahern most recently ended prior to the occurrence of such Trigger Event for which Financial Statements for Ahern and its Subsidiaries have been delivered to the Administrative Agent pursuant to Section 6.2(a) or 6.2(b)(i) and (y) the last day of each fiscal quarter of Ahern after the fiscal quarter referred to in clause (x) ending prior to or during the Trigger Event Compliance Period for such Trigger Event.

“Time Utilization” means the ratio, calculated on a monthly basis for Ahern and its Subsidiaries, of (i) the average number of units on rent during such month divided by (ii) the average number of units available for rent during such month.

“Title Company” means one of more title insurance companies reasonably satisfactory to the Agents.

“Transaction Documents” means, collectively, the Loan Documents, the Second Lien Debt Documents, the Refinancing Second Lien Debt Documents (if any) and all other documents, instruments and agreements executed and/or delivered in connection therewith.

“Transportation Equipment” means each of the following types of licensed vehicles and trailers owned by any Obligated Party so long as they are not included in the rental fleet available for rental to third parties: (a) vehicles and trailers used for delivery, (b) vehicles used for service and (c) vehicles used by employees for transportation.

“Trigger Event” means for any reason Excess Availability is less than \$25,000,000 at any time.

“Trigger Event Compliance Period” means the period commencing on the occurrence of a Trigger Event and continuing until such time as Excess Availability is greater than \$25,000,000 for thirty (30) consecutive calendar days.

“UCC” means the Uniform Commercial Code (or any successor statute), as in effect from time to time, of the State of New York or of any other state the laws of which are required as a result thereof to be applied in connection with the issue of perfection of security interests; provided that to the extent that the UCC is used to define any term herein or in any other documents and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term as contained in Article or Division 9 shall govern.

“Unfunded Pension Liability” means the excess of a Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

“Unused Availability” means, at any time, the Borrowing Base minus the Aggregate Revolver Outstandings.

“Unused Letter of Credit Subfacility” means an amount equal to the Letter of Credit Subfacility, minus the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit, plus, without duplication, (b) the aggregate unpaid reimbursement obligations with respect to all Letters of Credit.

“Unused Line Fee” has the meaning specified in Section 3.4.

“U.S.” means the United States of America.

“Wachovia” has the meaning specified in the introductory paragraph of this Agreement.

“Waived” means waived in accordance with Section 13.1.

“Wholly-Owned Subsidiary” means, with respect to any Person (the “subject Person”), a Subsidiary all of the issued and outstanding Capital Stock (other than directors’ qualifying shares) of which are owned by the subject Person or one or more of the subject Person’s other Wholly-Owned Subsidiaries or by the subject Person and one or more of the subject Person’s Wholly-Owned Subsidiaries.

Section 1.2 Accounting Terms. Any accounting term used in this Agreement shall have, unless otherwise specifically provided herein, the meaning customarily given to such term in accordance with GAAP, and all financial computations in this Agreement shall be computed, unless otherwise specifically provided herein, in accordance with GAAP as consistently applied and using the same method for inventory valuation as used in the preparation of the Financial Statements. If at any time any change in GAAP would affect the computation of any financial covenant or requirement set forth in any Loan Document, and any of the Obligated Parties, either of the Agents or the Majority Lenders shall request, the Agents, the Lenders and the Obligated Parties shall negotiate in good faith to amend such covenant or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Majority

Lenders and the Agents); provided that, until so amended, (a) such covenant or requirement shall continue to be determined in accordance with GAAP prior to such change and (b) the Obligated Parties shall provide to the Agents (with sufficient copies to the Administrative Agent for distribution to each Lender) Financial Statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

Section 1.3 Interpretive Provisions.

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms. Terms used herein that are defined in the UCC and are not otherwise defined herein shall have the meanings specified therefor in the UCC.

(b) The words “hereof,” “herein,” “hereunder,” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, Schedule, and Exhibit references are to this Agreement unless otherwise specified. The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices, and other writings, however evidenced. The term “including” is not limiting and means “including, without limitation.” In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including.” The word “or” is not exclusive.

(c) Unless otherwise expressly provided herein, (i) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, and other modifications thereto, but only to the extent such amendments, restatements, and other modifications are not prohibited by the terms of any Loan Document, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.

(d) The captions and headings of this Agreement and other Loan Documents are for convenience of reference only and shall not affect the interpretation of this Agreement and the other Loan Documents.

(e) This Agreement and the other Loan Documents may use several different limitations, tests, or measurements to regulate the same or similar matters. All such limitations, tests, and measurements are cumulative and shall each be performed in accordance with their terms.

(f) For purposes of Section 11.1, a breach of a financial covenant contained in Section 8.21 shall be deemed to have occurred as of any date of determination thereof by either of the Agents or as of the last day of any specified measuring period, regardless of when the Financial Statements reflecting such breach are delivered to either of the Agents.

Section 1.4 No Strict Construction. This Agreement and the other Loan Documents are the result of negotiations among, and have been reviewed by counsel to, each Agent, each Lender, and the Obligated Parties and are the products of all parties. Accordingly, this Agreement and the other Loan Documents shall not be construed against the Administrative Agent, the Collateral Agent, the Lenders, or the Obligated Parties merely because of their respective involvement in their preparation.

Section 1.5 No Novation. It is the intent of the parties hereto that this Agreement does not constitute a novation of the rights, obligations and liabilities of the respective parties (including the Obligations) existing under the Original Loan and Security Agreement or evidence payment of all or any of such obligations and liabilities, and such rights, obligations and liabilities shall continue and remain outstanding under the terms and conditions of, and as amended and restated by, this Agreement, and that this Agreement amends and restates in its entirety the Original Loan and Security Agreement. Without limiting the generality of the foregoing (i) all Revolving Loans outstanding under the Original Loan and Security Agreement shall on the Closing Date become Revolving Loans hereunder, (ii) all Letters of Credit under the Original Loan and Security Agreement shall on the Closing Date become Letters of Credit hereunder and (iii) all other Obligations outstanding under the Original Loan and Security Agreement shall on the Closing Date be Obligations under this Agreement. Each of the Borrowers and the other Obligated Parties hereby ratifies and confirms its grant of security interests and Liens in the Collateral (including, without limitation, any and all Collateral granted under the Original Loan and Security Agreement and the other Loan Documents) in which it has rights and confirms and agrees that such Collateral secures any and all of the Obligations, including, without limitation, the Revolving Loans.

The Borrowers acknowledge and agree that as of the close of business on August 17, 2005, the Aggregate Revolver Outstandings under and as defined in the Original Loan and Security Agreement (excluding the aggregate undrawn amount of all outstanding Letters of Credit issued under the Original Loan and Security Agreement) is \$141,198,219.49. As of the date hereof, none of the Obligated Parties or any of their respective Affiliates has offset rights, counterclaims or defenses of any kind against any of their obligations, indebtedness or liabilities under the Original Loan and Security Agreement. As of the date hereof immediately prior to the amendment and restatement of the Original Loan and Security Agreement contemplated herein, there exists no Default or Event of Default under and as defined in the Original Loan and Security Agreement.

ARTICLE 2

LOANS AND LETTERS OF CREDIT

Section 2.1 Credit Facility.

(a) Subject to the terms and conditions of this Agreement, the Lenders agree to make available a credit facility for use by any one or more of the Borrowers from time to time during the term of this Agreement. Such credit facility shall be composed of a revolving credit facility consisting of Revolving Loans and Letters of Credit as described in Section 2.2 and Section 2.4.

(b) So long as no Default or Event of Default then exists or would result therefrom, the Borrowers, with the prior written consent of the Administrative Agent as to new Lenders as contemplated under clause (b)(v)(z) below, shall have the right to request from time to time prior to the Termination Date that one or more Lenders (and/or one or more other Persons that will become Lenders as provided below) provide Incremental Commitments and, subject to the terms and conditions contained in this Agreement, make Incremental Revolving Loans, as the case may be, pursuant thereto; it being understood and agreed, however, that:

(i) no Lender shall be obligated to provide an Incremental Commitment as a result of any such request by the Borrowers, and until such time, if any, as such Lender has agreed in its sole discretion to provide an Incremental Commitment and executed and delivered to the Administrative Agent an Incremental Commitment Agreement as provided in clause (c)(i) of this Section 2.1, such Lender shall not be obligated to fund any Incremental Revolving Loans;

(ii) any Lender (or, in the circumstances contemplated by clause (v) below, any other Person that qualifies as an Eligible Assignee) may so provide an Incremental Commitment without the consent of any other Lender;

(iii) the Incremental Commitments provided pursuant to this clause (b) shall be in a minimum aggregate amount (for all Lenders (including in the circumstances contemplated by clause (v) below, Eligible Assignees who will become Lenders)) of at least \$5,000,000 and in integral multiples of \$1,000,000 in excess thereof;

(iv) the aggregate amount of all Incremental Commitments permitted to be provided pursuant to this Section 2.1(b) shall not exceed \$50,000,000;

(v) if, after the Borrowers have requested the then existing Lenders (other than Defaulting Lenders) to provide Incremental Commitments pursuant to this clause (b), the Borrowers have not received Incremental Commitments in an aggregate amount equal to that amount of Incremental Commitments which the Borrowers desire to obtain pursuant to such request (as set forth in the notice provided by the Borrowers as provided below), then the Borrowers may request Incremental Commitments from Persons that would qualify as Eligible Assignees hereunder in an aggregate amount equal to such deficiency, provided that (x) any such Incremental Commitment provided by any such Eligible Assignee shall be in a minimum amount (for such Eligible Assignee) of at least \$1,000,000, (y) the fees to be paid to such Eligible Assignee shall be no greater than those paid (or which were offered) to the then existing Lenders providing (or which were requested to provide) the respective requested Incremental Commitments and (z) the prior written consent of the Administrative Agent shall be required with respect to each Person (not an existing Lender) which provides any Incremental Commitment;

(vi) the prior written consent of each Letter of Credit Issuer to each new Lender providing an Incremental Commitment shall be required;

(vii) each Lender agreeing to provide an Incremental Commitment pursuant to an Incremental Commitment Agreement shall, subject to the satisfaction of the relevant conditions set forth in this Agreement, make revolving loans and advances (each, an "Incremental Revolving Loan" and, collectively, the "Incremental Revolving Loans") to the Borrowers as specified in such Incremental Commitment Agreement and such Incremental Revolving Loans shall thereafter be deemed to be Revolving Loans for all purposes of this Agreement and the other Loan Documents;

(viii) Incremental Revolving Loans to be made pursuant to such Incremental Commitment Agreement shall mature on the Termination Date and shall bear interest at the same rates (i.e., have the same Applicable Margins) applicable to other Revolving Loans; and

(ix) all actions by the Borrowers pursuant to this clause (b) shall be taken in coordination with the Administrative Agent.

(c) In connection with the Incremental Commitments to be provided pursuant to preceding clause (b):

(i) the Borrowers, the Administrative Agent and each such Lender or other Eligible Assignee which agrees to provide an Incremental Commitment (each such Lender or Eligible Assignee, an "Incremental Lender") shall execute and deliver to the Administrative Agent (with a copy to the Borrowers) an Incremental Commitment Agreement, with the effectiveness of such Incremental Lender's Incremental Commitment to occur upon the delivery of such Incremental Commitment Agreement to the Administrative Agent, the obtaining of the consents required by Section 2.1(b) (v) and/or (vi), if and to the extent required pursuant to said clauses, the payment of any fees required in connection therewith and the satisfaction of any other conditions precedent that may be set forth in such Incremental Commitment Agreement;

(ii) the Borrowers and the other Obligated Parties shall have delivered such amendments, modifications and/or supplements to the Collateral Documents as are necessary or, in the reasonable opinion of the Administrative Agent, desirable to ensure that the additional Obligations to be incurred pursuant to the Incremental Commitments are secured by, and entitled to the benefits of, the Collateral Documents;

(iii) the Administrative Agent shall receive an acknowledgment from the Obligated Parties that the Incremental Revolving Loans to be incurred pursuant to such Incremental Commitments are entitled to the benefits of the Collateral Documents, together with resolutions executed by (x) the Borrowers, authorizing the incurrence of such Incremental Revolving Loans pursuant to such

Incremental Commitments and (y) each other Obligated Party, stating that the Incremental Revolving Loans to be incurred pursuant to such Incremental Commitments are entitled to benefits of the Collateral Documents;

(iv) the Borrowers shall deliver to the Administrative Agent a certificate of a Responsible Officer of Ahern certifying that the Incremental Commitment Agreements and the incurrence of Debt in connection therewith does not violate any of the Second Lien Debt Agreement or any of the other Second Lien Debt Documents;

(v) the Borrowers shall deliver to the Administrative Agent an opinion or opinions, in form and substance satisfactory to the Administrative Agent, from counsel to the Borrowers satisfactory to the Administrative Agent and dated the date of such Incremental Commitment Agreement, covering such of the matters set forth in the opinions of counsel delivered to the Administrative Agent on the Closing Date pursuant to Section 9.1 and such other matters as the Administrative Agent may reasonably request, including non-contravention of the Second Lien Debt Documents;

(vi) on the date of the making of such Incremental Revolving Loans, such Incremental Revolving Loans shall be added to (and form part of) each Borrowing of outstanding Revolving Loans on a pro rata basis (based on the relative sizes of the various outstanding Borrowings), so that each Lender will participate proportionately in each then outstanding Borrowing of Revolving Loans, and so that the existing Lenders continue to have the same participation (by amount) in each Borrowing as they had before the making of the new Incremental Revolving Loans; and

(vii) the Administrative Agent shall promptly notify each Lender as to the effectiveness of each Incremental Commitment Agreement, and shall deliver to each Lender a copy of same, and at such time Schedule 1.1(A) shall be deemed modified to reflect the Incremental Commitments of such Incremental Lender.

To the extent the provisions contained in clause (c)(vi) above require that Lenders making Incremental Revolving Loans add such Incremental Revolving Loans to then outstanding Borrowings of LIBOR Rate Revolving Loans, it is acknowledged that the effect thereof may result in such new Incremental Revolving Loans having short Interest Periods (i.e., an Interest Period that began during an Interest Period then applicable to outstanding LIBOR Rate Revolving Loans and which will end on the last day of such Interest Period). In connection therewith, the Borrowers may agree, in the respective Incremental Commitment Agreement, to compensate the Lenders making the new Incremental Revolving Loans for funding LIBOR Rate Revolving Loans during an existing Interest Period on such basis as may be agreed by the Borrowers and such respective Lender or Lenders.

Section 2.2 Revolving Loans.

(a) Amounts. Subject to the terms and conditions of this Agreement, each Lender severally, but not jointly, agrees, upon a Borrower's request from time to time on any Business Day during the period from the Original Closing Date to the Termination Date, to make revolving loans (the "Revolving Loans") to the Borrowers in amounts not to exceed such Lender's Pro Rata Share of the Commitments. The Lenders, however, in their unanimous discretion, may elect to make Revolving Loans that would cause the Aggregate Revolver Outstandings to exceed the Borrowing Base on one or more occasions, but if they do so, neither the Agents nor the Lenders shall be deemed thereby to have changed the limits of the Borrowing Base or to be obligated to exceed such limits on any other occasion. If any requested Revolving Loan exceeds the Unused Availability then the Lenders may refuse to make or may otherwise restrict the making of such Revolving Loan, subject to the authority of the Administrative Agent, in its sole discretion, to make Agent Advances pursuant to the terms of Section 2.2(j).

(b) [Intentionally Omitted.]

(c) Procedure for Borrowing.

(i) Each Borrowing of Revolving Loans shall be made upon a Borrower's irrevocable written notice delivered to the Administrative Agent, in the form of a notice of borrowing in the form of Exhibit D or such other form as may be acceptable to the Agents in their sole discretion (any such notice being referred to herein as a "Notice of Borrowing"), which must be received by the Administrative Agent prior to 1:00 p.m. (New York time) (y) three Business Days prior to the requested Funding Date, in the case of LIBOR Rate Revolving Loans or (z) on the requested Funding Date, in the case of Base Rate Revolving Loans, specifying:

(A) the amount of the Borrowing, which in the case of LIBOR Rate Revolving Loans shall be in an amount that is not less than One Million Dollars (\$1,000,000) or an integral multiple of One Million Dollars (\$1,000,000) in excess thereof;

(B) the requested Funding Date, which must be a Business Day;

(C) whether the Revolving Loans requested are to be Base Rate Revolving Loans or LIBOR Rate Revolving Loans; provided that if such Borrower fails to specify whether any Revolving Loans are to be Base Rate Revolving Loans or LIBOR Rate Revolving Loans, such request shall be deemed a request for Base Rate Revolving Loans;

(D) if the requested Revolving Loans are to be LIBOR Rate Revolving Loans, the duration of the Interest Period; provided that if such Borrower fails to select the duration of the Interest Period with respect to any requested LIBOR Rate Revolving Loans, such Borrower shall be

deemed to have requested such Revolving Loans be made as LIBOR Rate Revolving Loans with an Interest Period of one month in duration; and

(E) whether the proceeds of such Borrowing are to be deposited to the Funding Account or sent by wire transfer to a third party, in which case such Borrower shall provide the Administrative Agent with written wire transfer instructions satisfactory to the Administrative Agent;

provided that with respect to the Borrowing to be made on the Original Closing Date, such Borrowing will consist of Base Rate Revolving Loans only.

(ii) With respect to any request for Base Rate Revolving Loans, in lieu of delivering a Notice of Borrowing, a Borrower may give the Administrative Agent telephonic notice of such request for advances to the Funding Account not later than the required time specified in clause (i) preceding. The Administrative Agent at all times shall be entitled to rely on such telephonic notice in making any such Revolving Loans, regardless of whether any written confirmation is received by it.

(iii) Whenever checks or other items are presented to BofA for payment against the Funding Account or any other Deposit Account maintained by a Borrower with BofA in an amount greater than the then available balance in the Funding Account or such other Deposit Account, such presentation may, at the election of the Administrative Agent in its sole discretion, be deemed to be a request by the Borrowers for a Base Rate Revolving Loan on the date of such presentation in an amount sufficient to cover all such items presented in the Funding Account or such other Deposit Account on such date.

(iv) At the election of either of the Agents or the Majority Lenders, the Borrowers shall have no right to request LIBOR Rate Revolving Loans during the existence of any Default or Event of Default.

(d) Disbursement. On or prior to the Closing Date, the Borrowers shall have delivered to the Administrative Agent a notice setting forth the deposit account maintained with BofA (the "Funding Account") to which the Administrative Agent is authorized by the Borrowers to transfer the proceeds of the Revolving Loans requested hereunder. Each of the Borrowers agrees that the Funding Account may be established in the name of any other Borrower, and hereby agrees that the Funding Account has been established for the benefit of all of the Borrowers for receipt of the proceeds of Revolving Loans hereunder. Each Borrower hereby appoints each other Borrower as its agent with respect to receipt of the proceeds of Revolving Loans in the Funding Account as contemplated herein. The Borrowers may designate a replacement Funding Account from time to time by written notice to the Administrative Agent. Any designation by the Borrowers of the Funding Account must be reasonably acceptable to the Administrative Agent.

(e) Reliance Upon Authority; No Liability. The Administrative Agent is entitled to rely conclusively on any individual's request for Revolving Loans on behalf of a Borrower, as long as the proceeds thereof are to be transferred to the Funding Account or according to such other instructions as may be provided to the Administrative Agent pursuant to Section 2.2(c)(i)(E). The Administrative Agent has no duty to verify the identity of any individual representing himself or herself as a person authorized by any Borrower to make such requests on its behalf. The Administrative Agent shall not incur any liability to the Borrowers as a result of acting upon any notice referred to in Section 2.2(c) or Section 2.2(d) which the Administrative Agent reasonably believes to have been given by an officer or other person duly authorized by a Borrower to request Revolving Loans on its behalf or for otherwise acting under this Section 2.2. The crediting of Revolving Loans to the Funding Account or wire transfer to such Person as a Borrower shall direct shall conclusively establish the obligation of the Borrowers to repay such Revolving Loans as provided herein.

(f) Notice Irrevocable. Any Notice of Borrowing (or telephonic notice in lieu thereof) made pursuant to Section 2.2(c) shall be irrevocable and the Borrowers shall be bound to borrow the funds requested therein in accordance therewith.

(g) Administrative Agent's Election. Promptly after receipt of a Notice of Borrowing (or telephonic notice in lieu thereof), the Administrative Agent shall elect in its sole discretion to have the terms of Section 2.2(h), Section 2.2(i), or Section 2.2(j) apply to such requested Borrowing. If BofA declines in its sole discretion to make a Non-Ratable Loan pursuant to Section 2.2(i), the terms of Section 2.2(h) shall apply to the requested Borrowing unless such requested Borrowing is to be made by the Administrative Agent as an Agent Advance pursuant to Section 2.2(j).

(h) Making of Revolving Loans. If the Administrative Agent elects to have the terms of this Section 2.2(h) apply to a requested Borrowing, then promptly after receipt of a Notice of Borrowing or telephonic notice in lieu thereof, the Administrative Agent shall notify the Lenders by telecopy, telephone, or e-mail of the requested Borrowing. Each Lender shall transfer its Pro Rata Share of the requested Borrowing to the Administrative Agent, in immediately available funds, to the account from time to time designated by the Administrative Agent not later than 3:30 p.m. (New York time) on the applicable Funding Date. After receipt by the Administrative Agent of all proceeds of such requested Borrowing, it shall make the proceeds of such requested Borrowing available to the applicable Borrower on the applicable Funding Date by transferring same day funds to the Funding Account or as otherwise requested by such Borrower in accordance with Section 2.2(c)(i)(E). Unless the Lenders in their unanimous discretion consent otherwise, no Borrowing under this clause (h) shall be permitted if the requested Borrowing exceeds the Unused Availability on the applicable Funding Date prior to giving effect to such requested Borrowing.

(i) Making of Non-Ratable Loans. If the Administrative Agent elects, with the consent of BofA, in its capacity as a Lender, to have the terms of this Section 2.2(i) apply to a requested Borrowing, BofA shall make a Revolving Loan in the amount of such requested Borrowing available to the Borrowers on the applicable Funding Date by

transferring same day funds to the Funding Account or as otherwise requested by the applicable Borrower in accordance with Section 2.2(c)(i)(E). Each Revolving Loan made solely by BofA pursuant to this Section 2.2(i) is referred to hereinafter as a “Non-Ratable Loan,” and such Revolving Loans are collectively referred to as the “Non-Ratable Loans.” Each Non-Ratable Loan shall be subject to all the terms and conditions applicable to other Revolving Loans except that all payments of principal and interest thereon shall be payable to BofA solely for its own account. The aggregate amount of Non-Ratable Loans outstanding at any time shall not exceed \$10,000,000. The Administrative Agent shall not request BofA to make any Non-Ratable Loan if (A) the Administrative Agent has received written notice from any Lender that one or more of the applicable conditions precedent set forth in Article 9 will not be satisfied on the requested Funding Date for the applicable Borrowing or (B) the Administrative Agent has actual knowledge (based solely on the Borrowing Base Certificate most recently delivered to it or written notice from any Lender thereof) that the requested Borrowing exceeds the Unused Availability on the applicable Funding Date prior to giving effect to such requested Borrowing. The Non-Ratable Loans shall be secured by the Agent’s Liens in and to the Collateral and shall constitute Base Rate Revolving Loans and Obligations hereunder.

(j) Agent Advances. Subject to the limitations set forth below, the Administrative Agent is authorized by the Borrowers and the Lenders, from time to time in its sole discretion in such capacity, after the occurrence of a Default or an Event of Default or at any time that any of the other conditions precedent set forth in Article 9 have not been satisfied, to make Base Rate Revolving Loans to the Borrowers or any Borrower on behalf of the Lenders in an aggregate amount outstanding at any time not to exceed \$10,000,000 which the Administrative Agent, in its reasonable business judgment, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations (including through the Borrowers using any proceeds of such Revolving Loans to pay payroll and associated tax obligations), or (iii) to pay any other amount chargeable to the Borrowers pursuant to the terms of this Agreement, including costs, fees, and expenses as described in Section 15.7 (any of such advances are herein referred to as “Agent Advances”); provided that after giving effect to the making of any Agent Advance, the Aggregate Revolver Outstandings shall not exceed the Maximum Revolver Amount. The Majority Lenders may at any time revoke the authorization of the Administrative Agent to make Agent Advances. Any such revocation must be in writing and shall become effective prospectively upon the receipt by the Administrative Agent thereof. The Agent Advances shall be secured by the Agent’s Liens in and to the Collateral and shall constitute Base Rate Revolving Loans and Obligations hereunder.

Section 2.3 [Intentionally Omitted.]

Section 2.4 Letters of Credit.

(a) Agreement to Cause to Issue. Subject to the terms and conditions of this Agreement, the Agents agree to cause the Letter of Credit Issuer to issue for the account

of any of the Borrowers (whether one or more) one or more commercial/documentary and standby letters of credit (each a "Letter of Credit" and collectively, the "Letters of Credit") from time to time during the term of this Agreement.

(b) Amounts; Outside Expiration Date. The Agents shall not cause to be issued any Letter of Credit at any time if: (i) the maximum face amount of the requested Letter of Credit is greater than the Unused Letter of Credit Subfacility at such time; (ii) the maximum undrawn amount of the requested Letter of Credit and all commissions, fees, and charges due from such Borrower in connection with the opening thereof exceeds the Unused Availability prior to giving effect to issuance of such requested Letter of Credit; (iii) such Letter of Credit has an expiration date later than 30 days prior to the Stated Termination Date; or (iv) such Letter of Credit has an expiration date later than twelve calendar months from the date of issuance for standby letters of credit and six calendar months from the date of issuance for commercial/documentary letters of credit, provided that any Letter of Credit issued hereunder may, subject to this clause (iv) and the other provisions of this Section 2.4, include an "evergreen" or automatic renewal provision of the type referenced in Section 2.4(d)(iii) without contravening the requirement contained in this Section 2.4(b).

(c) Other Conditions. In addition to being subject to the satisfaction of the applicable conditions precedent contained in Article 9, the obligation of the Agents to cause any Letter of Credit to be issued is subject to the following conditions precedent having been satisfied in a manner satisfactory to the Agents and the Letter of Credit Issuer:

(i) the Borrowers shall have delivered to the Letter of Credit Issuer, at such times and in such manner as the Letter of Credit Issuer may prescribe, an application in form and substance satisfactory to the Letter of Credit Issuer and reasonably satisfactory to each Agent for the issuance of the Letter of Credit and such other documents as may be required pursuant to the terms thereof, and the form, terms, and purpose of the proposed Letter of Credit shall be reasonably satisfactory to each Agent and the Letter of Credit Issuer (provided that in the event any term of such application or any other document is inconsistent with the terms of this Agreement and the Letter of Credit Issuer is either the same Person as an Agent or any Lender, then the terms of this Agreement shall be controlling); and

(ii) as of the date of issuance, no order of any court, arbitrator, or Governmental Authority shall purport by its terms to enjoin or restrain money center banks generally from issuing letters of credit of the type and in the amount of the proposed Letter of Credit, and no law, rule, or regulation applicable to money center banks generally and no request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over money center banks generally shall prohibit, or request that the Letter of Credit Issuer refrain from, the issuance of letters of credit generally or the issuance of such Letter of Credit.

(d) Issuance of Letters of Credit.

(i) Request for Issuance. Any Borrower that wishes to cause the issuance of a Letter of Credit shall notify each Agent and the Letter of Credit Issuer of such request for issuance at least three Business Days prior to the proposed issuance date. Such notice shall be irrevocable and must specify the original face amount of the Letter of Credit requested, the Business Day of issuance of such requested Letter of Credit, whether such Letter of Credit may be drawn in a single or in partial draws, the Business Day on which the requested Letter of Credit is to expire, the purpose for which such Letter of Credit is to be issued, and the beneficiary of the requested Letter of Credit. The applicable Borrower shall attach to such notice the proposed form of the Letter of Credit.

(ii) Responsibilities of the Agents; Issuance. As of the Business Day immediately preceding the requested issuance date of the Letter of Credit set forth in the notice from a Borrower pursuant to Section 2.3(d)(i), the Agents shall determine (A) the amount of the Unused Letter of Credit Subfacility and (B) the Unused Availability (based solely on the Borrowing Base Certificate most recently delivered to the Agents). If the face amount of the requested Letter of Credit is not greater than the Unused Letter of Credit Subfacility (prior to giving effect to issuance of such requested Letter of Credit) and the amount of such requested Letter of Credit and all commissions, fees, and charges due from the Borrower in connection with the opening thereof do not exceed the Unused Availability (prior to giving effect to issuance of such requested Letter of Credit and based solely on the Borrowing Base Certificate most recently delivered to the Agents), the Agents shall cause the Letter of Credit Issuer to issue the requested Letter of Credit on the requested issuance date if the other conditions hereof and of the application for such requested Letter of Credit are met.

(iii) Extensions and Amendments. The Agents shall not be obligated to cause the Letter of Credit Issuer to extend, renew, or amend any Letter of Credit issued pursuant hereto unless the requirements of this Section 2.4 are met as though a new Letter of Credit were being requested and issued. With respect to any Letter of Credit that contains any "evergreen" or automatic renewal provision, each Lender shall be deemed to have consented to any such extension or renewal unless such Lender shall have provided to each Agent written notice that such Lender declines to consent to any such extension or renewal at least 30 days prior to the date on which the Letter of Credit Issuer is entitled to decline to extend or renew such Letter of Credit; provided that, notwithstanding the foregoing, if all of the requirements of this Section 2.4 are met and no Default or Event of Default exists, no Lender may decline to consent to any such extension or renewal.

(e) Payments Pursuant to Letters of Credit. The Borrowers agree to reimburse the Letter of Credit Issuer immediately for any draw under any Letter of Credit and to pay the Letter of Credit Issuer the amount of all other charges and fees payable to the Letter of Credit Issuer under or in connection with any Letter of Credit immediately when due, irrespective of any claim, setoff, defense, or other right that any Borrower may have at

any time against the Letter of Credit Issuer or any other Person. Each drawing under any Letter of Credit shall constitute a request by the Borrower for whose account such Letter of Credit was issued for a Borrowing of a Base Rate Revolving Loan in the amount of such drawing. The Funding Date with respect to such Borrowing shall be the date of such drawing.

(f) Indemnification; Exoneration; Power of Attorney.

(i) Indemnification. In addition to amounts payable as elsewhere provided in this Section 2.4, each Borrower agrees to protect, indemnify, pay, and save the Lenders, the Agents, and the Letter of Credit Issuer harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges, and expenses (including reasonable attorneys' fees) that any Lender, either Agent, or the Letter of Credit Issuer may incur or be subject to as a consequence, direct or indirect, of the issuance of any Letter of Credit. The foregoing indemnity shall not apply to the Letter of Credit Issuer to the extent of any wrongful honor or dishonor of a drawing against any Letter of Credit or to the extent of any gross negligence or willful misconduct of the Letter of Credit Issuer as determined in a final, nonappealable judgment by a court of competent jurisdiction. The Borrowers' obligations under this Section 2.4(f) shall survive payment of all other Obligations.

(ii) Assumption of Risk by the Borrowers. As among the Borrowers, the Lenders, the Agents, and the Letter of Credit Issuer, the Borrowers assume all risks of the acts and omissions of, or misuse of any of the Letters of Credit by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, the Lenders, the Agents, and the Letter of Credit Issuer shall not be responsible for: (A) the form, validity, sufficiency, accuracy, genuineness, or legal effect of any document submitted by any Person in connection with the application for and issuance of and presentation of drafts with respect to any of the Letters of Credit, even if it should prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent, or forged; (B) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, that may prove to be invalid or ineffective for any reason; (C) the failure of the beneficiary of any Letter of Credit to comply duly with conditions required in order to draw upon such Letter of Credit; (D) errors, omissions, interruptions, or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, or otherwise, whether or not they be in cipher; (E) errors in interpretation of technical terms; (F) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit or of the proceeds thereof; (G) the misapplication by the beneficiary of any Letter of Credit of the proceeds of any drawing under such Letter of Credit; (H) any consequences arising from causes beyond the control of any of the Lenders, either of the Agents, or the Letter of Credit Issuer, including any act or omission, whether rightful or wrongful, of any present or future de jure or de facto Governmental Authority; or (I) the Letter of Credit Issuer's honor of a

draw for which the draw or any certificate fails to comply in any respect with the terms of the Letter of Credit. None of the foregoing shall affect, impair, or prevent the vesting of any rights or powers of either Agent, any Lender, or, subject to Section 2.4(f)(iv), the Letter of Credit Issuer under this Section 2.4(f).

(iii) Exoneration. Without limiting the foregoing, no action or omission whatsoever by either Agent, any Lender, or the Letter of Credit Issuer under or in connection with any of the Letters of Credit or any related matters shall result in any liability of either Agent, any Lender, or the Letter of Credit Issuer to any Borrower, or relieve any Borrower of any of its obligations hereunder to any such Person.

(iv) Rights Against the Letter of Credit Issuer. Nothing contained in this Section 2.4(f) is intended to limit any Borrower's rights, if any, with respect to the Letter of Credit Issuer that arise as a result of the letter of credit application and related documents executed by and between such Borrower and the Letter of Credit Issuer.

(v) Account Party. Each Borrower hereby authorizes and directs the Letter of Credit Issuer to name any Borrower as the "Account Party" in any Letter of Credit and to deliver to the Agents all instruments, documents, and other writings and property received by the Letter of Credit Issuer pursuant to each such Letter of Credit, and to accept and rely upon either Agent's instructions and agreements with respect to all matters arising in connection with each such Letter of Credit or the application therefor.

(g) Supporting Letter of Credit; Cash Collateral. If, notwithstanding the provisions of Section 2.4(b) and Section 12.1, any Letter of Credit is outstanding upon the termination of this Agreement, then upon such termination the Borrowers shall deposit with the Collateral Agent, for the benefit of the Agents, the Letter of Credit Issuer, and the Lenders, with respect to each such Letter of Credit then outstanding, either (i) a standby letter of credit (a "Supporting Letter of Credit") in form and substance satisfactory to each Agent, issued by an issuer satisfactory to the Agents in their sole discretion in an amount equal to 105% of the maximum undrawn amount of such Letter of Credit, plus any fees and expenses associated with such Letter of Credit, under which Supporting Letter of Credit the Collateral Agent is entitled to draw amounts necessary to reimburse the Agents, the Letter of Credit Issuer, and the Lenders for payments to be made by either of the Agents, the Letter of Credit Issuer, and any of the Lenders under such Letter of Credit and any fees and expenses associated with such Letter of Credit or (ii) cash (a "Supporting Cash Deposit") in an amount equal to 105% of the maximum undrawn amount of such Letter of Credit, plus any fees and expenses associated with such Letter of Credit. Such Supporting Letter of Credit or Supporting Cash Deposit shall be held by the Collateral Agent, for the benefit of the Agents, the Letter of Credit Issuer, and the Lenders, as security for, and to provide for the payment of, the aggregate undrawn amount of such Letters of Credit remaining outstanding and the fees and expenses associated with such Letters of Credit.

Section 2.5 Bank Products. Any Obligated Party may obtain Bank Products from BofA or Wachovia or any of BofA's or Wachovia's Affiliates, or, subject to the definition of Bank Products, another Lender or any of such Lender's Affiliates, although no Obligated Party is required to do so. To the extent Bank Products are provided by an Affiliate of BofA, Wachovia or another Lender, the Obligated Parties agree to indemnify and hold the Agents and BofA, Wachovia or such other Lender, as applicable, harmless from any and all costs and obligations now or hereafter incurred by any of the Credit Providers which arise from any indemnity given by BofA, Wachovia or such other Lender, as applicable, to its Affiliates related to such Bank Products; provided, however, nothing contained herein is intended to limit any Obligated Party's rights, with respect to BofA, Wachovia or such other Lender, as applicable, or its Affiliates, if any, that arise as a result of the execution of documents by and between such Obligated Party and BofA, Wachovia or such other Lender, as applicable, or its Affiliates that relate to Bank Products. The agreement contained in this Section 2.5 shall survive termination of this Agreement. Each Obligated Party acknowledges and agrees that the obtaining of Bank Products from BofA, Wachovia, any other Lender or any of their respective Affiliates (a) is in the sole and absolute discretion of BofA, Wachovia, such other Lender or such Affiliate, and (b) is subject to all rules and regulations of BofA, Wachovia, such other Lender or such Affiliate.

ARTICLE 3

INTEREST AND FEES

Section 3.1 Interest.

(a) Interest Rates. All outstanding Obligations shall bear interest on the unpaid principal amount thereof (including, to the extent permitted by law, on accrued interest thereon not paid when due) from the date made or incurred until paid in full in cash at a rate determined by reference to the Base Rate or the LIBOR Rate, as applicable, plus the Applicable Margin as set forth below, but not to exceed the Maximum Rate. If at any time Loans are outstanding with respect to which a Borrower has not delivered to the Administrative Agent a notice specifying the basis for determining the interest rate applicable thereto in accordance herewith, such Loans shall be Base Rate Revolving Loans and bear interest at a rate determined by reference to the Base Rate until notice to the contrary has been given to the Administrative Agent in accordance with this Agreement and such notice has become effective. Except as otherwise provided herein, the outstanding Obligations shall bear interest as follows:

(i) for all Base Rate Revolving Loans and other Obligations (other than LIBOR Rate Revolving Loans) at a fluctuating per annum rate equal to the lesser of (A) the Base Rate, plus the Applicable Margin or (B) the Maximum Rate; and

(ii) for all LIBOR Rate Revolving Loans at a per annum rate equal to the lesser of (A) the LIBOR Rate, plus the Applicable Margin or (B) the Maximum Rate.

Each change in the Base Rate shall be reflected in the interest rate described in clause (i) preceding as of the effective date of such change. Subject to Section 3.3, all interest charges on the Obligations shall be computed on the basis of a year of 360 days and actual days elapsed (which results in more interest being paid than if computed on the basis of a 365 day year).

(b) Interest Payments. The Borrowers shall pay to the Administrative Agent, for the benefit of the Lenders, accrued interest in arrears on each Interest Payment Date, as applicable.

(c) Default Rate. During the existence of any Default or Event of Default if either of the Agents or the Majority Lenders in their discretion so elect, the Obligations shall, subject to Section 3.3, bear interest at a rate per annum equal to the lesser of (i) the Default Rate applicable thereto or (ii) the Maximum Rate.

(d) Interest Periods. After giving effect to any Borrowing of any LIBOR Rate Revolving Loan, there may not be more than ten (10) different Interest Periods in effect hereunder.

Section 3.2 Continuation and Conversion Elections.

(a) A Borrower may upon irrevocable written notice to the Administrative Agent in accordance with Section 3.2(b):

(i) provided that Borrowing of LIBOR Rate Revolving Loans is permitted pursuant to Section 2.2, elect, as of any Business Day, in the case of Base Rate Revolving Loans to convert any such Base Rate Revolving Loans (or any part thereof in an amount not less than One Million Dollars (\$1,000,000), or that is in an integral multiple of One Million Dollars (\$1,000,000) in excess thereof) into LIBOR Rate Revolving Loans;

(ii) provided that Borrowing of LIBOR Rate Revolving Loans is permitted pursuant to Section 2.2, elect, as of the last day of the applicable Interest Period, to continue any LIBOR Rate Revolving Loans having Interest Periods expiring on such day (or any part thereof) in an amount not less than One Million Dollars (\$1,000,000), or that is in an integral multiple of One Million Dollars (\$1,000,000) in excess thereof as LIBOR Rate Revolving Loans; or

(iii) elect, as of any Business Day subject to Section 5.4, in the case of LIBOR Rate Revolving Loans to convert any such LIBOR Rate Revolving Loans (or any part thereof not being continued pursuant to clause (ii) preceding) into Base Rate Revolving Loans;

provided that if at any time the aggregate amount of LIBOR Rate Revolving Loans in respect of any Borrowing is reduced, by payment, prepayment, or conversion of part thereof to be less than One Million Dollars (\$1,000,000), such LIBOR Rate Revolving Loans shall automatically convert into Base Rate Revolving Loans; provided, further, that if the notice shall fail to specify the duration of the Interest Period of any LIBOR

Rate Revolving Loan to result from any such continuation or conversion, such Interest Period shall be one month in duration.

(b) For any continuation or conversion pursuant to clause (a) preceding, the Borrowers shall deliver a notice of continuation/conversion in the form of Exhibit E or such other form as may be acceptable to the Agents, in their sole discretion (any such notice being referred to herein as a "Notice of Continuation/ Conversion") to the Administrative Agent not later than 1:00 p.m. (New York time) at least three Business Days in advance of the Continuation/Conversion Date specifying:

(i) the proposed Continuation/Conversion Date;

(ii) the aggregate amount of such Loans to be continued or converted and, if continuing LIBOR Rate Revolving Loans, the specific Loans (or portions thereof) to be continued or converted;

(iii) the type of Loans resulting from the proposed continuation or conversion; and

(iv) the duration of any requested Interest Period, provided, however, the Borrowers may not select an Interest Period that ends after the Stated Termination Date.

(c) If upon the expiration of any Interest Period applicable to LIBOR Rate Revolving Loans, the Borrowers have failed to timely select a new Interest Period to be applicable to such LIBOR Rate Revolving Loans, the Borrowers shall be deemed to have elected to convert such LIBOR Rate Revolving Loans into Base Rate Revolving Loans effective as of the expiration date of such Interest Period.

(d) On or before the deadline set forth in clause (b) preceding, in lieu of delivering a Notice of Continuation/Conversion, the Borrowers may give the Administrative Agent telephonic notice of any request for a continuation or conversion. The Administrative Agent shall be entitled to rely on such telephonic notice in continuing or converting such Loans, regardless of whether any written confirmation is received.

(e) The Administrative Agent will promptly notify each Lender of its receipt of a Notice of Continuation/Conversion. All continuations and conversions shall be made ratably according to the respective outstanding principal amounts of the Loans held by each Lender with respect to which such notice was given.

(f) After giving effect to any continuation or conversion of any LIBOR Rate Revolving Loan, there may not be more than ten (10) different Interest Periods in effect hereunder.

(g) At the election of either of the Agents or the Majority Lenders, the Borrowers shall have no right to convert any Base Rate Revolving Loans into LIBOR Rate Revolving Loans or to continue any LIBOR Rate Revolving Loans as LIBOR Rate Revolving Loans during the existence of any Default or Event of Default.

Section 3.3 Maximum Interest Rate. In no event shall any Interest Rate provided for in this Agreement exceed the Maximum Rate. If any Interest Rate, absent the limitation set forth in this Section 3.3, would otherwise exceed the Maximum Rate, then such Interest Rate shall be the Maximum Rate, and, if in the future, such Interest Rate would otherwise be less than the Maximum Rate, then such Interest Rate shall remain at the Maximum Rate until such time as the amount of interest paid hereunder equals the amount of interest which would have been paid if the Interest Rate had not been limited to the Maximum Rate. In the event that, upon payment in full of the Obligations, the total amount of interest paid or accrued under the terms of this Agreement is less than the total amount of interest which would, but for this Section 3.3, have been charged, paid, or accrued if the Interest Rate otherwise set forth in this Agreement had at all times been in effect, then the Borrowers shall, to the extent permitted by applicable law, pay the Administrative Agent, for the account of the Lenders, an amount equal to the excess of (a) the lesser of (i) the amount of interest which would have been charged, paid, or accrued if the Maximum Rate had, at all times, been in effect or (ii) the amount of interest which would have been charged, paid, or accrued had the Interest Rate otherwise set forth in this Agreement, at all times, been in effect over (b) the amount of interest actually charged, paid, or accrued under this Agreement. If a court of competent jurisdiction determines that either Agent and/or any Lender has charged, received, or demanded interest and other charges hereunder in excess of the Maximum Rate, such excess shall be deemed charged, received, or demanded on account of, and shall automatically be applied to reduce, the Obligations other than interest, in the inverse order of maturity, and if there are no Obligations outstanding, the applicable Agent and/or such Lender shall refund to the Borrowers (as applicable) such excess.

Section 3.4 Unused Line Fee. Subject to Section 3.3, until the Revolving Loans have been paid in full and this Agreement and the Commitments are terminated, the Borrowers agree to pay to the Administrative Agent, for the account of the Lenders in accordance with their respective Pro Rata Shares, on the first day of each calendar month and on the Termination Date, an unused line fee (the "Unused Line Fee") computed at a rate per annum equal to 0.25%, multiplied by the amount by which (A) the average daily Maximum Revolver Amount exceeded (B) the sum of the average daily outstanding amount of the Revolving Loans other than Non-Ratable Loans and the average daily undrawn amount of all outstanding Letters of Credit during the immediately preceding calendar month or shorter period if calculated for the first calendar month following the Closing Date or on the Termination Date. Subject to Section 3.3, the Unused Line Fee shall be computed on the basis of a 360 day year for the actual number of days elapsed. For purposes of calculating the Unused Line Fee pursuant to this Section 3.4, any payment received by the Administrative Agent (if received prior to 12:00 noon (New York time)) shall be deemed to be credited to the Borrowers' Loan Account on the Business Day such payment is received by the Administrative Agent.

Section 3.5 Letter of Credit Fees and Expenses.

(a) Subject to Section 3.3, the Borrowers agree to pay to the Administrative Agent for the account of the Lenders in accordance with their respective Pro Rata Shares a fee (the "Letter of Credit Fee") equal to the Letter of Credit Fee Percentage, multiplied by the average undrawn amount of each Letter of Credit issued and outstanding hereunder. The Letter of Credit Fee shall be (i) computed on the basis of a 360 day year for the actual number of days elapsed and (ii) payable monthly in arrears on the first day

of each month following any month in which a Letter of Credit was issued and/or in which a Letter of Credit remained outstanding and on the Termination Date.

(b) Subject to Section 3.3, the Borrowers agree to pay to the Letter of Credit Issuer, for its sole benefit, (i) all out-of-pocket costs, fees, and expenses incurred by the Letter of Credit Issuer in connection with the application for, processing, issuance, renewal, extension, or amendment of any Letter of Credit and (ii) a “fronting fee” in an amount equal to 0.125% of the face amount of such Letter of Credit on the date of issuance, renewal, or extension of each Letter of Credit.

Section 3.6 Other Fees. Subject to Section 3.3, the Borrowers agree to pay the Agents when due all other fees and expenses as set forth in the Fee Letters.

Section 3.7 Incremental Commitments. The Borrowers may agree to pay to any Incremental Lender such up-front fees, and amounts as contemplated by the last paragraph of Section 2.1, as are specified in the Incremental Commitment Agreement pursuant to which such Incremental Commitment has been provided, with such amounts to be payable at the times set forth in such Incremental Commitment Agreement. It is understood that the interest and regularly accruing fees with respect to the extensions of credit provided pursuant to any Incremental Commitment, as well as the regularly accruing fees with respect to any Commitment provided pursuant to any Incremental Commitment Agreements, shall be as provided in this Agreement.

ARTICLE 4

PRINCIPAL PAYMENTS AND PREPAYMENTS

Section 4.1 Repayment.

(a) Revolving Loans. The Borrowers shall repay the outstanding principal balance of the Revolving Loans, together with all other non-contingent Obligations, including all accrued and unpaid interest thereon, on the Termination Date (or with respect to any Bank Products, any applicable earlier date). The Borrowers may prepay the Revolving Loans, in whole or in part, at any time and from time to time and, subject to the terms of this Agreement, reborrow prior to the Termination Date. In addition, and without limiting the generality of the foregoing, the Borrowers shall immediately pay to the Administrative Agent, for the account of the Lenders, the amount, if any and without duplication, by which the Aggregate Revolver Outstandings exceed the Borrowing Base.

(b) [Intentionally Omitted.]

(c) Payments. All payments to be made by the Borrowers with respect to the Loans shall be made without setoff, recoupment, or counterclaim. Unless otherwise expressly provided herein, all payments by the Borrowers shall be made to the Administrative Agent, for the account of the Lenders, to the account designated by the Administrative Agent and shall be made in Dollars and in immediately available funds, no later than 12:00 noon (New York time) on the date specified herein. Any payment received by the Administrative Agent after such time shall be deemed to have been

received on the following Business Day and any applicable interest or fee shall continue to accrue.

(d) LIBOR Rate Revolving Loan Payment Dates. Subject to the provisions set forth in the definition of Interest Period, whenever any payment is due on a day other than a Business Day, such payment shall be due on the following Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

Section 4.2 Termination of Credit Facility. The Borrowers may terminate this Agreement upon at least ten Business Days prior written notice thereof to the Agents, upon (a) the payment in full of all outstanding Revolving Loans, together with accrued and unpaid interest thereon, and the cancellation and return of all outstanding Letters of Credit (or alternatively with respect to each such Letter of Credit, the furnishing to the Collateral Agent of either a Supporting Cash Deposit or a Supporting Letter of Credit as required by Section 2.4(g)), (b) the payment of the Early Termination Fee defined in the following sentence (if applicable), and (c) the payment in full of all reimbursable expenses and other Obligations (including any amount due under Section 5.4) together with accrued and unpaid interest thereon. Subject to Section 3.3, if this Agreement is terminated at any time prior to the second Anniversary Date, whether pursuant to this Section or pursuant to Section 11.2, the Borrowers shall pay to the Administrative Agent, for the account of the Lenders, an early termination fee (the "Early Termination Fee") determined in accordance with the following table:

<u>Period during which early termination occurs</u>	<u>Early Termination Fee</u>
On or prior to the first Anniversary Date	1.00% of the Maximum Revolver Amount
After the first Anniversary Date, but prior to the second Anniversary Date	0.50% of the Maximum Revolver Amount

Notwithstanding the foregoing, no such Early Termination Fee shall be payable in the event this Agreement is terminated in connection with refinancing of the Obligations in a transaction in which (i) BofA or any of its Affiliates and (ii) Wachovia or any of its Affiliates jointly arrange replacement financing; provided that each Lender (other than BofA and Wachovia) shall continue to be entitled to its Pro Rata Share of such Early Termination Fee unless such Lender shall have been given the opportunity to participate in such replacement financing and such replacement financing shall be on market terms or terms materially the same as the terms of this credit facility. The Maximum Revolver Amount shall not be reduced except in connection with termination of the Commitments and payment in full of all Obligations as provided by this Section 4.2 or as otherwise provided in Section 4.3(f) or Section 11.2.

Section 4.3 Mandatory Prepayment of the Loans. Without limiting Section 4.1, each of the Borrowers agrees to make a prepayment with respect to the outstanding Loans and other Obligations as follows:

(a) On any Business Day, if the Aggregate Revolver Outstandings exceed the Borrowing Base, the Borrowers shall immediately pay to the Administrative Agent, for the account of the Lenders, the amount (if any) of such excess for application to the principal amount of the Revolving Loans and, if after such application there remains any portion of such excess, such remaining unapplied amount shall be delivered to and held by the Collateral Agent as cash collateral for the Obligations (contingent or otherwise) with respect to outstanding Letters of Credit.

(b) All cash proceeds received by any Borrower from the Disposition or sale of Inventory or collection of Accounts in the ordinary course of business shall be applied to repayment of the Obligations promptly (and in any event within one Business Day of receipt) as specified in Section 4.6(c).

(c) The Borrowers shall pay to the Administrative Agent, for the account of the Lenders, promptly (and in any event within one Business Day of receipt) all net cash proceeds received by an Obligated Party in connection with any Disposition, excluding proceeds received pursuant to clause (b) preceding, for application to the Obligations as provided in Section 4.6(c). As used in this Section 4.3(c), "net cash proceeds" means the proceeds of any applicable Disposition, minus (i) commissions and other reasonable and customary transaction costs, fees, and expenses properly attributable to such transaction and payable by such Obligated Party in connection therewith (in each case, paid to non-Affiliates), (ii) transfer taxes and (iii) amounts payable to holders of Liens (to the extent such Liens constitute Permitted Liens hereunder and such Liens are senior to the Agent's Liens), if any, on the property subject to such Disposition to the extent the documentation governing such senior Liens required such payment to such holders upon such Disposition.

(d) All cash payments or other cash proceeds received by any Obligated Party constituting proceeds of a Distribution, loan, or other advance (other than a Distribution, loan or advance by an Obligated Party to an Obligated Party) to such Obligated Party, excluding proceeds of Revolving Loans, the Second Lien Debt or the Refinancing Second Lien Debt, such proceeds which are proceeds of a loan or advance from one Borrower to another Obligated Party, and other than such proceeds which are proceeds of a loan or advance permitted under clause (c) through clause (j) of Section 8.12, shall be paid to the Administrative Agent promptly upon such receipt, for application to the Obligations as specified in Section 4.6(c).

(e) Upon any issuance of any Capital Stock of any Obligated Party, no later than two Business Days after such issuance, the Borrowers shall make a prepayment in an amount equal to the proceeds of such issuance, net of underwriting discounts, commissions, and other reasonable and customary transaction costs, fees, and expenses properly attributable to such transaction and payable by such Obligated Party in connection therewith (in each case paid to Persons who are not Affiliates of any Obligated Party) for application to the Obligations in accordance with Section 4.6(c).

(f) In any event, if any Obligated Party receives (i) net cash proceeds in connection with any Disposition, (ii) cash payments or other cash proceeds of a

Distribution, loan, or other advance to such Obligated Party or (iii) proceeds of any issuance of Capital Stock, on or after the Closing Date, any such proceeds or payments shall be applied to the payment of the Revolving Loans to the extent necessary to avoid any requirement under any Second Lien Debt Documents or Refinancing Second Lien Debt Documents to prepay or redeem (or to make any offer to prepay or redeem) any portion of the Second Lien Debt or Refinancing Second Lien Debt, together with a permanent reduction of the Commitments and the Maximum Revolver Amount in the amount of any such application to the Revolving Loans (such reduction to result in each Lender's Commitment being permanently reduced by its Pro Rata Share of such reduction).

No provision contained in this Section 4.3 shall constitute a consent to an asset disposition, Distribution, loan, advance or equity issuance that is otherwise not permitted by the terms of this Agreement.

Section 4.4 LIBOR Rate Revolving Loan Prepayments. In connection with any prepayment, if any LIBOR Rate Revolving Loans are prepaid prior to the expiration date of the Interest Period applicable thereto, the Borrowers shall pay to the Administrative Agent, for the benefit of the Lenders, the amounts described in Section 5.4, provided that the Borrowers shall not be required to pay the amounts described in Section 5.4 in connection with any Lender's entering into an Assignment and Acceptance.

Section 4.5 Payments as Revolving Loans. At the election of the Administrative Agent, all payments of principal, interest, reimbursement obligations in connection with Letters of Credit, fees, premiums, reimbursable expenses (including all reimbursement for expenses pursuant to Section 15.7), other sums payable under the Loan Documents, and any and all amounts equal to the excess of checks and other items presented to BofA for payment against the Funding Account or any other Deposit Account maintained by a Borrower with BofA in an amount greater than the then available balance in such Deposit Account may be paid with the proceeds of Revolving Loans made hereunder whether made following a request for such purpose by the Borrowers pursuant to Section 2.2 or pursuant to a deemed request as provided in this Section 4.5. The Borrowers hereby irrevocably authorize the Administrative Agent to charge the Loan Account for the purpose of paying all amounts from time to time due under the Loan Documents (including as described in this Section 4.5) and agree that all such amounts charged shall constitute Revolving Loans (including Non-Ratable Loans and Agent Advances) and that all such Revolving Loans shall be deemed to have been requested pursuant to Section 2.2; provided that, except as set forth in the succeeding sentence, so long as no Event of Default exists, the Administrative Agent shall not charge the Loan Account for expenses until 10 days have elapsed since the Administrative Agent has sent an invoice therefor to Ahern. In the event the Collateral Agent is required to make any payment to Wells Fargo Bank, N.A. ("WFB") pursuant to the payoff letter delivered by WFB to Ahern and the Collateral Agent on the Original Closing Date with respect to that certain Credit and Security Agreement, dated as of July 25, 2003, the Administrative Agent shall immediately charge the Loan Account for the purpose of reimbursing the Collateral Agent for all such payments and all such amounts charged shall constitute Revolving Loans.

Section 4.6 Apportionment, Application, and Reversal of Payments.

(a) Principal and interest payments shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the Loans to which such payments relate held by each Lender) and payments of the fees shall, as applicable, be apportioned ratably among the Lenders, except for fees payable solely to BofA, Wachovia, the Agents or either of them and the Letter of Credit Issuer and except as provided in Section 13.1(c).

(b) Except as provided otherwise in this Agreement, all payments shall be remitted to the Administrative Agent or, if applicable, to the Collateral Agent, and all such payments not relating to principal or interest of specific Loans, or not constituting payment of specific fees, and all proceeds of any Obligated Party's Accounts or any other Collateral received by the Administrative Agent or the Collateral Agent, shall be applied, ratably, subject to the other provisions of this Agreement, **FIRST**, to pay any fees, indemnities, or expense reimbursements then due to either of the Agents from any Obligated Party, **SECOND**, to pay any fees, indemnities, or expense reimbursements then due to any of the Credit Providers other than the Agents from any Obligated Party, **THIRD**, to pay interest then due in respect of the Loans, including Non-Ratable Loans and Agent Advances, **FOURTH**, to pay or prepay principal of the Non-Ratable Loans and the Agent Advances, **FIFTH**, to pay or prepay principal of the Revolving Loans (other than the Non-Ratable Loans and the Agent Advances) and unpaid reimbursement obligations in respect of Letters of Credit, **SIXTH**, during the existence of a Default or an Event of Default, to pay an amount to the Collateral Agent equal to 105% of the aggregate undrawn amount of all outstanding Letters of Credit and the aggregate amount of any unpaid reimbursement obligations in respect of Letters of Credit, to be held as cash collateral for such Obligations, and **SEVENTH**, to the payment of any other Obligation including any amounts relating to Bank Products due to BofA, Wachovia, any other Lender or any of their respective Affiliates by any of the Obligated Parties. Subject to items "first" through "seventh" preceding, the Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Obligations.

(c) Payments received pursuant to Section 4.3(b), Section 4.3(c), Section 4.3(d) and Section 4.3(e) shall be applied, ratably, subject to the other provisions of this Agreement, in the order of priority set forth for items "first" through "fifth" of clause (b) preceding at any time other than during the existence of a Default or an Event of Default, and during the existence of any Default or Event of Default, as specified in clause (b) preceding.

(d) Notwithstanding anything to the contrary contained in this Agreement, unless so directed by a Borrower, or unless an Event of Default is in existence, neither the Administrative Agent nor any Lender shall apply any payment which it receives to any LIBOR Rate Revolving Loan, except (i) on the expiration date of the Interest Period applicable to any such LIBOR Rate Revolving Loan or (ii) in the event, and only to the extent, that there are no outstanding Base Rate Revolving Loans and, in any such event, the Borrowers shall pay the LIBOR breakage losses in accordance with Section 5.4.

Section 4.7 Indemnity for Returned Payments. If after receipt of any payment or of any proceeds of Collateral that is applied to the payment of all or any part of the Obligations, any Credit Provider is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by such Credit Provider and the Borrowers shall be liable to pay to the Administrative Agent, for the benefit of the Credit Providers, and each Borrower hereby indemnifies the Credit Providers and holds the Credit Providers harmless for the amount of such payment or proceeds surrendered. The provisions of this Section 4.7 shall be and remain effective notwithstanding any release of Collateral or guarantors, cancellation or return of Loan Documents, or other contrary action that may have been taken by any Credit Provider in reliance upon such payment or application of proceeds, and any such contrary action so taken shall be without prejudice to the Credit Providers' rights under this Agreement and the other Loan Documents and shall be deemed to have been conditioned upon such payment or application of proceeds having become final and irrevocable. The provisions of this Section 4.7 shall survive the termination of this Agreement.

Section 4.8 Administrative Agent's and the Lenders' Books and Records; Monthly Statements. The Administrative Agent shall record the principal amount of the Loans, the undrawn amount of all outstanding Letters of Credit, and the aggregate amount of unpaid reimbursement obligations outstanding with respect to the Letters of Credit from time to time on its books. In addition, each Lender may note the date and amount of each payment or prepayment of principal of such Lender's Loans in its books and records. Failure by the Administrative Agent or any Lender to make any such notation shall not affect the obligations of the Borrowers with respect to the Loans or the Letters of Credit. The Borrowers agree that the Administrative Agent's and each Lender's books and records showing the Obligations and the transactions pursuant to this Agreement and the other Loan Documents shall be admissible in any action or proceeding arising therefrom, and shall constitute presumptive proof thereof, irrespective of whether any Obligation is also evidenced by a promissory note or other instrument. The Administrative Agent will provide to the Borrowers and the Lenders a monthly statement of Loans, payments, and other transactions pursuant to this Agreement. Such statement shall be deemed correct, accurate, and binding on the Borrowers and an account stated (except for reversals and reapplications of payments made as provided in Section 4.6 and corrections of errors discovered by either of the Agents), unless a Borrower notifies the Administrative Agent in writing to the contrary within 30 days after such statement is rendered. In the event a timely written notice of objections is given by a Borrower, only the items to which exception is expressly made will be considered to be disputed by the Borrowers.

ARTICLE 5

TAXES, YIELD PROTECTION AND ILLEGALITYSection 5.1 Taxes.

(a) Any and all payments by the Obligated Parties, or any of them, to either Agent or any Lender under this Agreement or any other Loan Document shall be made free and clear of, and without deduction or withholding for, any Taxes. In addition, subject to Section 14.10(c), the Obligated Parties shall pay all Other Taxes.

(b) The Obligated Parties agree to indemnify and hold harmless the Administrative Agent, the Collateral Agent and each Lender for the full amount of Taxes or Other Taxes (including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 5.1) paid by the Administrative Agent, the Collateral Agent or any Lender and any liability (including penalties, interest, additions to tax, and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. Payment under this indemnification shall be made within 30 days after the date the Administrative Agent, the Collateral Agent or any Lender makes written demand therefor.

(c) If an Obligated Party shall be required by law to deduct or withhold any Taxes or Other Taxes from or in respect of any sum payable hereunder to the Administrative Agent, the Collateral Agent or any Lender, then:

(i) the sum payable shall be increased as necessary so that after making all required deductions and withholdings (including, without limitation, deductions and withholdings applicable to additional sums payable under this Section 5.1) the Administrative Agent, the Collateral Agent or such Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made;

(ii) such Obligated Party shall make such deductions and withholdings;

(iii) such Obligated Party shall pay the full amount deducted or withheld to the relevant taxing authority or other authority in accordance with any applicable Requirement of Law; and

(iv) such Obligated Party shall also pay to the Administrative Agent, for the account of each Lender, or each Lender at the time interest is paid, all additional amounts that the respective Lender specifies as necessary to preserve the after-tax yield such Lender would have received if such Taxes or Other Taxes had not been imposed.

(d) Within 30 days after the date of any payment by any Obligated Party of Taxes or Other Taxes, such Obligated Party shall furnish to the Administrative Agent the

original or a certified copy of a receipt evidencing payment thereof or other evidence of payment satisfactory to the Administrative Agent.

(e) If the Obligated Parties are required to pay additional amounts to any Lender pursuant to Section 5.1(c), then such Lender shall use reasonable efforts (consistent with legal and regulatory restrictions) to change the jurisdiction of its lending office so as to eliminate any such additional payment by the Obligated Parties that may thereafter accrue, if such change in the judgment of such Lender is not otherwise disadvantageous to such Lender.

Section 5.2 Illegality.

(a) If any Lender determines that, after the date of this Agreement, the introduction of any Requirement of Law, or any change in any Requirement of Law, or in the interpretation or administration of any Requirement of Law, has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for such Lender or its applicable lending office to make LIBOR Rate Revolving Loans, then, on notice thereof by such Lender to the Borrowers through the Administrative Agent, any obligation of such Lender to make LIBOR Rate Revolving Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist.

(b) If a Lender determines that it is unlawful to maintain any LIBOR Rate Revolving Loan, the Borrowers shall, upon receipt of notice of such fact and demand from such Lender (with a copy to the Administrative Agent), prepay in full such LIBOR Rate Revolving Loans of such Lender then outstanding, together with accrued and unpaid interest thereon and amounts required under Section 5.4, either on the last day of the Interest Period thereof, if such Lender may lawfully continue to maintain such LIBOR Rate Revolving Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBOR Rate Revolving Loans. If the Borrowers are required to so prepay any LIBOR Rate Revolving Loans, then concurrently with such prepayment, the Borrowers shall borrow from the affected Lender, in the amount of such repayment, a Base Rate Revolving Loan. Each Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the judgment of such Lender, otherwise be disadvantageous to such Lender.

Section 5.3 Increased Costs and Reduction of Return.

(a) If any Lender determines that due to either (i) the introduction of or any change in the interpretation of any law or regulation after the date of this Agreement or (ii) the compliance by such Lender with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law) made after the date of this Agreement, there shall be any increase in the cost to such Lender of agreeing to make or making, funding, or maintaining any LIBOR Rate Revolving Loans, then the Borrowers shall be liable for, and shall from time to time, within three Business Days of demand by such Lender (with a copy of such demand to be sent to the Administrative

Agent), pay to the Administrative Agent, for the account of such Lender, additional amounts as are sufficient to compensate such Lender for such increased costs.

(b) If any Lender shall have determined that (to the extent it occurs after the date of this Agreement) (i) the introduction of any Capital Adequacy Regulation, (ii) any change in any Capital Adequacy Regulation, (iii) any change in the interpretation or administration of any Capital Adequacy Regulation by any central bank or other Governmental Authority charged with the interpretation or administration thereof, or (iv) compliance by such Lender or any corporation or other entity controlling such Lender with any Capital Adequacy Regulation, affects or would affect the amount of capital required or expected to be maintained by such Lender or any corporation or other entity controlling such Lender and (taking into consideration such Lender's or such corporation's or other entity's policies with respect to capital adequacy and such Lender's desired return on capital) determines that the amount of such capital is increased as a consequence of its Commitment, loans, credits, or obligations under this Agreement, then, within three Business Days of demand by such Lender (with a copy of such demand to be sent to the Administrative Agent), the Borrowers shall pay to the Administrative Agent, for the account of such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender for such increase.

Section 5.4 Funding Losses. The Borrowers shall reimburse each Lender and hold each Lender harmless from any loss or expense that such Lender may sustain or incur as a consequence of:

(a) the failure of the Borrowers to make on a timely basis any payment of principal of any LIBOR Rate Revolving Loan;

(b) except as permitted by Section 5.5, the failure of the Borrowers to (i) borrow any requested LIBOR Rate Revolving Loan, (ii) continue any LIBOR Rate Revolving Loan, or (iii) convert a Base Rate Revolving Loan to a LIBOR Rate Revolving Loan, in each case, after any Borrower has given (or is deemed to have given) a Notice of Borrowing, a Notice of Continuation/Conversion, or any telephonic notice in lieu thereof with respect thereto; or

(c) the prepayment or other payment (including after acceleration thereof) of any LIBOR Rate Revolving Loans on a day that is not the last day of the relevant Interest Period;

including any such loss of anticipated profit and any loss or expense arising from the liquidation or reemployment of funds obtained by such Lender (but excluding loss of the Applicable Margin) to maintain its LIBOR Rate Revolving Loans or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees, including a processing fee (the processing fee is currently Three Hundred Fifty Dollars (\$350) but is subject to change from time to time by the Administrative Agent without notice), charged by the Administrative Agent or any Lender in connection with the foregoing.

Section 5.5 Inability to Determine Rates. If the Administrative Agent determines that for any reason adequate and reasonable means do not exist for determining the LIBOR Rate for any requested Interest Period with respect to a proposed LIBOR Rate Revolving Loan or that the LIBOR Rate for any requested Interest Period with respect to a proposed LIBOR Rate Revolving Loan does not adequately and fairly reflect the cost to the Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrowers and each Lender. Thereafter, the obligation of the Lenders to make or maintain LIBOR Rate Revolving Loans hereunder shall be suspended until the Administrative Agent revokes such notice in writing. Upon receipt of a notice pursuant to the first sentence of this Section 5.5, the Borrowers may revoke any Notice of Borrowing or Notice of Continuation/Conversion then submitted by any of them. If the Borrowers do not revoke any such Notice of Borrowing or Notice of Continuation/Conversion, the Lenders shall make, convert, or continue the Loans, as proposed by the Borrowers, in the amount specified in the applicable notice submitted by a Borrower, but such Loans shall be made, converted, or continued as Base Rate Revolving Loans instead of LIBOR Rate Revolving Loans.

Section 5.6 Certificate of the Affected Lender. If any Lender claims reimbursement or compensation under this Article 5, the affected Lender shall determine the amount thereof and shall deliver to the Borrowers (with a copy to the Administrative Agent) a certificate setting forth in reasonable detail the amount payable to the affected Lender, and such certificate shall be conclusive and binding on the Borrowers in the absence of manifest error.

Section 5.7 Survival. The agreements and obligations of the Borrowers in this Article 5 shall survive the payment of all other Obligations.

ARTICLE 6

BOOKS AND RECORDS; FINANCIAL INFORMATION; NOTICES

Section 6.1 Books and Records. The Obligated Parties shall maintain, and shall cause each of their Subsidiaries to maintain, at all times, correct and complete books, records, and accounts in which full, true, complete, correct, and timely entries are made of such Person's transactions in accordance with GAAP consistently applied. The Obligated Parties shall reflect, and shall cause each of their Subsidiaries to reflect, by means of appropriate entries, in such accounts and in all Financial Statements proper liabilities and reserves for all taxes and proper provision for depreciation and amortization of property and bad debts, all in accordance with GAAP. The Obligated Parties shall maintain at all times books and records pertaining to the Collateral in such detail, form, and scope as the Agents shall reasonably require, including, but not limited to, timely records of (a) all payments received and all credits and extensions granted with respect to the Accounts, (b) the return, rejection, repossession, stoppage in transit, loss, damage, or destruction of any Inventory, and (c) all other dealings affecting the Collateral.

Section 6.2 Financial and Other Information. The Obligated Parties shall promptly furnish to the Agents all such information regarding the Obligated Parties' and each of their Subsidiaries' financial and business affairs as either of the Agents or any Lender (through either of the Agents, and the applicable Agent agrees to pass along all such reasonable requests by any Lender to the Obligated Parties) may reasonably request. Without limiting the foregoing, the

Obligated Parties will furnish, or cause to be furnished, to both Agents (with sufficient copies to the Administrative Agent for distribution to each Lender) the following, in such detail as either of the Agents or the Lenders (through either of the Agents, and the applicable Agent agrees to pass along all such reasonable requests by any Lender to the Obligated Parties) shall reasonably request:

(a) The Obligated Parties will furnish, or cause to be furnished, as soon as available, but in any event not later than 120 days after the close of each Fiscal Year of Ahern, consolidated audited balance sheets and statements of income, cash flow, and stockholders' equity for Ahern and its Subsidiaries for such Fiscal Year, and the accompanying notes thereto, setting forth in each case in comparative form figures for the previous Fiscal Year, all in reasonable detail, fairly presenting the financial position and the results of operations of Ahern and its Subsidiaries on a consolidated basis as at the date thereof and for the Fiscal Year then ended, and prepared in accordance with GAAP; provided that the Obligated Parties will furnish or cause to be furnished unaudited drafts of each of such financial statements to the Agents as soon as available, but in any event not later than 90 days after the close of each Fiscal Year of Ahern. Such Financial Statements shall be audited in accordance with generally accepted auditing standards by and accompanied by a report thereon containing an opinion that is unqualified in any respect of, independent certified public accountants selected by Ahern (it being agreed by the parties hereto, however, that at any time after the Closing Date, the Agents shall have the right, in their reasonable discretion, to require that Ahern and its Subsidiaries retain independent certified public accountants of national standing to perform such examinations and provide such reports). The Obligated Parties hereby authorize each of the Agents to communicate directly with the Obligated Parties' certified public accountants and, by this provision, authorizes such accountants to disclose to each of the Agents any and all financial statements and other supporting financial documents and schedules relating to the Obligated Parties and to discuss directly with each of the Agents the finances and affairs of the Obligated Parties, provided that the applicable Agent shall provide the Obligated Parties the opportunity to attend and participate in such discussions.

(b) The Obligated Parties will furnish or cause to be furnished,

(i) as soon as available, but in any event not later than 45 days after the end of each Fiscal Quarter, other than a Fiscal Quarter that is a year end, an unaudited balance sheet, income statement, and statement of cash flow for Ahern and its Subsidiaries prepared on a consolidated basis for the period from the beginning of the current Fiscal Year to the end of such Fiscal Quarter, all in reasonable detail and fairly presenting the financial position and results of operations of Ahern and its Subsidiaries as at the date thereof and for such period, and, in each case, in comparable form, figures for the corresponding period in the prior Fiscal Year, and in the Latest Projections, and prepared in accordance with GAAP (other than the omission of footnotes and subject to normal year-end audit adjustments, if any) applied consistently with the audited Financial Statements required to be delivered pursuant to Section 6.2(a) and

(ii) as soon as available, but in any event not later than 30 days after the end of each Fiscal Month, an unaudited balance sheet, income statement, and statement of cash flow for Ahern and its Subsidiaries prepared on a consolidated basis for the period from the beginning of the current Fiscal Year to the end of such Fiscal Month, all in reasonable detail and fairly presenting the financial position and results of operations of Ahern and its Subsidiaries as at the date thereof and for such period, and, in each case, in comparable form, figures for the corresponding period in the prior Fiscal Year, and in the Latest Projections, and prepared in accordance with GAAP (other than the omission of footnotes and subject to normal year-end audit adjustments, if any, and, solely in the case of the financial statements for the Fiscal Months of January and February of each Fiscal Year, subject to normal year-end audit adjustments from the prior Fiscal Year that have an impact on the financial statements for such Fiscal Months) applied consistently with the audited Financial Statements required to be delivered pursuant to Section 6.2(a).

Ahern shall certify by a certificate signed by a Responsible Officer that all such Financial Statements have been prepared in accordance with GAAP (other than the omission of footnotes and subject to normal year-end audit adjustments, if any) applied consistently with the audited Financial Statements required to be delivered pursuant to Section 6.2(a) and present fairly, subject to normal year-end audit adjustments, the financial position of Ahern and its Subsidiaries as at the dates thereof and their results of operations for the periods then ended.

(c) The Obligated Parties will cause to be furnished, with each of the Financial Statements delivered pursuant to Section 6.2(a), a letter from the independent certified public accountants that audited such Financial Statements to the effect that such accountants are familiar with this Agreement and that, in auditing such Financial Statements, they did not become aware of any fact or condition which then constituted a Default or Event of Default with respect to a financial covenant set forth in Section 8.21, except for those, if any, described in reasonable detail in such letter.

(d) The Obligated Parties will furnish or cause to be furnished, with each of the Financial Statements delivered pursuant to Section 6.2(a), and with each of the Financial Statements delivered pursuant to Section 6.2(b)(i), a certificate of a Responsible Officer of Ahern in the form of Exhibit C (a “Compliance Certificate”), or another form acceptable to the Agents in their discretion, (i) setting forth in reasonable detail the calculations required to establish compliance with the covenants set forth in Section 8.21 during the period covered by such Financial Statements and as at the end thereof and (ii) except as explained in reasonable detail in such certificate, (A) stating that all of the representations and warranties of the Obligated Parties contained in this Agreement and the other Loan Documents are correct and complete in all material respects as at the date of such certificate as if made at such time, except for those that speak as of a particular date, (B) stating that the Obligated Parties are, at the date of such certificate, in compliance in all material respects with all of their respective covenants and agreements in this Agreement and the other Loan Documents, (C) stating that no Default or Event of Default then exists or existed during the period covered by such Financial Statements,

(D) analyzing in reasonable detail the material variances of the figures in the Latest Projections and corresponding Financial Statements for the prior Fiscal Year and (E) certifying, to the Obligated Parties' knowledge, that the amount of the Unused Availability during the period covered by such certificate did not fall to an amount which would give rise to an Accelerated Delivery Date and that the amount of the Excess Availability during the period covered by such certificate did not fall to an amount which would give rise to a Trigger Event, or, if the Unused Availability or Excess Availability fell to any such amount, the first date on which such event occurred. If such certificate discloses that a representation or warranty is not correct or complete, or that a covenant has not been complied with, or that a Default or Event of Default existed or exists, such certificate shall set forth what action the Obligated Parties have taken or propose to take with respect thereto. In addition, if, as a result of any change in accounting principles and policies from those used in the preparation of the audited Financial Statements referred to in Section 7.6(a), the consolidated Financial Statements of Ahern and its Subsidiaries delivered pursuant to Section 6.2(a) or (b) will differ in any material respect from the consolidated Financial Statements that would have been delivered pursuant to such clauses had no such change in accounting principles and policies been made, then the Obligated Parties will deliver to both Agents (with sufficient copies to the Administrative Agent for distribution to each Lender) (i) together with the first delivery of Financial Statements pursuant to Section 6.2(a) or (b) following such change, consolidated Financial Statements of Ahern and its Subsidiaries for (y) the current Fiscal Year to the effective date of such change and (z) one full Fiscal Year immediately preceding the Fiscal Year in which such change is made, in each case prepared on a pro forma basis as if such change had been in effect during such periods, and (ii) together with each delivery of Financial Statements pursuant to Section 6.2(a) or (b) following such change, subject to Section 1.2, a written statement of a Responsible Officer of Ahern setting forth the differences (including, subject to Section 1.2, any differences that would affect any calculations relating to the financial covenants set forth in Section 8.21) which would have resulted if such Financial Statements had been prepared without giving effect to such change. The Obligated Parties will furnish or cause to be furnished, with each of the Financial Statements delivered pursuant to Section 6.2(b)(ii), a monitoring report, in form, scope and substance reasonably satisfactory to the Agents, for the Fiscal Month covered by such Financial Statements.

(e) The Obligated Parties will furnish, or cause to be furnished, no sooner than 60 days but not less than 30 days prior to the beginning of each Fiscal Year of Ahern, annual forecasts prepared by Ahern (to include forecasted consolidated balance sheets, income statements, statements of cash flow, and Borrowing Base and Unused Availability projections) for Ahern and its Subsidiaries as at the end of and for each Fiscal Month of such Fiscal Year and the following Fiscal Year.

(f) Upon the request of either of the Agents, the Obligated Parties will furnish, or cause to be furnished, within three Business Days of such request, a copy of the most recent annual report or other requested filing filed with the PBGC, IRS or any other Governmental Authority with respect to each Plan of any Obligated Party.

(g) The Obligated Parties will furnish, or cause to be furnished, within three Business Days after filing thereof, copies of (i) all reports, if any, or other documents filed by Ahern or any of its Subsidiaries with the Securities and Exchange Commission under the Exchange Act or any other similar Governmental Authority pursuant to any Requirement of Law, (ii) all reports, notices, or statements sent or received by Ahern or any of its Subsidiaries to or from the holders of any Debt of Ahern or any of its Subsidiaries registered under the Securities Act of 1933 or to or from the trustee under any indenture under which the same is issued, and (iii) all press releases and other statements made available generally by Ahern or any of its Subsidiaries to the public concerning material developments in the business of Ahern or any of its Subsidiaries.

(h) The Obligated Parties will furnish, or cause to be furnished, as soon as available, but in any event not later than fifteen days after Ahern's or any of its Subsidiaries' receipt thereof, a copy of all reports and letters prepared by any independent certified public accountants of Ahern or any of its Subsidiaries and submitted by such independent certified public accountants to the board of directors (or the audit committee of the board of directors) of Ahern or any of its Subsidiaries; provided that the Obligated Parties shall request such reports and letters at least once per year.

(i) The Obligated Parties will furnish, or cause to be furnished, (i) concurrently with distribution thereof to the owners of Capital Stock of any Obligated Party, copies of any and all proxy statements and financial statements which such Obligated Party makes available to any such Person, (ii) concurrently with distribution thereof to the primary recipients, copies of any and all proxy statements, financial statements, and reports which any Obligated Party makes available to any holder of any Debt of any Obligated Party, (iii) not later than three (3) Business Days after execution, receipt or delivery thereof, copies of any material notices or other communications that any Obligated Party executes, receives or delivers in connection with any Second Lien Debt Document or any Refinancing Second Lien Debt Document and (iv) not later than five (5) Business Days (or such lesser number of Business Days as agreed to by the Agents) prior to the effectiveness thereof, copies of substantially final drafts of any proposed amendment, supplement, waiver or other modification with respect to any Second Lien Debt Document, Refinancing Second Lien Debt Document or any related document, and promptly after the execution thereof, copies of any executed amendment, supplement, waiver or other modification with respect to any Second Lien Debt Document, any Refinancing Second Lien Debt Document or any related document.

(j) If requested by either of the Agents, the Obligated Parties will furnish, or cause to be furnished, promptly after such request, a copy of each tax return filed by Ahern or any of its Subsidiaries with the IRS or any other Governmental Authority.

(k) The Obligated Parties will furnish, or cause to be furnished to the Agents,

(i) as soon as available, but in any event within twenty (20) days after the end of each Fiscal Month of Ahern as of the end of such Fiscal Month, and at such other times as may be requested by either of the Agents, a Borrowing Base Certificate and supporting information in connection therewith; provided, that

during each Accelerated Delivery Period, the Borrowers shall deliver a Borrowing Base Certificate and supporting information in connection therewith to the Agents on a weekly basis (not later than the fourth Business Day after the last Business Day of the previous week) with the information thereon to be as of the last Business Day of such previous week;

(ii) within twenty (20) days of the end of each Fiscal Month, or more frequently if requested by either of the Agents, a schedule (in form reasonably satisfactory to the Agents) of each Borrower's Accounts created, credits given, cash collected, and other adjustments made to such Borrower's Accounts as of the last day of such Fiscal Month since the date of the previous such schedule;

(iii) within twenty (20) days of the end of each Fiscal Month, or more frequently if requested by either of the Agents, an aging (in form reasonably satisfactory to the Agents) of each Borrower's Accounts as of the last day of such Fiscal Month, together with a reconciliation to the corresponding Borrowing Base and to such Borrower's general ledger;

(iv) within twenty (20) days of the end of each Fiscal Month, or more frequently if requested by either of the Agents, an aging (in form reasonably satisfactory to the Agents) of each Borrower's accounts payable as of the last day of such Fiscal Month together with a reconciliation to the corresponding general ledger of such Borrower;

(v) within twenty (20) days of the end of each Fiscal Month, or more frequently if requested by either of the Agents, a detailed calculation (in form reasonably satisfactory to the Agents) of Eligible Accounts, Eligible Transportation Equipment and Eligible Inventory as of the last day of such Fiscal Month;

(vi) within twenty (20) days of the end of each Fiscal Month, or more frequently if requested by either of the Agents, Inventory and Transportation Equipment reports by each Borrower, category, quantity, cost, and location (in form reasonably satisfactory to the Agents), together with a reconciliation to the corresponding Borrowing Base and to the Borrowers' general ledger as of the last day of such Fiscal Month;

(vii) within twenty (20) days of the end of each Fiscal Month, a schedule identifying each location, if any, where any Collateral is located with a sales representative, agent, contractor, or other Person under any bailee, consignee, or warehouse arrangement, in each case setting forth, as of the last day of the immediately preceding Fiscal Month, (A) the name and address of each such sales representative, agent, contractor, or other Person and a description of the nature of any such arrangement and (B) the cost of such Inventory and Transportation Equipment at each such location;

(viii) upon request by either of the Agents, within three (3) Business Days of such request, copies of invoices, customer statements, credit memos, remittance advices and reports, leases, lease forms, deposit slips, and leasing, shipping and delivery documents with respect to each Borrower's Accounts and Inventory, and purchase orders and invoices with respect to any Equipment or Inventory acquired by any Borrower or a written explanation of why the requested items can not be delivered within such three (3) Business Day period (in which case, such requested items shall then be delivered as promptly thereafter as is reasonably practicable);

(ix) within twenty (20) days of the end of each Fiscal Month, a report in a format to be agreed upon between the Agents and Ahern with relevant operating information including Time Utilization by product category, average discount and average rental rates;

(x) upon request by either of the Agents, within three (3) Business Days of such request, a statement of the balance of each of the Intercompany Accounts; and

(xi) within three (3) Business Days, such other reports with respect to the Collateral as either of the Agents may reasonably request or a written explanation of why the requested reports can not be delivered within such three (3) Business Day period (in which case such requested reports shall then be delivered as promptly thereafter as is reasonably practicable).

With the delivery of each of the foregoing, the Obligated Parties shall furnish a certificate executed by a Responsible Officer of the Borrowers certifying as to the accuracy and completeness of the foregoing. If any of any Borrower's records or reports with respect to the Collateral are prepared by an accounting service or other agent, such Borrower hereby authorizes such service or agent to deliver such records, reports, and related documents to the Administrative Agent for distribution to the Lenders.

(l) The Obligated Parties will provide the Agents the information required by Section 8.7(b).

(m) Within 30 days following the date franchise taxes are due, the Obligated Parties will, unless the Agents shall each otherwise consent, provide to the Administrative Agent a certificate of the applicable Governmental Authority evidencing each Obligated Party's good standing in its jurisdiction of formation, incorporation, or organization, as applicable.

(n) The Obligated Parties will furnish, or cause to be furnished, such additional information as either Agent and/or any Lender (through either of the Agents, and the applicable Agent agrees to pass along all such reasonable requests by any Lender to the Obligated Parties) may from time to time reasonably request regarding the financial and business affairs of Ahern or any Subsidiary of Ahern.

(o) The Obligated Parties will furnish, or cause to be furnished, with each of the Financial Statements delivered pursuant to Section 6.2(b), a description of any commercial tort claim acquired by any Obligated Party during the period covered by such Financial Statements.

(p) The Obligated Parties will furnish, or cause to be furnished, with each of the Financial Statements delivered pursuant to Section 6.2(b), a description of all Collateral acquired by any Obligated Party during the period covered by such Financial Statements which is subject to any certificate of title law of the U.S. or any state.

(q) After any item of Inventory is no longer subject to a Lien described in clause (l) of the definition of "Permitted Liens", the Obligated Parties will furnish, or cause to be furnished, either a UCC partial release for such item of Inventory or a statement from the vendor of such item of Inventory that such vendor no longer has a Lien in such item of Inventory, and until such partial release or statement is delivered to the Agents such item of Inventory shall in no event constitute Eligible Inventory and no Accounts created with respect to such Inventory shall constitute Eligible Accounts.

(r) After any item of Transportation Equipment is no longer subject to a Lien described in clause (k) of the definition of "Permitted Liens", the Obligated Parties will furnish, or cause to be furnished, (i) if a certificate of title is not required with respect to such item of Transportation Equipment under the titling statutes of any relevant Governmental Authority, either a UCC partial release for such item of Transportation Equipment or a statement from the vendor or lessor of such item of Transportation Equipment that such vendor or lessor, as the case may be, no longer has a Lien in such item of Transportation Equipment or (ii) if a certificate of title has been issued with respect to such item of Transportation Equipment, such certificate of title endorsed by the secured party releasing its Lien in such item of Transportation Equipment or, if such original certificate of title cannot be furnished, such other lien release as is acceptable to the Governmental Authority issuing such certificate of title to permit the issuance of a replacement certificate of title without the notation of such Lien, and until such partial release, statement, certificate of title or other release, as applicable, is delivered to the Agents such item of Transportation Equipment shall in no event constitute Eligible Transportation Equipment.

Section 6.3 Notices. The Obligated Parties shall notify each Agent in writing of the following matters at the following times:

(a) immediately after a Responsible Officer's becoming aware of any Default or Event of Default;

(b) within three (3) Business Days after a Responsible Officer's becoming aware of the assertion by the holder of any Capital Stock of Ahern or any Subsidiary of Ahern or the holder of any Debt of Ahern or any Subsidiary of Ahern in excess of \$500,000 that a default exists with respect thereto or that any such Person is not in compliance with the terms thereof, or the written threat or commencement by such holder of any enforcement action because of such asserted default or non-compliance;

(c) within five (5) Business Days after a Responsible Officer's becoming aware of any pending or threatened (in writing) action, suit, proceeding, or counterclaim by any Person, or any pending or threatened (in writing) investigation by a Governmental Authority, that could reasonably be expected to result in, or has resulted in, liability in excess of \$500,000 or otherwise could reasonably be expected to have, or has resulted in, a Material Adverse Effect;

(d) within five (5) Business Days after a Responsible Officer's becoming aware of any pending or threatened (in writing) strike, work stoppage, unfair labor practice claim or other similar labor dispute affecting any Obligated Party that could reasonably be expected to result in, or has resulted in, liability in excess of \$500,000 or otherwise could reasonably be expected to have, or has resulted in, a Material Adverse Effect;

(e) within five (5) Business Days after a Responsible Officer's becoming aware of any violation of any Requirement of Law affecting any Obligated Party that reasonably could be expected to result in, or has resulted in, liability in excess of \$500,000 or otherwise could reasonably be expected to have, or has resulted in, a Material Adverse Effect;

(f) within five (5) Business Days after (i) a Responsible Officer's receipt of any written notice of any violation by any Obligated Party of any Environmental Law or (ii) a Responsible Officer's obtaining knowledge that any Governmental Authority has asserted that any Obligated Party is not in compliance with any Environmental Law or that any Governmental Authority is investigating any Obligated Party's compliance therewith, which in any event under clause (i) or clause (ii) preceding could reasonably be expected to result in, or has resulted in, liability in excess of \$500,000 or otherwise could reasonably be expected to have, or has resulted in, a Material Adverse Effect;

(g) within five (5) Business Days after a Responsible Officer's receipt of any written notice from any Governmental Authority or other Person or otherwise obtaining knowledge that any Obligated Party is or may be liable to any Person as a result of the Release or threatened Release of any Contaminant or that any Obligated Party is subject to investigation by any Governmental Authority evaluating whether any remedial action is needed to respond to the Release or threatened Release of any Contaminant that, in either case, could reasonably be expected to result in, or has resulted in, liability in excess of \$500,000 or otherwise could reasonably be expected to have, or has resulted in, a Material Adverse Effect;

(h) within five (5) Business Days after a Responsible Officer's receipt of any written notice of the imposition of any Environmental Lien against any property of any Obligated Party;

(i) not less than 30 days prior to any change in any Obligated Party's (i) name as it appears in the jurisdiction of its formation, incorporation, or organization, (ii) type of entity, (iii) organizational identification number, or (iv) trade names under which such Obligated Party will sell Inventory or create Accounts, or to which instruments in payment of Accounts may be made payable;

(j) within five (5) Business Days after any Responsible Officer knows or has reason to know, (i) that an ERISA Event or a prohibited transaction (as defined in Sections 406 of ERISA and 4975 of the Code) has occurred or (ii) that any action has been taken or threatened (in writing) by the IRS, the DOL, or the PBGC with respect to any such ERISA Event or prohibited transaction;

(k) upon either Agent's request, copies of the following: (i) each annual report (form 5500 series), including Schedule B thereto, filed with the DOL or the IRS with respect to each Plan; (ii) a copy of each funding waiver request filed with the IRS with respect to any Plan and all communications received by any Obligated Party or any ERISA Affiliate from the IRS with respect to such request; and (iii) a copy of each other filing or notice filed with the PBGC, the DOL, or the IRS, with respect to each Plan by any Obligated Party or any ERISA Affiliate;

(l) upon request from either Agent, copies of each most recent actuarial report for any Plan (except that in the case of a Multiemployer Plan, the Obligated Party will request of the plan administrator thereof that a copy of each actuarial report and annual report for the Multiemployer Plan be sent to the requesting Agent), and within five (5) Business Days after receipt thereof by any Obligated Party or any ERISA Affiliate, copies of the following: (i) any notices of the PBGC's intention to terminate a Plan or to have a trustee appointed to administer such Plan; (ii) any favorable or unfavorable determination letter from the IRS regarding the qualification of a Plan under Section 401(a) of the Code; or (iii) any notice from a Multiemployer Plan regarding the imposition of withdrawal liability;

(m) within five (5) Business Days after the occurrence thereof: (i) any changes in the benefits of any existing Plan which the Obligated Party expects to increase any Obligated Party's annual costs with respect thereto by an amount in excess of \$500,000, or the establishment of any new Plan or the commencement of contributions to any Plan to which any Obligated Party or any ERISA Affiliate was not previously contributing; or (ii) any failure by any Obligated Party or any ERISA Affiliate to make a required installment or any other required payment to any Plan in excess of \$250,000 under Section 412 of the Code on or before the due date for such installment or payment;

(n) within five (5) Business Days after commencement of any proceedings contesting any tax, fee, assessment, or other governmental charge in excess of \$500,000;

(o) within five (5) Business Days after any Responsible Officer becomes aware that any material assumption on which the Obligated Parties prepared and presented the Latest Projections is no longer valid;

(p) with each of the financial statements required to be delivered pursuant to Section 6.2(b), a listing of (i) each Deposit Account opened by any Obligated Party and (ii) any Proprietary Rights registered with the United States Patent and Trademark Office or the United States Copyright Office, in the preceding Fiscal Month;

(q) within five (5) Business Days after the occurrence thereof, any loss, damage, or destruction to the Collateral, whether due to any casualty, condemnation, or other reason, having a value in excess of \$500,000, whether or not covered by insurance;

(r) within five (5) Business Days after any Responsible Officer becomes aware of any Lien (other than Permitted Liens) against, or any claim in excess of \$100,000 made or asserted in writing against, any of the Collateral;

(s) within five (5) Business Days after a Responsible Officer's becoming aware of any event or circumstance not covered by clause (a) through clause (r) preceding that could reasonably be expected to have, or has resulted in, a Material Adverse Effect;

(t) not less than ten (10) Business Days prior to the lease under the GE Sale and Leaseback Agreement of any item of property which was not leased under that agreement on the Original Closing Date, a description in reasonable detail (including serial numbers thereof, if any) of the item of property to be leased (including, without limitation, any such item to be leased as a result of Ahern's exercise of a replacement option under the GE Sale and Leaseback Agreement or as a result of the occurrence of a casualty to another item of property leased thereunder);

(u) promptly, any material additions to or deletions from any Obligated Party's Inventory or Transportation Equipment that are not made in the ordinary course of business;

(v) promptly, any material change in insurance coverage maintained by any Obligated Party, specifying the changes and reasons therefor;

(w) promptly, and in any event within ten (10) Business Days after any Material Contract of any Obligated Party set forth on Schedule 7.24 is terminated or amended in a manner that is materially adverse to any Obligated Party, a written statement describing such event with copies of such material amendments, and an explanation of any actions being taken with respect thereto; and

(x) not less than ten (10) days prior to any Asset Sale (as defined in the Second Lien Debt Agreement) or any application of proceeds thereof to the payment of any Obligations, in each instance, that will result in a reduction of the maximum amount of Aggregate Revolver Outstandings permitted to be incurred under Section 4.09(b)(1) of the Second Lien Debt Agreement (other than solely as a result of a reduction due to the borrowing base formula under Section 4.09(b)(1)(b) of the Second Lien Debt Agreement), notice of such Asset Sale and the amount of such reduction.

Each notice given under this Section 6.3 shall describe the subject matter thereof in reasonable detail, and shall set forth the action that any Obligated Party or any ERISA Affiliate, as applicable, has taken or proposes to take with respect thereto.

ARTICLE 7

GENERAL WARRANTIES AND REPRESENTATIONS

Each Obligated Party warrants and represents to the Agents and the other Credit Providers as follows:

Section 7.1 Authorization, Validity, and Enforceability of the Transaction Documents. Each Obligated Party has the power and authority to execute, deliver, and perform this Agreement and the other Transaction Documents to which it is a party, to incur the indebtedness, liabilities, and obligations it has agreed to undertake under the Transaction Documents to which it is a party, and to grant the Agent's Liens. Each Obligated Party has taken all necessary action (including obtaining approval of the owners of its Capital Stock or any other Person required to provide approval or consent, if necessary) to authorize its execution, delivery, and performance of the Transaction Documents to which it is a party. The Transaction Documents to which each Obligated Party is a party have been duly executed and delivered by such Obligated Party, and constitute the legal, valid, and binding obligations of such Obligated Party, enforceable against it in accordance with their respective terms without defense, setoff, or counterclaim except as such enforceability is limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the rights of creditors generally and to the effect of general principles of equity whether applied by a court of law or equity. Each Obligated Party's execution, delivery, and performance of the Transaction Documents to which it is a party do not and will not conflict with, or constitute a violation or breach of, or constitute a default under, or result in or require the creation or imposition of any Lien upon any property of any Obligated Party by reason of the terms of (a) any contract, mortgage, Lien, lease, agreement, indenture, document, or instrument to which such Obligated Party is a party or that is binding upon it, (b) any Requirement of Law applicable to such Obligated Party, or (c) the Organization Certificate or Management Agreement of such Obligated Party. Each Borrowing and each delivery by any or all of the Borrowers (or Ahern on behalf of the Borrowers) of a Borrowing Base Certificate constitutes a representation and warranty by Ahern that, as of the date of such Borrowing or delivery, as the case maybe (both before and after giving effect to such Borrowing, if applicable), the financial accommodations provided to the Borrowers hereunder do not violate the debt incurrence limits set forth in the Second Lien Debt Agreement or exceed the Maximum First Lien Principal Indebtedness (as defined in the Intercreditor Agreement). Without limitation of the foregoing, the Borrowers represent and warrant that (i) each Borrowing is permitted under Section 4.09(b)(1) of the Second Lien Debt Agreement, (ii) each Borrowing is permitted to be incurred and secured by all applicable Secured Debt Documents (as defined in the Second Lien Debt Agreement) and constitutes Priority Lien Debt (as defined in the Second Lien Debt Agreement), (iii) all Obligations constitute "First Lien Obligations" as defined in the Intercreditor Agreement, (iv) there are in existence no Credit Facilities (as defined in the Second Lien Debt Agreement) other than this Agreement and (v) there is in existence no Parity Lien Debt (as defined in the Second Lien Debt Agreement) other than Second Lien Debt.

Section 7.2 Validity and Priority of Security Interest. The provisions of the Loan Documents create legal and valid Liens on the Collateral in favor of the Collateral Agent, for the benefit of the Credit Providers, and such Liens (a) constitute perfected and continuing Liens on the Collateral, securing the Obligations, (b) are enforceable against the applicable Obligated

Party and all third parties, and (c) have priority over all other Liens on the Collateral except for those Liens identified in clause (b) through clause (h) or clause (k) through clause (l) of the definition of Permitted Liens (but only to the extent any such Permitted Liens would have priority over the Agent's Liens pursuant to any Requirement of Law) and Liens perfected only by possession (including possession of any certificate of title) to the extent the Collateral Agent has not obtained or does not maintain possession of such Collateral.

Section 7.3 Organization, Authority, and Good Standing. Each of the Obligated Parties

(a) is a corporation, limited liability company, partnership, limited partnership, or other business entity duly and properly formed, incorporated, or organized and validly existing under Requirements of Law of the jurisdiction of its formation, incorporation, or organization as set forth in Schedule 7.3, and such jurisdiction is the only jurisdiction under which it is formed, incorporated, or organized,

(b) has all requisite power and authority to conduct its business in each jurisdiction in which it conducts business and to own its property, and

(c) to the extent applicable, is qualified and in good standing under the Requirements of Law of (i) its jurisdiction of formation, incorporation, or organization and (ii) each other jurisdiction in which qualification is necessary in order for it to own or lease its property and conduct its business.

Section 7.4 Capitalization and Subsidiaries. As of the Closing Date, Schedule 7.4 sets forth (a) a correct and complete list of the relationship of the Obligated Parties and all of their respective Subsidiaries, (b) the location of the chief executive office of each of the Obligated Parties, (c) a true and complete listing of each class of the Capital Stock of each of the Obligated Parties, of which all of such issued shares or other interests are validly issued, outstanding, fully paid and non-assessable, and owned beneficially and of record by the Persons identified in Schedule 7.4, (d) the type of entity of each of the Obligated Parties, (e) the jurisdiction of formation, incorporation or organization of each of the Obligated Parties and the employer or taxpayer identification number of each of the Obligated Parties and the organizational identification number issued by each of the Obligated Parties' jurisdiction of formation, incorporation, or organization (or a statement that no such number has been issued). Each Obligated Party has only one state of formation, incorporation, or organization.

Section 7.5 Corporate Name; Prior Transactions. As of the Closing Date, Schedule 7.5 sets forth a correct and complete list of the name of each Obligated Party as it appears in official filings in the jurisdiction of its formation, organization, or incorporation. Except as set forth in Schedule 7.5, no Obligated Party has, during the past five years, been known by or used any other corporate or fictitious name, or been a party to any merger or consolidation, or acquired all or substantially all of the assets of any Person, or acquired any of its property outside of the ordinary course of business.

Section 7.6 Financial Statements and Projections.

(a) The Obligated Parties have delivered to each Agent and the Lenders the audited financial statements for Ahern and its Subsidiaries for the Fiscal Years ended December 31, 2001, December 31, 2002, December 31, 2003 and December 31, 2004, accompanied by the report thereon of Ahern's independent certified public accountants, Piercy Bowler Taylor & Kern. The Obligated Parties have also delivered to each Agent and the Lenders the unaudited balance sheet and related statements of income and cash flow for Ahern and its Subsidiaries on a consolidated basis as of the end of each Fiscal Month ending January 31, 2005 through June 30, 2005. All such financial statements have been prepared in accordance with GAAP and fairly present the financial position of Ahern and its Subsidiaries as at the dates thereof and their results of operations for the periods then ended (except with respect to the unaudited financial statements referred to immediately above, for the omission of applicable footnotes and subject to normal year-end audit adjustments). Except as set forth on Schedule 7.6, as of the Closing Date, Ahern and its Subsidiaries do not have any material liabilities that are not disclosed in such financial statements.

(b) The Latest Projections when submitted to the Agents as required herein represent the Obligated Parties' good faith estimate of the future financial performance of the Borrowers for the periods set forth therein. The Latest Projections have been prepared on the basis of the assumptions set forth therein, which the Obligated Parties believe are fair and reasonable in light of current and reasonably foreseeable business conditions at the time submitted to the Agents.

(c) The pro forma balance sheet of Ahern and its Subsidiaries as at June 30, 2005, delivered to the Agents presents fairly and accurately Ahern's and its Subsidiaries' financial condition as of such date and after giving effect to consummation of the transactions contemplated by this Agreement and the Second Lien Debt Documents.

Section 7.7 Solvency. As of the Closing Date, prior to and after giving effect to all of the transactions to occur on the Closing Date (including the Borrowings to be made on the Closing Date), and at all times after the Closing Date, each of the Obligated Parties is Solvent.

Section 7.8 Debt. As of the Closing Date, after giving effect to the Borrowings to be made on the Closing Date, the Obligated Parties and their Subsidiaries have no Debt, except (a) the Obligations and (b) Debt permitted pursuant to Section 8.12.

Section 7.9 Distributions. Schedule 7.9 accurately sets forth, as of the date hereof, all Distributions which have been declared, paid, or made upon or in respect of any Capital Stock of Ahern since December 31, 2003.

Section 7.10 Real Estate; Leases. As of the Closing Date, Schedule 7.10 sets forth a correct and complete list of all Real Estate owned by each Obligated Party, all leases and subleases of real or personal property by each Obligated Party as lessee or sublessee (other than leases of personal property as to which such Obligated Party is lessee or sublessee for which the value of such personal property under any such lease in the aggregate is less than \$10,000, and

Re-Rental Leases) and all leases and subleases of real or personal property by each Obligated Party as lessor or sublessor. Schedule 7.10 also sets forth a correct and complete list, as of the Closing Date, of all inventory and equipment that is subject to the GE Sale and Leaseback Agreement. Each material lease and sublease between an Obligated Party and DFA LLC is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease or sublease exists. All other leases and subleases of the Obligated Parties are in full force and effect, and no default by any party to any such lease or sublease exists, except if the result thereof would not have a Material Adverse Effect; provided that, as of the Closing Date, each lease and sublease set forth on Schedule 7.10 is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease or sublease exists. Each Obligated Party has good and indefeasible title in fee simple to the Real Estate identified in Schedule 7.10 as "owned" by such Obligated Party, or valid leasehold interests in all Real Estate identified in Schedule 7.10 as "leased" by such Obligated Party, and each Obligated Party has good, indefeasible, and merchantable title to all of its other property reflected on the June 30, 2005 Financial Statements of Ahern and its Subsidiaries delivered to the Agents and the Lenders, except as disposed of in the ordinary course of business since the date thereof, free of all Liens except Permitted Liens.

Section 7.11 Proprietary Rights. As of the Closing Date, (a) Schedule 7.11 sets forth a correct and complete list of all of each Obligated Party's registered patents, trademarks, copyrights, and other material Proprietary Rights, (b) none of the Proprietary Rights listed in Schedule 7.11 is subject to any licensing agreement or similar arrangement except as set forth in Schedule 7.11, (c) the Proprietary Rights listed in Schedule 7.11 constitute all of the property of such type necessary to the current and anticipated future conduct of the Obligated Parties' business, (d) to the best of each Obligated Party's knowledge, none of the Proprietary Rights listed in Schedule 7.11 infringes upon or conflicts with any rights held by any other Person, and (e) no claim or litigation regarding any of the foregoing is pending or threatened (in writing).

Section 7.12 Trade Names. All trade names or styles under which any Obligated Party will sell or lease Inventory or create Accounts, or to which instruments in payment of Accounts may be made payable, are listed in Schedule 7.12.

Section 7.13 Litigation. Except as set forth in Schedule 7.13, there is no pending or threatened (in writing), action, suit, proceeding, or counterclaim by any Person, or investigation by any Governmental Authority, or any basis for any of the foregoing, that could reasonably be expected to have a Material Adverse Effect.

Section 7.14 Labor Matters. As of the Closing Date, except as set forth in Schedule 7.14, (a) there is no collective bargaining agreement or other labor contract covering employees of any Obligated Party, (b) no such collective bargaining agreement or other labor contract is scheduled to expire during the term of this Agreement, (c) to the best of any Obligated Party's knowledge, no union or other labor organization is seeking to organize, or to be recognized as, a collective bargaining unit of employees of any Obligated Party or for any similar purpose, (d) to the best of any Obligated Party's knowledge, there is no pending or threatened strike, work stoppage, unfair labor practice claim, or other material dispute against or affecting any Obligated Party or its employees, and (e) to the best of any Obligated Party's knowledge, there is no pending or threatened unfair labor practice claim or other similar labor

dispute against or affecting any Obligated Party or its employees that could reasonably be expected to result in, or has resulted in, liability in excess of \$500,000 or that could reasonably be expected to have a Material Adverse Effect.

Section 7.15 Environmental Law. Except as otherwise set forth in Schedule 7.15 and except as could not reasonably be expected to result in liability in excess of \$500,000 in the aggregate for all the Obligated Parties and otherwise could not reasonably be expected to have a Material Adverse Effect:

(a) Each Obligated Party is in compliance with all applicable Environmental Laws, and neither any Obligated Party nor any of their respective presently or previously owned Real Estate or presently conducted or prior operations, is subject to any enforcement order from, or liability agreement with, any Governmental Authority or private Person respecting (i) compliance with any Environmental Law or (ii) any potential liabilities and costs or remedial action arising from a Release or threatened Release of a Contaminant.

(b) Each Obligated Party has obtained all permits necessary for its current operations under applicable Environmental Law, and all such permits are in good standing, and each Obligated Party is in compliance with all terms and conditions of such permits.

(c) No Obligated Party is in violation of any Environmental Law with respect to storage, treatment, or disposal of any hazardous waste (as defined pursuant to 40 CFR Part 261 or any equivalent Environmental Law).

(d) No Obligated Party has received any summons, complaint, order, or similar written notice of any Environmental Claim indicating that it is not currently in compliance with, or that any Governmental Authority is currently investigating such Obligated Party's compliance with, any Environmental Law or that it is or may be liable to any other Person as a result of a Release or threatened Release of a Contaminant.

(e) To the best of each Obligated Party's knowledge, none of the present or past operations of any Obligated Party is the subject of any investigation by any Governmental Authority evaluating whether any remedial action is needed to respond to a Release or threatened Release of a Contaminant.

(f) To the best of each Obligated Party's knowledge, there is not now on the Real Estate of any Obligated Party in violation of any Environmental Law:

- (i) any underground storage tanks or surface impoundments,
- (ii) any asbestos-containing material, or
- (iii) any polychlorinated biphenyls used in hydraulic oils, electrical transformers, or other equipment.

(g) No Obligated Party has filed, or has had the obligation to file, any notice under any requirement of Environmental Law reporting a spill or accidental and unpermitted Release or discharge of a Contaminant into the environment.

(h) No Obligated Party has entered into any pending or ongoing negotiations or any currently effective settlement agreements with any Person (including any prior owner of such Obligated Party's property) imposing obligations or liabilities on any Obligated Party with respect to any remedial action in response to the Release of a Contaminant or environmentally related claim.

(i) None of the products manufactured, distributed, or sold by any Obligated Party or any Subsidiary of any Obligated Party contains asbestos containing material.

(j) No presently effective Environmental Lien has attached to any of the Real Estate owned by any Obligated Party.

Section 7.16 No Violation of Law. No Obligated Party is in violation of any Requirement of Law applicable to it, which violation could reasonably be expected to have a Material Adverse Effect.

Section 7.17 No Default. No Obligated Party is in default with respect to any note, indenture, loan agreement, mortgage, lease, deed, or other agreement to which such Obligated Party is a party or by which it is bound, which default could reasonably be expected to have a Material Adverse Effect.

Section 7.18 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code, and other federal or state law;

(b) Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS and, to the best knowledge of each Obligated Party, nothing has occurred which would cause the loss of such qualification;

(c) Each Obligated Party and each ERISA Affiliate has made all required contributions to any Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan;

(d) There are no pending or, to the best knowledge of any Obligated Party, threatened (in writing) claims, actions, or lawsuits, or action by any Governmental Authority, with respect to any Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect;

(e) There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect; and

(f) Except where the occurrence or existence could not, individually or in the aggregate, result in liability in excess of \$500,000 or otherwise be reasonably expected to have a Material Adverse Effect, (i) no ERISA Event has occurred or is reasonably expected to occur, (ii) no Pension Plan has any Unfunded Pension Liability, (iii) no Obligated Party and no ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA), (iv) no Obligated Party and no ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred that, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan, and (v) no Obligated Party and no ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

Section 7.19 Taxes. Each Obligated Party has filed all federal, state, and other tax returns and reports required to be filed (or appropriate extensions have been timely filed), and has paid all federal, state, and other taxes, assessments, fees, and other governmental charges levied or imposed upon it or its properties, income, or assets otherwise due and payable unless such unpaid taxes and assessments would constitute a Permitted Lien.

Section 7.20 Regulated Entities. No Obligated Party or Affiliate of any Obligated Party is an "Investment Company" within the meaning of the Investment Company Act of 1940. No Obligated Party or Affiliate of any Obligated Party is subject to regulation under the Public Utility Holding Company Act of 1935, any state public utilities Requirement of Law, the Federal Power Act, the Interstate Commerce Act, or any other Requirement of Law limiting its ability to incur indebtedness.

Section 7.21 Use of Proceeds; Margin Regulations. The proceeds of the Loans are to be used solely for the purposes specified in Section 8.22. No Obligated Party is engaged in the business of buying or selling Margin Stock or extending credit for the purpose of buying or carrying Margin Stock. Margin Stock constitutes less than 5.0% of the value of those assets of the Obligated Parties that are subject to any limitation on sale, pledge, or other restriction hereunder.

Section 7.22 No Material Adverse Change. No Material Adverse Effect has occurred since the date of the latest Financial Statements delivered to the Agents and the Lenders referenced in Section 7.6(a).

Section 7.23 Full Disclosure. None of the representations or warranties made by any Obligated Party in any of the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in any document, agreement, exhibit, report, statement, or certificate furnished by or on behalf of any Obligated Party in connection with the Loan Documents (including any offering and disclosure materials delivered by or on behalf of any Obligated Party to either of the Agents or any of the Lenders prior to the Closing Date), contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered.

Section 7.24 Material Agreements. As of the Closing Date, Schedule 7.24 sets forth a complete and accurate list of all material agreements and contracts (other than the Loan Documents) to which any Obligated Party is a party or is bound.

Section 7.25 Bank Accounts. As of the Closing Date, Schedule 7.25 contains a complete and accurate list of all bank accounts maintained by each Obligated Party with any bank or other financial institution.

Section 7.26 Commercial Tort Claims. As of the Closing Date, Schedule 7.26 contains a complete and accurate list of all commercial tort claims owned by each Obligated Party.

Section 7.27 Governmental Authorization. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or other Person is necessary or required in connection with the execution, delivery, or performance by, or enforcement against, any Obligated Party of any Transaction Document except for those that have been duly obtained by the Obligated Parties, copies of which, with respect to the Loan Documents, have been provided to the Agents, and for filing of financing statements and recording of Mortgages (if any).

Section 7.28 Second Lien Debt. The transactions contemplated by the Second Lien Debt Documents have been duly and validly consummated in accordance with the terms, conditions and provisions of such documents. Each of the representations and warranties made by any of the Obligated Parties pursuant to any of the Second Lien Debt Documents is true and correct, in all material respects. None of the transactions contemplated by this Agreement, any of the other Loan Documents or any of the Second Lien Debt Documents shall result in a breach of any of the representations and warranties or other provisions contained in any of the Transaction Documents.

Section 7.29 Certificates of Title. As of the Closing Date, Schedule 7.29 contains a complete and accurate list of all Collateral owned by each Obligated Party which is subject to a certificate of title law of the U.S. or any state.

Section 7.30 Subordinated Debt. The Obligations constitute senior indebtedness that is entitled to the benefits of the subordination provisions, if any, of all Debt of the Obligated Parties.

Section 7.31 Foreign Assets Control Regulations, Etc.

(a) None of the execution, delivery or performance of the Loan Documents by the Obligated Parties nor the use of the proceeds of the Revolving Loans hereunder will violate (i) the United States Trading with the Enemy Act, as amended, (ii) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, (iii) Executive Order No. 13,224, 66 Fed Reg 49,079 (2001), issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism) (the "Terrorism Order") or (iv) the Patriot Act. No part of the proceeds from the Revolving Loans will be used, directly or indirectly, for any payments to any governmental official

or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

(b) No Obligated Party (i) is or will become a “blocked person” as described in Section 1 of the Terrorism Order or (ii) engages or will engage in any dealings or transactions, or is otherwise associated, with any such blocked person or any such Person.

(c) Each Obligated Party and its Affiliates are in compliance, in all material respects, with the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Public Law 107-56 (October 26, 2001).

Section 7.32 Ranking. All Obligations constitute direct, unconditional and general obligations of the Obligated Parties and rank in right of payment either pari passu or senior to all other Debt of the Obligated Parties.

ARTICLE 8

AFFIRMATIVE AND NEGATIVE COVENANTS

Each Obligated Party covenants to each Agent and each Lender that as long as any of the Obligations remain outstanding or this Agreement is in effect each Obligated Party will keep and perform each of the following covenants:

Section 8.1 Taxes and Other Obligations. Except as otherwise permitted by the terms of this Agreement, each Obligated Party shall (a) file when due (after giving effect to all timely filed appropriate extensions) all tax returns and other reports that it is required to file, (b) pay, or provide for the payment, when due, of all taxes, fees, assessments, and other governmental charges against it or upon its property, income, and franchises, make all required withholding and other tax deposits, and establish adequate reserves for the payment of all such items in accordance with GAAP, and provide to the Agents and the Lenders, upon request, satisfactory evidence of its timely compliance with the foregoing, and (c) pay when due all Debt and claims owed to materialmen, mechanics, carriers, warehousemen, landlords, processors, and other like Persons, and all other indebtedness, liabilities, and obligations the nonpayment of which could result in a Lien on any of the Collateral; provided that upon prior written notice to each Agent, such Obligated Party need not pay any of the foregoing (x) which it is contesting in good faith by appropriate proceedings diligently pursued, (y) for which it has established proper reserves as required in accordance with GAAP, and (z) for which no Lien (other than a Permitted Lien) results from such non-payment.

Section 8.2 Legal Existence and Good Standing. Except as allowed by Section 8.9, each Obligated Party shall maintain (i) its legal existence and good standing in the jurisdiction of its formation, incorporation, or organization and (ii) its qualification and good standing in all other jurisdictions in which the failure to maintain such qualification and good standing could reasonably be expected to have a Material Adverse Effect. No Obligated Party shall change the jurisdiction of its formation, incorporation, or organization or change its type of entity as identified on Schedule 7.3 without the prior written consent of the Agents.

Section 8.3 Compliance with Law and Agreements; Maintenance of Licenses. Each Obligated Party shall, and shall cause each of its Subsidiaries to, comply in all material respects with all Requirements of Law. Each Obligated Party shall, and shall cause each of its Subsidiaries to, obtain and maintain all licenses, permits, franchises, and governmental authorizations necessary to own its property and to conduct its business as conducted on the Original Closing Date or as permitted by Section 8.16. No Obligated Party shall modify, amend, or alter its Organization Certificate or Management Agreement other than in a manner that does not adversely affect the rights of the Lenders or the Agents under any of the Loan Documents.

Section 8.4 Maintenance of Property; Inspection of Property.

(a) Each Obligated Party shall (i) maintain all of its inventory, equipment and facilities necessary and useful in the conduct of its business in good operating order and condition, ordinary wear and tear excepted and (ii) make all necessary repairs thereto and renewals and replacements thereof.

(b) Each Obligated Party shall permit employees, representatives and independent contractors of each of the Agents (accompanied by any Lender that so elects with the consent of such Agent, such consent not to be unreasonably withheld) to visit and inspect any of such Obligated Party's properties, to examine, audit, make extracts from or copies of and inspect any or all of such Obligated Party's Collateral, its corporate, financial, and operating records, files, and books of account, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances, and accounts with its officers, directors, and independent public accountants (provided that the relevant Agent shall provide the Obligated Parties the opportunity to attend and participate in such discussions with such public accountants) at such reasonable times during normal business hours and as soon as may be reasonably desired, upon reasonable advance notice to such Obligated Party, provided that during the existence of any Event of Default, each Agent (accompanied by any Lender that so elects with the consent of such Agent, such consent not to be unreasonably withheld) may do any of the foregoing at any time without advance notice. Each Obligated Party will deliver to each Agent any instrument necessary for such Agent to obtain records from any service bureau maintaining records for such Obligated Party. Each Agent shall have the right, at any time, in the applicable Obligated Party's name, in such Agent's name, or in the name of a nominee of such Agent, to verify the validity, amount, or any other matter relating to the Accounts, Inventory, or other Collateral, by mail, telephone, or otherwise. The Obligated Parties shall reimburse each of the Agents for its expenses incurred in connection with any such audit, inspection, and examination as provided in Section 15.7. Each of the Agents may, without expense to any of them,

use such of each Obligated Party's respective personnel, supplies, and Real Estate as may be necessary for maintaining or enforcing the Agent's Liens.

Section 8.5 Insurance.

(a) Each Obligated Party shall maintain with financially sound and reputable insurers having a rating of at least A+ or better by Best Rating Guide (or self-insure with respect to workers compensation, health, and other insurance (excluding insurance of the Collateral), including deductible and loss retention provisions, compatible with the standards set forth in this Section 8.5(a)), insurance against (i) loss or damage by fire (with extended coverage), theft, burglary, pilferage, and loss in transit, (ii) public liability and third party property damage, (iii) larceny, embezzlement, or other criminal liability, (iv) business interruption, and (v) such other hazards or of such other types as is customary for Persons engaged in the same or similar business, in amounts, and under policies reasonably acceptable to the Agents. Without limiting the foregoing, in the event that any improved Real Estate covered by a Mortgage is determined to be located within an area that has been identified by the Director of the Federal Emergency Management Agency as a Special Flood Hazard Area ("SFHA"), the applicable Obligated Party shall purchase and maintain flood insurance on such improved Real Estate and any Equipment and Inventory located on such Real Estate. Each Obligated Party shall also maintain flood insurance for its Inventory and Equipment that is, at any time, located in a SFHA. Without limiting the Agents' discretion with respect to the amount of any insurance as provided by the first sentence of this Section 8.5, the amount of any flood insurance required by this Section 8.5 shall, at a minimum, comply with applicable federal regulations as required by the Flood Disaster Protection Act of 1973.

(b) For each of the insurance policies issued as required by this Section 8.5 that insures Collateral against loss or damage, each Obligated Party shall cause the Collateral Agent to be named as secured party or mortgagee and loss payee, in a manner acceptable to the Collateral Agent. Each policy of insurance shall contain (i) a clause or endorsement requiring the insurer to give not less than ten days prior written notice to the Collateral Agent in the event of cancellation of such policy for non-payment of premiums and not less than thirty days prior written notice to the Collateral Agent in the event of cancellation of such policy for any other reason whatsoever and (ii) a clause or endorsement stating that the interest of the Collateral Agent shall not be impaired or invalidated by any act or neglect of the insured Person or the owner of any premises for purposes more hazardous than are permitted by such policy. All premiums for insurance required to be maintained by this Section 8.5 shall be paid by the applicable Obligated Party when due. Certificates of insurance and, if requested by either of the Agents, photocopies of the policies shall be delivered to each of the Agents (with sufficient copies to the Administrative Agent for distribution to each of the Lenders). If any Obligated Party fails to procure (or cause to be procured) such insurance or to pay the premiums therefor when due, the Administrative Agent may, and at the direction of the Majority Lenders shall, do so from the proceeds of Revolving Loans.

(c) The Obligated Parties shall deliver all proceeds of any insurance policies covering any Collateral to the Administrative Agent. If any Obligated Party fails to

promptly do so or if any Event of Default exists, the Collateral Agent may directly collect all insurance proceeds in respect of any loss, damage, or destruction of Collateral. All proceeds of any insurance policy covering any Collateral received by the Administrative Agent or the Collateral Agent shall be applied to the Obligations in the manner provided for in Section 4.3 as if such Collateral were the subject of a Disposition permitted pursuant to this Agreement.

Section 8.6 Condemnation. The Obligated Parties shall deliver to the Administrative Agent all proceeds received with respect to any Collateral that is the subject of any condemnation or other similar proceeding. If any Obligated Party fails to promptly do so or if any Event of Default exists, the Collateral Agent may directly collect all such proceeds. All proceeds resulting from any condemnation or other similar proceeding received by the Administrative Agent or the Collateral Agent shall be applied to the Obligations in the manner provided for in Section 4.3 as if such Collateral were the subject of a Disposition permitted pursuant to this Agreement.

Section 8.7 Environmental Law.

(a) Each Obligated Party shall conduct, and shall cause each of its Subsidiaries to conduct, its business in compliance with all Environmental Laws applicable to it, including those relating to the generation, handling, use, storage, and disposal of any Contaminant. Each Obligated Party shall take, and shall cause each of its Subsidiaries to take, prompt and appropriate action to respond to any non-compliance with any Environmental Law. Each Obligated Party shall regularly report to the Agents on any such response with respect to any circumstance that could reasonably be expected to result in, or has resulted in, liability in excess of \$500,000 or otherwise could reasonably be expected to result in, or has resulted in, a Material Adverse Effect.

(b) Without limiting the generality of the foregoing, the Obligated Parties shall submit to each of the Agents (with sufficient copies to the Administrative Agent for distribution to the Lenders) annually, or more frequently if requested by either of the Agents, commencing on the first Anniversary Date, and on each Anniversary Date thereafter, an update of the status of each environmental compliance or liability issue concerning any Obligated Party or any Subsidiary of an Obligated Party or any of their respective properties or operations (whether past or present), if any, that could reasonably be expected to result in, or has resulted in, liability in excess of \$500,000 or otherwise could reasonably be expected to result in, or has resulted in, a Material Adverse Effect. Each Agent (or any Lender through either of the Agents) may request, in which case the Borrowers will promptly furnish or cause to be promptly furnished to each of the Agents (with sufficient copies to the Administrative Agent for distribution to the Lenders), copies of technical reports prepared or received by any Obligated Party or any Subsidiary of an Obligated Party and its communications with any Governmental Authority to determine whether such Obligated Party or Subsidiary of an Obligated Party is proceeding reasonably to correct, cure, or contest in good faith any alleged non-compliance or environmental liability. Each Obligated Party shall, at either of the Agent's request (or at the Majority Lenders' request through either of the Agents) and at such Obligated Party's expense, (i) retain an independent environmental engineer

acceptable to the Agents to evaluate any site, including tests if appropriate, where the non-compliance or alleged non-compliance with any Environmental Law has occurred and prepare and deliver to each of the Agents (with sufficient copies to the Administrative Agent for distribution to the Lenders) a report setting forth the results of such evaluation, a proposed plan for responding to any environmental problems described therein, and an estimate of the costs thereof and (ii) provide to each of the Agents (with sufficient copies to the Administrative Agent for distribution to the Lenders) a supplemental report of such engineer whenever the scope of the environmental problems (if any), or the response thereto or the estimated costs thereof, shall increase in any material respect.

Section 8.8 Compliance with ERISA. Each Obligated Party shall, and shall cause each of its ERISA Affiliates to: (a) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code, and Requirements of Law; (b) cause each Plan that is qualified under Section 401(a) of the Code to maintain such qualification; (c) make all required contributions to any Plan subject to Section 412 of the Code in a timely fashion; (d) not engage in a prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan; and (e) not engage in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

Section 8.9 Mergers, Consolidations, or Sales. No Obligated Party shall enter into any transaction of merger, reorganization, or consolidation, or transfer, sell, assign, lease, or otherwise Dispose of all or any part of its property, or sell or issue any of its preferred Capital Stock, or wind up, liquidate, or dissolve, or agree to do any of the foregoing, except for (A) sales and other Dispositions of Inventory in the ordinary course of its business, (B) sales or other Dispositions of Equipment in the ordinary course of business that is (1) damaged, worn out, unserviceable, or obsolete, (2) no longer necessary for the proper conduct of business with a good faith estimated value not in excess of \$100,000 in any Fiscal Year of Ahern, or (3) contemporaneously replaced with Equipment of comparable utility, in each case in the ordinary course of business and operations of the Obligated Parties and on a basis consistent with past practices, (C) the sale of the helicopter that is the subject of the Aircraft Mortgage or the Cessna 525 aircraft (serial number 525-0341); provided that the purchase price received by the relevant Obligated Party for each such aircraft shall not be less than the fair market value of such aircraft and at least 75% of the purchase price therefor shall be payable in cash on the closing date of such sale or by the assumption of Debt secured by such aircraft, (D) payments of cash in the ordinary course of business and as otherwise permitted by this Agreement, and (E) subject to Section 8.10, other transactions between or among the Obligated Parties in the ordinary course of each Obligated Party's business consistent with past practices; provided that, notwithstanding the foregoing or any other provision of this Agreement, as long as no Default or Event of Default exists or would result therefrom and provided Ahern gives the Agents prior written notice:

(a) a Borrower (other than Ahern) may wind-up, dissolve, or liquidate if (i) its property is transferred to another Borrower and (ii) the Borrower acquiring such property complies with its obligations under Section 8.25 and Section 10.2 simultaneously with such acquisition;

(b) an Obligated Party that is not a Borrower may wind-up, dissolve, or liquidate if (i) its property is transferred to another Obligated Party and (ii) the Obligated Party acquiring such property complies with its obligations under Section 8.25 and Section 10.2 simultaneously with such acquisition;

(c) a Borrower may merge or consolidate with another Borrower, provided that if Ahern is a party to any such merger or consolidation, Ahern shall be the surviving entity;

(d) an Obligated Party may transfer assets in connection with a Permitted Investment; and

(e) an Obligated Party that is not a Borrower may merge or consolidate with another Obligated Party, provided that if a Borrower is a party to any such merger or consolidation, such Borrower shall be the surviving entity, and a Subsidiary of an Obligated Party that is not an Obligated Party may merge or consolidate with an Obligated Party; provided that the Obligated Party is the survivor of any such merger or consolidation.

The inclusion of proceeds in the definition of Collateral shall not be deemed to constitute the Administrative Agent's, the Collateral Agent's or any Lender's consent to any sale or other Disposition of the Collateral except as expressly permitted herein.

Section 8.10 Distributions; Capital Change; Restricted Investments. Ahern will not, nor will it permit any of its Subsidiaries to, (a) directly or indirectly declare or pay any Distributions, except that (i) any Subsidiary of Ahern that is an Obligated Party may make Distributions to a Borrower, and (ii) any Subsidiary of Ahern that is not an Obligated Party may make Distributions to Ahern or any other Subsidiary of Ahern that is an Obligated Party, and Ahern may make Permitted Distributions (but only to the extent that such Permitted Distribution is not prohibited to be made under the terms of any other agreement to which Ahern is a party or by which it is otherwise bound), (b) make any change in its capital structure which could have an adverse effect on the ability of any of the Obligated Parties to perform any of its duties and obligations under any Loan Document or pay the Obligations when due, or (c) make any Investment other than Permitted Investments.

Section 8.11 Guaranties. No Obligated Party shall make, issue, or become liable on any Guaranty, except (a) Guaranties of Debt allowed under Section 8.12 and (b) endorsement in the ordinary course of business of negotiable instruments for deposit or collection.

Section 8.12 Debt. No Obligated Party shall incur or maintain any Debt, other than:

(a) the Obligations;

(b) the Debt existing on the Closing Date described in Schedule 8.12;

(c) Debt evidencing a refunding, renewal, or extension of the Debt described in clause (b) preceding or in clause (h) below; provided that (i) the principal amount thereof is not increased at the time of such renewal, refinancing, refunding, or extension thereof; (ii) no Obligated Party that is not an obligor or guarantor of such Debt as of the Closing

Date shall become an obligor or guarantor thereof, (iii) the terms of such refunding, renewal, or extension are no less favorable to the Obligated Parties and the Lenders than the original Debt and (iv) the Liens, if any, securing such refunded, renewed or extended Debt do not attach to any assets in addition to those assets, if any, securing the Debt to be refunded, renewed or extended (except additions to the aircraft);

(d) Debt owing by an Obligated Party to another Obligated Party for intercompany loans and advances made for working capital in the ordinary course of business; provided that (i) all such intercompany Debt shall be evidenced by promissory notes, (ii) all such intercompany Debt owed by Ahern to any of its Subsidiaries shall be subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the applicable promissory notes or an intercompany subordination agreement satisfactory to the Agents, and (iii) any payment by any Subsidiary of Ahern under any guaranty of the Obligations or the Second Lien Debt shall result in a pro tanto reduction of the amount of any intercompany Debt owed by such Subsidiary to Ahern or to any of its Subsidiaries for whose benefit such payment is made;

(e) subject to clause (c)(ii) above, Guaranties permitted under Section 8.11;

(f) Debt incurred in connection with the financing of premiums payable with respect to insurance policies required to be maintained by the Obligated Parties pursuant to this Agreement;

(g) the Second Lien Debt; provided that the aggregate principal amount of such Debt under this clause (g) shall not at any time exceed \$200,000,000 less all payments and prepayments of principal thereon, and the refinancing thereof (the Debt under or with respect to such refinancing, the "Refinancing Second Lien Debt" and the agreements evidencing, governing, securing or guaranteeing any of the Refinancing Second Lien Debt (as amended, modified or supplemented from time to time in a manner not in contravention of the terms of this Agreement), collectively, the "Refinancing Second Lien Debt Documents"); provided that such refinancing shall be permitted only so long as (i) all, and not a portion of, the Second Lien Debt is refinanced and the principal amount of such refinancing is not greater than the principal amount of Debt being refinanced (other than with respect to any reasonable fees and other costs of refinancing and with respect to accrued interest on the Second Lien Debt), (ii) the Liens, if any, securing such refinancing do not attach to any assets in addition to those assets securing the Second Lien Debt and those Liens shall be junior and subordinate to the Agent's Liens and be subject to the terms and conditions of an intercreditor agreement between the Collateral Agent and the holders of the Refinancing Second Lien Debt (or an agent or trustee therefor) substantially identical to the Intercreditor Agreement or otherwise satisfactory to the Agents and the Majority Lenders, (iii) no Person that is not an obligor or guarantor of the Second Lien Debt immediately prior to the refinancing shall become an obligor or guarantor of the Refinancing Second Lien Debt, unless such Person simultaneously becomes a Guarantor, (iv) the terms under the Refinancing Second Lien Debt Documents are no less favorable in all material respects to the Obligated Parties, the Agents and the Lenders than the terms under the Second Lien Debt Documents (without in any way limiting the foregoing, in no event shall the financial or other covenants or

events of default in the Refinancing Second Lien Debt Documents be more restrictive than those in the Second Lien Debt Documents in effect on the Closing Date), (v) no payments of principal on the Refinancing Second Lien Debt shall be scheduled to be due and payable prior to one year after the Stated Termination Date and the final scheduled maturity of the Refinancing Second Lien Debt shall be no earlier than the final scheduled maturity of the Second Lien Debt under the Second Lien Debt Documents as in effect on the Closing Date and (vi) no Default or Event of Default shall exist either immediately prior to or after giving effect to such refinancing;

(h) Capital Leases of Transportation Equipment, the New Aircraft and/or computer and office equipment and Debt to finance (as purchase money or otherwise (any such financing that is not purchase money Debt to be on terms reasonably satisfactory to the Agents)) Transportation Equipment, the New Aircraft (purchase money Debt only) and/or computer and office equipment; provided that (1) the aggregate amount of Debt (including Capital Leases but excluding Revolving Loans) relating to Transportation Equipment incurred in any Fiscal Year shall not exceed \$4,000,000, (2) the aggregate amount of Debt (including Capital Leases) permitted to be outstanding under this Section 8.12 (including, without limitation, under clauses (b), (c) and (h) hereof) relating to Transportation Equipment (but excluding Revolving Loans) shall not exceed \$15,000,000 at any time outstanding, (3) the aggregate amount of Debt relating to the New Aircraft (including, without limitation, any refinancings thereof) shall not exceed \$6,000,000 at any time outstanding and (4) the aggregate amount of Debt (including Capital Leases) relating to computer and office equipment under this clause (h) and any refinancings thereof under clause (c) shall not exceed \$2,000,000 at any time outstanding;

(i) purchase money Debt to vendors to finance the purchase from such vendors of Inventory not to exceed an aggregate amount at any time outstanding equal to \$10,000,000 less the aggregate amount of inventory consigned to the Obligated Parties at such time; provided that (1) on or prior to the incurrence of any such Debt, the applicable Obligated Party has identified to the Agents in writing, in reasonable detail, the specific items of Inventory being financed thereby, (2) the applicable Obligated Party shall be able to readily identify such financed Inventory in its computer records in a manner reasonably satisfactory to the Agents; provided that during the existence of an Event of Default, if requested by either Agent, the applicable Obligated Party shall attach to such Inventory in a conspicuous location an insignia, stencil, plaque, or other form of notice indicating in a manner satisfactory to the Agents that such Inventory is being financed by such vendor, (3) the Liens created in connection with such purchase money Debt shall attach only to (and any UCC financing statements filed by any such vendor with respect to such Liens shall only cover) either (x) the specific items of Inventory being purchased and proceeds of the sale of such Inventory or (y) Inventory purchased from time to time by such Obligated Party from such vendor for which there remains an unpaid purchase price owing and proceeds of the sale of such Inventory (and a copy of each UCC financing statement filed by a vendor shall be delivered to the Agents promptly after filing thereof with the appropriate Governmental Authority), (4) the Liens created in connection with such purchase money Debt shall not attach to any Account arising from the rental of such Inventory, and (5) such Obligated Party shall cause any vendor whose

Lien and UCC financing statement is of the type included in clause (3)(y) above to deliver to the Agents a monthly statement, in form and substance reasonably satisfactory to the Agents, detailing those items of Inventory for which there remains an unpaid purchase price and the amount of such unpaid purchase price and those items of Inventory that have been released from the vendor's Lien since the last day of the period covered by the last monthly statement delivered to the Agents; and

(j) other unsecured Debt; provided that the aggregate amount of unsecured Debt outstanding under this clause (j) does not exceed \$2,000,000 at any time outstanding.

Section 8.13 Prepayment; Amendment of Debt Agreements.

(a) No Obligated Party shall voluntarily prepay or redeem any Debt, except the Obligations or through the proceeds of a refinancing permitted under Section 8.12(c) or (g) or as permitted under clause (c) or (d) below.

(b) No Obligated Party shall, directly or indirectly, amend, modify, supplement, waive compliance with or consent to any departure from any provision of (1) existing Debt (other than the Second Lien Debt Documents or the Refinancing Second Lien Debt Documents) or of any agreement (including any purchase agreement, indenture, loan agreement or security agreement) relating thereto (other than the Second Lien Debt Documents or the Refinancing Second Lien Debt Documents), other than any amendments or modifications to such Debt which do not in any way materially adversely affect the interests of the Credit Providers and are otherwise permitted under Section 8.12; (2) any of the Second Lien Debt Documents or any of the Refinancing Second Lien Debt Documents in any material respect; or (3) the GE Sale and Leaseback Agreement or any related document in any material respect.

(c) In no event shall any Borrower or any other Obligated Party make any payment or prepayment of principal or interest on any Second Lien Debt or any Refinancing Second Lien Debt, except (i) scheduled payments of interest on the Second Lien Debt and the Refinancing Second Lien Debt when due and payable, (ii) the scheduled payment of principal on the Second Lien Debt or the Refinancing Second Lien Debt, as the case may be, on the stated maturity date thereof and (iii) in the case of Second Lien Debt, through the proceeds of a refinancing permitted under Section 8.12(g).

(d) In no event shall any Borrower or any other Obligated Party make any payment or prepayment of any obligation or liability under or in connection with the GE Sale and Leaseback Agreement or purchase any Inventory subject to the GE Sale and Leaseback Agreement, except in connection with the termination of the lease arrangements under the GE Sale and Leaseback Agreement, the payment in full of all obligations under the GE Sale and Leaseback Agreement (the amount of which payment shall be determined in accordance with Schedule 8.13) and the concurrent purchase by Ahern of all Inventory subject to the GE Sale and Leaseback Agreement, but only so long as no Default or Event of Default exists immediately prior to or after giving effect to such payment and purchase.

Section 8.14 Transactions with Affiliates. Except as otherwise provided in Section 8.10, Section 8.11, Section 8.12 and this Section 8.14 or except as set forth on Schedule 8.14, during the term of this Agreement, no Obligated Party shall sell, transfer, distribute, or pay any money or property, including, but not limited to, any fees or expenses of any nature (including, but not limited to, any fees or expenses for management services), to any Affiliate that is not a Borrower, or lend or advance money or property to any Affiliate that is not a Borrower, or invest in (by capital contribution or otherwise) or purchase or repurchase any Capital Stock or indebtedness, or any property, of any Affiliate that is not a Borrower, or become liable on any Guaranty of the indebtedness, liabilities, dividends, or other obligations of any Affiliate that is not a Borrower, or enter into a lease for real or personal property with any Affiliate that is not a Borrower or extend or renew any such lease (whether such lease is existing on the Closing Date or entered into thereafter). Notwithstanding the foregoing, if no Default or Event of Default is in existence or would result therefrom, an Obligated Party may engage in transactions with an Affiliate that is not a Borrower (including, without limitation, any such transaction that constitutes an extension or renewal of a transaction permitted under this Section 8.14 that was in existence on the Original Closing Date) in the ordinary course of such Obligated Party's business consistent with past practices in amounts and upon terms fully disclosed to the Agents and the Lenders and no less favorable to such Obligated Party than would be obtained in a comparable arm's-length transaction with a third party who is not an Affiliate; provided, that (i) with respect to any transaction or series of transactions with an Affiliate that is not a Borrower involving aggregate consideration in excess of \$500,000, such transaction shall require the approval of the Board of Directors of Ahern and evidence of such approval shall be delivered to the Agents; provided further, that with respect to any transaction or series of transactions with an Affiliate that is not a Borrower involving aggregate consideration in excess of \$2,500,000, the relevant Obligated Party shall obtain a favorable written opinion as to the fairness of such transaction to such Obligated Party from a financial point of view from an independent investment banking firm of national reputation in the U.S. or, if pertaining to a matter for which such investment banking firms do not customarily render such opinions, an appraisal or valuation firm of national reputation in the U.S., and a copy of such opinion shall be delivered to the Agents.

