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# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION
**Washington, D.C. 20549**

# FORM 10-K

☒ **Annual Report Pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934**

**For the Fiscal Year Ended December 31, 2009**

☐ **Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**For the Transition Period from _____ to _____**

**Commission File Number 1-5581**

# WATSCO, INC.
**(Exact name of registrant as specified in its charter)**

| **FLORIDA** | **59-0778222** |
|---|---|
| **(State or other jurisdiction of incorporation or organization)** | **(I.R.S. Employer Identification No.)** |

**2665 South Bayshore Drive, Suite 901, Coconut Grove, FL 33133**
**(Address of principal executive offices, including zip code)**

**(305) 714-4100**
**(Registrant's telephone number, including area code)**

**Securities registered pursuant to Section 12(b) of the Act:**

| Title of each class | Name of each exchange on which registered |
|---|---|
| **Common stock, $.50 par value** | **New York Stock Exchange** |
| **Class B common stock, $.50 par value** | **NYSE Amex** |

**Securities registered pursuant to section 12(g) of the Act: None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES ☒ NO ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. YES ☐ NO ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities and Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES ☒ NO ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form l0-K or any amendment to this Form l0-K. ☒

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES ☐ NO ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

| | | | |
|---|---|---|---|
| Large accelerated filer | ☒ | Accelerated filer | ☐ |
| Non-accelerated filer | ☐ | Smaller reporting company | ☐ |

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). YES ☐ NO ☒

The aggregate market value of the registrant's voting stock (common stock) held by non-affiliates of the registrant as of June 30, 2009, the last business day of the registrant's most recently completed second fiscal quarter, was approximately $1,206 million, based on the closing sale price of the registrant's common stock on that date. For purposes of determining this number all executive officers and directors of the registrant as of June 30, 2009 are considered to be affiliates of the registrant. This number is provided only for the purposes of this report on Form 10-K and does not represent an admission by either the registrant or any such person as to the status of such person.

The number of shares of common stock outstanding as of February 24, 2010 was 27,998,454 shares of Common stock, excluding treasury shares of 6,322,650, and 4,333,489 shares of Class B common stock, excluding treasury shares of 48,263.

DOCUMENTS INCORPORATED BY REFERENCE

Certain information required by Parts I and II is incorporated by reference from the 2009 Annual Report, attached hereto as Exhibit 13. The information required by Part III (Items 10, 11, 12, 13 and 14) will be incorporated by reference from the Registrant's definitive proxy statement (to be filed pursuant to Regulation 14A).

**WATSCO, INC. AND SUBSIDIARIES**

**Index to 2009 Annual Report**
**on Form 10-K**
**Year Ended December 31, 2009**

# PART I

## ITEM 1. BUSINESS

### General

Watsco, Inc. and its subsidiaries (collectively, "Watsco," which may be referred to as *we, us* or *our*) was incorporated in 1956 and is the largest distributor of air conditioning, heating and refrigeration equipment and related parts and supplies ("HVAC/R") in the HVAC/R distribution industry. Our revenues in HVAC/R distribution have increased from $64 million in 1989 to $2 billion in 2009 via a strategy of acquiring companies with established market positions and subsequently building revenue and profit through a combination of adding locations, products, services and other initiatives.

On July 1, 2009, we completed the formation of a joint venture with Carrier Corporation ("Carrier") to distribute Carrier, Bryant and Payne products throughout the U.S. Sunbelt, Latin America and the Caribbean. In the formation of the joint venture, Carrier contributed 95 locations in the U.S. Sunbelt and Puerto Rico and the export division located in Miami, Florida and we contributed 15 locations that currently distribute Carrier, Bryant and Payne products. We purchased a 60% controlling interest in the joint venture with options to purchase up to an additional 20% interest from Carrier (10% beginning in July 2012 and an additional 10% in July 2014). Of our existing network, the newly formed joint venture, Carrier Enterprise, LLC ("Carrier Enterprise"), represents 110 locations in 20 states and Puerto Rico and serves over 19,000 air conditioning and heating contractors. Including Carrier Enterprise, we currently operate from 505 locations in 36 states and serve over 50,000 customers.

Our principal executive office is located at 2665 South Bayshore Drive, Suite 901, Coconut Grove, Florida 33133, and our telephone number is (305) 714-4100. Our website address on the Internet is www.watsco.com and e-mails may be sent to info@watsco.com.

### Residential Central Air Conditioning, Heating and Refrigeration Industry

The HVAC/R distribution industry is highly fragmented with over 1,300 distribution companies. The industry is well-established having its primary period of growth during the post-World War II era with the advent of affordable central air conditioning and heating systems for residential applications.

Based on data published in 2009 by the Air Conditioning, Heating and Refrigeration Institute ("AHRI") and other available data, we estimate the market for residential central air conditioning, heating and refrigeration equipment and related parts and supplies in the United States is approximately $22 billion. Residential central air conditioners are manufactured primarily by seven major companies that together account for approximately 90% of all units shipped in the United States each year. These companies are: Carrier, a unit of United Technologies Corporation, Goodman Manufacturing Company, L.P. ("Goodman"), a subsidiary of Goodman Global, Inc., Rheem Manufacturing Company ("Rheem"), Trane Inc. ("Trane"), a subsidiary of Ingersoll-Rand Company Limited, York International Corporation ("York"), a subsidiary of Johnson Controls, Inc., Lennox International, Inc. ("Lennox") and Nordyne Corporation ("Nordyne"), a subsidiary of Nortek Corporation. These manufacturers distribute their products through a combination of factory-owned and independent distributors who, in turn, supply the equipment and related parts and supplies to contractors and dealers nationwide that sell to and install the products for the consumer and other end-users.

Residential central air conditioning and heating equipment is sold to both the replacement and the new construction markets. The replacement side of the market has increased in size relative to the total market over the past several years as a result of the aging of the installed base of residential central air conditioners and furnaces, the introduction of new higher energy efficient models, the remodeling and expansion of existing homes, the addition of central air conditioning to homes that previously had only heating products and consumers' overall unwillingness to live without air conditioning or heating products. According to industry data published by the AHRI, over 120 million central air conditioning units and furnaces have been installed in the United States in the past 20 years. Many of these installed units have reached the end of their useful lives, thus providing a growing and stable replacement market. The mechanical life of central air conditioning and furnaces varies by geographical region due to usage and is estimated to range from 8 to 20 years.

We also sell products to the refrigeration market. Such products include condensing units, compressors, evaporators, valves, refrigerant, walk-in coolers and ice machines for industrial and commercial applications. We distribute products manufactured by Copeland Compressor Corporation, a subsidiary of Emerson Electric Co. ("Emerson"), E. I. Du Pont De Nemours and Company ("DuPont"), Mueller Industries, Inc., Owens Corning Insulating Systems, LLC and The Manitowoc Company, Inc. ("Manitowoc").

### Business Strategy

We have a "buy and build" strategy that has produced substantial long-term growth in sales and profits. The "buy" component of the strategy focuses on acquiring existing market leaders either by expanding into new geographic areas or gaining additional market share in existing markets. We employ a disciplined and conservative approach that seeks opportunities that fit well-defined financial and strategic criteria. The "build" component of the strategy focuses on implementing a growth culture at acquired companies, by adding products and locations to better serve our customers, exchanging ideas and business concepts amongst the executive management teams and investing in new technologies. Newly acquired businesses have access to our capital resources and established vendor relationships to provide their customers with an expanded array of product lines on favorable terms and conditions with an intensified commitment to service.

Strategy in Existing Markets

Our strategy for growth in existing markets focuses on customer service and product expansion to satisfy the needs of the higher growth, higher margin replacement market, where customers generally demand immediate, convenient and reliable service. In response to this need, our focus is to (i) offer a broad range of product lines, including the necessary equipment, parts and supplies to enable a contractor to install or repair a central air conditioner, furnace or refrigeration system, (ii) maintain a strong density of warehouse locations for increased customer convenience, (iii) maintain well-stocked inventories to ensure that customer orders are filled in a timely manner, (iv) provide a high degree of technical expertise at the point of sale and (v) develop and implement technology to further enhance customer service capabilities. We believe these concepts provide a competitive advantage over smaller, less-capitalized competitors who are unable to commit resources to open and maintain additional locations, implement technological business solutions, provide the same range of products, maintain the same inventory levels or attract the wide range of expertise that is required to support a diverse product offering. In some geographic areas we believe we have a competitive advantage over factory-operated distributor networks who typically do not maintain as diversified inventories of parts and supplies and whose fewer number of warehouse locations make it more difficult to meet the time-sensitive demands of the replacement market.

In addition to the replacement market, we sell to the new construction market. We believe our reputation for reliable, high-quality service and relationships with contractors, who may serve both the replacement and new construction markets, allow us to compete effectively in these markets.

Acquisition Strategy

Our acquisition strategy is focused on acquiring businesses that complement our current presence in existing markets or establish a presence in new markets. Since 1989, we have acquired 54 HVAC/R distribution businesses, three of which currently operate as primary operating subsidiaries. In July 2009, we formed a joint venture with Carrier in which Carrier contributed 95 locations and we contributed 15 locations. The newly formed joint venture, Carrier Enterprise, operates as our fourth primary operating subsidiary. The other smaller distributors acquired have been integrated into or are under the management of the primary operating subsidiaries. We continue to pursue additional strategic acquisitions to allow further penetration in existing markets and expand into new geographic markets.

Product Line Expansion

We actively seek new or expanded territories of distribution from the key equipment suppliers. Significant relationships currently exist with Carrier, Rheem, Goodman, Nordyne and Trane. We continually evaluate new parts and supply products to support equipment sales and further enhance service to our customers. The initiative includes increasing the product offering with existing vendors and identifying new product opportunities through traditional and non-traditional supply channels. We have also introduced private-label products as a means to obtain market share and grow revenues. We believe that the private-label brand products complement the existing offerings at the selected locations based on their particular market position, price-point and customer needs.

Operating Philosophy

Our subsidiaries operate in a manner that recognizes the long-term relationships established between the distributors and their customers. Typically, the identity and culture of acquired businesses continue by retaining their historical trade-name, management team and sales organization and by continuing the product brand-name offerings. We believe this strategy builds on the value of the acquired operations by creating additional sales opportunities and is an attractive exit strategy for the existing ownership of the long-standing distribution companies targeted for acquisition.

A specialized functional support staff is maintained at our corporate headquarters to support the subsidiaries' strategies for growth in their respective markets. Such functional support includes specialists in finance, accounting, product procurement, treasury and working capital management, tax planning, risk management and safety. Certain general and administrative expenses are targeted for cost savings by leveraging the overall business volume and improving operating efficiencies.

Technology

Our technology initiatives include: (i) implementation of effective point-of-sale systems that allow timely and effective customer service, including up-to-date pricing, credit checks, credit card processing and inventory availability, (ii) enabling connectivity with our suppliers and by our customers to the relevant components of our subsidiaries' business software and (iii) developing our website, ACDoctor.com, that educates consumers about energy efficient HVAC solutions and financial incentives related to the installation of energy efficient systems and connects them with high quality contractors.

## DESCRIPTION OF BUSINESS

Products

We sell an expansive line of products and maintain a diverse mix of inventory to meet our customers' immediate needs and seek to provide products a contractor would generally require when installing or repairing a central air conditioner, furnace or refrigeration system on short notice. The cooling capacity of air conditioning units is measured in tons. One ton of cooling capacity is equivalent to 12,000 BTUs and is generally adequate to air condition approximately 500 square feet of residential space. The products we distribute consist of: (i) equipment, including residential central air conditioners ranging from 1-1/2 to 5 tons, gas, electric and oil furnaces ranging from 50,000 to 150,000 BTUs, commercial air conditioning and heating equipment and systems ranging from 1-1/2 to 25 tons, and other specialized equipment, (ii) parts, including replacement compressors, evaporator coils, motors and other component parts and (iii) supplies, including thermostats, insulation material, refrigerants, ductwork, grills, registers, sheet metal, tools, copper tubing, concrete pads, tape, adhesives and other ancillary supplies.

Sales of HVAC equipment accounted for 55% and 44% of our revenues for the years ended December 31, 2009 and 2008, respectively. Sales of other HVAC products (currently sourced from over 600 vendors) comprised 36% and 43% of our revenues for the years ended December 31, 2009 and 2008, respectively. Sales of commercial refrigeration products accounted for 9% and 13% of our revenues for the years ended December 31, 2009 and 2008, respectively.

Distribution and Sales

At December 31, 2009, we operated from 505 locations, a vast majority of which are located in regions that we believe have favorable demographic trends. We maintain large inventories at each warehouse location and either directly delivering products to customers using one of our 805 trucks or by making products available for pick-up at the location nearest to the customer. Watsco has approximately 600 commissioned salespeople, averaging 12 years or more of experience in the HVAC/R distribution industry.

Markets

The table below identifies the number of locations by state as of December 31, 2009:

| | |
|---|---|
| Florida | 101 |
| Texas | 94 |
| Georgia | 39 |
| North Carolina | 39 |
| California | 38 |
| South Carolina | 28 |
| Tennessee | 25 |
| Louisiana | 19 |
| Virginia | 18 |
| Mississippi | 13 |
| Alabama | 8 |
| Arizona | 8 |
| Missouri | 8 |
| Maryland | 7 |
| Puerto Rico | 7 |
| Arkansas | 6 |
| Kansas | 6 |
| Massachusetts | 5 |
| Oklahoma | 5 |
| Utah | 5 |
| Colorado | 3 |
| Iowa | 2 |
| Kentucky | 2 |
| Maine | 2 |
| Nebraska | 2 |
| Nevada | 2 |
| New York | 2 |
| South Dakota | 2 |
| Connecticut | 1 |
| Illinois | 1 |
| New Hampshire | 1 |
| New Jersey | 1 |
| New Mexico | 1 |
| North Dakota | 1 |
| Rhode Island | 1 |
| Vermont | 1 |
| West Virginia | 1 |
| TOTAL | 505 |

Customers and Customer Service

We currently serve over 50,000 contractors and dealers who service the replacement and new construction markets for residential and light commercial central air conditioning, heating and refrigeration systems. No single customer in 2009, 2008 or 2007 represented more than 1% of consolidated revenues. We focus on providing products where and when the customer needs them, technical support by phone or on site as required, and quick and efficient service at our locations. Increased customer convenience is also provided through e-commerce, which allows customers to access information on-line 24 hours a day, seven days a week to search for desired products, verify inventory availability, obtain pricing, place orders, check order status, schedule pickup or delivery times and make payments. We believe we compete successfully with other distributors primarily on the basis of an experienced sales organization, strong service support, high quality reputation and broad product lines.

Key Suppliers

Significant relationships are maintained with Carrier, Rheem, Goodman, Nordyne, Trane, Emerson, Manitowoc and DuPont, each a leading manufacturer of HVAC/R products in the United States. Each manufacturer has a well-established reputation of producing high-quality, competitively priced products. The manufacturers' current product offerings, quality, serviceability and brand-name recognition allow us to operate favorably relative to our competitors. To maintain brand-name recognition, the manufacturers of air conditioning and heating equipment provide national advertising and participate with us in cooperative advertising programs and promotional incentives that are targeted to both contractors and end-users. We estimate that the replacement market for air conditioning products currently accounts for approximately 85% of industry sales in the United States and is expected to increase as units installed in the past 20 years wear out and get replaced or updated to more energy-efficient models as well as the significant decline in sales to the new construction market.

As a result of the formation of Carrier Enterprise, our purchases from Carrier and its affiliates comprised 41% of all purchases made during 2009. Purchases made from Carrier and its affiliates were 13% and 11% of all purchases made in 2008 and 2007, respectively. Approximately 66%, 48% and 48% of purchases in 2009, 2008 and 2007, respectively, were made from the six key HVAC/R equipment suppliers. A significant interruption in the delivery of these products could impair our ability to continue to maintain current inventory levels and could adversely affect our financial results. Future financial results are also materially dependent upon the continued market acceptance of these manufacturers' products and their ability to continue to manufacture products that comply with laws relating to environmental and efficiency standards. See "Business Risk Factors" in Item 1A. We believe that sales of other complementary equipment products and continued emphasis to expand sales of parts and supplies are mitigating factors against such risks.

Distribution Agreements

Distribution agreements have been executed with several of our key suppliers either on an exclusive or non-exclusive basis for terms generally ranging from one to ten years. Certain of the distribution agreements contain provisions that restrict or limit the sale of competitive products in the markets served. Other than the markets where such restrictions and limitations may apply, we may distribute other manufacturers' lines of air conditioning or heating equipment.

Carrier Enterprise maintains separate and distinct trade names and distributor agreements with Carrier. These agreements allow Carrier Enterprise to distribute certain HVAC products on an exclusive basis in select territories and use certain trade names associated with the products it distributes. See *Supplier Concentration* in "Business Risk Factors" in Item 1A.

Seasonality

Sales of residential central air conditioners, heating equipment and parts and supplies have historically been seasonal. See "Business Risk Factors" in Item 1A.

Competition

We operate in highly competitive environments. See "Business Risk Factors" in Item 1A.

**Employees**

There were approximately 4,050 employees as of December 31, 2009, substantially all of which are non-union employees. Most of these employees are employed on a full-time basis and relations with employees are good.

**Order Backlog**

Order backlog is not a material aspect of the business and no material portion of the business is subject to government contracts.

**Government Regulations, Environmental and Health and Safety Matters**

Our business is subject to federal, state and local laws and regulations relating to the storage, handling, transportation and release of hazardous materials into the environment. These laws and regulations include the Clean Air Act, relating to minimum energy efficiency standards of HVAC systems and the production, servicing and disposal of certain ozone-depleting refrigerants used in such systems, including those established at the Montreal Protocol in 1992 concerning the phase-out of the production of CFC-based refrigerants on January 1, 2010 for use in new equipment. We are also subject to regulations concerning the transport of hazardous materials, including regulations adopted pursuant to the Motor Carrier Safety Act of 1990. Our operations are also subject to health and safety requirements including the Occupational, Safety and Health Act. Management believes that the business is operated in substantial compliance with all applicable federal, state and local provisions relating to the protection of the environment, transport of hazardous materials and health and safety requirements.

**Non-U.S. Operations**

All of our operations are within the United States and Puerto Rico. Products are sold on an export-only basis to portions of Latin America and the Caribbean Basin and export sales are approximately 4% of total revenues. We do not have any international locations.

## ADDITIONAL INFORMATION

Filings with the Securities and Exchange Commission

As a public company, we regularly file reports and proxy statements with the Securities and Exchange Commission ("SEC"). These reports are required by the Securities Exchange Act of 1934 and include, but are not limited to:

- annual reports on Form 10-K;
- quarterly reports on Form 10-Q;
- current reports on Form 8-K and
- proxy statements on Schedule 14A.

The public may read and copy any of the materials we file with the SEC at the SEC's Public Reference Room at 100 F. Street N.E., Washington, DC 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site at www.sec.gov that contains the reports, proxy and information statements, and other information that we file electronically.

We make available free of charge access to our SEC filings as soon as reasonably practicable after such materials are electronically filed with or furnished to the SEC through our website at www.watsco.com. Other reports filed with the SEC under the Securities Exchange Act of 1934, as amended, are also available including the proxy statements and reports filed by officers and directors under Section 16(a) of that Act. These reports may be found on our website by selecting the option entitled "SEC Filings" under the "Investor Relations" section of the website. The reference to our website address does not constitute incorporation by reference of the information contained on our website and should not be considered part of this document.

Corporate Governance

An Employee Code of Business Ethics and Conduct that is applicable to all employees and a Code of Conduct for Executives that is applicable to members of our Board of Directors, executive officers and senior operating and financial personnel and any others designated by the Audit Committee are maintained . These codes require continued observance of high ethical standards such as honesty, integrity and compliance with laws. These codes are publicly available on our website at www.watsco.com under the caption "Codes of Conduct" within the "Governance" section. We intend to post on our website amendments to or waivers from our Code of Conduct for Executives (to the extent applicable to our chief executive officer, principal financial officer or principal accounting officer or directors). There were no material amendments or waivers from our Code of Conduct for Senior Executives in 2009. These materials may also be requested in print by writing to Watsco, Inc., Investor Relations, 2665 South Bayshore Drive, Suite 901, Coconut Grove, FL 33133.

## ITEM 1A. RISK FACTORS

**Business Risk Factors**

Joint Venture with Carrier Corporation

On July 1, 2009, we completed the formation of Carrier Enterprise to distribute Carrier, Bryant and Payne products throughout the U.S. Sunbelt, Latin America and the Caribbean. Carrier Enterprise operates 110 locations in 20 states and Puerto Rico and serves over 19,000 air conditioning and heating contractors. In the formation of the joint venture, Carrier contributed 95 locations in the U.S. Sunbelt and Puerto Rico and the export division located in Miami, Florida and we contributed 15 locations that currently distribute Carrier, Bryant and Payne products. We purchased a 60% controlling interest in Carrier Enterprise for consideration of $172.0 million and a fair value of $181.5 million with options to purchase up to an additional 20% interest from Carrier (10% beginning in July 2012 and an additional 10% in July 2014).

We issued 3,080,469 shares of our common stock on July 1, 2009, having a fair value of $151.1 million to Carrier, which diluted our existing shareholders' ownership interest, and contributed 15 locations that presently sell Carrier-manufactured products as consideration for our 60% controlling interest in Carrier Enterprise. The formation of Carrier Enterprise involves a number of risks, including the following:

- its successful operation and/or integration;
- dependence on one key supplier and

- possible loss of key employees and/or customer relationships.

Continuing Decline in Economic Conditions

The global and U.S. economy has experienced a significant contraction, with an almost unprecedented lack of availability of business and consumer credit. We rely on the capital markets as well as the credit markets to meet our financial commitments and short-term liquidity needs if internal funds are not available from our operations. Long-term disruptions in the capital and credit market, similar to those that have been experienced during 2008 and 2009 could adversely affect our access to liquidity needed for our business. Any long-term disruption could require us to take measures to conserve cash until the markets stabilize or until alternative credit arrangements or other funding for our business needs can be arranged. Such measures could include reducing or eliminating dividend payments, deferring capital expenditures and reducing or eliminating discretionary uses of cash.

The decline in economic conditions and lack of availability of business and consumer credit could have an adverse effect on our business. Capital and credit market disruptions could cause broader economic downturns, which may lead to lower demand for our products and increased incidence of customers' inability to pay their accounts. Further, bankruptcies or similar events by customers may cause us to incur bad debt expense at levels higher than historically experienced. Also, our suppliers may potentially be impacted causing disruption or delay of product availability. These events would adversely impact our results of operations, cash flows and financial position. Additionally, if financial institutions that have extended credit commitments to us are adversely affected by the conditions of the capital and credit markets, they may become unable to fund borrowings under their credit commitments to us, which could have an adverse impact on our financial condition and our ability to borrow funds, if needed, for working capital, acquisitions, capital expenditures and other corporate purposes.

Supplier Concentration

We maintain distribution agreements with our key equipment suppliers, either on an exclusive or non-exclusive basis, for terms generally ranging from one to ten years. Certain of the distribution agreements contain provisions that restrict or limit the sale of competitive products in the markets served. Other than the markets where such restrictions and limitations may apply, we may distribute other manufacturers' lines of air conditioning or heating equipment. As a result of the formation of a joint venture with Carrier, our purchases from Carrier and its affiliates comprised 41% of all purchases made during 2009. Significant relationships currently exist with six of the seven; and purchases from these equipment suppliers, including Carrier, comprised 66% of all purchases made in 2009. Given the significant concentration of our supply chain, particularly with Carrier, any significant interruption by the manufacturers or a termination of a distribution agreement could temporarily disrupt the operations of certain subsidiaries. Future results of operations are also materially dependent upon the continued market acceptance of these manufacturers' products and their ability to continue to manufacture products that comply with laws relating to environmental and efficiency standards.

Risks Inherent in Acquisitions

As part of our strategy, we intend to pursue additional acquisitions of complementary businesses. If we complete future acquisitions, we may be required to incur or assume additional debt and/or issue additional shares of our common stock as consideration, which will dilute our existing shareholder's ownership interest and may affect our results of operations. Growth through acquisitions involves a number of risks, including the following:

- the ability to identify and consummate complementary acquisition candidates;
- the successful operation and/or integration of acquired companies in an effective manner;
- diversion of management's attention from other daily functions;
- issuance by us of equity securities that would dilute ownership of our existing shareholders;
- incurrence and/or assumption of significant debt and contingent liabilities; and
- possible loss of key employees and/or customer relationships of the acquired companies.

Competition

We operate in highly competitive environments. We compete with a number of distributors and also with several air conditioning and heating equipment manufacturers that distribute a significant portion of their products through their own distribution organizations in certain markets. Competition within any given geographic market is based upon product availability, customer service, price and quality. Competitive pressures or other factors could cause our products or services to lose market acceptance or result in significant price erosion, all of which would have a material adverse effect on profitability.

Seasonality

Sales of residential central air conditioners, heating equipment and parts and supplies have historically been seasonal. Furthermore, profitability can be impacted favorably or unfavorably based on the severity or mildness of weather patterns during summer or winter selling seasons. Demand related to the residential central air conditioning replacement market is highest in the second and third quarters with demand for heating equipment usually highest in the fourth quarter. Demand related to the new construction sectors throughout most of the markets is fairly even during the year except for dependence on housing completions and related weather and economic conditions.

Dependence on Key Personnel

We are highly dependent on the skills, experience and services of key personnel. The loss of key personnel could have a material adverse effect on our business, operating results or financial condition. Our potential growth and expansion are expected to place increased demands on our management skills and resources. Therefore, our success also depends upon our ability to recruit, hire, train and retain additional skilled and experienced management personnel. Employment and retention of qualified personnel is important due to the competitive nature of our industry.

**General Risk Factors**

Goodwill and Intangibles

At December 31, 2009, goodwill and intangibles represented approximately 31% of total assets. Goodwill and indefinite lived intangibles are no longer amortized and are subject to impairment testing at least annually using a fair value based approach. The identification and measurement of impairment involves the estimation of the fair value of the reporting unit. Accounting for impairment contains uncertainty because management must use judgment in determining appropriate assumptions to be used in the measurement of fair value. The estimates of fair value of the reporting unit are based on the best information available as of the date of the assessment and incorporate management assumptions about expected future cash flows and contemplate other valuation techniques. Future cash flows can be affected by changes in the industry, a declining economic environment or market conditions.

The recoverability of goodwill and indefinite lived intangibles is evaluated at least annually and when events or changes in circumstances indicate that the carrying amount of goodwill and indefinite lived intangibles may not be recoverable. Although no impairment has been recorded to date, there can be no assurances that future impairments will not occur.

Risks Related to Insurance Coverage

We carry general liability, comprehensive property damage, workers' compensation, health benefits and other insurance coverage that management considers adequate for the protection of its assets and operations. There can be no assurance, however, that the coverage limits of such policies will be adequate to cover losses and expenses for lawsuits brought or which may be brought against us. A loss in excess of insurance coverage could have a material adverse effect on our financial position and/or profitability. Certain self-insurance risks for casualty insurance programs and health benefits are retained and reserves are established based on claims filed and estimates of claims incurred but not yet reported. Assurance cannot be provided that actual claims will not exceed present estimates. Exposure to catastrophic losses has been limited by maintaining excess and aggregate liability coverage and implementing loss control programs.

Control by Existing Shareholder

As of December 31, 2009, Albert H. Nahmad, our Chairman and Chief Executive Officer, and a limited partnership controlled by him, collectively had beneficial ownership of approximately 54% of the combined voting power of the outstanding Common stock and Class B common stock. Based on Mr. Nahmad's stock ownership and the stock ownership of the limited partnership controlled by him, Mr. Nahmad has the voting power to elect all but three members of the nine-person Board of Directors and to control most corporate actions requiring shareholder approval.

Information about Forward-Looking Statements

This Form 10-K contains or incorporates by reference statements that are not historical in nature and that are intended to be, and are hereby identified as, "forward-looking statements" as defined in the Private Securities Litigation Reform Act of 1995, including statements regarding, among other items, (i) business and acquisition strategies, (ii) potential acquisitions, (iii) financing plans and (iv) industry, demographic and other trends affecting our financial condition or results of operations. These forward-looking statements are based largely on management's current expectations and are subject to a number of risks, uncertainties and changes in circumstances, certain of which are beyond their control.

Actual results could differ materially from these forward-looking statements as a result of several factors, including:

- general economic conditions;

- competitive factors within the HVAC/R industry;
- effects of supplier concentration;
- fluctuations in certain commodity costs;
- consumer spending;
- consumer debt levels;
- new housing starts and completions;
- capital spending in the commercial construction market;
- access to liquidity needed for operations;
- seasonal nature of product sales;
- weather conditions;
- insurance coverage risks;
- federal, state and local regulations impacting our industry and products;
- prevailing interest rates; and
- the continued viability of our business strategy.

In light of these uncertainties, there can be no assurance that the forward-looking information contained herein will be realized or, even if substantially realized, that the information will have the expected consequences or effects on Watsco or its business or operations. A discussion of certain of these risks and uncertainties that could cause actual results to differ materially from those predicted in such forward-looking statements is included in our 2009 Annual Report in the section captioned "Management's Discussion and Analysis of Financial Condition and Results of Operations," which section has been incorporated in the Form 10-K by reference. Forward-looking statements speak only as of the date the statement was made. Watsco assumes no obligation to update forward-looking information or the discussion of such risks and uncertainties to reflect actual results, changes in assumptions or changes in other factors affecting forward-looking information.

## ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

## ITEM 2. PROPERTIES

Our main properties include warehousing and distribution facilities, trucks and administrative office space.

Warehousing and Distribution Facilities

At December 31, 2009, we operated 505 warehousing and distribution facilities across 36 states and Puerto Rico having approximately 12.4 million square feet of space in the aggregate of which approximately 11.9 million square feet is leased. The majority of these leases are for terms of three to five years. We believe that our facilities are generally sufficient to meet our present operating needs.

Trucks

At December 31, 2009, we operated 805 ground transport vehicles, including delivery and pick-up trucks, vans and tractors. Of this number, 508 trucks were leased and the rest were owned. We believe that the present size of our truck fleet is adequate to support our operations.

Administrative Facility

Senior management and a functional support staff are located at our corporate headquarters in Coconut Grove, Florida in approximately 6,000 square feet of owned space.

Capital Expenditures

During 2009, our capital expenditures were $5.9 million.

## ITEM 3. LEGAL PROCEEDINGS

We are involved in litigation incidental to the operation of our business. We vigorously defend all matters in which we or our subsidiaries are named defendants and, for insurable losses, maintain significant levels of insurance to protect against adverse judgments, claims or assessments that may affect us. Although the adequacy of existing insurance coverage or the outcome of any legal proceedings cannot be predicted with certainty, based on the current information available, we do not believe the ultimate liability associated with any known claims or litigation will have a material impact to our financial condition or results of operations.

## ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of security holders during the fourth quarter of the year ended December 31, 2009.

# PART II

## ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our 2009 Annual Report contains "Information on Common Stock," which identifies the market on which our common stocks are being traded and contains the high and low sales prices and dividend information for the years ended December 31, 2009 and 2008, and is incorporated herein by reference.

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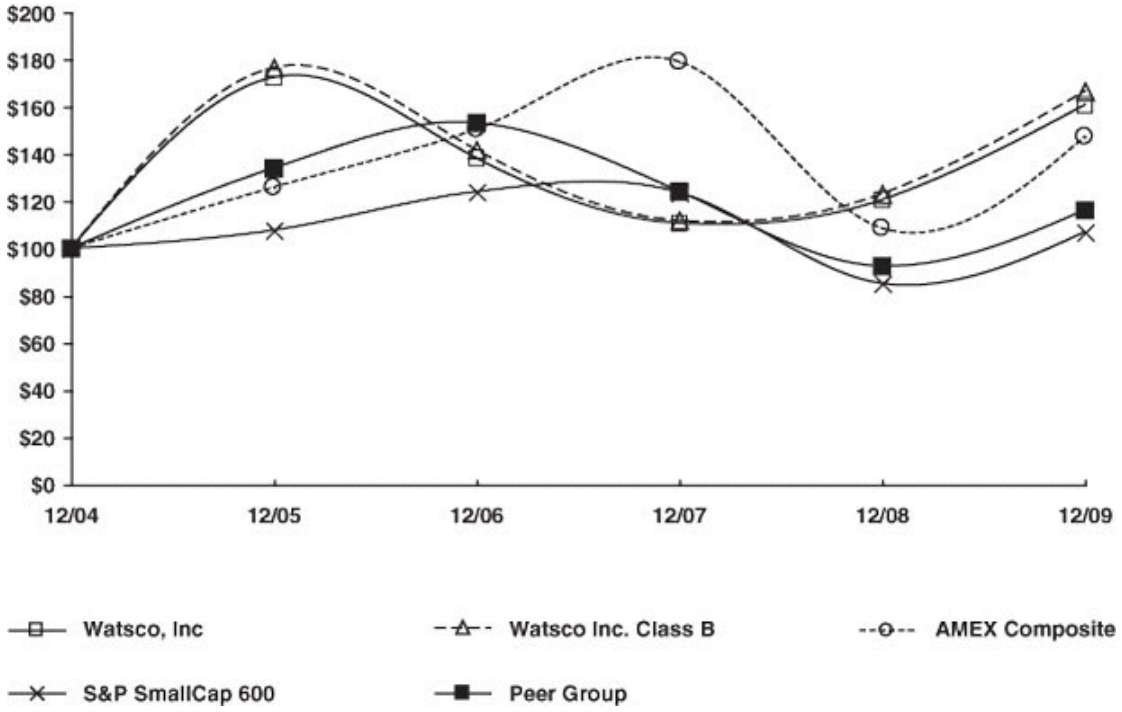
**Performance Graph**

The following graph compares the cumulative five-year total return attained by shareholders on our Common stock and Class B common stock relative to the cumulative total returns of the AMEX Composite index, the S&P SmallCap 600 index and a customized peer group of companies, which are: Beacon Roofing Supply, Inc., Interline Brands, Inc., Lennox International Inc., Pool Corp and WESCO International, Inc. An investment of $100 (with reinvestment of all dividends) is assumed to have been made in our common stock, in each index and in the peer group on December 31, 2004 and its relative performance is tracked through December 31, 2009.

**COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN***
**Among Watsco, Inc., the AMEX Composite Index, the S&P SmallCap 600 Index and a Peer Group**




| | 12/04 | 12/05 | 12/06 | 12/07 | 12/08 | 12/09 |
|---|---|---|---|---|---|---|
| Watsco, Inc. | 100.00 | 172.32 | 138.18 | 110.64 | 120.54 | 160.67 |
| Watsco, Inc. Class B | 100.00 | 176.40 | 141.68 | 111.85 | 123.05 | 166.44 |
| AMEX Composite | 100.00 | 125.80 | 150.40 | 178.95 | 108.56 | 147.27 |
| S&P SmallCap 600 | 100.00 | 107.68 | 123.96 | 123.59 | 85.19 | 106.97 |
| Peer Group | 100.00 | 133.92 | 153.07 | 124.15 | 92.53 | 116.17 |

* *The stock price performance included in this graph is not necessarily indicative of future stock price performance.*

**Purchases of Equity Securities by the Issuer and Affiliated Purchasers**

Our Board of Directors have authorized the repurchase, at management's discretion, of 7.5 million shares of common stock in the open market or via private transactions. Through December 31, 2009, 6.4 million shares of Common and Class B common stock have been repurchased at a cost of $114.4 million since the inception of the program. The remaining 1.1 million shares authorized for repurchase are subject to certain restrictions included in our revolving credit agreement. During the quarter ended December 31, 2009, there were no purchases of our equity securities made by us or on our behalf by any "affiliated purchaser" (as such term is defined in Rule 10b-18(a)(3) of the Securities Act of 1933, as amended).

**Recent Sales of Unregistered Securities**

No sales of unregistered securities were made during the fourth quarter of the year ended December 31, 2009.

**Dividends**

Cash dividends per share of $1.89, $1.75 and $1.31 for Common stock and Class B common stock were paid in 2009, 2008 and 2007, respectively. Future dividends will be at the sole discretion of the Board of Directors and will depend upon such factors as profitability, financial condition, cash requirements, restrictions existing under our debt agreement, future prospects and other factors deemed relevant by our Board of Directors.

## ITEM 6. SELECTED FINANCIAL DATA

Our 2009 Annual Report contains "Selected Consolidated Financial Data" and is incorporated herein by reference.

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Our 2009 Annual Report contains "Management's Discussion and Analysis of Financial Condition and Results of Operations" and is incorporated herein by reference.

## ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our 2009 Annual Report contains "Quantitative and Qualitative Disclosures about Market Risk" and is incorporated herein by reference.

## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Our 2009 Annual Report contains the 2009 and 2008 Consolidated Balance Sheets and other consolidated financial statements for the years ended December 31, 2009, 2008 and 2007, together with the reports thereon (for the applicable periods covered by their reports) of KPMG LLP dated February 26, 2010, and Grant Thornton LLP dated February 27, 2009, and are incorporated herein by reference.

Our 2009 Annual Report contains "Selected Quarterly Financial Data" for 2009 and 2008 and is incorporated herein by reference.

## ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

There were no disagreements with accountants on accounting or financial disclosures during the last three fiscal years. On June 23, 2009, the Board of Directors of the Company and its Audit Committee dismissed Grant Thornton LLP as the Company's independent registered public accounting firm and engaged KPMG LLP to serve as the Company's new independent registered public accounting firm. For more information with respect to this matter, see our Current Report on Form 8-K dated June 22, 2009.

## ITEM 9A. CONTROLS AND PROCEDURES

**Evaluation of Disclosure Controls and Procedures**

We performed an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this report. This evaluation was performed under the supervision and with the participation of management, including our Chief Executive Officer, Senior Vice President and Chief Financial Officer. Based upon that evaluation, our Chief Executive Officer, Senior Vice President and Chief Financial Officer concluded that our disclosure controls and procedures are effective. Disclosure controls and procedures are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Securities Exchange Act of 1934 is accumulated and communicated to management, including our Chief Executive Officer, Senior Vice President and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure and are effective to provide reasonable assurance that such information is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms.

**Management's Report on Internal Control over Financial Reporting**

Our 2009 Annual Report contains "Management's Report on Internal Control over Financial Reporting" and the report thereon of KPMG LLP dated February 26, 2010, and is incorporated herein by reference .

**Changes in Internal Control over Financial Reporting**

We are continuously seeking to improve the efficiency and effectiveness of our operations and of our internal controls. This results in refinements to processes throughout the Company. However, there have been no changes in internal controls over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter ended December 31, 2009, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. In accordance with the rules and regulations of the Securities and Exchange Commission, we have not yet assessed the internal control over financial reporting of the 95 locations added by Carrier Enterprise on July 1, 2009, which represents approximately 43% of our total consolidated assets at December 31, 2009 and approximately 29% of revenues for the year ended December 31, 2009. From the acquisition date to December 31, 2009, the processes and systems of Carrier Enterprise were discrete and did not impact internal controls over financial reporting for our other consolidated subsidiaries.

## ITEM 9B. OTHER INFORMATION

None.

## PART III

This part of Form 10-K, which includes items 10 through 14, is omitted because we will file definitive proxy material pursuant to Regulation 14A not more than 120 days after the close of our year-end, which proxy material will include the information required by Items 10 through 14 and is incorporated herein by reference.

## PART IV

## ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a)(1) Financial Statements. Our consolidated financial statements are incorporated by reference from our 2009 Annual Report.

(2) Financial Statement Schedules. The schedules are omitted because they are not applicable or the required information is shown in the consolidated financial statements or notes thereto.

(3) Exhibits. The following list of exhibits includes exhibits submitted with this Form 10-K as filed with the SEC and those incorporated by reference to other filings.

3.1 Watsco's Amended and Restated Articles of Incorporation (filed as Exhibit 3.1 to the Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2001 and incorporated herein by reference).

3.2 Watsco's Articles of Amendment to the Amended and Restated Articles of Incorporation (filed as Exhibit 3.1 to the Current Report on Form 8-K on June 4, 2009 and incorporated herein by reference).

3.3 Watsco's Bylaws (filed as Exhibit 3.2 to the Annual Report on Form 10-K for the fiscal year ended January 31, 1985 and incorporated herein by reference).

3.4 Watsco's Amendment to the Bylaws (filed as Exhibit 99.1 to the Current Report on Form 8-K on April 1, 2009 and incorporated herein by reference).

4.1 Specimen form of Class B Common Stock Certificate (filed as Exhibit 4.6 to the Registration Statement on Form S-1 (No. 33-56646) and incorporated herein by reference).

4.2 Specimen form of Common Stock Certificate (filed as Exhibit 4.4 to the Annual Report on Form 10-K for the fiscal year ended December 31, 1994 and incorporated herein by reference).

10.1 Watsco, Inc. Amended and Restated 1991 Stock Option Plan (filed as Exhibit 4.23 to the Registration Statement on Form S-8 (333-82011) and incorporated herein by reference). +

10.2 Employment Agreement and Incentive Plan dated January 31, 1996 by and between Watsco, Inc. and Albert H. Nahmad (filed as Exhibit 10.20 to the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 1996 and incorporated herein by reference). +*

10.3 First Amendment dated January 1, 2001 to Employment Agreement and Incentive Plan dated January 31, 1996 by and between Watsco, Inc. and Albert H. Nahmad (filed as Exhibit 10.13 to the Annual Report on Form 10-K for the year ended December 31, 2000 and incorporated herein by reference). +*

10.4 Second Amendment dated January 1, 2002 to Employment Agreement and Incentive Plan dated January 31, 1996 by and between Watsco, Inc. and Albert H. Nahmad (filed as Exhibit 10.15 to the Annual Report on Form 10-K for the year ended December 31, 2001 and incorporated herein by reference). +*

10.5 Third Amendment dated January 1, 2003 to Employment Agreement and Incentive Plan dated January 31, 1996 by and between Watsco, Inc. and Albert H. Nahmad (filed as Exhibit 10.11 to the Annual Report on Form 10-K for the year ended December 31, 2002 and incorporated herein by reference). +*

10.6 Fourth Amendment dated January 1, 2004 to Employment Agreement and Incentive Plan dated January 31, 1996 by and between Watsco, Inc. and Albert H. Nahmad (filed as Exhibit 10.1 to the Quarterly Report on Form 10-Q for the period ended March 31, 2004 and incorporated herein by reference). +*

10.7 Fifth Amendment dated January 1, 2005 to Employment Agreement and Incentive Plan dated January 31, 1996 by and between Watsco, Inc. and Albert H. Nahmad (filed as Exhibit 10.1 to the Quarterly Report on Form 10-Q for the period ended March 31, 2005 and incorporated herein by reference). +*

10.8 Sixth Amendment dated January 1, 2006 to Employment Agreement and Incentive Plan dated January 31, 1996 by and between Watsco, Inc. and Albert H. Nahmad (filed as Exhibit 10.16 to the Annual Report on Form 10-K for the year ended December 31, 2005 and incorporated herein by reference). +*

10.9 Watsco, Inc. 2001 Incentive Compensation Plan (filed as Exhibit I to the Definitive Proxy Statement for the year ended December 31, 2005 and incorporated herein by reference). +

10.10 Seventh Amendment dated January 1, 2007 to Employment Agreement and Incentive Plan dated January 31, 1996 by and between Watsco, Inc. and Albert H. Nahmad (filed as Exhibit 10.18 to the Annual Report on Form 10-K for the year ended December 31, 2006 and incorporated herein by reference). +*

10.11 Third Amended and Restated 1996 Qualified Employee Stock Purchase Plan dated February 27, 2007 (filed as Exhibit 1 to the Definitive Proxy Statement for the year ended December 31, 2006 and incorporated herein by reference). +

10.12 Revolving Credit Agreement dated as of August 3, 2007, by and among Watsco, Inc., as Borrower, the Lenders from Time to Time Party Thereto, Bank of America, N.A., as Administrative Agent (filed as Exhibit 10.1 to the Current Report on Form 8-K on August 6, 2007 and incorporated herein by reference).