Section 8.15 Investment Banking and Finder's Fees. No Obligated Party shall pay or agree to pay, or reimburse any other party with respect to, any investment banking or similar or related fee, underwriter's fee, finder's fee, or broker's fee to any Person in connection with this Agreement. The Obligated Parties shall defend and indemnify the Agents and the Lenders against and hold them harmless from (a) all claims of any Person that any Obligated Party is obligated to pay any such fees and (b) all costs and expenses (including reasonable attorneys' fees and Attorney Costs) incurred by either Agent and/or any Lender in connection therewith.

Section 8.16 Business Conducted. The Obligated Parties shall not engage, directly or indirectly, in any line of business other than the lines of business in which the Obligated Parties are engaged on the Closing Date and those reasonably similar, related, or incidental thereto.

Section 8.17 Liens.

(a) No Obligated Party shall create, incur, assume, or permit to exist, and will defend the Collateral against, and take such other action as is necessary to remove, any

Lien on any property now owned or hereafter acquired by it, except Permitted Liens. Each Obligated Party will defend the right, title, and interest of the Collateral Agent in and to any of such Obligated Party's rights under the Collateral against the claims and demands of all Persons whomsoever. Each Obligated Party will advise each Agent promptly, in reasonable detail, (i) of any Lien (other than Permitted Liens) or claim made or asserted against any of the Collateral and (ii) of the occurrence of any other event with respect to the Collateral that could reasonably be expected to have, or has resulted in, a Material Adverse Effect.

(b) Other than as set forth in the GE Sale and Leaseback Agreement or in connection with the creation of any Debt under Section 8.12(c), (h) or (i) or in any agreement relating to the lease of an Excluded Asset by an Obligated Party as lessee or sublessee, no Obligated Party will enter into or become subject to any Negative Pledge; provided that any Negative Pledge under the GE Sale and Leaseback Agreement shall be limited to property being leased to Ahern thereunder; and provided further that any Negative Pledge entered into or existing in connection with the creation of Debt under Section 8.12(c), (h) or (i) or in any agreement relating to the lease of an Excluded Asset by an Obligated Party as lessee or sublessee shall be limited to the applicable property being financed or leased, as the case may be.

(c) No Obligated Party shall create, incur, assume or otherwise cause or permit to exist or become effective any consensual encumbrance, condition, prohibition or restriction of any kind on any Obligated Party's right to: (a) incur or repay Debt (whether owing to any Obligated Party or otherwise); (b) guarantee the Obligations pursuant to any Guaranty Agreement; (c) amend, modify, extend or renew any agreement evidencing Debt; (d) repay any obligations owed to any Obligated Party; (e) make loans or advances to any Obligated Party; (f) pay dividends or make any other distributions on any Subsidiary's Capital Stock owned by Ahern or any other Subsidiary of Ahern; or (g) transfer any of its property to any Obligated Party, in each case except as provided in this Agreement, the other Loan Documents and the Second Lien Debt Documents or the Refinancing Second Lien Debt Documents and, in the case of clause (g), as provided in the GE Sale and Leaseback Agreement or in connection with any Debt permitted under Section 8.12(h) or (i), or in any agreement relating to the lease of an Excluded Asset by any Obligated Party as lessee or sublessee.

Section 8.18 Sale and Leaseback Transactions. No Obligated Party shall, directly or indirectly, enter into or otherwise be subject to any arrangement with any Person providing for such Obligated Party to lease or rent property that such Obligated Party has sold or will sell or otherwise transfer to such Person other than pursuant to the GE Sale and Leaseback Agreement (but only to the extent of the Inventory subject thereto on the Original Closing Date).

Section 8.19 New Subsidiaries. No Obligated Party shall, directly or indirectly, organize, create, acquire, or permit to exist any Subsidiary without the prior written consent of the Majority Lenders, other than those listed on Schedule 7.4.

Section 8.20 Fiscal Year. Each Obligated Party (other than Ahern) shall cause its Fiscal Year to be the same as Ahern's. Ahern shall not change its Fiscal Year.

Section 8.21 Financial Covenants.

(a) Fixed Charge Coverage Ratio. As of the last day of each Fiscal Quarter of Ahern, the Obligated Parties will not permit the Fixed Charge Coverage Ratio of Ahern and its Subsidiaries for any Test Period to be less than 1.00 to 1.00:

(b) Leverage Ratio. As of the last day of each Fiscal Quarter of Ahern, the Obligated Parties will not permit the Leverage Ratio of Ahern and its Subsidiaries for any Test Period to exceed the ratio specified corresponding to the applicable Fiscal Quarter end in the table below, respectively:

<u>Fiscal Quarter End</u>	<u>Leverage Ratio</u>
September 30, 2005	5.10 to 1.00
December 31, 2005	5.10 to 1.00
March 31, 2006	5.10 to 1.00
June 30, 2006	5.10 to 1.00
September 30, 2006	5.00 to 1.00
December 31, 2006	5.00 to 1.00
March 31, 2007	4.90 to 1.00
June 30, 2007	4.90 to 1.00
September 30, 2007	4.80 to 1.00
December 31, 2007	4.80 to 1.00
March 31, 2008	4.70 to 1.00
June 30, 2008	4.70 to 1.00
September 30, 2008	4.60 to 1.00
December 31, 2008	4.60 to 1.00
March 31, 2009	4.50 to 1.00
June 30, 2009	4.50 to 1.00
September 30, 2009 and each Fiscal Quarter end thereafter	4.50 to 1.00

(c) [Intentionally Omitted].

(d) Minimum Equipment Utilization. The Obligated Parties shall not permit the average actual customer lease utilization of all of the Borrowers' aerial lift Inventory during any two consecutive Fiscal Quarter period ending during a Trigger Event Compliance Period and during the two consecutive Fiscal Quarter period most recently ended prior to the commencement of such Trigger Event Compliance Period to be less than 45% of the maximum average customer lease utilization possible for all such Inventory during such two consecutive Fiscal Quarter period (assuming that all such Inventory of the Borrowers was available to be leased at all times during such two consecutive Fiscal Quarter period).

Section 8.22 Use of Proceeds. The Borrowers shall use the proceeds of the Loans (a) to pay costs and expenses incurred in connection with the closing of this Agreement and the transactions contemplated hereby, (b) to pay interest, costs, and expenses incurred in connection with this Agreement, (c) to issue Letters of Credit and to repay reimbursement obligations related thereto, and (d) to finance ongoing general working capital needs and Capital Expenditures (in each case, not otherwise prohibited by this Agreement) of the Obligated Parties in the ordinary course of business, and shall not use any portion of the Revolving Loan proceeds, directly or indirectly, (x) to fund a personal loan to or for the benefit of a director or executive officer of any Obligated Party or for any purpose that is prohibited by the Sarbanes-Oxley Act of 2002 (Pub. L. No. 107-204, 116 Stat. 745), (y) to buy or carry any Margin Stock, to repay or otherwise refinance indebtedness of any of the Borrowers or others incurred to buy or carry any Margin Stock, to extend credit for the purpose of buying or carrying any Margin Stock, or to acquire any security in any transaction that is subject to Sections 13 or 14 of the Exchange Act, or (z) for any purpose that is prohibited by any Requirement of Law.

Section 8.23 Lenders as Depository. Each Obligated Party shall maintain one or both of BofA and Wachovia as its principal depository, including for the maintenance of operating, administrative, cash management, collection activity, and other deposit accounts for the conduct of its business. Without limitation of the foregoing, each Obligated Party shall use and maintain its deposit accounts, securities accounts and cash management systems in a manner reasonably satisfactory to the Agents.

Section 8.24 Guaranties of the Obligations. Each Obligated Party, including any Person that becomes a Borrower or a Guarantor after the Closing Date pursuant to the terms of this Agreement, shall guarantee payment and performance of the Obligations (other than Obligations owing by such Obligated Party) pursuant to a Guaranty Agreement, duly executed by each such Obligated Party.

Section 8.25 Additional Collateral; Further Assurances.

(a) Subject to Requirements of Law, each Obligated Party shall, unless the Majority Lenders otherwise consent in writing, cause each Subsidiary of Ahern to become a Guarantor.

(b) Upon request of either of the Agents, each Obligated Party shall (i) grant Liens to the Collateral Agent, for the benefit of the Credit Providers, pursuant to such agreements, certificates, documents, and instruments as such Agent, as the case may be, may reasonably deem necessary and deliver such property, agreements, certificates, documents, and instruments as such Agent, as the case may be, may request to perfect the Liens of the Collateral Agent in any property of such Obligated Party that constitutes Collateral, (ii) execute a Guaranty Agreement as required by Section 8.24, and (iii) in connection with the foregoing requirements, or either of them, deliver to the Agents all items of the type required by Section 9.1 (as applicable). Upon execution and delivery of such Loan Documents and other agreements, certificates, documents, and instruments, each such Person shall automatically become a Guarantor hereunder and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents.

(c) Without limiting the foregoing, each Obligated Party shall, and shall cause each of Ahern's Subsidiaries that is required to become an Obligated Party pursuant to the terms of this Agreement to, execute and deliver, or cause to be executed and delivered, to the Agents such documents and agreements, and shall take or cause to be taken such actions as either of the Agents may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents.

Section 8.26 Changes in Accounting Treatment.

(a) No Borrower shall, without the prior written consent of each of the Agents, change any accounting treatment for, or method of valuation of, its Inventory or its Transportation Equipment, including with respect to the method of depreciation of Inventory or Transportation Equipment, from that in effect on the Original Closing Date; provided that a Borrower may make such changes as are required by GAAP.

(b) No Borrower shall, without the prior written consent of each of the Agents, change in any respect from that in effect on the Original Closing Date and consistent with past practices the manner or method in which such Borrower keeps its books and records or makes entries with respect to any of its ledger accounts "Equipment Down Long Term", "Rebate Accrual" or "Rent Purchase Option" or any items recorded therein, including without limitation and in any event, any change which would in any manner affect the type or amount of any item that would or should be recorded in any such general ledger account; provided that a Borrower may make such changes as are required by GAAP.

(c) Notwithstanding the proviso in either clause (a) or (b) of this Section 8.26, unless otherwise agreed to in writing by the Agents and the Lenders, the Borrowing Base

and all related definitions (including, without limitation, Net Book Value and Reserves) shall continue to be determined as if no such change had been made.

Section 8.27 Invoicing. Each Obligated Party shall invoice customers for all Inventory which is subject to the GE Sale and Leaseback Agreement separately from invoices relating to Inventory that is Collateral.

Section 8.28 Acquired Real Estate. From and after the Closing Date, in the event that (i) any Obligated Party acquires any Real Estate in fee interest or (ii) at the time any Person becomes a Guarantor, such Person owns or holds any Real Estate in fee interest (any such Real Estate described in the foregoing clause (i) or (ii) being an "Additional Mortgaged Property"), such Obligated Party will deliver to the Agents:

(a) A fully executed and notarized Mortgage in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering the interest of such Obligated Party in such Additional Mortgaged Property;

(b) A boundary survey prepared and certified to the Collateral Agent by a credentialed surveyor acceptable to the Agents,

(c) A mortgagee's policy of title insurance, or, in the Agents' discretion, a commitment for the issuance of such title insurance, containing only such exceptions as may be acceptable to the Agents, such insurance to be in an amount equal to 110% of the fair market value of such parcel of Real Estate,

(d) An appraisal prepared by a credentialed independent appraiser acceptable to each of the Agents, satisfying Requirements of Law and indicating whether or not such Real Estate is located within an area that has been identified by the Director of the Federal Emergency Management Agency as a Special Flood Hazard Area, and

(e) Such other information, documentation, and certifications, including an environmental assessment, as may be reasonably requested by either of the Agents.

Section 8.29 Ranking. Each Obligated Party shall ensure that, at all times, all Obligations shall rank in right of payment either pari passu or senior to all other Debt of the Obligated Parties.

Section 8.30 Kubota and Other Vendors. No Inventory manufactured, sold or consigned by Kubota Tractor Corporation or consigned by any other vendor to any Obligated Party shall be rented by an Obligated Party to a customer of such Obligated Party unless and until such Obligated Party shall have purchased such Inventory and paid the purchase price for such Inventory in full.

Section 8.31 Other Debt Limitations. No Obligated Party shall (i) enter into or permit to exist any Credit Facilities (as defined in the Second Lien Debt Agreement) other than this Agreement or (ii) issue or permit to exist any Parity Lien Debt (as defined in the Second Lien Debt Agreement) other than Second Lien Debt or designate, in an officer's certificate or otherwise, any Debt as Parity Lien Debt for purposes of the Second Lien Debt Agreement.

ARTICLE 9

CONDITIONS OF LENDING

Section 9.1 Conditions Precedent to Making of Loans on the Closing Date. The obligation of the Lenders to make any Revolving Loans on the Closing Date, and the obligation of the Agents to cause the Letter of Credit Issuer to issue any Letter of Credit on the Closing Date, are subject to the following conditions precedent having been satisfied in a manner satisfactory to each Agent and each Lender.

- (a) This Agreement shall have been executed and delivered by each party hereto.
- (b) The Agents shall have received duly executed copies of each of the Proprietary Rights Security Agreements, the Intercreditor Agreement, the GE Intercreditor Agreement, each Fee Letter and the Aircraft Mortgage.
- (c) The Agents shall have received each of the following from each Obligated Party, all of which shall be satisfactory in form and substance to each of the Agents and the Lenders:
 - (i) copies of the Organization Certificate of such Obligated Party, with all amendments thereto, each certified by the appropriate Governmental Authority of the jurisdiction of such Obligated Party's formation, incorporation, or organization (as applicable) certified by the secretary, general partner, or comparable authorized representative of such Obligated Party as being true, correct, complete, and in effect on the Closing Date;
 - (ii) copies of the Management Agreement of such Obligated Party certified by the secretary, general partner, or comparable authorized representative of such Obligated Party as being true, correct, complete, and in effect on the Closing Date;
 - (iii) copies of duly approved Resolutions authorizing the execution and delivery of the Loan Documents to which such Obligated Party is a party, and, with respect to the Borrowers, authorizing the Borrowings, certified by the secretary, general partner, or comparable authorized representative of such Obligated Party as being true, correct, complete, and in effect on the Closing Date;
 - (iv) a certificate evidencing the existence of such Obligated Party, and certificates evidencing the good standing and tax status of such Obligated Party in the jurisdiction of its organization and in each other jurisdiction in which it is required to be qualified as a foreign business entity to transact its business as presently conducted; and
 - (v) a certificate of incumbency and specimen signatures with respect to each individual authorized to execute and deliver this Agreement and the other Loan Documents on behalf of such Obligated Party, and any other individual

executing any document, certificate, or instrument to be delivered in connection with this Agreement and the other Loan Documents and, in the case of each Borrower, to request Borrowings.

(d) The Agents shall have received, in form and substance satisfactory to each Agent, each of the following:

(i) with respect to any Letter of Credit to be issued, all documentation required by Section 2.4, duly executed by a Responsible Officer of the applicable Borrower;

(ii) a Guaranty Agreement duly executed and delivered by each Obligated Party as required pursuant to Section 8.24;

(iii) a certificate of the Borrowers executed by a Responsible Officer of each Borrower:

(A) specifying the account of the Borrowers that is the Funding Account,

(B) attaching certified copies of (1) each of the Second Lien Debt Documents and (2) the GE Sale and Leaseback Agreement, each to be in form and substance satisfactory to each of the Agents, and

(C) certifying to such other factual matters as may be reasonably requested by either Agent or any Lender;

(iv) each Deposit Account Control Agreement required to be provided pursuant to Section 10.2(g) and Section 10.6(c);

(v) each Collateral Waiver Agreement required to be provided pursuant to Section 10.2(c);

(vi) acknowledgment copies of proper UCC financing statements with respect to the Collateral, duly authorized by each of the Obligated Parties, filed on or before the Original Closing Date in all jurisdictions that either of the Agents may deem necessary or desirable in order to perfect the Agent's Liens or, at the Agents' option, such other evidence satisfactory to the Agents of the filing of such financing statements;

(vii) UCC-3 financing statements and such other instruments, in form and substance satisfactory to each Agent, as shall be necessary to terminate all existing UCC filings on the property of each of the Obligated Parties that are not Permitted Liens, and satisfactory evidence that the Collateral Agent has a valid, exclusive (except for Permitted Liens), and perfected first priority (except for Permitted Liens that according to the terms of this Agreement are permitted to have priority over the Agent's Liens) Lien as of the Closing Date in the Collateral as security for the Obligations, to the extent any such Liens may be perfected

under the UCC (but excluding any Liens perfected solely by possession, but only to the extent neither of the Agents has requested possession of such Collateral), in each case in form and substance satisfactory to each of the Agents; provided that upon either of the Agent's request, the Obligated Parties shall provide any additional agreement, document, instrument, certificate, or other item relating to any other Collateral as may be required for perfection under any Requirement of Law;

(viii) a Borrowing Base Certificate that calculates the Borrowing Base as of the end of the Business Day immediately preceding the Closing Date;

(ix) evidence, in form, scope, and substance satisfactory to each of the Agents, of all insurance coverage, with appropriate loss payable endorsements, as required by this Agreement;

(x) satisfactory evidence that all filings, consents, or approvals with or of the owners of any Capital Stock of any Obligated Party, any Governmental Authority, or any other third party have been made or obtained, as applicable;

(xi) a revised sources and uses table with respect to the transactions contemplated to occur under the Transaction Documents on the Closing Date, which shall be in form and substance satisfactory to the Agents and shall, in any event, include all of the transaction costs with respect thereto; and

(xii) such other agreements, certificates, documents, and instruments as either Agent or any Lender may reasonably request.

(e) The Agents shall have received signed opinions of counsel for the Obligated Parties, opining as to such matters in connection with the transactions contemplated by this Agreement as either of the Agents may reasonably request, each such opinion to be in form, scope, and substance satisfactory to the Agents, the Lenders, and their respective counsel.

(f) After giving effect to all Borrowings on the Closing Date and payment of all fees and expenses due hereunder or due with respect to the other transactions contemplated under the Transaction Documents (consistent with the sources and uses table delivered pursuant to clause (d)(xi) above), and with all of the Borrowers' indebtedness, liabilities, and obligations current, the Unused Availability shall not be less than \$25,000,000.

(g) All representations and warranties made hereunder and in the other Loan Documents shall be true and correct.

(h) The Borrowers shall have paid (i) all fees and expenses of the Agents and the Attorney Costs incurred in connection with any of the Loan Documents and the transactions contemplated thereby to the extent invoiced and (ii) all fees payable to the Lenders on the Closing Date (or shall have made provision for the direct payment of all

such fees, expenses and Attorney Costs out of the proceeds of any Borrowing to be funded on the Closing Date).

(i) No Default or Event of Default shall exist or would exist after giving effect to the Borrowings to be made on the Closing Date.

(j) The Agents and the Lenders shall have had an opportunity to examine the books of account and other records and files of the Obligated Parties and to make copies thereof, to inspect each of the locations where any Obligated Party maintains any Inventory or other Collateral, to review each of the material licenses of any Obligated Party and the contracts referenced in Section 7.24, and to conduct a pre-closing audit that shall include verification of Inventory, Accounts, and the Borrowing Base, and the results of such examination and audit shall have been satisfactory to the Agents and the Lenders in all respects.

(k) All proceedings taken by the Obligated Parties in connection with the execution of this Agreement, the other Transaction Documents, and all documents and papers relating thereto shall be satisfactory in form, scope, and substance to the Agents and the Lenders.

(l) Without limiting the generality of the items described above, each of the Obligated Parties and each other Person guaranteeing payment of any of the Obligations shall have delivered or caused to be delivered to the Agents (in form and substance reasonably satisfactory to each of the Agents), the financial statements, instruments, resolutions, documents, agreements, certificates, opinions, and other items required by either of the Agents and the Lenders.

(m) Since December 31, 2003 there shall not have occurred any event, and no circumstances shall exist, that could reasonably be expected to result in a Material Adverse Effect.

(n) There shall exist no action, suit, investigation, litigation or proceeding pending, or to the knowledge of any of the Obligated Parties, threatened in any court or before any arbitrator or governmental instrumentality that (i) either of the Agents has determined could reasonably be expected to have a Material Adverse Effect or (ii) purports to adversely affect any of the Loan Documents or other Transaction Documents or any of the transactions contemplated thereby in any material respect.

(o) Each of the material agreements and contracts set forth on Schedule 7.24 shall be in form and substance satisfactory to each of the Agents.

(p) Each Inventory Appraisal prepared by Rouse Asset Services dated June 30, 2005 shall be in form and substance satisfactory to each of the Agents, and the Agents shall have received an update of each such Inventory Appraisal, each in form and substance satisfactory to each of the Agents.

(q) Ahern shall have received cash proceeds of at least \$200,000,000 from the issuance to the Second Lien Lenders of the Second Lien Notes secured by a second Lien

on the Collateral (hereinafter referred to as the “Second Lien Debt”), which Second Lien Debt and Liens securing the same shall have been issued and granted on terms and conditions and pursuant to documentation satisfactory to the Agents and their counsel in their sole discretion and shall be subject to the Intercreditor Agreement.

(r) The lessor under the GE Sale and Leaseback Agreement shall have entered into an intercreditor agreement with the Collateral Agent in form and substance satisfactory to the Agents (the “GE Intercreditor Agreement”).

(s) The Obligated Parties and their Subsidiaries shall have established cash management systems in form and substance satisfactory to each of the Agents.

(t) Each of the Agents shall be satisfied that no Inventory purchased by a Borrower from Xtreme Manufacturing, LLC contains or bears any Proprietary Rights of a third party (including Xtreme Manufacturing, LLC) which would make such Inventory ineligible under clause (k) of the definition of Eligible Inventory.

(u) Each of the Agents shall have received the Latest Projections referred to in clause (a) of that definition and the financial statements and pro forma balance sheet referred to in Sections 7.6(a) and (c), all of which shall be satisfactory to the Agents and the Lenders.

(v) The Junior Lien Debt shall have paid in full and all Liens granted in connection therewith shall have been released.

The acceptance by the Borrowers of any Loans made or Letters of Credit issued on the Closing Date shall be deemed to be a representation and warranty made by each of the Obligated Parties to the effect that all of the conditions precedent to the making of such Loans or issuance of such Letters of Credit have been satisfied, with the same effect as delivery to the Agents and the Lenders of a certificate signed by a Responsible Officer of each of the Obligated Parties, dated the Closing Date, to such effect. Execution and delivery to either of the Agents by a Lender of a counterpart of this Agreement shall be deemed confirmation by such Lender that (1) all conditions precedent in this Section 9.1 have been fulfilled to the satisfaction of such Lender, (2) the decision of such Lender to execute and deliver to either of the Agents an executed counterpart of this Agreement was made by such Lender independently and without reliance on either of the Agents or any other Lender as to the satisfaction of any condition precedent set forth in this Section 9.1, and (3) all documents sent to such Lender for approval, consent, or satisfaction were acceptable to such Lender.

Section 9.2 Conditions Precedent to Each Loan. The obligation of the Lenders to make each Loan, including any Loans on the Closing Date, and the obligations of the Agents to cause the Letter of Credit Issuer to issue any Letter of Credit shall be subject to the further conditions precedent that on and as of the date of any such Borrowing the following statements shall be true, and the request or deemed request by the Borrowers of any Borrowing shall be deemed to be a statement by each of the Obligated Parties to the effect set forth in clause (a), clause (b), clause (c), clause (d) and clause (e) following with the same effect as the delivery to

the Agents of a certificate signed by a Responsible Officer of each of the Obligated Parties, dated the date of such extension of credit, stating that:

- (a) the representations and warranties contained in this Agreement and the other Loan Documents are correct in all material respects on and as of the date of such Borrowing as though made on and as of such date, other than any such representation or warranty that relates to a specified prior date and except to the extent the Agents and the Lenders have been notified in writing by the Obligated Parties that any representation or warranty is not correct and the Majority Lenders have explicitly waived in writing compliance with such representation or warranty;
- (b) no event or circumstance exists, or would result from such Borrowing, that constitutes a Default or an Event of Default;
- (c) no event or circumstance exists, or would result from such Borrowing, that has had, or could reasonably be expected to have, a Material Adverse Effect;
- (d) the proposed Borrowing does not exceed the Unused Availability prior to giving effect to such Borrowing; and
- (e) the proposed Borrowing does not violate the borrowing or debt incurrence limits set forth in any of the Second Lien Debt Documents and is permitted to be incurred and secured by all applicable Secured Debt Documents (as defined in the Second Lien Debt Agreement).

provided that the foregoing conditions precedent are not conditions to any Lender (i) participating in or reimbursing BofA (individually or in its capacity as the Administrative Agent, as applicable) for such Lender's Pro Rata Share of any Non-Ratable Loan or Agent Advance made in accordance with the provisions of Section 2.2(i) or Section 2.2(j) or (ii) participating in any Letter of Credit in accordance with the provisions of Section 14.16(b).

ARTICLE 10

SECURITY

Section 10.1 Grant of Lien. As security for the Obligations, each Obligated Party hereby grants to the Collateral Agent, for the benefit of the Credit Providers, a continuing security interest in, lien on, pledge of, collateral assignment of, and right of setoff against, all of the following property and assets of such Obligated Party, whether now owned or existing or hereafter acquired or arising, regardless of where located:

- (a) Accounts;
- (b) Inventory;

(c) contract rights, including Assigned Contracts and rights under leases of personal property whether as lessor or lessee (including any option to purchase thereunder);

(d) Chattel Paper;

(e) Documents;

(f) Instruments;

(g) Supporting Obligations and Letter-of-Credit Rights;

(h) General Intangibles (including payment intangibles and Software);

(i) Goods;

(j) Equipment;

(k) Investment Property;

(l) money, cash, and cash equivalents;

(m) Deposit Accounts, credits, and balances with and other claims against any financial institution with which such Obligated Party maintains deposits, including any Clearing Accounts;

(n) a Hughes model 369D helicopter bearing manufacturer's serial number 790544D and U.S. registration number N58341, together with one (1) Allison Model 250-C20B helicopter engine bearing manufacturer's serial number CAE-832068, which has less than 750 rated take off horsepower, and five (5) Main Rotor Blades bearing manufacturer's serial numbers 8231, 8310, 8311, 8314 and 8235, respectively, and all available operating, repair, and maintenance records pertaining to the foregoing;

(o) books, records, and other property related to or referring to any of the foregoing, including books, records, account ledgers, data processing records, computer software, and other property and General Intangibles at any time evidencing or relating to any of the foregoing;

(p) the commercial tort claims described in Schedule 7.26 and from time to time disclosed to the Agents pursuant to Section 6.2(o); and

(q) any and all accessions and additions to, substitutions for, and replacements, products, and proceeds of any of the foregoing, including, but not limited to, proceeds of any insurance policies, claims against third parties, and condemnation or requisition payments with respect to all or any of the foregoing.

All of the foregoing, together with any Real Estate covered by any Mortgage and all other property of any of the Obligated Parties in which either of the Agents or any Lender may at any

time be granted a Lien as collateral for any of the Obligations, is herein collectively referred to as the "Collateral." Notwithstanding anything contained herein to the contrary, Collateral shall not include Excluded Assets.

Section 10.2 Perfection and Protection of Security Interest.

(a) Actions By the Obligated Parties. Each Obligated Party shall, at the expense of the Borrowers, perform all steps reasonably requested by either of the Agents at any time to perfect, maintain, protect, and enforce the Agent's Liens, including, as applicable: (i) executing, delivering, and filing and recording of the Mortgage(s), the Proprietary Rights Security Agreements and the Aircraft Mortgage and authorizing the filing of financing or continuation statements, and amendments thereof, in form and substance reasonably satisfactory to the Agents; (ii) delivering to the Collateral Agent warehouse receipts covering any portion of the Collateral located in warehouses and for which warehouse receipts are issued and certificates of title covering any portion of the Collateral for which certificates of title have been issued indicating the Collateral Agent as the lienholder thereon; (iii) at any time during the existence of an Event of Default, transferring Inventory to warehouses or other locations designated by the Collateral Agent; (iv) placing notations on such Obligated Party's books of account to disclose the Agent's Liens; and (v) taking such other steps as are deemed necessary or desirable by either of the Agents to maintain and protect the Agent's Liens.

(b) Delivery of Collateral. Upon the Administrative Agent's or the Collateral Agent's request, each Obligated Party shall promptly deliver to the Collateral Agent all Collateral consisting of negotiable Documents, certificated securities (accompanied by stock powers executed in blank), Chattel Paper, and Instruments.

(c) Landlords and Bailees Each Obligated Party will use its best efforts in good faith to provide to the Collateral Agent upon the Administrative Agent's or the Collateral Agent's request, an executed Collateral Waiver Agreement (i) from each landlord of leased Real Estate on which any Collateral is located and (ii) from each Person that is not an Obligated Party and is in possession of any Collateral (other than a customer of a Borrower in possession of an item or items of Inventory leased to such customer by such Borrower in the ordinary course of such Borrower's business), in each case, without the payment of fees or giving of other consideration to such landlord or other Person, as applicable. In the event that any Collateral Waiver Agreement requested by either of the Agents pursuant to this Section 10.2(c) is not provided, in lieu of such delivery, either of the Agents may, in its discretion, establish a Reserve as contemplated in the definitions of Eligible Inventory and Eligible Transportation Equipment with respect to any Collateral located on any leased Real Estate or in the possession of any third party that is not an Obligated Party for which the Collateral Agent has not received such executed Collateral Waiver Agreement, and/or exclude such Collateral from the determination of the Borrowing Base.

(d) Control Agreements. Upon the Administrative Agent's or the Collateral Agent's request, each Obligated Party shall obtain authenticated control agreements from each issuer of uncertificated securities, securities intermediary, or commodities

intermediary issuing or holding any financial assets or commodities to or for such Obligated Party.

(e) Letter of Credit Agreements. If any Obligated Party is or becomes the beneficiary of any letter of credit arising from the sale or other disposition of Collateral, such Obligated Party shall promptly notify the Agents thereof and, upon either of the Agent's request, enter into a tri-party agreement (in form and substance reasonably satisfactory to the Agents) with the Collateral Agent and the issuer and/or the confirmation bank with respect to all Letter-of-Credit Rights thereunder assigning such Letter-of-Credit Rights to the Collateral Agent and directing all payments thereunder to a Clearing Account.

(f) Electronic Chattel Paper. In accordance with the UCC (or other applicable Requirement of Law) and to the extent requested by either of the Agents, each Obligated Party shall take all steps reasonably necessary to grant the Collateral Agent control of all of such Obligated Party's electronic chattel paper and all "transferable records" as defined in the Uniform Electronic Transactions Act.

(g) Deposit Accounts. In accordance with the UCC (or other applicable Requirement of Law) and to the extent requested by either of the Agents, each Obligated Party shall take all steps reasonably necessary to grant the Collateral Agent control of all of such Obligated Party's Deposit Accounts, including delivery of such Deposit Account Control Agreements as either of the Agents may request.

(h) Financing Statements. Each Obligated Party hereby irrevocably authorizes each of the Agents at any time and from time to time to file in, transmit to, or communicate with any filing office any financing statements and amendments thereto that (i) indicate the Collateral (A) as "all assets" of such Obligated Party, or words of similar effect, regardless of whether any particular asset included in the Collateral falls within the scope of Article 9 of the UCC, or (B) as being of an equal or lesser scope or with greater detail and (ii) contain any other information required by Part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether such Obligated Party is an organization, the type of organization, any organization identification number issued to such Obligated Party, and any employer or taxpayer identification number issued to such Obligated Party and (B) in the case of a financing statement filed as a fixture filing or indicating any Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which such Collateral relates. Each Obligated Party agrees to furnish any such information to the Agents promptly upon request. Each Obligated Party also ratifies its authorization for each of the Agents to file any like financing statements or amendments thereto if filed prior to the date hereof.

(i) Commercial Tort Claims. With respect to each commercial tort claim required to be disclosed by Section 6.2(o), unless otherwise consented in writing by the Agents, the applicable Obligated Party shall enter into documentation satisfactory to the Agents to grant to the Collateral Agent a first priority perfected Lien in such commercial tort claim.

(j) Confirmations. From time to time, each Obligated Party shall, upon the Administrative Agent's or the Collateral Agent's request, execute and deliver confirmatory written instruments pledging to the Collateral Agent, for the benefit of the Credit Providers, the Collateral, but such Obligated Party's failure to do so shall not affect or limit any security interest or any other rights of the Collateral Agent, the Administrative Agent or any other Credit Provider in and to the Collateral with respect to such Obligated Party. As long as this Agreement is in effect and until all Obligations have been fully satisfied, the Agent's Liens shall continue in full force and effect in all Collateral (whether or not deemed eligible for the purpose of calculating the Unused Availability or as the basis for any advance, loan, extension of credit, or other financial accommodation).

(k) Terminations and Amendments Not Authorized. Each Obligated Party acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement filed by either of the Agents in connection with this Agreement or any other Loan Document without the prior written consent of the Agents and agrees that it will not do so without the prior written consent of the Agents, subject to such Obligated Party's rights under Section 9-509(d)(2) of the UCC.

Section 10.3 Location of Collateral. Each Obligated Party represents and warrants to each of the Agents and the Lenders that, as of the Closing Date, Schedule 10.3 contains a correct and complete list of (a) the location of such Obligated Party's chief executive office, (b) each location of its books and records, (c) each location and address where any Collateral is held (other than any location or address of any Inventory that as of the Closing Date is in the possession of a customer of a Borrower that is leasing such Inventory from such Borrower in the ordinary course of such Borrower's business), (d) with respect to each location referenced in clause (c) preceding where any Collateral is held by a representative, agent, warehouseman, or bailee, the name and address of such representative, agent, warehouseman, or bailee and the cost of such Inventory and Transportation Equipment and the net book value of Inventory and Fixed Assets at such location. Each Obligated Party covenants and agrees that it will not maintain any Collateral (other than (i) Transportation Equipment or (ii) Inventory which is in the possession of, or in transit to or from, a customer of a Borrower that is leasing such Inventory from such Borrower and Inventory in transit from one location on Schedule 10.3 (or such other location identified to the Agents in accordance with this Section 10.3) to another such location in the ordinary course of such Borrower's business) at any location other than those locations listed for such Obligated Party in Schedule 10.3, otherwise change or add to any of the locations listed for such Obligated Party in Schedule 10.3, or change the location of its chief executive office from the location identified in Schedule 10.3 unless, in any such case, it gives each of the Agents at least 30 days prior written notice thereof and authorizes the filing of any and all financing statements and executes any other documents that either of the Agents reasonably request in connection therewith; provided, however, that if a Borrower enters into a lease for a new retail branch, such Borrower shall notify the Agents in writing thereof on or prior to entering into such lease and such Borrower shall not maintain any Collateral at such leased location until it has delivered to the Agents an executed Collateral Waiver Agreement from the landlord of such premises or, in lieu of such Collateral Waiver Agreement, if either Agent so requests, a Reserve shall be established in the manner contemplated in clause (j) of the definition of "Eligible

Inventory” and/or clause (h) of the definition of “Eligible Transportation Equipment”. Without limiting the foregoing, each Obligated Party represents that all of its Inventory (other than Inventory in transit and Inventory which is in the possession of a customer of a Borrower that is leasing such Inventory from such Borrower in the ordinary course of such Borrower’s business) will be, located either (x) on premises owned by such Obligated Party, (y) on premises leased by such Obligated Party, provided that the Agents have received an executed Collateral Waiver Agreement from the landlord of such premises to the extent required by Section 10.2(c) (but subject to the proviso of the immediately preceding sentence), or (z) in the possession of a representative, agent, warehouseman, consignee, or bailee, provided that the Agents have received an executed Collateral Waiver Agreement from the applicable warehouseman, representative, agent, consignee, or bailee to the extent required by Section 10.2(c). Each Obligated Party represents and warrants to each of the Agents and the Lenders that all Transportation Equipment is based out of a location listed in Schedule 10.3 or, so long as it gives each of the Agents at least 30 days prior written notice thereof, another retail branch of an Obligated Party located in the United States.

Section 10.4 Appraisals.

(a) The Agents shall, once each Fiscal Quarter, engage Rouse Asset Services or another appraiser acceptable to the Agents to conduct and deliver (i) an Inventory Appraisal of the Inventory of each Borrower consisting of spare parts and merchandise inventory, (ii) an Inventory Appraisal of the Inventory of each Borrower (other than Inventory consisting of spare parts and merchandise inventory) and (iii) an Equipment Appraisal of the Transportation Equipment of each Borrower, each such Inventory Appraisal and Equipment Appraisal to be in form and scope satisfactory to the Agents and using a methodology to determine orderly liquidation value reasonably requested by the Agents. In addition, each Obligated Party will permit the Collateral Agent and its representatives to conduct quarterly appraisals of any and all of the Collateral.

(b) Notwithstanding the provisions of clause (a) of this Section 10.4, whenever an Event of Default exists, either of the Agents may, and at the direction of the Majority Lenders, the Agents shall, engage an appraiser acceptable to the Agents to conduct and deliver appraisals of any or all of the Collateral (if directed by the Majority Lenders, of such Collateral as specified in such direction), each such appraisal to be in form and scope satisfactory to the Agents and using a methodology reasonably requested by the Agents.

(c) The Borrowers agree, jointly and severally, to pay to the Agents on demand the cost of each appraisal conducted pursuant to this Section 10.4.

Section 10.5 Accounts.

(a) Representations. Each Obligated Party hereby represents and warrants, with respect to its Accounts, that: (i) each existing Account represents, and each future Account will represent, a bona fide sale or lease and delivery of goods by such Obligated Party, or rendition of services by such Obligated Party, in the ordinary course of such Obligated Party’s business; (ii) each existing Account is, and each future Account will

be, for a liquidated amount payable by the Account Debtor thereon on the terms set forth in the invoice therefor or in the schedule thereof delivered to the Agents, without any offset, deduction, defense, or counterclaim except those known to such Obligated Party and disclosed to the Agents pursuant to this Agreement; (iii) no payment will be received with respect to any Account, and no credit, discount, or extension, or any agreement therefor, will be granted on any Account, except as reported to the Agents in Borrowing Base Certificates delivered in accordance with this Agreement; (iv) each copy of an invoice delivered to either of the Agents by such Obligated Party will be a genuine copy of the original invoice sent to the Account Debtor named therein; and (v) all goods described in any invoice representing a sale or lease of goods will have been delivered to the Account Debtor and all services of such Obligated Party described in each invoice will have been performed.

(b) Dating Terms. No Obligated Party will re-date any invoice or sale or lease or make sales or leases on extended dating beyond that customary in such Obligated Party's business or extend or modify any Account except in the ordinary course of business. If any Obligated Party becomes aware of any matter materially adversely affecting the collectibility of any Account or the Account Debtor therefor, including information regarding the Account Debtor's creditworthiness, such Obligated Party will exclude such Account from Eligible Accounts and, with respect to any such Account Debtor that is obligated on Accounts owing to any Obligated Party, in an aggregate amount greater than \$250,000, promptly so advise the Agents.

(c) Notes and Instruments. Without the prior written consent of the Agents, (i) during the existence of any Default or Event of Default, no Obligated Party will accept any note or other instrument (except a check or other instrument for the immediate payment of money) with respect to any Account and (ii) at any time other than as provided in clause (i) preceding no Obligated Party will accept notes or other instruments in any Fiscal Year in excess of \$100,000 for all Accounts or accept notes or other instruments in excess of \$250,000 in the aggregate at any time outstanding during the term of this Agreement. Any such instrument accepted by any Obligated Party with respect to any Account shall be considered as evidence of the Account and not payment thereof and such Obligated Party will promptly deliver such instrument to the Collateral Agent, endorsed by such Obligated Party to the Collateral Agent in a manner satisfactory in form and substance to the Agents. Regardless of the form of presentment, demand, or notice of protest with respect thereto, delivery of any such note or other instrument to the Collateral Agent does not constitute payment of the Obligations.

(d) Disputes and Claims. Each Obligated Party shall notify the Agents promptly of all disputes and claims in excess of \$250,000 with any Account Debtor, and agrees to settle, contest, or adjust such dispute or claim at no expense to either of the Agents or any other Credit Provider. No discount, credit, or allowance shall be granted to any such Account Debtor without the Agents' prior written consent, except for discounts, credits, and allowances made or given in the ordinary course of the applicable Obligated Party's business when no Event of Default exists. Upon either of the Agent's request, each Obligated Party shall send the Agents a copy of credit memoranda. Notwithstanding the foregoing, each Obligated Party that is a Borrower shall promptly report that credit on

Borrowing Base Certificates submitted by the Obligated Parties. Each of the Agents may at all times when an Event of Default exists, settle or adjust disputes and claims directly with Account Debtors for amounts and upon terms that such Agent shall consider advisable and, in all cases, the applicable Agent will credit the Loan Account with the net amounts received by such Agent in payment of any Accounts.

(e) Returned Inventory. If an Account Debtor returns any Inventory to any Obligated Party for any reason when no Event of Default exists (other than Inventory leased by an Obligated Party in the ordinary course of its business that is returned to such Obligated Party by the applicable lessee), then such Obligated Party shall promptly determine the reason for such return and shall issue a credit memorandum to the Account Debtor in the appropriate amount. Each Obligated Party shall promptly report to the Agents any such return involving an amount in excess of \$250,000. Each such report shall indicate the reasons for the return and the location and condition of the returned Inventory. In the event any Account Debtor returns Inventory to any Obligated Party for any reason when an Event of Default exists (other than Inventory leased by an Obligated Party in the ordinary course of its business that is returned to such Obligated Party by the applicable lessee), such Obligated Party, upon the request of either of the Agents, shall: (i) hold the returned Inventory in trust for the Agents; (ii) segregate all such returned Inventory from all of such Obligated Party's other property; (iii) dispose of the returned Inventory solely according to the Agents' written instructions; and (iv) to the extent lawfully permitted, not issue any credits or allowances with respect thereto without the Agents' prior written consent. All returned Inventory shall be subject to the Agent's Liens thereon. Whenever any Inventory is returned (other than Inventory leased by an Obligated Party in the ordinary course of its business that is returned to such Obligated Party by the applicable lessee), the related Account shall be deemed ineligible to the extent of the amount owing by the Account Debtor with respect to such returned Inventory and such returned Inventory shall not be Eligible Inventory, in each instance, except to the extent such returned Inventory is Inventory (other than spare parts Inventory) held for lease in the ordinary course of an Obligated Party's business that is marked with an identifiable serial number or is Inventory held for sale that was returned for reasons other than the quality of the Inventory and is still readily marketable to other Persons.

(f) Leases. Each lease of Inventory by an Obligated Party to one of its customers is entered into in the ordinary course of business of such Obligated Party and constitutes the legal, valid and binding obligation of such Obligated Party and, to the best of each Obligated Party's knowledge, the customer party thereto. No such lease (i) contravenes any laws, rules or regulations applicable thereto (including, without limitation, to the extent applicable, laws, rules and regulations relating to consumer protection, fair credit billing, fair credit reporting, truth in lending, equal credit opportunity, fair debt collection practices and privacy) and the Obligated Party that is party thereto is not in violation of any such law, rule or regulation with respect thereto, (ii) requires the customer party thereto to consent to the transfer, assignment or pledge of any of the rights of such Obligated Party under such lease or (iii) contains or is otherwise subject to a confidentiality provision that purports to restrict the ability of the Collateral Agent or the Administrative Agent to exercise its rights under this Agreement with respect to such

lease, including, without limitation, its rights to review such lease or to enforce such lease. No Obligated Party shall, without the prior written consent of the Agents, (i) amend, modify or supplement in any material respect its forms of leases of Inventory from that in effect on the Original Closing Date except for those amendments, modifications or supplements made in order to comply with changes in applicable law or (ii) enter into a lease of Inventory which is materially different from one of its forms of lease in existence on the Original Closing Date (as such form may be amended, modified or supplemented in compliance with clause (i) above).

Section 10.6 Collection of Accounts; Payments.

(a) [Intentionally Omitted].

(b) Collections. Each Obligated Party shall collect its Accounts and other Collateral in the ordinary course of its business consistent with past practice. Each Obligated Party shall promptly (in any event within one Business Day of receipt thereof) deposit all such payments (except as permitted in clause (c) below) and receipts, and all other proceeds of Collateral received by it, in their original form, duly endorsed in blank (if applicable) into a Clearing Account or deliver such payments and receipts to the Collateral Agent in their original form, duly endorsed in blank (if applicable), as either of the Agents may direct. Each Obligated Party shall receive any and all proceeds of Accounts and other Collateral as the Collateral Agent's trustee. All collections received directly by any Obligated Party or either Agent, and all funds in any Clearing Account or other account to which such collections are deposited shall be subject to the Collateral Agent's sole control, and withdrawals by any Obligated Party shall not be permitted.

(c) Accounts. Each Clearing Account of any Obligated Party shall be established with BofA or a Clearing Bank reasonably acceptable to the Agents and, except as set forth in the next sentence, subject to a Deposit Account Control Agreement. No Obligated Party shall maintain any Clearing Account or Deposit Account except with BofA or subject to a Deposit Account Control Agreement, except those Clearing Accounts and Deposit Accounts existing on the Closing Date and listed on Schedule 7.23 that are not maintained with BofA; provided that with respect to any such account, the Obligated Parties shall deliver a Deposit Account Control Agreement with respect to any such account within 45 days of a request therefor by the Administrative Agent. No Obligated Party shall maintain any lockbox except with BofA or Wachovia.

(d) Cash Sales or Rentals. If sales or rentals of Inventory are made or services are rendered for cash, the applicable Obligated Party shall, within one Business Day of receipt, deliver to the Collateral Agent or deposit into a Clearing Account the cash that such Obligated Party receives; provided that the foregoing shall not apply to cash in an amount not to exceed \$10,000 in the aggregate for all Obligated Parties at any time.

(e) Payments. All payments received by either of the Agents at a bank account designated by any of them will be the Collateral Agent's sole property for the benefit of the Credit Providers and will be credited to the Loan Account (conditional upon final collection) after allowing one (1) Business Day for collection, including immediately

available funds, as required by Section 4.3; provided that, except during the existence of an Event of Default, such payments shall be deemed to be credited to the Loan Account immediately upon receipt for purposes of (i) determining the Unused Availability, (ii) calculating the Unused Line Fee, and (iii) calculating the amount of interest accrued thereon solely for purposes of determining the amount of interest to be distributed by the Administrative Agent to the Lenders (but not the amount of interest payable by the Borrowers). During the existence of any Event of Default, either of the Agents may, in its sole discretion, require that only payments representing final collections be credited to the Loan Account for the purposes set forth in clause (i), clause (ii), and clause (iii) preceding.

Section 10.7 Inventory; Perpetual Inventory. Each Obligated Party represents and warrants and agrees that all of the Inventory owned by such Obligated Party that is included in Eligible Inventory is and will be held for sale or lease, or is to be furnished in connection with the rendition of services or held as spare parts Inventory, in each case, in the ordinary course of such Obligated Party's business, and is and will be fit for such purposes. Each Obligated Party will keep its Inventory in good and marketable condition, except for damaged, obsolete or defective goods arising in the ordinary course of such Obligated Party's business. No Obligated Party will, without the prior written consent of the Agents, acquire or accept any Inventory on consignment or approval, except that Ahern may accept inventory on consignment from Kubota Tractor Corporation and other vendors, so long as (i) the aggregate amount of such consigned inventory held by all of the Obligated Parties does not exceed \$2,000,000 at any one time and (ii) none of such consigned inventory is rented by any Obligated Party to any of its customers. Each Obligated Party agrees that all Inventory produced by such Obligated Party in the U.S. will be produced in accordance with the Federal Fair Labor Standards Act of 1938, as amended, and all rules, regulations, and orders thereunder. Each Obligated Party will conduct cycle counts of its Inventory such that all of its Inventory shall be counted (though at varying times) at least once per Fiscal Year and, during the existence of an Event of Default, at such other times as either of the Agents requests. Each Obligated Party will maintain a perpetual inventory reporting system at all times. Each Obligated Party, at its own expense, shall make available to the Agents upon request the results of each physical verification, if any, which such Obligated Party may in its discretion have made, or caused any other Person to have made on its behalf, of all or any portion of its Inventory. No Obligated Party will, without the Agents' written consent, sell any Inventory on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment, or other repurchase or return basis. No Obligated Party will permit any of its Inventory to become a fixture with respect to Real Estate or (except for spare parts Inventory other than Eligible Spare Parts Inventory) to become an accession with respect to other personal property with respect to which Real Estate or personal property the Collateral Agent does not have a Lien. No Obligated Party will, without the Agents' prior written consent, alter or remove any identifying symbol or number on any of such Obligated Party's Inventory constituting Collateral.

Section 10.8 Equipment.

(a) Changes to Equipment. Each Obligated Party shall promptly inform the Agents of any material additions to or deletions from such Obligated Party's Equipment and shall indicate if any such material additions include any Equipment that is subject to any certificate of title law of the U.S. or any state. No Obligated Party will permit any of

its Equipment to become a fixture with respect to Real Estate or to become an accession with respect to other personal property with respect to which Real Estate or personal property the Collateral Agent does not have a Lien. No Obligated Party will, without the Agents' prior written consent, alter or remove any identifying symbol or number on any of such Obligated Party's Equipment constituting Collateral. Except as set forth in Section 8.9, no Obligated Party shall, without the Majority Lenders' prior written consent, sell, license, lease as a lessor, or otherwise dispose of any of such Obligated Party's Equipment.

(b) Certificates of Title. Each Obligated Party shall (i) as soon as practicable after the date hereof, in the case of Equipment now owned in which a security interest is perfected by a notation on the certificate of title or similar evidence of the ownership of such goods and (ii) within 30 days of acquiring any other similar Equipment, in each case, cause the Collateral Agent, for the benefit of the Credit Providers, to be named as lienholder on any such certificate of title or other evidence of ownership and deliver to the Collateral Agent any and all certificates of title of such Equipment reflecting such lien.

Section 10.9 Assigned Contracts. Each Obligated Party shall fully perform all of its obligations under each of the Assigned Contracts, and shall enforce all of its rights and remedies thereunder, in each case, as it deems appropriate in its business judgment; provided that no Obligated Party shall take any action or fail to take any action with respect to its Assigned Contracts that would cause the termination of a material Assigned Contract. Without limiting the generality of the foregoing, each Obligated Party shall take all action necessary or appropriate to permit, and shall not take any action that would have any materially adverse effect upon, the full enforcement of all indemnification rights under its Assigned Contracts. Each Obligated Party shall notify the Agents in writing, promptly after such Obligated Party becomes aware thereof, of any event or fact that could give rise to a material claim by it for indemnification under any of its Assigned Contracts, and shall diligently pursue such right and report to the Agents on all further developments with respect thereto. Each Obligated Party shall deposit into a Clearing Account or remit directly to the Administrative Agent, for application to the Obligations in such order as the Majority Lenders shall determine (unless such order is otherwise expressly provided herein, in which case in the order so provided), all amounts received by such Obligated Party as indemnification or otherwise pursuant to its Assigned Contracts. If any Obligated Party shall fail after either of the Agent's demand to pursue diligently any right under such Obligated Party's Assigned Contracts, or if an Event of Default then exists, either of the Agents may, and at the direction of the Majority Lenders shall, directly enforce such right in the name of such Agent or in such Obligated Party's name and may enter into such settlements or other agreements with respect thereto as either of the Agents or the Majority Lenders, as applicable, shall determine. In any suit, proceeding, or action brought by either of the Agents under any Assigned Contract for any sum owing thereunder or to enforce any provision thereof, each Obligated Party shall indemnify and hold the Agents and the other Credit Providers harmless from and against all expense, loss, or damage suffered by reason of any defense, setoff, counterclaims, recoupment, or reduction of liability whatsoever of the obligor thereunder arising out of a breach by any Obligated Party of any obligation thereunder or arising out of any other agreement, indebtedness, or liability at any time owing from any Obligated Party to or in favor of such obligor or its successors. All such obligations of any

Obligated Party shall be and remain enforceable only against such Obligated Party and shall not be enforceable against the Agents or any of the other Credit Providers. Notwithstanding any provision hereof to the contrary, each Obligated Party shall at all times remain liable to observe and perform all of its duties and obligations under its Assigned Contracts, and the Collateral Agent's, the Administrative Agent's or any Credit Provider's exercise of any of their respective rights with respect to the Collateral shall not release any Obligated Party from any of such duties and obligations. None of the Collateral Agent, the Administrative Agent or any other Credit Provider shall be obligated to perform or fulfill any Obligated Party's duties or obligations under its Assigned Contracts or to make any payment thereunder, or to make any inquiry as to the nature or sufficiency of any payment or property received by it thereunder or the sufficiency of performance by any party thereunder, or to present or file any claim, or to take any action to collect or enforce any performance, any payment of any amounts, or any delivery of any property.

Section 10.10 Documents, Instruments, and Chattel Paper. Each Obligated Party represents and warrants that (a) all Documents, Instruments, and Chattel Paper describing, evidencing, or constituting Collateral, and all signatures and endorsements thereon, are and will be complete, valid, and genuine, and (b) all goods evidenced by Documents, Instruments, Letter-of-Credit Rights, and Chattel Paper are and will be owned by the applicable Obligated Party, free and clear of all Liens other than Permitted Liens. If any Obligated Party retains possession of any Chattel Paper or Instruments, such Chattel Paper and Instruments shall be marked with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the security interest of Wachovia Bank, National Association, as Collateral Agent, for the benefit of the Agents and the other Credit Providers pursuant to that certain Amended and Restated Loan and Security Agreement, dated as of August 18, 2005, among Ahern Rentals, Inc. and certain of its affiliates, the Collateral Agent, the Administrative Agent, and the lending institutions party thereto." No Obligated Party will, without the prior written consent of the Agents, modify, amend or alter in any respect the terms and conditions of any material Instrument included in the Collateral (including, without limitation and in any event, the note pledged to the Collateral Agent referred to in clause (i) of the defined term "Permitted Investments"), nor forgive any indebtedness evidenced by any such Instrument.

Section 10.11 Right to Cure. Either of the Agents may, in its discretion, and the Agents shall, at the direction of the Majority Lenders, pay any amount or do any act required of any Obligated Party hereunder or under any other Loan Document in order to preserve, protect, maintain, or enforce the Obligations, the Collateral, or the Agent's Liens, and that any Obligated Party fails to pay or do, including payment of any judgment against any Obligated Party, any insurance premium, any warehouse charge, any finishing or processing charge, any landlord's, bailee's or consignee's claim, and any other Lien upon or with respect to the Collateral. All payments that either of the Agents make under this Section 10.11 and all out-of-pocket costs and expenses that either of the Agents pay or incur in connection with any action taken by it hereunder shall be payable by the Borrowers in accordance with Section 15.7 and shall be charged to the Borrowers' Loan Account as a Revolving Loan. Any payment made or other action taken by either of the Agents under this Section 10.11 shall be without prejudice to any right to assert an Event of Default hereunder and to proceed thereafter as herein provided.

Section 10.12 Power of Attorney. Each Obligated Party hereby appoints the Administrative Agent and the Collateral Agent and the Administrative Agent's and the Collateral Agent's designees as such Obligated Party's attorney, with power: (a) to endorse or sign such Obligated Party's name on any checks, notes, acceptances, money orders, or other forms of payment or security that come into the Collateral Agent's, the Administrative Agent's or any Lender's possession; (b) to sign such Obligated Party's name on any invoice, bill of lading, warehouse receipt, or other negotiable or non-negotiable Document constituting Collateral, on drafts against customers, on assignments of Accounts, on notices of assignment, financing statements and other public records and to file any such financing statements by electronic means with or without a signature as authorized or required by applicable law or filing procedure; (c) during the existence of any Event of Default, to notify the post office authorities to give the Collateral Agent access to any post office or mailboxes into which mail addressed to such Obligated Party is delivered and to receive, open, and dispose of all mail addressed to such Obligated Party; (d) to send requests for verification of Accounts to customers or Account Debtors; (e) during the existence of any Event of Default, to complete in such Obligated Party's name, the Administrative Agent's name or the Collateral Agent's name, any order, sale, lease or transaction, obtain the necessary Documents in connection therewith, and collect the proceeds thereof; (f) to clear Inventory through customs in such Obligated Party's name, the Administrative Agent's name, the Collateral Agent's name, or the name of the Administrative Agent's designee or the Collateral Agent's designee, and to sign and deliver to customs officials powers of attorney in such Obligated Party's name for such purpose; (g) to the extent, if any, that such Obligated Party's authorization given in Section 10.2(h) is not sufficient, and without otherwise limiting such authorization, to file such financing statements with respect to this Agreement, with or without such Obligated Party's signature, as either of the Agents may deem appropriate and to execute in such Obligated Party's name such financing statements and amendments thereto and continuation statements that may require such Obligated Party's signature; (h) during the existence of any Event of Default, to endorse such Obligated Party's name on all applications, documents, papers, and instruments necessary or reasonably desirable for either of the Agents in the use of such Obligated Party's Proprietary Rights; (i) during the existence of any Event of Default, to grant or issue any exclusive or non-exclusive license under such Obligated Party's Proprietary Rights to any Person; (j) during the existence of an Event of Default, to assign, convey, or otherwise transfer title in or Dispose of any of such Obligated Party's Proprietary rights to any Person; and (k) to do all other things reasonably necessary to carry out the terms of this Agreement. Each Obligated Party ratifies and approves all acts of such attorney. None of the Administrative Agent, the Collateral Agent or any other Credit Provider will be liable for any acts or omissions or for any error of judgment or mistake of fact or law except for their gross negligence or willful misconduct. This power, being coupled with an interest, is irrevocable until this Agreement has been terminated and the Obligations have been fully and irrevocably satisfied.

Section 10.13 The Collateral Agent's, the Administrative Agent's and the Lenders' Rights, Duties, and Liabilities.

(a) The Obligated Parties' Liability for the Collateral. Each Obligated Party assumes all responsibility and liability arising from or relating to the use, sale, lease, license, or other disposition of the Collateral. The Obligations shall not be affected by any failure of either of the Agents or any other Credit Provider to take any steps to

perfect the Agent's Liens or to collect or realize upon any of the Collateral, nor shall loss of or damage to any of the Collateral release any Obligated Party from any of the Obligations. During the existence of any Event of Default, the Collateral Agent may (but shall not be required to), and at the direction of the Majority Lenders shall, without notice to or consent from any Obligated Party, sue upon or otherwise collect, extend the time for payment of, modify or amend the terms of, compromise or settle for cash, credit, or otherwise upon any terms, grant other indulgences, extensions, renewals, compositions, or releases, and take or omit to take any other action with respect to the Collateral, any security therefor, any agreement relating thereto, any insurance applicable thereto, or any Person liable directly or indirectly in connection with any of the foregoing, without discharging or otherwise affecting the liability of any Obligated Party for the Obligations or under this Agreement or any other agreement now or hereafter existing between the Collateral Agent, the Administrative Agent and/or any other Credit Provider and such Obligated Party.

(b) The Obligated Parties' Liability Under Contracts and Licenses. It is expressly agreed by each Obligated Party that, anything herein to the contrary notwithstanding, such Obligated Party shall remain liable under each of its contracts and each of its licenses to observe and perform all the conditions and obligations to be observed and performed by it thereunder. None of the Collateral Agent, the Administrative Agent or any other Credit Provider shall have any obligation or liability under any contract or license by reason of or arising out of this Agreement or the granting herein of a Lien thereon or the receipt by the Collateral Agent, the Administrative Agent or any other Credit Provider of any payment relating to any contract or license pursuant hereto. None of the Collateral Agent, the Administrative Agent or any other Credit Provider shall be required or obligated in any manner to perform or fulfill any of the obligations of any Obligated Party under or pursuant to any contract or license, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any contract or license, or to present or file any claims, or to take any action to collect or enforce any performance or the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times.

(c) Notification of Account Debtors. Without limiting Section 11.2, at any time during the existence of an Event of Default (or if any rights of setoff (other than setoffs against an Account arising under the contract giving rise to the same Account) or contra accounts may be asserted with respect to the following), the Collateral Agent may, without prior notice to any Obligated Party, and upon the request of either of the Agents each Obligated Party shall, notify Account Debtors and other Persons obligated on the Collateral that the Collateral Agent has a security interest therein, and that payments shall be made directly to the Collateral Agent, for the benefit of the Collateral Agent and the other Credit Providers. Once any such notice has been given to any Account Debtor or other Person obligated on the Collateral, no Obligated Party shall give any contrary instructions to such Account Debtor or other Person without the Agents' prior written consent.

(d) Information Regarding Accounts and Account Debtors. The Collateral Agent and the Administrative Agent may at any time in the name of the Collateral Agent or the Administrative Agent, as applicable, or in the name of any Obligated Party, or in the name of the Collateral Agent's or the Administrative Agent's nominee or designee, communicate with each Obligated Party's Account Debtors, parties to contracts, and obligors in respect of Instruments to verify with such Persons, to the Collateral Agent's or the Administrative Agent's, as applicable, satisfaction, the existence, amount, and terms of Accounts, payment intangibles, Instruments, or Chattel Paper. If an Event of Default exists, each Obligated Party, at its own expense, shall cause the independent certified public accountants then engaged by such Obligated Party to prepare and deliver to each of the Agents (with sufficient copies to the Administrative Agent for distribution to each Lender) at any time and from time to time promptly upon either of the Agent's request the following reports with respect to such Obligated Party: (i) a reconciliation of all Accounts; (ii) an aging of all Accounts; (iii) trial balances; and (iv) a test verification of such Accounts as such Agent may request.

(e) No Obligation of the Agents. Notwithstanding anything in this Agreement to the contrary, each Obligated Party agrees that neither of the Agents shall have any obligation to take any steps necessary to preserve rights in any of the Proprietary Rights of any Obligated Party against any other Person, provided that each of the Agents may do so at its option during the existence of any Event of Default in accordance with Section 10.14(f).

Section 10.14 Patent, Trademark, and Copyright Collateral.

(a) Representations. This Agreement is effective to create a valid and continuing Lien on and, upon filing of appropriate financing statements pursuant to the UCC, perfected Liens in favor of the Collateral Agent, on the Proprietary Rights of each Obligated Party and such perfected Liens are enforceable as against any and all creditors of such Obligated Party. Upon filing of all such appropriate financing statements pursuant to the UCC, all action necessary to protect and perfect the Collateral Agent's Lien on each Obligated Party's Proprietary Rights under Requirements of Law shall have been duly taken. Upon filing the Proprietary Rights Security Agreements with the United States Copyright Office or United States Patent and Trademark Office, as applicable, the Agent's Liens will be enforceable against any purchaser of the Proprietary Rights covered thereby.

(b) Notices to the Agents. Each Obligated Party shall notify the Collateral Agent and the Administrative Agent promptly upon such Obligated Party obtaining knowledge that any application or registration relating to any patent, trademark, or copyright (now or hereafter existing) may become abandoned or dedicated, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office, or any court) regarding such Obligated Party's ownership of any patent, trademark, or copyright, its right to register the same, or to keep and maintain the same.

(c) Additional Agreements. In no event shall any Obligated Party, either directly or through any agent, employee, licensee, or designee, file an application for the registration of any patent, trademark, or copyright with the United States Patent and Trademark Office, the United States Copyright Office, or any similar Governmental Authority, or enter into any new license as licensor with respect to any patent, trademark, or copyright, without giving the Agents prior written notice thereof, and, upon request of either of the Agents, such Obligated Party shall execute and deliver such Proprietary Rights Security Agreements or other documents as either of the Agents may request to evidence the Agent's Liens on such patent, trademark, or copyright, and the General Intangibles of such Obligated Party relating thereto or represented thereby.

(d) Further Actions. Each Obligated Party shall take all actions necessary or requested by either of the Agents to maintain and pursue each application, to obtain the relevant registration and to maintain the registration of each of such Obligated Party's material Proprietary Rights (now or hereafter existing), including the filing of applications for renewal, affidavits of use, affidavits of noncontestability and opposition and interference and cancellation proceedings.

(e) Notices of Infringement. In the event that any of the Proprietary Rights that are Collateral are infringed upon, or misappropriated or diluted by a third party, each Obligated Party shall notify the Agents promptly after such Obligated Party learns thereof. Each Obligated Party shall, unless it shall reasonably determine that such Proprietary Rights that are Collateral are in no way material to the conduct of its business or operations, promptly sue for infringement, misappropriation, or dilution and to recover any and all damages for such infringement, misappropriation, or dilution, and shall take such other actions as either of the Agents shall deem appropriate under the circumstances to protect such Proprietary Rights that are Collateral.

(f) Suits by the Agents. Without limiting Section 11.2, during the existence of any Event of Default, each of the Agents shall have the right, but shall not be obligated, to bring suit in the name of the Collateral Agent or the Administrative Agent, as applicable, to enforce the Proprietary Rights and, if either of the Agents shall commence any such suit, each Obligated Party shall, at the request of such Agent, do any and all lawful acts and execute any and all proper documents reasonably required by such Agent in aid of such enforcement. Each Obligated Party shall, upon demand, promptly reimburse each of the Agents for all costs and expenses incurred by such Person in the exercise of its rights under this Section 10.14 (f) (including Attorney Costs and other fees and expenses of other professionals).

Section 10.15 Indemnification. In any suit, proceeding, or action brought by the Collateral Agent, the Administrative Agent or any other Credit Provider relating to any Collateral for any sum owing with respect thereto or to enforce any rights or claims with respect thereto, each Obligated Party will save, indemnify, and keep the Agents and the other Credit Providers harmless from and against all expense (including Attorney Costs and other reasonable attorneys' fees and expenses), loss or damage suffered by reason of any defense, setoff, counterclaim, recoupment, or reduction of liability whatsoever of the Account Debtor or other Person obligated on the Collateral, arising out of a breach by any Obligated Party of any

obligation thereunder or arising out of any other agreement, indebtedness, or liability at any time owing to, or in favor of, such obligor or its successors from any Obligated Party, provided that no Obligated Party shall be liable to any Credit Provider for the payment of any portion of such amount to the extent determined in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Credit Provider's own gross negligence or willful misconduct. All such obligations of each Obligated Party shall be and remain enforceable against and only against such Obligated Party and shall not be enforceable against the Collateral Agent, the Administrative Agent, any Lender or any other Credit Provider.

Section 10.16 Grant of License to Use Proprietary Rights. For the purpose of enabling the Collateral Agent to exercise rights and remedies under Section 11.2 or under any other Loan Document or applicable Requirement of Law (including in order to take possession of, hold, preserve, process, assemble, prepare for sale, market for sale, sell, or otherwise dispose of Collateral) at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Obligated Party hereby grants to the Collateral Agent, for the benefit of the Agents and the other Credit Providers, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Obligated Party) to use, license, or sublicense any Proprietary Rights now owned or hereafter acquired by such Obligated Party, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof.

Section 10.17 Limitation on the Agents' and the Lenders' Duty in Respect of the Collateral. The Collateral Agent, the Administrative Agent and each other Credit Provider shall use reasonable care with respect to the Collateral in its possession or under its control. None of the Collateral Agent, the Administrative Agent or any other Credit Provider shall have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Collateral Agent, the Administrative Agent or such other Credit Provider, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

Section 10.18 Miscellaneous.

(a) Reinstatement. The Agent's Liens on the Collateral granted pursuant to this Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Obligated Party for liquidation or reorganization, should any Obligated Party become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of any Obligated Party's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to any Requirement of Law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

(b) Benefit. All Liens granted or contemplated hereby shall be for the benefit of the Collateral Agent, the Administrative Agent and the other Credit Providers, and all proceeds or payments realized from Collateral in accordance herewith shall be applied to the Obligations in accordance with the terms of Section 4.6.

(c) Limitations. The Liens granted pursuant to Section 10.1 in each Obligated Party's, other than Ahern's, Collateral shall secure a maximum aggregate amount equal to the largest amount that would not render its obligations hereunder and the Liens granted hereby subject to avoidance as a fraudulent transfer or conveyance under any Requirement of Law, in each case after giving effect to all other liabilities and obligations of such Obligated Party, contingent or otherwise, that are relevant under such laws, and after giving effect to the value, as assets (as determined under the applicable provisions of such laws), of any rights of such Obligated Party to contribution, indemnity, and/or subrogation from any other Obligated Party or other Person pursuant to any Requirement of Law or any agreement providing for an equitable allocation among such Obligated Party, any other Obligated Party, and any other such Person of their respective obligations hereunder.

ARTICLE 11

DEFAULT; REMEDIES

Section 11.1 Events of Default. It shall constitute an event of default ("Event of Default") if any one or more of the following shall occur for any reason:

(a) any failure by the Borrowers to pay the principal of or interest or premium on any of the Obligations or any fee or other amount owing under any Loan Document when due, whether upon demand or otherwise;

(b) any representation or warranty made or deemed made by any Obligated Party in any Loan Document, any Financial Statement, or any certificate furnished by any Obligated Party at any time to either of the Agents or any Lender shall prove to be untrue in any material respect as of the date on which made, deemed made, or furnished;

(c) any default shall occur in the observance or performance of

(i) any of the covenants and agreements contained in Section 6.2, clauses (a) through (e), and (k), Section 8.1(c), Section 8.2, Section 8.5, Sections 8.9 through 8.24, Sections 8.26 through 8.28, Section 8.31 or Article 10;

(ii) any of the covenants and agreements contained in Section 6.2 (except as specified in clause (i) preceding), Section 6.3 or Section 8.1, clauses (a) and (b), and such default shall continue for three (3) Business Days or more after the earlier of any Obligated Party acquiring actual knowledge of such default and any Obligated Party receiving notice from any Agent, any Lender or any Affiliate of any Lender of such default; or

(iii) any of the other covenants or agreements contained in this Agreement other than as referenced in Section 11.1(a), Section 11.1(b), and clause (i) and clause (ii) preceding, any other Loan Document, or any other agreement entered into at any time to which any Obligated Party and either of the Agents or any Lender are party (including in respect of any Bank Products) and such default shall continue for 20 days or more after the earlier of any Obligated Party acquiring actual knowledge of such default and any Obligated Party receiving notice from any Agent, any Lender or any Affiliate of any Lender of such default;

(d) any default shall occur with respect to (i) the Second Lien Debt or (ii) any Debt (other than the Obligations) of any one or more of the Obligated Parties in an outstanding principal amount that, individually or in the aggregate, exceeds \$500,000, or under any agreement or instrument under or pursuant to which any such Debt (under clause (i) or (ii) above) may have been issued, created, assumed, or guaranteed by any Obligated Party, and such default shall continue for more than the period of grace, if any, therein specified, if the effect thereof (with or without the giving of notice or further lapse of time or both) is to accelerate or to permit the holders of any such Debt to accelerate, the maturity of any such Debt, or any such Debt shall be declared due and payable or be required to be prepaid (other than by a regularly scheduled required prepayment) prior to the stated maturity thereof, or any such Debt shall not be paid on the stated maturity date thereof;

(e) any Obligated Party or DFA LLC shall (i) file a voluntary petition in bankruptcy or file a voluntary petition or an answer or otherwise commence any action or proceeding seeking reorganization, arrangement, or readjustment of its debts or for any other relief under the Bankruptcy Code or under any other bankruptcy or insolvency act or law, state or federal, now or hereafter existing, or consent to, approve of, or acquiesce in, any such petition, action, or proceeding, (ii) apply for or acquiesce in the appointment of a receiver, assignee, liquidator, sequestrator, custodian, monitor, trustee, or similar officer for it or for all or any part of its property, (iii) make an assignment for the benefit of its creditors, or (iv) be unable generally to pay its debts as they become due;

(f) an involuntary petition or proposal shall be filed or an action or proceeding otherwise commenced seeking reorganization, arrangement, consolidation, or readjustment of the debts of any Obligated Party or DFA LLC or for any other relief under the Bankruptcy Code or under any other bankruptcy or insolvency act or law, state or federal, now or hereafter existing and such petition or proceeding shall not be dismissed within 60 days after the filing or commencement thereof or an order of relief (or comparable order under any other Requirement of Law) against any Obligated Party or DFA LLC shall be entered with respect thereto;

(g) a receiver, assignee, liquidator, sequestrator, custodian, monitor, trustee, or similar officer for any Obligated Party or DFA LLC or for all or any part of its property shall be appointed or a warrant of attachment, execution, or similar process shall be issued against any part of the property of any Obligated Party or DFA LLC;

(h) any Obligated Party shall file a certificate of dissolution under any Requirement of Law or shall be liquidated, dissolved, or wound-up (except in a transaction allowed under Section 8.9) or shall commence or have commenced against it any action or proceeding for dissolution, winding-up, or liquidation, or shall take any action in furtherance thereof (except in connection with a transaction allowed under Section 8.9);

(i) all or any material part of the property of any Obligated Party is nationalized, expropriated, condemned, recalled, seized, or otherwise appropriated, or custody or control of such property or of any Obligated Party is assumed by any Governmental Authority or any court of competent jurisdiction at the instance of any Governmental Authority, except where contested in good faith by proper proceedings diligently pursued where a stay of enforcement is in effect;

(j) one or more judgments, orders, decrees (including out-of-court settlements), or arbitration or mediation awards is entered against any Obligated Party involving liability in the aggregate for any or all of the Obligated Parties as to any single, related, or unrelated series of transactions, incidents, or conditions, of \$500,000 or more, and any such judgment, order, or decree remains unsatisfied, unvacated, and unstayed pending appeal for a period of 30 days after the entry thereof;

(k) any loss, theft, damage, or destruction of any item or items of Collateral or other property of any Obligated Party occurs that is not adequately covered by insurance and could reasonably be expected to result in a Material Adverse Effect;

(l) there is filed against any Obligated Party any action, suit, or proceeding under any federal or state racketeering statute (including the Racketeer Influenced and Corrupt Organization Act of 1970), which action, suit, or proceeding (i) is not dismissed within 120 days and (ii) could reasonably be expected to result in the confiscation or forfeiture of any material portion of the Collateral;

(m) for any reason any Loan Document ceases to be in full force and effect (other than in accordance with its terms or the terms hereof or with the written consent of the Agents and the Majority Lenders) or any Lien with respect to any material portion of the Collateral intended to be secured thereby ceases to be, or is not, valid, perfected, and prior to all other Liens (other than Permitted Liens that are expressly permitted to have priority over the Agent's Liens) or is terminated, revoked or declared void (other than in accordance with its terms or the terms thereof or with the written consent of the Agents and the Majority Lenders) or for any reason any Loan Document is terminated, revoked, or declared void (other than in accordance with its terms or the terms hereof or with the written consent of the Agents and the Majority Lenders) or is challenged by any Obligated Party or any other party thereto;

(n) (i) an ERISA Event shall occur with respect to any Pension Plan or Multiemployer Plan that has resulted in, or could reasonably be expected to result in, liability of any Obligated Party under Title IV of ERISA to such Pension Plan, such Multiemployer Plan, or the PBGC in an aggregate amount in excess of \$500,000; (ii) the

aggregate amount of Unfunded Pension Liability among all Pension Plans at any time exceeds \$500,000; or (iii) any Obligated Party or any ERISA Affiliate shall fail to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$100,000;

(o) there occurs a Change of Control;

(p) there occurs any event or events that, individually or in the aggregate, results in a Material Adverse Effect;

(q) any "Default" shall occur under and as defined in the GE Sale and Leaseback Agreement; or

(r) any default shall occur with respect to any Debt of DFA LLC in an outstanding principal amount that, individually or in the aggregate, exceeds \$3,000,000, or under any agreement or instrument under or pursuant to which any such Debt may have been issued, created, assumed, or guaranteed by DFA LLC or any Obligated Party, and such default is a payment default and such payment default shall continue for more than the period of grace, if any, therein specified, or the holders of any such Debt shall have accelerated the maturity of such Debt or have declared such Debt due and payable or required to be prepaid (other than by a regularly scheduled payment) prior to the stated maturity thereof, or any such Debt shall not be paid on the stated maturity date thereof; or

(s) failure by the Second Lien Agent under the Second Lien Debt Agreement or any lender, agent or trustee under any of the Refinancing Second Lien Debt Documents to comply in any material respect with, or any breach in any material respect by any such Person of, any terms or conditions of the Intercreditor Agreement or, in the case of the lenders and agents under any of the Refinancing Second Lien Debt Documents, any intercreditor agreement entered into by any such lenders and agents with either of the Agents.

Section 11.2 Remedies.

(a) During the existence of any Default or Event of Default, either of the Agents may, in its discretion, and the Agents shall, at the direction of the Majority Lenders, do one or more of the following at any time or times and in any order, without notice to or demand on any Obligated Party: (i) reduce the Maximum Revolver Amount, or the advance rates against the Net Amount of Eligible Accounts, Eligible Transportation Equipment and/or Eligible Inventory used in computing the Borrowing Base and/or any other advance rates or amounts used in computing the Borrowing Base (including increasing the amount of any Reserve); (ii) restrict the amount of or refuse to make Revolving Loans; and (iii) instruct the Letter of Credit Issuer to restrict or refuse to provide Letters of Credit.

(b) During the existence of any Event of Default, the Administrative Agent or the Collateral Agent, as applicable, shall, at the direction of the Majority Lenders, do one or more of the following: (i) take any of the actions described in clause (a) preceding, at

any time or times and in any order, without notice to or demand on any Obligated Party; (ii) terminate the Commitments, the obligation of the Lenders to make Revolving Loans under this Agreement, and the obligation of the Agents to cause the Letter of Credit Issuer to issue any Letter of Credit hereunder; (iii) declare any or all of the Obligations to be immediately due and payable (except for Obligations under Hedge Agreements, which remedy shall be governed by the terms and conditions contained in such Hedge Agreements); provided, however, that upon the occurrence of any Event of Default described in Section 11.1(e), Section 11.1(f), Section 11.1(g), or Section 11.1(h), the Commitments shall automatically and immediately expire and all Obligations shall automatically become immediately due and payable without notice or demand of any kind; (iv) require the Obligated Parties to provide cash collateral in an amount equal to 105% of all Obligations (contingent or otherwise) outstanding with respect to Letters of Credit; and (v) pursue its other rights and remedies under the Loan Documents and any Requirement of Law.

(c) During the existence of any Event of Default: (i) the Collateral Agent shall have, for the benefit of the Credit Providers, in addition to all other rights of the Credit Providers, the rights and remedies of a secured party under the Loan Documents and the UCC; (ii) the Collateral Agent may, at any time, take possession of the Collateral and keep it on any Obligated Party's premises, at no cost to the Credit Providers, or remove any part of the Collateral to such other place or places as the Collateral Agent may desire, or any Obligated Party shall, upon the Collateral Agent's demand, at such Obligated Party's cost, assemble the Collateral and make it available to the Collateral Agent at a place reasonably convenient to the Collateral Agent; (iii) the Collateral Agent or the Collateral Agent's designee may notify the Obligated Parties' Account Debtors that the Obligated Parties' Accounts have been assigned to the Collateral Agent and of the Agent's Lien therein, and may collect such Accounts directly and charge the collection costs and expenses to the Loan Account as a Revolving Loan; and (iv) the Collateral Agent may sell and deliver any Collateral at public or private sales, for cash, upon credit, or otherwise, at such prices and upon such terms as the Collateral Agent deems advisable, in its sole discretion, and may, if the Collateral Agent deems it reasonable, postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale. Without in any way requiring notice to be given in the following manner, each Obligated Party agrees that any notice by the Collateral Agent of sale, disposition, or other intended action hereunder or in connection herewith, whether required by the UCC or otherwise, shall constitute reasonable notice to the Obligated Parties if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least ten days prior to such action to the Obligated Parties' address specified in or pursuant to Section 15.8. If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Collateral Agent, Administrative Agent or the Lenders receive payment, and if the buyer defaults in payment, the Collateral Agent may resell the Collateral without further notice to any Obligated Party. In the event the Collateral Agent seeks to take possession of all or any portion of the Collateral by judicial process, each Obligated Party irrevocably waives the posting of any bond, surety, or security with respect thereto that might otherwise be required, any demand for possession prior to the commencement of

any suit or action to recover the Collateral, and any requirement that the Collateral Agent retains possession and not dispose of any Collateral until after trial or final judgment. Each Obligated Party agrees that the Collateral Agent has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. In addition to any license granted pursuant to Section 10.16, the Collateral Agent is hereby granted a license or other right to use, without charge, each Obligated Party's labels, patents, copyrights, name, trade secrets, trade names, trademarks, and advertising matter, or any similar property, in completing production of, advertising, or selling any Collateral, and each Obligated Party's rights under all licenses and all franchise agreements shall inure to the Collateral Agent's benefit for such purpose. The proceeds of sale shall be applied first to all expenses of sale, including Attorney Costs, and then to the Obligations as provided in Section 4.6(b). The Collateral Agent will return any excess to the Obligated Parties, except as required by the Intercreditor Agreement or as a court of competent jurisdiction shall otherwise direct, and the Obligated Parties shall remain liable for any deficiency.

(d) Without limiting the generality of the foregoing, each Obligated Party expressly agrees that, during the existence of any Event of Default, the Collateral Agent, without demand of performance or other demand, advertisement, or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon any Obligated Party or any other Person (all and each of which demands, advertisements, and notices are hereby expressly waived to the maximum extent permitted by the UCC and other applicable law), may forthwith enter upon the premises of any Obligated Party where any Collateral is located through self-help, without judicial process, without first obtaining a final judgment or giving such Obligated Party or any other Person notice and opportunity for a hearing on the Collateral Agent's claim or action and may collect, receive, assemble, process, appropriate, and realize upon the Collateral, or any part thereof, and may forthwith sell, lease, license, assign, give an option or options to purchase, or sell or otherwise dispose of and deliver said Collateral (or contract to do so), or any part thereof, in one or more parcels at a public or private sale or sales, at any exchange at such prices as the Collateral Agent may deem acceptable, for cash or on credit or for future delivery without assumption of any credit risk. The Collateral Agent or any other Credit Provider shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase for the benefit of the Collateral Agent and/or one or more of the other Credit Providers, the whole or any part of said Collateral so sold, free of any right or equity of redemption, which equity of redemption each Obligated Party hereby releases. Such sales may be adjourned and continued from time to time with or without notice. The Collateral Agent shall have the right to conduct such sales on any Obligated Party's premises or elsewhere and shall have the right to use each Obligated Party's premises without charge for such time or times as the Collateral Agent deems necessary or advisable.

(e) Each Obligated Party further agrees, at the Collateral Agent's request, to assemble the Collateral and make it available to the Collateral Agent at a place or places designated by the Collateral Agent that are reasonably convenient to the Collateral Agent and such Obligated Party, whether at such Obligated Party's premises or elsewhere. Until the Collateral Agent is able to effect a sale, lease, or other disposition of the

Collateral, the Collateral Agent shall have the right to hold or use the Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving the Collateral or its value or for any other purpose deemed appropriate by the Collateral Agent. The Collateral Agent shall have no obligation to any Obligated Party to maintain or preserve the rights of such Obligated Party as against third parties with respect to any Collateral while such Collateral is in the possession of the Collateral Agent. The Collateral Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of the Collateral, or any part thereof, and to enforce any of the Collateral Agent's remedies (for the benefit of the Collateral Agent and the other Credit Providers), with respect to such appointment without prior notice or hearing as to such appointment. The Collateral Agent shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization, or sale to the Obligations as provided in Section 4.6(b), and only after so paying over such net proceeds, and after the payment by the Collateral Agent of any other amount required by any provision of law (and subject to the terms of the Intercreditor Agreement or a decision, order or ruling of a court of competent jurisdiction), need the Collateral Agent account for the surplus, if any, to the applicable Obligated Party. To the maximum extent permitted by applicable law, each Obligated Party waives all claims, damages, and demands against the Collateral Agent or any other Credit Provider arising out of the repossession, retention, or sale of the Collateral except to the extent resulting from the gross negligence or willful misconduct of the Collateral Agent or such other Credit Provider as determined in a final, nonappealable judgment by a court of competent jurisdiction. Each Obligated Party agrees that ten days prior notice by the Collateral Agent of the time and place of any public sale or of the time after which a private sale may take place is reasonable notification of such matters. Each Obligated Party shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations, including any attorneys' fees or other expenses incurred by the Collateral Agent or any other Credit Provider to collect such deficiency.

(f) Except as otherwise specifically provided herein or in the other Loan Documents, each Obligated Party hereby waives presentment, demand, protest, or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Agreement or any Collateral.

(g) To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, each Obligated Party acknowledges and agrees that it is not commercially unreasonable for the Collateral Agent (i) to fail to incur expenses reasonably deemed significant by the Collateral Agent to prepare Collateral for disposition or otherwise to complete raw material or work-in-process into finished goods or other finished products for disposition, (ii) if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the

Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as such Obligated Party, for expressions of interest in acquiring all or any portion of such Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession, or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection, or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants, and other professionals to assist the Collateral Agent in the collection or disposition of any of the Collateral. Each Obligated Party acknowledges that the purpose of this Section 11.2(g) is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would not be commercially unreasonable in the Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 11.2(g). Without limiting the foregoing, nothing contained in this Section 11.2(g) shall be construed to grant any rights to any Obligated Party or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Agreement or by Requirement of Law in the absence of this Section 11.2(g).

(h) Without limiting Section 10.12(c), during the existence of an Event of Default, each Obligated Party, at the Collateral Agent's request, shall execute and deliver to the Collateral Agent such documents as the Collateral Agent shall require to grant the Collateral Agent access to any post office box in which collections of Accounts are received.

(i) During the existence of an Event of Default, the Obligated Parties will, at the Collateral Agent's request, with respect to all Inventory financed by Letters of Credit, instruct all suppliers, carriers, forwarders, customs brokers, warehouses, or others receiving or holding cash, checks, Inventory, documents, or instruments in which the Collateral Agent holds a security interest to deliver them to the Collateral Agent and/or subject to the Collateral Agent's order, and if they shall come into any Obligated Party's possession, to deliver them, upon request, to the Collateral Agent in their original form. The Obligated Parties shall also, at the Collateral Agent's request, during the existence of an Event of Default, designate the Collateral Agent as the consignee on all bills of lading and other negotiable and non-negotiable documents or cause all such documents to designate the applicable Obligated Party as the consignee subject to the Agent's Liens.

(j) During the existence of an Event of Default, each Obligated Party hereby waives all rights to notice and hearing prior to the exercise by the Collateral Agent of the Collateral Agent's rights to repossess the Collateral without judicial process or to replevy, attach, or levy upon the Collateral without notice or hearing.

ARTICLE 12

TERM AND TERMINATION

Section 12.1 Term and Termination.

(a) The term of this Agreement shall end on the Stated Termination Date unless sooner terminated in accordance with the terms hereof. Either of the Agents may, and upon direction from the Majority Lenders the Agents shall, terminate this Agreement, without notice to the Obligated Parties, during the existence of an Event of Default. Upon the effective date of termination of this Agreement for any reason whatsoever, all Obligations (including all unpaid principal, accrued and unpaid interest, and any early termination or prepayment fees, but excluding indemnification obligations to the extent no claim with respect thereto has been asserted and remains unsatisfied) shall become immediately due and payable, the Lenders shall have no obligation to make any Loans, the Agents shall have no obligation to cause the Letter of Credit Issuer to issue any Letter of Credit, and the Borrowers shall immediately arrange for the cancellation and return of all Letters of Credit then outstanding or delivery to the Collateral Agent of a Supporting Cash Deposit or a Supporting Letter of Credit in accordance with Section 2.4(g). Notwithstanding the termination of this Agreement, until all Obligations are indefeasibly paid and performed in full, the Obligated Parties shall remain bound by the terms of this Agreement and the other Loan Documents and shall not be relieved of any of their Obligations hereunder or thereunder, and the Agents and the Lenders shall retain all their rights and remedies hereunder and thereunder (including the Agent's Liens in and all rights and remedies with respect to all then existing and after-acquired or after-arising Collateral).

(b) Notwithstanding the payment in full of the Obligations, the Agents shall not be required to terminate the Agent's Liens in any of the Collateral unless, with respect to any loss or damage either of the Agents or any Lender may incur as a result of the dishonor or return of any payment items applied to the Obligations, the Agents shall have received either (i) a written agreement, executed by the Obligated Parties and any other Person deemed financially responsible by the Agents and whose loans or other advances to the Borrowers, or any of them, are used in whole or in part to satisfy the Obligations, indemnifying the Agents and the other Credit Providers from any such loss or damage or (ii) such monetary reserves and Liens on the Collateral for such period of time as the Agents, in their reasonable credit judgment, may deem necessary to protect the Agents and the other Credit Providers from any such loss or damage. The provisions of Section 2.4(f), Section 2.5, Section 4.7, Article 5, this Section 12.1(b), Section 14.7, Section 14.16(d), Section 15.7, Section 15.11, and all indemnification obligations of any of the Obligated Parties shall in all events survive any termination of the Commitments or this Agreement.

ARTICLE 13

AMENDMENTS; WAIVERS; PARTICIPATIONS; ASSIGNMENTS; SUCCESSORS

Section 13.1 Amendments and Waivers.

(a) Except as specified in clause (b) following, no amendment or waiver of any provision of this Agreement or any other Loan Document (other than Hedge Agreements), and no consent with respect to any departure by any Obligated Party therefrom, shall be effective unless such amendment, modification, or consent is in writing, signed by the Majority Lenders or, in the case of any amendment or waiver of, or any consent with respect to, any provision of Section 8.21 or any provision of the Intercreditor Agreement or the GE Intercreditor Agreement, the Majority Lenders and both Agents, and, in each case, the Obligated Parties that are party thereto, and then any such amendment, waiver, or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) Unless it is in writing and signed by all of the Lenders and the Obligated Parties that are party thereto and acknowledged by the Agents, no amendment, waiver, or consent shall do any of the following:

(i) increase (other than pursuant to an Incremental Commitment Agreement or an assignment under Section 13.2) or extend the Commitment of any Lender;

(ii) amend the second sentence of Section 2.2(a);

(iii) increase the Maximum Revolver Amount, the Letter of Credit Subfacility or the Dollar amount set forth in the first sentence of Section 2.2(j), in each instance, in excess of the respective amount set forth on the Closing Date, except as permitted in accordance with the terms of this Agreement;

(iv) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees (other than fees payable to BofA, Wachovia, the Administrative Agent or the Collateral Agent solely for such Person's benefit), or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document;

(v) reduce the principal of, or the rate of interest specified herein on any Loan, or any fees or other amounts payable hereunder or under any other Loan Document;

(vi) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans that is required for the Lenders, or any of them, to take any action hereunder;

(vii) change the definition of Borrowing Base, Blocked Availability Amount, Eligible Accounts, Eligible Inventory, Eligible Rental and Sale

Equipment, Eligible Spare Parts Inventory, Eligible Transportation Equipment or Unused Availability in a manner that would result in an increase in Unused Availability;

(viii) change the definition of Majority Lenders;

(ix) amend this Section 13.1 or any provision of this Agreement providing for consent or other action by all of the Lenders;

(x) other than as permitted by Section 14.11, release any Guaranties of the Obligations or release Collateral;

(xi) amend Section 4.6(b); or

(xii) expressly subordinate the payment of any Obligation to any other Debt;

provided that (A) no amendment, waiver, or consent shall, unless in writing and signed by the Administrative Agent, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document, (B) no amendment, waiver, or consent shall, unless in writing and signed by BofA and Wachovia, acting in their respective capacities as the Letter of Credit Issuer, affect the rights or duties of the Letter of Credit Issuer under this Agreement or any other Loan Document related to any Letter of Credit issued or to be issued by it, (C) no amendment, waiver, or consent shall, unless in writing and signed by the Collateral Agent, affect the rights or duties of the Collateral Agent under this Agreement or any other Loan Document, (D) Schedule 1.1(A) may be amended from time to time by the Agents alone to reflect assignments of Commitments in accordance with this Agreement and as contemplated by Section 2.1(c), (E) any Loan Document relating to Bank Products may be amended by the applicable Obligated Parties and the Person providing such Bank Products without the approval or consent of any other Lender, the Administrative Agent or the Collateral Agent, (F) except as specified for in clause (i) preceding, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver, or consent hereunder and (G) amendments and modifications to the Collateral Documents in connection with the provision of any Incremental Commitments by Incremental Lenders may be made as contemplated in Section 2.1(c)(ii) (with the consent of the Administrative Agent and/or the Collateral Agent, as appropriate).

(c) If any fees are paid to the Lenders as consideration for amendments, waivers, or consents with respect to this Agreement, at the Agents' election, such fees may be paid only to those Lenders that agree to such amendments, waivers, or consents within the time specified for submission thereof.

(d) If, in connection with any proposed amendment, waiver, or consent requiring the consent of all of the Lenders, the consent of the Majority Lenders is obtained but the consent of the other Lenders is not obtained (any such Lender whose consent is not obtained being referred to as a "Non-Consenting Lender"), then, if neither BofA nor Wachovia (in its individual capacity

as a Lender) is a Non-Consenting Lender, at the Obligated Parties' request either or both of BofA or Wachovia (in its individual capacity as a Lender) or an Eligible Assignee shall, subject to the requirements of Section 13.2(a), have the right (but not the obligation) to purchase from each Non-Consenting Lender, and each Non-Consenting Lender agrees that it shall sell, such Non-Consenting Lender's Loans and Commitments for an amount equal to the aggregate outstanding principal balances thereof plus all accrued interest and fees with respect thereto through the date of sale pursuant to one or more Assignment and Acceptances, without premium or discount.

Section 13.2 Assignments; Participations.

(a) Any Lender (the "assigning Lender") may, with the written consent of the Agents (which consent shall not be unreasonably withheld or delayed) and if no Default or Event of Default exists with the written consent of the Borrowers (which consent shall not be unreasonably withheld or delayed), assign and delegate to one or more Eligible Assignees (provided that no consent of the Agents or the Borrowers shall be required in connection with any assignment and delegation by an assigning Lender to an Affiliate of the assigning Lender or to another Lender) (each, an "Assignee") all or part of the Commitment of the assigning Lender hereunder, in a minimum amount of \$10,000,000 and integral amounts of \$5,000,000 in excess thereof, together with a ratable part of the assigning Lender's outstanding Loans and the other rights and obligations of the assigning Lender hereunder (provided that, unless the assigning Lender has assigned and delegated all of its Loans and Commitments, no such assignment and/or delegation shall be permitted unless, after giving effect thereto, the assigning Lender retains a Commitment in a minimum amount of \$10,000,000 and a ratable part of the outstanding Loans and the other rights and obligations hereunder); provided, further, that the Obligated Parties and the Agents may continue to deal solely and directly with the assigning Lender in connection with the interest so assigned to an Assignee until (i) written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, shall have been given to Ahern and the Agents by the assigning Lender and the Assignee, (ii) the assigning Lender and the Assignee shall have delivered to Ahern and the Agents an Assignment and Acceptance substantially in the form of Exhibit F (an "Assignment and Acceptance"), and (iii) the assigning Lender or the Assignee has paid to each of the Agents a processing fee in the amount of Three Thousand Five Hundred Dollars (\$3,500).

(b) From and after the date that the Agents notify the assigning Lender that they have received an executed Assignment and Acceptance and payment of the above-referenced processing fee, if applicable, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations, including, but not limited to, the obligation to participate in Letters of Credit, have been assigned to the Assignee pursuant to such Assignment and Acceptance, shall have the rights and obligations of a Lender under the Loan Documents and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by the assigning Lender pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of the assigning Lender's rights and obligations under this Agreement, the assigning Lender shall cease to be a party hereto).

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties, or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency, or value of this Agreement or any other Loan Document furnished pursuant hereto or the attachment, perfection, or priority of any Lien granted by the Obligated Parties to the Collateral Agent or any Lender in the Collateral; (ii) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Obligated Parties or the performance or observance by the Obligated Parties of any of their respective obligations under this Agreement or any other Loan Document furnished pursuant hereto; (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such Assignee will, independently and without reliance upon either of the Agents, the assigning Lender, or any other Lender, and based on such documents and information as such Assignee shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such Assignee appoints and authorizes the Administrative Agent and the Collateral Agent to take such action as administrative agent or collateral agent, as applicable, on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent or the Collateral Agent, as applicable, by the terms hereof, together with such powers, including the discretionary rights and incidental powers, as are reasonably incidental thereto; and (vi) such Assignee agrees that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon satisfaction of the requirements of Section 13.2(a), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce the Commitment of the assigning Lender pro tanto.

(e) Any Lender (the "originating Lender") may at any time sell to one or more Participants participating interests in any Loans, the Commitment of the originating Lender, and the other interests of the originating Lender hereunder and under the other Loan Documents; provided that (i) the originating Lender's obligations under this Agreement shall remain unchanged, (ii) the originating Lender shall remain solely responsible for the performance of such obligations, (iii) the Obligated Parties and the Agents shall continue to deal solely and directly with the originating Lender in connection with the originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has rights to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document except for the matters set forth in Section 13.1(b)(i), Section 13.1(b)(ii), and Section 13.1(b)(iii), and (v) all amounts payable by the Borrowers hereunder shall be determined as if the

originating Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of setoff in respect of its participating interest in amounts owing under this Agreement to the same extent and subject to the same limitation as if the amount of its participating interest were owing directly to it as a Lender under this Agreement.

(f) Notwithstanding any other provision in this Agreement, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Board or U.S. Treasury Regulation 31 C.F.R. §203.14, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law.

ARTICLE 14

THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT

Section 14.1 Appointment and Authorization.

(a) Each Lender hereby irrevocably appoints and designates each of BofA, acting in its capacity as the Administrative Agent, and Wachovia, acting in its capacity as the Collateral Agent, as its agent under this Agreement and the other Loan Documents, and each Lender hereby irrevocably authorizes the Collateral Agent and the Administrative Agent to take such action on such Lender's behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent or the Administrative Agent, as applicable, by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Each of the Collateral Agent and the Administrative Agent agrees to act as such on the express conditions contained in this Article 14. Other than as expressly provided in Section 14.10 and Section 14.11, the provisions of this Article 14 are solely for the benefit of the Collateral Agent, the Administrative Agent and the other Credit Providers, and no Obligated Party shall have any rights as a third party beneficiary of any of the provisions contained herein. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, the Agents shall not have any duties or responsibilities, except those expressly set forth herein, nor shall either of the Agents have or be deemed to have any fiduciary relationship with any Lender or Participant, and no implied covenants, functions, responsibilities, duties, obligations, or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against either of the Agents. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Agreement or any other Loan Document with reference to the Collateral Agent or the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. Except as expressly otherwise provided in this Agreement, each of the Collateral Agent

and the Administrative Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that the Collateral Agent or the Administrative Agent is expressly entitled to take or assert under this Agreement and the other Loan Documents, including (as applicable) (i) the determination of the applicability of ineligibility criteria with respect to the calculation of the Borrowing Base, (ii) the making of Agent Advances pursuant to Section 2.2(j), and (iii) the exercise of remedies pursuant to Section 11.2, and any action so taken or not taken shall be deemed consented to by the Lenders.

(b) The Letter of Credit Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued hereunder and the agreements and documents associated therewith. The Letter of Credit Issuer shall have all of the benefits and immunities (i) provided to the Agents in this Article 14 with respect to any acts taken or omissions suffered by the Letter of Credit Issuer in connection with Letters of Credit issued by it, or proposed to be issued by it, and the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term "Administrative Agent", "Collateral Agent" or "Agent", as the case may be, as used in this Article 14 included the Letter of Credit Issuer with respect to such acts or omissions, and (ii) as additionally provided herein with respect to the Letter of Credit Issuer.

Section 14.2 Delegation of Duties. Each of the Collateral Agent and the Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees, or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. Neither Agent shall be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects as long as such selection was made without gross negligence or willful misconduct.

Section 14.3 Liability of the Agents. None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Credit Provider or Participant for any recital, statement, representation, or warranty made by any Obligated Party or any Affiliate of any Obligated Party, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement, or other document referred to or provided for in, or received by the Collateral Agent or the Administrative Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability, or sufficiency of this Agreement or any other Loan Document, or for any failure of any Obligated Party or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender or Participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books, or records of any Obligated Party or any Obligated Party's Affiliates.

Section 14.4 Reliance by the Agents. Each of the Agents shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution,

representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex, or telephone message, electronic mail message, statement, or other document or conversation believed by the Collateral Agent or the Administrative Agent to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Obligated Party or any of their respective Affiliates), independent accountants and other experts selected by the Collateral Agent or the Administrative Agent. Each of the Agents shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Majority Lenders as the Collateral Agent or the Administrative Agent deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Collateral Agent and the Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Majority Lenders (or all Lenders if so required by Section 13.1) and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders. For purposes of determining compliance with the conditions specified in Section 9.1, each Lender that has executed and delivered this Agreement shall be deemed to have consented to, approved, or accepted, or to be satisfied with, each document or other matter required thereunder to be consented to or approved by, or acceptable or satisfactory to, a Lender unless each Agent shall have received written notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 14.5 Notice of Default. Neither Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, other than the failure of the Borrowers to make any payment of principal, interest, fees, or expenses required to be paid to it for the benefit of the Credit Providers, unless the Collateral Agent or the Administrative Agent, as applicable, shall have received written notice from an Obligated Party or a Lender referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." The Collateral Agent or the Administrative Agent, as applicable, will notify the Lenders of its receipt of any such notice. The Collateral Agent and/or the Administrative Agent, as applicable, shall take such action with respect to such Default or Event of Default as may be directed by the Majority Lenders in accordance with Article 11; provided that unless and until the Collateral Agent or the Administrative Agent, as applicable, has received any such direction, the Collateral Agent or the Administrative Agent, as applicable, may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of the Credit Providers.

Section 14.6 Credit Decision. Each Lender acknowledges that none of the Agent-Related Persons has made any representation or warranty to such Lender, and that no act by the Collateral Agent or the Administrative Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of the Obligated Parties and their Affiliates (or any of them), shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether any Agent-Related Person has disclosed material information in its possession. Each Lender represents to the Agents that such Lender has, independently and without reliance upon any Agent-Related Person and based on such documents and information as such Lender has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other

condition, and creditworthiness of the Obligated Parties and their Affiliates, and any Requirement of Law relating to the transactions contemplated hereby, and such Lender has made its own decision to enter into this Agreement and to extend credit to the Borrowers hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as such Lender shall deem appropriate at the time, continue to make its own credit analysis, appraisals, and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition, and creditworthiness of the Obligated Parties and their Affiliates. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by either of the Agents (as applicable), neither Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition, or creditworthiness of any Obligated Party or any of their Affiliates that may come into the possession of any of the Agent-Related Persons.

Section 14.7 Indemnification. WHETHER OR NOT THE TRANSACTIONS CONTEMPLATED HEREBY ARE CONSUMMATED, THE LENDERS SHALL, UPON DEMAND, INDEMNIFY THE AGENT-RELATED PERSONS (TO THE EXTENT NOT REIMBURSED BY OR ON BEHALF OF THE OBLIGATED PARTIES AND WITHOUT LIMITING THE OBLIGATION OF THE OBLIGATED PARTIES TO DO SO), IN ACCORDANCE WITH THEIR PRO RATA SHARES, AND HOLD HARMLESS EACH AGENT-RELATED PERSON FROM AND AGAINST ANY AND ALL INDEMNIFIED LIABILITIES (AS SUCH TERM IS DEFINED IN SECTION 15.11(a)); PROVIDED THAT NO LENDER SHALL BE LIABLE FOR THE PAYMENT TO ANY AGENT-RELATED PERSON OF ANY PORTION OF SUCH INDEMNIFIED LIABILITIES TO THE EXTENT DETERMINED IN A FINAL, NONAPPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH AGENT-RELATED PERSON'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; PROVIDED, FURTHER, THAT NO ACTION TAKEN IN ACCORDANCE WITH THE DIRECTIONS OF THE MAJORITY LENDERS OR ALL LENDERS (IF REQUIRED BY THE TERMS OF THIS AGREEMENT) SHALL BE DEEMED TO CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT FOR PURPOSES OF THIS SECTION. Without limitation of the foregoing, each Lender shall reimburse the Collateral Agent and the Administrative Agent upon demand for its Pro Rata Share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Collateral Agent or the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings, or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Collateral Agent or the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrowers. The undertaking in this Section 14.7 shall survive the termination of the Commitments, payment of all Obligations hereunder, and the resignation or replacement of the Collateral Agent or the Administrative Agent.

Section 14.8 The Collateral Agent and the Administrative Agent in their Individual Capacity. Each of BofA and Wachovia and their respective Affiliates may make loans to, issue

letters of credit for the account of, accept deposits from, acquire equity interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with any Obligated Party and its Affiliates as though such Person were not the Administrative Agent, the Letter of Credit Issuer or the Collateral Agent hereunder, as applicable, and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, each of BofA and Wachovia and its respective Affiliates may receive information regarding any Obligated Party, its Affiliates, and Account Debtors (including information that may be subject to confidentiality obligations in favor of any such Obligated Party or Affiliate), and the Lenders acknowledge that BofA and Wachovia shall be under no obligation to provide such information to the Lenders. With respect to its Loans, each of BofA and Wachovia as a Lender shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not the Administrative Agent, the Letter of Credit Issuer or the Collateral Agent, as applicable, and the terms "Lender" and "Lenders" include each of BofA and Wachovia in its individual capacity.

Section 14.9 Successor Agents. Each Agent may resign as an Agent (the "resigning Agent") upon at least 30 days' prior notice to the other Agent, the Lenders and the Obligated Parties (and any such resignation by BofA or Wachovia shall also constitute its resignation as the Letter of Credit Issuer hereunder (the "resigning Letter of Credit Issuer")). In the event BofA or Wachovia sells all of its Commitment and Loans, such Person shall resign as an Agent; provided that if such sale by BofA or Wachovia is as part of a sale, transfer, or other disposition by such Person of substantially all of its loan portfolio, such Person shall resign as an Agent and such purchaser or transferee shall become its successor Administrative Agent and/or Collateral Agent, as applicable, hereunder. Subject to the foregoing, if either Agent resigns under this Agreement, then (i) effective upon the effective date of the resignation of the resigning Agent, the remaining Agent shall act (and hereby agrees to act) as the sole Administrative Agent and Collateral Agent for the Lenders or (ii) if there is no remaining Agent at such time, the Majority Lenders shall appoint from among the Lenders the successor sole Administrative Agent and Collateral Agent (any Person being appointed pursuant to this clause (ii) as successor to the resigning Agent being referred to in this Section as the "successor Agent," and any such appointment shall also constitute appointment of such successor Agent as the Letter of Credit Issuer hereunder (the "successor Letter of Credit Issuer")) for the Lenders that shall be consented to by the Borrowers at all times other than during the existence of a Default or an Event of Default (such consent not to be unreasonably withheld or delayed). If no successor Agent has accepted appointment as the Administrative Agent and Collateral Agent for the Lenders prior to the effective date of the resignation of the resigning Agent at a time when there is no other Agent, the resigning Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all the duties of the Agents hereunder until such time, if any, as the Majority Lenders appoint the successor sole Administrative Agent and Collateral Agent as provided for in this Section 14.9. Upon the remaining Agent becoming the Administrative Agent and Collateral Agent for the Lenders (as provided in clause (i) of the second preceding sentence) or the acceptance by the successor Agent of its appointment as the successor Agent hereunder (as provided in clause (ii) of the second preceding sentence), (a) the remaining Agent or such successor Agent, as applicable, shall succeed to all the rights, powers, and duties of each of the Administrative Agent, the Collateral Agent and the resigning Letter of Credit Issuer, (b) the respective terms "Administrative Agent", "Collateral Agent" and "Letter of Credit Issuer" shall mean the remaining Agent or such successor Agent (as applicable) and such successor Letter of Credit

Issuer, (c) the resigning Agent's appointment, rights, powers, and duties as an Agent shall be terminated, and (d) the resigning Letter of Credit Issuer's appointment, rights, powers, and duties as the Letter of Credit Issuer shall be terminated without any other or further act or deed on the part of the resigning Letter of Credit Issuer, the remaining Agent or any Lender, other than the obligation of the remaining Agent or the successor Letter of Credit Issuer, as applicable, to issue Letters of Credit in substitution for the Letters of Credit, if any, issued by the resigning Letter of Credit Issuer outstanding at the time of such succession or to make other arrangements satisfactory to the resigning Letter of Credit Issuer to effectively assume the obligations of the resigning Letter of Credit Issuer with respect to its Letters of Credit. After any resigning Agent's resignation hereunder as an Agent, the provisions of this Article 14, Section 15.7, and Section 15.11 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was an Agent under this Agreement.

Section 14.10 Withholding Tax.

(a) If any Lender is a "foreign corporation, partnership, or trust" within the meaning of the Code and such Lender claims exemption from, or a reduction of, U.S. withholding tax under Sections 1441 or 1442 of the Code, such Lender agrees with and in favor of the Agents, to deliver to the Agents and Ahern:

(i) if such Lender claims an exemption from, or a reduction of, withholding tax under a U.S. tax treaty, two properly completed and executed IRS Form W-8BEN before the payment of any interest in the first calendar year during which interest may be paid under this Agreement (and thereafter as reasonably requested by the Administrative Agent, the Collateral Agent or Ahern, but only if such Lender is then lawfully permitted to do so);

(ii) if such Lender claims that interest paid under this Agreement is exempt from U.S. withholding tax because it is effectively connected with a U.S. trade or business of such Lender, two properly completed and executed copies of IRS Form W-8ECI before the payment of any interest is due in the first taxable year of such Lender during which interest may be paid under this Agreement (and thereafter as reasonably requested by the Administrative Agent, the Collateral Agent or Ahern, but only if such Lender is then lawfully permitted to do so), and IRS Form W-9; and

(iii) such other form or forms as may be required under the Code or other laws of the U.S. as a condition to exemption from, or reduction of, U.S. withholding tax.

Such Lender agrees to promptly notify the Agents and Ahern of any change in circumstances that would modify or render invalid any claimed exemption or reduction.

(b) If any Lender claims exemption from, or reduction of, withholding tax under a U.S. tax treaty by providing IRS Form W-8BEN and such Lender sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations owing to such Lender, such Lender agrees to notify the Agents and Ahern of the percentage amount in

which it is no longer the beneficial owner of Obligations owing to such Lender. To the extent of such percentage amount, the Agents and the Borrowers will treat such Lender's IRS Form W-8BEN as no longer valid.

(c) If any Lender claiming exemption from U.S. withholding tax by filing IRS Form W-8ECI with the Agents sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations owing to such Lender, such Lender agrees to undertake sole responsibility for complying with the withholding tax requirements imposed by Sections 1441 and 1442 of the Code.

(d) If any Lender is entitled to a reduction in the applicable withholding tax, the Administrative Agent, the Collateral Agent or any Borrower, as appropriate, may withhold from any interest payment to such Lender an amount equivalent to the applicable withholding tax after taking into account such reduction. If the forms or other documentation required by clause (a) preceding are not delivered to the Agents and Ahern, then the applicable Agent or any Borrower, as appropriate, may withhold from any interest payment to such Lender not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(e) If the IRS or any other Governmental Authority of the U.S. or other jurisdiction asserts a claim that an Agent or any Borrower did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify the Agents or any Borrower of a change in circumstances that rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify each of the Agents and any Borrower fully for all amounts paid, directly or indirectly, by any of them as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to either of the Agents or the Borrowers under this Section 14.10, together with all costs and expenses (including Attorney Costs). The obligation of the Lenders under this clause (e) shall survive the payment of all Obligations and the resignation or replacement of either Agent.

Section 14.11 Collateral Matters.

(a) The Credit Providers hereby irrevocably authorize the Collateral Agent to release any Guarantor that is permitted to wind-up, dissolve, liquidate, or merge out of existence under Section 8.9, and to release any Agent's Liens upon any Collateral (i) upon (A) termination of the Commitments, (B) termination or collateralization as provided in Section 2.4(g) of all outstanding Letters of Credit (whether or not any of such obligations are due), and (C) the Borrowers' payment and satisfaction in full of all Loans and other Obligations (other than indemnification obligations to the extent no claim with respect thereto has been asserted and remains unsatisfied), (ii) constituting property being sold or disposed of if the Obligated Party disposing of such property certifies to the Agents that the sale or disposition is made in compliance with Section 8.9 (and the Agents may rely conclusively on any such certification, without further inquiry), (iii) constituting property in which no Obligated Party owned any interest at the time the Lien was granted or at any time thereafter, or (iv) constituting property leased to an

Obligated Party under a lease that has expired or been terminated in a transaction permitted under this Agreement. Except as provided above, the Collateral Agent will not release any of the Agent's Liens without the prior written authorization of the Majority Lenders; provided that the Collateral Agent may, in its discretion with the prior written authorization of the Administrative Agent, release the Agent's Liens on Collateral valued in the aggregate not in excess of \$1,000,000 during each Fiscal Year without the prior written authorization of any Lender and the Collateral Agent may release the Agent's Liens on Collateral valued in the aggregate not in excess of \$5,000,000 during each Fiscal Year with the prior written authorization of the Majority Lenders and the Administrative Agent. Upon request by either of the Agents or the Obligated Parties at any time, the Credit Providers will confirm in writing the Collateral Agent's authority to release any Guarantor and any of the Agent's Liens upon particular types or items of Collateral in accordance with the terms of this Section 14.11.

(b) Upon receipt by the Collateral Agent of any authorization required pursuant to Section 14.11(a) from the Majority Lenders and/or the Administrative Agent, as appropriate, of the Collateral Agent's authority to release any Agent's Liens upon particular types or items of Collateral, and upon at least five Business Days prior written request by the Obligated Parties, the Collateral Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Agent's Liens upon such Collateral; provided that (i) the Collateral Agent shall not be required to execute any such document on terms that, in the Collateral Agent's opinion, would expose the Collateral Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Obligated Parties in respect of) all interests retained by the Obligated Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral.

(c) Neither of the Agents shall have any obligation whatsoever to any of the Credit Providers to assure that the Collateral exists or is owned by any of the Obligated Parties or is cared for, protected, or insured or has been encumbered, or that the Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure, or fidelity, or to continue exercising, any of the rights, authorities, and powers granted or available to either of the Agents pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, each of the Agents may act in any manner it may deem appropriate, in its sole discretion, given such Agent's own interest in the Collateral in its capacity as one of the Lenders and that neither of the Agents shall have any other duty or liability whatsoever to any Credit Provider as to any of the foregoing.

(d) Upon receipt by the Collateral Agent of any proceeds of Collateral, the Collateral Agent shall promptly turn all such proceeds over to the Administrative Agent for application in accordance with Section 4.6(b).

Section 14.12 Restrictions on Actions by Lenders; Sharing of Payments.

(a) Each of the Credit Providers agrees that it shall not, without the express consent of the Majority Lenders, and that it shall, to the extent it is lawfully entitled to do so, upon the request of the Majority Lenders, setoff against the Obligations, any amounts owing by such Credit Provider to any Obligated Party or any accounts of any Obligated Party now or hereafter maintained with such Credit Provider. Each of the Credit Providers further agrees that it shall not, unless specifically requested to do so by the Agents, take or cause to be taken any action to enforce its rights under this Agreement or any other Loan Document or against any Obligated Party, including the commencement of any legal or equitable proceedings, to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If at any time or times any Credit Provider shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations owing to such Credit Provider arising under, or relating to, this Agreement or the other Loan Documents, except for any such proceeds or payments received by such Credit Provider from either of the Agents pursuant to the terms of this Agreement, or (ii) payments from either of the Agents in excess of such Credit Provider's ratable portion of all such distributions by the Agents, such Credit Provider shall promptly (A) turn the same over to the Administrative Agent, in kind, and with such endorsements as may be required to negotiate the same to the Administrative Agent, or in same day funds, as applicable, for the account of all of the Credit Providers and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied among the Credit Providers in accordance with the terms of this Agreement; provided that if all or part of such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

Section 14.13 Agency for Perfection. Each Credit Provider hereby appoints each other Credit Provider as agent for the purpose of perfecting Liens, for the benefit of the Credit Providers, in assets that, in accordance with Article 9 of the UCC or any other Requirement of Law can be perfected only by possession. Should any Credit Provider (other than the Collateral Agent) obtain possession of any such Collateral, such Credit Provider shall notify the Collateral Agent thereof, and, promptly upon the Collateral Agent's request therefor, shall deliver such Collateral to the Collateral Agent or otherwise deal with such Collateral in accordance with the Collateral Agent's instructions.

Section 14.14 Payments by Agents to the Lenders. All payments to be made by either of the Agents to the Credit Providers shall be made by bank wire transfer or internal transfer of immediately available funds to each Credit Provider pursuant to transfer instructions delivered in writing to the Agents on or prior to the Closing Date (or if such Credit Provider is an Assignee,

delivered with or in the applicable Assignment and Acceptance), or pursuant to such other transfer instructions as each party may designate for itself by written notice to the Agents. Concurrently with each such payment, the applicable Agent shall identify whether such payment (or any portion thereof) represents principal, premium, interest, or fees on the Revolving Loans, the Letters of Credit, or otherwise. Unless the Agents receive notice from the Borrowers prior to the date on which any payment is due to any Credit Provider that the Borrowers will not make such payment in full as and when required, each of the Agents may assume that the Borrowers have made such payment in full to the applicable Agent on such date in immediately available funds and the applicable Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Credit Provider on such due date an amount equal to the amount then due such Credit Provider. If and to the extent the Borrowers have not made such payment in full to the applicable Agent, each Credit Provider shall repay to such Agent on demand such amount distributed to such Credit Provider, together with interest thereon at the Federal Funds Rate for each day from the date such amount is distributed to such Credit Provider until the date repaid.

Section 14.15 Settlement.

(a) Each Lender's funded portion of the Revolving Loans is intended by the Lenders to be equal at all times to such Lender's Pro Rata Share of the outstanding Revolving Loans. Notwithstanding such agreement, the Agents, BofA, Wachovia, and the Lenders agree (which agreement shall not be for the benefit of or enforceable by the Obligated Parties) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among them as to the Revolving Loans, including the Non-Ratable Loans and the Agent Advances, shall take place on a periodic basis in accordance with the following provisions:

(i) The Administrative Agent shall request settlement (a "Settlement") with the Lenders on at least a weekly basis, or on a more frequent basis at its election, (A) on behalf of BofA, with respect to each outstanding Non-Ratable Loan, (B) for itself, with respect to each Agent Advance, and (C) with respect to collections received, in each case, by notifying the Lenders of such requested Settlement by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 1:30p.m. (New York time) on the date of such requested Settlement (the "Settlement Date"). In its discretion, the Administrative Agent may on any Settlement Date permit Non-Ratable Loans in an aggregate principal amount not to exceed One Million Dollars (\$1,000,000) to remain outstanding, while requiring Settlement of the other outstanding Non-Ratable Loans. Each Lender (other than BofA, in the case of the Non-Ratable Loans, and the Administrative Agent, in the case of the Agent Advances) shall transfer the amount of such Lender's Pro Rata Share of the outstanding principal amount of the Non-Ratable Loans and Agent Advances with respect to which Settlement is requested to the Administrative Agent to such account of the Administrative Agent as the Administrative Agent may designate, not later than 4:00p.m. (New York time), on the Settlement Date applicable thereto. Settlements shall occur during the continuation of a Default or an Event of Default and whether or not the applicable conditions precedent set forth in Article 9 have then been satisfied.

Such amounts transferred to the Administrative Agent shall be applied against the amounts of the applicable Non-Ratable Loan or Agent Advance for which the Administrative Agent has requested Settlement and, together with the portion of such Non-Ratable Loan or Agent Advance representing BofA's (in its individual capacity or as the Administrative Agent, as appropriate) Pro Rata Share thereof, shall constitute Revolving Loans of such Lenders, respectively. If any such amount is not transferred to the Administrative Agent by any Lender on the Settlement Date applicable thereto, the Administrative Agent shall be entitled to recover such amount on demand from such Lender together with interest thereon at the Federal Funds Rate for the first three days from and after the Settlement Date and thereafter at the Interest Rate then applicable to Base Rate Revolving Loans (Y) on behalf of BofA, with respect to each outstanding Non-Ratable Loan and (Z) for itself, with respect to each Agent Advance.

(ii) Notwithstanding the foregoing, not more than one Business Day after demand is made by the Administrative Agent (whether before or after the occurrence of a Default or an Event of Default and regardless of whether it has requested a Settlement with respect to a Non-Ratable Loan or Agent Advance), each other Lender (A) shall irrevocably and unconditionally purchase and receive from BofA or the Administrative Agent, as applicable, without recourse or warranty, an undivided interest and participation in such Non-Ratable Loan or Agent Advance equal to such Lender's Pro Rata Share of such Non-Ratable Loan or Agent Advance, and (B) if Settlement has not previously occurred with respect to such Non-Ratable Loans or Agent Advances, upon demand by BofA or the Administrative Agent, as applicable, shall pay to BofA or the Administrative Agent, as applicable, as the purchase price of such participation an amount equal to 100% of such Lender's Pro Rata Share of such Non-Ratable Loans or Agent Advances. If such amount is not in fact transferred to BofA or the Administrative Agent, as applicable, by any Lender, BofA or the Administrative Agent, as applicable, shall be entitled to recover such amount on demand from such Lender together with interest thereon at the Federal Funds Rate for the first three days from and after such demand and thereafter at the Interest Rate then applicable to Base Rate Revolving Loans.

(iii) From and after the date, if any, on which any Lender purchases an undivided interest and participation in any Non-Ratable Loan or Agent Advance pursuant to clause (ii) preceding, the Administrative Agent shall promptly distribute to such Lender, such Lender's Pro Rata Share of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Non-Ratable Loan or Agent Advance.

(iv) Between Settlement Dates, to the extent no Agent Advances are outstanding, the Administrative Agent may pay over to BofA any payments received by the Administrative Agent which in accordance with the terms of this Agreement would be applied to the reduction of the Revolving Loans, for application to the Revolving Loans of BofA, including Non-Ratable Loans. If, as of any Settlement Date, collections received since the then immediately preceding

Settlement Date have been applied to the Revolving Loans of BofA (other than to Non-Ratable Loans or Agent Advances in which a Lender has not yet funded its purchase of a participation pursuant to clause (ii) preceding), as provided for in the previous sentence, BofA shall pay to the Administrative Agent, for the accounts of the Lenders, to be applied to the outstanding Revolving Loans of such Lenders, an amount such that each Lender shall, upon receipt of such amount, have, as of such Settlement Date, its Pro Rata Share of the Revolving Loans. During the period between Settlement Dates, BofA with respect to Non-Ratable Loans, the Administrative Agent with respect to Agent Advances, and each Lender with respect to the Revolving Loans other than Non-Ratable Loans and Agent Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the actual average daily amount of funds employed by BofA, the Administrative Agent and the other Lenders.

(v) Unless the Administrative Agent has received written notice from a Lender to the contrary, the Administrative Agent may assume that the applicable conditions precedent set forth in Article 9 have been satisfied on any Funding Date for a Revolving Loan or Non-Ratable Loan. Unless the Administrative Agent has received written notice from a Lender to the contrary or the Administrative Agent has actual knowledge to the contrary (based solely on the Borrowing Base Certificate most recently delivered to it), the Administrative Agent may assume that the requested Borrowing will not exceed the Unused Availability on any Funding Date for a Revolving Loan or Non-Ratable Loan.

(b) The Lenders' Failure to Perform. All Revolving Loans (other than Non-Ratable Loans and Agent Advances) shall be made by the Lenders simultaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Revolving Loans hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligation to make any Revolving Loans hereunder, (ii) no failure by any Lender to perform its obligation to make any Revolving Loans hereunder shall excuse any other Lender from its obligation to make any Revolving Loans hereunder, and (iii) the obligations of each Lender hereunder shall be several, not joint and several.

(c) Defaulting Lenders. Unless the Administrative Agent receives notice from a Lender on or prior to the Closing Date or, with respect to any Borrowing after the Closing Date, at least one Business Day prior to the date of such Borrowing, that such Lender will not make available as and when required hereunder to the Administrative Agent such Lender's Pro Rata Share of such Borrowing, the Administrative Agent may assume that each Lender has made such amount available to it in immediately available funds on the Funding Date. Furthermore, the Administrative Agent may, in reliance upon such assumption, make available to the Borrowers on such date a corresponding amount. If any Lender has not transferred its full Pro Rata Share to the Administrative Agent in immediately available funds and if the Administrative Agent has transferred a corresponding amount to the Borrowers on the Business Day following such Funding Date, the applicable Lender shall make such amount available to the Administrative

Agent, together with interest at the Federal Funds Rate for that day. A notice by the Administrative Agent submitted to any Lender with respect to amounts owing shall be conclusive, absent manifest error. If each Lender's full Pro Rata Share is transferred to the Administrative Agent as required, the amount transferred to the Administrative Agent shall constitute such Lender's Revolving Loan for all purposes of this Agreement. If any such amount is not transferred to the Administrative Agent on the Business Day following the Funding Date, the Administrative Agent will notify the Borrowers of such failure to fund and, upon demand by the Administrative Agent, the Borrowers shall pay such amount to the Administrative Agent for its account, together with interest thereon for each day elapsed since the date of such Borrowing at a rate per annum equal to the Interest Rate applicable at the time to the Revolving Loans comprising that particular Borrowing. The failure of any Lender to make any Revolving Loan on any Funding Date (any such Lender, prior to the cure of such failure, being referred to herein as a "Defaulting Lender") shall not relieve any other Lender of its obligation hereunder to make a Revolving Loan on such Funding Date. No Lender shall be responsible for any other Lender's failure to advance such other Lenders' Pro Rata Share of any Borrowing.

(d) Retention of Defaulting Lender's Payments. Neither of the Agents shall be obligated to transfer to a Defaulting Lender any payments made by any Borrower to such Agent for the Defaulting Lender's benefit, nor shall a Defaulting Lender be entitled to the sharing of any payments hereunder. Amounts payable to a Defaulting Lender shall instead be paid to or retained by the Administrative Agent. In its discretion, the Administrative Agent may loan the Borrowers the amount of all such payments received or retained by it for the account of such Defaulting Lender. Any amounts so loaned to the Borrowers shall bear interest at the rate applicable to Base Rate Revolving Loans and for all other purposes of this Agreement shall be treated as if they were Revolving Loans, provided, however, that for purposes of voting or consenting to matters with respect to the Loan Documents and determining Pro Rata Shares, such Defaulting Lender shall be deemed not to be a "Lender." Until a Defaulting Lender cures its failure to fund its Pro Rata Share of any Borrowing (i) such Defaulting Lender shall not be entitled to any portion of the Unused Line Fee and (ii) the Unused Line Fee shall accrue in favor of the Lenders that have funded their respective Pro Rata Shares of such requested Borrowing and shall be allocated among such performing Lenders ratably based upon their relative Commitments. This Section shall remain effective with respect to such Lender until such time as the Defaulting Lender shall no longer be in default of any of its obligations under this Agreement. The terms of this Section shall not be construed to increase or otherwise affect the Commitment of any Lender, or relieve or excuse the performance by any Borrower of its duties and obligations hereunder.

(e) Removal of Defaulting Lender. At the Borrowers' request, each Agent (acting in its individual capacity as a Lender) or an Eligible Assignee reasonably acceptable to the Agents and the Borrowers shall have the right (but not the obligation) to purchase from any Defaulting Lender, and each Defaulting Lender shall, upon such request, sell and assign to such Agent (acting in its individual capacity as a Lender) or such Eligible Assignee (as applicable), all of the Defaulting Lender's outstanding Loans and Commitments hereunder. Such sale shall be consummated promptly after the applicable Agent or one or more of the Borrowers, as applicable, has arranged for a

purchase by such Agent (acting in its individual capacity as a Lender) or an Eligible Assignee (as applicable) pursuant to an Assignment and Acceptance, and at a price equal to the outstanding principal balance of the Defaulting Lender's Loans, plus accrued interest and fees (excluding the Unused Line Fee to the extent not required to be paid to the Defaulting Lender pursuant to Section 14.15(d)), without premium or discount.

Section 14.16 Letters of Credit; Intra-Lender Issues.

(a) Notice of Letter of Credit Balance. On each Settlement Date, either or both of the Agents shall notify each Lender of the issuance of any Letters of Credit since the prior Settlement Date.

(b) Participations in Letters of Credit.

(i) Purchase of Participations. Immediately upon issuance of any Letter of Credit in accordance with Section 2.4(d), each Lender shall be deemed to have irrevocably and unconditionally purchased and received without recourse or warranty, an undivided interest and participation equal to such Lender's Pro Rata Share of the face amount of such Letter of Credit in connection with the issuance of such Letter of Credit (including all obligations of the Borrower for whose account such Letter of Credit was issued, and any security therefor or guaranty pertaining thereto).

(ii) Sharing of Reimbursement Obligation Payments. Whenever the Administrative Agent receives a payment from a Borrower on account of reimbursement obligations in respect of a Letter of Credit as to which the Administrative Agent has previously received for its account or the account of the Letter of Credit Issuer payment from a Lender, the Administrative Agent shall pay to such Lender such Lender's Pro Rata Share of such payment from such Borrower. Each such payment shall be made by the Administrative Agent on the next Settlement Date.

(iii) Documentation. Upon the request of any Lender, the Letter of Credit Issuer shall furnish to either of the Agents and such Agent shall furnish to such Lender copies of any Letter of Credit, reimbursement agreements executed in connection therewith, applications for any Letter of Credit, and such other documentation relating to such Letter of Credit as may reasonably be requested by such Lender.

(iv) Obligations Irrevocable. The obligation of each Lender to make payments to the Administrative Agent with respect to any Letter of Credit or with respect to its participation therein or with respect to the Revolving Loans made as a result of a drawing under a Letter of Credit and the obligation of the Borrowers to make payments to the Administrative Agent, for the account of the Lenders, with respect to any Letter of Credit shall be irrevocable and shall not be subject to any qualification or exception whatsoever, including any of the following circumstances:

(A) any lack of validity or enforceability of this Agreement or any of the other Loan Documents;

(B) the existence of any claim, setoff, defense, or other right that any Borrower may have at any time against a beneficiary named in a Letter of Credit or any transferee of any Letter of Credit (or any Person for whom any such transferee may be acting), any Lender, either Agent, the Letter of Credit Issuer, or any other Person, whether in connection with this Agreement, any Letter of Credit, the transactions contemplated herein or any unrelated transactions (including any underlying transactions between such Borrower or any other Person and the beneficiary named in any Letter of Credit);

(C) any draft, certificate, or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid, or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(D) the surrender or impairment of any security for the performance or observance of any of the terms of any of the Loan Documents;

(E) the occurrence of any Default or Event of Default; or

(F) the failure of the Borrowers to satisfy the applicable conditions precedent set forth in Article 9.

(v) Claims Against Letter of Credit Issuer. Nothing in this Section 14.16 shall prohibit a Lender from seeking to recover any payment made by such Lender to or for the benefit of the Letter of Credit Issuer that constituted reimbursement of (or the funding of its Pro Rata Share of) a drawing under a Letter of Credit, the honor of which drawing constitutes the gross negligence or willful misconduct of the Letter of Credit Issuer as determined by a court of competent jurisdiction in a final nonappealable judgment.

(c) Recovery or Avoidance of Payments; Refund of Payments in Error. In the event any payment by or on behalf of any Borrower received by the Administrative Agent with respect to any Letter of Credit and distributed by the Administrative Agent to the Lenders on account of their respective participations therein is thereafter set aside, avoided, or recovered from the Administrative Agent or the Letter of Credit Issuer in connection with any receivership, liquidation, or bankruptcy proceeding, the Lenders shall, upon demand by the Administrative Agent, pay to the Administrative Agent their respective Pro Rata Shares of such amount set aside, avoided, or recovered, together with interest at the rate required to be paid by the Administrative Agent or the Letter of Credit Issuer upon the amount required to be repaid by it. Unless the Administrative Agent receives notice from the Borrowers prior to the date on which any payment is due to the Lenders that the Borrowers will not make such payment in full as and when required, the

Administrative Agent may assume that the Borrowers have made such payment in full to it on such date in immediately available funds and the Administrative Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent the Borrowers have not made such payment in full to the Administrative Agent, each Lender shall repay to the Administrative Agent on demand such amount distributed to such Lender, together with interest thereon at the Federal Funds Rate for each day from the date such amount is distributed to such Lender until the date repaid.

(d) Indemnification by the Lenders. To the extent not reimbursed by the Borrowers and without limiting the obligations of the Borrowers hereunder, the Lenders agree to indemnify the Letter of Credit Issuer ratably in accordance with their respective Pro Rata Shares for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees) or disbursements of any kind and nature whatsoever that may be imposed on, incurred by or asserted against the Letter of Credit Issuer in any way relating to or arising out of any Letter of Credit or the transactions contemplated thereby or any action taken or omitted by the Letter of Credit Issuer under any Letter of Credit or any Loan Document in connection therewith; provided that no Lender shall be liable for any of the foregoing to the extent determined in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from the Letter of Credit Issuer's own gross negligence or willful misconduct. Without limiting the foregoing, each Lender agrees to reimburse the Letter of Credit Issuer promptly upon demand for its Pro Rata Share of any costs or expenses payable by any Borrower to the Letter of Credit Issuer to the extent that the Letter of Credit Issuer is not promptly reimbursed for such costs and expenses by a Borrower. The agreement contained in this Section shall survive payment in full of all other Obligations.

Section 14.17 Concerning the Collateral and the Related Loan Documents. Each Lender authorizes and directs the Collateral Agent and the Administrative Agent, as applicable, to enter into the other Loan Documents, for the benefit and obligation of the Credit Providers. Each Lender agrees that any action taken by the Collateral Agent, the Administrative Agent or the Majority Lenders, as applicable, in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Collateral Agent, the Administrative Agent or the Majority Lenders, as applicable, of their respective powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders. The Lenders acknowledge that the Revolving Loans (including the Agent Advances and the Non-Ratable Loans), Bank Products, and all interest, fees, and expenses hereunder constitute one Debt, secured *pari passu* by all of the Collateral, subject to the order of distribution of payments set forth in Section 4.6.

Section 14.18 Field Audit and Examination Reports; Disclaimer by Lenders. By signing this Agreement, each Lender:

(a) is deemed to have requested that each Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report (each, a "Report" and collectively, the "Reports") prepared by or on behalf of such Agent;

(b) expressly agrees and acknowledges that none of BofA, Wachovia or either of the Agents (i) makes any representation or warranty as to the accuracy of any Report or (ii) shall be liable for any information contained in any Report;

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the applicable Agent, BofA or Wachovia, or any other Person performing any audit or examination will inspect only specific information regarding the Obligated Parties and will rely significantly upon the Obligated Parties' books and records, as well as on representations of the Obligated Parties' personnel;

(d) agrees to keep all Reports confidential and strictly for its internal use, and not to distribute except to its Participants, or use any Report in any other manner; and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold each of the Agents and any such other Person preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to the Obligated Parties, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans to the Obligated Parties; and (ii) to pay and protect, and indemnify, defend, and hold each of the Agents and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including Attorney Costs) incurred by such Agent and any such other Person preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Section 14.19 Relation Among the Lenders. The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in the case of the Collateral Agent and the Administrative Agent) authorized to act for, any other Lender.

Section 14.20 Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceeding relative to any Obligated Party, or any other Person party to any Loan Document, the Administrative Agent (irrespective of whether the principal of any Loan or Obligation relating to Letters of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether either of the Agents shall have made any demand on the Obligated Parties or such other Person) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Obligations relating to Letters of Credit, and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Agents and the Lenders (including any claim for the reasonable compensation, expenses, disbursements, and advances of the Administrative Agent, the Collateral Agent and the Lenders, and their respective agents and counsel, and all other amounts due the Administrative Agent, the

Collateral Agent and the Lenders under Section 3.4 through Section 3.7 and Section 15.7) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator, or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements, and advances of the Administrative Agent and its agents and counsel (including Attorney Costs), and any other amounts due to the Administrative Agent under Section 3.4 through Section 3.7 and Section 15.7. Nothing contained in this Section shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment, or composition affecting the Obligations or the rights of any Lender, or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 14.21 Co-Lead Arrangers and Syndication Agent. Each of the Co-Lead Arrangers and the Syndication Agent, solely in its capacity as such, shall have no obligations, liabilities, responsibilities or duties under this Agreement or any other Loan Document. Without limiting the foregoing, the Co-Lead Arrangers and the Syndication Agent shall have no fiduciary relationship with any Credit Provider and each Credit Provider acknowledges that it has not relied, and will not rely, on either of the Co-Lead Arrangers or the Syndication Agent in deciding to enter into this Agreement or any other Loan Document or in taking or not taking action hereunder or thereunder.

ARTICLE 15

MISCELLANEOUS

Section 15.1 No Waivers; Cumulative Remedies. No failure by the Collateral Agent, the Administrative Agent or any Lender to exercise any right, remedy, or option under this Agreement, any other Loan Document, or any present or future supplement hereto or thereto, or in any other agreement between or among any Obligated Party and the Collateral Agent, the Administrative Agent and/or any Lender, or delay by the Collateral Agent, the Administrative Agent or any Lender in exercising the same, will operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or option hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, or option. Subject to Section 13.1, no waiver by the Collateral Agent, the Administrative Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by the Collateral Agent, the Administrative Agent or the Lenders on any occasion shall affect or diminish the Collateral Agent's, the Administrative Agent's and each Lender's rights thereafter to require strict performance by the Obligated Parties of any provision of this Agreement. The Administrative Agent, the Collateral Agent and the Lenders may proceed directly to collect the Obligations without any prior recourse to the Collateral. The Collateral Agent's, the Administrative Agent's and each Lender's rights under this Agreement will be cumulative and

not exclusive of any other right or remedy that the Collateral Agent, the Administrative Agent or any Lender may have.

Section 15.2 Severability. The illegality or unenforceability of any provision of this Agreement, any other Loan Document, or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement, any other Loan Document, or any instrument or agreement required hereunder.

Section 15.3 Governing Law; Choice of Forum; Service of Process.

(a) THIS AGREEMENT SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE INTERNAL LAWS (AS OPPOSED TO THE CONFLICT OF LAWS PROVISIONS, PROVIDED THAT PERFECTION ISSUES WITH RESPECT TO ARTICLE 9 OF THE UCC MAY GIVE EFFECT TO APPLICABLE CHOICE OR CONFLICT OF LAW RULES SET FORTH IN ARTICLE 9 OF THE UCC) OF THE STATE OF NEW YORK; PROVIDED THAT THE PARTIES HERETO SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE U.S. LOCATED IN THE SOUTHERN DISTRICT OF NEW YORK, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE OBLIGATED PARTIES, THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, AND THE LENDERS CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH OF THE OBLIGATED PARTIES, THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, AND THE LENDERS IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, THAT IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR ANY OTHER AGREEMENT, DOCUMENT, OR INSTRUMENT RELATED HERETO OR THERETO. NOTWITHSTANDING THE FOREGOING (i) THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT AND THE LENDERS SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST ANY OBLIGATED PARTY OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT OR THE LENDERS DEEM NECESSARY OR APPROPRIATE IN ORDER TO REALIZE ON THE COLLATERAL OR OTHER SECURITY FOR THE OBLIGATIONS AND (ii) EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT ANY APPEALS FROM THE COURTS DESCRIBED IN THE IMMEDIATELY PRECEDING SENTENCE MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE THOSE JURISDICTIONS.