10.13 Eighth Amendment dated January 1, 2008 to Employment Agreement and Incentive Plan dated January 31, 1996 by and between Watsco, Inc. and Albert H. Nahmad (filed as Exhibit 10.1 to the Quarterly Report on Form 10-Q for the period ended March 31, 2008 and incorporated herein by reference). +*

10.14 Ninth Amendment dated December 10, 2008 to Employment Agreement and Incentive Plan dated January 31, 1996 by and between Watsco, Inc. and Albert H. Nahmad (filed as Exhibit 10.19 to the Annual Report on Form 10-K for the year ended December 31, 2008 and incorporated herein by reference). +*

10.15 Tenth Amendment dated January 1, 2009 to Employment Agreement and Incentive Plan dated January 31, 1996 by and between Watsco, Inc. and Albert H. Nahmad (filed as Exhibit 10.1 to the Quarterly Report on Form 10-Q for the period ended March 31, 2009 and incorporated herein by reference). +*

10.16 Watsco, Inc. Amended and Restated 2001 Incentive Compensation Plan (filed as Appendix A to the Definitive Proxy Statement for the year ended December 31, 2008 and incorporated herein by reference). +

10.17 Credit Agreement dated as of July 1, 2009, by and among Carrier Enterprise, LLC, as Borrower, the Lenders that are Signatories Hereto, Wells Fargo Bank, N.A., as Administrative Agent (filed as Exhibit 10.1 to the Current Report on Form 8-K on July 8, 2009 and incorporated herein by reference).

10.18 Revolving Credit Agreement dated as of August 3, 2007 as amended by Amendment No. 1 to Revolving Credit Agreement dated July 1, 2009, by and among Watsco, Inc., as Borrower, the Lenders from Time to Time Party Thereto, Bank of America, N.A., as Administrative Agent. #

| | |
|---|---|
| 10.19 | Purchase and Contribution Agreement dated May 3, 2009 by and between Carrier Corporation and Watsco, Inc. (filed as Exhibit 2.1 to the Current Report on Form 8-K on May 7, 2009 and incorporated herein by reference). |
| 10.20 | Amendment to Purchase and Contribution Agreement dated as of June 29, 2009 by and between Carrier Corporation and Watsco, Inc. (filed as Exhibit 2.2 to the Current Report on Form 8-K on July 8, 2009 and incorporated herein by reference). |
| 10.21 | Operating Agreement of Carrier Enterprise, LLC (Amended and Restated), dated as of July 1, 2009 (filed as Exhibit 10.2 to the Current Report on Form 8-K on July 8, 2009 and incorporated herein by reference). |
| 10.22 | Shareholder Agreement by and between Watsco, Inc. and Carrier Corporation, dated as of July 1, 2009 (filed as Exhibit 10.3 to the Current Report on Form 8-K on July 8, 2009 and incorporated herein by reference). |
| 13 | 2009 Annual Report to Shareholders (with the exception of the information incorporated by reference into Items 1, 5, 6, 7 and 8 of this Form 10-K, the 2009 Annual Report to Shareholders is provided solely for the information of the SEC and is not deemed "filed" as part of this Form 10-K). # |
| 21 | Subsidiaries of the Registrant. # |
| 23.1 | Consent of Independent Registered Public Accounting Firm – KPMG LLP. # |
| 23.2 | Consent of Independent Registered Public Accounting Firm – Grant Thornton LLP. # |
| 31.1 | Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. # |
| 31.2 | Certification of Senior Vice President pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. # |
| 31.3 | Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. # |
| 32.1 | Certification of Chief Executive Officer, Senior Vice President and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. # |

Note to Exhibits:

| | |
|---|---|
| # | Submitted electronically herewith |
| + | Compensation plan or arrangement |
| * | Management contract |

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## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

WATSCO, INC.

February 26, 2010

By: /s/ Albert H. Nahmad
Albert H. Nahmad, President

February 26, 2010

By: /s/ Ana M. Menendez
Ana M. Menendez, Chief Financial Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

| SIGNATURE | TITLE | DATE |
|---|---|---|
| /S/ ALBERT H. NAHMAD<br>**Albert H. Nahmad** | Chairman of the Board and Chief Executive Officer (principal executive officer) | February 26, 2010 |
| /S/ BARRY S. LOGAN<br>**Barry S. Logan** | Senior Vice President | February 26, 2010 |
| /S/ ANA M. MENENDEZ<br>**Ana M. Menendez** | Chief Financial Officer (principal accounting officer and principal financial officer) | February 26, 2010 |
| /S/ CESAR L. ALVAREZ<br>**Cesar L. Alvarez** | Director | February 26, 2010 |
| /S/ ROBERT L. BERNER III<br>**Robert L. Berner III** | Director | February 26, 2010 |
| /S/ DENISE DICKINS<br>**Denise Dickins** | Director | February 26, 2010 |
| /S/ PAUL F. MANLEY<br>**Paul F. Manley** | Director | February 26, 2010 |
| /S/ BOB L. MOSS<br>**Bob L. Moss** | Director | February 26, 2010 |
| /S/ GEORGE P. SAPE<br>**George P. Sape** | Director | February 26, 2010 |
| /S/ GARY L. TAPELLA<br>**Gary L. Tapella** | Director | February 26, 2010 |

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## Exhibit Index

| Exhibit Number | Description |
|---|---|
| 10.18 | Revolving Credit Agreement dated as of August 3, 2007 as amended by Amendment No. 1 to Revolving Credit Agreement dated July 1, 2009, by and among Watsco, Inc., as Borrower, the Lenders from Time to Time Party Thereto, Bank of America, N.A., as Administrative Agent. |
| 13 | 2009 Annual Report to Shareholders (with the exception of the information incorporated by reference into Items 1, 5, 6, 7 and 8 of this Form 10-K, the 2009 Annual Report to Shareholders is provided solely for the information of the SEC and is not deemed "filed" as part of this Form 10-K). |
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| 23.1 | Consent of Independent Registered Public Accounting Firm – KPMG LLP. |
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| 31.2 | Certification of Senior Vice President pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 31.3 | Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 32.1 | Certification of Chief Executive Officer, Senior Vice President and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |

**Exhibit 10.18**

# REVOLVING CREDIT AGREEMENT

**dated as of August 3, 2007**
**as amended by**
**Amendment No. 1 to Revolving Credit Agreement dated July 1, 2009**

**among**

**WATSCO, INC.,**
**as Borrower,**

**THE LENDERS FROM TIME TO TIME PARTY HERETO,**

**BANK OF AMERICA, N.A.,**
**as Administrative Agent,**
**Swingline Lender and Issuing Bank,**

**J.P. MORGAN SECURITIES, INC.,**
**as Syndication Agent,**

**and**

**MIZUHO CORPORATE BANK (USA),**
**SUNTRUST BANK,**
**WELLS FARGO BANK, NATIONAL ASSOCIATION,**
**as Co-Documentation Agents**

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**BANC OF AMERICA SECURITIES, LLC,**
**as Sole Lead Arranger and Sole Book Manager**

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# REVOLVING CREDIT AGREEMENT

**THIS REVOLVING CREDIT AGREEMENT** (this "***Agreement***") is made and entered into as of August 3, 2007, by and among WATSCO, INC., a Florida corporation (the "***Borrower***"), the several banks and other financial institutions from time to time party hereto (the " ***Lenders***"), and **BANK OF AMERICA, N.A.**, a national banking association, in its capacity as Administrative Agent for the Lenders (the " ***Administrative Agent***").

## W I T N E S S E T H:

**WHEREAS**, the Borrower has requested that the Lenders establish a $300,000,000 senior revolving credit facility with a $25,000,000 swingline and a $50,000,000 letter of credit sub-facility thereunder for the Borrower;

**WHEREAS**, subject to the terms and conditions of this Agreement, the Lenders severally, to the extent of their respective Commitments, are willing to establish the requested revolving credit facility for the Borrower.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein contained, the Borrower, the Lenders and the Administrative Agent agree as follows:

## ARTICLE I

## DEFINITIONS; CONSTRUCTION

**Section 1.1 Definitions**. In addition to the other terms defined herein, the following terms used herein shall have the meanings herein specified (to be equally applicable to both the singular and plural forms of the terms defined):

"***Act***" shall mean the USA PATRIOT Act (Pub. L. No. 107-56, 115 Stat. 272 (2001)).

"***Additional Commitment Lender***" shall have the meaning assigned to such term in Section 2.23.

"***Additional Lender***" shall have the meaning assigned to such term in Section 2.8.

"***Additional Revolving Commitment Amount***" shall have the meaning assigned to such term in Section 2.8.

"***Adjusted Consolidated EBIT***" shall mean, with respect to any period, Consolidated EBIT for such period, adjusted so as to exclude from such computation (a) the results of Carrier Enterprise and (b) any deduction from Consolidated Net Income for minority interests in Carrier Enterprise, as reflected on the Borrower's audited financial statements delivered pursuant to Section 5.1(a).

"***Adjusted Consolidated EBITDA***" shall mean, with respect to any period, Consolidated EBITDA for such period, adjusted so as to exclude from such computation (a) the results of Carrier Enterprise and (b) any deduction from Consolidated Net Income for minority interests in Carrier Enterprise, as reflected on the Borrower's audited financial statements delivered pursuant to Section 5.1(a).

"***Adjusted LIBO Rate***" shall mean, with respect to each Interest Period for a Eurodollar Borrowing, the rate per annum obtained by dividing (a) LIBOR for such Interest Period by (b) a percentage equal to 1.00 *minus* the Eurodollar Reserve Percentage.

"***Administrative Agent***" shall have the meaning assigned to such term in the opening paragraph hereof.

"***Administrative Agent's Office***" shall mean the Administrative Agent's address and, as appropriate, account as set forth in Section 10.1, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

"***Administrative Questionnaire***" shall mean, with respect to each Lender, an administrative questionnaire in the form prepared by the Administrative Agent and submitted to the Administrative Agent duly completed by such Lender.

"***Affiliate***" shall mean, as to any Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person; provided that for all purposes of this Agreement (other than Section 10.4), Carrier shall be deemed not to be an Affiliate of the Borrower or any of its Subsidiaries.

"***Aggregate Revolving Commitments***" shall mean the sum of the Revolving Commitments of all Lenders at any time outstanding. On the Closing Date, the Aggregate Revolving Commitments (including the Swingline Commitment) equal $300,000,000.

"***Amendment No. 1***" shall mean Amendment No. 1 to this Agreement dated as of July 1, 2009, among the Borrower, the Administrative Agent and the Lenders party thereto.

"***Applicable Lending Office***" shall mean, for each Lender and for each Type of Loan, the "Lending Office" of such Lender (or an Affiliate of such Lender) designated for such Type of Loan in the Administrative Questionnaire submitted by such Lender or such other office of such Lender (or an Affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Borrower as the office by which its Loans of such Type are to be made and maintained.

"***Applicable Margin***" shall mean, as of any date, with respect to all Eurodollar Borrowings and Base Rate Borrowings outstanding on such date, the percentage per annum designated in the "Pricing Grid" attached hereto as Schedule I as applicable to Eurodollar Borrowings or Base Rate Borrowings, as the case may be, based on the Borrower's Leverage Ratio. The Applicable Margin for Eurodollar Borrowings shall initially be 0.5000% and the Applicable Margin for Base Rate Borrowings shall initially be 0.000%; provided, however, that upon delivery to the Administrative Agent of the financial statements required by Section 5.1(a) or (b) and the Compliance Certificate required by Section 5.1(c) for the fiscal quarter ended September 30, 2007 and for each fiscal quarter thereafter, the Applicable Margin shall be reset to the percentage designated in Schedule I based on the Borrower's Leverage Ratio for the preceding four fiscal quarter period then ending, measured quarterly, such Applicable Margin being effective as of the second Business Day following the date that the Administrative Agent receives such financial statements and certificate; provided further, however, that if at any time the Borrower shall have failed timely to deliver such financial statements and Compliance Certificate, the Applicable Margin for Eurodollar Borrowings shall be 1.125% and the Applicable Margin for Base Rate Borrowings shall be 0.125% until such time as such financial statements and Compliance Certificate are delivered, at which time the Applicable Margin shall be determined as provided above.

"***Applicable Percentage***" shall mean, as of any date, with respect to the commitment fee, the percentage per annum designated in the "Pricing Grid" attached hereto as Schedule I based on the Borrower's Leverage Ratio. The Applicable Percentage shall initially be 0.1000%; provided, however, that upon delivery to the Administrative Agent of the financial statements required by Section 5.1(a) or (b) and the Compliance Certificate required by Section 5.1(c) for the fiscal quarter September 30, 2007 and for each fiscal quarter thereafter, the Applicable Percentage shall be reset to the percentage designated in Schedule I based on the Borrower's Leverage Ratio for the preceding four fiscal quarter period then ending, measured quarterly, such Applicable Percentage being effective as of the second Business Day following the date that the Administrative Agent receives such financial statements and certificate; provided further, however, that if at any time the Borrower shall have failed timely to deliver such financial statements and Compliance Certificate, the Applicable Percentage shall be 0.2000% until such time as such financial statements and Compliance Certificate are delivered, at which time the Applicable Percentage shall be determined as provided above.

"***Approved Fund***" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"***Assignment and Assumption***" shall mean an Assignment and Assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.4(b)) and accepted by the Administrative Agent, in the form of Exhibit C attached hereto or any other form approved by the Administrative Agent.

"***Availability Period***" shall mean (a) in case of Revolving Borrowings, the period from the Closing Date to the Commitment Termination Date, and (b) in case of Swingline Borrowings, the period from the Closing Date to the Swingline Termination Date.

"***Base Rate***" shall mean the highest of (a) the per annum rate which the Administrative Agent publicly announces from time to time to be its prime lending rate, as in effect from time to time, (b) the Federal Funds Rate, as in effect from time to time, plus one-half of one percent (0.50%), and (c) LIBOR *plus* 1.50%. The Administrative Agent's prime lending rate is a reference rate and does not necessarily represent the lowest or best rate charged to customers. The Administrative Agent may make commercial loans or other loans at rates of interest at, above or below the Administrative Agent's prime lending rate. Any change in the Base Rate due to a change in the "prime rate" or the Federal Funds Rate shall take effect at the opening of business on the day specified in the public announcement of such change in the "prime rate" or the Federal Funds Rate, respectively. For the purposes of clause (c) above, LIBOR shall be determined daily in accordance with clause (b) of the definition thereof, and any change shall take effect on the day of such change.

"***Borrower***" shall have the meaning assigned to such term in the introductory paragraph hereof.

"***Borrowing***" shall mean a borrowing consisting of (a) Loans of the same Class and Type, made, converted or continued on the same date and, in case of Eurodollar Loans, as to which a single Interest Period is in effect, or (b) a Swingline Loan.

"***Business Day***" shall mean (a) any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the state where the Administrative Agent's Office is located and (b) if such day relates to a Borrowing of, a payment or prepayment of principal or interest on, a conversion of or into, or an Interest Period for, a Eurodollar Loan or a notice with respect to any of the foregoing, any day on which dealings in Dollars are carried on in the London interbank market.

"***Capital Expenditures***" shall mean for any period, without duplication, (a) the additions to property, plant and equipment and other capital expenditures of the Borrower and its Subsidiaries that are (or would be) set forth on a consolidated statement of cash flows of the Borrower and its Subsidiaries for such period prepared in accordance with GAAP and (b) Capital Lease Obligations incurred by the Borrower and its Subsidiaries during such period.

"***Capital Lease Obligations***" of any Person shall mean all obligations of such Person to pay rent or other amounts under any lease (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"***Capital Stock***" shall mean (a) in the case of a corporation, capital stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (c) in the case of a partnership, partnership interests (whether general or limited), (d) in the case of a limited liability company, membership interests and (e) 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.

"***Carrier***" shall mean Carrier Corporation, a Delaware corporation.

"***Carrier Enterprise***" shall mean (a) Carrier Enterprise, LLC, a Delaware limited liability company in which the Borrower shall own, directly or indirectly, a 60% membership interest as of the First Amendment Effective Date and (b) all Subsidiaries of Carrier Enterprise, LLC.

"***Cash Collateralize***" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Issuing Bank or Swingline Lender (as applicable) and the Lenders, as collateral for LC Exposure, Swingline Loans, or obligations of Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances pursuant to documentation in form and substance satisfactory to (a) the Administrative Agent and (b) the Issuing Bank or Swingline Lender (as applicable). " ***Cash Collateral***" shall have a meaning correlative to the foregoing.

"***Change in Control***" shall mean, at any time:

(a) With respect to the Borrower,

(i) any "person" or "group" (each as used in Sections 13(d)(3) and 14(d)(2) of the Securities Exchange Act of 1934) other than Albert Nahmad, Alna Capital Associates or a trust or other entity controlled by either of them or one of their Affiliates (each an " ***Existing Control Group***") either (A) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Securities Exchange Act of 1934), directly or indirectly, of Voting Stock of the Borrower (or securities convertible into or exchangeable for such Voting Stock) representing twenty-five percent (25%) or more of the combined voting power of all Voting Stock of the Borrower (on a fully diluted basis) or (B) otherwise has the ability, directly or indirectly, to elect a majority of the board of directors of the Borrower (provided, that if an event described in this clause (i) shall occur solely by reason of the death of one or more members of the Existing Control Group, then a "Change of Control" shall not be deemed to have occurred so long as the Voting Stock of the decedent is owned of record by the estate or immediate family of such decedent);

(ii) during any period of up to twenty-four (24) consecutive months, commencing on the Closing Date, individuals who at the beginning of such twenty-four (24)-month period were directors of the Borrower shall cease for any reason (other than the death, disability or retirement of a director or of an officer of the Borrower that is serving as a director at such time so long as another officer of the Borrower replaces such Person as a director) to constitute a majority of the board of directors of the Borrower; or

(iii) any Person or two or more Persons acting in concert other than the Existing Control Group shall have acquired by contract or otherwise, or shall have consummated a contract or arrangement that results in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence on the management or policies of the Borrower; or

(b) with respect to any Major Subsidiary,

(i) the Borrower shall cease to own, directly or indirectly, at least 100% of the Voting Stock of each currently existing Major Subsidiary or any other Subsidiary that is or becomes a Major Subsidiary after the date hereof; or

(ii) any Person or two or more Persons acting in concert other than the Borrower shall have acquired by contract or otherwise, or shall have consummated a contract or arrangement that results in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence on the management or policies of such Major Subsidiary.

"***Change in Law***" shall mean (a) the adoption of any applicable law, rule or regulation after the date of this Agreement, (b) any change in any applicable law, rule or regulation, or any change in the interpretation or application thereof, by any Governmental Authority after the date of this Agreement, or (c) compliance by any Lender (or its Applicable Lending Office) or the Issuing Bank (or for purposes of Section 2.17(b), by such Lender's or the Issuing Bank's holding company, if applicable) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

"***Class***", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Swingline Loans and when used in reference to any Commitment, refers to whether such Commitment is a Revolving Commitment or a Swingline Commitment.

"***Closing Date***" shall mean the date on which the conditions precedent set forth in Section 3.1 and Section 3.2 have been satisfied or waived in accordance with Section 10.2.

"***Code***" shall mean the Internal Revenue Code of 1986, as amended and in effect from time to time.

"***Commitment***" shall mean a Revolving Commitment or a Swingline Commitment or any combination thereof (as the context shall permit or require).

"***Commitment Termination Date***" shall mean the earliest of (a) the Scheduled Commitment Termination Date (as the same may be extended by Section 2.23), (b) the date on which the Revolving Commitments are terminated pursuant to Section 2.8 or (c) the date on which all amounts outstanding under this Agreement have been declared or have automatically become due and payable (whether by acceleration or otherwise); provided, however, that with respect to any Non-Extending Lender, the Commitment Termination Date of such Non-Extending Lender's Commitment shall be the Existing Scheduled Commitment Termination Date notwithstanding the extension of Commitments by any other Lender pursuant to Section 2.23.

"***Compliance Certificate***" shall have the meaning assigned to such term in Section 5.1(c).

"***Consolidated EBIT***" shall mean, for the Borrower and its Subsidiaries for any four-quarter period ending on the date of computation thereof, an amount equal to the sum of (a) Consolidated Net Income for such period *plus* (b) to the extent deducted in determining Consolidated Net Income for such period, (i) Consolidated Interest Expense, (ii) income tax expense and (iii) plus losses (or minus gains) related to discontinued operations of Dunhill.

"***Consolidated EBITDA***" shall mean, for the Borrower and its Subsidiaries for any four-quarter period ending on the date of computation thereof, an amount equal to the sum of (a) Consolidated Net Income for such period *plus* (b) to the extent deducted in determining Consolidated Net Income for such period, (i) Consolidated Interest Expense, (ii) income tax expense, (iii) depreciation and amortization (including non-cash, stock based compensation), and (iv) plus losses (or minus gains) related to discontinued operations of Dunhill.

"***Consolidated Interest Expense***" shall mean, for the Borrower and its Subsidiaries (other than Carrier Enterprise) for any period ending on the date of computation thereof, determined on a consolidated basis in accordance with GAAP, the sum of (a) total cash interest expense, including without limitation, the interest component of any payments in respect of Capital Lease Obligations during such period (whether or not actually paid during such period), (b) interest expense with respect to any Guaranteed Carrier Debt, *plus* (c) the net amount payable (or *minus* the net amount receivable) under Hedging Agreements during such period (whether or not actually paid or received during such period).

"***Consolidated Net Income***" shall mean, for any period, the net income (or loss) of the Borrower and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, but excluding therefrom (to the extent otherwise included therein) (a) any extraordinary gains or losses, (b) any gains attributable to write-ups of assets, (c) any equity interest of the Borrower or any Subsidiary in the unremitted earnings of any Person that is not a Subsidiary and (d) any income (or loss) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Borrower or any Subsidiary on the date that such Person's assets are acquired by the Borrower or any Subsidiary.

"***Consolidated Tangible Assets***" shall mean, on any date of computation, Consolidated Total Assets minus intangible assets of the Borrower and its Subsidiaries (excluding Carrier Enterprise) on that date.

"***Consolidated Total Assets***" shall mean, for the Borrower and its Subsidiaries for any period ending on the date of computation thereof, determined on a consolidated basis in accordance with GAAP, the aggregate book value of the assets of the Borrower and its Subsidiaries (excluding Carrier Enterprise) for such period.

"***Consolidated Total Debt***" shall mean, as of any date of determination, without duplication, all Indebtedness of the Borrower and its Subsidiaries (other than as described in subsection (k) under the definition of "Indebtedness" herein), determined on a consolidated basis in accordance with GAAP, including, but not limited to, all of the Obligations, but excluding Indebtedness of Carrier Enterprise other than Guaranteed Carrier Debt. For purposes of determining "***Consolidated Total Debt***", the principal amount of any Synthetic Lease Obligation shall be deemed to be the amount that would be reflected on the balance sheet of the Borrower and its Subsidiaries if such Synthetic Lease Obligation were characterized as a capital lease rather than an operating lease.

"***Consolidated Total Revenues***" shall mean, for the Borrower and its Subsidiaries for any period ending on the date of computation thereof, determined on a consolidated basis in accordance with GAAP, the total revenues of the Borrower and its Subsidiaries (excluding Carrier Enterprise) for such period.

"***Contractual Obligation***" shall mean, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"***Control***" shall mean the power, directly or indirectly, either to (a) vote five percent (5%) or more of securities having ordinary voting power for the election of directors (or persons performing similar functions) of a Person or (b) direct or cause the direction of the management and policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. The terms " ***Controlling***", "***Controlled by***", and "***under common Control with***" have meanings correlative thereto.

"***Default***" shall mean any condition or event that, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"***Default Excess***" has the meaning specified in Section 10.15(b).

"***Default Interest***" shall have the meaning assigned to such term in Section 2.12(c).

"***Default Period***" has the meaning specified in Section 10.15(b).

"***Defaulting Lender***" has the meaning specified in Section 10.15(b).

"***Distress Event***" has the meaning specified in Section 10.15(b).

"***Distressed Person***" has the meaning specified in Section 10.15(b).

"***Dollar(s)***" and the sign "***$***" shall mean lawful money of the United States of America.

"***Dunhill***" shall mean Dunhill Staffing Systems, Inc., a Delaware corporation and Dunhill Temporary Systems, Inc., a New York corporation.

"***Eligible Assignee***" means any Person that meets the requirements to be an assignee under Section 10.4(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 10.4(b)(iii)).

"***Environmental Laws***" shall mean all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by or with any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, Release or threatened Release of any Hazardous Material or to health and safety matters.

"***Environmental Liability***" shall mean any liability, contingent or otherwise (including any liability for damages, costs of environmental investigation and remediation, costs of administrative oversight, fines, natural resource damages, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) any actual or alleged violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) any actual or alleged exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"***ERISA***" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute.

"***ERISA Affiliate***" shall mean any trade or business (whether or not incorporated), which, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for the purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"***ERISA Event***" shall mean (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator appointed by the PBGC of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"***Eurodollar***" when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bears interest at a rate determined by reference to the Adjusted LIBO Rate.

"***Eurodollar Reserve Percentage***" shall mean the aggregate of the maximum reserve percentages (including, without limitation, any emergency, supplemental, special or other marginal reserves) expressed as a decimal (rounded upwards to the next 1/100th of 1%) in effect on any day to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate pursuant to regulations issued by the Board of Governors of the Federal Reserve System (or any Governmental Authority succeeding to any of its principal functions) with respect to eurocurrency funding (currently referred to as "eurocurrency liabilities" under Regulation D). Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D. The Eurodollar Reserve Percentage shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"***Event of Default***" shall have the meaning assigned to such term in Article VIII.

"***Excluded Taxes***" shall mean with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Borrower is located, and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.21(b)), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender's failure to comply with Section 2.19(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 2.19(a).

"***Existing Letter of Credit***" shall mean each outstanding letter of credit issued prior to the date hereof for the account of the Borrower as set forth on Schedule 2.22 and continued after the date hereof pursuant to Section 2.22. Each "*Existing Letter of Credit*" shall be a "*Letter of Credit*" for purposes of this Agreement and deemed to have been issued hereunder.

"***Existing Scheduled Commitment Termination Date***" shall have the meaning assigned to such term in Section 2.23.

"***Federal Funds Rate***" shall mean, for any day, the rate per annum (rounded upwards, if necessary, to the next 1/100th of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with member banks of the Federal Reserve System arranged by Federal funds brokers, as published by the Federal Reserve Bank of New York on the next succeeding Business Day or if such rate is not so published for any Business Day, the Federal Funds Rate for such day shall be the average rounded upwards, if necessary, to the next 1/100th of 1% of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by the Administrative Agent.

"***First Amendment Effective Date***" has the definition specified in Amendment No. 1.

"***Foreign Lender***" means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"***Fund***" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"***GAAP***" shall mean generally accepted accounting principles in the United States applied on a consistent basis and subject to the terms of Section 1.3.

"***Gemaire Caribe***" shall mean Gemaire Caribe, Inc., a Puerto Rico corporation.

"***Governmental Authority***" shall mean the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"***Guarantee***" of or by any Person (the "***guarantor***") shall mean any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the " ***primary obligor***") in any manner, whether directly or indirectly and including any obligation, direct or indirect, of the guarantor (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness of other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued in support of such Indebtedness or obligation; provided, that the term "Guarantee" shall not include endorsements for collection of deposits in the ordinary course of business. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which Guarantee is made or, if not so stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith. The term "Guarantee" used as a verb has a corresponding meaning.

"***Guaranteed Carrier Debt***" shall mean that portion of any Indebtedness of Carrier Enterprise that is guaranteed by the Borrower or any of its Subsidiaries (other than a Subsidiary of Carrier Enterprise, LLC).

"***Hazardous Materials***" shall mean all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"***Hedge Bank***" means any Person that, at the time it enters into a Secured Hedging Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Secured Hedging Agreement.

"***Hedging Agreements***" shall mean interest rate swap, cap or collar agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts, foreign exchange agreements, commodity agreements and other similar agreements or arrangements designed to protect against fluctuations in interest rates, currency values or commodity values.

"***Indebtedness***" of any Person shall mean, without duplication (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person in respect of the deferred purchase price of property or services (other than trade payables incurred in the ordinary course of business), (d) all obligations of such Person under any conditional sale or other title retention agreement(s) relating to property acquired by such Person, (e) all Capital Lease Obligations of such Person, (f) all obligations, contingent or otherwise, of such Person in respect of letters of credit, acceptances or similar extensions of credit, (g) all Guarantees of such Person of the type of Indebtedness described in clauses (a) through (f) above, (h) all Indebtedness of a third party secured by any Lien on property owned by such Person, whether or not such Indebtedness has been assumed by such Person, (i) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any common stock of such Person, (j) Off-Balance Sheet Liabilities, (k) obligations under any Hedging Agreements, and (l) all Securitization Transactions of such Person. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"***Indemnified Taxes***" shall mean Taxes other than Excluded Taxes.

"***Indemnity and Contribution Agreement***" shall mean the Indemnity, Subrogation and Contribution Agreement, substantially in the form of Exhibit E, among the Borrower, the Subsidiary Loan Parties and the Administrative Agent.

"***Interest Coverage Ratio***" shall mean as of any date of determination with respect to the Borrower, the ratio of (a) the sum of Adjusted Consolidated EBIT plus the JV EBIT Amount as of such date to (b) Consolidated Interest Expense as of such date.

"***Interest Period***" shall mean (a) with respect to any Eurodollar Borrowing, a period of one, two, three or six months, selected by the Borrower pursuant to Section 2.3 and subject to customary adjustments in duration; and (b) with respect to a Swingline Loan, a period of such duration not to exceed 5 days, as the Borrower may request and the Swingline Lender may agree in accordance with Section 2.5; provided, that:

(i) the initial Interest Period for such Borrowing shall commence on the date of such Borrowing (including the date of any conversion from a Borrowing of another Type) and each Interest Period occurring thereafter in respect of such Borrowing shall commence on the day on which the next preceding Interest Period expires;

(ii) if any Interest Period would otherwise end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day, unless, in the case of a Eurodollar Borrowing, such Business Day falls in another calendar month, in which case such Interest Period would end on the next preceding Business Day;

(iii) any Interest Period in respect of a Eurodollar Borrowing which 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 such calendar month; and

(iv) no Interest Period may extend beyond the Commitment Termination Date or the Swingline Termination Date, as the case may be.

"***Investment***" shall have the meaning assigned to such term in Section 7.4.

"***Issuing Bank***" shall mean Bank of America, N.A. or any other Lender, each in its capacity as an issuer of Letters of Credit pursuant to Section 2.22.

"***JV EBIT Amount***" shall mean, for Carrier Enterprise for any four-quarter period ending on the date of computation thereof, an amount equal to the sum of (a) consolidated net income (calculated in the manner set forth in the definition of Consolidated Net Income with respect to Carrier Enterprise rather than the Borrower and its Subsidiaries) for such period *plus* (b) to the extent deducted in determining such consolidated net income for such period, (i) consolidated interest expense for such entities (calculated in the manner set forth in the definition of Consolidated Interest Expense with respect to Carrier Enterprise rather than the Borrower and its Subsidiaries), and (ii) income tax expense *times* the Watsco Ownership Percentage; *provided however* that in no event shall the JV EBIT Amount for any such period exceed the aggregate amount of cash actually distributed by Carrier Enterprise to the Borrower during such period.

"***JV EBITDA Amount***" shall mean, for Carrier Enterprise for any four-quarter period ending on the date of computation thereof, an amount equal to the sum of (a) consolidated net income for such entities (calculated in the manner set forth in the definition of Consolidated Net Income with respect to Carrier Enterprise rather than the Borrower and its Subsidiaries) for such period *plus* (b) to the extent deducted in determining such consolidated net income for such period, (i) consolidated interest expense for such entities (calculated in the manner set forth in the definition of Consolidated Interest Expense with respect to Carrier and its Subsidiaries rather than the Borrower and its Subsidiaries), (ii) income tax expense, and (iii) depreciation and amortization (including non-cash, stock based compensation) *times* the Watsco Ownership Percentage; *provided however* that in no event shall the JV EBITDA Amount for any period exceed the aggregate amount of cash actually distributed by Carrier Enterprise to the Borrower during such period.

"***JV Operating Agreement***" shall mean the Operating Agreement of Carrier Enterprise, LLC (Amended and Restated) dated July 1, 2009.

"***LC Commitment***" shall mean that portion of the Aggregate Revolving Commitments that may be used by the Borrower for the issuance of Letters of Credit in an aggregate face amount not to exceed $50,000,000.

"***LC Disbursement***" shall mean a payment made by the Issuing Bank pursuant to a Letter of Credit.

"***LC Documents***" shall mean the Letters of Credit and all applications, agreements and instruments relating to the Letters of Credit.

"***LC Exposure***" shall mean, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements that have not been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender shall be its Pro Rata Share of the total LC Exposure at such time.

"***Lenders***" shall have the meaning assigned to such term in the opening paragraph of this Agreement and shall include, where appropriate, the Swingline Lender.

"***Letter of Credit***" shall mean each Existing Letter of Credit and any other letter of credit hereafter issued pursuant to Section 2.22 by the Issuing Bank for the account of the Borrower or any Subsidiary Loan Party pursuant to the LC Commitment.

"***Leverage Ratio***" shall mean as of any date of determination with respect to the Borrower, the ratio of (a) Consolidated Total Debt as of such date to (b) the sum of Adjusted Consolidated EBITDA plus the JV EBITDA Amount as of such date.

"***LIBOR***" shall mean,

(a) for any applicable Interest Period with respect to any Eurodollar Loan, the rate per annum equal to the British Bankers Association LIBOR Rate ("***BBA LIBOR***"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the "LIBOR" for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan, the rate per annum equal to (i) BBA LIBOR, at approximately 11:00 a.m., London time two Business Days prior to the date of determination (provided that if such day is not a Business Day, the next preceding Business Day) for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in dollars for delivery on the date of determination in same day funds in the approximate amount of the Base Rate Loan being made or maintained by Bank of America and with a term equal to one month would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at their request two Business Days prior to the date and time of determination.

"***Lien***" shall mean any mortgage, pledge, security interest, lien (statutory or otherwise), charge, encumbrance, hypothecation, assignment, deposit arrangement, or other arrangement having the practical effect of the foregoing or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having the same economic effect as any of the foregoing).

"***Loan Documents***" shall mean, collectively, this Agreement, the Notes (if any), the LC Documents, all Notices of Borrowing, the Subsidiary Guarantee Agreement, the Indemnity and Contribution Agreement, the Pledge Agreement (and any Pledge Joinder Agreement) and any and all other instruments, agreements, documents and writings executed in connection with any of the foregoing, excluding any such documents not expressly referenced in the definition of "Loan Documents" to the extent relating to the Project Orange Investment.

"***Loan Parties***" shall mean the Borrower and the Subsidiary Loan Parties.

"***Loans***" shall mean all Revolving Loans and Swingline Loans in the aggregate or any of them, as the context shall require.

"***Major Subsidiary***" shall mean, collectively, (a) Baker Distributing Company LLC, Gemaire Distributors LLC, East Coast Distributors LLC and Heating & Cooling Supply LLC, and (b) any other direct or indirect Subsidiary of the Borrower (other than Carrier Enterprise) having at any time: (i) assets in an amount equal to at least 10% of the Consolidated Total Assets of the Borrower and its Subsidiaries determined as of the last day of the most recent fiscal quarter of the Borrower as reflected in the Borrower's most recent financial statements required by Section 5.1(a) or (b); or (ii) revenues or net income in an amount equal to at least 10% of the Consolidated Total Revenues or Consolidated Net Income of the Borrower and its Subsidiaries for the 12-month period ending on the last day of the most recent fiscal quarter of the Borrower as reflected in the Borrower's most recent financial statements required by Section 5.1(a) or (b).

"***Material Adverse Effect***" shall mean, with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences whether or not related, a material adverse change in, or a material adverse effect on, (a) the business, results of operations, financial condition, assets, liabilities or prospects of the Borrower or of the Borrower and its Subsidiaries, taken as a whole, or of the Loan Parties taken as a whole, (b) the ability of the Loan Parties to perform any of their respective obligations under the Loan Documents, (c) the rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders under any of the Loan Documents or (d) the legality, validity or enforceability of any of the Loan Documents.

"***Material Agreement***" shall mean any agreement filed pursuant to Item 601(b)(10) of Regulation S-K (17 C.F.R. 229, *et seq*.) with the Borrower's most recent Annual Report on Form 10-K.

"***Material Indebtedness***" shall mean Indebtedness (other than the Loans and Letters of Credit) or obligations in respect of one or more Hedging Agreements, to a single Person and such Person's Affiliates of an aggregate principal amount exceeding $10,000,000. For purposes of determining " *Material Indebtedness*," the "principal amount" of the obligations of the Borrower or any Subsidiary in respect to any Hedging Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Hedging Agreement were terminated at such time.

"***Material Indebtedness Agreements***" shall mean each of the Prudential Shelf Agreement, any agreement or instrument evidencing Private Placement Debt, any agreement relating to a Securitization Transaction, or any other agreement relating to Material Indebtedness of the Borrower or any Subsidiary Loan Party.

"***Modification Date***" shall have the meaning assigned to such term in Section 2.23.

"***Moody's***" shall mean Moody's Investors Service, Inc., or any successor.

"***Multiemployer Plan***" shall have the meaning set forth in Section 4001(a)(3) of ERISA.

"***Non-Extending Lender***" shall have the meaning assigned to such term in Section 2.23.

"***Notes***" shall mean, collectively, the Revolving Credit Notes and the Swingline Note.

"***Notices of Borrowing***" shall mean, collectively, the Notices of Revolving Borrowing and the Notices of Swingline Borrowing.

"***Notice of Conversion/Continuation***" shall mean the notice given by the Borrower to the Administrative Agent in respect of the conversion or continuation of an outstanding Borrowing as provided in Section 2.7(b) hereof.

"***Notice of Revolving Borrowing***" shall have the meaning assigned to such term in Section 2.3.

"***Notice of Swingline Borrowing***" shall have the meaning assigned to such term in Section 2.5.

"***Obligations***" shall mean (a) all amounts owing by the Borrower or any Subsidiary (other than Carrier Enterprise) to the Administrative Agent, the Issuing Bank or any Lender (including the Swingline Lender) pursuant to or in connection with this Agreement or any other Loan Document, including without limitation, all principal, interest (including any interest accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or like proceeding relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), all reimbursement obligations, fees, expenses, indemnification and reimbursement payments, costs and expenses (including all fees and expenses of counsel to the Administrative Agent and any Lender (including the Swingline Lender) incurred pursuant to this Agreement or any other Loan Document), whether direct or indirect, absolute or contingent, liquidated or unliquidated, now existing or hereafter arising hereunder or thereunder, together with all renewals, extensions, modifications or refinancings thereof, and (b) all obligations of the Borrower or any Subsidiary (other than Carrier Enterprise), monetary or otherwise, under each interest rate Hedging Agreement relating to Obligations referred to in the preceding clause (a) entered into with any counterparty that was a Lender (or an Affiliate thereof) at the time such Hedging Agreement was entered into.

"***OFAC***" shall mean the U.S. Department of Treasury's Office of Foreign Assets Control.

"***Off-Balance Sheet Liabilities***" of any Person shall mean (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any liability of such Person under any sale and leaseback transactions which do not create a liability on the balance sheet of such Person, (c) any Synthetic Lease Obligation or (d) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person.

"***Other Taxes***" shall mean any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"***Participant***" shall have the meaning set forth in Section 10.4(c).

"***Payment Office***" shall mean the office of the Administrative Agent located at 101 North Tryon Street, NC1-001-04-39, Charlotte, North Carolina 28255, or such other location as to which the Administrative Agent shall have given written notice to the Borrower and the other Lenders.

"***PBGC***" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA, and any successor entity performing similar functions.

"***Permitted Encumbrances***" shall mean:

(a) Liens imposed by law for taxes, governmental assessments or similar governmental charges not yet due or which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP;

(b) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen and other Liens imposed by law created in the ordinary course of business for amounts not yet due or which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP;

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment and attachment liens not giving rise to an Event of Default or Liens created by or existing from any litigation or legal proceeding that are currently being contested in good faith by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP;

(f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of the Borrower and its Subsidiaries taken as a whole;

(g) bank liens with respect to collection of deposits in the ordinary course of business; and

(h) Liens pursuant to any Loan Document;

provided, that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness, except as specifically provided in clause (h).

"***Permitted Investments***" shall mean:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States), in each case maturing within one (1) year from the date of acquisition thereof;

(b) commercial paper having the highest rating, at the time of acquisition thereof, of *Standard & Poor's* or *Moody's* and in either case maturing within six (6) months from the date of acquisition thereof;

(c) certificates of deposit, bankers' acceptances and time deposits maturing within one-hundred eighty (180) days of the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States or any state thereof which has a combined capital and surplus and undivided profits of not less than $500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above;

(e) mutual funds investing solely in any one or more of the Permitted Investments described in clauses (a) through (d) above;

(f) debt securities with a maturity of no greater than 365 days and rated at least "A-" by *Standard & Poor's* or at least "A3" by *Moody's*; and

(g) subject to the restriction set forth in Section 4.9, other debt or equity securities which are listed on a national securities exchange or freely traded in the over-the-counter market so long as the cost of such securities does not exceed at any time in the aggregate an amount equal to 2% of Consolidated Tangible Assets as of the most recent fiscal year end.

"***Person***" shall mean any individual, partnership, firm, corporation, association, joint venture, limited liability company, trust or other entity, or any Governmental Authority.

"***Plan***" shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"***Pledge Agreement***" shall mean the Securities Pledge Agreement dated as of the First Amendment Effective Date executed by the Borrower and/or each Subsidiary owning membership interests in Carrier Enterprise from time to time party thereto in favor of the Administrative Agent for the ratable benefit of itself and the Secured Parties, substantially in the form of Exhibit F attached hereto, as supplemented from time to time by the execution and delivery of Pledge Joinder Agreements pursuant to Section 5.10(b) or otherwise.

"***Pledge Agreement Supplement***" means, with respect to the Pledge Agreement, the Pledge Agreement Supplement in the form affixed as an Exhibit to the Pledge Agreement.

"***Pledge Joinder Agreement***" means each Pledge Joinder Agreement, substantially in the form thereof attached to the Pledge Agreement, executed and delivered by a Subsidiary to the Administrative Agent pursuant to Section 5.10(b) or otherwise.

"***Private Placement Debt***" shall mean unsecured Indebtedness for borrowed money issued by the Borrower in a private placement transaction; provided, that all of the following conditions shall be satisfied:

(a) except as set forth on Schedule II hereof, no portion of principal thereof shall be payable or required to be purchased (whether by scheduled installment, mandatory prepayment or redemption, or the exercise of any put right) prior to the Scheduled Commitment Termination Date;

(b) the instruments and agreements evidencing such Indebtedness, and any agreement under which such Indebtedness, and any agreement under which such Indebtedness is created, shall provide that the right to payment of the holders or owners of Private Placement Debt (including any trustee or agent action on behalf of such holders or owners, collectively "***Private Placement Debt Holders***") shall either be subordinate to or rank *pari passu* in all respects with the rights of the Lenders and the Administrative Agent to payment and performance of the Obligations on terms reasonably acceptable to the Administrative Agent;

(c) both immediately prior to and immediately after giving effect to the issuance of such Indebtedness, there shall not have occurred and be continuing any Default or Event of Default;

(d) the Borrower shall furnish to the Administrative Agent, not later than the earliest date of delivery thereof to any actual or prospective Private Placement Debt Holder, copies of (i) all preliminary placement memoranda and final placement memoranda relating to such Indebtedness and (ii) drafts of all documents and agreements under which such Indebtedness is to be created or governed; and

(e) not later than ten (10) days prior to the issuance of such Indebtedness, the Borrower shall deliver to the Administrative Agent a certificate in the form of Exhibit 5.1(c), executed by a Responsible Officer and containing calculations giving historical pro forma effect to the issuance of such Indebtedness as of and for the four consecutive fiscal quarter period ending at the end of most recent fiscal quarter of the Borrower preceding the date of such issuance (assuming for such purpose that the initial rate or rates of interest provided for therein (and giving effect to any increase in rates of interest therein provided) remained in effect for such four fiscal quarter period), which certificate shall demonstrate that the issuance of such Indebtedness does not cause, create or result in a Default or Event of Default on a historical pro forma basis.

"***Pro Rata Share***" shall mean, with respect to any Lender at any time, a percentage, the numerator of which shall be such Lender's Revolving Commitment and the denominator of which shall be the sum of all Lenders' Revolving Commitments; or if the Revolving Commitments have been terminated or expired or if the Loans have been declared to be due and payable, a percentage, the numerator of which shall be the sum of such Lender's Revolving Credit Exposure and the denominator of which shall be the sum of the aggregate Revolving Credit Exposure of all Lenders.

"***Project Orange Investment***" shall mean the purchase by the Borrower and/or any Subsidiary of a sixty percent (60%) membership interest in Carrier Enterprise pursuant to the Purchase and Contribution Agreement.

"***Prudential Shelf Agreement***" shall mean that certain Second Amended and Restated Private Shelf Agreement dated December 10, 2004 between The Prudential Insurance Company of America, Inc, the Borrower and the purchasers named therein.

"***Purchase and Contribution Agreement***" shall mean that certain Purchase and Contribution Agreement dated May 3, 2009, as amended by Amendment to Purchase and Contribution Agreement dated June 29, 2009 between Carrier and the Borrower.

"***Receivables***" shall mean accounts receivable (including, without limitation, all rights to payment created or arising from the sales of goods, leases of goods or the rendition of services, no matter how evidenced and whether or not earned by performance).

"***Regulation D***" shall mean Regulation D of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

"***Related Parties***" shall mean, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"***Release***" shall mean any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or within any building, structure, facility or fixture.

"***Required Lenders***" shall mean, at any time, Lenders holding fifty-one percent (51%) or more of the aggregate outstanding Revolving Credit Exposures at such time or if the Lenders have no Revolving Credit Exposure outstanding, then Lenders holding fifty-one percent (51%) or more of the Aggregate Revolving Commitments; provided that, as set forth in Section 10.15, the unused Revolving Commitment of, and the portion of the Revolving Credit Exposure outstanding, held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"***Responsible Officer***" shall mean any of the president, the chief executive officer, the chief operating officer, the chief financial officer, the treasurer or a vice president of the Borrower or such other representative of the Borrower (or, with respect to any request for the issuance of a Letter of Credit for the account of a Subsidiary, such officer of the applicable Subsidiary), as may be designated in writing by any one of the foregoing with the consent of the Administrative Agent; and, with respect to the financial covenants only, the chief financial officer or the treasurer of the Borrower.

"***Restricted Payment***" shall have the meaning assigned to such term in Section 7.5.

"***Revolving Commitment***" shall mean, with respect to each Lender, the obligation of such Lender to make Revolving Loans to the Borrower and to participate in Letters of Credit and Swingline Loans in an aggregate principal amount not exceeding the amount set forth with respect to such Lender on the signature pages to this Agreement, or in the case of a Person becoming a Lender after the Closing Date, the amount of the assigned "Revolving Commitment" as provided in the Assignment and Assumption Agreement executed by such Person as an assignee, as the same may be changed pursuant to terms hereof.

"***Revolving Credit Exposure***" shall mean, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Revolving Loans, such Lender's LC Exposure and such Lender's Swingline Exposure.

"***Revolving Credit Note***" shall mean a promissory note of the Borrower payable to the order of a requesting Lender in the principal amount of such Lender's Revolving Commitment, in substantially the form of Exhibit A.

"***Revolving Loan***" shall mean a loan made by a Lender (other than the Swingline Lender) to the Borrower under its Revolving Commitment, which may either be a Base Rate Loan or a Eurodollar Loan.

"***Scheduled Commitment Termination Date***" shall mean August 3, 2012.

"***Secured Hedging Agreement***" means any interest rate Hedging Agreement permitted under Section 7.10 that is entered into by and between any Loan Party and any Hedge Bank.

"***Secured Parties***" means, collectively, the Administrative Agent, the Lenders, the Issuing Bank, the Hedge Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.2, and each other Person to which any Obligation is owing from time to time.

"***Securitization Transaction***" shall mean (a) any transfer by the Borrower or any Subsidiary of Receivables or interests therein and all collateral securing such Receivables, all contracts and contract rights and all guarantees or other obligations in respect of such Receivables, all other assets that are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving such Receivables and all proceeds of any of the foregoing (i) to a trust, partnership, corporation or other entity (other than the Borrower or a Subsidiary other than a SPE Subsidiary), which transfer is funded in whole or in part, directly or indirectly, by the incurrence or issuance by the transferee or any successor transferee of indebtedness or other securities that are to receive payments from, or that represent interests in, the cash flow derived from such Receivables or interests in Receivables, or (ii) directly to one or more investors or other purchasers (other than the Borrower or any Subsidiary), or (b) any transaction in which the Borrower or a Subsidiary incurs Indebtedness or other obligations secured by Liens on Receivables. The "amount" or "principal amount" of any *Securitization Transaction* shall be deemed at any time to be (x) in the case of a transaction described in clause (a) of the preceding sentence, the aggregate principal or stated amount of the Indebtedness or other securities referred to in such clause or, if there shall be no such principal or stated amount, the uncollected amount of the Receivables transferred pursuant to such Securitization Transaction net of any such Receivables that have been written off as uncollectible, and (y) in the case of a transaction described in clause (b) of the preceding sentence, the aggregate outstanding principal amount of the Indebtedness secured by Liens on the subject Receivables.

"***Solvent***" or "***Solvency***" shall mean, with respect to any Person as of a particular date, that on such date (a) such Person is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (b) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature in their ordinary course, (c) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person's properties and assets would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage, (d) the fair value of the properties and assets of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person and (e) the present fair saleable value of the properties and assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at 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.

"***SPE Subsidiary***" shall mean any Subsidiary formed solely for the purpose of, and that engages only in, one or more Securitization Transactions.

"***Standard & Poor's***" shall mean Standard & Poor's, a division of the McGraw-Hill Companies.

"***Subsidiary***" shall mean, with respect to any Person (the "***parent***"), any corporation, partnership, joint venture, limited liability company, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, partnership, joint venture, limited liability company, association or other entity (a) of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power, or in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless otherwise indicated, all references to "Subsidiary" hereunder shall mean a Subsidiary of the Borrower.

"***Subsidiary Guarantee Agreement***" shall mean the Subsidiary Guarantee Agreement, substantially in the form of Exhibit D, made by the Subsidiary Loan Parties in favor of the Administrative Agent for the benefit of the Lenders.

"***Subsidiary Loan Party***" shall mean any direct or indirect Subsidiary (other than Gemaire Caribe, unless it becomes a Subsidiary Loan Party pursuant to Section 5.12 and other than Carrier Enterprise, unless it becomes a Subsidiary Loan Party pursuant to Section 5.10(a).

"***Swingline Commitment***" shall mean the commitment of the Swingline Lender to make Swingline Loans in an aggregate principal amount at any time outstanding not to exceed $25,000,000.

"***Swingline Exposure***" shall mean, with respect to each Lender, the principal amount of the Swingline Loans in which such Lender is legally obligated either to make a Base Rate Loan or to purchase a participation in accordance with Section 2.5, which shall equal such Lender's Pro Rata Share of all outstanding Swingline Loans.

"***Swingline Lender***" shall mean Bank of America, N.A., or any other Lender that may agree to make Swingline Loans hereunder.

"***Swingline Loan***" shall mean a loan made to the Borrower by the Swingline Lender under the Swingline Commitment.

"***Swingline Note***" shall mean the promissory note of the Borrower payable to the order of the Swingline Lender in the principal amount of the Swingline Commitment, in substantially the form of Exhibit B.

"***Swingline Rate***" shall mean, for any Interest Period, the rate as offered by the Administrative Agent and accepted by the Borrower. The Borrower is under no obligation to accept this rate and the Administrative Agent is under no obligation to provide it.

"***Swingline Termination Date***" shall mean the Commitment Termination Date.

"***Synthetic Lease***" shall mean a lease transaction under which the parties intend that (a) the lease will be treated as an "operating lease" by the lessee pursuant to Statement of Financial Accounting Standards No. 13, as amended, and (b) the lessee will be entitled to various tax and other benefits ordinarily available to owners (as opposed to lessees) of like property.

"***Synthetic Lease Obligations***" shall mean, with respect to any Person, the sum of (a) all remaining rental obligations of such Person as lessee under Synthetic Leases that are attributable to principal and, without duplication, (b) all rental and purchase price payment obligations of such Person under such Synthetic Leases assuming such Person exercises the option to purchase the lease property at the end of the lease term.

"***Taxes***" shall mean any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

"***Type***", when used in reference to a Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Base Rate.

"***Voting Stock***" shall mean, with respect to any Person, Capital Stock issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right to vote has been suspended by the happening of such a contingency.

"***Watsco Ownership Percentage***" shall mean, with respect to any period, the weighted average percentage ownership interest of Watsco and its Subsidiaries in Carrier Enterprise during such period.

"***Withdrawal Liability***" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

**Section 1.2 Classifications of Loans and Borrowings**. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g. a "Revolving Loan" or "Swingline Loan") or by Type (e.g. a "Eurodollar Loan" or "Base Rate Loan") or by Class and Type (e.g. "Revolving Eurodollar Loan"). Borrowings also may be classified and referred to by Class (e.g. "Revolving Borrowing") or by Type (e.g. "Eurodollar Borrowing") or by Class and Type (e.g. " Revolving Eurodollar Borrowing").

**Section 1.3 Accounting Terms and Determination**. Unless otherwise defined or specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP as in effect from time to time, applied on a basis consistent (except for such changes approved by the Borrower's independent public accountants) with the most recent audited consolidated financial statement of the Borrower delivered pursuant to Section 5.1(a); provided, that if the Borrower notifies the Administrative Agent that the Borrower wishes to amend any covenant in Article VI to eliminate the effect of any change in GAAP on the operation of such covenant (or if the Administrative Agent notifies the Borrower that the Required Lenders wish to amend Article VI for such purpose), then the Borrower's compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Borrower and the Required Lenders.

**Section 1.4 Accounting for Acquisitions and Divestures**.

(a) Covenant Acquisition Adjustment. For purposes of calculating the financial covenants in Sections 6.1 and 6.2 for any period (or a portion of a period) of measurement that includes the date of the Acquisition or the consummation of any Investment permitted by Section 7.4(a)(vii), references to "Borrower and its Subsidiaries" shall include each acquired Person, or lines of business, as applicable, and references to (i) "Consolidated EBITDA" or "JV EBITDA Amount" shall include the "EBITDA" of such acquired Person or line of business (such EBITDA to be formulated on the basis of the definition of Consolidated EBITDA or JV EBITDA Amount, as applicable, set forth herein) and (ii) "Consolidated EBIT" or "JV EBIT Amount" shall include the "EBIT" of such acquired Person or line of business (such EBIT to be formulated on the basis of the definition of Consolidated EBIT or JV EBIT Amount, as applicable, set forth herein), as if such Acquisition or Investment had been consummated on the first day of any such period of measurement.

(b) Covenant Disposition Adjustment. For purposes of calculating the financial covenants in Sections 6.1 and 6.2 for any period of measurement (or a portion of a period) that includes the date of any Disposition of a Subsidiary or line of business, as applicable, Consolidated EBITDA shall be determined on a historical pro forma basis to exclude the results of operations of such Subsidiary or line of business, as applicable, so disposed.

**Section 1.5 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". In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the word "to" means "to but excluding". 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 it was originally executed or as it may from time to time be amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (iii) the words "hereof", "herein" and "hereunder" and words of similar import shall be construed to refer to this Agreement as a whole and not to any particular provision hereof, (iv) all references to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles, Sections, Exhibits and Schedules to this Agreement and (v) all references to a specific time shall be construed to refer to the time in the city and state of the Administrative Agent's principal office, unless otherwise indicated.

## ARTICLE II

## AMOUNT AND TERMS OF THE COMMITMENTS

**Section 2.1 General Description of Facilities**. Subject to and upon the terms and conditions herein set forth, (a) the Lenders hereby establish in favor of the Borrower a revolving credit facility pursuant to which the Lenders severally agree (to the extent of each Lender's Pro Rata Share up to such Lender's Revolving Commitment) to make Revolving Loans to the Borrower in accordance with Section 2.2), (b) the Issuing Bank agrees to issue Letters of Credit in accordance with Section 2.22, (c) the Swingline Lender agrees to make Swingline Loans in accordance with Section 2.4, and (d) each Lender agrees to purchase a participation interest in the Letters of Credit and the Swingline Loans pursuant to the terms and conditions hereof; provided, that in no event shall the sum of the aggregate outstanding Revolving Credit Exposures of all Lenders exceed at any time the Aggregate Revolving Commitments then in effect.

**Section 2.2 Revolving Loans**. Subject to the terms and conditions set forth herein, each Lender severally agrees to make Revolving Loans to the Borrower, from time to time during the Availability Period, in an aggregate principal amount outstanding at any time that will not result in (i) such Lender's Revolving Credit Exposure exceeding such Lender's Revolving Commitment or (ii) the sum of the aggregate Revolving Credit Exposures of all Lenders exceeding the Aggregate Revolving Commitments. During the Availability Period, the Borrower shall be entitled to borrow, prepay and reborrow Revolving Loans in accordance with the terms and conditions of this Agreement; provided, that the Borrower may not borrow or reborrow should there exist a Default or Event of Default.

**Section 2.3 Procedure for Revolving Borrowings**. The Borrower shall give the Administrative Agent written notice (or telephonic notice promptly confirmed in writing) of each Revolving Borrowing, substantially in the form of Exhibit 2.3 attached hereto (a "***Notice of Revolving Borrowing***"), (a) prior to 12:00 noon on the requested date of each Base Rate Borrowing and (b) prior to 12:00 noon three (3) Business Days prior to the requested date of each Eurodollar Borrowing. Each Notice of Revolving Borrowing shall be irrevocable and shall specify: (i) the aggregate principal amount of such Borrowing, (ii) the date of such Borrowing (which shall be a Business Day), (iii) the Type of such Revolving Loan comprising such Borrowing and (iv) in the case of a Eurodollar Borrowing, the duration of the initial Interest Period applicable thereto (subject to the provisions of the definition of Interest Period). Each Revolving Borrowing shall consist entirely of Base Rate Loans or Eurodollar Loans, as the Borrower may request. The aggregate principal amount of each Eurodollar Borrowing shall be not less than $5,000,000 or a larger multiple of $1,000,000, and the aggregate principal amount of each Base Rate Borrowing shall not be less than $1,000,000 or a larger multiple of $100,000; provided, that Base Rate Loans made pursuant to Section 2.5 or Section 2.22(d) may be made in lesser amounts as provided therein. At no time shall the total number of Eurodollar Borrowings outstanding at any time exceed ten (10). Promptly following the receipt of a Notice of Revolving Borrowing in accordance herewith, the Administrative Agent shall advise each Lender of the details thereof and the amount of such Lender's Revolving Loan to be made as part of the requested Revolving Borrowing.

**Section 2.4 Swingline Loans**. Subject to the terms and conditions set forth herein, the Swingline Lender may, in its sole and absolute discretion, make Swingline Loans to the Borrower, from time to time from the Closing Date to the Swingline Termination Date, in an aggregate principal amount outstanding at any time not to exceed the lesser of (a) the Swingline Commitment then in effect and (b) the difference between the Aggregate Revolving Commitments and the aggregate outstanding Revolving Credit Exposures of all Lenders; provided, that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. The Borrower shall be entitled to borrow, repay and reborrow Swingline Loans in accordance with the terms and conditions of this Agreement.

**Section 2.5 Procedure for Swingline Borrowing; Etc**.

(a) The Borrower shall give the Administrative Agent written notice (or telephonic notice promptly confirmed in writing) of each Swingline Borrowing ("***Notice of Swingline Borrowing***") prior to 12:00 noon on the requested date of each Swingline Borrowing. Each Notice of Swingline Borrowing shall be irrevocable and shall specify: (i) the principal amount of such Swingline Loan, (ii) the date of such Swingline Loan (which shall be a Business Day) and (iii) the account of the Borrower to which the proceeds of such Swingline Loan should be credited. The Administrative Agent will promptly advise the Swingline Lender of each Notice of Swingline Borrowing. Each Swingline Loan shall accrue interest at the rate specified in Section 2.12(b) and shall have an Interest Period (subject to the definition thereof) as agreed between the Borrower and the Swingline Lender. The aggregate principal amount of each Swingline Loan shall be not less than $100,000 or a larger multiple of $50,000, or such other minimum amounts agreed to by the Swingline Lender and the Borrower. The Swingline Lender will make the proceeds of each Swingline Loan available to the Borrower in Dollars in immediately available funds at the account specified by the Borrower in the applicable Notice of Swingline Borrowing not later than 1:00 p.m. on the requested date of such Swingline Loan. The Administrative Agent will notify the Lenders on a quarterly basis if any Swingline Loans occurred during such quarter.

(b) The Swingline Lender, at any time and from time to time in its sole discretion, may, on behalf of the Borrower (which hereby irrevocably authorizes and directs the Swingline Lender to act on its behalf), give a Notice of Revolving Borrowing to the Administrative Agent requesting the Lenders (including the Swingline Lender) to make Base Rate Loans in an amount equal to the unpaid principal amount of any Swingline Loan. Each Lender will make the proceeds of its Base Rate Loan included in such Borrowing available to the Administrative Agent for the account of the Swingline Lender in accordance with Section 2.6, which will be used solely for the repayment of such Swingline Loan.

(c) If for any reason a Base Rate Borrowing may not be (as determined in the sole discretion of the Administrative Agent), or is not, made in accordance with the foregoing provisions, then each Lender (other than the Swingline Lender) shall purchase an undivided participating interest in such Swingline Loan in an amount equal to its Pro Rata Share thereof on the date that such Base Rate Borrowing should have occurred. On the date of such required purchase, each Lender shall promptly transfer, in immediately available funds, the amount of its participating interest to the Administrative Agent for the account of the Swingline Lender. If such Swingline Loan bears interest at a rate other than the Base Rate, such Swingline Loan shall automatically become a Base Rate Loan on the effective date of any such participation and interest shall become payable on demand.

(d) Each Lender's obligation to make a Base Rate Loan pursuant to Section 2.5(b) or to purchase the participating interests pursuant to Section 2.5(c) shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation (i) any setoff, counterclaim, recoupment, defense or other right that such Lender or any other Person may have or claim against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (ii) the existence of a Default or an Event of Default (other than an Event of Default in existence at the time of the making of any Swingline Loan by the Swingline Lender of which the Swingline Lender had actual knowledge) or the termination of any Lender's Revolving Commitment, (iii) the existence (or alleged existence) of any event or condition which has had or could reasonably be expected to have a Material Adverse Effect, (iv) any breach of this Agreement or any other Loan Document by the Borrower, the Administrative Agent or any Lender or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. If such amount is not in fact made available to the Swingline Lender by any Lender, the Swingline Lender shall be entitled to recover such amount on demand from such Lender, together with accrued interest thereon for each day from the date of demand thereof at the Federal Funds Rate. Until such time as such Lender makes its required payment, the Swingline Lender shall be deemed to continue to have outstanding Swingline Loans in the amount of the unpaid participation for all purposes of the Loan Documents. In addition, such Lender shall be deemed to have assigned any and all payments made of principal and interest on its Loans and any other amounts due to it hereunder, to the Swingline Lender to fund the amount of such Lender's participation interest in such Swingline Loans that such Lender failed to fund pursuant to this Section 2.5, until such amount has been purchased in full.

(e) In the event that the Swingline Lender, in the exercise of its discretion, requires as a condition to the making of any Swingline Loan that a Lender (as a result of (x) its status as a Defaulting Lender or (y) any Person that Controls such Lender being a Distressed Person) or the Borrower enter into arrangements satisfactory to the Swingline Lender for the provision of sufficient Cash Collateral or other credit support acceptable to the Administrative Agent and the Swingline Lender, to eliminate the Swingline Lender's actual or potential risk with respect to any such Lender, then:

(i) The Borrower, and to the extent provided by any Lender pursuant to this Section 2.5, such Lender, hereby grants to the Administrative Agent, for the benefit of the Administrative Agent, the Swingline Lender and the Lenders, a security interest in all Cash Collateral and all other property provided as Cash Collateral under this Section 2.5, and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America; provided that if the Borrower requests that any such account bear interest and Bank of America has the operational capacity, in its reasonable determination, to set up such an account, Bank of America shall hold such deposit in an interest-bearing deposit account.

(ii) Notwithstanding anything to the contrary contained in this Agreement, (A) Cash Collateral or other credit support (and proceeds thereof) provided by any Lender pursuant to this Section 2.5 to support the obligations of such Lender in respect of Swingline Loans shall be held and applied, first, to fund, as applicable, the participations of such Lender arising from, or Base Rate Loans issued to repay, Swingline Loans with respect to which such Cash Collateral or other credit support was provided, as contemplated in the foregoing provisions of this Section 2.5, and, second, to fund (x) as applicable, the participations of such Lender arising from, or Base Rate Loans issued to repay, Swingline Loans arising from any other Swingline Loans, as contemplated in the foregoing provisions of this Section 2.5, and (y) any interest accrued for the benefit of the Swingline Lender pursuant to Section 2.5(d) allocable to such Lender, and (B) Cash Collateral (and proceeds thereof) otherwise provided by or on behalf of the Borrower under this Section 2.5 to support Swingline Loans (or participations therein) pursuant to the terms and conditions of this Agreement shall be held and applied, first, to the satisfaction of the specific Swingline Loans so Cash Collateralized and, second, if remedies under Section 8.1 shall have been exercised, to the application of such Cash Collateral or proceeds thereof to any other Obligations in accordance with Section 8.1.

(iii) Cash Collateral and other credit support provided under this Section 2.5 in connection with (x) any Lender's status as a Defaulting Lender or (y) the status of any Person that Controls such Lender as a Distressed Person shall be released (except as the Swingline Lender and the Person providing such Cash Collateral or other credit support may agree otherwise) promptly following the earlier to occur of (A) the termination of the Default Period with respect to such Defaulting Lender or (B) such Person that Controls the Lender ceases to be a Distressed Person; subject, however, to the additional condition that, as to any such Cash Collateral or other credit support provided by or on behalf of the Borrower, no Default or Event of Default shall then have occurred and be continuing.

**Section 2.6 Funding of Borrowings**.

(a) Each Lender will make available each Loan to be made by it hereunder on the proposed date thereof by wire transfer in immediately available funds by 1:00 p.m. to the Administrative Agent at the Payment Office; provided, that the Swingline Loans will be made as set forth in Section 2.5. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts that it receives, in like funds by the close of business on such proposed date, to an account maintained by the Borrower with the Administrative Agent or at the Borrower's option, by effecting a wire transfer of such amounts to an account designated by the Borrower to the Administrative Agent.

(b) Unless the Administrative Agent shall have been notified by any Lender prior to 5:00 p.m. one (1) Business Day prior to the date of a Borrowing in which such Lender is participating that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date, and the Administrative Agent, in reliance on such assumption, may make available to the Borrower on such date a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender on the date of such Borrowing, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest at the Federal Funds Rate for up to two (2) days and thereafter at the rate specified for such Borrowing. If the Administrative Agent has made available to the Borrower any Lender's share of such Borrowing and such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower, and the Borrower shall immediately pay such corresponding amount to the Administrative Agent together with interest at the rate specified for such Borrowing. Nothing in this subsection shall be deemed to relieve any Lender from its obligation to fund its Pro Rata Share of any Borrowing hereunder or to prejudice any rights which the Borrower may have against any Lender as a result of any default by such Lender hereunder.

(c) All Revolving Borrowings shall be made by the Lenders on the basis of their respective Pro Rata Shares. No Lender shall be responsible for any default by any other Lender in its obligations hereunder, and each Lender shall be obligated to make its Loans provided to be made by it hereunder, regardless of the failure of any other Lender to make its Loans hereunder.

**Section 2.7 Interest Elections**.

(a) Each Borrowing initially shall be of the Type specified in the applicable Notice of Borrowing, and in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Notice of Borrowing. Thereafter, the Borrower may elect to convert such Borrowing into a different Type or to continue such Borrowing, and in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.7. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section 2.7 shall not apply to Swingline Borrowings, which may not be converted or continued.

(b) To make an election pursuant to this Section 2.7, the Borrower shall give the Administrative Agent prior written notice (or telephonic notice promptly confirmed in writing) of each Borrowing (a "***Notice of Conversion/Continuation***") that is to be converted or continued, as the case may be, (x) prior to 12:00 noon on the Business Day of the requested date of a conversion into a Base Rate Borrowing and (y) prior to 12:00 noon three (3) Business Days prior to a continuation of or conversion into a Eurodollar Borrowing. Each such Notice of Conversion/Continuation shall be irrevocable and shall specify (i) the Borrowing to which such Notice of Continuation/Conversion applies and if different options are being elected with respect to different portions thereof, the portions thereof that are to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) shall be specified for each resulting Borrowing); (ii) the effective date of the election made pursuant to such Notice of Continuation/Conversion, which shall be a Business Day, (iii) whether the resulting Borrowing is to be a Base Rate Borrowing or a Eurodollar Borrowing; and (iv) if the resulting Borrowing is to be a Eurodollar Borrowing, the Interest Period applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of "Interest Period". If any such Notice of Continuation/Conversion requests a Eurodollar Borrowing but does not specify an Interest Period, the Borrower shall be deemed to have selected an Interest Period of one month. The principal amount of any resulting Borrowing shall satisfy the minimum borrowing amount for Eurodollar Borrowings and Base Rate Borrowings set forth in Section 2.3.

(c) If, on the expiration of any Interest Period in respect of any Eurodollar Borrowing, the Borrower shall have failed to deliver a Notice of Conversion/Continuation, then, unless such Borrowing is repaid as provided herein, the Borrower shall be deemed to have elected to convert such Borrowing to a Base Rate Borrowing. No Borrowing may be converted into, or continued as, a Eurodollar Borrowing if a Default or an Event of Default exists, unless the Administrative Agent and each of the Lenders shall have otherwise consented in writing. No conversion of any Eurodollar Loans shall be permitted except on the last day of the Interest Period in respect thereof.

(d) Upon receipt of any Notice of Conversion/Continuation, the Administrative Agent shall promptly notify each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

**Section 2.8 Optional Reduction and Termination of Commitments; Extension of Commitments; Increase of Aggregate Revolving Commitments; Additional Lenders**.

(a) Unless previously terminated, all Revolving Commitments shall terminate on the Commitment Termination Date, except that the Swingline Commitment shall terminate on the Swingline Termination Date.

(b) Upon at least three (3) Business Days' prior written notice (or telephonic notice promptly confirmed in writing) to the Administrative Agent (which notice shall be irrevocable), the Borrower may reduce the Aggregate Revolving Commitments in part or terminate the Aggregate Revolving Commitments in whole; provided, that (i) any partial reduction shall apply to reduce proportionately and permanently the Revolving Commitment of each Lender, (ii) any partial reduction pursuant to this Section 2.8(b) shall be in an amount of at least $5,000,000 and any larger multiple of $1,000,000, and (iii) no such reduction shall be permitted which would reduce the Aggregate Revolving Commitments to an amount less than the sum of the aggregate outstanding Revolving Credit Exposures of all Lenders. Any such reduction in the Aggregate Revolving Commitments shall result in a proportionate and permanent reduction (rounded to the next lowest integral multiple of $100,000) in the Swingline Commitment and the LC Commitment.

(c) So long as no Event of Default has occurred and is continuing, from time to time after the Closing Date, Borrower may, upon at least 30 days' written notice to the Administrative Agent, who shall promptly notify the Lenders, propose to increase the Aggregate Revolving Commitments up to an amount not to exceed $150,000,000 less the amount of any permanent reductions in the Aggregate Revolving Commitments pursuant to Section 2.8(b) (the amount of any such increase, the "***Additional Revolving Commitment Amount***"). Each Lender shall have the right for a period of fifteen (15) days following receipt of such notice to elect by written notice to the Borrower and the Administrative Agent to increase its Revolving Commitment by a principal amount equal to its Pro Rata Share of the Additional Revolving Commitment Amount. No Lender (or any successor thereto) shall have any obligation to increase its Revolving Commitment or its other obligations under this Agreement and the other Loan Documents, and any decision by a Lender to increase its Revolving Commitment shall be made in its sole discretion independently from any other Lender.

(d) If any Lender shall not elect to increase its Revolving Commitment pursuant to subsection (c) of this Section 2.8, the Borrower may, to the extent necessary to increase the Aggregate Revolving Commitments by the then unsubscribed Additional Revolving Commitment Amount, designate another bank or other financial institution (which may be, but need not be, one or more of the existing Lenders) which at the time agrees to, in the case of any such Person that is an existing Lender, increase its Revolving Commitment and in the case of any other such Person (an " ***Additional Lender***"), become a party to this Agreement; provided, however, that each Additional Lender must be acceptable to the Administrative Agent in its sole discretion, which acceptance will not be unreasonably withheld. The sum of the increases in the Revolving Commitments of the existing Lenders plus the Revolving Commitments of the Additional Lenders shall not in the aggregate exceed the Additional Revolving Commitment Amount.

(e) An increase in the aggregate amount of the Revolving Commitments pursuant to this Section 2.8 shall become effective upon the receipt by the Administrative Agent of an agreement in form and substance satisfactory to the Administrative Agent signed by the Borrower, by each Additional Lender and by each other Lender whose Revolving Commitment is to be increased, setting forth the new Revolving Commitments of such Lenders and setting forth the agreement of each Additional Lender to become a party to this Agreement and to be bound by all the terms and provisions hereof, together with a replacement or additional Revolving Credit Note, as applicable, evidencing the new Revolving Commitment of each affected Lender, duly executed and delivered by the Borrower, and such evidence of appropriate corporate authorization on the part of the Borrower with respect to the increase in the Aggregate Revolving Commitments and other documents with respect to the increase in the Revolving Commitments as the Administrative Agent may reasonably request.

(f) Upon any increase in the Aggregate Revolving Commitments pursuant to this Section 2.8 that is not pro rata among all Lenders, (i) within five Business Days in the case of any Base Rate Loans then outstanding, and at the end of the then applicable Interest Period in the case of any Eurodollar Loans then outstanding, the Borrower shall prepay such Loans in their entirety and, to the extent the Borrower elects to do so and subject to the conditions specified in Article III hereof, the Borrower shall reborrow Loans from the Lenders in proportion to their Pro Rata Share after giving effect to such increase, until such time as all outstanding Loans are held by the Lenders in such proportion and (ii) effective upon such increase, the amount of the participations held by each Lender in each Letter of Credit then outstanding shall be deemed adjusted such that, after giving effect to such adjustments, the Lenders shall hold participations in each such Letter of Credit in the proportion its respective Revolving Commitment bears to the Aggregate Revolving Commitments after giving effect to such increase.

**Section 2.9 Repayment of Loans**.

(a) The outstanding principal amount of all Revolving Loans shall be due and payable on the Commitment Termination Date. Interest on all Revolving Loans shall be payable as set forth in Section 2.12(d).

(b) The principal amount of each Swingline Loan shall be due and payable on the earlier of (i) the date ten Business Days after such Loan is made and (ii) the Swingline Termination Date. Interest on all Swingline Loans shall be payable as set forth in Section 2.12(d).

**Section 2.10 Evidence of Indebtedness**.

(a) Each Lender shall maintain in accordance with its usual practice appropriate records evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable thereon and paid to such Lender from time to time under this Agreement. The Administrative Agent shall maintain appropriate records in which shall be recorded (i) the Revolving Commitment of each Lender, (ii) the amount of each Loan made hereunder by each Lender, the Class and Type thereof and the Interest Period applicable thereto, (iii) the date of each continuation thereof pursuant to Section 2.7, (iv) the date of each conversion of all or a portion thereof to another Type pursuant to Section 2.7, (v) the date and amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder in respect of such Loans and (vi) both the date and amount of any sum received by the Administrative Agent hereunder from the Borrower in respect of the Loans and each Lender's Pro Rata Share thereof. The entries made in such records shall be *prima facie* evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided, that the failure or delay of any Lender or the Administrative Agent in maintaining or making entries into any such record or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans (both principal and unpaid accrued interest) of such Lender in accordance with the terms of this Agreement.

(b) At the request of any Lender (including the Swingline Lender) at any time, the Borrower agrees that it will execute and deliver to such Lender a Revolving Credit Note, and, in the case of the Swingline Lender only, a Swingline Note, payable to the order of such Lender. At the request of the Borrower, any such Revolving Credit Note or Swingline Note may be executed and delivered by the Borrower outside of the State of Florida in such location within the continental United States as may reasonably be acceptable to the Administrative Agent.

**Section 2.11 Prepayments**.

(a) *Mandatory Prepayments*. The Borrower shall be required to make mandatory principal prepayments to the Administrative Agent without the Administrative Agent's further demand therefor if, as of any fiscal quarter end of the Borrower, the sum of the aggregate outstanding Revolving Credit Exposures of all Lenders exceed the aggregate amount that the Borrower would then have been entitled to borrow or retain under the applicable provisions of Section 2.1. Such mandatory principal prepayment shall be in the amount necessary to reduce the sum of the aggregate outstanding Revolving Credit Exposures of all Lenders to the maximum amount that the Borrower then would be entitled to borrow or retain hereunder and shall be made, in any event, within ten (10) days after the end of the applicable fiscal quarter end of Borrower.

(b) *Optional Prepayments*. The Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, without premium or penalty, by giving irrevocable written notice (or telephonic notice promptly confirmed in writing) to the Administrative Agent no later than 12:00 noon, (i) in the case of prepayment of any Eurodollar Borrowing, not less than three (3) Business Days prior to any such prepayment, (ii) in the case of any prepayment of any Base Rate Borrowing, on the Business Day of such prepayment, and (iii) in the case of Swingline Borrowings, on the date of such prepayment. Each such notice shall be irrevocable and shall specify the proposed date of such prepayment and the principal amount of each Borrowing or portion thereof to be prepaid. Upon receipt of any such notice, the Administrative Agent shall promptly notify each affected Lender of the contents thereof and of such Lender's Pro Rata Share of any such prepayment. If such notice is given, the aggregate amount specified in such notice shall be due and payable on the date designated in such notice, together with accrued interest to such date on the amount so prepaid in accordance with Section 2.12(d); provided, that if a Eurodollar Borrowing is prepaid on a date other than the last day of an Interest Period applicable thereto, the Borrower shall also pay all amounts required pursuant to Section 2.18. Each partial prepayment of any Loan (other than a Swingline Loan) shall be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type pursuant to Section 2.3 or in the case of a Swingline Loan pursuant to Section 2.5. Each prepayment of a Borrowing shall be applied ratably to the Loans comprising such Borrowing.

**Section 2.12 Interest on Loans**.

(a) The Borrower shall pay interest on each Base Rate Loan at the Base Rate in effect from time to time and on each Eurodollar Loan at the Adjusted LIBO Rate for the applicable Interest Period in effect for such Loan, *plus*, in each case, the Applicable Margin in effect from time to time but, in no event, to exceed the Maximum Rate.

(b) The Borrower shall pay interest on each Swingline Loan at the Swingline Rate in effect from time to time but, in no event, to exceed the Maximum Rate.

(c) While an Event of Default exists or after acceleration, at the option of the Required Lenders, the Borrower shall pay interest (" ***Default Interest***") with respect to all Eurodollar Loans at the rate otherwise applicable for the then-current Interest Period plus an additional two percent (2%) per annum until the last day of such Interest Period, and thereafter, and with respect to all Base Rate Loans (including all Swingline Loans) and all other Obligations hereunder (other than Loans), at an all-in rate in effect for Base Rate Loans (i.e., including Applicable Margin), *plus* an additional 2% per annum.

(d) Interest on the principal amount of all Loans shall accrue from and including the date such Loans are made to but excluding the date of any repayment thereof. Interest on all outstanding Base Rate Loans shall be payable quarterly in arrears on the last Business Day of each fiscal quarter of the Borrower and on the Commitment Termination Date. Interest on all outstanding Eurodollar Loans shall be payable on the last day of each Interest Period applicable thereto, and, in the case of any Eurodollar Loans having an Interest Period in excess of three months, on each day which occurs every three months after the initial date of such Interest Period, and on the Commitment Termination Date. Interest on each Swingline Loan shall be payable quarterly in arrears on the last Business Day of each fiscal quarter of the Borrower and on the Swingline Termination Date. Interest on any Loan which is converted into a Loan of another Type or which is repaid or prepaid shall be payable on the date of such conversion or on the date of any such repayment or prepayment (on the amount repaid or prepaid) thereof. All Default Interest shall be payable on demand.

(e) The Administrative Agent shall determine each interest rate applicable to the Loans hereunder and shall promptly notify the Borrower and the Lenders of such rate in writing (or by telephone, promptly confirmed in writing). Any such determination shall be conclusive and binding for all purposes, absent manifest error.

**Section 2.13 Fees**.

(a) *Administrative Agent Fees*. The Borrower shall pay to the Administrative Agent for its own account fees in the amounts and at the times previously agreed upon the Borrower and the Administrative Agent.

(b) *Commitment Fees*. The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at the Applicable Percentage (determined quarterly in accordance with Schedule I) on the average daily amount of the unused Revolving Commitment of such Lender during the Availability Period; provided, that if such Lender continues to have any Revolving Credit Exposure after the Commitment Termination Date, then the commitment fee shall continue to accrue on the average daily amount of such Lender's unused Revolving Commitment from and after the Commitment Termination Date to the date that all of such Lender's Revolving Credit Exposure has been paid in full **;** provided further that, as set forth in Section 10.15, no such fee shall be payable for the account of any Defaulting Lender during the applicable Default Period. The Applicable Percentage shall initially be 0.100%, but shall be reset from time to time as provided in the definition of "Applicable Percentage" herein. Accrued commitment fees shall be payable in arrears on the last Business Day of each fiscal quarter of the Borrower and on the Commitment Termination Date, commencing on the first such date after the Closing Date; provided that any commitment fees accruing after the Commitment Termination Date shall be payable on demand. For purposes of computing commitment fees with respect to the Revolving Commitments, the Revolving Commitment of each Lender shall be deemed used to the extent of the outstanding Revolving Loans and LC Exposure of such Lender (but outstanding Swingline Loans shall not be deemed usage of the Revolving Commitment of each Lender).

(c) *Letter of Credit Fees*. The Borrower agrees to pay (i) to the Administrative Agent, for the account of each Lender, a letter of credit fee with respect to its participation in each Letter of Credit, which shall accrue at the Applicable Margin then in effect for Eurodollar Borrowings on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) attributable to such Letter of Credit during the period from and including the date of issuance of such Letter of Credit to but excluding the date on which such Letter expires or is drawn in full (including without limitation any LC Exposure that remains outstanding after the Commitment Termination Date); provided, however, as set forth in Section 10.15, any letter of credit fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral or other credit support arrangements satisfactory pursuant to Section 2.22 shall be payable for the account of the Issuing Bank, and (ii) to the Issuing Bank for its own account a fronting fee, which shall accrue at the rate of 0.125% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the Availability Period (or until the date that such Letter of Credit is irrevocably cancelled, whichever is later), as well as the Issuing Bank's standard fees with respect to issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder.

(d) *Payments*. Accrued fees shall be payable quarterly in arrears on the last Business Day of each fiscal quarter of the Borrower, commencing on September 30, 2007 and on the Commitment Termination Date (and if later, the date the Loans and LC Exposure shall be repaid in their entirety).

**Section 2.14 Computation of Interest and Fees**. All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.20, bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

**Section 2.15 Inability to Determine Interest Rates**. If prior to the commencement of any Interest Period for any Eurodollar Borrowing:

(a) the Administrative Agent shall have determined (which determination shall be conclusive and binding upon the Borrower) that, by reason of circumstances affecting the relevant interbank market, adequate means do not exist for ascertaining LIBOR for such Interest Period; or

(b) the Administrative Agent shall have received notice from the Required Lenders that the Adjusted LIBO Rate does not adequately and fairly reflect the cost to such Lenders (or Lender, as the case may be) of making, funding or maintaining their (or its, as the case may be) Eurodollar Loans for such Interest Period;

then the Administrative Agent shall give written notice (or telephonic notice, promptly confirmed in writing) to the Borrower and to the Lenders as soon as practicable thereafter. In the case of Eurodollar Loans, until the Administrative Agent shall notify the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) the obligations of the Lenders to make Eurodollar Revolving Loans or to continue or convert outstanding Loans as or into Eurodollar Loans shall be suspended and (ii) all such affected Loans shall be converted into Base Rate Loans on the last day of the then current Interest Period applicable thereto unless the Borrower prepays such Loans in accordance with this Agreement. Unless the Borrower notifies the Administrative Agent at least one (1) Business Day before the date of any Eurodollar Revolving Borrowing for which a Notice of Revolving Borrowing has previously been given that it elects not to borrow on such date, then such Revolving Borrowing shall be made as a Base Rate Borrowing.