(c) EACH OBLIGATED PARTY HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (RETURN RECEIPT REQUESTED) DIRECTED TO SUCH OBLIGATED PARTY AT ITS ADDRESS SET FORTH IN SECTION 15.8 AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED FIVE DAYS AFTER THE SAME SHALL HAVE BEEN SO DEPOSITED IN THE U.S. MAILED POSTAGE PREPAID. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT OR THE LENDERS TO SERVE LEGAL PROCESS BY ANY OTHER MANNER PERMITTED BY LAW.

Section 15.4 Waiver of Jury Trial. EACH OBLIGATED PARTY, THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, AND EACH OTHER CREDIT PROVIDER IRREVOCABLY WAIVES ITS RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY IN ANY ACTION, PROCEEDING, OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY AGENT-RELATED PERSON, PARTICIPANT, OR ASSIGNEE, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH OF THE OBLIGATED PARTIES, THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, AND EACH OTHER CREDIT PROVIDER AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, EACH OF THE PARTIES FURTHER AGREES THAT ITS RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION 15.4 AS TO ANY ACTION, COUNTERCLAIM, OR OTHER PROCEEDING THAT SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

Section 15.5 Survival of Representations and Warranties. All representations and warranties of the Obligated Parties contained in this Agreement and the other Loan Documents shall survive the execution, delivery, and acceptance thereof by the parties, notwithstanding any investigation by the Collateral Agent, the Administrative Agent or the Lenders or their respective agents.

Section 15.6 Other Security and Guaranties. Each of the Collateral Agent and the Administrative Agent may, without notice or demand and without affecting the Obligated Parties' obligations hereunder, from time to time (a) take from any Person and hold collateral (other than the Collateral) for the payment of all or any part of the Obligations and exchange, enforce, or release such collateral or any part thereof and (b) accept and hold any endorsement or guaranty of payment of all or any part of the Obligations and release or substitute any such endorser or guarantor (other than any Guarantor), or any Person who has given any Lien in any other collateral as security for the payment of all or any part of the Obligations, or any other Person in any way obligated to pay all or any part of the Obligations.

Section 15.7 Fees and Expenses. Each Borrower agrees to pay to each of the Collateral Agent and the Administrative Agent, for its account, on demand, all reasonable costs and expenses that the Collateral Agent or the Administrative Agent pays or incurs in connection with the negotiation, preparation, syndication, consummation, administration, enforcement, and termination of this Agreement or any of the other Loan Documents, including: (a) Attorney Costs; (b) costs and expenses (including Attorney Costs) for any amendment, supplement, waiver, consent, or subsequent closing in connection with the Loan Documents and the transactions contemplated thereby; (c) costs and expenses of lien and title searches, title insurance, and environmental audits; (d) taxes, fees, and other charges for recording the Mortgages and the Aircraft Mortgage, filing financing statements and continuations, and other actions to perfect, protect, and continue the Agent's Liens (including costs and expenses paid or incurred by the Collateral Agent or the Administrative Agent in connection with the consummation of this Agreement); (e) sums paid or incurred to pay any amount or take any action required of any Obligated Party under the Loan Documents that such Obligated Party fails to pay or take; (f) costs of all Inventory Appraisals, Equipment Appraisals and other appraisals (in each case, whether conducted by an internal or external appraiser), and costs of two field examinations and two environmental audits per year (except that after the occurrence and during the continuation of an Event of Default, the Borrowers shall pay the costs of all field examinations and environmental audits), inspections, and verifications of the Collateral and other due diligence, including travel, lodging, and meals for field examinations and inspections of the Collateral and the Obligated Parties' operations by such Agent, plus such Agent's then customary charge for field examinations and audits and the preparation of reports thereof (such charge for each Agent is currently \$850 per day (or portion thereof) for each Person retained or employed by such Agent with respect to each field examination or audit) performed or prepared at any time; and (g) costs and expenses of forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining Clearing Accounts, and costs and expenses of preserving and protecting the Collateral. In addition, the Borrowers agree to pay (i) to the Collateral Agent and the Administrative Agent, for its benefit, on demand, all costs and expenses incurred by the Collateral Agent or the Administrative Agent (including Attorney Costs), and (ii) to the Lenders, for their benefit, on demand, all reasonable and actual fees, expenses, and disbursements incurred by the Lenders for one law firm retained by the Lenders, in each case, paid or incurred during the existence of an Event of Default to obtain payment of the Obligations, enforce the Agent's Liens, sell or otherwise realize upon the Collateral, and otherwise enforce the provisions of the Loan Documents, or to defend any claims made or threatened against the Collateral Agent, the Administrative Agent or any Lender arising out of the transactions contemplated hereby (including preparations for and consultations concerning any such matters). The foregoing shall not be construed to limit any other provisions of the Loan Documents regarding costs and expenses to be paid by the Borrowers. All of the foregoing costs and expenses shall be charged to the Loan Account as Revolving Loans as described in Section 4.5. The agreements in this Section 15.7 shall survive payment of all other Obligations.

Section 15.8 Notices and Information.

(a) Except as otherwise provided herein, all notices, demands, and requests that any party is required or elects to give to any other party shall be in writing, or by a telecommunications device capable of creating a written record, and any such notice shall become effective (i) upon personal delivery thereof, including, but not limited to,

delivery by overnight mail or courier service, (ii) four days after it shall have been mailed by U.S. mail, first class, certified or registered, with postage prepaid, or (iii) in the case of notice by such a telecommunications device, when properly transmitted and confirmed, in each case addressed to the party to be notified as follows:

If to the Administrative Agent:

Bank of America, N.A.
335 Madison Avenue
New York, NY 10017
Attention: Business Capital/URGENT
Telecopy No.: (212) 503-7330

If to the Collateral Agent:

Wachovia Bank, National Association
One Wachovia Center
301 S. College Street
Charlotte, NC 28202
Mail Code: NC0479
Attention: John Trainor
Telecopy No.: (704) 374-2703

If to any Obligated Party:

c/o Ahern Rentals, Inc.
4241 S. Arville Street
Las Vegas, Nevada 89103
Attention: Chief Financial Officer
Telecopy No.: (702) 367-7652

If to any Lender:

to the address of such Lender set forth on the signature pages of this Agreement or on the most recent Assignment and Acceptance to which such Lender is a party,

or to such other address as each party may designate for itself by like notice.

(b) The Obligated Parties hereby agree that any notice required or permitted to be given by the Agents hereunder may be given by either of the Agents.

(c) Loan Documents may be transmitted and/or signed by facsimile. The effectiveness of any such Loan Documents and signatures shall, subject to Requirements of Law, have the same force and effect as manually signed originals and shall be binding on the Obligated Parties, the Agents, the Lenders, and all other parties to the Loan Documents. Either of the Agents may also require that any such documents and signatures be confirmed by a manually signed original thereof, provided that the failure to

request or deliver the same shall not limit the effectiveness of any facsimile document or signature.

(d) The Agents and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices in lieu of written Notices of Borrowing and Notices of Continuation/Conversion) purportedly given by or on behalf of any Obligated Party even if (i) such notices were not made in a manner specified herein, (ii) such notices were incomplete or were not preceded or followed by any other form of notice specified herein, or (iii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Obligated Parties shall indemnify each Credit Provider from all losses, costs, expenses, and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of an Obligated Party. All telephonic notices to and other communications with the Collateral Agent or the Administrative Agent may be recorded by such Agent, and each of the parties hereto hereby consents to such recording.

(e) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, each Obligated Party agrees to use its best efforts to provide all Communications (as defined below) to each of the Agents in an electronic/soft medium in a format acceptable to the Collateral Agent or the Administrative Agent, as applicable, to the e-mail addresses specified by it to Ahern from time to time. As used in this [Section 15.8](#) "Communications" means all information, documents and other materials that any Obligated Party is obligated to furnish to the Collateral Agent or the Administrative Agent pursuant to this Agreement or any other Loan Document, including all notices, requests, Financial Statements, financial and other reports, certificates, and other information materials, but excluding any such information, documents, or materials that (i) relate to any request for a Borrowing or a continuation or a conversion of any existing Loan (including any election of an interest rate or the duration of an Interest Period), (ii) relate to the payment of any principal or other amount due under this Agreement or any other Loan Document prior to the scheduled date therefor, (iii) provide notice of any Default or Event of Default; or (iv) are required to be delivered to satisfy any condition set forth in [Section 9.1](#) or [Section 9.2](#). The Collateral Agent and the Administrative Agent may, in its sole discretion, require that the Obligated Parties provide any of the information provided in electronic/soft medium also in written or printed form.

(f) Each Obligated Party and each Credit Provider agrees that each of the Agents may make the Loan Documents and the Communications, together with other information relating to the Obligated Parties and their business and assets, including Borrowing Base Certificates, appraisals, and Reports, (all such other information being referred to collectively in this [Section 15.8](#) as the "Other Information"), available to the Credit Providers by posting on Intralinks or a substantially similar electronic transmission system (each such system being referred to in this [Section 15.8](#) as a "Platform"). Each Obligated Party (i) acknowledges that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and (ii) agrees that posting of the Communications and

Other Information to a Platform will not in any event constitute a breach of the confidentiality provisions of Section 15.16.

(g) EACH PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT-RELATED PERSONS DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF ANY LOAN DOCUMENTS, COMMUNICATIONS, OR OTHER INFORMATION POSTED BY ANY AGENT-RELATED PERSON TO ANY PLATFORM, OR THE ADEQUACY OF ANY PLATFORM, AND THE AGENT-RELATED PERSONS AND THE OTHER CREDIT PROVIDERS EXPRESSLY DISCLAIM ANY LIABILITY FOR ERRORS OR OMISSIONS IN ANY LOAN DOCUMENTS, COMMUNICATIONS, OR OTHER INFORMATION AS POSTED ON ANY PLATFORM. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY (INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS) IS MADE BY THE AGENT-RELATED PERSONS OR ANY OTHER CREDIT PROVIDER IN CONNECTION WITH THE LOAN DOCUMENTS, COMMUNICATIONS, OR OTHER INFORMATION OR ANY PLATFORM. IN NO EVENT SHALL ANY AGENT-RELATED PERSON OR ANY OTHER CREDIT PROVIDER HAVE ANY LIABILITY TO ANY OBLIGATED PARTY OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND (INCLUDING DIRECT OR INDIRECT DAMAGES, SPECIAL DAMAGES, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN CONTRACT, TORT OR OTHERWISE)) ARISING OUT OF ANY PERSON'S TRANSMISSION OF LOAN DOCUMENTS, COMMUNICATIONS, OR OTHER INFORMATION THROUGH THE INTERNET, OR POSTING OR FAILURE TO POST ANY LOAN DOCUMENTS, COMMUNICATIONS, OR OTHER INFORMATION ON ANY PLATFORM, EXCEPT TO THE EXTENT DETERMINED IN A FINAL, NONAPPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH PERSON'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(h) Subject to the last sentence of clause (e) preceding, the Collateral Agent and the Administrative Agent each agrees that the receipt of the Communications by it at its e-mail address specified to the Obligated Parties from time to time shall constitute effective delivery of the Communications to the Collateral Agent or the Administrative Agent, as the case may be, for purposes of this Agreement. Each Lender agrees that notice to it (as provided in the following sentence) specifying that the Communications and the Other Information have been posted to a Platform shall constitute effective delivery of the Communications and the Other Information to such Lender for purposes of this Agreement. Each Lender agrees (i) to notify the Collateral Agent and the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail addresses to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such e-mail address.

(i) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, each Agent agrees that any notice of a Default delivered by such Agent to any Obligated Party shall be effected through personal delivery (including, but not limited to, delivery by overnight mail or courier service), registered mail or by a telecommunications device.

Section 15.9 Waiver of Notices. Unless otherwise expressly provided herein, each Obligated Party waives presentment, notice of demand or dishonor, protest as to any instrument, notice of intent to accelerate the Obligations, and notice of acceleration of the Obligations, as well as any and all other notices to which it might otherwise be entitled. No notice to or demand on any Obligated Party that the Collateral Agent, the Administrative Agent or any Lender may elect to give shall entitle any Obligated Party to any or further notice or demand in the same, similar, or other circumstances.

Section 15.10 Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective representatives, successors, and assigns of the parties hereto; provided that no interest herein may be assigned by any Obligated Party without the prior written consent of the Agents and the Lenders.

Section 15.11 Indemnity of the Credit Providers by the Obligated Parties.

(a) EACH OBLIGATED PARTY AGREES TO DEFEND, INDEMNIFY, AND HOLD THE AGENT-RELATED PERSONS, EACH CREDIT PROVIDER, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, COUNSEL, REPRESENTATIVES, AGENTS, AND ATTORNEYS-IN-FACT (EACH, AN "INDEMNIFIED PERSON") HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, CHARGES, EXPENSES, AND DISBURSEMENTS (INCLUDING ATTORNEY COSTS AND REASONABLE LEGAL COSTS AND EXPENSES OF THE OTHER CREDIT PROVIDERS) OF ANY KIND OR NATURE WHATSOEVER THAT MAY AT ANY TIME (INCLUDING AT ANY TIME FOLLOWING REPAYMENT OF THE LOANS AND THE TERMINATION, RESIGNATION, OR REPLACEMENT OF THE COLLATERAL AGENT OR THE ADMINISTRATIVE AGENT OR REPLACEMENT OF ANY OTHER CREDIT PROVIDER) BE IMPOSED ON, INCURRED BY, OR ASSERTED AGAINST ANY SUCH PERSON IN ANY WAY RELATING TO OR ARISING OUT OF THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR ANY OTHER AGREEMENT, INSTRUMENT, OR DOCUMENT CONTEMPLATED BY OR REFERRED TO HEREIN OR THEREIN, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR ANY ACTION TAKEN OR OMITTED BY ANY INDEMNIFIED PERSON UNDER OR IN CONNECTION WITH ANY OF THE FOREGOING, INCLUDING WITH RESPECT TO ANY INVESTIGATION, LITIGATION, OR PROCEEDING (INCLUDING ANY BANKRUPTCY, INSOLVENCY, OR OTHER PROCEEDING, AND ANY APPELLATE PROCEEDING) RELATED TO OR ARISING OUT OF THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, THE LOANS, OR THE USE OF THE PROCEEDS OF THE LOANS, WHETHER OR NOT ANY INDEMNIFIED PERSON IS A PARTY THERETO (ALL THE FOREGOING,

COLLECTIVELY, THE “INDEMNIFIED LIABILITIES”); PROVIDED THAT NO OBLIGATED PARTY SHALL HAVE ANY OBLIGATION HEREUNDER TO ANY INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES TO THE EXTENT DETERMINED IN A FINAL, NONAPPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH INDEMNIFIED PERSON’S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE AGREEMENTS IN THIS SECTION 15.11(a) SHALL SURVIVE PAYMENT OF ALL OTHER OBLIGATIONS.

(b) EACH OBLIGATED PARTY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT AND THE LENDERS FROM ANY LOSS OR LIABILITY DIRECTLY OR INDIRECTLY ARISING OUT OF THE USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE OF A HAZARDOUS SUBSTANCE RELATING TO ANY OBLIGATED PARTY’S OPERATIONS, BUSINESS, OR PROPERTY. THIS INDEMNITY WILL APPLY WHETHER THE HAZARDOUS SUBSTANCE IS ON, UNDER, OR ABOUT ANY OBLIGATED PARTY’S PROPERTY OR OPERATIONS OR PROPERTY LEASED TO ANY OBLIGATED PARTY. THE INDEMNITY INCLUDES BUT IS NOT LIMITED TO ATTORNEY COSTS AND REASONABLE LEGAL COSTS AND EXPENSES OF THE CREDIT PROVIDERS (INCLUDING ENVIRONMENTAL ASSESSMENTS). THE INDEMNITY EXTENDS TO THE AGENTS AND THE OTHER CREDIT PROVIDERS, THEIR AFFILIATES, SUBSIDIARIES, AND ALL OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ATTORNEYS, AND ASSIGNS. AS USED IN THIS CLAUSE (b), “HAZARDOUS SUBSTANCES” MEANS ANY SUBSTANCE, MATERIAL, OR WASTE THAT IS OR BECOMES DESIGNATED OR REGULATED AS “TOXIC,” “HAZARDOUS,” “POLLUTANT,” OR “CONTAMINANT” OR A SIMILAR DESIGNATION OR REGULATION UNDER ANY FEDERAL, STATE, OR LOCAL LAW (WHETHER UNDER COMMON LAW, STATUTE, REGULATION, OR OTHERWISE) OR JUDICIAL OR ADMINISTRATIVE INTERPRETATION OF SUCH, INCLUDING PETROLEUM OR NATURAL GAS. THIS INDEMNITY WILL SURVIVE REPAYMENT OF ALL OTHER OBLIGATIONS.

Section 15.12 Limitation of Liability. NO CLAIM MAY BE MADE BY ANY OBLIGATED PARTY, THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, ANY OTHER CREDIT PROVIDER, OR ANY OTHER PERSON AGAINST ANY OBLIGATED PARTY, THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, ANY OTHER CREDIT PROVIDER, OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH OBLIGATED PARTY, THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, AND EACH OTHER CREDIT PROVIDER HEREBY

WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

Section 15.13 Final Agreement. This Agreement and the other Loan Documents are intended by the Obligated Parties, the Agents, and the Lenders to be the final, complete, and exclusive expression of the agreement between them. This Agreement and the other Loan Documents supersede any and all prior oral or written agreements relating to the subject matter hereof and thereof (including, without limitation, the terms of the Original Loan and Security Agreement). No modification, rescission, waiver, release, or amendment of any provision of this Agreement or any other Loan Document shall be made, except in accordance with Section 13.1.

Section 15.14 Counterparts. This Agreement may be executed in any number of counterparts, and by the Collateral Agent, the Administrative Agent, each Lender, and each Obligated Party in separate counterparts, each of which shall be an original, but all of which shall together constitute one and the same agreement. Signature pages to this Agreement may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document and a telecopy of any such executed signature page shall be valid as an original.

Section 15.15 Right of Setoff. In addition to any rights and remedies of the Lenders provided by law, if an Event of Default exists or the Loans have been accelerated, each Lender is authorized at any time and from time to time, without prior notice to any Obligated Party, any such notice being waived by the Obligated Parties to the fullest extent permitted by law, to setoff and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other indebtedness at any time owing by, such Lender or any Affiliate of such Lender to or for the credit or the account of any Obligated Party against any and all Obligations owing to such Lender, now or hereafter existing, irrespective of whether or not either Agent or such Lender shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured. Each Lender agrees promptly to notify the Obligated Parties and the Agents after any such setoff and application made by such Lender; provided that the failure to give such notice shall not affect the validity of such setoff and application. NOTWITHSTANDING THE FOREGOING, NO LENDER SHALL EXERCISE ANY RIGHT OF SETOFF, BANKER'S LIEN, OR THE LIKE AGAINST ANY DEPOSIT ACCOUNT OR PROPERTY OF ANY OBLIGATED PARTY HELD OR MAINTAINED BY SUCH LENDER WITHOUT THE PRIOR WRITTEN CONSENT OF THE MAJORITY LENDERS.

Section 15.16 Confidentiality.

(a) Each Obligated Party hereby consents that the Collateral Agent, the Administrative Agent and each Lender may issue and disseminate to the public general information describing the credit accommodation entered into pursuant to this Agreement, including the name and address of the Obligated Parties and a general description of the Obligated Parties' business and may use each Obligated Party's name in advertising and other promotional material.

(b) Each Lender severally agrees to take normal and reasonable precautions and exercise due care to maintain the confidentiality of all information identified as “confidential” or “secret” by any Obligated Party and provided to the Collateral Agent, the Administrative Agent or such Lender by or on behalf of any Obligated Party under this Agreement or any other Loan Document, except to the extent that such information (i) was or becomes generally available to the public other than as a result of disclosure by the Collateral Agent, the Administrative Agent or a Lender or (ii) was or becomes available on a nonconfidential basis from a source other than an Obligated Party, provided that such source is not bound by a confidentiality agreement with an Obligated Party known to the Collateral Agent, the Administrative Agent or such Lender; provided, however, that the Collateral Agent, the Administrative Agent and any Lender may disclose such information (A) at the request or pursuant to any requirement of any Governmental Authority to which the Collateral Agent, the Administrative Agent or such Lender is subject or in connection with an examination of the Collateral Agent, the Administrative Agent or such Lender by any such Governmental Authority, (B) pursuant to subpoena or other court process, (C) when required to do so in accordance with the provisions of any applicable Requirement of Law, (D) to the extent reasonably required in connection with any litigation or proceeding (including any bankruptcy proceeding) to which the Collateral Agent, the Administrative Agent, any Lender or any of their respective Affiliates may be party, (E) to the extent reasonably required in connection with the exercise of any remedy hereunder or under any other Loan Document, (F) to the Collateral Agent’s, the Administrative Agent’s or such Lender’s independent auditors, accountants, attorneys, and other professional advisors, (G) to any prospective Participant or Assignee, actual or potential, provided that such prospective Participant or Assignee agrees to keep such information confidential to the same extent required of the Agents and the Lenders hereunder, (H) as expressly permitted under the terms of any other document or agreement regarding confidentiality to which any Obligated Party is party or is deemed party with the Collateral Agent, the Administrative Agent or such Lender, and (I) to its Affiliates. Any Person required to maintain the confidentiality of information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such information as such Person would accord to its own confidential information.

Section 15.17 USA Patriot Act Notice. Each Lender and each Agent (for itself and not on behalf of any Lender) hereby notifies the Obligated Parties that pursuant to the requirements of the Patriot Act, such Credit Provider is required to obtain, verify, and record information that identifies the Obligated Parties, which information includes the name and address of the Obligated Parties and other information that will allow such Credit Provider to identify the Obligated Parties in accordance with the Patriot Act.

Section 15.18 Joint and Several Liability. All Loans, upon funding, shall be deemed to be jointly funded to and received by the Borrowers. Each Borrower jointly and severally agrees to pay, and shall be jointly and severally liable under this Agreement for, all Obligations, regardless of the manner or amount in which proceeds of Loans are used, allocated, shared, or disbursed by or among the Borrowers themselves, or the manner in which either Agent and/or any Lender accounts for such Loans or other extensions of credit on its books and records. Each Borrower shall be liable for all amounts due to either of the Agents and/or any Lender under this

Agreement, regardless of which Borrower actually receives Loans or other extensions of credit hereunder or the amount of such Loans and extensions of credit received or the manner in which such Agent and/or such Lender accounts for such Loans or other extensions of credit on its books and records. Each Borrower's Obligations with respect to Loans and other extensions of credit made to it, and such Borrower's Obligations arising as a result of the joint and several liability of such Borrower hereunder, with respect to Loans made to the other Borrowers hereunder, shall be separate and distinct obligations, but all such Obligations shall be primary obligations of such Borrower. The Borrowers acknowledge and expressly agree with each Agent and each Lender that the joint and several liability of each Borrower is required solely as a condition to, and is given solely as inducement for and in consideration of, credit or accommodations extended or to be extended under the Loan Documents to any or all of the other Borrowers and is not required or given as a condition of extensions of credit to such Borrower. Each Borrower's obligations under this Agreement and as an obligor under a Guaranty Agreement shall be separate and distinct obligations. Each Borrower's obligations under this Agreement shall, to the fullest extent permitted by law, be unconditional irrespective of (a) the validity or enforceability, avoidance, or subordination of the Obligations of any other Borrower or of any promissory note or other document evidencing all or any part of the Obligations of any other Borrower, (b) the absence of any attempt to collect the Obligations from any other Borrower, any Guarantor, or any other security therefor, or the absence of any other action to enforce the same, (c) the waiver, consent, extension, forbearance, or granting of any indulgence by the Administrative Agent, the Collateral Agent and/or any Lender with respect to any provision of any instrument evidencing the Obligations of any other Borrower or Guarantor, or any part thereof, or any other agreement now or hereafter executed by any other Borrower or Guarantor and delivered to the Administrative Agent, the Collateral Agent and/or any Lender, (d) the failure by the Collateral Agent, the Administrative Agent and/or any Lender to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations of any other Borrower or Guarantor, (e) the Administrative Agent's, the Collateral Agent's and/or any Lender's election, in any proceeding instituted under the Bankruptcy Code, or the application of Section 1111(b)(2) of the Bankruptcy Code, (f) any borrowing or grant of a security interest by any other Borrower, as debtor-in-possession under Section 364 of the Bankruptcy Code, (g) the disallowance of all or any portion of the Administrative Agent's, the Collateral Agent's and/or any Lender's claim(s) for the repayment of the Obligations of any other Borrower under Section 502 of the Bankruptcy Code, or (h) any other circumstances that might constitute a legal or equitable discharge or defense of a Guarantor or of any other Borrower. With respect to any Borrower's Obligations arising as a result of the joint and several liability of the Borrowers hereunder with respect to Loans or other extensions of credit made to any of the other Borrowers hereunder, such Borrower waives, until the Obligations shall have been paid in full and this Agreement shall have been terminated, any right to enforce any right of subrogation or any remedy that the Collateral Agent, the Administrative Agent and/or any Lender now has or may hereafter have against any other Borrower, any endorser or any Guarantor of all or any part of the Obligations, and any benefit of, and any right to participate in, any security or collateral given to the Administrative Agent, the Collateral Agent and/or any other Credit Provider to secure payment of the Obligations or any other liability of any Borrower to any other Credit Provider. Upon any Event of Default, either of the Agents may proceed directly and at once, without notice, against any Borrower to collect and recover the full amount, or any portion of the Obligations, without first proceeding against any other Borrower or any

other Person, or against any security or collateral for the Obligations. Each Borrower consents and agrees that neither the Collateral Agent nor the Administrative Agent shall be under any obligation to marshal any assets in favor of any Borrower or against or in payment of any or all of the Obligations.

Section 15.19 Contribution and Indemnification among the Obligated Parties. Each Borrower is obligated to repay the Obligations as joint and several obligors under this Agreement. To the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Loans made to another Borrower hereunder or other Obligations incurred directly and primarily by any other Borrower and to the extent any other Obligated Party makes any transfer (including any payment, grant, guaranty, or granting of a Lien) pursuant to this Agreement (any such payment or transfer being referred to herein as an "Accommodation Payment"), then the Obligated Party making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Obligated Parties in an amount, for each of such other Obligated Parties, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Obligated Party's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Obligated Parties. As of any date of determination, the "Allocable Amount" of each Obligated Party shall be equal to the maximum amount of liability for Accommodation Payments that could be asserted against such Obligated Party hereunder without (a) rendering such Obligated Party "insolvent" within the meaning of Section 101 (32) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA"), (b) leaving such Obligated Party with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Obligated Party unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA. All rights and claims of contribution, indemnification, and reimbursement under this Section shall be subordinate in right of payment to the prior payment in full of the Obligations. The provisions of this Section shall, to the extent expressly inconsistent with any provision in any Loan Document, supersede such inconsistent provision. Notwithstanding the foregoing, no provision of this Agreement shall limit the liability or obligation of any Person (the "subject Person") with respect to any indebtedness, liabilities, or obligations of any Subsidiary of the subject Person.

Section 15.20 Agency of Ahern for Each Other Obligated Party. Each of the Obligated Parties (excluding Ahern) irrevocably appoints Ahern as its agent for all purposes relevant to this Agreement, including the giving and receipt of notices and execution and delivery of all documents, instruments, and certificates contemplated herein (including execution and delivery to the Agents of Borrowing Base Certificates) and all modifications hereto. Any acknowledgment, consent, direction, certification, or other action that might otherwise be valid or effective only if given or taken by all or any of the Obligated Parties or acting singly, shall be valid and effective if given or taken only by Ahern, whether or not any of the other Obligated Parties joins therein, and the Agents and the Lenders shall have no duty or obligation to make further inquiry with respect to the authority of Ahern under this Section 15.20, provided that nothing in this Section 15.20 shall limit the effectiveness of, or the right of the Agents and the Lenders to rely upon, any notice, document, instrument, certificate, acknowledgment, consent,

direction, certification, or other action delivered by any Obligated Party pursuant to this Agreement.

Section 15.21 Additional Borrowers and Guarantors. Addition of any Person as a Borrower or a Guarantor to this Agreement is subject to approval of all of the Lenders (in the case of a Borrower) or the Majority Lenders (in the case of a Guarantor), and may be conditioned upon such requirements as they may determine in their discretion, including (a) the furnishing of such financial and other information as any such Lender may reasonably request, (b) approval by all appropriate approval authorities of each such Lender, and (c) execution and delivery by the Obligated Parties, such Person, the Agents and the Majority Lenders (as appropriate) of such agreements and other documentation (including a Guaranty Agreement and an amendment to this Agreement or any other Loan Document), and the furnishing by such Person or any of the Obligated Parties of such certificates, opinions, and other documentation, as either of the Agents or any such Lender may reasonably request. No Lender shall have any obligation to approve any such Person for addition as a party to this Agreement.

Section 15.22 Express Waivers By the Obligated Parties In Respect of Cross Guaranties and Cross Collateralization. Each Obligated Party agrees as follows:

(a) Each Obligated Party hereby waives: (i) notice of acceptance of this Agreement; (ii) notice of the making of any Loans, the issuance of any Letter of Credit, or any other financial accommodations made or extended under the Loan Documents or the creation or existence of any Obligations; (iii) notice of the amount of the Obligations, subject, however, to such Obligated Party's right to make inquiry of the Administrative Agent to ascertain the amount of the Obligations at any reasonable time; (iv) notice of any adverse change in the financial condition of any other Obligated Party or of any other fact that might increase such Obligated Party's risk with respect to such other Obligated Party under the Loan Documents; (v) notice of presentment for payment, demand, protest, and notice thereof as to any promissory notes or other instruments among the Loan Documents; and (vii) all other notices (except if such notice is specifically required to be given to such Obligated Party hereunder or under any of the other Loan Documents to which such Obligated Party is a party) and demands to which such Obligated Party might otherwise be entitled.

(b) Each Obligated Party hereby waives the right by statute or otherwise to require any Credit Provider to institute suit against any other Obligated Party or to exhaust any rights and remedies that any Credit Provider has or may have against any other Obligated Party. Each Obligated Party further waives any defense arising by reason of any disability or other defense of any other Obligated Party (other than the defense that the Obligations shall have been fully and finally performed and indefeasibly paid) or by reason of the cessation from any cause whatsoever of the liability of any such Obligated Party in respect thereof.

(c) Each Obligated Party hereby waives and agrees not to assert against any Credit Provider: (i) any defense (legal or equitable), setoff, counterclaim, or claim that such Obligated Party may now or at any time hereafter have against any other Obligated Party or any other party liable under any of the Loan Documents; (ii) any defense, setoff,

counterclaim, or claim of any kind or nature available to any other Obligated Party against any Credit Provider, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of any of the Obligations or any security therefor; (iii) any right or defense arising by reason of any claim or defense based upon an election of remedies by any Credit Provider under any Requirement of Law; or (iv) the benefit of any statute of limitations affecting any other Obligated Party's liability hereunder.

(d) Each Obligated Party consents and agrees that, without notice to or by such Obligated Party and without affecting or impairing the obligations of such Obligated Party hereunder, each of the Agents may (subject to any requirement for consent of any of the Lenders to the extent required by this Agreement), by action or inaction: (i) compromise, settle, extend the duration or the time for the payment of, or discharge the performance of, or may refuse to or otherwise not enforce the Loan Documents; (ii) release all or any one or more parties to any one or more of the Loan Documents or grant other indulgences to any other Obligated Party in respect thereof; (iii) amend or modify in any manner and at any time (or from time to time) any of the Loan Documents; or (iv) release or substitute any Person liable for payment of any of the Obligations, or enforce, exchange, release, or waive any security for any of the Obligations or any Guaranty of the Obligations.

Each Obligated Party represents and warrants that such Obligated Party is currently informed of the financial condition of all other Obligated Parties and all other circumstances that a diligent inquiry would reveal and that bear upon the risk of nonpayment of the Obligations. Each Obligated Party further represents and warrants that such Obligated Party has read and understands the terms and conditions of the Loan Documents. Each Obligated Party agrees that no Credit Provider has any responsibility to inform any Obligated Party of the financial condition of any other Obligated Party or of any other circumstances that bear upon the risk of nonpayment or nonperformance of the Obligations.

Section 15.23 Intercreditor Agreements. EACH CREDIT PROVIDER HEREBY GRANTS TO THE COLLATERAL AGENT ALL REQUISITE AUTHORITY TO ENTER INTO OR OTHERWISE BECOME BOUND BY EACH OF THE INTERCREDITOR AGREEMENT (AND AN INTERCREDITOR AGREEMENT ENTERED INTO IN CONNECTION WITH ANY REFINANCING SECOND LIEN DEBT) AND THE GE INTERCREDITOR AGREEMENT AND TO BIND THE CREDIT PROVIDERS THERETO BY THE COLLATERAL AGENT'S ENTERING INTO OR OTHERWISE BECOMING BOUND THEREBY, AND NO FURTHER CONSENT OR APPROVAL ON THE PART OF THE CREDIT PROVIDERS IS OR WILL BE REQUIRED IN CONNECTION WITH THE PERFORMANCE OF EITHER THE INTERCREDITOR AGREEMENT (OR ANY INTERCREDITOR AGREEMENT ENTERED INTO IN CONNECTION WITH ANY REFINANCING SECOND LIEN DEBT) OR THE GE INTERCREDITOR AGREEMENT.

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IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first above written.

OBLIGATED PARTIES:

AHERN RENTALS, INC.

By: /s/ HOWARD BROWN

Name: Howard Brown

Title: Chief Financial Officer

ADMINISTRATIVE AGENT:

BANK OF AMERICA, N. A.

By: /s/ ROBERT SCALZITTI

Name: Robert Scalzitti

Title: Vice President

COLLATERAL AGENT:

WACHOVIA BANK, NATIONAL
ASSOCIATION

By: /s/ JOHN T. TRAINOR

Name: John T. Trainor

Title: Director

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LENDERS:

BANK OF AMERICA, N.A.

By: /s/ ROBERT SCALZITTI

Name: Robert Scalzitti

Title: Vice President

Address for Notices:

Bank of America, N.A.

335 Madison Avenue

New York, New York 10017

Attn: Business Capital: URGENT

Telecopy: (212) 503-7330

WACHOVIA BANK, NATIONAL
ASSOCIATION

By: /s/ JOHN T. TRAINOR

Name: John T. Trainor

Title: Director

Address for Notices:

Wachovia Bank, National Association
One Wachovia Center
301 S. College Street
Charlotte, NC 28202
Mail Code: NC0479
Attn: John Trainor
Telecopy: (704) 374-2703

KEYBANK NATIONAL ASSOCIATION

By: /s/ CHRIS MOHLER

Name: Chris Mohler

Title: Vice President

Address for Notices:

KeyBank National Association
1675 Broadway, Suite 500
Denver, Colorado 80202
Attn: Chris Mohler
Telecopy: (720) 904-4515

PNC BANK, NATIONAL ASSOCIATION

By: /s/ THANWANTIE SOMAR

Name: Thanwantie Somar

Title: AVP

Address for Notices:

PNC Bank, National Association

70 East 55th Street

New York, New York 10022

Attn: Kysa Pierre-Louis

Telecopy: (646) 497-0324

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COMERICA BANK

By: /s/ MICHAEL T. RODGERS

Name: Michael T. Rodgers

Title:

Address for Notices:

Comerica Bank
Construction & Industrial Equipment
Lending
1601 Elm Street, 2nd Floor
Dallas, Texas 75201
Attn: Michael T. Rodgers
Telecopy: (214) 969-6534

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EXHIBIT
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EXHIBIT
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INTERCREDITOR AGREEMENT

among

AHERN RENTALS, INC.,
as Company

and

WACHOVIA BANK, NATIONAL ASSOCIATION,
as First Lien Collateral Agent

and

WELLS FARGO BANK, N.A.,
as Trustee, as Second Lien Collateral Agent

and

WACHOVIA BANK, NATIONAL ASSOCIATION,
as Control Agent

Dated as of August 18, 2005

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INTERCREDITOR AGREEMENT

This INTERCREDITOR AGREEMENT, is dated as of August 18, 2005, and entered into by and among AHERN RENTALS, INC., a Nevada corporation (“Company”), and WACHOVIA BANK, NATIONAL ASSOCIATION, in its capacity as collateral agent for the holders of the First Lien Obligations (as defined below), including its successors and assigns in such capacity from time to time (the “First Lien Collateral Agent”), and WELLS FARGO BANK, N.A., as Trustee under the Indenture (as defined below), in its capacity as collateral trustee for the holders of the Second Lien Obligations (as defined below), including its successors and assigns in such capacity from time to time (the “Second Lien Collateral Agent”), and WACHOVIA BANK, NATIONAL ASSOCIATION, in its capacity as control agent for the First Lien Collateral Agent and the Second Lien Collateral Agent, including its successors and assigns in such capacity from time to time (the “Control Agent”). Capitalized terms used herein but not otherwise defined herein have the meanings set forth in Section 1 below.

RECITALS

WHEREAS, Company, as Borrower, the lenders party thereto, Bank of America, N.A., as administrative agent, and First Lien Collateral Agent have entered into that certain Amended and Restated Loan and Security Agreement, dated as of the date hereof, providing for a revolving credit facility to the Company (as amended, restated, supplemented, modified or Refinanced from time to time, the “Initial First Lien Credit Agreement”);

WHEREAS, Company and Trustee (as defined below) have entered into that certain Indenture dated as of the date hereof providing for the issuance by Company of the Notes (as defined below) (as amended, restated, supplemented, modified or Refinanced from time to time, the “Indenture”);

WHEREAS, the obligations of Company under the Initial First Lien Credit Agreement, any Hedging Obligations owing to any of the First Lien Claimholders (or any of their respective affiliates) and any other Bank Products Obligations owing to any of the First Lien Claimholders (or any of their respective affiliates) will be secured by substantially all of the assets of Company pursuant to the terms of the First Lien Collateral Documents;

WHEREAS, the obligations of Company under the Indenture will be secured by substantially all of the assets of Company pursuant to the terms of the Second Lien Collateral Documents;

WHEREAS, the First Lien Credit Documents and the Second Lien Note Documents provide, among other things, that the parties thereto shall set forth in this Agreement their respective rights and remedies with respect to the Collateral; and

WHEREAS, in order to induce the First Lien Claimholders to consent to Company incurring the Second Lien Obligations and to induce the First Lien Claimholders to extend credit and other financial accommodations to or for the benefit of Company, the Second Lien Collateral Agent, on behalf of the Second Lien Claimholders, has agreed to the lien subordination, intercreditor and other provisions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

SECTION A. Definitions.

1.1 Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

“ACH Transactions” means any cash management, disbursement or related services, including overdrafts and the automatic clearing house transfer of funds, by Bank or Wachovia Bank, National Association for the account of the Company or any other Grantor.

“Affiliate” means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person or which owns, directly or indirectly, 5% or more of the outstanding equity interest of such Person. A Person shall be deemed to control another Person if the controlling Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, by contract, or otherwise.

“Agent Related Persons” means, as the context requires, the First Lien Collateral Agent and the Second Lien Collateral Agent, together with their respective Affiliates, and the officers, directors, employees, counsel, representatives, agents and attorneys-in-fact of the First Lien Collateral Agent and the Second Lien Collateral Agent and such respective Affiliates.

“Agreement” means this Intercreditor Agreement, as amended, renewed, extended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“Bank” means Bank of America, N.A., a national banking association, or any successor entity thereto.

“Bank Products Obligations” means all debts, liabilities and obligations of any Grantor now or hereafter arising with respect to any one or more of the following types of services or facilities extended to any Grantor by any First Lien Claimholder or any Affiliate of any First Lien Claimholder: (i) credit cards; (ii) ACH Transactions; (iii) cash management or related services, including controlled disbursement services; (iv) Hedge Agreements; and (v) foreign exchange.

“Bankruptcy Code” means title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

“Bankruptcy Law” means the Bankruptcy Code and all other liquidation, receivership, moratorium, conservatorship, assignment for the benefit of creditors, insolvency or similar federal, state or foreign laws for the relief of debtors.

“Business Day” means (a) any day that is not a Saturday, Sunday, or a day on which banks in New York, New York or Charlotte, North Carolina are required or permitted to be

closed, and (b) with respect to all notices, determinations, fundings and payments in connection with the LIBOR Rate or LIBOR Rate Revolving Loans (in each case as defined in the First Lien Credit Agreement), any day that is a Business Day pursuant to clause (a) above and that is also a day on which trading in Dollars (as defined in the Credit Agreement) is carried on by and between banks in the London interbank market.

“Capital Stock” means any and all shares, interests, participations or other equivalents (however designated) of capital stock, other equity interests or any and all equivalent ownership interests in a Person, and any and all warrants, rights, options to purchase or other rights to acquire any of the foregoing.

“Collateral” means all of the assets and property of any Grantor, whether tangible or intangible, constituting both First Lien Collateral and Second Lien Collateral.

“Company” has the meaning set forth in the introductory paragraph of this Agreement.

“Control Agent” has the meaning set forth in the introductory paragraph of this Agreement.

“Control Agent Vehicle Collateral” has the meaning set forth in Section 5.5.

“Control Collateral” means any Collateral consisting of any Certificated Security, Instrument, Investment Property (each as defined in the Uniform Commercial Code), cash, motor vehicles, and any other Collateral as to which a first priority Lien shall or may be perfected through possession or control by the secured party or any agent or bailee therefor.

“DIP Financing” has the meaning set forth in Section 6.1.

“Discharge of First Lien Obligations” means, except to the extent otherwise provided in Section 5.6 and Section 6.6 and subject to the second sentence of Section 6.7, the satisfaction of all of the following: (i) payment in full in cash or cash equivalents acceptable to the First Lien Lenders of (x) the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not a claim for such interest is, or would be, allowed in such Insolvency or Liquidation Proceeding) and premium, if any, on all First Lien Obligations (other than Hedging Obligations and other Bank Products Obligations) and (y) all other First Lien Obligations (other than Hedging Obligations and other Bank Products Obligations) and termination or expiration without replacement of all commitments to lend or otherwise extend credit under the First Lien Credit Documents, (ii) cancellation or cash collateralization (at the lower of (a) 110% of the aggregate undrawn amount and (b) the percentage of the aggregate undrawn amount required for release of liens under the terms of the applicable First Lien Credit Document) of all letters of credit issued under the First Lien Credit Documents and (iii) payment in full in cash of all of the Hedging Obligations and the other Bank Products Obligations to the extent due and payable at such time and either or a combination of the following clauses (x) and (y) at such time (x) cash collateralization of all of the Hedging Obligations and the other Bank Products Obligations not due and payable at such time in an amount reasonably satisfactory to the First Lien Collateral Agent (determined as if the relevant Hedge Agreement or other service or facility were terminated at such time or, in the case of Bank Products Obligations relating to credit cards,

based upon the maximum exposure with respect to all credit cards at such time) and/or (y) making of other arrangements at such time with respect to all of the Hedging Obligations and the other Bank Products Obligations not due and payable at such time (which arrangements shall be reasonably satisfactory to the First Lien Collateral Agent and the parties to the agreements relating to such Hedging Obligations and other Bank Products Obligations), subject, with respect to the aggregate principal amount of the items set forth in the foregoing clauses (i) through (ii), to the limitations set forth in the definition of Maximum First Lien Principal Indebtedness.

“Disposition” has the meaning set forth in Section 5.1(a)(ii).

“Exercise of Remedies” has the meaning set forth in Section 5.1(a)(i).

“First Lien Claimholders” means, at any relevant time, the holders of First Lien Obligations at such time, including without limitation and in any event the First Lien Lenders and any agent under the First Lien Credit Agreement (including, without limitation, the First Lien Collateral Agent).

“First Lien Collateral” means all of the assets and property of any Grantor, whether real, personal or mixed, with respect to which a Lien is granted as security for any First Lien Obligations.

“First Lien Collateral Agent” has the meaning set forth in the introductory paragraph of this Agreement.

“First Lien Collateral Documents” means the Loan Documents (as defined in the First Lien Credit Agreement as amended from time to time in accordance with the terms thereof) and any other agreement, document or instrument pursuant to which a Lien is granted securing any First Lien Obligations or under which rights or remedies with respect to such Liens are governed.

“First Lien Credit Agreement” means (i) the Initial First Lien Credit Agreement and (ii) any other credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument that includes a Lien Priority Confirmation evidencing or governing the terms of any indebtedness or other financial accommodation that has been incurred to extend, increase (subject to the limitations set forth herein), Refinance in whole or in part the indebtedness and other obligations outstanding under the (x) Initial First Lien Credit Agreement or (y) any subsequent First Lien Credit Agreement that includes a Lien Priority Confirmation unless such agreement or instrument expressly provides that it is not intended to be and is not a First Lien Credit Agreement hereunder. Any reference to the First Lien Credit Agreement hereunder shall be deemed a reference to any First Lien Credit Agreement then in existence.

“First Lien Credit Documents” means the First Lien Credit Agreement and the other Loan Documents (as defined in the First Lien Credit Agreement, as amended from time to time in accordance with the terms thereof) and each of the other agreements, documents and instruments providing for or evidencing any other First Lien Obligation, and any other document or instrument executed or delivered at any time in connection with any First Lien Obligations, including any intercreditor or joinder agreement among holders of First Lien Obligations, to the

extent such are effective at the relevant time, as each may be modified from time to time in accordance with this Agreement.

“First Lien Lenders” means the “Lenders” under and as defined in the First Lien Credit Agreement.

“First Lien Obligations” means all Obligations outstanding under (i) the First Lien Credit Agreement and (ii) the other First Lien Credit Documents (including, without limitation and in any event, all Hedging Obligations and other Bank Products Obligations owing to any First Lien Claimholder or any affiliate thereof); provided that for purposes of this Agreement (but subject to the immediately succeeding sentence), with respect to the aggregate principal amount of, without duplication, any revolving credit loans, letters of credit, term loans, bonds, debentures, notes or similar instruments outstanding under the First Lien Credit Agreement or any other First Lien Credit Document (or any Refinancing thereof), only that portion of such aggregate principal amount up to the greater of (I) \$175,000,000 and (II) the sum of (i) 85% of accounts receivable, plus (ii) the lesser of (A) 85% of the net orderly liquidation value of rental and sale equipment and other equipment (including transportation equipment but excluding aircraft) and (B) 95% of the net book value of rental and sale equipment and other equipment (including transportation equipment but excluding aircraft), plus (iii) the lesser of (A) 85% of the net orderly liquidation value of spare parts and merchandise inventory and (B) 60% of the net book value of spare parts and merchandise inventory, in the case of each of (I) and (II) less (x) the aggregate amount of all Net Proceeds of Asset Sales (as such terms are defined in the Indenture as in effect on the date hereof) applied by the Company or any of its subsidiaries since the date of this Agreement to repay principal on loans under the First Lien Credit Agreement or any other First Lien Credit Documents and effect a corresponding commitment reduction thereunder and (y) the amount of Second Lien Obligations incurred after the date of the Indenture the net proceeds of which are used to repay any First Lien Obligations and effect a corresponding commitment reduction thereunder (such maximum aggregate principal amount under this proviso, the “Maximum First Lien Principal Indebtedness”), shall constitute First Lien Obligations. Notwithstanding anything to the contrary contained in the previous sentence of this definition, in any event the aggregate principal amount of any and all revolving credit loans, letters of credit, term loans, bonds, debentures, notes or similar instruments outstanding under the First Lien Credit Agreement or any other First Lien Credit Document (or any Refinancing thereof) shall be deemed not to exceed the Maximum First Lien Principal Indebtedness (and shall be deemed to be First Lien Obligations) if (x) the First Lien Collateral Agent or any other First Lien Claimholder shall have received a representation from Company or any other Grantor in any of the First Lien Credit Documents evidencing, governing or otherwise relating to such Obligations (or a certificate from an authorized officer of Company or another Grantor delivered in connection with any of such First Lien Credit Documents) to the effect of any of the following: that such financial accommodations do not exceed the Maximum First Lien Principal Indebtedness or do not violate the debt incurrence limits set forth in the Indenture or that such Obligations constitute “First Lien Obligations” (in each instance, whether or not such Obligations were at any time determined not to have been permitted to be incurred under the Indenture or to have exceeded the Maximum First Lien Principal Indebtedness) and (y) the First Lien Collateral Agent or such other First Lien Claimholder, as the case may be, relied in good faith upon such representation or certificate in extending credit to Company or any other Grantor. For the purposes of the definition of Maximum First Lien Principal Indebtedness and the proviso in the second preceding sentence, all

letters of credit will be deemed to have a principal amount equal to the maximum potential liability of the Company thereunder and all Hedging Obligations and other Bank Products Obligations shall be valued at zero.

“GAAP” means generally accepted accounting principles and practices set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the Closing Date.

“Grantor” means the Company and any other Person (other than a First Lien Claimholder or a Second Lien Claimholder) that may from time to time hereafter execute and deliver a First Lien Collateral Document or a Second Lien Collateral Document.

“Hedge Agreement” means any and all transactions, agreements or documents now existing or hereafter entered into, which provides for an interest rate, credit, commodity or equity swap, cap, floor, collar, forward foreign exchange transaction, currency swap, cross currency rate swap, currency option, or any combination of, or option with respect to, these or similar transactions, for the purpose of hedging the Company’s or any other Grantor’s exposure to fluctuations in interest or exchange rates, loan, credit exchange, security or currency valuations or commodity prices.

“Hedging Obligation” means any obligation of any Grantor pursuant to any Hedge Agreements.

“Indenture” has the meaning set forth in the recitals hereto and includes any other credit agreement, loan agreement, note agreement, promissory note, indenture, or other agreement or instrument evidencing or governing the terms of any indebtedness or other financial accommodation that has been incurred to extend, increase, Refinance in whole or in part the indebtedness and other obligations outstanding under the Indenture or other agreement or instrument referred to above in this definition, subject to the limitations set forth herein and only to the extent permitted hereby. Any reference to the Indenture hereunder shall be deemed a reference to any Indenture then in existence.

“Initial First Lien Credit Agreement” has the meaning set forth in the recitals hereto.

“Insolvency or Liquidation Proceeding” means (i) any voluntary or involuntary case or proceeding under the Bankruptcy Code or any other Bankruptcy Law with respect to any Grantor, (ii) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any Grantor or with respect to a material portion of their respective assets, (iii) any liquidation, dissolution, reorganization or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (iv) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of any Grantor.

“Lien” means: (a) any interest in property securing an obligation owed to, or a claim by, a Person other than the owner of the property, whether such interest is based on the common law,

statute, or contract, and including a security interest, charge, claim, or lien arising from a mortgage, deed of trust, encumbrance, pledge, hypothecation, assignment, deposit arrangement, agreement, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes; (b) to the extent not included under clause (a), any reservation, exception, encroachment, easement, right-of-way, covenant, condition, restriction, lease or other title exception or encumbrance affecting property; and (c) any contingent or other agreement to provide any of the foregoing.

“Lien Priority Confirmation” shall have the meaning assigned to such term in the Indenture as in effect on the date hereof.

“Maximum First Lien Principal Indebtedness” has the meaning set forth in the definition of “First Lien Obligations”.

“Notes” means the senior secured notes due 2013 issued by Company pursuant to the Indenture, as amended, restated, supplemented or substituted for from time to time.

“Obligations” means all present and future loans, advances, liabilities, obligations, covenants, duties, and debts owing by the Company or any other Grantor to the First Lien Collateral Agent, any First Lien Lender, any other First Lien Claimholders, the Second Lien Collateral Agent, and/or any Second Lien Claimholder, arising under or pursuant to the First Lien Credit Agreement or the Indenture or any of the other First Lien Credit Documents or Second Lien Note Documents, whether or not evidenced by any note or other instrument or document, whether arising from an extension of credit, opening of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, as principal or guarantor, and including all principal, interest (including any interest accrued after commencement of an Insolvency or Liquidation Proceeding), charges, expenses, fees, attorneys’ fees, filing fees and any other sums chargeable to the Company or any other Grantor under any First Lien Credit Document or Second Lien Note Document. “Obligations” includes, without limitation and in any event, (a) all debts, liabilities, and obligations now or hereafter arising from or in connection with each Letter of Credit (as defined in the First Lien Credit Agreement) and (b) all Hedging Obligations and other Bank Products Obligations owing to any First Lien Claimholder or any affiliate thereof.

“Parity Lien” means a Lien granted by a security document to the Second Lien Collateral Agent, at any time, upon any property of the Company or any other Grantor to secure Parity Lien Obligations.

“Parity Lien Obligations” means obligations under:

- (1) the Notes issued on the date of this Agreement;
- (2) up to \$5.0 million in aggregate principal amount of indebtedness (including Additional Notes (as defined in the Indenture as in effect on the date hereof)) at any time outstanding that is secured equally and ratably with the Notes by a Parity Lien that was permitted to be incurred and so secured under each applicable First Lien Collateral Document and Second Lien Collateral Document; provided that the Company incurs such indebtedness pursuant to Section 4.09(a) of the Indenture; and

(3) any other indebtedness that would be permitted to be incurred pursuant to Section 4.09(a) of the Indenture to the extent that the Fixed Charge Coverage Ratio (as defined in the Indenture) would have been at least 3.00 to 1.00 at the time such indebtedness is incurred, determined on a pro forma basis (including pro forma application of the net proceeds therefrom), as if the additional indebtedness had been incurred at the beginning of such four-quarter period.

“Person” means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governmental authorities.

“Recovery” has the meaning set forth in Section 6.6.

“Refinance” means, in respect of any indebtedness, to refinance, replace or repay, or to issue other indebtedness, in exchange or replacement for, such indebtedness. “Refinanced” and “Refinancing” shall have correlative meanings.

“Required Lenders” means the “Majority Lenders” (as defined in the First Lien Credit Agreement).

“Second Lien Claimholders” means, at any relevant time, the holders of the Second Lien Obligations, the Second Lien Collateral Agent and the Trustee, including without limitation the holders of the Notes and any agent or trustee under the Indenture.

“Second Lien Collateral” means all of the assets and property of any Grantor, whether real, personal or mixed, with respect to which a Lien is granted as security for any Second Lien Obligations.

“Second Lien Collateral Agent” has the meaning set forth in the introductory paragraph of this Agreement.

“Second Lien Collateral Documents” means the Security Documents (as defined in the Indenture as amended from time to time in accordance herewith) and any other agreement, document or instrument pursuant to which a Lien is granted securing any Second Lien Obligations or under which rights or remedies with respect to such Liens are governed.

“Second Lien Note Documents” means the Indenture, the Notes and the Second Lien Collateral Documents and each of the other agreements, documents and instruments providing for or evidencing any other Second Lien Obligation, and any other document or instrument executed or delivered at any time in connection with any Second Lien Obligations, including any intercreditor or joinder agreement among holders of Second Lien Obligations, to the extent such are effective at the relevant time, as each may be modified from time to time in accordance with this Agreement.

“Second Lien Obligations” means all Obligations outstanding under the Second Lien Note Documents. “Second Lien Obligations” shall include (i) all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) in

accordance with the rate specified in the relevant Second Lien Note Document, (ii) all fees, costs and charges incurred in connection with the Second Lien Note Documents and provided for thereunder, in each case whether before or after commencement of an Insolvency or Liquidation Proceeding irrespective of whether any claim for such interest, fees, costs or charges is allowed as a claim in such Insolvency or Liquidation Proceeding and (iii) all other Parity Lien Obligations.

“Subsidiary” of a Person means any corporation, association, partnership, limited liability company, joint venture or other business entity of which more than fifty percent (50%) of the voting stock or other equity interests (in the case of Persons other than corporations), is owned or controlled directly or indirectly by the Person, or one or more of the Subsidiaries of the Person, or a combination thereof. Unless the context otherwise clearly requires, references herein to a “Subsidiary” refer to a Subsidiary of the Company.

“Trustee” means Wells Fargo Bank, N.A., as Trustee under the Indenture, and any successor trustee thereunder.

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

1.2 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified, (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Exhibits or Sections shall be construed to refer to Exhibits or Sections of this Agreement and (v) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION B. Lien Priorities.

2.1 Relative Priorities. Notwithstanding the date, manner or order of grant, attachment or perfection of any Liens securing the Second Lien Obligations granted on the Collateral or of any Liens securing the First Lien Obligations granted on the Collateral and notwithstanding any provision of the UCC, or any applicable law or the Second Lien Note Documents, the Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, hereby agrees that: (a) any Lien on the Collateral securing any First Lien Obligations now or hereafter held by or on behalf of the First Lien Collateral Agent or any other First Lien Claimholders or any agent or trustee therefor, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien on the

Collateral securing any of the Second Lien Obligations; and (b) any Lien on the Collateral now or hereafter held by or on behalf of the Second Lien Collateral Agent, any other Second Lien Claimholders or any agent or trustee therefor regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Collateral securing any First Lien Obligations.

2.2 Failure to Perfect. All Liens on the Collateral securing any First Lien Obligations shall be and remain senior in all respects and prior to all Liens on the Collateral securing any Second Lien Obligations for all purposes, notwithstanding any failure of the First Lien Collateral Agent or any of the other First Lien Claimholders to adequately perfect its security interests in the Collateral, the subordination of any Lien on the Collateral securing any First Lien Obligations to any Lien securing any other obligation of any Grantor, or the avoidance, invalidation or lapse of any Lien on the Collateral securing any First Lien Obligations.

2.3 Nature of First Lien Obligations. The Second Lien Collateral Agent, for itself and on behalf of the other Second Lien Claimholders, acknowledges that (a) the First Lien Obligations are revolving in nature, (b) the amount thereof that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed, (c) the terms of the First Lien Obligations may be modified, extended or amended from time to time, and (d) subject to the limitations on the aggregate principal amount of First Lien Obligations, the aggregate amount of the First Lien Obligations may be increased or Refinanced, in either event, without notice to or consent by the Second Lien Claimholders except as provided in Sections 5.3(a) and 5.6 with respect to Refinancings and without affecting the provisions hereof. The lien priorities provided in Sections 2.1 and 2.2 shall not be altered or otherwise affected by any such amendment, modification, supplement, extension, repayment, reborrowing, increase, replacement, renewal, restatement or Refinancing of either the First Lien Obligations or the Second Lien Obligations, or any portion thereof.

2.4 Prohibition on Contesting Liens. Each of the Second Lien Collateral Agent, for itself and on behalf of each other Second Lien Claimholder, and the First Lien Collateral Agent, for itself and on behalf of each other First Lien Claimholder, agrees that it shall not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the priority, validity or enforceability of a Lien held by or on behalf of any of the other First Lien Claimholders in the First Lien Collateral or by or on behalf of any of the Second Lien Claimholders in the Second Lien Collateral, as the case may be; provided that nothing in this Agreement shall be construed to prevent or impair the rights of the First Lien Collateral Agent or any other First Lien Claimholder to enforce this Agreement, including the priority of the Liens securing the First Lien Obligations as provided in Sections 2.1 and 3.1.

2.5 No New Liens.

(a) Limitation on Other Collateral for First Lien Claimholders. So long as any Second Lien Obligations remain outstanding, and subject to Section 6, each Grantor agrees not to grant any Lien on any of its assets, or permit any of its Subsidiaries to grant a Lien on any of its assets, in favor of the First Lien Collateral Agent or the other First Lien Claimholders unless it, or such Subsidiary, has granted a similar Lien on such assets in favor of the Second Lien

Collateral Agent or the Second Lien Claimholders. If the First Lien Collateral Agent or any other First Lien Claimholder shall (nonetheless) acquire any Lien on any assets of any Grantor or any of their respective Subsidiaries securing any First Lien Obligations which assets are not also subject to the Lien of the Second Lien Collateral Agent under the Second Lien Collateral Documents, then the First Lien Collateral Agent (or the relevant other First Lien Claimholder) shall, without the need for any further consent of any other Person and notwithstanding anything to the contrary in any other First Lien Document, (x) hold and be deemed to have held such Lien and security interest for the benefit of the Second Lien Collateral Agent as security for the Second Lien Obligations subject to the priorities set forth herein, with any amounts received in respect thereof subject to distribution and turnover under Section 4 or (y) release such Lien.

(b) Limitation on other Collateral for Second Lien Claimholders. Until the date upon which the Discharge of First Lien Obligations shall have occurred, (i) the Second Lien Collateral Agent agrees that, after the date hereof, except to the extent the First Lien Claimholders otherwise agree in writing, neither the Second Lien Collateral Agent nor any other Second Lien Claimholder shall acquire or hold any Lien on any assets of any Grantor or any of its Subsidiaries securing any Second Lien Obligations which assets are not also subject to the Lien of the First Lien Collateral Agent under the First Lien Collateral Documents, and (ii) each Grantor agrees not to grant any Lien on any of its assets, or permit any of its Subsidiaries to grant a Lien on any of its assets, in favor of the Second Lien Collateral Agent or any of the other Second Lien Claimholders unless it, or such Subsidiary, has granted a similar Lien on such assets in favor of the First Lien Collateral Agent or the First Lien Claimholders. If the Second Lien Collateral Agent or any Second Lien Claimholder shall (nonetheless and in breach hereof) acquire any Lien on any assets of any Grantor or any of their respective Subsidiaries securing any Second Lien Obligations which assets are not also subject to the Lien of the First Lien Collateral Agent under the First Lien Collateral Documents, then the Second Lien Collateral Agent (or the relevant other Second Lien Claimholder), shall, without the need for any further consent of any other Person and notwithstanding anything to the contrary in any other Second Lien Document, (x) hold and be deemed to have held such Lien and security interest for the benefit of the First Lien Collateral Agent as security for the First Lien Obligations or (y) release such Lien.

2.6 Similar Liens and Agreements. The parties hereto agree that it is their intention that the First Lien Collateral and the Second Lien Collateral be identical. In furtherance of the foregoing and of Section 8.10, the parties hereto agree, subject to the other provisions of this Agreement:

(a) upon request by the First Lien Collateral Agent or the Second Lien Collateral Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the First Lien Collateral and the Second Lien Collateral and the steps taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the First Lien Credit Documents and the Second Lien Note Documents; and

(b) that the documents and agreements creating or evidencing the First Lien Collateral (in the case of the First Lien Credit Agreement, to the extent relating to First Lien Collateral) and the Second Lien Collateral and guarantees for the First Lien Obligations and the Second Lien Obligations shall be in all material respects the same forms of documents other than

with respect to the senior and subordinate nature of the security interests in the Collateral securing the respective Obligations thereunder.

SECTION C. Enforcement.

3.1 Exercise of Remedies.

(a) So long as the Discharge of First Lien Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against Company or any other Grantor:

(i) the Second Lien Collateral Agent and the other Second Lien Claimholders:

(A) will not exercise or seek to exercise any rights or remedies (including any right of set-off or recoupment) with respect to any Collateral (including, without limitation, the exercise of any right under any lockbox agreement, account control agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which the Second Lien Collateral Agent or any other Second Lien Claimholder is a party) or institute or commence (or join with any other Person in commencing) any enforcement, collection, execution, levy or foreclosure action or proceeding (including, without limitation, any Insolvency or Liquidation Proceeding) with respect to any Lien held by it under the Second Lien Collateral Documents or any other Second Lien Note Document or otherwise; and

(B) will not contest, protest or object to any foreclosure proceeding or action brought by the First Lien Collateral Agent or any other First Lien Claimholder or any other exercise by the First Lien Collateral Agent or any other First Lien Claimholder of any rights and remedies relating to any of the Collateral under the First Lien Credit Documents or otherwise, provided that the respective Liens of the Second Lien Claimholders attach to the proceeds thereof, subject to the relative priorities described in Section 2 and Section 4; and

(C) will not object to the forbearance by the First Lien Collateral Agent or the other First Lien Claimholders from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the Collateral; and

(ii) subject to Section 5.1, the First Lien Collateral Agent and the other First Lien Claimholders shall have the exclusive right to enforce rights, exercise remedies (including set-off and the right to credit bid their debt) and make determinations regarding the release, disposition, or restrictions with respect to the Collateral without any consultation with or the consent of the Second Lien Collateral Agent or any other Second Lien Claimholder; provided that

(A) in any Insolvency or Liquidation Proceeding commenced by or against Company or any other Grantor, the Second Lien Collateral Agent may file a claim or statement of interest with respect to the Second Lien Obligations,

(B) the Second Lien Collateral Agent may take any action (not adverse to the Liens on the Collateral securing the First Lien Obligations or the rights of the First Lien Collateral Agent or any of the other First Lien Claimholders to exercise remedies in respect thereof) in order to preserve or protect its Lien on the Collateral,

(C) the Second Lien Claimholders shall be entitled to file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any person objecting to or otherwise seeking the disallowance of any claims of the Second Lien Claimholders, including without limitation any claims secured by the Collateral, if such claims of the Second Lien Claimholders are consistent with the provisions of this Agreement,

(D) in any Insolvency or Liquidation Proceeding, the Second Lien Claimholders shall be entitled to file any pleadings, objections, motions or agreements which assert rights or interests available to unsecured creditors of the Grantors arising under either Bankruptcy Law or applicable non-bankruptcy law, in each case in accordance with the terms of this Agreement, and

(E) in any Insolvency or Liquidation Proceeding, the Second Lien Claimholders shall be entitled to vote on any plan of reorganization, to the extent consistent with the provisions hereof.

In exercising rights and remedies with respect to the Collateral, the First Lien Collateral Agent and the other First Lien Claimholders may enforce the provisions of the First Lien Credit Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by the First Lien Collateral Agent or any of the other First Lien Claimholders to sell or otherwise dispose of Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the Uniform Commercial Code of any applicable jurisdiction and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(b) The Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, agrees that any Collateral or proceeds taken or received by it will be paid over or delivered to the First Lien Collateral Agent pursuant to Section 4.2, unless and until the Discharge of First Lien Obligations has occurred. Without limiting the generality of the foregoing, unless and until the Discharge of First Lien Obligations has occurred, except as expressly provided in the proviso in Section 3.1(a)(ii), the sole right of the Second Lien Collateral Agent and the other Second Lien Claimholders with respect to the Collateral is to hold a Lien on the Collateral pursuant to the Second Lien Collateral Documents for the period and to the extent granted therein and to receive, after the Discharge of First Lien Obligations has occurred, a share of the proceeds thereof, if any, in accordance with the terms of the Second Lien Note Documents and applicable law.

(c) Subject to the proviso in clause (ii) of Section 3.1(a), the Second Lien Collateral Agent, for itself and on behalf of the other Second Lien Claimholders, agrees that (i) the Second Lien Collateral Agent and the other Second Lien Claimholders will not take any action that would hinder, delay or impede any exercise of remedies under the First Lien Credit Documents, including any sale, lease, exchange, transfer or other disposition of the Collateral, whether by foreclosure or otherwise, and (ii) the Second Lien Collateral Agent, for itself and on behalf of the other Second Lien Claimholders, hereby waives any and all rights it or any of the other Second Lien Claimholders may have as a junior lien creditor or otherwise, to object to the manner or order in which the First Lien Collateral Agent or any of the other First Lien Claimholders seek to enforce or collect the First Lien Obligations or the Liens granted in any of the First Lien Collateral.

(d) The Second Lien Collateral Agent hereby acknowledges and agrees that no covenant, agreement or restriction contained in the Second Lien Collateral Documents or any other Second Lien Note Document shall be deemed to restrict in any way the rights and remedies of the First Lien Collateral Agent or the other First Lien Claimholders with respect to the Collateral as set forth in this Agreement and the First Lien Credit Documents.

3.2 Actions Upon Breach.

(a) If any Second Lien Claimholder, contrary to this Agreement, commences or participates in any action or proceeding against Company, any other Grantor or the Collateral, the First Lien Collateral Agent may interpose in the name of the First Lien Claimholders or in the name of Company or such Grantor the making of this Agreement as a defense or dilatory plea.

(b) Except as permitted by the proviso in Section 3.1(a)(ii), should any Second Lien Claimholder, contrary to this Agreement, in any way take, or attempt or threaten to take, any action with respect to the Collateral (including, without limitation, any attempt to realize upon or enforce any remedy with respect to this Agreement or the Collateral), or fail to take any action required by this Agreement, the First Lien Collateral Agent (in its own name) may obtain relief against such Second Lien Claimholder by injunction, specific performance and/or other appropriate equitable relief, it being understood and agreed by the Second Lien Collateral Agent on behalf of each Second Lien Claimholder that (i) the First Lien Claimholders' damages from such actions may be difficult to ascertain and may be irreparable, and (ii) the Second Lien Collateral Agent on behalf of each Second Lien Claimholder waives any defense that the First Lien Claimholders cannot demonstrate damage or be made whole by the awarding of damages.

SECTION D. Payments.

4.1 Application of Proceeds. So long as the Discharge of First Lien Obligations has not occurred, any proceeds of Collateral received in connection with the sale or other disposition of such Collateral, or collection on such Collateral upon the exercise of remedies, shall be applied by the First Lien Collateral Agent to the First Lien Obligations in such order as specified in the relevant First Lien Credit Documents. Upon the Discharge of the First Lien Obligations, the First Lien Collateral Agent shall deliver to the Second Lien Collateral Agent any proceeds of Collateral held by it in the same form as received, with any necessary endorsements or, as a court

of competent jurisdiction may otherwise direct, to be applied by the Second Lien Collateral Agent to the Second Lien Obligations in such order as specified in the Second Lien Collateral Documents.

4.2 Payment Turnover. So long as the Discharge of First Lien Obligations has not occurred, any Collateral or proceeds thereof received by the Second Lien Collateral Agent or any other Second Lien Claimholders in connection with the exercise of any right or remedy (including set-off or recoupment) in respect of the Collateral shall be segregated and held in trust by the Second Lien Collateral Agent with respect to Collateral or proceeds thereof received by it or by any other Second Lien Claimholder with respect to Collateral or proceeds thereof received by it and forthwith paid over to the First Lien Collateral Agent for the benefit of the First Lien Claimholders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The First Lien Collateral Agent is hereby authorized to make any such endorsements as agent for the Second Lien Collateral Agent or any such other Second Lien Claimholders. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms. The First Lien Collateral Agent agrees to use reasonable efforts to promptly notify the Second Lien Collateral Agent that the Discharge of First Lien Obligations has occurred; provided, that the failure of the First Lien Collateral Agent to deliver such notice or to promptly do so shall not create any liability on the First Lien Collateral Agent or any other First Lien Claimholder.

SECTION E. Other Agreements.

5.1 Releases.

(a) If, in connection with:

(i) the exercise of any First Lien Collateral Agent's remedies in respect of the Collateral, including any sale, lease, exchange, transfer or other disposition of any such Collateral, whether by direct exercise of rights by the First Lien Collateral Agent or, during the existence of an Event of Default under and as defined in the First Lien Credit Agreement, by the Company at the direction and with the consent of the First Lien Collateral Agent or the relevant First Lien Claimholders (an "Exercise of Remedies"); or

(ii) any sale, lease, exchange, transfer or other disposition of any Collateral (including motor vehicles) permitted under the terms of the First Lien Credit Documents (whether or not an Event of Default thereunder, and as defined therein, has occurred and is continuing) (a "Disposition"), or

(iii) any release of Liens on the assets of any Grantor, all of the Capital Stock of which is being released pursuant to any other provision of this Section 5.1(a);

the First Lien Collateral Agent, for itself or on behalf of any of the other First Lien Claimholders (and whether directly or through the Control Agent), releases any of its Liens on any part of the Collateral, or releases any Grantor from its obligations under its guaranty of the First Lien Obligations, in each case other than in connection with the Discharge of the First Lien Obligations, then the Liens, if any, of the Second Lien Collateral Agent, for itself or for the benefit of the other Second Lien Claimholders, on such Collateral, and the obligations of such

Grantor under its guaranty of the Second Lien Obligations, shall be automatically, unconditionally and simultaneously released (the "Second Lien Release") and the Second Lien Collateral Agent, for itself or on behalf of any such other Second Lien Claimholders, promptly shall execute and deliver to the First Lien Collateral Agent or such Grantor such termination statements, releases and other documents as the First Lien Collateral Agent or such Grantor may request to effectively confirm such release; provided, however, that the Second Lien Release shall not occur without the consent of the Second Lien Collateral Agent (x) in the case of an Exercise of Remedies, as to any Collateral the net proceeds of the disposition of which will not be applied to repay and/or cash collateralize (and, to the extent applicable, to reduce permanently commitments with respect to) the First Lien Obligations or (y) in the case of a Disposition, if the Disposition is prohibited by any provision of the Indenture (other than any provision prohibiting or limiting Dispositions during the continuance of a Default or an Event of Default under and as defined in the Indenture). For the avoidance of doubt, in connection with a disposition of Collateral by a Grantor permitted under the First Lien Credit Documents and the Second Lien Note Documents, the First Lien Collateral Agent and the Second Lien Collateral Agent shall release their respective liens in accordance with this Section 5.1.

(b) (i) With respect to all Collateral not constituting Control Agent Vehicle Collateral, until the Discharge of First Lien Obligations occurs, the Second Lien Collateral Agent, for itself and on behalf of the other Second Lien Claimholders, hereby irrevocably constitutes and appoints the First Lien Collateral Agent and any officer or agent of the First Lien Collateral Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Second Lien Collateral Agent or such Second Lien Claimholders or in the First Lien Collateral Agent's own name, from time to time in the First Lien Collateral Agent's discretion, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of this Section 5.1, including any endorsements or other instruments of transfer or release. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms. The Second Lien Collateral Agent shall not be liable or responsible for any actions or omissions of the First Lien Collateral Agent.

(ii) With respect to any Collateral constituting Control Agent Vehicle Collateral, until the Discharge of First Lien Obligations occurs, the Second Lien Collateral Agent, for itself and on behalf of the other Second Lien Claimholders, hereby irrevocably constitutes and appoints the Control Agent and any officer or agent of the Control Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Second Lien Collateral Agent or such Second Lien Claimholders, from time to time in the Control Agent's discretion, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of this Section 5.1, including any endorsements or other instruments of transfer or release. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms. The Second Lien Collateral Agent shall not be liable or responsible for any actions or omissions of the Control Agent.

(c) Until the Discharge of First Lien Obligations occurs, to the extent that the First Lien Collateral Agent for itself and on behalf of the other First Lien Claimholders (i) has released any Lien on Collateral or any Grantor from its obligation under its guaranty and any such Liens or guaranty are later reinstated or (ii) obtains any new Liens or additional guaranties from Grantors, then the Second Lien Collateral Agent for itself and on behalf of the other Second Lien Claimholders shall be granted a Lien on any such Collateral and an additional guaranty, as the case may be, subject to the priorities set forth in Section 2.

5.2 Insurance. The First Lien Collateral Agent and the Second Lien Collateral Agent shall each be named as additional insureds and as loss payee as their respective interests may appear under any insurance policies maintained from time to time by any Grantor. Until the date upon which the Discharge of First Lien Obligations shall have occurred, as between the First Lien Collateral Agent and the First Lien Claimholders, on the one hand, and the Second Lien Collateral Agent and the Second Lien Claimholders on the other, the First Lien Collateral Agent and the First Lien Claimholders shall have the sole and exclusive right (a) to adjust or settle any insurance policy or claim covering any Collateral in the event of any loss thereunder and (b) to approve any award granted in any condemnation or similar proceeding affecting any Collateral. Until the date upon which the Discharge of First Lien Obligations shall have occurred, all proceeds of any such policy and any such award in respect of any Collateral that are payable to the First Lien Collateral Agent and the Second Lien Collateral Agent shall be paid to the First Lien Collateral Agent for the benefit of the First Lien Claimholders to the extent required under the First Lien Credit Documents and thereafter to the Second Lien Collateral Agent for the benefit of the Second Lien Claimholders to the extent required under the applicable Second Lien Note Documents and then to the owner of the subject property or as a court of competent jurisdiction may otherwise direct. If the Second Lien Collateral Agent or any Second Lien Claimholder shall, at any time, receive any proceeds of any such insurance policy or any such award in contravention of this Agreement, it shall pay such proceeds over to the First Lien Collateral Agent in accordance with the terms of Section 4.2.

5.3 Amendments to First Lien Credit Documents and Second Lien Note Documents.

(a) The First Lien Credit Documents may be amended, supplemented or otherwise modified in accordance with their terms and the First Lien Credit Agreement may be Refinanced in each case, without the consent of the Second Lien Collateral Agent or the other Second Lien Claimholders; provided, however, that the holders of such Refinancing debt bind themselves in writing to the terms of this Agreement and any such amendment, supplement, modification or Refinancing shall not provide for an aggregate principal amount of, without duplication, term loans, revolving credit loans, letters of credit, bonds, debentures, notes or similar instruments (but excluding Hedging Obligations and other Bank Products Obligations) outstanding at any time in excess of the Maximum First Lien Principal Indebtedness; and provided, further, that the document governing any such Refinancing debt shall contain a Lien Priority Confirmation and a copy of such document shall be delivered to the Second Lien Collateral Agent.

(b) Until the Discharge of First Lien Obligations occurs, the Second Lien Note Documents may be amended, supplemented or otherwise modified in accordance with their terms and the Indenture and any other Parity Lien Debt may be Refinanced in each case, without the consent of the First Lien Collateral Agent or the other First Lien Claimholders provided,

however, that the holders of such Refinancing debt bind themselves in writing to the terms of this Agreement and any such amendment, supplement, modification or Refinancing shall not: (i) increase the principal amount of the Second Lien Obligations less the amount of all repayments and prepayments applied to any loans included in Second Lien Obligations or the rate of interest on any of the Second Lien Obligations, other than in connection with the imposition of the default rate of interest in accordance with the Second Lien Note Documents as in effect on the date hereof; (ii) change the dates upon which payments of principal or interest on the Second Lien Obligations are due; provided, however that the maturity date may be extended, (iii) change or add any event of default or any covenant with respect to the Second Lien Obligations, (iv) change any prepayment or redemption (whether optional or mandatory) provisions of the Second Lien Obligations, or (v) change or amend any other term of the Second Lien Note Documents if such change or amendment would result in a default under the First Lien Credit Agreement, increase the obligations of any Grantor or confer additional material rights on any Second Lien Claimholder in a manner adverse in any material respect to any Grantor or any of the First Lien Claimholders.

(c) Notwithstanding the foregoing clauses (a) and (b) of this Section 5.3, until the date upon which the Discharge of First Lien Obligations shall have occurred, without the prior written consent of the First Lien Collateral Agent, no Second Lien Collateral Document may be amended, supplemented or otherwise modified or entered into to the extent such amendment, supplement or modification, or the terms of any new Indenture or Second Lien Collateral Document, would contravene any of the terms of this Agreement.

(d) The Second Lien Collateral Agent agrees that each Second Lien Collateral Document shall include the following language or similar language acceptable to the First Lien Collateral Agent:

“Notwithstanding anything herein to the contrary, the lien and security interest granted to Wells Fargo Bank, N.A., as Trustee under the Indenture, dated as of the date hereof, providing for the issuance of senior secured notes due 2013 (the “Collateral Agent”) pursuant to this Agreement and the exercise of any right or remedy by Collateral Agent hereunder are subject to the provisions of the Intercreditor Agreement, dated as of August 18, 2005 as the same may be amended, supplemented, modified or replaced from time to time (the “Intercreditor Agreement”) among Wachovia Bank, National Association, as First Lien Collateral Agent, Wells Fargo Bank, N.A., as Second Lien Collateral Agent, Wachovia Bank, National Association, as Control Agent, and the Grantors (as defined therein) from time to time a party thereto. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern.”

In addition, the Second Lien Collateral Agent agrees that each Second Lien Collateral Document under which any Lien on real property owned by any Grantor is granted to secure any of the Second Lien Obligations covering any Collateral shall contain such other language as the First Lien Collateral Agent may reasonably request to reflect the priority of the First Lien Collateral Document covering such Collateral over such Second Lien Collateral Document.

(e) Notwithstanding the foregoing clauses (a) and (b) of this Section 5.3, until the date upon which the Discharge of First Lien Obligations shall have occurred, in the event the First Lien Collateral Agent or any of the other First Lien Claimholders enter into any amendment, waiver or consent in respect of any of the First Lien Collateral Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of any First Lien Collateral Document or changing in any manner the rights of the First Lien Collateral Agent, any of the other First Lien Claimholders or any of the Grantors thereunder (in each instance, as any of the foregoing relate to Collateral or a guaranty by any of the Grantors), then such amendment, waiver or consent shall automatically apply in a comparable manner to any comparable provision of the Second Lien Collateral Documents without the consent of the Second Lien Collateral Agent or the other Second Lien Claimholders and without any action by the Second Lien Collateral Agent or any Grantor; provided, however, (A) that no such amendment, waiver or consent shall be effective to (i) release any Lien of the Second Lien Collateral Documents, (ii) remove assets subject to the Lien of the Second Lien Collateral Documents, (iii) adversely affect the creation, perfection or priority of any such Lien, (iv) reduce the principal of, or interest or other amounts payable on, any amount payable under the Indenture or any other Second Lien Note Document, (v) postpone any date fixed for any payment of principal of, or interest or other amounts payable on, any amounts payable under the Indenture or any other Second Lien Note Document, (vi) permit any Liens on the Collateral not permitted under the Second Lien Note Documents or Section F, or (vii) impose duties on the Second Lien Collateral Agent without its consent, except, in the cases of clauses (i), (ii) and (iii), to the extent that a release of, or adverse effect on the perfection or priority of, such Lien is permitted by Section 5.1 or Section F, and (B) notice of such amendment, waiver or consent shall have been given to the Second Lien Collateral Agent no later than 10 days after its effectiveness, provided that the failure to give such notice shall not affect the effectiveness or validity thereof; and provided further that this paragraph is intended solely to set forth provisions by which the Second Lien Collateral Documents shall be automatically affected by amendments, waivers and consents given by the First Lien Collateral Agent and other First Lien Claimholders under the First Lien Credit Agreement and the First Lien Collateral Documents and is not intended to impose any liability on the First Lien Collateral Agent or other First Lien Claimholders.

5.4 Rights as Unsecured Creditors. Subject to Section 3.1 and Section 4.1, the Second Lien Collateral Agent and the other Second Lien Claimholders may exercise rights and remedies as unsecured creditors against any Grantor in accordance with the terms of the Second Lien Note Documents and applicable law. Except as provided in Section 4, nothing in this Agreement shall prohibit the receipt by the Second Lien Collateral Agent or any other Second Lien Claimholders of the required payments of interest, principal, fees, costs and expenses so long as such receipt is not the direct or indirect result of the exercise by the Second Lien Collateral Agent or any other Second Lien Claimholders of rights or remedies as a secured creditor (including set-off or recoupment) or enforcement of any Lien held by any of them. Nothing in this Agreement

impairs or otherwise adversely affects any rights or remedies the First Lien Collateral Agent or the other First Lien Claimholders may have with respect to the Collateral. In the event that any Second Lien Claimholder becomes a judgment Lien creditor as a result of its enforcement of its rights as an unsecured creditor, such judgment Lien shall be subject to the terms of this Agreement for all purposes to the same extent as all other Liens securing the Second Lien Obligations subject to this Agreement.

5.5 Control Agent for Perfection.

(a) The First Lien Collateral Agent, on behalf of itself and the other First Lien Claimholders, and the Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, each hereby appoint Wachovia Bank, National Association as its Control Agent for the limited purpose of acting as the agent on behalf of the First Lien Collateral Agent (on behalf of itself and the other First Lien Claimholders) and the Second Lien Collateral Agent (on behalf of itself and the other Second Lien Claimholders) with respect to the Control Collateral for purposes of perfecting the Liens of such parties on the Control Collateral. The Control Agent accepts such appointment and agrees to hold the Control Collateral in its possession or control (or in the possession or control of its agents or bailees) as Control Agent, and with respect to motor vehicles constituting Collateral, to be named as secured party on the certificates of title of such motor vehicles when the applicable state law allows only one party to be named as lienholder on the certificate of title (the "Control Agent Vehicle Collateral"), in each case, for the benefit of the First Lien Collateral Agent (on behalf of itself and the other First Lien Claimholders) and the Second Lien Collateral Agent (on behalf of itself and the other Second Lien Claimholders) and any permitted assignee of any thereof solely for the purpose of perfecting the security interest granted to such parties in such Control Collateral, subject to the terms and conditions of this Section 5.5.

(b) The Control Agent, the First Lien Collateral Agent, on behalf of itself and the other First Lien Claimholders, and the Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, each hereby agrees that the First Lien Collateral Agent shall have the sole and exclusive right and authority to give instructions to, and otherwise direct, the Control Agent in respect of the Control Collateral or any control agreement with respect to any Control Collateral until the date upon which the Discharge of First Lien Obligations shall have occurred and neither the Second Lien Collateral Agent nor any other Second Lien Claimholder will impede, hinder, delay or interfere with the exercise of such rights by the First Lien Collateral Agent in any respect. The Grantors hereby jointly and severally agree to pay, reimburse, indemnify and hold harmless the Control Agent to the same extent and on the same terms that the Grantors are required to do so for the First Lien Collateral Agent in accordance with the First Lien Credit Agreement. The First Lien Claimholders and the Second Lien Claimholders (but as to the Trustee only to the extent amounts have been furnished to it by the holders of the Notes or of other Second Lien Obligations or otherwise held by the Trustee under the Indenture or any other Second Lien Note Document) hereby jointly and severally agree to pay, reimburse, indemnify and hold harmless the Control Agent with respect to the First Lien Claimholders, to the same extent and on the same terms that the First Lien Claimholders are required to do so for the First Lien Collateral Agent in accordance with the First Lien Credit Agreement and, with respect to the Second Lien Claimholders, to the same extent and on the same terms that the

Second Lien Claimholders are required to do so for the Second Lien Collateral Agent in accordance with the Indenture or any of the other Second Lien Note Documents.

(c) Except as set forth below, the Control Agent shall have no obligation whatsoever to the Second Lien Collateral Agent or any other Second Lien Claimholder including, without limitation, any obligation to assure that the Control Collateral is genuine or owned by any Grantor or one of their respective Subsidiaries or to preserve rights or benefits of any Person except as expressly set forth in this Section 5.5. In acting on behalf of the Second Lien Collateral Agent and the other Second Lien Claimholders and the First Lien Collateral Agent and the other First Lien Claimholders, the duties or responsibilities of the Control Agent under this Section 5.5 shall be limited solely (i) to physically holding the Control Collateral delivered to the Control Agent by any Grantor as agent for the First Lien Collateral Agent (on behalf of itself and the other First Lien Claimholders) and the Second Lien Collateral Agent (on behalf of itself and the other Second Lien Claimholders) for purposes of perfecting the Lien held by the First Lien Collateral Agent and the Second Lien Collateral Agent and (ii) delivering such collateral as set forth in Sections 5.5(f) and (g).

(d) The rights of the Second Lien Collateral Agent shall at all times be subject to the terms of this Agreement and to the First Lien Collateral Agent's rights under the First Lien Credit Documents.

(e) Neither the Control Agent nor the First Lien Collateral Agent shall have, by reason of the Second Lien Note Documents or this Agreement or any other document, a fiduciary relationship in respect of the Second Lien Collateral Agent or any other Second Lien Claimholder. Except as expressly set forth herein, the Second Lien Collateral Agent shall not have, by reason of the First Lien Credit Agreement or this Agreement or any other document, a fiduciary relationship in respect of the Control Agent, the First Lien Collateral Agent or any other First Lien Claimholder.

(f) Upon the Discharge of First Lien Obligations (other than in connection with a Refinancing of the First Lien Obligations), the Control Agent shall deliver to the Second Lien Collateral Agent the Control Collateral together with any necessary endorsements (or otherwise allow the Second Lien Collateral Agent to obtain control of such Control Collateral and with respect to motor vehicles constituting Collateral, to be named as lienholder on the certificates of title of such motor vehicles) or as a court of competent jurisdiction may otherwise direct and the Second Lien Collateral Agent shall accept and succeed to the role of the Control Agent as the agent for perfection on the Control Collateral.

(g) The Control Agent shall have an unfettered right to resign as Control Agent upon 30 days notice to the First Lien Collateral Agent and the Second Lien Collateral Agent. If upon the effective date of such resignation no successor to the Control Agent has been appointed by the First Lien Collateral Agent (or at any time after the Discharge of the First Lien Obligations, by the Second Lien Collateral Agent), the Control Agent shall deliver to the First Lien Collateral Agent (or, at any time after the Discharge of the First Lien Obligations, to the Second Lien Collateral Agent) the Control Collateral together with any necessary endorsements (or otherwise allow the First Lien Collateral Agent (or, at any time after the Discharge of the First Lien Obligations, the Second Lien Collateral Agent) to obtain control of such Control Collateral, and,

with respect to motor vehicles constituting Collateral, (i) if the applicable state law allows more than one party to be named as lienholder on the applicable certificate of title, allow the First Lien Collateral Agent to be named as senior lienholder and the Second Lien Collateral Agent to be named as junior lienholder on such certificate of title or (ii) if the applicable state law allows only one party to be named as lienholder on the certificate of title, allow the First Lien Collateral Agent (as the succeeding Control Agent) to be named as lienholder on such certificate of title for the benefit of itself (on behalf of itself and the other First Lien Claimholders) and for the benefit of the Second Lien Collateral Agent (on behalf of itself and the other Second Lien Claimholders), or as a court of competent jurisdiction may otherwise direct, and the First Lien Collateral Agent shall accept and succeed to the role of the Control Agent as the agent for perfection on the Control Collateral.

5.6 When Discharge of First Lien Obligations Deemed to Not Have Occurred. If at any time after the Discharge of First Lien Obligations has occurred, Company thereafter enters into any Refinancing of any First Lien Credit Document evidencing a First Lien Obligation which Refinancing is permitted hereby, then such Discharge of First Lien Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement (other than with respect to any actions taken prior to the date of such designation as a result of the occurrence of such first Discharge of First Lien Obligations), and the obligations under such Refinancing First Lien Credit Document shall automatically be treated as First Lien Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and the First Lien Collateral Agent under such First Lien Credit Documents shall be a First Lien Collateral Agent for all purposes of this Agreement; provided, however, that the holders of such Refinancing debt bind themselves in writing to the terms of this Agreement and any such , Refinancing shall not provide for an aggregate principal amount of, without duplication, term loans, revolving credit loans, letters of credit, bonds, debentures, notes or similar instruments (but excluding Hedging Obligations and other Bank Products Obligations) outstanding at any time in excess of the Maximum First Lien Principal Indebtedness; and provided, further, that the document governing such Refinancing shall contain a Lien Priority Confirmation and such document shall be delivered to the Second Lien Collateral Agent. Upon receipt of (i) a notice stating that Company has entered into a new First Lien Credit Document (which notice shall include the identity of the new collateral agent, such agent, the “New Agent”) and (ii) a copy of the document governing such Refinancing containing a Lien Priority Confirmation, the Second Lien Collateral Agent shall promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as Company or such New Agent shall reasonably request in order to provide to the New Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement; provided that if the new First Lien Obligations under the new First Lien Credit Documents are secured by assets of the Grantors of the type constituting Collateral that do not also secure the Second Lien Obligations, then the Second Lien Obligations shall be secured at such time by a second priority Lien on such assets to the same extent provided in the Second Lien Collateral Documents.

SECTION F. Insolvency or Liquidation Proceedings.

6.1 Use of Cash Collateral and Financing Issues. Until the Discharge of First Lien Obligations has occurred, if Company or any other Grantor shall be subject to any Insolvency or

Liquidation Proceeding and the First Lien Collateral Agent shall desire to permit the use of cash collateral on which the First Lien Collateral Agent or any other creditor has a Lien or to permit Company or any other Grantor to obtain financing from one or more of the First Lien Claimholders under Section 363 or Section 364 of the Bankruptcy Code or any similar Bankruptcy Law (each, a "DIP Financing"), then, so long as the maximum principal amount of indebtedness (excluding, in any event, Hedging Obligations and other Bank Products Obligations) that may be outstanding from time to time in connection with such DIP Financing and First Lien Obligations shall not exceed an amount equal to the Maximum First Lien Principal Indebtedness, the Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, (A) agrees that it will raise no objection to such use of cash collateral or DIP Financing nor support any other Person objecting to such sale, use, or lease of cash collateral or DIP Financing and will not request any form of adequate protection or any other relief in connection therewith (except as agreed by the First Lien Collateral Agent or to the extent expressly permitted by Section 6.4) and, to the extent the Liens securing the First Lien Obligations are subordinated to or pari passu with such DIP Financing, the Second Lien Collateral Agent will subordinate its Liens in the Collateral to (x) the Liens securing such DIP Financing (and all Obligations relating thereto), (y) any adequate protection Liens provided to any of the First Lien Claimholders and (z) any "carve-out" for professional or United States Trustee fees agreed to by the First Lien Collateral Agent; and (B) agrees that notice received two (2) Business Days prior to the entry of an order approving such usage of cash collateral or approving such DIP Financing shall be adequate notice; provided that the foregoing shall not prohibit the Second Lien Collateral Agent or the other Second Lien Claimholders from objecting solely to any provisions in any DIP Financing relating to, describing or requiring any provision or content of a plan of reorganization other than any provisions requiring that the DIP Financing be paid in full in cash.

6.2 Sale Issues. The Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, agrees that it will raise no objection to or oppose a sale or other disposition of any Collateral (or any post-petition assets subject to adequate protection liens in favor of the First Lien Collateral Agent) free and clear of its Liens or other claims under Section 363 of the Bankruptcy Code if the Required Lenders under the First Lien Credit Agreement have consented to such sale or disposition of such assets so long as the interests of the Second Lien Claimholders in such Collateral (or any such post-petition assets subject to adequate protection liens, if any, in favor of the Second Lien Collateral Agent) attach to the proceeds thereof, subject to the terms of this Agreement. If requested by the First Lien Collateral Agent in connection therewith, the Second Lien Collateral Agent shall affirmatively consent to such a sale or disposition.

6.3 Relief from the Automatic Stay. Until the Discharge of First Lien Obligations has occurred, the Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, agrees that none of them shall (i) seek relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the Collateral, without the prior written consent of the First Lien Collateral Agent, or (ii) oppose any request by the First Lien Collateral Agent or any other First Lien Claimholder to seek relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the Collateral.

6.4 Adequate Protection.

(a) The Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, agrees that none of them shall contest (or support any other Person contesting) (i) any request by the First Lien Collateral Agent or any of the other First Lien Claimholders for adequate protection of any form, including without limitation, payments in the amount of current post-petition interest, incurred fees and expenses or other cash payments, or (ii) any objection by the First Lien Collateral Agent or any of the other First Lien Claimholders to any motion, relief, action or proceeding based on the First Lien Collateral Agent or any of the other First Lien Claimholders claiming a lack of adequate protection. In any Insolvency or Liquidation Proceeding, the Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, may seek (and neither the First Lien Collateral Agent nor any other First Lien Claimholder shall object to) adequate protection in respect of the Second Lien Obligations, subject to the provisions of this Agreement, only if (A) the First Lien Claimholders (or any subset thereof) are granted adequate protection in the form of additional collateral including replacement liens on post-petition collateral and (B) such additional protection requested by the Second Lien Collateral Agent is in the form of a Lien on such additional collateral, which Lien, if granted, will be subordinated to the adequate protection Liens securing the First Lien Obligations and the Liens securing any DIP Financing (and all Obligations relating thereto) on the same basis as the other Liens securing the Second Lien Obligations are so subordinated to the Liens securing the First Lien Obligations under this Agreement and the Liens securing any such DIP Financing. In the event the Second Lien Collateral Agent, on behalf of itself or any of the other Second Lien Claimholders, seeks or requests adequate protection in respect of Second Lien Obligations and such adequate protection is granted in the form of additional collateral, then the Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, agrees that the First Lien Collateral Agent shall also be granted a Lien on such additional collateral as security for the First Lien Obligations and for any DIP Financing and that any Lien on such additional collateral securing the Second Lien Obligations shall be subordinated to the Liens on such collateral securing the First Lien Obligations and any DIP Financing (and all Obligations relating thereto) and to any other Liens granted to any of the other First Lien Claimholders as adequate protection on the same basis as the other Liens securing the Second Lien Obligations are so subordinated to the Liens securing the First Lien Obligations under this Agreement and the Liens securing any DIP Financing.

(b) Similarly, if the First Lien Claimholders are granted adequate protection in the form of a superpriority claim, then the Second Lien Collateral Agent, on behalf of itself or any of the other Second Lien Claimholders, may seek or request a superpriority claim, which superpriority claim will be junior in all respects to the superpriority claim granted to the First Lien Collateral Agent and the other First Lien Claimholders, and, in the event that the Second Lien Collateral Agent, on behalf of itself or any of the other Second Lien Claimholders, seeks or requests adequate protection in respect of Second Lien Obligations and such adequate protection is granted in the form of a superpriority claim, then the Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, agrees that the First Lien Collateral Agent and the providers of any DIP Financing also shall be granted a superpriority claim, which superpriority claim will be senior in all respects to the superpriority claim granted to the Second Lien Collateral Agent and any of the other Second Lien Claimholders.

6.5 No Waiver. Nothing contained herein shall prohibit or in any way limit the First Lien Collateral Agent or any other First Lien Claimholder from objecting in any Insolvency or

Liquidation Proceeding or otherwise to any action taken by the Second Lien Collateral Agent or any of the other Second Lien Claimholders, including the seeking by the Second Lien Collateral Agent or any other Second Lien Claimholders of adequate protection or the asserting by the Second Lien Collateral Agent or any other Second Lien Claimholders of any of its rights and remedies under the Second Lien Note Documents or otherwise; provided, however, that this Section 6.5 shall not limit the rights of the Second Lien Claimholders under the proviso in Section 3.1(a)(ii) or under Section 6.4 or Section 6.9.

6.6 Avoidance Issues. If any First Lien Claimholder is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of Company or any other Grantor any amount in respect of a First Lien Obligation (a "Recovery"), then such First Lien Claimholders shall be entitled to a reinstatement of First Lien Obligations with respect to all such recovered amounts. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect (and the Discharge of First Lien Obligations shall automatically be deemed not to occur for all purposes of this Agreement), and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement. Collateral or proceeds thereof received by the Second Lien Collateral Agent or any Second Lien Claimholder after a Discharge of First Lien Obligations and prior to the reinstatement of such First Lien Obligations shall be delivered to the First Lien Collateral Agent upon such reinstatement in accordance with Section 4.2.

6.7 Separate Grants of Security and Separate Classification. Each of the Grantors, the First Lien Claimholders and the Second Lien Claimholders acknowledges and agrees that (i) the grants of Liens pursuant to the First Lien Collateral Documents and the Second Lien Collateral Documents constitute two separate and distinct grants of Liens and (ii) because of, among other things, their differing rights in the Collateral, the Second Lien Obligations are fundamentally different from the First Lien Obligations and must be separately classified in any plan of reorganization proposed or adopted in an Insolvency or Liquidation Proceeding. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the First Lien Claimholders and Second Lien Claimholders in respect of the Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then the First Lien Claimholders shall be entitled to receive, in addition to amounts distributed to them from, or in respect of, the Collateral in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest, fees, costs, premium and other charges, irrespective of whether a claim for such amounts is allowed or allowable in such Insolvency or Liquidation Proceeding, before any distribution from, or in respect of, any Collateral is made in respect of the claims held by the Second Lien Claimholders), with the Second Lien Claimholders hereby acknowledging and agreeing to turn over to the First Lien Claimholders amounts otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Second Lien Claimholders.

6.8 Reorganization Securities. If, in any Insolvency or Liquidation Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a plan of reorganization or similar dispositive restructuring plan, both on account of First Lien Obligations and on account of Second Lien Obligations, then,

to the extent the debt obligations distributed on account of the First Lien Obligations and on account of the Second Lien Obligations are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

6.9 Post-Petition Claims.

(a) Neither the Second Lien Collateral Agent nor any other Second Lien Claimholder shall oppose or seek to challenge any claim by the First Lien Collateral Agent or any other First Lien Claimholder for allowance in any Insolvency or Liquidation Proceeding of First Lien Obligations consisting of post-petition interest, fees, costs, charges or expenses to the extent of the value of the First Lien Collateral Agent's Lien held for the benefit of the First Lien Claimholders, without regard to the existence of the Lien of the Second Lien Collateral Agent on behalf of the Second Lien Claimholders on the Collateral.

(b) Neither the First Lien Collateral Agent nor any other First Lien Claimholder shall oppose or seek to challenge any claim by the Second Lien Collateral Agent or any other Second Lien Claimholder for allowance in any Insolvency or Liquidation Proceeding of Second Lien Obligations consisting of post-petition interest, fees, costs, charges or expenses to the extent of the value of the Lien of the Second Lien Collateral Agent on behalf of the Second Lien Claimholders on the Collateral (after taking into account the First Lien Obligations).

6.10 Waiver. The Second Lien Collateral Agent, for itself and on behalf of the other Second Lien Claimholders, waives any claim it or they may hereafter have against the First Lien Collateral Agent or any other First Lien Claimholder arising out of the election of the First Lien Collateral Agent or any other First Lien Claimholder of the application of Section 1111(b)(2) of the Bankruptcy Code, or out of any cash collateral or financing arrangement or out of any grant of a security interest in connection with any of the Collateral in any Insolvency or Liquidation Proceeding.

6.11 Expense Claims. Neither the Second Lien Collateral Agent nor any other Second Lien Claimholder will (i) contest the payment of fees, expenses or other amounts to the First Lien Collateral Agent or any other First Lien Claimholder under Section 506(b) of the Bankruptcy Code or otherwise to the extent provided for in the First Lien Credit Agreement or (ii) assert or enforce, at any time prior to the Discharge of First Lien Obligations, any claim under Section 506(c) of the Bankruptcy Code senior to or on parity with the First Lien Obligations for costs or expenses of preserving or disposing of any Collateral.

6.12 Other Matters. To the extent that the Second Lien Collateral Agent or any other Second Lien Claimholder has or acquires rights under Section 361, Section 363 or Section 364 of the Bankruptcy Code with respect to any of the Collateral, the Second Lien Collateral Agent agrees, on behalf of itself and the other Second Lien Claimholders, not to assert any of such rights without the prior written consent of the First Lien Collateral Agent; provided that if requested by the First Lien Collateral Agent, the Second Lien Collateral Agent shall timely exercise such rights in the manner requested by the First Lien Collateral Agent, including any rights to payments in respect of such rights.

6.13 Effectiveness in Insolvency or Liquidation Proceedings. This Agreement, which the parties hereto expressly acknowledge is a “subordination agreement” under Section 510(a) of the Bankruptcy Code, shall be effective before, during and after the commencement of an Insolvency or Liquidation Proceeding. All references in this Agreement to any Grantor shall include such Person as a debtor-in-possession and any receiver or trustee for such Person in any Insolvency or Liquidation Proceeding.

SECTION G. Reliance; Waivers; Etc.

7.1 Non-Reliance.

(a) The consent by the First Lien Claimholders to the execution and delivery of the Second Lien Note Documents and the grant to the Second Lien Collateral Agent, on behalf of the Second Lien Claimholders, of a Lien on the Collateral and all loans and other extensions of credit made or deemed made on and after the date hereof by the First Lien Claimholders to the Grantors shall be deemed to have been given and made in reliance upon this Agreement. The Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, acknowledges that it and the other Second Lien Claimholders have, independently and without reliance on the First Lien Collateral Agent or any other First Lien Claimholder, and based on documents and information deemed by them appropriate, made their own decision to enter into the Indenture, the other Second Lien Note Documents, this Agreement and the transactions contemplated hereby and thereby and they will continue to make their own decision in taking or not taking any action under the Indenture, the other Second Lien Note Documents or this Agreement.

(b) The consent by the Second Lien Claimholders to the execution and delivery of the First Lien Credit Documents and the grant to the First Lien Collateral Agent on behalf of the First Lien Claimholders of a Lien on the Collateral and all loans and other extensions of credit made or deemed made on and after the date hereof by the Second Lien Claimholders to the Grantors shall be deemed to have been given and made in reliance upon this Agreement. The First Lien Collateral Agent, on behalf of itself and the other First Lien Claimholders, acknowledges that it and the other First Lien Claimholders have, independently and without reliance on the Second Lien Collateral Agent or any other Second Lien Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into the First Lien Credit Agreement, the other First Lien Credit Documents, this Agreement and the transactions contemplated hereby and thereby and they will continue to make their own credit decision in taking or not taking any action under the First Lien Credit Agreement, the other First Lien Credit Documents or this Agreement.

7.2 No Warranties or Liability. The First Lien Collateral Agent, on behalf of itself and the other First Lien Claimholders under the First Lien Credit Documents, acknowledges and agrees that each of the Second Lien Collateral Agent and the other Second Lien Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the Second Lien Note Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. The Second Lien Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Second Lien Note Documents in accordance with law and as

they may otherwise, in their sole discretion, deem appropriate subject to the terms of this Agreement. The Second Lien Collateral Agent, on behalf of itself and the other Second Lien Obligations, acknowledges and agrees that the First Lien Collateral Agent and the other First Lien Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the First Lien Credit Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. The First Lien Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under their respective First Lien Credit Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Second Lien Collateral Agent and the other Second Lien Claimholders shall have no duty to the First Lien Collateral Agent or any of the First Lien Claimholders, and the First Lien Collateral Agent and the other First Lien Claimholders shall have no duty to the Second Lien Collateral Agent or any of the other Second Lien Claimholders, to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with Company or any other Grantor (including the First Lien Credit Documents and the Second Lien Note Documents), regardless of any knowledge thereof which they may have or be charged with.

7.3 No Waiver of Lien Priorities.

(a) No right of the First Lien Claimholders, the Control Agent, the First Lien Collateral Agent or any of them to enforce any provision of this Agreement or any First Lien Credit Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of Company or any other Grantor or by any act or failure to act by the Control Agent, any First Lien Claimholder or the First Lien Collateral Agent, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the First Lien Credit Documents or any of the Second Lien Note Documents, regardless of any knowledge thereof which the Control Agent, the First Lien Collateral Agent or the other First Lien Claimholders, or any of them, may have or be otherwise charged with.

(b) Without in any way limiting the generality of the foregoing paragraph (but subject to the rights of Company and the other Grantors under the First Lien Credit Documents, the First Lien Claimholders, the First Lien Collateral Agent and any of them may, at any time and from time to time in accordance with the First Lien Credit Documents or applicable law, without the consent of, or notice to, the Second Lien Collateral Agent or any other Second Lien Claimholders, without incurring any liabilities to the Second Lien Collateral Agent or any other Second Lien Claimholders and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of the Second Lien Collateral Agent or any other Second Lien Claimholders is affected, impaired or extinguished thereby) do any one or more of the following:

(i) make loans and advances to any Grantor or issue, guaranty or obtain letters of credit for account of any Grantor or otherwise extend credit to any Grantor, in any amount and on any terms, whether pursuant to a commitment or as a discretionary advance and whether or not any default or event of default or failure of condition is then continuing (subject, in each case, to the limits set forth in the definition of "First Lien Obligations" and Section 5.3);

(ii) subject to Section 5.3(a), change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of the First Lien Obligations or any Lien on any First Lien Collateral or guaranty thereof or any liability of Company or any other Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the First Lien Obligations, without any restriction as to the amount, tenor or terms of any such increase or extension, subject to the limits set forth in the definition of “First Lien Obligations”) or, subject to the provisions of this Agreement, otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens held by the First Lien Collateral Agent or any of the other First Lien Claimholders, any of the First Lien Obligations or any of the First Lien Credit Documents; provided, however, the foregoing shall not prohibit the Second Lien Collateral Agent and the other Second Lien Claimholders from enforcing, consistent with the other terms of this Agreement, any right against the Grantors arising under the Indenture as a result of any Grantor’s violation of the terms thereof;

(iii) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the Collateral or any liability of Company or any other Grantor to the First Lien Claimholders or the First Lien Collateral Agent, or any of them, or any liability incurred directly or indirectly in respect thereof;

(iv) settle or compromise any First Lien Obligation or any other liability of Company or any other Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the First Lien Obligations) in any manner or order;

(v) exercise or delay in or refrain from exercising any right or remedy against Company or any security or any other Grantor or any other Person, elect any remedy and otherwise deal freely with Company, any other Grantor or any First Lien Collateral and any security and any guarantor or any liability of Company or any other Grantor to any of the First Lien Claimholders or any liability incurred directly or indirectly in respect thereof;

(vi) take or fail to take any Lien securing the First Lien Obligations or any other collateral security for any First Lien Obligations or take or fail to take any action which may be necessary or appropriate to ensure that any Lien securing First Lien Obligations or any other Lien upon any property is duly enforceable or perfected or entitled to priority as against any other Lien or to ensure that any proceeds of any property subject to any Lien are applied to the payment of any First Lien Obligation or any Obligation secured thereby; or

(vii) otherwise release, discharge or permit the lapse of any or all Liens securing the First Lien Obligations or any other Liens upon any property at any time securing any First Lien Obligations.

(c) The Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, also agrees that the Control Agent, the First Lien Claimholders and the First Lien

Collateral Agent shall have no liability to the Second Lien Collateral Agent or any other Second Lien Claimholders, and the Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, hereby waives any claim against the Control Agent, any First Lien Claimholder and the First Lien Collateral Agent, arising out of any and all actions which the Control Agent, any of the First Lien Claimholders or the First Lien Collateral Agent may take or permit or omit to take with respect to: (i) the First Lien Credit Documents, (ii) the collection of the First Lien Obligations or (iii) the foreclosure upon, or sale, liquidation or other disposition of, any Collateral (including, without limitation, any Control Collateral, as applicable) other than, in each case, any claim resulting from gross negligence or willful misconduct of the Control Agent as finally defined by a court of competent jurisdiction. The Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, agrees that the Control Agent, the First Lien Claimholders and the First Lien Collateral Agent have no duty to them in respect of the maintenance or preservation of the Collateral (except to the extent provided in Section 5.5(c) with respect to Control Collateral), the First Lien Obligations or otherwise. The First Lien Collateral Agent, on behalf of itself and the other First Lien Claimholders, also agrees that the Second Lien Claimholders and the Second Lien Collateral Agent shall have no liability to the First Lien Collateral Agent or any other First Lien Claimholders, and the First Lien Collateral Agent, on behalf of itself and the other First Lien Claimholders, hereby waives any claim against any Second Lien Claimholder and the Second Lien Collateral Agent, arising out of any and all actions which any of the Second Lien Claimholders or the Second Lien Collateral Agent may take or permit or omit to take with respect to: (i) the Second Lien Credit Documents or (ii) the collection of the Second Lien Obligations, other than arising out of any action which any of the Second Lien Claimholders or the Second Lien Collateral Agent may take or permit or omit to take contrary to or in breach or contravention of this Agreement. The First Lien Collateral Agent, on behalf of itself and the other First Lien Claimholders, agrees that, except as otherwise provided in this Agreement, the Second Lien Claimholders and the Second Lien Collateral Agent have no duty to them in respect of the maintenance or preservation of the Collateral, the Second Lien Obligations or otherwise.

(d) The Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Collateral or any other similar rights a junior secured creditor may have under applicable law.

7.4 Obligations Unconditional. All rights, interests, agreements and obligations of the First Lien Collateral Agent and the other First Lien Claimholders and the Second Lien Collateral Agent and the other Second Lien Claimholders, respectively, hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any First Lien Credit Documents or any Second Lien Note Documents or any setting aside or avoidance of any Lien;

(b) except, in each case, as otherwise set forth in this Agreement, any change in the time, manner or place of payment of, or in any other terms of, all or any of the First Lien Obligations or Second Lien Obligations, or any amendment or waiver or other modification,

including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any First Lien Credit Document or any Second Lien Note Document;

(c) any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the First Lien Obligations or Second Lien Obligations or any guarantee thereof;

(d) the commencement of any Insolvency or Liquidation Proceeding in respect of Company or any other Grantor; or

(e) any other circumstances which otherwise might constitute a defense available to, or a discharge of, Company or any other Grantor in respect of the First Lien Obligations, or of the Second Lien Collateral Agent or any other Second Lien Claimholder in respect of this Agreement.

7.5 Certain Notices.

(a) Promptly upon the satisfaction of the conditions set forth in clauses (i), (ii), (iii) and (iv) of the definition of Discharge of First Lien Obligations, the First Lien Collateral Agent shall deliver written notice confirming same to the Second Lien Collateral Agent; provided that the failure to give any such notice shall not result in any liability of the First Lien Collateral Agent or any of the other First Lien Claimholders hereunder or in the modification, alteration, impairment, or waiver of the rights of any party hereunder.

(b) Promptly upon (or as soon as practicable following) the commencement by the First Lien Collateral Agent of any enforcement action or the exercise by the First Lien Collateral Agent of any remedy with respect to any Collateral (including by way of a public or private sale of Collateral), the First Lien Collateral Agent shall notify the Second Lien Collateral Agent of such action; provided that the failure to give any such notice shall not result in any liability of the First Lien Collateral Agent or any of the other First Lien Claimholders hereunder or in the modification, alteration, impairment, or waiver of the rights of any party hereunder.

SECTION H. Miscellaneous.

8.1 Conflicts. In the event of any conflict between the provisions of this Agreement and the provisions of the First Lien Credit Documents or the Second Lien Note Documents, the provisions of this Agreement shall govern and control. The parties hereto acknowledge that the terms of this Agreement are not intended to negate any specific rights granted to Company or any other Grantor in the First Lien Credit Documents and the Second Lien Note Documents.

8.2 Effectiveness; Continuing Nature of this Agreement; Severability. This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of lien subordination and the First Lien Claimholders may continue, at any time and, except as provided in Sections 5.3(a) and 5.6, without notice to the Second Lien Collateral Agent or any other Second Lien Claimholder subject to the other provisions of this Agreement, to extend credit and other financial accommodations and lend monies to or for the benefit of Company or any Grantor constituting First Lien Obligations in reliance hereof. The Second Lien

Collateral Agent, on behalf of itself and the other Second Lien Claimholders, hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect in any Insolvency or Liquidation Proceeding. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to Company or any other Grantor shall include Company or such Grantor as debtor and debtor-in-possession and any receiver or trustee for Company or any other Grantor (as the case may be) in any Insolvency or Liquidation Proceeding. This Agreement shall terminate and be of no further force and effect upon the earlier of (i) the date upon which the Obligations under the Indenture and Notes and all other Second Lien Obligations terminate and payment has been made in full in cash of all Second Lien Obligations outstanding on such date and (ii) the date of Discharge of First Lien Obligations, subject to the rights of the First Lien Claimholders under Section 5.6 and Section 6.6.

8.3 Amendments; Waivers. No amendment, modification or waiver of any of the provisions of this Agreement by the Second Lien Collateral Agent or the First Lien Collateral Agent shall be deemed to be made unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time. Notwithstanding the foregoing, none of Company or any other Grantor shall have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent its rights or obligations are directly affected.

8.4 Information Concerning Financial Condition of Company and its Subsidiaries.

(a) The First Lien Collateral Agent and the other First Lien Claimholders shall have no duty to advise the Second Lien Collateral Agent or any other Second Lien Claimholder of information known to it or them regarding the financial condition of Company or any of its Subsidiaries or any endorsers and/or guarantors of the First Lien Obligations or the Second Lien Obligations or any other circumstances bearing upon the risk of nonpayment of the First Lien Obligations or the Second Lien Obligations or otherwise. In the event the First Lien Collateral Agent or any of the other First Lien Claimholders, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to the Second Lien Collateral Agent or any other Second Lien Claimholder, it or they shall be under no obligation (w) to make, and the First Lien Collateral Agent and the other First Lien Claimholders shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided, (x) to provide any additional information or to provide any such information on any subsequent occasion, (y) to undertake any investigation or (z) to disclose any information which, pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential. The Second Lien Collateral Agent and the other Second Lien Claimholders shall have no duty to advise the First Lien Collateral Agent or any other First Lien Claimholder of information known to it or them regarding the financial condition of Company or any of its Subsidiaries or any endorsers and/or guarantors of the First Lien

Obligations or the Second Lien Obligations or any other circumstances bearing upon the risk of nonpayment of the First Lien Obligations or the Second Lien Obligations or otherwise. In the event the Second Lien Collateral Agent or any of the other Second Lien Claimholders, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to the First Lien Collateral Agent or any other First Lien Claimholder, it or they shall be under no obligation (w) to make, and the Second Lien Collateral Agent and the other Second Lien Claimholders shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided, (x) to provide any additional information or to provide any such information on any subsequent occasion, (y) to undertake any investigation or (z) to disclose any information which, pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

(b) The Grantors agree that any information provided to the First Lien Collateral Agent, the Second Lien Collateral Agent, the Control Agent, any other First Lien Claimholder or any other Second Lien Claimholder may be shared by such Person with any First Lien Claimholder, any Second Lien Claimholder, the Control Agent, the First Lien Collateral Agent or the Second Lien Collateral Agent notwithstanding a request or demand by such Grantor that such information be kept confidential; provided, that such information shall otherwise be subject to the respective confidentiality provisions in the First Lien Credit Agreement and the Indenture, as applicable.

8.5 Subrogation. The Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, hereby waives any rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of First Lien Obligations has occurred.

8.6 Application of Payments. All payments received by the First Lien Collateral Agent or any of the other First Lien Claimholders may be applied, reversed and reapplied, in whole or in part, to such part of the First Lien Obligations provided for in the First Lien Credit Documents. The Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, assents to any extension or postponement of the time of payment of the First Lien Obligations or any part thereof and to any other indulgence with respect thereto, to any substitution, exchange or release of any security which may at any time secure any part of the First Lien Obligations and to the addition or release of any other Person primarily or secondarily liable therefor.

8.7 Choice of Forum; Service of Process.

(a) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA LOCATED IN NEW YORK COUNTY, NEW YORK, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF EACH GRANTOR, THE FIRST LIEN COLLATERAL AGENT, THE CONTROL AGENT AND THE SECOND LIEN COLLATERAL AGENT CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH OF EACH GRANTOR, THE FIRST LIEN COLLATERAL AGENT, THE CONTROL AGENT AND THE SECOND LIEN COLLATERAL AGENT IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED

ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT ANY APPEALS FROM THE COURTS DESCRIBED IN THE IMMEDIATELY PRECEDING SENTENCE MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE THOSE JURISDICTIONS.

(b) EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTY, HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (RETURN RECEIPT REQUESTED) DIRECTED TO SUCH PARTY AT ITS ADDRESS SET FORTH IN THE SIGNATURE PAGES HERETO AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED 5 DAYS AFTER THE SAME SHALL HAVE BEEN SO DEPOSITED IN THE U.S. MAILED POSTAGE PREPAID. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE LEGAL PROCESS BY ANY OTHER MANNER PERMITTED BY LAW.

8.8 Waiver of Jury Trial. THE PARTIES HERETO EACH IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY AGENT-RELATED PERSON WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. THE PARTIES HERETO EACH AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.

8.9 Notices. All notices to the Control Agent, the Second Lien Claimholders and the First Lien Claimholders permitted or required under this Agreement shall also be sent to the Second Lien Collateral Agent and the First Lien Collateral Agent, respectively. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, electronically mailed or sent by courier service or U.S. mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of electronic mail or four Business Days after deposit in the U.S. mail (registered or certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the parties hereto shall be as set forth below each party's name on the signature pages hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

8.10 Further Assurances. The First Lien Collateral Agent, on behalf of itself and the other First Lien Claimholders under the First Lien Credit Documents, and the Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders under the Second Lien Note Documents, and Company and each other Grantor, agrees that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the First Lien Collateral Agent or the Second Lien Collateral Agent may reasonably request to effectuate the terms of and the lien priorities contemplated by this Agreement.

8.11 Applicable Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF.

8.12 Binding on Successors and Assigns. This Agreement shall be binding upon the First Lien Collateral Agent, the other First Lien Claimholders, the Second Lien Collateral Agent, the other Second Lien Claimholders, the Control Agent and their respective successors and assigns.

8.13 Specific Performance. Each of the First Lien Collateral Agent and the Second Lien Collateral Agent may demand specific performance of this Agreement. The First Lien Collateral Agent, on behalf of itself and the other First Lien Claimholders under the First Lien Credit Documents, and the Second Lien Collateral Agent, on behalf of itself and the other Second Lien Claimholders, hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by the First Lien Collateral Agent or the Second Lien Collateral Agent, as the case may be.

8.14 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

8.15 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

8.16 Authorization. By its signature, each Person executing this Agreement on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement.

8.17 No Third Party Beneficiaries. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns and shall inure to the benefit of each of the First Lien Collateral Agent, the other First Lien Claimholders, the Second Lien Collateral Agent, the other Second Lien Claimholders, the Control Agent and the Company and other Grantors. No other Person shall have or be entitled to assert rights or benefits hereunder.

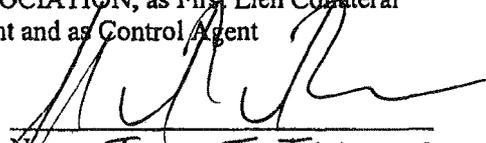
8.18 Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the First Lien Claimholders on the one hand and the Second Lien Claimholders on the other hand. Nothing in this Agreement is intended to or shall impair the rights of Company or any other Grantor, or the obligations of Company or any other Grantor, which are absolute and unconditional, to pay the First Lien Obligations and the Second Lien Obligations as and when the same shall become due and payable in accordance with their terms.

8.19 Documentation Not Subject to this Agreement. The parties hereto agree that any limitations, restrictions or prohibitions imposed on any Second Lien Claimholder in its capacity as a Second Lien Claimholder hereunder shall not apply to any such Second Lien Claimholder in its capacity as a holder of debt or equity under documentation not subject to this Agreement.

8.20 Concerning the Trustee. The parties hereto acknowledge that the Second Lien Collateral Agent has entered into this Agreement solely in its capacity as Collateral Trustee under the Indenture and the Second Lien Note Documents and not in its individual or personal capacity in accordance with the Indenture.

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

WACHOVIA BANK, NATIONAL
ASSOCIATION, as First Lien Collateral
Agent and as Control Agent

By: 

Name: JOHN T. TRAINOR
Title: DIRECTOR

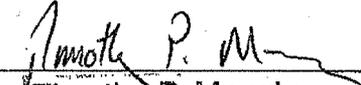
Notice Address:

Wachovia Bank, National Association
301 S. College Street
Charlotte, NC 28202
Mail Code: NC0479
Attention: John Trainor
Telecopy No. (704) 374-2703

with copies to:

Bank of America, N.A.
335 Madison Avenue
New York, NY 10017
Attention: Business Capital/URGENT
Telecopy No. (212) 503-7330

WELLS FARGO BANK, N.A.,
as Trustee, as Second Lien Collateral Agent

By: 
Name: Timothy P. Mowdy
Title: Vice President

Notice Address:

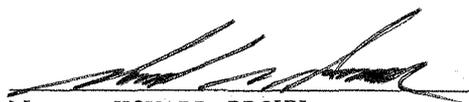
Wells Fargo Bank, N.A.
Corporate Trust Services
Sixth & Marquette Avenue; N9303-120
Minneapolis, Minnesota 55479
Attention: Corporate Trust Administration: Ahern Rentals Notes

with copies to:

Pillsbury Winthrop Shaw Pittman LLP
650 Town Center Drive, 7th Floor
Costa Mesa, CA 92626
Attention: Ethan D. Feffer, Esq.
Telecopier: (714) 436-2800
Telephone: (714) 436-6884

AHERN RENTALS, INC.,
as Company

By:



Name: HOWARD BROWN

Title: CHIEF FINANCIAL OFFICER

Notice Address:

Ahern Rentals, Inc.
4241 S. Arville Street
Las Vegas, Nevada 89103
Attention: Chief Financial Officer
Telecopier No.: (702) 367-7652

EXHIBIT
3

EXHIBIT
3

EX-4.1 2 a06-18601_1ex4d1.htm EX-4

Exhibit 4.1

AMENDMENT NO. 1
TO AMENDED AND RESTATED
LOAN AND SECURITY AGREEMENT

AMENDMENT NO. 1 TO AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (“this Amendment”), dated as of August 21, 2006, to that certain Amended and Restated Loan and Security Agreement dated as of August 18, 2005 (as further amended, restated, supplemented or otherwise modified from time to time, the “Loan Agreement”) among the lending institutions party thereto from time to time (each a “Lender” and collectively the “Lenders”), Ahern Rentals, Inc. (the “Borrower”), each of the Borrower’s subsidiaries party thereto from time to time that become borrowers thereunder with the prior written consent of all the Lenders, Bank of America, N.A., in its capacity as administrative agent for the Lenders (in such capacity, the “Administrative Agent”), Wachovia Bank, National Association, as collateral agent for the Lenders (in such capacity, the “Collateral Agent”), and each of the other Obligated Parties (as defined therein) party thereto from time to time.

WHEREAS, the Borrower, the Lenders, the Administrative Agent and the Collateral Agent desire to amend a provision of the Loan and Security Agreement;

NOW, THEREFORE, subject to the condition precedent set forth in Section 3 hereof, the Borrower, the Lenders, the Administrative Agent and the Collateral Agent hereby agree as follows:

SECTION 1. CAPITALIZED TERMS. Capitalized terms used but not defined herein shall have the respective meanings set forth in the Loan and Security Agreement.

SECTION 2. AMENDMENTS TO LOAN AND SECURITY AGREEMENT.

2.1 Section 1.1 of the Loan Agreement is hereby amended by deleting the pricing grid contained in the definition of “Applicable Margin” and replacing it with the following:

<u>Leverage Ratio</u>	<u>Base Rate Revolving Loans and other Obligations (other than LIBOR Rate Revolving Loans)</u>	<u>LIBOR Rate Revolving Loans</u>
greater than 4.75:1.00	.500%	2.250%
4.75:1.00 to 3.50:1.00	.250%	2.000%
less than 3.50:1.00	.000%	1.750%

2.2 Section 1.1 of the Loan Agreement is hereby further amended by deleting the definition of “Maximum Revolver Amount” and shall be replaced with the following:

“‘Maximum Revolver Amount’ means \$250,000,000 as such amount shall be increased by the aggregate amount of Incremental Commitments, if any, and as reduced in accordance with Section 4.3(f).”

2.3 Section 1.1 of the Loan Agreement is hereby further amended by deleting the definition of “Stated Termination Date” and shall be replaced with the following:

“‘Stated Termination Date’ means August 21, 2011.”

2.4 Schedule 1.1(A) of the Loan Agreement is replaced with the Schedule 1.1(A) attached hereto as Annex A.

2.5 Section 10.6(b) of the Loan Agreement is hereby amended by deleting such provision and replacing it with the following:

“(b) Collections. Each Obligated Party shall collect its Accounts and other Collateral in the ordinary course of its business consistent with past practice. Each Obligated Party shall promptly (in any event within one Business Day of receipt thereof) deposit all such payments (except as permitted in clause (c) below) and receipts, and all other proceeds of Collateral received by it, in their original form, duly endorsed in blank (if applicable) into a Clearing Account or deliver such payments and receipts to the Collateral Agent in their original form, duly endorsed in blank (if applicable), as either of the Agents may direct. Each Obligated Party shall receive any and all proceeds of Accounts and other Collateral as the Collateral Agent’s trustee. All collections received directly by any Obligated Party or either Agent, and all funds in any Clearing Account or other account to which such collections are deposited shall be subject to the Collateral Agent’s control, but shall be available to such Obligated Party at its discretion unless and until the occurrence of a Trigger Event. Following the occurrence of a Trigger Event, all collections received directly by any Obligated Party or either Agent, and all funds in any Clearing Account or other account to which such collections are deposited shall be subject to the Collateral Agent’s sole control and withdrawals by any Obligated Party shall not be permitted.”

SECTION 3. EFFECTIVENESS. This Amendment shall become effective on such date (the "Effective Date") that:

- (1) counterparts of this Amendment executed by the Borrower, the Lenders, the Administrative Agent and the Collateral Agent shall have been delivered to the Administrative Agent;
- (2) the Administrative Agent shall have received the fees set forth in the letter agreements dated as of the date hereof supplementing the Fee Letters;
- (3) the Agents shall have received signed opinions of counsel for the Obligated Parties, opining as to such matters in connection with the transactions contemplated by this Amendment as either of the Agents may reasonably request, each such opinion to be in form, scope, and substance satisfactory to the Agents, the Lenders, and their respective counsel; and
- (4) the Agents shall have received a certificate of the secretary, general partner, or comparable authorized representative of each Obligated Party certifying that (A) the copy of its Management Agreement attached to the certificate of its secretary, general partner, or comparable authorized representative delivered on the Closing Date is a true and complete copy of its Management Agreement as in effect on the date of the certificate delivered pursuant to this subsection and such Management Agreement has not been amended since the Closing Date, (B) a true and complete copy of duly approved Resolutions authorizing the execution, delivery and performance of this Amendment are attached thereto and that such Resolutions have not been modified, rescinded or amended and are in full force and effect, (C) its Organizational Certificate has not been amended since the date of the last amendment thereto shown on the certificate of good standing from the appropriate Governmental Authority of the jurisdiction of such Obligated Party's formation, incorporation, or organization (as applicable) delivered on the Closing Date, and (D) the individuals executing this Amendment or any other document to which it is a party delivered in connection herewith or therewith are the incumbent officers and their signatures are as set forth thereto.

SECTION 4. COUNTERPARTS. This Amendment may be executed in counterparts, each of which shall be an original, and all of which, taken together, shall constitute a single instrument.

SECTION 5. GOVERNING LAW. THIS AMENDMENT SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE INTERNAL LAWS (AS OPPOSED TO THE CONFLICT OF LAWS PROVISIONS) OF THE STATE OF NEW YORK.

SECTION 6. REFERENCES TO LOAN AND SECURITY AGREEMENT. From and after the effectiveness of this Amendment and the amendments contemplated hereby, all references in the Loan Agreement to "this Agreement", "hereof", "herein", and similar terms

shall mean and refer to the Loan and Security Agreement, as amended and modified by this Amendment, and all references in other documents to the Loan Agreement shall mean such agreement as amended and modified by this Amendment.

SECTION 7. RATIFICATION AND CONFIRMATION. The Loan Agreement is hereby ratified and confirmed and, except as herein agreed, remains in full force and effect. The Borrower represents and warrants that (i) all representations and warranties contained in the Loan Documents are correct in all material respects with the same effect as though such representations and warranties had been made on and as of the date hereof (except to the extent that such representations or warranties expressly related to a specified prior date, in which case such representations and warranties shall be correct in all material respects as of such specified prior date), (ii) there exists no Default or Event of Default and (iii) since the Closing Date, no event has occurred, and no circumstances exist, that have resulted in, or could reasonably be expected to result in, a Material Adverse Effect.

SECTION 8. SETTLEMENT OF OUTSTANDING REVOLVING LOANS. Notwithstanding Section 13.2 of the Loan Agreement, the Agents, the Lenders and the Borrower hereby agree that the Administrative Agent will effect a settlement on or about the Effective Date of all outstanding Revolving Loans among the Lenders that will reflect the adjustments to the Commitments of certain of the Lenders resulting from the replacement of Schedule 1.1(A) to the Loan Agreement (Commitments) with a new schedule as contemplated by Section 2.4 of this Amendment such that immediately after giving effect to such settlement each Lender shall have a Pro Rata Share of the outstanding Revolving Loans. Any interest, fees and other payments accrued to the date of such settlement with respect to the interests and obligations of any Revolving Loans of a Lender transferred by such Lender in accordance with such settlement shall be for the account of the transferring Lender. Any interest, fees and other payments accrued on and after the date of such settlement with respect to the interests and obligations acquired by a Lender hereunder as a result of such settlement shall be for the account of the acquiring Lender. Each Lender agrees to cooperate with the Administrative Agent in effecting such settlement (including, without limitation, promptly paying to the Administrative Agent a sum equal to the amount, if any, of Revolving Loans transferred to such Lender as a result of such settlement).

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized officers as of the day and year first above written.

OBLIGATED PARTIES:

AHERN RENTALS, INC.

By: /s/ HOWARD BROWN
Name: Howard Brown
Title: Chief Financial Officer

ADMINISTRATIVE AGENT:

BANK OF AMERICA, N. A.,
as Administrative Agent

By: /s/ ROBERT SCALZITTI
Name: Robert Scalzitti
Title: _____

COLLATERAL AGENT:

WACHOVIA BANK, NATIONAL ASSOCIATION,
as Collateral Agent

By: /s/ JEFFREY SCOTT
Name: Jeffrey Scott
Title: _____

LENDERS:

BANK OF AMERICA, N.A.

By: /s/ ROBERT SCALZITTI
Name: Robert Scalzitti
Title: _____



WACHOVIA BANK, NATIONAL ASSOCIATION

By: /s/ JEFFREY SCOTT
Name: Jeffrey Scott
Title: _____

KEYBANK NATIONAL ASSOCIATION

By: /s/ CHRIS MOHLER
Name: Chris Mohler
Title: _____

PNC BANK, NATIONAL ASSOCIATION

By: /s/ EVAN ZWERMAN
Name: Evan Zwerman
Title: _____

COMERICA BANK

By: /s/ MICHAEL RODGERS
Name: Michael Rodgers
Title: _____

THE CIT GROUP/BUSINESS CREDIT, INC.

By: /s/ JANG KIM
Name: Jang Kim
Title: _____

GMAC COMMERCIAL FINANCE LLC

By: /s/ WAKEFIELD SMITH

Name: Wakefield Smith

Title: _____



ANNEX A**Schedule 1.1.(A)**
Commitments

<u>Lender</u>	<u>Commitment</u>
Bank of America, N.A.	\$ 60,000,000
Wachovia Bank, National Association	\$ 50,000,000
KeyBank National Association	\$ 30,000,000
PNC Bank, National Association	\$ 25,000,000
Comerica Bank	\$ 25,000,000
The CIT Group/Business Credit, Inc.	\$ 40,000,000
GMAC Commercial Finance LLC	\$ 20,000,000
	<u>\$ 250,000,000</u>

EXHIBIT
4

EXHIBIT
4

EX-4.1 2 a07-27535_1ex4d1.htm EX-4.1

Exhibit 4.1

AMENDMENT NO. 3
AND CONSENT
TO AMENDED AND RESTATED
LOAN AND SECURITY AGREEMENT

AMENDMENT NO. 3 AND CONSENT TO AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT ("this Amendment"), dated as of October 24, 2007, to that certain Amended and Restated Loan and Security Agreement dated as of August 18, 2005 (as heretofore amended and as further amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement") among the lending institutions party thereto from time to time (each a "Lender" and collectively the "Lenders"), Ahern Rentals, Inc. (the "Borrower"), each of the Borrower's subsidiaries party thereto from time to time that become borrowers thereunder with the prior written consent of all the Lenders, Bank of America, N.A., in its capacity as administrative agent for the Lenders (in such capacity, the "Administrative Agent"), Wachovia Bank, National Association, as collateral agent for the Lenders (in such capacity, the "Collateral Agent"), and each of the other Obligated Parties (as defined therein) party thereto from time to time.

WHEREAS, the Borrower, the Lenders, the Administrative Agent and the Collateral Agent desire to amend certain provisions of the Loan Agreement;

NOW, THEREFORE, subject to the condition precedent set forth in Section 4 hereof, the Borrower, the Lenders, the Administrative Agent and the Collateral Agent hereby agree as follows:

SECTION 1. CAPITALIZED TERMS. Capitalized terms used but not defined herein shall have the respective meanings set forth in the Loan Agreement.

SECTION 2. AMENDMENTS TO LOAN AGREEMENT.

2.1 Section 1.1 of the Loan Agreement is hereby amended by adding the following proviso to the end of the definition of "Fixed Charge Coverage Ratio":

“; provided that for each Test Period with respect to a Trigger Event, Fixed Charges shall be determined without giving effect to clauses (d) and (e) of such definition if Suppressed Availability is in excess of \$50,000,000 as of the report date of the Borrowing Base Certificate most recently delivered on or prior to (i) with respect to the Test Period described in clause (x) of the definition of Test Period, the date on which such Trigger Event occurred and (ii) with respect to each Test Period thereafter ending prior to or during the Trigger Event Compliance Period for such Trigger Event, the date of delivery of the Compliance Certificate detailing

the calculation of the Fixed Charge Coverage Ratio for such Test Period”

2.2 Section 1.1 of the Loan Agreement is hereby further amended by deleting the definition of “Maximum Revolver Amount” and replacing it with the following:

“‘Maximum Revolver Amount’ means \$300,000,000 as such amount shall be increased by the aggregate amount of Incremental Commitments, if any, and as reduced in accordance with Section 4.3(f).”

2.3 Section 1.1 of the Loan Agreement is hereby further amended by adding the following definition of “Suppressed Availability” in the appropriate alphabetical order:

“‘Suppressed Availability’ means, at any date of determination, the amount, if any, that (i) the sum of, without duplication, (1) up to eighty-five percent (85%) of the Net Amount of Eligible Accounts, plus (2) up to the lesser of (A) ninety-five percent (95%) of the Net Book Value of Eligible Rental and Sale Equipment and (B) eighty-five percent (85%) of the Net Orderly Liquidation Value of Eligible Rental and Sale Equipment, plus (3) up to the lesser of (A) ninety-five percent (95%) of the Net Book Value of Eligible Transportation Equipment and (B) eighty-five percent (85%) of the Net Orderly Liquidation Value of Eligible Transportation Equipment, plus (4) up to the lesser of (A) sixty percent (60%) of the value (at the lower of cost, on an average cost basis, or market) of Eligible Spare Parts Inventory and (B) eighty-five percent (85%) of the Net Orderly Liquidation Value of Eligible Spare Parts Inventory, minus (5) the Blocked Availability Amount minus (6) such Reserves as are established from time to time by either or both of the Agents in its or their reasonable credit judgment exceeds (ii) the Maximum Revolver Amount.”

2.4 Schedule 1.1(A) of the Loan Agreement is replaced with the Schedule 1.1(A) attached hereto as Annex A.

SECTION 3. CONSENT. The Lenders hereby consent to the payment by the Borrower of dividends to holders of Capital Stock of the Borrower in addition to Permitted Distributions permitted under Section 8.10(a) of the Loan and Security Agreement; provided, that (i) no Default or Event of Default shall exist at the time of the payment of any such dividend or immediately after giving effect to the payment thereof, (ii) such dividend is not prohibited to be paid under the terms of any other agreement to which the Borrower is a party or by which it is otherwise bound, (iii) all such dividends shall be paid on or prior to November 15, 2007 and (iv) the aggregate amount of such dividends shall not exceed \$3,500,000. The Borrower hereby agrees to the terms of the foregoing consent.