**Section 2.16 Illegality**. If any Change in Law shall make it unlawful or impossible for any Lender to make, maintain or fund any Eurodollar Loan and such Lender shall so notify the Administrative Agent, the Administrative Agent shall promptly give notice thereof to the Borrower and the other Lenders, whereupon until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such suspension no longer exist, the obligation of such Lender to make Eurodollar Revolving Loans, or to continue or convert outstanding Loans as or into Eurodollar Loans, shall be suspended. In the case of the making of a Eurodollar Revolving Borrowing, such Lender's Revolving Loan shall be made as a Base Rate Loan as part of the same Revolving Borrowing for the same Interest Period and if the affected Eurodollar Loan is then outstanding, such Loan shall be converted to a Base Rate Loan either (a) on the last day of the then current Interest Period applicable to such Eurodollar Loan if such Lender may lawfully continue to maintain such Loan to such date or (b) immediately if such Lender shall determine that it may not lawfully continue to maintain such Eurodollar Loan to such date. Notwithstanding the foregoing, the affected Lender shall, prior to giving such notice to the Administrative Agent, designate a different Applicable Lending Office if such designation would avoid the need for giving such notice and if such designation would not otherwise be disadvantageous to such Lender in the good faith exercise of its discretion.

**Section 2.17 Increased Costs**.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement that is not otherwise included in the determination of the Adjusted LIBO Rate hereunder against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or the Issuing Bank; or

(ii) impose on any Lender or on the Issuing Bank or the eurodollar interbank market any other condition affecting this Agreement or any Eurodollar Loans made by such Lender or any Letter of Credit or any participation therein;

and the result of the foregoing is to increase the cost to such Lender of making, converting into, continuing or maintaining a Eurodollar Loan or to increase the cost to such Lender or the Issuing Bank of participating in or issuing any Letter of Credit or to reduce the amount received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or any other amount), then the Borrower shall promptly pay, upon written notice from and demand by such Lender on the Borrower (with a copy of such notice and demand to the Administrative Agent), to the Administrative Agent for the account of such Lender, within five (5) Business Days after the date of such notice and demand, additional amount or amounts sufficient to compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank shall have determined that on or after the date of this Agreement any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital (or on the capital of such Lender's or the Issuing Bank's parent corporation) as a consequence of its obligations hereunder or under or in respect of any Letter of Credit to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's parent corporation could have achieved but for such Change in Law, then, from time to time, within five (5) Business Days after receipt by the Borrower of written demand by such Lender (with a copy thereof to the Administrative Agent), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's parent corporation for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's parent corporation, as the case may be, specified in paragraph (a) or (b) of this Section 2.17 shall be delivered to the Borrower (with a copy to the Administrative Agent) and shall be conclusive, absent manifest error. The Borrower shall pay any such Lender or the Issuing Bank, as the case may be, such amount or amounts within ten (10) days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section 2.17 shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation.

**Section 2.18 Funding Indemnity**. In the event of (a) the payment of any principal of a Eurodollar Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion or continuation of a Eurodollar Loan other than on the last day of the Interest Period applicable thereto, or (c) the failure by the Borrower to borrow, prepay, convert or continue any Eurodollar Loan on the date specified in any applicable notice (regardless of whether such notice is withdrawn or revoked), then, in any such event, the Borrower shall compensate each Lender, within five (5) Business Days after written demand from such Lender, for any loss, cost or expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Eurodollar Loan if such event had not occurred at the Adjusted LIBO Rate applicable to such Eurodollar Loan for the period from the date of such event to the last day of the then current Interest Period therefor (or in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Eurodollar Loan) over (ii) the amount of interest that would accrue on the principal amount of such Eurodollar Loan for the same period if the Adjusted LIBO Rate were set on the date such Eurodollar Loan was prepaid or converted or the date on which the Borrower failed to borrow, convert or continue such Eurodollar Loan. A certificate as to any additional amount payable under this Section 2.18 submitted to the Borrower by any Lender shall be conclusive, absent manifest error.

**Section 2.19 Taxes**.

(a) Any and all payments by or on account of any obligation of the Borrower hereunder shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided, that if the Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.19) the Administrative Agent, any Lender or the Issuing Bank (as the case may be) shall receive an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Borrower shall indemnify the Administrative Agent, each Lender and the Issuing Bank, within five (5) Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, such Lender or the Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.19) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or the Issuing Bank, or by the Administrative Agent on its own behalf or on behalf of a Lender or the Issuing Bank, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate. Without limiting the generality of the foregoing, each Foreign Lender agrees that it will deliver to the Administrative Agent and the Borrower (or in the case of a Participant, to the Lender from which the related participation shall have been purchased) (i) two (2) duly completed copies of Internal Revenue Service Form 1001 or 4224, or any successor form thereto, as the case may be, certifying in each case that such Foreign Lender is entitled to receive payments made by the Borrower hereunder and under the Notes payable to it, without deduction or withholding of any United States federal income taxes and (ii) a duly completed Internal Revenue Service Form W-8 or W-9, or any successor form thereto, as the case may be, to establish an exemption from United State backup withholding tax. Each such Foreign Lender shall deliver to the Borrower and the Administrative Agent such forms on or before the date that it becomes a party to this Agreement (or in the case of a Participant, on or before the date such Participant purchases the related participation). In addition, each such Lender shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such Lender. Each such Lender shall promptly notify the Borrower and the Administrative Agent at any time that it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose).

**Section 2.20 Payments Generally; Pro Rata Treatment; Sharing of Set-offs**.

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.17, 2.18, 2.19, or 10.3, or otherwise) and each optional prepayment permitted by Section 2.11(b) prior to 12:00 noon, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at the Payment Office, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.17, 2.18, 2.19 and 10.3 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be made payable for the period of such extension. All payments hereunder shall be made in Dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) If any Lender shall, by exercising any right of set-of or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans or participations in LC Disbursements or Swingline Loans that would result in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in LC Disbursements and Swingline Loans; provided, that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements or Swingline Loans to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount or amounts due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Sections 2.5(b), 2.6(b), 2.20(d), 2.22(d) or (e) or 10.3(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

**Section 2.21 Mitigation of Obligations; Replacement of Lenders.**

(a) If any Lender requests compensation under Section 2.17, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.19, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the sole judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable under Section 2.17 or Section 2.19, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all costs and expenses incurred by any Lender in connection with such designation or assignment.

(b) If any Lender requests compensation under Section 2.17, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority of the account of any Lender pursuant to Section 2.19, or if any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions set forth in Section 10.4(b) all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender); provided, that (i) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal amount of all Loans owed to it, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (in the case of such outstanding principal and accrued interest) and from the Borrower (in the case of all other amounts) and (iii) in the case of a claim for compensation under Section 2.17 or payments required to be made pursuant to Section 2.19, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

**Section 2.22 Letters of Credit**.

(a) On the Closing Date, SunTrust Bank, as the Issuing Bank of the Existing Letters of Credit, in reliance upon the agreements of the other Lenders pursuant to Section 2.22(d), agrees to continue the prior issuance of the Existing Letters of Credit on the terms and conditions set forth therein. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof. Thereafter during the Availability Period, the Issuing Bank, in reliance upon said agreements of the other Lenders pursuant to Section 2.22(d), agrees to issue, at the request of the Borrower, Letters of Credit for the account of the Borrower or any Subsidiary Loan Party on the terms and conditions hereinafter set forth; provided, that (i) each Letter of Credit shall expire on the earlier of (A) the date one year after the date of issuance of such Letter of Credit (or in the case of any renewal or extension thereof, one year after such renewal or extension) and (B) the date that is five (5) Business Days prior to the Commitment Termination Date; (ii) each Letter of Credit may be in any stated amount subject, however, to the provisions of clause (iii) hereof; (iii) neither the Borrower nor any Subsidiary Loan Party may request any Letter of Credit, if, after giving effect to such issuance (A) the aggregate LC Exposure would exceed the LC Commitment or (B) the sum of the aggregate outstanding Revolving Credit Exposures of all Lenders would exceed the Aggregate Revolving Commitments; and (iv) if at the time of such request any Lender is a Defaulting Lender or any Person that Controls such Lender is a Distressed Person, the Issuing Bank shall have entered into arrangements satisfactory to the Issuing Bank (in its sole discretion) with the Borrower or such Lender to eliminate the Issuing Bank's actual or potential risk with respect to such Lender. Upon the issuance of each Letter of Credit (which, as set forth in the definition thereof, includes each Existing Letter of Credit set forth on Schedule 2.22), each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Issuing Bank without recourse a participation in such Letter of Credit equal to such Lender's Pro Rata Share of the aggregate amount available to be drawn under such Letter of Credit. Each issuance of a Letter of Credit shall be deemed to utilize the Revolving Commitment of each Lender by an amount equal to the amount of such participation.

(b) To request the issuance of a Letter of Credit (or any amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall give the Issuing Bank and the Administrative Agent irrevocable written notice at least three (3) Business Days prior to the requested date of such issuance specifying the date (which shall be a Business Day) such Letter of Credit is to be issued (or amended, extended or renewed, as the case may be), the expiration date of such Letter of Credit, the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. In addition to the satisfaction of the conditions in Article III, the issuance of such Letter of Credit (or any amendment which increases the amount of such Letter of Credit) will be subject to the further conditions that such Letter of Credit shall be in such form and contain such terms as the Issuing Bank shall approve and that the Borrower shall have executed and delivered any additional applications, agreements and instruments relating to such Letter of Credit as the Issuing Bank shall reasonably require; provided, that in the event of any conflict between such applications, agreements or instruments and this Agreement, the terms of this Agreement shall control.

(c) At least two (2) Business Days prior to the issuance of any Letter of Credit, the Issuing Bank will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received such notice and if not, the Issuing Bank will provide the Administrative Agent with a copy thereof. Unless the Issuing Bank has received notice from the Administrative Agent on or before the Business Day immediately preceding the date the Issuing Bank is to issue the requested Letter of Credit directing the Issuing Bank not to issue the Letter of Credit because such issuance is not then permitted hereunder because of the limitations set forth in Section 2.22(a) or that one or more conditions specified in Article III are not then satisfied, then, subject to the terms and conditions hereof, the Issuing Bank shall, on the requested date, issue such Letter of Credit in accordance with the Issuing Bank's usual and customary business practices.

(d) The Issuing Bank shall examine all documents purporting to represent a demand for payment under a Letter of Credit promptly following its receipt thereof. The Issuing Bank shall notify the Borrower and the Administrative Agent of such demand for payment and whether the Issuing Bank has made or will make a LC Disbursement thereunder; provided, that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Issuing Bank and the Lenders with respect to such LC Disbursement. The Borrower shall be irrevocably and unconditionally obligated to reimburse the Issuing Bank for any LC Disbursements paid by the Issuing Bank in respect of such drawing, without presentment, demand or other formalities of any kind. Unless the Borrower shall have notified the Issuing Bank and the Administrative Agent prior to 12:00 noon on the Business Day immediately prior to the date on which such drawing is honored that the Borrower intends to reimburse the Issuing Bank for the amount of such drawing in funds other than from the proceeds of Revolving Loans, the Borrower shall be deemed to have timely given a Notice of Revolving Borrowing to the Administrative Agent requesting the Lenders to make a Base Rate Borrowing on the date on which such drawing is honored in an exact amount due to the Issuing Bank; provided, that for purposes solely of such Borrowing, the conditions precedents set forth in Section 3.2 hereof shall not be applicable. The Administrative Agent shall notify the Lenders of such Borrowing in accordance with Section 2.3, and each Lender shall make the proceeds of its Base Rate Loan included in such Borrowing available to the Administrative Agent for the account of the Issuing Bank in accordance with Section 2.6. The proceeds of such Borrowing shall be applied directly by the Administrative Agent to reimburse the Issuing Bank for such LC Disbursement.

(e) If for any reason a Base Rate Borrowing may not be (as determined in the sole discretion of the Administrative Agent), or is not, made in accordance with the foregoing provisions, then each Lender (other than the Issuing Bank) shall be obligated to fund the participation that such Lender purchased pursuant to subsection (a) in an amount equal to its Pro Rata Share of such LC Disbursement on and as of the date which such Base Rate Borrowing should have occurred. Each Lender's obligation to fund its participation shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation (i) any setoff, counterclaim, recoupment, defense or other right that such Lender or any other Person may have against the Issuing Bank or any other Person for any reason whatsoever, (ii) the existence of a Default or an Event of Default (other than an Event of Default in existence at the time of the issuance of any Letter of Credit by the Issuing Bank of which the Issuing Bank had actual knowledge) or the termination of the Aggregate Revolving Commitments, (iii) any adverse change in the condition (financial or otherwise) of the Borrower or any of its Subsidiaries, (iv) any breach of this Agreement by the Borrower or any other Lender, (v) any amendment, renewal or extension of any Letter of Credit or (vi) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. On the date that such participation is required to be funded, each Lender shall promptly transfer, in immediately available funds, the amount of its participation to the Administrative Agent for the account of the Issuing Bank. Whenever, at any time after the Issuing Bank has received from any such Lender the funds for its participation in a LC Disbursement, the Issuing Bank (or the Administrative Agent on its behalf) receives any payment on account thereof, the Administrative Agent or the Issuing Bank, as the case may be, will distribute to such Lender its Pro Rata Share of such payment; provided, that if such payment is required to be returned for any reason to the Borrower or to a trustee, receiver, liquidator, custodian or similar official in any bankruptcy proceeding, such Lender will return to the Administrative Agent or the Issuing Bank any portion thereof previously distributed by the Administrative Agent or the Issuing Bank to it.

(f) To the extent that any Lender shall fail to pay any amount required to be paid pursuant to paragraph (d) of this Section 2.22 on the due date therefor, such Lender shall pay interest to the Issuing Bank (through the Administrative Agent) on such amount from such due date to the date such payment is made at a rate per annum equal to the Federal Funds Rate; provided, that if such Lender shall fail to make such payment to the Issuing Bank within three (3) Business Days of such due date, then, retroactively to the due date, such Lender shall be obligated to pay Default Interest on such amount.

(g) If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders demanding the deposit of Cash Collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders, an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid interest thereon; provided, that the obligation to deposit such Cash Collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (g) or (h) of Section 8.1. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. At the request of the Borrower, the Administrative Agent shall hold such deposit in an interest-bearing money market demand deposit account at the Borrower's risk and expense; otherwise, such deposit shall not bear interest. Interest and profits, if any, on such investments shall accumulate in such account. Moneys in such account shall applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it had not been reimbursed and to the extent so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, with the consent of the Required Lenders, be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of Cash Collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not so applied as aforesaid) shall be returned to the Borrower with three (3) Business Days after all Events of Default have been cured or waived.

Notwithstanding anything to the contrary contained in this Agreement, (A) Cash Collateral or other credit support (and proceeds thereof) provided by any Lender pursuant to Section 2.22(g) to support the obligations of such Lender in respect of Letters of Credit shall be held and applied, first, to fund the LC Disbursements of such Lender or such Lender's Pro Rata Share of Base Rate Loans arising from Letters of Credit with respect to which such Cash Collateral or other credit support was provided, as contemplated by the foregoing provisions of this Section 2.22, and, second, to fund (x) the LC Disbursements of such Lender or such Lender's Pro Rata Share of Base Rate Loans arising from any other Letters of Credit, as contemplated by the foregoing provisions of this Section 2.22, and (y) any interest accrued for the benefit of the Issuing Bank pursuant to Section 2.22(f) allocable to such Lender, and (B) Cash Collateral and other credit support (and proceeds thereof) otherwise provided by or on behalf of the Borrower under Section 2.22 to support LC Exposure shall be held and applied, first, to the satisfaction of the specific LC Exposure so supported and, second, if remedies under Section 8.1 shall have been exercised, to the application of such Cash Collateral or other credit support (or proceeds thereof) to any other Obligations in accordance with Section 8.1.

Cash Collateral and other credit support provided under this Section 2.22(g) in connection with (x) any Lender's status as a Defaulting Lender or (y) the status of any Person that Controls such Lender as a Distressed Person shall be released (except as the Issuing Bank and the Person providing such Cash Collateral or other credit support may agree otherwise) promptly following the earlier to occur of (A) the termination of the Default Period with respect to such Defaulting Lender or (B) such Person that Controls the Lender ceases to be a Distressed Person; subject, however, to the additional condition that, as to any such Cash Collateral or other credit support provided by or on behalf of the Borrower, no Default or Event of Default shall then have occurred and be continuing.

(h) Promptly following the end of each fiscal quarter, the Issuing Bank shall deliver (through the Administrative Agent) to each Lender and the Borrower a report describing the aggregate Letters of Credit outstanding at the end of such fiscal quarter. Upon the request of any Lender from time to time, the Issuing Bank shall deliver to such Lender any other information reasonably requested by such Lender with respect to each Letter of Credit then outstanding.

(i) The Borrower's obligation to reimburse LC Disbursements hereunder shall be absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under all circumstances whatsoever and irrespective of any of the following circumstances:

(i) Any lack of validity or enforceability of any Letter of Credit or this Agreement;

(ii) The existence of any claim, set-off, defense or other right which the Borrower or any Subsidiary or Affiliate of the Borrower may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons or entities for whom any such beneficiary or transferee may be acting), any Lender (including the Issuing Bank) or any other Person, whether in connection with this Agreement or the Letter of Credit or any document related hereto or thereto or any unrelated transaction;

(iii) Any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect;

(iv) Payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document to the Issuing Bank that does not comply with the terms of such Letter of Credit;

(v) Any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.22, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder; or

(vi) The existence of a Default or an Event of Default.

Neither the Administrative Agent, the Issuing Bank, the Lenders nor any Related Party of any of the foregoing shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to above), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; provided, that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts or other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree, that in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(j)(i) Each standby Letter of Credit shall be subject to the International Standby Practices (ISP98 – International Chamber of Commerce Publication Number 590), as the same may be amended from time to time, and (ii) each commercial Letter of Credit shall be subject to the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance, and (iii) each Letter of Credit, to the extent not inconsistent therewith, shall be subject to the governing law of this Agreement set forth in Section 10.5.

(k) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary Loan Party, the Borrower shall be obligated to reimburse the Issuing Bank hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiary Loan Parties.

**Section 2.23 Extension of Scheduled Commitment Termination Date**.

(a) The Borrower may, by notice to the Administrative Agent (who shall promptly notify the Lenders) not earlier than ninety (90) days and not later than thirty-five (35) days prior to the first and/or second anniversaries of this Agreement (each such anniversary being a " ***Modification Date***") request that each Lender extend such Lender's Scheduled Commitment Termination Date for an additional year from the Scheduled Commitment Termination Date then in effect hereunder (the "***Existing Scheduled Commitment Termination Date***").

(b) Each Lender, acting in its sole and individual discretion, shall, by notice to the Administrative Agent given not later than the date specified in the notice from the Administrative Agent (the "***Notice Date***"), which date shall not be earlier than ten (10) Business Days after the date of such notice and not later than twenty (20) days prior to the applicable Modification Date, advise the Administrative Agent whether or not such Lender agrees to such extension (and each Lender that determines not to so extend its Maturity Date (a " ***Non-Extending Lender***") shall notify the Administrative Agent of such fact promptly after such determination (but in any event no later than the Notice Date) and any Lender that does not so advise the Administrative Agent on or before the Notice Date shall be deemed to be a Non-Extending Lender). The election of any Lender to agree to such extension shall not obligate any other Lender to so agree.

(c) The Administrative Agent shall notify the Borrower of each Lender's determination under this Section no later than the date fifteen (15) days prior to the Modification Date (or, if such date is not a Business Day, on the next preceding Business Day).

(d) The Borrower shall have the right (but not the obligation) on or before the Modification Date to replace each Non-Extending Lender with, and add as "Lenders" under this Agreement in place thereof, one or more Eligible Assignees (each, an " ***Additional Commitment Lender***") as provided in Section 2.21, each of which Additional Commitment Lenders shall have entered into an Assignment and Assumption pursuant to which such Additional Commitment Lender shall, effective as of the Modification Date, undertake a Commitment (and, if any such Additional Commitment Lender is already a Lender, its Commitment shall be in addition to such Lender's Commitment hereunder on such date).

(e) If (and only if) the total of the Commitments of the Lenders that have agreed to so extend their Scheduled Commitment Termination Date and the additional Commitments of the Additional Commitment Lenders shall be more than 50% of the aggregate amount of the Commitments in effect immediately prior to the Modification Date, then, effective as of the Modification Date, the Scheduled Commitment Termination Date of each Extending Lender and of each Additional Commitment Lender shall be extended to the date falling one year after the Existing Scheduled Commitment Termination Date (except that, if such date is not a Business Day, such Scheduled Commitment Termination Date as so extended shall be the next preceding Business Day) and each Additional Commitment Lender shall thereupon become a "Lender" for all purposes of this Agreement.

(f) Notwithstanding the foregoing, the extension of the Scheduled Commitment Termination Date pursuant to this Section shall not be effective with respect to any Lender unless the Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Modification Date signed by a Responsible Officer of such Loan Party certifying:

(i) no Default shall have occurred and be continuing on the date of such extension and after giving effect thereto;

(ii) the representations and warranties contained in this Agreement are true and correct in all material respects on and as of the date of such extension and after giving effect thereto, as though made on and as of such date (except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects as of such earlier date); and

(iii) on the Scheduled Commitment Termination Date of each Non-Extending Lender, the Borrower shall prepay any Loans outstanding on such date (and pay any additional amounts required pursuant to Section 2.18) to the extent necessary to keep outstanding Loans ratable with any revised Pro Rata Share of the respective Lenders effective as of such date.

(g) This Section shall supersede any provisions in Section 2.20 or 10.2 to the contrary.

## ARTICLE III

## CONDITIONS PRECEDENT TO LOANS AND LETTERS OF CREDIT

**Section 3.1 Conditions To Effectiveness**. The obligations of the Lenders (including the Swingline Lender) initially to make Loans and the obligation of the Issuing Bank initially to issue any Letter of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 10.2).

(a) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Closing Date, including reimbursement or payment of all out-of-pocket expenses (including reasonable fees, charges and disbursements of counsel to the Administrative Agent) required to be reimbursed or paid by the Borrower hereunder, under any other Loan Document and under any agreement with the Administrative Agent or Banc of America Securities, LLC, as Arranger.

(b) The Administrative Agent (or its counsel) shall have received the following:

(i) a counterpart of this Agreement signed by or on behalf of each party thereto or written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement;

(ii) if requested by any Lender, duly executed Notes payable to such Lender;

(iii) a duly executed Subsidiary Guarantee Agreement and Indemnity and Contribution Agreement;

(iv) a certificate of the Secretary or Assistant Secretary, or manager or member, as applicable, of each Loan Party, attaching and certifying copies of its bylaws and of the resolutions of its boards of directors, or partnership agreement or limited liability company operating agreement, or comparable organizational documents and authorizations, authorizing the execution, delivery and performance of the Loan Documents to which it is a party and certifying the name, title and true signature of each officer of such Loan Party executing the Loan Documents to which it is a party;

(v) certified copies of the articles of incorporation or other charter documents of each Loan Party, together with certificates of good standing or existence, as may be available from the Secretary of State of the jurisdiction of incorporation or organization of such Loan Party and each other jurisdiction where such Loan Party is required to be qualified to do business as a foreign corporation;

(vi) a favorable written opinion of Moore & Van Allen PLLC, counsel to the Loan Parties, addressed to the Administrative Agent and each of the Lenders, and covering such matters relating to the Loan Parties, the Loan Documents and the transactions contemplated therein as the Administrative Agent or the Lenders shall reasonably request;

(vii) a certificate in the form of Exhibit 3.1(b)(vii), dated the Closing Date and signed by a Responsible Officer, confirming compliance with the conditions set forth in paragraphs (a), (b) and (c) of Section 3.2 and, further, demonstrating compliance with Sections 6.1 and 6.2 as of the most recent fiscal quarter ended;

(viii) a certificate dated the Closing Date and signed by a Responsible Officer certifying (A) that since March 31, 2007 there has been no event or condition which has had or could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, and (B) as to the absence of any action, suit, investigation or proceeding pending or, to the knowledge of the Borrower, threatened in any court or before any arbitrator or governmental authority that could reasonably be expected to have a Material Adverse Effect;

(ix) certified copies of all consents, approvals, authorizations, registrations or filings required to be made or obtained by each Loan Party in connection with the Loans and any transaction being financed with the proceeds of the Loans;

(x) duly executed payoff letters, in form and substance satisfactory to the Administrative Agent, executed by each lender holding Indebtedness to be refinanced at closing, including but not limited to Indebtedness under the Borrower's $100,000,000 Revolving Credit Agreement dated December 10, 2004, together with evidence satisfactory to the Administrative Agent as to the termination of the Commitments thereunder, the payment in full of all obligations owing thereunder and the release of any and all liens and security interests securing such obligations;

(xi) UCC, judgment and tax lien searches in the jurisdiction of the chief executive office and jurisdiction of incorporation or organization of each Loan Party, together with copies of all financing statements on file in such jurisdictions (with all attachments) and evidence that no Liens exist on any assets or properties of any such Loan Party (other than Liens permitted by Section 7.2);

(xii) a certificate of insurance issued on behalf of insurers of each Loan Party, describing in reasonable detail the types and amounts of insurance (property and liability) maintained by such Loan Party, naming the Administrative Agent as additional insured under all liability insurance;

(xiii) duly executed Notices of Borrowing, if applicable; and

(xiv) a duly executed funds disbursement agreement.

**Section 3.2 Each Credit Event**. The obligation of each Lender to make a Loan on the occasion of any Borrowing and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit, and the agreement of any Lender to extend the Stated Commitment Termination Date pursuant to Section 2.8 is, in each case subject to the satisfaction of the following conditions:

(a) at the time of and immediately after giving effect to such Borrowing, the issuance, amendment, renewal or extension of such Letter of Credit or the extension of the Scheduled Commitment Termination Date, as applicable, no Default or Event of Default shall exist;

(b) all representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct in all material respects on and as of the date of such Borrowing, the date of issuance, amendment, extension or renewal of such Letter of Credit or the date of extension of the Scheduled Commitment Termination Date, as applicable, in each case before and after giving effect thereto, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date and except that for the purposes of this Section 3.2 the representations and warranties contained in Sections 4.4(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 5.1(a) and (b), respectively;

(c) since the date of the most recent financial statements of the Borrower described in Section 5.1(a) (or as to Loans and issuances on the Closing Date, since March 31, 2007), there shall have been no change which has had or could reasonably be expected to have a Material Adverse Effect;

(d) the Borrower shall have paid all fees payable under this Agreement to the extent then due and payable; and

(e) the Administrative Agent shall have received such other documents, certificates, information or legal opinions as the Administrative Agent or the Required Lenders may reasonably request, all in form and substance reasonably satisfactory to the Administrative Agent or the Required Lenders.

Each Borrowing, each issuance, amendment, extension or renewal of any Letter of Credit and any extension of the Scheduled Commitment Termination Date shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a), (b) and (c) of this Section 3.2.

**Section 3.3 Delivery of Documents**. All of the Loan Documents, certificates, legal opinions and other documents and papers referred to in this Article III, unless otherwise specified, shall be delivered to the Administrative Agent for the account of each of the Lenders and, except for the Notes, in sufficient counterparts or copies for each of the Lenders and shall be in form and substance satisfactory in all respects to the Administrative Agent.

## ARTICLE IV

## REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and each Lender as follows:

**Section 4.1 Existence; Power**. The Borrower and each of its Subsidiaries (i) is duly organized, validly existing and in good standing as a corporation or other legally organized entity under the laws of the jurisdiction of its organization, (ii) has all requisite power and authority to carry on its business as now conducted, and (iii) is duly qualified to do business, and is in good standing, in each jurisdiction where such qualification is required, except where a failure to be so qualified could not reasonably be expected to result in a Material Adverse Effect.

**Section 4.2 Organizational Power; Authorization**. The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party are within such Loan Party's organizational powers and have been duly authorized by all necessary organizational, and if required, stockholder or other equity owner, action. This Agreement has been duly executed and delivered by the Borrower, and constitutes, and each other Loan Document to which any Loan Party is a party, when executed and delivered by such Loan Party, will constitute, valid and binding obligations of the Borrower or such Loan Party (as the case may be), enforceable against it in accordance with their respective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

**Section 4.3 Governmental Approvals; No Conflicts**. The execution, delivery and performance by the Borrower of this Agreement, and by each Loan Party of the other Loan Documents to which it is a party (a) do not require any consent or approval of, registration or filing with, or any action by, any Governmental Authority, except those as have been obtained or made and are in full force and effect or where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, (b) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of the Borrower or any of its Subsidiaries or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, material agreement or other material instrument binding on the Borrower or any of its Subsidiaries or any of its assets (other than the Prudential Shelf Agreement) or give rise to a right thereunder to require any payment to be made by the Borrower or any of its Subsidiaries and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Subsidiaries, except Liens (if any) created under the Loan Documents.

**Section 4.4 Financial Statements**.

(a) The Borrower has furnished to each Lender the audited consolidated balance sheet of the Borrower and its Subsidiaries as of December 31, 2006 and the related consolidated statements of income, shareholders' equity and comprehensive income and cash flows for the fiscal year then ended reported on by Grant Thornton LLP, independent certified public accountants.

(b) The Borrower has furnished to each Lender the unaudited consolidated balance sheets of the Borrower and its Subsidiaries as of the most recently ended fiscal quarter and the related unaudited consolidated statements of income and cash flows for the Borrower and its Subsidiaries for such fiscal quarter and the then elapsed portion of such fiscal year.

In the case of each of clauses (a) and (b), such financial statements fairly present the consolidated financial condition of the Borrower and its Subsidiaries as of such date and the consolidated results of operations for such period in conformity with GAAP consistently applied.

(c) Since December 31, 2006, there have been no changes with respect to the Borrower and its Subsidiaries which have had or could reasonably be expected to have, singly or in the aggregate, a Material Adverse Effect.

**Section 4.5 Litigation and Environmental Matters**.

(a) Schedule 4.5(a) sets forth certain litigation which is pending against Borrower as of the Closing Date (the " ***Pending Litigation***"). No litigation (including the Pending Litigation), investigation or proceeding of or before any arbitrators or Governmental Authorities is pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of its Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect or (ii) which in any manner draws into question the validity or enforceability of this Loan Agreement or any other Loan Document.

(b) Except for the matters set forth on Schedule 4.5(b), neither the Borrower nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, (ii) has become subject to any Environmental Liability that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, (iii) has received notice of any claim with respect to any Environmental Liability that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect or (iv) knows of any basis for any Environmental Liability that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

**Section 4.6 Compliance with Laws and Agreements**. The Borrower and each Subsidiary is in compliance with (a) all applicable laws, rules, regulations and orders of any Governmental Authority, and (b) all indentures, agreements or other instruments binding upon it or its properties, except, in either case, where non-compliance, either singly or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**Section 4.7 Investment Company Act, Etc**. Neither the Borrower nor any of its Subsidiaries is (a) an "investment company", as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended, or (b) otherwise subject to any other regulatory scheme limiting its ability to incur debt.

**Section 4.8 Taxes**. The Borrower and its Subsidiaries and each other Person for whose taxes the Borrower or any Subsidiary could become liable have timely filed or caused to be filed all Federal income tax returns and all other material tax returns that are required to be filed by them, and have paid all taxes shown to be due and payable on such returns or on any assessments made against it or its property and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, except (i) to the extent the failure to do so would not have a Material Adverse Effect or (ii) where the same are currently being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as the case may be, has set aside on its books adequate reserves. The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of such taxes are adequate, and no tax liabilities that could be materially in excess of the amount so provided are anticipated.

**Section 4.9 Margin Regulations**. The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than 25% of the value of the assets (either of the Borrower only or of the Borrower and its Subsidiaries on a consolidated basis) will be margin stock.

**Section 4.10 ERISA**. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect.

**Section 4.11 Ownership of Property**.

(a) Each of the Borrower and its Subsidiaries has good title to, or valid leasehold interests in, all of its real and personal property material to the operation of its business.

(b) Each of the Borrower and its Subsidiaries owns, or is licensed, or otherwise has the right, to use, all patents, trademarks, service marks, trade names, copyrights and other intellectual property material to its business, and the use thereof by the Borrower and its Subsidiaries does not infringe on the rights of any other Person, except for any such infringements that, individually or in the aggregate, would not have a Material Adverse Effect.

**Section 4.12 Disclosure**. The Borrower has disclosed to the Lenders all agreements, instruments, and corporate or other restrictions to which the Borrower or any of its Subsidiaries is subject, and all other matters known to any of them, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No documents, reports (including without limitation all reports that the Borrower is required to file with the Securities and Exchange Commission), financial statements, certificates or other information furnished by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the negotiation or syndication of this Agreement or any other Loan Document or delivered hereunder or thereunder (as modified or supplemented by any other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, taken as a whole, in light of the circumstances under which they were made, not misleading.

**Section 4.13 Labor Relations**. There are no strikes, lockouts or other material labor disputes or grievances against the Borrower or any of its Subsidiaries (other than Carrier Enterprise), or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its Subsidiaries (other than Carrier Enterprise), and no significant unfair labor practice, charges or grievances are pending against the Borrower or any of its Subsidiaries (other than Carrier Enterprise), or to the Borrower's knowledge, threatened against any of them before any Governmental Authority. All payments due from the Borrower or any of its Subsidiaries (other than Carrier Enterprise) pursuant to the provisions of any collective bargaining agreement have been paid or accrued as a liability on the books of the Borrower or any such Subsidiary, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**Section 4.14 Binding Effect**. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms.

**Section 4.15 No Default**. Neither any Loan Party nor any Subsidiary thereof is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

**Section 4.16 Solvency**. Each of the Loan Parties and Carrier Enterprise is Solvent and, in executing the Loan Documents and consummating the transactions contemplated thereby, none of the Loan Parties intends to hinder, delay or defraud either present or future creditors or other Persons to which one or more of the Loan Parties is or will become indebted.

**Section 4.17 Senior Debt**. The Obligations constitute senior debt for purposes of all subordinated debt facilities, if any.

**Section 4.18 Principal Places of Business and Subsidiaries**. Schedule 4.18 sets forth the name of, the chief executive office of, the principal place of business of, the ownership interest of the Borrower in, the jurisdiction of organization of, and the type of, each Subsidiary, in each case as of the Closing Date, and the chief executive office and principal place of business of the Borrower.

**Section 4.19 Insurance**. The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates.

## ARTICLE V

## AFFIRMATIVE COVENANTS

The Borrower covenants and agrees that so long as any Lender has a Commitment hereunder or the principal of and interest on any Loan or any fee or any LC Disbursement remains unpaid or any Letter of Credit remains outstanding:

**Section 5.1 Financial Statements and Other Information**. The Borrower will deliver to the Administrative Agent:

(a) as soon as available and in any event within seventy-five (75) days after the end of each fiscal year of Borrower, a copy of the annual audited report for such fiscal year for the Borrower and its Subsidiaries, containing a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal year and the related consolidated statements of income, stockholders' equity and cash flows (together with all footnotes thereto) of the Borrower and its Subsidiaries for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and reported on by independent public accountants of nationally recognized standing (without a "going concern" or like qualification or exception, and without any qualification or exception not acceptable to Lenders in their sole discretion) to the effect that such financial statements present fairly in all material respects the financial condition and the results of operations of the Borrower and its Subsidiaries for such fiscal year on a consolidated basis in accordance with GAAP and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards;

(b) as soon as available and in any event within forty (40) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower, an unaudited consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal quarter and the related unaudited consolidated statements of income and cash flows of the Borrower and its Subsidiaries for such fiscal quarter and the then elapsed portion of such fiscal year, setting forth in each case in comparative form the figures for the corresponding quarter and the corresponding portion of Borrower's previous fiscal year, all certified by the chief financial officer or treasurer of the Borrower as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with the delivery of the financial statements referred to in clauses (a) and (b) above, (i) a certificate of a Responsible Officer, (A) certifying as to whether there exists a Default or Event of Default on the date of such certificate, and if a Default or an Event of Default then exists, specifying the details thereof and the action which the Borrower has taken or proposes to take with respect thereto and (B) stating whether any change in GAAP or the application thereof has occurred since the date of the Borrower's audited financial statements referred to in Section 4.4 and, if any change has occurred, specifying the effect of such change on the financial statements accompanying such certificate, and (ii) a certificate of a Responsible Officer in the form of Exhibit 5.1(c) (the "***Compliance Certificate***") setting forth in reasonable detail calculations demonstrating compliance with Article VI;

(d) as soon as available and in any event within seventy-five (75) days after the end of each fiscal year of Carrier Enterprise, a copy of the annual audited report for such fiscal year for Carrier Enterprise, containing a consolidated balance sheet of Carrier Enterprise as of the end of such fiscal year and the related consolidated statements of income, stockholders' equity and cash flows (together with all footnotes thereto) of Carrier Enterprise for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and reported on by independent public accountants of nationally recognized standing (without a "going concern" or like qualification or exception, and without any qualification or exception not acceptable to Lenders in their sole discretion) to the effect that such financial statements present fairly in all material respects the financial condition and the results of operations of Carrier Enterprise for such fiscal year on a consolidated basis in accordance with GAAP and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards;

(e) as soon as available and in any event within forty (40) days after the end of each of the first three (3) fiscal quarters of each fiscal year of Carrier Enterprise, an unaudited consolidated balance sheet of Carrier Enterprise as of the end of such fiscal quarter and the related unaudited consolidated statements of income and cash flows of Carrier Enterprise for such fiscal quarter and the then elapsed portion of such fiscal year, setting forth in each case in comparative form the figures for the corresponding quarter and the corresponding portion of Carrier Enterprise's previous fiscal year, all certified by the chief financial officer or treasurer of Carrier Enterprise as presenting fairly in all material respects the financial condition and results of operations of Carrier Enterprise on a consolidated basis in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes;

(f) promptly following any request therefor, copies of all periodic and other reports, proxy statements and other materials filed with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all functions of said Commission, or with any national securities exchange, or distributed by the Borrower to its shareholders generally, as the case may be; and

(g) promptly following any request therefor, such other information regarding the results of operations, business affairs and financial condition of the Borrower or any Subsidiary as the Administrative Agent or any Lender may reasonably request.

Documents required to be delivered pursuant to Section 5.1(a) or (b) or Section 5.2(d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed in Section 10.1; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions ( i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 5.1(c) to the Administrative Agent. Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders and the Issuing Bank materials and/or information provided by or on behalf of the Borrower hereunder (collectively, " ***Borrower Materials***") by posting the Borrower Materials on IntraLinks or another similar electronic system (the " ***Platform***") and (b) certain of the Lenders (each, a " ***Public Lender***") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC", the Borrower shall be deemed to have authorized the Administrative Agent, the Arranger, the Issuing Bank and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws ( provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.11); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (z) the Administrative Agent and the Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor".

**Section 5.2 Notices of Material Events**. The Borrower will furnish to the Administrative Agent and each Lender prompt written notice of the following:

(a) the occurrence of any Default or Event of Default or the occurrence of any event or condition that would, or would with the giving of notice or the lapse of time or both, constitute an Event of Default if the provisions of Section 8.1 did not exclude Carrier Enterprise;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or, to the knowledge of the Borrower, affecting the Borrower or any Subsidiary which, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any event or any other development by which the Borrower or any of its Subsidiaries (i) fails to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) becomes subject to any Environmental Liability, (iii) receives notice of any claim with respect to any Environmental Liability, or (iv) becomes aware of any basis for any Environmental Liability and in each of the preceding clauses (i) through (iv), which individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(d) the occurrence of any ERISA Event that alone, or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding $1,000,000;

(e) any change in the fiscal year of the Borrower or any Subsidiary, except to change the fiscal year of a Subsidiary to conform its fiscal year to that of the Borrower; and

(f) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section 5.2 shall be accompanied by a written statement of a Responsible Officer setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

**Section 5.3 Existence; Conduct of Business**. The Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and maintain in full force and effect its legal existence and its respective rights, licenses, permits, privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business and will continue to engage in the same business as presently conducted or such other businesses that are reasonably related thereto; provided, that nothing in this Section 5.3 shall prohibit any merger, consolidation, liquidation or dissolution permitted under Section 7.3.

**Section 5.4 Compliance with Laws, Etc**. The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and requirements of any Governmental Authority applicable to its properties, except where the failure to do so, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**Section 5.5 Payment of Obligations**. The Borrower will, and will cause each of its Subsidiaries (other than Carrier Enterprise) to, pay and discharge at or before maturity, all of its obligations and liabilities (including without limitation all tax liabilities and claims that could result in a statutory Lien) before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

**Section 5.6 Books and Records**. The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities to the extent necessary to prepare the consolidated financial statements of Borrower in conformity with GAAP.

**Section 5.7 Visitation, Inspection, Etc**. The Borrower will, and will cause each of its Subsidiaries (other than Carrier Enterprise) to, permit any representative of the Administrative Agent or any Lender, to visit and inspect its properties, to examine its books and records and to make copies and take extracts therefrom, and to discuss its affairs, finances and accounts with any of its officers and with its independent certified public accountants, all at such reasonable times and as often as the Administrative Agent or any Lender may reasonably request after reasonable prior notice to the Borrower.

**Section 5.8 Maintenance of Properties; Insurance**. The Borrower will, and will cause each of its Subsidiaries (other than Carrier Enterprise) to, (a) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear except where the failure to do so, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect and (b) maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business, and the properties and business of its Subsidiaries, in amounts and against loss or damage of the kinds customarily insured against by companies in the same or similar businesses operating in the same or similar locations, in each instance, reasonably acceptable to the Administrative Agent.

**Section 5.9 Use of Proceeds and Letters of Credit**. The Borrower will use the proceeds of all Loans to refinance existing Indebtedness on the Closing Date and thereafter to finance working capital needs, Capital Expenditures, acquisitions and for other general corporate purposes of the Borrower and its Subsidiaries (other than Carrier Enterprise, except as otherwise permitted in this Agreement). No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that would violate any rule or regulation of the Board of Governors of the Federal Reserve System, including Regulations T, U or X. All Letters of Credit will be used for general corporate purposes.

**Section 5.10 Additional Subsidiaries**.

(a) Except as to any Subsidiary formed by the Borrower after the Closing Date and having assets with a total value of less than $500,000 and except as to Carrier Enterprise (except as set forth in Sections 7.4(a)(x) and 10.16(b)), if any additional Subsidiary is acquired or formed by the Borrower after the Closing Date, the Borrower will, within thirty (30) Business Days after such Subsidiary is acquired or formed or acquires or maintains assets with a total value of $500,000 or more, notify the Administrative Agent and the Lenders thereof and will cause such Subsidiary to become a Subsidiary Loan Party by executing agreements in the form of Annex I to Exhibit D and Annex I to Exhibit E in form and substance satisfactory to the Administrative Agent and the Required Lenders and will cause such Subsidiary to deliver simultaneously therewith similar documents applicable to such Subsidiary required under Section 3.1(b)(iv), (v), (vi), (viii), (xi) and (xii) as reasonably requested by the Administrative Agent.

(b) If at any time a Subsidiary acquires an ownership interest in Carrier Enterprise, the Borrower shall (i) promptly notify the Administrative Agent of such Subsidiary's acquisition of such ownership interest and (ii) within 30 days after such Subsidiary's acquisition of such ownership interest, cause to be delivered to the Administrative Agent for the benefit of the Secured Parties a Pledge Agreement Supplement or Pledge Joinder Agreement, as applicable, executed by such Subsidiary.

**Section 5.11 Environmental Laws**.

(a) The Borrower shall, and shall cause each of its Subsidiaries (other than Carrier Enterprise) to, conduct its operations and keep and maintain its property in compliance in all material respects with all Environmental Laws, except to the extent that the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

(b) Upon written request of the Administrative Agent or any Lender, the Borrower shall submit and cause each of its Subsidiaries (other than Carrier Enterprise) to submit, to the Administrative Agent and such Lender, at the Borrower's sole cost and expense and at reasonable intervals, a report providing an update of the status any environmental, health or safety compliance obligation, remedial obligation or liability, that could, individually or in the aggregate, result in liability in excess of $5,000,000.

**Section 5.12 Gemaire Caribe**. If after the Closing Date, Gemaire Caribe (a) obtains assets, (b) commences business operations, or (c) receives any Investment from the Borrower or any other Subsidiary, such that if Gemaire Caribe were a newly formed or acquired Subsidiary it would be required to become a Subsidiary Loan Party pursuant to Section 5.10(a), the Borrower will, within thirty (30) Business Days after the occurrence of any event described in clauses (a), (b) or (c) above, notify the Administrative Agent and the Lenders thereof and will cause Gemaire Caribe to become a Subsidiary Loan Party by executing agreements in the form of Annex I to Exhibit D and Annex I to Exhibit E in form and substance satisfactory to the Administrative Agent and the Required Lenders and will cause Gemaire Caribe to deliver simultaneously therewith similar documents applicable to Gemaire Caribe required under Section 3.1(b)(iv), (v), (vi), (viii), (xi) and (xii) as reasonably requested by the Administrative Agent.

## ARTICLE VI

## FINANCIAL COVENANTS

The Borrower covenants and agrees that so long as any Lender has a Commitment hereunder or the principal of or interest on or any Loan remains unpaid or any fee or any LC Disbursement remains unpaid or any Letter of Credit remains outstanding:

**Section 6.1 Leverage Ratio**. The Borrower and its Subsidiaries will have, as of the end of each fiscal quarter of the Borrower, commencing with the fiscal quarter ended June 30, 2007, a Leverage Ratio of not greater than 3.50:1.00, calculated on a rolling four-quarter basis.

**Section 6.2 Interest Coverage Ratio**. The Borrower and it Subsidiaries will have, as of the end of each fiscal quarter of the Borrower, commencing with the fiscal quarter ended June 30, 2007, an Interest Coverage Ratio of not less than 3.00:1.00, calculated on a rolling four-quarter basis.

## ARTICLE VII

## NEGATIVE COVENANTS

Subject to Section 10.16, the Borrower covenants and agrees that so long as any Lender has a Commitment hereunder or the principal of or interest on any Loan remains unpaid or any fee or any LC Disbursement remains unpaid or any Letter of Credit remains outstanding:

**Section 7.1 Indebtedness**. The Borrower will not, and will not permit any of its Subsidiaries (other than Carrier Enterprise) to, create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness created pursuant to the Loan Documents;

(b) Indebtedness existing on the date hereof and set forth on Schedule 7.1 and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof (immediately prior to giving effect to such extension, renewal or replacement) or shorten the maturity or the weighted average life thereof;

(c) Indebtedness of the Borrower owing to any Subsidiary Loan Party and of any Subsidiary Loan Party owing to the Borrower or any other Subsidiary Loan Party;

(d) Private Placement Debt or other Indebtedness incurred after the date hereof in an aggregate principal amount not to exceed $200,000,000 at any time outstanding; provided, however, that no Indebtedness may be incurred under the Prudential Shelf Agreement until such agreement has been amended to the Administrative Agent's satisfaction to eliminate any negative covenants in conflict with or more restrictive than those contained herein;

(e) Indebtedness in respect of obligations under Hedging Agreements permitted by Section 7.10; and

(f) Indebtedness in respect of any Securitization Transaction permitted by Section 7.6(c).

**Section 7.2 Negative Pledge**. The Borrower will not, and will not permit any of its Subsidiaries (other than Carrier Enterprise) to, create, incur, assume or suffer to exist any Lien on any of its assets or property now owned or hereafter acquired, except:

(a) Liens, if any, created in favor of the Administrative Agent for the benefit of the Lenders pursuant to the Loan Documents;

(b) Permitted Encumbrances;

(c) any Liens on any property or asset of the Borrower or any such Subsidiary existing on the Closing Date set forth on Schedule 7.2; provided, that such Lien shall not apply to any other property or asset of the Borrower or any such Subsidiary;

(d) purchase money Liens upon or in any fixed or capital assets to secure the purchase price or the cost of construction or improvement of such fixed or capital assets or to secure Indebtedness incurred solely for the purpose of financing the acquisition, construction or improvement of such fixed or capital assets (including Liens securing any Capital Lease Obligations); provided, that (i) the principal amount of the Indebtedness secured by such Liens does not exceed $20,000,000 in the aggregate at any time outstanding, (ii) such Liens attach to such assets concurrently or within ninety (90) days after the acquisition, improvement or completion of the construction thereof; (iii) such Liens do not extend to any other assets; and (iv) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets;

(e) any Lien (i) existing on any asset of any Person at the time such Person becomes such a Subsidiary of the Borrower, (ii) existing on any asset of any Person at the time such Person is merged with or into the Borrower or any such Subsidiary of the Borrower or (iii) existing on any asset prior to the acquisition thereof by the Borrower or any such Subsidiary of the Borrower; provided, that any such Lien was not created in the contemplation of any of the foregoing and any such Lien secures only those obligations which it secures on the date that such Person becomes such a Subsidiary or the date of such merger or the date of such acquisition;

(f) any Lien arising out of any Securitization Transaction permitted by Section 7.6(c);

(g) extensions, renewals, or replacements of any Lien referred to in paragraphs (a) through (f) of this Section 7.2; provided, that the principal amount of the Indebtedness secured thereby is not increased and that any such extension, renewal or replacement is limited to the assets originally encumbered thereby; and

(h) other Liens arising in the ordinary course of business of the Borrower or such Subsidiary of the Borrower, as applicable; provided, that the principal amount of the Indebtedness secured by such Liens shall not exceed $20,000,000 in the aggregate at any time outstanding.

For purposes of this Section, the entry by the Borrower or any such Subsidiary into a true lease or true bailment arrangement which contains a provision purporting to grant a lien in the event that such arrangement is determined not to constitute a true lease or true bailment and the filing of a precautionary UCC financing statement in connection therewith shall not constitute the creation, incurrence, assumption or sufference of a Lien unless, under applicable law, such arrangement is determined not to constitute a true lease or true bailment arrangement and a security interest or other interest in or lien on property or assets of the Borrower or any such Subsidiary has in fact been granted or deemed to have been granted.

**Section 7.3 Fundamental Changes**.

(a) The Borrower will not, and will not permit any Subsidiary (other than Carrier Enterprise) to, merge into or consolidate into any other Person, or permit any other Person to merge into or consolidate with it, or sell, lease, transfer or otherwise dispose of (in a single transaction or a series of transactions) all or substantially all of its assets (in each case, whether now owned or hereafter acquired) or all or substantially all of the stock of any such Subsidiary (in each case, whether now owned or hereafter acquired) or liquidate or dissolve; provided, that if at the time thereof and immediately after giving effect thereto, no Default or Event of Default shall have occurred and be continuing (i) the Borrower or any such Subsidiary may merge with a Person if the Borrower (or such Subsidiary if the Borrower is not a party to such merger) is the surviving Person ( provided that in the case of an Acquisition permitted by Section 7.4 by a Subsidiary Loan Party, the acquired company may be the surviving Person so long as such acquired company becomes a Subsidiary Loan Party as required by Section 5.10(a)), (ii) any such Subsidiary may merge into another Subsidiary; provided, that (A) if any party to such merger is a Subsidiary Loan Party, the Subsidiary Loan Party shall be the surviving Person (and if the non-surviving Subsidiary was also a Subsidiary Loan Party, the Administrative Agent, upon such event and at the request and expense of the Borrower and/or the surviving Subsidiary Loan Party, will execute such documents as shall be acceptable to the Administrative Agent and its counsel releasing the non-surviving Subsidiary Loan Party from its obligations under the Subsidiary Guarantee Agreement) or (B) if any party to such merger is not a Subsidiary Loan Party, the surviving Person (including Carrier Enterprise, if applicable) shall execute and deliver to the Administrative Agent an agreement guaranteeing payment of the Obligations in form and substance satisfactory to the Administrative Agent and the Required Lenders, (iii) any such Subsidiary may sell, transfer, lease or otherwise dispose of all or substantially all of its assets to the Borrower or to a Subsidiary Loan Party, and (iv) any such Subsidiary (other than a Subsidiary Loan Party) may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders; provided, that any such merger involving a Person that is not a wholly-owned Subsidiary (other than Carrier Enterprise) immediately prior to such merger shall not be permitted unless also permitted by Section 7.4.

(b) The Borrower will not, and will not permit any of its Subsidiaries (other than Carrier Enterprise) to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and its Subsidiaries on the date hereof and businesses reasonably related thereto.

**Section 7.4 Investments, Loans, Capital Expenditures, Etc .**

(a) The Borrower will not, and will not permit any of its Subsidiaries (other than Carrier Enterprise) to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly-owned Subsidiary prior to such merger), any common stock, evidence of indebtedness or other securities (including any option, warrant, or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person (all of the foregoing (but excluding in all cases, any portion of any of the foregoing by the Borrower in Carrier Enterprise or by the Borrower to purchase additional interests in Carrier Enterprise, in either case, to the extent such is funded by equity in the Borrower) being collectively called " ***Investments***"), or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person that constitute a business unit, except:

(i) Investments (other than Permitted Investments) existing on the date hereof and set forth on Schedule 7.4 (including Investments in such Subsidiaries);

(ii) Permitted Investments;

(iii) Guarantees constituting Indebtedness permitted by Section 7.1;

(iv) Investments in Subsidiary Loan Parties and in repurchases of the capital stock of the Borrower to the extent otherwise permitted hereunder;

(v) Loans or advances to employees, officers or directors of the Borrower or any Subsidiary Loan Party in the ordinary course of business for travel, relocation and related expenses;

(vi) Hedging Agreements permitted by Section 7.10;

(vii) the purchase or other acquisition of a controlling equity interest in another Person (other than Carrier Enterprise) (including the purchase of an option, warrant, convertible or similar type security to acquire such a controlling interest at the time it becomes exercisable by the holder thereof), whether by purchase of such equity interest or upon exercise of an option or warrant for, or conversions of securities into, such equity interest, or the purchase or other acquisition (in one transaction or a series of transactions) of any assets of any such other Person that constitute a business unit (each, an "***Acquisition***"), provided, that: (i) the Person to be (or whose assets are to be) so purchased or acquired does not oppose such Acquisition, (ii) the line or lines of business of the Person to be (or whose assets are to be) so purchased or acquired are substantially the same as the Major Subsidiaries and their lines of business, (iii) prior to and immediately after giving effect to such Acquisition, no Default or Event of Default shall have occurred and be continuing, (iv) if the costs of such Acquisition exceed $50,000,000, the Borrower shall have furnished to the Administrative Agent pro forma historical financial statements as of the end of the most recently completed fiscal period of the Borrower (whether quarterly or year end) giving effect to such Acquisition and assuming that any Indebtedness incurred to effect such Acquisition shall be deemed to have been outstanding during the four full consecutive fiscal quarter period of the Borrower preceding such Acquisition and to have borne a rate of interest during such period equal to that rate in existence at the date of determination, together with a certificate of a Responsible Officer, in the form of Exhibit 5.1(c), prepared on a historical pro forma basis giving effect to such Acquisition as of the most recent fiscal quarter of the Borrower then ended, which certificate shall demonstrate that no Default or Event of Default would exist immediately after giving effect thereto, and (vi) the Person acquired shall be a Subsidiary (other than Carrier Enterprise), or be merged into or with the Borrower or one of its Subsidiaries (other than Carrier Enterprise), immediately upon consummation of the Acquisition (or if assets are being purchased or acquired, the acquirer shall be the Borrower or one of its Subsidiaries (other than Carrier Enterprise));

(viii) Investments of any Person acquired in an Acquisition permitted under Section 7.4(a)(vii);

(ix) the Project Orange Investment;

(x) additional direct or indirect Investments by the Borrower in Carrier Enterprise made pursuant to and in accordance with the JV Operating Agreement; provided, that (i) the Guarantee by the Borrower of Indebtedness of Carrier Enterprise shall not be deemed to be an Investment for purposes of this Section 7.4, (ii) no such direct or indirect Investment may be made after the occurrence of any event or condition which would, or would with the giving of notice and lapse of time or both, constitute an Event of Default if the provisions of Section 8.1 did not exclude Carrier Enterprise, for so long as such event or condition exists, (iii) no such Investment may be made for the purpose of the acquisition of margin stock by Carrier Enterprise, (iv) the aggregate costs incurred in making such Investments shall not exceed $50,000,000 in the aggregate unless the Borrower has delivered a pro forma Compliance Certificate evidencing a Leverage Ratio of not greater than 2.00 to 1.00 after giving effect to such Investments in excess of $50,000,000 and (v) prior to and immediately after giving effect to such Investment, no Default or Event of Default shall have occurred and be continuing; provided that the aggregate costs incurred in making such Investments shall not exceed the lesser of (x) $100,000,000 in the aggregate at any time less the aggregate amount of all sales and dispositions of assets to Carrier Enterprise made after the First Amendment Effective Date under Section 7.6(g) or (y) the amount that would cause the Borrower's ownership interest (direct or indirect) in Carrier Enterprise to exceed 80% of the total ownership interests, unless the Borrower has caused Carrier Enterprise to become party to a Subsidiary Guarantee Agreement and deliver to the Administrative Agent all other items required by Section 5.10(a) to cause Carrier Enterprise to become a Subsidiary Loan Party; and

(xi) additional Investments (other than in Carrier Enterprise); provided that the aggregate costs incurred in making such Investments shall not exceed $15,000,000 in the aggregate any time.

(b) The Borrower will not, and will not permit any of its Subsidiaries (other than Carrier Enterprise) to, make Capital Expenditures in the aggregate (excluding Capital Expenditures made by Carrier Enterprise) in excess of $60,000,000 during any fiscal year of the Borrower.

**Section 7.5 Restricted Payments**. The Borrower will not, and will not permit its Subsidiaries (other than Carrier Enterprise) to, declare or make, or agree to pay or make, directly or indirectly, any dividend on any class of its stock, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, retirement, defeasance or other acquisition of, any shares of common stock or Indebtedness subordinated to the Obligations of the Borrower or any options, warrants, or other rights to purchase such common stock or such Indebtedness, whether now or hereafter outstanding (each, a "***Restricted Payment***"), except:

(a) the Borrower and such Subsidiaries may make Restricted Payments, if (i) both before and after giving effect to such Restricted Payment no Default shall have occurred or be continuing and (ii) after giving pro forma effect to such Restricted Payment, the Borrower's Leverage Ratio is less than 2.00 to 1.00;

(b) if after giving pro forma effect to a Restricted Payment, the Borrower's Leverage Ratio is greater than or equal to 2.00 to 1.00, the Borrower and such Subsidiaries may make the following Restricted Payments: (1) dividends payable by the Borrower solely in shares of any class of its common stock, (2) Restricted Payments made by any such Subsidiary to the Borrower or to another Subsidiary Loan Party, (3) dividends paid by any such Subsidiary to Borrower or to another such Subsidiary that is its direct parent and (4) cash dividends paid on, and cash redemptions of, the common stock of the Borrower provided, that (i) no Default or Event of Default has occurred and is continuing at the time such dividend is paid or redemption is made, and (ii) the aggregate amount of all such Restricted Payments does not exceed the sum of (A) $100,000,000 plus (B) fifty percent (50%) of Consolidated Net Income (if greater than $0) earned year to date as of the most recently ended fiscal quarter (except that in the case of the third and fourth fiscal quarters of 2007, such calculation of Consolidated Net Income shall run from July 1, 2007 rather than the prior year end), and further, provided, if such Restricted Payments in any fiscal year are less than hereby permitted for such fiscal year, the excess permitted amount for such fiscal year may be carried forward to any succeeding fiscal period; and

(c) each such Subsidiary may make Restricted Payments to the Borrower, the Subsidiary Loan Parties and any other Person that owns an equity interest in such Subsidiary, ratably according to their respective holdings of the type of equity interest in respect of which such Restricted Payment is being made.

**Section 7.6 Sale of Assets**. The Borrower will not, and will not permit any of its Subsidiaries (other than Carrier Enterprise) to, convey, sell, lease, assign, transfer or otherwise dispose of, any of its assets, business or property, whether now owned or hereafter acquired, or, in the case of any such Subsidiary, issue or sell any shares of such Subsidiary's common stock to any Person other than the Borrower or a Subsidiary Loan Party (or to qualify directors if required by applicable law), except:

(a) the sale or other disposition for fair market value of obsolete or worn out property or other property not necessary for the principal business operations disposed of in the ordinary course of business;

(b) the sale of inventory and Permitted Investments in the ordinary course of business;

(c) the sale or other disposition of such assets in connection with any Securitization Transaction in an aggregate (excluding such sales or other dispositions by Carrier Enterprise) amount not to exceed $100,000,000 at any time during the term of this Agreement;

(d) **[Reserved]**;

(e) the sale, without recourse, other than for misrepresentation, by any such Subsidiary of the Borrower of accounts receivable having a value, net of all allowances and discounts, not to exceed during any fiscal year of the Borrower an aggregate Dollar value of $25,000,000 for all such sales, which receivables shall be payable by Persons who are not United States citizens or organized and existing under the laws of the United States or a state or territory thereof;

(f) the sale or disposition of any interest in Carrier Enterprise; provided that any sale or other disposition of the Borrower's direct or indirect interests in Carrier Enterprise pursuant to this clause (f) shall not be made unless the Borrower shall have furnished to the Administrative Agent pro forma historical financial statements as of the end of the most recently completed fiscal period of the Borrower (whether quarterly or year end) giving effect to such disposition, together with a certificate of a Responsible Officer, in the form of Exhibit 5.1(c), prepared on a historical pro forma basis giving effect to such disposition as of the most recent fiscal quarter of the Borrower then ended, which certificate shall demonstrate that no Default or Event of Default would exist immediately after giving effect thereto;

(g) the sale or other disposition of such other assets in an aggregate amount not to exceed $50,000,000 in any fiscal year of the Borrower, less, in the case of the Borrower's fiscal year ending December 31, 2009, the book value of the Comfort Products Distributing LLC assets disposed of as part of the Project Orange Investment (provided that no such sale or disposition may be made after the occurrence or during the continuance of any event or condition which would, or would with the giving of notice or the lapse of time or both, constitute an Event of Default if the provisions of Section 8.1 did not exclude Carrier Enterprise).

**Section 7.7 Transactions with Affiliates**. The Borrower will not, and will not permit any of its Subsidiaries (other than Carrier Enterprise) to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties ( provided that no such transaction (other than transactions consisting of typical and customary administrative functions of a corporate parent) may be consummated by the Borrower or any such Subsidiary with Carrier Enterprise if at the time of such transaction any event or condition exists which would, or would with the giving of notice or the lapse of time or both, constitute an Event of Default if the provisions of Section 8.1 did not exclude Carrier Enterprise), (b) transactions between or among the Borrower and Subsidiary Loan Parties not involving any other Affiliates, (c) transactions between or among the Borrower and Subsidiary Loan Parties, on the one hand, and Carrier Enterprise, on the other hand ( provided that at the time of such transaction no event or condition exists which would, or would with the giving of notice or the lapse of time or both, constitute an Event of Default if the provisions of Section 8.1 did not exclude Carrier Enterprise) not involving any other Affiliates, and (d) any Restricted Payment permitted by Section 7.5.

**Section 7.8 Restrictive Agreements**. The Borrower will not, and will not permit any Subsidiary (other than Carrier Enterprise) to, directly or indirectly, enter into, incur or permit to exist any agreement that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any Subsidiary (other than Carrier Enterprise) to create, incur or permit any Lien upon any of its assets or properties, whether now owned or hereafter acquired, or (b) the ability of any Subsidiary (other than Carrier Enterprise) to pay dividends or other distributions with respect to its common stock, to make or repay loans or advances to the Borrower or any other Subsidiary (other than Carrier Enterprise), to Guarantee Indebtedness of the Borrower or any other Subsidiary (other than Carrier Enterprise) or to transfer any of its property or assets to the Borrower or any Subsidiary (other than Carrier Enterprise) of the Borrower; provided, that (i) the foregoing shall not apply to restrictions or conditions imposed (A) by law, (B) by this Agreement or any other Loan Document, (C) by the documents governing the Private Placement Debt, (D) by documents listed on Schedule 7.8 hereto or (E) by any documents creating a Permitted Lien, (ii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary (other than Carrier Enterprise) pending such sale, provided such restrictions and conditions apply only to the Subsidiary (other than Carrier Enterprise) that is sold and such sale is permitted hereunder, (iii) clause (a) shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions and conditions apply only to the property or assets securing such Indebtedness, and (iv) clause (a) shall not apply to customary provisions in leases and other contracts restricting the assignment thereof.

**Section 7.9 Sale and Leaseback Transactions**. The Borrower will not, and will not permit any of its Subsidiaries (other than Carrier Enterprise) to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereinafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred, except for the sale and leaseback of properties in an aggregate amount not to exceed $30,000,000 in any fiscal year of the Borrower.

**Section 7.10 Hedging Agreements**. The Borrower will not, and will not permit any of its Subsidiaries (other than Carrier Enterprise) to, enter into any Hedging Agreement, other than Hedging Agreements which are non-speculative in purpose and nature and are entered into in the ordinary course of business to hedge or mitigate risks to which the Borrower or any such Subsidiary is exposed in the conduct of its business or the management of its liabilities. Solely for the avoidance of doubt, the Borrower acknowledges that a Hedging Agreement entered into for speculative purposes or of a speculative nature (which shall be deemed to include any Hedging Agreement under which the Borrower or any of such Subsidiaries is or may become obliged to make any payment (i) in connection with the purchase by any third party of any common stock or any Indebtedness or (ii) as a result of changes in the market value of any common stock or any Indebtedness) is not a Hedging Agreement entered into in the ordinary course of business to hedge or mitigate risks.

**Section 7.11 Amendment to Material Documents**. The Borrower will not, and will not permit any Subsidiary (including Carrier Enterprise) to, amend, modify or waive any of its rights under (a) its certificate of incorporation, bylaws or other organizational documents (including but not limited to the JV Operating Agreement) in a manner that in the aggregate are materially adverse to the interests of the Lenders in their capacities as lenders, or (b) any Material Agreement in a manner that results in, or could reasonably be expected to result in, a Material Adverse Effect.

**Section 7.12 Accounting Changes**. (a) The Borrower will not, and will not permit any Subsidiary (other than Carrier Enterprise) to, make any significant change in accounting treatment or reporting practices, except as required or, with the approval of the Required Lenders, as permitted, by GAAP.

(b) The Borrower shall not permit Carrier Enterprise to make any significant change in accounting treatment or reporting practices, except as required or as permitted by GAAP, provided that in the event Carrier Enterprise makes any such significant change in accounting treatment or reporting practices, then (i) the Borrower shall remain obligated to provide financial reporting for Carrier Enterprise (as contemplated by Sections 5.1(d) and 5.1(e) to the Administrative Agent using the same GAAP methodology and principles as are then utilized for the financial reporting for the Borrower (as contemplated by Sections 5.1(a) and 5.1(b)) and (ii) calculations of the Leverage Ratio and the Interest Coverage Ratio, to the extent relating to Carrier Enterprise, shall be made using the same GAAP methodology and principles then being utilized for such calculations regarding the Borrower and not using the modified GAAP methodology and principles then adopted by Carrier Enterprise.

(c) The Borrower will not, and will not permit any Subsidiary (including Carrier Enterprise) to, change the fiscal year of the Borrower or any Subsidiary, except to change the fiscal year of a Subsidiary to conform its fiscal year to that of the Borrower.

**Section 7.13 [Reserved]**

**Section 7.14 Use of Proceeds**. The Borrower will not, and will not permit any Subsidiary (other than Carrier Enterprise) to, use the proceeds of any credit extension hereunder, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, other than the purchase of the capital stock of ACR Group, Inc. pursuant to the Borrower's tender offer made on July 9, 2007.

**Section 7.15 Prepayments**. The Borrower will not, and will not permit any Subsidiary (other than Carrier Enterprise) to make any prepayment, redemption, defeasance, purchase, acquisition or other payment in violation of any subordination terms of any Indebtedness which is subject to an intercreditor and/or subordination agreement, except in connection with payment of the Obligations in accordance with the Loan Documents.

**Section 7.16 Amendments to Material Indebtedness Agreements** . The Borrower will not, and will not permit any Subsidiary (other than Carrier Enterprise) to enter into or suffer to exist any amendment or modification (a) to the amortization schedule or prepayment provisions (excluding the waiver of any prepayment premium or penalty) of the Indebtedness created under the Material Indebtedness Agreements or (b) to any other terms or conditions contained in the Material Indebtedness Agreements if such modification (i) would conflict with or be more restrictive than the terms or provisions of this Agreement in any material respect, (ii) would provide for collateral security for such Indebtedness in excess of that provided under such agreements as of the Closing Date, (iii) would expand any negative pledge provision provided for therein, or (iv) would alter any provision of the events of default under those agreements.

## ARTICLE VIII

## EVENTS OF DEFAULT

**Section 8.1 Events of Default**. If any of the following events (each an "***Event of Default***") shall occur:

(a) the Borrower shall fail to pay any principal of any Loan or of any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment or otherwise; or

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount payable under clause (a) of this Article VIII) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days; or

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Subsidiary (other than Carrier Enterprise) in or in connection with this Agreement or any other Loan Document (including the Schedules attached thereto) and any amendments or modifications hereof or waivers hereunder, or in any certificate, report, financial statement or other document submitted to the Administrative Agent or the Lenders by any Loan Party or any representative of any Loan Party pursuant to or in connection with this Agreement or any other Loan Document shall prove to be incorrect in any material respect when made or deemed made or submitted; or

(d) the Borrower shall fail to observe or perform any covenant or agreement contained in Sections 5.1(a), (b), (c), (d), and (e), 5.2, 5.3 (with respect to the Borrower's legal existence unless, in the case of any involuntary administrative dissolution of the Borrower, such failure to preserve, renew or maintain its legal existence is remedied within ten (10) days after the earlier of (i) any Responsible Officer of the Borrower becomes aware of such failure, or (ii) notice thereof shall have been given to the Borrower by the Administrative Agent or any Lender, provided, that until the Borrower's legal existence is lawfully reinstated by the appropriate Governmental Authority, the Lenders or the Issuing Bank, as applicable, may withhold any further Borrowing or issuance of any additional Letter of Credit), 5.7, 5.9, 5.10, 5.11 or Articles VI or VII; or

(e) any Loan Party shall fail to observe or perform any covenant or agreement contained in this Agreement (other than those referred to in clauses (a), (b) and (d) above), and such failure shall remain unremedied for thirty (30) days after the earlier of (i) any Responsible Officer of the Borrower becomes aware of such failure, or (ii) notice thereof shall have been given to the Borrower by the Administrative Agent or any Lender;

(f) the Borrower or any of its Subsidiaries (other than Carrier Enterprise) shall default in the performance or observance of any term, condition or provision of any Material Agreement that results in, or could reasonably be expected to result in, a Material Adverse Effect; or

(g) the Borrower or any Subsidiary (other than Carrier Enterprise) (whether as primary obligor or as guarantor or other surety) shall fail to pay any principal of or premium or interest on any Material Indebtedness that is outstanding, when and as the same shall become due and payable (whether at scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument evidencing such Indebtedness; or any other event shall occur or condition shall exist under any agreement or instrument relating to such Indebtedness and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or permit the acceleration of, the maturity of such Indebtedness; or any such Indebtedness shall be declared to be due and payable, required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or any offer to prepay, redeem, purchase or defease such Indebtedness shall be required to be made, in each case prior to the stated maturity thereof; or

(h) the Borrower or any Subsidiary (other than Carrier Enterprise) shall (i) commence a voluntary case or other proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official of it or any substantial part of its property, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) of this Section 8.1(h), (iii) apply for or consent to the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Borrower or any such Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, or (vi) take any action for the purpose of effecting any of the foregoing; or

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Subsidiary (other than Carrier Enterprise) or its debts, or any substantial part of its assets, under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Borrower or any Subsidiary (other than Carrier Enterprise) or for a substantial part of its assets, and in any such case, such proceeding or petition shall remain undismissed for a period of sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; or

(j) the Borrower or any Subsidiary (other than Carrier Enterprise) shall become unable to pay, shall admit in writing its inability to pay, or shall fail to pay, its debts as they become due; or

(k) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with other ERISA Events that have occurred, could reasonably be expected to result in liability to the Borrower and the Subsidiaries (other than Carrier Enterprise) in an aggregate amount exceeding $1,000,000; or

(l) any judgment or order for the payment of money where the amount not covered by insurance exceeds $5,000,000 individually or in the aggregate shall be rendered against the Borrower or any Subsidiary (other than Carrier Enterprise), and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be a period of thirty (30) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(m) any non-monetary judgment or order shall be rendered against the Borrower or any Subsidiary (other than Carrier Enterprise) that could reasonably be expected to have a Material Adverse Effect, and there shall be a period of thirty (30) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(n) a Change in Control shall occur or exist; or

(o) any provision of any Subsidiary Guarantee Agreement shall for any reason cease to be valid and binding on, or enforceable against, any Subsidiary Loan Party, or any Subsidiary Loan Party shall so state in writing, or any Subsidiary Loan Party shall seek to terminate its Subsidiary Guarantee Agreement; or

(p) any provision of any other Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(q) an event of default shall have occurred under any other Loan Document;

then, and in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Section 8.1) and at any time thereafter during the continuance of such event, the Administrative Agent may, and upon the written request of the Required Lenders shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, whereupon the Commitment of each Lender shall terminate immediately; (ii) declare the principal of and any accrued interest on the Loans, and all other Obligations (except obligations in respect of any interest rate Hedging Agreement to which a Lender is a counterparty and such Lender has requested otherwise in writing to the Administrative Agent) owing hereunder, to be, whereupon the same shall become, due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower and (iii) exercise all remedies contained in any other Loan Document; and that, if an Event of Default specified in either clause (h) or (i) shall occur, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon, and all fees, and all other Obligations shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

## ARTICLE IX

## THE ADMINISTRATIVE AGENT

**Section 9.1 Appointment and Authority**. Each of the Lenders and the Issuing Bank hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Bank, and the Borrower shall not have rights as a third party beneficiary of any of such provisions.

**Section 9.2 Delegation of Duties**. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

**Section 9.3 Non-Reliance on Administrative Agent and Other Lenders**. Each Lender and the Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**Section 9.4 Exculpatory Provisions**. Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.2 and 8.1) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or the Issuing Bank.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article III or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**Section 9.5 Reliance by Administrative Agent**. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**Section 9.6 The Administrative Agent in its Individual Capacity**. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

**Section 9.7 Resignation of Administrative Agent**. Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Bank and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the Issuing Bank directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.3 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as Issuing Bank and Swingline Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank and Swingline Lender, (b) the retiring Issuing Bank and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Issuing Bank to effectively assume the obligations of the retiring Issuing Bank with respect to such Letters of Credit.

**Section 9.8 No Other Duties, etc**. Anything herein to the contrary notwithstanding, the Sole Book Manager, Sole Lead Arranger, Syndication Agent or Co-Documentation Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the Issuing Bank hereunder.

## ARTICLE X

## MISCELLANEOUS

**Section 10.1 Notices; Electronic Communications**.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications to any party herein to be effective shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

| | |
|---|---|
| To the Borrower: | Watsco, Inc.<br>2665 South Bayshore Drive, Suite 901<br>Coconut Grove, Florida 33133<br>Attention: Ana M. Menendez<br>Chief Financial Officer<br>Facsimile: (305) 858-6898<br>Website: www.watsco.com |
| With a copy to: | Moore & Van Allen PLLC<br>100 North Tryon Street, Suite 4700<br>Charlotte, North Carolina 28202<br>Attention: Stephen Hope, Esquire<br>Facsimile: (704) 378-2036 |
| To the Administrative Agent or the Swingline Bank: | Bank of America, N.A.<br>100 N. Tryon Street<br>Mail Code: NC1-001-04-39<br>Charlotte, North Carolina 28255<br>Attention:<br>Sabrina D. Miles<br>Telephone: (704) 388-1043<br>Facsimile: (704) 719-8762<br>Email: sabrina.d.miles@bankofamerica.com |
| With a copy in each case to: | Bank of America, N.A.<br>Agency Management<br>231 S. LaSalle Street<br>Mail Code: IL1-231-10-41<br>Chicago, Illinois 60604<br>Attention: Felicia Brinson<br>Telephone: (312) 828-7299<br>Facsimile: (877) 216-2432<br>Email: felicia.brinson@bankofamerica.com |
| To the Issuing Bank: | Bank of America, N.A.<br>Trade Operations<br>1 Fleet Way<br>Mail Code: PA6-580-02-30<br>Scranton, Pennsylvania<br>Attention: Alfonso Malave<br>Telephone: (570) 330-4212<br>Facsimile: (570) 330-4186<br>Email: alfonso.malave@bankofamerica.com |
| To any other Lender: | the address set forth in the Administrative Questionnaire |

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All such notices and other communications shall, when transmitted by overnight delivery, or faxed, be effective when delivered for overnight (next-day) delivery, or transmitted in legible form by facsimile machine, respectively, or if mailed, upon the fifth Business Day after the date deposited into the mails or if delivered, upon delivery; provided, that notices delivered to the Administrative Agent, the Issuing Bank or the Swingline Bank shall not be effective until actually received by such Person at its address specified in this Section 10.1.

(b) Any agreement of the Administrative Agent and the Lenders herein to receive certain notices by telephone or facsimile is solely for the convenience and at the request of the Borrower. The Administrative Agent and the Lenders shall be entitled to rely on the authority of any Person purporting to be a Person authorized by the Borrower to give such notice and the Administrative Agent and Lenders shall not have any liability to the Borrower or other Person on account of any action taken or not taken by the Administrative Agent or the Lenders in reliance upon such telephonic or facsimile notice. The obligation of the Borrower to repay the Loans and all other Obligations hereunder shall not be affected in any way or to any extent by any failure of the Administrative Agent and the Lenders to receive written confirmation of any telephonic or facsimile notice or the receipt by the Administrative Agent and the Lenders of a confirmation which is at variance with the terms understood by the Administrative Agent and the Lenders to be contained in any such telephonic or facsimile notice.

(c) Electronic Communications. Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the Issuing Bank pursuant to Article II if such Lender or the Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(d) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. 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 ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "***Agent Parties***") have any liability to the Borrower, any Lender, the Issuing Bank or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender, the Issuing Bank or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

**Section 10.2 Waiver; Amendments**.

(a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or any other Loan Document, and no course of dealing between the Borrower and the Administrative Agent or any Lender, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power hereunder or thereunder. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies provided by law. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 10.2, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or the issuance of a Letter of Credit shall not be construed as a waiver of any Default or Event of Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default or Event of Default at the time.

(b) No amendment or waiver of any provision of this Agreement or the other Loan Documents, nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Borrower and the Required Lenders or the Borrower and the Administrative Agent with the consent of the Required Lenders (and, if the Administrative Agent executes and delivers any such amendment, waiver or consent which states that it is being provided by the Administrative Agent in its capacity as such with the consent of the Required Lenders, the Borrower shall be entitled to rely thereon) and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, that no amendment or waiver shall: (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the date fixed for any payment of any principal of, or interest on, any Loan or LC Disbursement or interest thereon or any fees hereunder or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date for the termination or reduction of any Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.20(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) change any of the provisions of this Section 10.2 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders which are required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender; (vi) release any guarantor or limit the liability of any such guarantor under any guaranty agreement, without the written consent of each Lender; (vii) release all or substantially all of the collateral (if any) securing any of the Obligations, without the written consent of each Lender; (viii) waive any condition set forth in Section 3.2(a), without the written consent of each Lender; provided further, that no such agreement shall amend, modify or otherwise affect the rights, duties or obligations of the Administrative Agent, the Swingline Bank or the Issuing Bank without the prior written consent of such Person. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders may be effected with the consent of all Lenders other than Defaulting Lenders), except that (i) the Commitment of such Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender and (ii) any amendment, waiver or consent requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

**Section 10.3 Expenses; Indemnification**.

(a) The Borrower shall pay (i) all reasonable, out-of-pocket costs and expenses of the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent and its Affiliates, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of the Loan Documents and any amendments, modifications or waivers thereof (whether or not the transactions contemplated in this Agreement or any other Loan Document shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket costs and expenses (including, without limitation, the reasonable fees, charges and disbursements of outside counsel and the allocated cost of inside counsel) incurred by the Administrative Agent, the Issuing Bank or any Lender in connection with the enforcement or protection of its rights in connection with this Agreement, including its rights under this Section 10.3, or in connection with the Loans made or any Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) The Borrower shall indemnify the Administrative Agent, the Issuing Bank and each Lender, and each Related Party of any of the foregoing (each, an "***Indemnitee***") against, and hold each of them harmless from, any and all costs, losses, liabilities, claims, damages and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, which may be incurred by or asserted against any Indemnitee arising out of, in connection with or as a result of (i) the execution or delivery of this Agreement or any other agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of any of the transactions contemplated hereby, (ii) any Loan or Letter of Credit or any actual or proposed use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned by the Borrower or any Subsidiary or any Environmental Liability related in any way to the Borrower or any Subsidiary, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto or (v) any civil penalty or fine assessed by OFAC against any Lender, the Issuing Bank or the Administrative Agent and all reasonable costs and expenses (including counsel fees and disbursements) incurred in connection with defense thereof, as a result of the funding of Loans, the issuance of Letters of Credit, or the acceptance of payments under the Loan Documents; provided, that the Borrower shall not be obligated to indemnify any Indemnitee for any of the foregoing arising out of such Indemnitee's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and nonappealable judgment.

(c) The Borrower shall pay, and hold the Administrative Agent and each of the Lenders harmless from and against, any and all present and future stamp, documentary, and other similar taxes with respect to this Agreement and any other Loan Documents, any collateral described therein, or any payments due thereunder, and save the Administrative Agent and each Lender harmless from and against any and all liabilities with respect to or resulting from any delay or omission to pay such taxes.

(d) To the extent that the Borrower fails to pay any amount required to be paid to the Administrative Agent, the Issuing Bank or the Swingline Lender under clauses (a), (b) or (c) hereof, each Lender severally agrees to pay to the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be, such Lender's Pro Rata Share (determined as of the time that the unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided, that the unreimbursed expense or indemnified payment, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the Issuing Bank or the Swingline Lender in its capacity as such.

(e) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to actual or direct damages) arising out of, in connection with or as a result of, this Agreement or any agreement or instrument contemplated hereby, the transactions contemplated therein, any Loan or any Letter of Credit or the use of proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence of willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(f) All amounts due under this Section 10.3 shall be payable promptly after written demand therefor.

(g) The agreements in this Section shall survive the resignation of the Administrative Agent, the Issuing Bank and the Swingline Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**Section 10.4 Successors and Assigns**.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in LC Exposure and in Swingline Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to the Swingline Lender's rights and obligations in respect of Swingline Loans.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to be a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender;

(C) the consent of the Issuing Bank (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(D) the consent of the Swingline Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) any Defaulting Lender or its Subsidiaries or Affiliates that are Distressed Persons, or (C) to a natural Person.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.17, 2.18, 2.19, and 10.3 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and LC Exposure owing to, each Lender pursuant to the terms hereof from time to time (the "***Register***"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register the designation, and revocation of designation, of any Lender as a Defaulting Lender of which it has received notice. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a " ***Participant***") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in LC Exposure and/or Swingline Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Lenders and the Issuing Bank shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.2 that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.17, 2.18 and 2.19 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7 as though it were a Lender, provided such Participant agrees to be subject to Section 2.20 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 2.17 or 2.19 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.19 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.19(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) Resignation as Issuing Bank or Swingline Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitment and Loans pursuant to subsection (b) above, Bank of America may, (i) upon 30 days' notice to the Borrower and the Lenders, resign as Issuing Bank and/or (ii) upon 30 days' notice to the Borrower, resign as Swingline Lender. In the event of any such resignation as Issuing Bank or Swingline Lender, the Borrower shall be entitled to appoint from among the Lenders a successor Issuing Bank or Swingline Lender hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of Bank of America as Issuing Bank or Swingline Lender, as the case may be. If Bank of America resigns as Issuing Bank, it shall retain all the rights, powers, privileges and duties of the Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Issuing Bank and all LC Exposure with respect thereto. If Bank of America resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.5. Upon the appointment of a successor Issuing Bank and/or Swingline Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank or Swingline Lender, as the case may be, and (b) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such successor or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

**Section 10.5 Governing Law; Jurisdiction; Consent to Service of Process** .

(a) This Agreement and the other Loan Documents shall be construed in accordance with and be governed by the law (without giving effect to the conflict of law principles thereof) of the State of North Carolina.

(b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the United States District Court of the Western District of North Carolina, and of any state court of the State of North Carolina sitting in Mecklenburg County and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document or the transactions contemplated hereby or thereby, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such North Carolina state court or, to the extent permitted by applicable law, such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or its properties in the courts of any jurisdiction.

(c) The Borrower irrevocably and unconditionally waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding described in paragraph (b) of this Section 10.5 and brought in any court referred to in paragraph (b) of this Section 10.5. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to the service of process in the manner provided for notices in Section 10.1. Nothing in this Agreement or in any other Loan Document will affect the right of any party hereto to serve process in any other manner permitted by law.