SECTION 4. EFFECTIVENESS. This Amendment shall become effective on such date (the “Effective Date”) that:

- (1) counterparts of this Amendment executed by the Borrower, the Lenders, the Administrative Agent and the Collateral Agent shall have been delivered to the Administrative Agent;
- (2) the Administrative Agent shall have received the fees set forth in the letter agreements dated the date hereof supplementing the Fee Letters;
- (3) the Agents shall have received signed opinions of counsel for the Obligated Parties, opining as to such matters in connection with the transactions contemplated by this Amendment as either of the Agents may reasonably request, each such opinion to be in form, scope, and substance satisfactory to the Agents, the Lenders, and their respective counsel; and
- (4) the Agents shall have received a certificate of the secretary, general partner, or comparable authorized representative of each Obligated Party certifying that (A) the copy of its Management Agreement attached to the certificate of its secretary, general partner, or comparable authorized representative delivered on the Closing Date is a true and complete copy of its Management Agreement as in effect on the date of the certificate delivered pursuant to this subsection and such Management Agreement has not been amended since the Closing Date, (B) a true and complete copy of duly approved Resolutions authorizing the execution, delivery and performance of this Amendment are attached thereto and that such Resolutions have not been modified, rescinded or amended and are in full force and effect, (C) its Organizational Certificate has not been amended since the date of the last amendment thereto shown on the certificate of good standing from the appropriate Governmental Authority of the jurisdiction of such Obligated Party’s formation, incorporation, or organization (as applicable) delivered on the Closing Date, and (D) the individuals executing this Amendment or any other document to which it is a party delivered in connection herewith or therewith are the incumbent officers and their signatures are as set forth thereto.

SECTION 5. COUNTERPARTS. This Amendment may be executed in counterparts, each of which shall be an original, and all of which, taken together, shall constitute a single instrument.

SECTION 6. GOVERNING LAW. THIS AMENDMENT SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE INTERNAL LAWS (AS OPPOSED TO THE CONFLICT OF LAWS PROVISIONS) OF THE STATE OF NEW YORK.

SECTION 7. REFERENCES TO LOAN AGREEMENT. From and after the effectiveness of this Amendment and the amendments contemplated hereby, all references in the Loan Agreement to “this Agreement”, “hereof”, “herein”, and similar terms shall mean and refer

to the Loan Agreement, as amended and modified by this Amendment, and all references in other documents to the Loan Agreement shall mean such agreement as amended and modified by this Amendment.

SECTION 8. RATIFICATION AND CONFIRMATION. The Loan Agreement is hereby ratified and confirmed and, except as herein agreed, remains in full force and effect. The Borrower represents and warrants that (i) all representations and warranties contained in the Loan Documents are correct in all material respects with the same effect as though such representations and warranties had been made on and as of the date hereof (except to the extent that such representations or warranties expressly related to a specified prior date, in which case such representations and warranties shall be correct in all material respects as of such specified prior date), (ii) there exists no Default or Event of Default and (iii) since the Closing Date, no event has occurred, and no circumstances exist, that have resulted in, or could reasonably be expected to result in, a Material Adverse Effect.

SECTION 9. SETTLEMENT OF OUTSTANDING REVOLVING LOANS. Notwithstanding Section 13.2 of the Loan Agreement, the Agents, the Lenders and the Borrower hereby agree that the Administrative Agent will effect a settlement on or about the Effective Date of all outstanding Revolving Loans among the Lenders that will reflect the adjustments to the Commitments of certain of the Lenders resulting from the replacement of Schedule 1.1(A) to the Loan Agreement (Commitments) with a new schedule as contemplated by Section 2.4 of this Amendment such that immediately after giving effect to such settlement each Lender shall have a Pro Rata Share of the outstanding Revolving Loans. Any interest, fees and other payments accrued to the date of such settlement with respect to the interests and obligations of any Revolving Loans of a Lender transferred by such Lender in accordance with such settlement shall be for the account of the transferring Lender. Any interest, fees and other payments accrued on and after the date of such settlement with respect to the interests and obligations acquired by a Lender hereunder as a result of such settlement shall be for the account of the acquiring Lender. Each Lender agrees to cooperate with the Administrative Agent in effecting such settlement (including, without limitation, promptly paying to the Administrative Agent a sum equal to the amount, if any, of Revolving Loans transferred to such Lender as a result of such settlement).

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized officers as of the day and year first above written.

OBLIGATED PARTIES:

AHERN RENTALS, INC.

By: /s/ Howard Brown
Name: Howard Brown
Title: Chief Financial Officer

ADMINISTRATIVE AGENT:

BANK OF AMERICA, N. A.,
as Administrative Agent

By: /s/ Robert Scalzitti
Name: Robert Scalzitti
Title: Vice President

COLLATERAL AGENT:

WACHOVIA BANK, NATIONAL ASSOCIATION,
as Collateral Agent

By: /s/ D. B. Laughton
Name: D. B. Laughton
Title: Managing Director

LENDERS:

BANK OF AMERICA, N.A.

By: /s/ Robert Scalzitti
Name: Robert Scalzitti
Title: Vice President

WACHOVIA BANK, NATIONAL ASSOCIATION

By: /s/ D. B. Laughton _____
Name: D. B. Laughton
Title: Managing Director

KEYBANK NATIONAL ASSOCIATION

By: /s/ Chris Monler _____
Name: Chris Monler
Title: Senior Vice President

PNC BANK, NATIONAL ASSOCIATION

By: /s/ Thanwantie Somar _____
Name: Thanwantie Somar
Title: Assistant Vice President

COMERICA BANK

By: /s/ Brian Foley _____
Name: Brian Foley
Title: Senior Vice President

THE CIT GROUP/BUSINESS CREDIT, INC.

By: /s/ Jang Kim _____
Name: Jang Kim
Title: Vice President



CF BLACKBURN LLC

By: GMAC COMMERCIAL FINANCE LLC, as
Servicer

By: /s/ Christopher Gauch

Name: Christopher Gauch

Title: Vice President

BANK OF ARIZONA N.A.

By: /s/ Ryan A. Watson

Name: Ryan A. Watson

Title: Vice President

BANK MIDWEST, N.A.

By: /s/ V. Cramer Hass

Name: V. Cramer Hass

Title: Vice President

ANNEX A**Schedule 1.1.(A)**
Commitments

<u>Lender</u>	<u>Commitment</u>
Bank of America, N.A.	\$ 75,000,000
Wachovia Bank, National Association	\$ 50,000,000
KeyBank National Association	\$ 30,000,000
PNC Bank, National Association	\$ 30,000,000
Comerica Bank	\$ 35,000,000
The CIT Group/Business Credit, Inc.	\$ 40,000,000
CF Blackburn LLC	\$ 20,000,000
Bank of Arizona N.A.	\$ 10,000,000
Bank Midwest, N.A.	\$ 10,000,000
	<u>\$ 300,000,000</u>

EXHIBIT
5

EXHIBIT
5

AMENDMENT NO. 1 TO INTERCREDITOR AGREEMENT

THIS AMENDMENT NO. 1 TO INTERCREDITOR AGREEMENT (this "Amendment") is made and dated as of the 23rd day of December, 2009, by and among AHERN RENTALS, INC., a Nevada corporation (the "Company"), and WACHOVIA BANK, NATIONAL ASSOCIATION, in its capacity as collateral agent for the holders of the First Lien Obligations, including its successors and assigns in such capacity from time to time (the "First Lien Collateral Agent"), and WELLS FARGO BANK, N.A., as Trustee under the Indenture, in its capacity as collateral trustee for the holders of the Second Lien Obligations, including its successors and assigns in such capacity from time to time (the "Second Lien Collateral Agent"), and WACHOVIA BANK, NATIONAL ASSOCIATION, in its capacity as control agent for the First Lien Collateral Agent and the Second Lien Collateral Agent, including its successors and assigns in such capacity from time to time (the "Control Agent").

RECITALS

A. Reference is made to that certain Intercreditor Agreement, dated as of August 18, 2005 (the "Intercreditor Agreement"), by and among the Company, the First Lien Collateral Agent, the Second Lien Collateral Agent and the Control Agent. Capitalized terms used but not defined in this Amendment shall have the respective meanings given to them in the Intercreditor Agreement.

B. The Company has requested that the First Lien Collateral Agent, the Second Lien Collateral Agent and the Control Agent amend the Intercreditor Agreement as provided herein.

C. The holders of greater than a majority in principal amount of the Second Lien Obligations outstanding under the Indenture, pursuant to a consent solicitation dated December 7, 2009, as supplemented, have consented to the amendment of the Intercreditor Agreement as provided herein.

D. Based on the foregoing, the First Lien Collateral Agent, the Second Lien Collateral Agent, and the Control Agent have agreed to amend the Intercreditor Agreement as provided herein.

NOW, THEREFORE, in consideration of the foregoing Recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENT

1. Amendment of Intercreditor Agreement. The definition of "First Lien Obligations" in Section 1.1 of the Intercreditor Agreement shall be amended and restated to read as follows:

“First Lien Obligations’ means all Obligations outstanding under (i) the First Lien Credit Agreement and (ii) the other First Lien Credit Documents (including, without limitation and in any event, all Hedging Obligations and other Bank Products Obligations owing to any First Lien Claimholder or any affiliate thereof); provided that for purposes of this Agreement (but subject to the immediately succeeding sentence), with respect to the aggregate principal amount of, without duplication, any revolving credit loans, letters of credit, term loans, bonds, debentures, notes or similar instruments outstanding under the First Lien Credit Agreement or any other First Lien Credit Document (or any Refinancing thereof), only that portion of such aggregate principal amount up to the greater of (I) \$396,000,000 or (II) the sum of (i) 85% of accounts receivable, plus (ii) the lesser of (A) 85% of the net orderly liquidation value of rental and sale equipment and other equipment (including transportation equipment but excluding aircraft) and (B) 95% of the net book value of rental and sale equipment and other equipment (including transportation equipment but excluding aircraft), plus (iii) the lesser of (A) 85% of the net orderly liquidation value of spare parts and merchandise inventory and (B) 60% of the net book value of spare parts and merchandise inventory, in the case of each of (I) and (II) less (x) the aggregate amount of all Net Proceeds of Asset Sales (as such terms are defined in the Indenture as in effect on the date hereof) applied by the Company or any of its subsidiaries since the date of this Agreement to repay principal on loans under the First Lien Credit Agreement or any other First Lien Credit Documents and effect a corresponding commitment reduction thereunder and (y) the amount of Second Lien Obligations incurred after the date of the Indenture the net proceeds of which are used to repay any First Lien Obligations and effect a corresponding commitment reduction thereunder (such maximum aggregate principal amount under this proviso, the “Maximum First Lien Principal Indebtedness”), shall constitute First Lien Obligations. Notwithstanding anything to the contrary contained in the previous sentence of this definition, in any event the aggregate principal amount of any and all revolving credit loans, letters of credit, term loans, bonds, debentures, notes or similar instruments outstanding under the First Lien Credit Agreement or any other First Lien Credit Document (or any Refinancing thereof) shall be deemed not to exceed the Maximum First Lien Principal Indebtedness (and shall be deemed to be First Lien Obligations) if (x) the First Lien Collateral Agent or any other First Lien Claimholder shall have received a representation from Company or any other Grantor in any of the First Lien Credit Documents evidencing, governing or otherwise relating to such Obligations (or a certificate from an authorized officer of Company or another Grantor delivered in connection with any of such First Lien Credit Documents) to the effect of any of the following: that such financial accommodations do not exceed the Maximum First Lien Principal Indebtedness or do not violate the debt incurrence limits set forth in the Indenture or that such Obligations constitute “First Lien Obligations” (in each instance, whether or not such Obligations were at any time determined not to have been permitted to be incurred under the Indenture or to have exceeded the Maximum First Lien Principal Indebtedness) and (y) the First Lien Collateral Agent or such other First Lien Claimholder, as the case may be, relied in good faith upon such representation or certificate in extending credit to Company or any other Grantor. For the purposes of the definition of Maximum First Lien Principal Indebtedness and the proviso in the second preceding sentence, all letters of credit will be deemed to have a principal amount equal

to the maximum potential liability of the Company thereunder and all Hedging Obligations and other Bank Products Obligations shall be valued at zero.”

2. Amendment Effective Date. This Amendment shall be effective as of the date hereof.

3. Governing Law. THIS AMENDMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF.

4. Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose or be given any substantive effect.

5. Counterparts. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment or any document or instrument delivered in connection herewith by telecopy or electronic transmission (in pdf format) shall be effective as delivery of a manually executed counterpart of this Amendment or such other document or instrument, as applicable.

6. Authorization. By its signature, each Person executing this Amendment on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Amendment.

7. Ratification and Confirmation. Except as amended by this Amendment, the Intercreditor Agreement is hereby ratified and confirmed and continues in full force and effect in accordance with its terms.

8. Concerning the Trustee. The parties hereto acknowledge that the Second Lien Collateral Agent has entered into this Amendment solely in its capacity as Collateral Trustee under the Indenture and the Second Lien Note Documents and not in its individual or personal capacity in accordance with the Indenture..

[Signature Pages Following]

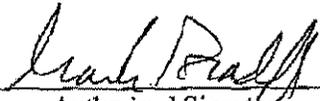
JAN-08-2010 FRI 11:10 AM

FAX NO.

P. 02

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

WACHOVIA BANK, NATIONAL
ASSOCIATION, as First Lien Collateral Agent
and as Control Agent

By: 
Authorized Signatory

WELLS FARGO BANK, N.A.,
as Trustee, as Second Lien Collateral Agent

By: _____
Authorized Signatory

AHERN RENTALS, INC.

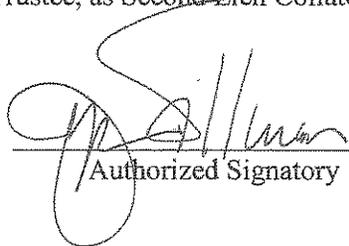
By: _____
Howard Brown
Chief Financial Officer

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

WACHOVIA BANK, NATIONAL
ASSOCIATION, as First Lien Collateral Agent
and as Control Agent

By: _____
Authorized Signatory

WELLS FARGO BANK, N.A.,
as Trustee, as Second Lien Collateral Agent

By:  _____
Authorized Signatory

AHERN RENTALS, INC.

By: _____
Howard Brown
Chief Financial Officer

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

WACHOVIA BANK, NATIONAL
ASSOCIATION, as First Lien Collateral Agent
and as Control Agent

By: _____
Authorized Signatory

WELLS FARGO BANK, N.A.,
as Trustee, as Second Lien Collateral Agent

By: _____
Authorized Signatory

AHERN RENTALS, INC.

By: 
Howard Brown
Chief Financial Officer

EXHIBIT
6

EXHIBIT
6

EX-4.1 2 a10-1559_1ex4d1.htm EX-4.1

Exhibit 4.1

SECOND AMENDED AND RESTATED
LOAN AND SECURITY AGREEMENT

Dated as of January 8, 2010

among

THE FINANCIAL INSTITUTIONS NAMED HEREIN,
as the Lenders,

BANK OF AMERICA, N.A.,
as Administrative Agent,

WACHOVIA BANK, NATIONAL ASSOCIATION,
as Collateral Agent and as Syndication Agent,

AHERN RENTALS, INC.,
as the Obligated Party,

and

BANC OF AMERICA SECURITIES LLC and
WACHOVIA CAPITAL MARKETS, LLC,
as Co-Lead Arrangers

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SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

This Second Amended and Restated Loan and Security Agreement, dated as of January 8, 2010, is among the lending institutions from time to time party hereto as Lenders (as hereinafter defined), Bank of America, N.A. ("BofA"), as administrative agent for the Lenders (in such capacity, the "Administrative Agent"), Wachovia Bank, National Association ("Wachovia"), as collateral agent for the Lenders (in such capacity, the "Collateral Agent"), Ahern Rentals, Inc. ("Ahern"), each of its subsidiaries party from time to time hereto that becomes a borrower hereunder with the prior written consent of all the Revolving Lenders (such subsidiaries, together with Ahern, are referred to hereinafter each individually as a "Borrower" and collectively as the "Borrowers") and each of the other Obligated Parties (as hereinafter defined) signatory to this Agreement.

RECITALS:

WHEREAS, the Borrowers, the Agents and certain of the Lenders party hereto were party to a certain Loan and Security Agreement, dated as of October 29, 2004, as amended to but excluding August 18, 2005 (as so amended, the "Original Loan and Security Agreement");

WHEREAS, the Borrowers, the Agents and certain of the Lenders party hereto amended and restated the Original Loan and Security Agreement pursuant to an Amended and Restated Loan and Security Agreement, dated as of August 18, 2005 (as amended to but excluding the date hereof, the "First Amended and Restated Loan and Security Agreement"); and

WHEREAS, the parties hereto desire to amend and restate the First Amended and Restated Loan and Security Agreement in its entirety, but not as a novation, on the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth in this Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree that the First Amended and Restated Loan and Security Agreement shall be, and hereby is, amended and restated in its entirety as follows, effective on and as of the Closing Date.

ARTICLE 1

DEFINITIONS, ACCOUNTING TERMS, AND INTERPRETIVE PROVISIONS

Section 1.1 Definitions. Capitalized terms wherever used in this Agreement and the other Loan Documents, unless otherwise defined therein, shall have the meanings specified in this Section 1.1.

"Accelerated Delivery Date" means any date on which the Unused Availability is less than \$15,000,000.

"Accelerated Delivery Period" means the period commencing on an Accelerated Delivery Date and ending on the first day after any full Fiscal Quarter of Ahern, occurring after an

Accelerated Delivery Date, during which the Unused Availability equals or exceeds \$15,000,000 for each day during such Fiscal Quarter and no Event of Default has occurred or existed.

“Accommodation Payment” has the meaning specified in Section 15.19.

“Account Debtor” means each Person obligated in any way on or in connection with an Account, Chattel Paper, or General Intangible (including a payment intangible).

“Accounts” means “accounts”, as such term is defined in the UCC, and any rights to payment for the sale or lease of goods or rendition of services, whether or not they have been earned by performance.

“Accounts Payable” means all trade accounts payable of the Obligated Parties and all Debt and other obligations owing by the Obligated Parties with respect to Inventory or Equipment.

“ACH Transactions” means any cash management, disbursement, or related services, including overdrafts and the automated clearinghouse transfer of funds, by BofA or Wachovia for the account of any Obligated Party.

“Additional Mortgaged Property” has the meaning specified in Section 8.28.

“Adjusted Net Earnings from Operations” means, with respect to any fiscal period of Ahern, net income of Ahern and its Subsidiaries on a consolidated basis after provision for state and local income taxes (if any) for such fiscal period, as determined in accordance with GAAP and reported on the Financial Statements for such fiscal period, excluding any and all of the following included in the determination of such net income: (a) gain or loss arising from the sale of any capital assets (which shall not include, in any event, Inventory); (b) gain arising from any write-up in the book value of any asset or non-cash loss arising from any write-down or write-off in the book value of any non-operating asset; (c) earnings of any other Person, substantially all the assets of which have been acquired by Ahern or any of its Subsidiaries in any manner, to the extent realized by such other Person prior to the date of acquisition; (d) earnings of any other Person (other than a Subsidiary of Ahern) in which Ahern or any of its Subsidiaries has an ownership interest unless (and only to the extent) such earnings shall actually have been received by Ahern or any of its Subsidiaries in the form of cash distributions; (e) earnings of any Person to which assets of Ahern or any of its Subsidiaries shall have been sold, transferred, or disposed of, or into which Ahern or any of its Subsidiaries shall have been merged, or which has been a party with Ahern or any of its Subsidiaries to any consolidation or other form of reorganization, prior to the date of such transaction; (f) gain arising from the acquisition of debt or equity securities of Ahern or any of its Subsidiaries or from cancellation or forgiveness of Debt; and (g) gain or non-cash loss generated or arising from extraordinary items, as determined in accordance with GAAP, or from any other non-recurring transaction; provided that any non-cash loss generated from the write-down or write-off of operating assets shall not be included in this clause (g).

“Administrative Agent” means BofA, solely in its capacity as administrative agent for the Lenders, and any successor administrative agent.

“Affiliate” means, as to any Person (the “subject Person”), any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, the subject Person or which owns, directly or indirectly, 5.0% or more of the outstanding Capital Stock of the subject Person. A Person shall be deemed to control another Person if the controlling Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, by contract, or otherwise.

“Agent” means each of the Administrative Agent and the Collateral Agent, individually, and “Agents” means both of such Persons, collectively.

“Agent Advances” has the meaning specified in Section 2.2(j).

“Agent-Related Persons” means the Collateral Agent and the Administrative Agent, together with their respective Affiliates, and the officers, directors, employees, counsel, representatives, agents, and attorneys-in-fact of the Collateral Agent and the Administrative Agent and their respective Affiliates.

“Agent’s Liens” means the Liens in the Collateral granted to the Collateral Agent, for the benefit of the Credit Providers, pursuant to the terms of this Agreement (and, for the avoidance of doubt, the Original Loan and Security Agreement and the First Amended and Restated Loan and Security Agreement) and the other Loan Documents.

“Aggregate Revolver Outstandings” means, at any time, the sum of (a) the aggregate unpaid balance of the Revolving Loans, (b) the aggregate undrawn amount of all outstanding Letters of Credit, and (c) the aggregate amount of any unpaid reimbursement obligations in respect of Letters of Credit.

“Agreement” means this Second Amended and Restated Loan and Security Agreement, as it may be further amended, restated, or otherwise modified from time to time.

“Ahern” means Ahern Rentals, Inc., a Nevada corporation.

“Aircraft Mortgage” means the Aircraft Security Agreement, dated as of the Original Closing Date, by and between Ahern and the Collateral Agent, by which the Collateral Agent, for the benefit of the Credit Providers, acquired a Lien on a certain 1979 Hughes model 369D helicopter bearing Serial Number 790544D and FAA Registration Number N58341.

“Allocable Amount” has the meaning specified in Section 15.19.

“Anniversary Date” means an anniversary of the Closing Date.

“Applicable Margin” means, as of the Closing Date,

(a) with respect to Base Rate Revolving Loans and all other Obligations (other than LIBOR Rate Revolving Loans and Term Loan Obligations), 3.00% per annum, and

(b) with respect to LIBOR Rate Revolving Loans, 4.00%,

in each case subject to adjustment from time to time thereafter to the applicable percentage specified corresponding to the Fixed Charge Coverage Ratio, as set forth below, respectively:

<u>Fixed Charge Coverage Ratio</u>	<u>Base Rate Revolving Loans and other Obligations (other than LIBOR Rate Revolving Loans and Term Loan Obligations)</u>	<u>LIBOR Rate Revolving Loans</u>
less than or equal to 1.0:1.0	3.00%	4.00%
greater than 1.0:1.0 and less than 1.1:1.0	2.75%	3.75%
greater than 1.1:1.0	2.50%	3.50%

For the purpose of determining any such adjustments to the Applicable Margin, the Fixed Charge Coverage Ratio shall be determined, beginning with the Fiscal Quarter ending June 30, 2010, based upon the Financial Statements of Ahern and its Subsidiaries for the immediately preceding four (4) Fiscal Quarters of Ahern, and for each Fiscal Quarter of Ahern ending thereafter, delivered to the Agents as required by Section 6.2(a) (with respect to the Financial Statements as of the last day of each Fiscal Year) or Section 6.2(b)(i) (with respect to the Financial Statements for each of the other Fiscal Quarters of each Fiscal Year), and any such adjustment, if any, shall become effective prospectively on and after the first day of the calendar month following the date of delivery of such Financial Statements to the Agents. Concurrently with the delivery of such Financial Statements, Ahern shall deliver to the Agents a certificate, signed by a Responsible Officer, setting forth in reasonable detail the basis for the continuance of, or any change in, the Applicable Margin. In the event the Obligated Parties fail to timely deliver any such Financial Statements, in addition to any other remedy provided for in this Agreement, the Applicable Margin shall be deemed to be equal to the highest level set forth in the preceding table, until the first day of the calendar month following the date of delivery of such Financial Statements to the Agents, at which time the Applicable Margin shall be determined, prospectively, in accordance with the terms hereof. If a Default or an Event of Default exists at the time any reduction in the Applicable Margin is to be implemented, such reduction shall not occur until the first day of the calendar month following the date on which such Default or Event of Default is Waived or cured.

“Applicable Unused Line Fee Percentage” means, with respect to the Unused Line Fee payable for any calendar month or a portion of any calendar month, the percentage per annum set forth below opposite the respective Level (i.e., Level 1 or Level 2, as the case may be) of Average Usage for the immediately preceding calendar month.

<u>Level</u>	<u>Average Usage</u>	<u>Applicable Unused Line Fee Percentage</u>
1	≤ 50%	0.75%
2	> 50%	0.50%

Notwithstanding anything to the contrary contained above in this definition, Level 1 pricing shall apply at all times during which there shall exist any Default or Event of Default.

“Assigned Contracts” means, collectively, all of each Obligated Party’s rights and remedies under, and all moneys and claims for money due or to become due to such Obligated Party under, those contracts set forth on Schedule 1.1(D) and any other material contracts, and any and all amendments, supplements, extensions, renewals, and other modifications thereof including all rights and claims of such Obligated Party now or hereafter existing: (a) under any insurance, indemnities, warranties, and guaranties provided for or arising out of or in connection with any of the foregoing agreements; (b) for any damages arising out of or for breach or default under or in connection with any of the foregoing contracts; (c) to all other amounts from time to time paid or payable under or in connection with any of the foregoing agreements; or (d) to exercise or enforce any and all covenants, remedies, powers, and privileges thereunder.

“Assignee” has the meaning specified in Section 13.2(a).

“Assignment and Acceptance” has the meaning specified in Section 13.2(a).

“Attorney Costs” means and includes (a) all reasonable fees, expenses, and disbursements of (i) any law firm or other counsel engaged by the Collateral Agent or the Administrative Agent, (ii) one law firm or other external counsel engaged by the Revolving Lenders and (iii) one law firm or other external counsel engaged by the Term Lenders and (b) the reasonably allocated costs and expenses of internal legal services of the Collateral Agent and the Administrative Agent.

“Average Usage” means, for any period, an amount, expressed as a percentage, equal to (i) the quotient of (x) the Aggregate Revolver Outstandings for each day during such period, divided by (y) the number of days in such period, divided by (ii) the quotient of (x) the sum of the Revolving Credit Commitments of all Lenders for each day during such period, divided by (y) the number of days in such period, all as determined by the Administrative Agent.

“Bank Product Reserves” means all reserves which either or both of the Agents from time to time establish in its or their reasonable credit judgment for the Bank Products then provided or outstanding.

“Bank Products” means each and any of the following types of services or facilities extended to any of the Obligated Parties by (I) in the case of (b) below, BofA or Wachovia or any Affiliate of BofA or Wachovia and (II) in the case of (a), (c) and (d) below, any Revolving Lender or any Affiliate of any Revolving Lender: (a) commercial credit cards; (b) cash management services (including controlled disbursement services, ACH Transactions, and interstate depository network services), (c) Hedge Agreements; and (d) foreign exchange.

“Bankruptcy Code” means Title 11 of the United States Code (11 U.S.C. § 101 et seq.).

“Base Rate” means, for any day, the greatest of (a) the rate of interest in effect for such day as publicly announced from time to time by BofA in Charlotte, North Carolina as its “prime rate” (the “prime rate” being a rate set by BofA based upon various factors including BofA’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate); (b) the Federal Funds Rate in effect for such day, plus 0.50% per annum; and (c) the LIBOR Rate for a 30-day interest period as determined for such day, plus 1.00% per annum, provided, that, in the Agents’ sole discretion, such amount is subject to change at any time without notice to the Borrowers. With respect to any determination of any Interest Rate which is based on the Base Rate, any change in the prime rate announced by BofA shall take effect at the opening of business on the day specified in the public announcement of such change, and any change in the Federal Funds Rate shall take effect as of the date of such change.

“Base Rate Revolving Loan” means any portion of the Revolving Loans during any period in which such portion bears interest based on the Base Rate.

“Blocked Availability Amount” means \$10,000,000.

“BofA” has the meaning specified in the introductory paragraph of this Agreement.

“Borrower” means, separately and individually, any of Ahern and any other Person who becomes a party to this Agreement as a “Borrower” pursuant to the terms hereof, jointly, severally, and collectively, and “Borrowers” means more than one or all of the foregoing Persons, jointly, severally, and collectively, as the context requires.

“Borrowing” means (a) a borrowing hereunder consisting of Revolving Loans made available to the Borrowers, or any of them, on the same day (i) by the Revolving Lenders, (ii) by BofA (in the case of a Borrowing funded as a Non-Ratable Loan), or (iii) by the Administrative Agent (in the case of a Borrowing consisting of an Agent Advance), (b) the issuance of a Letter of Credit hereunder or (c) the borrowing of the Term Loans hereunder on the Closing Date.

“Borrowing Base” means, at any time, (a) an amount equal to the lesser of (i) the Maximum Revolver Amount or (ii) the sum of, without duplication, (1) up to eighty-five percent (85%) of the Net Amount of Eligible Accounts, plus (2) up to the lesser of (A) ninety-five percent (95%) of the Net Book Value of Eligible Rental and Sale Equipment and (B) eighty-five percent (85%) of the Net Orderly Liquidation Value of Eligible Rental and Sale Equipment, plus (3) up to the lesser of (A) ninety-five percent (95%) of the Net Book Value of Eligible Transportation Equipment and (B) eighty-five percent (85%) of the Net Orderly Liquidation Value of Eligible Transportation Equipment, plus (4) up to the lesser of (A) sixty percent (60%)

of the value (at the lower of cost, on an average cost basis, or market) of Eligible Spare Parts Inventory and (B) eighty-five percent (85%) of the Net Orderly Liquidation Value of Eligible Spare Parts Inventory, minus (5) if the sum of the Aggregate Revolver Outstandings 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 Reserves) minus (c) the sum of the Blocked Availability Amount and the Supplemental Blocked Availability Amount.

“Borrowing Base Certificate” means a certificate by a Responsible Officer of the Borrowers, or Ahern on behalf of the Borrowers, substantially in the form of Exhibit B (or another form acceptable to the Agents) setting forth the calculation of the Borrowing Base, including a calculation of each component thereof (including to the extent a Borrower has received notice of any Reserve from an Agent, any of the Reserves included in such calculation pursuant to clause (b) of the definition of Borrowing Base), all in such detail as shall be satisfactory to the Agents. All calculations of the Borrowing Base in connection with the preparation of any Borrowing Base Certificate shall originally be made by the Borrowers, or Ahern on behalf of the Borrowers, and certified to the Agents; provided that each of the Agents shall have the right to review and adjust, in the exercise of its credit judgment, any such calculation (a) to reflect its estimate of declines in value of any of the Collateral described therein, (b) to reflect the receipt of proceeds of the Collateral, and (c) to the extent that such calculation is not made in accordance with the terms of this Agreement.

“Business Day” means (a) any day that is not a Saturday, Sunday, Nevada Day or a day on which banks in New York, New York or Charlotte, North Carolina are required or permitted to be closed and (b) with respect to all notices, determinations, fundings, and payments in connection with the LIBOR Rate or LIBOR Rate Revolving Loans, any day that is a Business Day pursuant to clause (a) preceding and that is also a day on which trading in Dollars is carried on by and between banks in the London interbank market. “Nevada Day” means the holiday celebrating the admission of Nevada into statehood, which occurs on or about October 31st of each year.

“Capital Adequacy Regulation” means any guideline, request, or directive of any central bank or other Governmental Authority, or any other law, rule, or regulation, whether or not having the force of law, in each case, regarding capital adequacy of any bank or of any corporation controlling a bank.

“Capital Expenditures” means, with respect to any Person, all payments made by such Person with respect to the cost of any Inventory (other than spare parts Inventory and other than Inventory at all times held for sale and not rental), Fixed Asset or improvement, or replacement, substitution, or addition thereto, which has a useful life of more than one year, including those costs arising in connection with the direct or indirect acquisition of such asset or improvement by way of increased product or service charges or in connection with a Capital Lease, excluding

(a) expenditure of insurance proceeds to rebuild or replace any asset or improvement after a casualty loss and (b) leasehold improvement expenditures for which such Person is reimbursed promptly by the lessor.

“Capital Lease” means any lease of property by a Person which, in accordance with GAAP, should be reflected as a capital lease on the balance sheet of such Person.

“Capital Stock” means any and all corporate stock, units, shares, partnership interests, membership interests, equity interests, rights, securities, or other equivalent evidences of ownership (howsoever designated) issued by any Person.

“Change of Control” means the occurrence of any of the following: (a) except as allowed by Section 8.9, the adoption of a plan relating to the liquidation or dissolution of any Obligated Party; (b) (i) Don Ahern shall cease to own, directly or indirectly, at least 51% of the outstanding voting Capital Stock of Ahern, (ii) Don Ahern, any member of his immediate family and any trust established for the benefit of Don Ahern and/or any member of his immediate family shall cease to own, directly or indirectly, at least 75.0% of the outstanding voting Capital Stock of Ahern, (iii) Don Ahern shall, by agreement or otherwise, cease to have the right to exercise voting control of Ahern or (iv) Don Ahern shall die or shall become incapacitated or disabled such that Don Ahern is unable to properly perform the duties for Ahern that he performs for Ahern on the Original Closing Date; provided, that if Don Ahern shall die or become so incapacitated or disabled, a Change of Control under this clause (b) shall not occur as a result of such death, incapacitation or disability if, within 90 days after the occurrence of his death or such incapacity or disability and at all times thereafter, Ahern shall have employed one or more Persons with requisite experience that are reasonably satisfactory to the Agents to perform those duties for Ahern that Don Ahern performed for Ahern on the Original Closing Date; (c) except as allowed by Section 8.9, any Obligated Party (other than Ahern) shall cease to be a Wholly-Owned Subsidiary of Ahern or (d) there shall occur a “Change of Control” or a “Change in Control” as defined in any Second Lien Debt Document, any Refinancing Second Lien Debt Document or any other document governing material Debt of any Obligated Party.

“Chattel Paper” means “chattel paper”, as such term is defined in the UCC, and any electronic chattel paper.

“Clearing Account” means each bank account maintained with BofA or a Clearing Bank, subject to a Deposit Account Control Agreement providing for the Collateral Agent’s dominion and control of such bank account, to which the funds of an Obligated Party (including proceeds of Accounts and other Collateral) are deposited or credited, and which is maintained in the name of the Collateral Agent or such Obligated Party (as the Agents may determine) on terms acceptable to the Agents. For purposes of this Agreement, “Clearing Account” includes any Clearing Accounts opened by any Obligated Party with BofA and pledged in accordance with Article 10, and any renewals or rollovers thereof, any successor or substitute deposit accounts, including any such deposit account as it may have been renumbered or retitled, any proceeds thereof (including any interest paid thereon), and any general intangibles and choses in action arising therefrom or related thereto. Whenever there is more than one Clearing Account, the term “Clearing Account” shall refer to all such Clearing Accounts, collectively.

“Clearing Bank” means any banking institution reasonably acceptable to the Agents with whom a Clearing Account has been established.

“Closing Date” means the date of this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended.

“Co-Lead Arrangers” means Banc of America Securities LLC and Wachovia Capital Markets, LLC, solely in their respective capacities as co-lead arrangers.

“Collateral” has the meaning specified in Section 10.1.

“Collateral Agent” means Wachovia, solely in its capacity as collateral agent for the Lenders, and any successor collateral agent.

“Collateral Documents” means this Agreement, the Intercreditor Agreement, the Proprietary Rights Security Agreements, any Mortgages, any Aircraft Mortgage, any Guaranty Agreements, and any other agreements, instruments, and documents heretofore, now or hereafter executed and delivered in connection with this Agreement, the Original Loan and Security Agreement or the First Amended and Restated Loan and Security Agreement, pursuant to which liens and security interests are granted to the Collateral Agent in the Collateral for the benefit of the Credit Providers.

“Collateral Waiver Agreement” means any agreement, in form and substance reasonably satisfactory to the Agents, between the Collateral Agent (or the Collateral Agent and the Second Lien Agent) and any landlord of any Obligated Party for any Real Estate where any Collateral is located or any third party (including any bailee, consignee, customs broker, processor, warehouseman, or other similar Person) in possession of any Collateral, as such agreement may be amended, restated, or otherwise modified from time to time.

“Commitment” means, at any time with respect to a Lender, the sum of the Term Loan Commitment and Revolving Credit Commitment of such Lender.

“Compliance Certificate” has the meaning specified in Section 6.2(d).

“Contaminant” means any material defined as waste, pollutant, hazardous substance, toxic substance, hazardous waste, or special waste under any Environmental Law (including petroleum or petroleum-derived substance or waste, asbestos in any form or condition, and polychlorinated biphenyls), or any constituent of any such substance or waste.

“Continuation/Conversion Date” means the effective date of (a) any continuation of LIBOR Rate Revolving Loans as LIBOR Rate Revolving Loans and (b) any conversion of LIBOR Rate Revolving Loans to Base Rate Revolving Loans or of Base Rate Revolving Loans to LIBOR Rate Revolving Loans.

“Credit Facility” has the meaning specified in Section 2.1.

“Credit Providers” means, collectively, the Collateral Agent, the Administrative Agent (in its capacity as administrative agent for the Lenders and, additionally, as provider of Agent Advances), the Lenders, BofA, in its capacity as provider of Non-Ratable Loans, each of BofA, Wachovia and each other Revolving Lender and their respective Affiliates as a provider of Bank Products, the Letter of Credit Issuer, and the Indemnified Persons, and “Credit Provider” means any of the foregoing, individually.

“Debt” means, without duplication, with respect to any Person (the “subject Person”) all liabilities, obligations, and indebtedness of the subject Person to any other Person, of any kind or nature, now or hereafter owing, arising, due, or payable, howsoever evidenced, created, incurred, acquired, or owing, whether primary, secondary, direct, contingent, fixed, or otherwise, consisting of indebtedness for borrowed money or the deferred purchase price of property, excluding trade payables and the endorsement of checks and other similar instruments in the ordinary course of business, but including, in any event and without in any way limiting the generality of the foregoing: (a) in the case of the Obligated Parties, the Obligations; (b) all such indebtedness, liabilities, and obligations of any Person secured by any Lien on the subject Person’s property, even if the subject Person shall not have assumed or become liable for the payment thereof; provided that all such indebtedness, liabilities, and obligations which are limited in recourse to such property shall be included in Debt only to the extent of the book value of such property as would be shown on a balance sheet of the subject Person prepared in accordance with GAAP; (c) all such indebtedness, liabilities, and obligations created or arising under any Capital Lease or conditional sale or other title retention agreement with respect to property used or acquired by the subject Person, even if the rights and remedies of the lessor, seller, or lender thereunder are limited to repossession of such property; provided that all such indebtedness, liabilities, and obligations which are limited in recourse to such property shall be included in Debt only to the extent of the book value of such property as would be shown on a balance sheet of the subject Person prepared in accordance with GAAP; (d) all indebtedness, liabilities, and obligations under Guaranties of Debt; (e) the present value (discounted at the implicit interest rate in such transaction) of lease payments due under synthetic leases; (f) net obligations in respect of Hedge Agreements; (g) all indebtedness, liabilities and obligations of the subject Person evidenced by notes, bonds, debentures or similar instruments; (h) all preferred capital stock issued by the subject Person that is required to be repurchased or redeemed by the subject Person or is repurchaseable or redeemable at the option of the holder thereof; and (i) all indebtedness, liabilities and obligations of the subject Person in respect of letters of credit or instruments serving a similar function issued or accepted for the account of the subject Person (whether or not representing obligations for borrowed money). Debt of any Person shall include all obligations of such Person of the character described in clauses (a) through (i) to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is deemed to be extinguished under GAAP. Debt of any Person shall include the Debt of any partnership or Joint Venture in which such Person is a general partner or a joint venturer, unless such Debt is, by its terms, non-recourse to the assets of such Person other than as a result of customary exclusions.

“Default” means any event or circumstance which, with the giving of notice, the lapse of time, or both, would (if not cured, Waived, or otherwise remedied during such time) constitute an Event of Default.

“Default Rate” means a fluctuating per annum interest rate at all times equal to the sum of (a) the otherwise applicable Interest Rate, plus (b) 2.00% per annum. The Default Rate shall be adjusted simultaneously with any change in the applicable Interest Rate.

“Defaulting Lender” has the meaning specified in Section 14.15(c).

“Deposit Account Control Agreement” means an agreement, including a blocked account agreement, in form and substance satisfactory to each Agent, among an Obligated Party, a banking institution holding funds of such Obligated Party, the Collateral Agent (or the Collateral Agent and the Second Lien Agent) and the Administrative Agent with respect to collection and control of all deposits and balances held in a Deposit Account maintained by such Obligated Party with such banking institution.

“Deposit Accounts” means “deposit accounts”, as such term is defined in the UCC.

“Dilution” means, at the time of any relevant determination, the average amount for the twelve (12) consecutive Fiscal Month period most recently ended prior to such time of determination, by which the amount of Eligible Accounts is reduced due to returns, discounts, claims, credits, allowances, accrued rebates, offsets, deductions, counterclaims, disputes and other defenses of any nature at any time issued, owing, granted, outstanding, available or claimed.

“Disposition” or “Dispose” means the sale, transfer, license, lease, or other disposition (including any sale and leaseback transaction) of any property by any Person.

“Distribution” means, with respect to any Person (other than a natural person) (a) the payment or making of any dividend or other distribution of property by such Person in respect of its Capital Stock (or any options or warrants for, or other rights with respect to, such Capital Stock), other than distributions solely in such Person’s Capital Stock (or any options or warrants for, or other rights with respect to, such Capital Stock) of the same class or (b) the redemption, repurchase, retirement, or other acquisition by such Person of any Capital Stock (or any options or warrants for, or other rights with respect to, such Capital Stock) of such Person.

“Documents” means “documents”, as such term is defined in the UCC, and bills of lading, warehouse receipts, and other documents of title.

“DOL” means the United States Department of Labor or any successor department or agency.

“Dollar” and “\$” mean dollars in the lawful currency of the U.S. Unless otherwise specified, all payments under any Loan Document shall be made in Dollars.

“Dollar Utilization” means, with respect to any Fiscal Quarter of Ahern, an annualized ratio, the numerator of which is the sum of revenues from all equipment rentals and related revenues of the Obligated Parties, as reported by Ahern on its statement of income and retained earnings for such Fiscal Quarter, multiplied by four (4), and the denominator of which is the average original cost of the fleet of rental equipment owned by the Obligated Parties during such Fiscal Quarter.

“Early Term Loan Prepayment Fee” has the meaning specified in Section 4.2.

“EBITDA” means, with respect to any fiscal period of Ahern, Adjusted Net Earnings from Operations, plus, to the extent deducted in the determination of Adjusted Net Earnings from Operations for such fiscal period, (a) Interest Expense, (b) federal, state, local, and foreign income taxes, and (c) depreciation and amortization, in each case for Ahern and its Subsidiaries on a consolidated basis.

“Eligible Accounts” means the Accounts of the Borrowers that both of the Agents in the exercise of their reasonable credit judgment determine to be Eligible Accounts. Without limiting the discretion of the Agents to establish other criteria of ineligibility, Eligible Accounts shall not include any Account (except as may be otherwise specified below):

(a) that does not arise from the sale or lease of Goods or rendition of services in the ordinary course of business of a Borrower;

(b) that is not subject to the Agent’s Liens which are perfected as to such Account, or that is subject to any other Lien (other than the Lien permitted under clause (i) of the defined term Permitted Liens);

(c) with respect to which either (i) any payment, or part thereof, remains unpaid for more than 90 days from the original due date therefor, or (ii) more than 120 days have elapsed from the date of the original invoice therefor, or no invoice has been issued;

(d) with respect to which any of the representations, warranties, covenants, and agreements contained in this Agreement are incorrect or have been breached;

(e) with respect to which (or any other Account due from the applicable Account Debtor), in whole or in part, a check, promissory note, draft, trade acceptance, or other instrument for the payment of money has been received, presented for payment, and returned uncollected for any reason;

(f) that is the subject of any debit memo or charge-back, but only to the extent of such debit memo or charge-back;

(g) that represents a progress billing (for the purposes hereof, “progress billing” means any invoice for goods sold or leased or services rendered under a contract or agreement pursuant to which the Account Debtor’s obligation to pay such invoice is conditioned upon such Borrower’s completion of any further performance under such contract or agreement, other than, in the case of a lease of Inventory in the ordinary course of business, the performance of any covenant of quiet enjoyment);

(h) with respect to which any one or more of the following events has occurred to the Account Debtor on such Account: (i) death or judicial declaration of incompetency of such Account Debtor who is a natural person; (ii) the filing by or against such Account Debtor of a request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as a bankrupt, winding-up, or other relief

under the Bankruptcy Code or any other Requirement of Law, now or hereafter in effect; (iii) the making of any general assignment by such Account Debtor for the benefit of creditors; (iv) the appointment of a receiver or trustee for such Account Debtor or for any of the assets of such Account Debtor, including the appointment of or taking possession by a "custodian," as defined in the Bankruptcy Code; (v) the institution by or against such Account Debtor of any other type of insolvency proceeding (under the Bankruptcy Code or otherwise) or of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against, or winding up of affairs of, such Account Debtor; (vi) the sale, assignment, or transfer of all or any material part of the assets of such Account Debtor; (vii) the nonpayment generally by such Account Debtor of its debts as they become due; or (viii) the cessation of the business of such Account Debtor as a going concern;

(i) with respect to which 50% or more of the aggregate Dollar amount of outstanding Accounts owed at such time to the Borrowers by the Account Debtor thereon is classified as ineligible pursuant to the other provisions of this definition;

(j) owed by an Account Debtor that: (i) does not maintain its chief executive office in the U.S.; (ii) is not organized under the laws of the U.S. or any political subdivision, state or territory thereof; or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, except to the extent that such Account is secured or payable by a letter of credit the terms of which are satisfactory to the Agents in their reasonable credit judgment and which is in the possession of the Collateral Agent and which, together with all related Letter-of-Credit Rights, is subject to a first priority Lien in favor of the Collateral Agent, for the benefit of the Credit Providers;

(k) owed by an Account Debtor that is an Affiliate, officer, director, or employee of any Borrower or any Affiliate of any Borrower;

(l) except as provided in clause (n) following, with respect to which either the perfection or validity of the Agent's Liens in such Account, or the Collateral Agent's right or ability to obtain direct payment to the Collateral Agent of the proceeds of such Account, is governed by any federal, state, or local statutory requirements other than those of the UCC;

(m) owed by an Account Debtor to which an Obligated Party or any of its Affiliates, is indebted in any way (including accrued liabilities), or which is subject to any right of setoff or recoupment by the Account Debtor, unless the Account Debtor has entered into an agreement acceptable to the Agents to waive setoff rights, or if the Account Debtor thereon has disputed liability or made any claim with respect to any other Account due from such Account Debtor, but in each such case only to the extent of such indebtedness, setoff, recoupment, dispute, or claim;

(n) owed by (i) the government of the U.S., or any department, agency, public corporation, or other instrumentality thereof, unless the Federal Assignment of Claims

Act of 1940, as amended (31 U.S.C. § 3727 et seq.), and any other steps necessary to perfect the Agent's Liens therein, have been complied with to the Agents' reasonable satisfaction with respect to such Account or (ii) any state, municipality, or other political subdivision of the U.S., or any department, agency, public corporation, or other instrumentality thereof and as to which either of the Agents determines that the Agent's Lien therein is not or cannot be perfected;

(o) that represents a sale on a (i) cash or C.O.D. basis or (ii) bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment, or other repurchase or return basis;

(p) [Intentionally Omitted];

(q) that is evidenced by a promissory note or other instrument or by Chattel Paper;

(r) with respect to which either Agent believes, in the exercise of its reasonable credit judgment, that the prospect of collection of such Account is impaired or that such Account may not be paid by reason of the Account Debtor's financial inability to pay;

(s) except as may be permitted by the Agents in their reasonable credit judgment, with respect to which the Account Debtor is located in any state requiring the filing of a Notice of Business Activities Report or similar report in order to permit the applicable Borrower to seek judicial enforcement in such state of payment of such Account, unless such applicable Borrower has qualified to do business in such state or has filed a Notice of Business Activities Report or equivalent report for the then current year;

(t) to the extent constituting finance or similar charges or sales or use tax;

(u) with respect to which the goods giving rise to such Account have not been shipped and delivered to and accepted by, or have been rejected or objected to by, the Account Debtor or to the extent the services giving rise to such Account have not been performed by the applicable Borrower, and, if applicable, accepted by the Account Debtor, or the Account Debtor revokes its acceptance of such goods or services;

(v) owed by an Account Debtor, or group of affiliated Account Debtors, which is obligated to the Borrowers respecting Accounts the aggregate unpaid balance of which exceeds 10% of the aggregate unpaid balance of all Eligible Accounts owed to the Borrowers at such time by all of the Borrowers' Account Debtors, but only to the extent of such excess;

(w) that is the subject of any unreconciled variance between the aging of Accounts delivered to either Agent, the general ledger of the applicable Borrower, and the applicable Borrowing Base Certificate; or

(x) that either of the Agents determines in its reasonable credit judgment is ineligible for any other reason.

“Eligible Assignee” means (i) with respect to an assignment of all or a portion of a Revolving Lender’s Revolving Loans and/or Revolving Credit Commitment, (a) a commercial bank, commercial finance company, or other asset based lender having total assets in excess of One Billion Dollars (\$1,000,000,000), (b) any Revolving Lender, (c) any Affiliate of any Revolving Lender, and (d) if an Event of Default has occurred and is continuing, any Person reasonably acceptable to the Agents and (ii) with respect only to an assignment of all or a portion of a Term Lender’s Term Loans, (a) any Lender, (b) any Affiliate of any Lender, (c) with respect to any Term Lender that is an investment fund that invests in commercial loans, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Term Lender or by an Affiliate of such investment advisor, and (d) any commercial bank, savings and loan association or savings bank or any other entity which is an “accredited investor” (as defined in Regulation D under the Securities Act of 1933) which extends credit or buys loans as one of its businesses, including insurance companies, mutual funds, investment funds, lease financing companies and commercial finance companies.

“Eligible Inventory” means Inventory of the Borrowers which both of the Agents, in their reasonable credit judgment, determine to be Eligible Inventory. Without limiting the discretion of the Agents to establish other criteria of ineligibility, Eligible Inventory shall not include any Inventory (except as may be otherwise specified below):

- (a) that is not owned by a Borrower, including goods held by a Borrower on consignment;
- (b) that is not subject to the Agent’s Liens, which are perfected as to such Inventory, or that is subject to any Lien (other than the Liens described in clauses (a), (c), (e) and (i) of the definition of Permitted Liens; provided that such Permitted Liens (i) are junior in priority to the Agent’s Liens or subject to Reserves and (ii) do not impair directly or indirectly the ability of the Collateral Agent to realize on or obtain the full benefit of the Collateral);
- (c) that is not finished goods or raw materials;
- (d) that consists of work-in-process, chemicals, samples, prototypes, supplies, or packing and shipping materials;
- (e) that is not in good condition, is unmerchantable or not rentable in the ordinary course of business of a Borrower, or does not meet all standards imposed by any Governmental Authority having regulatory authority over such goods or their use or sale;
- (f) that is obsolete or defective;
- (g) consisting of airplanes, helicopters or other aircraft or spare parts therefor;
- (h) that is located outside the U.S. or that is in transit from vendors or suppliers or to buyers; provided that the Agents may in their discretion include as Eligible

Inventory any Inventory which is in transit within the U.S. or Canada to a Borrower's place of business and any Inventory held for lease which is in transit to lessees shall not be excluded by this clause (h), provided that upon the request of either Agent the Borrowers shall deliver to the Agents a listing of all such Inventory and its location;

(i) that is consigned to third parties or is subject to any bill-and-hold, guaranteed sale, sale on approval, or other repurchase or return basis;

(j) that is located in a public warehouse or in possession of a bailee or in a facility leased by a Borrower, if the applicable warehouseman, bailee, or lessor has not delivered to the Agents a Collateral Waiver Agreement or if, in lieu of such Collateral Waiver Agreement, a Reserve for rents or storage charges (in an amount for any location not to exceed at any time three (3) months' rent or storage charges plus any then unpaid rent or storage charges owing with respect to such location) has not been established to the extent the Agents deem appropriate in their reasonable credit judgment for Inventory at that location;

(k) that contains or bears any Proprietary Rights licensed to a Borrower by any Person, if either of the Agents is not satisfied that the Collateral Agent may sell or otherwise dispose of such Inventory in accordance with the terms of this Agreement (including Section 11.2) without infringing the rights of the licensor of such Proprietary Rights or violating any contract with such licensor (and without payment of any royalties other than any royalties due with respect to the sale or disposition of such Inventory pursuant to the existing license agreement), and, if either of the Agents deems it necessary, as to which such Borrower has not delivered to the Agents a consent or sublicense agreement from such licensor in form and substance acceptable to the Agents;

(l) that is not reflected in the details of a current perpetual inventory report;

(m) that is leased to any Person which is not in compliance with the terms of the lease agreement relating to such lease and as to which there is any restriction or impediment (legal or otherwise), as determined by either of the Agents in its reasonable credit judgment, on the ability of the Collateral Agent to obtain access thereto in order to repossess same; or

(n) that either of the Agents determines in its reasonable credit judgment is ineligible for any other reason.

"Eligible Rental and Sale Equipment" means Eligible Inventory consisting of Inventory (other than spare parts and merchandise Inventory) held for sale or lease in the ordinary course of a Borrower's business, which is marked with an identifiable serial number.

"Eligible Spare Parts Inventory" means Eligible Inventory consisting of unused spare parts and merchandise inventory located on premises owned or leased by a Borrower, which spare parts and merchandise inventory are held for sale by a Borrower in the ordinary course of its business or for the repair or maintenance of Inventory of a Borrower that is held for sale or lease by such Borrower in the ordinary course of its business.

“Eligible Transportation Equipment” means Transportation Equipment of the Borrowers marked with an identifiable serial number which both of the Agents, in their reasonable credit judgment, determine to be Eligible Transportation Equipment. Without limiting the discretion of the Agents to establish other criteria of ineligibility, Eligible Transportation Equipment shall not include any Transportation Equipment (except as may be otherwise specified below):

- (a) that is not owned by a Borrower, including goods held by a Borrower on consignment;
- (b) that is not subject to the Agent’s Liens, which are perfected as to such Transportation Equipment, or that is subject to any Lien (other than the Liens described in clauses (a), (c), (e) and (i) of the definition of Permitted Liens; provided that such Permitted Liens (i) are junior in priority to the Agent’s Liens or subject to Reserves and (ii) do not impair directly or indirectly the ability of the Collateral Agent to realize on or obtain the full benefit of the Collateral);
- (c) that is not in good condition or does not meet all standards imposed by any Governmental Authority having regulatory authority over such goods or their use or sale;
- (d) that is obsolete or defective;
- (e) consisting of airplanes, helicopters or other aircraft or spare parts therefore;
- (f) that is located outside the U.S.; provided that the Agents may in their discretion include as Eligible Transportation Equipment any Transportation Equipment which is in transit within Canada moving Inventory to or from a customer of a Borrower in the ordinary course of such Borrower’s business;
- (g) that is consigned to third parties or is subject to any bill-and-hold, guaranteed sale, sale on approval, or other repurchase or return basis;
- (h) that is located in a public warehouse or in possession of a bailee or in a facility leased by a Borrower, if the applicable warehouseman, bailee, or lessor has not delivered to the Agents a Collateral Waiver Agreement or if, in lieu of such Collateral Waiver Agreement, a Reserve for rents or storage charges (in an amount for any location not to exceed at any time three (3) months’ rent or storage charges plus any then unpaid rent or storage charges owing with respect to such location) has not been established to the extent the Agents deem appropriate in their reasonable credit judgment for Transportation Equipment at that location;
- (i) that contains or bears any Proprietary Rights licensed to a Borrower by any Person, if either of the Agents is not satisfied that the Collateral Agent may sell or otherwise dispose of such Transportation Equipment in accordance with the terms of this Agreement (including Section 11.2) without infringing the rights of the licensor of such Proprietary Rights or violating any contract with such licensor (and without payment of any royalties), and, if either of the Agents deems it necessary, as to which such Borrower

has not delivered to the Agents a consent or sublicense agreement from such licensor in form and substance acceptable to the Agents; or

(j) that either of the Agents determines in its reasonable credit judgment is ineligible for any other reason.

“Engagement Letter” means the engagement letter agreement, dated December 14, 2009, among Ahern, BofA and Banc of America Securities LLC.

“Environmental Claim” means any claim, however asserted, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for a Release or injury to the environment.

“Environmental Compliance Reserve” means any reserve that either of the Agents establishes from time to time in its reasonable credit judgment after prior written notice to the Borrowers for amounts that are reasonably likely to be expended by an Obligated Party in order for such Obligated Party and its operations and property (a) to comply with any notice from a Governmental Authority asserting non-compliance with any Environmental Law or (b) to correct any non-compliance identified in a report delivered to the Agents pursuant to Section 8.7.

“Environmental Law” means any Requirement of Law relating to environmental, health, safety, and land use matters.

“Environmental Lien” means a Lien in favor of any Governmental Authority or any other Person for (a) any liability under any Environmental Law or (b) damages arising from, or costs incurred by such Governmental Authority or other Person in response to, a Release or threatened Release of a Contaminant into the environment.

“Equipment” means “equipment”, as such term is defined in the UCC, and all machinery, equipment, furniture, furnishings, fixtures, and other tangible personal property (except Inventory), including embedded software, motor vehicles with respect to which a certificate of title has been issued, aircraft, dies, tools, jigs, molds, and office equipment, as well as all of such types of property leased by the applicable Person and all of such Person’s rights and interests with respect thereto under such leases (including options to purchase), together with all present and future additions and accessions thereto, replacements therefor, component and auxiliary parts and supplies used or to be used in connection therewith, and all substitutes for any of the foregoing, and all manuals, drawings, instructions, warranties and rights with respect thereto.

“Equipment Appraisal” means, with respect to a Borrower, the most recently delivered appraisal of the Transportation Equipment of such Borrower delivered to the Agents pursuant to Section 10.4.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with an Obligated Party within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code). Any former ERISA Affiliate of a Person or any of its Subsidiaries shall continue to

be considered an ERISA Affiliate of such Person or such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of such Person or such Subsidiary and with respect to liabilities arising after such period for which such Person or such Subsidiary could be liable under the Code or ERISA.

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan, (b) a withdrawal by an Obligated Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA, (c) a complete or partial withdrawal by an Obligated Party or any ERISA Affiliate from a Multiemployer Plan, (d) the filing of a notice of intent to terminate, or the commencement of proceedings by the PBGC to terminate a Pension Plan or the termination, insolvency, or reorganization of a Multiemployer Plan, (e) the occurrence of an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon an Obligated Party or any ERISA Affiliate.

“Event of Default” has the meaning specified in Section 11.1.

“Exchange Act” means the Securities Exchange Act of 1934.

“Exchanged Term Loan Amount” has the meaning specified in Section 2.3(a).

“Excluded Asset” means any lease (including any fixtures or improvements on the property subject to the lease), license, contract or agreement to which Ahern or any Guarantor is a party or any of its rights or interests thereunder (including any rights or interests in tangible property in which Ahern or any Guarantor grants a Lien pursuant to any such agreement), in each instance, if and only for so long as the grant of a security interest under this Agreement therein shall constitute or result in a breach, termination or default under any such lease, license, contract or agreement (other than to the extent that any such term would be rendered ineffective pursuant to the Uniform Commercial Code of any relevant jurisdiction (including, without limitation, under Sections 9-406, 9-407, 9-408 or 9-409 thereof) or any other applicable law or principles of equity); provided that notwithstanding the foregoing (i) no lease, license, contract or agreement or any right or interest thereunder, in each instance, existing on the Closing Date shall constitute an Excluded Asset unless described on Schedule 1.1(E), (ii) no Account or money or other amounts due or to become due to Ahern or any Guarantor under or with respect to any such lease, license, contract or agreement or right or interest thereunder (other than amounts constituting proceeds from the sale of Inventory (other than Eligible Inventory) or Equipment (other than Eligible Transportation Equipment), in each instance, subject to purchase money financing permitted hereunder) shall constitute an Excluded Asset, (iii) no item of tangible property owned by Ahern or any Guarantor shall constitute an Excluded Asset unless such item is subject to purchase money Debt or other financing permitted under this Agreement or is an aircraft (other than the helicopter subject to the Aircraft Mortgage), (iv) any interest of Ahern or any Guarantor, as lessee, in a lease of real property shall constitute an Excluded Asset and (v) such lease, license, contract or agreement or right or interest thereunder shall be an

Excluded Asset only to the extent and for so long as the consequences specified above shall result and shall cease to be an Excluded Asset and shall become subject to the security interest granted under this Agreement, immediately and automatically, at such time as such consequences shall no longer result (including, without limitation and in any event, in the case of any item of tangible property which is the subject of purchase money Debt or other financing permitted hereunder when such financing has been paid in full).

“FDIC” means the Federal Deposit Insurance Corporation, and any Governmental Authority succeeding to any of its principal functions.

“Federal Funds Rate” means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/8th of 1.00%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to BofA on such day on such transactions as determined by BofA.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System or any successor thereto.

“Fee Letters” means (i) that certain fee and payment agreement, dated August 18, 2005, entered into among the Administrative Agent, the Collateral Agent and the Borrowers and (ii) that certain fee and payment agreement, dated the Closing Date, entered into between the Administrative Agent and the Borrowers, in each case, as amended, supplemented or otherwise modified from time to time.

“Financial Statements” means, according to the context in which used, the financial statements referred to in Section 6.2 and Section 7.6 or any other financial statements required to be given to either of the Agents pursuant to this Agreement.

“First Amended and Restated Loan and Security Agreement” has the meaning specified in the recitals of this Agreement.

“Fiscal Month” means a calendar month. There are twelve Fiscal Months in each Fiscal Year.

“Fiscal Quarter” means a period of three calendar months (with respect to Ahern beginning on the first day of each January, April, July, and October) constituting a Person’s fiscal quarter for financial accounting purposes, with the first of such measurement periods beginning on the first day of each Fiscal Year and the last of such measurement periods ending on the last day of such Fiscal Year.

“Fiscal Year” means, with respect to any Person, such Person’s fiscal year for financial accounting purposes. The current Fiscal Year of Ahern will end on December 31, 2010, and each Fiscal Year of Ahern is the relevant calendar year.

“Fixed Assets” means, with respect to any Person, the Equipment and Real Estate of such Person.

“Fixed Charge Coverage Ratio” means, as of the end of any Fiscal Quarter of Ahern, determined for Ahern and its Subsidiaries on a consolidated basis for the preceding four Fiscal Quarters, the ratio of EBITDA, divided by Fixed Charges.

“Fixed Charge Rental Fleet CapEx Percentage” means, at any time, that percentage which is (x) 100% minus (y) 85% of the Net Orderly Liquidation Percentage at such time with respect to rental fleet Inventory.

“Fixed Charge Rental Fleet Depreciation Percentage” means, at any time, that percentage which is (x) 100% minus (y) the Fixed Charge Rental Fleet CapEx Percentage at such time.

“Fixed Charges” means, with respect to any fiscal period, determined for Ahern and its Subsidiaries on a consolidated basis, without duplication, the sum of:

- (a) cash Interest Expense,
- (b) an amount equal to the product of (x) the Fixed Charge Rental Fleet CapEx Percentage in effect on the last day of such fiscal period times (y) the aggregate amount of Capital Expenditures made or incurred during such fiscal period with respect to Inventory which was in the rental fleet of Ahern or any of its Subsidiaries at any time on or prior to the last day of such fiscal period (excluding, in the case of the Obligated Parties, any such Capital Expenditures to the extent funded with proceeds from the sale of Inventory in the rental fleet of any Obligated Party permitted hereunder),
- (c) an amount equal to the product of (x) the Fixed Charge Transportation CapEx Percentage in effect on the last day of such fiscal period times (y) the aggregate amount of Capital Expenditures made or incurred during such fiscal period with respect to Transportation Equipment (excluding, in the case of the Obligated Parties, any such Capital Expenditures to the extent (1) funded with Debt other than Revolving Loans, but including, without duplication, principal payments with respect to any such Debt or (2) funded with proceeds from the sale of Transportation Equipment of any Obligated Party permitted hereunder),
- (d) an amount equal to the product of (x) the Fixed Charge Rental Fleet Depreciation Percentage in effect on the last day of such fiscal period times (y) depreciation expense taken in such fiscal period with respect to any Inventory which was in the rental fleet of Ahern or any of its Subsidiaries at any time on or prior to the last day of such fiscal period,
- (e) an amount equal to the product of (x) the Fixed Charge Transportation Depreciation Percentage in effect on the last day of such fiscal period times (y) depreciation expense taken in such fiscal period with respect to Transportation Equipment owned by Ahern or any of its Subsidiaries at any time on or prior to the last day of such fiscal period,

- (f) cash Distributions in respect of any Capital Stock,
- (g) scheduled principal payments of Debt, plus
- (h) federal, state, local, and foreign cash income taxes (not less than zero), excluding deferred taxes.

“Fixed Charge Transportation CapEx Percentage” means, at any time, that percentage which is (x) 100% minus (y) 85% of the Net Orderly Liquidation Percentage at such time with respect to Transportation Equipment.

“Fixed Charge Transportation Depreciation Percentage” means, at any time, that percentage which is (x) 100% minus (y) the Fixed Charge Transportation CapEx Percentage at such time.

“Funding Account” has the meaning specified in Section 2.2(d).

“Funding Date” means the date on which a Borrowing occurs.

“GAAP” means, subject to the limitations on the application thereof set forth in Section 1.2, generally accepted accounting principles and practices set forth from time to time in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession) that are applicable to the circumstances as of the date of determination.

“GE Intercreditor Agreement” means the intercreditor agreement entered into by the Collateral Agent and General Electric Capital Corporation relating to that certain Master Lease Agreement between Ahern and General Electric Capital Corporation dated as of February 14, 2003, both of which agreements have been terminated prior to the date hereof.

“General Intangibles” means, with respect to any Person, “general intangibles”, as such term is defined in the UCC, and all other choses in action and causes of action, intangible personal property of every kind and nature (other than Accounts), including all contract rights, payment intangibles, Proprietary Rights, corporate or other business records, inventions, designs, blueprints, plans, specifications, patents, patent applications, trademarks, service marks, trade names, trade secrets, goodwill, copyrights, computer software, customer lists, registrations, licenses, franchises, tax refund claims, any funds that may become due to such Person in connection with the termination of any Plan or other employee benefit plan or any rights thereto and any other amounts payable to such Person from any Plan or other employee benefit plan, rights and claims against carriers and shippers, rights to indemnification, business interruption insurance and proceeds thereof, property, casualty or any similar type of insurance and any proceeds thereof, proceeds of insurance covering the lives of key employees on which such Person is beneficiary, rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged equity interests or Investment Property and any letter of credit, guarantee, claim, security interest or other security held by or granted to such Person.

“Goods” means “goods” as such term is defined in the UCC.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing, and any department, agency, board, commission, tribunal, committee, or instrumentality of any of the foregoing.

“Guarantor” means each of (a) the Borrowers and (b) each other Person who becomes a party to any Guaranty Agreement pursuant to the terms of this Agreement, and “Guarantors” means two or more of the foregoing Persons, collectively.

“Guaranty” means, with respect to any Person, all obligations of such Person that in any manner directly or indirectly guarantee or assure, or in effect guarantee or assure, the payment or performance of any indebtedness, dividend, or other obligations of any other Person (the “guaranteed obligations”), or assure or in effect assure the holder of the guaranteed obligations against loss in respect thereof, excluding the endorsement of checks and other similar instruments in the ordinary course of business, but including any such obligations incurred through an agreement, contingent or otherwise: (a) to purchase the guaranteed obligations or any property constituting security therefor; (b) to advance or supply funds for the purchase or payment of the guaranteed obligations or to maintain a working capital or other balance sheet condition; or (c) to lease property or to purchase any debt or equity securities or other property or services. In any computation of the indebtedness or other liabilities of the obligor under any Guaranty, the indebtedness or other obligations that are the subject of such Guaranty shall be assumed to be direct obligations of such obligor.

“Guaranty Agreement” means each guaranty agreement in favor of the Collateral Agent to which any Person becomes a party pursuant to the terms of this Agreement, and “Guaranty Agreements” means all of such agreements, collectively.

“Hedge Agreement” means any and all transactions, agreements, or documents now existing or hereafter entered into, which provide for an interest rate, credit, commodity, or equity swap, cap, floor, collar, forward foreign exchange transaction, currency swap, cross currency rate swap, currency option, or any combination of, or option with respect to, these or similar transactions, for the purpose of hedging a Person’s exposure to fluctuations in interest or exchange rates, loan, credit exchange, security, or currency valuations, or commodity prices.

“Incremental Commitment Agreements” means the incremental commitment agreements contemplated under the First Amended and Restated Loan and Security Agreement, which were entered into by the Obligated Parties and certain of the Revolving Lenders (each, an “Incremental Lender”) pursuant to which each such Incremental Lender committed (such commitment, an “Incremental Commitment”) to increase its Commitment or provide a new Commitment, in each instance, to make Revolving Loans (the aggregate amount of which increased or new Commitments are included in the aggregate Revolving Credit Commitments on the Closing Date).

“Indemnified Liabilities” has the meaning specified in Section 15.11(a).

“Indemnified Person” has the meaning specified in Section 15.11(a).

“Instruments” means “instruments”, as such term is defined in the UCC.

“Intercompany Accounts” means all assets and liabilities, however arising, which are due to Ahern or a Subsidiary of Ahern from, which are due from Ahern or a Subsidiary of Ahern to, or which otherwise arise from any transaction by Ahern or a Subsidiary of Ahern with, any Affiliate of Ahern or a Subsidiary of Ahern.

“Intercreditor Agreement” means the Intercreditor Agreement, dated as of August 18, 2005, by and among the Obligated Parties, the Collateral Agent, the Second Lien Agent and Wachovia, as control agent, as amended, restated, supplemented or otherwise modified from time to time.

“Interest Expense” means with respect to Ahern and its Subsidiaries for any fiscal period, the aggregate amount of interest required to be paid or accrued on all Debt of Ahern and its Subsidiaries during such period, whether such interest was or is required to be reflected as an item of expense or capitalized, including payments consisting of interest in respect of Capital Leases or synthetic leases, and including unused commitment fees, facility fees, and similar fees and expenses in connection with the borrowing of money (including all fees and expenses incurred in connection with Hedge Agreements entered into with respect to any Debt).

“Interest Payment Date” means (a) the first day of each calendar month, (b) additionally, in the case of interest on any Obligations (other than Term Loan Obligations), the Revolving Termination Date and (c) additionally, in the case of interest on any Term Loan Obligations, the Term Loan Termination Date.

“Interest Period” means, with respect to any LIBOR Rate Revolving Loan, the period commencing on the Funding Date of such Loan or on the Continuation/Conversion Date on which such Loan is continued as or converted into a LIBOR Rate Revolving Loan, and ending on the date one, two, or three months thereafter as selected by a Borrower in a Notice of Borrowing or Notice of Continuation/Conversion, provided that:

- (a) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the following Business Day unless the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the preceding Business Day;
- (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and
- (c) no Interest Period shall extend beyond the Stated Revolving Termination Date.

“Interest Rate” means each or any of the interest rates, including the Default Rate, set forth in Section 3.1.

“Inventory” means “inventory”, as such term is defined in the UCC, and inventory, goods, and merchandise to be furnished under any contract of service or held for sale or lease, returned goods, raw materials, work-in-process, finished goods (including embedded software), other materials and supplies of any kind, nature, or description which are used or consumed in a Person’s business or used in connection with the packing, shipping, advertising, selling, or finishing of such goods, merchandise, and all documents of title or other Documents representing them.

“Inventory Appraisal” means with respect to a Borrower (a) on the Closing Date and until the first appraisal of the relevant class of Inventory of such Borrower is delivered to the Agents pursuant to Section 10.4, (i) the appraisal of Inventory of such Borrower consisting of spare parts and merchandise inventory or (ii) the appraisal of Inventory of such Borrower (other than Inventory consisting of spare parts and merchandise inventory), or both such appraisals, as the context may require, in each case prepared by Rouse Asset Services and dated September 30, 2009 and (b) thereafter, each appraisal of the relevant class of Inventory of such Borrower delivered to the Agents pursuant to Section 10.4.

“Investment” means any acquisition by an Obligated Party of property in exchange for cash or other property, whether in the form of an acquisition of Capital Stock, Debt, or other indebtedness or obligation, or the purchase or acquisition of any other assets or property, or a loan, advance, capital contribution, or subscription, excluding acquisitions in the ordinary course of business of such Obligated Party of Real Estate, Equipment, and Inventory to be used in the business of such Obligated Party. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment (other than adjustments for the repayment of, or the refund of capital with respect to, the original principal amount of any such Investment).

“Investment Property” means “investment property”, as such term is defined in the UCC, and any (a) securities, whether certificated or uncertificated, (b) securities entitlements, (c) securities accounts, (d) commodity contracts, and (e) commodity accounts.

“IRS” means the Internal Revenue Service and any Governmental Authority succeeding to any of its principal functions under the Code.

“Joint Venture” means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form.

“Latest Projections” means: (a) on the Closing Date and thereafter until the Agents receive new projections pursuant to Section 6.2(e), the monthly projections of the Obligated Parties’ financial condition, results of operations, cash flow, Borrowing Base, and Unused Availability, in each case for the period commencing on January 1, 2010 and ending on December 31, 2013 (for the period commencing on January 1, 2009 and ending on December 31, 2012 for purposes of Section 6.2(b)(ii)) with respect to any Financial Statements for any Fiscal

Month included in the 2009 Fiscal Year of Ahern) and the annual financial projections for Fiscal Years 2010-2013 (for Fiscal Years 2009-2012 for purposes of [Section 6.2\(d\)](#) with respect to the Financial Statements for the 2009 Fiscal Year of Ahern), each as delivered to the Agents prior to the Closing Date; and (b) thereafter, the projections most recently received by the Agents pursuant to [Section 6.2\(e\)](#).

“[Leasehold Property](#)” means any leasehold interest of any Obligated Party as lessee under any lease of real property.

“[Lender](#)” means any of the lending institutions signatory to this Agreement as specified on the signature pages hereto or in any Assignment and Acceptance as a “Lender”, any Non-Executing Revolving Lender, the Administrative Agent to the extent of any Agent Advance outstanding, and BofA to the extent of any Non-Ratable Loan outstanding, and “[Lenders](#)” means any two or more of such Persons, collectively; provided, however, that until the Revolving Facility Payment In Full (x) for purposes of the second sentence of [Section 2.2\(a\)](#), [Section 4.6\(b\)](#) and [Section 13.1](#), each reference therein to a “Lender” or the “Lenders” shall be deemed to be solely a reference to a “Revolving Lender” or the “Revolving Lenders”, respectively, and (y) for purposes of the definition of “Majority Lenders” when used in [Section 13.1](#) or in connection with such Section or when used in the Intercreditor Agreement, each reference in such definition to a “Lender” or “Lenders” shall be deemed to be solely a reference to a “Revolving Lender” or “Revolving Lenders”, respectively, and consequently Pro Rata Share shall be determined for such purposes solely in the context of the revolving credit facility provided under this Agreement.

“[Letter of Credit](#)” has the meaning specified in [Section 2.4\(a\)](#).

“[Letter of Credit Fee](#)” has the meaning specified in [Section 3.5](#).

“[Letter of Credit Fee Percentage](#)” means with respect to any Letter of Credit, on any date of determination, a per annum percentage equal to the Applicable Margin for LIBOR Rate Revolving Loans as of such date of determination, plus, during the existence of any Event of Default, an additional 2.00% per annum.

“[Letter of Credit Issuer](#)” means BofA or Wachovia or any Affiliate of BofA or Wachovia.

“[Letter-of-Credit Rights](#)” means “letter-of-credit rights”, as such term is defined in the UCC, and any rights to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is entitled to demand payment or performance.

“[Letter of Credit Subfacility](#)” means \$10,000,000.

“[LIBOR Rate](#)” means, for any Interest Period, with respect to LIBOR Rate Revolving Loans, the per annum rate of interest (rounded up, if necessary, to the nearest 1/8th of 1%), determined by the Administrative Agent at approximately 11:00 a.m. (London time) two Business Days prior to commencement of such Interest Period, for a term comparable to such Interest Period, equal to (a) the British Bankers Association LIBOR Rate (“[BBA LIBOR](#)”), as published by Reuters (or other commercially available source designated by the Administrative

Agent); or (b) if BBA LIBOR is not available for any reason, the interest rate at which Dollar deposits in the approximate amount of the LIBOR Rate Revolving Loan would be offered by BofA's London branch to major banks in the London interbank Eurodollar market. If the Federal Reserve Board imposes a Reserve Percentage with respect to LIBOR deposits, then LIBOR Rate shall be the foregoing rate, divided by 1 minus the Reserve Percentage.

“LIBOR Rate Revolving Loan” means any portion of the Revolving Loans during any period in which such portion bears interest based on the LIBOR Rate.

“Lien” means (a) any interest in property securing an obligation owed to, or a claim by, a Person other than the owner of the property, whether such interest is based on the common law, statute, or contract, and including a security interest, charge, claim, or lien arising from a mortgage, deed of trust, encumbrance, pledge, hypothecation, assignment, deposit arrangement, agreement, security agreement, conditional sale or trust receipt or a lease, consignment, or bailment for security purposes, (b) to the extent not included under clause (a) preceding, any reservation, exception, encroachment, easement, right-of-way, covenant, condition, restriction, lease, or other title exception or encumbrance affecting property, and (c) any contingent or other agreement to provide any of the foregoing.

“Loan Account” means the loan account of the Borrowers, which account shall be maintained by the Administrative Agent.

“Loan Documents” means, collectively, this Agreement, the Intercreditor Agreement, the Proprietary Rights Security Agreements, any Term Loan Notes, any Mortgages, any Aircraft Mortgage, any Guaranty Agreements, any agreements providing for Bank Products, the Fee Letters and any other agreements, instruments, and documents heretofore, now or hereafter evidencing, securing, guaranteeing, or otherwise relating to any of the Obligations, any of the Collateral, or any other aspect of the transactions contemplated by this Agreement.

“Loans” means, collectively, all loans and advances provided for in Article 2.

“Majority Lenders” means, at any time, Lenders whose Pro Rata Shares aggregate more than 50%; provided, that the Commitment, Loans and other Obligations of any Defaulting Lender and such Defaulting Lender's right to vote on any issue shall be excluded for the purpose of making any determination of Majority Lenders.

“Majority Revolving Lenders” means, at any time, Revolving Lenders whose Pro Rata Shares (as determined in such definition solely in the context of the revolving credit facility provided under this Agreement) aggregate more than 50.0%; provided, that the Revolving Credit Commitment, Revolving Loans and other Revolving Obligations of any Defaulting Lender and such Defaulting Lender's right to vote on any issue shall be excluded for the purpose of making any determination of Majority Revolving Lenders; provided, further, that so long as BofA and Wachovia are the Agents and the Pro Rata Shares (as determined in such definition solely in the context of the revolving credit facility provided under this Agreement) of BofA and Wachovia aggregate more than 50.0%, “Majority Revolving Lenders” means at least three (3) Revolving Lenders whose Pro Rata Shares (as determined in such definition solely in the context of the revolving credit facility provided under this Agreement) aggregate more than 50.0%.

“Majority Term Lenders” means, at any time, Term Lenders whose Pro Rata Shares (as determined in such definition solely in the context of the Term Loans) aggregate more than 50%; provided, that the Term Loan Commitment and Term Loans of any Defaulting Lender and such Defaulting Lender’s right to vote on any issue shall be excluded for the purpose of making any determination of Majority Term Lenders.

“Management Agreement” means (a) with respect to any corporation, its bylaws, (b) with respect to any limited liability company or other similar entity, its operating agreement, (c) with respect to any limited partnership, its partnership agreement, and (d) with respect to any other entity, any agreement or other document similar in nature to any of the foregoing.

“Margin Stock” means “margin stock” as such term is defined in Regulation T, U, or X of the Federal Reserve Board.

“Material Adverse Effect” means: (a) a material adverse change in, or a material adverse effect upon, (i) the Collateral or (ii) the operations, business, properties, prospects or condition (financial or otherwise) of Ahern and its Subsidiaries, taken as a whole; (b) a material impairment of the ability of any Obligated Party or any Affiliate of any Obligated Party to perform under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect, or enforceability against any Obligated Party or any Affiliate of any Obligated Party of any Loan Document to which it is a party.

“Material Contract” means any contract or other arrangement to which Ahern or any of its Subsidiaries is a party (other than the Loan Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

“Maximum Rate” means, at any time with respect to any Obligation, the highest rate of interest the Lenders holding such Obligation may legally contract for, charge, or receive in respect of such Obligation as allowed by any Requirement of Law.

“Maximum Revolver Amount” means \$350,000,000 as such amount shall be reduced in accordance with Section 4.3 (f).

“Mortgage” means and includes any mortgage, deed of trust, deed to secure debt, assignment, or other instrument executed and delivered by any Obligated Party to or for the benefit of the Collateral Agent by which the Collateral Agent, for the benefit of the Credit Providers, acquires a Lien on any Real Estate of such Obligated Party, and all amendments, modifications, and supplements thereto, and “Mortgages” means two or more of such mortgages, deeds of trust, deeds to secure debt, assignments, and other instruments, as the context requires.

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA that is or was at any time during the current calendar year or the immediately preceding six calendar years contributed to by an Obligated Party or any ERISA Affiliate.

“Negative Pledge” means any agreement, contract, or other arrangement whereby any Obligated Party is prohibited from, or would otherwise be in default as a result of, creating, assuming, incurring, or suffering to exist, directly or indirectly, any Lien on any of its assets in favor of the Collateral Agent under the Loan Documents.

“Net Amount of Eligible Accounts” means, at any time, without duplication, the gross amount of Eligible Accounts, less sales, excise, or other similar taxes, and less returns, discounts, claims, credits, allowances, accrued rebates, offsets, deductions, counterclaims, disputes, and other defenses of any nature at any time issued, owing, granted, outstanding, available, or claimed.

“Net Book Value” means, with respect to any item of Eligible Rental and Sale Equipment or Eligible Transportation Equipment of a Borrower, the cost to such Borrower of such item of Eligible Rental and Sale Equipment or Eligible Transportation Equipment, as the case may be, less the accumulated depreciation taken by such Borrower thereon, all as reflected in the books and records of such Borrower.

“Net Orderly Liquidation Percentage” means (a) with respect to any class of Inventory of a Borrower at any time, the ratio (expressed as a percentage) computed by dividing (i) (x) if such percentage is being determined on the Closing Date or on any date prior to the first delivery of an Inventory Appraisal of such Borrower’s Inventory (containing such class of Inventory) required pursuant to Section 10.4, the net recovery value of such class of Inventory of such Borrower (which in any event shall give effect to all costs and expenses of liquidation), as set forth in the Inventory Appraisal of such Borrower’s Inventory (containing such class of Inventory) most recently delivered to the Agents prior to the Closing Date and (y) if such percentage is being determined on or after the date of the first delivery of an Inventory Appraisal of such Borrower’s Inventory (containing such class of Inventory) required pursuant to Section 10.4, the net recovery value of such class of Inventory of such Borrower (which in any event shall give effect to all costs and expenses of liquidation), as set forth in the Inventory Appraisal of such Borrower’s Inventory (containing such class of Inventory) most recently delivered to the Agents pursuant to Section 10.4 by (ii) the value of such class of Inventory of such Borrower, valued at net book value, as set forth in the corresponding Inventory Appraisal and (b) with respect to Transportation Equipment of a Borrower at any time, the ratio (expressed as a percentage) computed by dividing (i) (x) if such percentage is being determined on the Closing Date or on any date prior to the first delivery of an Equipment Appraisal of such Borrower’s Transportation Equipment pursuant to Section 10.4, the net recovery value of the Transportation Equipment of such Borrower (which in any event shall give effect to all costs and expenses of liquidation), as set forth in the Equipment Appraisal of such Borrower’s Transportation Equipment most recently delivered to the Agents prior to the Closing Date, and (y) if such percentage is being determined on or after the date of the first delivery of an Equipment Appraisal of such Borrower’s Transportation Equipment pursuant to Section 10.4, the net recovery value of the Transportation Equipment of such Borrower (which in any event shall give effect to all costs and expenses of liquidation), as set forth in the Equipment Appraisal of such Borrower’s Transportation Equipment most recently delivered to the Agents pursuant to Section 10.4 by (ii) the value of the Transportation Equipment of such Borrower, valued at net book value, as set forth in the corresponding Equipment Appraisal.

“Net Orderly Liquidation Value” means (x) with respect to the applicable class of Eligible Inventory of a Borrower at any time, an amount equal to the product of (i) the value of such class of Eligible Inventory of such Borrower at such time valued at the lower of Net Book Value (or average cost in the case of Eligible Spare Parts Inventory) or market, multiplied by (ii) the Net Orderly Liquidation Percentage for such class of Eligible Inventory of such Borrower

in effect at such time and (y) with respect to the Eligible Transportation Equipment of a Borrower at any time, an amount equal to the product of (i) the value of the Eligible Transportation Equipment of such Borrower at such time valued at the lower of Net Book Value or market, multiplied by (ii) the Net Orderly Liquidation Percentage for the Eligible Transportation Equipment of such Borrower in effect at such time.

“New Aircraft” means a Cessna Citation CJ3 that was ordered by Ahern prior to the Original Closing Date, with a purchase price of approximately \$6,000,000.

“New Term Loan Funding Amount” has the meaning specified in Section 2.3(a).

“Non-Consenting Lender” has the meaning specified in Section 13.1(d).

“Non-Consenting Lender Party” has the meaning specified in Section 13.3(g).

“Non-Executing Revolving Lender” means any lending institution party to the First Amended and Restated Loan and Security Agreement as a “Lender” thereunder immediately prior to the effectiveness of the amendment and restatement thereof pursuant to this Agreement that does not execute and deliver to either Agent its counterpart signature page to this Agreement prior to or at the time of such effectiveness. For the avoidance of doubt, each Non-Executing Revolving Lender is a party to and bound by this Agreement on the effectiveness of the amendment and restatement of the First Amended and Restated Loan and Security Agreement pursuant to this Agreement notwithstanding its failure to execute and deliver to either Agent its counterpart signature page to this Agreement prior to or at the time of such effectiveness.

“Non-Ratable Loan” and “Non-Ratable Loans” have the meanings specified in Section 2.2(i).

“Notice of Borrowing” has the meaning specified in Section 2.2(c).

“Notice of Continuation/Conversion” has the meaning specified in Section 3.2(b).

“Obligated Party” means each of the Borrowers and the Guarantors, individually, and “Obligated Parties” means two or more of such Persons, collectively.

“Obligations” means (a) all present and future loans, advances, liabilities, obligations, covenants, duties, and debts owing by the Obligated Parties, or any of them, to the Administrative Agent, the Collateral Agent, BofA, Wachovia, the Letter of Credit Issuer, each Indemnified Person, and the Lenders, or any of them, arising under or pursuant to this Agreement or any of the other Loan Documents, whether or not evidenced by any note, or other instrument or document, whether arising from an extension of credit, opening of a letter of credit, loan, guaranty, indemnification, or otherwise, whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, as principal or guarantor, and including all principal, interest, charges, expenses, fees, attorneys’ fees (including Attorney Costs), filing fees, and any other sums chargeable to any Obligated Party hereunder or under any of the other Loan Documents, including, without limitation, post-petition interest whether or not such interest is an allowable claim in a bankruptcy, (b) all debts, liabilities, and obligations owing by the Obligated Parties, or any of them, now or hereafter arising from or in connection with the Letters of Credit

and (c) all debts, liabilities, and obligations owing by the Obligated Parties, or any of them, now or hereafter arising from or in connection with Bank Products.

“Operating Lease”, as applied to any Person, means any lease (including leases that may be terminated by the lessee at any time) of any property (whether real, personal or mixed) that is not a Capital Lease other than any such lease under which that Person is the lessor and excluding Re-Rental Leases.

“Organization Certificate” means, (a) with respect to any corporation, its articles or certificate of incorporation, (b) with respect to any limited liability company or other similar entity, its certificate of formation or organization, (c) with respect to any limited partnership, its certificate of limited partnership, and (d) with respect to any other entity, any certificate or other document similar in nature to any of the foregoing.

“Original Closing Date” means October 29, 2004.

“Original Loan and Security Agreement” has the meaning specified in the recitals of this Agreement.

“Other Taxes” means any present or future stamp or documentary taxes or any other excise or property taxes, charges, or similar levies (excluding, in the case of each Lender and each Agent, such taxes (including income taxes or franchise taxes) as are imposed on or measured by such Lender’s or such Agent’s gross or net income) that arise from any payment made hereunder or from the execution, delivery, or registration of, or otherwise with respect to, this Agreement or any other Loan Documents.

“Participant” means any commercial bank, financial institution, or other Person that is not an Affiliate of the Obligated Parties who shall have been granted the right by any Lender to participate in the financing provided by such Lender under this Agreement, and who shall have entered into a participation agreement in form and substance satisfactory to such Lender.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. No. 107-56, 115 Stat. 272 (Oct. 26, 2001)).

“PBGC” means the Pension Benefit Guaranty Corporation or any Governmental Authority succeeding to the functions thereof.

“Pension Plan” means a pension plan (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA that any Obligated Party or any ERISA Affiliate sponsors, maintains, or to which it makes, is making, or is obligated to make contributions, or in the case of a Multiemployer Plan has made contributions at any time during the immediately preceding five plan years.

“Permitted Distributions” means with respect to a period during which Ahern is or was an S Corporation or a substantially similar pass-through entity for federal income tax purposes, the making of any Distribution in an amount equal to the aggregate net federal, state and local income and alternative minimum taxes (including federal and state estimated income taxes then

payable) attributable to income from Ahern and any Subsidiaries for such period allocated to the holders of Capital Stock of Ahern (after taking into account the reduction in (i) federal income tax liability that will result from the payment of such state and local income taxes, and (ii) federal, state and local income and alternative minimum tax liability that has previously, or will for such tax period, result from the utilization of losses from prior periods attributable to the operations of Ahern and any Subsidiaries that has been allocated to the holders of Capital Stock of Ahern) and, if required to maintain such S Corporation or similar pass-through status, a proportionate distribution to all such holders.

“Permitted Investment” means any Investment made by an Obligated Party at a time when no Default or Event of Default exists or would result therefrom consisting of: (a) Investments in direct obligations of the U.S., or any agency thereof, or obligations guaranteed by the U.S., provided that such obligations mature within one year from the date of acquisition thereof; (b) Investments in certificates of deposit maturing within one year from the date of investment, bankers’ acceptances, Eurodollar bank deposits, or overnight bank deposits, in each case issued by, created by, or with, a bank or trust company organized under the laws of the U.S. or any state thereof having capital and surplus aggregating at least One Hundred Million Dollars (\$100,000,000); (c) Investments in commercial paper given a rating of “A2” or better by Standard & Poor’s Corporation or “P2” or better by Moody’s Investors Service, Inc. and maturing not more than 90 days from the date of creation thereof; (d) Investments in Hedge Agreements entered into for the purpose of limiting the amount of interest payable under this Agreement; (e) Investments in mutual funds substantially all of the assets of which are comprised of securities of the types described in clause (a), clause (b), and clause (c) preceding; (f) Investments by any Obligated Party in any Borrower; (g) existing Investments listed on Schedule 1.1(B); (h) loans to executive officers and employees of the Obligated Parties (that are not also holders of equity of any Obligated Party); provided that (x) at the time of such loan no Default or Event of Default shall exist or result therefrom, (y) the aggregate amount of such loans made by the Obligated Parties and outstanding at any one time does not exceed \$100,000, and (z) such loan does not violate any Requirement of Law; and (i) other Investments not included in clause (a) through clause (h) preceding in an aggregate amount at any time not exceeding \$100,000.

“Permitted Liens” means:

- (a) the Agent’s Liens;
- (b) Liens, if any, that are described on Schedule 1.1(C) and Liens that secure Debt permitted pursuant to clause (c) of Section 8.12, provided that any Liens securing refunded, renewed, or extended Debt pursuant to such clause (c) shall not attach to any assets other than those assets securing the Debt being refunded, renewed, or extended;
- (c) Liens for (i) taxes, fees, assessments, or other charges of a Governmental Authority that are not delinquent and (ii) taxes, fees, assessments, or other charges of a Governmental Authority in an amount not in excess of \$250,000, provided that the payment of such taxes, fees, assessments, or other charges of a Governmental Authority referenced in this clause (ii) that are due and payable is being contested in good faith and by appropriate proceedings diligently pursued and as to which adequate financial reserves

have been established in accordance with GAAP on the applicable Obligated Party's books and records and a stay of enforcement of any such Lien is in effect;

(d) Liens consisting of deposits made in the ordinary course of business in connection with, or to secure payment of, obligations under worker's compensation, unemployment insurance, social security, and other similar laws, or to secure the performance of bids, tenders, or contracts (other than for the repayment of Debt) or to secure indemnity, performance, or other similar bonds for the performance of bids, tenders, or contracts (other than for the repayment of Debt) or to secure statutory obligations (other than Liens arising under ERISA or Environmental Liens) or surety or appeal bonds, or to secure indemnity, performance, or other similar bonds;

(e) Liens securing the claims or demands of materialmen, mechanics, carriers, warehousemen, landlords, and other similar Persons, provided that if any such Lien arises from the nonpayment of such claims or demands when due, such claims or demands do not exceed \$250,000 in the aggregate and are being contested in good faith and by appropriate proceedings diligently pursued and as to which adequate financial reserves have been established in accordance with GAAP on the applicable Obligated Party's books and records and a stay of enforcement of any such Lien is in effect;

(f) Liens constituting encumbrances in the nature of reservations, exceptions, encroachments, easements, rights of way, covenants running with the land, and other similar title exceptions or encumbrances affecting any Real Estate, provided that any such Liens do not in the aggregate materially interfere with the use of such Real Estate in the ordinary conduct of an Obligated Party's business;

(g) Liens (i) arising from rights of setoff, but excluding any requirement for provision of cash collateral, in favor of BofA or Wachovia or any of their respective Affiliates arising from any agreement entered into in connection with any Obligated Party obtaining Bank Products from BofA or Wachovia or any of their respective Affiliates and (ii) arising in favor of the Letter of Credit Issuer under the applicable application and reimbursement agreement delivered to the Letter of Credit Issuer in connection with each Letter of Credit;

(h) Liens arising from judgments and attachments in connection with court proceedings, provided that (i) the attachment or enforcement of such Liens would not otherwise result in an Event of Default hereunder, (ii) such Liens are being contested in good faith by appropriate proceedings diligently pursued, (iii) adequate financial reserves have been established on the applicable Obligated Party's books and records in accordance with GAAP, (iv) no material Collateral is subject to a material risk of loss or forfeiture, and (v) a stay of execution pending appeal or proceeding for review is in effect;

(i) Liens granted in favor of the Second Lien Agent to secure the repayment of the Second Lien Debt (or if all of the Second Lien Debt is repaid with proceeds of Refinancing Second Lien Debt, in favor of the holders of the Refinancing Second Lien Debt or an agent or trustee therefor to secure the repayment of the Refinancing Second

Lien Debt), which Liens are junior and subordinate to the Agent's Liens and are subject to the terms of the Intercreditor Agreement (or in the case of Liens securing Refinancing Second Lien Debt, an intercreditor agreement substantially identical to the Intercreditor Agreement or otherwise satisfactory to the Agents and the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders));

(j) [Intentionally Omitted];

(k) Liens that constitute purchase money Liens and secure Debt permitted under clause (h) of Section 8.12 including the lessors' interests under Capital Leases permitted under clause (h) of Section 8.12, but only to the extent such Liens attach only to the Transportation Equipment, aircraft or computer or office equipment acquired by the incurrence of such Capital Leases and purchase money secured Debt, and Liens securing refinancings of such Debt permitted under clause (c) of Section 8.12; provided that such Liens are not extended to property other than the Transportation Equipment, aircraft or computer or office equipment securing the Debt being refinanced; and

(l) Liens that constitute purchase money Liens and secure Debt permitted under clause (i) of Section 8.12, but only to the extent such Liens attach only to the Inventory acquired by the incurrence of such purchase money secured Debt and not to any Account, including, in any event, any rental proceeds of any such Inventory;

provided that (i) none of such Liens listed in clause (b) through clause (h) or clause (k) through clause (l) preceding may attach to any Accounts of a Borrower, (ii) none of such Liens listed in clause (b) through clause (h) or clause (k) preceding, other than such Liens of a type and to the extent provided by clause (c) and clause (e) preceding, may attach to any Inventory owned by a Borrower and (iii) none of such Liens listed in clause (b) through clause (h) or clause (l) preceding, other than such Liens of a type and to the extent provided by clause (c) and clause (e) preceding, may attach to any Transportation Equipment owned by a Borrower.

"Person" means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, Governmental Authority, or any other entity.

"Plan" means an employee benefit plan (as defined in Section 3(3) of ERISA) that any Obligated Party sponsors or maintains or to which any Obligated Party makes, is making, or is obligated to make contributions and includes any Pension Plan.

"Pro Rata Share" means, with respect to a Lender at any time, a fraction (expressed as a percentage), the numerator of which is the sum of (x) the amount of such Lender's Commitment at such time plus (y) the aggregate unpaid principal balance of the Term Loans owing to such Lender at such time and the denominator of which is the sum of (x) the amounts of all of the Lenders' Commitments at such time plus (y) the aggregate unpaid principal balance of the Term Loans owing to all of the Lenders at such time (or if no Commitments are outstanding at such time, a fraction (expressed as a percentage), the numerator of which is the amount of Obligations owed to such Lender at such time and the denominator of which is the aggregate amount of the Obligations owed to all Lenders at such time); provided, that references to Pro Rata Share in the

context solely of the revolving credit facility provided hereunder (including, without limitation, with respect to Revolving Loans and participations in Revolving Loans and Letters of Credit) means, with respect to a Lender at any time, a fraction (expressed as a percentage), the numerator of which is the amount of such Lender's Revolving Credit Commitment at such time and the denominator of which is the sum of the amounts of all of the Lenders' Revolving Credit Commitments at such time, or if no Revolving Credit Commitments are outstanding at such time, a fraction (expressed as a percentage), the numerator of which is the amount of Obligations owed to such Lender at such time with respect to the revolving credit facility provided hereunder and the denominator of which is the aggregate amount of the Obligations owed to all Lenders at such time with respect to the revolving credit facility provided hereunder; and provided, further, that references to Pro Rata Share in the context solely of the Term Loans means, with respect to a Lender at any time, a fraction (expressed as a percentage), the numerator of which is the aggregate unpaid principal balance of the Term Loans owing to such Lender at such time and the denominator of which is the aggregate unpaid principal balance of the Term Loans owing to all of the Lenders at such time.

"Proprietary Rights" means licenses, franchises, permits, patents, patent rights, copyrights, works that are the subject matter of copyrights, trademarks, service marks, trade names, trade styles, patent applications, copyright applications, trademark and service mark applications, and licenses and rights related to any of the foregoing, and any other rights under any of the foregoing, extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing, and any rights to sue for past, present and future infringement of any of the foregoing. With respect to the Obligated Parties, "Proprietary Rights" includes, without limitation, all of the items listed on Schedule 7.11.

"Proprietary Rights Security Agreements" means the assignments for security and special powers of attorney executed and delivered by one or more of the Obligated Parties to the Collateral Agent, for the benefit of the Credit Providers, to evidence the Agent's Liens in each such Obligated Party's present and future patents, trademarks, copyrights and related licenses and rights and/or provide certain rights with respect to such Liens.

"Real Estate" means, with respect to any Person, such Person's now or hereafter owned or leased estates in real property (as applicable), including fees, leaseholds, and future interests, together with such Person's now or hereafter owned or leased interests in the improvements thereon, the fixtures attached thereto, and the easements appurtenant thereto.

"Refinancing Second Lien Debt" has the meaning specified in Section 8.12.

"Refinancing Second Lien Debt Documents" has the meaning specified in Section 8.12.

"Release" means a release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, or migration of a Contaminant into the indoor or outdoor environment or into or out of any Real Estate or other property, including the movement of Contaminants through or in the air, soil, surface water, groundwater, or Real Estate or other property.

"Report" has the meaning specified in Section 14.18(a).

“Reportable Event” means any of the events set forth in Section 4043(b) of ERISA or the regulations thereunder, other than any such event for which the 30 day notice requirement under ERISA has been waived in regulations issued by the PBGC.

“Requirement of Law” means, as to any Person, any law (statutory or common), treaty, rule, or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject.

“Re-Rental Lease” means any lease of property entered into by Ahern as lessee which property is immediately subleased by Ahern to another Person in the ordinary course of business of Ahern.

“Reserve Percentage” means the reserve percentage (expressed as a decimal, rounded up to the nearest 1/8th of 1%) applicable to member banks under regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as “Eurocurrency liabilities”).

“Reserves” means any and all reserves that either of the Agents deems necessary in the exercise of its reasonable credit judgment to maintain with respect to the Collateral or any Obligated Party that limit the availability of Borrowings hereunder or that represent amounts the Administrative Agent, the Collateral Agent or any Lender may be obligated to pay in the future on behalf of an Obligated Party (including, without limitation, (a) Bank Product Reserves, (b) reserves for accrued, unpaid interest on the Obligations, (c) reserves for rent at each leased location where any Collateral or the books and records of an Obligated Party are maintained or kept, except to the extent a Collateral Waiver Agreement is delivered to the Agents for such leased location, (d) reserves for Inventory shrinkage, (e) Environmental Compliance Reserves, (f) reserves for customs charges and shipping charges relating to any Inventory in transit, (g) reserves for warehousemen’s or bailees’ charges, except to the extent a Collateral Waiver Agreement is delivered to the Agents by the applicable warehouseman or bailee, (h) reserves for taxes, fees, assessments, and other governmental charges, (i) a dilution reserve equal to the difference (if a positive number) between Dilution and 5% of the Net Amount of Eligible Accounts and (j) reserves for any amounts reflected in any Borrower’s ledger accounts under any of the following categories: “Equipment Down Long Term” or “Rebate Accrual”). Reserves shall in any event include a reserve for interest on the Term Loans in an amount equal to two (2) months interest on the original aggregate principal amount thereof, which reserve may only be released (in whole or in part) with the written consent of the Agents and the Majority Revolving Lenders.

“Responsible Officer” means, with respect to any Obligated Party, the chief executive officer, the president, the chief financial officer, the treasurer, the director of finance, any vice president, or any other officer having substantially the same authority and responsibility as any of the foregoing.

“Revolving Credit Commitment” means, at any time with respect to a Lender, the principal amount set forth beside such Lender’s name under the heading “Revolving Credit”

Commitment” on Schedule 1.1(A) or as set forth as such Lender’s Revolving Credit Commitment in the most recent Assignment and Acceptance to which such Lender is a party, as such Revolving Credit Commitment may be adjusted from time to time in accordance with the provisions of this Agreement, and “Revolving Credit Commitments” means the aggregate amount of the Revolving Credit Commitments of all of the Lenders.

“Revolving Facility Payment In Full” means the following have occurred: (a) all the Revolving Credit Commitments have expired or have been terminated, (b) all Letters of Credit have expired, have been terminated or cancelled or have been collateralized as provided in Section 2.4(g) and (c) all Revolving Obligations have been paid in full in cash.

“Revolving Lender” means each Lender that has a Revolving Credit Commitment or that holds Revolving Loans. References herein or in any other Loan Document to “Revolving Lender” shall not include a Lender in its capacity, if any, as a Term Lender.

“Revolving Loans” has the meaning specified in Section 2.2(a) and includes each Agent Advance and Non-Ratable Loan.

“Revolving Obligations” means all Obligations other than Term Loan Obligations.

“Revolving Termination Date” means the earliest to occur of (a) the Stated Revolving Termination Date, (b) the date the Revolving Credit Commitments are terminated (i) by the Borrowers pursuant to Section 4.2 or (ii) pursuant to Section 11.2, and (c) the date this Agreement is otherwise terminated for any reason whatsoever pursuant to the terms of this Agreement.

“Second Lien Agent” means Wells Fargo Bank, N.A., as Trustee, in its capacity as collateral trustee for the Second Lien Lenders and its successors and assigns in such capacity from time to time.

“Second Lien Debt” means the Debt issued by the Borrower pursuant to the terms of the Second Lien Debt Agreement and the other Second Lien Debt Documents and evidenced by the Second Lien Notes.

“Second Lien Debt Agreement” means the Indenture, dated as of August 18, 2005, between Ahern and Wells Fargo Bank, N.A., as Trustee, providing for the issuance by Ahern of the Second Lien Notes, as such agreement may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof.

“Second Lien Debt Documents” means the Second Lien Debt Agreement, the Second Lien Notes, any security agreements in favor of the Second Lien Agent securing the payment of the Second Lien Debt and any other agreements between any of the Obligated Parties and the Second Lien Agent executed from time to time in connection with the Second Lien Debt Agreement, if any.

“Second Lien Lenders” means the holders of the Second Lien Debt.

“Second Lien Notes” means the senior secured notes due 2013 issued by Ahern pursuant to the Second Lien Debt Agreement, as amended, restated, supplemented or substituted for from time to time in accordance with the terms thereof and hereof.

“Settlement” has the meaning specified in Section 14.15(a)(i).

“Settlement Date” has the meaning specified in Section 14.15(a)(i).

“Software” means “software”, as such term is defined in the UCC, other than software embedded in any category of Goods, including all computer programs and all supporting information provided in connection with a transaction related to any program.

“Solvent” means, when used with respect to any Person, that at the time of determination:

- (a) the assets of such Person, at a fair valuation, are in excess of the total amount of its debts (including contingent liabilities);
- (b) the present fair saleable value of its assets is greater than its probable liability on its existing debts as such debts become absolute and matured;
- (c) it is then able and expects to be able to pay its debts (including contingent debts and other commitments) as they mature; and
- (d) it has capital sufficient to carry on its business as conducted and as proposed to be conducted.

For purposes of determining whether a Person is Solvent, the amount of any contingent liability shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Stated Revolving Termination Date” means August 21, 2011, as such date may be extended pursuant to Section 4.1(a) or Article 13.

“Stated Term Loan Termination Date” means December 15, 2012, as such date may be extended pursuant to Article 13.

“Subsidiary” means, with respect to any Person (the “subject Person”), any corporation, association, partnership, limited liability company, joint venture, or other business entity of which more than 50.0% of the voting Capital Stock is owned or controlled directly or indirectly by the subject Person, or one or more of the Subsidiaries of the subject Person, or a combination thereof. Unless the context otherwise clearly requires, references herein to a “Subsidiary” refer to a Subsidiary of an Obligated Party.

“Supermajority Revolving Lenders” means, at any time, Revolving Lenders whose Pro Rata Shares (as determined in such definition solely in the context of the revolving credit facility provided under this Agreement) aggregate more than 85.0%; provided, that the Revolving Credit Commitment, Revolving Loans and other Obligations of any Defaulting Lender and such

Defaulting Lender's right to vote on any issue shall be excluded for the purpose of making any determination of Supermajority Revolving Lenders.

"Supplemental Blocked Availability Amount" means \$30,000,000 or such lesser amount (but in no event less than \$20,000,000) as the Supermajority Revolving Lenders may agree to in writing in their sole discretion.

"Supporting Cash Deposit" has the meaning specified in Section 2.4(g).

"Supporting Letter of Credit" has the meaning specified in Section 2.4(g).

"Supporting Obligations" means "supporting obligations", as such term is defined in the UCC, including letters of credit and guaranties issued in support of Accounts, Chattel Paper, Documents, General Intangibles, Instruments, or Investment Property.

"Syndication Agent" means Wachovia, solely in its capacity as a syndication agent.

"Taxes" means any and all present or future taxes, levies, imposts, deductions, charges, or withholdings, and all liabilities with respect thereto, excluding, in the case of the Administrative Agent, each Lender and the Collateral Agent, such taxes (including income taxes or franchise taxes) as are imposed on or measured by the Administrative Agent's, such Lender's or the Collateral Agent's net income (or on gross income where such tax is in lieu of a tax on net income and is not a withholding tax) in any jurisdiction (whether federal, state, or local and including any political subdivision thereof) under the laws of which the Administrative Agent, such Lender or the Collateral Agent, as the case may be, is organized or maintains a lending office or where the contacts with such jurisdiction (other than the Loan Documents or events contemplated by the Loan Documents) would otherwise subject the Administrative Agent, such Lender or the Collateral Agent, as the case may be, to taxes on such net income.

"Term Closing Fee" has the meaning specified in Section 3.7.

"Term Lender" means each Lender that has a Term Loan Commitment or is the holder of a Term Loan. References herein or in any other Loan Document to "Term Lender" shall not include a Lender in its capacity, if any, as a Revolving Lender.

"Term Loan" and "Term Loans" have the meanings specified in Section 2.3(a).

"Term Loan Commitment" means, with respect to a Lender, the principal amount set forth beside such Lender's name under the heading "Term Loan Commitment" on Schedule 1.1(A), and "Term Loan Commitments" means the aggregate amount of the Term Loan Commitments of all of the Lenders. Effective immediately after the making of the Term Loans on the Closing Date, the Term Loan Commitment of each Lender shall be permanently reduced to zero.

"Term Loan Note" and "Term Loan Notes" have the meanings specified in Section 2.3(c).

“Term Loan Obligations” means all principal of and interest on the Term Loans, the Early Term Loan Prepayment Fee and any and all other Obligations owing to any Term Lender.

“Term Loan Termination Date” means the earliest to occur of (a) the Stated Term Loan Termination Date, (b) the date the Credit Facility is terminated (i) by the Borrowers pursuant to Section 4.2 or (ii) pursuant to Section 11.2, and (c) the date this Agreement is otherwise terminated for any reason whatsoever pursuant to the terms of this Agreement.

“Time Utilization” means the ratio, calculated on a monthly basis for Ahern and its Subsidiaries, of (i) the average number of units of aerial lift rental equipment on rent during such month divided by (ii) the average number of units of aerial lift rental equipment available for rent during such month; provided, however, that such calculation of such equipment which is available for rent shall exclude (1) for purposes of Section 8.21(a), any unit of rental equipment that (a) is in transit to, from or between rental locations and (b) is not available for rental because it is being maintained or serviced, such maintenance or service period not to extend longer than ninety (90) days, and (2) for purposes of Section 6.2(k)(ix), any unit of rental equipment while such unit is reflected in Ahern’s ledger accounts under “Equipment Down Long Term”.

“Title Company” means one of more title insurance companies reasonably satisfactory to the Agents.

“Transaction Documents” means, collectively, the Loan Documents, the Second Lien Debt Documents, the Refinancing Second Lien Debt Documents (if any) and all other documents, instruments and agreements executed and/or delivered in connection therewith.

“Transportation Equipment” means each of the following types of licensed vehicles and trailers owned by any Obligated Party so long as they are not included in the rental fleet available for rental to third parties: (a) vehicles and trailers used for delivery, (b) vehicles used for service and (c) vehicles used by employees for transportation.

“UCC” means the Uniform Commercial Code (or any successor statute), as in effect from time to time, of the State of New York or of any other state the laws of which are required as a result thereof to be applied in connection with the issue of perfection of security interests; provided that to the extent that the UCC is used to define any term herein or in any other documents and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term as contained in Article or Division 9 shall govern.

“Unfunded Pension Liability” means the excess of a Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

“Unused Availability” means, at any time, the Borrowing Base minus the Aggregate Revolver Outstandings.

“Unused Letter of Credit Subfacility” means an amount equal to the Letter of Credit Subfacility, minus the sum of (a) the aggregate undrawn amount of all outstanding Letters of

Credit, plus, without duplication, (b) the aggregate unpaid reimbursement obligations with respect to all Letters of Credit.

“Unused Line Fee” has the meaning specified in Section 3.4.

“U.S.” means the United States of America.

“Wachovia” has the meaning specified in the introductory paragraph of this Agreement.

“Waived” means waived in accordance with Article 13.

“Wholly-Owned Subsidiary” means, with respect to any Person (the “subject Person”), a Subsidiary all of the issued and outstanding Capital Stock (other than directors’ qualifying shares) of which are owned by the subject Person or one or more of the subject Person’s other Wholly-Owned Subsidiaries or by the subject Person and one or more of the subject Person’s Wholly-Owned Subsidiaries.

Section 1.2 Accounting Terms. Any accounting term used in this Agreement shall have, unless otherwise specifically provided herein, the meaning customarily given to such term in accordance with GAAP, and all financial computations in this Agreement shall be computed, unless otherwise specifically provided herein, in accordance with GAAP as consistently applied and using the same method for inventory valuation as used in the preparation of the Financial Statements. If at any time any change in GAAP would affect the computation of any financial covenant or requirement set forth in any Loan Document, and any of the Obligated Parties, either of the Agents or the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders) shall request, the Agents, the Revolving Lenders (or after the Revolving Facility Payment In Full, the Term Lenders) and the Obligated Parties shall negotiate in good faith to amend such covenant or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders) and the Agents); provided that, until so amended, (a) such covenant or requirement shall continue to be determined in accordance with GAAP prior to such change and (b) the Obligated Parties shall provide to the Agents (with sufficient copies to the Administrative Agent for distribution to each Lender) Financial Statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

Section 1.3 Interpretive Provisions.

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms. Terms used herein that are defined in the UCC and are not otherwise defined herein shall have the meanings specified therefor in the UCC.

(b) The words “hereof,” “herein,” “hereunder,” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, Schedule, and Exhibit references are to this Agreement unless otherwise specified. The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices, and other writings, however evidenced. The term “including” is not

limiting and means “including, without limitation.” In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including.” The word “or” is not exclusive.

(c) Unless otherwise expressly provided herein, (i) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, and other modifications thereto, but only to the extent such amendments, restatements, and other modifications are not prohibited by the terms of any Loan Document, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.

(d) The captions and headings of this Agreement and other Loan Documents are for convenience of reference only and shall not affect the interpretation of this Agreement and the other Loan Documents.

(e) This Agreement and the other Loan Documents may use several different limitations, tests, or measurements to regulate the same or similar matters. All such limitations, tests, and measurements are cumulative and shall each be performed in accordance with their terms.

(f) For purposes of Section 11.1, a breach of a financial covenant contained in Section 8.21 shall be deemed to have occurred as of any date of determination thereof by either of the Agents or as of the last day of any specified measuring period, regardless of when the Financial Statements reflecting such breach are delivered to either of the Agents.

(g) Certain amendments have been made to the defined terms “GE Intercreditor Agreement”, “Incremental Commitment Agreements” and “Lender” to preserve certain rights of the Revolving Lenders under the First Amended and Restated Loan and Security Agreement as in effect immediately prior to the effectiveness of the amendment and restatement thereof pursuant to this Agreement.

Section 1.4 No Strict Construction. This Agreement and the other Loan Documents are the result of negotiations among, and have been reviewed by counsel to, each Agent, each Lender, and the Obligated Parties and are the products of all parties. Accordingly, this Agreement and the other Loan Documents shall not be construed against the Administrative Agent, the Collateral Agent, the Lenders, or the Obligated Parties merely because of their respective involvement in their preparation.

Section 1.5 No Novation. It is the intent of the parties hereto that this Agreement does not constitute a novation of the rights, obligations and liabilities of the respective parties (including the Obligations) existing under the First Amended and Restated Loan and Security Agreement or evidence payment of all or any of such obligations and liabilities, and such rights, obligations and liabilities shall continue and remain outstanding under the terms and conditions of, and as amended and restated by, this Agreement, and that this Agreement amends and restates

in its entirety the First Amended and Restated Loan and Security Agreement. Without limiting the generality of the foregoing (i) all Revolving Loans outstanding under the First Amended and Restated Loan and Security Agreement shall on the Closing Date become Revolving Loans hereunder, (ii) all Letters of Credit under the First Amended and Restated Loan and Security Agreement shall on the Closing Date become Letters of Credit hereunder and (iii) all other Obligations outstanding under the First Amended and Restated Loan and Security Agreement shall on the Closing Date be Obligations under this Agreement. Each of the Borrowers and the other Obligated Parties hereby ratifies and confirms its grant of security interests and Liens in the Collateral (including, without limitation, any and all Collateral granted under the Original Loan and Security Agreement, the First Amended and Restated Loan and Security Agreement and the other Loan Documents) in which it has rights and confirms and agrees that such Collateral secures any and all of the Obligations, including, without limitation, the Revolving Loans.

The Borrowers acknowledge and agree that as of the close of business on January 7, 2010, the Aggregate Revolver Outstandings under and as defined in the First Amended and Restated Loan and Security Agreement (excluding the aggregate undrawn amount of all outstanding Letters of Credit under the First Amended and Restated Loan and Security Agreement) is \$317,482,878.43. As of the date hereof, none of the Obligated Parties or any of their respective Affiliates has offset rights, counterclaims or defenses of any kind against any of their obligations, indebtedness or liabilities under the First Amended and Restated Loan and Security Agreement. As of the date hereof immediately prior to the amendment and restatement of the First Amended and Restated Loan and Security Agreement contemplated herein, there exists no Default or Event of Default under and as defined in the First Amended and Restated Loan and Security Agreement. The Obligated Parties hereby irrevocably and unconditionally release the Agents and the other Credit Providers from any and all actions, causes of action, damages, judgments, executions and claims arising on or prior to the Closing Date under or with respect to the First Amended and Restated Loan and Security Agreement, any of the other Loan Documents (as defined in the First Amended and Restated Loan and Security Agreement) or any of the transactions contemplated thereby.

ARTICLE 2

LOANS AND LETTERS OF CREDIT

Section 2.1 Credit Facility. Subject to the terms and conditions of this Agreement, the Lenders agree to make available a credit facility for use by any one or more of the Borrowers from time to time during the term of this Agreement (the "Credit Facility"). The Credit Facility shall be composed of a revolving credit facility consisting of Revolving Loans and Letters of Credit as described in Section 2.2 and Section 2.4 and a term loan facility consisting of Term Loans as described in Section 2.3.

Section 2.2 Revolving Loans.

(a) Amounts. Subject to the terms and conditions of this Agreement, each Revolving Lender severally, but not jointly, agrees, upon a Borrower's request from time to time on any Business Day during the period from the Original Closing Date to the Revolving Termination Date, to make revolving loans (the "Revolving Loans") to the

Borrowers in amounts not to exceed such Revolving Lender's Pro Rata Share of the Revolving Credit Commitments. The Lenders, however, in their unanimous discretion, may elect to make Revolving Loans that would cause the Aggregate Revolver Outstandings to exceed the Borrowing Base on one or more occasions, but if they do so, neither the Agents nor the Lenders shall be deemed thereby to have changed the limits of the Borrowing Base or to be obligated to exceed such limits on any other occasion. If any requested Revolving Loan exceeds the Unused Availability then the Revolving Lenders may refuse to make or may otherwise restrict the making of such Revolving Loan, subject to the authority of the Administrative Agent, in its sole discretion, to make Agent Advances pursuant to the terms of Section 2.2(j).

(b) [Intentionally Omitted.]

(c) Procedure for Borrowing.

(i) Each Borrowing of Revolving Loans shall be made upon a Borrower's irrevocable written notice delivered to the Administrative Agent, in the form of a notice of borrowing in the form of Exhibit D or such other form as may be acceptable to the Agents in their sole discretion (any such notice being referred to herein as a "Notice of Borrowing"), which must be received by the Administrative Agent prior to 1:00 p.m. (New York time) (y) three Business Days prior to the requested Funding Date, in the case of LIBOR Rate Revolving Loans or (z) on the requested Funding Date, in the case of Base Rate Revolving Loans, specifying:

(A) the amount of the Borrowing, which in the case of LIBOR Rate Revolving Loans shall be in an amount that is not less than One Million Dollars (\$1,000,000) or an integral multiple of One Million Dollars (\$1,000,000) in excess thereof;

(B) the requested Funding Date, which must be a Business Day;

(C) whether the Revolving Loans requested are to be Base Rate Revolving Loans or LIBOR Rate Revolving Loans; provided that if such Borrower fails to specify whether any Revolving Loans are to be Base Rate Revolving Loans or LIBOR Rate Revolving Loans, such request shall be deemed a request for Base Rate Revolving Loans;

(D) if the requested Revolving Loans are to be LIBOR Rate Revolving Loans, the duration of the Interest Period; provided that if such Borrower fails to select the duration of the Interest Period with respect to any requested LIBOR Rate Revolving Loans, such Borrower shall be deemed to have requested such Revolving Loans be made as LIBOR Rate Revolving Loans with an Interest Period of one month in duration; and

(E) whether the proceeds of such Borrowing are to be deposited to the Funding Account or sent by wire transfer to a third party,

in which case such Borrower shall provide the Administrative Agent with written wire transfer instructions satisfactory to the Administrative Agent;

provided that with respect to the Borrowing to be made on the Original Closing Date, such Borrowing will consist of Base Rate Revolving Loans only.

(ii) With respect to any request for Base Rate Revolving Loans, in lieu of delivering a Notice of Borrowing, a Borrower may give the Administrative Agent telephonic notice of such request for advances to the Funding Account not later than the required time specified in clause (i) preceding. The Administrative Agent at all times shall be entitled to rely on such telephonic notice in making any such Revolving Loans, regardless of whether any written confirmation is received by it.

(iii) Whenever checks or other items are presented to BofA for payment against the Funding Account or any other Deposit Account maintained by a Borrower with BofA in an amount greater than the then available balance in the Funding Account or such other Deposit Account, such presentation may, at the election of the Administrative Agent in its sole discretion, be deemed to be a request by the Borrowers for a Base Rate Revolving Loan on the date of such presentation in an amount sufficient to cover all such items presented in the Funding Account or such other Deposit Account on such date.

(iv) At the election of either of the Agents or the Majority Revolving Lenders, the Borrowers shall have no right to request LIBOR Rate Revolving Loans during the existence of any Default or Event of Default.

(d) Disbursement. On or prior to the Closing Date, the Borrowers shall have delivered to the Administrative Agent a notice setting forth the deposit account maintained with BofA (the "Funding Account") to which the Administrative Agent is authorized by the Borrowers to transfer the proceeds of the Revolving Loans requested hereunder. Each of the Borrowers agrees that the Funding Account may be established in the name of any other Borrower, and hereby agrees that the Funding Account has been established for the benefit of all of the Borrowers for receipt of the proceeds of Revolving Loans hereunder. Each Borrower hereby appoints each other Borrower as its agent with respect to receipt of the proceeds of Revolving Loans in the Funding Account as contemplated herein. The Borrowers may designate a replacement Funding Account from time to time by written notice to the Administrative Agent. Any designation by the Borrowers of the Funding Account must be reasonably acceptable to the Administrative Agent.

(e) Reliance Upon Authority; No Liability. The Administrative Agent is entitled to rely conclusively on any individual's request for Revolving Loans on behalf of a Borrower, as long as the proceeds thereof are to be transferred to the Funding Account or according to such other instructions as may be provided to the Administrative Agent pursuant to Section 2.2(c)(i)(E). The Administrative Agent has no duty to verify the identity of any individual representing himself or herself as a person authorized by any

Borrower to make such requests on its behalf. The Administrative Agent shall not incur any liability to the Borrowers as a result of acting upon any notice referred to in Section 2.2(c) or Section 2.2(d) which the Administrative Agent reasonably believes to have been given by an officer or other person duly authorized by a Borrower to request Revolving Loans on its behalf or for otherwise acting under this Section 2.2. The crediting of Revolving Loans to the Funding Account or wire transfer to such Person as a Borrower shall direct shall conclusively establish the obligation of the Borrowers to repay such Revolving Loans as provided herein.

(f) Notice Irrevocable. Any Notice of Borrowing (or telephonic notice in lieu thereof) made pursuant to Section 2.2(c) shall be irrevocable and the Borrowers shall be bound to borrow the funds requested therein in accordance therewith.

(g) Administrative Agent's Election. Promptly after receipt of a Notice of Borrowing (or telephonic notice in lieu thereof), the Administrative Agent shall elect in its sole discretion to have the terms of Section 2.2(h), Section 2.2(i), or Section 2.2(j) apply to such requested Borrowing. If BofA declines in its sole discretion to make a Non-Ratable Loan pursuant to Section 2.2(i), the terms of Section 2.2(h) shall apply to the requested Borrowing unless such requested Borrowing is to be made by the Administrative Agent as an Agent Advance pursuant to Section 2.2(j).

(h) Making of Revolving Loans. If the Administrative Agent elects to have the terms of this Section 2.2(h) apply to a requested Borrowing, then promptly after receipt of a Notice of Borrowing or telephonic notice in lieu thereof, the Administrative Agent shall notify the Revolving Lenders by telecopy, telephone, or e-mail of the requested Borrowing. Each Revolving Lender shall transfer its Pro Rata Share of the requested Borrowing to the Administrative Agent, in immediately available funds, to the account from time to time designated by the Administrative Agent not later than 3:30 p.m. (New York time) on the applicable Funding Date. After receipt by the Administrative Agent of all proceeds of such requested Borrowing, it shall make the proceeds of such requested Borrowing available to the applicable Borrower on the applicable Funding Date by transferring same day funds to the Funding Account or as otherwise requested by such Borrower in accordance with Section 2.2(c)(i)(E). Unless the Revolving Lenders in their unanimous discretion consent otherwise, no Borrowing under this clause (h) shall be permitted if the requested Borrowing exceeds the Unused Availability on the applicable Funding Date prior to giving effect to such requested Borrowing.

(i) Making of Non-Ratable Loans. If the Administrative Agent elects, with the consent of BofA, in its capacity as a Revolving Lender, to have the terms of this Section 2.2(i) apply to a requested Borrowing, BofA shall make a Revolving Loan in the amount of such requested Borrowing available to the Borrowers on the applicable Funding Date by transferring same day funds to the Funding Account or as otherwise requested by the applicable Borrower in accordance with Section 2.2(c)(i)(E). Each Revolving Loan made solely by BofA pursuant to this Section 2.2(i) is referred to hereinafter as a "Non-Ratable Loan," and such Revolving Loans are collectively referred to as the "Non-Ratable Loans." Each Non-Ratable Loan shall be subject to all the terms

and conditions applicable to other Revolving Loans except that all payments of principal and interest thereon shall be payable to BofA solely for its own account. The aggregate amount of Non-Ratable Loans outstanding at any time shall not exceed \$10,000,000. The Administrative Agent shall not request BofA to make any Non-Ratable Loan if (A) the Administrative Agent has received written notice from any Revolving Lender that one or more of the applicable conditions precedent set forth in Article 9 will not be satisfied on the requested Funding Date for the applicable Borrowing or (B) the Administrative Agent has actual knowledge (based solely on the Borrowing Base Certificate most recently delivered to it or written notice from any Revolving Lender thereof) that the requested Borrowing exceeds the Unused Availability on the applicable Funding Date prior to giving effect to such requested Borrowing. The Non-Ratable Loans shall be secured by the Agent's Liens in and to the Collateral and shall constitute Base Rate Revolving Loans and Obligations hereunder.

(j) Agent Advances. Subject to the limitations set forth below, the Administrative Agent is authorized by the Borrowers and the Lenders, from time to time in its sole discretion in such capacity, after the occurrence of a Default or an Event of Default or at any time that any of the other conditions precedent set forth in Article 9 have not been satisfied, to make Base Rate Revolving Loans to the Borrowers or any Borrower on behalf of the Revolving Lenders in an aggregate amount outstanding at any time not to exceed \$10,000,000 which the Administrative Agent, in its reasonable business judgment, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations (including through the Borrowers using any proceeds of such Revolving Loans to pay payroll and associated tax obligations), or (iii) to pay any other amount chargeable to the Borrowers pursuant to the terms of this Agreement, including costs, fees, and expenses as described in Section 15.7 (any of such advances are herein referred to as "Agent Advances"); provided that after giving effect to the making of any Agent Advance, the Aggregate Revolver Outstandings shall not exceed the Maximum Revolver Amount. The Majority Revolving Lenders may at any time revoke the authorization of the Administrative Agent to make Agent Advances. Any such revocation must be in writing and shall become effective prospectively upon the receipt by the Administrative Agent thereof. The Agent Advances shall be secured by the Agent's Liens in and to the Collateral and shall constitute Base Rate Revolving Loans and Obligations hereunder.

Section 2.3 Term Loans.

(a) Amounts of Term Loans. Each Term Lender severally agrees to make a term loan (any such term loan being referred to as a "Term Loan") and such term loans being referred to collectively as the "Term Loans") to the Borrowers on the Closing Date, upon the satisfaction of the conditions precedent set forth in Article 9, in an amount equal to such Term Lender's Term Loan Commitment. A portion of the Term Loan of each Term Lender to be made on the Closing Date shall be made as new funds to the Borrowers in the amount set forth beside such Term Lender's name under the heading "New Term Loan Funding Amount" on Schedule 1.1(A) (such amount for any Term Lender, its "New Term Loan Funding Amount"), with the remaining portion of the Term

Loan of such Term Lender to be made on the Closing Date (such portion for any Term Lender, its "Exchanged Term Loan Amount") to be deemed made as an exchange for cancellation of certain of the Second Lien Debt held by such Term Lender immediately prior to such Borrowing (the amount of such Second Lien Debt of any Term Lender to be so cancelled to be equal to such Term Lender's Exchanged Term Loan Amount multiplied by 4/3).

(b) Making of Term Loans. Each Term Lender shall make the amount of such Term Lender's New Term Loan Funding Amount available to the Administrative Agent in same day funds, to the Administrative Agent's designated account, not later than 12:00 noon (New York time) on the Closing Date. After the Administrative Agent's receipt of the New Term Loan Funding Amounts of all the Term Lenders, upon satisfaction of the conditions precedent set forth in Article 9, the Administrative Agent shall make such amounts available to the Borrowers on such Funding Date by transferring same day funds equal to the aggregate New Term Loan Funding Amounts received by the Administrative Agent to a Clearing Account designated in writing by the Borrowers or as the Borrowers shall otherwise instruct in writing.

(c) Term Loan Notes. The Borrowers shall execute and deliver to the Administrative Agent on behalf of each Term Lender, on the Closing Date, a promissory note, substantially in the form of Exhibit A attached hereto and made a part hereof (such promissory notes, together with any new promissory notes issued pursuant to Section 13.2 upon the assignment of any portion of any Term Lender's Term Loan, being hereinafter referred to collectively as the "Term Loan Notes" and each of such promissory notes being hereinafter referred to individually as a "Term Loan Note"). The Term Loan Notes shall evidence each Term Lender's Term Loan, in an original principal amount equal to that Term Lender's Term Loan Commitment and with other appropriate insertions. Each Term Loan Note shall be dated the Closing Date and be stated to mature on the Stated Term Loan Termination Date. The Borrowers shall repay the outstanding principal balance of the Term Loans, plus all accrued but unpaid interest thereon, on the Term Loan Termination Date. Payments or prepayments of the Term Loans may not be reborrowed. The liability of the Borrowers with respect to the Term Loans shall be joint and several.

Section 2.4 Letters of Credit.

(a) Agreement to Cause to Issue. Subject to the terms and conditions of this Agreement, the Agents agree to cause the Letter of Credit Issuer to issue for the account of any of the Borrowers (whether one or more) one or more commercial/documentary and standby letters of credit (each a "Letter of Credit" and collectively, the "Letters of Credit") from time to time prior to the Revolving Termination Date.

(b) Amounts: Outside Expiration Date. The Agents shall not cause to be issued any Letter of Credit at any time if: (i) the maximum face amount of the requested Letter of Credit is greater than the Unused Letter of Credit Subfacility at such time; (ii) the maximum undrawn amount of the requested Letter of Credit and all commissions, fees, and charges due from such Borrower in connection with the opening thereof

exceeds the Unused Availability prior to giving effect to issuance of such requested Letter of Credit; (iii) such Letter of Credit has an expiration date later than 30 days prior to the Stated Revolving Termination Date; or (iv) such Letter of Credit has an expiration date later than twelve calendar months from the date of issuance for standby letters of credit and six calendar months from the date of issuance for commercial/documentary letters of credit, provided that any Letter of Credit issued hereunder may, subject to this clause (iv) and the other provisions of this Section 2.4, include an "evergreen" or automatic renewal provision of the type referenced in Section 2.4(d)(iii) without contravening the requirement contained in this Section 2.4(b).

(c) Other Conditions. In addition to being subject to the satisfaction of the applicable conditions precedent contained in Article 9, the obligation of the Agents to cause any Letter of Credit to be issued is subject to the following conditions precedent having been satisfied in a manner satisfactory to the Agents and the Letter of Credit Issuer:

(i) the Borrowers shall have delivered to the Letter of Credit Issuer, at such times and in such manner as the Letter of Credit Issuer may prescribe, an application in form and substance satisfactory to the Letter of Credit Issuer and reasonably satisfactory to each Agent for the issuance of the Letter of Credit and such other documents as may be required pursuant to the terms thereof, and the form, terms, and purpose of the proposed Letter of Credit shall be reasonably satisfactory to each Agent and the Letter of Credit Issuer (provided that in the event any term of such application or any other document is inconsistent with the terms of this Agreement and the Letter of Credit Issuer is either the same Person as an Agent or any Revolving Lender, then the terms of this Agreement shall be controlling); and

(ii) as of the date of issuance, no order of any court, arbitrator, or Governmental Authority shall purport by its terms to enjoin or restrain money center banks generally from issuing letters of credit of the type and in the amount of the proposed Letter of Credit, and no law, rule, or regulation applicable to money center banks generally and no request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over money center banks generally shall prohibit, or request that the Letter of Credit Issuer refrain from, the issuance of letters of credit generally or the issuance of such Letter of Credit.

(d) Issuance of Letters of Credit.

(i) Request for Issuance. Any Borrower that wishes to cause the issuance of a Letter of Credit shall notify each Agent and the Letter of Credit Issuer of such request for issuance at least three Business Days prior to the proposed issuance date. Such notice shall be irrevocable and must specify the original face amount of the Letter of Credit requested, the Business Day of issuance of such requested Letter of Credit, whether such Letter of Credit may be drawn in a single or in partial draws, the Business Day on which the requested

Letter of Credit is to expire, the purpose for which such Letter of Credit is to be issued, and the beneficiary of the requested Letter of Credit. The applicable Borrower shall attach to such notice the proposed form of the Letter of Credit.

(ii) Responsibilities of the Agents; Issuance. As of the Business Day immediately preceding the requested issuance date of the Letter of Credit set forth in the notice from a Borrower pursuant to Section 2.3(d)(i), the Agents shall determine (A) the amount of the Unused Letter of Credit Subfacility and (B) the Unused Availability (based solely on the Borrowing Base Certificate most recently delivered to the Agents). If the face amount of the requested Letter of Credit is not greater than the Unused Letter of Credit Subfacility (prior to giving effect to issuance of such requested Letter of Credit) and the amount of such requested Letter of Credit and all commissions, fees, and charges due from the Borrower in connection with the opening thereof do not exceed the Unused Availability (prior to giving effect to issuance of such requested Letter of Credit and based solely on the Borrowing Base Certificate most recently delivered to the Agents), the Agents shall cause the Letter of Credit Issuer to issue the requested Letter of Credit on the requested issuance date if the other conditions hereof and of the application for such requested Letter of Credit are met.

(iii) Extensions and Amendments. The Agents shall not be obligated to cause the Letter of Credit Issuer to extend, renew, or amend any Letter of Credit issued pursuant hereto unless the requirements of this Section 2.4 are met as though a new Letter of Credit were being requested and issued. With respect to any Letter of Credit that contains any "evergreen" or automatic renewal provision, each Revolving Lender shall be deemed to have consented to any such extension or renewal unless such Revolving Lender shall have provided to each Agent written notice that such Revolving Lender declines to consent to any such extension or renewal at least 30 days prior to the date on which the Letter of Credit Issuer is entitled to decline to extend or renew such Letter of Credit; provided that, notwithstanding the foregoing, if all of the requirements of this Section 2.4 are met and no Default or Event of Default exists, no Revolving Lender may decline to consent to any such extension or renewal.

(e) Payments Pursuant to Letters of Credit. The Borrowers agree to reimburse the Letter of Credit Issuer immediately for any draw under any Letter of Credit and to pay the Letter of Credit Issuer the amount of all other charges and fees payable to the Letter of Credit Issuer under or in connection with any Letter of Credit immediately when due, irrespective of any claim, setoff, defense, or other right that any Borrower may have at any time against the Letter of Credit Issuer or any other Person. Each drawing under any Letter of Credit shall constitute a request by the Borrower for whose account such Letter of Credit was issued for a Borrowing of a Base Rate Revolving Loan in the amount of such drawing. The Funding Date with respect to such Borrowing shall be the date of such drawing.

(f) Indemnification; Exoneration; Power of Attorney.

(i) Indemnification. In addition to amounts payable as elsewhere provided in this Section 2.4, each Borrower agrees to protect, indemnify, pay, and save the Revolving Lenders, the Agents, and the Letter of Credit Issuer harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges, and expenses (including reasonable attorneys' fees) that any Revolving Lender, either Agent, or the Letter of Credit Issuer may incur or be subject to as a consequence, direct or indirect, of the issuance of any Letter of Credit. The foregoing indemnity shall not apply to the Letter of Credit Issuer to the extent of any wrongful honor or dishonor of a drawing against any Letter of Credit or to the extent of any gross negligence or willful misconduct of the Letter of Credit Issuer as determined in a final, nonappealable judgment by a court of competent jurisdiction. The Borrowers' obligations under this Section 2.4(f) shall survive payment of all other Obligations.

(ii) Assumption of Risk by the Borrowers. As among the Borrowers, the Revolving Lenders, the Agents, and the Letter of Credit Issuer, the Borrowers assume all risks of the acts and omissions of, or misuse of any of the Letters of Credit by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, the Revolving Lenders, the Agents, and the Letter of Credit Issuer shall not be responsible for: (A) the form, validity, sufficiency, accuracy, genuineness, or legal effect of any document submitted by any Person in connection with the application for and issuance of and presentation of drafts with respect to any of the Letters of Credit, even if it should prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent, or forged; (B) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, that may prove to be invalid or ineffective for any reason; (C) the failure of the beneficiary of any Letter of Credit to comply duly with conditions required in order to draw upon such Letter of Credit; (D) errors, omissions, interruptions, or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, or otherwise, whether or not they be in cipher; (E) errors in interpretation of technical terms; (F) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit or of the proceeds thereof; (G) the misapplication by the beneficiary of any Letter of Credit of the proceeds of any drawing under such Letter of Credit; (H) any consequences arising from causes beyond the control of any of the Revolving Lenders, either of the Agents, or the Letter of Credit Issuer, including any act or omission, whether rightful or wrongful, of any present or future de jure or de facto Governmental Authority; or (I) the Letter of Credit Issuer's honor of a draw for which the draw or any certificate fails to comply in any respect with the terms of the Letter of Credit. None of the foregoing shall affect, impair, or prevent the vesting of any rights or powers of either Agent, any Revolving Lender, or, subject to Section 2.4(f)(iv), the Letter of Credit Issuer under this Section 2.4(f).

(iii) Exoneration. Without limiting the foregoing, no action or omission whatsoever by either Agent, any Revolving Lender, or the Letter of Credit Issuer under or in connection with any of the Letters of Credit or any related matters shall result in any liability of either Agent, any Revolving Lender, or the Letter of Credit Issuer to any Borrower, or relieve any Borrower of any of its obligations hereunder to any such Person.

(iv) Rights Against the Letter of Credit Issuer. Nothing contained in this Section 2.4(f) is intended to limit any Borrower's rights, if any, with respect to the Letter of Credit Issuer that arise as a result of the letter of credit application and related documents executed by and between such Borrower and the Letter of Credit Issuer.

(v) Account Party. Each Borrower hereby authorizes and directs the Letter of Credit Issuer to name any Borrower as the "Account Party" in any Letter of Credit and to deliver to the Agents all instruments, documents, and other writings and property received by the Letter of Credit Issuer pursuant to each such Letter of Credit, and to accept and rely upon either Agent's instructions and agreements with respect to all matters arising in connection with each such Letter of Credit or the application therefor.

(g) Supporting Letter of Credit; Cash Collateral. If, notwithstanding the provisions of Section 2.4 (b) and Section 12.1, any Letter of Credit is outstanding on the Revolving Termination Date, then on the Revolving Termination Date the Borrowers shall deposit with the Collateral Agent, for the benefit of the Agents, the Letter of Credit Issuer, and the Revolving Lenders, with respect to each such Letter of Credit then outstanding, either (i) a standby letter of credit (a "Supporting Letter of Credit") in form and substance satisfactory to each Agent, issued by an issuer satisfactory to the Agents in their sole discretion in an amount equal to 105% of the maximum undrawn amount of such Letter of Credit, plus any fees and expenses associated with such Letter of Credit, under which Supporting Letter of Credit the Collateral Agent is entitled to draw amounts necessary to reimburse the Agents, the Letter of Credit Issuer, and the Revolving Lenders for payments to be made by either of the Agents, the Letter of Credit Issuer, and any of the Revolving Lenders under or with respect to such Letter of Credit and any fees and expenses associated with such Letter of Credit or (ii) cash (a "Supporting Cash Deposit") in an amount equal to 105% of the maximum undrawn amount of such Letter of Credit, plus any fees and expenses associated with such Letter of Credit. Such Supporting Letter of Credit or Supporting Cash Deposit shall be held by the Collateral Agent, for the benefit of the Agents, the Letter of Credit Issuer, and the Revolving Lenders, as security for, and to provide for the payment of, the aggregate undrawn amount of such Letters of Credit remaining outstanding and the fees and expenses associated with such Letters of Credit.

Section 2.5 Bank Products. Any Obligated Party may obtain Bank Products from BofA or Wachovia or any of BofA's or Wachovia's Affiliates, or, subject to the definition of Bank Products, another Revolving Lender or any of such Revolving Lender's Affiliates, although no Obligated Party is required to do so. To the extent Bank Products are provided by

an Affiliate of BofA, Wachovia or another Revolving Lender, the Obligated Parties agree to indemnify and hold the Agents and BofA, Wachovia or such other Revolving Lender, as applicable, harmless from any and all costs and obligations now or hereafter incurred by any of the Credit Providers which arise from any indemnity given by BofA, Wachovia or such other Revolving Lender, as applicable, to its Affiliates related to such Bank Products; provided, however, nothing contained herein is intended to limit any Obligated Party's rights, with respect to BofA, Wachovia or such other Revolving Lender, as applicable, or its Affiliates, if any, that arise as a result of the execution of documents by and between such Obligated Party and BofA, Wachovia or such other Revolving Lender, as applicable, or its Affiliates that relate to Bank Products. The agreement contained in this Section 2.5 shall survive termination of this Agreement. Each Obligated Party acknowledges and agrees that the obtaining of Bank Products from BofA, Wachovia, any other Revolving Lender or any of their respective Affiliates (a) is in the sole and absolute discretion of BofA, Wachovia, such other Revolving Lender or such Affiliate, and (b) is subject to all rules and regulations of BofA, Wachovia, such other Revolving Lender or such Affiliate.

ARTICLE 3

INTEREST AND FEES

Section 3.1 Interest.

(a) Interest Rates. All outstanding Obligations (other than Term Loans and other Term Loan Obligations) shall bear interest on the unpaid principal amount thereof (including, to the extent permitted by law, on accrued interest thereon not paid when due) from the date made or incurred until paid in full in cash at a rate determined by reference to the Base Rate or the LIBOR Rate, as applicable, plus the Applicable Margin as set forth below, but not to exceed the Maximum Rate. All Term Loans and other Term Loan Obligations shall bear interest on the unpaid principal amount thereof (including, to the extent permitted by law, on accrued interest thereon not paid when due) from the date made or incurred until paid in full in cash at the interest rate set forth in clause (iii) below. If at any time Revolving Loans are outstanding with respect to which a Borrower has not delivered to the Administrative Agent a notice specifying the basis for determining the interest rate applicable thereto in accordance herewith, such Revolving Loans shall be Base Rate Revolving Loans and bear interest at a rate determined by reference to the Base Rate until notice to the contrary has been given to the Administrative Agent in accordance with this Agreement and such notice has become effective. Except as otherwise provided herein, the outstanding Obligations shall bear interest as follows:

- (i) for all Base Rate Revolving Loans and other Obligations (other than LIBOR Rate Revolving Loans, Term Loans and other Term Loan Obligations) at a fluctuating per annum rate equal to the lesser of (A) the Base Rate, plus the Applicable Margin or (B) the Maximum Rate;

(ii) for all LIBOR Rate Revolving Loans at a per annum rate equal to the lesser of (A) the LIBOR Rate, plus the Applicable Margin or (B) the Maximum Rate; and

(iii) for all Term Loans and other Term Loan Obligations at a per annum rate equal to the lesser of (A) 16% or (B) the Maximum Rate.

Each change in the Base Rate shall be reflected in the interest rate described in clause (i) preceding as of the effective date of such change. Subject to Section 3.3, all interest charges on the Obligations shall be computed on the basis of a year of 360 days and actual days elapsed (which results in more interest being paid than if computed on the basis of a 365-day year).

(b) Interest Payments. The Borrowers shall pay to the Administrative Agent, for the benefit of the applicable Lenders, accrued interest in arrears on each Interest Payment Date, as applicable.

(c) Default Rate. During the existence of any Default or Event of Default if either of the Agents or the Majority Revolving Lenders (in the case of Revolving Obligations) or the Majority Term Lenders (in the case of Term Loan Obligations) in their discretion so elect (in the case of the Majority Revolving Lenders or the Majority Term Lenders, upon written notice to the Agents), the applicable Obligations shall, subject to Section 3.3, bear interest at a rate per annum equal to the lesser of (i) the Default Rate applicable thereto or (ii) the Maximum Rate.

(d) Interest Periods. After giving effect to any Borrowing of any LIBOR Rate Revolving Loan, there may not be more than ten (10) different Interest Periods in effect hereunder.

Section 3.2 Continuation and Conversion Elections.

(a) A Borrower may upon irrevocable written notice to the Administrative Agent in accordance with Section 3.2(b):

(i) provided that Borrowing of LIBOR Rate Revolving Loans is permitted pursuant to Section 2.2, elect, as of any Business Day, in the case of Base Rate Revolving Loans to convert any such Base Rate Revolving Loans (or any part thereof in an amount not less than One Million Dollars (\$1,000,000), or that is in an integral multiple of One Million Dollars (\$1,000,000) in excess thereof) into LIBOR Rate Revolving Loans;

(ii) provided that Borrowing of LIBOR Rate Revolving Loans is permitted pursuant to Section 2.2, elect, as of the last day of the applicable Interest Period, to continue any LIBOR Rate Revolving Loans having Interest Periods expiring on such day (or any part thereof) in an amount not less than One Million Dollars (\$1,000,000), or that is in an integral multiple of One Million Dollars (\$1,000,000) in excess thereof as LIBOR Rate Revolving Loans; or

(iii) elect, as of any Business Day subject to Section 5.4, in the case of LIBOR Rate Revolving Loans to convert any such LIBOR Rate Revolving Loans (or any part thereof not being continued pursuant to clause (ii) preceding) into Base Rate Revolving Loans;

provided that if at any time the aggregate amount of LIBOR Rate Revolving Loans in respect of any Borrowing is reduced, by payment, prepayment, or conversion of part thereof to be less than One Million Dollars (\$1,000,000), such LIBOR Rate Revolving Loans shall automatically convert into Base Rate Revolving Loans; provided, further, that if the notice shall fail to specify the duration of the Interest Period of any LIBOR Rate Revolving Loan to result from any such continuation or conversion, such Interest Period shall be one month in duration.

(b) For any continuation or conversion pursuant to clause (a) preceding, the Borrowers shall deliver a notice of continuation/conversion in the form of Exhibit E or such other form as may be acceptable to the Agents, in their sole discretion (any such notice being referred to herein as a “Notice of Continuation/ Conversion”) to the Administrative Agent not later than 1:00 p.m. (New York time) at least three Business Days in advance of the Continuation/Conversion Date specifying:

- (i) the proposed Continuation/Conversion Date;
- (ii) the aggregate amount of such Revolving Loans to be continued or converted and, if continuing LIBOR Rate Revolving Loans, the specific Revolving Loans (or portions thereof) to be continued or converted;
- (iii) the type of Revolving Loans resulting from the proposed continuation or conversion; and
- (iv) the duration of any requested Interest Period, provided, however, the Borrowers may not select an Interest Period that ends after the Stated Revolving Termination Date.

(c) If upon the expiration of any Interest Period applicable to LIBOR Rate Revolving Loans, the Borrowers have failed to timely select a new Interest Period to be applicable to such LIBOR Rate Revolving Loans, the Borrowers shall be deemed to have elected to convert such LIBOR Rate Revolving Loans into Base Rate Revolving Loans effective as of the expiration date of such Interest Period.

(d) On or before the deadline set forth in clause (b) preceding, in lieu of delivering a Notice of Continuation/Conversion, the Borrowers may give the Administrative Agent telephonic notice of any request for a continuation or conversion. The Administrative Agent shall be entitled to rely on such telephonic notice in continuing or converting such Revolving Loans, regardless of whether any written confirmation is received.

(e) The Administrative Agent will promptly notify each Revolving Lender of its receipt of a Notice of Continuation/Conversion. All continuations and conversions

shall be made ratably according to the respective outstanding principal amounts of the Revolving Loans held by each Revolving Lender with respect to which such notice was given.

(f) After giving effect to any continuation or conversion of any LIBOR Rate Revolving Loan, there may not be more than ten (10) different Interest Periods in effect hereunder.

(g) At the election of either of the Agents or the Majority Revolving Lenders, the Borrowers shall have no right to convert any Base Rate Revolving Loans into LIBOR Rate Revolving Loans or to continue any LIBOR Rate Revolving Loans as LIBOR Rate Revolving Loans during the existence of any Default or Event of Default.

Section 3.3 Maximum Interest Rate. In no event shall the Interest Rate provided for in this Agreement applicable to any Obligation exceed the Maximum Rate. If the Interest Rate applicable to any Obligation, absent the limitation set forth in this Section 3.3, would otherwise exceed the Maximum Rate, then such Interest Rate shall be the Maximum Rate, and, if in the future, such Interest Rate would otherwise be less than the Maximum Rate, then such Interest Rate shall remain at the Maximum Rate until such time as the amount of interest paid hereunder in respect of such Obligation equals the amount of interest which would have been paid in respect of such Obligation if the Interest Rate for such Obligation had not been limited to the Maximum Rate. In the event that, upon payment in full of the applicable Obligation, the total amount of interest paid or accrued under the terms of this Agreement in respect of such Obligation is less than the total amount of interest which would, but for this Section 3.3, have been charged, paid, or accrued in respect of such Obligation if the Interest Rate for such Obligation otherwise set forth in this Agreement had at all times been in effect, then the Borrowers shall, to the extent permitted by applicable law, pay the Administrative Agent, for the account of the applicable Lenders, an amount equal to the excess of (a) the lesser of (i) the amount of interest which would have been charged, paid, or accrued in respect of such Obligation if the Maximum Rate had, at all times, been in effect or (ii) the amount of interest which would have been charged, paid, or accrued in respect of such Obligation had the Interest Rate for such Obligation otherwise set forth in this Agreement, at all times, been in effect over (b) the amount of interest actually charged, paid, or accrued under this Agreement in respect of such Obligation. If a court of competent jurisdiction determines that either Agent and/or any Lender has charged, received, or demanded interest and other charges hereunder in respect of any Obligation in excess of the Maximum Rate, such excess shall be deemed charged, received, or demanded on account of, and shall automatically be applied to reduce, the applicable Obligation other than interest, in the inverse order of maturity, and if there is no applicable Obligation outstanding, the applicable Agent and/or such Lender shall refund to the Borrowers (as applicable) such excess.

Section 3.4 Unused Line Fee. Subject to Section 3.3, until the Revolving Facility Payment In Full, the Borrowers agree to pay to the Administrative Agent, for the account of the Revolving Lenders in accordance with their respective Pro Rata Shares, on the first day of each calendar month and on the Revolving Termination Date, an unused line fee (the "Unused Line Fee") computed at a rate per annum equal to the Applicable Unused Line Fee Percentage, multiplied by the amount by which (A) the average daily Maximum Revolver Amount exceeded

(B) the sum of the average daily outstanding amount of the Revolving Loans other than Non-Ratable Loans and the average daily undrawn amount of all outstanding Letters of Credit during the immediately preceding calendar month or shorter period if calculated on the Revolving Termination Date. Subject to Section 3.3, the Unused Line Fee shall be computed on the basis of a 360 day year for the actual number of days elapsed. For purposes of calculating the Unused Line Fee pursuant to this Section 3.4, any payment received by the Administrative Agent (if received prior to 12:00 noon (New York time)) shall be deemed to be credited to the Borrowers' Loan Account on the Business Day such payment is received by the Administrative Agent.

Section 3.5 Letter of Credit Fees and Expenses.

(a) Subject to Section 3.3, the Borrowers agree to pay to the Administrative Agent for the account of the Revolving Lenders in accordance with their respective Pro Rata Shares a fee (the "Letter of Credit Fee") equal to the Letter of Credit Fee Percentage, multiplied by the average undrawn amount of each Letter of Credit issued and outstanding hereunder. The Letter of Credit Fee shall be (i) computed on the basis of a 360 day year for the actual number of days elapsed and (ii) payable monthly in arrears on the first day of each month following any month in which a Letter of Credit was issued and/or in which a Letter of Credit remained outstanding and on the Revolving Termination Date.

(b) Subject to Section 3.3, the Borrowers agree to pay to the Letter of Credit Issuer, for its sole benefit, (i) all out-of-pocket costs, fees, and expenses incurred by the Letter of Credit Issuer in connection with the application for, processing, issuance, renewal, extension, or amendment of any Letter of Credit and (ii) a "fronting fee" in an amount equal to 0.125% of the face amount of such Letter of Credit on the date of issuance, renewal, or extension of each Letter of Credit.

Section 3.6 Other Fees. Subject to Section 3.3, the Borrowers agree to pay the Agents when due all other fees and expenses as set forth in the Fee Letters.

Section 3.7 Term Closing Fee. Subject to Section 3.3, the Borrowers agree to pay to the Administrative Agent for the account of each Term Lender on the Closing Date a closing fee in an amount equal to 1.632% of the New Term Loan Funding Amount of such Term Lender (the "Term Closing Fee").

Section 3.8 Engagement Letter Fee. Subject to Section 3.3, the Borrowers agree to pay to Banc of America Securities LLC on the Closing Date the arrangement fee described in the Fee Letter (as defined in the Engagement Letter).

ARTICLE 4

PRINCIPAL PAYMENTS AND PREPAYMENTS

Section 4.1 Repayment.

(a) Revolving Loans. The Borrowers shall repay the outstanding principal balance of the Revolving Loans, together with all other non-contingent Obligations (other

than Term Loan Obligations), including all accrued and unpaid interest thereon, on the Revolving Termination Date (or with respect to any Bank Products, any applicable earlier date). The Borrowers may prepay the Revolving Loans, in whole or in part, at any time and from time to time and, subject to the terms of this Agreement, reborrow prior to the Revolving Termination Date. In addition, and without limiting the generality of the foregoing, the Borrowers shall immediately pay to the Administrative Agent, for the account of the Revolving Lenders, the amount, if any and without duplication, by which the Aggregate Revolver Outstandings exceed the Borrowing Base. The Borrowers shall have the option, without the consent of the Term Lenders, to request that the Revolving Lenders extend the Stated Revolving Termination Date to a date no later than the Stated Term Loan Termination Date, subject to the approval of all of the Revolving Lenders in their sole discretion. In the event that the Borrowers wish to obtain a revolving credit facility on terms that, in the reasonable judgment of the Majority Term Lenders, are no less adverse taken as a whole to the Term Lenders than those contained in this Agreement with revolving credit lenders that are commercial banks, commercial finance companies or other asset-based lenders that provide asset-based revolving credit loans in the ordinary course of business, the Term Lenders agree to amend this Agreement or enter into a new loan agreement to provide for such replacement revolving credit facility on such terms; provided that in no event shall the foregoing obligate the Term Lenders to consent to any amendment to this Agreement or enter into a new loan agreement in respect of such replacement revolving credit facility which in the reasonable judgment of the Majority Term Lenders would be adverse to the Term Lenders taken as a whole; provided further that the Borrowers shall pay all of the Term Lenders' reasonable fees and expenses (including reasonable fees and expenses of counsel) incurred in connection with the negotiation of such replacement revolving credit facility.

(b) Term Loans. The Borrowers shall repay the outstanding principal balance of the Term Loans, together with all other non-contingent Obligations, including all accrued and unpaid interest thereon and the Early Term Loan Prepayment Fee, if any, on the Term Loan Termination Date.

(c) Payments. All payments to be made by the Borrowers with respect to the Loans shall be made without setoff, recoupment, or counterclaim. Unless otherwise expressly provided herein, all payments by the Borrowers shall be made to the Administrative Agent, for the account of the applicable Lenders, to the account designated by the Administrative Agent and shall be made in Dollars and in immediately available funds, no later than 12:00 noon (New York time) on the date specified herein. Any payment received by the Administrative Agent after such time shall be deemed to have been received on the following Business Day and any applicable interest or fee shall continue to accrue.

(d) LIBOR Rate Revolving Loan Payment Dates. Subject to the provisions set forth in the definition of Interest Period, whenever any payment is due on a day other than a Business Day, such payment shall be due on the following Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

Section 4.2 Termination of Credit Facility; Prepayment or Termination of Term Loans. The Borrowers may, at any time, terminate this Agreement upon at least ten Business Days' prior written notice thereof to the Agents, upon (a) the payment in full of all outstanding Loans, together with accrued and unpaid interest thereon, and the cancellation and return of all outstanding Letters of Credit (or alternatively with respect to each such Letter of Credit, the furnishing to the Collateral Agent of either a Supporting Cash Deposit or a Supporting Letter of Credit as required by Section 2.4(g)), (b) the payment of the Early Term Loan Prepayment Fee provided below (if applicable), and (c) the payment in full of all reimbursable expenses and other Obligations (including any amount due under Section 5.4) together with accrued and unpaid interest thereon; provided that this Agreement may not be terminated as to the Term Loans prior to the first Anniversary Date. The Maximum Revolver Amount shall not be reduced except in connection with termination of the Revolving Credit Commitments and payment in full of all Revolving Obligations as provided by this Section 4.2 or as otherwise provided in Section 4.3(f) or Section 11.2. For the avoidance of doubt, the Maximum Revolver Amount shall be reduced to zero and the Revolving Credit Commitments shall be terminated upon the termination, in accordance with this Section 4.2, of the revolving credit facility provided hereunder (whether or not the Term Loans or any other Term Loan Obligations have been paid as provided in this Section 4.2). Subject to Section 3.3, if this Agreement is terminated or all or any portion of the Term Loans are prepaid or repaid at any time prior to the date that is thirty months after the Closing Date, whether pursuant to Section 4.3 or pursuant to Section 11.2 or otherwise, the Borrowers shall pay to the Administrative Agent, for the account of the Term Lenders, a fee (the "Early Term Loan Prepayment Fee") in an amount determined in accordance with the following table and allocated to each Term Lender pro rata based upon the amount of its Term Loans being so repaid, prepaid or terminated:

Period during which repayment, prepayment or early termination occurs	Early Term Loan Prepayment Fee
On or prior to the second Anniversary Date	3.00% of the aggregate outstanding principal amount of Term Loans being repaid, prepaid or terminated
After the second Anniversary Date, but prior to the date that is thirty months after the Closing Date	2.00% of the aggregate outstanding principal amount of Term Loans being repaid, prepaid or terminated

No Term Loans may be voluntarily prepaid prior to the Revolving Facility Payment In Full.

Section 4.3 Mandatory Prepayment of the Loans. Without limiting Section 4.1, each of the Borrowers agrees to make a prepayment with respect to the outstanding Loans and other Obligations as follows:

- (a) On any Business Day, if the Aggregate Revolver Outstandings exceed the Borrowing Base, the Borrowers shall immediately pay to the Administrative Agent, for the account of the Revolving Lenders, the amount (if any) of such excess for application to the principal amount of the Revolving Loans and, if after such application there

remains any portion of such excess, such remaining unapplied amount shall be delivered to and held by the Collateral Agent as cash collateral for the Obligations (contingent or otherwise) with respect to outstanding Letters of Credit.

(b) All cash proceeds received by any Borrower from the Disposition or sale of Inventory or collection of Accounts in the ordinary course of business shall be applied to repayment of the applicable Obligations promptly (and in any event within one Business Day of receipt) as specified in Section 4.6(c).

(c) The Borrowers shall pay to the Administrative Agent, for the account of the applicable Lenders, promptly (and in any event within one Business Day of receipt) all net cash proceeds received by an Obligated Party in connection with any Disposition, excluding proceeds received pursuant to clause (b) preceding, for application to the applicable Obligations as provided in Section 4.6(c). As used in this Section 4.3(c), "net cash proceeds" means the proceeds of any applicable Disposition, minus (i) commissions and other reasonable and customary transaction costs, fees, and expenses properly attributable to such transaction and payable by such Obligated Party in connection therewith (in each case, paid to non-Affiliates), (ii) transfer taxes and (iii) amounts payable to holders of Liens (to the extent such Liens constitute Permitted Liens hereunder and such Liens are senior to the Agent's Liens), if any, on the property subject to such Disposition to the extent the documentation governing such senior Liens required such payment to such holders upon such Disposition.

(d) All cash payments or other cash proceeds received by any Obligated Party constituting proceeds of a Distribution, loan, or other advance (other than a Distribution, loan or advance by an Obligated Party to an Obligated Party) to such Obligated Party, excluding proceeds of Revolving Loans, Term Loans, the Second Lien Debt or the Refinancing Second Lien Debt, such proceeds which are proceeds of a loan or advance from one Borrower to another Obligated Party, and other than such proceeds which are proceeds of a loan or advance permitted under clause (c) through clause (j) of Section 8.12, shall be paid to the Administrative Agent promptly upon such receipt, for application to the applicable Obligations as specified in Section 4.6(c).

(e) Upon any issuance of any Capital Stock of any Obligated Party, no later than two Business Days after such issuance, the Borrowers shall make a prepayment in an amount equal to the proceeds of such issuance, net of underwriting discounts, commissions, and other reasonable and customary transaction costs, fees, and expenses properly attributable to such transaction and payable by such Obligated Party in connection therewith (in each case paid to Persons who are not Affiliates of any Obligated Party) for application to the applicable Obligations in accordance with Section 4.6(c).

(f) In any event, if any Obligated Party receives (i) net cash proceeds in connection with any Disposition, (ii) cash payments or other cash proceeds of a Distribution, loan, or other advance to such Obligated Party or (iii) proceeds of any issuance of Capital Stock, on or after the Closing Date, any such proceeds or payments shall be applied to the payment of the Revolving Loans (and after the payment in full of

the Revolving Loans and so long as no Event of Default is then continuing, to the payment of the Term Loans) to the extent necessary to avoid any requirement under any Second Lien Debt Documents or Refinancing Second Lien Debt Documents to prepay or redeem (or to make any offer to prepay or redeem) any portion of the Second Lien Debt or Refinancing Second Lien Debt, together with a permanent reduction of the Revolving Credit Commitments and the Maximum Revolver Amount in the amount of any such application to the Revolving Loans (such reduction to result in each Revolving Lender's Revolving Credit Commitment being permanently reduced by its Pro Rata Share of such reduction). Any payment of the Term Loans made pursuant to this Section 4.3(f) and prior to the date that is thirty months after the Closing Date shall be accompanied by the Early Term Loan Prepayment Fee in accordance with Section 4.2. For the avoidance of doubt, no Early Term Loan Prepayment Fee shall be payable in connection with any prepayments or payments on the Term Loans made at any time after thirty months after the Closing Date.

No provision contained in this Section 4.3 shall constitute a consent to an asset disposition, Distribution, loan, advance or equity issuance that is otherwise not permitted by the terms of this Agreement.

Section 4.4 LIBOR Rate Revolving Loan Prepayments. In connection with any prepayment, if any LIBOR Rate Revolving Loans are prepaid prior to the expiration date of the Interest Period applicable thereto, the Borrowers shall pay to the Administrative Agent, for the benefit of the Revolving Lenders, the amounts described in Section 5.4, provided that the Borrowers shall not be required to pay the amounts described in Section 5.4 in connection with any Revolving Lender's entering into an Assignment and Acceptance.

Section 4.5 Payments as Revolving Loans. At the election of the Administrative Agent, all payments of principal, interest, reimbursement obligations in connection with Letters of Credit, fees, premiums, reimbursable expenses (including all reimbursement for expenses pursuant to Section 15.7), other sums payable under the Loan Documents, and any and all amounts equal to the excess of checks and other items presented to BofA for payment against the Funding Account or any other Deposit Account maintained by a Borrower with BofA in an amount greater than the then available balance in such Deposit Account may be paid with the proceeds of Revolving Loans made hereunder whether made following a request for such purpose by the Borrowers pursuant to Section 2.2 or pursuant to a deemed request as provided in this Section 4.5. The Borrowers hereby irrevocably authorize the Administrative Agent to charge the Loan Account for the purpose of paying all amounts from time to time due under the Loan Documents (including as described in this Section 4.5) and agree that all such amounts charged shall constitute Revolving Loans (including Non-Ratable Loans and Agent Advances) and that all such Revolving Loans shall be deemed to have been requested pursuant to Section 2.2; provided that, except as set forth in the succeeding sentence, so long as no Event of Default exists, the Administrative Agent shall not charge the Loan Account for expenses until 10 days have elapsed since the Administrative Agent has sent an invoice therefor to Ahern. In the event the Collateral Agent is required to make any payment to Wells Fargo Bank, N.A. ("WFB") pursuant to the payoff letter delivered by WFB to Ahern and the Collateral Agent on the Original Closing Date with respect to that certain Credit and Security Agreement, dated as of July 25, 2003, the Administrative Agent shall immediately charge the Loan Account for the purpose of

reimbursing the Collateral Agent for all such payments and all such amounts charged shall constitute Revolving Loans.

Section 4.6 Apportionment, Application, and Reversal of Payments.

(a) Principal and interest payments shall be apportioned ratably among the applicable Lenders (according to the unpaid principal balance of the Loans to which such payments relate held by each applicable Lender) and payments of the fees shall, as applicable, be apportioned ratably among the applicable Lenders, except for fees payable solely to BofA, Wachovia, the Agents, either of them, Banc of America Securities LLC and the Letter of Credit Issuer and except as provided in Article 13.

(b) Except as provided otherwise in this Agreement, all payments shall be remitted to the Administrative Agent or, if applicable, to the Collateral Agent, and all such payments not relating to principal or interest of specific Loans, or not constituting payment of specific fees, and all proceeds of any Obligated Party's Accounts or any other Collateral received by the Administrative Agent or the Collateral Agent, shall be applied, ratably, subject to the other provisions of this Agreement, **FIRST**, to pay any fees, indemnities, or expense reimbursements then due to either of the Agents from any Obligated Party, **SECOND**, to pay any fees, indemnities, or expense reimbursements then due to any of the Credit Providers other than the Agents from any Obligated Party, **THIRD**, to pay interest then due in respect of the Loans, including Non-Ratable Loans and Agent Advances, **FOURTH**, to pay or prepay principal of the Non-Ratable Loans and the Agent Advances, **FIFTH**, to pay or prepay principal of the Revolving Loans (other than the Non-Ratable Loans and the Agent Advances) and unpaid reimbursement obligations in respect of Letters of Credit, **SIXTH**, during the existence of a Default or an Event of Default, to pay an amount to the Collateral Agent equal to 105% of the aggregate undrawn amount of all outstanding Letters of Credit and the aggregate amount of any unpaid reimbursement obligations in respect of Letters of Credit, to be held as cash collateral for such Obligations, and **SEVENTH**, to the payment of any other Obligation including any amounts relating to Bank Products due to BofA, Wachovia, any other Lender or any of their respective Affiliates by any of the Obligated Parties. Subject to items "first" through "seventh" preceding, the Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Obligations.

(c) Payments received pursuant to Section 4.3(b), Section 4.3(c), Section 4.3(d) and Section 4.3(e) shall be applied, ratably, subject to the other provisions of this Agreement (including, without limitation, Section 4.3(f) and Section 4.6(e)), in the order of priority set forth for items "first" through "fifth" of clause (b) preceding at any time other than during the existence of a Default or an Event of Default, and during the existence of any Default or Event of Default, as specified in clause (b) preceding but with such payments to be applied first, to payment or cash collateralization, as applicable, of the Revolving Obligations in accordance with the allocation arrangements prescribed in such clause (b) until fully paid or cash collateralized, as applicable, and thereafter to payment of the Term Loan Obligations.

(d) Notwithstanding anything to the contrary contained in this Agreement, unless so directed by a Borrower, or unless an Event of Default is in existence, neither the Administrative Agent nor any Revolving Lender shall apply any payment which it receives to any LIBOR Rate Revolving Loan, except (i) on the expiration date of the Interest Period applicable to any such LIBOR Rate Revolving Loan or (ii) in the event, and only to the extent, that there are no outstanding Base Rate Revolving Loans and, in any such event, the Borrowers shall pay the LIBOR breakage losses in accordance with Section 5.4.

(e) Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, (i) subject to clause (iii) of this Section 4.6(e), on the Stated Term Loan Termination Date, the Administrative Agent shall apply Collateral and proceeds of Collateral remitted to it (other than Collateral and proceeds of Collateral described in the last sentence of Section 10.1) to pay the outstanding Term Loan Obligations, (ii) the Administrative Agent shall allocate amounts received by it to Term Loan Obligations in accordance with and to the extent provided in Section 4.3(f), and (iii) with respect to all Collateral and proceeds of Collateral received by the Collateral Agent or the Administrative Agent from and after the acceleration of the Obligations under this Agreement or the commencement of any bankruptcy or similar proceeding by or against any Obligated Party, such Collateral and proceeds of Collateral shall be applied first, to pay or cash collateralize, as applicable, the Revolving Obligations in accordance with the allocation arrangements prescribed in Section 4.6(b) until fully paid or cash collateralized, as applicable, and thereafter to pay the Term Loan Obligations.

Section 4.7 Indemnity for Returned Payments. If after receipt of any payment or of any proceeds of Collateral that is applied to the payment of all or any part of the Obligations, any Credit Provider is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by such Credit Provider and the Borrowers shall be liable to pay to the Administrative Agent, for the benefit of the applicable Credit Providers, and each Borrower hereby indemnifies the applicable Credit Providers and holds the applicable Credit Providers harmless for the amount of such payment or proceeds surrendered. The provisions of this Section 4.7 shall be and remain effective notwithstanding any release of Collateral or guarantors, cancellation or return of Loan Documents, or other contrary action that may have been taken by any Credit Provider in reliance upon such payment or application of proceeds, and any such contrary action so taken shall be without prejudice to the Credit Providers' rights under this Agreement and the other Loan Documents and shall be deemed to have been conditioned upon such payment or application of proceeds having become final and irrevocable. The provisions of this Section 4.7 shall survive the termination of this Agreement.

Section 4.8 Administrative Agent's and the Lenders' Books and Records; Monthly Statements. The Administrative Agent shall record the principal amount of the Loans, the undrawn amount of all outstanding Letters of Credit, and the aggregate amount of unpaid reimbursement obligations outstanding with respect to the Letters of Credit from time to time on

its books. In addition, each Lender may note the date and amount of each payment or prepayment of principal of such Lender's Loans in its books and records. Failure by the Administrative Agent or any Lender to make any such notation shall not affect the obligations of the Borrowers with respect to the Loans or the Letters of Credit. The Borrowers agree that the Administrative Agent's and each Lender's books and records showing the Obligations and the transactions pursuant to this Agreement and the other Loan Documents shall be admissible in any action or proceeding arising therefrom, and shall constitute presumptive proof thereof, irrespective of whether any Obligation is also evidenced by a promissory note or other instrument. The Administrative Agent will provide to the Borrowers and the Revolving Lenders (and, if requested in writing by any Term Lender, such Term Lender) a monthly statement of Loans, payments, and other transactions pursuant to this Agreement. Such statement shall be deemed correct, accurate, and binding on the Borrowers and an account stated (except for reversals and reapplications of payments made as provided in Section 4.6 and corrections of errors discovered by either of the Agents), unless a Borrower notifies the Administrative Agent in writing to the contrary within 30 days after such statement is rendered. In the event a timely written notice of objections is given by a Borrower, only the items to which exception is expressly made will be considered to be disputed by the Borrowers. Each Term Lender agrees to provide the Administrative Agent with such information as to the Term Loans and other Term Loan Obligations owing to such Term Lender and as to such Term Lender (including, without limitation, wire transfer information) as the Administrative Agent may reasonably request in order for the Administrative Agent to properly and accurately perform its duties under this Section 4.8, Section 4.6 and the other relevant provisions of this Agreement.

ARTICLE 5

TAXES, YIELD PROTECTION AND ILLEGALITY

Section 5.1 Taxes.

(a) Any and all payments by the Obligated Parties, or any of them, to either Agent or any Lender under this Agreement or any other Loan Document shall be made free and clear of, and without deduction or withholding for, any Taxes. In addition, subject to Section 14.10(c), the Obligated Parties shall pay all Other Taxes.

(b) The Obligated Parties agree to indemnify and hold harmless the Administrative Agent, the Collateral Agent and each Lender for the full amount of Taxes or Other Taxes (including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 5.1) paid by the Administrative Agent, the Collateral Agent or any Lender and any liability (including penalties, interest, additions to tax, and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. Payment under this indemnification shall be made within 30 days after the date the Administrative Agent, the Collateral Agent or any Lender makes written demand therefor.

(c) If an Obligated Party shall be required by law to deduct or withhold any Taxes or Other Taxes from or in respect of any sum payable hereunder to the Administrative Agent, the Collateral Agent or any Lender, then:

(i) the sum payable shall be increased as necessary so that after making all required deductions and withholdings (including, without limitation, deductions and withholdings applicable to additional sums payable under this Section 5.1) the Administrative Agent, the Collateral Agent or such Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made;

(ii) such Obligated Party shall make such deductions and withholdings;

(iii) such Obligated Party shall pay the full amount deducted or withheld to the relevant taxing authority or other authority in accordance with any applicable Requirement of Law; and

(iv) such Obligated Party shall also pay to the Administrative Agent, for the account of each Lender, or each Lender at the time interest is paid, all additional amounts that the respective Lender specifies as necessary to preserve the after-tax yield such Lender would have received if such Taxes or Other Taxes had not been imposed.

(d) Within 30 days after the date of any payment by any Obligated Party of Taxes or Other Taxes, such Obligated Party shall furnish to the Administrative Agent the original or a certified copy of a receipt evidencing payment thereof or other evidence of payment satisfactory to the Administrative Agent.

(e) If the Obligated Parties are required to pay additional amounts to any Lender pursuant to Section 5.1(c), then such Lender shall use reasonable efforts (consistent with legal and regulatory restrictions) to change the jurisdiction of its lending office so as to eliminate any such additional payment by the Obligated Parties that may thereafter accrue, if such change in the judgment of such Lender is not otherwise disadvantageous to such Lender.

Section 5.2 Illegality.

(a) If any Revolving Lender determines that, after the date of this Agreement, the introduction of any Requirement of Law, or any change in any Requirement of Law, or in the interpretation or administration of any Requirement of Law, has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for such Revolving Lender or its applicable lending office to make LIBOR Rate Revolving Loans, then, on notice thereof by such Revolving Lender to the Borrowers through the Administrative Agent, any obligation of such Revolving Lender to make LIBOR Rate Revolving Loans shall be suspended until such Revolving Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist.

(b) If a Revolving Lender determines that it is unlawful to maintain any LIBOR Rate Revolving Loan, the Borrowers shall, upon receipt of notice of such fact and demand from such Revolving Lender (with a copy to the Administrative Agent), prepay in full such LIBOR Rate Revolving Loans of such Revolving Lender then outstanding, together with accrued and unpaid interest thereon and amounts required under Section 5.4, either on the last day of the Interest Period thereof, if such Revolving Lender may lawfully continue to maintain such LIBOR Rate Revolving Loans to such day, or immediately, if such Revolving Lender may not lawfully continue to maintain such LIBOR Rate Revolving Loans. If the Borrowers are required to so prepay any LIBOR Rate Revolving Loans, then concurrently with such prepayment, the Borrowers shall borrow from the affected Revolving Lender, in the amount of such repayment, a Base Rate Revolving Loan. Each Revolving Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the judgment of such Revolving Lender, otherwise be disadvantageous to such Revolving Lender.

Section 5.3 Increased Costs and Reduction of Return.

(a) If any Revolving Lender determines that due to either (i) the introduction of or any change in the interpretation of any law or regulation after the date of this Agreement or (ii) the compliance by such Revolving Lender with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law) made after the date of this Agreement, there shall be any increase in the cost to such Revolving Lender of agreeing to make or making, funding, or maintaining any LIBOR Rate Revolving Loans, then the Borrowers shall be liable for, and shall from time to time, within three Business Days of demand by such Revolving Lender (with a copy of such demand to be sent to the Administrative Agent), pay to the Administrative Agent, for the account of such Revolving Lender, additional amounts as are sufficient to compensate such Revolving Lender for such increased costs.

(b) If any Revolving Lender shall have determined that (to the extent it occurs after the date of this Agreement) (i) the introduction of any Capital Adequacy Regulation, (ii) any change in any Capital Adequacy Regulation, (iii) any change in the interpretation or administration of any Capital Adequacy Regulation by any central bank or other Governmental Authority charged with the interpretation or administration thereof, or (iv) compliance by such Revolving Lender or any corporation or other entity controlling such Revolving Lender with any Capital Adequacy Regulation, affects or would affect the amount of capital required or expected to be maintained by such Revolving Lender or any corporation or other entity controlling such Revolving Lender and (taking into consideration such Revolving Lender's or such corporation's or other entity's policies with respect to capital adequacy and such Revolving Lender's desired return on capital) determines that the amount of such capital is increased as a consequence of its Commitment, loans, credits, or obligations under this Agreement, then, within three Business Days of demand by such Revolving Lender (with a copy of such demand to be sent to the Administrative Agent), the Borrowers shall pay to the Administrative Agent, for the account of such Revolving Lender, from time to time as specified by such

Revolving Lender, additional amounts sufficient to compensate such Revolving Lender for such increase.

Section 5.4 Funding Losses. The Borrowers shall reimburse each Revolving Lender and hold each Revolving Lender harmless from any loss or expense that such Revolving Lender may sustain or incur as a consequence of:

- (a) the failure of the Borrowers to make on a timely basis any payment of principal of any LIBOR Rate Revolving Loan;
- (b) except as permitted by Section 5.5, the failure of the Borrowers to (i) borrow any requested LIBOR Rate Revolving Loan, (ii) continue any LIBOR Rate Revolving Loan, or (iii) convert a Base Rate Revolving Loan to a LIBOR Rate Revolving Loan, in each case, after any Borrower has given (or is deemed to have given) a Notice of Borrowing, a Notice of Continuation/Conversion, or any telephonic notice in lieu thereof with respect thereto; or
- (c) the prepayment or other payment (including after acceleration thereof) of any LIBOR Rate Revolving Loans on a day that is not the last day of the relevant Interest Period;

including any such loss of anticipated profit and any loss or expense arising from the liquidation or reemployment of funds obtained by such Revolving Lender (but excluding loss of the Applicable Margin) to maintain its LIBOR Rate Revolving Loans or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees, including a processing fee (the processing fee is currently Three Hundred Fifty Dollars (\$350) but is subject to change from time to time by the Administrative Agent without notice), charged by the Administrative Agent or any Revolving Lender in connection with the foregoing.

Section 5.5 Inability to Determine Rates. If the Administrative Agent determines that for any reason adequate and reasonable means do not exist for determining the LIBOR Rate for any requested Interest Period with respect to a proposed LIBOR Rate Revolving Loan or that the LIBOR Rate for any requested Interest Period with respect to a proposed LIBOR Rate Revolving Loan does not adequately and fairly reflect the cost to the Revolving Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrowers and each Revolving Lender. Thereafter, the obligation of the Revolving Lenders to make or maintain LIBOR Rate Revolving Loans hereunder shall be suspended until the Administrative Agent revokes such notice in writing. Upon receipt of a notice pursuant to the first sentence of this Section 5.5, the Borrowers may revoke any Notice of Borrowing or Notice of Continuation/Conversion then submitted by any of them. If the Borrowers do not revoke any such Notice of Borrowing or Notice of Continuation/Conversion, the Revolving Lenders shall make, convert, or continue the Revolving Loans, as proposed by the Borrowers, in the amount specified in the applicable notice submitted by a Borrower, but such Revolving Loans shall be made, converted, or continued as Base Rate Revolving Loans instead of LIBOR Rate Revolving Loans.

Section 5.6 Certificate of the Affected Lender. If any Lender claims reimbursement or compensation under this Article 5, the affected Lender shall determine the amount thereof and shall deliver to the Borrowers (with a copy to the Administrative Agent) a certificate setting forth in reasonable detail the amount payable to the affected Lender, and such certificate shall be conclusive and binding on the Borrowers in the absence of manifest error.

Section 5.7 Survival. The agreements and obligations of the Borrowers in this Article 5 shall survive the payment of all other Obligations.

ARTICLE 6

BOOKS AND RECORDS; FINANCIAL INFORMATION; NOTICES

Section 6.1 Books and Records. The Obligated Parties shall maintain, and shall cause each of their Subsidiaries to maintain, at all times, correct and complete books, records, and accounts in which full, true, complete, correct, and timely entries are made of such Person's transactions in accordance with GAAP consistently applied. The Obligated Parties shall reflect, and shall cause each of their Subsidiaries to reflect, by means of appropriate entries, in such accounts and in all Financial Statements proper liabilities and reserves for all taxes and proper provision for depreciation and amortization of property and bad debts, all in accordance with GAAP. The Obligated Parties shall maintain at all times books and records pertaining to the Collateral in such detail, form, and scope as the Agents shall reasonably require, including, but not limited to, timely records of (a) all payments received and all credits and extensions granted with respect to the Accounts, (b) the return, rejection, repossession, stoppage in transit, loss, damage, or destruction of any Inventory, and (c) all other dealings affecting the Collateral.

Section 6.2 Financial and Other Information. The Obligated Parties shall promptly furnish to the Agents all such information regarding the Obligated Parties' and each of their Subsidiaries' financial and business affairs as either of the Agents or any Lender (through either of the Agents, and the applicable Agent agrees to pass along all such reasonable requests by any Lender to the Obligated Parties) may reasonably request. Without limiting the foregoing, the Obligated Parties will furnish, or cause to be furnished, to both Agents (with sufficient copies to the Administrative Agent for distribution to each Lender) the following, in such detail as either of the Agents or the Lenders (through either of the Agents, and the applicable Agent agrees to pass along all such reasonable requests by any Lender to the Obligated Parties) shall reasonably request:

(a) The Obligated Parties will furnish, or cause to be furnished, as soon as available, but in any event not later than 120 days after the close of each Fiscal Year of Ahern, consolidated audited balance sheets and statements of income, cash flow, and stockholders' equity for Ahern and its Subsidiaries for such Fiscal Year, and the accompanying notes thereto, setting forth in each case in comparative form figures for the previous Fiscal Year, all in reasonable detail, fairly presenting the financial position and the results of operations of Ahern and its Subsidiaries on a consolidated basis as at the date thereof and for the Fiscal Year then ended, and prepared in accordance with GAAP; provided that the Obligated Parties will furnish or cause to be furnished unaudited drafts of each of such financial statements to the Agents as soon as available, but in any event

not later than 90 days after the close of each Fiscal Year of Ahern. Such Financial Statements shall be audited in accordance with generally accepted auditing standards by and accompanied by a report thereon containing an opinion that is unqualified in any respect of, independent certified public accountants selected by Ahern (it being agreed by the parties hereto, however, that at any time after the Closing Date, the Agents shall have the right, in their reasonable discretion, to require that Ahern and its Subsidiaries retain independent certified public accountants of national standing to perform such examinations and provide such reports). The Obligated Parties hereby authorize each of the Agents to communicate directly with the Obligated Parties' certified public accountants and, by this provision, authorizes such accountants to disclose to each of the Agents any and all financial statements and other supporting financial documents and schedules relating to the Obligated Parties and to discuss directly with each of the Agents the finances and affairs of the Obligated Parties, provided that the applicable Agent shall provide the Obligated Parties the opportunity to attend and participate in such discussions.

(b) The Obligated Parties will furnish or cause to be furnished,

(i) as soon as available, but in any event not later than 45 days after the end of each Fiscal Quarter, other than a Fiscal Quarter that is a year end, an unaudited balance sheet, income statement, and statement of cash flow for Ahern and its Subsidiaries prepared on a consolidated basis for the period from the beginning of the current Fiscal Year to the end of such Fiscal Quarter, all in reasonable detail and fairly presenting the financial position and results of operations of Ahern and its Subsidiaries as at the date thereof and for such period, and, in each case, in comparable form, figures for the corresponding period in the prior Fiscal Year, and in the Latest Projections, and prepared in accordance with GAAP (other than the omission of footnotes and subject to normal year-end audit adjustments, if any) applied consistently with the audited Financial Statements required to be delivered pursuant to Section 6.2(a); and

(ii) as soon as available, but in any event not later than 30 days after the end of each Fiscal Month, an unaudited balance sheet, income statement, and statement of cash flow for Ahern and its Subsidiaries prepared on a consolidated basis for the period from the beginning of the current Fiscal Year to the end of such Fiscal Month, all in reasonable detail and fairly presenting the financial position and results of operations of Ahern and its Subsidiaries as at the date thereof and for such period, and, in each case, in comparable form, figures for the corresponding period in the prior Fiscal Year, and in the Latest Projections, and prepared in accordance with GAAP (other than the omission of footnotes and subject to normal year-end audit adjustments, if any, and, solely in the case of the financial statements for the Fiscal Months of January and February of each Fiscal Year, subject to normal year-end audit adjustments from the prior Fiscal Year that have an impact on the financial statements for such Fiscal Months) applied consistently with the audited Financial Statements required to be delivered pursuant to Section 6.2(a).

Ahern shall certify by a certificate signed by a Responsible Officer that all such Financial Statements have been prepared in accordance with GAAP (other than the omission of footnotes and subject to normal year-end audit adjustments, if any) applied consistently with the audited Financial Statements required to be delivered pursuant to Section 6.2(a) and present fairly, subject to normal year-end audit adjustments, the financial position of Ahern and its Subsidiaries as at the dates thereof and their results of operations for the periods then ended.

(c) The Obligated Parties will cause to be furnished, with each of the Financial Statements delivered pursuant to Section 6.2(a), a letter from the independent certified public accountants that audited such Financial Statements to the effect that such accountants are familiar with this Agreement and that, in auditing such Financial Statements, they did not become aware of any fact or condition which then constituted a Default or Event of Default with respect to a financial covenant set forth in Section 8.21, except for those, if any, described in reasonable detail in such letter.

(d) The Obligated Parties will furnish or cause to be furnished, with each of the Financial Statements delivered pursuant to Section 6.2(a), and with each of the Financial Statements delivered pursuant to Section 6.2(b)(i), a certificate of a Responsible Officer of Ahern in the form of Exhibit C (a “Compliance Certificate”), or another form acceptable to the Agents in their discretion, (i) setting forth in reasonable detail the calculations required to establish compliance with the covenants set forth in Section 8.21 during the period covered by such Financial Statements and as at the end thereof and (ii) except as explained in reasonable detail in such certificate, (A) stating that all of the representations and warranties of the Obligated Parties contained in this Agreement and the other Loan Documents are correct and complete in all material respects as at the date of such certificate as if made at such time, except for those that speak as of a particular date, (B) stating that the Obligated Parties are, at the date of such certificate, in compliance in all material respects with all of their respective covenants and agreements in this Agreement and the other Loan Documents, (C) stating that no Default or Event of Default then exists or existed during the period covered by such Financial Statements, (D) analyzing in reasonable detail the material variances of the figures in the Latest Projections and corresponding Financial Statements for the prior Fiscal Year and (E) certifying, to the Obligated Parties’ knowledge, that the amount of the Unused Availability during the period covered by such certificate did not fall to an amount which would give rise to an Accelerated Delivery Date or, if the Unused Availability fell to any such amount, the first date on which such event occurred. If such certificate discloses that a representation or warranty is not correct or complete, or that a covenant has not been complied with, or that a Default or Event of Default existed or exists, such certificate shall set forth what action the Obligated Parties have taken or propose to take with respect thereto. In addition, if, as a result of any change in accounting principles and policies from those used in the preparation of the audited Financial Statements referred to in Section 7.6(a), the consolidated Financial Statements of Ahern and its Subsidiaries delivered pursuant to Section 6.2(a) or (b) will differ in any material respect from the consolidated Financial Statements that would have been delivered pursuant to such clauses had no such change in accounting principles and policies been made, then the Obligated Parties will deliver to both Agents (with sufficient

copies to the Administrative Agent for distribution to each Lender) (i) together with the first delivery of Financial Statements pursuant to Section 6.2(a) or (b) following such change, consolidated Financial Statements of Ahern and its Subsidiaries for (y) the current Fiscal Year to the effective date of such change and (z) one full Fiscal Year immediately preceding the Fiscal Year in which such change is made, in each case prepared on a pro forma basis as if such change had been in effect during such periods, and (ii) together with each delivery of Financial Statements pursuant to Section 6.2(a) or (b) following such change, subject to Section 1.2, a written statement of a Responsible Officer of Ahern setting forth the differences (including, subject to Section 1.2, any differences that would affect any calculations relating to the financial covenants set forth in Section 8.21) which would have resulted if such Financial Statements had been prepared without giving effect to such change. The Obligated Parties will furnish or cause to be furnished, with each of the Financial Statements delivered pursuant to Section 6.2(b)(ii), a monitoring report, in form, scope and substance reasonably satisfactory to the Agents, for the Fiscal Month covered by such Financial Statements.

(e) The Obligated Parties will furnish, or cause to be furnished, no sooner than 60 days but not less than 30 days prior to the beginning of each Fiscal Year of Ahern, annual forecasts prepared by Ahern (to include forecasted consolidated balance sheets, income statements, statements of cash flow, and Borrowing Base and Unused Availability projections) for Ahern and its Subsidiaries as at the end of and for each Fiscal Month of such Fiscal Year and the following Fiscal Year.

(f) Upon the request of either of the Agents, the Obligated Parties will furnish, or cause to be furnished, within three Business Days of such request, a copy of the most recent annual report or other requested filing filed with the PBGC, IRS or any other Governmental Authority with respect to each Plan of any Obligated Party.

(g) The Obligated Parties will furnish, or cause to be furnished, within three Business Days after filing thereof, copies of (i) all reports, if any, or other documents filed by Ahern or any of its Subsidiaries with the Securities and Exchange Commission under the Exchange Act or any other similar Governmental Authority pursuant to any Requirement of Law, (ii) all reports, notices, or statements sent or received by Ahern or any of its Subsidiaries to or from the holders of any Debt of Ahern or any of its Subsidiaries registered under the Securities Act of 1933 or to or from the trustee under any indenture under which the same is issued, and (iii) all press releases and other statements made available generally by Ahern or any of its Subsidiaries to the public concerning material developments in the business of Ahern or any of its Subsidiaries.

(h) The Obligated Parties will furnish, or cause to be furnished, as soon as available, but in any event not later than fifteen days after Ahern's or any of its Subsidiaries' receipt thereof, a copy of all reports and letters prepared by any independent certified public accountants of Ahern or any of its Subsidiaries and submitted by such independent certified public accountants to the board of directors (or the audit committee of the board of directors) of Ahern or any of its Subsidiaries; provided that the Obligated Parties shall request such reports and letters at least once per year.

(i) The Obligated Parties will furnish, or cause to be furnished, (i) concurrently with distribution thereof to the owners of Capital Stock of any Obligated Party, copies of any and all proxy statements and financial statements which such Obligated Party makes available to any such Person, (ii) concurrently with distribution thereof to the primary recipients, copies of any and all proxy statements, financial statements, and reports which any Obligated Party makes available to any holder of any Debt of any Obligated Party, (iii) not later than three (3) Business Days after execution, receipt or delivery thereof, copies of any material notices or other communications that any Obligated Party executes, receives or delivers in connection with any Second Lien Debt Document or any Refinancing Second Lien Debt Document and (iv) not later than five (5) Business Days (or such lesser number of Business Days as agreed to by the Agents) prior to the effectiveness thereof, copies of substantially final drafts of any proposed amendment, supplement, waiver or other modification with respect to any Second Lien Debt Document, Refinancing Second Lien Debt Document or any related document, and promptly after the execution thereof, copies of any executed amendment, supplement, waiver or other modification with respect to any Second Lien Debt Document, any Refinancing Second Lien Debt Document or any related document.

(j) If requested by either of the Agents, the Obligated Parties will furnish, or cause to be furnished, promptly after such request, a copy of each tax return filed by Ahern or any of its Subsidiaries with the IRS or any other Governmental Authority.

(k) The Obligated Parties will furnish, or cause to be furnished to the Agents,

(i) as soon as available, but in any event within twenty (20) days after the end of each Fiscal Month of Ahern as of the end of such Fiscal Month, and at such other times as may be requested by either of the Agents, a Borrowing Base Certificate and supporting information in connection therewith; provided, that during each Accelerated Delivery Period, the Borrowers shall deliver a Borrowing Base Certificate and supporting information in connection therewith to the Agents on a weekly basis (not later than the fourth Business Day after the last Business Day of the previous week) with the information thereon to be as of the last Business Day of such previous week;

(ii) within twenty (20) days of the end of each Fiscal Month, or more frequently if requested by either of the Agents, a schedule (in form reasonably satisfactory to the Agents) of each Borrower's Accounts created, credits given, cash collected, and other adjustments made to such Borrower's Accounts as of the last day of such Fiscal Month since the date of the previous such schedule;

(iii) within twenty (20) days of the end of each Fiscal Month, or more frequently if requested by either of the Agents, an aging (in form reasonably satisfactory to the Agents) of each Borrower's Accounts as of the last day of such Fiscal Month, together with a reconciliation to the corresponding Borrowing Base and to such Borrower's general ledger;

(iv) within twenty (20) days of the end of each Fiscal Month, or more frequently if requested by either of the Agents, an aging (in form reasonably satisfactory to the Agents) of each Borrower's accounts payable as of the last day of such Fiscal Month together with a reconciliation to the corresponding general ledger of such Borrower;

(v) within twenty (20) days of the end of each Fiscal Month, or more frequently if requested by either of the Agents, a detailed calculation (in form reasonably satisfactory to the Agents) of Eligible Accounts, Eligible Transportation Equipment and Eligible Inventory as of the last day of such Fiscal Month;

(vi) within twenty (20) days of the end of each Fiscal Month, or more frequently if requested by either of the Agents, Inventory and Transportation Equipment reports by each Borrower, category, quantity, cost, and location (in form reasonably satisfactory to the Agents), together with a reconciliation to the corresponding Borrowing Base and to the Borrowers' general ledger as of the last day of such Fiscal Month;

(vii) within twenty (20) days of the end of each Fiscal Month, a schedule identifying each location, if any, where any Collateral is located with a sales representative, agent, contractor, or other Person under any bailee, consignee, or warehouse arrangement, in each case setting forth, as of the last day of the immediately preceding Fiscal Month, (A) the name and address of each such sales representative, agent, contractor, or other Person and a description of the nature of any such arrangement and (B) the cost of such Inventory and Transportation Equipment at each such location;

(viii) upon request by either of the Agents, within three (3) Business Days of such request, copies of invoices, customer statements, credit memos, remittance advices and reports, leases, lease forms, deposit slips, and leasing, shipping and delivery documents with respect to each Borrower's Accounts and Inventory, and purchase orders and invoices with respect to any Equipment or Inventory acquired by any Borrower or a written explanation of why the requested items cannot be delivered within such three (3) Business Day period (in which case, such requested items shall then be delivered as promptly thereafter as is reasonably practicable);

(ix) within twenty (20) days of the end of each Fiscal Month, a report in a format to be agreed upon between the Agents and Ahern with relevant operating information including Time Utilization by product category, average discount and average rental rates;

(x) upon request by either of the Agents, within three (3) Business Days of such request, a statement of the balance of each of the Intercompany Accounts; and

(xi) within three (3) Business Days, such other reports with respect to the Collateral as either of the Agents may reasonably request or a written explanation of why the requested reports cannot be delivered within such three (3) Business Day period (in which case such requested reports shall then be delivered as promptly thereafter as is reasonably practicable).

With the delivery of each of the foregoing, the Obligated Parties shall furnish a certificate executed by a Responsible Officer of the Borrowers certifying as to the accuracy and completeness of the foregoing. If any of any Borrower's records or reports with respect to the Collateral are prepared by an accounting service or other agent, such Borrower hereby authorizes such service or agent to deliver such records, reports, and related documents to the Administrative Agent for distribution to the Lenders.

(l) The Obligated Parties will provide the Agents the information required by Section 8.7(b).

(m) Within 30 days following the date franchise taxes are due, the Obligated Parties will, unless the Agents shall each otherwise consent, provide to the Administrative Agent a certificate of the applicable Governmental Authority evidencing each Obligated Party's good standing in its jurisdiction of formation, incorporation, or organization, as applicable.

(n) The Obligated Parties will furnish, or cause to be furnished, such additional information as either Agent and/or any Lender (through either of the Agents, and the applicable Agent agrees to pass along all such reasonable requests by any Lender to the Obligated Parties) may from time to time reasonably request regarding the financial and business affairs of Ahern or any Subsidiary of Ahern.

(o) The Obligated Parties will furnish, or cause to be furnished, with each of the Financial Statements delivered pursuant to Section 6.2(b), a description of any commercial tort claim acquired by any Obligated Party during the period covered by such Financial Statements.

(p) The Obligated Parties will furnish, or cause to be furnished, with each of the Financial Statements delivered pursuant to Section 6.2(b), a description of all Collateral acquired by any Obligated Party during the period covered by such Financial Statements which is subject to any certificate of title law of the U.S. or any state.

(q) After any item of Inventory is no longer subject to a Lien described in clause (l) of the definition of "Permitted Liens", the Obligated Parties will furnish, or cause to be furnished, either a UCC partial release for such item of Inventory or a statement from the vendor of such item of Inventory that such vendor no longer has a Lien in such item of Inventory, and until such partial release or statement is delivered to the Agents such item of Inventory shall in no event constitute Eligible Inventory and no Accounts created with respect to such Inventory shall constitute Eligible Accounts.

(r) After any item of Transportation Equipment is no longer subject to a Lien described in clause (k) of the definition of "Permitted Liens", the Obligated Parties will

furnish, or cause to be furnished, (i) if a certificate of title is not required with respect to such item of Transportation Equipment under the titling statutes of any relevant Governmental Authority, either a UCC partial release for such item of Transportation Equipment or a statement from the vendor or lessor of such item of Transportation Equipment that such vendor or lessor, as the case may be, no longer has a Lien in such item of Transportation Equipment or (ii) if a certificate of title has been issued with respect to such item of Transportation Equipment, such certificate of title endorsed by the secured party releasing its Lien in such item of Transportation Equipment or, if such original certificate of title cannot be furnished, such other lien release as is acceptable to the Governmental Authority issuing such certificate of title to permit the issuance of a replacement certificate of title without the notation of such Lien, and until such partial release, statement, certificate of title or other release, as applicable, is delivered to the Agents such item of Transportation Equipment shall in no event constitute Eligible Transportation Equipment.

In addition to the foregoing delivery requirements, if at any time during which the Term Loans are outstanding Ahern is no longer subject to the periodic reporting requirements of the Exchange Act for any reason, Ahern will nevertheless continue filing with the Securities and Exchange Commission (the "Commission"), unless the Commission will not accept such a filing, all quarterly and annual reports on Forms 10-Q and 10-K and all current reports on Form 8-K that would be required to be filed if Ahern were required to file such reports, in each case within the time periods specified in the Commission's rules and regulations and prepared in all material respects in accordance with all of the rules and regulations applicable to such reports. Ahern will not take any action for the purpose of causing the Commission not to accept any such filings. If, notwithstanding the foregoing, the Commission will not accept Ahern's filings for any reason, Ahern will post the reports referred to in this paragraph on its website within the time periods that would apply if Ahern were required to file such reports with the Commission. In addition, Ahern agrees that, for so long as any Term Loans remain outstanding, if at any time Ahern is not required to file with the Commission the reports required by this paragraph, Ahern will furnish to the Term Lenders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act of 1933, as amended.

The Obligated Parties acknowledge that one or more of the Term Lenders may be "public-side" Lenders (i.e. Term Lenders that do not wish to receive material non-public information with respect to any Obligated Party or its securities). Ahern agrees to make any and all material and/or information to be provided by any of the Obligated Parties hereunder or under any other Loan Document intended to be distributed or made available to the Lenders (collectively, "Obligated Parties Material") clearly and conspicuously designated by Ahern as "PUBLIC" if such Obligated Parties Material is either publicly available or not material information (though it may be sensitive and proprietary) with respect to the Obligated Parties and their respective securities for purposes of the United States Federal and state securities laws. Notwithstanding anything herein or in any other Loan Document to the contrary, unless and until a Term Lender notifies the Administrative Agent in writing to the contrary, the Administrative Agent shall only furnish or make available to such Term Lender under this Agreement or any other Loan Document Obligated Parties Material clearly and conspicuously designated by Ahern as "PUBLIC".

Section 6.3 Notices. The Obligated Parties shall notify each Agent in writing of the following matters at the following times:

- (a) immediately after a Responsible Officer's becoming aware of any Default or Event of Default;
- (b) within three (3) Business Days after a Responsible Officer's becoming aware of the assertion by the holder of any Capital Stock of Ahern or any Subsidiary of Ahern or the holder of any Debt of Ahern or any Subsidiary of Ahern in excess of \$500,000 that a default exists with respect thereto or that any such Person is not in compliance with the terms thereof, or the written threat or commencement by such holder of any enforcement action because of such asserted default or non-compliance;
- (c) within five (5) Business Days after a Responsible Officer's becoming aware of any pending or threatened (in writing) action, suit, proceeding, or counterclaim by any Person, or any pending or threatened (in writing) investigation by a Governmental Authority, that could reasonably be expected to result in, or has resulted in, liability in excess of \$500,000 or otherwise could reasonably be expected to have, or has resulted in, a Material Adverse Effect;
- (d) within five (5) Business Days after a Responsible Officer's becoming aware of any pending or threatened (in writing) strike, work stoppage, unfair labor practice claim or other similar labor dispute affecting any Obligated Party that could reasonably be expected to result in, or has resulted in, liability in excess of \$500,000 or otherwise could reasonably be expected to have, or has resulted in, a Material Adverse Effect;
- (e) within five (5) Business Days after a Responsible Officer's becoming aware of any violation of any Requirement of Law affecting any Obligated Party that reasonably could be expected to result in, or has resulted in, liability in excess of \$500,000 or otherwise could reasonably be expected to have, or has resulted in, a Material Adverse Effect;
- (f) within five (5) Business Days after (i) a Responsible Officer's receipt of any written notice of any violation by any Obligated Party of any Environmental Law or (ii) a Responsible Officer's obtaining knowledge that any Governmental Authority has asserted that any Obligated Party is not in compliance with any Environmental Law or that any Governmental Authority is investigating any Obligated Party's compliance therewith, which in any event under clause (i) or clause (ii) preceding could reasonably be expected to result in, or has resulted in, liability in excess of \$500,000 or otherwise could reasonably be expected to have, or has resulted in, a Material Adverse Effect;
- (g) within five (5) Business Days after a Responsible Officer's receipt of any written notice from any Governmental Authority or other Person or otherwise obtaining knowledge that any Obligated Party is or may be liable to any Person as a result of the Release or threatened Release of any Contaminant or that any Obligated Party is subject to investigation by any Governmental Authority evaluating whether any remedial action

is needed to respond to the Release or threatened Release of any Contaminant that, in either case, could reasonably be expected to result in, or has resulted in, liability in excess of \$500,000 or otherwise could reasonably be expected to have, or has resulted in, a Material Adverse Effect;

(h) within five (5) Business Days after a Responsible Officer's receipt of any written notice of the imposition of any Environmental Lien against any property of any Obligated Party;

(i) not less than 30 days prior to any change in any Obligated Party's (i) name as it appears in the jurisdiction of its formation, incorporation, or organization, (ii) type of entity, (iii) organizational identification number, or (iv) trade names under which such Obligated Party will sell Inventory or create Accounts, or to which instruments in payment of Accounts may be made payable;

(j) within five (5) Business Days after any Responsible Officer knows or has reason to know, (i) that an ERISA Event or a prohibited transaction (as defined in Sections 406 of ERISA and 4975 of the Code) has occurred or (ii) that any action has been taken or threatened (in writing) by the IRS, the DOL, or the PBGC with respect to any such ERISA Event or prohibited transaction;

(k) upon either Agent's request, copies of the following: (i) each annual report (form 5500 series), including Schedule B thereto, filed with the DOL or the IRS with respect to each Plan; (ii) a copy of each funding waiver request filed with the IRS with respect to any Plan and all communications received by any Obligated Party or any ERISA Affiliate from the IRS with respect to such request; and (iii) a copy of each other filing or notice filed with the PBGC, the DOL, or the IRS, with respect to each Plan by any Obligated Party or any ERISA Affiliate;

(l) upon request from either Agent, copies of each most recent actuarial report for any Plan (except that in the case of a Multiemployer Plan, the Obligated Party will request of the plan administrator thereof that a copy of each actuarial report and annual report for the Multiemployer Plan be sent to the requesting Agent), and within five (5) Business Days after receipt thereof by any Obligated Party or any ERISA Affiliate, copies of the following: (i) any notices of the PBGC's intention to terminate a Plan or to have a trustee appointed to administer such Plan; (ii) any favorable or unfavorable determination letter from the IRS regarding the qualification of a Plan under Section 401(a) of the Code; or (iii) any notice from a Multiemployer Plan regarding the imposition of withdrawal liability;

(m) within five (5) Business Days after the occurrence thereof: (i) any changes in the benefits of any existing Plan which the Obligated Party expects to increase any Obligated Party's annual costs with respect thereto by an amount in excess of \$500,000, or the establishment of any new Plan or the commencement of contributions to any Plan to which any Obligated Party or any ERISA Affiliate was not previously contributing; or (ii) any failure by any Obligated Party or any ERISA Affiliate to make a

required installment or any other required payment to any Plan in excess of \$250,000 under Section 412 of the Code on or before the due date for such installment or payment;

(n) within five (5) Business Days after commencement of any proceedings contesting any tax, fee, assessment, or other governmental charge in excess of \$500,000;

(o) within five (5) Business Days after any Responsible Officer becomes aware that any material assumption on which the Obligated Parties prepared and presented the Latest Projections is no longer valid;

(p) with each of the financial statements required to be delivered pursuant to Section 6.2(b), a listing of (i) each Deposit Account opened by any Obligated Party and (ii) any Proprietary Rights registered with the United States Patent and Trademark Office or the United States Copyright Office, in the preceding Fiscal Month;

(q) within five (5) Business Days after the occurrence thereof, any loss, damage, or destruction to the Collateral, whether due to any casualty, condemnation, or other reason, having a value in excess of \$500,000, whether or not covered by insurance;

(r) within five (5) Business Days after any Responsible Officer becomes aware of any Lien (other than Permitted Liens) against, or any claim in excess of \$100,000 made or asserted in writing against, any of the Collateral;

(s) within five (5) Business Days after a Responsible Officer's becoming aware of any event or circumstance not covered by clause (a) through clause (r) preceding that could reasonably be expected to have, or has resulted in, a Material Adverse Effect;

(t) [Intentionally Omitted];

(u) promptly, any material additions to or deletions from any Obligated Party's Inventory or Transportation Equipment that are not made in the ordinary course of business;

(v) promptly, any material change in insurance coverage maintained by any Obligated Party, specifying the changes and reasons therefor;

(w) promptly, and in any event within ten (10) Business Days after any Material Contract of any Obligated Party set forth on Schedule 7.24 is terminated or amended in a manner that is materially adverse to any Obligated Party, a written statement describing such event with copies of such material amendments, and an explanation of any actions being taken with respect thereto; and

(x) not less than ten (10) days prior to any Asset Sale (as defined in the Second Lien Debt Agreement) or any application of proceeds thereof to the payment of any Obligations, in each instance, that will result in a reduction of the maximum amount of Aggregate Revolver Outstandings permitted to be incurred under Section 4.09 (b)(1) of the Second Lien Debt Agreement (other than solely as a result of a reduction due to the

borrowing base formula under Section 4.09(b)(1)(b) of the Second Lien Debt Agreement), notice of such Asset Sale and the amount of such reduction.

Each notice given under this Section 6.3 shall describe the subject matter thereof in reasonable detail, and shall set forth the action that any Obligated Party or any ERISA Affiliate, as applicable, has taken or proposes to take with respect thereto.

ARTICLE 7

GENERAL WARRANTIES AND REPRESENTATIONS

Each Obligated Party warrants and represents to the Agents and the other Credit Providers as follows:

Section 7.1 Authorization, Validity, and Enforceability of the Transaction Documents. Each Obligated Party has the power and authority to execute, deliver, and perform this Agreement and the other Transaction Documents to which it is a party, to incur the indebtedness, liabilities, and obligations it has agreed to undertake under the Transaction Documents to which it is a party, and to grant the Agent's Liens. Each Obligated Party has taken all necessary action (including obtaining approval of the owners of its Capital Stock or any other Person required to provide approval or consent, if necessary) to authorize its execution, delivery, and performance of the Transaction Documents to which it is a party. The Transaction Documents to which each Obligated Party is a party have been duly executed and delivered by such Obligated Party, and constitute the legal, valid, and binding obligations of such Obligated Party, enforceable against it in accordance with their respective terms without defense, setoff, or counterclaim except as such enforceability is limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the rights of creditors generally and to the effect of general principles of equity whether applied by a court of law or equity. Each Obligated Party's execution, delivery, and performance of the Transaction Documents to which it is a party do not and will not conflict with, or constitute a violation or breach of, or constitute a default under, or result in or require the creation or imposition of any Lien upon any property of any Obligated Party by reason of the terms of (a) any contract, mortgage, Lien, lease, agreement, indenture, document, or instrument to which such Obligated Party is a party or that is binding upon it, (b) any Requirement of Law applicable to such Obligated Party, or (c) the Organization Certificate or Management Agreement of such Obligated Party. Each Borrowing and each delivery by any or all of the Borrowers (or Ahern on behalf of the Borrowers) of a Borrowing Base Certificate constitutes a representation and warranty by Ahern that, as of the date of such Borrowing or delivery, as the case maybe (both before and after giving effect to such Borrowing, if applicable), the financial accommodations provided to the Borrowers hereunder do not violate the debt incurrence limits set forth in the Second Lien Debt Agreement or exceed the Maximum First Lien Principal Indebtedness (as defined in the Intercreditor Agreement). Without limitation of the foregoing, the Borrowers represent and warrant that (i) each Borrowing is permitted under Section 4.09(b)(1) of the Second Lien Debt Agreement, (ii) each Borrowing is permitted to be incurred and secured by all applicable Secured Debt Documents (as defined in the Second Lien Debt Agreement) and constitutes Priority Lien Debt (as defined in the Second Lien Debt Agreement), (iii) all Obligations constitute "First Lien Obligations" as defined in the Intercreditor Agreement, (iv) there are in existence no Credit Facilities (as defined in the Second

Lien Debt Agreement) other than this Agreement and (v) there is in existence no Parity Lien Debt (as defined in the Second Lien Debt Agreement) other than Second Lien Debt. There is no restriction or other impediment (legal, contractual or otherwise) to the cancellation of Second Lien Debt as contemplated in Section 2.3(a) and, upon the making of the Term Loans on the Closing Date, Second Lien Debt shall be cancelled in the aggregate principal amount required under Section 2.3(a).

Section 7.2 Validity and Priority of Security Interest. The provisions of the Loan Documents create legal and valid Liens on the Collateral in favor of the Collateral Agent, for the benefit of the Credit Providers, and such Liens (a) constitute perfected and continuing Liens on the Collateral, securing the Obligations, (b) are enforceable against the applicable Obligated Party and all third parties, and (c) have priority over all other Liens on the Collateral except for those Liens identified in clause (b) through clause (h) or clause (k) through clause (l) of the definition of Permitted Liens (but only to the extent any such Permitted Liens would have priority over the Agent's Liens pursuant to any Requirement of Law) and Liens perfected only by possession (including possession of any certificate of title) to the extent the Collateral Agent has not obtained or does not maintain possession of such Collateral.

Section 7.3 Organization, Authority, and Good Standing. Each of the Obligated Parties

(a) is a corporation, limited liability company, partnership, limited partnership, or other business entity duly and properly formed, incorporated, or organized and validly existing under Requirements of Law of the jurisdiction of its formation, incorporation, or organization as set forth in Schedule 7.3, and such jurisdiction is the only jurisdiction under which it is formed, incorporated, or organized,

(b) has all requisite power and authority to conduct its business in each jurisdiction in which it conducts business and to own its property, and

(c) to the extent applicable, is qualified and in good standing under the Requirements of Law of (i) its jurisdiction of formation, incorporation, or organization and (ii) each other jurisdiction in which qualification is necessary in order for it to own or lease its property and conduct its business.

Section 7.4 Capitalization and Subsidiaries. As of the Closing Date, Schedule 7.4 sets forth (a) a correct and complete list of the relationship of the Obligated Parties and all of their respective Subsidiaries, (b) the location of the chief executive office of each of the Obligated Parties, (c) a true and complete listing of each class of the Capital Stock of each of the Obligated Parties, of which all of such issued shares or other interests are validly issued, outstanding, fully paid and non-assessable, and owned beneficially and of record by the Persons identified in Schedule 7.4, (d) the type of entity of each of the Obligated Parties, (e) the jurisdiction of formation, incorporation or organization of each of the Obligated Parties and the employer or taxpayer identification number of each of the Obligated Parties and the organizational identification number issued by each of the Obligated Parties' jurisdiction of formation, incorporation, or organization (or a statement that no such number has been issued). Each Obligated Party has only one state of formation, incorporation, or organization.

Section 7.5 Corporate Name; Prior Transactions. As of the Closing Date, Schedule 7.5 sets forth a correct and complete list of the name of each Obligated Party as it appears in official filings in the jurisdiction of its formation, organization, or incorporation. Except as set forth in Schedule 7.5, no Obligated Party has, during the past five years, been known by or used any other corporate or fictitious name, or been a party to any merger or consolidation, or acquired all or substantially all of the assets of any Person, or acquired any of its property outside of the ordinary course of business.

Section 7.6 Financial Statements and Projections.

(a) The Obligated Parties have delivered to each Agent and the Lenders the audited financial statements for Ahern and its Subsidiaries for the Fiscal Years ended December 31, 2007 and December 31, 2008, accompanied by the report thereon of Ahern's independent certified public accountants, Piercy Bowler Taylor & Kern. The Obligated Parties have also delivered to each Agent and the Lenders the unaudited balance sheet and related statements of income and cash flow for Ahern and its Subsidiaries on a consolidated basis as of the end of the Fiscal Month ending November 30, 2009. All such financial statements have been prepared in accordance with GAAP and fairly present the financial position of Ahern and its Subsidiaries as at the dates thereof and their results of operations for the periods then ended (except with respect to the unaudited financial statements referred to immediately above, for the omission of applicable footnotes and subject to normal year-end audit adjustments). Except as set forth on Schedule 7.6, as of the Closing Date, Ahern and its Subsidiaries do not have any material liabilities that are not disclosed in such financial statements.

(b) The Latest Projections when submitted to the Agents as required herein represent the Obligated Parties' good faith estimate of the future financial performance of the Borrowers for the periods set forth therein. The Latest Projections have been prepared on the basis of the assumptions set forth therein, which the Obligated Parties believe are fair and reasonable in light of current and reasonably foreseeable business conditions at the time submitted to the Agents.

(c) The pro forma balance sheet of Ahern and its Subsidiaries as at November 30, 2009, delivered to the Agents presents fairly and accurately Ahern's and its Subsidiaries' financial condition as of such date and after giving effect to consummation of the transactions contemplated by this Agreement and the Second Lien Debt Documents.

Section 7.7 Solvency. As of the Closing Date, prior to and after giving effect to all of the transactions to occur on the Closing Date (including the Borrowings to be made on the Closing Date), and at all times after the Closing Date, each of the Obligated Parties is Solvent.

Section 7.8 Debt. As of the Closing Date, after giving effect to the Borrowings to be made on the Closing Date, the Obligated Parties and their Subsidiaries have no Debt, except (a) the Obligations and (b) Debt permitted pursuant to Section 8.12.

Section 7.9 Distributions. Schedule 7.9 accurately sets forth, as of the date hereof, all Distributions which have been declared, paid, or made upon or in respect of any Capital Stock of Ahern since December 31, 2007.

Section 7.10 Real Estate: Leases. As of the Closing Date, Schedule 7.10 sets forth a correct and complete list of all Real Estate owned by each Obligated Party, all leases and subleases of real or personal property by each Obligated Party as lessee or sublessee (other than leases of personal property as to which such Obligated Party is lessee or sublessee for which the value of such personal property under any such lease in the aggregate is less than \$10,000, and Re-Rental Leases) and all leases and subleases of real or personal property by each Obligated Party as lessor or sublessor. Each material lease and sublease between an Obligated Party and DFA LLC is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease or sublease exists. All other leases and subleases of the Obligated Parties are in full force and effect, and no default by any party to any such lease or sublease exists, except if the result thereof would not have a Material Adverse Effect; provided that, as of the Closing Date, each lease and sublease set forth on Schedule 7.10 is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease or sublease exists. Each Obligated Party has good and indefeasible title in fee simple to the Real Estate identified in Schedule 7.10 as "owned" by such Obligated Party, or valid leasehold interests in all Real Estate identified in Schedule 7.10 as "leased" by such Obligated Party, and each Obligated Party has good, indefeasible, and merchantable title to all of its other property reflected on the November 30, 2009 Financial Statements of Ahern and its Subsidiaries delivered to the Agents and the Lenders, except as disposed of in the ordinary course of business since the date thereof, free of all Liens except Permitted Liens.

Section 7.11 Proprietary Rights. As of the Closing Date, (a) Schedule 7.11 sets forth a correct and complete list of all of each Obligated Party's registered patents, trademarks, copyrights, and other material Proprietary Rights, (b) none of the Proprietary Rights listed in Schedule 7.11 is subject to any licensing agreement or similar arrangement except as set forth in Schedule 7.11, (c) the Proprietary Rights listed in Schedule 7.11 constitute all of the property of such type necessary to the current and anticipated future conduct of the Obligated Parties' business, (d) to the best of each Obligated Party's knowledge, none of the Proprietary Rights listed in Schedule 7.11 infringes upon or conflicts with any rights held by any other Person, and (e) no claim or litigation regarding any of the foregoing is pending or threatened (in writing).

Section 7.12 Trade Names. All trade names or styles under which any Obligated Party will sell or lease Inventory or create Accounts, or to which instruments in payment of Accounts may be made payable, are listed in Schedule 7.12.

Section 7.13 Litigation. Except as set forth in Schedule 7.13, there is no pending or threatened (in writing), action, suit, proceeding, or counterclaim by any Person, or investigation by any Governmental Authority, or any basis for any of the foregoing, that could reasonably be expected to have a Material Adverse Effect.

Section 7.14 Labor Matters. As of the Closing Date, except as set forth in Schedule 7.14, (a) there is no collective bargaining agreement or other labor contract covering employees of any Obligated Party, (b) no such collective bargaining agreement or other labor

contract is scheduled to expire during the term of this Agreement, (c) to the best of any Obligated Party's knowledge, no union or other labor organization is seeking to organize, or to be recognized as, a collective bargaining unit of employees of any Obligated Party or for any similar purpose, (d) to the best of any Obligated Party's knowledge, there is no pending or threatened strike, work stoppage, unfair labor practice claim, or other material dispute against or affecting any Obligated Party or its employees, and (e) to the best of any Obligated Party's knowledge, there is no pending or threatened unfair labor practice claim or other similar labor dispute against or affecting any Obligated Party or its employees that could reasonably be expected to result in, or has resulted in, liability in excess of \$500,000 or that could reasonably be expected to have a Material Adverse Effect.

Section 7.15 Environmental Law. Except as otherwise set forth in Schedule 7.15 and except as could not reasonably be expected to result in liability in excess of \$500,000 in the aggregate for all the Obligated Parties and otherwise could not reasonably be expected to have a Material Adverse Effect:

(a) Each Obligated Party is in compliance with all applicable Environmental Laws, and neither any Obligated Party nor any of their respective presently or previously owned Real Estate or presently conducted or prior operations, is subject to any enforcement order from, or liability agreement with, any Governmental Authority or private Person respecting (i) compliance with any Environmental Law or (ii) any potential liabilities and costs or remedial action arising from a Release or threatened Release of a Contaminant.

(b) Each Obligated Party has obtained all permits necessary for its current operations under applicable Environmental Law, and all such permits are in good standing, and each Obligated Party is in compliance with all terms and conditions of such permits.

(c) No Obligated Party is in violation of any Environmental Law with respect to storage, treatment, or disposal of any hazardous waste (as defined pursuant to 40 CFR Part 261 or any equivalent Environmental Law).

(d) No Obligated Party has received any summons, complaint, order, or similar written notice of any Environmental Claim indicating that it is not currently in compliance with, or that any Governmental Authority is currently investigating such Obligated Party's compliance with, any Environmental Law or that it is or may be liable to any other Person as a result of a Release or threatened Release of a Contaminant.

(e) To the best of each Obligated Party's knowledge, none of the present or past operations of any Obligated Party is the subject of any investigation by any Governmental Authority evaluating whether any remedial action is needed to respond to a Release or threatened Release of a Contaminant.

(f) To the best of each Obligated Party's knowledge, there is not now on the Real Estate of any Obligated Party in violation of any Environmental Law:

(i) any underground storage tanks or surface impoundments,

- (ii) any asbestos-containing material, or
- (iii) any polychlorinated biphenyls used in hydraulic oils, electrical transformers, or other equipment.

(g) No Obligated Party has filed, or has had the obligation to file, any notice under any requirement of Environmental Law reporting a spill or accidental and unpermitted Release or discharge of a Contaminant into the environment.

(h) No Obligated Party has entered into any pending or ongoing negotiations or any currently effective settlement agreements with any Person (including any prior owner of such Obligated Party's property) imposing obligations or liabilities on any Obligated Party with respect to any remedial action in response to the Release of a Contaminant or environmentally related claim.

(i) None of the products manufactured, distributed, or sold by any Obligated Party or any Subsidiary of any Obligated Party contains asbestos containing material.

(j) No presently effective Environmental Lien has attached to any of the Real Estate owned by any Obligated Party.

Section 7.16 No Violation of Law. No Obligated Party is in violation of any Requirement of Law applicable to it, which violation could reasonably be expected to have a Material Adverse Effect.

Section 7.17 No Default. No Obligated Party is in default with respect to any note, indenture, loan agreement, mortgage, lease, deed, or other agreement to which such Obligated Party is a party or by which it is bound, which default could reasonably be expected to have a Material Adverse Effect.

Section 7.18 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code, and other federal or state law;

(b) Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS and, to the best knowledge of each Obligated Party, nothing has occurred which would cause the loss of such qualification;

(c) Each Obligated Party and each ERISA Affiliate has made all required contributions to any Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan;

(d) There are no pending or, to the best knowledge of any Obligated Party, threatened (in writing) claims, actions, or lawsuits, or action by any Governmental Authority, with respect to any Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect;

(e) There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect; and

(f) Except where the occurrence or existence could not, individually or in the aggregate, result in liability in excess of \$500,000 or otherwise be reasonably expected to have a Material Adverse Effect, (i) no ERISA Event has occurred or is reasonably expected to occur, (ii) no Pension Plan has any Unfunded Pension Liability, (iii) no Obligated Party and no ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA), (iv) no Obligated Party and no ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred that, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan, and (v) no Obligated Party and no ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

Section 7.19 Taxes. Each Obligated Party has filed all federal, state, and other tax returns and reports required to be filed (or appropriate extensions have been timely filed), and has paid all federal, state, and other taxes, assessments, fees, and other governmental charges levied or imposed upon it or its properties, income, or assets otherwise due and payable unless such unpaid taxes and assessments would constitute a Permitted Lien.

Section 7.20 Regulated Entities. No Obligated Party or Affiliate of any Obligated Party is an "Investment Company" within the meaning of the Investment Company Act of 1940. No Obligated Party or Affiliate of any Obligated Party is subject to regulation under the Public Utility Holding Company Act of 1935, any state public utilities Requirement of Law, the Federal Power Act, the Interstate Commerce Act, or any other Requirement of Law limiting its ability to incur indebtedness.

Section 7.21 Use of Proceeds; Margin Regulations. The proceeds of the Loans are to be used solely for the purposes specified in Section 8.22. No Obligated Party is engaged in the business of buying or selling Margin Stock or extending credit for the purpose of buying or carrying Margin Stock. Margin Stock constitutes less than 5.0% of the value of those assets of the Obligated Parties that are subject to any limitation on sale, pledge, or other restriction hereunder.

Section 7.22 No Material Adverse Change. No Material Adverse Effect has occurred since the date of the latest Financial Statements delivered to the Agents and the Lenders referenced in Section 7.6(a).

Section 7.23 Full Disclosure. None of the representations or warranties made by any Obligated Party in any of the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in any document, agreement, exhibit, report, statement, or certificate furnished by or on behalf of any Obligated Party in connection with the Loan Documents (including any offering and disclosure materials delivered by or on behalf of any Obligated Party to either of the Agents or any of the Lenders prior to the

Closing Date), contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered.

Section 7.24 Material Agreements. As of the Closing Date, Schedule 7.24 sets forth a complete and accurate list of all material agreements and contracts (other than the Loan Documents) to which any Obligated Party is a party or is bound.

Section 7.25 Bank Accounts. As of the Closing Date, Schedule 7.25 contains a complete and accurate list of all bank accounts maintained by each Obligated Party with any bank or other financial institution.

Section 7.26 Commercial Tort Claims. As of the Closing Date, Schedule 7.26 contains a complete and accurate list of all commercial tort claims owned by each Obligated Party.

Section 7.27 Governmental Authorization. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or other Person is necessary or required in connection with the execution, delivery, or performance by, or enforcement against, any Obligated Party of any Transaction Document except for those that have been duly obtained by the Obligated Parties, copies of which, with respect to the Loan Documents, have been provided to the Agents, and for filing of financing statements and recording of Mortgages (if any).

Section 7.28 Second Lien Debt. The transactions contemplated by the Second Lien Debt Documents have been duly and validly consummated in accordance with the terms, conditions and provisions of such documents. Each of the representations and warranties made by any of the Obligated Parties pursuant to any of the Second Lien Debt Documents is true and correct, in all material respects. None of the transactions contemplated by this Agreement, any of the other Loan Documents or any of the Second Lien Debt Documents shall result in a breach of any of the representations and warranties or other provisions contained in any of the Transaction Documents.

Section 7.29 Certificates of Title. As of the Closing Date, Schedule 7.29 contains a complete and accurate list of all Collateral owned by each Obligated Party which is subject to a certificate of title law of the U.S. or any state.

Section 7.30 Subordinated Debt. The Obligations constitute senior indebtedness that is entitled to the benefits of the subordination provisions, if any, of all Debt of the Obligated Parties.

Section 7.31 Foreign Assets Control Regulations, Etc.

(a) None of the execution, delivery or performance of the Loan Documents by the Obligated Parties nor the use of the proceeds of the Loans hereunder will violate (i) the United States Trading with the Enemy Act, as amended, (ii) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, (iii) Executive Order No. 13,224, 66 Fed Reg 49,079 (2001), issued by the President of

the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism) (the “Terrorism Order”) or (iv) the Patriot Act. No part of the proceeds from the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

(b) No Obligated Party (i) is or will become a “blocked person” as described in Section 1 of the Terrorism Order or (ii) engages or will engage in any dealings or transactions, or is otherwise associated, with any such blocked person or any such Person.

(c) Each Obligated Party and its Affiliates are in compliance, in all material respects, with the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Public Law 107-56 (October 26, 2001).

Section 7.32 Ranking. All Obligations constitute direct, unconditional and general obligations of the Obligated Parties and rank in right of payment either pari passu or senior to all other Debt of the Obligated Parties.

ARTICLE 8

AFFIRMATIVE AND NEGATIVE COVENANTS

Each Obligated Party covenants to each Agent and each Lender that as long as any of the Obligations remain outstanding or this Agreement is in effect each Obligated Party will keep and perform each of the following covenants:

Section 8.1 Taxes and Other Obligations. Except as otherwise permitted by the terms of this Agreement, each Obligated Party shall (a) file when due (after giving effect to all timely filed appropriate extensions) all tax returns and other reports that it is required to file, (b) pay, or provide for the payment, when due, of all taxes, fees, assessments, and other governmental charges against it or upon its property, income, and franchises, make all required withholding and other tax deposits, and establish adequate reserves for the payment of all such items in accordance with GAAP, and provide to the Agents and the Lenders, upon request, satisfactory evidence of its timely compliance with the foregoing, and (c) pay when due all Debt and claims owed to materialmen, mechanics, carriers, warehousemen, landlords, processors, and other like Persons, and all other indebtedness, liabilities, and obligations the nonpayment of which could result in a Lien on any of the Collateral; provided that upon prior written notice to each Agent, such Obligated Party need not pay any of the foregoing (x) which it is contesting in good faith by appropriate proceedings diligently pursued, (y) for which it has established proper reserves as required in accordance with GAAP, and (z) for which no Lien (other than a Permitted Lien) results from such non-payment.

Section 8.2 Legal Existence and Good Standing. Except as allowed by Section 8.9, each Obligated Party shall maintain (i) its legal existence and good standing in the jurisdiction of its formation, incorporation, or organization and (ii) its qualification and good standing in all other jurisdictions in which the failure to maintain such qualification and good standing could reasonably be expected to have a Material Adverse Effect. No Obligated Party shall change the jurisdiction of its formation, incorporation, or organization or change its type of entity as identified on Schedule 7.3 without the prior written consent of the Agents.

Section 8.3 Compliance with Law and Agreements; Maintenance of Licenses. Each Obligated Party shall, and shall cause each of its Subsidiaries to, comply in all material respects with all Requirements of Law. Each Obligated Party shall, and shall cause each of its Subsidiaries to, obtain and maintain all licenses, permits, franchises, and governmental authorizations necessary to own its property and to conduct its business as conducted on the Original Closing Date or as permitted by Section 8.16. No Obligated Party shall modify, amend, or alter its Organization Certificate or Management Agreement other than in a manner that does not adversely affect the rights of the Lenders or the Agents under any of the Loan Documents.

Section 8.4 Maintenance of Property; Inspection of Property.

(a) Each Obligated Party shall (i) maintain all of its inventory, equipment and facilities necessary and useful in the conduct of its business in good operating order and condition, ordinary wear and tear excepted and (ii) make all necessary repairs thereto and renewals and replacements thereof.

(b) Each Obligated Party shall permit employees, representatives and independent contractors of each of the Agents (accompanied by any Lender that so elects with the consent of such Agent, such consent not to be unreasonably withheld) to visit and inspect any of such Obligated Party's properties, to examine, audit, make extracts from or copies of and inspect any or all of such Obligated Party's Collateral, its corporate, financial, and operating records, files, and books of account, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances, and accounts with its officers, directors, and independent public accountants (provided that the relevant Agent shall provide the Obligated Parties the opportunity to attend and participate in such discussions with such public accountants) at such reasonable times during normal business hours and as soon as may be reasonably desired, upon reasonable advance notice to such Obligated Party, provided that during the existence of any Event of Default, each Agent (accompanied by any Lender that so elects with the consent of such Agent, such consent not to be unreasonably withheld) may do any of the foregoing at any time without advance notice. Each Obligated Party will deliver to each Agent any instrument necessary for such Agent to obtain records from any service bureau maintaining records for such Obligated Party. Each Agent shall have the right, at any time, in the applicable Obligated Party's name, in such Agent's name, or in the name of a nominee of such Agent, to verify the validity, amount, or any other matter relating to the Accounts, Inventory, or other Collateral, by mail, telephone, or otherwise. The Obligated Parties shall reimburse each of the Agents for its expenses incurred in connection with any such audit, inspection, and examination as provided in Section 15.7. Each of the Agents may, without expense to any of them, use such of each Obligated Party's respective personnel,

supplies, and Real Estate as may be necessary for maintaining or enforcing the Agent's Liens.

Section 8.5 Insurance.

(a) Each Obligated Party shall maintain with financially sound and reputable insurers having a rating of at least A+ or better by Best Rating Guide (or self-insure with respect to workers compensation, health, and other insurance (excluding insurance of the Collateral), including deductible and loss retention provisions, compatible with the standards set forth in this Section 8.5(a)), insurance against (i) loss or damage by fire (with extended coverage), theft, burglary, pilferage, and loss in transit, (ii) public liability and third party property damage, (iii) larceny, embezzlement, or other criminal liability, (iv) business interruption, and (v) such other hazards or of such other types as is customary for Persons engaged in the same or similar business, in amounts, and under policies reasonably acceptable to the Agents. Without limiting the foregoing, in the event that any improved Real Estate covered by a Mortgage is determined to be located within an area that has been identified by the Director of the Federal Emergency Management Agency as a Special Flood Hazard Area ("SFHA"), the applicable Obligated Party shall purchase and maintain flood insurance on such improved Real Estate and any Equipment and Inventory located on such Real Estate. Each Obligated Party shall also maintain flood insurance for its Inventory and Equipment that is, at any time, located in a SFHA. Without limiting the Agents' discretion with respect to the amount of any insurance as provided by the first sentence of this Section 8.5, the amount of any flood insurance required by this Section 8.5 shall, at a minimum, comply with applicable federal regulations as required by the Flood Disaster Protection Act of 1973.

(b) For each of the insurance policies issued as required by this Section 8.5 that insures Collateral against loss or damage, each Obligated Party shall cause the Collateral Agent to be named as secured party or mortgagee and loss payee, in a manner acceptable to the Collateral Agent. Each policy of insurance shall contain (i) a clause or endorsement requiring the insurer to give not less than ten days prior written notice to the Collateral Agent in the event of cancellation of such policy for non-payment of premiums and not less than thirty days prior written notice to the Collateral Agent in the event of cancellation of such policy for any other reason whatsoever and (ii) a clause or endorsement stating that the interest of the Collateral Agent shall not be impaired or invalidated by any act or neglect of the insured Person or the owner of any premises for purposes more hazardous than are permitted by such policy. All premiums for insurance required to be maintained by this Section 8.5 shall be paid by the applicable Obligated Party when due. Certificates of insurance and, if requested by either of the Agents, photocopies of the policies shall be delivered to each of the Agents (with sufficient copies to the Administrative Agent for distribution to each of the Lenders). If any Obligated Party fails to procure (or cause to be procured) such insurance or to pay the premiums therefor when due, the Administrative Agent may, and at the direction of the Majority Revolving Lenders shall, do so from the proceeds of Revolving Loans.

(c) The Obligated Parties shall deliver all proceeds of any insurance policies covering any Collateral to the Administrative Agent. If any Obligated Party fails to

promptly do so or if any Event of Default exists, the Collateral Agent may directly collect all insurance proceeds in respect of any loss, damage, or destruction of Collateral. All proceeds of any insurance policy covering any Collateral received by the Administrative Agent or the Collateral Agent shall be applied to the Obligations in the manner provided for in Section 4.3 as if such Collateral were the subject of a Disposition permitted pursuant to this Agreement.

Section 8.6 Condemnation. The Obligated Parties shall deliver to the Administrative Agent all proceeds received with respect to any Collateral that is the subject of any condemnation or other similar proceeding. If any Obligated Party fails to promptly do so or if any Event of Default exists, the Collateral Agent may directly collect all such proceeds. All proceeds resulting from any condemnation or other similar proceeding received by the Administrative Agent or the Collateral Agent shall be applied to the Obligations in the manner provided for in Section 4.3 as if such Collateral were the subject of a Disposition permitted pursuant to this Agreement.

Section 8.7 Environmental Law.

(a) Each Obligated Party shall conduct, and shall cause each of its Subsidiaries to conduct, its business in compliance with all Environmental Laws applicable to it, including those relating to the generation, handling, use, storage, and disposal of any Contaminant. Each Obligated Party shall take, and shall cause each of its Subsidiaries to take, prompt and appropriate action to respond to any non-compliance with any Environmental Law. Each Obligated Party shall regularly report to the Agents on any such response with respect to any circumstance that could reasonably be expected to result in, or has resulted in, liability in excess of \$500,000 or otherwise could reasonably be expected to result in, or has resulted in, a Material Adverse Effect.

(b) Without limiting the generality of the foregoing, the Obligated Parties shall submit to each of the Agents (with sufficient copies to the Administrative Agent for distribution to the Lenders) annually, or more frequently if requested by either of the Agents, commencing on August 18, 2006, and on August 18 of each year thereafter, an update of the status of each environmental compliance or liability issue concerning any Obligated Party or any Subsidiary of an Obligated Party or any of their respective properties or operations (whether past or present), if any, that could reasonably be expected to result in, or has resulted in, liability in excess of \$500,000 or otherwise could reasonably be expected to result in, or has resulted in, a Material Adverse Effect. Each Agent (or any Lender through either of the Agents) may request, in which case the Borrowers will promptly furnish or cause to be promptly furnished to each of the Agents (with sufficient copies to the Administrative Agent for distribution to the Lenders), copies of technical reports prepared or received by any Obligated Party or any Subsidiary of an Obligated Party and its communications with any Governmental Authority to determine whether such Obligated Party or Subsidiary of an Obligated Party is proceeding reasonably to correct, cure, or contest in good faith any alleged non-compliance or environmental liability. Each Obligated Party shall, at either of the Agent's request (or at the Majority Revolving Lenders' (or after the Revolving Facility Payment In Full, the Majority Term Lenders') request through either of the Agents) and

at such Obligated Party's expense, (i) retain an independent environmental engineer acceptable to the Agents to evaluate any site, including tests if appropriate, where the non-compliance or alleged non-compliance with any Environmental Law has occurred and prepare and deliver to each of the Agents (with sufficient copies to the Administrative Agent for distribution to the Lenders) a report setting forth the results of such evaluation, a proposed plan for responding to any environmental problems described therein, and an estimate of the costs thereof and (ii) provide to each of the Agents (with sufficient copies to the Administrative Agent for distribution to the Lenders) a supplemental report of such engineer whenever the scope of the environmental problems (if any), or the response thereto or the estimated costs thereof, shall increase in any material respect.

Section 8.8 Compliance with ERISA. Each Obligated Party shall, and shall cause each of its ERISA Affiliates to: (a) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code, and Requirements of Law; (b) cause each Plan that is qualified under Section 401(a) of the Code to maintain such qualification; (c) make all required contributions to any Plan subject to Section 412 of the Code in a timely fashion; (d) not engage in a prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan; and (e) not engage in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

Section 8.9 Mergers, Consolidations, or Sales. No Obligated Party shall enter into any transaction of merger, reorganization, or consolidation, or transfer, sell, assign, lease, or otherwise Dispose of all or any part of its property, or sell or issue any of its preferred Capital Stock, or wind up, liquidate, or dissolve, or agree to do any of the foregoing, except for (A) sales and other Dispositions of Inventory in the ordinary course of its business, (B) sales or other Dispositions of Equipment in the ordinary course of business that is (1) damaged, worn out, unserviceable, or obsolete, (2) no longer necessary for the proper conduct of business with a good faith estimated value not in excess of \$100,000 in any Fiscal Year of Ahern, or (3) contemporaneously replaced with Equipment of comparable utility, in each case in the ordinary course of business and operations of the Obligated Parties and on a basis consistent with past practices, (C) the sale of the helicopter that is the subject of the Aircraft Mortgage or the Cessna 525 aircraft (serial number 525-0341); provided that the purchase price received by the relevant Obligated Party for each such aircraft shall not be less than the fair market value of such aircraft and at least 75% of the purchase price therefor shall be payable in cash on the closing date of such sale or by the assumption of Debt secured by such aircraft, (D) payments of cash in the ordinary course of business and as otherwise permitted by this Agreement, and (E) subject to Section 8.10, other transactions between or among the Obligated Parties in the ordinary course of each Obligated Party's business consistent with past practices; provided that, notwithstanding the foregoing or any other provision of this Agreement, as long as no Default or Event of Default exists or would result therefrom and provided Ahern gives the Agents prior written notice:

(a) a Borrower (other than Ahern) may wind-up, dissolve, or liquidate if (i) its property is transferred to another Borrower and (ii) the Borrower acquiring such property complies with its obligations under Section 8.25 and Section 10.2 simultaneously with such acquisition;

(b) an Obligated Party that is not a Borrower may wind-up, dissolve, or liquidate if (i) its property is transferred to another Obligated Party and (ii) the Obligated Party acquiring such property complies with its obligations under Section 8.25 and Section 10.2 simultaneously with such acquisition;

(c) a Borrower may merge or consolidate with another Borrower, provided that if Ahern is a party to any such merger or consolidation, Ahern shall be the surviving entity;

(d) an Obligated Party may transfer assets in connection with a Permitted Investment; and

(e) an Obligated Party that is not a Borrower may merge or consolidate with another Obligated Party, provided that if a Borrower is a party to any such merger or consolidation, such Borrower shall be the surviving entity, and a Subsidiary of an Obligated Party that is not an Obligated Party may merge or consolidate with an Obligated Party; provided that the Obligated Party is the survivor of any such merger or consolidation.

The inclusion of proceeds in the definition of Collateral shall not be deemed to constitute the Administrative Agent's, the Collateral Agent's or any Lender's consent to any sale or other Disposition of the Collateral except as expressly permitted herein.

Section 8.10 Distributions; Capital Change; Restricted Investments. Ahern will not, nor will it permit any of its Subsidiaries to, (a) directly or indirectly declare or pay any Distributions, except that (i) any Subsidiary of Ahern that is an Obligated Party may make Distributions to a Borrower, and (ii) any Subsidiary of Ahern that is not an Obligated Party may make Distributions to Ahern or any other Subsidiary of Ahern that is an Obligated Party, and Ahern may make Permitted Distributions (but only to the extent that such Permitted Distribution is not prohibited to be made under the terms of any other agreement to which Ahern is a party or by which it is otherwise bound), (b) make any change in its capital structure which could have an adverse effect on the ability of any of the Obligated Parties to perform any of its duties and obligations under any Loan Document or pay the Obligations when due, or (c) make any Investment other than Permitted Investments.

Section 8.11 Guaranties. No Obligated Party shall make, issue, or become liable on any Guaranty, except (a) Guaranties of Debt allowed under Section 8.12 and (b) endorsement in the ordinary course of business of negotiable instruments for deposit or collection.

Section 8.12 Debt. No Obligated Party shall incur or maintain any Debt, other than:

(a) the Obligations;

(b) the Debt existing on the Closing Date described in Schedule 8.12;

(c) Debt evidencing a refunding, renewal, or extension of the Debt described in clause (b) preceding or in clause (h) below; provided that (i) the principal amount thereof is not increased at the time of such renewal, refinancing, refunding, or extension

thereof; (ii) no Obligated Party that is not an obligor or guarantor of such Debt as of the Closing Date shall become an obligor or guarantor thereof, (iii) the terms of such refunding, renewal, or extension are no less favorable to the Obligated Parties and the Lenders than the original Debt and (iv) the Liens, if any, securing such refunded, renewed or extended Debt do not attach to any assets in addition to those assets, if any, securing the Debt to be refunded, renewed or extended (except additions to the aircraft);

(d) Debt owing by an Obligated Party to another Obligated Party for intercompany loans and advances made for working capital in the ordinary course of business; provided that (i) all such intercompany Debt shall be evidenced by promissory notes, (ii) all such intercompany Debt owed by Ahern to any of its Subsidiaries shall be subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the applicable promissory notes or an intercompany subordination agreement satisfactory to the Agents, and (iii) any payment by any Subsidiary of Ahern under any guaranty of the Obligations or the Second Lien Debt shall result in a pro tanto reduction of the amount of any intercompany Debt owed by such Subsidiary to Ahern or to any of its Subsidiaries for whose benefit such payment is made;

(e) subject to clause (c)(ii) above, Guaranties permitted under Section 8.11;

(f) Debt incurred in connection with the financing of premiums payable with respect to insurance policies required to be maintained by the Obligated Parties pursuant to this Agreement;

(g) the Second Lien Debt; provided that the aggregate principal amount of such Debt under this clause (g) after giving effect to all cancellations of principal thereof in exchange for Term Loans shall not at any time exceed \$237,000,000 less all payments and prepayments of principal thereon, and the refinancing thereof (the Debt under or with respect to such refinancing, the "Refinancing Second Lien Debt" and the agreements evidencing, governing, securing or guaranteeing any of the Refinancing Second Lien Debt (as amended, modified or supplemented from time to time in a manner not in contravention of the terms of this Agreement), collectively, the "Refinancing Second Lien Debt Documents"); provided that such refinancing shall be permitted only so long as (i) all, and not a portion of, the Second Lien Debt is refinanced and the principal amount of such refinancing is not greater than the principal amount of Debt being refinanced (other than with respect to any reasonable fees and other costs of refinancing and with respect to accrued interest on the Second Lien Debt), (ii) the Liens, if any, securing such refinancing do not attach to any assets in addition to those assets securing the Second Lien Debt and those Liens shall be junior and subordinate to the Agent's Liens and be subject to the terms and conditions of an intercreditor agreement between the Collateral Agent and the holders of the Refinancing Second Lien Debt (or an agent or trustee therefor) substantially identical to the Intercreditor Agreement or otherwise satisfactory to the Agents and the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders), (iii) no Person that is not an obligor or guarantor of the Second Lien Debt immediately prior to the refinancing shall become an obligor or guarantor of the Refinancing Second Lien Debt, unless such Person simultaneously becomes a Guarantor, (iv) the terms under the Refinancing Second Lien

Debt Documents are no less favorable in all material respects to the Obligated Parties, the Agents and the Lenders than the terms under the Second Lien Debt Documents (without in any way limiting the foregoing, in no event shall the financial or other covenants or events of default in the Refinancing Second Lien Debt Documents be more restrictive than those in the Second Lien Debt Documents in effect on August 18, 2005), (v) no payments of principal on the Refinancing Second Lien Debt (including, without limitation, the final scheduled maturity thereof) shall be scheduled to be due and payable on or prior to the Stated Term Loan Termination Date and (vi) no Default or Event of Default shall exist either immediately prior to or after giving effect to such refinancing;

(h) Capital Leases of Transportation Equipment, the New Aircraft and/or computer and office equipment and Debt to finance (as purchase money or otherwise (any such financing that is not purchase money Debt to be on terms reasonably satisfactory to the Agents)) Transportation Equipment, the New Aircraft (purchase money Debt only) and/or computer and office equipment; provided that (1) the aggregate amount of Debt (including Capital Leases but excluding Revolving Loans) relating to Transportation Equipment incurred in any Fiscal Year shall not exceed \$4,000,000, (2) the aggregate amount of Debt (including Capital Leases) permitted to be outstanding under this Section 8.12 (including, without limitation, under clauses (b), (c) and (h) hereof) relating to Transportation Equipment (but excluding Revolving Loans) shall not exceed \$15,000,000 at any time outstanding, (3) the aggregate amount of Debt relating to the New Aircraft (including, without limitation, any refinancings thereof) shall not exceed \$6,000,000 at any time outstanding and (4) the aggregate amount of Debt (including Capital Leases) relating to computer and office equipment under this clause (h) and any refinancings thereof under clause (c) shall not exceed \$2,000,000 at any time outstanding;

(i) purchase money Debt to vendors to finance the purchase from such vendors of Inventory not to exceed an aggregate amount at any time outstanding equal to \$10,000,000 less the aggregate amount of inventory consigned to the Obligated Parties at such time; provided that (1) on or prior to the incurrence of any such Debt, the applicable Obligated Party has identified to the Agents in writing, in reasonable detail, the specific items of Inventory being financed thereby, (2) the applicable Obligated Party shall be able to readily identify such financed Inventory in its computer records in a manner reasonably satisfactory to the Agents; provided that during the existence of an Event of Default, if requested by either Agent, the applicable Obligated Party shall attach to such Inventory in a conspicuous location an insignia, stencil, plaque, or other form of notice indicating in a manner satisfactory to the Agents that such Inventory is being financed by such vendor, (3) the Liens created in connection with such purchase money Debt shall attach only to (and any UCC financing statements filed by any such vendor with respect to such Liens shall only cover) either (x) the specific items of Inventory being purchased and proceeds of the sale of such Inventory or (y) Inventory purchased from time to time by such Obligated Party from such vendor for which there remains an unpaid purchase price owing and proceeds of the sale of such Inventory (and a copy of each UCC financing statement filed by a vendor shall be delivered to the Agents promptly after filing thereof with the appropriate Governmental Authority), (4) the Liens created in connection with such purchase money Debt shall not attach to any Account arising from

the rental of such Inventory, and (5) such Obligated Party shall cause any vendor whose Lien and UCC financing statement is of the type included in clause (3)(y) above to deliver to the Agents a monthly statement, in form and substance reasonably satisfactory to the Agents, detailing those items of Inventory for which there remains an unpaid purchase price and the amount of such unpaid purchase price and those items of Inventory that have been released from the vendor's Lien since the last day of the period covered by the last monthly statement delivered to the Agents; and

(j) other unsecured Debt; provided that the aggregate amount of unsecured Debt outstanding under this clause (j) does not exceed \$2,000,000 at any time outstanding.

Section 8.13 Prepayment; Amendment of Debt Agreements.

(a) No Obligated Party shall voluntarily prepay or redeem any Debt prior to the Stated Term Loan Termination Date, except the Obligations (other than, prior to the Revolving Facility Payment In Full, principal of the Term Loans unless required by Section 4.3(f) or permitted under Section 4.2) or through the proceeds of a refinancing permitted under Section 8.12(c) or (g) or as permitted under clause (c) below.

(b) No Obligated Party shall, directly or indirectly, amend, modify, supplement, waive compliance with or consent to any departure from any provision of (1) existing Debt (other than the Second Lien Debt Documents or the Refinancing Second Lien Debt Documents) or of any agreement (including any purchase agreement, indenture, loan agreement or security agreement) relating thereto (other than the Second Lien Debt Documents or the Refinancing Second Lien Debt Documents), other than any amendments or modifications to such Debt which do not in any way materially adversely affect the interests of the Credit Providers and are otherwise permitted under Section 8.12; or (2) any of the Second Lien Debt Documents or any of the Refinancing Second Lien Debt Documents in any material respect.

(c) In no event shall any Borrower or any other Obligated Party make any payment or prepayment of principal or interest on any Second Lien Debt or any Refinancing Second Lien Debt, except (i) scheduled payments of interest on the Second Lien Debt and the Refinancing Second Lien Debt when due and payable, (ii) the scheduled payment of principal on the Second Lien Debt or the Refinancing Second Lien Debt, as the case may be, on the stated maturity date thereof and (iii) in the case of Second Lien Debt, through the proceeds of a refinancing permitted under Section 8.12(g).

Section 8.14 Transactions with Affiliates. Except as otherwise provided in Section 8.10, Section 8.11, Section 8.12 and this Section 8.14 or except as set forth on Schedule 8.14, during the term of this Agreement, no Obligated Party shall sell, transfer, distribute, or pay any money or property, including, but not limited to, any fees or expenses of any nature (including, but not limited to, any fees or expenses for management services), to any Affiliate that is not a Borrower, or lend or advance money or property to any Affiliate that is not a Borrower, or invest in (by capital contribution or otherwise) or purchase or repurchase any Capital Stock or indebtedness, or any property, of any Affiliate that is not a Borrower, or become

liable on any Guaranty of the indebtedness, liabilities, dividends, or other obligations of any Affiliate that is not a Borrower, or enter into a lease for real or personal property with any Affiliate that is not a Borrower or extend or renew any such lease (whether such lease is existing on the Closing Date or entered into thereafter). Notwithstanding the foregoing, if no Default or Event of Default is in existence or would result therefrom, an Obligated Party may engage in transactions with an Affiliate that is not a Borrower (including, without limitation, any such transaction that constitutes an extension or renewal of a transaction permitted under this Section 8.14 that was in existence on the Original Closing Date) in the ordinary course of such Obligated Party's business consistent with past practices in amounts and upon terms fully disclosed to the Agents and the Lenders and no less favorable to such Obligated Party than would be obtained in a comparable arm's-length transaction with a third party who is not an Affiliate; provided, that (i) with respect to any transaction or series of transactions with an Affiliate that is not a Borrower involving aggregate consideration in excess of \$500,000, such transaction shall require the approval of the Board of Directors of Ahern and evidence of such approval shall be delivered to the Agents; provided, further, that with respect to any transaction or series of transactions with an Affiliate that is not a Borrower involving aggregate consideration in excess of \$2,500,000, the relevant Obligated Party shall obtain a favorable written opinion as to the fairness of such transaction to such Obligated Party from a financial point of view from an independent investment banking firm of national reputation in the U.S. or, if pertaining to a matter for which such investment banking firms do not customarily render such opinions, an appraisal or valuation firm of national reputation in the U.S., and a copy of such opinion shall be delivered to the Agents.

Section 8.15 Investment Banking and Finder's Fees. No Obligated Party shall pay or agree to pay, or reimburse any other party with respect to, any investment banking or similar or related fee, underwriter's fee, finder's fee, or broker's fee to any Person in connection with this Agreement, except for any investment banking fee payable to Oppenheimer & Co. in connection with the making of the Term Loans. The Obligated Parties shall defend and indemnify the Agents and the Lenders against and hold them harmless from (a) all claims of any Person that any Obligated Party is obligated to pay any such fees and (b) all costs and expenses (including reasonable attorneys' fees and Attorney Costs) incurred by either Agent and/or any Lender in connection therewith.

Section 8.16 Business Conducted. The Obligated Parties shall not engage, directly or indirectly, in any line of business other than the lines of business in which the Obligated Parties were engaged on the Original Closing Date and those reasonably similar, related, or incidental thereto.

Section 8.17 Liens.

(a) No Obligated Party shall create, incur, assume, or permit to exist, and will defend the Collateral against, and take such other action as is necessary to remove, any Lien on any property now owned or hereafter acquired by it, except Permitted Liens. Each Obligated Party will defend the right, title, and interest of the Collateral Agent in and to any of such Obligated Party's rights under the Collateral against the claims and demands of all Persons whomsoever. Each Obligated Party will advise each Agent promptly, in reasonable detail, (i) of any Lien (other than Permitted Liens) or claim made

or asserted against any of the Collateral and (ii) of the occurrence of any other event with respect to the Collateral that could reasonably be expected to have, or has resulted in, a Material Adverse Effect.

(b) Other than in connection with the creation of any Debt under Section 8.12(c), (h) or (i) or in any agreement relating to the lease of an Excluded Asset by an Obligated Party as lessee or sublessee, no Obligated Party will enter into, become subject to or otherwise permit to exist any Negative Pledge; provided that any Negative Pledge entered into or existing in connection with the creation of Debt under Section 8.12(c), (h) or (i) or in any agreement relating to the lease of an Excluded Asset by an Obligated Party as lessee or sublessee shall be limited to the applicable property being financed or leased, as the case may be.

(c) No Obligated Party shall create, incur, assume or otherwise cause or permit to exist or become effective any consensual encumbrance, condition, prohibition or restriction of any kind on any Obligated Party's right to: (a) incur or repay Debt (whether owing to any Obligated Party or otherwise); (b) guarantee the Obligations pursuant to any Guaranty Agreement; (c) amend, modify, extend or renew any agreement evidencing Debt; (d) repay any obligations owed to any Obligated Party; (e) make loans or advances to any Obligated Party; (f) pay dividends or make any other distributions on any Subsidiary's Capital Stock owned by Ahern or any other Subsidiary of Ahern; or (g) transfer any of its property to any Obligated Party, in each case except as provided in this Agreement, the other Loan Documents and the Second Lien Debt Documents or the Refinancing Second Lien Debt Documents and, in the case of clause (g), in connection with any Debt permitted under Section 8.12(h) or (i), or in any agreement relating to the lease of an Excluded Asset by any Obligated Party as lessee or sublessee.

Section 8.18 Sale and Leaseback Transactions. No Obligated Party shall, directly or indirectly, enter into or otherwise be subject to any arrangement with any Person providing for such Obligated Party to lease or rent property that such Obligated Party has sold or will sell or otherwise transfer to such Person.

Section 8.19 New Subsidiaries. No Obligated Party shall, directly or indirectly, organize, create, acquire, or permit to exist any Subsidiary without the prior written consent of the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders), other than those listed on Schedule 7.4.

Section 8.20 Fiscal Year. Each Obligated Party (other than Ahern) shall cause its Fiscal Year to be the same as Ahern's. Ahern shall not change its Fiscal Year.

Section 8.21 Financial Covenants.

(a) Capital Expenditures. For each Fiscal Quarter commencing after the date hereof, the Obligated Parties shall not permit the difference between (x) the aggregate amount of all Capital Expenditures made or incurred by the Obligated Parties, on a consolidated basis, during such Fiscal Quarter, minus (y) the proceeds received by the Obligated Parties, on a consolidated basis, during such Fiscal Quarter from sales of rental

equipment and other property (in each case, as reported by Ahern in the statement of cash flows delivered to the Agents as part of the financial information required by Section 6.2(a) and (b)), to exceed the following (provided that (i) any amount not utilized in one Fiscal Quarter may be carried forward to the amount permitted to be expended in (but only in) the immediately succeeding Fiscal Quarter and (ii) Capital Expenditures made during any Fiscal Quarter shall be deemed to be made first without regard to any amount carried forward to such Fiscal Quarter in accordance with clause (i)):

- (i) for the Fiscal Quarter ended March 31, 2010, \$4,500,000;
- (ii) for the Fiscal Quarter ended June 30, 2010, \$4,500,000; and
- (iii) for each Fiscal Quarter thereafter, the lesser of 30% of equipment rental and related revenue for such Fiscal Quarter and the amount determined according to the following grid:

		Time Utilization (\$ in millions)				
		<u><55%</u>	<u>55% to <60%</u>	<u>60% to <65%</u>	<u>65% to <70%</u>	<u>≥70%</u>
Dollar Utilization	<30%	\$ 2.50	\$ 3.25	\$ 4.00	\$ 4.75	\$ 5.50
	30% to <35%	\$ 3.25	\$ 5.00	\$ 7.09	\$ 9.35	\$ 10.25
	35% to <40%	\$ 4.00	\$ 7.09	\$ 11.00	\$ 15.81	\$ 18.75
	40% to <45%	\$ 4.75	\$ 9.35	\$ 15.81	\$ 21.56	\$ 24.44
	45% to <50%	\$ 5.50	\$ 11.79	\$ 21.56	\$ 25.50	\$ 25.50
	≥50%	\$ 6.25	\$ 13.20	\$ 24.44	\$ 25.50	\$ 25.50

(b) Minimum Equipment Utilization. The Obligated Parties shall not permit the average actual customer lease utilization of all of the Borrowers' aerial lift Inventory during any two consecutive Fiscal Quarter period to be less than 45% of the maximum average customer lease utilization possible for all such Inventory during such two consecutive Fiscal Quarter period (assuming that all such Inventory of the Borrowers was available to be leased at all times during such two consecutive Fiscal Quarter period, but excluding any unit of aerial lift Inventory so long as such unit is reflected in Ahern's ledger accounts under "Equipment Down Long Term").

Section 8.22 Use of Proceeds. The Borrowers shall use the proceeds of the Revolving Loans (a) to pay costs and expenses incurred in connection with the closing of this Agreement and the transactions contemplated hereby, (b) to pay interest, costs, and expenses incurred in connection with this Agreement, (c) to issue Letters of Credit and to repay reimbursement obligations related thereto, and (d) to finance ongoing general working capital needs and Capital Expenditures (in each case, not otherwise prohibited by this Agreement) of the Obligated Parties in the ordinary course of business, and shall not use any portion of the Revolving Loan proceeds, directly or indirectly, (x) to fund a personal loan to or for the benefit of a director or executive officer of any Obligated Party or for any purpose that is prohibited by the Sarbanes-Oxley Act of 2002 (Pub. L. No. 107-204, 116 Stat. 745), (y) to buy or carry any Margin Stock, to repay or

otherwise refinance indebtedness of any of the Borrowers or others incurred to buy or carry any Margin Stock, to extend credit for the purpose of buying or carrying any Margin Stock, or to acquire any security in any transaction that is subject to Sections 13 or 14 of the Exchange Act, or (z) for any purpose that is prohibited by any Requirement of Law. The Borrowers shall use the net cash proceeds of the Term Loans to repay not less than \$47,000,000 of Revolving Loans (with no corresponding permanent reduction of Revolving Credit Commitments) and to pay fees, costs and expenses incurred in connection with the making of the Term Loans and the other transactions contemplated by the amendment and restatement of the First Amended and Restated Loan and Security Agreement pursuant to this Agreement.

Section 8.23 Lenders as Depository. Each Obligated Party shall maintain one or both of BofA and Wachovia as its principal depository, including for the maintenance of operating, administrative, cash management, collection activity, and other deposit accounts for the conduct of its business. Without limitation of the foregoing, each Obligated Party shall use and maintain its deposit accounts, securities accounts and cash management systems in a manner reasonably satisfactory to the Agents.

Section 8.24 Guaranties of the Obligations. Each Obligated Party, including any Person that becomes a Borrower or a Guarantor after the Closing Date pursuant to the terms of this Agreement, shall guarantee payment and performance of the Obligations (other than Obligations owing by such Obligated Party) pursuant to a Guaranty Agreement, duly executed by each such Obligated Party.

Section 8.25 Additional Collateral; Further Assurances.

(a) Subject to Requirements of Law, each Obligated Party shall, unless the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders) otherwise consent in writing, cause each Subsidiary of Ahern to become a Guarantor.

(b) Upon request of either of the Agents, each Obligated Party shall (i) grant Liens to the Collateral Agent, for the benefit of the Credit Providers, pursuant to such agreements, certificates, documents, and instruments as such Agent, as the case may be, may reasonably deem necessary and deliver such property, agreements, certificates, documents, and instruments as such Agent, as the case may be, may request to perfect the Liens of the Collateral Agent in any property of such Obligated Party that constitutes Collateral, (ii) execute a Guaranty Agreement as required by Section 8.24, and (iii) in connection with the foregoing requirements, or either of them, deliver to the Agents all items of the type required by Section 9.1 (as applicable) and such other items as either Agent may reasonably request. Upon execution and delivery of such Loan Documents and other agreements, certificates, documents, and instruments, each such Person shall automatically become a Guarantor hereunder and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents.

(c) Without limiting the foregoing, each Obligated Party shall, and shall cause each of Ahern's Subsidiaries that is required to become an Obligated Party pursuant to the terms of this Agreement to, execute and deliver, or cause to be executed and

delivered, to the Agents such documents and agreements, and shall take or cause to be taken such actions as either of the Agents may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents.

Section 8.26 Changes in Accounting Treatment.

(a) No Borrower shall, without the prior written consent of each of the Agents, change any accounting treatment for, or method of valuation of, its Inventory or its Transportation Equipment, including with respect to the method of depreciation of Inventory or Transportation Equipment, from that in effect on the Original Closing Date; provided that a Borrower may make such changes as are required by GAAP.

(b) No Borrower shall, without the prior written consent of each of the Agents, change in any respect from that in effect on the Original Closing Date and consistent with past practices the manner or method in which such Borrower keeps its books and records or makes entries with respect to any of its ledger accounts "Equipment Down Long Term", "Rebate Accrual" or "Rent Purchase Option" or any items recorded therein, including without limitation and in any event, any change which would in any manner affect the type or amount of any item that would or should be recorded in any such general ledger account; provided that a Borrower may make such changes as are required by GAAP.

(c) Notwithstanding the proviso in either clause (a) or (b) of this Section 8.26, unless otherwise agreed to in writing by the Agents and the Revolving Lenders, the Borrowing Base and all related definitions (including, without limitation, Net Book Value and Reserves) shall continue to be determined as if no such change had been made.

Section 8.27 [Intentionally Omitted].

Section 8.28 Acquired Real Estate. From and after the Closing Date, in the event that (i) any Obligated Party acquires any Real Estate in fee interest or (ii) at the time any Person becomes a Guarantor, such Person owns or holds any Real Estate in fee interest (any such Real Estate described in the foregoing clause (i) or (ii) being an "Additional Mortgaged Property"), such Obligated Party will deliver to the Agents:

(a) A fully executed and notarized Mortgage in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering the interest of such Obligated Party in such Additional Mortgaged Property;

(b) A boundary survey prepared and certified to the Collateral Agent by a credentialed surveyor acceptable to the Agents,

(c) A mortgagee's policy of title insurance, or, in the Agents' discretion, a commitment for the issuance of such title insurance, containing only such exceptions as may be acceptable to the Agents, such insurance to be in an amount equal to 110% of the fair market value of such parcel of Real Estate,

(d) An appraisal prepared by a credentialed independent appraiser acceptable to each of the Agents, satisfying Requirements of Law and indicating whether or not such Real Estate is located within an area that has been identified by the Director of the Federal Emergency Management Agency as a Special Flood Hazard Area, and

(e) Such other information, documentation, and certifications, including an environmental assessment, as may be reasonably requested by either of the Agents.

Section 8.29 Ranking. Each Obligated Party shall ensure that, at all times, all Obligations shall rank in right of payment either pari passu or senior to all other Debt of the Obligated Parties.

Section 8.30 Kubota and Other Vendors. No Inventory manufactured, sold or consigned by Kubota Tractor Corporation or Kubota Tractor Corporation, USA or consigned by any other vendor to any Obligated Party shall be rented by an Obligated Party to a customer of such Obligated Party unless and until such Obligated Party shall have purchased such Inventory and paid the purchase price for such Inventory in full.

Section 8.31 Other Debt Limitations. No Obligated Party shall (i) enter into or permit to exist any Credit Facilities (as defined in the Second Lien Debt Agreement) other than this Agreement or (ii) issue or permit to exist any Parity Lien Debt (as defined in the Second Lien Debt Agreement) other than Second Lien Debt or designate, in an officer's certificate or otherwise, any Debt as Parity Lien Debt for purposes of the Second Lien Debt Agreement.

Section 8.32 Compliance with and Amendments to Second Lien Debt Agreement. Each Obligated Party shall comply at all times and in all material respects with the terms and provisions of the Second Lien Debt Agreement. Without limitation of any restrictions in Section 8.13(b), no Obligated Party shall (i) permit the Second Lien Debt Agreement to be amended or (ii) request a waiver of any provision of the Second Lien Debt Agreement, in each instance under clause (i) or (ii) above, that would be materially adverse to the interests of the Term Lenders in the reasonable judgment of the Term Lenders or the interests of the Revolving Lenders in the reasonable judgment of the Revolving Lenders (it being understood and agreed that any amendment, modification or waiver of Sections 4.09(b)(1) and 4.10 of the Second Lien Debt Agreement would be materially adverse to the interests of the Term Lenders and the interests of the Revolving Lenders).

ARTICLE 9

CONDITIONS OF LENDING

Section 9.1 Conditions Precedent to Making of Loans on the Closing Date. The obligation of the Revolving Lenders to make any Revolving Loans on the Closing Date and of the Term Lenders to make the Term Loans on the Closing Date, and the obligation of the Agents to cause the Letter of Credit Issuer to issue any Letter of Credit on the Closing Date, are subject to the following conditions precedent having been satisfied in a manner satisfactory to each Agent and each Lender.

(a) This Agreement shall have been executed and delivered by the Borrowers, the other Obligated Parties, the Majority Lenders (under and as defined in the First Amended and Restated Loan and Security Agreement), the Term Lenders and the Agents.

(b) The Agents shall have received (i) a duly executed amendment to the Intercreditor Agreement, in form and substance satisfactory to the Agents and the Lenders, increasing the \$175,000,000 amount in the definition of "First Lien Obligations" contained therein to \$396,000,000 and (ii) a duly executed supplement to the Second Lien Debt Agreement, in form and substance satisfactory to the Agents and the Lenders, increasing the \$175,000,000 amount in Section 4.09(b)(1) thereof to \$396,000,000.

(c) The Agents shall have received each of the following from each Obligated Party, all of which shall be satisfactory in form and substance to each of the Agents and the Lenders:

(i) copies of the Organization Certificate of such Obligated Party, with all amendments thereto, each certified by the appropriate Governmental Authority of the jurisdiction of such Obligated Party's formation, incorporation, or organization (as applicable) certified by the secretary, general partner, or comparable authorized representative of such Obligated Party as being true, correct, complete, and in effect on the Closing Date;

(ii) copies of the Management Agreement of such Obligated Party certified by the secretary, general partner, or comparable authorized representative of such Obligated Party as being true, correct, complete, and in effect on the Closing Date;

(iii) copies of duly approved Resolutions authorizing the execution and delivery of this Agreement, the Term Loan Notes and the other Loan Documents entered into in connection with this Agreement to which such Obligated Party is a party, and, with respect to the Borrowers, authorizing the Borrowings, certified by the secretary, general partner, or comparable authorized representative of such Obligated Party as being true, correct, complete, and in effect on the Closing Date;

(iv) a certificate evidencing the existence of such Obligated Party, and certificates evidencing the good standing and tax status of such Obligated Party in the jurisdiction of its organization and in each other jurisdiction in which it is required to be qualified as a foreign business entity to transact its business as presently conducted; and

(v) a certificate of incumbency and specimen signatures with respect to each individual authorized to execute and deliver this Agreement and the other Loan Documents on behalf of such Obligated Party, and any other individual executing any document, certificate, or instrument to be delivered in connection with this Agreement and the other Loan Documents and, in the case of each Borrower, to request Borrowings.

(d) The Agents shall have received, in form and substance satisfactory to each Agent, each of the following:

(i) with respect to any Letter of Credit to be issued, all documentation required by Section 2.4, duly executed by a Responsible Officer of the applicable Borrower;

(ii) (A) an amendment to the Fee Letter among the Administrative Agent, the Collateral Agent and the Borrowers duly executed by such parties modifying certain defined terms used therein and (B) the other Fee Letter duly executed by the Administrative Agent and the Borrowers;

(iii) a certificate of the Borrowers executed by a Responsible Officer of each Borrower:

(A) specifying the account of the Borrowers that is the Funding Account,

(B) attaching a certified copy of the Second Lien Debt Agreement and all amendments and supplements thereto, and

(C) certifying to such other factual matters as may be reasonably requested by either Agent or any Lender;

(iv) such amendments to the other Loan Documents duly executed by the requisite parties as either Agent shall request in order to secure the Term Loan Obligations by the Collateral and to effectuate the other modifications contemplated by the amendment and restatement of the First Amended and Restated Loan and Security Agreement pursuant to this Agreement;

(v) the pro forma balance sheet required by Section 7.6(c);

(vi) evidence of the cancellation, upon the making of the Term Loans, of Second Lien Debt in the aggregate principal amount required under Section 2.3(a);

(vii) UCC-3 financing statements and such other instruments, in form and substance satisfactory to each Agent, as shall be necessary to terminate all existing UCC filings on the property of each of the Obligated Parties that are not Permitted Liens, and satisfactory evidence that the Collateral Agent has a valid, exclusive (except for Permitted Liens), and perfected first priority (except for Permitted Liens that according to the terms of this Agreement are permitted to have priority over the Agent's Liens) Lien as of the Closing Date in the Collateral as security for the Obligations, to the extent any such Liens may be perfected under the UCC (but excluding any Liens perfected solely by possession, but only to the extent neither of the Agents has requested possession of such Collateral), in each case in form and substance satisfactory to each of the Agents; provided that upon either of the Agent's request, the Obligated Parties shall provide any

additional agreement, document, instrument, certificate, or other item relating to any other Collateral as may be required for perfection under any Requirement of Law;

(viii) a Borrowing Base Certificate that calculates the Borrowing Base as of the end of the Business Day immediately preceding the Closing Date;

(ix) satisfactory evidence that all filings, consents, or approvals with or of the owners of any Capital Stock of any Obligated Party, any Governmental Authority, or any other third party (including, without limitation, holders of the Second Lien Debt) have been made or obtained, as applicable; and

(x) such other agreements, certificates, documents, and instruments as either Agent or any Lender may reasonably request.

(e) The Agents shall have received signed opinions of counsel for the Obligated Parties, opining as to such matters in connection with the transactions contemplated by this Agreement as either of the Agents may reasonably request, each such opinion to be in form, scope, and substance satisfactory to the Agents, the Lenders, and their respective counsel.

(f) After giving effect to all Borrowings on the Closing Date and payment of all fees and expenses due hereunder or due with respect to the other transactions contemplated under the Transaction Documents, and with all of the Borrowers' indebtedness, liabilities, and obligations current, the Unused Availability shall not be less than \$40,000,000.

(g) All representations and warranties made hereunder and in the other Loan Documents shall be true and correct.

(h) The Borrowers shall have paid (i) all fees and expenses of the Agents and the Attorney Costs incurred in connection with this Agreement and any of the other Loan Documents to be executed in connection with this Agreement and the transactions contemplated thereby to the extent invoiced and (ii) all fees payable to the Lenders on the Closing Date (including, without limitation, the fees payable under Sections 3.6, 3.7 and 3.8 on the Closing Date) (or shall have made provision for the direct payment of all such fees, expenses and Attorney Costs out of the proceeds of any Borrowing to be funded on the Closing Date).

(i) No Default or Event of Default shall exist or would exist after giving effect to the Borrowings to be made on the Closing Date.

(j) [Intentionally Omitted].

(k) All proceedings taken by the Obligated Parties in connection with the execution of this Agreement, the other Transaction Documents, and all documents and papers relating thereto shall be satisfactory in form, scope, and substance to the Agents and the Lenders.

(l) Without limiting the generality of the items described above, each of the Obligated Parties and each other Person guaranteeing payment of any of the Obligations shall have delivered or caused to be delivered to the Agents (in form and substance reasonably satisfactory to each of the Agents), the financial statements, instruments, resolutions, documents, agreements, certificates, opinions, and other items required by either of the Agents and the Lenders.

(m) Since December 31, 2008 there shall not have occurred any event, and no circumstances shall exist, that could reasonably be expected to result in a Material Adverse Effect.

(n) There shall exist no action, suit, investigation, litigation or proceeding pending, or to the knowledge of any of the Obligated Parties, threatened in any court or before any arbitrator or governmental instrumentality that (i) either of the Agents has determined could reasonably be expected to have a Material Adverse Effect or (ii) purports to adversely affect any of the Loan Documents or other Transaction Documents or any of the transactions contemplated thereby in any material respect.

(o) The Agents shall be satisfied that Ahern shall receive net cash proceeds of at least \$47,000,000 from the issuance of the Term Loans, all of which net cash proceeds shall be applied to repay Revolving Loans.

The acceptance by the Borrowers of any Loans made or Letters of Credit issued on the Closing Date shall be deemed to be a representation and warranty made by each of the Obligated Parties to the effect that all of the conditions precedent to the making of such Loans or issuance of such Letters of Credit have been satisfied, with the same effect as delivery to the Agents and the Lenders of a certificate signed by a Responsible Officer of each of the Obligated Parties, dated the Closing Date, to such effect. Execution and delivery to either of the Agents by a Lender of a counterpart of this Agreement shall be deemed confirmation by such Lender that (1) all conditions precedent in this Section 9.1 have been fulfilled to the satisfaction of such Lender, (2) the decision of such Lender to execute and deliver to either of the Agents an executed counterpart of this Agreement was made by such Lender independently and without reliance on either of the Agents or any other Lender as to the satisfaction of any condition precedent set forth in this Section 9.1, and (3) all documents sent to such Lender for approval, consent, or satisfaction were acceptable to such Lender. Execution and delivery to either of the Agents by the Majority Lenders under and as defined in the First Amended and Restated Loan and Security Agreement of counterparts of this Agreement shall be deemed to constitute confirmation by the Non-Executing Revolving Lenders that (1) all conditions precedent in this Section 9.1 have been fulfilled to the satisfaction of the Non-Executing Revolving Lenders and (2) all documents sent to the Non-Executing Revolving Lenders for approval, consent, or satisfaction were acceptable to the Non-Executing Revolving Lenders.

Section 9.2 Conditions Precedent to Each Loan. The obligation of the Revolving Lenders or the Term Lenders, as the case may be, to make each Loan, including any Loans on the Closing Date, and the obligations of the Agents to cause the Letter of Credit Issuer to issue any Letter of Credit shall be subject to the further conditions precedent that on and as of the date of any such Borrowing the following statements shall be true, and the request or deemed request

by the Borrowers of any Borrowing shall be deemed to be a statement by each of the Obligated Parties to the effect set forth in clause (a), clause (b), clause (c), clause (d) and clause (e) following with the same effect as the delivery to the Agents of a certificate signed by a Responsible Officer of each of the Obligated Parties, dated the date of such extension of credit, stating that:

- (a) the representations and warranties contained in this Agreement and the other Loan Documents are correct in all material respects on and as of the date of such Borrowing as though made on and as of such date, other than any such representation or warranty that relates to a specified prior date and except to the extent the Agents and the Lenders have been notified in writing by the Obligated Parties that any representation or warranty is not correct and the requisite Lenders (as provided in Article 13) have explicitly waived in writing compliance with such representation or warranty;
- (b) no event or circumstance exists, or would result from such Borrowing, that constitutes a Default or an Event of Default;
- (c) no event or circumstance exists, or would result from such Borrowing, that has had, or could reasonably be expected to have, a Material Adverse Effect;
- (d) the proposed Borrowing (other than in the case of Term Loans) does not exceed the Unused Availability prior to giving effect to such Borrowing and will not require a payment under the third sentence of Section 4.1(a); and
- (e) the proposed Borrowing does not violate the borrowing or debt incurrence limits set forth in any of the Second Lien Debt Documents and is permitted to be incurred and secured by all applicable Secured Debt Documents (as defined in the Second Lien Debt Agreement);

provided that the foregoing conditions precedent are not conditions to any Revolving Lender (i) participating in or reimbursing BofA (individually or in its capacity as the Administrative Agent, as applicable) for such Revolving Lender's Pro Rata Share of any Non-Ratable Loan or Agent Advance made in accordance with the provisions of Section 2.2(i) or Section 2.2(j) or (ii) participating in any Letter of Credit in accordance with the provisions of Section 14.16(b).