**Section 10.6 Waiver of Jury Trial**. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.6.

**Section 10.7 Right of Setoff**. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, each Lender and the Issuing Bank shall have the right, at any time or from time to time upon the occurrence and during the continuance of an Event of Default, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, to set off and apply against all deposits (general or special, time or demand, provisional or final) of the Borrower at any time held or other obligations at any time owing by such Lender and the Issuing Bank to or for the credit or the account of the Borrower against any and all Obligations held by such Lender or the Issuing Bank, as the case may be, irrespective of whether such Lender or the Issuing Bank shall have made demand hereunder and although such Obligations may be unmatured. Each Lender and the Issuing Bank agree promptly to notify the Administrative Agent and the Borrower after any such set-off and any application made by such Lender and the Issuing Bank, as the case may be; provided, that the failure to give such notice shall not affect the validity of such set-off and application.

**Section 10.8 Counterparts; Effectiveness of Agreement; Integration** . This Agreement may be executed by one or more of the parties to this Agreement in any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Notwithstanding execution of this Agreement by the Borrower and each of the Lenders party hereto and satisfaction (or waiver) of each of the conditions set forth in Section 3.1, this Agreement shall not be or become effective and binding upon the parties until executed and accepted by the Administrative Agent in its capacity as such on behalf of the Lenders. This Agreement, the other Loan Documents, and any separate letter agreement(s) relating to any fees payable to the Administrative Agent constitute the entire agreement among the parties hereto and thereto regarding the subject matters hereof and thereof and supersede all prior agreements and understandings, oral or written, regarding such subject matters.

**Section 10.9 Survival**. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.17, 2.18, 2.19, and 10.3 and Article IX shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof. All representations and warranties made herein, in the certificates, reports, notices, and other documents delivered pursuant to this Agreement shall survive the execution and delivery of this Agreement and the other Loan Documents, and the making of the Loans and the issuance of the Letters of Credit.

**Section 10.10 Severability**. Any provision of this Agreement or any other Loan Document held to be illegal, invalid or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity or unenforceability without affecting the legality, validity or enforceability of the remaining provisions hereof or thereof; and the illegality, invalidity or unenforceability of a particular provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 10.11 Confidentiality**. Each of the Administrative Agent, the Issuing Bank and each Lender agrees to take normal and reasonable precautions to maintain the confidentiality of any information designated in writing as confidential and provided to it by the Borrower or any Subsidiary, except that, subject to taking such normal and reasonable precautions to maintain the confidentiality thereof, such information may be disclosed by the Administrative Agent, the Issuing Bank and any Lender (i) to any Related Party of the Administrative Agent, the Issuing Bank or any such Lender, including without limitation accountants, legal counsel and other advisors, provided, that such Related Party agrees to be bound by the provisions of this Section 10.11, (ii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iii) to the extent requested by any regulatory agency or authority, (iv) to the extent that such information becomes publicly available other than as a result of a breach of this Section 10.11, or which becomes available to the Administrative Agent, the Issuing Bank, any Lender or any Related Party of any of the foregoing on a nonconfidential basis from a source other than the Borrower, (v) in connection with the exercise of any remedy hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, and (vi) subject to provisions substantially similar to this Section 10.11, to any actual or prospective assignee or Participant, or (vii) with the consent of the Borrower. Any Person required to maintain the confidentiality of any information as provided for in this Section 10.11 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 its own confidential information.

**Section 10.12 Interest Rate Limitation**. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which may be treated as interest on such Loan under applicable law (collectively, the "***Charges***"), shall exceed the maximum lawful rate of interest (the "***Maximum Rate***") which may be contracted for, charged, taken, received or reserved by a Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 10.12 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of repayment, shall have been received by such Lender.

**Section 10.13 PATRIOT Act Notice**. Each Lender subject to the Act hereby notifies the Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act.

**Section 10.14 No Advisory or Fiduciary Responsibility**. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Arranger, are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent and the Arranger, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and the Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates or any other Person and (B) neither the Administrative Agent nor the Arranger has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents and (iii) the Administrative Agent and the Arranger and their respective Affiliates may be engaged in a board range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent nor the Arranger has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent and the Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**Section 10.15 Defaulting Lenders**. (a) Notwithstanding anything contained in this Agreement, if any Lender becomes a Defaulting Lender (defined below), then to the extent permitted by applicable Law,

(i) during any Default Period (defined below) with respect to such Defaulting Lender, such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.2;

(ii) until such time as the Default Excess (defined below) with respect to such Defaulting Lender shall have been reduced to zero, any prepayment of Loans shall, if the Borrower so directs at the time of making such prepayment, be applied to the Loans of other Lenders as if such Defaulting Lender had no Loans outstanding;

(iii) until such time as all Defaulted Payments (defined below) with respect to such Defaulting Lender shall have been paid, the Administrative Agent may (in its sole discretion) apply any amounts thereafter received by the Administrative Agent for the account of such Defaulting Lender to satisfy such Defaulting Lender's obligations to make such Defaulted Payments until such Defaulted Payments have been fully paid;

(iv) with respect to any Defaulting Lender with one or more Defaulted Loans, such Defaulting Lender shall not be entitled to receive any commitment fee pursuant to Section 2.13(b), for any Default Period with respect to such Defaulting Lender (and any such fee that would have otherwise have been required to have been paid to such Defaulting Lender shall not be required to be paid by the Borrower);

(v) such Defaulting Lender shall not be entitled to receive its portion of any letter of credit fee pursuant to Section 2.13(c) for any Default Period with respect to such Defaulting Lender (and any such fee that would have otherwise have been required to have been paid to such Defaulting Lender shall be required to be paid to the Issuing Bank);

(vi) at the request of the Borrower, such Defaulting Lender may be replaced in accordance with Section 2.21; and

(vii) no assignment otherwise permitted by Section 10.4 shall be made to such Defaulting Lender or any of its Subsidiaries or Affiliates that are Distressed Persons.

(b) As used in this Agreement,

"***Default Excess***" means, with respect to any Defaulting Lender, the excess, if any, of (A) such Defaulting Lender's Pro Rata Share multiplied by the aggregate Revolving Credit Exposure of all Lenders (calculated as if all Defaulting Lenders had funded all of their respective Defaulted Loans) over (B) the aggregate Revolving Credit Exposure of such Defaulting Lender.

"***Default Period***" means, with respect to any Defaulting Lender,

(i) in the case of any Defaulted Loan, the period commencing on the date of the applicable Defaulted Loan was required to be extended to the Borrower under this Agreement and ending on the earlier of the following dates: (x) the date on which (A) the Default Excess with respect to such Defaulting Lender has been reduced to zero (whether by the funding of any Defaulted Loan by such Defaulting Lender or by the non-pro-rata application of any prepayment pursuant to Section 10.15(a)(ii)) and (B) such Defaulting Lender shall have delivered to the Borrower and the Administrative Agent a written reaffirmation of its intention to honor its obligations hereunder with respect to its Commitment; and (y) the date on which the Borrower, the Administrative Agent and the Required Lenders (and not including such Defaulting Lender in any such determination, in accordance with Section 10.15(a)(i)) waive the application of this Section 10.15 with respect to such Defaulted Loans of such Defaulting Lender in writing;

(ii) in the case of any Defaulted Payment, the period commencing on the date of the applicable Defaulted Payment was required to have been paid to the Administrative Agent, the Issuing Bank or other Lender under this Agreement and ending on the earlier of the following dates: (x) the date on which (A) such Defaulted Payment has been paid to the Administrative Agent, the Issuing Bank or other Lender, as applicable, together with (to the extent that such Person has not otherwise been compensated by the Borrower for such Defaulted Payment) interest thereon for each day from and including the date such amount is paid but excluding the date of payment, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation (whether by the funding of any Defaulted Payment by such Defaulting Lender or by the application of any amount pursuant to Section 10.15(a)(iii)) and (B) such Defaulting Lender shall have delivered to the Administrative Agent, Issuing Bank and any other such Lender, as applicable, a written reaffirmation of its intention to honor its obligations hereunder with respect to such payments; and (y) the date on which the Administrative Agent, the Issuing Bank and any such other Lender, as applicable, waive the application of this Section 10.15 with respect to such Defaulted Payments of such Defaulting Lender in writing; and

(iii) in the case of any Distress Event determined by the Administrative Agent (in its good faith judgment) or the Required Lenders (in their respective good faith judgment) to exist, the period commencing on the date of the applicable Distress Event was so determined to exist and ending on the earlier of the following dates: (x) the date on which (A) such Distress Event is determined by the Administrative Agent (in its good faith judgment) or the Required Lenders (in their respective good faith judgment) to no longer exist and (B) the applicable Lender shall have delivered to the Borrower and the Administrative Agent a written reaffirmation of its intention to honor its obligations hereunder with respect to its Commitment; and (y) such date as the Borrower and the Administrative Agent mutually agree, in their sole discretion, to waive the application of this Section 10.15 with respect to such Distress Event of such Defaulting Lender.

"***Defaulted Loan***" has the meaning specified in the definition of "Defaulting Lender" below.

"***Defaulted Payment***" has the meaning specified in the definition of "Defaulting Lender" below.

"***Defaulting Lender***" means any Lender that (i) has failed to fund any portion of the Loans required to be funded by it hereunder (each such portion that has not been funded, a "***Defaulted Loan***") within three Business Days of the date required to be funded by it hereunder, (ii) has otherwise failed to pay over to Administrative Agent, the Issuing Bank or any other Lender any other amount required to be paid by it hereunder (each such payment, a "***Defaulted Payment***") within three Business Days of the date when due, unless the subject of a good faith dispute, or (iii) as to which a Distress Event has occurred, in each case for so long as the applicable Default Period is in effect.

"***Distress Event***" means, with respect to any Person (each, a "***Distressed Person***"), (i) a voluntary or involuntary case (or comparable proceeding) has been commenced with respect to such Person under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect, (ii) a custodian, conservator, receiver or similar official has been appointed for such Person or for any substantial part of such Person's assets, (iii) after the date hereof, such Person has consummated or entered into a commitment to consummate a forced (in the good faith judgment of the Administrative Agent) liquidation, merger, sale of assets or other transaction resulting, in the good faith judgment of the Administrative Agent, in a change of ownership or operating control of such Person supported in whole or in part by guaranties, assumption of liabilities or other comparable credit support of (including without limitation the nationalization or assumption of ownership or operating control by) any Governmental Authority and the Administrative Agent believes (in its good faith judgment) or the Required Lenders believe (in their respective good faith judgment) that such event increases the risk that such Person could default in performing its obligations hereunder for so long as the Administrative Agent (in its good faith judgment) or the Required Lenders (in their respective good faith judgment) believe such risk to exist, or (iv) such Person has made a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Person or its assets to be, insolvent, bankrupt, or deficient in meeting any capital adequacy or liquidity requirement of any Governmental Authority applicable to such Person.

"***Distressed Person***" has the meaning specified in the definition of "Distress Event" above.

**Section 10.16 Treatment of Carrier Enterprise**.

(a) So long as Carrier Enterprise is not a Subsidiary Loan Party, as a clarification and not in limitation of the other provisions of Article VII hereof, Sections 7.1 through 7.10, 7.12(a), 7.14, 7.15 and 7.16 shall not limit or restrict the transactions or operations of Carrier Enterprise other than as a result of any restriction imposed upon the Borrower or any Subsidiary (without including for this purpose Carrier Enterprise) in respect of its transactions with Carrier Enterprise. So long as Carrier Enterprise is not a Subsidiary Loan Party, as a clarification and not in limitation of Article VIII, no provision of Article VIII shall limit or restrict the transactions or operations of Carrier Enterprise other than as a result of any restriction imposed upon the Borrower or any Subsidiary (without including for this purpose Carrier Enterprise) in respect of its transactions with Carrier Enterprise.

(b) Notwithstanding any provision in this Agreement to the contrary, in the event that Carrier Enterprise shall become a Subsidiary Loan Party and deliver to the Administrative Agent all of the items required by Section 5.10 hereof, then automatically, and without the need for any additional modification of this Agreement or any other Loan Document, (i) all references to "Adjusted Consolidated EBIT" and "Adjusted Consolidated EBITDA" shall be deemed to mean "Consolidated EBIT" and "Consolidated EBITDA", respectively, and the definitions for "Adjusted Consolidated EBIT" and "Adjusted Consolidated EBITDA" shall be deemed null and void, (ii) the definition of "Consolidated Total Debt" shall be amended to delete the phrase "but excluding Indebtedness of Carrier Enterprise other than Guaranteed Carrier Debt", (iii) the definitions for "Guaranteed Carrier Debt", "JV EBIT Amount" and "JV EBITDA Amount" and all references and calculations with respect to such terms shall be deemed null and void, (iv) the definition of "Subsidiary Loan Party" shall be deemed to include Carrier Enterprise, (v) all references to "(other than Carrier Enterprise)", to "(excluding Carrier Enterprise)", to "(other than in Carrier Enterprise)", to "(other than Carrier Enterprise, except as otherwise permitted by this Agreement)" or to "(including Carrier Enterprise)" shall be deemed null and void, (vi) all exceptions for Carrier Enterprise in Articles IV and V (other than such exceptions that apply to the other Subsidiary Loan Parties) hereof shall be deemed null and void, (vii) the requirements of Sections 5.1(d) and 5.1(e) hereof shall be deemed null and void, (viii) Sections 7.1 through 7.10, 7.12(a), 7.14, 7.15 and 7.16 and Article VIII shall be deemed to apply to and to limit and restrict the transactions and operations of Carrier Enterprise to the same extent that such sections apply to, limit and restrict the other Subsidiary Loan Parties, (ix) Section 7.3(a) shall be amended to delete the phrase "(including Carrier Enterprise, if applicable)", (x) Section 7.4(a) shall be amended to delete the phrase "(but excluding in all cases, any portion of any of the foregoing by the Borrower in Carrier Enterprise or by the Borrower to purchase additional interests in Carrier Enterprise, in either case, to the extent such is funded by equity in the Borrower)", (xi) Section 7.4(a)(x) shall be deleted in its entirety, (xii) Section 7.4(b) shall be amended to delete the phrase "(excluding Capital Expenditures made by Carrier Enterprise)", (xiii) Section 7.6 shall be amended to delete "Section 7.6(f)", (xiv) Section 7.6(c) shall be amended to delete the phrase "(excluding such sales or other dispositions by Carrier Enterprise)", (xv) Section 7.7 shall be amended to eliminate the proviso to clause (a) thereof and to eliminate clause (c) thereof, and (xvi) the pledge of membership interests in Carrier Enterprise pursuant to the Pledge Agreement shall be deemed to be released and the Pledge Agreement shall be terminated and the Administrative Agent shall promptly return to the Borrower any and all certificates evidencing a membership interest in Carrier Enterprise, to the extent any such certificates are in the possession or control of the Administrative Agent.

*[Balance of page left intentionally blank]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed under seal in the case of the Borrower by their respective authorized officers as of the day and year first above written.

**WATSCO, INC.**

By: /s/ Ana M. Menendez
Name: Ana M. Menendez
Title: Vice President

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

By: /s/ Tamisha U. Eason
Name: Tamisha U. Eason
Title: Vice President

**BANK OF AMERICA, N.A.,** as Issuing Bank, as Swingline Lender and as a Lender

By: /s/ Adam Kaplan
Name: Adam Kaplan
Title: Senior Vice President

| | |
|---|---|
| Revolving Commitment: | $60,000,000 |
| Swingline Commitment: | $25,000,000 |

**JPMORGAN CHASE BANK, N.A.**

By: /s/ Robert P. Carswell
Name: Robert P. Carswell
Title: Vice President

| | |
|---|---|
| Revolving Commitment: | $45,000,000 |

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

By: /s/ David S. Matter
Name: David S. Matter
Title: Regional Vice President

| | |
|---|---|
| Revolving Commitment: | $40,000,000 |

**SUNTRUST BANK**

By: /s/ Robert Maddox

Name: Robert Maddox

Title: Vice President

| | |
|---|---|
| Revolving Commitment: | $40,000,000 |

**MIZUHO CORPORATE BANK (USA)**

By: /s/ Robert Gallagher
Name: Robert Gallagher
Title: Senior Vice President

| | |
|---|---|
| Revolving Commitment: | $40,000,000 |

**COMERICA BANK**

By: /s/ Gerald R. Finney, Jr.
Name: Gerald R. Finney, Jr.
Title: Vice President

| | |
|---|---|
| Revolving Commitment: | $25,000,000 |

**THE NORTHERN TRUST COMPANY**

By: /s/ Rick J. Gomez
Name: Rick J. Gomez
Title: Commercial Banking Officer

| | |
|---|---|
| Revolving Commitment: | $25,000,000 |

**U.S. BANK NATIONAL ASSOCIATION**

By: /s/ Frances W. Josephic
Name: Frances W. Josephic
Title: Vice President

Revolving Commitment: $25,000,000

**Exhibit 13**

**WATSCO, INC. AND SUBSIDIARIES**
**SELECTED CONSOLIDATED FINANCIAL DATA**

| *Years Ended December 31, (In thousands, except per share data)* | 2009 *(1)* | 2008 | 2007 *(2)(4)* | 2006 *(3)(4)* | 2005 *(4)* |
|---|---|---|---|---|---|
| **OPERATING DATA** | | | | | |
| Revenues | $2,001,815 | $1,700,237 | $1,758,022 | $1,771,214 | $1,658,249 |
| Gross profit | 480,832 | 441,994 | 446,985 | 457,270 | 418,479 |
| Operating income | 81,060 | 98,608 | 111,154 | 135,394 | 117,283 |
| Net income from continuing operations | 51,573 | 60,369 | 67,489 | 82,233 | 70,528 |
| (Loss) income from discontinued operations, net of income taxes | — | — | (1,912) | 131 | (509) |
| Net income | 51,573 | 60,369 | 65,577 | 82,364 | 70,019 |
| Less: net income attributable to the noncontrolling interest | (8,259) | — | — | — | — |
| Net income attributable to Watsco, Inc. | $ 43,314 | $ 60,369 | $ 65,577 | $ 82,364 | $ 70,019 |
| **SHARE AND PER SHARE DATA** | | | | | |
| Diluted earnings per share for Common and Class B common stock: | | | | | |
| Net income from continuing operations attributable to Watsco, Inc. shareholders | $ 1.40 | $ 2.09 | $ 2.34 | $ 2.85 | $ 2.47 |
| Net (loss) income from discontinued operations attributable to Watsco, Inc. shareholders | — | — | (0.07) | 0.01 | (0.02) |
| Net income attributable to Watsco, Inc. shareholders | $ 1.40 | $ 2.09 | $ 2.27 | $ 2.86 | $ 2.45 |
| Cash dividends declared and paid per share: | | | | | |
| Common stock | $ 1.89 | $ 1.75 | $ 1.31 | $ 0.95 | $ 0.62 |
| Class B common stock | $ 1.89 | $ 1.75 | $ 1.31 | $ 0.95 | $ 0.62 |
| Weighted-average Common and Class B common shares and equivalent shares used to calculate diluted earnings per share | 28,521 | 27,022 | 27,139 | 27,159 | 27,195 |
| Common stock outstanding | 32,139 | 28,326 | 27,969 | 27,833 | 27,463 |
| **BALANCE SHEET DATA** | | | | | |
| Total assets | $1,160,613 | $ 716,061 | $ 750,113 | $ 710,368 | $ 677,884 |
| Long-term obligations | 13,429 | 20,783 | 55,042 | 30,118 | 40,189 |
| Shareholders' equity | 894,808 | 570,660 | 549,957 | 516,386 | 450,650 |

(1) Effective January 1, 2009, we adopted the provisions of accounting guidance stating that non-vested share-based payment awards that contain non-forfeitable rights to dividends are considered participating securities and should be included in the computation of earnings per share pursuant to the two-class method for all periods presented. We also adopted the provisions of revised accounting guidance for recognizing and measuring assets acquired and liabilities assumed in a business combination effective January 1, 2009.

(2) Effective January 1, 2007, we adopted the provisions of accounting guidance related to uncertainty in income taxes.

(3) Effective January 1, 2006, the provisions of accounting guidance on share-based payments were adopted using the modified prospective transition method.

(4) On July 19, 2007, we divested of our non-core staffing unit. All amounts related to this operation are restated as discontinued operations.

**WATSCO, INC. AND SUBSIDIARIES**
**MANAGEMENT'S DISCUSSION AND ANALYSIS OF**
**FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The following information should be read in conjunction with the information contained in Item 1A, "Risk Factors" and the consolidated financial statements included under Item 8, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K.

## Company Overview

Watsco, Inc. and its subsidiaries (collectively, "Watsco," which may be referred to as *we, us* or *our*) was incorporated in 1956 and is the largest distributor of air conditioning, heating and refrigeration equipment and related parts and supplies ("HVAC/R") in the HVAC/R distribution industry. On July 1, 2009, we completed the formation of a joint venture with Carrier Corporation ("Carrier"), a unit of United Technologies Corporation, to distribute Carrier, Bryant and Payne products throughout the U.S. Sunbelt, Latin America and the Caribbean. In the formation of the joint venture, Carrier contributed 95 locations in the U.S. Sunbelt and Puerto Rico and the export division located in Miami, Florida and we contributed 15 locations that currently distribute Carrier, Bryant and Payne products. We purchased a 60% controlling interest in the joint venture for consideration of $172.0 million and a fair value of $181.5 million with options to purchase up to an additional 20% interest from Carrier (10% beginning in July 2012 and an additional 10% in July 2014). We issued 3,080,469 shares of Common and Class B common stock for consideration of $147.0 million and a fair value of $151.1 million to Carrier and contributed 15 locations that presently sell Carrier-manufactured products for consideration of $25.0 million as total consideration for our 60% controlling interest in the joint venture. Carrier Enterprise, LLC ("Carrier Enterprise"), operates 110 locations in 20 states and Puerto Rico and serves over 19,000 air conditioning and heating contractors. Including Carrier Enterprise, we operate from 505 locations in 36 states and serve over 50,000 customers.

Revenues primarily consist of sales of air conditioning, heating and refrigeration equipment and related parts and supplies. Selling, general and administrative expenses primarily consist of selling expenses, the largest components of which are salaries, commissions and marketing expenses that tend to be variable in nature and correlate to changes in sales. Other significant selling, general and administrative expenses relate to the operation of warehouse facilities, including a fleet of trucks and forklifts and facility rent, which are payable mostly under non-cancelable operating leases.

Sales of residential central air conditioners, heating equipment and parts and supplies are seasonal. Furthermore, results of operations can be impacted favorably or unfavorably based on the severity or mildness of weather patterns during summer or winter selling seasons. Demand related to the residential central air conditioning replacement market is highest in the second and third quarters with demand for heating equipment usually highest in the fourth quarter. Demand related to the new construction sectors throughout most of the markets is fairly even during the year except for dependence on housing completions and related weather and economic conditions.

## Items Affecting Comparability between Periods

Refer to Note 1 to the consolidated financial statements for a discussion of the impact of changes in accounting standards.

## Critical Accounting Policies

Management's discussion and analysis of financial condition and results of operations is based upon the consolidated financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amount of revenues and expenses during the reporting period. Actual results may differ from these estimates under different assumptions or conditions. At least quarterly, management reevaluates its judgments and estimates, which are based on historical experience, current trends and various other assumptions that are believed to be reasonable under the circumstances.

Our significant accounting policies are discussed in Note 1 to the consolidated financial statements. Management believes that the following accounting policies include a higher degree of judgment and/or complexity and, thus, are considered to be critical accounting policies. Management has discussed the development and selection of critical accounting policies with the Audit Committee of the Board of Directors and the Audit Committee has reviewed the disclosures relating to them.

### Allowance for Doubtful Accounts

An allowance for doubtful accounts is maintained for estimated losses resulting from the inability of customers to make required payments. Accounting for doubtful accounts contains uncertainty because management must use judgment to assess the collectability of these accounts. When preparing these estimates, management considers a number of factors, including the aging of a customer's account, past transactions with customers, creditworthiness of specific customers, historical trends and other information. Our business is seasonal and our customers' businesses are also seasonal. Sales are lowest during the first and fourth quarters and past due accounts receivable balances as a percentage of total trade receivables generally increase during these quarters. We review our accounts receivable reserve policy periodically, reflecting current risks, trends and changes in industry conditions.

The allowance for doubtful accounts was $10.9 million and $3.9 million at December 31, 2009 and 2008, respectively, an increase of $7.0 million. Accounts receivable balances greater than 90 days past due as a percent of accounts receivable at December 31, 2009 increased to 5.8% compared to 3.4% at December 31, 2008. These increases are attributable to the 95 Carrier Enterprise locations added in July 2009.

Although we believe the allowance for doubtful accounts is sufficient, any continuing declining economic conditions could lead to further deterioration in the financial condition of customers, resulting in an impairment of their ability to make payments and additional allowances may be required that could materially impact our consolidated results of operations. Concentrations of credit risk with respect to accounts receivable are limited due to the large number of customers comprising the customer base and their dispersion across many different geographical regions. We also have access to a credit insurance program which is used as an additional means to mitigate credit risk.

Inventory Valuation

Inventories consist of air conditioning, heating and refrigeration equipment and related parts and supplies and are valued at the lower of cost or market using a weighted-average cost basis and the first-in, first-out method. As part of the valuation process, inventory reserves are established to state excess, slow-moving and damaged inventories at their estimated net realizable value. The valuation process for excess, slow-moving and damaged inventory contains uncertainty because management must use judgment to estimate when the inventory will be sold and the quantities and prices at which the inventory will be sold in the normal course of business. Inventory reserve policies are periodically reviewed, reflecting current risks, trends and changes in industry conditions. A reserve for estimated inventory shrinkage is also maintained and reflects the results of cycle count programs and physical inventories. When preparing these estimates, management considers historical results, inventory levels and current operating trends.

Valuation of Goodwill and Indefinite Lived Intangible Assets

The recoverability of goodwill and indefinite lived intangibles is evaluated at least annually and when events or changes in circumstances indicate that the carrying amount of goodwill and indefinite lived intangibles may not be recoverable. The identification and measurement of goodwill impairment involves the estimation of the fair value of our reporting unit and contains uncertainty because management must use judgment in determining appropriate assumptions to be used in the measurement of fair value. Indefinite lived intangibles not subject to amortization are assessed for impairment by comparing the fair value of the intangible asset to its carrying amount to determine if a write-down to fair value is required. The estimates of fair value of the reporting unit and indefinite lived intangibles are based on the best information available as of the date of the assessment and incorporate management assumptions about expected future cash flows and contemplate other valuation techniques. Future cash flows can be affected by changes in the industry, a declining economic environment or market conditions.

On January 1, 2010, the annual impairment tests were performed and it was determined there was no impairment. No factors have developed since the last impairment tests that would indicate that the carrying value of goodwill and indefinite lived intangibles may not be recoverable. The carrying amount of goodwill and intangibles at December 31, 2009 was $361.8 million. Although no impairment has been recorded to date, there can be no assurances that future impairments will not occur. An adjustment to the carrying value of goodwill and intangibles could materially impact the consolidated results of operations.

Self-Insurance Reserves

Self-insurance reserves are maintained relative to company-wide casualty insurance and health benefit programs. The level of exposure from catastrophic events is limited by the purchase of stop-loss and aggregate liability reinsurance coverage. When estimating the self-insurance liabilities and related reserves, management considers a number of factors, which include historical claims experience, demographic factors, severity factors and valuations provided by independent third-party actuaries. Management reviews its assumptions with its independent third-party actuaries to evaluate whether the self-insurance reserves are adequate. If actual claims or adverse development of loss reserves occur and exceed these estimates, additional reserves may be required. The estimation process contains uncertainty since management must use judgment to estimate the ultimate cost that will be incurred to settle reported claims and unreported claims for incidents incurred but not reported as of the balance sheet date. Reserves in the amount of $7.1 million and $3.9 million at December 31, 2009 and 2008, respectively, were established related to such insurance programs. The increase in the self-insurance reserves reflects changing our health benefit plan from fully insured to a self-insured plan effective January 1, 2009 and the addition of Carrier Enterprise on July 1, 2009.

Income Taxes

Income taxes are accounted for under the asset and liability method. Under this method, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial reporting basis and the tax basis of assets and liabilities at enacted tax rates expected to be in effect when such amounts are recovered or settled. The use of estimates by management is required to determine income tax expense, deferred tax assets and any related valuation allowance and deferred tax liabilities. The valuation allowance is based on estimates of future taxable income by jurisdiction in which the deferred tax assets will be recoverable. These estimates can be affected by a number of factors, including possible tax audits or general economic conditions or competitive pressures that could affect future taxable income. Although management believes that the estimates are reasonable, the deferred tax asset and any related valuation allowance will need to be adjusted if management's estimates of future taxable income differ from actual taxable income. An adjustment to the deferred tax asset and any related valuation allowance could materially impact the consolidated results of operations. At December 31, 2009 and 2008, there was no valuation allowance recorded.

**Discontinued Operations**

During June 2007, our Board of Directors approved and we executed an agreement to sell the stock of our non-core staffing unit, Dunhill Staffing Systems, Inc. ("Dunhill"). The amounts related to this operation are presented as discontinued operations in our consolidated statement of income and our consolidated statement of cash flows for 2007. See Note 13 to the consolidated financial statements for further information.

**Results of Operations**

The following table summarizes information derived from the consolidated statements of income expressed as a percentage of revenues for the years ended December 31, 2009, 2008 and 2007:

| | 2009 | 2008 | 2007 |
|---|---|---|---|
| Revenues | 100.0% | 100.0% | 100.0% |
| Cost of sales | 76.0 | 74.0 | 74.6 |
| Gross profit | 24.0 | 26.0 | 25.4 |
| Selling, general and administrative expenses | 20.0 | 20.2 | 19.1 |
| Operating income | 4.0 | 5.8 | 6.3 |
| Interest expense, net | 0.1 | 0.1 | 0.2 |
| Income from continuing operations before income taxes | 3.9 | 5.7 | 6.1 |
| Income taxes | 1.3 | 2.1 | 2.3 |
| Net income from continuing operations | 2.6 | 3.6 | 3.8 |
| Loss from discontinued operations, net of income taxes | — | — | 0.1 |
| Net income | 2.6 | 3.6 | 3.7 |
| Less: net income attributable to the noncontrolling interest | 0.4 | — | — |
| Net income attributable to Watsco, Inc. | 2.2% | 3.6% | 3.7% |

The following narratives include the results of operations for businesses acquired during 2009 and 2007. The operating results of acquisitions have been included in the consolidated results beginning on their respective dates of acquisition. The pro forma effect of these acquisitions, excluding Carrier Enterprise, was not deemed significant on either an individual or an aggregate basis in the related acquisition year. There were no businesses acquired during 2008. In the following narratives, computations and disclosure information referring to "same-store basis" exclude the effects of locations acquired or locations opened or closed during the prior twelve months unless they are within close geographical proximity to existing locations. Additionally, the following narratives include the results of operations of our continuing operations only and exclude the results of our discontinued operation, Dunhill.

**2009 Compared to 2008**

Revenues

Revenues in 2009 increased $301.6 million, or 18%, to $2,002 million, including a $595.6 million contribution from locations acquired and opened during the prior 12 months, offset by $14.4 million from closed locations. On a same-store basis, revenues declined $279.6 million, or 17%, over 2008 and reflected a decline of 11% in sales of HVAC equipment, a 24% decline in sales of other HVAC products and a 16% decline in sales of refrigeration products. Revenues were impacted by lower demand experienced during the current economic conditions and lower pricing on certain commodity products that are sensitive to changes in commodity prices (copper tubing, galvanized sheet metal and refrigerant). These commodity products accounted for approximately $90.0 million of the same-store revenue decline and in aggregate represented 12% of revenues on a same-store basis.

Gross Profit

Gross profit in 2009 increased $38.8 million, or 9%, to $480.8 million. Gross profit margin decreased 200 basis-points to 24.0% in 2009 from 26.0% in 2008, reflecting lower gross margins achieved by Carrier Enterprise. On a same-store basis, gross profit margin declined 60 basis-points to 25.4% versus 26.0% in 2008. The decline of same-store gross profit margin is primarily due to lower margins on certain commodity products that are sensitive to changes in commodity prices, a shift in sales mix toward HVAC equipment, which generates a lower gross profit margin versus non-equipment products and generally more competitive pricing conditions.

Selling, General and Administrative Expenses

Selling, general and administrative expenses in 2009 increased $56.4 million, or 16%, to $399.8 million. Selling, general and administrative expenses as a percent of revenues decreased to 20.0% in 2009 from 20.2% in 2008. Selling, general and administrative expenses include $4.8 million of transaction costs primarily associated with the closing and transition of Carrier Enterprise in 2009. On a same-store basis, selling, general and administrative expenses were down 13% compared to 2008, primarily due to ongoing cost savings initiatives implemented in early 2008.

Operating Income

Operating income in 2009 decreased $17.5 million, or 18%, to $81.1 million. Operating margin decreased 180 basis-points to 4.0% in 2009 from 5.8% in 2008. On a same-store basis, operating margin declined 150 basis-points to 4.4% versus 5.9% in 2008.

Interest Expense, Net

Net interest expense in 2009 increased $0.7 million, or 35%, primarily as a result of the additional amortization of bank fees (included in interest expense, net) related to the amendment of our existing revolving credit agreement required to consummate the joint venture and the establishment of the Carrier Enterprise revolving credit agreement, partially offset by a 42% decrease in average outstanding borrowings as compared to 2008.

Income Taxes

Income taxes of $26.8 million consist of the income taxes attributable to Watsco’s wholly-owned operations and 60% of income taxes attributable to Carrier Enterprise, which is taxed as a partnership for income tax purposes. The effective income tax rate attributable to Watsco, Inc. was 37.8% in 2009 versus 37.5% in 2008. The increase is primarily due to a higher state effective tax rate associated with Carrier Enterprise. Our overall effective income tax rate was 34.2% in 2009 versus 37.5% in 2008.

Net Income Attributable to Watsco, Inc.

Net income attributable to Watsco decreased $17.1 million, or 28%, to $43.3 million. The decrease was primarily driven by the lower gross profit margin and the higher levels of selling, general and administrative expenses discussed above.

**2008 Compared to 2007**

Revenues

Revenues in 2008 decreased $57.8 million, or 3%, to $1,700 million, including a $133.4 million contribution from locations acquired and opened during the prior 12 months, offset by $13.6 million from closed locations. On a same-store basis, revenues declined $177.6 million, or 10%, over 2007 and reflected a decline of 10% in sales of HVAC equipment, an 11% decline in sales of other HVAC products and a 5% decline in sales of refrigeration products. Revenues in 2008 were impacted by significantly lower demand in the new construction market.

Gross Profit

Gross profit in 2008 decreased $5.0 million, or 1%, to $442.0 million. Gross profit margin improved 60 basis-points to 26.0% in 2008 from 25.4% in 2007 and improved 70 basis-points on a same-store basis. The expansion of gross profit margin is primarily due to increased sales of high-efficiency air conditioning systems, an improved sales mix to the repair and replacement market and execution on gross profit margin enhancement initiatives.

Selling, General and Administrative Expenses

Selling, general and administrative expenses in 2008 increased $7.6 million, or 2%, to $343.4 million. Selling, general and administrative expenses as a percent of revenues increased to 20.2% in 2008 from 19.1% in 2007 primarily as a result of lower same-store revenues and the relative inefficiency of fixed operating costs following a decline in revenues. On a same-store basis, including locations closed during 2008, selling, general and administrative expenses decreased 6% compared to 2007 primarily due to decreases in selling expenses related to our decreased revenues, other cost reductions and efficiency initiatives including facility rationalization and headcount reductions and lower incentive-based compensation as a result of our decreased revenues.

Operating Income

Operating income in 2008 decreased $12.5 million, or 11%, to $98.6 million. Operating margin decreased 50 basis-points to 5.8% in 2008 from 6.3% in 2007. On a same-store basis, operating margin declined 40 basis-points to 6.0% versus 6.4% in 2007.

Interest Expense, Net

Net interest expense in 2008 decreased $1.2 million, or 36%, compared to 2007, primarily due to a 24% decrease in average outstanding borrowings and a lower effective interest rate.

Income Taxes

The effective tax rate was 37.5% in 2008 and 2007.

Net Income attributable to Watsco, Inc.

Net income attributable to Watsco, Inc. for 2008 decreased $5.2 million, or 8%, to $60.4 million. The decrease was primarily a result of lower revenues.

**Liquidity and Capital Resources**

We assess our liquidity in terms of our ability to generate cash to execute our business strategy and fund operating and investing activities, taking into consideration the seasonal demand of HVAC/R products, which peak in the months of May through August. Significant factors that could affect our liquidity include the following:

- cash flows generated from operating activities;
- the adequacy of available bank lines of credit;
- the ability to attract long-term capital with satisfactory terms;
- acquisitions;
- dividend payments;
- the timing and extent of common stock repurchases; and
- capital expenditures.

We rely on cash flows from operations and our lines of credit to fund seasonal working capital needs, financial commitments and short-term liquidity needs, including funds necessary for business acquisitions. Disruptions in the capital and credit markets, such as those that have been experienced during 2008 and 2009 could adversely affect our ability to draw on our lines of credit. Our access to funds under the lines of credit is dependent on the ability of the banks to meet their funding commitments. Disruptions in capital and credit markets have also affected the determination of interest rates for borrowers, particularly rates based on LIBOR, as are our lines of credit. Continued disruptions in these markets and their effect on interest rates could result in increased borrowing costs under our lines of credit. We believe that, at present, cash flows from operations combined with those available under our lines of credit are sufficient to satisfy our current liquidity needs, including our anticipated dividend payments and capital expenditures.

*Cash Flows*

The following table summarizes our cash flow activity for 2009 and 2008:

| | 2009 | 2008 | Change |
|---|---|---|---|
| Operating activities | **$ 88.3** | $113.5 | $(25.2) |
| Investing activities | **$(15.5)** | $ (3.7) | $(11.8) |
| Financing activities | **$(56.1)** | $ (77.8) | $ 21.7 |

Operating Activities

Cash flows provided by operating activities provides us with a significant source of liquidity. The decrease in net cash provided by operating activities was principally attributable to lower reductions in inventories and lower net income in 2009 compared to 2008.

Investing Activities

The increase in net cash used in investing activities is primarily due to cash used to acquire businesses in 2009 for $9.8 million and an increase in capital expenditures of $1.9 million.

The final purchase price of Carrier Enterprise was subject to an adjustment of $7.2 million, of which $1.4 million was payable to Carrier at December 31, 2009.

In August 2009, a capital contribution in the amount of $80.0 million was made to Carrier Enterprise pursuant to the Purchase and Contribution Agreement. Our share of the contribution totaling $48.0 million was made as an additional capital contribution to Carrier Enterprise in cash. Carrier's share of the contribution totaling $32.0 million consisted of inventory.

In August 2009, one of our subsidiaries acquired certain assets and assumed certain liabilities of a wholesale distributor of air conditioning and heating products operating from six locations in Utah and serving over 500 customers. The purchase price of the acquisition included a cash payment of $4.0 million.

The results of operations of these acquired locations have been included in the consolidated financial statements from their respective dates of acquisition. The pro forma effect of the August 2009 acquisition was not deemed significant to the consolidated financial statements.

Financing Activities

The decrease in net cash used in financing activities is primarily attributable to $26.8 million lower net debt repayments under our revolving credit agreement, a $4.8 million increase in excess tax benefits resulting from share-based compensation and $4.4 million higher net proceeds from issuances of common stock in 2009, partially offset by an increase of $7.7 million in dividends paid, $6.7 million revolving credit agreements fees paid and $4.8 million distribution made to the noncontrolling interest in 2009.

Working capital increased to $531.4 million at December 31, 2009 from $348.9 million at December 31, 2008 primarily due to the 95 new locations added by Carrier Enterprise in July 2009, which added $236.3 million of working capital. Excluding these new locations, working capital was $295.1 million.

*Revolving Credit Agreements*

We maintain a bank-syndicated, unsecured revolving credit agreement that provides for borrowings of up to $300.0 million. Borrowings are used to fund seasonal working capital needs and for other general corporate purposes, including acquisitions, dividends, stock repurchases and issuances of letters of credit. The credit facility matures in August 2012. At December 31, 2009 and 2008, $12.8 million and $20.0 million were outstanding under this revolving credit agreement, respectively.

On July 1, 2009, we amended our $300.0 million credit agreement to provide for the consummation of Carrier Enterprise. We paid an amendment fee of $5.5 million, which is being amortized ratably through the maturity of the facility in August 2012. All other significant terms and conditions remained the same, including capacity, pricing and covenant structure.

The revolving credit agreement contains customary affirmative and negative covenants including financial covenants with respect to consolidated leverage and interest coverage ratios and limits capital expenditures, dividends and share repurchases in addition to other restrictions. We believe we were in compliance with all covenants and financial ratios at December 31, 2009.

On July 1, 2009, Carrier Enterprise entered into a separate secured three-year $75.0 million revolving credit agreement with three lenders. Borrowings under the credit facility will be used by Carrier Enterprise for general corporate purposes, including working capital and permitted acquisitions. The credit facility is secured by substantially all tangible and intangible assets of Carrier Enterprise. Carrier Enterprise paid $1.2 million of fees in connection with the credit agreement, which is being amortized ratably through the maturity of the facility in July 2012. As of December 31, 2009, $0.01 million was outstanding under this credit facility.

The revolving credit agreement contains customary affirmative and negative covenants and warranties, including compliance with a monthly borrowing base certificate with advance rates on accounts receivable and inventory, two financial covenants with respect to Carrier Enterprise's leverage and interest coverage ratios and limits the level of capital expenditures in addition to other restrictions. We believe Carrier Enterprise was in compliance with all covenants and financial ratios at December 31, 2009.

*Contractual Obligations and Off-Balance Sheet Arrangements*

As of December 31, 2009, our significant contractual obligations were as follows (in millions):

| | Payments due by Period | | | | | | |
|---|---|---|---|---|---|---|---|
| **Contractual Obligations** | **2010** | **2011** | **2012** | **2013** | **2014** | **Thereafter** | **Total** |
| Non-cancelable operating lease obligations | $62.9 | $47.9 | $33.1 | $24.5 | $17.1 | $ 27.2 | $ 212.7 |
| Minimum royalty payments | 1.0 | 1.0 | — | — | — | — | 2.0 |
| Other debt | 0.2 | 0.1 | 0.1 | — | — | 0.4 | 0.8 |
| Total Contractual Obligations | $ 64.1 | $ 49.0 | $33.2 | $24.5 | $17.1 | $ 27.6 | $215.5 |

Commercial obligations outstanding at December 31, 2009 under the revolving credit agreements consist of borrowings totaling $10.0 million and standby letters of credit totaling $3.8 million. Borrowings under the revolving credit agreements at December 31, 2009 had revolving maturities of 30 days and letters of credit had varying terms expiring through August 2010.