ARTICLE 10

SECURITY

Section 10.1 Grant of Lien. As security for the Obligations, each Obligated Party hereby grants to the Collateral Agent, for the benefit of the Credit Providers, a continuing security interest in, lien on, pledge of, collateral assignment of, and right of setoff against, all of the following property and assets of such Obligated Party, whether now owned or existing or hereafter acquired or arising, regardless of where located:

- (a) Accounts;
- (b) Inventory;

- (c) contract rights, including Assigned Contracts and rights under leases of personal property whether as lessor or lessee (including any option to purchase thereunder);
- (d) Chattel Paper;
- (e) Documents;
- (f) Instruments;
- (g) Supporting Obligations and Letter-of-Credit Rights;
- (h) General Intangibles (including payment intangibles and Software);
- (i) Goods;
- (j) Equipment;
- (k) Investment Property;
- (l) money, cash, and cash equivalents;
- (m) Deposit Accounts, credits, and balances with and other claims against any financial institution with which such Obligated Party maintains deposits, including any Clearing Accounts;
- (n) a Hughes model 369D helicopter bearing manufacturer's serial number 790544D and U.S. registration number N58341, together with one (1) Allison Model 250-C20B helicopter engine bearing manufacturer's serial number CAE-832068, which has less than 750 rated take off horsepower, and five (5) Main Rotor Blades bearing manufacturer's serial numbers 8231, 8310, 8311, 8314 and 8235, respectively, and all available operating, repair, and maintenance records pertaining to the foregoing;
- (o) books, records, and other property related to or referring to any of the foregoing, including books, records, account ledgers, data processing records, computer software, and other property and General Intangibles at any time evidencing or relating to any of the foregoing;
- (p) the commercial tort claims described in Schedule 7.26 and from time to time disclosed to the Agents pursuant to Section 6.2(o); and
- (q) any and all accessions and additions to, substitutions for, and replacements, products, and proceeds of any of the foregoing, including, but not limited to, proceeds of any insurance policies, claims against third parties, and condemnation or requisition payments with respect to all or any of the foregoing.

All of the foregoing, together with any Real Estate covered by any Mortgage and all other property of any of the Obligated Parties in which either of the Agents or any Lender may at any

time be granted a Lien as collateral for any of the Obligations, whether or not the Lien of either of the Agents or any Lender in any thereof has been perfected, is herein collectively referred to as the "Collateral." Notwithstanding anything contained herein or in any other Loan Document to the contrary, (i) Collateral shall not include Excluded Assets and (ii) cash collateral held by either Agent with respect to any Letters of Credit or any Obligations relating thereto (including, without limitation, any Supporting Cash Deposit or any cash collateral provided under Section 4.3(a), clause sixth of Section 4.6(b) or clause (iv) of Section 11.2(b)) shall not secure or be applied to the payment of any Term Loan Obligations and proceeds or payments under any Supporting Letters of Credit shall not be applied to the payment of any Term Loan Obligations.

Section 10.2 Perfection and Protection of Security Interest.

(a) Actions By the Obligated Parties. Each Obligated Party shall, at the expense of the Borrowers, perform all steps reasonably requested by either of the Agents at any time to perfect, maintain, protect, and enforce the Agent's Liens, including, as applicable: (i) executing, delivering, and filing and recording of the Mortgage(s), the Proprietary Rights Security Agreements and the Aircraft Mortgage and authorizing the filing of financing or continuation statements, and amendments thereof, in form and substance reasonably satisfactory to the Agents; (ii) delivering to the Collateral Agent warehouse receipts covering any portion of the Collateral located in warehouses and for which warehouse receipts are issued and certificates of title covering any portion of the Collateral for which certificates of title have been issued indicating the Collateral Agent as the lienholder thereon; (iii) at any time during the existence of an Event of Default, transferring Inventory to warehouses or other locations designated by the Collateral Agent; (iv) placing notations on such Obligated Party's books of account to disclose the Agent's Liens; and (v) taking such other steps as are deemed necessary or desirable by either of the Agents to maintain and protect the Agent's Liens.

(b) Delivery of Collateral. Upon the Administrative Agent's or the Collateral Agent's request, each Obligated Party shall promptly deliver to the Collateral Agent all Collateral consisting of negotiable Documents, certificated securities (accompanied by stock powers executed in blank), Chattel Paper, and Instruments.

(c) Landlords and Bailees Each Obligated Party will use its best efforts in good faith to provide to the Collateral Agent upon the Administrative Agent's or the Collateral Agent's request, an executed Collateral Waiver Agreement (i) from each landlord of leased Real Estate on which any Collateral is located and (ii) from each Person that is not an Obligated Party and is in possession of any Collateral (other than a customer of a Borrower in possession of an item or items of Inventory leased to such customer by such Borrower in the ordinary course of such Borrower's business), in each case, without the payment of fees or giving of other consideration to such landlord or other Person, as applicable. In the event that any Collateral Waiver Agreement requested by either of the Agents pursuant to this Section 10.2(c) is not provided, in lieu of such delivery, either of the Agents may, in its discretion, establish a Reserve as contemplated in the definitions of Eligible Inventory and Eligible Transportation Equipment with respect to any Collateral located on any leased Real Estate or in the possession of any third party that is not an Obligated Party for which the Collateral Agent has not received

such executed Collateral Waiver Agreement, and/or exclude such Collateral from the determination of the Borrowing Base.

(d) Control Agreements. Upon the Administrative Agent's or the Collateral Agent's request, each Obligated Party shall obtain authenticated control agreements from each issuer of uncertificated securities, securities intermediary, or commodities intermediary issuing or holding any financial assets or commodities to or for such Obligated Party.

(e) Letter of Credit Agreements. If any Obligated Party is or becomes the beneficiary of any letter of credit arising from the sale or other disposition of Collateral, such Obligated Party shall promptly notify the Agents thereof and, upon either of the Agent's request, enter into a tri-party agreement (in form and substance reasonably satisfactory to the Agents) with the Collateral Agent and the issuer and/or the confirmation bank with respect to all Letter-of-Credit Rights thereunder assigning such Letter-of-Credit Rights to the Collateral Agent and directing all payments thereunder to a Clearing Account.

(f) Electronic Chattel Paper. In accordance with the UCC (or other applicable Requirement of Law) and to the extent requested by either of the Agents, each Obligated Party shall take all steps reasonably necessary to grant the Collateral Agent control of all of such Obligated Party's electronic chattel paper and all "transferable records" as defined in the Uniform Electronic Transactions Act.

(g) Deposit Accounts. In accordance with the UCC (or other applicable Requirement of Law) and to the extent requested by either of the Agents, each Obligated Party shall take all steps reasonably necessary to grant the Collateral Agent control of all of such Obligated Party's Deposit Accounts, including delivery of such Deposit Account Control Agreements as either of the Agents may request.

(h) Financing Statements. Each Obligated Party hereby irrevocably authorizes each of the Agents at any time and from time to time to file in, transmit to, or communicate with any filing office any financing statements and amendments thereto that (i) indicate the Collateral (A) as "all assets" of such Obligated Party, or words of similar effect, regardless of whether any particular asset included in the Collateral falls within the scope of Article 9 of the UCC, or (B) as being of an equal or lesser scope or with greater detail and (ii) contain any other information required by Part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether such Obligated Party is an organization, the type of organization, any organization identification number issued to such Obligated Party, and any employer or taxpayer identification number issued to such Obligated Party and (B) in the case of a financing statement filed as a fixture filing or indicating any Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which such Collateral relates. Each Obligated Party agrees to furnish any such information to the Agents promptly upon request. Each Obligated Party also ratifies its authorization for each of the Agents to file any like financing statements or amendments thereto if filed prior to the date hereof.

(i) Commercial Tort Claims. With respect to each commercial tort claim required to be disclosed by Section 6.2(o), unless otherwise consented in writing by the Agents, the applicable Obligated Party shall enter into documentation satisfactory to the Agents to grant to the Collateral Agent a first priority perfected Lien in such commercial tort claim.

(j) Confirmations. From time to time, each Obligated Party shall, upon the Administrative Agent's or the Collateral Agent's request, execute and deliver confirmatory written instruments pledging to the Collateral Agent, for the benefit of the Credit Providers, the Collateral, but such Obligated Party's failure to do so shall not affect or limit any security interest or any other rights of the Collateral Agent, the Administrative Agent or any other Credit Provider in and to the Collateral with respect to such Obligated Party. As long as this Agreement is in effect and until all Obligations have been fully satisfied, the Agent's Liens shall continue in full force and effect in all Collateral (whether or not deemed eligible for the purpose of calculating the Unused Availability or as the basis for any advance, loan, extension of credit, or other financial accommodation).

(k) Terminations and Amendments Not Authorized. Each Obligated Party acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement filed by either of the Agents in connection with this Agreement or any other Loan Document without the prior written consent of the Agents and agrees that it will not do so without the prior written consent of the Agents, subject to such Obligated Party's rights under Section 9-509(d)(2) of the UCC.

Section 10.3 Location of Collateral. Each Obligated Party represents and warrants to each of the Agents and the Lenders that, as of the Closing Date, Schedule 10.3 contains a correct and complete list of (a) the location of such Obligated Party's chief executive office, (b) each location of its books and records, (c) each location and address where any Collateral is held (other than any location or address of any Inventory that as of the Closing Date is in the possession of a customer of a Borrower that is leasing such Inventory from such Borrower in the ordinary course of such Borrower's business) and (d) with respect to each location referenced in clause (c) preceding where any Collateral is held by a representative, agent, warehouseman, or bailee, the name and address of such representative, agent, warehouseman, or bailee and the cost of such Inventory and Transportation Equipment and the net book value of Inventory and Fixed Assets at such location. Each Obligated Party covenants and agrees that it will not maintain any Collateral (other than (i) Transportation Equipment or (ii) Inventory which is in the possession of, or in transit to or from, a customer of a Borrower that is leasing such Inventory from such Borrower and Inventory in transit from one location on Schedule 10.3 (or such other location identified to the Agents in accordance with this Section 10.3) to another such location in the ordinary course of such Borrower's business) at any location other than those locations listed for such Obligated Party in Schedule 10.3, otherwise change or add to any of the locations listed for such Obligated Party in Schedule 10.3, or change the location of its chief executive office from the location identified in Schedule 10.3 unless, in any such case, it gives each of the Agents at least 30 days prior written notice thereof and authorizes the filing of any and all financing statements and executes any other documents that either of the Agents reasonably request in

connection therewith; provided, however, that if a Borrower enters into a lease for a new retail branch, such Borrower shall notify the Agents in writing thereof on or prior to entering into such lease and such Borrower shall not maintain any Collateral at such leased location until it has delivered to the Agents an executed Collateral Waiver Agreement from the landlord of such premises or, in lieu of such Collateral Waiver Agreement, if either Agent so requests, a Reserve shall be established in the manner contemplated in clause (j) of the definition of "Eligible Inventory" and/or clause (h) of the definition of "Eligible Transportation Equipment". Without limiting the foregoing, each Obligated Party represents that all of its Inventory (other than Inventory in transit and Inventory which is in the possession of a customer of a Borrower that is leasing such Inventory from such Borrower in the ordinary course of such Borrower's business) will be, located either (x) on premises owned by such Obligated Party, (y) on premises leased by such Obligated Party, provided that the Agents have received an executed Collateral Waiver Agreement from the landlord of such premises to the extent required by Section 10.2(c) (but subject to the proviso of the immediately preceding sentence), or (z) in the possession of a representative, agent, warehouseman, consignee, or bailee, provided that the Agents have received an executed Collateral Waiver Agreement from the applicable warehouseman, representative, agent, consignee, or bailee to the extent required by Section 10.2(c). Each Obligated Party represents and warrants to each of the Agents and the Lenders that all Transportation Equipment is based out of a location listed in Schedule 10.3 or, so long as it gives each of the Agents at least 30 days prior written notice thereof, another retail branch of an Obligated Party located in the United States.

Section 10.4 Appraisals.

(a) The Agents shall, once each Fiscal Quarter, engage Rouse Asset Services or another appraiser acceptable to the Agents to conduct and deliver (i) an Inventory Appraisal of the Inventory of each Borrower consisting of spare parts and merchandise inventory, (ii) an Inventory Appraisal of the Inventory of each Borrower (other than Inventory consisting of spare parts and merchandise inventory) and (iii) an Equipment Appraisal of the Transportation Equipment of each Borrower, each such Inventory Appraisal and Equipment Appraisal to be in form and scope satisfactory to the Agents and using a methodology to determine orderly liquidation value reasonably requested by the Agents. In addition, each Obligated Party will permit the Collateral Agent and its representatives to conduct quarterly appraisals of any and all of the Collateral.

(b) Notwithstanding the provisions of clause (a) of this Section 10.4, whenever an Event of Default exists, either of the Agents may, and at the direction of the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders), the Agents shall, engage an appraiser acceptable to the Agents to conduct and deliver appraisals of any or all of the Collateral (if directed by the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders), of such Collateral as specified in such direction), each such appraisal to be in form and scope satisfactory to the Agents and using a methodology reasonably requested by the Agents.

(c) The Borrowers agree, jointly and severally, to pay to the Agents on demand the cost of each appraisal conducted pursuant to this Section 10.4.

Section 10.5 Accounts.

(a) Representations. Each Obligated Party hereby represents and warrants, with respect to its Accounts, that: (i) each existing Account represents, and each future Account will represent, a bona fide sale or lease and delivery of goods by such Obligated Party, or rendition of services by such Obligated Party, in the ordinary course of such Obligated Party's business; (ii) each existing Account is, and each future Account will be, for a liquidated amount payable by the Account Debtor thereon on the terms set forth in the invoice therefor or in the schedule thereof delivered to the Agents, without any offset, deduction, defense, or counterclaim except those known to such Obligated Party and disclosed to the Agents pursuant to this Agreement; (iii) no payment will be received with respect to any Account, and no credit, discount, or extension, or any agreement therefor, will be granted on any Account, except as reported to the Agents in Borrowing Base Certificates delivered in accordance with this Agreement; (iv) each copy of an invoice delivered to either of the Agents by such Obligated Party will be a genuine copy of the original invoice sent to the Account Debtor named therein; and (v) all goods described in any invoice representing a sale or lease of goods will have been delivered to the Account Debtor and all services of such Obligated Party described in each invoice will have been performed.

(b) Dating Terms. No Obligated Party will re-date any invoice or sale or lease or make sales or leases on extended dating beyond that customary in such Obligated Party's business or extend or modify any Account except in the ordinary course of business. If any Obligated Party becomes aware of any matter materially adversely affecting the collectibility of any Account or the Account Debtor therefor, including information regarding the Account Debtor's creditworthiness, such Obligated Party will exclude such Account from Eligible Accounts and, with respect to any such Account Debtor that is obligated on Accounts owing to any Obligated Party, in an aggregate amount greater than \$250,000, promptly so advise the Agents.

(c) Notes and Instruments. Without the prior written consent of the Agents, (i) during the existence of any Default or Event of Default, no Obligated Party will accept any note or other instrument (except a check or other instrument for the immediate payment of money) with respect to any Account and (ii) at any time other than as provided in clause (i) preceding no Obligated Party will accept notes or other instruments in any Fiscal Year in excess of \$100,000 for all Accounts or accept notes or other instruments in excess of \$250,000 in the aggregate at any time outstanding during the term of this Agreement. Any such instrument accepted by any Obligated Party with respect to any Account shall be considered as evidence of the Account and not payment thereof and such Obligated Party will promptly deliver such instrument to the Collateral Agent, endorsed by such Obligated Party to the Collateral Agent in a manner satisfactory in form and substance to the Agents. Regardless of the form of presentment, demand, or notice of protest with respect thereto, delivery of any such note or other instrument to the Collateral Agent does not constitute payment of the Obligations.

(d) Disputes and Claims. Each Obligated Party shall notify the Agents promptly of all disputes and claims in excess of \$250,000 with any Account Debtor, and

agrees to settle, contest, or adjust such dispute or claim at no expense to either of the Agents or any other Credit Provider. No discount, credit, or allowance shall be granted to any such Account Debtor without the Agents' prior written consent, except for discounts, credits, and allowances made or given in the ordinary course of the applicable Obligated Party's business when no Event of Default exists. Upon either of the Agent's request, each Obligated Party shall send the Agents a copy of credit memoranda. Notwithstanding the foregoing, each Obligated Party that is a Borrower shall promptly report that credit on Borrowing Base Certificates submitted by the Obligated Parties. Each of the Agents may at all times when an Event of Default exists, settle or adjust disputes and claims directly with Account Debtors for amounts and upon terms that such Agent shall consider advisable and, in all cases, the applicable Agent will credit the Loan Account with the net amounts received by such Agent in payment of any Accounts.

(e) Returned Inventory. If an Account Debtor returns any Inventory to any Obligated Party for any reason when no Event of Default exists (other than Inventory leased by an Obligated Party in the ordinary course of its business that is returned to such Obligated Party by the applicable lessee), then such Obligated Party shall promptly determine the reason for such return and shall issue a credit memorandum to the Account Debtor in the appropriate amount. Each Obligated Party shall promptly report to the Agents any such return involving an amount in excess of \$250,000. Each such report shall indicate the reasons for the return and the location and condition of the returned Inventory. In the event any Account Debtor returns Inventory to any Obligated Party for any reason when an Event of Default exists (other than Inventory leased by an Obligated Party in the ordinary course of its business that is returned to such Obligated Party by the applicable lessee), such Obligated Party, upon the request of either of the Agents, shall: (i) hold the returned Inventory in trust for the Agents; (ii) segregate all such returned Inventory from all of such Obligated Party's other property; (iii) dispose of the returned Inventory solely according to the Agents' written instructions; and (iv) to the extent lawfully permitted, not issue any credits or allowances with respect thereto without the Agents' prior written consent. All returned Inventory shall be subject to the Agent's Liens thereon. Whenever any Inventory is returned (other than Inventory leased by an Obligated Party in the ordinary course of its business that is returned to such Obligated Party by the applicable lessee), the related Account shall be deemed ineligible to the extent of the amount owing by the Account Debtor with respect to such returned Inventory and such returned Inventory shall not be Eligible Inventory, in each instance, except to the extent such returned Inventory is Inventory (other than spare parts Inventory) held for lease in the ordinary course of an Obligated Party's business that is marked with an identifiable serial number or is Inventory held for sale that was returned for reasons other than the quality of the Inventory and is still readily marketable to other Persons.

(f) Leases. Each lease of Inventory by an Obligated Party to one of its customers is entered into in the ordinary course of business of such Obligated Party and constitutes the legal, valid and binding obligation of such Obligated Party and, to the best of each Obligated Party's knowledge, the customer party thereto. No such lease (i) contravenes any laws, rules or regulations applicable thereto (including, without limitation, to the extent applicable, laws, rules and regulations relating to consumer

protection, fair credit billing, fair credit reporting, truth in lending, equal credit opportunity, fair debt collection practices and privacy) and the Obligated Party that is party thereto is not in violation of any such law, rule or regulation with respect thereto, (ii) requires the customer party thereto to consent to the transfer, assignment or pledge of any of the rights of such Obligated Party under such lease or (iii) contains or is otherwise subject to a confidentiality provision that purports to restrict the ability of the Collateral Agent or the Administrative Agent to exercise its rights under this Agreement with respect to such lease, including, without limitation, its rights to review such lease or to enforce such lease. No Obligated Party shall, without the prior written consent of the Agents, (i) amend, modify or supplement in any material respect its forms of leases of Inventory from that in effect on the Original Closing Date except for those amendments, modifications or supplements made in order to comply with changes in applicable law or (ii) enter into a lease of Inventory which is materially different from one of its forms of lease in existence on the Original Closing Date (as such form may be amended, modified or supplemented in compliance with clause (i) above).

Section 10.6 Collection of Accounts; Payments.

(a) [Intentionally Omitted].

(b) Collections. Each Obligated Party shall collect its Accounts and other Collateral in the ordinary course of its business consistent with past practice. Each Obligated Party shall promptly (in any event within one Business Day of receipt thereof) deposit all such payments (except as permitted in clause (c) below) and receipts, and all other proceeds of Collateral received by it, in their original form, duly endorsed in blank (if applicable) into a Clearing Account or deliver such payments and receipts to the Collateral Agent in their original form, duly endorsed in blank (if applicable), as either of the Agents may direct. Each Obligated Party shall receive any and all proceeds of Accounts and other Collateral as the Collateral Agent's trustee. All collections received directly by any Obligated Party or either Agent, and all funds in any Clearing Account or other account to which such collections are deposited shall be subject to the Collateral Agent's sole control and withdrawals by any Obligated Party shall not be permitted.

(c) Accounts. Each Clearing Account of any Obligated Party shall be established with BofA or a Clearing Bank reasonably acceptable to the Agents and, except as set forth in the next sentence, subject to a Deposit Account Control Agreement. No Obligated Party shall maintain any Clearing Account or Deposit Account except with BofA or subject to a Deposit Account Control Agreement, except those Clearing Accounts and Deposit Accounts existing on the Closing Date and listed on Schedule 7.23 that are not maintained with BofA; provided that with respect to any such account, the Obligated Parties shall deliver a Deposit Account Control Agreement with respect to any such account within 45 days of a request therefor by the Administrative Agent. No Obligated Party shall maintain any lockbox except with BofA or Wachovia.

(d) Cash Sales or Rentals. If sales or rentals of Inventory are made or services are rendered for cash, the applicable Obligated Party shall, within one Business Day of receipt, deliver to the Collateral Agent or deposit into a Clearing Account the cash that

such Obligated Party receives; provided that the foregoing shall not apply to cash in an amount not to exceed \$10,000 in the aggregate for all Obligated Parties at any time.

(e) Payments. All payments received by either of the Agents at a bank account designated by any of them will be the Collateral Agent's sole property for the benefit of the Credit Providers and will be credited to the Loan Account (conditional upon final collection) after allowing one (1) Business Day for collection, including immediately available funds, as required by Section 4.3; provided that, except during the existence of an Event of Default, such payments shall be deemed to be credited to the Loan Account immediately upon receipt for purposes of (i) determining the Unused Availability, (ii) calculating the Unused Line Fee, and (iii) calculating the amount of interest accrued thereon solely for purposes of determining the amount of interest to be distributed by the Administrative Agent to the Lenders (but not the amount of interest payable by the Borrowers). During the existence of any Event of Default, either of the Agents may, in its sole discretion, require that only payments representing final collections be credited to the Loan Account for the purposes set forth in clause (i), clause (ii), and clause (iii) preceding.

Section 10.7 Inventory; Perpetual Inventory. Each Obligated Party represents and warrants and agrees that all of the Inventory owned by such Obligated Party that is included in Eligible Inventory is and will be held for sale or lease, or is to be furnished in connection with the rendition of services or held as spare parts Inventory, in each case, in the ordinary course of such Obligated Party's business, and is and will be fit for such purposes. Each Obligated Party will keep its Inventory in good and marketable condition, except for damaged, obsolete or defective goods arising in the ordinary course of such Obligated Party's business. No Obligated Party will, without the prior written consent of the Agents, acquire or accept any Inventory on consignment or approval, except that Ahern may accept inventory on consignment from Kubota Tractor Corporation and other vendors, so long as (i) the aggregate amount of such consigned inventory held by all of the Obligated Parties does not exceed \$2,000,000 at any one time and (ii) none of such consigned inventory is rented by any Obligated Party to any of its customers. Each Obligated Party agrees that all Inventory produced by such Obligated Party in the U.S. will be produced in accordance with the Federal Fair Labor Standards Act of 1938, as amended, and all rules, regulations, and orders thereunder. Each Obligated Party will conduct cycle counts of its Inventory such that all of its Inventory shall be counted (though at varying times) at least once per Fiscal Year and, during the existence of an Event of Default, at such other times as either of the Agents requests. Each Obligated Party will maintain a perpetual inventory reporting system at all times. Each Obligated Party, at its own expense, shall make available to the Agents upon request the results of each physical verification, if any, which such Obligated Party may in its discretion have made, or caused any other Person to have made on its behalf, of all or any portion of its Inventory. No Obligated Party will, without the Agents' written consent, sell any Inventory on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment, or other repurchase or return basis. No Obligated Party will permit any of its Inventory to become a fixture with respect to Real Estate or (except for spare parts Inventory other than Eligible Spare Parts Inventory) to become an accession with respect to other personal property with respect to which Real Estate or personal property the Collateral Agent does not have a Lien. No Obligated Party will, without the Agents' prior written consent, alter or remove any identifying symbol or number on any of such Obligated Party's Inventory constituting Collateral.

Section 10.8 Equipment.

(a) Changes to Equipment. Each Obligated Party shall promptly inform the Agents of any material additions to or deletions from such Obligated Party's Equipment and shall indicate if any such material additions include any Equipment that is subject to any certificate of title law of the U.S. or any state. No Obligated Party will permit any of its Equipment to become a fixture with respect to Real Estate or to become an accession with respect to other personal property with respect to which Real Estate or personal property the Collateral Agent does not have a Lien. No Obligated Party will, without the Agents' prior written consent, alter or remove any identifying symbol or number on any of such Obligated Party's Equipment constituting Collateral. Except as set forth in Section 8.9, no Obligated Party shall, without the Majority Revolving Lenders' (or after the Revolving Facility Payment In Full, the Majority Term Lenders') prior written consent, sell, license, lease as a lessor, or otherwise dispose of any of such Obligated Party's Equipment.

(b) Certificates of Title. Each Obligated Party shall (i) as soon as practicable after the date hereof, in the case of Equipment now owned in which a security interest is perfected by a notation on the certificate of title or similar evidence of the ownership of such goods and (ii) within 30 days of acquiring any other similar Equipment, in each case, cause the Collateral Agent, for the benefit of the Credit Providers, to be named as lienholder on any such certificate of title or other evidence of ownership and deliver to the Collateral Agent any and all certificates of title of such Equipment reflecting such lien.

Section 10.9 Assigned Contracts. Each Obligated Party shall fully perform all of its obligations under each of the Assigned Contracts, and shall enforce all of its rights and remedies thereunder, in each case, as it deems appropriate in its business judgment; provided that no Obligated Party shall take any action or fail to take any action with respect to its Assigned Contracts that would cause the termination of a material Assigned Contract. Without limiting the generality of the foregoing, each Obligated Party shall take all action necessary or appropriate to permit, and shall not take any action that would have any materially adverse effect upon, the full enforcement of all indemnification rights under its Assigned Contracts. Each Obligated Party shall notify the Agents in writing, promptly after such Obligated Party becomes aware thereof, of any event or fact that could give rise to a material claim by it for indemnification under any of its Assigned Contracts, and shall diligently pursue such right and report to the Agents on all further developments with respect thereto. Each Obligated Party shall deposit into a Clearing Account or remit directly to the Administrative Agent, for application to the Obligations in such order as the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders) shall determine (unless such order is otherwise expressly provided herein, in which case in the order so provided), all amounts received by such Obligated Party as indemnification or otherwise pursuant to its Assigned Contracts. If any Obligated Party shall fail after either of the Agent's demand to pursue diligently any right under such Obligated Party's Assigned Contracts, or if an Event of Default then exists, either of the Agents may, and at the direction of the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders) shall, directly enforce such right in the name of such Agent or in such Obligated Party's name and may enter into such settlements or

other agreements with respect thereto as either of the Agents or the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders), as applicable, shall determine. In any suit, proceeding, or action brought by either of the Agents under any Assigned Contract for any sum owing thereunder or to enforce any provision thereof, each Obligated Party shall indemnify and hold the Agents and the other Credit Providers harmless from and against all expense, loss, or damage suffered by reason of any defense, setoff, counterclaims, recoupment, or reduction of liability whatsoever of the obligor thereunder arising out of a breach by any Obligated Party of any obligation thereunder or arising out of any other agreement, indebtedness, or liability at any time owing from any Obligated Party to or in favor of such obligor or its successors. All such obligations of any Obligated Party shall be and remain enforceable only against such Obligated Party and shall not be enforceable against the Agents or any of the other Credit Providers. Notwithstanding any provision hereof to the contrary, each Obligated Party shall at all times remain liable to observe and perform all of its duties and obligations under its Assigned Contracts, and the Collateral Agent's, the Administrative Agent's or any Credit Provider's exercise of any of their respective rights with respect to the Collateral shall not release any Obligated Party from any of such duties and obligations. None of the Collateral Agent, the Administrative Agent or any other Credit Provider shall be obligated to perform or fulfill any Obligated Party's duties or obligations under its Assigned Contracts or to make any payment thereunder, or to make any inquiry as to the nature or sufficiency of any payment or property received by it thereunder or the sufficiency of performance by any party thereunder, or to present or file any claim, or to take any action to collect or enforce any performance, any payment of any amounts, or any delivery of any property.

Section 10.10 Documents, Instruments, and Chattel Paper. Each Obligated Party represents and warrants that (a) all Documents, Instruments, and Chattel Paper describing, evidencing, or constituting Collateral, and all signatures and endorsements thereon, are and will be complete, valid, and genuine, and (b) all goods evidenced by Documents, Instruments, Letter-of-Credit Rights, and Chattel Paper are and will be owned by the applicable Obligated Party, free and clear of all Liens other than Permitted Liens. If any Obligated Party retains possession of any Chattel Paper or Instruments, such Chattel Paper and Instruments shall (i) if acquired by an Obligated Party prior to the Closing Date, be marked with the legend required by Section 10.10 of the First Amended and Restated Loan and Security Agreement and (ii) if acquired by an Obligated Party on or after the Closing Date, be marked with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the security interest of Wachovia Bank, National Association, as Collateral Agent, for the benefit of the Agents and the other Credit Providers pursuant to that certain Second Amended and Restated Loan and Security Agreement, dated as of January 8, 2010, among Ahern Rentals, Inc. and certain of its affiliates, the Collateral Agent, the Administrative Agent, and the lending institutions party thereto." No Obligated Party will, without the prior written consent of the Agents, modify, amend or alter in any respect the terms and conditions of any material Instrument included in the Collateral, nor forgive any indebtedness evidenced by any such Instrument.

Section 10.11 Right to Cure. Either of the Agents may, in its discretion, and the Agents shall, at the direction of the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders), pay any amount or do any act required of any Obligated Party hereunder or under any other Loan Document in order to preserve, protect, maintain, or enforce the Obligations, the Collateral, or the Agent's Liens, and that any Obligated

Party fails to pay or do, including payment of any judgment against any Obligated Party, any insurance premium, any warehouse charge, any finishing or processing charge, any landlord's, bailee's or consignee's claim, and any other Lien upon or with respect to the Collateral. All payments that either of the Agents make under this Section 10.11 and all out-of-pocket costs and expenses that either of the Agents pay or incur in connection with any action taken by it hereunder shall be payable by the Borrowers in accordance with Section 15.7 and, prior to the Revolving Facility Payment In Full, shall be charged to the Borrowers' Loan Account as a Revolving Loan. Any payment made or other action taken by either of the Agents under this Section 10.11 shall be without prejudice to any right to assert an Event of Default hereunder and to proceed thereafter as herein provided.

Section 10.12 Power of Attorney. Each Obligated Party hereby appoints the Administrative Agent and the Collateral Agent and the Administrative Agent's and the Collateral Agent's designees as such Obligated Party's attorney, with power: (a) to endorse or sign such Obligated Party's name on any checks, notes, acceptances, money orders, or other forms of payment or security that come into the Collateral Agent's, the Administrative Agent's or any Lender's possession; (b) to sign such Obligated Party's name on any invoice, bill of lading, warehouse receipt, or other negotiable or non-negotiable Document constituting Collateral, on drafts against customers, on assignments of Accounts, on notices of assignment, financing statements and other public records and to file any such financing statements by electronic means with or without a signature as authorized or required by applicable law or filing procedure; (c) during the existence of any Event of Default, to notify the post office authorities to give the Collateral Agent access to any post office or mailboxes into which mail addressed to such Obligated Party is delivered and to receive, open, and dispose of all mail addressed to such Obligated Party; (d) to send requests for verification of Accounts to customers or Account Debtors; (e) during the existence of any Event of Default, to complete in such Obligated Party's name, the Administrative Agent's name or the Collateral Agent's name, any order, sale, lease or transaction, obtain the necessary Documents in connection therewith, and collect the proceeds thereof; (f) to clear Inventory through customs in such Obligated Party's name, the Administrative Agent's name, the Collateral Agent's name, or the name of the Administrative Agent's designee or the Collateral Agent's designee, and to sign and deliver to customs officials powers of attorney in such Obligated Party's name for such purpose; (g) to the extent, if any, that such Obligated Party's authorization given in Section 10.2(h) is not sufficient, and without otherwise limiting such authorization, to file such financing statements with respect to this Agreement, with or without such Obligated Party's signature, as either of the Agents may deem appropriate and to execute in such Obligated Party's name such financing statements and amendments thereto and continuation statements that may require such Obligated Party's signature; (h) during the existence of any Event of Default, to endorse such Obligated Party's name on all applications, documents, papers, and instruments necessary or reasonably desirable for either of the Agents in the use of such Obligated Party's Proprietary Rights; (i) during the existence of any Event of Default, to grant or issue any exclusive or non-exclusive license under such Obligated Party's Proprietary Rights to any Person; (j) during the existence of an Event of Default, to assign, convey, or otherwise transfer title in or Dispose of any of such Obligated Party's Proprietary rights to any Person; and (k) to do all other things reasonably necessary to carry out the terms of this Agreement. Each Obligated Party ratifies and approves all acts of such attorney. None of the Administrative Agent, the Collateral Agent or any other Credit Provider will be liable for any acts or omissions or for any error of judgment or mistake of fact

or law except for their gross negligence or willful misconduct. This power, being coupled with an interest, is irrevocable until this Agreement has been terminated and the Obligations have been fully and irrevocably satisfied.

Section 10.13 The Collateral Agent's, the Administrative Agent's and the Lenders' Rights, Duties, and Liabilities.

(a) The Obligated Parties' Liability for the Collateral. Each Obligated Party assumes all responsibility and liability arising from or relating to the use, sale, lease, license, or other disposition of the Collateral. The Obligations shall not be affected by any failure of either of the Agents or any other Credit Provider to take any steps to perfect the Agent's Liens or to collect or realize upon any of the Collateral, nor shall loss of or damage to any of the Collateral release any Obligated Party from any of the Obligations. During the existence of any Event of Default, the Collateral Agent may (but shall not be required to), and at the direction of the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders) shall, without notice to or consent from any Obligated Party, sue upon or otherwise collect, extend the time for payment of, modify or amend the terms of, compromise or settle for cash, credit, or otherwise upon any terms, grant other indulgences, extensions, renewals, compositions, or releases, and take or omit to take any other action with respect to the Collateral, any security therefor, any agreement relating thereto, any insurance applicable thereto, or any Person liable directly or indirectly in connection with any of the foregoing, without discharging or otherwise affecting the liability of any Obligated Party for the Obligations or under this Agreement or any other agreement now or hereafter existing between the Collateral Agent, the Administrative Agent and/or any other Credit Provider and such Obligated Party.

(b) The Obligated Parties' Liability Under Contracts and Licenses. It is expressly agreed by each Obligated Party that, anything herein to the contrary notwithstanding, such Obligated Party shall remain liable under each of its contracts and each of its licenses to observe and perform all the conditions and obligations to be observed and performed by it thereunder. None of the Collateral Agent, the Administrative Agent or any other Credit Provider shall have any obligation or liability under any contract or license by reason of or arising out of this Agreement or the granting herein of a Lien thereon or the receipt by the Collateral Agent, the Administrative Agent or any other Credit Provider of any payment relating to any contract or license pursuant hereto. None of the Collateral Agent, the Administrative Agent or any other Credit Provider shall be required or obligated in any manner to perform or fulfill any of the obligations of any Obligated Party under or pursuant to any contract or license, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any contract or license, or to present or file any claims, or to take any action to collect or enforce any performance or the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times.

(c) Notification of Account Debtors. Without limiting Section 11.2, at any time during the existence of an Event of Default (or if any rights of setoff (other than

setoffs against an Account arising under the contract giving rise to the same Account) or contra accounts may be asserted with respect to the following), the Collateral Agent may, without prior notice to any Obligated Party, and upon the request of either of the Agents each Obligated Party shall, notify Account Debtors and other Persons obligated on the Collateral that the Collateral Agent has a security interest therein, and that payments shall be made directly to the Collateral Agent, for the benefit of the Collateral Agent and the other Credit Providers. Once any such notice has been given to any Account Debtor or other Person obligated on the Collateral, no Obligated Party shall give any contrary instructions to such Account Debtor or other Person without the Agents' prior written consent.

(d) Information Regarding Accounts and Account Debtors. The Collateral Agent and the Administrative Agent may at any time in the name of the Collateral Agent or the Administrative Agent, as applicable, or in the name of any Obligated Party, or in the name of the Collateral Agent's or the Administrative Agent's nominee or designee, communicate with each Obligated Party's Account Debtors, parties to contracts, and obligors in respect of Instruments to verify with such Persons, to the Collateral Agent's or the Administrative Agent's, as applicable, satisfaction, the existence, amount, and terms of Accounts, payment intangibles, Instruments, or Chattel Paper. If an Event of Default exists, each Obligated Party, at its own expense, shall cause the independent certified public accountants then engaged by such Obligated Party to prepare and deliver to each of the Agents (with sufficient copies to the Administrative Agent for distribution to each Lender) at any time and from time to time promptly upon either of the Agent's request the following reports with respect to such Obligated Party: (i) a reconciliation of all Accounts; (ii) an aging of all Accounts; (iii) trial balances; and (iv) a test verification of such Accounts as such Agent may request.

(e) No Obligation of the Agents. Notwithstanding anything in this Agreement to the contrary, each Obligated Party agrees that neither of the Agents shall have any obligation to take any steps necessary to preserve rights in any of the Proprietary Rights of any Obligated Party against any other Person, provided that each of the Agents may do so at its option during the existence of any Event of Default in accordance with Section 10.14(f).

Section 10.14 Patent, Trademark, and Copyright Collateral.

(a) Representations. This Agreement is effective to create a valid and continuing Lien on and, upon filing of appropriate financing statements pursuant to the UCC, perfected Liens in favor of the Collateral Agent, on the Proprietary Rights of each Obligated Party and such perfected Liens are enforceable as against any and all creditors of such Obligated Party. Upon filing of all such appropriate financing statements pursuant to the UCC, all action necessary to protect and perfect the Collateral Agent's Lien on each Obligated Party's Proprietary Rights under Requirements of Law shall have been duly taken. Upon filing the Proprietary Rights Security Agreements with the United States Copyright Office or United States Patent and Trademark Office, as applicable, the Agent's Liens will be enforceable against any purchaser of the Proprietary Rights covered thereby.

(b) Notices to the Agents. Each Obligated Party shall notify the Collateral Agent and the Administrative Agent promptly upon such Obligated Party obtaining knowledge that any application or registration relating to any patent, trademark, or copyright (now or hereafter existing) may become abandoned or dedicated, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office, or any court) regarding such Obligated Party's ownership of any patent, trademark, or copyright, its right to register the same, or to keep and maintain the same.

(c) Additional Agreements. In no event shall any Obligated Party, either directly or through any agent, employee, licensee, or designee, file an application for the registration of any patent, trademark, or copyright with the United States Patent and Trademark Office, the United States Copyright Office, or any similar Governmental Authority, or enter into any new license as licensor with respect to any patent, trademark, or copyright, without giving the Agents prior written notice thereof, and, upon request of either of the Agents, such Obligated Party shall execute and deliver such Proprietary Rights Security Agreements or other documents as either of the Agents may request to evidence the Agent's Liens on such patent, trademark, or copyright, and the General Intangibles of such Obligated Party relating thereto or represented thereby.

(d) Further Actions. Each Obligated Party shall take all actions necessary or requested by either of the Agents to maintain and pursue each application, to obtain the relevant registration and to maintain the registration of each of such Obligated Party's material Proprietary Rights (now or hereafter existing), including the filing of applications for renewal, affidavits of use, affidavits of noncontestability and opposition and interference and cancellation proceedings.

(e) Notices of Infringement. In the event that any of the Proprietary Rights that are Collateral are infringed upon, or misappropriated or diluted by a third party, each Obligated Party shall notify the Agents promptly after such Obligated Party learns thereof. Each Obligated Party shall, unless it shall reasonably determine that such Proprietary Rights that are Collateral are in no way material to the conduct of its business or operations, promptly sue for infringement, misappropriation, or dilution and to recover any and all damages for such infringement, misappropriation, or dilution, and shall take such other actions as either of the Agents shall deem appropriate under the circumstances to protect such Proprietary Rights that are Collateral.

(f) Suits by the Agents. Without limiting Section 11.2, during the existence of any Event of Default, each of the Agents shall have the right, but shall not be obligated, to bring suit in the name of the Collateral Agent or the Administrative Agent, as applicable, to enforce the Proprietary Rights and, if either of the Agents shall commence any such suit, each Obligated Party shall, at the request of such Agent, do any and all lawful acts and execute any and all proper documents reasonably required by such Agent in aid of such enforcement. Each Obligated Party shall, upon demand, promptly reimburse each of the Agents for all costs and expenses incurred by such Person in the

exercise of its rights under this Section 10.14(f) (including Attorney Costs and other fees and expenses of other professionals).

Section 10.15 Indemnification. In any suit, proceeding, or action brought by the Collateral Agent, the Administrative Agent or any other Credit Provider relating to any Collateral for any sum owing with respect thereto or to enforce any rights or claims with respect thereto, each Obligated Party will save, indemnify, and keep the Agents and the other Credit Providers harmless from and against all expense (including Attorney Costs and other reasonable attorneys' fees and expenses), loss or damage suffered by reason of any defense, setoff, counterclaim, recoupment, or reduction of liability whatsoever of the Account Debtor or other Person obligated on the Collateral, arising out of a breach by any Obligated Party of any obligation thereunder or arising out of any other agreement, indebtedness, or liability at any time owing to, or in favor of, such obligor or its successors from any Obligated Party, provided that no Obligated Party shall be liable to any Credit Provider for the payment of any portion of such amount to the extent determined in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Credit Provider's own gross negligence or willful misconduct. All such obligations of each Obligated Party shall be and remain enforceable against and only against such Obligated Party and shall not be enforceable against the Collateral Agent, the Administrative Agent, any Lender or any other Credit Provider.

Section 10.16 Grant of License to Use Proprietary Rights. For the purpose of enabling the Collateral Agent to exercise rights and remedies under Section 11.2 or under any other Loan Document or applicable Requirement of Law (including in order to take possession of, hold, preserve, process, assemble, prepare for sale, market for sale, sell, or otherwise dispose of Collateral) at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Obligated Party hereby grants to the Collateral Agent, for the benefit of the Agents and the other Credit Providers, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Obligated Party) to use, license, or sublicense any Proprietary Rights now owned or hereafter acquired by such Obligated Party, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof.

Section 10.17 Limitation on the Agents' and the Lenders' Duty in Respect of the Collateral. The Collateral Agent, the Administrative Agent and each other Credit Provider shall use reasonable care with respect to the Collateral in its possession or under its control. None of the Collateral Agent, the Administrative Agent or any other Credit Provider shall have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Collateral Agent, the Administrative Agent or such other Credit Provider, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

Section 10.18 Miscellaneous.

(a) Reinstatement. The Agent's Liens on the Collateral granted pursuant to this Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Obligated Party for liquidation or reorganization,

should any Obligated Party become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of any Obligated Party's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to any Requirement of Law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of any of the Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

(b) Benefit. All Liens granted or contemplated hereby shall be for the benefit of the Collateral Agent, the Administrative Agent and the other Credit Providers, and all proceeds or payments realized from Collateral in accordance herewith shall be applied to the Obligations in accordance with the terms of Section 4.6.

(c) Limitations. The Liens granted pursuant to Section 10.1 in each Obligated Party's, other than Ahern's, Collateral shall secure a maximum aggregate amount equal to the largest amount that would not render its obligations hereunder and the Liens granted hereby subject to avoidance as a fraudulent transfer or conveyance under any Requirement of Law, in each case after giving effect to all other liabilities and obligations of such Obligated Party, contingent or otherwise, that are relevant under such laws, and after giving effect to the value, as assets (as determined under the applicable provisions of such laws), of any rights of such Obligated Party to contribution, indemnity, and/or subrogation from any other Obligated Party or other Person pursuant to any Requirement of Law or any agreement providing for an equitable allocation among such Obligated Party, any other Obligated Party, and any other such Person of their respective obligations hereunder.

ARTICLE 11

DEFAULT; REMEDIES

Section 11.1 Events of Default. It shall constitute an event of default ("Event of Default") if any one or more of the following shall occur for any reason:

(a) any failure by the Borrowers to pay the principal of or interest or premium on any of the Obligations or any fee or other amount owing under any Loan Document when due, whether upon demand or otherwise;

(b) any representation or warranty made or deemed made by any Obligated Party in any Loan Document, any Financial Statement, or any certificate furnished by any Obligated Party at any time to either of the Agents or any Lender shall prove to be untrue in any material respect as of the date on which made, deemed made, or furnished;

(c) any default shall occur in the observance or performance of

(i) any of the covenants and agreements contained in Section 6.2, clauses (a) through (e), and (k), Section 8.1(c), Section 8.2, Section 8.5, Sections 8.9 through 8.24, Sections 8.26 through 8.28, Section 8.31 or Article 10;

(ii) any of the covenants and agreements contained in Section 6.2 (except as specified in clause (i) preceding), Section 6.3 or Section 8.1, clauses (a) and (b), and such default shall continue for three (3) Business Days or more after the earlier of any Obligated Party acquiring actual knowledge of such default and any Obligated Party receiving notice from any Agent, any Lender or any Affiliate of any Lender of such default; or

(iii) any of the other covenants or agreements contained in this Agreement other than as referenced in Section 11.1(a), Section 11.1(b), and clause (i) and clause (ii) preceding, any other Loan Document, or any other agreement entered into at any time to which any Obligated Party and either of the Agents or any Revolving Lender are party (including in respect of any Bank Products) and such default shall continue for 20 days or more after the earlier of any Obligated Party acquiring actual knowledge of such default and any Obligated Party receiving notice from any Agent, any Lender or any Affiliate of any Lender of such default;

(d) any default shall occur with respect to (i) the Second Lien Debt or (ii) any Debt (other than the Obligations) of any one or more of the Obligated Parties in an outstanding principal amount that, individually or in the aggregate, exceeds \$500,000, or under any agreement or instrument under or pursuant to which any such Debt (under clause (i) or (ii) above) may have been issued, created, assumed, or guaranteed by any Obligated Party, and such default shall continue for more than the period of grace, if any, therein specified, if the effect thereof (with or without the giving of notice or further lapse of time or both) is to accelerate or to permit the holders of any such Debt to accelerate, the maturity of any such Debt, or any such Debt shall be declared due and payable or be required to be prepaid (other than by a regularly scheduled required prepayment) prior to the stated maturity thereof, or any such Debt shall not be paid on the stated maturity date thereof;

(e) any Obligated Party or DFA LLC shall (i) file a voluntary petition in bankruptcy or file a voluntary petition or an answer or otherwise commence any action or proceeding seeking reorganization, arrangement, or readjustment of its debts or for any other relief under the Bankruptcy Code or under any other bankruptcy or insolvency act or law, state or federal, now or hereafter existing, or consent to, approve of, or acquiesce in, any such petition, action, or proceeding, (ii) apply for or acquiesce in the appointment of a receiver, assignee, liquidator, sequestrator, custodian, monitor, trustee, or similar officer for it or for all or any part of its property, (iii) make an assignment for the benefit of its creditors, or (iv) be unable generally to pay its debts as they become due;

(f) an involuntary petition or proposal shall be filed or an action or proceeding otherwise commenced seeking reorganization, arrangement, consolidation, or readjustment of the debts of any Obligated Party or DFA LLC or for any other relief under the Bankruptcy Code or under any other bankruptcy or insolvency act or law, state or federal, now or hereafter existing and such petition or proceeding shall not be dismissed within 60 days after the filing or commencement thereof or an order of relief (or comparable order under any other Requirement of Law) against any Obligated Party or DFA LLC shall be entered with respect thereto;

(g) a receiver, assignee, liquidator, sequestrator, custodian, monitor, trustee, or similar officer for any Obligated Party or DFA LLC or for all or any part of its property shall be appointed or a warrant of attachment, execution, or similar process shall be issued against any part of the property of any Obligated Party or DFA LLC;

(h) any Obligated Party shall file a certificate of dissolution under any Requirement of Law or shall be liquidated, dissolved, or wound-up (except in a transaction allowed under Section 8.9) or shall commence or have commenced against it any action or proceeding for dissolution, winding-up, or liquidation, or shall take any action in furtherance thereof (except in connection with a transaction allowed under Section 8.9);

(i) all or any material part of the property of any Obligated Party is nationalized, expropriated, condemned, recalled, seized, or otherwise appropriated, or custody or control of such property or of any Obligated Party is assumed by any Governmental Authority or any court of competent jurisdiction at the instance of any Governmental Authority, except where contested in good faith by proper proceedings diligently pursued where a stay of enforcement is in effect;

(j) one or more judgments, orders, decrees (including out-of-court settlements), or arbitration or mediation awards is entered against any Obligated Party involving liability in the aggregate for any or all of the Obligated Parties as to any single, related, or unrelated series of transactions, incidents, or conditions, of \$500,000 or more, and any such judgment, order, or decree remains unsatisfied, unvacated, and unstayed pending appeal for a period of 30 days after the entry thereof;

(k) any loss, theft, damage, or destruction of any item or items of Collateral or other property of any Obligated Party occurs that is not adequately covered by insurance and could reasonably be expected to result in a Material Adverse Effect;

(l) there is filed against any Obligated Party any action, suit, or proceeding under any federal or state racketeering statute (including the Racketeer Influenced and Corrupt Organization Act of 1970), which action, suit, or proceeding (i) is not dismissed within 120 days and (ii) could reasonably be expected to result in the confiscation or forfeiture of any material portion of the Collateral;

(m) for any reason any Loan Document ceases to be in full force and effect (other than in accordance with its terms or the terms hereof or with the written consent of

the Agents and the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders)) or any Lien with respect to any material portion of the Collateral intended to be secured thereby ceases to be, or is not, valid, perfected, and prior to all other Liens (other than Permitted Liens that are expressly permitted to have priority over the Agent's Liens) or is terminated, revoked or declared void (other than in accordance with its terms or the terms thereof or with the written consent of the Agents and the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders)) or for any reason any Loan Document is terminated, revoked, or declared void (other than in accordance with its terms or the terms hereof or with the written consent of the Agents and the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders)) or is challenged by any Obligated Party or any other party thereto;

(n) (i) an ERISA Event shall occur with respect to any Pension Plan or Multiemployer Plan that has resulted in, or could reasonably be expected to result in, liability of any Obligated Party under Title IV of ERISA to such Pension Plan, such Multiemployer Plan, or the PBGC in an aggregate amount in excess of \$500,000; (ii) the aggregate amount of Unfunded Pension Liability among all Pension Plans at any time exceeds \$500,000; or (iii) any Obligated Party or any ERISA Affiliate shall fail to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$100,000;

(o) there occurs a Change of Control;

(p) there occurs any event or events that, individually or in the aggregate, results in a Material Adverse Effect;

(q) [Intentionally Omitted];

(r) any default shall occur with respect to any Debt of DFA LLC in an outstanding principal amount that, individually or in the aggregate, exceeds \$3,000,000, or under any agreement or instrument under or pursuant to which any such Debt may have been issued, created, assumed, or guaranteed by DFA LLC or any Obligated Party, and such default is a payment default and such payment default shall continue for more than the period of grace, if any, therein specified, or the holders of any such Debt shall have accelerated the maturity of such Debt or have declared such Debt due and payable or required to be prepaid (other than by a regularly scheduled payment) prior to the stated maturity thereof, or any such Debt shall not be paid on the stated maturity date thereof; or

(s) failure by the Second Lien Agent under the Second Lien Debt Agreement or any lender, agent or trustee under any of the Refinancing Second Lien Debt Documents to comply in any material respect with, or any breach in any material respect by any such Person of, any terms or conditions of the Intercreditor Agreement or, in the case of the lenders and agents under any of the Refinancing Second Lien Debt Documents, any intercreditor agreement entered into by any such lenders and agents with either of the Agents.

Section 11.2 Remedies.

(a) During the existence of any Default or Event of Default, either of the Agents may, in its discretion, and the Agents shall, at the direction of the Majority Revolving Lenders, do one or more of the following at any time or times and in any order, without notice to or demand on any Obligated Party: (i) reduce the Maximum Revolver Amount, or the advance rates against the Net Amount of Eligible Accounts, Eligible Transportation Equipment and/or Eligible Inventory used in computing the Borrowing Base and/or any other advance rates or amounts used in computing the Borrowing Base (including increasing the amount of any Reserve); (ii) restrict the amount of or refuse to make Revolving Loans; and (iii) instruct the Letter of Credit Issuer to restrict or refuse to provide Letters of Credit.

(b) During the existence of any Event of Default, the Administrative Agent or the Collateral Agent, as applicable, shall, at the direction of the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders, but only with respect to clauses (iii) and (v) below), do one or more of the following: (i) take any of the actions described in clause (a) preceding, at any time or times and in any order, without notice to or demand on any Obligated Party; (ii) terminate the Revolving Credit Commitments, the obligation of the Revolving Lenders to make Revolving Loans under this Agreement, and the obligation of the Agents to cause the Letter of Credit Issuer to issue any Letter of Credit hereunder; (iii) declare all of the Obligations to be immediately due and payable (except for Obligations under Hedge Agreements or with respect to other Bank Products, which remedy shall be governed by the terms and conditions contained in such Hedge Agreements or the respective documents governing other Bank Products); provided, however, that upon the occurrence of any Event of Default described in Section 11.1(e), Section 11.1(f), Section 11.1(g), or Section 11.1(h), the Revolving Credit Commitments shall automatically and immediately expire and all Obligations shall automatically become immediately due and payable without notice or demand of any kind; (iv) require the Obligated Parties to provide cash collateral in an amount equal to 105% of all Obligations (contingent or otherwise) outstanding with respect to Letters of Credit; and (v) pursue its other rights and remedies under the Loan Documents and any Requirement of Law. Notwithstanding the foregoing, prior to the Revolving Facility Payment In Full, if an Event of Default shall occur and be continuing for 180 or more consecutive days, the Administrative Agent, at the direction of the Majority Term Lenders, shall declare all of the Obligations to be immediately due and payable (except for Obligations under Hedge Agreements or with respect to other Bank Products, which remedy shall be governed by the terms and conditions contained in such Hedge Agreements or in the respective documents governing other Bank Products) and commence (if not already commenced) and pursue its other rights and remedies under the Loan Documents and any applicable law in a commercially reasonable manner (it being understood and agreed that no Term Lender shall have the right to direct the manner or order of the exercise of rights or remedies and each of the Administrative Agent and the Collateral Agent may exercise its rights and remedies all in such order and in such manner as it shall determine in its sole discretion).

(c) During the existence of any Event of Default: (i) the Collateral Agent shall have, for the benefit of the Credit Providers, in addition to all other rights of the Credit Providers, the rights and remedies of a secured party under the Loan Documents and the UCC; (ii) the Collateral Agent may, at any time, take possession of the Collateral and keep it on any Obligated Party's premises, at no cost to the Credit Providers, or remove any part of the Collateral to such other place or places as the Collateral Agent may desire, or any Obligated Party shall, upon the Collateral Agent's demand, at such Obligated Party's cost, assemble the Collateral and make it available to the Collateral Agent at a place reasonably convenient to the Collateral Agent; (iii) the Collateral Agent or the Collateral Agent's designee may notify the Obligated Parties' Account Debtors that the Obligated Parties' Accounts have been assigned to the Collateral Agent and of the Agent's Lien therein, and may collect such Accounts directly and charge the collection costs and expenses to the Loan Account as a Revolving Loan; and (iv) the Collateral Agent may sell and deliver any Collateral at public or private sales, for cash, upon credit, or otherwise, at such prices and upon such terms as the Collateral Agent deems advisable, in its sole discretion, and may, if the Collateral Agent deems it reasonable, postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale. Without in any way requiring notice to be given in the following manner, each Obligated Party agrees that any notice by the Collateral Agent of sale, disposition, or other intended action hereunder or in connection herewith, whether required by the UCC or otherwise, shall constitute reasonable notice to the Obligated Parties if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least ten days prior to such action to the Obligated Parties' address specified in or pursuant to Section 15.8. If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Collateral Agent, Administrative Agent or the Lenders receive payment, and if the buyer defaults in payment, the Collateral Agent may resell the Collateral without further notice to any Obligated Party. In the event the Collateral Agent seeks to take possession of all or any portion of the Collateral by judicial process, each Obligated Party irrevocably waives the posting of any bond, surety, or security with respect thereto that might otherwise be required, any demand for possession prior to the commencement of any suit or action to recover the Collateral, and any requirement that the Collateral Agent retains possession and not dispose of any Collateral until after trial or final judgment. Each Obligated Party agrees that the Collateral Agent has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. In addition to any license granted pursuant to Section 10.16, the Collateral Agent is hereby granted a license or other right to use, without charge, each Obligated Party's labels, patents, copyrights, name, trade secrets, trade names, trademarks, and advertising matter, or any similar property, in completing production of, advertising, or selling any Collateral, and each Obligated Party's rights under all licenses and all franchise agreements shall inure to the Collateral Agent's benefit for such purpose. The proceeds of sale shall be applied first to all expenses of sale, including Attorney Costs, and then to the Obligations as provided in Section 4.6(b). The Collateral Agent will return any excess to the Obligated Parties, except as required by the Intercreditor

Agreement or as a court of competent jurisdiction shall otherwise direct, and the Obligated Parties shall remain liable for any deficiency.

(d) Without limiting the generality of the foregoing, each Obligated Party expressly agrees that, during the existence of any Event of Default, the Collateral Agent, without demand of performance or other demand, advertisement, or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon any Obligated Party or any other Person (all and each of which demands, advertisements, and notices are hereby expressly waived to the maximum extent permitted by the UCC and other applicable law), may forthwith enter upon the premises of any Obligated Party where any Collateral is located through self-help, without judicial process, without first obtaining a final judgment or giving such Obligated Party or any other Person notice and opportunity for a hearing on the Collateral Agent's claim or action and may collect, receive, assemble, process, appropriate, and realize upon the Collateral, or any part thereof, and may forthwith sell, lease, license, assign, give an option or options to purchase, or sell or otherwise dispose of and deliver said Collateral (or contract to do so), or any part thereof, in one or more parcels at a public or private sale or sales, at any exchange at such prices as the Collateral Agent may deem acceptable, for cash or on credit or for future delivery without assumption of any credit risk. The Collateral Agent or any other Credit Provider shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase for the benefit of the Collateral Agent and/or one or more of the other Credit Providers, the whole or any part of said Collateral so sold, free of any right or equity of redemption, which equity of redemption each Obligated Party hereby releases. Such sales may be adjourned and continued from time to time with or without notice. The Collateral Agent shall have the right to conduct such sales on any Obligated Party's premises or elsewhere and shall have the right to use each Obligated Party's premises without charge for such time or times as the Collateral Agent deems necessary or advisable.

(e) Each Obligated Party further agrees, at the Collateral Agent's request, to assemble the Collateral and make it available to the Collateral Agent at a place or places designated by the Collateral Agent that are reasonably convenient to the Collateral Agent and such Obligated Party, whether at such Obligated Party's premises or elsewhere. Until the Collateral Agent is able to effect a sale, lease, or other disposition of the Collateral, the Collateral Agent shall have the right to hold or use the Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving the Collateral or its value or for any other purpose deemed appropriate by the Collateral Agent. The Collateral Agent shall have no obligation to any Obligated Party to maintain or preserve the rights of such Obligated Party as against third parties with respect to any Collateral while such Collateral is in the possession of the Collateral Agent. The Collateral Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of the Collateral, or any part thereof, and to enforce any of the Collateral Agent's remedies (for the benefit of the Collateral Agent and the other Credit Providers), with respect to such appointment without prior notice or hearing as to such appointment. The Collateral Agent shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization, or sale to the Obligations as provided in Section 4.6(b), and only after so paying over such net proceeds, and after the payment by the Collateral

Agent of any other amount required by any provision of law (and subject to the terms of the Intercreditor Agreement or a decision, order or ruling of a court of competent jurisdiction), need the Collateral Agent account for the surplus, if any, to the applicable Obligated Party. To the maximum extent permitted by applicable law, each Obligated Party waives all claims, damages, and demands against the Collateral Agent or any other Credit Provider arising out of the repossession, retention, or sale of the Collateral except to the extent resulting from the gross negligence or willful misconduct of the Collateral Agent or such other Credit Provider as determined in a final, nonappealable judgment by a court of competent jurisdiction. Each Obligated Party agrees that ten days prior notice by the Collateral Agent of the time and place of any public sale or of the time after which a private sale may take place is reasonable notification of such matters. Each Obligated Party shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations, including any attorneys' fees or other expenses incurred by the Collateral Agent or any other Credit Provider to collect such deficiency.

(f) Except as otherwise specifically provided herein or in the other Loan Documents, each Obligated Party hereby waives presentment, demand, protest, or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Agreement or any Collateral.

(g) To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, each Obligated Party acknowledges and agrees that it is not commercially unreasonable for the Collateral Agent (i) to fail to incur expenses reasonably deemed significant by the Collateral Agent to prepare Collateral for disposition or otherwise to complete raw material or work-in-process into finished goods or other finished products for disposition, (ii) if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as such Obligated Party, for expressions of interest in acquiring all or any portion of such Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession, or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection, or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants, and other professionals to

assist the Collateral Agent in the collection or disposition of any of the Collateral. Each Obligated Party acknowledges that the purpose of this Section 11.2(g) is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would not be commercially unreasonable in the Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 11.2(g). Without limiting the foregoing, nothing contained in this Section 11.2(g) shall be construed to grant any rights to any Obligated Party or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Agreement or by Requirement of Law in the absence of this Section 11.2(g).

(h) Without limiting Section 10.12(c), during the existence of an Event of Default, each Obligated Party, at the Collateral Agent's request, shall execute and deliver to the Collateral Agent such documents as the Collateral Agent shall require to grant the Collateral Agent access to any post office box in which collections of Accounts are received.

(i) During the existence of an Event of Default, the Obligated Parties will, at the Collateral Agent's request, with respect to all Inventory financed by Letters of Credit, instruct all suppliers, carriers, forwarders, customs brokers, warehouses, or others receiving or holding cash, checks, Inventory, documents, or instruments in which the Collateral Agent holds a security interest to deliver them to the Collateral Agent and/or subject to the Collateral Agent's order, and if they shall come into any Obligated Party's possession, to deliver them, upon request, to the Collateral Agent in their original form. The Obligated Parties shall also, at the Collateral Agent's request, during the existence of an Event of Default, designate the Collateral Agent as the consignee on all bills of lading and other negotiable and non-negotiable documents or cause all such documents to designate the applicable Obligated Party as the consignee subject to the Agent's Liens.

(j) During the existence of an Event of Default, each Obligated Party hereby waives all rights to notice and hearing prior to the exercise by the Collateral Agent of the Collateral Agent's rights to repossess the Collateral without judicial process or to replevy, attach, or levy upon the Collateral without notice or hearing.

Section 11.3 Term Lender Purchase Option.

(a) The Administrative Agent agrees that it will provide the Term Lenders prompt written notice of the first time the Aggregate Revolver Outstandings shall become \$90,000,000 or less (such notice, the "Revolver Outstandings Notice"). Following delivery by the Administrative Agent to the Term Lenders of the Revolver Outstandings Notice, the Term Lenders shall have the option, exercisable no later than five Business Days after delivery of the Revolver Outstandings Notice, to purchase all (but not less than all) of the Revolving Obligations from the Credit Providers holding same (such Credit Providers, together with the Agents, the "Revolving Obligation Credit Providers") and to assume all (but not less than all) of the commitments and other obligations of the Revolving Obligation Credit Providers under the Loan Documents (other than the obligations of the Administrative Agent under this Section 11.3 and obligations of the

Revolving Obligation Credit Providers under Hedge Agreements and other Bank Products) (such commitments and other obligations to be assumed, the “Assumed Obligations”). The Term Lenders electing to purchase Revolving Obligations and assume Assumed Obligations pursuant to this Section 11.3 (the “Purchasing Parties”) shall exercise such option through delivery of written notice (a “Purchase Notice”) to the Administrative Agent, which notice shall irrevocably obligate the Purchasing Parties to purchase the Revolving Obligations and assume the Assumed Obligations. The Administrative Agent shall promptly deliver to each Revolving Lender a copy of each Purchase Notice received by it. Each Purchasing Party shall participate in such purchase and assumption on a Purchasing Party Pro Rata Basis (as hereafter defined). For purposes of this Section 11.3, “Purchasing Party Pro Rata Basis” means, with respect to a Purchasing Party, the percentage obtained by dividing the aggregate principal amount of Term Loans held by such Purchasing Party by the aggregate principal amount of Term Loans held by all the Purchasing Parties. The foregoing purchase and assumption option shall be irrevocable once exercised, including, without limitation, in the event that the Aggregate Revolver Outstandings shall exceed \$90,000,000 on the Purchase Date (as defined below). The Agents, the Revolving Lenders and the other Revolving Obligation Credit Providers shall have no obligation at any time prior to the consummation of the purchase and assumption to forgo providing any financial accommodations to any of the Borrowers or other Obligated Parties but after the purchase and assumption option has been timely exercised in accordance with the terms hereof and until the earliest of the consummation of the purchase and assumption, the Purchase Date or the revocation or termination of the purchase and assumption option, the Agents shall not commence any foreclosure or other action to sell or otherwise realize upon Collateral (it being agreed that the foregoing shall not prohibit either Agent from applying any Collateral or proceeds of Collateral received by it to the payment or cash collateralization of Revolving Obligations). For the avoidance of doubt, (i) there shall be only one purchase and assumption option under this Section 11.3, (ii) only one Revolver Outstandings Notice will be delivered under this Section 11.3 and (iii) if the Purchasing Parties do not timely exercise the above purchase and assumption option or any of the Purchasing Parties does not timely comply with its obligations to purchase its share of all of the Revolving Obligations and assume its share of all of the Assumed Obligations (so that all Revolving Obligations are purchased and all Assumed Obligations are assumed on the Purchase Date in accordance with the terms hereof), the purchase and assumption option hereunder shall be irrevocably revoked and terminated.

(b) On the date specified by the Administrative Agent (which date shall not be later than ten Business Days after the date of the Revolver Outstandings Notice and no earlier than six Business Days after the date of the Revolver Outstandings Notice) (the “Purchase Date”), the Revolving Obligation Credit Providers shall sell and assign to the Purchasing Parties, and the Purchasing Parties shall purchase and assume from the Revolving Obligation Credit Providers, all of the respective Revolving Obligations and Assumed Obligations of the Revolving Obligation Credit Providers. The Purchasing Parties shall be irrevocably and unconditionally obligated to effect such purchase and assumption on the terms herein on the Purchase Date. The Obligated Parties and the other parties hereto hereby agree that each Revolving Obligation Credit Provider shall have the right, at any time after any Purchase Notice is delivered by a Term Lender to the

Administrative Agent, to terminate any and all Hedge Agreements and other Bank Products extended or provided by it to any Obligated Party, all without any liability to such Revolving Obligation Credit Provider and notwithstanding anything to the contrary contained in any such Hedge Agreement or any document governing any such other Bank Product.

(c) The Purchasing Parties shall (i) on the Purchase Date (A) pay to the Administrative Agent, on behalf of the relevant Revolving Obligation Credit Providers, as the purchase price therefor the full amount of all the Revolving Obligations then outstanding and unpaid (including in any event (1) all outstanding principal of the Revolving Obligations, (2) all accrued and unpaid interest (including interest accruing on or after the commencement of a bankruptcy or similar proceeding by or against any Obligated Party, whether or not a claim for such interest is, or would be, allowed in such proceeding), (3) all fees, breakage costs (to the extent actually incurred), matured indemnification obligations and expenses, including reasonable attorneys' fees and legal expenses owing under the Loan Documents, (4) all unreimbursed amounts drawn under any Letters of Credit, but excluding the undrawn amount of any outstanding Letters of Credit, and (5) all amounts owing to either of the Agents and any of the other Revolving Obligation Credit Providers with respect to any Hedge Agreements or other Bank Products extended or provided to any Obligated Party (including, in any event, all amounts owing with respect to any Hedge Agreements or other Bank Products extended or provided to any Obligated Party terminated on or prior to the Purchase Date)) and (B) furnish cash collateral to the Administrative Agent, on behalf of the relevant Revolving Obligation Credit Providers, in an amount equal to the sum of (1) an amount equal to 105% of the aggregate undrawn amount of all Letters of Credit outstanding on the Purchase Date; provided that such amount shall be held by the Administrative Agent as collateral for the obligations arising in connection with a drawing under any such Letters of Credit and fees and expenses related thereto (and applied to satisfy such obligations as they become due) and (2) for each Hedge Agreement or other Bank Product extended or provided to any Obligated Party not terminated on or prior to the Purchase Date, an amount reasonably determined by the Revolving Obligation Credit Party party to or otherwise providing such Hedge Agreement or other Bank Product to be necessary to collateralize its credit risk arising out of such Hedge Agreement or other Bank Product, (ii) upon and after the Purchase Date, reimburse the Revolving Obligation Credit Providers within five Business Days of written demand for any loss, cost, damage or expense (including reasonable attorneys' fees and legal expenses) related to any checks or other payments provisionally credited to the Revolving Obligations and/or as to which any of the Revolving Obligation Credit Providers have not yet received final payment, (iii) if the cash collateral under clause (i)(B)(2) above with respect to any Hedge Agreement or other Bank Product is less than the amount owing by the relevant Obligated Party under or with respect to such Hedge Agreement or other Bank Product, after the Purchase Date reimburse the applicable Revolving Obligation Credit Provider within five Business Days of written demand for any such deficiency, (iv) upon and after the Purchase Date, within five Business Days after the written request from the Administrative Agent, reimburse the Revolving Obligation Credit Providers in respect of matured indemnification obligations of each Obligated Party under any of the Loan Documents and (v) on the Purchase Date, assume all of the Assumed Obligations. Each

of the Purchasing Parties shall fund its Purchasing Party Pro Rata Basis of any payment required to be made under this clause (c) and shall assume its Purchasing Party Pro Rata Basis of the Assumed Obligations.

(d) Such purchase price and cash collateral shall be remitted on the Purchase Date by wire transfer in United States dollars and in immediately available funds to the Administrative Agent to such bank account of the Administrative Agent as the Administrative Agent may designate in writing to the Purchasing Parties for such purpose. The Administrative Agent shall, promptly following its receipt thereof, distribute the amounts received by it in respect of such purchase price to the relevant Revolving Obligation Credit Providers, pro rata according to the respective Revolving Obligations owing to the Revolving Obligation Credit Providers sold pursuant to this Section 11.3. Interest shall be calculated to (and including) the day on which such purchase and assumption shall occur if the amounts so paid by the Purchasing Parties to the bank account designated by the Administrative Agent are all received in such bank account prior to 12:00 noon, New York time, and interest shall be calculated to and including the next Business Day if any of the amounts so paid by the Purchasing Parties to the bank account designated by the Administrative Agent are received in such bank account later than 12:00 noon, New York time.

(e) Such purchase and assumption shall be expressly made without representation or warranty of any kind by the Revolving Obligation Credit Providers as to the Revolving Obligations, the Assumed Obligations, the Collateral or otherwise and without recourse to the Revolving Obligation Credit Providers, except that each Revolving Obligation Credit Provider shall represent and warrant to the Purchasing Parties on the Purchase Date immediately before giving effect to the purchase and assumption that: (i) such Revolving Obligation Credit Provider owns its portion of the Revolving Obligations to be sold by it under this Section 11.3 free and clear of any liens or encumbrances and (ii) such Revolving Obligation Credit Provider has the right to sell its portion of the Revolving Obligations to be sold by it under this Section 11.3 and its sale is duly authorized by all necessary action on its part. The terms of such purchase and assumption shall be set forth in documentation prepared by counsel to the Administrative Agent (at the reasonable expense of the Purchasing Parties to be paid on the Purchase Date as part of the purchase price) which is mutually acceptable to each of the Administrative Agent, the other Revolving Obligation Credit Providers and the Purchasing Parties and consistent with the terms hereof. The purchase and assumption documentation shall contain an unconditional waiver by the Purchasing Parties and the Obligated Parties of all claims against the Revolving Obligation Credit Providers arising out of the Loan Documents and the transactions contemplated thereby and an unconditional release and discharge of the Revolving Obligation Credit Providers of all Assumed Obligations (including, without limitation, any commitment or agreement to provide or arrange any financial accommodations to any Obligated Party under this Agreement). Each Revolving Obligation Credit Provider shall retain all rights to indemnification provided in the Loan Documents for all periods prior to the purchase of the Revolving Obligations pursuant to this Section 11.3.

(f) Each of the parties hereto (x) agrees that the provisions of Section 13.2 shall not apply to the purchase and assumption contemplated by this Section 11.3 and (y) consents to such purchase and assumption.

(g) The obligations of the Revolving Obligation Credit Providers to sell and assign their respective Revolving Obligations and Assumed Obligations under this Section 11.3 are several and not joint and several. If a Revolving Obligation Credit Provider breaches its obligation to sell its Revolving Obligations or assign its Assumed Obligations under this Section 11.3 (a “Defaulting Revolving Obligation Credit Provider”), no other Revolving Obligation Credit Provider will be obligated to purchase or assume the Defaulting Revolving Obligation Credit Provider’s Revolving Obligations or Assumed Obligations for resale or assignment to the Purchasing Parties. A Revolving Obligation Credit Provider that complies with this Section 11.3 will not be in default of this Section 11.3 or otherwise be deemed liable for any action or inaction of any Defaulting Revolving Obligation Credit Provider; provided that nothing in this clause (g) will require the Purchasing Parties to purchase less than all of the Revolving Obligations to be sold under this Section 11.3.

ARTICLE 12

TERM AND TERMINATION

Section 12.1 Term and Termination.

(a) The term of this Agreement shall end on the Stated Term Loan Termination Date unless sooner terminated in accordance with the terms hereof. Either of the Agents may, and upon direction from the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders) the Agents shall, terminate this Agreement, without notice to the Obligated Parties, during the existence of an Event of Default. Upon the effective date of termination of this Agreement for any reason whatsoever, all Obligations (including all unpaid principal, accrued and unpaid interest, and any early termination or prepayment fees, but excluding indemnification obligations to the extent no claim with respect thereto has been asserted and remains unsatisfied) shall become immediately due and payable, the Revolving Lenders shall have no obligation to make any Revolving Loans, the Agents shall have no obligation to cause the Letter of Credit Issuer to issue any Letter of Credit, and the Borrowers shall immediately arrange for the cancellation and return of all Letters of Credit then outstanding or delivery to the Collateral Agent of a Supporting Cash Deposit or a Supporting Letter of Credit in accordance with Section 2.4(g). Notwithstanding the termination of this Agreement, until all Obligations are indefeasibly paid and performed in full, the Obligated Parties shall remain bound by the terms of this Agreement and the other Loan Documents and shall not be relieved of any of their Obligations hereunder or thereunder, and the Agents and the Lenders shall retain all their rights and remedies hereunder and thereunder (including the Agent’s Liens in and all rights and remedies with respect to all then existing and after-acquired or after-arising Collateral).

(b) Notwithstanding the payment in full of the Obligations, the Agents shall not be required to terminate the Agent's Liens in any of the Collateral unless, with respect to any loss or damage either of the Agents or any Lender may incur as a result of the dishonor or return of any payment items applied to the Obligations, the Agents shall have received either (i) a written agreement, executed by the Obligated Parties and any other Person deemed financially responsible by the Agents and whose loans or other advances to the Borrowers, or any of them, are used in whole or in part to satisfy the Obligations, indemnifying the Agents and the other Credit Providers from any such loss or damage or (ii) such monetary reserves and Liens on the Collateral for such period of time as the Agents, in their reasonable credit judgment, may deem necessary to protect the Agents and the other Credit Providers from any such loss or damage. The provisions of Section 2.4(f), Section 2.5, Section 4.7, Article 5, this Section 12.1(b), Section 14.7, Section 14.16(d), Section 15.7, Section 15.11, and all indemnification obligations of any of the Obligated Parties shall in all events survive any termination of the Commitments or this Agreement.

ARTICLE 13

AMENDMENTS; WAIVERS; PARTICIPATIONS; ASSIGNMENTS; SUCCESSORS

Section 13.1 Amendments and Waivers.

(a) Except as specified in clause (b) following, no amendment or waiver of any provision of this Agreement or any other Loan Document (other than Hedge Agreements), and no consent with respect to any departure by any Obligated Party therefrom, shall be effective unless such amendment, modification, or consent is in writing, signed by the Majority Lenders or, in the case of any amendment or waiver of, or any consent with respect to, any provision of Section 8.21 or any provision of the Intercreditor Agreement or the GE Intercreditor Agreement, the Majority Lenders and both Agents, and, in each case, the Obligated Parties that are party thereto, and then any such amendment, waiver, or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) Unless it is in writing and signed by all of the Lenders and the Obligated Parties that are party thereto and acknowledged by the Agents, no amendment, waiver, or consent shall do any of the following:

- (i) increase (other than pursuant to an Incremental Commitment Agreement or an assignment under Section 13.2) or extend the Commitment of any Lender;
- (ii) amend the second sentence of Section 2.2(a);
- (iii) increase the Maximum Revolver Amount, the Letter of Credit Subfacility or the Dollar amount set forth in the first sentence of Section 2.2(j), in each instance, in excess of the respective amount set forth on the Closing Date, except as permitted in accordance with the terms of this Agreement;

- (iv) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees (other than fees payable to BofA, Wachovia, the Administrative Agent or the Collateral Agent solely for such Person's benefit), or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document;
- (v) reduce the principal of, or the rate of interest specified herein on any Loan, or any fees or other amounts payable hereunder or under any other Loan Document;
- (vi) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans that is required for the Lenders, or any of them, to take any action hereunder;
- (vii) change the definition of Borrowing Base, Blocked Availability Amount, Eligible Accounts, Eligible Inventory, Eligible Rental and Sale Equipment, Eligible Spare Parts Inventory, Eligible Transportation Equipment or Unused Availability in a manner that would result in an increase in Unused Availability;
- (viii) change the definition of Majority Lenders;
- (ix) amend this Section 13.1 or any provision of this Agreement providing for consent or other action by all of the Lenders;
- (x) other than as permitted by Section 14.11, release any Guaranties of the Obligations or release Collateral;
- (xi) amend Section 4.6(b); or
- (xii) expressly subordinate the payment of any Obligation to any other Debt;

provided that (A) no amendment, waiver, or consent shall, unless in writing and signed by the Administrative Agent, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document, (B) no amendment, waiver, or consent shall, unless in writing and signed by BofA and Wachovia, acting in their respective capacities as the Letter of Credit Issuer, affect the rights or duties of the Letter of Credit Issuer under this Agreement or any other Loan Document related to any Letter of Credit issued or to be issued by it, (C) no amendment, waiver, or consent shall, unless in writing and signed by the Collateral Agent, affect the rights or duties of the Collateral Agent under this Agreement or any other Loan Document, (D) Schedule 1.1(A) may be amended from time to time by the Agents alone to reflect assignments of Commitments in accordance with this Agreement and as contemplated by Section 2.1(c), (E) any Loan Document relating to Bank Products may be amended by the applicable Obligated Parties and the Person providing such Bank Products without the approval or consent of any other Lender, the Administrative Agent or the Collateral Agent, (F) except as specified for in clause (i) preceding, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver, or consent hereunder and (G) amendments and modifications to the

Collateral Documents in connection with the provision of any Incremental Commitments by Incremental Lenders may be made as contemplated in Section 2.1(c)(ii) (with the consent of the Administrative Agent and/or the Collateral Agent, as appropriate).

(c) If any fees are paid to the Lenders as consideration for amendments, waivers, or consents with respect to this Agreement, at the Agents' election, such fees may be paid only to those Lenders that agree to such amendments, waivers, or consents within the time specified for submission thereof.

(d) If, in connection with any proposed amendment, waiver, or consent requiring the consent of all of the Lenders, the consent of the Majority Lenders is obtained but the consent of the other Lenders is not obtained (any such Lender whose consent is not obtained being referred to as a "Non-Consenting Lender"), then, if neither BofA nor Wachovia (in its individual capacity as a Lender) is a Non-Consenting Lender, at the Obligated Parties' request either or both of BofA or Wachovia (in its individual capacity as a Lender) or an Eligible Assignee shall, subject to the requirements of Section 13.2(a), have the right (but not the obligation) to purchase from each Non-Consenting Lender, and each Non-Consenting Lender agrees that it shall sell, such Non-Consenting Lender's Loans and Commitments for an amount equal to the aggregate outstanding principal balances thereof plus all accrued interest and fees with respect thereto through the date of sale pursuant to one or more Assignment and Acceptances, without premium or discount.

Section 13.2 Assignments; Participations.

(a) Any Lender (the "assigning Lender") may, with the written consent of the Agents (which consent shall not be unreasonably withheld or delayed) and if no Default or Event of Default exists with the written consent of the Borrowers (which consent shall not be unreasonably withheld or delayed), assign and delegate to one or more Eligible Assignees (provided that no consent of the Agents or the Borrowers shall be required in connection with any assignment and delegation (i) by an assigning Lender to an Affiliate of the assigning Lender or to another Lender or (ii) of Term Loans to an Eligible Assignee that is a bank, financial institution or other entity which extends credit or buys term loans in the ordinary course of its business (but excluding any competitor of the Borrowers)) (each, an "Assignee") all, or any ratable part of all, of the Revolving Credit Commitment (if any), the Loans and the other rights and obligations of the assigning Lender hereunder, in a minimum amount of \$10,000,000 and integral amounts of \$5,000,000 in excess thereof (provided that, unless the assigning Lender has assigned and delegated all of its Loans and Revolving Credit Commitment, no such assignment and/or delegation shall be permitted unless, after giving effect thereto, the assigning Lender retains a Revolving Credit Commitment (or, with respect to a Term Lender, Term Loans or, with respect to a Revolving Lender after the termination of the Revolving Credit Commitments, Revolving Loans) in a minimum amount of \$10,000,000); provided, further, that the Obligated Parties and the Agents may continue to deal solely and directly with the assigning Lender in connection with the interest so assigned to an Assignee until (i) written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, shall have been given to Ahern and the

Agents by the assigning Lender and the Assignee, (ii) the assigning Lender and the Assignee shall have delivered to Ahern and the Agents an Assignment and Acceptance substantially in the form of Exhibit F (an "Assignment and Acceptance"), together with, in the case of delivery to the Administrative Agent, any Term Loan Note subject to such assignment, and (iii) the assigning Lender or the Assignee has paid to each of the Agents a processing fee in the amount of Three Thousand Five Hundred Dollars (\$3,500). If applicable, the Borrowers agree to promptly execute and deliver new Term Loan Notes and replacement Term Loan Notes as reasonably requested by the Administrative Agent to evidence assignments of Term Loans in accordance herewith.

(b) From and after the date that the Agents notify the assigning Lender that they have received an executed Assignment and Acceptance and payment of the above-referenced processing fee, if applicable, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations, including, but not limited to (if applicable), the obligation to participate in Letters of Credit, have been assigned to the Assignee pursuant to such Assignment and Acceptance, shall have the rights and obligations of a Term Lender or a Revolving Lender, as applicable, under the Loan Documents and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by the assigning Lender pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of the assigning Lender's rights and obligations under this Agreement, the assigning Lender shall cease to be a party hereto).

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties, or representations made in or in connection with this Agreement or any other Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency, or value of this Agreement or any other Loan Document furnished pursuant hereto or the attachment, perfection, or priority of any Lien granted by any of the Obligated Parties to the Collateral Agent or any Lender in the Collateral; (ii) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Obligated Parties or the performance or observance by the Obligated Parties of any of their respective obligations under this Agreement or any other Loan Document furnished pursuant hereto; (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such Assignee will, independently and without reliance upon either of the Agents, the assigning Lender, or any other Lender, and based on such documents and information as such Assignee shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such Assignee appoints and authorizes the Administrative Agent and the Collateral Agent to take such action as administrative agent or collateral agent, as applicable, on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent or the Collateral Agent, as

applicable, by the terms hereof, together with such powers, including the discretionary rights and incidental powers, as are reasonably incidental thereto; (vi) such Assignee agrees that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as a Term Lender or Revolving Lender, as applicable; (vii) such Assignee represents and warrants that it is an Eligible Assignee; and (viii) if the subject assignment relates to an assignment of all or a portion of a Revolving Credit Commitment or of Revolving Loans, such Assignee represents and warrants that it is not a Term Lender, a Second Lien Lender or any affiliate of either of them or, if it is a Term Lender, a Second Lien Lender or any affiliate of either of them, it represents and warrants in the Assignment and Acceptance which of those Persons it is.

(d) Immediately upon satisfaction of the requirements of Section 13.2(a), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Revolving Credit Commitments arising therefrom. The Revolving Credit Commitment allocated to each Assignee shall reduce the Revolving Credit Commitment of the assigning Lender pro tanto.

(e) Any Lender (the "originating Lender") may at any time sell to one or more Participants participating interests in any Loans, the Revolving Credit Commitment of the originating Lender, and the other interests of the originating Lender hereunder and under the other Loan Documents; provided that (i) the originating Lender's obligations under this Agreement shall remain unchanged, (ii) the originating Lender shall remain solely responsible for the performance of such obligations, (iii) the Obligated Parties and the Agents shall continue to deal solely and directly with the originating Lender in connection with the originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has rights to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document except for the matters set forth in, in the case of a Lender that is a Revolving Lender, Section 13.1(b)(i), Section 13.1(b)(ii), and Section 13.1(b)(iii) and, in the case of a Lender that is a Term Lender, Section 13.3(b)(i), and (v) all amounts payable by the Borrowers hereunder shall be determined as if the originating Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of setoff in respect of its participating interest in amounts owing under this Agreement to the same extent and subject to the same limitation as if the amount of its participating interest were owing directly to it as a Lender under this Agreement.

(f) Notwithstanding any other provision in this Agreement, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Board or U.S. Treasury Regulation 31 C.F.R. §203.14, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law.

(g) Notwithstanding anything to the contrary contained herein or in any other Loan Document, any Term Lender, any Second Lien Lender or any affiliate of either of them (excluding in any event any such Person that is a Revolving Lender on the Closing Date) that after the Closing Date acquires, by assignment or otherwise, any Revolving Credit Commitment or any Revolving Loans (such Person, a “Dual Lender”) shall, for purposes of voting or consenting to matters with respect to the Loan Documents and determining Pro Rata Shares, be deemed not to hold any Revolving Credit Commitments, any Revolving Loans or any other Revolving Obligations; provided, however, that the Administrative Agent may agree in writing in its sole discretion that the provisions of this Section 13.2 (g) shall not apply to a Dual Lender that (x) is not itself a Second Lien Lender at the time such Dual Lender first acquires any Revolving Credit Commitment or any Revolving Loans and (y) is an Eligible Assignee under clause (i) of such definition that is a commercial bank, commercial finance company or other asset-based lender that provides asset-based revolving credit loans in the ordinary course of its business (and not a hedge fund).

(h) Notwithstanding any other provision of this Section 13.2, if an assigning Lender desires pursuant to this Section 13.2 to assign to a Second Lien Lender or any affiliate thereof (other than (x) any Person that is a Revolving Lender on the Closing Date or (y) Liberty Harbor Master Fund I, L.P. (“Liberty Harbor”)) (such Second Lien Lender or affiliate intended to be party to such assignment, the “Intended Assignee”) all or any portion of such assigning Lender’s Revolving Credit Commitment and/or Revolving Loans, such assigning Lender will be required to provide written notice thereof (the “ROFR Notice”) to Liberty Harbor and each Agent not less than two (2) Business Days prior to the intended date of such assignment and provide Liberty Harbor with a right of first refusal, as set forth in this Section 13.2(h), with respect to the assignment of such Revolving Credit Commitment and Revolving Loans intended to be assigned by such assigning Lender. The ROFR Notice shall set forth all of the material terms of the proposed assignment to the Intended Assignee (including the amount of the Revolving Credit Commitment to be assigned by the assigning Lender, the aggregate amount or percentage of the Revolving Loans of the assigning Lender to be assigned by the assigning Lender and any other economic terms relevant to such proposed assignment, including any discounts to be realized or fees to be paid) and shall be accompanied by an Assignment and Acceptance between such assigning Lender and Liberty Harbor for such assignment reflecting such terms to be executed by Liberty Harbor. Upon receipt of a ROFR Notice and related Assignment and Acceptance, Liberty Harbor will have the right to purchase such Revolving Credit Commitment and Revolving Loans of the assigning Lender on the terms set forth in such ROFR Notice and such Assignment and Acceptance, which right may only be exercised with respect to all of the Revolving Credit Commitment and Revolving Loans being offered pursuant to such ROFR Notice and Assignment and Acceptance, exercisable by Liberty Harbor by: (i) delivering written notice thereof to the assigning Lender and the Agents (the “Election Notice”) within three (3) Business Days after receipt of such ROFR Notice; (ii) executing and delivering to the assigning Lender (with a copy to each Agent) the Assignment and Acceptance for such assignment provided by the assigning Lender with the ROFR Notice and delivering to the assigning Lender and the Agents all information, notices and other documents required under this Section 13.2 to assign such Revolving Credit Commitment and Revolving

Loans (collectively with such Assignment and Acceptance, the “Assignment Materials”), within ten (10) Business Days after delivery of the Election Notice (or such later time as agreed to by the assigning Lender in its sole discretion as notified in writing to Liberty Harbor and each Agent); and (iii) consummating the assignment within ten (10) Business Days after delivery of the Election Notice (or such later time as agreed to by the assigning Lender in its sole discretion as notified in writing to Liberty Harbor and each Agent) (the “ROFR Closing Date”). If Liberty Harbor fails to timely deliver an Election Notice and/or timely execute and/or deliver the Assignment Materials and/or timely consummate the assignment it shall be deemed to have irrevocably waived its rights under this Section 13.2(h) with respect to such ROFR Notice.

If Liberty Harbor timely delivers an Election Notice and timely executes and/or delivers the Assignment Materials as required above, the closing of the assignment shall be on the ROFR Closing Date therefor. As a condition to the effectiveness of the assignment on such ROFR Closing Date (i) Liberty Harbor shall pay or cause to be paid to the assigning Lender in immediately available funds all amounts required to be paid under the Assignment Materials or otherwise agreed between the assigning Lender and Liberty Harbor and (ii) either the assigning Lender or Liberty Harbor shall have paid to each Agent the processing fee payable to such Agent pursuant to Section 13.2(a). If the conditions required under the preceding sentence are not satisfied on the ROFR Closing Date, then Liberty Harbor shall be deemed to have irrevocably waived its rights under this Section 13.2(h) with respect to such assignment. Any such assignment shall be subject to the requirements of this Section 13.2 (including, without limitation, those in clause (a) thereof). Each of the Agents and the Borrowers hereby consents to any assignment to Liberty Harbor contemplated by this clause (h), but subject to clause (g) above.

If Liberty Harbor waives (or is deemed to have waived) its right to acquire the Revolving Credit Commitment and Revolving Loans offered by the assigning Lender in a given ROFR Notice, the Revolving Credit Commitment and Revolving Loans offered by the assigning Lender may be sold by the assigning Lender to the Intended Assignee, on the same terms offered to Liberty Harbor in the ROFR Notice, at any time during the next thirty (30) Business Day period subsequent to the expiration of the three (3) Business Day period for Liberty Harbor to respond to the ROFR Notice.

In determining if an assigning Lender must comply with this Section 13.2(h) with respect to an assignment of all or a portion of its Revolving Credit Commitment and/or Revolving Loans to an Assignee, such assigning Lender shall be entitled to rely conclusively on any representation and warranty made by such Assignee in the relevant Assignment and Acceptance or in a certificate of such Assignee as to whether or not such Assignee is a Second Lien Lender or any affiliate thereof.

Nothing contained herein shall limit the right of either Agent or the Borrowers under this Section 13.2 to object to any assignment to any Second Lien Lender or any of its affiliates of all or any portion of the Revolving Credit Commitment and/or Revolving Loans of a Revolving Lender.

Section 13.3 Amendments and Waivers - Additional Voting Requirements.

(a) In addition to the requirements set forth in Section 13.1, unless it is in writing and signed by all of the Revolving Lenders, no amendment or waiver of any provision of this Agreement or any other Loan Document (other than Hedge Agreements or any other agreements for any Bank Products), and no consent with respect to any departure by any Obligated Party therefrom, shall do any of the following:

- (i) change the percentage of the Revolving Credit Commitments or of the aggregate unpaid principal amount of the Revolving Loans or any other Revolving Obligations that is required for the Revolving Lenders, or any of them, to take any action hereunder;
- (ii) change the definition of Majority Revolving Lenders or Supermajority Revolving Lenders;
- (iii) amend this Section 13.3 or any other provision of this Agreement providing for consent or other action by all of the Revolving Lenders, by the Supermajority Revolving Lenders, by the Majority Revolving Lenders or by the Majority Lenders; or
- (iv) reduce the Supplemental Blocked Availability Amount below \$20,000,000.

(b) In addition to the requirements set forth in Section 13.1, unless it is in writing and signed by all of the Term Lenders, no amendment or waiver of any provision of this Agreement or any other Loan Document (other than Hedge Agreements or any other agreements for any Bank Products), and no consent with respect to any departure by any Obligated Party therefrom, shall do any of the following:

- (i) increase or extend the Term Loan Commitment of any Term Lender or increase (other than pursuant to an assignment under Section 13.2) the Term Loan of any Term Lender;
- (ii) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Term Lenders (or any of them) hereunder or under any other Loan Document;
- (iii) reduce the principal of, or the rate of interest specified herein on, any Term Loan, or any fees (including, without limitation, the Early Term Loan Prepayment Fee or any fees payable to the Term Lenders pursuant to Section 13.3(f)) or other amounts constituting Term Loan Obligations payable hereunder or under any other Loan Document;
- (iv) change the percentage of the Term Loan Commitments or of the aggregate unpaid principal amount of the Term Loans that is required for the Term Lenders, or any of them, to take any action hereunder;

- (v) change the definition of Majority Term Lenders;
- (vi) amend this Section 13.3 or any other provision of this Agreement providing for consent or other action by all of the Term Lenders or by the Majority Term Lenders;
- (vii) other than as permitted by Section 14.11, after the Revolving Facility Payment In Full release any Guaranties of the Obligations or release Collateral;
- (viii) expressly subordinate the payment of any Term Loan Obligation to any other Debt; or
- (ix) amend Section 10.1 or any other provision of this Agreement, in each instance under this clause (ix), to provide that the grant of the Collateral hereunder (other than Collateral described in the last sentence of Section 10.1) shall not equally and ratably secure the Term Loan Obligations.

(c) In addition to the requirements set forth in Section 13.1, unless it is in writing and signed by all of the Lenders, no amendment or waiver of any provision of this Agreement or any other Loan Document (other than Hedge Agreements or any other agreements for any Bank Products), and no consent with respect to any departure by any Obligated Party therefrom, shall do any of the following:

- (i) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans or other Obligations that is required for the Lenders, or any of them, to take any action hereunder (other than any change to the definitions of Majority Revolving Lenders, Majority Term Lenders or Supermajority Revolving Lenders);
- (ii) change the definition of Lender or Majority Lenders;
- (iii) amend this Section 13.3 or any other provision of this Agreement providing for consent or other action by all of the Lenders; or
- (iv) amend Section 4.6(b) or Section 4.6(e).

(d) In addition to the requirements set forth in Section 13.1, unless it is in writing and signed by the Majority Term Lenders, no provision of the Intercreditor Agreement may be amended or waived and no amendment or waiver of any provision of this Agreement or any other Loan Document (other than Hedge Agreements or any other agreements for any Bank Products), and no consent with respect to any departure by any Obligated Party therefrom, shall do any of the following:

- (i) shorten any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Term Lenders (or any of them) hereunder or under any other Loan Document;

- (ii) extend the Stated Revolving Termination Date beyond the Stated Term Loan Termination Date;
- (iii) modify Section 8.21(a), Section 8.32, the last sentence of Section 11.2(b), Section 11.3, Section 13.2(g) or (h) or Section 14.11(a);
- (iv) permit the payment of cash Distributions by Ahern to its shareholders (other than Permitted Distributions as such definition is in effect on the Closing Date);
- (v) increase the aggregate Revolving Credit Commitments to an amount greater than \$350,000,000 or create any new tranche of loans under this Agreement (it being agreed that loans made at any time under the revolving credit facility provided hereunder are not a new tranche of loans under this Agreement);
- (vi) modify either of the last two paragraphs of Section 6.2;
- (vii) reduce the Supplemental Blocked Availability Amount below \$10,000,000 or reduce the Blocked Availability Amount; or
- (viii) modify clause (ii) of the definition of Eligible Assignee or Section 13.2, in each instance, in a manner that imposes additional restrictions on the ability of the Term Lenders to assign Term Loans.
- (e) In addition to the requirements set forth in Section 13.1, unless it is in writing and signed by the Supermajority Revolving Lenders, no amendment or waiver of any provision of this Agreement or any other Loan Document (other than Hedge Agreements or any other agreements for any Bank Products), and no consent with respect to any departure by any Obligated Party therefrom, shall reduce the Supplemental Blocked Availability Amount below \$30,000,000 (but any reduction of the Supplemental Blocked Availability Amount below \$20,000,000 shall be governed by clause (a) above (and if reduced below \$10,000,000, additionally by clause (d) above) and not this clause (e)).
- (f) If any fees are paid to the applicable Lenders as consideration for amendments, waivers, or consents with respect to this Agreement, at the Agents' election, such fees may be paid only to those applicable Lenders that agree to such amendments, waivers, or consents within the time specified for submission thereof. If any fees are paid to all of the Revolving Lenders (solely in their capacities as such and in no other capacities) as consideration for an amendment, waiver or consent pursuant to Section 13.1 or Section 13.3(a) and such amendment, waiver or consent does not additionally require the signature of any Term Lenders under this Section 13.3, such fees shall also be paid to the Term Lenders in the same proportion as payable to consenting Revolving Lenders as if the Term Lenders were consenting Revolving Lenders in respect of such amendment, waiver or consent. In addition to the requirements set forth in Section 13.1, the immediately preceding sentence of this clause (f) may not be amended or waived without the consent of the Majority Term Lenders.

- (g) If, in connection with any proposed amendment, waiver, or consent:
- (i) requiring the consent of all of the Lenders, the consent of the Majority Lenders is obtained but the consent of the other Lenders is not obtained (any such Lender whose consent is not obtained as described in this clause (i) or in either of clauses (ii) or (iii) below being referred to as a “Non-Consenting Lender Party”), or
 - (ii) requiring the consent of all Revolving Lenders or the Supermajority Revolving Lenders, the consent of the Majority Revolving Lenders is obtained, or
 - (iii) requiring the consent of all Term Lenders, the consent of the Majority Term Lenders is obtained,

then, if neither BofA nor Wachovia (in its individual capacity as a Lender) is a Non-Consenting Lender Party, at the Obligated Parties’ request either or both of BofA or Wachovia (in its individual capacity as a Lender) or an Eligible Assignee shall, subject to the requirements of Section 13.2(a), have the right (but not the obligation) to purchase from each Non-Consenting Lender Party, and each Non-Consenting Lender Party agrees that it shall sell, such Non-Consenting Lender Party’s Loans and Commitments for an amount equal to the aggregate outstanding principal balances thereof plus all accrued interest and fees with respect thereto through the date of sale pursuant to one or more Assignment and Acceptances, without premium or discount.

(h) For the avoidance of doubt and without limiting clause (B) of the proviso to Section 13.1(b), no amendment, waiver or consent to this Agreement shall, unless in writing and signed by the Letter of Credit Issuer, either (A) modify any of Section 2.4(g), clause (ii) of the last sentence of Section 10.1 or the last sentence of Section 14.9 or (B) release any Letter of Credit Security (as defined in Section 14.9) after the Revolving Facility Payment In Full except in accordance with Section 14.11(a) as in effect on the Closing Date.

ARTICLE 14

THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT

Section 14.1 Appointment and Authorization.

(a) Each Lender hereby irrevocably appoints and designates each of BofA, acting in its capacity as the Administrative Agent, and Wachovia, acting in its capacity as the Collateral Agent, as its agent under this Agreement and the other Loan Documents, and each Lender hereby irrevocably authorizes the Collateral Agent and the Administrative Agent to take such action on such Lender’s behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent or the Administrative Agent, as applicable, by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Each of the Collateral

Agent and the Administrative Agent agrees to act as such on the express conditions contained in this Article 14. Other than as expressly provided in Section 14.10 and Section 14.11, the provisions of this Article 14 are solely for the benefit of the Collateral Agent, the Administrative Agent and the other Credit Providers, and no Obligated Party shall have any rights as a third party beneficiary of any of the provisions contained herein. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, the Agents shall not have any duties or responsibilities, except those expressly set forth herein, nor shall either of the Agents have or be deemed to have any fiduciary relationship with any Lender or Participant, and no implied covenants, functions, responsibilities, duties, obligations, or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against either of the Agents. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Agreement or any other Loan Document with reference to the Collateral Agent or the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. Except as expressly otherwise provided in this Agreement, each of the Collateral Agent and the Administrative Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that the Collateral Agent or the Administrative Agent is expressly entitled to take or assert under this Agreement and the other Loan Documents, including (as applicable) (i) the determination of the applicability of ineligibility criteria with respect to the calculation of the Borrowing Base, (ii) the making of Agent Advances pursuant to Section 2.2(j), and (iii) the exercise of remedies pursuant to Section 11.2, and any action so taken or not taken shall be deemed consented to by the Lenders.

(b) The Letter of Credit Issuer shall act on behalf of the Revolving Lenders with respect to any Letters of Credit issued hereunder and the agreements and documents associated therewith. The Letter of Credit Issuer shall have all of the benefits and immunities (i) provided to the Agents in this Article 14 with respect to any acts taken or omissions suffered by the Letter of Credit Issuer in connection with Letters of Credit issued by it, or proposed to be issued by it, and the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term "Administrative Agent", "Collateral Agent" or "Agent", as the case may be, as used in this Article 14 included the Letter of Credit Issuer with respect to such acts or omissions, and (ii) as additionally provided herein with respect to the Letter of Credit Issuer.

Section 14.2 Delegation of Duties. Each of the Collateral Agent and the Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees, or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. Neither Agent shall be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects as long as such selection was made without gross negligence or willful misconduct.

Section 14.3 Liability of the Agents. None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this

Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Credit Provider or Participant for any recital, statement, representation, or warranty made by any Obligated Party or any Affiliate of any Obligated Party, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement, or other document referred to or provided for in, or received by the Collateral Agent or the Administrative Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability, or sufficiency of this Agreement or any other Loan Document, or for any failure of any Obligated Party or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender or Participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books, or records of any Obligated Party or any Obligated Party's Affiliates.

Section 14.4 Reliance by the Agents. Each of the Agents shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex, or telephone message, electronic mail message, statement, or other document or conversation believed by the Collateral Agent or the Administrative Agent to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Obligated Party or any of their respective Affiliates), independent accountants and other experts selected by the Collateral Agent or the Administrative Agent. Each of the Agents shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Majority Lenders, the Majority Revolving Lenders, the Majority Term Lenders, the Supermajority Revolving Lenders, all the Lenders, all the Revolving Lenders or all the Term Lenders, as appropriate, as the Collateral Agent or the Administrative Agent deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Collateral Agent and the Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Majority Revolving Lenders or, after the Revolving Facility Payment In Full, the Majority Term Lenders (or all Lenders, all Revolving Lenders, all Term Lenders, the Majority Lenders or the Supermajority Revolving Lenders, as appropriate, if so required by Article 13) and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders. For purposes of determining compliance with the conditions specified in Section 9.1, each Lender that has executed and delivered this Agreement shall be deemed to have consented to, approved, or accepted, or to be satisfied with, each document or other matter required thereunder to be consented to, approved by, or acceptable or satisfactory to, a Lender unless each Agent shall have received written notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 14.5 Notice of Default. Neither Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, other than the failure of the

Borrowers to make any payment of principal, interest, fees, or expenses required to be paid to it for the benefit of the Credit Providers, unless the Collateral Agent or the Administrative Agent, as applicable, shall have received written notice from an Obligated Party or a Lender referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." The Collateral Agent or the Administrative Agent, as applicable, will notify the Lenders of its receipt of any such notice. The Collateral Agent and/or the Administrative Agent, as applicable, shall take such action with respect to such Default or Event of Default as may be directed by the Majority Revolving Lenders (or the Majority Lenders or the Majority Term Lenders, as applicable) in accordance with Article 11; provided that unless and until the Collateral Agent or the Administrative Agent, as applicable, has received any such direction, the Collateral Agent or the Administrative Agent, as applicable, may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of the Credit Providers.

Section 14.6 Credit Decision. Each Lender acknowledges that none of the Agent-Related Persons has made any representation or warranty to such Lender, and that no act by the Collateral Agent or the Administrative Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of the Obligated Parties and their Affiliates (or any of them), shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether any Agent-Related Person has disclosed material information in its possession. Each Lender represents to the Agents that such Lender has, independently and without reliance upon any Agent-Related Person and based on such documents and information as such Lender has deemed appropriate, made its own appraisal of an investigation into the business, prospects, operations, property, financial and other condition, and creditworthiness of the Obligated Parties and their Affiliates, and any Requirement of Law relating to the transactions contemplated hereby, and such Lender has made its own decision to enter into this Agreement and to extend credit to the Borrowers hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as such Lender shall deem appropriate at the time, continue to make its own credit analysis, appraisals, and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition, and creditworthiness of the Obligated Parties and their Affiliates. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by either of the Agents (as applicable), neither Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition, or creditworthiness of any Obligated Party or any of their Affiliates that may come into the possession of any of the Agent-Related Persons.

Section 14.7 Indemnification. WHETHER OR NOT THE TRANSACTIONS CONTEMPLATED HEREBY ARE CONSUMMATED, THE LENDERS SHALL, UPON DEMAND, INDEMNIFY THE AGENT-RELATED PERSONS (TO THE EXTENT NOT REIMBURSED BY OR ON BEHALF OF THE OBLIGATED PARTIES AND WITHOUT LIMITING THE OBLIGATION OF THE OBLIGATED PARTIES TO DO SO), IN ACCORDANCE WITH THEIR PRO RATA SHARES, AND HOLD HARMLESS EACH AGENT-RELATED PERSON FROM AND AGAINST ANY AND ALL INDEMNIFIED

LIABILITIES (AS SUCH TERM IS DEFINED IN SECTION 15.11(a)); PROVIDED THAT NO LENDER SHALL BE LIABLE FOR THE PAYMENT TO ANY AGENT-RELATED PERSON OF ANY PORTION OF SUCH INDEMNIFIED LIABILITIES TO THE EXTENT DETERMINED IN A FINAL, NONAPPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH AGENT-RELATED PERSON'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; PROVIDED, FURTHER, THAT NO ACTION TAKEN IN ACCORDANCE WITH THE DIRECTIONS OF THE MAJORITY REVOLVING LENDERS OR, IF REQUIRED BY THE TERMS OF THIS AGREEMENT, THE LENDERS, THE REVOLVING LENDERS, THE TERM LENDERS, THE MAJORITY LENDERS, THE SUPERMAJORITY REVOLVING LENDERS OR THE MAJORITY TERM LENDERS SHALL BE DEEMED TO CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT FOR PURPOSES OF THIS SECTION. Without limitation of the foregoing, each Lender shall reimburse the Collateral Agent and the Administrative Agent upon demand for its Pro Rata Share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Collateral Agent or the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings, or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Collateral Agent or the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrowers. The undertaking in this Section 14.7 shall survive the termination of the Commitments, payment of all Obligations hereunder, and the resignation or replacement of the Collateral Agent or the Administrative Agent.

Section 14.8 The Collateral Agent and the Administrative Agent in their Individual Capacity. Each of BofA and Wachovia and their respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with any Obligated Party and its Affiliates as though such Person were not the Administrative Agent, the Letter of Credit Issuer or the Collateral Agent hereunder, as applicable, and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, each of BofA and Wachovia and its respective Affiliates may receive information regarding any Obligated Party, its Affiliates, and Account Debtors (including information that may be subject to confidentiality obligations in favor of any such Obligated Party or Affiliate), and the Lenders acknowledge that BofA and Wachovia shall be under no obligation to provide such information to the Lenders. With respect to its Loans, each of BofA and Wachovia as a Lender shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not the Administrative Agent, the Letter of Credit Issuer or the Collateral Agent, as applicable, and the terms "Lender" and "Lenders" include each of BofA and Wachovia in its individual capacity.

Section 14.9 Successor Agents. Each Agent may resign as an Agent (the "resigning Agent") upon at least 30 days' prior notice to the other Agent, the Lenders and the Obligated Parties (and any such resignation by BofA or Wachovia shall also constitute its resignation as the Letter of Credit Issuer hereunder with respect to Letters of Credit to be issued after its resignation (the "resigning Letter of Credit Issuer")). In the event BofA or Wachovia sells all of its Commitment and Loans, such Person shall resign as an Agent; provided that if such sale by

BofA or Wachovia is as part of a sale, transfer, or other disposition by such Person of substantially all of its loan portfolio, such Person shall resign as an Agent and such purchaser or transferee shall become its successor Administrative Agent and/or Collateral Agent, as applicable, hereunder. Subject to the foregoing, if either Agent resigns under this Agreement, then (i) effective upon the effective date of the resignation of the resigning Agent, the remaining Agent shall act (and hereby agrees to act) as the sole Administrative Agent and Collateral Agent for the Lenders or (ii) if there is no remaining Agent at such time, the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders) shall appoint from among the Lenders the successor sole Administrative Agent and Collateral Agent (any Person being appointed pursuant to this clause (ii) as successor to the resigning Agent being referred to in this Section as the “successor Agent,” and any such appointment prior to the Revolving Termination Date shall also constitute appointment of such successor Agent as the Letter of Credit Issuer hereunder with respect to Letters of Credit to be issued after such appointment (the “successor Letter of Credit Issuer”) for the Lenders that shall be consented to by the Borrowers at all times other than during the existence of a Default or an Event of Default (such consent not to be unreasonably withheld or delayed). If no successor Agent has accepted appointment as the Administrative Agent and Collateral Agent for the Lenders prior to the effective date of the resignation of the resigning Agent at a time when there is no other Agent, the resigning Agent’s resignation shall nevertheless thereupon become effective and the Lenders shall perform all the duties of the Agents hereunder until such time, if any, as the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders) appoint the successor sole Administrative Agent and Collateral Agent as provided for in this Section 14.9. Upon the remaining Agent becoming the Administrative Agent and Collateral Agent for the Lenders (as provided in clause (i) of the second preceding sentence) or the acceptance by the successor Agent of its appointment as the successor Agent hereunder (as provided in clause (ii) of the second preceding sentence), (a) the remaining Agent or such successor Agent, as applicable, shall succeed to all the rights, powers, and duties of each of the Administrative Agent, the Collateral Agent and, if and to the extent applicable, the resigning Letter of Credit Issuer, (b) the respective terms “Administrative Agent”, “Collateral Agent” and, if and to the extent applicable, “Letter of Credit Issuer” shall mean the remaining Agent or such successor Agent (as applicable) and, if and to the extent applicable, such successor Letter of Credit Issuer, (c) the resigning Agent’s appointment, rights, powers, and duties as an Agent shall be terminated, and (d) if and to the extent applicable, the resigning Letter of Credit Issuer’s appointment, rights, powers, and duties as the Letter of Credit Issuer shall be terminated without any other or further act or deed on the part of the resigning Letter of Credit Issuer, the remaining Agent or any Lender, other than the obligation of the remaining Agent or the successor Letter of Credit Issuer, as applicable, to issue Letters of Credit in substitution for the Letters of Credit, if any, issued by the resigning Letter of Credit Issuer outstanding at the time of such succession or to make other arrangements satisfactory to the resigning Letter of Credit Issuer to effectively assume the obligations of the resigning Letter of Credit Issuer with respect to its Letters of Credit. After any resigning Agent’s resignation hereunder as an Agent, the provisions of this Article 14, Section 15.7, and Section 15.11 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was an Agent under this Agreement. Notwithstanding the foregoing, if (x) on or after the Revolving Facility Payment In Full, the Collateral Agent shall resign while holding any Supporting Letters of Credit or any Supporting Cash Deposit or other cash collateral for the payment of any Obligations relating to Letters of Credit (collectively the

foregoing, the “Letter of Credit Security”), (y) the resigning Collateral Agent is not also acting as the Administrative Agent (or if so acting, is resigning as the Administrative Agent at the same time as it is resigning as the Collateral Agent) and (z) the resigning Collateral Agent was, at any time prior to the Revolving Facility Payment In Full, a Letter of Credit Issuer, a Revolving Lender or any affiliate of any thereof and the then Administrative Agent (if not the same Person as the resigning Collateral Agent) was not, at any time prior to the Revolving Facility Payment In Full, a Letter of Credit Issuer, a Revolving Lender or any affiliate of any thereof, then:

(a) notwithstanding such resignation, the resigning Collateral Agent may, at its election exercised in its notice of resignation delivered under this Section 14.9, continue to act as the Collateral Agent solely with respect to the Letter of Credit Security (the Collateral Agent solely in such capacity, the “Letter of Credit Collateral Agent”) and as such (i) shall retain all of the rights, powers and duties of the Collateral Agent with respect to the Letter of Credit Security and the successor Collateral Agent, if any, to the resigning Collateral Agent shall not succeed to such rights, powers and duties with respect to the Letter of Credit Security and (ii) the provisions of this Article 14, Section 15.7 and Section 15.11 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it acted as the Collateral Agent under this Agreement (including, without limitation, with respect to the Letter of Credit Security after it resigned hereunder as Collateral Agent for all other purposes);

(b) if the resigning Collateral Agent does not make the election described in clause (a), its notice of resignation shall, concurrently with being delivered as provided under this Section 14.9, be additionally delivered to each Letter of Credit Issuer (if other than such retiring Collateral Agent or a recipient of such notice otherwise) any of whose Letters of Credit are outstanding at such time; and

(c) if clause (b) shall be applicable and there are outstanding any Letters of Credit issued by one or more Letter of Credit Issuers other than the resigning Collateral Agent, each such Letter of Credit Issuer may, at its election exercised by delivering written notice thereof to the resigning Collateral Agent, the other Agent, the other Letter of Credit Issuers and Ahern within 10 Business Days of its receipt of the notice of resignation described in clause (a), agree to act as the Letter of Credit Collateral Agent, in which case (i) if more than one Letter of Credit Issuer timely makes such election, the Letter of Credit Issuer so making such election with the greatest undrawn amount of outstanding Letters of Credit issued by it shall become the Letter of Credit Collateral Agent, (ii) the resigning Collateral Agent shall, upon the effective date of its resignation, deliver the Letter of Credit Security to the Letter of Credit Collateral Agent, (iii) upon the effective date of the resignation of the resigning Collateral Agent and its compliance with clause (ii), the Letter of Credit Collateral Agent shall succeed to all the rights, powers and duties of the Collateral Agent with respect to the Letter of Credit Security and the successor Collateral Agent, if any, to the resigning Collateral Agent shall not succeed to such rights, powers and duties with respect to the Letter of Credit Security.

Section 14.10 Withholding Tax.

(a) If any Lender is a “foreign corporation, partnership, or trust” within the meaning of the Code and such Lender claims exemption from, or a reduction of, U.S. withholding tax under Sections 1441 or 1442 of the Code, such Lender agrees with and in favor of the Agents, to deliver to the Agents and Ahern:

(i) if such Lender claims an exemption from, or a reduction of, withholding tax under a U.S. tax treaty, two properly completed and executed IRS Form W-8BEN before the payment of any interest in the first calendar year during which interest may be paid under this Agreement (and thereafter as reasonably requested by the Administrative Agent, the Collateral Agent or Ahern, but only if such Lender is then lawfully permitted to do so);

(ii) if such Lender claims that interest paid under this Agreement is exempt from U.S. withholding tax because it is effectively connected with a U.S. trade or business of such Lender, two properly completed and executed copies of IRS Form W-8ECI before the payment of any interest is due in the first taxable year of such Lender during which interest may be paid under this Agreement (and thereafter as reasonably requested by the Administrative Agent, the Collateral Agent or Ahern, but only if such Lender is then lawfully permitted to do so), and IRS Form W-9; and

(iii) such other form or forms as may be required under the Code or other laws of the U.S. as a condition to exemption from, or reduction of, U.S. withholding tax.

Such Lender agrees to promptly notify the Agents and Ahern of any change in circumstances that would modify or render invalid any claimed exemption or reduction.

(b) If any Lender claims exemption from, or reduction of, withholding tax under a U.S. tax treaty by providing IRS Form W-8BEN and such Lender sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations owing to such Lender, such Lender agrees to notify the Agents and Ahern of the percentage amount in which it is no longer the beneficial owner of Obligations owing to such Lender. To the extent of such percentage amount, the Agents and the Borrowers will treat such Lender’s IRS Form W-8BEN as no longer valid.

(c) If any Lender claiming exemption from U.S. withholding tax by filing IRS Form W-8ECI with the Agents sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations owing to such Lender, such Lender agrees to undertake sole responsibility for complying with the withholding tax requirements imposed by Sections 1441 and 1442 of the Code.

(d) If any Lender is entitled to a reduction in the applicable withholding tax, the Administrative Agent, the Collateral Agent or any Borrower, as appropriate, may withhold from any interest payment to such Lender an amount equivalent to the applicable withholding tax after taking into account such reduction. If the forms or other

documentation required by clause (a) preceding are not delivered to the Agents and Ahern, then the applicable Agent or any Borrower, as appropriate, may withhold from any interest payment to such Lender not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(e) If the IRS or any other Governmental Authority of the U.S. or other jurisdiction asserts a claim that an Agent or any Borrower did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify the Agents or any Borrower of a change in circumstances that rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify each of the Agents and any Borrower fully for all amounts paid, directly or indirectly, by any of them as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to either of the Agents or the Borrowers under this Section 14.10, together with all costs and expenses (including Attorney Costs). The obligation of the Lenders under this clause (e) shall survive the payment of all Obligations and the resignation or replacement of either Agent.

Section 14.11 Collateral Matters.

(a) The Credit Providers hereby irrevocably authorize the Collateral Agent to release any Guarantor that is permitted to wind-up, dissolve, liquidate, or merge out of existence under Section 8.9, and to release any Agent's Liens upon any Collateral (i) upon (A) termination of the Commitments, (B) termination or collateralization as provided in Section 2.4(g) of all outstanding Letters of Credit (whether or not any of such obligations are due), and (C) the Borrowers' payment and satisfaction in full of all Loans and other Obligations (other than indemnification obligations to the extent no claim with respect thereto has been asserted and remains unsatisfied), (ii) constituting property being sold or disposed of if the Obligated Party selling or disposing of such property certifies to the Agents that the sale or disposition is made in compliance with Section 8.9 (and the Agents may rely conclusively on any such certification, without further inquiry), (iii) constituting property in which no Obligated Party owned any interest at the time the Lien was granted or at any time thereafter, or (iv) constituting property leased to an Obligated Party under a lease that has expired or been terminated in a transaction permitted under this Agreement. Except as provided above, the Collateral Agent will not release any of the Agent's Liens without the prior written authorization of the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders); provided that the Collateral Agent may, in its discretion with the prior written authorization of the Administrative Agent, release the Agent's Liens on Collateral valued in the aggregate not in excess of \$1,000,000 during each Fiscal Year without the prior written authorization of any Lender and the Collateral Agent may release the Agent's Liens on Collateral valued in the aggregate not in excess of \$5,000,000 during each Fiscal Year with the prior written authorization of the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders) and the Administrative Agent; and provided, further that, notwithstanding the immediately preceding sentence, after the Revolving Facility Payment In Full the Collateral Agent may not release the Agent's Lien on any cash collateral provided under any of

Section 2.4(g), Section 4.3(a), clause sixth of Section 4.6(b) or Section 11.2(b) securing the payment of any Obligations with respect to any Letters of Credit without the prior written consent of the Administrative Agent, the Majority Revolving Lenders and the Letter of Credit Issuer except to pay any Obligations secured thereby or upon the termination or cancellation of all Letters of Credit and the payment in full of all Obligations with respect to all Letters of Credit. Upon request by either of the Agents or the Obligated Parties at any time, the Credit Providers will confirm in writing the Collateral Agent's authority to release any Guarantor and any of the Agent's Liens upon particular types or items of Collateral in accordance with the terms of this Section 14.11.

(b) Upon receipt by the Collateral Agent of any authorization required pursuant to Section 14.11(a) from the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders) and/or the Administrative Agent (or as provided in the second proviso in the second sentence of Section 14.11(a), the Administrative Agent, the Majority Revolving Lenders and the Letter of Credit Issuer), as appropriate, of the Collateral Agent's authority to release any Agent's Liens upon particular types or items of Collateral, and upon at least five Business Days prior written request by the Obligated Parties, the Collateral Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Agent's Liens upon such Collateral; provided that (i) the Collateral Agent shall not be required to execute any such document on terms that, in the Collateral Agent's opinion, would expose the Collateral Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Obligated Parties in respect of) all interests retained by the Obligated Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral.

(c) Neither of the Agents shall have any obligation whatsoever to any of the Credit Providers to assure that the Collateral exists or is owned by any of the Obligated Parties or is cared for, protected, or insured or has been encumbered, or that the Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure, or fidelity, or to continue exercising, any of the rights, authorities, and powers granted or available to either of the Agents pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, each of the Agents may act in any manner it may deem appropriate, in its sole discretion, given such Agent's own interest in the Collateral in its capacity as one of the Lenders and that neither of the Agents shall have any other duty or liability whatsoever to any Credit Provider as to any of the foregoing.

(d) Upon receipt by the Collateral Agent of any proceeds of Collateral, the Collateral Agent shall promptly turn all such proceeds over to the Administrative Agent for application in accordance with Section 4.6(b).

Section 14.12 Restrictions on Actions by Lenders; Sharing of Payments.

(a) Each of the Credit Providers agrees that it shall not, without the express consent of the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders), and that it shall, to the extent it is lawfully entitled to do so, upon the request of the Majority Revolving Lenders (or after the Revolving Facility Payment In Full, the Majority Term Lenders), setoff against the Obligations, any amounts owing by such Credit Provider to any Obligated Party or any accounts of any Obligated Party now or hereafter maintained with such Credit Provider. Each of the Credit Providers further agrees that it shall not, unless specifically requested to do so by the Agents, take or cause to be taken any action to enforce its rights under this Agreement or any other Loan Document or against any Obligated Party, including the commencement of any legal or equitable proceedings, to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If at any time or times any Credit Provider shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations owing to such Credit Provider arising under, or relating to, this Agreement or the other Loan Documents, except for any such proceeds or payments received by such Credit Provider from either of the Agents pursuant to the terms of this Agreement, or (ii) payments from either of the Agents in excess of such Credit Provider's ratable portion of all such distributions by the Agents with respect to the applicable Obligations, such Credit Provider shall promptly (A) turn the same over to the Administrative Agent, in kind, and with such endorsements as may be required to negotiate the same to the Administrative Agent, or in same day funds, as applicable, for the account of all of the applicable Credit Providers and for application to the applicable Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the applicable Obligations owed to the other applicable Credit Providers so that such excess payment received shall be applied among the applicable Credit Providers in accordance with the terms of this Agreement; provided that if all or part of such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

Section 14.13 Agency for Perfection. Each Credit Provider hereby appoints each other Credit Provider as agent for the purpose of perfecting Liens, for the benefit of the Credit Providers, in assets that, in accordance with Article 9 of the UCC or any other Requirement of Law, can be perfected only by possession. Should any Credit Provider (other than the Collateral Agent) obtain possession of any such Collateral, such Credit Provider shall notify the Collateral Agent thereof, and, promptly upon the Collateral Agent's request therefor, shall deliver such Collateral to the Collateral Agent or otherwise deal with such Collateral in accordance with the Collateral Agent's instructions.

Section 14.14 Payments by Agents to the Lenders. All payments to be made by either of the Agents to the Credit Providers shall be made by bank wire transfer or internal transfer of immediately available funds to each Credit Provider pursuant to transfer instructions delivered in writing to the Agents on or prior to the Closing Date (or if such Credit Provider is an Assignee, delivered with or in the applicable Assignment and Acceptance), or pursuant to such other transfer instructions as each party may designate for itself by written notice to the Agents. Concurrently with each such payment, the applicable Agent shall identify whether such payment (or any portion thereof) represents principal, premium, interest, or fees on the Revolving Loans, Term Loans, the Letters of Credit, or otherwise. Unless the Agents receive notice from the Borrowers prior to the date on which any payment is due to any Credit Provider that the Borrowers will not make such payment in full as and when required, each of the Agents may assume that the Borrowers have made such payment in full to the applicable Agent on such date in immediately available funds and the applicable Agent may (but shall not be so required), in reliance upon such assumption, distribute to each applicable Credit Provider on such due date an amount equal to the amount then due such Credit Provider. If and to the extent the Borrowers have not made such payment in full to the applicable Agent, each applicable Credit Provider shall repay to such Agent on demand such amount distributed to such Credit Provider, together with interest thereon at the Federal Funds Rate for each day from the date such amount is distributed to such Credit Provider until the date repaid.

Section 14.15 Settlement.

(a) Each Revolving Lender's funded portion of the Revolving Loans is intended by the Revolving Lenders to be equal at all times to such Revolving Lender's Pro Rata Share of the outstanding Revolving Loans. Notwithstanding such agreement, the Agents, BofA, Wachovia, and the Revolving Lenders agree (which agreement shall not be for the benefit of or enforceable by the Obligated Parties or the Term Lenders) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among them as to the Revolving Loans, including the Non-Ratable Loans and the Agent Advances, shall take place on a periodic basis in accordance with the following provisions:

(i) The Administrative Agent shall request settlement (a "Settlement") with the Revolving Lenders on at least a weekly basis, or on a more frequent basis at its election, (A) on behalf of BofA, with respect to each outstanding Non-Ratable Loan, (B) for itself, with respect to each Agent Advance, and (C) with respect to collections received, in each case, by notifying the Revolving Lenders of such requested Settlement by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 1:30 p.m. (New York time) on the date of such requested Settlement (the "Settlement Date"). In its discretion, the Administrative Agent may on any Settlement Date permit Non-Ratable Loans in an aggregate principal amount not to exceed One Million Dollars (\$1,000,000) to remain outstanding, while requiring Settlement of the other outstanding Non-Ratable Loans. Each Revolving Lender (other than BofA, in the case of the Non-Ratable Loans, and the Administrative Agent, in the case of the Agent Advances) shall transfer the amount of such Revolving Lender's Pro Rata Share of the outstanding principal amount of the Non-Ratable Loans and

Agent Advances with respect to which Settlement is requested to the Administrative Agent to such account of the Administrative Agent as the Administrative Agent may designate, not later than 4:00 p.m. (New York time), on the Settlement Date applicable thereto. Settlements shall occur during the continuation of a Default or an Event of Default and whether or not the applicable conditions precedent set forth in Article 9 have then been satisfied. Such amounts transferred to the Administrative Agent shall be applied against the amounts of the applicable Non-Ratable Loan or Agent Advance for which the Administrative Agent has requested Settlement and, together with the portion of such Non-Ratable Loan or Agent Advance representing BofA's (in its individual capacity or as the Administrative Agent, as appropriate) Pro Rata Share thereof, shall constitute Revolving Loans of such Revolving Lenders, respectively. If any such amount is not transferred to the Administrative Agent by any Revolving Lender on the Settlement Date applicable thereto, the Administrative Agent shall be entitled to recover such amount on demand from such Revolving Lender together with interest thereon at the Federal Funds Rate for the first three days from and after the Settlement Date and thereafter at the Interest Rate then applicable to Base Rate Revolving Loans (Y) on behalf of BofA, with respect to each outstanding Non-Ratable Loan and (Z) for itself, with respect to each Agent Advance.

(ii) Notwithstanding the foregoing, not more than one Business Day after demand is made by the Administrative Agent (whether before or after the occurrence of a Default or an Event of Default and regardless of whether it has requested a Settlement with respect to a Non-Ratable Loan or Agent Advance), each other Revolving Lender (A) shall irrevocably and unconditionally purchase and receive from BofA or the Administrative Agent, as applicable, without recourse or warranty, an undivided interest and participation in such Non-Ratable Loan or Agent Advance equal to such Revolving Lender's Pro Rata Share of such Non-Ratable Loan or Agent Advance, and (B) if Settlement has not previously occurred with respect to such Non-Ratable Loans or Agent Advances, upon demand by BofA or the Administrative Agent, as applicable, shall pay to BofA or the Administrative Agent, as applicable, as the purchase price of such participation an amount equal to 100% of such Revolving Lender's Pro Rata Share of such Non-Ratable Loans or Agent Advances. If such amount is not in fact transferred to BofA or the Administrative Agent, as applicable, by any Revolving Lender, BofA or the Administrative Agent, as applicable, shall be entitled to recover such amount on demand from such Revolving Lender together with interest thereon at the Federal Funds Rate for the first three days from and after such demand and thereafter at the Interest Rate then applicable to Base Rate Revolving Loans.

(iii) From and after the date, if any, on which any Revolving Lender purchases an undivided interest and participation in any Non-Ratable Loan or Agent Advance pursuant to clause (ii) preceding, the Administrative Agent shall promptly distribute to such Revolving Lender, such Revolving Lender's Pro Rata Share of all payments of principal and interest and all proceeds of Collateral

received by the Administrative Agent in respect of such Non-Ratable Loan or Agent Advance.

(iv) Between Settlement Dates, to the extent no Agent Advances are outstanding, the Administrative Agent may pay over to BofA any payments received by the Administrative Agent which in accordance with the terms of this Agreement would be applied to the reduction of the Revolving Loans, for application to the Revolving Loans of BofA, including Non-Ratable Loans. If, as of any Settlement Date, collections received since the then immediately preceding Settlement Date have been applied to the Revolving Loans of BofA (other than to Non-Ratable Loans or Agent Advances in which a Revolving Lender has not yet funded its purchase of a participation pursuant to clause (ii) preceding), as provided for in the previous sentence, BofA shall pay to the Administrative Agent, for the accounts of the Revolving Lenders, to be applied to the outstanding Revolving Loans of such Revolving Lenders, an amount such that each Revolving Lender shall, upon receipt of such amount, have, as of such Settlement Date, its Pro Rata Share of the Revolving Loans. During the period between Settlement Dates, BofA with respect to Non-Ratable Loans, the Administrative Agent with respect to Agent Advances, and each Revolving Lender with respect to the Revolving Loans other than Non-Ratable Loans and Agent Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the actual average daily amount of funds employed by BofA, the Administrative Agent and the other Revolving Lenders.

(v) Unless the Administrative Agent has received written notice from a Revolving Lender to the contrary, the Administrative Agent may assume that the applicable conditions precedent set forth in Article 9 have been satisfied on any Funding Date for a Revolving Loan or Non-Ratable Loan. Unless the Administrative Agent has received written notice from a Revolving Lender to the contrary or the Administrative Agent has actual knowledge to the contrary (based solely on the Borrowing Base Certificate most recently delivered to it), the Administrative Agent may assume that the requested Borrowing will not exceed the Unused Availability on any Funding Date for a Revolving Loan or Non-Ratable Loan.

(b) The Lenders' Failure to Perform. All Revolving Loans (other than Non-Ratable Loans and Agent Advances) shall be made by the Revolving Lenders simultaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Revolving Lender shall be responsible for any failure by any other Revolving Lender to perform its obligation to make any Revolving Loans hereunder, nor shall any Revolving Credit Commitment of any Revolving Lender be increased or decreased as a result of any failure by any other Revolving Lender to perform its obligation to make any Revolving Loans hereunder, (ii) no failure by any Revolving Lender to perform its obligation to make any Revolving Loans hereunder shall excuse any other Revolving Lender from its obligation to make any Revolving Loans hereunder, and (iii) the obligations of each Revolving Lender hereunder shall be several, not joint and several.

(c) Defaulting Lenders. Unless the Administrative Agent receives notice from a Lender on or prior to the Closing Date or, with respect to any Borrowing after the Closing Date, at least one Business Day prior to the date of such Borrowing, that such Lender will not make available as and when required hereunder to the Administrative Agent such Lender's Pro Rata Share of such Borrowing, the Administrative Agent may assume that each Lender has made such amount available to it in immediately available funds on the Funding Date. Furthermore, the Administrative Agent may, in reliance upon such assumption, make available to the Borrowers on such date a corresponding amount. If any Lender has not transferred its full Pro Rata Share to the Administrative Agent in immediately available funds and if the Administrative Agent has transferred a corresponding amount to the Borrowers on the Business Day following such Funding Date, the applicable Lender shall make such amount available to the Administrative Agent, together with interest at the Federal Funds Rate for that day. A notice by the Administrative Agent submitted to any Lender with respect to amounts owing shall be conclusive, absent manifest error. If each Lender's full Pro Rata Share is transferred to the Administrative Agent as required, the amount transferred to the Administrative Agent shall constitute such Lender's Revolving Loan or Term Loan, as applicable, for all purposes of this Agreement. If any such amount is not transferred to the Administrative Agent on the Business Day following the Funding Date, the Administrative Agent will notify the Borrowers of such failure to fund and, upon demand by the Administrative Agent, the Borrowers shall pay such amount to the Administrative Agent for its account, together with interest thereon for each day elapsed since the date of such Borrowing at a rate per annum equal to the Interest Rate applicable at the time to the Revolving Loans or Term Loans, as applicable, comprising that particular Borrowing. The failure of any Lender to make any Loan on any Funding Date (any such Lender, prior to the cure of such failure, being referred to herein as a "Defaulting Lender") shall not relieve any other Lender of its obligation hereunder to make a Loan on such Funding Date. No Lender shall be responsible for any other Lender's failure to advance such other Lenders' Pro Rata Share of any Borrowing.

(d) Retention of Defaulting Lender's Payments. Neither of the Agents shall be obligated to transfer to a Defaulting Lender any payments made by any Borrower to such Agent for the Defaulting Lender's benefit, nor shall a Defaulting Lender be entitled to the sharing of any payments hereunder. Amounts payable to a Defaulting Lender shall instead be paid to or retained by the Administrative Agent. In its discretion with respect to a Defaulting Lender that is a Revolving Lender, the Administrative Agent may loan the Borrowers the amount of all such payments received or retained by it for the account of such Defaulting Lender. Any amounts so loaned to the Borrowers shall bear interest at the rate applicable to Base Rate Revolving Loans and for all other purposes of this Agreement shall be treated as if they were Revolving Loans. For purposes of voting or consenting to matters with respect to the Loan Documents and determining Pro Rata Shares, a Defaulting Lender shall be deemed not to be a "Lender." Until a Defaulting Lender that is a Revolving Lender cures its failure to fund its Pro Rata Share of any Borrowing (i) such Defaulting Lender shall not be entitled to any portion of the Unused Line Fee and (ii) the Unused Line Fee shall accrue in favor of the Revolving Lenders that have funded their respective Pro Rata Shares of such requested Borrowing and shall be allocated among such performing Revolving Lenders ratably based upon their relative

Revolving Credit Commitments. This Section shall remain effective with respect to such Lender until such time as the Defaulting Lender shall no longer be in default of any of its obligations under this Agreement. The terms of this Section shall not be construed to increase or otherwise affect the Commitment of any Lender, or relieve or excuse the performance by any Borrower of its duties and obligations hereunder.

(e) Removal of Defaulting Lender. At the Borrowers' request, each Agent (acting in its individual capacity as a Lender) or an Eligible Assignee reasonably acceptable to the Agents and the Borrowers shall have the right (but not the obligation) to purchase from any Defaulting Lender, and each Defaulting Lender shall, upon such request, sell and assign to such Agent (acting in its individual capacity as a Lender) or such Eligible Assignee (as applicable), all of the Defaulting Lender's outstanding Loans and Commitments hereunder. Such sale shall be consummated promptly after the applicable Agent or one or more of the Borrowers, as applicable, has arranged for a purchase by such Agent (acting in its individual capacity as a Lender) or an Eligible Assignee (as applicable) pursuant to an Assignment and Acceptance, and at a price equal to the outstanding principal balance of the Defaulting Lender's Loans, plus accrued interest and fees (excluding the Unused Line Fee to the extent not required to be paid to the Defaulting Lender pursuant to Section 14.15(d)), without premium or discount.

Section 14.16 Letters of Credit; Intra-Revolving Lender Issues.

(a) Notice of Letter of Credit Balance. On each Settlement Date, either or both of the Agents shall notify each Revolving Lender of the issuance of any Letters of Credit since the prior Settlement Date.

(b) Participations in Letters of Credit.

(i) Purchase of Participations. Immediately upon issuance of any Letter of Credit in accordance with Section 2.4(d), each Revolving Lender shall be deemed to have irrevocably and unconditionally purchased and received without recourse or warranty, an undivided interest and participation equal to such Revolving Lender's Pro Rata Share of the face amount of such Letter of Credit in connection with the issuance of such Letter of Credit (including all obligations of the Borrower for whose account such Letter of Credit was issued, and any security therefor or guaranty pertaining thereto).

(ii) Sharing of Reimbursement Obligation Payments. Whenever the Administrative Agent receives a payment from a Borrower on account of reimbursement obligations in respect of a Letter of Credit as to which the Administrative Agent has previously received for its account or the account of the Letter of Credit Issuer payment from a Revolving Lender, the Administrative Agent shall pay to such Revolving Lender such Revolving Lender's Pro Rata Share of such payment from such Borrower. Each such payment shall be made by the Administrative Agent on the next Settlement Date.

(iii) Documentation. Upon the request of any Revolving Lender, the Letter of Credit Issuer shall furnish to either of the Agents and such Agent shall furnish to such Revolving Lender copies of any Letter of Credit, reimbursement agreements executed in connection therewith, applications for any Letter of Credit, and such other documentation relating to such Letter of Credit as may reasonably be requested by such Revolving Lender.

(iv) Obligations Irrevocable. The obligation of each Revolving Lender to make payments to the Administrative Agent with respect to any Letter of Credit or with respect to its participation therein or with respect to the Revolving Loans made as a result of a drawing under a Letter of Credit and the obligation of the Borrowers to make payments to the Administrative Agent, for the account of the Revolving Lenders, with respect to any Letter of Credit shall be irrevocable and shall not be subject to any qualification or exception whatsoever, including any of the following circumstances:

(A) any lack of validity or enforceability of this Agreement or any of the other Loan Documents;

(B) the existence of any claim, setoff, defense, or other right that any Borrower may have at any time against a beneficiary named in a Letter of Credit or any transferee of any Letter of Credit (or any Person for whom any such transferee may be acting), any Lender, either Agent, the Letter of Credit Issuer, or any other Person, whether in connection with this Agreement, any Letter of Credit, the transactions contemplated herein or any unrelated transactions (including any underlying transactions between such Borrower or any other Person and the beneficiary named in any Letter of Credit);

(C) any draft, certificate, or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid, or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(D) the surrender or impairment of any security for the performance or observance of any of the terms of any of the Loan Documents;

(E) the occurrence of any Default or Event of Default; or

(F) the failure of the Borrowers to satisfy the applicable conditions precedent set forth in Article 9.

(v) Claims Against Letter of Credit Issuer. Nothing in this Section 14.16 shall prohibit a Revolving Lender from seeking to recover any payment made by such Revolving Lender to or for the benefit of the Letter of Credit Issuer that constituted reimbursement of (or the funding of its Pro Rata Share of) a drawing under a Letter of Credit, the honor of which drawing

constitutes the gross negligence or willful misconduct of the Letter of Credit Issuer as determined by a court of competent jurisdiction in a final nonappealable judgment.

(c) Recovery or Avoidance of Payments; Refund of Payments in Error. In the event any payment by or on behalf of any Borrower received by the Administrative Agent with respect to any Letter of Credit and distributed by the Administrative Agent to the Revolving Lenders on account of their respective participations therein is thereafter set aside, avoided, or recovered from the Administrative Agent or the Letter of Credit Issuer in connection with any receivership, liquidation, or bankruptcy proceeding, the Revolving Lenders shall, upon demand by the Administrative Agent, pay to the Administrative Agent their respective Pro Rata Shares of such amount set aside, avoided, or recovered, together with interest at the rate required to be paid by the Administrative Agent or the Letter of Credit Issuer upon the amount required to be repaid by it. Unless the Administrative Agent receives notice from the Borrowers prior to the date on which any payment is due to the Revolving Lenders that the Borrowers will not make such payment in full as and when required, the Administrative Agent may assume that the Borrowers have made such payment in full to it on such date in immediately available funds and the Administrative Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Revolving Lender on such due date an amount equal to the amount then due such Revolving Lender. If and to the extent the Borrowers have not made such payment in full to the Administrative Agent, each Revolving Lender shall repay to the Administrative Agent on demand such amount distributed to such Revolving Lender, together with interest thereon at the Federal Funds Rate for each day from the date such amount is distributed to such Revolving Lender until the date repaid.

(d) Indemnification by the Lenders. To the extent not reimbursed by the Borrowers and without limiting the obligations of the Borrowers hereunder, the Revolving Lenders agree to indemnify the Letter of Credit Issuer ratably in accordance with their respective Pro Rata Shares for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees) or disbursements of any kind and nature whatsoever that may be imposed on, incurred by or asserted against the Letter of Credit Issuer in any way relating to or arising out of any Letter of Credit or the transactions contemplated thereby or any action taken or omitted by the Letter of Credit Issuer under any Letter of Credit or any Loan Document in connection therewith; provided that no Revolving Lender shall be liable for any of the foregoing to the extent determined in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from the Letter of Credit Issuer's own gross negligence or willful misconduct. Without limiting the foregoing, each Revolving Lender agrees to reimburse the Letter of Credit Issuer promptly upon demand for its Pro Rata Share of any costs or expenses payable by any Borrower to the Letter of Credit Issuer to the extent that the Letter of Credit Issuer is not promptly reimbursed for such costs and expenses by a Borrower. The agreement contained in this Section shall survive payment in full of all other Obligations.

Section 14.17 Concerning the Collateral and the Related Loan Documents. Each Lender authorizes and directs the Collateral Agent and the Administrative Agent, as applicable, to enter

into the other Loan Documents, for the benefit and obligation of the Credit Providers. Each Lender agrees that any action taken by the Collateral Agent, the Administrative Agent, the Majority Lenders, the Majority Revolving Lenders, the Majority Term Lenders or the Revolving Lenders, as applicable, in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Collateral Agent, the Administrative Agent, the Majority Lenders, the Majority Revolving Lenders, the Majority Term Lenders or the Revolving Lenders, as applicable, of their respective powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders. The Lenders acknowledge that the Revolving Loans (including the Agent Advances and the Non-Ratable Loans), Term Loans, Bank Products, and all interest, fees, and expenses hereunder constitute one Debt, secured *pari passu* by all of the Collateral, subject to the order of distribution of payments set forth in Section 4.6.

Section 14.18 Field Audit and Examination Reports; Disclaimer by Revolving Lenders. By signing or otherwise being bound by this Agreement, each Revolving Lender:

- (a) is deemed to have requested that each Agent furnish such Revolving Lender, promptly after it becomes available, a copy of each field audit or examination report (each, a "Report" and collectively, the "Reports") prepared by or on behalf of such Agent;
- (b) expressly agrees and acknowledges that none of BofA, Wachovia or either of the Agents (i) makes any representation or warranty as to the accuracy of any Report or (ii) shall be liable for any information contained in any Report;
- (c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the applicable Agent, BofA or Wachovia, or any other Person performing any audit or examination will inspect only specific information regarding the Obligated Parties and will rely significantly upon the Obligated Parties' books and records, as well as on representations of the Obligated Parties' personnel;
- (d) agrees to keep all Reports confidential and strictly for its internal use, and not to distribute except to its Participants, or use any Report in any other manner; and
- (e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold each of the Agents and any such other Person preparing a Report harmless from any action the indemnifying Revolving Lender may take or conclusion the indemnifying Revolving Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Revolving Lender has made or may make to the Obligated Parties, or the indemnifying Revolving Lender's participation in, or the indemnifying Revolving Lender's purchase of, a loan or loans to the Obligated Parties; and (ii) to pay and protect, and indemnify, defend, and hold each of the Agents and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including Attorney Costs) incurred by such Agent and any

such other Person preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Revolving Lender.

Section 14.19 Relation Among the Lenders. The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in the case of the Collateral Agent and the Administrative Agent) authorized to act for, any other Lender.

Section 14.20 Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceeding relative to any Obligated Party, or any other Person party to any Loan Document, the Administrative Agent (irrespective of whether the principal of any Loan or Obligation relating to Letters of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether either of the Agents shall have made any demand on the Obligated Parties or such other Person) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Obligations relating to Letters of Credit, and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Agents and the Lenders (including any claim for the reasonable compensation, expenses, disbursements, and advances of the Administrative Agent, the Collateral Agent and the Lenders, and their respective agents and counsel, and all other amounts due the Administrative Agent, the Collateral Agent and the Lenders under Section 3.4 through Section 3.7 and Section 15.7) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator, or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements, and advances of the Administrative Agent and its agents and counsel (including Attorney Costs), and any other amounts due to the Administrative Agent under Section 3.4 through Section 3.7 and Section 15.7. Nothing contained in this Section shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment, or composition affecting the Obligations or the rights of any Lender, or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 14.21 Co-Lead Arrangers and Syndication Agent. Each of the Co-Lead Arrangers and the Syndication Agent, solely in its capacity as such, shall have no obligations, liabilities, responsibilities or duties under this Agreement or any other Loan Document. Without limiting the foregoing, the Co-Lead Arrangers and the Syndication Agent shall have no fiduciary relationship with any Credit Provider and each Credit Provider acknowledges that it has not

relied, and will not rely, on either of the Co-Lead Arrangers or the Syndication Agent in deciding to enter into this Agreement or any other Loan Document or in taking or not taking action hereunder or thereunder.

Section 14.22 Revolving Loans and Letters of Credit in Excess of Unused Availability. Notwithstanding anything herein to the contrary (including, without limitation, Section 2.2(a)), none of BofA, any of the other Revolving Lenders, the Administrative Agent or the Letter of Credit Issuer shall have any liability to the Term Lenders if BofA, any other Revolving Lender, the Administrative Agent or the Letter of Credit Issuer makes a Revolving Loan to a Borrower or issues or causes the issuance of a Letter of Credit for the account of a Borrower in excess of the Unused Availability or if prior to or after giving effect thereto the Aggregate Revolver Outstandings exceeds or would exceed the Borrowing Base, in each instance, so long as immediately after giving effect to the making of such Revolving Loan or the issuance of such Letter of Credit the Aggregate Revolver Outstandings do not exceed \$350,000,000.

ARTICLE 15

MISCELLANEOUS

Section 15.1 No Waivers; Cumulative Remedies. No failure by the Collateral Agent, the Administrative Agent or any Lender to exercise any right, remedy, or option under this Agreement, any other Loan Document, or any present or future supplement hereto or thereto, or in any other agreement between or among any Obligated Party and the Collateral Agent, the Administrative Agent and/or any Lender, or delay by the Collateral Agent, the Administrative Agent or any Lender in exercising the same, will operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or option hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, or option. Subject to Article 13, no waiver by the Collateral Agent, the Administrative Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by the Collateral Agent, the Administrative Agent or any of the Lenders on any occasion shall affect or diminish the Collateral Agent's, the Administrative Agent's and each Lender's rights thereafter to require strict performance by the Obligated Parties of any provision of this Agreement. The Administrative Agent, the Collateral Agent and the Lenders may proceed directly to collect the Obligations without any prior recourse to the Collateral. The Collateral Agent's, the Administrative Agent's and each Lender's rights under this Agreement will be cumulative and not exclusive of any other right or remedy that the Collateral Agent, the Administrative Agent or any Lender may have.

Section 15.2 Severability. The illegality or unenforceability of any provision of this Agreement, any other Loan Document, or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement, any other Loan Document, or any instrument or agreement required hereunder.

Section 15.3 Governing Law; Choice of Forum; Service of Process.

(a) THIS AGREEMENT SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE

WITH THE INTERNAL LAWS (AS OPPOSED TO THE CONFLICT OF LAWS PROVISIONS, PROVIDED THAT PERFECTION ISSUES WITH RESPECT TO ARTICLE 9 OF THE UCC MAY GIVE EFFECT TO APPLICABLE CHOICE OR CONFLICT OF LAW RULES SET FORTH IN ARTICLE 9 OF THE UCC) OF THE STATE OF NEW YORK; PROVIDED THAT THE PARTIES HERETO SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE U.S. LOCATED IN THE SOUTHERN DISTRICT OF NEW YORK, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE OBLIGATED PARTIES, THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, AND THE LENDERS CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH OF THE OBLIGATED PARTIES, THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, AND THE LENDERS IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, THAT IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR ANY OTHER AGREEMENT, DOCUMENT, OR INSTRUMENT RELATED HERETO OR THERETO. NOTWITHSTANDING THE FOREGOING (i) THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT AND THE LENDERS SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST ANY OBLIGATED PARTY OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT OR THE LENDERS DEEM NECESSARY OR APPROPRIATE IN ORDER TO REALIZE ON THE COLLATERAL OR OTHER SECURITY FOR THE OBLIGATIONS AND (ii) EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT ANY APPEALS FROM THE COURTS DESCRIBED IN THE IMMEDIATELY PRECEDING SENTENCE MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE THOSE JURISDICTIONS.

(c) EACH OBLIGATED PARTY HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (RETURN RECEIPT REQUESTED) DIRECTED TO SUCH OBLIGATED PARTY AT ITS ADDRESS SET FORTH IN SECTION 15.8 AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED FIVE DAYS AFTER THE SAME SHALL HAVE BEEN SO DEPOSITED IN THE U.S. MAILED POSTAGE PREPAID. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT OR THE LENDERS TO SERVE LEGAL PROCESS BY ANY OTHER MANNER PERMITTED BY LAW.

Section 15.4 Waiver of Jury Trial. EACH OBLIGATED PARTY, THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, AND EACH OTHER CREDIT

PROVIDER IRREVOCABLY WAIVES ITS RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY IN ANY ACTION, PROCEEDING, OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY AGENT-RELATED PERSON, PARTICIPANT, OR ASSIGNEE, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH OF THE OBLIGATED PARTIES, THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, AND EACH OTHER CREDIT PROVIDER AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, EACH OF THE PARTIES FURTHER AGREES THAT ITS RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION 15.4 AS TO ANY ACTION, COUNTERCLAIM, OR OTHER PROCEEDING THAT SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

Section 15.5 Survival of Representations and Warranties. All representations and warranties of the Obligated Parties contained in this Agreement and the other Loan Documents shall survive the execution, delivery, and acceptance thereof by the parties, notwithstanding any investigation by the Collateral Agent, the Administrative Agent or the Lenders or their respective agents.

Section 15.6 Other Security and Guaranties. Each of the Collateral Agent and the Administrative Agent may, without notice or demand and without affecting the Obligated Parties' obligations hereunder, from time to time (a) take from any Person and hold collateral (other than the Collateral) for the payment of all or any part of the Obligations and exchange, enforce, or release such collateral or any part thereof and (b) accept and hold any endorsement or guaranty of payment of all or any part of the Obligations and release or substitute any such endorser or guarantor (other than any Guarantor), or any Person who has given any Lien in any other collateral as security for the payment of all or any part of the Obligations, or any other Person in any way obligated to pay all or any part of the Obligations.

Section 15.7 Fees and Expenses. Each Borrower agrees to pay to each of the Collateral Agent and the Administrative Agent, for its account, on demand, all reasonable costs and expenses that the Collateral Agent or the Administrative Agent pays or incurs in connection with the negotiation, preparation, syndication, consummation, administration, enforcement, and termination of this Agreement or any of the other Loan Documents, including: (a) Attorney Costs; (b) costs and expenses (including Attorney Costs) for any amendment, supplement, waiver, consent, or subsequent closing in connection with any of the Loan Documents and the transactions contemplated thereby; (c) costs and expenses of lien and title searches, title insurance, and environmental audits; (d) taxes, fees, and other charges for recording the Mortgages and the Aircraft Mortgage, filing financing statements and continuations, and other actions to perfect, protect, and continue the Agent's Liens (including costs and expenses paid or incurred by the Collateral Agent or the Administrative Agent in connection with the

consummation of this Agreement); (e) sums paid or incurred to pay any amount or take any action required of any Obligated Party under the Loan Documents that such Obligated Party fails to pay or take; (f) costs of all Inventory Appraisals, Equipment Appraisals and other appraisals (in each case, whether conducted by an internal or external appraiser), and costs of two field examinations and two environmental audits per year (except that after the occurrence and during the continuation of an Event of Default, the Borrowers shall pay the costs of all field examinations and environmental audits), inspections, and verifications of the Collateral and other due diligence, including travel, lodging, and meals for field examinations and inspections of the Collateral and the Obligated Parties' operations by such Agent, plus such Agent's then customary charge for field examinations and audits and the preparation of reports thereof (such charge for each Agent is currently \$1,000 per day (or portion thereof) for each Person retained or employed by such Agent with respect to each field examination or audit) performed or prepared at any time; and (g) costs and expenses of forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining Clearing Accounts, and costs and expenses of preserving and protecting the Collateral. In addition, the Borrowers agree to pay (i) to the Collateral Agent and the Administrative Agent, for its benefit, on demand, all costs and expenses incurred by the Collateral Agent or the Administrative Agent (including Attorney Costs), and (ii) to the Lenders, for their benefit, on demand, all reasonable and actual fees, expenses, and disbursements incurred by (x) the Revolving Lenders for one law firm retained by the Revolving Lenders and (y) the Term Lenders for one law firm retained by the Term Lenders, in each case, paid or incurred during the existence of an Event of Default to obtain payment of the Obligations, enforce the Agent's Liens, sell or otherwise realize upon the Collateral, and otherwise enforce the provisions of the Loan Documents, or to defend any claims made or threatened against the Collateral Agent, the Administrative Agent or any Lender arising out of the transactions contemplated hereby (including preparations for and consultations concerning any such matters). The foregoing shall not be construed to limit any other provisions of the Loan Documents regarding costs and expenses to be paid by the Borrowers. All of the foregoing costs and expenses shall be charged to the Loan Account as Revolving Loans as described in Section 4.5. The agreements in this Section 15.7 shall survive payment of all other Obligations.

Section 15.8 Notices and Information.

(a) Except as otherwise provided herein, all notices, demands, and requests that any party is required or elects to give to any other party shall be in writing, or by a telecommunications device capable of creating a written record, and any such notice shall become effective (i) upon personal delivery thereof, including, but not limited to, delivery by overnight mail or courier service, (ii) four days after it shall have been mailed by U.S. mail, first class, certified or registered, with postage prepaid, or (iii) in the case of notice by such a telecommunications device, when properly transmitted and confirmed, in each case addressed to the party to be notified as follows:

If to the Administrative Agent:

Bank of America, N.A.
335 Madison Avenue
New York, NY 10017
Attention: Richard Levenson
Telecopy No.: (646) 556-0260

If to the Collateral Agent:

Wachovia Bank, National Association
2450 Colorado Ave.
Suite 3000 W.
Santa Monica, CA 90404
Attention: Krista Wade
Telecopy No.: (704) 715-0343

If to any Obligated Party:

c/o Ahern Rentals, Inc.
4241 S. Arville Street
Las Vegas, Nevada 89103
Attention: Chief Financial Officer
Telecopy No.: (702) 367-7652

If to any Lender:

to the address of such Lender set forth on the signature pages of this Agreement or on the most recent Assignment and Acceptance to which such Lender is a party,

or to such other address as each party may designate for itself by like notice.

(b) The Obligated Parties hereby agree that any notice required or permitted to be given by the Agents hereunder may be given by either of the Agents.

(c) Loan Documents may be transmitted and/or signed by facsimile or electronic transmission (in pdf format). The effectiveness of any such Loan Documents and signatures shall, subject to Requirements of Law, have the same force and effect as manually signed originals and shall be binding on the Obligated Parties, the Agents, the Lenders, and all other parties to the Loan Documents. Either of the Agents may also require that any such documents and signatures be confirmed by a manually signed original thereof, provided that the failure to request or deliver the same shall not limit the effectiveness of any facsimile or electronic transmission document or signature.

(d) The Agents and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices in lieu of written Notices of Borrowing and Notices

of Continuation/Conversion) purportedly given by or on behalf of any Obligated Party even if (i) such notices were not made in a manner specified herein, (ii) such notices were incomplete or were not preceded or followed by any other form of notice specified herein, or (iii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Obligated Parties shall indemnify each Credit Provider from all losses, costs, expenses, and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of an Obligated Party. All telephonic notices to and other communications with the Collateral Agent or the Administrative Agent may be recorded by such Agent, and each of the parties hereto hereby consents to such recording.

(e) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, each Obligated Party agrees to use its best efforts to provide all Communications (as defined below) to each of the Agents in an electronic/soft medium in a format acceptable to the Collateral Agent or the Administrative Agent, as applicable, to the e-mail addresses specified by it to Ahern from time to time. As used in this Section 15.8 "Communications" means all information, documents and other materials that any Obligated Party is obligated to furnish to the Collateral Agent or the Administrative Agent pursuant to this Agreement or any other Loan Document, including all notices, requests, Financial Statements, financial and other reports, certificates, and other information materials, but excluding any such information, documents, or materials that (i) relate to any request for a Borrowing or a continuation or a conversion of any existing Loan (including any election of an interest rate or the duration of an Interest Period), (ii) relate to the payment of any principal or other amount due under this Agreement or any other Loan Document prior to the scheduled date therefor, (iii) provide notice of any Default or Event of Default; or (iv) are required to be delivered to satisfy any condition set forth in Section 9.1 or Section 9.2. The Collateral Agent and the Administrative Agent may, in its sole discretion, require that the Obligated Parties provide any of the information provided in electronic/soft medium also in written or printed form.

(f) Each Obligated Party and each Credit Provider agrees that each of the Agents may make the Loan Documents and the Communications, together with other information relating to the Obligated Parties and their business and assets, including Borrowing Base Certificates, appraisals, and Reports, (all such other information being referred to collectively in this Section 15.8 as the "Other Information"), available to the Credit Providers by posting on Intralinks or a substantially similar electronic transmission system (each such system being referred to in this Section 15.8 as a "Platform"). Each Obligated Party (i) acknowledges that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and (ii) agrees that posting of the Communications and Other Information to a Platform will not in any event constitute a breach of the confidentiality provisions of Section 15.16.

(g) EACH PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT-RELATED PERSONS DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF ANY LOAN DOCUMENTS, COMMUNICATIONS, OR

OTHER INFORMATION POSTED BY ANY AGENT-RELATED PERSON TO ANY PLATFORM, OR THE ADEQUACY OF ANY PLATFORM, AND THE AGENT-RELATED PERSONS AND THE OTHER CREDIT PROVIDERS EXPRESSLY DISCLAIM ANY LIABILITY FOR ERRORS OR OMISSIONS IN ANY LOAN DOCUMENTS, COMMUNICATIONS, OR OTHER INFORMATION AS POSTED ON ANY PLATFORM. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY (INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS) IS MADE BY THE AGENT-RELATED PERSONS OR ANY OTHER CREDIT PROVIDER IN CONNECTION WITH THE LOAN DOCUMENTS, COMMUNICATIONS, OR OTHER INFORMATION OR ANY PLATFORM. IN NO EVENT SHALL ANY AGENT-RELATED PERSON OR ANY OTHER CREDIT PROVIDER HAVE ANY LIABILITY TO ANY OBLIGATED PARTY OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND (INCLUDING DIRECT OR INDIRECT DAMAGES, SPECIAL DAMAGES, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN CONTRACT, TORT OR OTHERWISE)) ARISING OUT OF ANY PERSON'S TRANSMISSION OF LOAN DOCUMENTS, COMMUNICATIONS, OR OTHER INFORMATION THROUGH THE INTERNET, OR POSTING OR FAILURE TO POST ANY LOAN DOCUMENTS, COMMUNICATIONS, OR OTHER INFORMATION ON ANY PLATFORM, EXCEPT TO THE EXTENT DETERMINED IN A FINAL, NONAPPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH PERSON'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(h) Subject to the last sentence of clause (e) preceding, the Collateral Agent and the Administrative Agent each agrees that the receipt of the Communications by it at its e-mail address specified to the Obligated Parties from time to time shall constitute effective delivery of the Communications to the Collateral Agent or the Administrative Agent, as the case may be, for purposes of this Agreement. Each Lender agrees that notice to it (as provided in the following sentence) specifying that the Communications and the Other Information have been posted to a Platform shall constitute effective delivery of the Communications and the Other Information to such Lender for purposes of this Agreement. Each Lender agrees (i) to notify the Collateral Agent and the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail addresses to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such e-mail address.

(i) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, each Agent agrees that any notice of a Default delivered by such Agent to any Obligated Party shall be effected through personal delivery (including, but not limited to, delivery by overnight mail or courier service), registered mail or by a telecommunications device.

Section 15.9 Waiver of Notices. Unless otherwise expressly provided herein, each Obligated Party waives presentment, notice of demand or dishonor, protest as to any instrument, notice of intent to accelerate any of the Obligations, and notice of acceleration of any of the Obligations, as well as any and all other notices to which it might otherwise be entitled. No notice to or demand on any Obligated Party that the Collateral Agent, the Administrative Agent or any Lender may elect to give shall entitle any Obligated Party to any or further notice or demand in the same, similar, or other circumstances.

Section 15.10 Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective representatives, successors, and assigns of the parties hereto; provided that no interest herein may be assigned by any Obligated Party without the prior written consent of the Agents and the Lenders.

Section 15.11 Indemnity of the Credit Providers by the Obligated Parties.

(a) EACH OBLIGATED PARTY AGREES TO DEFEND, INDEMNIFY, AND HOLD THE AGENT-RELATED PERSONS, EACH CREDIT PROVIDER, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, COUNSEL, REPRESENTATIVES, AGENTS, AND ATTORNEYS-IN-FACT (EACH, AN "INDEMNIFIED PERSON") HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, CHARGES, EXPENSES, AND DISBURSEMENTS (INCLUDING ATTORNEY COSTS AND REASONABLE LEGAL COSTS AND EXPENSES OF THE OTHER CREDIT PROVIDERS) OF ANY KIND OR NATURE WHATSOEVER THAT MAY AT ANY TIME (INCLUDING AT ANY TIME FOLLOWING REPAYMENT OF THE LOANS AND THE TERMINATION, RESIGNATION, OR REPLACEMENT OF THE COLLATERAL AGENT OR THE ADMINISTRATIVE AGENT OR REPLACEMENT OF ANY OTHER CREDIT PROVIDER) BE IMPOSED ON, INCURRED BY, OR ASSERTED AGAINST ANY SUCH PERSON IN ANY WAY RELATING TO OR ARISING OUT OF THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR ANY OTHER AGREEMENT, INSTRUMENT, OR DOCUMENT CONTEMPLATED BY OR REFERRED TO HEREIN OR THEREIN, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR ANY ACTION TAKEN OR OMITTED BY ANY INDEMNIFIED PERSON UNDER OR IN CONNECTION WITH ANY OF THE FOREGOING, INCLUDING WITH RESPECT TO ANY INVESTIGATION, LITIGATION, OR PROCEEDING (INCLUDING ANY BANKRUPTCY, INSOLVENCY, OR OTHER PROCEEDING, AND ANY APPELLATE PROCEEDING) RELATED TO OR ARISING OUT OF THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, THE LOANS, OR THE USE OF THE PROCEEDS OF THE LOANS, WHETHER OR NOT ANY INDEMNIFIED PERSON IS A PARTY THERETO (ALL THE FOREGOING, COLLECTIVELY, THE "INDEMNIFIED LIABILITIES"); PROVIDED THAT NO OBLIGATED PARTY SHALL HAVE ANY OBLIGATION HEREUNDER TO ANY INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES TO THE EXTENT DETERMINED IN A FINAL, NONAPPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH INDEMNIFIED PERSON'S OWN GROSS NEGLIGENCE OR WILLFUL

MISCONDUCT. THE AGREEMENTS IN THIS SECTION 15.11(a) SHALL SURVIVE PAYMENT OF ALL OTHER OBLIGATIONS.

(b) EACH OBLIGATED PARTY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT AND THE LENDERS FROM ANY LOSS OR LIABILITY DIRECTLY OR INDIRECTLY ARISING OUT OF THE USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE OF A HAZARDOUS SUBSTANCE RELATING TO ANY OBLIGATED PARTY'S OPERATIONS, BUSINESS, OR PROPERTY. THIS INDEMNITY WILL APPLY WHETHER THE HAZARDOUS SUBSTANCE IS ON, UNDER, OR ABOUT ANY OBLIGATED PARTY'S PROPERTY OR OPERATIONS OR PROPERTY LEASED TO ANY OBLIGATED PARTY. THE INDEMNITY INCLUDES BUT IS NOT LIMITED TO ATTORNEY COSTS AND REASONABLE LEGAL COSTS AND EXPENSES OF THE CREDIT PROVIDERS (INCLUDING ENVIRONMENTAL ASSESSMENTS). THE INDEMNITY EXTENDS TO THE AGENTS AND THE OTHER CREDIT PROVIDERS, THEIR AFFILIATES, SUBSIDIARIES, AND ALL OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ATTORNEYS, AND ASSIGNS. AS USED IN THIS CLAUSE (b), "HAZARDOUS SUBSTANCES" MEANS ANY SUBSTANCE, MATERIAL, OR WASTE THAT IS OR BECOMES DESIGNATED OR REGULATED AS "TOXIC," "HAZARDOUS," "POLLUTANT," OR "CONTAMINANT" OR A SIMILAR DESIGNATION OR REGULATION UNDER ANY FEDERAL, STATE, OR LOCAL LAW (WHETHER UNDER COMMON LAW, STATUTE, REGULATION, OR OTHERWISE) OR JUDICIAL OR ADMINISTRATIVE INTERPRETATION OF SUCH, INCLUDING PETROLEUM OR NATURAL GAS. THIS INDEMNITY WILL SURVIVE REPAYMENT OF ALL OTHER OBLIGATIONS.

Section 15.12 Limitation of Liability. NO CLAIM MAY BE MADE BY ANY OBLIGATED PARTY, THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, ANY OTHER CREDIT PROVIDER, OR ANY OTHER PERSON AGAINST ANY OBLIGATED PARTY, THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, ANY OTHER CREDIT PROVIDER, OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH OBLIGATED PARTY, THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, AND EACH OTHER CREDIT PROVIDER HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

Section 15.13 Final Agreement. This Agreement and the other Loan Documents are intended by the Obligated Parties, the Agents, and the Lenders to be the final, complete, and

exclusive expression of the agreement between them. This Agreement and the other Loan Documents supersede any and all prior oral or written agreements relating to the subject matter hereof and thereof (including, without limitation, the terms of the Original Loan and Security Agreement and the First Amended and Restated Loan and Security Agreement). No modification, rescission, waiver, release, or amendment of any provision of this Agreement or any other Loan Document shall be made, except in accordance with Article 13.

Section 15.14 Counterparts. This Agreement may be executed in any number of counterparts, and by the Collateral Agent, the Administrative Agent, each Lender, and each Obligated Party in separate counterparts, each of which shall be an original, but all of which shall together constitute one and the same agreement. Signature pages to this Agreement may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document and a telecopy or electronic transmission (in pdf format) of any such executed signature page shall be valid as an original.

Section 15.15 Right of Setoff. In addition to any rights and remedies of the Lenders provided by law, if an Event of Default exists or any or all of the Loans have been accelerated, each Lender is authorized at any time and from time to time, without prior notice to any Obligated Party, any such notice being waived by the Obligated Parties to the fullest extent permitted by law, to setoff and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other indebtedness at any time owing by, such Lender or any Affiliate of such Lender to or for the credit or the account of any Obligated Party against any and all Obligations owing to such Lender, now or hereafter existing, irrespective of whether or not either Agent or such Lender shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured. Each Lender agrees promptly to notify the Obligated Parties and the Agents after any such setoff and application made by such Lender; provided that the failure to give such notice shall not affect the validity of such setoff and application. **NOTWITHSTANDING THE FOREGOING, NO LENDER SHALL EXERCISE ANY RIGHT OF SETOFF, BANKER'S LIEN, OR THE LIKE AGAINST ANY DEPOSIT ACCOUNT OR PROPERTY OF ANY OBLIGATED PARTY HELD OR MAINTAINED BY SUCH LENDER WITHOUT THE PRIOR WRITTEN CONSENT OF THE MAJORITY REVOLVING LENDERS (OR AFTER THE REVOLVING FACILITY PAYMENT IN FULL, THE MAJORITY TERM LENDERS).**

Section 15.16 Confidentiality.

(a) Each Obligated Party hereby consents that the Collateral Agent, the Administrative Agent and each Lender may issue and disseminate to the public general information describing the credit accommodation entered into pursuant to this Agreement, including the name and address of the Obligated Parties and a general description of the Obligated Parties' business and may use each Obligated Party's name in advertising and other promotional material.

(b) Each Lender severally agrees to take normal and reasonable precautions and exercise due care to maintain the confidentiality of all information identified as "confidential" or "secret" by any Obligated Party and provided to the Collateral Agent, the Administrative Agent or such Lender by or on behalf of any Obligated Party under

this Agreement or any other Loan Document, except to the extent that such information (i) was or becomes generally available to the public other than as a result of disclosure by the Collateral Agent, the Administrative Agent or a Lender or (ii) was or becomes available on a nonconfidential basis from a source other than an Obligated Party, provided that such source is not bound by a confidentiality agreement with an Obligated Party known to the Collateral Agent, the Administrative Agent or such Lender; provided, however, that the Collateral Agent, the Administrative Agent and any Lender may disclose such information (A) at the request or pursuant to any requirement of any Governmental Authority to which the Collateral Agent, the Administrative Agent or such Lender is subject or in connection with an examination of the Collateral Agent, the Administrative Agent or such Lender by any such Governmental Authority, (B) pursuant to subpoena or other court process, (C) when required to do so in accordance with the provisions of any applicable Requirement of Law, (D) to the extent reasonably required in connection with any litigation or proceeding (including any bankruptcy proceeding) to which the Collateral Agent, the Administrative Agent, any Lender or any of their respective Affiliates may be party, (E) to the extent reasonably required in connection with the exercise of any remedy hereunder or under any other Loan Document, (F) to the Collateral Agent's, the Administrative Agent's or such Lender's independent auditors, accountants, attorneys, and other professional advisors, (G) to any prospective Participant or Assignee, actual or potential, provided that such prospective Participant or Assignee agrees to keep such information confidential to the same extent required of the Agents and the Lenders hereunder, (H) as expressly permitted under the terms of any other document or agreement regarding confidentiality to which any Obligated Party is party or is deemed party with the Collateral Agent, the Administrative Agent or such Lender, and (I) to its Affiliates. Any Person required to maintain the confidentiality of information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such information as such Person would accord to its own confidential information.

Section 15.17 USA Patriot Act Notice. Each Lender and each Agent (for itself and not on behalf of any Lender) hereby notifies the Obligated Parties that pursuant to the requirements of the Patriot Act, such Credit Provider is required to obtain, verify, and record information that identifies the Obligated Parties, which information includes the name and address of the Obligated Parties and other information that will allow such Credit Provider to identify the Obligated Parties in accordance with the Patriot Act.

Section 15.18 Joint and Several Liability. All Loans, upon funding, shall be deemed to be jointly funded to and received by the Borrowers. Each Borrower jointly and severally agrees to pay, and shall be jointly and severally liable under this Agreement for, all Obligations, regardless of the manner or amount in which proceeds of Loans are used, allocated, shared, or disbursed by or among the Borrowers themselves, or the manner in which either Agent and/or any Lender accounts for such Loans or other extensions of credit on its books and records. Each Borrower shall be liable for all amounts due to either of the Agents and/or any Lender under this Agreement, regardless of which Borrower actually receives Loans or other extensions of credit hereunder or the amount of such Loans and extensions of credit received or the manner in which such Agent and/or such Lender accounts for such Loans or other extensions of credit on its books and records. Each Borrower's Obligations with respect to Loans and other extensions of credit

made to it, and such Borrower's Obligations arising as a result of the joint and several liability of such Borrower hereunder, with respect to Loans made to the other Borrowers hereunder, shall be separate and distinct obligations, but all such Obligations shall be primary obligations of such Borrower. The Borrowers acknowledge and expressly agree with each Agent and each Lender that the joint and several liability of each Borrower is required solely as a condition to, and is given solely as inducement for and in consideration of, credit or accommodations extended or to be extended under the Loan Documents to any or all of the other Borrowers and is not required or given as a condition of extensions of credit to such Borrower. Each Borrower's obligations under this Agreement and as an obligor under a Guaranty Agreement shall be separate and distinct obligations. Each Borrower's obligations under this Agreement shall, to the fullest extent permitted by law, be unconditional irrespective of (a) the validity or enforceability, avoidance, or subordination of any of the Obligations of any other Borrower or of any promissory note or other document evidencing all or any part of the Obligations of any other Borrower, (b) the absence of any attempt to collect any of the Obligations from any other Borrower, any Guarantor, or any other security therefor, or the absence of any other action to enforce the same, (c) the waiver, consent, extension, forbearance, or granting of any indulgence by the Administrative Agent, the Collateral Agent and/or any Lender with respect to any provision of any instrument evidencing any of the Obligations of any other Borrower or Guarantor, or any part thereof, or any other agreement now or hereafter executed by any other Borrower or Guarantor and delivered to the Administrative Agent, the Collateral Agent and/or any Lender, (d) the failure by the Collateral Agent, the Administrative Agent and/or any Lender to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for any of the Obligations of any other Borrower or Guarantor, (e) the Administrative Agent's, the Collateral Agent's and/or any Lender's election, in any proceeding instituted under the Bankruptcy Code, or the application of Section 1111(b)(2) of the Bankruptcy Code, (f) any borrowing or grant of a security interest by any other Borrower, as debtor-in-possession under Section 364 of the Bankruptcy Code, (g) the disallowance of all or any portion of the Administrative Agent's, the Collateral Agent's and/or any Lender's claim(s) for the repayment of any of the Obligations of any other Borrower under Section 502 of the Bankruptcy Code, or (h) any other circumstances that might constitute a legal or equitable discharge or defense of a Guarantor or of any other Borrower. With respect to any Borrower's Obligations arising as a result of the joint and several liability of the Borrowers hereunder with respect to Loans or other extensions of credit made to any of the other Borrowers hereunder, such Borrower waives, until the Obligations shall have been paid in full and this Agreement shall have been terminated, any right to enforce any right of subrogation or any remedy that the Collateral Agent, the Administrative Agent and/or any Lender now has or may hereafter have against any other Borrower, any endorser or any Guarantor of all or any part of the Obligations, and any benefit of, and any right to participate in, any security or collateral given to the Administrative Agent, the Collateral Agent and/or any other Credit Provider to secure payment of the Obligations or any other liability of any Borrower to any other Credit Provider. Upon any Event of Default, either of the Agents may proceed directly and at once, without notice, against any Borrower to collect and recover the full amount, or any portion of the Obligations, without first proceeding against any other Borrower or any other Person, or against any security or collateral for any of the Obligations. Each Borrower consents and agrees that neither the Collateral Agent nor the Administrative Agent shall be under any obligation to marshal any assets in favor of any Borrower or against or in payment of any or all of the Obligations.

Section 15.19 Contribution and Indemnification among the Obligated Parties. Each Borrower is obligated to repay the Obligations as joint and several obligors under this Agreement. To the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Loans made to another Borrower hereunder or other Obligations incurred directly and primarily by any other Borrower and to the extent any other Obligated Party makes any transfer (including any payment, grant, guaranty, or granting of a Lien) pursuant to this Agreement (any such payment or transfer being referred to herein as an "Accommodation Payment"), then the Obligated Party making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Obligated Parties in an amount, for each of such other Obligated Parties, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Obligated Party's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Obligated Parties. As of any date of determination, the "Allocable Amount" of each Obligated Party shall be equal to the maximum amount of liability for Accommodation Payments that could be asserted against such Obligated Party hereunder without (a) rendering such Obligated Party "insolvent" within the meaning of Section 101 (32) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA"), (b) leaving such Obligated Party with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Obligated Party unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA. All rights and claims of contribution, indemnification, and reimbursement under this Section shall be subordinate in right of payment to the prior payment in full of the Obligations. The provisions of this Section shall, to the extent expressly inconsistent with any provision in any Loan Document, supersede such inconsistent provision. Notwithstanding the foregoing, no provision of this Agreement shall limit the liability or obligation of any Person (the "subject Person") with respect to any indebtedness, liabilities, or obligations of any Subsidiary of the subject Person.

Section 15.20 Agency of Ahern for Each Other Obligated Party. Each of the Obligated Parties (excluding Ahern) irrevocably appoints Ahern as its agent for all purposes relevant to this Agreement, including the giving and receipt of notices and execution and delivery of all documents, instruments, and certificates contemplated herein (including execution and delivery to the Agents of Borrowing Base Certificates) and all modifications hereto. Any acknowledgment, consent, direction, certification, or other action that might otherwise be valid or effective only if given or taken by all or any of the Obligated Parties or acting singly, shall be valid and effective if given or taken only by Ahern, whether or not any of the other Obligated Parties joins therein, and the Agents and the Lenders shall have no duty or obligation to make further inquiry with respect to the authority of Ahern under this Section 15.20, provided that nothing in this Section 15.20 shall limit the effectiveness of, or the right of the Agents and the Lenders to rely upon, any notice, document, instrument, certificate, acknowledgment, consent, direction, certification, or other action delivered by any Obligated Party pursuant to this Agreement.

Section 15.21 Additional Borrowers and Guarantors. Addition of any Person as a Borrower or a Guarantor to this Agreement is subject to approval of all of the Revolving Lenders (in the case of a Borrower) or the Majority Revolving Lenders (in the case of a Guarantor), and

may be conditioned upon such requirements as they may determine in their discretion, including (a) the furnishing of such financial and other information as any such Lender may reasonably request, (b) approval by all appropriate approval authorities of each such Lender, and (c) execution and delivery by the Obligated Parties, such Person, the Agents and the Majority Revolving Lenders or other requisite Lenders (as appropriate) of such agreements and other documentation (including a Guaranty Agreement and an amendment to this Agreement or any other Loan Document), and the furnishing by such Person or any of the Obligated Parties of such certificates, opinions, and other documentation, as either of the Agents or any such Lender may reasonably request. No Lender shall have any obligation to approve any such Person for addition as a party to this Agreement.

Section 15.22 Express Waivers By the Obligated Parties In Respect of Cross Guaranties and Cross Collateralization. Each Obligated Party agrees as follows:

(a) Each Obligated Party hereby waives: (i) notice of acceptance of this Agreement; (ii) notice of the making of any Loans, the issuance of any Letter of Credit, or any other financial accommodations made or extended under the Loan Documents or the creation or existence of any Obligations; (iii) notice of the amount of the Obligations, subject, however, to such Obligated Party's right to make inquiry of the Administrative Agent to ascertain the amount of the Obligations at any reasonable time; (iv) notice of any adverse change in the financial condition of any other Obligated Party or of any other fact that might increase such Obligated Party's risk with respect to such other Obligated Party under the Loan Documents; (v) notice of presentment for payment, demand, protest, and notice thereof as to any promissory notes or other instruments among the Loan Documents; and (vii) all other notices (except if such notice is specifically required to be given to such Obligated Party hereunder or under any of the other Loan Documents to which such Obligated Party is a party) and demands to which such Obligated Party might otherwise be entitled.

(b) Each Obligated Party hereby waives the right by statute or otherwise to require any Credit Provider to institute suit against any other Obligated Party or to exhaust any rights and remedies that any Credit Provider has or may have against any other Obligated Party. Each Obligated Party further waives any defense arising by reason of any disability or other defense of any other Obligated Party (other than the defense that the Obligations shall have been fully and finally performed and indefeasibly paid) or by reason of the cessation from any cause whatsoever of the liability of any such Obligated Party in respect thereof.

(c) Each Obligated Party hereby waives and agrees not to assert against any Credit Provider: (i) any defense (legal or equitable), setoff, counterclaim, or claim that such Obligated Party may now or at any time hereafter have against any other Obligated Party or any other party liable under any of the Loan Documents; (ii) any defense, setoff, counterclaim, or claim of any kind or nature available to any other Obligated Party against any Credit Provider, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of any of the Obligations or any security therefor; (iii) any right or defense arising by reason of any claim or defense based upon an election of remedies by any Credit Provider under any Requirement of

Law; or (iv) the benefit of any statute of limitations affecting any other Obligated Party's liability hereunder.

(d) Each Obligated Party consents and agrees that, without notice to or by such Obligated Party and without affecting or impairing the obligations of such Obligated Party hereunder, each of the Agents may (subject to any requirement for consent of any of the Lenders to the extent required by this Agreement), by action or inaction: (i) compromise, settle, extend the duration or the time for the payment of, or discharge the performance of, or may refuse to or otherwise not enforce the Loan Documents; (ii) release all or any one or more parties to any one or more of the Loan Documents or grant other indulgences to any other Obligated Party in respect thereof; (iii) amend or modify in any manner and at any time (or from time to time) any of the Loan Documents; or (iv) release or substitute any Person liable for payment of any of the Obligations, or enforce, exchange, release, or waive any security for any of the Obligations or any Guaranty of the Obligations.

Each Obligated Party represents and warrants that such Obligated Party is currently informed of the financial condition of all other Obligated Parties and all other circumstances that a diligent inquiry would reveal and that bear upon the risk of nonpayment of the Obligations. Each Obligated Party further represents and warrants that such Obligated Party has read and understands the terms and conditions of the Loan Documents. Each Obligated Party agrees that no Credit Provider has any responsibility to inform any Obligated Party of the financial condition of any other Obligated Party or of any other circumstances that bear upon the risk of nonpayment or nonperformance of the Obligations.

Section 15.23 Intercreditor Agreement. EACH CREDIT PROVIDER HEREBY GRANTS TO THE COLLATERAL AGENT ALL REQUISITE AUTHORITY TO ENTER INTO OR OTHERWISE BECOME BOUND BY THE INTERCREDITOR AGREEMENT (AND AN INTERCREDITOR AGREEMENT ENTERED INTO IN CONNECTION WITH ANY REFINANCING SECOND LIEN DEBT) AND TO BIND THE CREDIT PROVIDERS THERETO BY THE COLLATERAL AGENT'S ENTERING INTO OR OTHERWISE BECOMING BOUND THEREBY, AND NO FURTHER CONSENT OR APPROVAL ON THE PART OF THE CREDIT PROVIDERS IS OR WILL BE REQUIRED IN CONNECTION WITH THE PERFORMANCE OF THE INTERCREDITOR AGREEMENT (OR ANY INTERCREDITOR AGREEMENT ENTERED INTO IN CONNECTION WITH ANY REFINANCING SECOND LIEN DEBT).

Section 15.24 Consent to Amendment of Certain Loan Documents. Each of the Lenders and the Agents hereby consents to the amendments to the other Loan Documents contemplated under Section 9.1.

Section 15.25 Term Loan Obligations. The parties hereto acknowledge that the Term Loan Obligations are not contractually subordinate in right of payment to the Revolving Obligations and that the Credit Providers have merely agreed in this Agreement as to the order of distribution of Collateral and proceeds of Collateral to the various Obligations.

Section 15.26 Retention of Consultant. In the event that Unused Availability shall fall below \$15,000,000, either Agent may, or at the direction of the Majority Revolving Lenders the Administrative Agent shall, retain (either directly or through its counsel or other representative) and thereafter maintain for the benefit of the Revolving Lenders a consultant reasonably satisfactory to the Agents for contingency/bankruptcy planning and restructuring opportunities (the expense of which the Borrowers agree to pay); provided that in addition to (and not in lieu of) retaining and maintaining the foregoing consultant for such purposes, either Agent may, or at the direction of the Majority Revolving Lenders the Administrative Agent shall, retain (either directly or through its counsel or other representative) and thereafter maintain a consultant for the benefit of the Revolving Lenders reasonably satisfactory to the Agents to consult with the Agents and the Revolving Lenders on a limited scope reasonably determined by the Administrative Agent (the expense of which the Borrowers also agree to pay). Any written information provided by such consultant to the Agents or the Revolving Lenders that the Agents and their respective counsel determine are not protected by the attorney-client privilege as to the Revolving Lenders shall be provided to any Term Lender upon its written request to both Agents.

Section 15.27 Reaffirmation and Grant of Security Interests.

(a) Each Obligated Party hereby acknowledges that it has (i) guaranteed the Obligations (other than, in the case of a Borrower, such Borrower's Obligations) and (ii) created, under Section 10.1 and under certain of the other Loan Documents to which it is a party, Liens in favor of the Collateral Agent, for the benefit of the Credit Providers, on certain Collateral to secure its Obligations hereunder. Each Obligated Party hereby acknowledges that it has reviewed the terms and provisions of this Agreement and consents to the amendment and restatement of the First Amended and Restated Loan and Security Agreement effected pursuant to this Agreement. Each Obligated Party hereby (i) confirms that each Loan Document to which it is a party or is otherwise bound continues to be in full force and effect as amended hereby (if applicable) and all Collateral encumbered thereby will continue to secure, to the fullest extent possible in accordance with the Loan Documents and subject to the last sentence of Section 10.1, the payment and performance of the Obligations, including without limitation the payment and performance of all such Obligations, which are joint and several obligations of each Obligated Party now or hereafter existing, and (ii) subject to the last sentence of Section 10.1, grants to the Collateral Agent, for the benefit of the Credit Providers, a continuing lien on and security interest in and to such Obligated Party's right, title and interest in, to and under all Collateral as collateral security for the prompt payment and performance in full when due of the Obligations (whether at stated maturity, by acceleration or otherwise).

(b) Each Obligated Party acknowledges and agrees that any of the Loan Documents to which it is a party or otherwise bound shall continue in full force and effect

as amended hereby (if applicable) and that all of its Obligations thereunder shall be valid and enforceable and shall not be impaired or limited by the execution or effectiveness of the amendment and restatement of the First Amended and Restated Loan and Security Agreement. Each Obligated Party represents and warrants that all representations and warranties contained in the Loan Documents to which it is a party or otherwise bound are true, correct and complete in all material respects on and as of the Closing Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case they were true, correct and complete in all material respects on and as of such earlier date.

Section 15.28 Amendment and Restatement.

It is the intention of each of the parties hereto that the First Amended and Restated Loan and Security Agreement be amended and restated so as to preserve the perfection and priority of all security interests securing indebtedness and obligations of the Obligated Parties under the First Amended and Restated Loan and Security Agreement and that all indebtedness and obligations of the Borrowers and the other Obligated Parties hereunder and thereunder shall be equally and ratably secured by the Loan Documents (except as otherwise provided in the last sentence of Section 10.1) and that this Agreement does not constitute a novation of the obligations and liabilities of the Obligated Parties existing under the First Amended and Restated Loan and Security Agreement. The parties hereto further acknowledge and agree that this Agreement constitutes an amendment of the First Amended and Restated Loan and Security Agreement made under and in accordance with the terms of Section 13.1 of the First Amended and Restated Loan and Security Agreement. In addition, unless specifically amended hereby, each of the Loan Documents and the Exhibits and Schedules to the First Amended and Restated Loan and Security Agreement shall continue in full force and effect and that, from and after the Closing Date, all references to the "Loan Agreement" contained therein shall be deemed to refer to this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first above written.

OBLIGATED PARTIES:

AHERN RENTALS, INC.

By: /s/ Howard L. Brown

Name: Howard L. Brown

Title: Chief Financial Officer

ADMINISTRATIVE AGENT:

BANK OF AMERICA, N. A.

By: /s/ Robert Scalzitti

Name: Robert Scalzitti

Title: Vice President

COLLATERAL AGENT:

WACHOVIA BANK, NATIONAL
ASSOCIATION

By: /s/ Mark Bradford

Name: Mark Bradford

Title: Vice President

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LENDERS:

BANK OF AMERICA, N.A.

By: /s/ Robert Scalzitti

Name: Robert Scalzitti

Title: Vice President

Address for Notices:

Bank of America, N.A.
335 Madison Avenue
New York, New York 10017
Attn: Richard Levenson
Telecopy: (646) 556-0260

WACHOVIA BANK, NATIONAL
ASSOCIATION

By: /s/ Mark Bradford

Name: Mark Bradford

Title: Vice President

Address for Notices:

Wachovia Bank, National Association

2450 Colorado Ave.

Suite 3000 W.

Santa Monica, CA 90404

Attn: Krista Wade

Telecopy: (704) 715-0343

KEYBANK NATIONAL ASSOCIATION

By: /s/ Lance Shaffer

Name: Lance Shaffer

Title: V.P.

Address for Notices:

KeyBank National Association

1675 Broadway, 2nd Floor

Denver, Colorado 80202

Attn: Lance Schaffer

Telecopy: (720) 904-4370

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PNC BANK, NATIONAL ASSOCIATION

By: /s/ Thanwantie Somar

Name: Thanwantie Somar

Title: AVP

Address for Notices:

PNC Bank, National Association

340 Madison Avenue

New York, New York 10173

Attn: Anne Somar

Telecopy: (212) 752-6097

COMERICA BANK

By: /s/ Chap LancasterName: Chap LancasterTitle: Assistant Vice President

Address for Notices:

Comerica Bank
Heavy Equipment Group
1717 Main Street, 4th Floor
Dallas, Texas 75201
Attn: Chad Lancaster
Telecopy: (214) 462-4250

BANK OF ARIZONA N.A.

By: /s/ Michael Rodgers

Name: Michael Rodgers

Title: Vice President

Address for Notices:

Bank of Arizona N.A.
Construction & Industrial Equipment Lending Group
5956 Sherry Lane
Suite 1100
Dallas, Texas 75225
Attn: Michael Rodgers
Telecopy: (214) 987-8892

WELLS FARGO FOOTHILL, LLC

By: /s/ Mark Bradford

Name: Mark Bradford

Title: Vice President

Address for Notices:

Wells Fargo Foothill, LLC

2450 Colorado Ave.

Suite 3000 W.

Santa Monica, California 90404

Attn: Krista Wade

Telecopy: (866) 615-7803

CAPITAL ONE LEVERAGE FINANCE
CORP.

By: /s/ Nick Malatestinic

Name: Nick Malatestinic

Title: SVP

Address for Notices:

Capital One Leverage Finance Corp.
265 Broadhollow Road
Melville, N.Y. 11746
Attn: Robert Wallace
Telecopy: (631) 531-2791

REGIONS BANK

By: /s/ Louis McKinley

Name: Louis McKinley

Title: Attorney in Fact

Address for Notices:

Regions Bank
599 Lexington Avenue
New York, New York 10022
Attn: Louis McKinley
Telecopy: (212) 935-7458

BANK MIDWEST, N.A.

By: _____
Name: _____
Title: _____

Address for Notices:

Bank Midwest, N.A.
1111 Main, Suite 1600
Kansas City, MO 64105
Attn: Matthew Mayer
Telecopy: (816) 412-2065

LIBERTY HARBOR MASTER FUND I,
L.P.
By: Liberty Harbor I GP, LLC, its general
partner

By: /s/ Jonathan Lamm

Name: Jonathan Lamm

Title: Authorized Signatory

Address for Notices:

Liberty Harbor Master Fund I, L.P.
32 Old Slip
New York, New York 10005
Attn: Thomas Secor
Telecopy: (212) 428-1505

GOLDMAN SACHS HIGH YIELD FUND

By: Goldman Sachs Asset Management, L.P.

By: /s/ Jonathan Lamm

Name: Jonathan Lamm

Title: Authorized Signatory

GOLDMAN SACHS COLLECTIVE TRUST HIGH YIELD
IMPLEMENTATION VEHICLE

By: Goldman Sachs Asset Management, L.P.

By: /s/ Jonathan Lamm

Name: Jonathan Lamm

Title: Authorized Signatory

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA

By: Goldman Sachs Asset Management, L.P.

By: /s/ Jonathan Lamm

Name: Jonathan Lamm

Title: Authorized Signatory

GOLDMAN SACHS PALMETTO STATE CREDIT
FUND, L.P.

By: Goldman Sachs Asset Management, L.P.

By: /s/ Jonathan Lamm
Name: Jonathan Lamm
Title: Authorized Signatory

GOLDMAN SACHS HIGH YIELD FUND

By: Goldman Sachs Asset Management, L.P.

By: /s/ Jonathan Lamm

Name: Jonathan Lamm

Title: Authorized Signatory

Address for Notices:

295 Chipeta Way 4th Floor
Salt Lake City, Utah 84108
Attn: Craig D. Gill
gsam-asset-servicing@gs.com
Telecopy: (212) 428-9406

GOLDMAN SACHS COLLECTIVE TRUST HIGH YIELD
IMPLEMENTATION VEHICLE

By: Goldman Sachs Asset Management, L.P.

By: /s/ Jonathan Lamm
Name: Jonathan Lamm
Title: Authorized Signatory

Address for Notices:

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By: Goldman Sachs Asset Management, L.P.

By: /s/ Jonathan Lamm

Name: Jonathan Lamm

Title: Authorized Signatory

Address for Notices:

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Salt Lake City, Utah 84108
Attn: Craig D. Gill
gsam-asset-servicing@gs.com
Telecopy: (212) 428-9406

EXHIBIT
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EXHIBIT
7

EX-4.1 4 a05-16694_2ex4d1.htm EX-4.1

EXHIBIT 4.1

AHERN RENTALS, INC.

9¼% SENIOR SECURED NOTES DUE 2013

INDENTURE

Dated as of August 18, 2005

WELLS FARGO BANK, N.A.

Trustee

CROSS-REFERENCE TABLE*

Trust Indenture Act Section	Indenture Section
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.10
(b)	7.10
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.05
(b)	13.03
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(c)(1)	13.04
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(c)(3)	N.A.
(e)	13.05
(f)	N.A.
315(a)	7.01
(b)	7.05; 13.02
(c)	7.01
(d)	7.01
(e)	6.11
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N.A. means not applicable.

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v

INDENTURE dated as of August 18, 2005 between Ahern Rentals, Inc., a Nevada corporation (“*Ahern Rentals*”), and Wells Fargo Bank, N.A., as trustee (the “*Trustee*”).

Ahern Rentals and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders (as defined) of the 9¼% Series A Senior Secured Notes due 2013 (the “*Series A Notes*”) and the 9¼% Series B Senior Secured Notes due 2013 (the “*Series B Notes*”) and, together with the Series A Notes, the “*Notes*”):

ARTICLE 1.

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 *Definitions.*

“*144A Global Note*” means a Global Note substantially in the form of Exhibit A hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depository or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

“*Acquired Debt*” means, with respect to any specified Person:

- (1) Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Subsidiary of such specified Person, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Restricted Subsidiary of, such specified Person; and
- (2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“*Additional Interest*” means all liquidated damages then owing pursuant to the Registration Rights Agreement.

“*Additional Notes*” means additional notes (other than the Initial Notes) issued from time to time under this Indenture in accordance with Sections 2.02 and 4.09 hereof, as part of the same series as the Initial Notes.

“*Affiliate*” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “*control*,” as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; *provided* that beneficial ownership of 10% or more of the Voting Stock of a Person will be deemed to be control unless a majority of the disinterested members of the Board of Directors of Ahern Rentals determines that (a) a third Person (that is not otherwise an Affiliate of Ahern Rentals) is the beneficial owner of a greater percentage of the Voting Stock of such Person than the percentage of Voting Stock of such Person beneficially owned by the specified Person and (b) the specified Person does not otherwise control such Person. For purposes of this definition, the terms “*controlling*,” “*controlled by*” and “*under common control with*” have correlative meanings.

“*Ahern Rentals*” means the party named as such in the preamble to this Indenture until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

“*Amended and Restated Mortgage*” means each amended and restated mortgage, deed of trust or deed to secure debt made by Ahern Rentals or any of its Restricted Subsidiaries in favor or for the benefit of the Priority Lien Agent or Collateral Trustee, as applicable.

“*Applicable Procedures*” means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depository, Euroclear and Clearstream that apply to such transfer or exchange.

“*Asset Sale*” means:

- (1) the sale, lease, conveyance or other disposition of any assets or rights; *provided* that the sale, lease, conveyance or other disposition of all or substantially all of the assets of Ahern Rentals and its Restricted Subsidiaries taken as a whole will be governed by Section 4.14 hereof and/or Section 5.01 hereof and not by Section 4.10 hereof; and
- (2) the issuance of Equity Interests in any of Ahern Rentals’ Restricted Subsidiaries or the sale of Equity Interests in any of its Subsidiaries.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

- (1) any single transaction or series of related transactions that involves assets having a Fair Market Value of less than \$1.0 million;
- (2) a transfer of assets between or among Ahern Rentals and its Restricted Subsidiaries;
- (3) an issuance of Equity Interests by a Restricted Subsidiary of Ahern Rentals to Ahern Rentals or to a Restricted Subsidiary of Ahern Rentals;
- (4) the sale or lease of products, inventory of parts, merchandise or goods (including new equipment or used equipment acquired for resale) held for sale (excluding Rental Equipment), services or accounts receivable in the ordinary course of business and any sale, conveyance or other disposition of damaged, worn-out or obsolete assets in the ordinary course of business;
- (5) the sale or other disposition of cash or Cash Equivalents; and
- (6) a Restricted Payment that does not violate Section 4.07 hereof or a Permitted Investment.

“*Attributable Debt*” in respect of a sale and leaseback transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP; *provided, however*, that if such sale and leaseback transaction results in a Capital Lease

Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of "Capital Lease Obligation."

"*Bankruptcy Code*" means Title 11, U.S. Code, and the rules and regulations promulgated thereunder.

"*beneficial owner*" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only after the passage of time. The terms "*beneficially owns*" and "*beneficially owned*" have a corresponding meaning.

"*Board of Directors*" means:

- (1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;
- (2) with respect to a partnership, the board of directors of the general partner of the partnership;
- (3) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and
- (4) with respect to any other Person, the board or committee of such Person serving a similar function.

"*Business Day*" means any day other than a Saturday, a Sunday or a day on which banking institutions in the City of New York, the location of the Corporate Trust Office of the Trustee or at a place of payment are authorized by law, regulation or executive order to remain closed.

"*Capital Lease Obligation*" means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

"*Capital Stock*" means:

- (1) in the case of a corporation, corporate stock;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and
- (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

“Cash Equivalents” means:

- (1) United States dollars;
- (2) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (*provided* that the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than six months from the date of acquisition;
- (3) certificates of deposit and eurodollar time deposits with maturities of six months or less from the date of acquisition, bankers’ acceptances with maturities not exceeding six months and overnight bank deposits, in each case, with any lender party to the Credit Agreement or with any domestic commercial bank having capital and surplus in excess of \$500.0 million and a Thomson Bank Watch Rating of “B” or better;
- (4) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;
- (5) commercial paper having one of the two highest ratings obtainable from Moody’s or S&P, in each case, maturing within six months after the date of acquisition; and
- (6) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (1) through (5) of this definition.

“Casualty Event” means any taking under power of eminent domain or similar proceeding and any insured loss, in each case relating to property or other assets that constituted Collateral.

“Change of Control” means the occurrence of any of the following:

- (1) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of Ahern Rentals and its Subsidiaries taken as a whole to any “person” (as that term is used in Section 13(d) of the Exchange Act) other than a Principal or a Related Party of a Principal;
- (2) the adoption of a plan relating to the liquidation or dissolution of Ahern Rentals;
- (3) the consummation of any transaction (including, without limitation, any merger or consolidation), the result of which is that any “person” (as defined above), other than the Principals and their Related Parties, becomes the beneficial owner, directly or indirectly, of more than 50% of the Voting Stock of Ahern Rentals, measured by voting power rather than number of shares;
- (4) Ahern Rentals consolidates with, or merges with or into, any Person, or any Person consolidates with, or merges with or into, Ahern Rentals, in any such event pursuant to a transaction in which any of the outstanding Voting Stock of Ahern Rentals or such other Person is converted into or exchanged for cash, securities or other property, other than any such transaction where the Voting Stock of Ahern Rentals outstanding immediately prior to such transaction is converted into or exchanged for Voting Stock (other than Disqualified Stock) of the surviving or

transferee Person constituting a majority of the outstanding shares of such Voting Stock of such surviving or transferee Person (immediately after giving effect to such issuance); or

(5) after an initial public offering of the Capital Stock of Ahern Rentals or any direct or indirect parent of Ahern Rentals, the first day on which a majority of the members of the Board of Directors of Ahern Rentals are not Continuing Directors.

“*Class*” means (1) in the case of Parity Lien Debt, every Series of Parity Lien Debt, taken together, and (2) in the case of Priority Lien Debt, every Series of Priority Lien Debt, taken together.

“*Clearstream*” means Clearstream Banking, S.A.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time.

“*Collateral*” means all existing and future assets (whether real, personal or mixed) of Ahern Rentals or any of the other Pledgors that are from time to time made subject, or purported to be made subject, to the Lien of the Security Documents, which shall not include, at any time, any assets or property with respect to which a Lien has not been granted in favor of the Priority Lien Collateral Agent for the benefit of the holders of Priority Lien Obligations.

“*Collateral Trustee*” means Wells Fargo Bank, N.A., in its capacity as Collateral Trustee under the Intercreditor Agreement and the Security Documents, together with its successors in such capacity.

“*Consolidated Cash Flow*” means, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period *plus*, without duplication:

(1) an amount equal to any extraordinary loss plus any net loss realized by such Person or any of its Restricted Subsidiaries in connection with an Asset Sale, to the extent such losses were deducted in computing such Consolidated Net Income; *plus*

(2) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries for such period (and to the extent not included in the foregoing, Permitted Shareholder Tax Distributions), to the extent that such provision for taxes or Permitted Shareholder Tax Distributions was deducted in computing such Consolidated Net Income; *plus*

(3) the Fixed Charges of such Person and its Restricted Subsidiaries for such period, to the extent that such Fixed Charges were deducted in computing such Consolidated Net Income; *plus*

(4) depreciation, amortization (including amortization of intangibles but excluding amortization of prepaid cash expenses other than debt issuance costs to the extent they relate to the issuance of any debt after the sale of the notes and the closing of the Credit Agreement) and other noncash expenses (excluding any such noncash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense other than debt issuance costs to the extent they relate to the issuance of any debt after the sale of the notes and the closing of the Credit Agreement) of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, amortization and other noncash expenses were deducted in computing such Consolidated Net Income; *minus*

(5) noncash items increasing such Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business,

in each case, on a consolidated basis and determined in accordance with GAAP.

Notwithstanding the preceding, the provision for taxes based on the income or profits of, and the depreciation and amortization and other noncash expenses of, a Restricted Subsidiary of Ahern Rentals will be added to Consolidated Net Income to compute Consolidated Cash Flow of Ahern Rentals only to the extent that a corresponding amount would be permitted at the date of determination to be dividended to Ahern Rentals by such Restricted Subsidiary without prior governmental approval (that has not been obtained), and without direct or indirect restriction pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to that Restricted Subsidiary or its stockholders.

“*Consolidated Net Income*” means, with respect to any Person, for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; *provided, however*, that:

- (1) the Net Income of any Person, other than a Restricted Subsidiary of the referent Person, will be included only to the extent of the amount of dividends or distributions paid to the referent Person or a Restricted Subsidiary of such referent Person;
- (2) the Net Income (but not to the extent Net Income represents a loss) of any Restricted Subsidiary of the Person in question that is subject to any restriction or limitation on the payment of dividends or the making of other distributions will be excluded to the extent of such restriction or limitation;
- (3) the Net Income of any Person acquired in a pooling of interests transaction for any period prior to the date of such acquisition will be excluded;
- (4) any net gain (but not loss) resulting from an Asset Sale by the Person in question or any of its Restricted Subsidiaries other than in the ordinary course of business will be excluded;
- (5) extraordinary gains and losses will be excluded;
- (6) income or loss attributable to discontinued operations (including, without limitation, operations disposed of during such period whether or not such operations were classified as discontinued) will be excluded;
- (7) in the case of a successor to the referent Person by consolidation or merger or as a transferee of the referent Person’s assets, any earnings of the successor corporation prior to such consolidation, merger or transfer of assets will be excluded;
- (8) charges with respect to Indebtedness retired with the proceeds of the Notes shall be excluded;
- (9) charges for amortization of goodwill in excess of amortization on a straight-line, 40 year basis shall be excluded; and
- (10) all gains, losses, charges or write-offs with respect to an election to be taxed as an “S corporation” under Subchapter S of the Code shall be excluded.

“*Continuing Directors*” means, as of any date of determination, any member of the Board of Directors of Ahern Rentals who:

- (1) was a member of such Board of Directors on the date of this Indenture; or
- (2) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board of Directors at the time of such nomination or election.

“*Corporate Trust Office of the Trustee*” means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at Corporate Trust Services, Sixth & Marquette; N9303-120; Minneapolis, MN 55479, Attention: Corporate Trust Administration: Ahern Rentals Notes, or such other address as the Trustee may designate from time to time by notice to the Holders and Ahern Rentals, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and Ahern Rentals).

“*Credit Agreement*” means that certain amended and restated loan and security agreement, to be dated as of the date of this Indenture, by and among Ahern Rentals, the lenders party thereto, Bank of America, N.A., as administrative agent, and Wachovia Bank, National Association, as collateral agent and syndication agent, including any related notes, guarantees, collateral documents, instruments and agreements executed in connection therewith, and, in each case, as amended, restated, modified, renewed, refunded, replaced (whether upon or after termination or otherwise) or refinanced (including by means of sales of debt securities to institutional investors) in whole or in part from time to time.

“*Credit Agreement Agent*” means, at any time, the Person serving at such time as the “Collateral Agent” under the Credit Agreement or any other representative then most recently designated in accordance with the applicable provisions of the Credit Agreement, together with its successors in such capacity.

“*Credit Facilities*” means one or more debt facilities (including, without limitation, the Credit Agreement) or commercial paper facilities, in each case, with banks or other institutional lenders providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables) or letters of credit, in each case, as amended, restated, modified, renewed, refunded, replaced (whether upon or after termination or otherwise) or refinanced (including by means of sales of debt securities to institutional investors) in whole or in part from time to time.

“*Custodian*” means the Trustee, as custodian with respect to the Notes in global form, or any successor entity thereto.

“*Default*” means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

“*Definitive Note*” means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06 hereof, substantially in the form of Exhibit A hereto except that such Note shall not bear the Global Note Legend and shall not have the “Schedule of Exchanges of Interests in the Global Note” attached thereto.

“*Depository*” means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 hereof as the Depository with respect to the Notes, and any and

all successors thereto appointed as depositary hereunder and having become such pursuant to the applicable provision of this Indenture.

“Discharge of Priority Lien Obligations” means the occurrence of all of the following:

- (1) termination or expiration without replacement of all commitments to extend credit that would constitute Priority Lien Debt;
- (2) payment in full in cash of the principal of and interest and premium, if any, on all Priority Lien Debt (other than any undrawn letters of credit);
- (3) discharge or cash collateralization (at the lower of (a) 110% of the aggregate undrawn amount and (b) the percentage of the aggregate undrawn amount required for release of liens under the terms of the applicable Priority Lien Document) of all outstanding letters of credit constituting Priority Lien Debt; and
- (4) payment in full in cash of all other Priority Lien Obligations that are outstanding and unpaid at the time the Priority Lien Debt is paid in full in cash (other than any obligations for taxes, costs, indemnifications, reimbursements, damages and other liabilities in respect of which no claim or demand for payment has been made at such time).

Notwithstanding the foregoing, if any holder of Priority Lien Debt or the Priority Lien Collateral Agent must return or disgorge any payment or proceeds of Collateral, then Discharge of Priority Lien Obligations is not deemed to have occurred.

“Disqualified Stock” means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the date on which the notes mature. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require Ahern Rentals to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that Ahern Rentals may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with Section 4.07. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Indenture will be the maximum amount that Ahern Rentals and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock, exclusive of accrued dividends.

“Dividend Limitation” means the product of the Maximum Tax Rate and Federal Taxable Income.

“equally and ratably” means, in reference to sharing of Liens or proceeds thereof as between the holders of Secured Obligations within the same Class, that such Liens or proceeds will be allocated and distributed first to the Secured Debt Representative for each outstanding Series of Secured Debt within that Class, for the account of the holders of such Series of Secured Debt, ratably in proportion to the principal of, and interest and premium (if any) and reimbursement obligations (contingent or otherwise) with respect to letters of credit, if any, outstanding (whether or not drawings have been made under such letters of credit) on each outstanding Series of Secured Debt within that Class when the allocation or distribution is made.

“*Equity Interests*” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“*Euroclear*” means Euroclear Bank S.A./N.V., as operator of the Euroclear system.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“*Exchange Notes*” means the Notes issued in the Exchange Offer pursuant to Section 2.06(f) hereof.

“*Exchange Offer*” has the meaning set forth in the Registration Rights Agreement.

“*Exchange Registration Statement*” has the meaning set forth in the Registration Rights Agreement.

“*Existing Indebtedness*” means Indebtedness of Ahern Rentals and its Subsidiaries (other than Indebtedness under the Credit Agreement) in existence on the date of this Indenture, until such amounts are repaid.

“*Fair Market Value*” means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the Board of Directors of Ahern Rentals (unless otherwise provided in this Indenture).

“*Federal Taxable Income*” means the taxable income of Ahern Rentals for any taxable year computed pursuant to Section 1363(b) (or any successor provision) of the Code or, if Ahern Rentals becomes a partnership for U.S. federal income tax purposes, Section 703(a) (or any successor provision) of the Code, but calculated as if the taxable year of Ahern Rentals ended on the date with respect to which such taxable income calculation is made, reduced, but not below zero, by the amount of any Suspended Losses which are treated as incurred by Ahern Rentals in, and allowed as deductions on the tax returns of Ahern Rentals’ stockholders (or partners) for, such taxable year.

“*Fixed Charge Coverage Ratio*” means with respect to any specified Person for any period, the ratio of the Consolidated Cash Flow of such Person for such period to the Fixed Charges of such Person for such period. In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than ordinary working capital borrowings) or issues, repurchases or redeems preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the “*Calculation Date*”), then the Fixed Charge Coverage Ratio will be calculated giving pro forma effect to such incurrence, assumption, guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance, repurchase or redemption of preferred stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the applicable four-quarter reference period.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

(1) acquisitions that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers or consolidations, or any Person or any of its Restricted Subsidiaries acquired by the specified Person or any of its Restricted Subsidiaries, and including any related financing transactions and including increases in ownership of Restricted Subsidiaries,

during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date will be given pro forma effect (in accordance with Regulation S-X under the Securities Act) as if they had occurred on the first day of the four-quarter reference period;

(2) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date will be excluded;

(3) the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date;

(4) any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such four-quarter period;

(5) any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such four-quarter period; and

(6) if any Indebtedness bears a floating rate of interest, the interest expense on such Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Indebtedness if such Hedging Obligation has a remaining term as at the Calculation Date in excess of 12 months).

“Fixed Charges” means, with respect to any specified Person for any period, the sum, without duplication, of:

(1) the consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued, including, without limitation, amortization of debt issuance costs (to the extent such costs relate to the issuance of any debt after the sale of the Notes and the closing of the Credit Agreement) and original issue discount, noncash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, imputed interest with respect to Attributable Debt, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers’ acceptance financings (excluding any premium or penalty paid on or prior to the date of this Indenture in connection with the redemption, repurchase or retirement of Indebtedness of such Person prior to the stated maturity thereof pursuant to the agreements governing such Indebtedness), and net of the effect of all payments made or received pursuant to Hedging Obligations in respect of interest rates; *plus*

(2) the consolidated interest expense of such Person and its Restricted Subsidiaries that was capitalized during such period; *plus*

(3) any interest on Indebtedness of another Person that is guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, whether or not such guarantee or Lien is called upon; *plus*

(4) the product of (a) all dividends, whether paid or accrued and whether or not in cash, on any series of preferred stock of such Person or any of its Restricted Subsidiaries, other than dividends on Equity Interests payable solely in Equity Interests of Ahern Rentals (other than Disqualified Stock) or to Ahern Rentals or a Restricted Subsidiary of Ahern Rentals, *times* (b) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state and local statutory tax rate of such Person, expressed as a decimal, in each case, determined on a consolidated basis in accordance with GAAP.

“GAAP” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect on the date of this Indenture.

“Global Note Legend” means the legend set forth in Section 2.06(g)(ii) which is required to be placed on all Global Notes issued under this Indenture.

“Global Notes” means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes, substantially in the form of Exhibit A hereto issued in accordance with Section 2.01, 2.06(b)(iii), 2.06(b)(iv), 2.06(d)(ii) or 2.06(f) hereof.

“Government Securities” means direct non-callable obligations of, or guaranteed by, the United States of America for the payment of which guarantee or obligations the full faith and credit of the United States is pledged.

“guarantee” means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise).

“Guarantors” means each Subsidiary of Ahern Rentals, if any, that executes a Note Guarantee in accordance with the provisions of this Indenture and its respective successors and assigns.

“Hedging Obligations” means, with respect to any specified Person, the obligations of such Person under:

- (1) interest rate swap agreements (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements;
- (2) other agreements or arrangements designed to manage interest rates or interest rate risk; and
- (3) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates or commodity prices.

“Holder” means a Person in whose name a Note is registered.

“IAI Global Note” means a Global Note substantially in the form of Exhibit A hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of and registered

in the name of the Depository or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold to Institutional Accredited Investors.

“*Indebtedness*” means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables), whether or not contingent:

- (1) in respect of borrowed money;
- (2) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof);
- (3) in respect of bankers’ acceptances;
- (4) representing Capital Lease Obligations or Attributable Debt in respect of sale and leaseback transactions;
- (5) representing the balance deferred and unpaid of the purchase price of any property or services due more than six months (or, in the case of rental equipment acquired for use in a Permitted Business, more than one year) after such property is acquired or such services are completed; or
- (6) representing any Hedging Obligations,

if and to the extent any of the preceding items (other than letters of credit, Attributable Debt and Hedging Obligations) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP. In addition, the term “*Indebtedness*” includes all *Indebtedness* of others secured by a Lien on any asset of the specified Person (whether or not such *Indebtedness* is assumed by the specified Person) and, to the extent not otherwise included, the guarantee by the specified Person of any *Indebtedness* of any other Person.

“*Indirect Participant*” means a Person who holds a beneficial interest in a Global Note through a Participant.

“*Initial Notes*” means the first \$200,000,000 aggregate principal amount of Notes issued under this Indenture on the date hereof.

“*Initial Purchasers*” means CIBC World Markets Corp. and Banc of America Securities LLC.

“*insolvency or liquidation proceeding*” means:

- (1) any case commenced by or against Ahern Rentals or any other Pledgor under Title 11, U.S. Code or any similar federal or state law for the relief of debtors, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of Ahern Rentals or any other Pledgor, any receivership or assignment for the benefit of creditors relating to Ahern Rentals or any other Pledgor or any similar case or proceeding relative to Ahern Rentals or any other Pledgor or its creditors, as such, in each case whether or not voluntary;
- (2) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to Ahern Rentals or any other Pledgor, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or

(3) any other proceeding of any type or nature in which substantially all claims of creditors of Ahern Rentals or any other Pledgor are determined and any payment or distribution is or may be made on account of such claims.

“*Institutional Accredited Investor*” means an institution that is an “accredited investor” as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act that is not also a QIB.

“*Intercreditor Agreement*” means the Intercreditor Agreement, dated as of the date of this Indenture, among Ahern Rentals, the Collateral Trustee, the Priority Lien Collateral Agent and the Control Agent (as defined under the Intercreditor Agreement), as amended, supplemented or otherwise modified from time to time.

“*Investments*” means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including guarantees or other obligations), advances or capital contributions (excluding commission, travel and similar advances to officers and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. If Ahern Rentals or any Subsidiary of Ahern Rentals sells or otherwise disposes of any Equity Interests of any direct or indirect Subsidiary of Ahern Rentals such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary of Ahern Rentals, Ahern Rentals will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of Ahern Rentals’ Investments in such Subsidiary that were not sold or disposed of in an amount determined as provided in the final paragraph of Section 4.07. The acquisition by Ahern Rentals or any Subsidiary of Ahern Rentals of a Person that holds an Investment in a third Person will be deemed to be an Investment by Ahern Rentals or such Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person in an amount determined as provided in the final paragraph of Section 4.07. Except as otherwise provided in this Indenture, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value.

“*Letter of Transmittal*” means the letter of transmittal to be prepared by Ahern Rentals and sent to all Holders of the Notes for use by such Holders in connection with the Exchange Offer.

“*Lien*” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction.

“*Lien Priority Confirmation*” means:

(1) as to any Series of Parity Lien Debt, the written agreement of the holders of such Series of Parity Lien Debt, as set forth in this Indenture, credit agreement or other agreement governing such Series of Parity Lien Debt, for the enforceable benefit of all holders of each existing and future Series of Priority Lien Debt, each existing and future Priority Lien Agent and each existing and future holder of Permitted Prior Liens to be bound by Sections 12.02 and 12.03 herein and the provisions of the Intercreditor Agreement; and

(2) as to any Series of Priority Lien Debt, the written agreement of the holders of such Series of Priority Lien Debt, as set forth in the Credit Agreement or other agreement governing

such Series of Priority Lien Debt, for the enforceable benefit of all holders of each existing and future Series of Parity Lien Debt, each existing and future Parity Lien Representative and each existing and future holder of Permitted Prior Liens to be bound by the provisions of the Intercreditor Agreement.

“*Maximum Tax Rate*” means, for a particular taxable year, the sum of the highest marginal U.S. federal income tax rate, the highest marginal U.S. state income tax rate and, where applicable, the highest marginal local income tax rate, in each case applicable to any shareholder (or partner, if Ahern Rentals becomes a partnership for U.S. federal income tax purposes) of Ahern Rentals, or such higher rate as may be determined by a Tax Accountant to take into account any additional pass-through liability of any shareholder (or partner) as a result of application of alternative minimum tax (“*AMT*”), calculated as though such shareholder (or partner) has no items of income, gain, loss, deduction or credit, other than items attributable to Ahern Rentals, has no available AMT exemption amount, and is taxed at the highest marginal AMT rate.

“*Moody’s*” means Moody’s Investors Service, Inc.

“*Mortgage*” means a mortgage, deed of trust or deed to secure debt made by Ahern Rentals or any of its Restricted Subsidiaries in favor or for the benefit of the Priority Lien Agent or the Collateral Trustee on behalf of the Holders of the Notes, as the case may be, in form and substance required to grant a security interest in real property in the state in which the property is located.

“*Net Income*” means, with respect to any specified Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends, excluding, however:

- (1) any gain (but not loss), together with any related provision for taxes on such gain (but not loss), realized in connection with: (a) any Asset Sale; or (b) the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Restricted Subsidiaries; and
- (2) any extraordinary gain (but not loss), together with any related provision for taxes on such extraordinary gain (but not loss).

“*Net Proceeds*” means the aggregate cash proceeds received by Ahern Rentals or any of its Restricted Subsidiaries in respect of:

- (1) any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any noncash consideration received in any Asset Sale), net of the direct costs relating to such Asset Sale, including, without limitation, legal, accounting and investment banking fees, and sales commissions, and any relocation expenses incurred as a result of the Asset Sale, taxes paid or payable as a result of the Asset Sale (and to the extent not included in the foregoing, that portion of any Permitted Shareholder Tax Distributions attributable thereto); and
- (2) any Casualty Events,

in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements, and amounts required to be applied to the repayment of Indebtedness secured by a Lien on the asset or assets that were the subject of such Asset Sale or Casualty Event, as the case may be, and any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with GAAP.

“*Non-Recourse Debt*” means Indebtedness:

(1) as to which neither Ahern Rentals nor any of its Restricted Subsidiaries (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), (b) is directly or indirectly liable as a guarantor or otherwise, or (c) constitutes the lender;

(2) no default with respect to which (including any rights that the holders of the Indebtedness may have to take enforcement action against an Unrestricted Subsidiary) would permit upon notice, lapse of time or both any holder of any other Indebtedness of Ahern Rentals or any of its Restricted Subsidiaries to declare a default on such other Indebtedness or cause the payment of the Indebtedness to be accelerated or payable prior to its Stated Maturity; and

(3) as to which the lenders have been notified in writing that they will not have any recourse to the stock or assets of Ahern Rentals or any of its Restricted Subsidiaries.

“*Non-U.S. Person*” means a Person who is not a U.S. Person.

“*Note Documents*” means each indenture, the Notes and the Security Documents.

“*Note Guarantee*” means the guarantee by each Guarantor of Ahern Rentals’ obligations under this Indenture and the Notes, executed pursuant to the provisions of this Indenture.

“*Notes*” has the meaning assigned to it in the preamble to this Indenture. The Initial Notes and the Additional Notes shall be treated as a single class for all purposes under this Indenture, and unless the context otherwise requires, all references to the Notes shall include the Initial Notes and any Additional Notes.

“*Obligations*” means any principal (including reimbursement obligations with respect to letters of credit whether or not drawn), interest, premium (if any), fees, indemnifications, reimbursements, expenses and other liabilities payable under the documentation governing any Indebtedness (including, without limitation and in any event, with respect to the Credit Agreement, any “Obligations” as defined in the Credit Agreement as in effect on the date of this Indenture).

“*Officer*” means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of such Person.

“*Officers’ Certificate*” means a certificate signed on behalf of Ahern Rentals or a Guarantor, as applicable, by two Officers of Ahern Rentals or such Guarantor, one of whom must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of Ahern Rentals or such Guarantor, that meets the requirements of Section 13.05 hereof.

“*Opinion of Counsel*” means an opinion from legal counsel who is reasonably acceptable to the Trustee that meets the requirements of Section 13.05 hereof. The counsel may be an employee of or counsel to Ahern Rentals, any Subsidiary of Ahern Rentals or the Trustee.

“*Parity Lien*” means a Lien granted by a security document to the Collateral Trustee, at any time, upon any property of Ahern Rentals or any other Pledgor to secure Parity Lien Obligations.

“*Parity Lien Debt*” means:

- (1) the Notes issued on the date of this Indenture;
- (2) up to \$5.0 million in aggregate principal amount of Indebtedness (including Additional Notes) at any time outstanding that is secured equally and ratably with the Notes by a Parity Lien that was permitted to be incurred and so secured under each applicable Secured Debt Document; *provided that* Ahern Rentals incurs such Indebtedness pursuant to Section 4.09(a); and
- (3) any other Indebtedness that would be permitted to be incurred pursuant to Section 4.09 (a) to the extent that the Fixed Charge Coverage Ratio would have been at least 3.00 to 1.00 at the time such Indebtedness is incurred, determined on a pro forma basis (including pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred at the beginning of such four-quarter period;

provided that, in the case of any Indebtedness referred to in clause (2) or (3) of this definition:

- (a) on or before the date on which such Indebtedness is incurred by Ahern Rentals or the applicable Restricted Subsidiary, if any, such Indebtedness is designated by Ahern Rentals, in an Officers’ Certificate delivered to each Parity Lien Representative and the Collateral Trustee, as “Parity Lien Debt” for the purposes of this Indenture and the Intercreditor Agreement;
- (b) such Indebtedness is governed by an indenture, credit agreement or other agreement that includes a Sharing Confirmation and a Lien Priority Confirmation; and
- (c) all requirements set forth in the Security Documents as to the confirmation, grant or perfection of the Collateral Trustee’s Liens to secure such Indebtedness or Obligations in respect thereof are satisfied (and the satisfaction of such requirements and the other provisions of this clause (c) will be conclusively established if Ahern Rentals delivers to the Collateral Trustee an Officers’ Certificate stating that such requirements and other provisions have been satisfied and that such Indebtedness is “Parity Lien Debt”).

“*Parity Lien Documents*” means, collectively, the Note Documents and the indenture, credit agreement or other agreement governing each other Series of Parity Lien Debt and the Security Documents.

“*Parity Lien Obligations*” means Parity Lien Debt and all other Obligations in respect thereof.

“*Parity Lien Representative*” means:

- (1) in the case of the Notes, the Trustee; or
- (2) in the case of any other Series of Parity Debt, the trustee, agent or representative of the holders of such Series of Parity Lien Debt who maintains the transfer register for such Series of Parity Lien Debt and (a) is appointed as a Parity Lien Representative (for purposes related to the administration of the Security Documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Parity Lien Debt, together with its successors in such capacity, and (b) has become a party to the Intercreditor Agreement by executing a joinder in the form required under the Intercreditor Agreement.

“*Participant*” means, with respect to the Depository, Euroclear or Clearstream, a Person who has an account with the Depository, Euroclear or Clearstream, respectively (and, with respect to DTC, shall include Euroclear and Clearstream).

“*Permitted Business*” means any business conducted by Ahern Rentals on the date the Notes are originally issued under this Indenture and any businesses that, in the good faith judgment of the Board of Directors of Ahern Rentals, are reasonably related, ancillary or complementary thereto, or reasonable extensions thereof.

“*Permitted Dividend Amount*” means, with respect to any taxable period, the amount (determined by a Tax Accountant) by which the Dividend Limitation for the taxable year exceeds the aggregate Permitted Shareholder Tax Distributions previously paid, if any, by Ahern Rentals to the shareholders of Ahern Rentals for such taxable year, including distributions paid or loans made by Ahern Rentals with respect to such taxable year not later than 105 days after the end of that taxable year; *provided* that:

- (1) if, at the end of any taxable year of Ahern Rentals, the Dividend Limitation for such year exceeds the aggregate Permitted Shareholder Tax Distributions paid by Ahern Rentals for such year pursuant to Section 4.07, the Permitted Dividend Amount for the following taxable year shall be increased effective the first day of such year by the amount of such excess;
- (2) if, at the end of any taxable year of Ahern Rentals, the aggregate Permitted Shareholder Tax Distributions paid by Ahern Rentals for such year exceed the Dividend Limitation for such year, the Permitted Dividend Amount for purposes of calculating any further distributions for such taxable year shall be zero and the amount of such excess shall be treated as having been paid by Ahern Rentals on the first day of the following taxable year (and, if necessary, succeeding taxable years); and
- (3) if Ahern Rentals’ S Corporation election made pursuant to Code Section 1362 (or any successor provision) shall be determined to be invalid, or is revoked or terminated, subject to the right of Ahern Rentals to seek relief pursuant to Code Section 1362(f) or any similar provision), and if Ahern Rentals is not treated as a partnership for U.S. federal income tax purposes, then the Permitted Dividend Amount for Ahern Rentals shall be zero from and after the date of such invalidity, revocation, termination or cessation.

“*Permitted Investments*” means:

- (1) any Investment in Ahern Rentals or in a Restricted Subsidiary of Ahern Rentals;
- (2) any Investment in Cash Equivalents;
- (3) any Investment by Ahern Rentals or any Restricted Subsidiary of Ahern Rentals in a Person, if as a result of such Investment:
 - (a) such Person becomes a Restricted Subsidiary of Ahern Rentals; or
 - (b) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, Ahern Rentals or a Restricted Subsidiary of Ahern Rentals;
- (4) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with Section 4.10;

- (5) any acquisition of assets or Capital Stock solely in exchange for the issuance of Equity Interests (other than Disqualified Stock) of Ahern Rentals;
- (6) any Investments received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of Ahern Rentals or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (B) litigation, arbitration or other disputes with Persons who are not Affiliates;
- (7) Investments represented by Hedging Obligations;
- (8) loans or advances to employees other than executives restricted by the Sarbanes-Oxley Act of 2002 made in the ordinary course of business of Ahern Rentals or the Restricted Subsidiary of Ahern Rentals in an aggregate principal amount not to exceed \$500,000 at any one time outstanding;
- (9) repurchases of the Notes and any Note Guarantees; and
- (10) other Investments in any Person having an aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (10) that are at the time outstanding not to exceed \$5.0 million.

“*Permitted Liens*” means:

- (1) Liens held by the Priority Lien Collateral Agent securing (a) Priority Lien Debt in an aggregate principal amount not exceeding the Priority Lien Cap and (b) all related Priority Lien Obligations;
- (2) Liens held by the Collateral Trustee equally and ratably securing the Initial Notes and all future Parity Lien Debt and other Parity Lien Obligations;
- (3) Liens in favor of Ahern Rentals or any Guarantor;
- (4) Liens on property of a Person existing at the time such Person is merged with or into or consolidated with Ahern Rentals or any Subsidiary of Ahern Rentals; *provided* that such Liens were in existence prior to the contemplation of such merger or consolidation and do not extend to any assets other than those of the Person merged into or consolidated with Ahern Rentals or the Subsidiary;
- (5) Liens on property (including Capital Stock) existing at the time of acquisition of the property by Ahern Rentals or any Subsidiary of Ahern Rentals; *provided* that such Liens were in existence prior to, such acquisition, and not incurred in contemplation of, such acquisition;
- (6) Liens to secure the performance of statutory obligations, surety or appeal bonds, performance bonds or other obligations of a like nature incurred in the ordinary course of business;
- (7) (a) Liens to secure Indebtedness (including Capital Lease Obligations) permitted by Section 4.09(b)(4) and (b) Liens securing trade payables incurred in the ordinary course of

business, in each case covering only the assets acquired with or financed by such Indebtedness or giving rise to such trade payables;

(8) Liens existing on the date of this Indenture;

(9) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded; *provided* that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor;

(10) Liens imposed by law, such as carriers', warehousemen's, landlords' and mechanics' Liens, in each case, incurred in the ordinary course of business;

(11) survey exceptions, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property that were not incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(12) Liens created for the benefit of (or to secure) the Notes or the Note Guarantees;

(13) Liens to secure any Permitted Refinancing Indebtedness permitted to be incurred under this Indenture; *provided, however*, that:

(a) the new Lien shall be limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus improvements and accessions to, such property or proceeds or distributions thereof); and

(b) the Indebtedness secured by the new Lien is not increased to any amount greater than the sum of (x) the outstanding principal amount, or, if greater, committed amount, of the Permitted Refinancing Indebtedness and (y) an amount necessary to pay any fees and expenses, including premiums, related to such renewal, refunding, refinancing, replacement, defeasance or discharge;

(14) judgment Liens not giving rise to an Event of Default so long as such Lien is adequately bonded and any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceedings may be initiated shall not have expired;

(15) Liens securing reimbursement obligations with respect to letters of credit which encumber (a) in the case of commercial letters of credit, documents and other property relating to such letters of credit and products and proceeds thereof, and (b) in the case of other letters of credit, only cash and marketable securities and documents and other property relating to such letters of credit and the products and proceeds thereof;

(16) Liens encumbering deposits made to secure obligations arising from statutory, regulatory, contractual or warranty requirements of Ahern Rentals or any of its Restricted Subsidiaries, including rights of offset and set-off;

(17) Liens constituting rights of or obligations to lessees and renters from Ahern Rentals or any of its Restricted Subsidiaries incurred in the ordinary course of business; and

(18) Liens incurred in the ordinary course of business of Ahern Rentals or any Subsidiary of Ahern Rentals with respect to obligations that do not exceed \$5.0 million at any one time outstanding.

“*Permitted Prior Liens*” means:

- (1) Liens described in clause (1) of the definition of “Permitted Liens”;
- (2) Liens described in clause (4), (5), (7)(a) or (8) of the definition of “Permitted Liens”; and
- (3) Permitted Liens that arise by operation of law and are not voluntarily granted, to the extent entitled by law to priority over the security interests created by the Security Documents.

“*Permitted Refinancing Indebtedness*” means any Indebtedness of Ahern Rentals or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge, other Indebtedness of Ahern Rentals or any of its Restricted Subsidiaries (other than intercompany Indebtedness); *provided* that:

- (1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness renewed, refunded, refinanced, replaced, defeased or discharged (plus all accrued interest on the Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith);
- (2) such Permitted Refinancing Indebtedness has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged;
- (3) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is subordinated in right of payment to the notes, such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and is subordinated in right of payment to, the notes on terms at least as favorable to the holders of notes as those contained in the documentation governing the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged; and
- (4) such Indebtedness is incurred either by Ahern Rentals or by the Restricted Subsidiary who is the obligor on the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged.

“*Permitted Shareholder Tax Distributions*” means cash distributions and/or loans made by Ahern Rentals to its shareholders (or partners if Ahern Rentals becomes a partnership for U.S. federal income tax purposes) in amounts computed by a Tax Accountant to be necessary to permit the shareholders (or partners) of Ahern Rentals to pay their estimated and final U.S. federal, state and local income tax liabilities attributable to the income of Ahern Rentals (including any pass-through income recognized by Ahern Rentals with respect to any of its Subsidiaries) to the extent such taxes are not payable directly by Ahern

Rentals or its Subsidiaries; *provided, however*, that the amount of such distributions or loans shall not exceed the Permitted Dividend Amount. Permitted Shareholder Tax Distributions may not be made more frequently than quarterly with respect to each period for which an installment of estimated tax would be required to be paid by the shareholders (or partners) of Ahern Rentals. Notwithstanding the foregoing limitation with respect to the Permitted Dividend Amount, if in any year Ahern Rentals' shareholders (or partners) are required to pay additional taxes with respect to a prior year's tax return which are attributable to the taxable income of Ahern Rentals (because of an audit by a taxing authority or an amended return the filing of which is required in the reasonable judgment of Ahern Rentals), the amount of Permitted Shareholder Tax Distributions which may be paid in such later year shall be increased by the amount of such additional taxes, and any interest and penalties with respect thereto, as determined by a Tax Accountant.

"*Person*" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

"*Pledgors*" means Ahern Rentals, any future Guarantors and any other Person (if any) that provides collateral security for any Secured Obligations.

"*Principals*" means Don F. Ahern and John Paul Ahern, Jr.

"*Priority Lien*" means a Lien granted by a Priority Lien Document to the Priority Lien Collateral Agent, at any time, upon any property of Ahern Rentals or any other Pledgor to secure Priority Lien Obligations.

"*Priority Lien Agent*" means (1) the Credit Agreement Agent or (2) in the case of any other Series of Priority Lien Debt, the trustee, agent or representative of the holders of such Series of Priority Lien Debt who maintains the transfer register for such Series of Priority Lien Debt and is appointed as a representative of the Priority Lien Debt (for purposes related to the administration of the Security Documents) pursuant to the credit agreement, indenture or other agreement governing such Series of Priority Lien Debt.

"*Priority Lien Cap*" means, as of any date, the principal amount outstanding under the Credit Agreement and/or the Indebtedness outstanding under any other Credit Facility, in an aggregate principal amount not to exceed the sum of the amount provided by clause (1) of the definition of "Permitted Debt," as of any date, less the amount of Parity Lien Debt incurred after the date of this Indenture the net proceeds of which are used to repay any term Priority Lien Debt or to repay any revolving credit Indebtedness that constitutes Priority Lien Debt and effect a corresponding commitment reduction thereunder. For purposes of this definition, all letters of credit will be deemed to have a principal amount equal to the maximum potential liability of Ahern Rentals and its Restricted Subsidiaries thereunder, and all Hedging Obligations will be valued at zero.

"*Priority Lien Collateral Agent*" means the Credit Agreement Agent or, after the Discharge of Priority Lien Obligations in respect of the Credit Agreement, a single representative of all holders of Priority Liens most recently designated by Ahern Rentals in an Officers' Certificate delivered to the trustee and the collateral agent or the successor of such representative in its capacity as such.

"*Priority Lien Debt*" means:

- (1) Indebtedness under the Credit Agreement that was permitted to be incurred and secured under each applicable Secured Debt Document (or as to which the lenders under the Credit Agreement (or the Credit Agreement Agent) obtained an Officers' Certificate (or a representation

or warranty is made by Ahern Rentals to such lenders) at the time of incurrence to the effect that such Indebtedness was permitted to be incurred and secured by all applicable Secured Debt Documents);

(2) Indebtedness under any other Credit Facility that is secured equally and ratably with the Credit Agreement by a Priority Lien that was permitted to be incurred and so secured under each applicable Secured Debt Document; *provided*, in the case of any Indebtedness referred to in this clause (2), that:

(a) on or before the date on which such Indebtedness is incurred by Ahern Rentals or the applicable Restricted Subsidiary, such Indebtedness is designated by Ahern Rentals, in an Officers' Certificate delivered to each representative of the Priority Debt and the Collateral Trustee, as "Priority Lien Debt" for the purposes of the Secured Debt Documents;

(b) such Indebtedness is governed by a credit agreement or other agreement that includes a Sharing Confirmation; and

(c) all requirements set forth in the Intercreditor Agreement as to the confirmation, grant or perfection of the Priority Lien Collateral Agent's Lien to secure such Indebtedness or Obligations in respect thereof are satisfied (and the satisfaction of such requirements and the other provisions of this clause (c) will be conclusively established if Ahern Rentals delivers to the Collateral Trustee an Officers' Certificate stating that such requirements and other provisions have been satisfied and that such Indebtedness is "Priority Lien Debt"); and

(3) Hedging Obligations incurred to hedge or manage interest rate risk with respect to Priority Lien Debt; *provided* that:

(a) such Hedging Obligations are secured by a Priority Lien on all of the assets and properties that secure Indebtedness under the Credit Facility in respect of which such Hedging Obligations are incurred; and

(b) such Priority Lien is senior to or on a parity with the Priority Liens securing Indebtedness under the Credit Facility in respect of which such Hedging Obligations are incurred.

"*Priority Lien Documents*" means the Credit Agreement and any other Credit Facility pursuant to which any Priority Lien Debt is incurred, each Lien Priority Confirmation and the Priority Lien Security Documents.

"*Priority Lien Obligations*" means the Priority Lien Debt and all other Obligations in respect of Priority Lien Debt (including, without limitation and in any event, with respect to the Credit Agreement, any "Obligations" as defined in the Credit Agreement as in effect on the date of this Indenture).

"*Priority Lien Security Documents*" means each Sharing Confirmation and Lien Priority Confirmation, and all security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements or other grants or transfers for security executed and delivered by Ahern Rentals or any other Pledgor creating (or purporting to create) a Priority Lien upon Collateral in favor of the Priority Lien Collateral Agent, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms.

“*Public Equity Offering*” means an offer and sale of Capital Stock (other than Disqualified Stock) of Ahern Rentals pursuant to a registration statement that has been declared effective by the SEC pursuant to the Securities Act (other than a registration statement on Form S-8 or otherwise relating to equity securities issuable under any employee benefit plan of Ahern Rentals).

“*QSSS Election*” means the election to treat any Person as a qualified subchapter S subsidiary pursuant to Code Section 1361(b)(3).

“*Registration Rights Agreement*” means the Registration Rights Agreement, dated as of the date hereof, among Ahern Rentals and the Initial Purchasers, as such agreement may be amended, modified or supplemented from time to time, and with respect to any Additional Notes, one or more registration rights agreements among Ahern Rentals, the Guarantors, if any, and the other parties thereto, as such agreement(s) may be amended, modified or supplemented from time to time, relating to rights given by Ahern Rentals to the purchasers of Additional Notes to register such Additional Notes under the Securities Act.

“*Regulation S*” means Regulation S promulgated under the Securities Act.

“*Regulation S Global Note*” means a Global Note bearing the Private Placement Legend and deposited with or on behalf of the Depository and registered in the name of the Depository or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes initially sold in reliance on Rule 903 of Regulation S.

“*Related Party*” means:

- (1) any immediate family member of any Principal;
- (2) in the event of the death or permanent disability of any Principal, any heir or devisee of such Principal, or any executor or similar legal representative of such Principal pending final disposition of such Principal's Equity Interests in Ahern Rentals; or
- (3) any trust, corporation, partnership, limited liability company or other entity, the beneficiaries, stockholders, partners, members, owners or Persons beneficially holding an 80% or more controlling interest of which consist of any one or more Principals and/or such other Persons referred to in the immediately preceding clauses (1) and (2).

“*Rental Equipment*” means any assets or equipment owned by Ahern Rentals or any of its Restricted Subsidiaries, the principal purpose of which has been for rental or leasing by Ahern Rentals or any of its Restricted Subsidiaries in a Permitted Business.

“*Required Parity Debtholders*” means, at any time, the holders of a majority in aggregate principal amount of all Parity Lien Debt then outstanding. For purposes of this definition, Parity Lien Debt registered in the name of, or beneficially owned by, Ahern Rentals or any Affiliate of Ahern Rentals will be deemed not to be outstanding.

“*Responsible Officer*,” when used with respect to the Trustee, means any officer within the Corporate Trust Administration of the Trustee (or any successor group of the Trustee), including any vice president, assistant vice president, assistant secretary, trust officer or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“*Restricted Definitive Note*” means a Definitive Note bearing the Private Placement Legend.

“*Restricted Global Note*” means a Global Note bearing the Private Placement Legend.

“*Restricted Investment*” means an Investment other than a Permitted Investment.

“*Restricted Subsidiary*” of a Person means any Subsidiary of the referent Person that is not an Unrestricted Subsidiary.

“*Rule 144*” means Rule 144 promulgated under the Securities Act.

“*Rule 144A*” means Rule 144A promulgated under the Securities Act.

“*Rule 903*” means Rule 903 promulgated under the Securities Act.

“*Rule 904*” means Rule 904 promulgated the Securities Act.

“*S Corporation*” means a small business corporation within the meaning of Code Section 1361 (or any successor provision) for which an election is in effect under Code Section 1362(a) (or any successor provision).

“*S&P*” means Standard & Poor’s Ratings Group.

“*Sale of Collateral*” means any Asset Sale involving a sale or other disposition of Collateral.

“*SEC*” means the U.S. Securities and Exchange Commission.

“*Securities Act*” means the Securities Act of 1933, as amended.

“*Secured Debt*” means Parity Lien Debt and Priority Lien Debt.

“*Secured Debt Documents*” means the Parity Lien Documents and the Priority Lien Documents.

“*Secured Debt Representative*” means each Parity Lien Representative and the Priority Lien Agent.

“*Secured Obligations*” means Parity Lien Obligations and Priority Lien Obligations.

“*Securities Act*” means the U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“*Security Documents*” means each Sharing Confirmation and Lien Priority Confirmation, and all security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements or other agreements, documents, grants or transfers for security executed and delivered by Ahern Rentals or any other Pledgor or which is otherwise necessary in creating (or purporting to create) a Parity Lien upon Collateral in favor of the Collateral Trustee, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms and Section 12.10.

“*Series of Parity Lien Debt*” means, severally, the Notes and each other issue or series of Parity Lien Debt for which a single transfer register is maintained.

“*Series of Priority Lien Debt*” means, severally, the Indebtedness outstanding under the Credit Agreement and any other Credit Facility that constitutes Priority Lien Debt.

“*Series of Secured Debt*” means each Series of Parity Lien Debt and each Series of Priority Lien Debt.

“*Sharing Confirmation*” means, as to any Series of Parity Lien Debt, the written agreement of the holders of such Series of Parity Lien Debt, as set forth in the indenture, credit agreement or other agreement governing such Series of Parity Lien Debt, for the enforceable benefit of all holders of each other existing and future Series of Parity Lien Debt and each existing and future Parity Lien Representative that all Parity Lien Obligations will be and are secured equally and ratably by all Liens at any time granted by Ahern Rentals or any other Pledgor to secure any Obligations in respect of such Series of Parity Lien Debt, whether or not upon property otherwise constituting Collateral, that all such Liens will be enforceable by the Collateral Trustee for the benefit of all holders of Parity Lien Obligations equally and ratably, and that the holders of Obligations in respect of such Series of Parity Lien Debt are bound by the provisions in the Intercreditor Agreement relating to the order of application of proceeds from enforcement of such Liens, and consent to and direct the Collateral Trustee to perform its obligations under the Intercreditor Agreement and the other Security Documents.

“*Shelf Registration Statement*” means the Shelf Registration Statement as defined in the Registration Rights Agreement.

“*Significant Subsidiary*” means any Subsidiary that would be a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the date of this Indenture.

“*Stated Maturity*” means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the documentation governing such Indebtedness as of the date of this Indenture, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

“*Subsidiary*” means, with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders’ agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

“*Suspended Losses*” means the aggregate amount of losses and deductions of Ahern Rentals which has been taken into account by the shareholders of Ahern Rentals and disallowed under Code Sections 1366(d) or 704(d) (or any successor provision) in a prior taxable year.

“*Tax Accountant*” means (1) the independent accounting firm that has prepared the filed federal tax returns of Ahern Rentals, if any, and the Principals for each of the last three tax years as of the date of determination, (2) any one of the four largest nationally recognized independent accounting firms, or (3) any other independent accounting firm approved by Ahern Rentals.

“*TIA*” means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbbb) as in effect on the date on which this Indenture is qualified under the TIA.

“*Trustee*” means the party named as such in the preamble to this Indenture until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

“*Unrestricted Definitive Note*” means one or more Definitive Notes that do not bear and are not required to bear the Private Placement Legend.

“*Unrestricted Global Note*” means a permanent Global Note substantially in the form of Exhibit A attached hereto that bears the Global Note Legend and that has the “Schedule of Exchanges of Interests in the Global Note” attached thereto, and that is deposited with or on behalf of and registered in the name of the Depository, representing a series of Notes that do not bear the Private Placement Legend.

“*Unrestricted Subsidiary*” means any Subsidiary of Ahern Rentals that is designated by the Board of Directors of Ahern Rentals as an Unrestricted Subsidiary pursuant to a resolution of the Board of Directors, but only to the extent that such Subsidiary:

- (1) has no Indebtedness other than Non-Recourse Debt;
- (2) except as permitted by Section 4.11, is not party to any agreement, contract, arrangement or understanding with Ahern Rentals or any Restricted Subsidiary of Ahern Rentals unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to Ahern Rentals or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of Ahern Rentals;
- (3) is a Person with respect to which neither Ahern Rentals nor any of its Restricted Subsidiaries has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person’s financial condition or to cause such Person to achieve any specified levels of operating results; and
- (4) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of Ahern Rentals or any of its Restricted Subsidiaries.

“*U.S. Person*” means a U.S. Person as defined in Rule 902(o) under the Securities Act.

“*Voting Stock*” of any specified Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

“*Weighted Average Life to Maturity*” means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

- (1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (b) the number of years (calculated

to the nearest one-twelfth) that will elapse between such date and the making of such payment; by

(2) the then outstanding principal amount of such Indebtedness.

Section 1.02 *Other Definitions.*

<u>Term</u>	<u>Defined in Section</u>
“Acceleration Notice”	6.02
“Affiliate Transaction”	4.11
“Asset Sale Offer”	3.09
“Authentication Order”	2.02
“Change of Control Offer”	4.14
“Change of Control Payment”	4.14
“Change of Control Payment Date”	4.14
“Covenant Defeasance”	8.03
“DTC”	2.03
“Event of Default”	6.01
“Excess Proceeds”	4.10
“Fixed Charge Coverage Ratio”	4.09
“Incur”	4.09
“Legal Defeasance”	8.02
“New Maximum Amount”	4.09
“Offer Amount”	3.09
“Offer Period”	3.09
“Paying Agent”	2.03
“Payment Default”	6.01
“Permitted Debt”	4.09
“Purchase Date”	3.09
“Registrar”	2.03
“Restricted Payments”	4.07

Section 1.03 *Incorporation by Reference of Trust Indenture Act.*

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture.

The following TIA terms used in this Indenture have the following meanings:

“*indenture securities*” means the Notes;

“*indenture security holder*” means a Holder of a Note;

“*indenture to be qualified*” means this Indenture;

“*indenture trustee*” or “*institutional trustee*” means the Trustee; and

“*obligor*” on the Notes and the Note Guarantees means Ahern Rentals and the Guarantors, respectively, and any successor obligor upon the Notes and the Note Guarantees, respectively.

Section 1.04 *Rules of Construction.*

Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (c) “or” is not exclusive;
- (d) words in the singular include the plural, and in the plural include the singular;
- (e) provisions apply to successive events and transactions; and
- (f) references to sections of or rules under the Securities Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time.

ARTICLE 2.

THE NOTES

Section 2.01 *Form and Dating.*

(a) *General.* The Notes and the Trustee’s certificate of authentication shall be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. Each Note shall be dated the date of its authentication. The Notes shall be in denominations of \$1,000 and integral multiples thereof.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and Ahern Rentals, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

(b) *Global Notes.* Notes issued in global form shall be substantially in the form of Exhibit A attached hereto (including the Global Note Legend thereon and the “Schedule of Exchanges of Interests in the Global Note” attached thereto). Notes issued in definitive form shall be substantially in the form of Exhibit A attached hereto (but without the Global Note Legend thereon and without the “Schedule of Exchanges of Interests in the Global Note” attached thereto). Each Global Note shall represent such of the outstanding Notes as shall be specified therein and each shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) *Euroclear and Cedel Procedures Applicable.* The provisions of the “Operating Procedures of the Euroclear System” and “Terms and Conditions Governing Use of Euroclear” and the “General

Terms and Conditions of Cedel Bank” and “Customer Handbook” of Cedel Bank shall be applicable to transfers of beneficial interests in the Regulation S Global Notes that are held by Participants through Euroclear or Cedel Bank.

Section 2.02 *Execution and Authentication.*

One or more Officers shall sign the Notes for Ahern Rentals by manual or facsimile signature. Ahern Rentals’ seal shall be reproduced on the Notes and may be in facsimile form.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note shall nevertheless be valid.

A Note shall not be valid until authenticated by the manual signature of the Trustee. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee shall, upon a written order of Ahern Rentals signed by one or more Officers (an “*Authentication Order*”), authenticate the Initial Notes for original issue up to \$200,000,000 in aggregate principal amount and, upon delivery of any Authentication Order at any time and from time to time thereafter, the Trustee shall authenticate Additional Notes and Exchange Notes for original issue in an aggregate principal amount specified in such Authentication Order.

The Trustee may appoint an authenticating agent acceptable to Ahern Rentals to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of Ahern Rentals.

Section 2.03 *Registrar and Paying Agent.*

Ahern Rentals shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange (“*Registrar*”) and an office or agency where Notes may be presented for payment (“*Paying Agent*”). The Registrar shall keep a register of the Notes and of their transfer and exchange. Ahern Rentals may appoint one or more co-registrars and one or more additional paying agents. The term “Registrar” includes any co-registrar and the term “Paying Agent” includes any additional paying agent. Ahern Rentals may change any Paying Agent or Registrar without notice to any Holder. Ahern Rentals shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. Ahern Rentals initially appoints the Trustee to act as the Registrar, Paying Agent and Collateral Trustee and to act as Custodian with respect to the Global Notes. If Ahern Rentals desires to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall cease being the Registrar and Paying Agent. Ahern Rentals or any of its Subsidiaries may act as Paying Agent or Registrar.

Ahern Rentals initially appoints The Depository Trust Company (“*DTC*”) to act as Depository with respect to the Global Notes.

Section 2.04 *Paying Agent to Hold Money in Trust.*

Ahern Rentals shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and will notify the Trustee of any default by Ahern Rentals in making any such payment. Ahern Rentals at any time may require a

Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than Ahern Rentals or a Subsidiary) shall have no further liability for the money. If Ahern Rentals or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to Ahern Rentals, the Trustee shall serve as Paying Agent for the Notes.

Section 2.05 *Holder Lists.*

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders and shall otherwise comply with TIA § 312(a). If the Trustee is not the Registrar, Ahern Rentals shall furnish to the Trustee at least seven Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes and Ahern Rentals shall otherwise comply with TIA § 312(a).

Section 2.06 *Transfer and Exchange.*

(a) *Transfer and Exchange of Global Notes.* A Global Note may not be transferred as a whole except by the Depository to a nominee of the Depository, by a nominee of the Depository to the Depository or to another nominee of the Depository, or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository. All Global Notes will be exchanged by Ahern Rentals for Definitive Notes if (i) Ahern Rentals delivers to the Trustee notice from the Depository that it is unwilling or unable to continue to act as Depository or that it is no longer a clearing agency registered under the Exchange Act and, in either case, a successor Depository is not appointed by Ahern Rentals within 120 days after the date of such notice from the Depository or (ii) Ahern Rentals in its sole discretion determines that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and delivers a written notice to such effect to the Trustee. Upon the occurrence of either of the preceding events in (i) or (ii) above, Definitive Notes shall be issued in such names as the Depository shall instruct the Trustee. Global Notes also may be exchanged or replaced, in whole or in part, as provided in Sections 2.07 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or 2.10 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Note. A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a); however, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b), (c) or (f) hereof.

(b) *Transfer and Exchange of Beneficial Interests in the Global Notes.* The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depository, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(i) *Transfer of Beneficial Interests in the Same Global Note.* Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend; *provided, however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written

orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(i).

(ii) *All Other Transfers and Exchanges of Beneficial Interests in Global Notes.* In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(i) above, the transferor of such beneficial interest must deliver to the Registrar either (A) (1) a written order from a Participant or an Indirect Participant given to the Depository in accordance with the Applicable Procedures directing the Depository to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase or (B) (1) a written order from a Participant or an Indirect Participant given to the Depository in accordance with the Applicable Procedures directing the Depository to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Depository to the Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in (1) above. Upon consummation of an Exchange Offer by Ahern Rentals in accordance with Section 2.06(f) hereof, the requirements of this Section 2.06(b)(ii) shall be deemed to have been satisfied upon receipt by the Registrar of the instructions contained in the Letter of Transmittal delivered by the Holder of such beneficial interests in the Restricted Global Notes. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(h) hereof.

(iii) *Transfer of Beneficial Interests to Another Restricted Global Note.* A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.06(b)(ii) above and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in the 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transferee will take delivery in the form of a beneficial interest in the Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transferee will take delivery in the form of a beneficial interest in the IAI Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications and certificates and Opinion of Counsel required by item (3) thereof, if applicable.

(iv) *Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in the Unrestricted Global Note.* A beneficial interest in any Restricted Global Note may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.06(b)(ii) above and:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the holder of the beneficial interest

to be transferred, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a broker-dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of Ahern Rentals;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a broker-dealer pursuant to the Exchange Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to subparagraph (B) or (D) above at a time when an Unrestricted Global Note has not yet been issued, Ahern Rentals shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to subparagraph (B) or (D) above.

Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

(c) *Transfer or Exchange of Beneficial Interests for Definitive Notes.*

(i) *Beneficial Interests in Restricted Global Notes to Restricted Definitive Notes.* If any holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then, upon receipt by the Registrar of the following documentation:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to an Institutional Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable;

(F) if such beneficial interest is being transferred to Ahern Rentals or any of its Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(G) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h) hereof, and Ahern Rentals shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee shall deliver such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c)(i) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(ii) *Beneficial Interests in Restricted Global Notes to Unrestricted Definitive Notes.* A holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the holder of such beneficial interest, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of

Transmittal that it is not (1) a broker-dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of Ahern Rentals;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a broker-dealer pursuant to the Exchange Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Definitive Note that does not bear the Private Placement Legend, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a Definitive Note that does not bear the Private Placement Legend, a certificate from such holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) *Beneficial Interests in Unrestricted Global Notes to Unrestricted Definitive Notes.* If any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon satisfaction of the conditions set forth in Section 2.06(b)(ii) hereof, the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h) hereof, and Ahern Rentals shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(iii) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee shall deliver such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(iii) shall not bear the Private Placement Legend.

(d) *Transfer and Exchange of Definitive Notes for Beneficial Interests.*

(i) *Restricted Definitive Notes to Beneficial Interests in Restricted Global Notes.* If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;

(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to an Institutional Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable;

(F) if such Restricted Definitive Note is being transferred to Ahern Rentals or any of its Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3) (b) thereof; or

(G) (if such Restricted Definitive Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the appropriate Restricted Global Note, in the case of clause (B) above, the 144A Global Note, in the case of clause (C) above, the Regulation S Global Note, and in all other cases, the IAI Global Note.

(ii) *Restricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes.* A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a broker-dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of Ahern Rentals;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a broker-dealer pursuant to the Exchange Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the Holder of such Definitive Notes proposes to exchange such Notes for a beneficial interest in the Unrestricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(c) thereof; or

(2) if the Holder of such Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of a beneficial interest in the Unrestricted Global Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.06(d)(ii), the Trustee shall cancel the Definitive Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(iii) *Unrestricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes.* A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraph (ii)(B), (ii)(D) or (iii) above at a time when an Unrestricted Global Note has not yet been issued, Ahern Rentals shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

(e) *Transfer and Exchange of Definitive Notes for Definitive Notes.* Upon request by a Holder of Definitive Notes and such Holder's compliance with the provisions of this Section 2.06(e), the Registrar shall register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(e):

(i) *Restricted Definitive Notes to Restricted Definitive Notes.* Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer will be made pursuant to Rule 144A under the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

(ii) *Restricted Definitive Notes to Unrestricted Definitive Notes.* Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a broker-dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of Ahern Rentals;

(B) any such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) any such transfer is effected by a broker-dealer pursuant to the Exchange Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) Notes for an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or

(2) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests, an Opinion of Counsel in form reasonably acceptable to Ahern Rentals to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) *Unrestricted Definitive Notes to Unrestricted Definitive Notes.* A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the

Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(f) *Exchange Offer.* Upon the occurrence of the Exchange Offer in accordance with the Registration Rights Agreement, Ahern Rentals shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02, the Trustee shall authenticate (i) one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of the beneficial interests in the Restricted Global Notes tendered for acceptance by Persons that certify in the applicable Letters of Transmittal that (x) they are not broker-dealers, (y) they are not participating in a distribution of the Exchange Notes and (z) they are not affiliates (as defined in Rule 144) of Ahern Rentals, and accepted for exchange in the Exchange Offer and (ii) Definitive Notes in an aggregate principal amount equal to the principal amount of the Restricted Definitive Notes accepted for exchange in the Exchange Offer. Concurrently with the issuance of such Notes, the Trustee shall cause the aggregate principal amount of the applicable Restricted Global Notes to be reduced accordingly, and Ahern Rentals shall execute and the Trustee shall authenticate and deliver to the Persons designated by the Holders of Definitive Notes so accepted Definitive Notes in the appropriate principal amount.

(g) *Legends.* The following legends shall appear on the face of all Global Notes and Definitive Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture.

(i) *Private Placement Legend.*

(A) Except as permitted by subparagraph (B) below, each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO (X) THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") WHICH IS TWO YEARS (OR SUCH SHORTER PERIOD AS MAY BE PRESCRIBED BY RULE 144(k) (OR ANY SUCCESSOR PROVISION THEREOF) UNDER THE SECURITIES ACT) AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF (OR ANY PREDECESSOR OF THIS SECURITY) AND THE LAST DATE ON WHICH AHERN RENTALS OR ANY AFFILIATE OF AHERN RENTALS WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) OR (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, ONLY (A) TO AHERN RENTALS OR ITS AFFILIATES, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO

LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT (“RULE 144A”), TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) INSIDE THE UNITED STATES TO AN INSTITUTIONAL ACCREDITED INVESTOR WITHIN THE MEANING OF SUBPARAGRAPH (a)(1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT THAT, PRIOR TO SUCH TRANSFER, FURNISHES (OR HAS FURNISHED ON ITS BEHALF BY A U.S. BROKER-DEALER) TO THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THIS NOTE (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE TRUSTEE), (E) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATIONS UNDER THE SECURITIES ACT, PURSUANT TO RULE 904 OF REGULATIONS OR (F) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT SUBJECT TO AHERN RENTALS’ AND THE TRUSTEE’S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.

(B) Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraph (b)(iv), (c)(ii), (c)(iii), (d)(ii), (d)(iii), (e)(ii), (e)(iii) or (f) of this Section 2.06 (and all Notes issued in exchange therefor or substitution thereof) shall not bear the Private Placement Legend.

(ii) *Global Note Legend.* Each Global Note shall bear a legend in substantially the following form:

THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.07 OF THE INDENTURE, (II) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (III) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (IV) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF AHERN RENTALS.

(h) *Cancellation and/or Adjustment of Global Notes.* At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(i) *General Provisions Relating to Transfers and Exchanges.*

(i) To permit registrations of transfers and exchanges, Ahern Rentals shall execute and the Trustee shall authenticate Global Notes and Definitive Notes upon Ahern Rentals' order or at the Registrar's request.

(ii) No service charge shall be made to a holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but Ahern Rentals may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.10, 3.06, 3.09, 4.10, 4.14 and 9.05 hereof).

(iii) The Registrar shall not be required to register the transfer of or exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(iv) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes shall be the valid obligations of Ahern Rentals, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(v) Ahern Rentals shall not be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.02 hereof and ending at the close of business on the day of selection, (B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part or (C) to register the transfer of or to exchange a Note between a record date and the next succeeding Interest Payment Date.

(vi) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and Ahern Rentals may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or Ahern Rentals shall be affected by notice to the contrary.

(vii) The Trustee shall authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.02 hereof.

(viii) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

Section 2.07 *Replacement Notes.*

If any mutilated Note is surrendered to the Trustee or Ahern Rentals or the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, Ahern Rentals shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Note if the Trustee's requirements are met. If required by the Trustee or Ahern Rentals, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and Ahern Rentals (and which may insure up to the total amount of principal, interest and premium, if any) to protect Ahern Rentals, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. Ahern Rentals and the Trustee may charge for their expenses in replacing a Note.

Every replacement Note is an additional obligation of Ahern Rentals and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08 *Outstanding Notes.*

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because Ahern Rentals or an Affiliate of Ahern Rentals holds the Note.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than Ahern Rentals, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

Section 2.09 *Treasury Notes.*

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by Ahern Rentals, or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with Ahern Rentals, shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that the Trustee knows are so owned shall be so disregarded.

Section 2.10 *Temporary Notes.*

Until certificates representing Notes are ready for delivery, Ahern Rentals may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of certificated Notes but may have variations that Ahern Rentals considers appropriate for temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable

delay, Ahern Rentals shall prepare and the Trustee shall authenticate definitive Notes in exchange for temporary Notes.

Holders of temporary Notes shall be entitled to all of the benefits of this Indenture.

Section 2.11 *Cancellation.*

Ahern Rentals at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall destroy canceled Notes (subject to the record retention requirement of the Exchange Act). Certification of the destruction of all canceled Notes shall be delivered to Ahern Rentals. Ahern Rentals may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12 *Defaulted Interest.*

If Ahern Rentals defaults in a payment of interest on the Notes, it shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. Ahern Rentals shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment. Ahern Rentals shall fix or cause to be fixed each such special record date and payment date, *provided* that no such special record date shall be less than 10 days prior to the related payment date for such defaulted interest. At least 15 days before the special record date, Ahern Rentals (or, upon the written request of Ahern Rentals, the Trustee in the name and at the expense of Ahern Rentals) shall mail or cause to be mailed to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

Section 2.13 *Issuance of Additional Notes*

Ahern Rentals shall be entitled, from time to time, subject to its compliance with Sections 4.09 and 4.12 hereof, without consent of the Holders, to issue Additional Notes, under this Indenture with identical terms as the Notes other than with respect to (i) the date of issuance, (ii) the issue price, (iii) the amount of interest payable on the first interest payment date and (iv) any adjustments in order to conform to and ensure compliance with the Securities Act (or other applicable securities laws). The Notes, any Additional Notes and all Exchange Notes issued in exchange therefor shall be treated as a single class for all purposes under this Indenture.

With respect to any Additional Notes, Ahern Rentals shall set forth in an Officers' Certificate pursuant to a resolution of the Board of Directors of Ahern Rentals, copies of which shall be delivered to the Trustee, the following information:

- (1) the aggregate principal amount of such Additional Notes to be authenticated and delivered pursuant to this Indenture;
- (2) the issue price, the issue date and the CUSIP number of such Additional Notes; *provided, however,* that no Additional Notes may be issued at a price that would cause such Additional Notes to have "original issue discount" within the meaning of Section 1273 of the Code; and

(3) whether such Additional Notes shall be issued in the form of Restricted Global Notes or Exchange Notes.

ARTICLE 3.

REDEMPTION AND PREPAYMENT

Section 3.01 *Notices to Trustee.*

If Ahern Rentals elects to redeem Notes pursuant to the optional redemption provisions of Section 3.07 hereof, it shall furnish to the Trustee, at least 30 days but not more than 60 days before a redemption date, an Officers' Certificate setting forth (i) the clause of this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of Notes to be redeemed and (iv) the redemption price.

Section 3.02 *Selection of Notes to Be Redeemed.*

If less than all of the Notes are to be redeemed at any time, the Trustee shall, subject to the procedures of the Depository, select the Notes to be redeemed or purchased among the Holders of the Notes in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not so listed, on a *pro rata* basis, by lot or in accordance with any other method the Trustee considers fair and appropriate. In the event of partial redemption by lot, the particular Notes to be redeemed shall be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the redemption date by the Trustee from the outstanding Notes not previously called for redemption.

The Trustee shall promptly notify Ahern Rentals in writing of the Notes selected for redemption and, in the case of any Note selected for partial redemption, the principal amount thereof to be redeemed. Notes and portions of Notes selected shall be in amounts of \$1,000 or whole multiples of \$1,000; except that if all of the Notes of a Holder are to be redeemed, the entire outstanding amount of Notes held by such Holder, even if not a multiple of \$1,000, shall be redeemed. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption.

Section 3.03 *Notice of Redemption.*

Subject to the provisions of Section 3.09 hereof, at least 30 days but not more than 60 days before a redemption date, Ahern Rentals shall mail or cause to be mailed, by first class mail, a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture.

The notice shall identify the Notes to be redeemed and shall state:

- (a) the redemption date;
- (b) the redemption price;
- (c) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the redemption date upon surrender of such Note, a new Note

or Notes in principal amount equal to the unredeemed portion shall be issued upon cancellation of the original Note;

- (d) the name and address of the Paying Agent;
- (e) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (f) that, unless Ahern Rentals defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;
- (g) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and
- (h) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes.

At Ahern Rentals' request, the Trustee shall give the notice of redemption in Ahern Rentals' name and at its expense; *provided, however*, that Ahern Rentals shall have delivered to the Trustee, at least 45 days prior to the redemption date, an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04 *Effect of Notice of Redemption.*

Once notice of redemption is mailed in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price. A notice of redemption may not be conditional.

Section 3.05 *Deposit of Redemption Price.*

Prior to 10:00 a.m. Eastern Time on the redemption date, Ahern Rentals shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption price of and accrued interest on all Notes to be redeemed on that date. The Trustee or the Paying Agent shall promptly return to Ahern Rentals any money deposited with the Trustee or the Paying Agent by Ahern Rentals in excess of the amounts necessary to pay the redemption price of, and accrued interest on, all Notes to be redeemed.

If Ahern Rentals complies with the provisions of the preceding paragraph, on and after the redemption date, interest shall cease to accrue on the Notes or the portions of Notes called for redemption. If a Note is redeemed on or after an interest record date but on or prior to the related interest payment date, then any accrued and unpaid interest shall be paid to the Person in whose name such Note was registered at the close of business on such record date. If any Note called for redemption shall not be so paid upon surrender for redemption because of the failure of Ahern Rentals to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06 *Notes Redeemed in Part.*

Upon surrender of a Note that is redeemed in part, Ahern Rentals shall issue and, upon Ahern Rentals' written request, the Trustee shall authenticate for the Holder at the expense of Ahern Rentals a new Note equal in principal amount to the unredeemed portion of the Note surrendered.

Section 3.07 *Optional Redemption.*

(a) At any time prior to August 15, 2008, Ahern Rentals may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under this Indenture at a redemption price of 109.250% of the principal amount, plus accrued and unpaid interest and Additional Interest, if any, to the redemption date, with the net cash proceeds of one or more Public Equity Offerings; *provided* that:

(1) at least 65% of the aggregate principal amount of Notes originally issued under this Indenture (excluding Notes held by Ahern Rentals and its Subsidiaries, if any) remains outstanding immediately after the occurrence of such redemption; and

(2) the redemption occurs within 90 days of the date of the closing of such Public Equity Offering.

(b) On or after August 15, 2009, Ahern Rentals may redeem all or a part of the Notes upon not less than 30 nor more than 60 days' notice, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest and Additional Interest, if any, on the Notes redeemed, to the applicable redemption date, if redeemed during the twelve-month period beginning on August 15 of the years indicated below, subject to the rights of Holders of Notes on the relevant record date to receive interest on the relevant interest payment date:

<u>Year</u>	<u>Percentage</u>
2009	104.625%
2010	102.313%
2011 and thereafter	100.000%

(c) Except pursuant to the preceding paragraphs, the Notes will not be redeemable at Ahern Rentals' option prior to August 15, 2009. Unless Ahern Rentals defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(d) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof.

Section 3.08 *Mandatory Redemption.*

Ahern Rentals shall not be required to make mandatory redemption payments with respect to the Notes.

Section 3.09 *Offer to Purchase by Application of Excess Proceeds.*

In the event that, pursuant to Section 4.10 hereof, Ahern Rentals shall be required to commence an offer to all Holders to purchase Notes (an "*Asset Sale Offer*"), it shall follow the procedures specified below.

The Asset Sale Offer shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the "*Offer Period*"). No later than five Business Days after the termination of the Offer Period (the "*Purchase Date*"), Ahern Rentals shall purchase the principal amount of Notes required to be purchased pursuant to

Section 4.10 hereof (the “*Offer Amount*”) or, if less than the Offer Amount has been tendered, all Notes tendered in response to the Asset Sale Offer. Payment for any Notes so purchased shall be made in the same manner as interest payments are made.

If the Purchase Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest shall be paid to the Person in whose name a Note is registered at the close of business on such record date, and no additional interest shall be payable to Holders who tender Notes pursuant to the Asset Sale Offer.

Upon the commencement of an Asset Sale Offer, Ahern Rentals shall send, by first class mail, a notice to the Trustee and each of the Holders, with a copy to the Trustee. The notice shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Asset Sale Offer. The Asset Sale Offer shall be made to all Holders. The notice, which shall govern the terms of the Asset Sale Offer, shall state:

- (a) that the Asset Sale Offer is being made pursuant to this Section 3.09 and Section 4.10 hereof and the length of time the Asset Sale Offer shall remain open;
- (b) the Offer Amount, the purchase price and the Purchase Date;
- (c) that any Note not tendered or accepted for payment shall continue to accrete or accrue interest;
- (d) that, unless Ahern Rentals defaults in making such payment, any Note accepted for payment pursuant to the Asset Sale Offer shall cease to accrete or accrue interest after the Purchase Date;
- (e) that Holders electing to have a Note purchased pursuant to an Asset Sale Offer may elect to have Notes purchased in integral multiples of \$1,000 only;
- (f) that Holders electing to have a Note purchased pursuant to any Asset Sale Offer shall be required to surrender the Note, with the form entitled “Option of Holder to Elect Purchase” on the reverse of the Note completed, or transfer by book-entry transfer, to Ahern Rentals, a depository, if appointed by Ahern Rentals, or a Paying Agent at the address specified in the notice at least three days before the Purchase Date;
- (g) that Holders shall be entitled to withdraw their election if Ahern Rentals, the depository or the Paying Agent, as the case may be, receives, not later than the expiration of the Offer Period, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;
- (h) that, if the aggregate principal amount of Notes surrendered by Holders exceeds the Offer Amount, Ahern Rentals shall select the Notes to be purchased on a *pro rata* basis (with such adjustments as may be deemed appropriate by Ahern Rentals so that only Notes in denominations of \$1,000, or integral multiples thereof, shall be purchased); and
- (i) that Holders whose Notes were purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer).

On or before the Purchase Date, Ahern Rentals shall, to the extent lawful, accept for payment, on a *pro rata* basis to the extent necessary, the Offer Amount of Notes or portions thereof tendered pursuant to the Asset Sale Offer, or if less than the Offer Amount has been tendered, all Notes tendered, and shall deliver to the Trustee an Officers' Certificate stating that such Notes or portions thereof were accepted for payment by Ahern Rentals in accordance with the terms of this Section 3.09. Ahern Rentals, the Depository or the Paying Agent, as the case may be, shall promptly (but in any case not later than five days after the Purchase Date) mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes tendered by such Holder and accepted by Ahern Rentals for purchase, and Ahern Rentals shall promptly issue a new Note, and the Trustee, upon written request from Ahern Rentals shall authenticate and mail or deliver such new Note to such Holder, in a principal amount equal to any unpurchased portion of the Note surrendered. Any Note not so accepted shall be promptly mailed or delivered by Ahern Rentals to the Holder thereof. Ahern Rentals shall publicly announce the results of the Asset Sale Offer on the Purchase Date.

Other than as specifically provided in this Section 3.09, any purchase pursuant to this Section 3.09 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof.

ARTICLE 4.

COVENANTS

Section 4.01 *Payment of Notes.*

Ahern Rentals shall pay or cause to be paid the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than Ahern Rentals or a Subsidiary thereof, holds as of 10:00 a.m. Eastern Time on the due date money deposited by Ahern Rentals in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due.

Ahern Rentals shall pay interest (including post-petition interest in any proceeding under the Bankruptcy Code) on overdue principal at the rate equal to 1% per annum in excess of the then applicable interest rate on the Notes to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under the Bankruptcy Code) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful.

Section 4.02 *Maintenance of Office or Agency.*

Ahern Rentals shall maintain an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon Ahern Rentals in respect of the Notes and this Indenture may be served. Ahern Rentals shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time Ahern Rentals shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

Ahern Rentals may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations. Ahern Rentals shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

Ahern Rentals hereby designates the Corporate Trust Office of the Trustee as one such office or agency of Ahern Rentals in accordance with Section 2.03.

Section 4.03 *Reports.*

Whether or not required by the rules and regulations of the SEC, so long as any Notes are outstanding, Ahern Rentals will furnish to the Holders of Notes or cause the Trustee at Ahern Rentals' expense to furnish to the Holders of Notes, within the time periods specified in the SEC's rules and regulations:

- (1) all quarterly and annual reports that would be required to be filed with the SEC on Forms 10-Q and 10-K if Ahern Rentals were required to file such reports; and
- (2) all current reports that would be required to be filed with the SEC on Form 8-K if Ahern Rentals were required to file such reports.

All such reports will be prepared in all material respects in accordance with all of the rules and regulations applicable to such reports. Each annual report on Form 10-K will include a report on Ahern Rentals' consolidated financial statements by Ahern Rentals' certified independent accountants. In addition, following the completion of the exchange offer contemplated by the registration rights agreement, Ahern Rentals will file a copy of each of the reports referred to in clauses (1) and (2) above with the SEC for public availability within the time periods specified in the rules and regulations applicable to such reports (unless the SEC will not accept such a filing) and will post the reports on its website within those time periods.

If, at any time after completion of the Exchange Offer contemplated by the Registration Rights Agreement, Ahern Rentals is no longer subject to the periodic reporting requirements of the Exchange Act for any reason, Ahern Rentals will nevertheless continue filing the reports specified in the preceding paragraphs of this Section 4.03 with the SEC within the time periods specified above unless the SEC will not accept such a filing. Ahern Rentals will not take any action for the purpose of causing the SEC not to accept any such filings. If, notwithstanding the foregoing, the SEC will not accept Ahern Rentals' filings for any reason, Ahern Rentals will post the reports referred to in the preceding paragraphs on its website within the time periods that would apply if Ahern Rentals were required to file those reports with the SEC.

If Ahern Rentals has designated any of its Subsidiaries as Unrestricted Subsidiaries, then the quarterly and annual financial information required by the preceding paragraphs will include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, and in Management's Discussion and Analysis of Financial Condition and Results of Operations, of the financial condition and results of operations of Ahern Rentals and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of Ahern Rentals.

In addition, Ahern Rentals agrees that, for so long as any Notes remain outstanding, if at any time Ahern Rentals and the Guarantors are not required to file with the SEC the reports required by the preceding paragraphs, they will furnish to the Holders of Notes and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

Section 4.04 *Compliance Certificate.*

(a) Ahern Rentals and each Guarantor (to the extent that such Guarantor is so required under the TIA) shall deliver to the Trustee, within 90 days after the end of each fiscal year, an Officers' Certificate stating that a review of the activities of Ahern Rentals and its Subsidiaries or such Guarantor during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether Ahern Rentals or such Guarantor, if any, has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge Ahern Rentals or such Guarantor has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action Ahern Rentals or the applicable Guarantor is taking or proposes to take with respect thereto) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action Ahern Rentals or the applicable Guarantor is taking or proposes to take with respect thereto.

(b) So long as not contrary to the then current recommendations of the American Institute of Certified Public Accountants, the year-end financial statements delivered pursuant to Section 4.03(a) above shall be accompanied by a written statement of Ahern Rentals' independent public accountants (who shall be a firm of established national reputation) that in making the examination necessary for certification of such financial statements, nothing has come to their attention that would lead them to believe that Ahern Rentals has violated any provisions of Article 4 or Article 5 hereof or, if any such violation has occurred, specifying the nature and period of existence thereof, it being understood that such accountants shall not be liable directly or indirectly to any Person for any failure to obtain knowledge of any such violation.

(c) Ahern Rentals shall, so long as any of the Notes are outstanding, deliver to the Trustee, forthwith upon any Officer becoming aware of any Default or Event of Default, an Officers' Certificate specifying such Default or Event of Default and what action Ahern Rentals is taking or proposes to take with respect thereto.

Section 4.05 *Taxes.*

Ahern Rentals shall pay, and shall cause each of its Subsidiaries to pay, prior to delinquency, all material taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders of the Notes.