Standby letters of credit are primarily used as collateral under self-insurance programs and are not expected to result in any material losses or obligation as the obligations under the programs will be met in the ordinary course of business. Accordingly, the estimated fair value of these instruments is zero at December 31, 2009. See Note 10 to the consolidated financial statements for further information.

*Company Share Repurchase Program*

In September 1999, our Board of Directors authorized the repurchase, at management's discretion, of 7.5 million shares of common stock in the open market or via private transactions. Shares repurchased under the program are accounted for using the cost method and result in a reduction of shareholders' equity. Repurchases totaled 105,600 shares at a cost of $4.8 million in 2008 and 231,100 shares at a cost of $9.4 million in 2007. No shares were repurchased in 2009. In aggregate, 6.4 million shares of Common stock and Class B common stock have been repurchased at a cost of $114.4 million since the inception of the program. The remaining 1.1 million shares authorized for repurchase are subject to certain restrictions included in our revolving credit agreement.

*Common Stock Dividends*

Cash dividends per share of $1.89, $1.75 and $1.31 for Common stock and Class B common stock were paid in 2009, 2008 and 2007, respectively. In February 2010, the Board of Directors approved an increase to the quarterly cash dividend rate to $0.52 per share from $0.48 per share of Common and Class B common stock beginning with the next regular scheduled dividend declaration in April 2010. Future dividends and/or dividend rate increases will be at the sole discretion of the Board of Directors and will depend upon such factors as profitability, financial condition, cash requirements, and restrictions under our revolving credit agreement, future prospects and other factors deemed relevant by our Board of Directors.

*Capital Resources*

We believe we have adequate availability of capital from operations and our current credit facilities to fund working capital requirements and support the development of our short-term and long-term operating strategies. As of December 31, 2009, we had cash and cash equivalents on hand and additional borrowing capacity (subject to certain restrictions) under our revolving credit agreements to fund present operations and anticipated growth, including expansion in our current and targeted market areas. Potential acquisitions are continually evaluated and discussions are conducted with a number of acquisition candidates. Should suitable acquisition opportunities or working capital needs arise that would require additional financing, we believe our financial position and earnings history provide a sufficient base for obtaining additional financing resources at competitive rates and terms or gives us the ability to raise funds through the issuance of equity securities.

## Quantitative and Qualitative Disclosures about Market Risk

The primary market risk exposure for Watsco is interest rate risk. The objective in managing the exposure to interest rate changes is to limit the impact of interest rate changes on earnings and cash flows and to lower our overall borrowing costs. To achieve this objective, interest rate swaps are used to manage net exposure to interest rate changes to our borrowings. These swaps are entered into with financial institutions with investment grade credit ratings, thereby minimizing the risk of credit losses. All items described are non-trading. See Notes 1 and 10 to the consolidated financial statements for further information.

Interest rate swap agreements reduce the exposure to market risks from changing interest rates under our revolving credit agreement. Under the swap agreements, we agree to exchange, at specified intervals, the difference between fixed and variable interest amounts calculated by reference to a notional principal amount. Any differences paid or received on interest rate swap agreements are recognized as adjustments to interest expense over the life of each swap, thereby adjusting the effective interest rate on the underlying obligation. Financial instruments are not held for trading purposes. Derivatives used for hedging purposes must be designated as, and effective as, a hedge of the identified risk exposure at the inception of the contract. Accordingly, changes in the fair value of the derivative contract must be highly correlated with changes in the fair value of the underlying hedged item at inception of the hedge and over the life of the hedge contract.

At December 31, 2009, one interest rate swap agreement was in effect with a notional amount of $10.0 million, to manage the net exposure to interest rate changes related to $10.0 million of borrowings under our revolving credit agreement. The swap agreement matures in October 2011 and exchanges the variable rate of 30-day LIBOR to a fixed interest rate of 5.07%. The interest rate swap was effective as a cash flow hedge and no charge to earnings was required in 2009, 2008 and 2007.

We were party to an interest rate swap agreement with a notional amount of $10.0 million, which matured on October 31, 2009, that was designated as a cash flow hedge and effectively exchanged the variable rate of 30-day LIBOR to a fixed interest rate of 5.04%. During 2009, 2008 and 2007, the hedging relationship was determined to be highly effective in achieving offsetting changes in cash flows.

We were party to an interest rate swap agreement with a notional amount of $30.0 million, which matured on October 9, 2007, that was designated as a cash flow hedge and effectively exchanged the variable rate of 90-day LIBOR to a fixed interest rate of 6.25%. During 2007, the hedging relationship was determined to be highly effective in achieving offsetting changes in cash flows.

The negative fair value of the derivative financial instruments was $0.7 million and $1.3 million at December 31, 2009 and 2008, respectively, and is included, net of accrued interest, in deferred income taxes and other liabilities in the consolidated balance sheets.

At December 31, 2009 and 2008, our exposure to interest rate changes was limited to variable rate lease payments which are indexed to one month LIBOR. To assess our exposure to changes in interest rates, we performed a sensitivity analysis to determine the impact to earnings associated with an immediate 100 basis-point fluctuation from one month LIBOR. Based on the results of this simulation, as of December 31, 2009 and 2008, net income would decrease or increase by approximately $.1 million on an annual basis if there were an immediate 100 basis-point increase or decrease, respectively, in one month LIBOR. Disruptions in the capital and credit markets have also affected the determination of interest rates for LIBOR-based borrowers. Disruptions in these markets and their affect on interest rates could result in increased borrowings than our sensitivity analysis determined. This information constitutes a “forward-looking statement” and actual results may differ significantly based on actual borrowings and interest rates.

### Recent Accounting Pronouncements

Refer to Note 1 to the consolidated financial statements for a discussion of recent accounting pronouncements.

## Information about Forward-Looking Statements

This Annual Report contains or incorporates by reference statements that are not historical in nature and that are intended to be, and are hereby identified as, “forward-looking statements” as defined in the Private Securities Litigation Reform Act of 1995, including statements regarding, among other items, (i) economic conditions, (ii) business and acquisition strategies, (iii) potential acquisitions, (iv) financing plans and (v) industry, demographic and other trends affecting our financial condition or results of operations. These forward-looking statements are based largely on management’s current expectations and are subject to a number of risks, uncertainties and changes in circumstances, certain of which are beyond their control.

Actual results could differ materially from these forward-looking statements as a result of several factors, including:

- general economic conditions;
- competitive factors within the HVAC/R industry;
- effects of supplier concentration;
- fluctuations in certain commodity costs;
- consumer spending;
- consumer debt levels;
- new housing starts and completions;
- capital spending in the commercial construction market;
- access to liquidity needed for operations;
- seasonal nature of product sales;
- weather conditions;
- insurance coverage risks;
- federal, state and local regulations impacting our industry and products;
- prevailing interest rates; and
- the continued viability of our business strategy.

In light of these uncertainties, there can be no assurance that the forward-looking information contained herein will be realized or, even if substantially realized, that the information will have the expected consequences to or effects on our business or operations. A discussion of certain of these risks and uncertainties that could cause actual results to differ materially from those predicted in such forward-looking statements is included in our 2009 Annual Report in the section captioned “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” which section has been incorporated in the Form 10-K by reference. Forward-looking statements speak only as of the date the statement was made. We assume no obligation to update forward-looking information or the discussion of such risks and uncertainties to reflect actual results, changes in assumptions or changes in other factors affecting forward-looking information.

**WATSCO, INC. AND SUBSIDIARIES**
**MANAGEMENT'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f). Our internal control system was designed to provide reasonable assurance to our management and Board of Directors regarding the reliability of financial reporting and the preparation and fair presentation of our published consolidated financial statements.

All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective may not prevent or detect misstatements and can provide only reasonable assurance with respect to financial statement preparation and presentation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

On July 1, 2009, we completed the formation of a joint venture, Carrier Enterprise, LLC ("Carrier Enterprise"). As permitted by Securities and Exchange Commission guidance, the scope of our Section 404 evaluation for the fiscal year ended December 31, 2009 does not include the internal controls over financial reporting of the 95 locations added by Carrier Enterprise. Carrier Enterprise is included in our consolidated financial statements from the date the joint venture was formed and represented approximately 43% of total consolidated assets at December 31, 2009 and approximately 29% of revenues for the year ended December 31, 2009. From the acquisition date to December 31, 2009, the processes and systems of Carrier Enterprise were discrete and did not significantly impact internal controls over financial reporting for our other consolidated subsidiaries.

Under the supervision and with the participation of our management, including our Chief Executive Officer, Senior Vice President and Chief Financial Officer, we conducted an assessment of the effectiveness of our internal control over financial reporting as of December 31, 2009. The assessment was based on criteria established in the framework *Internal Control — Integrated Framework*, issued by the Committee of Sponsoring Organizations ("COSO") of the Treadway Commission. Based on this assessment under the COSO framework, our management concluded that our internal control over financial reporting was effective as of December 31, 2009. The effectiveness of our internal control over financial reporting as of December 31, 2009 has been audited by KPMG LLP, an independent registered public accounting firm, as stated in their report that is included herein.

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Shareholders
Watsco, Inc.:

We have audited Watsco, Inc. and subsidiaries' (the Company) internal control over financial reporting as of December 31, 2009, based on criteria established in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Watsco, Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting, appearing under Item 15. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2009, based on criteria established in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

The Company acquired Carrier Enterprise, LLC ("Carrier Enterprise") during 2009, and management excluded from its assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2009, Carrier Enterprise's internal control over financial reporting, which represented approximately 43% of the Company's total consolidated assets as of December 31, 2009 and approximately 29% of consolidated revenues for the year ended December 31, 2009, included in the consolidated financial statements of Watsco, Inc. and subsidiaries as of and for the year ended December 31, 2009. Our audit of internal control over financial reporting of Watsco, Inc. and subsidiaries also excluded an evaluation of the internal control over financial reporting of Carrier Enterprise.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheet of Watsco, Inc. and subsidiaries as of December 31, 2009, and the related consolidated statements of income, cash flows, and shareholders' equity for the year ended December 31, 2009, and our report dated February 26, 2010 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG LLP

Miami, Florida
February 26, 2010
Certified Public Accountants

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Shareholders
Watsco, Inc.:

We have audited the accompanying consolidated balance sheet of Watsco, Inc. and subsidiaries (the "Company") as of December 31, 2009, and the related consolidated statements of income, cash flows, and shareholders' equity for the year ended December 31, 2009. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Watsco, Inc. and subsidiaries as of December 31, 2009, and the results of their operations and their cash flows for the year ended December 31, 2009, in conformity with U.S. generally accepted accounting principles.

As discussed in Note 1 to the consolidated financial statements, effective January 1, 2009 the Company changed its accounting and reporting for business combinations, noncontrolling interests, and earnings per share.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Watsco, Inc.'s internal control over financial reporting as of December 31, 2009, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated February 26, 2010 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ KPMG LLP

Miami, Florida
February 26, 2010
Certified Public Accountants

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Shareholders of
Watsco, Inc.

We have audited the accompanying consolidated balance sheet of Watsco, Inc. (a Florida Corporation) and subsidiaries (the "Company") as of December 31, 2008, and the related consolidated statements of income, cash flows, and shareholders' equity for each of the two years in the period ended December 31, 2008. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Watsco, Inc. and subsidiaries as of December 31, 2008, and the results of their operations and their cash flows for each of the two years in the period ended December 31, 2008 in conformity with accounting principles generally accepted in the United States of America.

/s/ GRANT THORNTON LLP

Miami, Florida
February 27, 2009 (except for earnings per share amounts as discussed in Note 1 - Accounting Changes - Earnings per Share, as to which the date is February 26, 2010)

**WATSCO, INC. AND SUBSIDIARIES**
**CONSOLIDATED STATEMENTS OF INCOME**

| *(In thousands, except per share data)* | Years Ended December 31, 2009 | 2008 | 2007 |
|---|---|---|---|
| Revenues | $ 2,001,815 | $ 1,700,237 | $ 1,758,022 |
| Cost of sales | 1,520,983 | 1,258,243 | 1,311,037 |
| Gross profit | 480,832 | 441,994 | 446,985 |
| Selling, general and administrative expenses | 399,772 | 343,386 | 335,831 |
| Operating income | 81,060 | 98,608 | 111,154 |
| Interest expense, net | 2,731 | 2,018 | 3,172 |
| Income from continuing operations before income taxes | 78,329 | 96,590 | 107,982 |
| Income taxes | 26,756 | 36,221 | 40,493 |
| Net income from continuing operations | 51,573 | 60,369 | 67,489 |
| Loss from discontinued operations, net of income taxes (Note 13) | — | — | (1,912) |
| Net income | 51,573 | 60,369 | 65,577 |
| Less: net income attributable to the noncontrolling interest | (8,259) | — | — |
| Net income attributable to Watsco, Inc. | $ 43,314 | $ 60,369 | $ 65,577 |
| Basic earnings per share for Common and Class B common stock: | | | |
| Net income from continuing operations attributable to Watsco, Inc. shareholders | $ 1.40 | $ 2.14 | $ 2.41 |
| Net loss from discontinued operations attributable to Watsco, Inc. shareholders | — | — | (0.07) |
| Net income attributable to Watsco, Inc. shareholders | $ 1.40 | $ 2.14 | $ 2.34 |
| Diluted earnings per share for Common and Class B common stock: | | | |
| Net income from continuing operations attributable to Watsco, Inc. shareholders | $ 1.40 | $ 2.09 | $ 2.34 |
| Net loss from discontinued operations attributable to Watsco, Inc. shareholders | — | — | (0.07) |
| Net income attributable to Watsco, Inc. shareholders | $ 1.40 | $ 2.09 | $ 2.27 |

*See accompanying notes to consolidated financial statements.*

**WATSCO, INC. AND SUBSIDIARIES**
**CONSOLIDATED BALANCE SHEETS**

| *(In thousands, except share and per share data)* | December 31, 2009 | 2008 |
|---|---|---|
| **ASSETS** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 58,093 | $ 41,444 |
| Accounts receivable, net | 266,284 | 151,317 |
| Inventories | 410,078 | 250,914 |
| Other current assets | 20,843 | 13,028 |
| Total current assets | 755,298 | 456,703 |
| Property and equipment, net | 33,118 | 24,209 |
| Goodwill | 303,257 | 219,810 |
| Intangible assets | 58,566 | 10,658 |
| Other assets | 10,374 | 4,681 |
| | $1,160,613 | $ 716,061 |
| **LIABILITIES AND SHAREHOLDERS' EQUITY** | | |
| Current liabilities: | | |
| Current portion of long-term obligations | $ 151 | $ 268 |
| Accounts payable | 145,825 | 63,850 |
| Accrued expenses and other current liabilities | 77,950 | 43,706 |
| Total current liabilities | 223,926 | 107,824 |
| Long-term obligations: | | |
| Borrowings under revolving credit agreements | 12,763 | 20,000 |
| Other long-term obligations, net of current portion | 666 | 783 |
| Total long-term obligations | 13,429 | 20,783 |
| Deferred income taxes and other liabilities | 28,450 | 16,794 |
| Commitments and contingencies (Notes 10 and 12) | | |
| Watsco, Inc. shareholders' equity: | | |
| Common stock, $0.50 par value, 60,000,000 shares authorized; 34,209,913 and 30,882,931 shares issued in 2009 and 2008, respectively | 17,105 | 15,442 |
| Class B common stock, $0.50 par value, 10,000,000 shares authorized; 4,299,644 and 3,813,620 shares issued in 2009 and 2008, respectively | 2,150 | 1,907 |
| Preferred stock, $0.50 par value, 10,000,000 shares authorized; no shares issued | — | — |
| Paid-in capital | 461,563 | 282,636 |
| Accumulated other comprehensive loss, net of tax | (821) | (1,125) |
| Retained earnings | 372,454 | 386,225 |
| Treasury stock, at cost, 6,370,913 shares of Common and Class B common stock in 2009 and 2008 | (114,425) | (114,425) |
| Total Watsco, Inc. shareholders' equity | 738,026 | 570,660 |
| Noncontrolling interest | 156,782 | — |
| Total shareholders' equity | 894,808 | 570,660 |
| | $1,160,613 | $ 716,061 |

*See accompanying notes to consolidated financial statements.*

**WATSCO, INC. AND SUBSIDIARIES**
**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**

| *(In thousands, except share and per share data)* | Common Stock, Class B Common Stock and Preferred Stock Shares | Common Stock, Class B Common Stock and Preferred Stock Amount | Paid-In Capital | Accumulated Other Comprehensive Loss | Retained Earnings | Treasury Stock | Noncontrolling Interest | Total |
|---|---|---|---|---|---|---|---|---|
| **Balance at December 31, 2006** | **27,832,831** | **$ 16,934** | **$253,422** | **$ (126)** | **$346,375** | **$(100,219)** | **—** | **$ 516,386** |
| Net income | | | | | 65,577 | | | 65,577 |
| Changes in unrealized gains and losses on available-for-sale securities and derivative instruments, net of income taxes | | | | (305) | | | | (305) |
| Comprehensive income | | | | | | | | 65,272 |
| Retirement of common stock | (17,291) | (9) | (893) | | | | | (902) |
| Common stock contribution to 401(k) plan | 27,111 | 14 | 1,265 | | | | | 1,279 |
| Stock issuances from exercise of stock options and employee stock purchase plan | 268,652 | 133 | 4,488 | | | | | 4,621 |
| Excess tax benefit from share-based compensation | | | 3,462 | | | | | 3,462 |
| Issuances of non-vested (restricted) shares of common stock | 91,255 | 46 | (46) | | | | | — |
| Forfeitures of non-vested (restricted) shares of common stock | (1,988) | (1) | 1 | | | | | — |
| Share-based compensation | | | 5,970 | | | | | 5,970 |
| Cash dividends declared on Common and Class B common stock, $1.31 per share | | | | | (36,745) | | | (36,745) |
| Purchase of treasury stock | (231,100) | | | | | (9,386) | | (9,386) |
| **Balance at December 31, 2007** | **27,969,470** | **17,117** | **267,669** | **(431)** | **375,207** | **(109,605)** | **—** | **549,957** |
| Net income | | | | | 60,369 | | | 60,369 |
| Changes in unrealized gains and losses on available-for-sale securities and derivative instruments, net of income taxes | | | | (694) | | | | (694) |
| Comprehensive income | | | | | | | | 59,675 |
| Retirement of common stock | (261,014) | (131) | (9,798) | | | | | (9,929) |
| Common stock contribution to 401(k) plan | 33,986 | 17 | 1,232 | | | | | 1,249 |
| Stock issuances from exercise of stock options and employee stock purchase plan | 643,796 | 323 | 12,344 | | | | | 12,667 |
| Excess tax benefit from share-based compensation | | | 4,758 | | | | | 4,758 |
| Issuances of non-vested (restricted) shares of common stock | 45,000 | 23 | (23) | | | | | — |
| Share-based compensation | | | 6,454 | | | | | 6,454 |
| Cash dividends declared on Common and Class B common stock, $1.75 per share | | | | | (49,351) | | | (49,351) |
| Purchase of treasury stock | (105,600) | | | | | (4,820) | | (4,820) |
| **Balance at December 31, 2008** | **28,325,638** | **17,349** | **282,636** | **(1,125)** | **386,225** | **(114,425)** | **—** | **570,660** |

*Continued on next page.*

| *(In thousands, except share and per share data)* | Common Stock, Class B Common Stock and Preferred Stock Shares | Common Stock, Class B Common Stock and Preferred Stock Amount | Paid-In Capital | Accumulated Other Comprehensive Loss | Retained Earnings | Treasury Stock | Noncontrolling Interest | Total |
|---|---|---|---|---|---|---|---|---|
| **Balance at December 31, 2008** | **28,325,638** | **17,349** | **282,636** | **(1,125)** | **386,225** | **(114,425)** | **—** | **570,660** |
| Net income | | | | | 43,314 | | 8,259 | 51,573 |
| Changes in unrealized gains and losses on available-for-sale securities and derivative instruments, net of income taxes | | | | 304 | | | | 304 |
| Comprehensive income | | | | | | | | 51,877 |
| Retirement of common stock | (206,029) | (103) | (9,335) | | | | | (9,438) |
| Common stock contribution to 401(k) plan | 33,779 | 17 | 1,280 | | | | | 1,297 |
| Stock issuances from exercise of stock options and employee stock purchase plan | 823,320 | 412 | 11,885 | | | | | 12,297 |
| Excess tax benefit from share-based compensation | | | 9,589 | | | | | 9,589 |
| Issuances of non-vested (restricted) shares of common stock | 86,635 | 43 | (43) | | | | | — |
| Forfeitures of non-vested (restricted) shares of common stock | (5,168) | (3) | 3 | | | | | — |
| Share-based compensation | | | 5,264 | | | | | 5,264 |
| Cash dividends declared on Common and Class B common stock, $1.89 per share | | | | | (57,085) | | | (57,085) |
| Common and Class B common stock issued for joint venture | 3,080,469 | 1,540 | 149,516 | | | | | 151,056 |
| Fair value increment over carrying value of locations contributed to joint venture | | | 10,768 | | | | | 10,768 |
| Fair value of noncontrolling interest | | | | | | | 108,883 | 108,883 |
| Share of carrying value of our locations contributed to joint venture | | | | | | | 12,448 | 12,448 |
| Non-cash capital contribution of inventory by noncontrolling interest | | | | | | | 32,000 | 32,000 |
| Distribution to noncontrolling interest | | | | | | | (4,808) | (4,808) |
| **Balance at December 31, 2009** | **32,138,644** | **$ 19,255** | **$ 461,563** | **$ (821)** | **$ 372,454** | **$(114,425)** | **$ 156,782** | **$ 894,808** |

*See accompanying notes to consolidated financial statements.*

**WATSCO, INC. AND SUBSIDIARIES**
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

| *(In thousands)* | Years Ended December 31, 2009 | 2008 | 2007 |
|---|---|---|---|
| Cash flows from operating activities: | | | |
| Net income | $ 51,573 | $ 60,369 | $ 65,577 |
| Loss from discontinued operations, net of income taxes | — | — | 1,912 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | | |
| Depreciation and amortization | 8,533 | 7,071 | 6,420 |
| Share-based compensation | 5,264 | 6,454 | 5,970 |
| Provision for doubtful accounts | 5,934 | 3,816 | 3,086 |
| Gain on sale of property and equipment | (47) | (170) | (23) |
| Gain on sale of available-for-sale securities | — | — | (1,299) |
| Deferred income tax provision | 1,972 | 447 | 4,117 |
| Non-cash contribution for 401(k) plan | 1,297 | 1,249 | 1,279 |
| Excess tax benefits from share-based compensation | (9,589) | (4,758) | (3,462) |
| Changes in operating assets and liabilities, net of effects of acquisitions: | | | |
| Accounts receivable | 67,243 | 23,416 | 23,519 |
| Inventories | 1,204 | 37,153 | 46,416 |
| Accounts payable and other liabilities | (46,386) | (23,020) | (48,390) |
| Other, net | 1,289 | 1,446 | 1,649 |
| Net cash provided by operating activities of continuing operations | 88,287 | 113,473 | 106,771 |
| Net cash provided by operating activities of discontinued operations | — | — | 1,227 |
| Net cash provided by operating activities | 88,287 | 113,473 | 107,998 |
| Cash flows from investing activities: | | | |
| Business acquisitions, net of cash acquired | (9,840) | 76 | (108,972) |
| Capital expenditures | (5,912) | (3,973) | (6,071) |
| Purchases of available-for-sale securities | — | — | (5,240) |
| Proceeds from sale of discontinued operations | — | — | 3,342 |
| Proceeds from sale of available-for-sale securities | — | — | 8,551 |
| Proceeds from sale of property and equipment | 249 | 226 | 428 |
| Net cash used in investing activities of continuing operations | (15,503) | (3,671) | (107,962) |
| Net cash used in investing activities of discontinued operations | — | — | (38) |
| Net cash used in investing activities | (15,503) | (3,671) | (108,000) |
| Cash flows from financing activities: | | | |
| Dividends on Common and Class B common stock | (57,085) | (49,351) | (36,745) |
| Net (repayments) proceeds under revolving credit agreements | (7,237) | (34,000) | 24,000 |
| Payment of fees related to revolving credit agreements | (6,695) | — | (476) |
| Distribution to noncontrolling interest | (4,808) | — | — |
| Net (repayments) proceeds from other long-term obligations | (234) | (266) | 81 |
| Purchase of treasury stock | — | (4,820) | (9,386) |
| Repayment of long-term notes | — | — | (10,000) |
| Excess tax benefits from share-based compensation | 9,589 | 4,758 | 3,462 |
| Net proceeds from issuances of common stock | 10,335 | 5,916 | 4,131 |
| Net cash used in financing activities | (56,135) | (77,763) | (24,933) |
| Net increase (decrease) in cash and cash equivalents | 16,649 | 32,039 | (24,935) |
| Cash and cash equivalents at beginning of year | 41,444 | 9,405 | 34,340 |
| Cash and cash equivalents at end of year | $ 58,093 | $ 41,444 | $ 9,405 |

Supplemental cash flow information (Note 15)

*See accompanying notes to consolidated financial statements.*

**WATSCO, INC. AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**
***(In thousands, except share and per share data)***

**1. Summary of Significant Accounting Policies**

Nature of Operations

Watsco, Inc. and its subsidiaries (collectively, "Watsco," which may be referred to as *we, us* or *our*) is the largest distributor of air conditioning, heating and refrigeration equipment and related parts and supplies ("HVAC/R") in the HVAC/R distribution industry. Since 1989, our HVAC/R distribution revenues have increased from approximately $64,000 to $2,001,815 in 2009. On July 1, 2009, we completed the formation of a joint venture with Carrier Corporation ("Carrier"), a unit of United Technologies Corporation, to distribute Carrier, Bryant and Payne products throughout the U.S. Sunbelt, Latin America and the Caribbean (see Note 7). In the formation of the joint venture, Carrier Enterprise, LLC ("Carrier Enterprise"), Carrier contributed 95 locations in the U.S. Sunbelt and Puerto Rico and the export division located in Miami, Florida and we contributed 15 locations. Of our existing network, the newly formed joint venture, Carrier Enterprise, represents 110 locations in 20 states and Puerto Rico and serves over 19,000 air conditioning and heating contractors. Including Carrier Enterprise, at December 31, 2009 we operated from 505 locations in 36 states.

Financial Statement Presentation

On July 19, 2007, we divested of our non-core staffing unit (see Note 13).

Basis of Consolidation

The consolidated financial statements include the accounts of Watsco and all of its wholly-owned subsidiaries and effective July 1, 2009, includes our 60% controlling interest in Carrier Enterprise (see Note 7). All significant intercompany balances and transactions have been eliminated.

Reclassifications

Certain reclassifications of prior year amounts have been made to conform to the 2009 presentation. These reclassifications had no effect on net income or earnings per share as previously reported.

Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. generally accepted accounting principles ("GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Significant estimates include valuation reserves for accounts receivable, inventory and income taxes, reserves related to self-insurance programs and valuation of goodwill and indefinite lived intangible assets. Actual results could differ from those estimates.

Accounting Changes

*Business Combinations*

In December 2007, the Financial Accounting Standards Board ("FASB") revised the accounting guidance for recognizing and measuring assets acquired and liabilities assumed in a business combination and require, among other things, that transaction costs in a business combination be expensed as incurred. This guidance was effective for business combinations closing after January 1, 2009. See Note 7 for information on acquisitions.

*Noncontrolling Interests*

In December 2007, the FASB issued accounting guidance which clarified that a noncontrolling interest in a subsidiary should be reported as equity in the consolidated financial statements. This guidance affected our consolidated financial statements beginning July, 1, 2009, as a result of the formation of Carrier Enterprise on this date. See Note 7.

*Earnings per Share*

In June 2008, the FASB issued earnings per share guidance stating that non-vested share-based payment awards that contain non-forfeitable rights to dividends are considered participating securities and should be included in the computation of earnings per share pursuant to the two-class method. We adopted the provisions of this accounting guidance effective January 1, 2009 and computed earnings per share using the two-class method for all periods presented. See Note 1, "Earnings per Share." The two-class method of computing earnings per share based on the new accounting guidance reduced diluted earnings per share for our Common and Class B common stock by the following amounts:

| ***Years Ended December 31,*** | **2009** | **2008** | **2007** |
|---|---|---|---|
| Diluted earnings per share for Common and Class B common stock excluding effect of the participating securities | **$1.46** | $2.18 | $2.36 |
| Less: effect of the participating securities | **$0.06** | $0.09 | $0.09 |
| Diluted earnings per share for Common and Class B common stock as adjusted | **$1.40** | $2.09 | $2.27 |

Cash Equivalents

All highly liquid instruments purchased with original maturities of three months or less are considered to be cash equivalents.

Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable primarily consists of trade receivables due from customers. Our customers are primarily independent contractors and dealers who service the replacement and new construction markets for residential and light commercial central air conditioning, heating and refrigeration systems. We routinely grant credit to customers to facilitate revenue growth and maintain branch locations for product sales and distribution. When determining whether to grant or increase credit, management considers a number of factors, which include creditworthiness, customer payment history and historical experience with the customer and other information. Consistent with industry practices, we normally require payment from our customers within 30 to 45 days. We record our trade receivables at the invoiced amount less an allowance for doubtful accounts. An allowance for doubtful accounts is maintained for estimated losses resulting from the inability of customers to make required payments. When preparing these estimates, we consider a number of factors, including the aging of a customer's account, past transactions with customers, creditworthiness of specific customers, historical trends and other information. We typically do not require our customers to provide collateral. Accounts receivable reserve policies are reviewed periodically, reflecting current risks, trends and changes in industry conditions. The past due status of an account is determined based on stated payment terms. Upon determination that an account is uncollectible, we write off the receivable balance. At December 31, 2009 and 2008, the allowance for doubtful accounts totaled $10,942 and $3,941, respectively. Although we believe the allowance is sufficient, a continuing declining economic condition could lead to further deterioration in the financial condition of our customers, resulting in an impairment of their ability to make payments and additional allowances may be required.

Inventories

Inventories consist of air conditioning, heating and refrigeration equipment and related parts and supplies and are valued at the lower of cost or market using a weighted-average cost basis and the first-in, first-out method. As part of the valuation process, inventory reserves are established to state excess, slow-moving and damaged inventories at their estimated net realizable value. Inventory reserve policies are reviewed periodically, reflecting current risks, trends and changes in industry conditions. A reserve for estimated inventory shrinkage is also maintained to consider inventory shortages determined from cycle counts and physical inventories.

Vendor Rebates

We have arrangements with several vendors that provide rebates payable to us when we achieve any of a number of measures, generally related to the volume level of purchases. We account for such rebates as a reduction of inventory until we sell the product, at which time such rebates are reflected as a reduction of cost of sales in our consolidated statements of income. Throughout the year, we estimate the amount of the rebate based on our estimate of purchases to date relative to the purchase levels that mark our progress toward earning the rebates. We continually revise these estimates of earned vendor rebates based on actual purchase levels. At December 31, 2009 and 2008, we have $5,019 and $4,416, respectively, of rebates recorded as a reduction of inventory. Substantially all vendor rebate receivables are collected within three months immediately following the end of the year.

Marketable Securities

Investments in marketable equity securities of $104 and $279 at December 31, 2009 and 2008, respectively, are included in other assets in our consolidated balance sheets and are classified as available-for-sale. These equity securities are recorded at market using the specific identification method with unrealized holding losses, net of deferred taxes, reported in accumulated other comprehensive loss ("OCL") within shareholders' equity. Dividend and interest income are recognized in the statement of income when earned. At December 31, 2009 and 2008, $389 and $347 of unrealized losses, net of deferred tax benefits of $237 and $208, respectively, was included in accumulated OCL.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization of property and equipment is computed using the straight-line method. Buildings and improvements are depreciated or amortized over estimated useful lives ranging from 3-40 years. Leasehold improvements are amortized over the shorter of the respective lease terms or estimated useful lives. Estimated useful lives for other depreciable assets range from 3-7 years. Depreciation and amortization expense related to property and equipment amounted to $7,342, $6,612 and $6,196 for the years ended December 31, 2009, 2008 and 2007, respectively.

Goodwill and Intangible Assets

Goodwill is recorded when the purchase price paid for an acquisition exceeds the fair value of the net identified tangible and intangible assets acquired. We perform an impairment review on an annual basis, or more frequently if indicators of potential impairment exist, to determine if the carrying value of the recorded goodwill is impaired. The impairment review process compares the fair value of the reporting unit in which goodwill resides to its carrying value. If the fair value of the reporting unit is less than its carrying value, an impairment loss is recorded to the extent that the fair value of goodwill within the reporting unit is less than its carrying value. See Note 8 for further information on goodwill.

Intangible assets primarily consist of the value of trade names and trademarks, distributor agreements, customer relationships and non-compete agreements. Indefinite lived intangibles not subject to amortization are assessed for impairment at least annually, or more frequently if events or changes in circumstances indicate they may be impaired, by comparing the fair value of the intangible asset to its carrying amount to determine if a write-down to fair value is required. Finite lived intangible assets are amortized using the straight-line method over their respective estimated useful lives. See Note 8 for further information on intangible assets.

Impairment of Long-Lived Assets Other than Goodwill

Long-lived assets, including intangible assets with finite lives, are tested for recoverability when events or changes in circumstances indicate that the carrying amount of assets may not be recoverable. Recoverability is evaluated by determining whether the amortization of the balance over its remaining life can be recovered through undiscounted future operating cash flows. The amount of impairment if any, is measured based on projected discounted cash flows using a discount rate reflecting the average cost of funds and compared to the asset’s carrying value. As of December 31, 2009, there were no such events or circumstances.

Fair Value Measurements

We carry various assets and liabilities at fair value in the consolidated balance sheets. Beginning in 2008, we applied new accounting guidance that defined fair value as an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. Fair value measurements under the accounting guidance are classified based on the following fair value hierarchy:

| | |
|---|---|
| Level 1 | Quoted prices in active markets for identical assets or liabilities. An active market for an asset or liability is a market in which transactions for the asset or liability occur with sufficient frequency and volume to provide pricing information on an ongoing basis. |
| Level 2 | Observable inputs other than Level 1 prices such as quoted prices in active markets for similar assets or liabilities; quoted prices in markets that are not active; or model-driven valuations or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities. |
| Level 3 | Unobservable inputs for the asset or liability. These inputs reflect our own assumptions about the assumptions a market participant would use in pricing the asset or liability. |

Revenue Recognition

Revenue primarily consists of sales of air conditioning, heating and refrigeration equipment and related parts and supplies and is recorded when shipment of products or delivery of services has occurred. Assessment of collection is based on a number of factors, including past transactions, creditworthiness of customers, historical trends and other information. Substantially all customer returns relate to products that are returned under warranty obligations underwritten by manufacturers, effectively mitigating our risk of loss for customer returns. Taxes collected from our customers and remitted to governmental authorities are presented in our consolidated statements of income on a net basis.

Advertising Costs

Advertising costs are expensed as incurred. Advertising expense amounted to $12,106, $5,841 and $6,314 for the years ended December 31, 2009, 2008 and 2007, respectively.

Shipping and Handling

Shipping and handling costs associated with inbound freight are capitalized to inventories and relieved through cost of sales as inventories are sold. Shipping and handling costs associated with the delivery of products is included in selling, general and administrative expenses. Shipping and handling costs included in selling, general and administrative expenses amounted to $14,829, $6,444 and $6,747 for the years ended December 31, 2009, 2008 and 2007, respectively.

Share-Based Compensation

The fair value of stock option and non-vested (restricted) stock awards are expensed on a straight-line basis over the vesting period of the awards. Share-based compensation expense is included in selling, general and administrative expenses in our consolidated statements of income. Cash flows from the tax benefits resulting from tax deductions in excess of the compensation expense recognized for those options are classified as financing cash flows. Tax benefits resulting from tax deductions in excess of share-based compensation expense recognized are credited to paid-in capital in the consolidated balance sheets. See Note 6 for further information on share-based compensation.

Income Taxes

We record federal and state income taxes currently payable, as well as deferred taxes due to temporary differences between reporting income and expenses for financial statement purposes versus tax purposes. Deferred tax assets and liabilities reflect the temporary differences between the financial statement and income tax bases of assets and liabilities. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect of a change in tax rates is recognized as income or expense in the period that includes the enactment date. Watsco and its eligible subsidiaries file a consolidated United States federal income tax return. As income tax returns are generally not filed until well after the closing process for the December 31 financial statements is complete, the amounts recorded at December 31 reflect estimates of what the final amounts will be when the actual income tax returns are filed for that calendar year. In addition, estimates are often required with respect to, among other things, the appropriate state income tax rates to use in the various states that Watsco and its subsidiaries are required to file, the potential utilization of operating loss carryforwards and valuation allowances required, if any, for tax assets that may not be realizable in the future.

We recognize the financial statement benefit of a tax position only after determining that the relevant tax authority would more likely than not sustain the position following an audit. For tax positions meeting the “more-likely-than-not” threshold, the amount recognized in the financial statements is the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement with the relevant tax authority.

Earnings per Share

Earnings per share is computed using the two-class method. The two-class method of computing earnings per share is an earnings allocation formula that determines earnings per share for common stock and any participating securities according to dividends declared (whether paid or unpaid) and participation rights in undistributed earnings. Our non-vested (restricted) stock are considered participating securities since the share-based awards contain a non-forfeitable right to dividends irrespective of whether the awards ultimately vest. Under the two-class method, earnings per common share for our Common and Class B common stock is computed by dividing the sum of distributed earnings to common shareholders and undistributed earnings allocated to common shareholders by the weighted-average number of shares of Common stock and Class B common stock outstanding for the period. In applying the two-class method, undistributed earnings are allocated to Common stock, Class B common stock and participating securities based on the weighted-average shares outstanding during the period.

Diluted earnings per share for our Common stock assumes the conversion of all of our Class B common stock (2,844,935, 2,435,546 and 2,343,613 shares as of December 31, 2009, 2008 and 2007, respectively) into Common stock as of the beginning of the period and adjusts for the dilutive effects of outstanding stock options using the treasury stock method.

The following table presents the calculation of basic and diluted earnings per common share for our Common and Class B common stock:

| *Years Ended December 31,* | 2009 | 2008 | 2007 |
|---|---|---|---|
| **Basic Earnings per Share:** | | | |
| Net income attributable to Watsco, Inc. shareholders | **$ 43,314** | $ 60,369 | $ 65,577 |
| Less: distributed and undistributed earnings allocated to non-vested (restricted) common stock | **3,320** | 3,809 | 4,011 |
| Earnings allocated to Watsco, Inc. shareholders | **$ 39,994** | $ 56,560 | $ 61,566 |
| Allocation of earnings for Basic: | | | |
| Common stock | **$ 36,005** | $ 51,353 | $ 56,079 |
| Class B common stock | **3,989** | 5,207 | 5,487 |
| | **$ 39,994** | $ 56,560 | $ 61,566 |
| **Diluted Earnings per Share:** | | | |
| Net income attributable to Watsco, Inc. shareholders | **$ 43,314** | $ 60,369 | $ 65,577 |
| Less: distributed and undistributed earnings allocated to non-vested (restricted) common stock | **3,320** | 3,796 | 3,959 |
| Earnings allocated to Watsco, Inc. shareholders | **$ 39,994** | $ 56,573 | $ 61,618 |

| *Years Ended December 31,* | 2009 | 2008 | 2007 |
|---|---|---|---|
| Weighted-average Common and Class B common shares outstanding for Basic | **28,521,437** | 26,453,167 | 26,296,555 |
| Effect of dilutive stock options | — | 568,560 | 842,063 |
| Weighted-average Common and Class B common shares outstanding for Diluted | **28,521,437** | 27,021,727 | 27,138,618 |

For the year ended December 31, 2009, no potential shares related to stock options were included in the calculation of diluted earnings per share because it would result in an anti-dilutive effect on diluted earnings per share. Accordingly, we excluded from the diluted earnings per share calculation 298,162 diluted shares related to stock options that were outstanding at December 31, 2009.

Diluted earnings per share excluded 261,015 and 219,640 shares for the years ended December 31, 2008 and 2007, respectively, related to stock options with an exercise price per share greater than the average market value, resulting in an anti-dilutive effect on diluted earnings per share.

Derivative Instruments

All derivatives, whether designated in hedging relationships or not, are required to be recorded on the balance sheet at fair value. If the derivative is designated as a fair value hedge, the changes in the fair value of the derivative and of the hedged item attributable to the hedged risk are recognized in earnings. If the derivative is designated as a cash flow hedge, the effective portions of changes in the fair value of the derivative are recorded in OCL and are recognized in the income statement when the hedged item affects earnings. Ineffective portions of changes in the fair value of cash flow hedges are recognized in earnings. See Note 10 for further information regarding hedging activities.

Comprehensive Income

Comprehensive income consists of net income and changes in the unrealized losses (gains) on available-for-sale securities and the effective portion of cash flow hedges as further discussed in Note 10. The components of comprehensive income are as follows:

| *Years Ended December 31,* | 2009 | 2008 | 2007 |
|---|---|---|---|
| Net income | **$51,573** | $ 60,369 | $65,577 |
| Changes in unrealized gains (losses) on derivative instruments, net of income tax expense (benefit) of $205, $(248) and $(137), respectively | **346** | (411) | (230) |
| Changes in unrealized (losses) gains on available-for-sale securities, net of income tax (benefit) expense of $(29), $(170) and $218, respectively | **(42)** | (283) | 361 |
| Reclassification adjustment for securities gains and losses on a derivative instrument realized in net income, net of income tax expense of $0, $0 and $262, respectively | **—** | — | (436) |
| Comprehensive income | **51,877** | 59,675 | 65,272 |
| Less: comprehensive income attributable to the noncontrolling interest | **8,259** | — | — |
| Comprehensive income attributable to Watsco, Inc. | **$43,618** | $59,675 | $65,272 |

Recently Adopted Accounting Standards

*Fair Value Measurements*

On January 1, 2009, we adopted accounting guidance issued by the FASB which had previously deferred the effective date of fair value measurements for all nonfinancial assets and nonfinancial liabilities, except for items that are recognized or disclosed in financial statements at fair value on a recurring basis (at least annually). The adoption of this guidance did not have a material impact on our consolidated financial statements. See Note 11 for information on fair value measurements.

Effective June 30, 2009, we adopted accounting guidance issued by the FASB that provides additional guidance on factors to consider in estimating fair value when there has been a significant decrease in market activity for a financial asset. The adoption of this guidance did not have a material impact on our consolidated financial statements.

Effective June 30, 2009, we adopted guidance amended by the FASB that requires fair value disclosures in interim financial statements in order to provide more timely information about the effects of current market conditions on financial instruments. The adoption of this guidance did not have an impact on our consolidated financial statements.