Section 4.06 *Stay, Extension and Usury Laws.*

Ahern Rentals and each of the Guarantors covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and Ahern Rentals and each of the Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07 *Restricted Payments.*

- (a) Ahern Rentals shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:
- (i) declare or pay any dividend or make any other payment or distribution on account of Ahern Rentals' or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger or consolidation involving Ahern Rentals or any of its Restricted Subsidiaries) or to the direct or indirect holders of Ahern Rentals' or any of its Restricted Subsidiaries' Equity Interests in their capacity as such (other than dividends or distributions payable in Equity Interests (other than Disqualified Stock) of Ahern Rentals and other than dividends or distributions to Ahern Rentals or a Restricted Subsidiary of Ahern Rentals);
 - (ii) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving Ahern Rentals) any Equity Interests of Ahern Rentals or any direct or indirect parent of Ahern Rentals;
 - (iii) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of Ahern Rentals or any Guarantor that is contractually subordinated to the Notes or to any Note Guarantee (excluding any intercompany Indebtedness between or among Ahern Rentals and any of its Restricted Subsidiaries), except a payment of interest or principal at the Stated Maturity thereof; or
 - (iv) make any Restricted Investment

(all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as "*Restricted Payments*"), unless, at the time of and after giving effect to such Restricted Payment:

- (1) no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment;
- (2) Ahern Rentals would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable four-quarter period, have been permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio Provision (as defined below); and
- (3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by Ahern Rentals and its Restricted Subsidiaries since the date of this Indenture (excluding Restricted Payments permitted by clauses (2), (3), (4), (7), (8) and (9) of paragraph (b) below), is less than the sum, without duplication, of:
 - (A) 50% of the Consolidated Net Income of Ahern Rentals for the period (taken as one accounting period) from the beginning of the first fiscal quarter commencing after the date of this Indenture to the end of Ahern Rentals' most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit); *plus*
 - (B) 100% of the aggregate net cash proceeds received by Ahern Rentals since the date of this Indenture as a contribution to its common equity capital or from the

issue or sale of Equity Interests of Ahern Rentals (other than Disqualified Stock) or from the issue or sale of convertible or exchangeable Disqualified Stock or convertible or exchangeable debt securities of Ahern Rentals that have been converted into or exchanged for such Equity Interests (other than Equity Interests (or Disqualified Stock or debt securities) sold to a Subsidiary of Ahern Rentals); *plus*

(C) to the extent that any Restricted Investment that was made after the date of this indenture is sold for cash or otherwise liquidated or repaid for cash, the lesser of (i) the cash return of capital with respect to such Restricted Investment (less the cost of disposition, if any) and (ii) the initial amount of such Restricted Investment; *plus*

(D) to the extent that any Unrestricted Subsidiary of Ahern Rentals designated as such after the date of this Indenture is redesignated as a Restricted Subsidiary after the date of this Indenture, the lesser of (i) the Fair Market Value of Ahern Rentals' Investment in such Subsidiary as of the date of such redesignation and (ii) such Fair Market Value as of the date on which such Subsidiary was originally designated as an Unrestricted Subsidiary after the date of this Indenture; *plus*

(E) 100% of any dividends received by Ahern Rentals or a Restricted Subsidiary of Ahern Rentals that is a Guarantor after the date of this Indenture from an Unrestricted Subsidiary of Ahern Rentals, to the extent that such dividends were not otherwise included in the Consolidated Net Income of Ahern Rentals for such period.

(b) The provisions of Section 4.07(a) shall not prohibit:

(1) the payment of any dividend or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or redemption payment would have complied with the provisions of this Indenture;

(2) the making of any Restricted Payment in exchange for, or out of the net cash proceeds of the substantially concurrent sale (other than to a Subsidiary of Ahern Rentals) of, Equity Interests of Ahern Rentals (other than Disqualified Stock) or from the substantially concurrent contribution of common equity capital to Ahern Rentals; *provided* that the amount of any such net cash proceeds that are utilized for any such Restricted Payment will be excluded from Section 4.07(a)(3)(B);

(3) the repurchase, redemption, defeasance or other acquisition or retirement for value of Indebtedness of Ahern Rentals or any Guarantor that is contractually subordinated to the notes or to any Note Guarantee with the net cash proceeds from a substantially concurrent incurrence of Permitted Refinancing Indebtedness;

(4) the payment of any dividend (or, in the case of any partnership or limited liability company, any similar distribution) by a Restricted Subsidiary of Ahern Rentals to the holders of its Equity Interests on a *pro rata* basis;

(5) the declaration and payment of Permitted Shareholder Tax Distributions with respect to a period during which Ahern Rentals is or was an S Corporation or a partnership for U.S. federal income tax purposes; *provided* that the shareholders of Ahern Rentals (or partners of Ahern Rentals, if Ahern Rentals becomes a partnership for U.S. federal income tax purposes) apply such Permitted Shareholder Tax Distribution (excluding amounts representing a distribution

of cash necessary to make the total distributions proportionate among shareholders (or partners)) to the payment of taxes attributable to the income of Ahern Rentals (including any pass through income recognized by Ahern Rentals with respect to any of its Subsidiaries) within 30 days of such distribution;

(6) so long as no Default has occurred and is continuing or would be caused thereby, the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of Ahern Rentals or any Restricted Subsidiary of Ahern Rentals held by any current or former officer, director or employee of Ahern Rentals or any of its Restricted Subsidiaries pursuant to any equity subscription agreement, stock option agreement, shareholders' agreement or similar agreement; *provided* that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests may not exceed \$250,000 in any twelve-month period;

(7) the repurchase of Equity Interests deemed to occur upon the exercise of stock options to the extent such Equity Interests represent a portion of the exercise price of those stock options;

(8) so long as no Default has occurred and is continuing or would be caused thereby, the declaration and payment of regularly scheduled or accrued dividends to holders of any class or series of Disqualified Stock of Ahern Rentals or any Restricted Subsidiary of Ahern Rentals issued on or after the date of this Indenture in accordance with the Fixed Charge Coverage Ratio Provision; and

(9) so long as no Default has occurred and is continuing or would be caused thereby, other Restricted Payments in an aggregate amount not to exceed \$5.0 million.

The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by Ahern Rentals or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment. The Fair Market Value of any assets or securities (other than assets or securities with a public trading market) that are required to be valued by this Section 4.07 will be determined by the Board of Directors of Ahern Rentals whose resolution with respect thereto will be delivered to the Trustee. The Board of Directors' determination must be based upon an opinion or appraisal issued by an accounting, appraisal or investment banking firm of national standing if the Fair Market Value exceeds \$5.0 million.

Section 4.08 *Dividend and Other Payment Restrictions Affecting Subsidiaries.*

(a) Ahern Rentals shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

- (1) pay dividends or make any other distributions on its Capital Stock to Ahern Rentals or any of its Restricted Subsidiaries, or with respect to any other interest or participation in, or measured by, its profits, or pay any indebtedness owed to Ahern Rentals or any of its Restricted Subsidiaries;
- (2) make loans or advances to Ahern Rentals or any of its Restricted Subsidiaries; or
- (3) sell, lease or transfer any of its properties or assets to Ahern Rentals or any of its Restricted Subsidiaries.

(b) However, the preceding restrictions in Section 4.08(a) will not apply to encumbrances or restrictions existing under or by reason of:

- (1) agreements governing Existing Indebtedness and Credit Facilities as in effect on the date of this Indenture and any amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings of those agreements; *provided* that the amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in those agreements on the date of this Indenture;
- (2) this Indenture, the Notes and the Note Guarantees;
- (3) applicable law, rule, regulation or order;
- (4) any instrument governing Indebtedness or Capital Stock of a Person acquired by Ahern Rentals or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Indebtedness or Capital Stock was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; *provided* that, in the case of Indebtedness, such Indebtedness was permitted by the terms of this Indenture to be incurred;
- (5) customary non-assignment provisions in contracts and licenses entered into in the ordinary course of business;
- (6) purchase money obligations for property acquired in the ordinary course of business and Capital Lease Obligations that impose restrictions on the property purchased or leased of the nature described in Section 4.08(a)(3);
- (7) any agreement for the sale or other disposition of a Restricted Subsidiary that restricts distributions by that Restricted Subsidiary pending the sale or other disposition;
- (8) Permitted Refinancing Indebtedness; *provided* that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;
- (9) Liens permitted to be incurred under the provisions of Section 4.12 that limit the right of the debtor to dispose of the assets subject to such Liens;
- (10) provisions limiting the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements, which limitation is applicable only to the assets or property that are the subject of such agreements and, if the assets or property subject to any such agreement have an aggregate Fair Market Value of more than \$10.0 million, such agreement has been entered into with the approval of Ahern Rentals' Board of Directors; and
- (11) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business.

Section 4.09 *Incurrence of Indebtedness and Issuance of Preferred Stock.*

(a) Ahern Rentals shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "*incur*") any Indebtedness (including Acquired Debt), and Ahern Rentals shall not issue any Disqualified Stock and shall not permit any of its Restricted Subsidiaries to issue any shares of preferred stock; *provided, however*, that Ahern Rentals may incur Indebtedness (including Acquired Debt) or issue Disqualified Stock, and Ahern Rentals' Restricted Subsidiaries may incur Indebtedness (including Acquired Debt) or issue preferred stock, if the Fixed Charge Coverage Ratio for Ahern Rentals' most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued, as the case may be, would have been at least 2.25 to 1.00 (the "*Fixed Charge Coverage Ratio Provision*"), determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred or the Disqualified Stock or the preferred stock had been issued, as the case may be, at the beginning of such four-quarter period.

(b) The provisions of Section 4.09(a) will not prohibit the incurrence of any of the following items of Indebtedness (collectively, "*Permitted Debt*"):

(1) the incurrence by Ahern Rentals and any of its Restricted Subsidiaries of additional Indebtedness and letters of credit under Credit Facilities in an aggregate principal amount at any one time outstanding under this clause (1) (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of Ahern Rentals and its Restricted Subsidiaries thereunder) not to exceed the greater of (a) \$175.0 million and (b) the sum of (I) 85% of accounts receivable, plus (II) the lesser of (A) 85% net orderly liquidation value of rental and sale equipment and other equipment (including transportation equipment but excluding aircraft) and (B) 95% of net book value of rental and sale equipment and other equipment (including transportation equipment but excluding aircraft), plus (III) the lesser of (A) 85% of net orderly liquidation value of spare parts and merchandise inventory and (B) 60% of net book value of spare parts and merchandise inventory, in the case of each of (a) and (b) less the aggregate amount of all Net Proceeds of Asset Sales applied by Ahern Rentals or any of its Restricted Subsidiaries since the date of this Indenture to repay any term Indebtedness under a Credit Facility or to repay any revolving credit Indebtedness under a Credit Facility and effect a corresponding commitment reduction thereunder pursuant to Section 4.10;

(2) the incurrence by Ahern Rentals and its Restricted Subsidiaries of the Existing Indebtedness;

(3) the incurrence by Ahern Rentals of Indebtedness represented by the Notes to be issued on the date of this Indenture and the Exchange Notes to be issued pursuant to the Registration Rights Agreement;

(4) the incurrence by Ahern Rentals or any of its Restricted Subsidiaries of Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, incurred for the purpose of financing all or any part of the purchase price or cost of design, construction, installation or improvement of property, plant or equipment used in the business of Ahern Rentals or any of its Restricted Subsidiaries, in an aggregate principal amount, including all Permitted Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (4), not to exceed \$20.0 million at any time outstanding;

(5) the incurrence by Ahern Rentals or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge, any Indebtedness (other than intercompany Indebtedness) that was permitted by this Indenture to be incurred pursuant to Section 4.09(a) or clause (2), (3), (4), (5) or (12) of this Section 4.09(b);

(6) the incurrence by Ahern Rentals or any of its Restricted Subsidiaries of intercompany Indebtedness between or among Ahern Rentals and any of its Restricted Subsidiaries; *provided, however*, that:

(a) if Ahern Rentals or any Guarantor is the obligor on such Indebtedness and the payee is not Ahern Rentals or a Guarantor, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all Obligations then due with respect to the Notes, in the case of Ahern Rentals, or the Note Guarantee, in the case of a Guarantor; and

(b) (i) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than Ahern Rentals or a Restricted Subsidiary of Ahern Rentals and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either Ahern Rentals or a Restricted Subsidiary of Ahern Rentals, will be deemed, in each case, to constitute an incurrence of such Indebtedness by Ahern Rentals or such Restricted Subsidiary, as the case may be, that was not permitted by this clause (6);

(7) the issuance by any of Ahern Rentals' Restricted Subsidiaries to Ahern Rentals or to any of its Restricted Subsidiaries of shares of preferred stock; *provided, however*, that:

(a) any subsequent issuance or transfer of Equity Interests that results in any such preferred stock being held by a Person other than Ahern Rentals or a Restricted Subsidiary of Ahern Rentals and

(b) any sale or other transfer of any such preferred stock to a Person that is not either Ahern Rentals or a Restricted Subsidiary of Ahern Rentals

will be deemed, in each case, to constitute an issuance of such preferred stock by such Restricted Subsidiary that was not permitted by this clause (7);

(8) the incurrence by Ahern Rentals or any of its Restricted Subsidiaries of Hedging Obligations in the ordinary course of business;

(9) the guarantee by Ahern Rentals or any of its Restricted Subsidiaries of Indebtedness of Ahern Rentals or a Restricted Subsidiary of Ahern Rentals that was permitted to be incurred by another provision of this Section 4.09; *provided* that if the Indebtedness being guaranteed is subordinated to the notes, then the guarantee shall be subordinated to the same extent as the Indebtedness guaranteed; *provided further* that any Restricted Subsidiary of Ahern Rentals that guarantees other Indebtedness pursuant to this clause (9) also shall concurrently guarantee, or already be a Guarantor with respect to, the Notes pursuant to Section 4.19;

(10) the incurrence by Ahern Rentals or any of its Restricted Subsidiaries of Indebtedness in respect of workers' compensation claims, self-insurance obligations, bankers' acceptances, performance and surety bonds in the ordinary course of business;

(11) the incurrence by Ahern Rentals or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five business days; and

(12) the incurrence by Ahern Rentals or any of its Restricted Subsidiaries of additional Indebtedness in an aggregate principal amount (or accreted value, as applicable) at any time outstanding, including all Permitted Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (12), not to exceed \$5.0 million.

Ahern Rentals shall not incur, and shall not permit any Guarantor to incur, any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of Ahern Rentals or such Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the Notes and the applicable Note Guarantee on substantially identical terms; *provided, however*, that no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness of Ahern Rentals solely by virtue of being unsecured or by virtue of being secured on a first or junior Lien basis.

For purposes of determining compliance with this Section 4.09, in the event that an item of proposed Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in clauses (b) (1) through (b)(12) above, or is entitled to be incurred pursuant to Section 4.09(a), Ahern Rentals will be permitted to classify such item of Indebtedness on the date of its incurrence, or later reclassify all or a portion of such item of Indebtedness, in any manner that complies with this Section 4.09. Indebtedness under Credit Facilities outstanding on the date on which notes are first issued and authenticated under this Indenture will initially be deemed to have been incurred on such date in reliance on the exception provided by clause (1) of the definition of "Permitted Debt."

The accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, the reclassification of preferred stock as Indebtedness due to a change in accounting principles, and the payment of dividends on Disqualified Stock in the form of additional shares of the same class of Disqualified Stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock for purposes of this Section 4.09; *provided*, in each such case, that the amount of any such accrual, accretion or payment is included in Fixed Charges of Ahern Rentals as accrued. Notwithstanding any other provision of this Section 4.09, the maximum amount of Indebtedness that Ahern Rentals or any Restricted Subsidiary may incur pursuant to this Section 4.09 shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.

The amount of any Indebtedness outstanding as of any date will be:

- (1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;
- (2) the principal amount of the Indebtedness, in the case of any other Indebtedness; and
- (3) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:
 - (a) the Fair Market Value of such assets at the date of determination; and

- (b) the amount of the Indebtedness of the other Person.

Section 4.10 *Asset Sales.*

(a) Ahern Rentals shall not, and shall not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(1) Ahern Rentals (or the Restricted Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Equity Interests issued or sold or otherwise disposed of;

(2) at least 75% of the consideration received in the Asset Sale by Ahern Rentals or such Restricted Subsidiary is in the form of cash. For purposes of this provision, each of the following will be deemed to be cash:

(a) any liabilities, as shown on Ahern Rentals' most recent consolidated balance sheet, of Ahern Rentals or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the notes or any Note Guarantee) that are assumed by the transferee of any such assets pursuant to a customary novation agreement that releases Ahern Rentals or such Restricted Subsidiary from further liability;

(b) any securities, notes or other obligations received by Ahern Rentals or any such Restricted Subsidiary from such transferee that are contemporaneously, subject to ordinary settlement periods, converted by Ahern Rentals or such Restricted Subsidiary into cash, to the extent of the cash received in that conversion; and

(c) any stock or assets of the kind referred to in Section 4.10(b)(2) or (4); and

(3) in the case of an Asset Sale that constitutes a Sale of Collateral or a Casualty Event occurring after the Discharge of Priority Lien Obligations, Ahern Rentals (or the Restricted Subsidiary, as the case may be) shall deposit the Net Proceeds from such Asset Sale or Casualty Event as cash collateral in a segregated account held by the Collateral Trustee or its agent to secure the Secured Obligations pending application of the Net Proceeds otherwise in accordance with this Section 4.10.

Pending the final application of any Net Proceeds, Ahern Rentals may temporarily reduce revolving credit borrowings.

(b) Within 360 days after the receipt of any Net Proceeds from an Asset Sale, Ahern Rentals (or the applicable Restricted Subsidiary, as the case may be) may apply such Net Proceeds, at its option:

(1) to repay Priority Lien Debt and, if such Priority Lien Debt is revolving credit Indebtedness (except for temporary reductions contemplated in the immediately preceding paragraph), to correspondingly reduce commitments with respect thereto;

(2) to acquire all or substantially all of the assets of, or any Capital Stock of, another Permitted Business, if, after giving effect to any such acquisition of Capital Stock, the Permitted Business is or becomes a Restricted Subsidiary of Ahern Rentals;

- (3) to make a capital expenditure; or
- (4) to acquire other assets that are not classified as current assets under GAAP and that are used or useful in a Permitted Business.

Any Net Proceeds from Asset Sales that are not applied or invested as provided in this Section 4.10(b) will constitute "*Excess Proceeds*." When the aggregate amount of Excess Proceeds exceeds \$10.0 million, within 30 days thereof, Ahern Rentals shall make an Asset Sale Offer to all Holders of Notes and all holders of Parity Lien Debt containing provisions similar to those set forth in this Indenture with respect to offers to purchase or redeem with the proceeds of sales of assets to purchase the maximum principal amount of Notes and such Parity Lien Debt that may be purchased out of the Excess Proceeds. The offer price in any Asset Sale Offer will be equal to 100% of the principal amount plus accrued and unpaid interest and Additional Interest, if any, to the date of purchase, and will be payable in cash. If any Excess Proceeds remain after consummation of an Asset Sale Offer, Ahern Rentals may use those Excess Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of Notes and Parity Lien Debt tendered into such Asset Sale Offer exceeds the amount of Excess Proceeds, Ahern Rentals will select the Notes and such Parity Lien Debt to be purchased on a *pro rata* basis. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds will be reset at zero.

Ahern Rentals shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the Asset Sale provisions of this Indenture, Ahern Rentals will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Asset Sale provisions of this Indenture by virtue of such compliance.

Section 4.11 *Transactions with Affiliates.*

(a) Ahern Rentals shall not, and shall not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of Ahern Rentals (each, an "*Affiliate Transaction*"), unless:

(1) the Affiliate Transaction is on terms that are not materially less favorable to Ahern Rentals or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by Ahern Rentals or such Restricted Subsidiary with an unrelated Person; and

(2) Ahern Rentals delivers to the Trustee:

(a) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$3.0 million, a resolution of the Board of Directors of Ahern Rentals set forth in an Officers' Certificate certifying that such Affiliate Transaction complies with this Section 4.11(a) and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors of Ahern Rentals; and

(b) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$7.5 million, an opinion as to the fairness to Ahern Rentals or such Subsidiary of such Affiliate Transaction from a financial

point of view issued by an accounting, appraisal or investment banking firm of national standing.

(b) The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of Section 4.11(a):

- (1) any employment agreement, employee benefit plan, officer or director indemnification agreement or any similar arrangement entered into by Ahern Rentals or any of its Restricted Subsidiaries in the ordinary course of business and payments pursuant thereto;
- (2) transactions between or among Ahern Rentals and/or its Restricted Subsidiaries;
- (3) transactions with a Person (other than an Unrestricted Subsidiary of Ahern Rentals) that is an Affiliate of Ahern Rentals solely because Ahern Rentals owns, directly or through a Restricted Subsidiary, an Equity Interest in, or controls, such Person;
- (4) payment of reasonable directors' fees to Persons who are not otherwise Affiliates of Ahern Rentals;
- (5) any issuance of Equity Interests (other than Disqualified Stock) of Ahern Rentals to Affiliates of Ahern Rentals;
- (6) Restricted Payments and Permitted Investments that are permitted by Section 4.07 hereof;
- (7) loans or advances to employees in the ordinary course of business not to exceed \$1.0 million in the aggregate at any one time outstanding; and
- (8) purchases of equipment and related parts from Affiliates of Ahern Rentals in the ordinary course of business; *provided* that such purchases are on terms that are not materially less favorable to Ahern Rentals or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by Ahern Rentals or such Restricted Subsidiary with an unrelated Person; *provided, further* that to the extent the aggregate amount of such purchases exceeds \$15 million during any fiscal year, Ahern Rentals delivers to the Trustee a resolution of the Board of Directors of Ahern Rentals set forth in an Officers' Certificate certifying that such purchases comply with the provisions set forth above in this clause (8) and that such purchases have been approved, in the aggregate, by a majority of the disinterested members of the Board of Directors of Ahern Rentals.

Section 4.12 *Liens.*

Ahern Rentals shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien of any kind on any asset now owned or hereafter acquired, except Permitted Liens.

Section 4.13 *Corporate Existence.*

Subject to Article 5 hereof, Ahern Rentals shall do or cause to be done all things necessary to preserve and keep in full force and effect (i) its corporate existence, and the corporate, partnership or other existence of each of its Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of Ahern Rentals or any such Subsidiary and (ii) the rights

(charter and statutory), licenses and franchises of Ahern Rentals and its Subsidiaries; *provided, however*, that Ahern Rentals shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of its Subsidiaries, if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of Ahern Rentals and its Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders of the Notes.

Section 4.14 *Offer to Repurchase upon Change of Control.*

(a) Upon the occurrence of a Change of Control, Ahern Rentals shall make an offer (a “*Change of Control Offer*”) to each Holder to repurchase all or any part (equal to \$1,000 or an integral multiple of \$1,000) of each Holder’s Notes at a purchase price equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest and Additional Interest on the Notes repurchased, if any, to the date of purchase (the “*Change of Control Payment*”). Within 10 days following any Change of Control, Ahern Rentals shall mail a notice to each Holder describing the transaction or transactions that constitute the Change of Control and stating:

- (1) that the Change of Control Offer is being made pursuant to this Section 4.14 and that all Notes tendered will be accepted for payment;
- (2) the purchase price and the purchase date, which shall be no earlier than 30 days and no later than 60 business days from the date such notice is mailed (the “*Change of Control Payment Date*”);
- (3) that any Note not tendered will continue to accrue interest;
- (4) that, unless Ahern Rentals defaults in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest after the Change of Control Payment Date;
- (5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender the Notes, with the form entitled “Option of Holder to Elect Purchase” on the reverse of the Notes completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;
- (6) that Holders will be entitled to withdraw their election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing his election to have the Notes purchased; and
- (7) that Holders whose Notes are being purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to \$1,000 in principal amount or an integral multiple thereof.

Ahern Rentals shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change in Control. To the extent that the provisions of any securities laws or regulations conflict with the provisions of Section 3.09 or 4.14 of this

Indenture, Ahern Rentals will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under Section 3.09 or this Section 4.14 by virtue of such conflict.

- (b) On the Change of Control Payment Date, Ahern Rentals will, to the extent lawful:
- (1) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;
 - (2) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and
 - (3) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by Ahern Rentals.

The Paying Agent will promptly pay to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each new Note will be in a principal amount of \$1,000 or an integral multiple of \$1,000. Ahern Rentals will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(c) Ahern Rentals will not be required to make a Change of Control Offer upon a Change of Control if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by Ahern Rentals and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer or (2) notice of redemption has been given pursuant to this Indenture as described above in Section 3.07, unless and until there is a default in payment of the applicable redemption price.

Section 4.15 *Payments for Consent.*

Ahern Rentals shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Holder of Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such consideration is offered to be paid and is paid to all Holders of the Notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

Section 4.16 *Limitation on Sale and Leaseback Transactions.*

Ahern Rentals shall not, and shall not permit any of its Restricted Subsidiaries to, enter into any sale and leaseback transaction; *provided* that Ahern Rentals or any Restricted Subsidiary may enter into a sale and leaseback transaction if:

- (1) Ahern Rentals or that Restricted Subsidiary, as applicable, could have (a) incurred Indebtedness in an amount equal to the Attributable Debt relating to such sale and leaseback transaction under the Fixed Charge Coverage Ratio Provision and (b) incurred a Lien to secure such Indebtedness pursuant to Section 4.12;
- (2) the gross cash proceeds of that sale and leaseback transaction are at least equal to the Fair Market Value, as determined in good faith by the Board of Directors of Ahern Rentals

and set forth in an Officers' Certificate delivered to the Trustee, of the property that is the subject of that sale and leaseback transaction; and

(3) the transfer of assets in that sale and leaseback transaction is permitted by, and Ahern Rentals applies the proceeds of such transaction in compliance with, Section 4.10.

Section 4.17 *Business Activities.*

Ahern Rentals shall not, and shall not permit any of its Restricted Subsidiaries to, engage in any business other than Permitted Businesses, except to such extent as would not be material to Ahern Rentals and its Restricted Subsidiaries taken as a whole.

Section 4.18 *Designation of Restricted and Unrestricted Subsidiaries.*

The Board of Directors of Ahern Rentals may designate any Restricted Subsidiary to be an Unrestricted Subsidiary if that designation would not cause a Default. If a Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments owned by Ahern Rentals and its Restricted Subsidiaries in the Subsidiary designated as Unrestricted will be deemed to be an Investment made as of the time of the designation and will reduce the amount available for Restricted Payments under Section 4.07 or under one or more clauses of the definition of Permitted Investments, as determined by Ahern Rentals. That designation will only be permitted if the Investment would be permitted at that time and if the Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. The Board of Directors of Ahern Rentals may redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary if that redesignation would not cause a Default.

Any designation of a Subsidiary of Ahern Rentals as an Unrestricted Subsidiary will be evidenced to the Trustee by filing with the Trustee a certified copy of a resolution of the Board of Directors giving effect to such designation and an Officers' Certificate certifying that such designation complied with the preceding conditions and was permitted by Section 4.07. If, at any time, any Unrestricted Subsidiary would fail to meet the requirements as an Unrestricted Subsidiary (including failure to meet the definition of an Unrestricted Subsidiary), it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Indenture and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of Ahern Rentals as of such date and, if such Indebtedness is not permitted to be incurred as of such date under Section 4.09, Ahern Rentals will be in default of Section 4.09.

The Board of Directors of Ahern Rentals may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary of Ahern Rentals; *provided* that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of Ahern Rentals of any outstanding Indebtedness of such Unrestricted Subsidiary, and such designation will only be permitted if (1) such Indebtedness is permitted under Section 4.09, calculated on a pro forma basis as if such designation had occurred at the beginning of the four-quarter reference period; and (2) no Default or Event of Default would be in existence following such designation.

Section 4.19 *Limitation on Issuances of Guarantees of Indebtedness.*

Ahern Rentals shall not permit any of its Restricted Subsidiaries, directly or indirectly, to guarantee the payment of any other Indebtedness of Ahern Rentals unless such Restricted Subsidiary simultaneously (i) executes and delivers a supplemental indenture providing for the guarantee of the payment of the Notes by such Restricted Subsidiary, which guarantee will be senior to or *pari passu* with such Restricted Subsidiary's guarantee of such other Indebtedness and (ii) becomes a party to each Security Document in which Ahern Rentals is a party.

The Note Guarantee of a Guarantor shall automatically and unconditionally be released:

- (1) in connection with any sale or other disposition of all or substantially all of the assets of that Guarantor (including by way of merger or consolidation) to a Person that is not (either before or after giving effect to such transaction) Ahern Rentals or a Restricted Subsidiary of Ahern Rentals, if the sale or other disposition does not violate Sections 3.09 and 4.10;
- (2) in connection with any sale or other disposition of all of the Capital Stock of that Guarantor to a Person that is not (either before or after giving effect to such transaction) Ahern Rentals or a Restricted Subsidiary of Ahern Rentals, if the sale or other disposition does not violate Sections 3.09 and 4.10;
- (3) if Ahern Rentals designates any Restricted Subsidiary that is a Guarantor to be an Unrestricted Subsidiary in accordance with the applicable provisions of this Indenture;
- (4) upon legal defeasance or satisfaction and discharge of this Indenture as provided in Articles 8 and 11 hereof, or
- (5) in accordance with the terms of the Intercreditor Agreement.

ARTICLE 5.

SUCCESSORS

Section 5.01 *Merger, Consolidation or Sale of Assets.*

Ahern Rentals shall not, directly or indirectly: (1) consolidate or merge with or into another Person; or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of Ahern Rentals and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person, unless:

- (1) either: (a) Ahern Rentals is the surviving corporation; or (b) the Person formed by or surviving any such consolidation or merger (if other than Ahern Rentals) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation organized or existing under the laws of the United States, any state of the United States or the District of Columbia;
- (2) the Person formed by or surviving any such consolidation or merger (if other than Ahern Rentals) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all the obligations of Ahern Rentals under the Notes, this Indenture and the Registration Rights Agreement pursuant to agreements reasonably satisfactory to the Trustee;
- (3) immediately after such transaction, no Default or Event of Default exists; and
- (4) Ahern Rentals or the Person formed by or surviving any such consolidation or merger (if other than Ahern Rentals), or to which such sale, assignment, transfer, conveyance or other disposition has been made will, on the date of such transaction after giving pro forma effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio Provision.

In addition, Ahern Rentals shall not, directly or indirectly, lease all or substantially all of the properties and assets of it and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to any other Person.

This Section 5.01 will not apply to:

- (1) a merger of Ahern Rentals with an Affiliate solely for the purpose of reincorporating Ahern Rentals in another jurisdiction; or
- (2) any consolidation or merger, or any sale, assignment, transfer, conveyance, lease or other disposition of assets between or among Ahern Rentals and any of its Restricted Subsidiaries.

Section 5.02 *Successor Corporation Substituted.*

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of Ahern Rentals in accordance with Section 5.01 hereof, the successor corporation formed by such consolidation or into or with which Ahern Rentals is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Indenture referring to "Ahern Rentals" shall refer instead to the successor corporation and not to Ahern Rentals), and may exercise every right and power of Ahern Rentals under this Indenture with the same effect as if such successor Person had been named as Ahern Rentals herein; *provided, however*, that the predecessor company shall not be relieved from the obligation to pay the principal of and interest on the Notes except in the case of a sale, assignment, transfer, conveyance or other disposition of all of Ahern Rentals' assets that meets the requirements of Section 5.01 hereof.

ARTICLE 6.

DEFAULTS AND REMEDIES

Section 6.01 *Events of Default.*

Each of the following is an "Event of Default":

- (1) default for 30 days in the payment when due of interest on, or Additional Interest, if any, with respect to, the Notes;
- (2) default in the payment when due (at maturity, upon redemption or otherwise) of the principal of, or premium, if any, on, the Notes;
- (3) failure by Ahern Rentals or any of its Restricted Subsidiaries for 30 days after notice to Ahern Rentals by the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding voting as a single class to comply with Section 4.07, 4.09, 4.10, 4.14 or 5.01;
- (4) failure by Ahern Rentals or any of its Restricted Subsidiaries for 60 days after notice to Ahern Rentals by the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding voting as a single class to comply with any of the other agreements in this Indenture;

(5) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by Ahern Rentals or any of its Restricted Subsidiaries (or the payment of which is guaranteed by Ahern Rentals or any of its Restricted Subsidiaries), whether such Indebtedness or guarantee now exists, or is created after the date of this Indenture, if that default:

(a) is caused by a failure to pay a scheduled payment or payment at maturity of principal of, or interest or premium, if any, on, such Indebtedness prior to the expiration of the grace period provided in such Indebtedness on the date of such default (a “*Payment Default*”); or

(b) results in the acceleration of such Indebtedness prior to its express maturity,

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates \$5.0 million or more;

(6) failure by Ahern Rentals or any of its Restricted Subsidiaries to pay final judgments entered by a court or courts of competent jurisdiction aggregating in excess of \$5.0 million, which judgments are not paid, discharged or stayed for a period of 60 days;

(7) the occurrence of any of the following:

(a) except as permitted by this Indenture, any security document ceases for any reason to be fully enforceable; *provided* that it will not be an Event of Default under this clause (7) (a) if the sole result of the failure of one or more Security Documents to be fully enforceable is that any Parity Lien purported to be granted under such Security Documents on Collateral, individually or in the aggregate, having a Fair Market Value of not more than \$5.0 million ceases to be an enforceable and perfected second-priority security interest and, in the case of Collateral consisting of titled vehicles, ceases to be an enforceable second-priority security interest, subject only to Permitted Prior Liens;

(b) any Parity Lien purported to be granted under any security document on Collateral, individually or in the aggregate, having a Fair Market Value in excess of \$5.0 million ceases to be an enforceable and perfected second-priority security interest and, in the case of Collateral consisting of titled vehicles, ceases to be an enforceable second-priority security interest, subject only to Permitted Prior Liens; or

(c) Ahern Rental or any other Pledgor, or any Person acting on behalf of any of them, denies or disaffirms, in writing, any obligation of Ahern Rental or any other Pledgor set forth in or arising under any security document;

(8) except as permitted by this Indenture, any Note Guarantee is held in any judicial proceeding to be unenforceable or invalid or ceases for any reason to be in full force and effect, or any Guarantor, or any Person acting on behalf of any Guarantor, denies or disaffirms its obligations under its Note Guarantee;

(9) Ahern Rentals or any of its Significant Subsidiaries or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary pursuant to or within the meaning of the Bankruptcy Code:

- (A) commences a voluntary case,
 - (B) consents to the entry of an order for relief against it in an involuntary case,
 - (C) consents to the appointment of a custodian of it or for all or substantially all of its property,
 - (D) makes a general assignment for the benefit of its creditors, or
 - (E) generally is not paying its debts as they become due; and
- (10) a court of competent jurisdiction enters an order or decree under the Bankruptcy Code that:

(A) is for relief against Ahern Rentals or any of its Significant Subsidiaries or any group of Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary in an involuntary case;

(B) appoints a custodian of Ahern Rentals or any of its Significant Subsidiaries or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary or for all or substantially all of the property of Ahern Rentals or any of its Significant Subsidiaries or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary; or

(C) orders the liquidation of Ahern Rentals or any of its Significant Subsidiaries or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 consecutive days.

Section 6.02 *Acceleration.*

In the case of an Event of Default specified in clause (9) or (10) of Section 6.01 hereof, all outstanding Notes will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare all the Notes to be due and payable immediately by giving notice in writing to Ahern Rentals and the Trustee specifying the respective Event of Default (the “*Acceleration Notice*”).

Upon any such declaration, the Notes shall become due and payable immediately. The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may on behalf of all of the Holders rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived.

In the case of any Event of Default occurring by reason of any willful action (or inaction) taken (or not taken) by or on behalf of Ahern Rentals with the intention of avoiding payment of the premium that Ahern Rentals would have had to pay if Ahern Rentals then had elected to redeem the Notes pursuant to Section 3.07, an equivalent premium will also become and be immediately due and payable to the extent

permitted by law upon the acceleration of the Notes. If an Event of Default occurs prior to August 15, 2009, by reason of any willful action (or inaction) taken (or not taken) by or on behalf of Ahern Rentals with the intention of avoiding the prohibition on redemption of the Notes prior to August 15, 2009, then, upon acceleration of the Notes, an additional premium shall also become and be immediately due and payable in an amount, for each of the years beginning on August 15 of the years set forth below, as set forth below (expressed as a percentage of the principal amount of the Notes on the date of payment that would otherwise be due but for the provisions of this sentence):

<u>Year</u>	<u>Percentage</u>
2005	109.250%
2006	108.094%
2007	106.938%
2008	105.781%

Section 6.03 *Other Remedies.*

If an Event of Default occurs and is continuing, the Trustee may, subject to the Intercreditor Agreement, pursue any available remedy to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes, this Indenture and the Security Documents.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 6.04 *Waiver of Past Defaults.*

Holders of not less than a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may on behalf of the Holders of all of the Notes waive an existing Default or Event of Default and its consequences hereunder, except a continuing Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Notes (including in connection with an offer to purchase) (*provided, however*, that the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration). Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05 *Control by Majority.*

Holders of a majority in principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines may be unduly prejudicial to the rights of other Holders of Notes or that may involve the Trustee in personal liability.

Section 6.06 *Limitation on Suits.*

A Holder of a Note may pursue a remedy with respect to this Indenture or the Notes only if:

- (a) the Holder of a Note gives to the Trustee written notice that an Event of Default is continuing;
- (b) the Holders of at least 25% in principal amount of the then outstanding Notes make a written request to the Trustee to pursue the remedy;
- (c) such Holder of a Note or Holders of Notes offer and, if requested, provide to the Trustee reasonable security or indemnity against any loss, liability or expense;
- (d) the Trustee does not comply with the request within 60 days after receipt of the request and the offer and, if requested, the provision of security or indemnity; and
- (e) the Holders of a majority in principal amount of the then outstanding Notes do not give the Trustee a direction inconsistent with the request within such 60-day period.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note.

Section 6.07 *Rights of Holders of Notes to Receive Payment.*

Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, premium, if any, and interest or Additional Interest, if any, on the Note, on or after the respective due dates expressed in the Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08 *Collection Suit by Trustee.*

If an Event of Default specified in Section 6.01(1) or (2) occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against Ahern Rentals for the whole amount of principal of, premium, if any, and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09 *Trustee May File Proofs of Claim.*

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to Ahern Rentals (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07

hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10 *Priorities.*

Subject to the Intercreditor Agreement and Section 12.02, if the Trustee collects any money or other property pursuant to this Article, it shall pay out the money or other property in the following order:

First: to the Trustee, its agents and attorneys for amounts due under Section 7.07 hereof, including payment of all compensation, expense and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any and interest, respectively; and

Third: to Ahern Rentals or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.10.

Section 6.11 *Undertaking for Costs.*

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

ARTICLE 7.

TRUSTEE

Section 7.01 *Duties of Trustee.*

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(i) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), and (c) of this Section.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any liability. The Trustee shall be under no obligation to exercise any of its rights and powers under this Indenture at the request of any Holders, unless such Holder shall have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with Ahern Rentals. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02 *Rights of Trustee.*

(a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee authenticates the Notes, takes any other act or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel or both. The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture. The Trustee shall not be liable for any claims, losses, liabilities, damages, costs, expenses, judgments (including attorney's fees and expenses) due to forces beyond its reasonable control, including strikes, work stoppages, acts of God and interruptions, losses or malfunctions of utilities, communications or computer (software or hardware) services.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from Ahern Rentals shall be sufficient if signed by an Officer of Ahern Rentals.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(g) Except as required hereunder or under the other Parity Lien Documents, or as required in its capacity as Collateral Trustee, the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it sees fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of Ahern Rentals, its Subsidiaries and Guarantors, personally or by agent or attorney, and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(h) The Trustee shall not be deemed to have notice of any Default or Event of Default except any Default or Event of Default of which the Trustee shall have received written notification at the Corporate Trust Office of the Trustee (given in accordance with Section 13.02 hereof and specifically identifying such Default or Event of Default) or a Responsible Officer of the Trustee has actual knowledge thereof.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, whether as the Trustee, Collateral Trustee, Paying Agent, Registrar or otherwise, and to each agent and other Person employed to act hereunder, and to the Trustee or any successor when acting in its capacity as the Trustee, Collateral Trustee or any other capacity under the Intercreditor Agreement, the Security Documents and other Parity Lien Documents to the same extent as if explicitly set forth in the Intercreditor Agreement, the Security Documents and other Parity Lien Documents.

(j) The Trustee may request that Ahern Rentals or the Guarantors, as the case may be, deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Agreement, which Officer's Certificate may be signed by any Person authorized to sign an Officer's Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded.

(k) The Trustee shall not be deemed to have notice of or have a duty to determine whether any information that it may receive with respect to Ahern Rentals or any Guarantor, or that it or any

Holder of the Notes may provide to the Holders, is material, nonpublic information of a type that should not be used by the recipient to trade in securities of Ahern Rentals, except for such information identified by Ahern Rentals in writing on the face thereof as material, non-public information. The Trustee shall not be responsible for how such information is used or for obtaining any agreement from the recipient of such information with respect to the use thereof.

Section 7.03 *Individual Rights of Trustee.*

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with Ahern Rentals or any Affiliate of Ahern Rentals with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.10 and 7.11 hereof.

Section 7.04 *Trustee's Disclaimer.*

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for Ahern Rentals' use of the proceeds from the Notes or any money paid to Ahern Rentals or upon Ahern Rentals' direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

Section 7.05 *Notice of Defaults.*

If a Default or Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to Holders of Notes a notice of the Default or Event of Default within the later of 90 days after it occurs or becomes known to the Trustee. Except in the case of a Default or Event of Default in payment of principal of, premium, if any, or interest on any Note, the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders of the Notes.

Section 7.06 *Reports by Trustee to Holders of the Notes.*

Within 60 days after each May 15 beginning with the May 15 following the date of this Indenture, and for so long as Notes remain outstanding, the Trustee shall mail to the Holders of the Notes a brief report dated as of such reporting date that complies with TIA § 313(a) (but if no event described in TIA § 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also shall comply with TIA § 313(b)(2). The Trustee shall also transmit by mail all reports as required by TIA § 313(c).

A copy of each report at the time of its mailing to the Holders of Notes shall be mailed to Ahern Rentals and filed with the SEC and each stock exchange on which the Notes are listed in accordance with TIA § 313(d). Ahern Rentals shall promptly notify the Trustee when the Notes are listed on any stock exchange.

Section 7.07 *Compensation and Indemnity.*

Ahern Rentals shall pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder pursuant to the rate sheets or similar rate and fee information provided by the Trustee to Ahern Rentals from time to time. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. Ahern Rentals shall reimburse the Trustee promptly, and in any event within 30 days, upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel. Ahern Rentals will pay the Trustee's agents and counsel directly upon Trustee's request.

Ahern Rentals shall indemnify the Trustee against any and all losses, liabilities or expenses incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against Ahern Rentals (including this Section 7.07) and defending itself against any claim (whether asserted by Ahern Rentals or any Holder or any other person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense may be attributable to its negligence or bad faith. The Trustee shall notify Ahern Rentals promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify Ahern Rentals shall not relieve Ahern Rentals of its obligations hereunder. Ahern Rentals shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have separate counsel and Ahern Rentals shall pay the reasonable fees and expenses of such counsel. Ahern Rentals need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld.

The obligations of Ahern Rentals under this Section 7.07 shall survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee.

To secure Ahern Rentals' payment obligations in this Section, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(7) or (8) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under the Bankruptcy Code.

Section 7.08 *Replacement of Trustee.*

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section.

The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying Ahern Rentals. The Holders of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and Ahern Rentals in writing. Ahern Rentals may remove the Trustee if:

- (a) the Trustee fails to comply with Section 7.10 hereof;
- (b) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under the Bankruptcy Code;

- (c) a custodian or public officer takes charge of the Trustee or its property; or
- (d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, Ahern Rentals shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by Ahern Rentals.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, Ahern Rentals, or the Holders of at least 10% in principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.10, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to Ahern Rentals. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, *provided* all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.07 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, Ahern Rentals' obligations under Section 7.07 hereof shall continue for the benefit of the retiring Trustee.

Section 7.09 *Successor Trustee by Merger, etc.*

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee.

Section 7.10 *Eligibility; Disqualification.*

There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least \$100 million as set forth in its most recent published annual report of condition.

This Indenture shall always have a Trustee who satisfies the requirements of TIA § 310(a)(1), (2) and (5). The Trustee is subject to TIA § 310(b).

Section 7.11 *Preferential Collection of Claims Against Ahern Rentals.*

The Trustee is subject to TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated therein.

ARTICLE 8.

LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01 *Option to Effect Legal Defeasance or Covenant Defeasance.*

Ahern Rentals may, at the option of its Board of Directors evidenced by a resolution set forth in an Officers' Certificate, at any time, elect to have either Section 8.02 or 8.03 hereof applied to all outstanding Notes and any Note Guarantees upon compliance with the conditions set forth below in this Article 8.

Section 8.02 *Legal Defeasance and Discharge.*

Upon Ahern Rentals' exercise under Section 8.01 hereof of the option applicable to this Section 8.02, Ahern Rentals shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from its obligations with respect to all outstanding Notes on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that Ahern Rentals shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in (a) and (b) below, and to have satisfied all its other obligations under such Notes and this Indenture (and the Trustee, on demand of and at the expense of Ahern Rentals, shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder: (a) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, premium, if any, and interest and Additional Interest, if any, on such Notes when such payments are due from the trust referred to in Section 8.04, (b) Ahern Rentals' obligations with respect to such Notes under Article 2 and Section 4.02 hereof, (c) the rights, powers, trusts, duties and immunities of the Trustee hereunder and Ahern Rentals' and the Guarantors' obligations in connection therewith and (d) this Article 8. Subject to compliance with this Article 8, Ahern Rentals may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

Section 8.03 *Covenant Defeasance.*

Upon Ahern Rentals' exercise under Section 8.01 hereof of the option applicable to this Section 8.03, Ahern Rentals shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from its obligations under the covenants contained in Sections 3.03, 4.03, 4.04, 4.05, 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.18 and 4.19 hereof and clause (4) of Section 5.01 hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 are satisfied (hereinafter, "*Covenant Defeasance*"), and the Notes shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, Ahern Rentals may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. In addition, upon Ahern Rentals' exercise under Section 8.01 hereof of the option applicable to this Section 8.03, subject to the satisfaction of the conditions

set forth in Section 8.04 hereof, Sections 6.01(3) through 6.01(6) hereof shall not constitute Events of Default.

Section 8.04 *Conditions to Legal or Covenant Defeasance.*

The following shall be the conditions to the application of either Section 8.02 or 8.03 hereof to the outstanding Notes:

In order to exercise either Legal Defeasance or Covenant Defeasance:

(a) Ahern Rentals must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in United States dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants, to pay the principal of and interest and premium and Additional Interest, if any, on the outstanding Notes on the stated date for payment thereof or on the applicable redemption date, as the case may be, and Ahern Rentals must specify whether the Notes are being defeased to such stated date for payment or to a particular redemption date;

(b) in the case of an election under Section 8.02 hereof, Ahern Rentals shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that (A) Ahern Rentals has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the date of this Indenture, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of an election under Section 8.03 hereof, Ahern Rentals shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that the Holders of the outstanding Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit), or insofar as Section 6.01(9) or 6.01(10) hereof is concerned, at any time in the period ending on the 91st day after the date of deposit, and the deposit shall not result in a breach or violation of, or constitute a default under, any other instrument to which Ahern Rentals or any Guarantor is a party or by which Ahern Rentals or any Guarantor is bound;

(e) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which Ahern Rentals or any of its Subsidiaries is a party or by which Ahern Rentals or any of its Subsidiaries is bound;

(f) the Company shall have delivered to the Trustee an Opinion of Counsel (which may be subject to customary exceptions) to the effect that on the 91st day following the deposit,

the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally;

(g) Ahern Rentals shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by Ahern Rentals with the intent of preferring the Holders over any other creditors of Ahern Rentals or with the intent of defeating, hindering, delaying or defrauding any other creditors of Ahern Rentals or others; and

(h) Ahern Rentals shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

Section 8.05 *Deposited Money and Government Securities to Be Held in Trust; Other Miscellaneous Provisions.*

Subject to Section 8.06 hereof, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "Trustee") pursuant to Section 8.04 hereof in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including Ahern Rentals acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

Ahern Rentals shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 8.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Anything in this Article 8 to the contrary notwithstanding, the Trustee shall deliver or pay to Ahern Rentals from time to time upon the request of Ahern Rentals any money or non-callable Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(a) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06 *Repayment to Ahern Rentals.*

Any money deposited with the Trustee or any Paying Agent, or then held by Ahern Rentals, in trust for the payment of the principal of, premium, if any, or interest on any Note and remaining unclaimed for two years after such principal, and premium, if any, or interest has become due and payable shall be paid to Ahern Rentals on its request or (if then held by Ahern Rentals) shall be discharged from such trust; and the Holder of such Note shall thereafter look only to Ahern Rentals for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of Ahern Rentals as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of Ahern Rentals cause to be published once, in *The New York Times* and *The Wall Street Journal* (national edition), notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to Ahern Rentals.

Section 8.07 *Reinstatement.*

If the Trustee or Paying Agent is unable to apply any United States dollars or non-callable Government Securities in accordance with Section 8.02 or 8.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then Ahern Rentals' obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, as the case may be; *provided, however*, that, if Ahern Rentals makes any payment of principal of, premium, if any, or interest on any Note following the reinstatement of its obligations, Ahern Rentals shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE 9.

AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 *Without Consent of Holders of Notes.*

Notwithstanding Section 9.02 of this Indenture, Ahern Rentals, the Guarantors and the Trustee may amend or supplement this Indenture, the Note Guarantees or the Notes without the consent of any Holder of a Note:

- (a) to cure any ambiguity, defect or inconsistency;
- (b) to provide for uncertificated Notes in addition to or in place of certificated Notes or to alter the provisions of Article 2 hereof (including the related definitions) in a manner that does not materially adversely affect any Holder;
- (c) to provide for the assumption of Ahern Rentals' or a Guarantor's obligations to the Holders of the Notes and Note Guarantees by a successor to Ahern Rentals pursuant to Article 5 hereof;
- (d) to make any change that would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the legal rights hereunder of any Holder of the Note;
- (e) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA;
- (f) to conform the text of this Indenture, the Note Guarantees or the Notes to any provision of the Description of Notes to the extent that such provision in the Description of Notes was intended to be a verbatim recitation of a provision of this Indenture, the Note Guarantees or the Notes;
- (g) to provide for the issuance of Additional Notes in accordance with the limitations set forth in this Indenture as of the date of this Indenture;
- (h) to allow any Guarantor to execute a supplemental indenture and/or a Note Guarantee with respect to the Notes; or

(i) to make, complete or confirm any grant of Collateral permitted or required by this Indenture or any of the Security Documents or any release of Collateral that becomes effective as set forth in this Indenture, any of the Security Documents or the Intercreditor Agreement.

Upon the request of Ahern Rentals accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental Indenture, and upon receipt by the Trustee of the documents described in Section 13.04 hereof, the Trustee shall join with Ahern Rentals and the Guarantors in the execution of any amended or supplemental Indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into such amended or supplemental Indenture that affects its own rights, duties or immunities under this Indenture or otherwise.

Section 9.02 *With Consent of Holders of Notes.*

Except as provided below in this Section 9.02, Ahern Rentals and the Trustee may amend or supplement this Indenture (including Section 3.09, 4.10 and 4.14 hereof), the Note Guarantees and the Notes with the consent of the Holders of at least a majority in principal amount of the Notes then outstanding voting as a single class (including consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Note Guarantees or the Notes may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes voting as a single class (including consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes).

Upon the request of Ahern Rentals accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental Indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 13.04 hereof, the Trustee shall join with Ahern Rentals in the execution of such amended or supplemental Indenture unless such amended or supplemental Indenture directly affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amended or supplemental Indenture.

It shall not be necessary for the consent of the Holders of Notes under this Section 9.02 to approve the particular form of any proposed amendment or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section becomes effective, Ahern Rentals shall mail to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of Ahern Rentals to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amended or supplemental Indenture or waiver. Subject to Sections 6.04 and 6.07 hereof, the Holders of a majority in aggregate principal amount of the Notes then outstanding voting as a single class may waive compliance in a particular instance by Ahern Rentals with any provision of this Indenture or the Notes. However, without the consent of each Holder affected, an amendment or waiver under this Section 9.02 may not (with respect to any Notes held by a non-consenting Holder):

(a) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

- (b) reduce the principal of or change the fixed maturity of any Note or alter the provisions with respect to the redemption of the Notes except as provided above with respect to Sections 3.09, 4.10 and 4.14 hereof;
- (c) reduce the rate of or change the time for payment of interest, including default interest, on any Note;
- (d) waive a Default or Event of Default in the payment of principal of or interest or premium, or Additional Interest, if any, on the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the then outstanding Notes and a waiver of the payment default that resulted from such acceleration);
- (e) make any Note payable in money other than that stated in the Notes;
- (f) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders of Notes to receive payments of principal of, or interest or premium, or Additional Interest, if any, on the Notes;
- (g) waive a redemption payment with respect to any Note (other than a payment required by Sections 4.10 and 4.14 hereof);
- (h) release any Guarantor from any of its obligations under its Note Guarantee or this Indenture, except in accordance with the terms of this Indenture or the Intercreditor Agreement;
- (i) release any Collateral from the Liens created by the Security Documents except as specifically provided for in this Indenture, the Security Documents or the Intercreditor Agreement; or
- (j) make any change in the preceding amendment and waiver provisions.

In addition, any amendment to, or waiver of, the provisions of this Indenture or any security document that has the effect of releasing all or substantially all of the Collateral from the Liens securing the Notes will require the consent of the Holders of at least 66 2/3% in aggregate principal amount of the Notes then outstanding.

Section 9.03 *Compliance with Trust Indenture Act.*

Every amendment or supplement to this Indenture or the Notes shall be set forth in a amended or supplemental Indenture that complies with the TIA as then in effect.

Section 9.04 *Revocation and Effect of Consents.*

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of the Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of the Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

Section 9.05 *Notation on or Exchange of Notes.*

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. Ahern Rentals in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

Section 9.06 *Trustee to Sign Amendments, etc.*

The Trustee shall sign any amended or supplemental Indenture authorized pursuant to this Article Nine if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. Ahern Rentals may not sign an amendment or supplemental Indenture until the Board of Directors approves it. In executing any amended or supplemental indenture, the Trustee shall be entitled to receive and (subject to Section 7.01 hereof) shall be fully protected in relying upon, in addition to the documents required by Section 13.04 hereof, an Officers' Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture.

ARTICLE 10.

NOTE GUARANTEES

Section 10.01 *Guarantee.*

Subject to this Article 10, each of the Guarantors hereby, jointly and severally, unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of Ahern Rentals hereunder or thereunder, that: (a) the principal of, premium and Additional Interest, if any, and interest on the Notes will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of Ahern Rentals to the Holders, the Trustee and the Collateral Trustee will be promptly paid in full or performed, all in accordance with the terms thereof; and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

The Guarantors hereby agree that their obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against Ahern Rentals, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of Ahern Rentals, any right to require a proceeding first against Ahern Rentals, protest, notice and all demands whatsoever and covenant that this Note Guarantee shall

not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

If any Holder or the Trustee is required by any court or otherwise to return to Ahern Rentals, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either Ahern Rentals or the Guarantors, any amount paid by either to the Trustee or such Holder, this Note Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this Note Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Note Guarantee. The Guarantors shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Guarantee.

Section 10.02 *Limitation on Guarantor Liability.*

Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Note Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Note Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of such Guarantor will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 10, result in the obligations of such Guarantor under its Note Guarantee not constituting a fraudulent transfer or conveyance.

Section 10.03 *Execution and Delivery of Note Guarantee.*

To evidence its Note Guarantee set forth in Section 10.01, each Guarantor hereby agrees that a notation of such Note Guarantee substantially in the form included in Exhibit E shall be endorsed by an Officer of such Guarantor on each Note authenticated and delivered by the Trustee and that this Indenture shall be executed on behalf of such Guarantor by its President or one of its Vice Presidents.

Each Guarantor hereby agrees that its Note Guarantee set forth in Section 10.01 shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Note Guarantee.

If an Officer whose signature is on this Indenture or on the Note Guarantee no longer holds that office at the time the Trustee authenticates the Note on which a Note Guarantee is endorsed, the Note Guarantee shall be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Note Guarantee set forth in this Indenture on behalf of the Guarantors.

In the event that Ahern Rentals creates or acquires any new Subsidiaries subsequent to the date of this Indenture, Ahern Rentals shall cause such Subsidiaries to execute supplemental indentures to this Indenture and Note Guarantees in the form and substance of Exhibits E and F in accordance with Article 10, to the extent required by Section 4.19.

Section 10.04 *Guarantors May Consolidate, etc., on Certain Terms.*

Except as otherwise provided in Section 10.05, no Guarantor may consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person whether or not affiliated with such Guarantor unless:

- (a) subject to Section 10.05 hereof, the Person formed by or surviving any such consolidation or merger (if other than a Guarantor or Ahern Rentals) unconditionally assumes all the obligations of such Guarantor, pursuant to a supplemental indenture in the form and substance of Exhibit F hereto, under the Notes, this Indenture and the Note Guarantee on the terms set forth herein or therein; and
- (b) immediately after giving effect to such transaction, no Default or Event of Default exists.

In case of any such consolidation, merger, sale or conveyance and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee, of the Note Guarantee endorsed upon the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Guarantor, such successor Person shall succeed to and be substituted for the Guarantor with the same effect as if it had been named herein as a Guarantor. Such successor Person thereupon may cause to be signed any or all of the Note Guarantees to be endorsed upon all of the Notes issuable hereunder which theretofore shall not have been signed by Ahern Rentals and delivered to the Trustee. All the Note Guarantees so issued shall in all respects have the same legal rank and benefit under this Indenture as the Note Guarantees theretofore and thereafter issued in accordance with the terms of this Indenture as though all of such Note Guarantees had been issued at the date of the execution hereof.

Except as set forth in Articles 4 and 5 hereof, and notwithstanding clauses (a) and (b) above, nothing contained in this Indenture or in any of the Notes shall prevent any consolidation or merger of a Guarantor with or into Ahern Rentals or another Guarantor, or shall prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to Ahern Rentals or another Guarantor.

Section 10.05 *Releases Following Sale of Assets.*

In the event of a sale or other disposition of all of the assets of any Guarantor, by way of merger, consolidation or otherwise, or a sale or other disposition of all the capital stock of any Guarantor, in each case to a Person that is not (either before or after giving effect to such transactions) a Restricted Subsidiary of Ahern Rentals, then such Guarantor (in the event of a sale or other disposition, by way of merger, consolidation or otherwise, of all of the capital stock of such Guarantor) or the corporation acquiring the property (in the event of a sale or other disposition of all or substantially all of the assets of such Guarantor) will be released and relieved of any obligations under its Note Guarantee; *provided* that the Net Proceeds of such sale or other disposition are applied in accordance with the applicable provisions of this Indenture, including without limitation Section 4.10 hereof. Upon delivery by Ahern Rentals to the Trustee of an Officers' Certificate and an Opinion of Counsel to the effect that such sale or other disposition was made by Ahern Rentals in accordance with the provisions of this Indenture, including without limitation

Section 4.10 hereof, the Trustee shall execute any documents reasonably requested in order to evidence the release of any Guarantor from its obligations under its Note Guarantee.

Any Guarantor not released from its obligations under its Note Guarantee shall remain liable for the full amount of principal of and interest on the Notes and for the other obligations of any Guarantor under this Indenture as provided in this Article 10.

ARTICLE 11.

SATISFACTION AND DISCHARGE

Section 11.01 *Satisfaction and Discharge.*

This Indenture will be discharged and will cease to be of further effect as to all Notes issued hereunder, when:

(1) either:

(a) all Notes that have been authenticated (except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust and thereafter repaid to Ahern Rentals) have been delivered to the Trustee for cancellation; or

(b) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the mailing of a notice of redemption or otherwise or will become due and payable within one year and Ahern Rentals or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium and Additional Interest, if any, and accrued interest to the date of maturity or redemption;

(2) no Default or Event of Default shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Company or any Guarantor is a party or by which the Company or any Guarantor is bound;

(3) Ahern Rentals or any Guarantor has paid or caused to be paid all sums payable by it under this Indenture; and

(4) Ahern Rentals has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes at maturity or the redemption date, as the case may be.

In addition, Ahern Rentals must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money shall have been deposited with the Trustee pursuant to subclause (b) of clause (1) of this Section, the provisions of Section 11.02 and Section 8.06 shall survive.

The Collateral shall be released from the Lien securing the Notes, as provided in Section 12.07 upon a satisfaction and discharge in accordance with the provisions described above.

Section 11.02 *Application of Trust Money.*

Subject to the provisions of Section 8.06, all money deposited with the Trustee pursuant to Section 11.01 shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including Ahern Rentals acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 11.01 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, Ahern Rentals' and any Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.01; *provided* that if Ahern Rentals has made any payment of principal of, premium, if any, or interest on any Notes because of the reinstatement of its obligations, Ahern Rentals shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

ARTICLE 12.

COLLATERAL AND SECURITY

Section 12.01 *Security Documents.*

(a) The payment of principal of and interest and premium and Additional Interest, if any, on the Notes will be secured, equally and ratably, by a security interest in the Collateral, subject only to Permitted Prior Liens, as provided in the Security Documents. Any Guarantor shall, upon becoming a Guarantor, become a party to each applicable Security Document as shall be necessary or appropriate to grant and create a valid Lien on and security interest in the personal property of such Guarantor of the type described in the definition of "Collateral" in the Security Documents and, to the extent required by the Credit Agreement, all real property owned by such Guarantor, in each case, subject to no Liens other than Permitted Liens.

(b) If at any time after the date of this Indenture, Ahern Rentals or any Guarantor acquires in fee simple any real property or any entity which owns in fee simple any real property becomes a Guarantor, and a Mortgage or Amended and Restated Mortgage on such real property is granted by Ahern Rentals or such Guarantor to the Priority Lien Agent for the benefit of the holders of Priority Lien Obligations, then Ahern Rentals or such Guarantor shall grant to the Collateral Trustee for the benefit of the Holders of the Notes a Mortgage or Amended and Restated Mortgage, as appropriate, on such real property that is not already covered by the Security Documents. All such Mortgages or Amended and Restated Mortgages, as appropriate, shall be substantially similar to the corresponding Mortgage or Amended and Restated Mortgage in favor of the Priority Lien Agent (other than the priority thereof and the Obligations secured thereby). In connection therewith, Ahern Rentals shall deliver title insurance policies, proper fixture filings under the UCC on Form UCC-1, opinions of counsel, surveys and insurance certificates, in each case, in form and substance reasonably satisfactory to the Collateral Trustee.

Section 12.02 *Equal and Ratable Sharing of Collateral by Holders of Parity Lien Debt; Order of Application.*

Notwithstanding:

- (1) anything to the contrary contained in the Security Documents;
- (2) the time of incurrence of any Series of Parity Lien Debt;
- (3) the order or method of attachment or perfection of any Liens securing any Series of Parity Lien Debt;
- (4) the time or order of filing or recording of financing statements, mortgages or other documents filed or recorded to perfect any Lien upon any Collateral;
- (5) the time of taking possession or control over any Collateral;
- (6) any Parity Lien not having been perfected or being or having become subordinated, by equitable subordination or otherwise, to any other Lien; or
- (7) the rules for determining priority under any law governing relative priorities of Liens,

(a) all Parity Liens granted at any time by Ahern Rentals or any other Pledgor will secure, equally and ratably with the Notes, all present and future Parity Lien Obligations and (b) subject to the Intercreditor Agreement, all proceeds of or distribution of property received with respect to any Collateral granted at any time by Ahern Rentals or any Pledgor shall be allocated and distributed in the following order:

First: to the Trustee and the Collateral Trustee, their respective agents and attorneys for amounts due under Section 7.07 hereof or under any Security Document, including payment of all compensation, expense and liabilities incurred, and all advances made, by the Trustee and the Collateral Trustee and the costs and expenses of collection;

Second: to the respective Parity Lien Representatives for application to the Parity Lien Obligations equally and ratably, until all Parity Lien Obligations have been paid in full in cash or the cash amount held by the Parity Lien Representatives in respect of all Parity Lien Obligations is sufficient to pay all Parity Lien Obligations in full in cash; and

Third: any surplus remaining after the payment or distribution in full of the cash or other property as described in the preceding clauses will be paid or distributed to Ahern Rentals (or the applicable Pledgor, as the case may be), its successors or assigns, or as a court of competent jurisdiction may direct.

This Section 12.02 is intended for the benefit of, and will be enforceable as a third party beneficiary by, each present and future holder of Parity Lien Obligations, each present and future Parity Lien Representative and the Collateral Trustee as holder of Parity Liens. The Parity Lien Representative of each future Series of Parity Lien Debt will be required to deliver a Sharing Confirmation to the Collateral Trustee and the Trustee at the time of incurrence of such Series of Parity Lien Debt.

Section 12.03 *Ranking of Parity Liens.*

Notwithstanding:

- (1) anything to the contrary contained in the Security Documents;
- (2) the time of incurrence of any Series of Secured Debt;
- (3) the order or method of attachment or perfection of any Liens securing any Series of Secured Debt;
- (4) the time or order of filing or recording of financing statements, mortgages or other documents filed or recorded to perfect any Lien upon any Collateral;
- (5) the time of taking possession or control over any Collateral;
- (6) any Priority Lien not having been perfected or being or having become subordinated, by equitable subordination or otherwise, to any other Lien; or
- (7) the rules for determining priority under any law governing relative priorities of Liens,

all Parity Liens granted at any time by Ahern Rentals or any other Pledgor will be subject and subordinate to all Priority Liens securing Priority Lien Obligations up to the Priority Lien Cap including, for the avoidance of doubt, the Obligations under the Credit Agreement, on the terms set forth in the Intercreditor Agreement.

This Section 12.03 is intended for the benefit of, and will be enforceable as a third party beneficiary by, each present and future holder of Priority Lien Obligations, each present and future Priority Lien Agent and the Collateral Trustee as holder of Parity Liens. No other Person will be entitled to rely on, have the benefit of or enforce these provisions. The Parity Lien Representative of each future Series of Parity Lien Debt will be required to deliver a Lien Priority Confirmation to the Collateral Trustee and each Priority Lien Agent at the time of incurrence of such Series of Parity Lien Debt.

This Section 12.03 is intended solely to set forth the relative ranking of the Liens securing Parity Lien Debt as against the Priority Liens. Neither the Notes nor any other Parity Lien Obligations nor the exercise or enforcement of any right or remedy for the payment or collection thereof (other than as provided in the Intercreditor Agreement) is intended to be, or will ever be by reason of the foregoing provision, in any respect subordinated, deferred, postponed, restricted or prejudiced.

Section 12.04 *Recordings and Opinions.*

(a) Promptly after (but in any event not more than 60 days after) the execution and delivery of this Indenture, or upon the later completion of all necessary filings, to the extent required by TIA § 314(b)(i), Ahern Rentals shall furnish to the Trustee an Opinion of Counsel either:

- (1) stating that, in the opinion of such counsel, all action has been taken with respect to the recording, registering and filing of this Indenture, financing statements or other instruments necessary to make effective the Lien intended to be created by the Security Documents, and reciting with respect to the security interests in the Collateral, the details of such action; or

(2) stating that, in the opinion of such counsel, no such action is necessary to make such Lien effective.

Such Opinion of Counsel may assume the due and proper filing of financing statements and the due and proper recordation of documents and instruments with federal, state and county officials, to the extent that such financing statements, documents and instruments have been presented for filing or recordation, or to the extent that such counsel has reviewed a file stamped copy or a recorded copy of any such financing statement, document or instrument.

(b) Ahern Rentals will furnish to the Collateral Trustee and the Trustee within 90 days after the end of each fiscal year, an Opinion of Counsel, dated as of such date, either:

(1) (A) stating that, in the opinion of such counsel, action has been taken with respect to the recording, registering, filing, re-recording, re-registering and re-filing of this Indenture, financing statements or continuation statements as is necessary to maintain the Lien of the Security Documents and reciting with respect to the security interests in the Collateral the details of such action or referring to prior Opinions of Counsel in which such details are given, and (B) stating that, in the opinion of such counsel, based on relevant laws as in effect on the date of such Opinion of Counsel, all financing statements and continuation statements have been executed and filed that are necessary as of such date and during the succeeding 12 months to maintain the lien on this Indenture and reciting the details of such actions; or

(2) stating that, in the opinion of such counsel, no such action is necessary to maintain such Lien and assignment.

(c) Immediately prior to the issuance of the Exchange Notes and annually thereafter, Ahern Rentals will furnish to the Trustee and the Collateral Trustee an Opinion of Counsel with respect to the effectiveness and perfection of the Liens intended to be created by the Security Documents. Ahern Rentals will otherwise comply with the provisions of TIA § 314(b).

Section 12.05 *Collateral Trustee.*

(a) The Collateral Trustee, which shall initially be the Trustee, will hold the Parity Liens granted to it to secure the Parity Lien Obligations pursuant to the Security Documents.

(b) Neither the Trustee nor the Collateral Trustee nor any of their respective officers, directors, employees, attorneys or agents will be responsible for the existence, genuineness, value or protection of any Collateral, for the legality, enforceability, effectiveness or sufficiency of the Security Documents, for the creation, perfection, priority, sufficiency or protection of any Lien securing Parity Lien Obligations, or for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Liens securing Parity Lien Obligations or for any delay in doing so.

(c) The Collateral Trustee is subject to any directions given to it by the Trustee from time to time as required or permitted by this Indenture. Except as directed by the Trustee and as required or permitted by this Indenture, until the Discharge of Priority Lien Obligations, the Collateral Trustee shall not be obligated:

- (1) to act upon directions purported to be delivered to it by any other Person;
- (2) to foreclose upon or otherwise enforce any Lien; or

(3) to take any other action whatsoever with regard to any or all of the Security Documents, the Liens created thereby or the Collateral.

Ahern Rentals shall deliver to each Secured Debt Representative copies of all Security Documents delivered to the Collateral Trustee or the Priority Lien Collateral Agent.

(d) The Collateral Trustee shall be accountable only for amounts that it actually receives as a result of the enforcement of Liens securing Parity Lien Obligations.

(e) In acting as Collateral Trustee, the Collateral Trustee may rely upon and enforce each and all of the rights, powers, protections, immunities, indemnities and benefits of the Trustee under Article 7 *mutatis mutandis*, and, in connection therewith, references to the Trustee shall be deemed to include the Collateral Trustee and references to this Indenture shall be deemed to include the Security Documents and the Intercreditor Agreement.

(f) Each successor Trustee will become the successor Collateral Trustee as and when the successor Trustee becomes the Trustee.

Section 12.06 *Authorization of Action to Be Taken.*

(a) Each Holder of Notes, by its acceptance thereof, consents and agrees to the terms of each of the Security Documents and the Intercreditor Agreement, as originally in effect and as amended, supplemented or replaced from time to time in accordance with its terms or the terms of this Indenture, authorizes and directs the Trustee and the Collateral Trustee to enter into the Security Documents, authorizes and empowers the Trustee to direct the Collateral Trustee to enter into, and to execute and deliver, the Intercreditor Agreement, and authorizes and empowers each of the Trustee and the Collateral Trustee to bind the Holders of Notes as set forth in the Security Documents and the Intercreditor Agreement and to perform its obligations and exercise its rights and powers thereunder.

(b) The Collateral Trustee and the Trustee are authorized and empowered to receive for the benefit of the Holders of Notes any funds collected or distributed under the Security Documents and to make further distributions of such funds to the Holders of Notes according to the provisions of this Indenture, the Security Documents and the Intercreditor Agreement.

(c) Subject to the provisions of Sections 7.01, 7.02 and 12.05 hereof and the terms of the Intercreditor Agreement, the Trustee may, in its sole discretion and without the consent of the Holders of Notes, direct, on behalf of the Holders of Notes, the Collateral Trustee to take all actions it deems necessary or appropriate in order to:

- (1) foreclose upon or otherwise enforce any or all of the Parity Liens;
- (2) enforce any of the terms of the Security Documents; or
- (3) collect and receive payment of any and all Parity Lien Obligations.

The Trustee is authorized and empowered to institute and maintain, or direct the Collateral Trustee to institute and maintain, such suits and proceedings as it may deem expedient to protect or enforce the Liens securing Parity Lien Obligations or to prevent any impairment of Collateral by any acts that may be unlawful or in violation of the Security Documents or this Indenture, and such suits and proceedings as the Trustee or the Collateral Trustee may deem expedient to preserve or protect its interests and the interests of the Holders of Notes in the Collateral, including power to institute and maintain suits or

proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest hereunder or be prejudicial to the interests of Holders of Notes, the Trustee or the Collateral Trustee.

(d) Subject to the terms of the Intercreditor Agreement and upon receipt of a notice stating that Ahern Rentals has entered into a new Priority Lien Document, the Collateral Trustee shall have the authority to enter into such documents and agreements (including amendments or supplements to the Intercreditor Agreement) as Ahern Rentals or the new Priority Lien Collateral Agent may request in order to provide the new Priority Lien Collateral Agent the rights contemplated by the Intercreditor Agreement.

Section 12.07 *Release of Security Interests in Respect of Notes.*

(a) The Liens on the Collateral securing the Notes shall be released:

- (1) in whole upon payment in full of all amounts due in respect of the Notes;
- (2) in whole upon satisfaction and discharge of this Indenture in accordance with Section 11.01 hereof;
- (3) in whole upon Legal Defeasance or Covenant Defeasance in accordance with Sections 8.02 and 8.03 hereof;

(b) In addition to the release provisions described in (a) above, the Liens shall be released with respect to any asset constituting Collateral:

- (1) that is sold or otherwise disposed of by Ahern Rentals or any Guarantor to a Person other than Ahern Rentals or a Guarantor in a transaction permitted by this Indenture and the Security Documents at the time of such sale or disposition; or
- (2) that is released from its Lien under the Credit Agreement and the Security Documents; or
- (3) as provided in the Intercreditor Agreement.

Section 12.08 *Enforcement of Security Interests.*

Subject to the terms of the Intercreditor Agreement, if the Collateral Trustee at any time receives written notice that any event has occurred that constitutes a default under any Parity Lien Document entitling the Collateral Trustee to foreclose upon, collect or otherwise enforce its security interests thereunder, it will promptly deliver written notice thereof to each Parity Lien Representative. Thereafter, the Collateral Trustee may await direction by Holders of a majority in principal amount of the then outstanding Notes and, subject to the terms of the Intercreditor Agreement, will act, or decline to act as directed by Holders of a majority in principal amount of the then outstanding Notes, in the exercise and enforcement of the Collateral Trustee's interests, rights, powers and remedies in respect of the Collateral or under the Security Documents or applicable law and, following the initiation of such exercise of remedies, the Collateral Trustee will act, or decline to act, with respect to the manner of such exercise of remedies as directed by Holders of a majority in principal amount of the then outstanding Notes. Unless it has been directed to the contrary by an instruction from Holders of a majority in principal amount of the then outstanding Notes, the Collateral Trustee in any event may (but will not be obligated to) take or refrain from

taking such action with respect to any default under any Parity Lien Document as it may deem advisable and in the best interest of the holders of Parity Lien Obligations.

Section 12.09 *Certificates of Ahern Rentals.*

Except for any release of Collateral required or contemplated by the Intercreditor Agreement, Ahern Rentals will furnish to the Trustee and the Collateral Trustee, prior to each proposed release of Collateral pursuant to the Security Documents:

- (1) all documents required by TIA § 314(d);
- (2) an Officers' Certificate certifying that all terms for release under this Indenture and any applicable Security Documents have been satisfied and specifying (a) the identity of the Collateral to be released and (b) the applicable provisions of this Indenture and the Security Documents which authorize that release; and
- (3) an Opinion of Counsel to Ahern Rentals, to the effect that such accompanying documents constitute all documents required by TIA § 314(d).

The Trustee and the Collateral Trustee may, to the extent permitted by Sections 7.01 and 7.02 hereof, accept as conclusive evidence of compliance with the foregoing provisions the appropriate statements contained in such documents, Officers' Certificate and such Opinion of Counsel.

Section 12.10 *Amendment of Security Documents.*

- (a) At any time when any Priority Lien Obligations exist that have not been repaid in full:

(1) The Collateral Trustee will not enter into, and the Trustee and the Holders of Notes will not authorize or direct, any amendment of or supplement to any security document relating to any Collateral that would make such security document inconsistent in any material respect with the comparable provisions of the Priority Lien Security Documents upon such Collateral and no such amendment or supplement will be enforceable; and

(2) Subject only to clauses (2) and (3) of Section 12.10(c) hereof (to the extent not inconsistent with the Intercreditor Agreement), any amendment, waiver or consent agreed to, upon any terms and conditions, by Ahern Rentals or any Guarantor and the Priority Lien Collateral Agent in respect of any provision of any Priority Lien Security Document, except to the extent effectuating or relating to any release of Liens (other than in the context of an amendment to the applicable Credit Facility to increase permitted dispositions thereunder to any Person other than Ahern Rentals or a Restricted Subsidiary of Ahern Rentals or as provided in the Intercreditor Agreement), will automatically apply, without the consent of any Holder of Notes, the Trustee or the Collateral Trustee, on the same terms and subject to the same conditions, to the comparable provision of the applicable Security Document, and will be effective upon the delivery by the Priority Lien Collateral Agent of written notice of such amendment, waiver or consent, and the terms and conditions thereof, to the Trustee and the Collateral Trustee, if such notice states that such amendment, waiver or consent has become effective as to such agreement and is, pursuant to this Section 12.10, likewise effective as to the comparable provision of the comparable Security Document. Such amendment, waiver or consent need not otherwise be confirmed by the Trustee, the Collateral Trustee or any Holder of Notes in order to be effective.

(b) For the purposes of clause (1) of Section 12.10(a), (i) no inconsistency reflected in the Security Documents delivered in connection with the issuance of the Notes, as compared with the comparable provisions of the applicable Priority Lien Security Documents then in effect, will be subject to the provisions of clause (1) of Section 12.10(a), and (ii) any provision granting rights or powers to the Collateral Trustee that are not granted to the holders of Priority Liens securing Priority Lien Debt will constitute a material inconsistency.

(c) Except as provided in the Intercreditor Agreement, no amendment or supplement to the provisions of any Security Document will be effective without the approval of the Collateral Trustee acting as directed by the Required Parity Debtholders, except that:

(1) any amendment or supplement that has the effect solely of adding or maintaining Collateral, securing additional Parity Lien Debt or preserving, perfecting or establishing the priority of the Parity Liens thereon or the rights of the Collateral Trustee therein, or adding or maintaining any guarantee, will become effective when executed and delivered by Ahern Rentals or any other applicable Pledgor party thereto and the Collateral Trustee;

(2) no amendment or supplement that reduces, impairs or adversely affects the right of any holder of Parity Lien Debt:

(a) to vote its outstanding Parity Lien Debt as to any matter described as subject to a direction by the Required Parity Debtholders (or amends the provisions of this clause (2) or the definition of "Required Parity Debtholders"),

(b) to share in the order of application described in the Intercreditor Agreement and Section 12.02 in the proceeds of enforcement of or realization on any Collateral or

(c) to require that Parity Liens be released only as set forth in Sections 12.07.

will become effective without the consent of the requisite percentage or number of holders of each Series of Parity Lien Debt so affected under the applicable Parity Lien Document; and

(3) no amendment or supplement that imposes any obligation upon the Collateral Trustee or any Parity Lien Representative or adversely affects the rights of the Collateral Trustee or any Parity Lien Representative, respectively, in its individual capacity as such will become effective without the consent of the Collateral Trustee or such Parity Lien Representative, respectively.

(d) Any amendment or supplement to the provisions of the Security Documents that releases Collateral will be effective only in accordance with the requirements as provided in the Intercreditor Agreement or as otherwise permitted in Section 12.07 without consent of any holder of Parity Liens. Any amendment or supplement that results in the Collateral Trustee's Liens upon the Collateral no longer securing the Notes and the other Obligations under this Indenture may only be effected in accordance with the provisions described in Section 12.07.

Section 12.11 *Compliance with Trust Indenture Act.*

Ahern Rentals shall comply with the provisions of TIA § 314.

To the extent applicable, Ahern Rentals shall cause TIA § 313(b), relating to reports, and TIA § 314(d), relating to the release of property or securities subject to the Lien of the Security Documents, to be complied with. Any certificate or opinion required by TIA § 314(d) may be made by an officer of Ahern Rentals except in cases where TIA § 314(d) requires that such certificate or opinion be made by an independent Person, which Person will be an independent engineer, appraiser or other expert selected by Ahern Rentals and reasonably satisfactory to the Trustee. Notwithstanding anything to the contrary in this paragraph, Ahern Rentals shall not be required to comply with all or any portion of TIA § 314(d) if it determines, in good faith based on advice of counsel, that under the terms of TIA § 314(d) and/or any interpretation or guidance as to the meaning thereof of the SEC and its staff, including “no action” letters or exemptive orders, all or any portion of TIA § 314(d) is inapplicable to one or a series of released Collateral.

Section 12.12 *Further Assurances; Insurance.*

(a) Ahern Rentals and each of the other Pledgors, if any, shall do or cause to be done all acts and things that may be required, or that the Collateral Trustee from time to time may reasonably request, to assure and confirm that the Collateral Trustee holds, for the benefit of the holders of Parity Lien Obligations, duly created and enforceable and perfected Liens upon the Collateral (including any property or assets that are acquired or otherwise become Collateral after the Notes are issued), in each case, as contemplated by, and with the Lien priority required under, the Parity Lien Documents.

Upon the reasonable request of the Collateral Trustee or any Parity Lien Representative at any time and from time to time, Ahern Rentals and each of the other Pledgors, if any, will promptly execute, acknowledge and deliver such Security Documents, instruments, certificates, notices and other documents and take such other actions as shall be reasonably required, or that the Collateral Trustee may reasonably request, to create, perfect, protect, assure or enforce the Liens and benefits intended to be conferred, in each case as contemplated by the Parity Lien Documents for the benefit of the holders of Parity Lien Obligations.

(b) Ahern Rentals and the other Pledgors, if any, shall:

- (1) keep their properties adequately insured at all times by financially sound and reputable insurers;
- (2) maintain such other insurance, to such extent and against such risks (and with such deductibles, retentions and exclusions), including fire and other risks insured against by extended coverage and coverage for acts of terrorism, as is customary with companies in the same or similar businesses operating in the same or similar locations, including public liability insurance against claims for personal injury or death or property damage occurring upon, in, about or in connection with the use of any properties owned, occupied or controlled by them;
- (3) maintain such other insurance as may be required by law; and
- (4) maintain such other insurance as may be required by the Security Documents.

Upon the request of the Collateral Trustee, Ahern Rentals and each of the other Pledgors, if any, will furnish to the Collateral Trustee full information as to their property and liability insurance carriers. The Collateral Trustee will be named as additional insured, with a waiver of subrogation, on all insurance policies of Ahern Rentals and the other Pledgors and the Collateral Trustee will be named as loss payee, with 10 days' notice of cancellation or material change, on all property and casualty insurance policies of Ahern Rentals and the other Pledgors.

ARTICLE 13.

MISCELLANEOUS

Section 13.01 *Trust Indenture Act Controls.*

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by TIA §318(c), the imposed duties shall control.

Section 13.02 *Notices.*

Any notice or communication by Ahern Rentals, any Guarantor or the Trustee to the others is duly given if in writing and delivered in Person or mailed by first class mail (registered or certified, return receipt requested), telex, telecopier or overnight air courier guaranteeing next day delivery, to the others' address:

If to Ahern Rentals and/or any Guarantor:

Ahern Rentals, Inc.
1611 West Bonanza Road
Las Vegas, NV 89106
Telecopier No.: (702) 367-7652
Attention: Chief Financial Officer

With a copy to:

Stoel Rives LLP
Standard Insurance Center
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204
Telecopier No.: (503) 220-2480
Attention: Robert Moorman

If to the Trustee:

Wells Fargo Bank, N.A.
Corporate Trust Services
Sixth Street & Marquette, N9303-120
Minneapolis, MN 55479
Telecopier No.: (612) 667-9825
Attention: Corporate Trust Administration: Ahern Rentals Notes

Ahern Rentals, any Guarantor or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt acknowledged, if telecopied; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder shall be mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Any notice or communication shall also be so mailed to any Person described in TIA § 313(c), to the extent required by the TIA. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If Ahern Rentals mails a notice or communication to Holders, it shall mail a copy to the Trustee and each Agent at the same time.

Section 13.03 *Communication by Holders of Notes with Other Holders of Notes.*

Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the Notes. Ahern Rentals, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

Section 13.04 *Certificate and Opinion as to Conditions Precedent.*

Upon any request or application by Ahern Rentals to the Trustee to take any action under this Indenture, Ahern Rentals shall furnish to the Trustee:

(a) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 13.05 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(b) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 13.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 13.05 *Statements Required in Certificate or Opinion.*

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA § 314(a)(4)) shall comply with the provisions of TIA § 314(e) and shall include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

Section 13.06 *Rules by Trustee and Agents.*

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 13.07 *No Personal Liability of Directors, Officers, Employees and Stockholders.*

No director, officer, employee, incorporator or stockholder of Ahern Rentals or any Guarantor, as such, shall have any liability for any obligations of Ahern Rentals or such Guarantor under the Notes, this Indenture, the Note Guarantees, the Note Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 13.08 *Governing Law.*

THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE, THE NOTES AND THE NOTE GUARANTEES WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

Section 13.09 *No Adverse Interpretation of Other Agreements.*

This Indenture may not be used to interpret any other indenture, loan or debt agreement of Ahern Rentals or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 13.10 *Successors.*

All agreements of Ahern Rentals in this Indenture and the Notes shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 10.05.

Section 13.11 *Severability.*

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 13.12 *Counterpart Originals.*

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

Section 13.13 *Table of Contents, Headings, etc.*

The Table of Contents, Cross-Reference Table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

[Signatures on following page]

SIGNATURES

Dated as of August 18, 2005

AHERN RENTALS, INC.

By: /s/ HOWARD BROWN _____

Name: Howard Brown

Title: Chief Financial Officer

WELLS FARGO BANK, N.A.

By: /s/ TIMOTHY P MOWDY _____

Name: Timothy P. Mowdy

Title: Vice President

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EXHIBIT A-1

[Face of Note]

CUSIP/CINS

9¼% [Series A] [Series B] Senior Secured Notes due 2013

No. \$

AHERN RENTALS, INC.

promises to pay to

or registered assigns

the principal sum of

Dollars on August 15, 2013.

Interest Payment Dates: February 15 and August 15

Record Dates: February 1 and August 1

Dated: August 18, 2005

AHERN RENTALS, INC.

By: _____

Name:

Title:

(SEAL)

This is one of the Notes referred to
in the within-mentioned Indenture:

WELLS FARGO BANK, N.A.,
as Trustee

By: _____
Authorized Signatory

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[Back of Note]

9¼% [Series A] [Series B] Senior Secured Notes due 2013

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. **INTEREST.** Ahern Rentals, Inc., a Nevada corporation (“*Ahern Rentals*”), promises to pay interest on the principal amount of this Note at 9¼% per annum from August 18, 2005 until maturity. Ahern Rentals will pay interest semi-annually in arrears on February 15 and August 15 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each an “*Interest Payment Date*”). Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; *provided* that if there is no existing Default in the payment of interest, and if this Note is authenticated between a record date referred to on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such next succeeding Interest Payment Date; *provided, further*, that the first Interest Payment Date shall be February 15, 2006. Ahern Rentals shall pay interest (including post-petition interest in any proceeding under the Bankruptcy Code) on overdue principal and premium, if any, from time to time on demand at a rate that is 1% per annum in excess of the rate then in effect; it shall pay interest (including post-petition interest in any proceeding under the Bankruptcy Code) on overdue installments of interest (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

2. **METHOD OF PAYMENT.** Ahern Rentals will pay interest on the Notes (except defaulted interest) to the Persons who are registered Holders of Notes at the close of business on August 1 or February 1 next preceding the Interest Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. The Notes will be payable as to principal, premium, if any, and interest at the office or agency of Ahern Rentals maintained for such purpose, or, at the option of Ahern Rentals, payment of interest may be made by check mailed to the Holders at their addresses set forth in the register of Holders, and *provided* that payment by wire transfer of immediately available funds will be required with respect to principal of and interest, and premium, if any, on, all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to Ahern Rentals or the Paying Agent. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

3. **PAYING AGENT AND REGISTRAR.** Initially, Wells Fargo Bank, N.A., the Trustee under the Indenture, will act as Paying Agent and Registrar. Ahern Rentals may change any Paying Agent or Registrar without notice to any Holder. Ahern Rentals or any of its Subsidiaries may act in any such capacity.

4. **INDENTURE.** Ahern Rentals issued the Notes under an Indenture dated as of August 18, 2005 (“*Indenture*”) between Ahern Rentals and the Trustee. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (15 U.S. Code §§ 77aaa-77bbb). The Notes are subject to all such terms, and Holders are referred to the Indenture and such Act for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern

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and be controlling. The Initial Notes are secured obligations of Ahern Rentals limited to \$200,000,000 in aggregate principal amount. In addition, Ahern Rentals shall be entitled, subject to its compliance with Section 4.09 of the Indenture, to issue Additional Notes.

5. *OPTIONAL REDEMPTION.*

(a) At any time prior to August 15, 2008, Ahern Rentals may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under the Indenture at a redemption price of 109.250% of the principal amount, plus accrued and unpaid interest and Additional Interest, if any, to the redemption date, with the net cash proceeds of one or more Public Equity Offerings; *provided* that:

(1) at least 65% of the aggregate principal amount of Notes originally issued under the Indenture (excluding Notes held by Ahern Rentals and its Subsidiaries, if any) remains outstanding immediately after the occurrence of such redemption; and

(2) the redemption occurs within 90 days of the date of the closing of such Public Equity Offering.

(b) On or after August 15, 2009, Ahern Rentals may redeem all or a part of the Notes upon not less than 30 nor more than 60 days' notice, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest and Additional Interest, if any, on the Notes redeemed, to the applicable redemption date, if redeemed during the twelve-month period beginning on August 15 of the years indicated below, subject to the rights of Holders of Notes on the relevant record date to receive interest on the relevant interest payment date:

<u>Year</u>	<u>Percentage</u>
2009	104.625%
2010	102.313%
2011 and thereafter	100.000%

(c) Except pursuant to the preceding paragraphs, the Notes will not be redeemable at Ahern Rentals' option prior to August 15, 2009. Unless Ahern Rentals defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

6. *MANDATORY REDEMPTION.* Except as set forth in paragraph 7 below, Ahern Rentals shall not be required to make mandatory redemption payments with respect to the Notes.

7. *REPURCHASE AT OPTION OF HOLDER.*

(a) Upon the occurrence of a Change of Control, Ahern Rentals shall make an offer (a "*Change of Control Offer*") to each Holder to repurchase all or any part (equal to \$1,000 or an integral multiple of \$1,000) of each Holder's Notes at a purchase price equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest and Additional Interest on the Notes repurchased, if any, to the date of purchase (the "*Change of Control Payment*"). Within 10 days following any Change of Control, Ahern Rentals shall mail a notice to each Holder describing the transaction or transactions that constitute the Change of Control and stating:

- (1) that the Change of Control Offer is being made pursuant to Section 4.14 of the Indenture and that all Notes tendered will be accepted for payment;
- (2) the purchase price and the purchase date, which shall be no earlier than 30 days and no later than 60 business days from the date such notice is mailed (the "*Change of Control Payment Date*");
- (3) that any Note not tendered will continue to accrue interest;
- (4) that, unless Ahern Rentals defaults in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest after the Change of Control Payment Date;
- (5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender the Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Notes completed, to the Paying Agent at the address specified in the notice prior to the closing of business on the third Business Day preceding the Change of Control Payment Date;
- (6) that Holders will be entitled to withdraw their election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing his election to have the Notes purchased; and
- (7) that Holders whose Notes are being purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to \$1,000 in principal amount or an integral multiple thereof.

Ahern Rentals shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change in Control. To the extent that the provisions of any securities laws or regulations conflict with the provisions of Section 3.09 or 4.14 of the Indenture, Ahern Rentals shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under Section 3.09 or 4.14 of the Indenture by virtue of such conflict.

- (b) On the Change of Control Payment Date, Ahern Rentals will, to the extent lawful:
 - (1) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;
 - (2) deposit with the Paying Agent an amount equal to the Change of Control payment in respect of all Notes or portions of Notes properly tendered; and
 - (3) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by Ahern Rentals.

The Paying Agent will promptly pay to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be

transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each new Note will be in a principal amount of \$1,000 or an integral multiple of \$1,000. Ahern Rentals will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(c) Ahern Rentals will not be required to make a Change of Control Offer upon a Change of Control if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by Ahern Rentals and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer or (2) notice of redemption has been given pursuant to Section 3.07 of the Indenture, unless and until there is a default in payment of the applicable redemption price.

8. *NOTICE OF REDEMPTION.* Notice of redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at its registered address. Notes in denominations larger than \$1,000 may be redeemed in part but only in whole multiples of \$1,000, unless all of the Notes held by a Holder are to be redeemed. On and after the redemption date interest ceases to accrue on Notes or portions thereof called for redemption.

9. *DENOMINATIONS, TRANSFER, EXCHANGE.* The Notes are in registered form without coupons in denominations of \$1,000 and integral multiples of \$1,000. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and Ahern Rentals may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. Ahern Rentals need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, Ahern Rentals need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a record date and the corresponding Interest Payment Date.

10. *PERSONS DEEMED OWNERS.* The registered Holder of a Note may be treated as its owner for all purposes.

11. *AMENDMENT, SUPPLEMENT AND WAIVER.* The Indenture or the Notes may be amended or supplemented only as provided in the Indenture.

12. *DEFAULTS AND REMEDIES.* Events of Default are set forth in the Indenture. If any Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare all the Notes to be due and payable. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency, all outstanding Notes will become due and payable without further action or notice. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Notes notice of any continuing Default or Event of Default (except a Default or Event of Default relating to the payment of principal or interest) if it determines that withholding notice is in their interest. The Holders of a majority in aggregate principal amount of the Notes then outstanding by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of interest on, or the principal of, the Notes. Ahern Rentals is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and Ahern Rentals is required upon becoming aware of any Default or Event of Default, to deliver to the Trustee a statement specifying such Default or Event of Default.

13. *TRUSTEE DEALINGS WITH AHERN RENTALS.* The Trustee, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for Ahern Rentals or its Affiliates, and may otherwise deal with Ahern Rentals or its Affiliates, as if it were not the Trustee.

14. *NO RECOURSE AGAINST OTHERS.* A director, officer, employee, incorporator or stockholder, of Ahern Rentals, as such, shall not have any liability for any obligations of Ahern Rentals under the Notes or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

15. *AUTHENTICATION.* This Note shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

16. *ABBREVIATIONS.* Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

17. *ADDITIONAL RIGHTS OF HOLDERS OF RESTRICTED GLOBAL NOTES AND RESTRICTED DEFINITIVE NOTES.* In addition to the rights provided to Holders of Notes under the Indenture, Holders of Restricted Global Notes and Restricted Definitive Notes shall have all the rights set forth in the Registration Rights Agreement dated as of August 18, 2005, between Ahern Rentals and the parties named on the signature pages thereof (the "*Registration Rights Agreement*").

18. *CUSIP NUMBERS.* Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, Ahern Rentals has caused CUSIP numbers to be printed on the Notes and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

Ahern Rentals will furnish to any Holder upon written request and without charge a copy of the Indenture and/or the Registration Rights Agreement. Requests may be made to:

Ahern Rentals, Inc.
1611 West Bonanza Road
Las Vegas, NV 89106
Attention: Chief Financial Officer

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ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this
Note to:

(Insert assignee's legal name)

(Insert assignee's soc. sec. or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably
appoint
to transfer this Note on the books of Ahern Rentals. The agent may substitute another to act for him.

Date: _____

Your
Signature: _____
(Sign exactly as your name appears on the face of
this Note)

Signature
Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by Ahern Rentals pursuant to Section 4.10 or 4.14 of the Indenture, check the appropriate box below:

Section 4.10 Section 4.14

If you want to elect to have only part of the Note purchased by Ahern Rentals pursuant to Section 4.10 or Section 4.14 of the Indenture, state the amount you elect to have purchased:

\$ _____

Date: _____

Your
Signature: _____
(Sign exactly as your name appears on the face of
this Note)

Tax Identification
No.: _____

Signature
Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE

The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global Note or Definitive Note for an interest in this Global Note, have been made:

<u>Date of Exchange</u>	<u>Amount of decrease in Principal Amount of this Global Note</u>	<u>Amount of increase in Principal Amount of this Global Note</u>	<u>Principal Amount of this Global Note following such decrease (or increase)</u>	<u>Signature of authorized officer of Trustee or Note Custodian</u>
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EXHIBIT A-2

[Face of Regulation S Global Note]

CUSIP/CINS

9¼% [Series A] [Series B] Senior Secured Notes due 2013

No.

\$

AHERN RENTALS, INC.

promises to pay to

or registered assigns

the principal sum of

Dollars on August 15, 2013.

Interest Payment Dates: February 15 and August 15

Record Dates: February 1 and August 1

Dated: August 18, 2005

AHERN RENTALS, INC.

By: _____

Name:

Title:

(SEAL)

This is one of the Notes referred to
in the within-mentioned Indenture:

WELLS FARGO BANK, N.A.,
as Trustee

By: _____

Authorized Signatory

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[Back of Regulation S Global Note]

9¼% [Series A] [Series B] Senior Secured Notes due 2013

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

THE RIGHTS ATTACHING TO THIS REGULATION S GLOBAL NOTE, AND THE CONDITIONS AND PROCEDURES GOVERNING ITS EXCHANGE FOR CERTIFICATED NOTES, ARE AS SPECIFIED IN THE INDENTURE (AS DEFINED HEREIN). NEITHER THE HOLDER NOR THE BENEFICIAL OWNERS OF THIS REGULATION S GLOBAL NOTE SHALL BE ENTITLED TO RECEIVE PAYMENT OF INTEREST HEREON.

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. *INTEREST.* Ahern Rentals, Inc., a Nevada corporation (“*Ahern Rentals*”), promises to pay interest on the principal amount of this Note at 9¼% per annum from August 18, 2005 until maturity. Ahern Rentals will pay interest semi-annually in arrears on February 15 and August 15 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each an “*Interest Payment Date*”). Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; *provided* that if there is no existing Default in the payment of interest, and if this Note is authenticated between a record date referred to on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such next succeeding Interest Payment Date; *provided, further*, that the first Interest Payment Date shall be February 15, 2006. Ahern Rentals shall pay interest (including post-petition interest in any proceeding under the Bankruptcy Code) on overdue principal and premium, if any, from time to time on demand at a rate that is 1% per annum in excess of the rate then in effect; it shall pay interest (including post-petition interest in any proceeding under the Bankruptcy Code) on overdue installments of interest (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

2. *METHOD OF PAYMENT.* Ahern Rentals will pay interest on the Notes (except defaulted interest) to the Persons who are registered Holders of Notes at the close of business on February 1 or August 1 next preceding the Interest Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. The Notes will be payable as to principal, premium, if any, and interest at the office or agency of Ahern Rentals maintained for such purpose, or, at the option of Ahern Rentals, payment of interest may be made by check mailed to the Holders at their addresses set forth in the register of Holders, and *provided* that payment by wire transfer of immediately available funds will be required with respect to principal of and interest, and premium, if any, on, all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to Ahern Rentals or the Paying Agent. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

3. *PAYING AGENT AND REGISTRAR.* Initially, Wells Fargo Bank, N.A., the Trustee under the Indenture, will act as Paying Agent and Registrar. Ahern Rentals may change any Paying Agent or Registrar without notice to any Holder. Ahern Rentals or any of its Subsidiaries may act in any such capacity.

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4. *INDENTURE*. Ahern Rentals issued the Notes under an Indenture dated as of August 18, 2005 (“*Indenture*”) between Ahern Rentals and the Trustee. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (15 U.S. Code §§ 77aaa-77bbb). The Notes are subject to all such terms, and Holders are referred to the Indenture and such Act for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. The Initial Notes are secured obligations of Ahern Rentals limited to \$200,000,000 in aggregate principal amount. In addition, Ahern Rentals shall be entitled, subject to its compliance with Section 4.09 of the Indenture, to issue Additional Notes.

5. *OPTIONAL REDEMPTION*.

(a) At any time prior to August 15, 2008, Ahern Rentals may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under the Indenture at a redemption price of 109.250% of the principal amount, plus accrued and unpaid interest and Additional Interest, if any, to the redemption date, with the net cash proceeds of one or more Public Equity Offerings; *provided* that:

(1) at least 65% of the aggregate principal amount of Notes originally issued under the Indenture (excluding Notes held by Ahern Rentals and its Subsidiaries, if any) remains outstanding immediately after the occurrence of such redemption; and

(2) the redemption occurs within 90 days of the date of the closing of such Public Equity Offering.

(b) On or after August 15, 2009, Ahern Rentals may redeem all or a part of the Notes upon not less than 30 nor more than 60 days’ notice, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest and Additional Interest, if any, on the Notes redeemed, to the applicable redemption date, if redeemed during the twelve-month period beginning on August 15 of the years indicated below, subject to the rights of Holders of Notes on the relevant record date to receive interest on the relevant interest payment date:

<u>Year</u>	<u>Percentage</u>
2009	104.625%
2010	102.313%
2011 and thereafter	100.000%

(c) Except pursuant to the preceding paragraphs, the Notes will not be redeemable at Ahern Rentals’ option prior to August 15, 2009. Unless Ahern Rentals defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

6. *MANDATORY REDEMPTION*. Except as set forth in paragraph 7 below, Ahern Rentals shall not be required to make mandatory redemption payments with respect to the Notes.

7. *REPURCHASE AT OPTION OF HOLDER*.

(a) Upon the occurrence of a Change of Control, Ahern Rentals shall make an offer (a “*Change of Control Offer*”) to each Holder to repurchase all or any part (equal to \$1,000 or an integral multiple of \$1,000) of each Holder’s Notes at a purchase price equal to 101% of the aggregate principal

amount thereof plus accrued and unpaid interest and Additional Interest on the Notes repurchased, if any, to the date of purchase (the "*Change of Control Payment*"). Within 10 days following any Change of Control, Ahern Rentals shall mail a notice to each Holder describing the transaction or transactions that constitute the Change of Control and stating:

- (1) that the Change of Control Offer is being made pursuant to Section 4.14 of the Indenture and that all Notes tendered will be accepted for payment;
- (2) the purchase price and the purchase date, which shall be no earlier than 30 days and no later than 60 business days from the date such notice is mailed (the "*Change of Control Payment Date*");
- (3) that any Note not tendered will continue to accrue interest;
- (4) that, unless Ahern Rentals defaults in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest after the Change of Control Payment Date;
- (5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender the Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Notes completed, to the Paying Agent at the address specified in the notice prior to the closing of business on the third Business Day preceding the Change of Control Payment Date;
- (6) that Holders will be entitled to withdraw their election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing his election to have the Notes purchased; and
- (7) that Holders whose Notes are being purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to \$1,000 in principal amount or an integral multiple thereof.

Ahern Rentals shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change in Control. To the extent that the provisions of any securities laws or regulations conflict with the provisions of Section 3.09 or 4.14 of the Indenture, Ahern Rentals shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under Section 3.09 or 4.14 of the Indenture by virtue of such conflict.

- (b) On the Change of Control Payment Date, Ahern Rentals will, to the extent lawful:
 - (1) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;
 - (2) deposit with the Paying Agent an amount equal to the Change of Control payment in respect of all Notes or portions of Notes properly tendered; and

(3) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by Ahern Rentals.

The Paying Agent will promptly pay to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each new Note will be in a principal amount of \$1,000 or an integral multiple of \$1,000. Ahern Rentals will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(c) Ahern Rentals will not be required to make a Change of Control Offer upon a Change of Control if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by Ahern Rentals and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer or (2) notice of redemption has been given pursuant to Section 3.07 of the Indenture, unless and until there is a default in payment of the applicable redemption price.

8. *NOTICE OF REDEMPTION.* Notice of redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at its registered address. Notes in denominations larger than \$1,000 may be redeemed in part but only in whole multiples of \$1,000, unless all of the Notes held by a Holder are to be redeemed. On and after the redemption date interest ceases to accrue on Notes or portions thereof called for redemption.

9. *DENOMINATIONS, TRANSFER, EXCHANGE.* The Notes are in registered form without coupons in denominations of \$1,000 and integral multiples of \$1,000. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and Ahern Rentals may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. Ahern Rentals need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, Ahern Rentals need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a record date and the corresponding Interest Payment Date.

10. *PERSONS DEEMED OWNERS.* The registered Holder of a Note may be treated as its owner for all purposes.

11. *AMENDMENT, SUPPLEMENT AND WAIVER.* The Indenture or the Notes may be amended or supplemented only as provided in the Indenture.

12. *DEFAULTS AND REMEDIES.* Events of Default are set forth in the Indenture. If any Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare all the Notes to be due and payable. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency, all outstanding Notes will become due and payable without further action or notice. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Notes notice of any continuing Default or Event of Default (except a Default or Event of Default relating to the payment of principal or interest) if it determines that withholding notice is in their interest. The Holders of a majority in aggregate principal amount of the Notes then outstanding by notice to the Trustee may on behalf of the Holders of all of the

Notes waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of interest on, or the principal of, the Notes. Ahern Rentals is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and Ahern Rentals is required upon becoming aware of any Default or Event of Default, to deliver to the Trustee a statement specifying such Default or Event of Default.

13. *TRUSTEE DEALINGS WITH AHERN RENTALS.* The Trustee, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for Ahern Rentals or its Affiliates, and may otherwise deal with Ahern Rentals or its Affiliates, as if it were not the Trustee.

14. *NO RECOURSE AGAINST OTHERS.* A director, officer, employee, incorporator or stockholder, of Ahern Rentals, as such, shall not have any liability for any obligations of Ahern Rentals under the Notes or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

15. *AUTHENTICATION.* This Note shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

16. *ABBREVIATIONS.* Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

17. *ADDITIONAL RIGHTS OF HOLDERS OF RESTRICTED GLOBAL NOTES AND RESTRICTED DEFINITIVE NOTES.* In addition to the rights provided to Holders of Notes under the Indenture, Holders of Restricted Global Notes and Restricted Definitive Notes shall have all the rights set forth in the Registration Rights Agreement dated as of August 18, 2005, between Ahern Rentals and the parties named on the signature pages thereof (the "*Registration Rights Agreement*").

18. *CUSIP NUMBERS.* Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, Ahern Rentals has caused CUSIP numbers to be printed on the Notes and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

Ahern Rentals will furnish to any Holder upon written request and without charge a copy of the Indenture and/or the Registration Rights Agreement. Requests may be made to:

Ahern Rentals, Inc.
1611 West Bonanza Road
Las Vegas, NV 89106
Attention: Chief Financial Officer

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ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to:

_____ (Insert assignee's legal name)

_____ (Insert assignee's soc. sec. or tax I.D. no.)

_____ (Print or type assignee's name, address and zip code)

and irrevocably appoint to transfer this Note on the books of Ahern Rentals. The agent may substitute another to act for him.

Date: _____

Your Signature: _____ (Sign exactly as your name appears on the face of this Note)

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by Ahern Rentals pursuant to Section 4.10 or 4.14 of the Indenture, check the appropriate box below:

Section 4.10 Section 4.14

If you want to elect to have only part of the Note purchased by Ahern Rentals pursuant to Section 4.10 or Section 4.14 of the Indenture, state the amount you elect to have purchased:

\$

Date: _____

Your
Signature: _____
(Sign exactly as your name appears on the face of
this Note)

Tax Identification
No.: _____

Signature
Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE

The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global Note or Definitive Note for an interest in this Global Note, have been made:

<u>Date of Exchange</u>	<u>Amount of decrease in Principal Amount of this Global Note</u>	<u>Amount of increase in Principal Amount of this Global Note</u>	<u>Principal Amount of this Global Note following such decrease (or increase)</u>	<u>Signature of authorized officer of Trustee or Note Custodian</u>
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EXHIBIT B

FORM OF CERTIFICATE OF TRANSFER

Ahern Rentals, Inc.
1611 West Bonanza Road
Las Vegas, NV 89106

[Registrar address block]

Re: 9¼% Senior Secured Notes due 2013

Reference is hereby made to the Indenture, dated as of August 18, 2005 (the “*Indenture*”), between Ahern Rentals, Inc., a Nevada corporation, as issuer (“*Ahern Rentals*”), and Wells Fargo Bank, N.A., as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

(the “*Transferor*”) owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of \$ _____ in such Note[s] or interests (the “*Transfer*”), to _____ (the “*Transferee*”), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. **Check if Transferee will take delivery of a beneficial interest in the 144A Global Note or a Definitive Note Pursuant to Rule 144A.** The Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the “*Securities Act*”), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believed and believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a “qualified institutional buyer” within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the 144A Global Note and/or the Definitive Note and in the Indenture and the Securities Act.

2. **Check if Transferee will take delivery of a beneficial interest in the Regulation S Global Note or a Definitive Note pursuant to Regulation S.** The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act, (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Restricted Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer

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enumerated in the Private Placement Legend printed on the Regulation S Global Note and/or the Definitive Note and in the Indenture and the Securities Act.

3. **Check and complete if Transferee will take delivery of a beneficial interest in the IAI Global Note or a Definitive Note pursuant to any provision of the Securities Act other than Rule 144A or Regulation S.** The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act;

or

(b) such Transfer is being effected to Ahern Rentals or a subsidiary thereof;

or

(c) such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act;

or

(d) such Transfer is being effected to an Institutional Accredited Investor and pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 144 or Rule 904, and the Transferor hereby further certifies that it has not engaged in any general solicitation within the meaning of Regulation D under the Securities Act and the Transfer complies with the transfer restrictions applicable to beneficial interests in a Restricted Global Note or Restricted Definitive Notes and the requirements of the exemption claimed, which certification is supported by (1) a certificate executed by the Transferee in the form of Exhibit D to the Indenture and (2) an Opinion of Counsel provided by the Transferor or the Transferee (a copy of which the Transferor has attached to this certification), to the effect that such Transfer is in compliance with the Securities Act. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the IAI Global Note and/or the Definitive Notes and in the Indenture and the Securities Act.

4. **Check if Transferee will take delivery of a beneficial interest in an Unrestricted Global Note or of an Unrestricted Definitive Note.**

(a) **Check if Transfer is pursuant to Rule 144.** (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(b) **Check if Transfer is Pursuant to Regulation S.** (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(c) **Check if Transfer is Pursuant to Other Exemption.** (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of Ahern Rentals.

[Insert Name of Transferor]

By: _____
Name:
Title:

Dated: _____

ANNEX A TO CERTIFICATE OF TRANSFER

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

- (a) a beneficial interest in the:

(i) 144A Global Note (CUSIP _____), or

(ii) Regulation S Global Note (CUSIP _____), or

(iii) IAI Global Note (CUSIP _____); or

- (b) a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

- (a) a beneficial interest in the:

(i) 144A Global Note (CUSIP _____), or

(ii) Regulation S Global Note (CUSIP _____), or

(iii) IAI Global Note (CUSIP _____), or

(iv) Unrestricted Global Note (CUSIP _____); or

- (b) a Restricted Definitive Note; or

- (c) an Unrestricted Definitive Note,

in accordance with the terms of the Indenture.

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EXHIBIT C

FORM OF CERTIFICATE OF EXCHANGE

Ahern Rentals, Inc.
1611 West Bonanza Road
Las Vegas, NV 89106

[Registrar address block]

Re: 9¼% Senior Secured Notes due 2013

(CUSIP)

Reference is hereby made to the Indenture, dated as of August 18, 2005 (the “*Indenture*”), between Ahern Rentals, Inc., a Nevada corporation, as issuer (“*Ahern Rentals*”), and Wells Fargo Bank, N.A., as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

(the “*Owner*”) owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of \$ _____ in such Note[s] or interests (the “*Exchange*”). In connection with the Exchange, the Owner hereby certifies that:

1. **Exchange of Restricted Definitive Notes or Beneficial Interests in a Restricted Global Note for Unrestricted Definitive Notes or Beneficial Interests in an Unrestricted Global Note**

(a) **Check if Exchange is from beneficial interest in a Restricted Global Note to beneficial interest in an Unrestricted Global Note.** In connection with the Exchange of the Owner’s beneficial interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the United States Securities Act of 1933, as amended (the “*Securities Act*”), (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest in an Unrestricted Global Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(b) **Check if Exchange is from beneficial interest in a Restricted Global Note to Unrestricted Definitive Note.** In connection with the Exchange of the Owner’s beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(c) **Check if Exchange is from Restricted Definitive Note to beneficial interest in an Unrestricted Global Note.** In connection with the Owner’s Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in

accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(d) **Check if Exchange is from Restricted Definitive Note to Unrestricted Definitive Note.** In connection with the Owner's Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

2. **Exchange of Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes for Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes**

(a) **Check if Exchange is from beneficial interest in a Restricted Global Note to Restricted Definitive Note.** In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner's own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

(b) **Check if Exchange is from Restricted Definitive Note to beneficial interest in a Restricted Global Note.** In connection with the Exchange of the Owner's Restricted Definitive Note for a beneficial interest in the [CHECK ONE] 144A Global Note, Regulation S Global Note, IAI Global Note with an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of Ahern Rentals.

[Insert Name of Transferor]

By: _____

Name: _____

Title: _____

Dated: _____

EXHIBIT D

FORM OF CERTIFICATE FROM
ACQUIRING INSTITUTIONAL ACCREDITED INVESTOR

Ahern Rentals, Inc.
1611 West Bonanza Road
Las Vegas, NV 89106

[Registrar address block]

Re: 9¼% Senior Secured Notes due 2013

Reference is hereby made to the Indenture, dated as of August 18, 2005 (the “*Indenture*”), between Ahern Rentals, Inc., a Nevada corporation, as issuer (“*Ahern Rentals*”), and Wells Fargo Bank, N.A., as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

In connection with our proposed purchase of \$ _____ aggregate principal amount of:

- (a) a beneficial interest in a Global Note, or
- (b) a Definitive Note,

we confirm that:

1. We understand that any subsequent transfer of the Notes or any interest therein is subject to certain restrictions and conditions set forth in the Indenture and the undersigned agrees to be bound by, and not to resell, pledge or otherwise transfer the Notes or any interest therein except in compliance with, such restrictions and conditions and the United States Securities Act of 1933, as amended (the “*Securities Act*”).

2. We understand that the offer and sale of the Notes have not been registered under the Securities Act, and that the Notes and any interest therein may not be offered or sold except as permitted in the following sentence. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should sell the Notes or any interest therein, we will do so only (A) to Ahern Rentals or any subsidiary thereof, (B) in accordance with Rule 144A under the Securities Act to a “qualified institutional buyer” (as defined therein), (C) to an institutional “accredited investor” (as defined below) that, prior to such transfer, furnishes (or has furnished on its behalf by a U.S. broker-dealer) to you and to Ahern Rentals a signed letter substantially in the form of this letter and, if such transfer is in respect of a principal amount of Notes, an Opinion of Counsel in form reasonably acceptable to Ahern Rentals to the effect that such transfer is in compliance with the Securities Act, (D) outside the United States in accordance with Rule 904 of Regulation S under the Securities Act, (E) pursuant to the provisions of Rule 144(k) under the Securities Act or (F) pursuant to an effective registration statement under the Securities Act, and we further agree to provide to any person purchasing the Definitive Note or beneficial interest in a Global Note from us in a transaction meeting the requirements of clauses (A) through (E) of this paragraph a notice advising such purchaser that resales thereof are restricted as stated herein.

3. We understand that, on any proposed resale of the Notes or beneficial interest therein, we will be required to furnish to you and Ahern Rentals such certifications, legal opinions and other information as you and Ahern Rentals may reasonably require to confirm that the proposed sale complies with the foregoing restrictions. We further understand that the Notes purchased by us will bear a legend to the foregoing effect.

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4. We are an institutional “accredited investor” (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.

5. We are acquiring the Notes or beneficial interest therein purchased by us for our own account or for one or more accounts (each of which is an institutional “accredited investor”) as to each of which we exercise sole investment discretion.

You and Ahern Rentals are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

[Insert Name of Accredited Investor]

By: _____
Name:
Title:

Dated: _____



EXHIBIT E

FORM OF NOTATION OF GUARANTEE

For value received, each Guarantor (which term includes any successor Person under the Indenture) has, jointly and severally, unconditionally guaranteed, to the extent set forth in the Indenture and subject to the provisions in the Indenture dated as of August 18, 2005 (the “*Indenture*”) among Ahern Rentals, Inc., a Nevada corporation (“*Ahern Rentals*”), the Guarantors listed on Schedule I thereto and Wells Fargo Bank, N.A., as trustee (the “*Trustee*”), (a) the due and punctual payment of the principal of, premium, if any, and interest on the Notes (as defined in the Indenture), whether at maturity, by acceleration, redemption or otherwise, the due and punctual payment of interest on overdue principal and premium, and, to the extent permitted by law, interest, and the due and punctual performance of all other obligations of Ahern Rentals to the Holders or the Trustee all in accordance with the terms of the Indenture and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. The obligations of the Guarantors to the Holders of Notes and to the Trustee pursuant to the Note Guarantee and the Indenture are expressly set forth in Article 10 of the Indenture and reference is hereby made to the Indenture for the precise terms of the Note Guarantee. Each Holder of a Note, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee, on behalf of such Holder, to take such action as may be necessary or appropriate to effectuate the subordination as provided in the Indenture and (c) appoints the Trustee attorney-in-fact of such Holder for such purpose; *provided, however*, that the Indebtedness evidenced by this Note Guarantee shall cease to be so subordinated and subject in right of payment upon any defeasance of this Note in accordance with the provisions of the Indenture.

[NAME OF GUARANTOR(S)]

By: _____

Name:

Title:

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FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS

SUPPLEMENTAL INDENTURE (this "*Supplemental Indenture*"), dated as of _____, among _____ (the "*Guaranteeing Subsidiary*"), a subsidiary of Ahern Rentals, Inc. (or its permitted successor), a Nevada corporation ("*Ahern Rentals*"), Ahern Rentals, the other Guarantors (as defined in the Indenture referred to herein) and Wells Fargo Bank, N.A., as trustee under the indenture referred to below (the "*Trustee*").

W I T N E S S E T H

WHEREAS, Ahern Rentals has heretofore executed and delivered to the Trustee an indenture (the "*Indenture*"), dated as of August 18, 2005, providing for the issuance of an aggregate principal amount of up to \$200,000,000 of 9¼% Senior Secured Notes due 2013 (the "*Notes*");

WHEREAS, the Indenture provides that under certain circumstances the Guaranting Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranting Subsidiary shall unconditionally guarantee all of Ahern Rentals' Obligations under the Notes and the Indenture on the terms and conditions set forth herein (the "*Note Guarantee*"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranting Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.
 2. AGREEMENT TO GUARANTEE. The Guaranting Subsidiary hereby agrees as follows:
 - (a) Along with all Guarantors named in the Indenture, to jointly and severally Guarantee to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, the Notes or the obligations of Ahern Rentals hereunder or thereunder, and that:
 - (i) the principal of and interest on the Notes will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of Ahern Rentals to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and
 - (ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.
-

Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same immediately.

(b) The obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or the Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against Ahern Rentals, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor.

(c) The following are hereby waived: diligence presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of Ahern Rentals, any right to require a proceeding first against Ahern Rentals, protest, notice and all demands whatsoever.

(d) This Note Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and the Indenture, and the Guaranteeing Subsidiary accepts all obligations of a Guarantor under the Indenture.

(e) If any Holder or the Trustee is required by any court or otherwise to return to Ahern Rentals, the Guarantors, or any Custodian, Trustee, liquidator or other similar official acting in relation to either Ahern Rentals or the Guarantors, any amount paid by either to the Trustee or such Holder, this Note Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(f) The Guaranteeing Subsidiary shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby.

(g) As between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 of the Indenture for the purposes of this Note Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 of the Indenture, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Note Guarantee.

(h) The Guarantors shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Guarantee.

(i) Pursuant to Section 10.02 of the Indenture, after giving effect to any maximum amount and any other contingent and fixed liabilities that are relevant under any applicable Bankruptcy or fraudulent conveyance laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under Article 10 of the Indenture, this new Note Guarantee shall be limited to the maximum amount permissible such that the obligations of such Guarantor under this Note Guarantee will not constitute a fraudulent transfer or conveyance.

3. EXECUTION AND DELIVERY. Each Guaranting Subsidiary agrees that the Note Guarantees shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Note Guarantee.

4. GUARANTEEING SUBSIDIARY MAY CONSOLIDATE, ETC. ON CERTAIN TERMS.

(a) The Guaranting Subsidiary may not consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another corporation, Person or entity whether or not affiliated with such Guarantor unless:

(i) subject to Sections 10.04 and 10.05 of the Indenture, the Person formed by or surviving any such consolidation or merger (if other than a Guarantor or Ahern Rentals) unconditionally assumes all the obligations of such Guarantor, pursuant to a supplemental indenture in form and substance reasonably satisfactory to the Trustee, under the Notes, the Indenture and the Note Guarantee on the terms set forth herein or therein; and

(ii) immediately after giving effect to such transaction, no Default or Event of Default exists.

(b) In case of any such consolidation, merger, sale or conveyance and upon the assumption by the successor corporation, by supplemental indenture, executed and delivered to the Trustee, of the Note Guarantee endorsed upon the Notes and the due and punctual performance of all of the covenants and conditions of the Indenture to be performed by the Guarantor, such successor corporation shall succeed to and be substituted for the Guarantor with the same effect as if it had been named herein as a Guarantor. Such successor corporation thereupon may cause to be signed any or all of the Note Guarantees to be endorsed upon all of the Notes issuable hereunder which theretofore shall not have been signed by Ahern Rentals and delivered to the Trustee. All the Note Guarantees so issued shall in all respects have the same legal rank and benefit under the Indenture as the Note Guarantees theretofore and thereafter issued in accordance with the terms of the Indenture as though all of such Note Guarantees had been issued at the date of the execution hereof.

(c) Except as set forth in Articles 4 and 5 and Section 10.05 of Article 10 of the Indenture, and notwithstanding clauses (a) and (b) above, nothing contained in the Indenture or in any of the Notes shall prevent any consolidation or merger of a Guarantor with or into Ahern Rentals or another Guarantor, or shall prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to Ahern Rentals or another Guarantor.

5. RELEASES.

(a) In the event of a sale or other disposition of all of the assets of any Guarantor, by way of merger, consolidation or otherwise, or a sale or other disposition of all the capital stock of any Guarantor, in each case to a Person that is not (either before or after giving effect to such transaction) a Restricted Subsidiary of Ahern Rentals, then such Guarantor (in the event of a sale or other disposition, by way of merger, consolidation or otherwise, of all of the capital stock of such Guarantor) or the corporation acquiring the property (in the event of a sale or other disposition of all or substantially all of the assets of such Guarantor) will be released and relieved of any obligations under its Note Guarantee; *provided* that the Net Proceeds of such sale or other disposition are applied in accordance with the applicable provisions of the Indenture, including without limitation, Section 4.10 of the Indenture. Upon delivery by Ahern Rentals to the Trustee of an Officers' Certificate and an Opinion of Counsel to the effect that such sale or other disposition was made by Ahern Rentals in accordance with the provisions of the Indenture, including

without limitation, Section 4.10 of the Indenture, the Trustee shall execute any documents reasonably required in order to evidence the release of any Guarantor from its obligations under its Note Guarantee.

(b) Any Guarantor not released from its obligations under its Note Guarantee shall remain liable for the full amount of principal of and interest on the Notes and for the other obligations of any Guarantor under the Indenture as provided in Article 10 of the Indenture.

6. NO RECOURSE AGAINST OTHERS. No past, present or future director, officer, employee, incorporator, stockholder or agent of the Guaranteeing Subsidiary, as such, shall have any liability for any obligations of Ahern Rentals or any Guaranteeing Subsidiary under the Notes, any Note Guarantees, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of the Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

7. NEW YORK LAW TO GOVERN. THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUCE THIS SUPPLEMENTAL INDENTURE BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

8. COUNTERPARTS. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

9. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

10. THE TRUSTEE. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary and Ahern Rentals.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Dated: _____, ____

[GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

AHERN RENTALS, INC.

By: _____
Name:
Title:

[EXISTING GUARANTORS]

By: _____
Name:
Title:

WELLS FARGO BANK, N.A.,
as Trustee

By: _____
Authorized Signatory

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Schedule I

SCHEDULE OF GUARANTORS

The following schedule lists each Guarantor under the Indenture as of the Issue Date:

None

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EXHIBIT
8

EXHIBIT
8

EX-4.1 2 a09-37133_1ex4d1.htm EX-4.1

Exhibit 4.1

AHERN RENTALS, INC.

9 1/4% SENIOR SECURED NOTES DUE 2013

FIRST SUPPLEMENTAL INDENTURE

Dated as of December 23, 2009

WELLS FARGO BANK, N.A.

Trustee

FIRST SUPPLEMENTAL INDENTURE, dated as of December 23, 2009, between Ahern Rentals, Inc., a corporation duly organized and existing under the laws of the State of Nevada ("Ahern Rentals"), and Wells Fargo Bank, N.A., a national banking association (the "Trustee"), as Trustee under the indenture referred to below.

RECITALS

WHEREAS, Ahern Rentals has heretofore executed and delivered to the Trustee an indenture (the "Indenture"), dated as of August 18, 2005, providing for the issuance of 9¼% Senior Secured Notes due 2013 (the "Notes").

WHEREAS, Section 9.02 of the Indenture provides that Ahern Rentals and the Trustee may amend or supplement the Indenture with the consent of the Holders of at least a majority in principal amount of the Notes then outstanding voting as a single class, and when authorized by a resolution of Ahern Rentals's Board of Directors.

WHEREAS, the Holders of greater than a majority in principal amount of the Notes outstanding, pursuant to a consent solicitation dated December 7, 2009, as supplemented, have consented to the amendment of the Indenture as provided herein.

WHEREAS, Ahern Rentals has been authorized by resolution of the Board of Directors to enter into this First Supplemental Indenture.

WHEREAS, pursuant to Section 9.02 of the Indenture, the Trustee is authorized to execute and deliver this First Supplemental Indenture.

WHEREAS, all things necessary to make this First Supplemental Indenture a valid agreement of Ahern Rentals, in accordance with its terms, have been done.

NOW, THEREFORE, THIS FIRST SUPPLEMENTAL INDENTURE WITNESSETH:

For and in consideration of the premises, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Notes, as follows:

1. Amendment to the Indenture.

a. Definitions. The definition of "Priority Lien Debt" in Section 1.01 of the Indenture is hereby amended and restated to read in its entirety as follows:

"Priority Lien Debt" means:

(1) Indebtedness under the Credit Agreement that was permitted to be incurred and secured under each applicable Secured Debt Document (or as to which the lenders under the Credit Agreement (or the Credit Agreement Agent) obtained an Officers' Certificate (or a representation or warranty is made by Ahern Rentals to such lenders) at the time of incurrence to the effect that such Indebtedness was permitted to be incurred and secured by all applicable Secured Debt Documents);

(2) Indebtedness under any other Credit Facility that is secured equally and ratably with the Credit Agreement by a Priority Lien that was permitted to be incurred and so secured under each applicable Secured Debt Document; provided, in the case of any Indebtedness referred to in this clause (2), that:

(a) on or before the date on which such Indebtedness is incurred by Ahern Rentals or the applicable Restricted Subsidiary, such Indebtedness is designated by Ahern Rentals, in an Officers' Certificate delivered to each representative of the Priority Debt and the Collateral Trustee, as 'Priority Lien Debt' for the purposes of the Secured Debt Documents;

(b) such Indebtedness is governed by a credit agreement or other agreement that includes a Lien Priority Confirmation; and

(c) all requirements set forth in the Intercreditor Agreement as to the confirmation, grant or perfection of the Priority Lien Collateral Agent's Lien to secure such Indebtedness or Obligations in respect thereof are satisfied (and the satisfaction of such requirements and the other provisions of this clause (c) will be conclusively established if Ahern Rentals delivers to the Collateral Trustee an Officers' Certificate stating that such requirements and other provisions have been satisfied and that such Indebtedness is 'Priority Lien Debt'); and

(3) Hedging Obligations incurred to hedge or manage interest rate risk with respect to Priority Lien Debt; provided that:

(a) such Hedging Obligations are secured by a Priority Lien on all of the assets and properties that secure Indebtedness under the Credit Facility in respect of which such Hedging Obligations are incurred; and

(b) such Priority Lien is senior to or on a parity with the Priority Liens securing Indebtedness under the Credit Facility in respect of which such Hedging Obligations are incurred."

b. Section 4.09. Section 4.09(b)(1) of the Indenture is hereby amended and restated to read in its entirety as follows:

"(1) the incurrence by Ahern Rentals and any of its Restricted Subsidiaries of additional Indebtedness and letters of credit under Credit Facilities in an aggregate principal amount at any one time outstanding under this clause (1) (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of Ahern Rentals and its Restricted Subsidiaries thereunder) not to exceed the greater of (a) \$396.0 million or (b) the sum of (I) 85% of accounts receivable, plus (II) the lesser of (A) 85% net orderly liquidation value of rental and sale equipment and other equipment (including transportation equipment but excluding aircraft) and (B) 95% of net book value of rental and sale equipment and other equipment (including transportation equipment but excluding aircraft), plus (III) the lesser of (A) 85% of net orderly liquidation value of spare parts and merchandise inventory and (B) 60% of net book value of spare parts and merchandise inventory, in the case of each of (a) and (b) less the

aggregate amount of all Net Proceeds of Asset Sales applied by Ahern Rentals or any of its Restricted Subsidiaries since the date of this Indenture to repay any term Indebtedness under a Credit Facility or to repay any revolving credit Indebtedness under a Credit Facility and effect a corresponding commitment reduction thereunder pursuant to Section 4.10;"

2. Effectiveness. This First Supplemental Indenture will become operative and binding upon each of Ahern Rentals, the Trustee and the holders of the Notes as of the day and year first above written.

3. Reference to and Effect on the Indenture. On and after the operative date of this First Supplemental Indenture, each reference in the Indenture to "this Indenture," "hereunder," "hereof," or "herein" shall mean and be a reference to the Indenture as supplemented by this First Supplemental Indenture unless the context otherwise requires. Except as specifically amended above, the Indenture shall remain in full force and effect and is hereby ratified and confirmed.

4. Governing Law. THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS FIRST SUPPLEMENTAL INDENTURE BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

5. Defined Terms. Unless otherwise indicated, capitalized terms used herein and not defined herein shall have the respective meanings given such terms in the Indenture.

6. Trustee Disclaimer. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this First Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by Ahern Rentals. This disclaimer does not apply to the third recital hereof to the extent that it relates to the Trustee's obligations under the Tabulation Agreement, dated December 7, 2009, between the Trustee and Ahern Rentals.

7. Trust Indenture Act Controls. If any provision of this First Supplemental Indenture limits, qualifies or conflicts with another provision that is required to be included in this First Supplemental Indenture or the Indenture by the Trust Indenture Act of 1931, as amended, as in force as of the date that this First Supplemental Indenture is executed, the provisions required by such Trust Indenture Act shall control.

8. Counterparts and Method of Execution. The parties may sign any number of copies of this First Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

9. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Indenture to be duly executed, all as of the date first above written.

Dated as of December 23, 2009

AHERN RENTALS, INC.

By: /s/ Howard Brown

Howard Brown
Chief Financial Officer

WELLS FARGO BANK, N.A.,
as Trustee

By: /s/ Jayne Sillman

Authorized Signatory

EXHIBIT
9

EXHIBIT
9

Ahern Rentals, Inc
13-Week Cash Flow Forecast

Week Ending (\$ in thousands)	Forecasting Period													Total
	Dec-24 1	Dec-31 2	Jan-07 3	Jan-14 4	Jan-21 5	Jan-28 6	Feb-04 7	Feb-11 8	Feb-18 9	Feb-25 10	Mar-03 11	Mar-10 12	Mar-17 13	
Cash Receipts:														
Collections	\$ 1,635.5	\$ 4,104.5	\$ 4,810.3	\$ 6,679.1	\$ 5,720.6	\$ 7,243.6	\$ 6,730.6	\$ 6,435.1	\$ 6,413.6	\$ 4,828.8	\$ 5,898.4	\$ 6,025.9	\$ 6,035.5	\$ 72,561.3
Sales of new equipment	175.0	175.0	197.4	197.4	197.4	197.4	195.7	194.4	194.4	194.4	192.0	188.8	188.8	2,488.0
Sales of used equipment	221.5	221.5	200.3	200.3	200.3	200.3	195.6	192.1	192.1	192.1	204.3	220.7	220.7	2,661.8
Total Receipts	\$ 2,032.0	\$ 4,501.0	\$ 5,207.9	\$ 7,076.8	\$ 6,118.2	\$ 7,641.3	\$ 7,121.8	\$ 6,821.6	\$ 6,800.1	\$ 5,215.3	\$ 6,294.7	\$ 6,435.4	\$ 6,445.0	\$ 77,711.1
Cash Disbursements:														
Salaries and Wages	-	1,400.0	1,400.0	1,750.0	1,300.0	1,300.0	1,400.0	1,300.0	1,750.0	1,300.0	1,400.0	1,300.0	1,750.0	17,350.0
Payroll Taxes	-	959.9	480.0	600.0	445.7	445.7	480.0	445.7	600.0	445.7	480.0	445.7	600.0	6,428.0
Operating Disbursements	-	579.7	1,512.4	1,112.4	1,162.4	1,162.4	1,565.6	1,167.9	1,167.9	1,167.9	1,556.1	1,140.5	1,140.5	14,435.7
Rent	-	37.3	1,225.0	-	-	75.7	1,225.0	-	-	75.7	1,225.0	-	-	3,863.8
Utilities	-	-	-	200.0	100.0	170.0	43.0	43.0	43.0	170.0	43.0	43.0	43.0	897.9
Property and sales taxes	-	1,205.8	8.0	613.6	1,143.4	2,293.5	3.5	117.1	1,037.3	1,206.1	249.5	-	1,138.1	9,015.9
Other SG&A (1)	-	150.0	300.0	350.0	350.0	400.0	500.0	500.0	500.0	500.0	500.0	500.0	500.0	5,050.0
Subtotal	\$ -	\$ 4,332.8	\$ 4,925.4	\$ 4,626.0	\$ 4,501.5	\$ 5,847.3	\$ 5,217.0	\$ 3,573.7	\$ 5,098.1	\$ 4,865.4	\$ 5,453.6	\$ 3,429.1	\$ 5,171.5	\$ 57,041.4
Insurance	-	66.7	-	524.8	344.3	66.7	-	524.8	344.3	66.7	-	524.8	344.3	2,807.3
Purchases of equipment for sale	-	-	171.8	171.8	171.8	171.8	168.7	166.3	166.3	166.3	178.1	193.8	193.8	1,920.3
Capex	-	100.0	569.0	569.0	569.0	569.0	596.1	616.5	616.5	616.5	657.1	711.3	711.3	6,901.3
Restructuring expenses	2,272.5	30.0	-	1,072.5	-	750.0	3,675.0	615.0	-	-	1,179.0	515.0	100.0	10,209.0
Revolver Cash Interest	-	-	1,466.5	-	-	-	1,241.3	-	-	-	1,085.7	-	-	3,793.5
First Lien Term Loan Cash Interest	-	-	495.2	-	-	-	1,485.6	-	-	-	1,485.6	-	-	3,466.3
Total Cash Interest Expense	\$ -	\$ -	\$ 1,961.7	\$ -	\$ -	\$ -	\$ 2,726.9	\$ -	\$ -	\$ -	\$ 2,571.3	\$ -	\$ -	\$ 7,259.8
Total Disbursements	\$ 2,272.5	\$ 4,529.4	\$ 7,627.9	\$ 6,964.1	\$ 5,586.6	\$ 7,404.8	\$ 12,383.7	\$ 5,496.3	\$ 6,225.2	\$ 5,714.8	\$ 10,039.1	\$ 5,374.0	\$ 6,520.9	\$ 86,139.2
Net Cash Flow	\$ (240.5)	\$ (28.5)	\$ (2,420.0)	\$ 112.6	\$ 531.6	\$ 236.5	\$ (5,261.9)	\$ 1,325.3	\$ 574.9	\$ (499.5)	\$ (3,744.3)	\$ 1,061.4	\$ (75.9)	\$ (8,428.1)
Cumulative Net Cash Flow From Petition Date	\$ (240.5)	\$ (269.0)	\$ (2,688.9)	\$ (2,576.3)	\$ (2,044.7)	\$ (1,808.2)	\$ (7,070.1)	\$ (5,744.7)	\$ (5,169.8)	\$ (5,669.3)	\$ (9,413.6)	\$ (8,352.2)	\$ (8,428.1)	
Pre-Petition Revolver - Beginning Balance	\$ 256,743.7	\$ 256,743.7	\$ 256,743.7	\$ 256,743.7	\$ 256,743.7	\$ 256,743.7	\$ 256,743.7							
Repayment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -							
Pre-Petition Revolver - Ending Balance	\$ 256,743.7	\$ 256,743.7	\$ 256,743.7	\$ 256,743.7	\$ 256,743.7	\$ 256,743.7	\$ 256,743.7							
Interim DIP Facility - Maximum Amount	\$ 20,000.0	\$ 20,000.0	\$ 20,000.0	\$ 20,000.0	\$ 20,000.0	\$ 20,000.0	\$ 20,000.0							
Interim DIP Facility - Beginning Balance	\$ -	\$ 240.5	\$ 269.0	\$ 2,688.9	\$ 2,576.3	\$ 2,044.7	\$ 2,044.7							
Draw / (Paydown)	240.5	28.5	2,420.0	(112.6)	(531.6)	(236.5)								
Interim DIP Facility - Ending Balance	\$ 240.5	\$ 269.0	\$ 2,688.9	\$ 2,576.3	\$ 2,044.7	\$ 1,808.2								
Cash Reserve Account - Beginning Balance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -							
Additions / (Reductions) in Cash Reserve Account	-	-	-	-	-	-	-							
Cash Reserve Account - Ending Balance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -							
Interim DIP Availability	\$ 19,759.5	\$ 19,731.0	\$ 17,311.1	\$ 17,423.7	\$ 17,955.3	\$ 18,191.8								
Cash Reserve Account	-	-	-	-	-	-								
Total Availability	\$ 19,759.5	\$ 19,731.0	\$ 17,311.1	\$ 17,423.7	\$ 17,955.3	\$ 18,191.8								
Final DIP - Beginning Balance							\$ 258,551.9	\$ 263,813.8	\$ 262,488.5	\$ 261,913.6	\$ 262,413.1	\$ 266,157.4	\$ 265,095.9	
Final DIP - Revolver (Paydown) / Draws							5,261.9	(1,325.3)	(574.9)	499.5	3,744.3	(1,061.4)	75.9	
Final DIP - Ending Balance							\$ 263,813.8	\$ 262,488.5	\$ 261,913.6	\$ 262,413.1	\$ 266,157.4	\$ 265,095.9	\$ 265,171.8	
Beginning Cash balance	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0
Ending Cash balance	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0	\$ 2,000.0
DIP borrowing availability							\$ 42,592.9	\$ 43,918.2	\$ 44,493.1	\$ 40,536.5	\$ 36,792.1	\$ 37,853.6	\$ 37,777.7	
Indenture borrowing availability	\$ 28,276.1	\$ 28,247.7	\$ 24,740.7	\$ 24,853.4	\$ 25,385.0	\$ 25,621.4	\$ 20,359.6	\$ 21,684.9	\$ 22,259.8	\$ 21,760.3	\$ 18,016.0	\$ 19,077.4	\$ 19,001.6	
Effective Borrowing Availability	\$ 19,759.5	\$ 19,731.0	\$ 17,311.1	\$ 17,423.7	\$ 17,955.3	\$ 18,191.8	\$ 20,359.6	\$ 21,684.9	\$ 22,259.8	\$ 21,760.3	\$ 18,016.0	\$ 19,077.4	\$ 19,001.6	
Total Liquidity	\$ 21,759.5	\$ 21,731.0	\$ 19,311.1	\$ 19,423.7	\$ 19,955.3	\$ 20,191.8	\$ 22,359.6	\$ 23,684.9	\$ 24,259.8	\$ 23,760.3	\$ 20,016.0	\$ 21,077.4	\$ 21,001.6	

(1) Primarily consists of ordinary course professionals, travel and entertainment, aircraft related costs and other general G&A items.
Note: Week one starts as of the Petition Date