*Other-Than-Temporary Impairments*

Effective June 30, 2009, we adopted accounting guidance issued by the FASB that changed the method for determining whether an other-than-temporary impairment exists for debt securities and the amount of the impairment to be recorded in earnings. The adoption of this guidance did not have a material impact on our consolidated financial statements.

*Disclosures about Derivative Instruments and Hedging Activities*

On January 1, 2009, we adopted a new accounting standard issued by the FASB which requires enhanced disclosures about an entity's derivative and hedging activities. The adoption of this guidance did not change our accounting for derivative instruments and did not have a material impact on our consolidated financial statements. See Note 10 for information on derivative instruments.

*Subsequent Events*

Effective June 30, 2009, we adopted a new accounting standard issued by the FASB which provides guidance on management's assessment of subsequent events and incorporates this guidance into accounting literature. We have evaluated subsequent events that require recognition and disclosure through February 26, 2010, the date our consolidated financial statements were issued. See Note 16 for information on subsequent events.

*FASB Accounting Standards Codification*

Effective September 30, 2009, we adopted authoritative guidance issued by the FASB codifying U.S. GAAP. While the guidance was not intended to change U.S. GAAP, it did change the way we reference these accounting principles in the notes to the consolidated financial statements. This guidance was effective for interim and annual reporting periods ending after September 15, 2009. The adoption of this authoritative guidance changed how we reference U.S. GAAP in our disclosures.

Recently Issued Accounting Standards

*Transfers of Financial Assets*

In June 2009, the FASB issued accounting guidance which addresses the accounting and disclosure requirements for transfers of financial assets. The guidance is effective for new transfers of financial assets occurring in fiscal years beginning after November 15, 2009, and interim periods within those years. We will adopt this guidance beginning January 1, 2010 and do not expect a material impact on our consolidated financial statements.

*Variable Interest Entities*

In June 2009, the FASB issued accounting guidance that amends the consolidation principles for variable interest entities ("VIEs") by requiring consolidation of VIEs based on which party has control of the entity. The guidance is effective for financial statements issued for fiscal years beginning after November 15, 2009, and interim periods within those years. We will adopt this guidance beginning January 1, 2010 and do not expect a material impact on our consolidated financial statements.

**2. Supplier Concentration**

We have six key suppliers of HVAC/R equipment products. Purchases from these six suppliers comprised 66%, 48% and 48% of all purchases made in 2009, 2008 and 2007, respectively; with the largest supplier, Carrier and its affiliates, accounting for 41%, 16% and 17% of all purchases made in each of the years ended December 31, 2009, 2008 and 2007. Any significant interruption by Carrier or the other suppliers in the delivery of products could impair our ability to maintain current inventory levels or a termination of a distribution agreement could disrupt the operations of certain subsidiaries and could materially impact our consolidated results of operations and consolidated financial position. See Note 14 for further information regarding related party transactions.

**3. Property and Equipment**

Property and equipment, net, consists of:

| *December 31,* | 2009 | 2008 |
|---|---|---|
| Land | **$ 1,520** | $ 1,106 |
| Buildings and improvements | **36,840** | 24,211 |
| Machinery, vehicles and equipment | **47,671** | 31,713 |
| Furniture and fixtures | **12,434** | 14,512 |
| | **98,465** | 71,542 |
| Less: accumulated depreciation and amortization | **(65,347)** | (47,333) |
| | **$ 33,118** | $ 24,209 |

**4. Long-Term Obligations**

Watsco Revolving Credit Agreement

We maintain a bank-syndicated, unsecured revolving credit agreement that provides for borrowings of up to $300,000. Borrowings are used to fund seasonal working capital needs and for other general corporate purposes, including acquisitions, dividends, stock repurchases and issuances of letters of credit. Included in the facility are a $25,000 swingline subfacility and a $50,000 letter of credit subfacility. Borrowings bear interest at primarily LIBOR-based rates plus a spread which ranges from 37.5 to 112.5 basis-points depending upon our ratio of total debt to EBITDA (LIBOR plus 40 basis-points at December 31, 2009). We pay a variable commitment fee on the unused portion of the commitment, ranging from 7.5 to 20 basis-points (8 basis-points at December 31, 2009). Alternatively, we may elect to have borrowings bear interest at the Prime Rate or the Federal Funds Rate plus our spread. The credit facility matures in August 2012. At December 31, 2009 and 2008, $12,750 and $20,000, respectively, were outstanding under the revolving credit agreement.

On July 1, 2009, we amended our $300,000 credit agreement to allow for the consummation of the joint venture, Carrier Enterprise. We paid an amendment fee of $5,483, which is being amortized ratably through the maturity of the facility in August 2012. All other significant terms and conditions remained the same, including capacity, pricing and covenant structure.

The revolving credit agreement contains customary affirmative and negative covenants including financial covenants with respect to consolidated leverage and interest coverage ratios and limits capital expenditures, dividends and share repurchases in addition to other restrictions. We believe we were in compliance with all covenants and financial ratios at December 31, 2009.

Carrier Enterprise Revolving Credit Agreement

On July 1, 2009, Carrier Enterprise entered into a separate secured three-year $75,000 revolving credit agreement with three lenders. Borrowings under the credit facility will be used by Carrier Enterprise for general corporate purposes, including working capital and permitted acquisitions. Included in the facility are a $15,000 swing loan subfacility and a $5,000 letter of credit subfacility. Borrowings bear interest at primarily LIBOR-based rates plus a spread which ranges from 275 to 325 basis-points depending upon Carrier Enterprise's ratio of total debt to EBITDA (LIBOR plus 275 basis-points at December 31, 2009). Carrier Enterprise pays a fixed commitment fee on the unused portion of the commitment of 50 basis-points. Alternatively, Carrier Enterprise has the option to elect to have borrowings bear interest at the higher of the Prime Rate, the Federal Funds Rate plus 50 basis-points or a LIBOR-based rate plus 150 basis-points. The credit facility is secured by substantially all tangible and intangible assets of Carrier Enterprise. Carrier Enterprise paid fees of $1,212 in connection with entering into the credit agreement, which are being amortized ratably through the maturity of the facility in July 2012. As of December 31, 2009, $13 was outstanding under this credit facility.

The revolving credit agreement contains customary affirmative and negative covenants and warranties, including compliance with a monthly borrowing base certificate with advance rates on accounts receivable and inventory, two financial covenants with respect to Carrier Enterprise's leverage and interest coverage ratios and limitations on the level of capital expenditures in addition to other restrictions. We believe Carrier Enterprise was in compliance with all covenants and financial ratios at December 31, 2009.

Long-Term Notes

A $125,000 unsecured private placement shelf facility was also maintained as a source of long-term borrowings through December 10, 2007. This uncommitted shelf facility provided fixed-rate financing as a complement to the variable rate borrowings available under the revolving credit agreement.

Other Long-Term Obligations

Other long-term obligations, net of current portion, of $666 and $783 at December 31, 2009 and 2008, respectively, relate to a mortgage loan and capital leases on equipment. Interest rates on other debt range from 1.0% to 9.3% and mature at varying dates through 2020. Annual maturities of other long-term obligations for the years subsequent to December 31, 2009 are as follows:

| | |
|---|---|
| 2010 | $151 |
| 2011 | 90 |
| 2012 | 56 |
| 2013 | 47 |
| 2014 | 51 |
| Thereafter | 422 |
| | $817 |

**5. Income Taxes**

The components of income tax expense from continuing operations for our wholly-owned operations and our 60% controlling interest in Carrier Enterprise are as follows:

| *Years Ended December 31,* | 2009 | 2008 | 2007 |
|---|---|---|---|
| Federal | **$24,308** | $ 32,493 | $ 37,387 |
| State | **2,448** | 3,728 | 3,106 |
| | **$26,756** | $36,221 | $ 40,493 |
| Current | **$24,784** | $ 35,774 | $36,376 |
| Deferred | **1,972** | 447 | 4,117 |
| | **$26,756** | $36,221 | $ 40,493 |

We calculate our income tax expense and our effective tax rate for 100% of income attributable to Watsco's wholly-owned operations and investments and 60% of income attributable to Carrier Enterprise, which is taxed as a partnership for income tax purposes.

Following is a reconciliation of the effective income tax rate:

| *Years Ended December 31,* | 2009 | 2008 | 2007 |
|---|---|---|---|
| Federal statutory rate | **35.0%** | 35.0% | 35.0% |
| State income taxes, net of federal benefit and other | **2.8** | 2.5 | 2.5 |
| Effective income tax rate attributable to Watsco, Inc. | **37.8** | 37.5 | 37.5 |
| Effective income tax rate attributable to the noncontrolling interest | **(3.6)** | — | — |
| Effective income tax rate | **34.2%** | 37.5% | 37.5% |

The following is a summary of the significant components of our current and long-term deferred tax assets and liabilities:

| *December 31,* | 2009 | 2008 |
|---|---|---|
| Current deferred tax assets: | | |
| Allowance for doubtful accounts | **$ 3,332** | $ 1,626 |
| Capitalized inventory costs and inventory reserves | **5,056** | 3,074 |
| Self-insurance reserves | **1,418** | 1,452 |
| Other current deferred tax assets | **1,174** | 1,168 |
| Total current deferred tax assets (1) | **10,980** | 7,320 |
| Long-term deferred tax assets (liabilities): | | |
| Deductible goodwill | **(30,890)** | (25,503) |
| Net operating loss carryforwards | **366** | 492 |
| Unrealized loss on derivative instruments | **268** | 483 |
| Depreciation | **869** | 1,287 |
| Share-based compensation | **9,530** | 8,289 |
| Other long-term net deferred tax assets | **(221)** | 238 |
| Total net long-term deferred tax liabilities | **(20,078)** | (14,714) |
| Net deferred tax liabilities | **$ (9,098)** | $ (7,394) |

(1) Current deferred tax assets of $10,980 and $7,320 have been included in the consolidated balance sheets in other current assets at December 31, 2009 and 2008, respectively.

Management has determined that no valuation allowance was necessary at December 31, 2009 to reduce the deferred tax assets to the amount that will more likely than not be realized. At December 31, 2009, there were state net operating loss carryforwards of $10,790, which expire in varying amounts from 2010 through 2028. These amounts are available to offset future taxable income. There were no federal net operating loss carryforwards at December 31, 2009.

We are subject to U.S. federal income tax and income tax of multiple state jurisdictions. We are open to tax audits in the various jurisdictions until the respective statutes of limitations expire. In June 2008, the Internal Revenue Service finalized an examination of our federal income tax returns for the 2004 and 2005 tax years. The adjustments resulting from this examination did not have a material effect on our consolidated financial position, results of operations or cash flows. We are no longer subject to U.S. federal tax examinations for tax years prior to 2006. For the majority of states, we are no longer subject to tax examinations for tax years prior to 2005.

As of December 31, 2009 and 2008, the total amount of gross unrecognized tax benefits (excluding the federal benefit received from state positions) was $1,990 and $2,296, respectively. Of these totals, $1,481 and $1,803, respectively, (net of the federal benefit received from state positions) represent the amount of unrecognized tax benefits that, if recognized, would affect the effective tax rate. Our continuing practice is to recognize penalties within selling, general and administrative expenses and interest related to income tax matters in income tax expense in the consolidated statements of income. As of December 31, 2009 and 2008, the cumulative amount of estimated accrued interest and penalties resulting from such unrecognized tax benefits was $317 and $362, respectively, and is included in other liabilities in the accompanying consolidated balance sheets.

The change in gross unrecognized tax benefits during 2009 and 2008 is as follows:

| | |
|---|---|
| Gross balance at January 1, 2008 | $ 2,173 |
| Additions based on tax positions related to the current year | 256 |
| Additions for tax positions of prior years | 69 |
| Reductions for tax positions of prior years | (202) |
| Gross balance at December 31, 2008 | 2,296 |
| Additions based on tax positions related to the current year | 146 |
| Additions for tax positions of prior years | 206 |
| Reductions for tax positions of prior years | (658) |
| Gross balance at December 31, 2009 | **$ 1,990** |

**6. Share-Based Compensation and Benefit Plans**

Share-Based Compensation Plans

We have two share-based compensation plans for employees. The 2001 Incentive Compensation Plan (the "2001 Plan") provides for the award of a broad variety of share-based compensation alternatives such as non-qualified stock options, incentive stock options, non-vested (restricted) stock, performance awards, dividend equivalents, deferred stock and stock appreciation rights at no less than 100% of the market price on the date the award is granted. To date, awards under the 2001 Plan consist of non-qualified stock options and non-vested (restricted) stock. Under the 2001 Plan, awards for an aggregate of 4,000,000 shares of Common and Class B common stock may be granted. A total of 1,615,462 shares of Common stock, net of cancellations and 1,121,446 shares of Class B common stock, net of cancellations have been awarded under the 2001 Plan as of December 31, 2009. There were 1,263,092 shares of common stock reserved for future grants as of December 31, 2009 under the 2001 Plan. There are 586,700 options of common stock outstanding under the 2001 Plan at December 31, 2009. Options under the 2001 Plan vest over two to five years of service and have contractual terms of five to ten years.

Awards of non-vested (restricted) stock, which are granted at no cost to the employee, vest upon attainment of a certain age, generally the employee's respective retirement age. Vesting may be accelerated in certain circumstances prior to the original vesting date.

We also maintain the 1991 Stock Option Plan (the "1991 Plan"), which expired during 2001; therefore, no additional options may be granted. There are 28,300 options of common stock outstanding under the 1991 Plan at December 31, 2009. Options under the 1991 Plan vest over two to five years of service and have contractual terms of ten years.

A summary of stock option activity under the 2001 Plan and 1991 Plan as of December 31, 2009, and changes during 2009, is as follows:

| | Options | Weighted-Average Exercise Price | Weighted-Average Remaining Contractual Term (in years) | Aggregate Intrinsic Value |
|---|---|---|---|---|
| Options outstanding at January 1, 2009 | 1,384,900 | $21.79 | | |
| Granted | 45,000 | 50.00 | | |
| Exercised | (804,900) | 14.36 | | |
| Forfeited | (8,000) | 47.52 | | |
| Expired | (2,000) | 41.96 | | |
| Options outstanding at December 31, 2009 | **615,000** | **$ 33.19** | **2.37** | **$11,168** |
| Options exercisable at December 31, 2009 | **457,500** | **$ 27.96** | **2.09** | **$10,612** |

The weighted-average grant date fair value of stock options granted during 2009, 2008 and 2007 was $9.93, $7.06 and $11.07, respectively. The total intrinsic value of stock options exercised during 2009, 2008 and 2007 was $11,555, $11,986 and $3,841, respectively. The fair value of stock options that vested during 2009, 2008 and 2007 was $3,750, $2,158 and $1,120, respectively.

A summary of non-vested (restricted) stock issued as of December 31, 2009, and changes during 2009, is shown below:

| | Shares | Weighted-Average Grant Date Fair Value |
|---|---|---|
| Non-vested (restricted) stock outstanding at January 1, 2009 | 1,787,169 | $ 29.94 |
| Granted | 86,635 | 49.62 |
| Vested | (42,635) | 22.97 |
| Forfeited | (5,168) | 50.93 |
| Non-vested (restricted) stock outstanding at December 31, 2009 | **1,826,001** | **$ 30.98** |

The weighted-average grant date fair value of non-vested (restricted) stock granted during 2009, 2008 and 2007 was $49.62, $43.04 and $52.34, respectively. The fair value of non-vested stock that vested during 2009, 2008 and 2007 was $1,460, $704 and $128, respectively.

Share-Based Compensation Fair Value Assumptions

The fair value of each stock option award is estimated on the date of grant using the Black-Scholes option pricing valuation model based on the weighted-average assumptions noted in the table below. The fair value of each stock option award, which is subject to graded vesting, is expensed, net of estimated forfeitures, on a straight-line basis over the requisite service period for each separately vesting portion of the stock option. We use historical data to estimate stock option forfeitures within the valuation model. The expected term of stock option awards granted represents the period of time that stock option awards granted are expected to be outstanding and was calculated using the simplified method for plain vanilla options. We will continue to use the simplified method until we have the historical data necessary to provide a reasonable estimate of expected life. The risk-free rate for periods within the contractual life of the stock option award is based on the yield curve of a zero-coupon U.S. Treasury bond on the date the stock option award is granted with a maturity equal to the expected term of the stock option award. Expected volatility is based on historical volatility of our stock.

The weighted-average assumptions relating to the valuation of our stock options were as follows:

| *Years Ended December 31,* | 2009 | 2008 | 2007 |
|---|---|---|---|
| Expected term in years | **4.25** | 4.25 | 4.25 |
| Risk-free interest rate | **1.96%** | 2.13% | 4.38% |
| Expected volatility | **34.03%** | 27.33% | 24.29% |
| Expected dividend yield | **4.32%** | 3.40% | 2.26% |

Share-Based Compensation Expense

Share-based compensation expense included in selling, general and administrative expenses amounted to $5,264, $6,454 and $5,970 for the years ended December 31, 2009, 2008 and 2007, respectively.

Cash received from Common stock issued as a result of stock options exercised during 2009, 2008 and 2007 was $9,592, $5,235 and $3,351, respectively. During 2009, 2008 and 2007, 206,029 shares of Common and Class B common stock with an aggregate market value of $9,438, 261,014 shares of Common and Class B common stock with an aggregate market value of $9,929 and 17,291 shares of Common stock with an aggregate market value of $902, respectively, were delivered as payment in lieu of cash for stock option exercises and related tax withholdings. Upon delivery these shares were retired. The tax benefit realized for the tax deductions from share-based compensation plans totaled $9,789, $5,095 and $3,542, for the years ended December 31, 2009, 2008 and 2007, respectively.

At December 31, 2009, there was $516 of unrecognized share-based compensation expense related to stock options granted under the 2001 Plan, which is expected to be recognized over a weighted-average period of 1.9 years. At December 31, 2009, there was $34,161 of unrecognized share-based compensation expense related to non-vested (restricted) stock, which is expected to be recognized over a weighted-average period of 9.0 years. In the event that vesting is accelerated for any circumstance, as defined in the related agreements, the remaining unrecognized share-based compensation expense would be immediately recognized as a charge to earnings. Approximately $25,000 of the unrecognized share-based compensation for shares of non-vested stock is related to awards granted to our Chief Executive Officer that vest in approximately 9 years upon his attainment of age 78.

Employee Stock Purchase Plan

The Watsco, Inc. Amended and Restated 1996 Qualified Employee Stock Purchase Plan (the "Watsco ESPP") provides for up to 1,000,000 shares of Common stock to be available for purchase by our full-time employees with at least 90 days of service. The plan allows participating employees to purchase, through payroll deductions or lump-sum contribution, shares of Common stock with a discount of 5% of the fair market value at specified times. During 2009, 2008 and 2007, employees purchased 10,917, 9,058 and 11,059 shares of Common stock at an average price of $38.18, $39.81 and $47.39 per share, respectively. Cash dividends received by the Watsco ESPP were reinvested in Common stock and resulted in additional shares issued in the amount of 7,503, 7,430 and 5,355 for the years ended December 31, 2009, 2008 and 2007, respectively. We received net proceeds of $743, $681 and $780, respectively, during 2009, 2008 and 2007, for shares of Watsco Common stock issued under the Watsco ESPP. At December 31, 2009, 83,003 shares remained available for purchase under the plan.

401(k) Plan

We have a profit sharing retirement plan for our employees that is qualified under Section 401(k) of the Internal Revenue Code. Annual matching contributions are made based on a percentage of eligible employee compensation deferrals. The contribution is made in cash or by the issuance of Common stock to the plan on behalf of our employees. For the years ended December 31, 2009, 2008 and 2007, the aggregate matching contribution required to the plan was $1,297, $1,249 and $1,279, respectively.

**7. Acquisitions**

On July 1, 2009, we completed the formation of a joint venture with Carrier to distribute Carrier, Bryant and Payne products throughout the U.S. Sunbelt, Latin America and the Caribbean. The newly formed joint venture, Carrier Enterprise, operates 110 locations in 20 states and Puerto Rico and serves over 19,000 air conditioning and heating contractors. In the formation of the joint venture, Carrier contributed 95 locations in the U.S. Sunbelt and Puerto Rico and the export division located in Miami, Florida and we contributed 15 locations that currently distribute Carrier, Bryant and Payne products. We purchased a 60% controlling interest in the joint venture for consideration of $172,000 and a fair value of $181,474 with options to purchase up to an additional 20% interest from Carrier (10% beginning in July 2012 and an additional 10% in July 2014). We issued 2,985,685 shares of Common stock and 94,784 shares of Class B common stock for consideration of $147,000 and a fair value of $151,056 to Carrier and contributed 15 locations that presently sell Carrier-manufactured products for consideration of $25,000 as total consideration for our 60% controlling interest in the joint venture. The fair value of the Common and Class B common stock issued as consideration was determined based on of the closing market price of our common stock on July 1, 2009. As a result of the joint venture, we operate as the largest distributor of air conditioning, heating and refrigeration equipment and related parts and supplies in the HVAC/R industry and serve over 50,000 customers in 36 states.

Based on our valuation we recognized $131,341 in goodwill and intangibles. The fair value of the identified intangible assets was $49,100 and consisted of $32,400 in trade names and distribution rights and $16,700 in customer relationships. The tax basis of the acquired goodwill recognized will be deductible for income tax purposes over 15 years. The final purchase price was subject to an adjustment of $7,201 pursuant to the Purchase and Contribution Agreement dated May 3, 2009, as amended June 29, 2009, ("Purchase and Contribution Agreement"), of which $1,418 was payable to Carrier at December 31, 2009.

The purchase price allocation is based upon a purchase price of $181,474 which represents the fair value of our 60% controlling interest in Carrier Enterprise. The table below presents the allocation of the total consideration to tangible and intangible assets acquired, liabilities assumed and the noncontrolling interest from the acquisition of our 60% controlling interest in Carrier Enterprise based on the respective fair values as of July 1, 2009:

| | |
|---|---|
| Accounts receivable | $ 186,082 |
| Inventories | 125,796 |
| Other current assets | 4,253 |
| Property and equipment | 10,048 |
| Goodwill | 82,241 |
| Intangibles | 49,100 |
| Other assets | 1,725 |
| Accounts payable and accrued expenses | (163,485) |
| Other liabilities | (5,403) |
| Noncontrolling interest | (108,883) |
| Total purchase price | $ 181,474 |

The fair value of the assets acquired includes trade receivables and other receivables recognized in the ordinary course of business with a fair value of $186,082. The gross amount outstanding was $191,131, of which $5,049 was deemed to be uncollectible. The fair value of the noncontrolling interest was determined by applying a pro-rata value of the total invested capital adjusted for a discount for lack of control that market participants would consider when estimating the fair value of the noncontrolling interest. As a result of our contribution of 15 locations to the joint venture, $12,448 representing 40% of the carrying value of the contributed locations was attributed to the noncontrolling interest, $10,768 representing 40% of the difference between the fair value and carrying value of the contributed locations was recognized as an increase to paid-in capital.

In August 2009, a capital contribution in the amount of $80,000 was made to Carrier Enterprise pursuant to the Purchase and Contribution Agreement. Our share of the contribution totaling $48,000 was made as an additional capital contribution to Carrier Enterprise in cash. Carrier's share of the contribution totaling $32,000 consisted of inventory.

Revenues of $588,065 and net income attributable to Watsco, Inc. of $6,971 were contributed by the new Carrier Enterprise locations during the year ended December 31, 2009. The unaudited pro forma financial information combining our results of operations with the operations of Carrier Enterprise as if the joint venture had been consummated on January 1, 2008 is as follows:

| Years ended December 31, | 2009 | 2008 |
|---|---|---|
| Revenues | **$2,562,319** | $2,933,662 |
| Net income | **59,874** | 76,894 |
| Less: net income attributable to the noncontrolling interest | **13,332** | 8,775 |
| Net income attributable to Watsco, Inc. | **46,542** | 68,119 |
| Diluted earnings per share for Common and Class B common shares | **$ 1.53** | $ 2.13 |

This unaudited pro forma financial information is presented for informational purposes only. The unaudited pro forma financial information from the beginning of the periods presented until the acquisition date includes adjustments to record income taxes related to our portion of Carrier Enterprise's income, bank fees paid to amend our $300,000 revolving credit agreement upon the consummation of the joint venture, bank fees paid by Carrier Enterprise to enter into a secured three-year $75,000 revolving credit agreement and amortization related to identified intangible assets with finite lives. The unaudited pro forma financial information does not include adjustments to remove certain corporate expenses of Carrier Enterprise, which may not be incurred in future periods, adjustments for depreciation or synergies (primarily related to improved gross profit and lower general and administrative expenses) that may be realized subsequent to the acquisition date. The unaudited pro forma financial information may not necessarily reflect our future results of operations or what the results of operations would have been had we owned and operated Carrier Enterprise as of the beginning of the periods presented.

In August 2009, one of our subsidiaries acquired certain assets and assumed certain liabilities of a wholesale distributor of air conditioning and heating products operating from six locations in Utah and serving over 500 customers. The purchase price of the acquisition included a cash payment of $4,057.

The results of operations of these acquired locations have been included in the consolidated financial statements from their respective dates of acquisition. The pro forma effect of the August 2009 acquisition was not deemed significant to the consolidated financial statements.

Approximately $4,800 of transaction costs is included in selling, general and administrative expenses in our consolidated statement of income for the year ended December 31, 2009 primarily associated with the closing and transition of Carrier Enterprise.

**8. Goodwill and Intangible Assets**

The recoverability of goodwill and indefinite lived intangibles is evaluated at least annually and when events or changes in circumstances indicate that the carrying amount of goodwill and indefinite lived intangibles may not be recoverable. The identification and measurement of impairment involves the estimation of the fair value of the reporting unit and indefinite lived intangibles and contains uncertainty because management must use judgment in determining appropriate assumptions to be used in the measurement of fair value. The estimate of fair value of the reporting unit is based on the best information available as of the date of the assessment and incorporates management's assumptions about expected future cash flows and contemplates other valuation techniques. Future cash flows can be affected by changes in the industry, a continuing declining economic environment or market conditions.

On January 1, 2010, we completed our annual impairment test and determined there was no impairment. No factors have developed since the last impairment test that would indicate that the carrying value of goodwill and indefinite lived intangibles may not be recoverable. The carrying amount of goodwill and intangibles at December 31, 2009 was $361,823. Although no impairment has been recorded to date, there can be no assurances that future impairments will not occur. An adjustment to the carrying value of goodwill and intangibles could materially impact the consolidated results of operations.

The changes in the carrying amount of goodwill are as follows:

| | |
|---|---|
| Balance at December 31, 2007 | $217,129 |
| Purchase price adjustments, net | 2,681 |
| Balance at December 31, 2008 | 219,810 |
| Acquired goodwill (1) | 83,447 |
| Balance at December 31, 2009 | **$ 303,257** |

(1) See Note 7 for information on acquisitions.

Intangible assets, net, included in other assets in the consolidated balance sheets consist of:

| December 31, | Estimated Useful Lives | 2009 | 2008 |
|---|---|---|---|
| Indefinite lived intangible assets: | | | |
| Trade names, trademarks and distribution rights | | **$37,963** | $ 5,683 |
| Finite lived intangible assets: | | | |
| Customer relationships | 4-15 years | **22,120** | 5,420 |
| Non-compete agreements | 7 years | **369** | 369 |
| Less: accumulated amortization | | **(1,886)** | (814) |
| Finite lived intangible assets, net | | **20,603** | 4,975 |
| | | **$ 58,566** | $10,658 |

Amortization expense related to finite lived intangible assets amounted to $1,191, $459 and $224 for the years ended December 31, 2009, 2008 and 2007, respectively. The future amortization expense for each of the five succeeding years related to all finite lived intangible assets that are currently recorded in the consolidated balance sheets is estimated to be as follows at December 31, 2009:

| | |
|---|---|
| 2010 | $1,851 |
| 2011 | 1,825 |
| 2012 | 1,770 |
| 2013 | 1,760 |
| 2014 | 1,736 |
| Total | $8,942 |

**9. Shareholders' Equity**

Common stock and Class B common stock share equally in earnings and are identical in most other respects except (i) Common stock is entitled to one vote on most matters and each share of Class B common stock is entitled to ten votes; (ii) shareholders of Common stock are entitled to elect 25% of the Board of Directors (rounded up to the nearest whole number) and Class B shareholders are entitled to elect the balance of the Board of Directors; (iii) cash dividends may be paid on Common stock without paying a cash dividend on Class B common stock and no cash dividend may be paid on Class B common stock unless at least an equal cash dividend is paid on Common stock and (iv) Class B common stock is convertible at any time into Common stock on a one-for-one basis at the option of the shareholder.

We are authorized to issue preferred stock with such designation, rights and preferences as may be determined from time to time by our Board of Directors. Accordingly, the Board of Directors is empowered, without shareholder approval, to issue preferred stock with dividend, liquidation, conversion, voting or other rights which could adversely affect the voting power or other rights of the holders of our Common stock and Class B common stock and, in certain instances, could adversely affect the market price of this stock. We have no preferred stock outstanding as of December 31, 2009.

Our Board of Directors has authorized the repurchase, at management's discretion, of 7,500,000 shares in the open market or via private transactions. Shares repurchased under the program are accounted for using the cost method and result in a reduction of shareholders' equity. During 2008 and 2007, 105,600 and 231,100 Common shares were repurchased at a cost of $4,820 and $9,386, respectively. No shares were repurchased during 2009. In aggregate since the inception of the repurchase plan in 1999, 6,322,650 shares of Common stock and 48,263 shares of Class B common stock were repurchased at a cost of $114,425. The remaining 1,129,087 shares authorized for repurchase are subject to certain restrictions included in our revolving credit agreement.

**10. Financial Instruments**

Recorded Financial Instruments

Recorded financial instruments consist of cash and cash equivalents, accounts receivable, accounts payable, the current portion of long-term obligations, borrowings under our revolving credit agreements and debt instruments included in other long-term obligations. At December 31, 2009 and 2008, the fair values of cash and cash equivalents, accounts receivable, accounts payable and the current portion of long-term obligations approximated their carrying values due to the short-term nature of these instruments.

The fair values of variable rate borrowings under our revolving credit agreements and debt instruments included in long-term obligations also approximate their carrying value based upon interest rates available for similar instruments with consistent terms and remaining maturities.

Derivative Financial Instruments

Periodically, we enter into interest rate swap agreements to reduce our exposure to market risks from changing interest rates under our revolving credit agreement. Under the terms of the swap agreements, we agree to exchange, at specified intervals, the difference between fixed and variable interest amounts calculated by reference to the notional principal amount. Any differences paid or received on our interest rate swap agreements are recognized as adjustments to interest expense over the life of each swap, thereby adjusting the effective interest rate on the underlying obligation. Financial instruments are not held or issued for trading purposes. In order to obtain hedge accounting treatment, any derivatives used for hedging purposes must be designated as, and effective as, a hedge of an identified risk exposure at the inception of the contract. Changes in the fair value of the derivative contract must be highly correlated with changes in the fair value of the underlying hedged item at inception of the hedge and over the life of the hedge contract. Accordingly, we record all derivative instruments as either assets or liabilities on the consolidated balance sheets at their respective fair values. We record the change in the fair value of a derivative instrument designated as a cash flow hedge in other comprehensive income to the extent the derivative is effective, and recognize the change in the statement of income when the hedged item affects earnings. Our interest rate hedge is designated as a cash flow hedge.

At December 31, 2009, one interest rate swap agreement was in effect with a notional value of $10,000, maturing in October 2011. The swap agreement exchanges the variable rate of 30-day LIBOR to a fixed interest rate of 5.07%. During the years ended December 31, 2009 and 2008, the hedging relationship was determined to be highly effective in achieving offsetting changes in cash flows.

We were party to an interest rate swap agreement with a notional amount of $10,000, which matured on October 31, 2009, that was designated as a cash flow hedge and effectively exchanged the variable rate of 30-day LIBOR to a fixed interest rate of 5.04%. During 2009 and 2008, the hedging relationship was determined to be highly effective in achieving offsetting changes in cash flows.

We were party to an interest rate swap agreement with a notional amount of $30,000, which matured on October 9, 2007, that was designated as a cash flow hedge and effectively exchanged the variable rate of 90-day LIBOR to a fixed interest rate of 6.25%. During 2007, the hedging relationship was determined to be highly effective in achieving offsetting changes in cash flows.

The negative fair value of the derivative financial instruments was $710 and $1,287 at December 31, 2009 and 2008, respectively, and is included, net of accrued interest, in deferred income taxes and other liabilities in the consolidated balance sheets. At December 31, 2009 and 2008, $432, net of deferred tax benefits of $262 and $778, net of deferred tax benefits of $467 was included in accumulated OCL associated with cash flow hedges.

The net change in OCL during 2009, 2008 and 2007, reflected the reclassification of $527, net of income tax benefit of $320, $274, net of income tax benefit of $164 and $128, net of income tax benefit of $77, respectively, of unrealized losses from accumulated OCL to current period earnings (recorded in interest expense, net in the consolidated statements of income). The net unrealized loss recorded in accumulated OCL will be reclassified to earnings on a monthly basis as interest payments occur. We estimate that approximately $450 in unrealized losses on the derivative instrument accumulated in OCL are expected to be reclassified to earnings during 2010 using a current 30-day LIBOR-based average receive rate (0.69% at December 31, 2009).

Off-Balance Sheet Financial Instruments

At December 31, 2009 and 2008, we were contingently liable under standby letters of credit aggregating $3,844 and $4,627, respectively that are primarily used as collateral to cover any contingency related to additional risk assessments pertaining to the self-insurance programs. We do not expect any material losses to result from the issuance of the standby letters of credit because claims are not expected to exceed premiums paid. Accordingly, the estimated fair value of these instruments is zero.

Concentrations of Credit Risk

Financial instruments which potentially subject us to concentrations of credit risk consist principally of cash investments and accounts receivable. Temporary cash investments are placed with high credit quality financial institutions and we limit the amount of credit exposure to any one financial institution or investment. Concentrations of credit risk with respect to accounts receivable are limited due to the large number of customers comprising the customer base and their dispersion across many different geographical regions.

## 11. Fair Value Measurements

The following table presents our assets and liabilities that are measured at fair value on a recurring basis as of December 31, 2009, segregated among the levels within the fair value hierarchy:

| Description | Fair Value at December 31, 2009 | Fair Value Measurements at December 31, 2009 Using Level 1 | Level 2 | Level 3 |
|---|---|---|---|---|
| Assets: | | | | |
| Available-for-sale securities | **$ 104** | **$ 104** | — | — |
| Liabilities: | | | | |
| Derivative financial instruments | **$ 710** | — | **$ 710** | — |

The following is a description of the valuation techniques used for these assets and liabilities, as well as the level of input used to measure fair value:

*Available-for-sale securities* – the investments are exchange-traded equity securities. Fair values for these investments are based on quoted prices in active markets and are therefore classified within Level 1 of the fair value hierarchy.

*Derivative financial instruments* – the derivative is a pay-variable, receive fixed interest rate swap based on 30-day LIBOR. Fair value is based on model-derived valuations using the respective LIBOR rate, which is observed at quoted intervals for the full term of the swap and incorporates adjustments to appropriately reflect our nonperformance risk and the counterparty's nonperformance risk. Therefore, the derivative is classified within Level 2 of the fair value hierarchy. See Note 10 for further information on derivative financial instruments.

## 12. Commitments and Contingencies

Litigation, Claims and Assessments

We are involved in litigation incidental to the operation of our business. We vigorously defend all matters in which we or our subsidiaries are named defendants and, for insurable losses, maintain significant levels of insurance to protect against adverse judgments, claims or assessments that may affect us. Although the adequacy of existing insurance coverage or the outcome of any legal proceedings cannot be predicted with certainty, based on the current information available, we do not believe the ultimate liability associated with any known claims or litigation in which we or our subsidiaries are involved will materially affect our financial condition or results of operations.

Self-Insurance

Self-insurance reserves are maintained relative to company-wide casualty insurance and health benefit programs. The level of exposure from catastrophic events is limited by the purchase of stop-loss and aggregate liability reinsurance coverage. When estimating the self-insurance liabilities and related reserves, management considers a number of factors, which include historical claims experience, demographic factors, severity factors and valuations provided by independent third-party actuaries. Management reviews its assumptions with its independent third-party actuaries to evaluate whether the self-insurance reserves are adequate. If actual claims or adverse development of loss reserves occur and exceed these estimates, additional reserves may be required. The estimation process contains uncertainty since management must use judgment to estimate the ultimate cost that will be incurred to settle reported claims and unreported claims for incidents incurred but not reported as of the balance sheet date. Reserves in the amount of $7,110 and $3,875 at December 31, 2009 and 2008, respectively, were established related to such insurance programs and are included in accrued expenses and other current liabilities in our consolidated balance sheets.

Variable Interest Entities

As of December 31, 2009, in conjunction with our casualty insurance programs, limited equity interests are held in a captive insurance entity. The programs permit us to self-insure a portion of losses, to gain access to a wide array of safety-related services, to pool insurance risks and resources in order to obtain more competitive pricing for administration and reinsurance and to limit risk of loss in any particular year. The entities meet the definition of variable interest entities ("VIEs"); however, there is not a requirement to include these entities in the consolidated financial statements. The maximum exposure to loss related to our involvement with these entities is limited to approximately $5,200. See "Self-Insurance" above for further information on commitments associated with the insurance programs and Note 10, "Off-Balance Sheet Financial Instruments," for further information on standby letters of credit. As of December 31, 2009, there are no other entities that met the definition of a VIE.

Minimum Royalty Payments

We are obligated under a licensing agreement with Whirlpool Corporation to make minimum annual royalty payments of $1,000 through 2011.

Operating Leases

We are obligated under non-cancelable operating leases of real property, equipment, vehicles and a corporate aircraft used in our operations with varying terms through 2019. Some of our leases contain renewal options, some of which involve rate increases. For leases with step rent provisions whereby the rental payments increase incrementally over the life of the lease, we recognize the total minimum lease payments on a straight-line basis over the lease term. The corporate aircraft lease is subject to adjustment from changes in LIBOR-based interest rates.

As of December 31, 2009, future minimum lease payments under non-cancelable operating leases are as follows:

| | |
|---|---|
| 2010 | $ 62,895 |
| 2011 | 47,855 |
| 2012 | 33,151 |
| 2013 | 24,488 |
| 2014 | 17,094 |
| Thereafter | 27,170 |
| | $212,653 |

Rental expense for the years ended December 31, 2009, 2008 and 2007 was $55,502, $45,606 and $42,739, respectively.

**13. Discontinued Operations**

During June 2007, our Board of Directors approved and we executed an agreement to sell the stock of our non-core staffing unit, Dunhill Staffing Systems, Inc. ("Dunhill"). The transaction closed on July 19, 2007. Dunhill represented our "other" segment and consequently, the amounts related to this operation are presented as discontinued operations in our consolidated statement of income and our consolidated statement of cash flows for 2007. The divestiture of Dunhill did not have a material impact on our financial condition or results of operations.

Included in discontinued operations as presented in our consolidated statement of income are the following:

| *Year Ended December 31,* | 2007 |
|---|---|
| Revenues | $12,431 |
| Loss from discontinued operations | (3,060) |
| Income tax benefit | 1,148 |
| Net loss from discontinued operations | (1,786) |
| Loss on sale of discontinued operations | (126) |

## 14. Related Party Transactions

Purchases from Carrier and its affiliates comprised 41% of all purchases made during 2009. At December 31, 2009, approximately $61,000 is payable to Carrier and its affiliates. Carrier Enterprise also sells HVAC/R products to Carrier and its affiliates; revenues in our consolidated statement of income for the year ended December 31, 2009 include $11,879 of sales to Carrier and its affiliates. We believe these transactions are conducted at arm's-length in the ordinary course of business.

Carrier Enterprise has entered into Transactional Services Agreements ("TSAs") with Carrier to have certain business processes performed on its behalf including the use of business software applications and information technologies. A number of the services provided pursuant to the TSAs expired on December 31, 2009, with the remaining services expiring at various dates through 2010. The fees related to the TSAs were approximately $10,808 and are included in selling, general and administrative expenses in our consolidated statement of income for the year ended December 31, 2009. At December 31, 2009, $7,116 related to the TSAs is payable to Carrier and is included in accrued expenses and other current liabilities in our consolidated balance sheet.

A member of the Board of Directors is the Executive Chairman of Greenberg Traurig, P.A., which serves as our principal outside counsel and receives customary fees for legal services. During 2009, 2008 and 2007, this firm was paid $49, $128 and $78, respectively, for services performed.

## 15. Supplemental Cash Flow Information

Supplemental cash flow information was as follows:

| *Years Ended December 31,* | 2009 | 2008 | 2007 |
|---|---|---|---|
| Interest paid | **$ 1,436** | $ 2,299 | $ 4,557 |
| Income taxes net of refunds | **$14,018** | $25,270 | $32,329 |
| Non-cash capital contribution of inventory by the noncontrolling interest | **$32,000** | — | — |

## 16. Subsequent Events

On February 15, 2010, our Board of Directors approved an increase in the quarterly cash dividend to $0.52 per share from $0.48 per share.

We evaluated subsequent events after December 31, 2009 through February 26, 2010, the date our consolidated financial statements were issued.

**WATSCO, INC. AND SUBSIDIARIES**
**SELECTED QUARTERLY FINANCIAL DATA**
**(UNAUDITED)**

| *(In thousands, except per share data)* | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter | Total |
|---|---|---|---|---|---|
| **Year Ended December 31, 2009** | | | | | |
| Revenues (1) | $ 291,343 | $ 404,971 | $741,895 | $563,606 | $2,001,815 |
| Gross profit | 74,234 | 100,985 | 172,009 | 133,604 | 480,832 |
| Net (loss) income attributable to Watsco, Inc. | $ (1,172) | $ 16,282 | $ 21,131 | $ 7,073 | $ 43,314 |
| (Loss) earnings per share for Common and Class B common stock (2)(3): | | | | | |
| Basic | $ (0.07) | $ 0.57 | $ 0.66 | $ 0.21 | $ 1.40 |
| Diluted | $ (0.07) | $ 0.56 | $ 0.66 | $ 0.21 | $ 1.40 |
| **Year Ended December 31, 2008** | | | | | |
| Revenues (1) | $380,399 | $509,822 | $475,225 | $ 334,791 | $ 1,700,237 |
| Gross profit | 98,004 | 131,060 | 126,673 | 86,257 | 441,994 |
| Net income attributable to Watsco, Inc. | $ 7,644 | $ 26,050 | $ 23,332 | $ 3,343 | $ 60,369 |
| Earnings per share for Common and Class B common stock (2)(3): | | | | | |
| Basic | $ 0.26 | $ 0.92 | $ 0.82 | $ 0.10 | $ 2.14 |
| Diluted | $ 0.26 | $ 0.90 | $ 0.81 | $ 0.10 | $ 2.09 |

(1) Sales of residential central air conditioners, heating equipment and related parts and supplies are seasonal. Demand related to the residential central air conditioning replacement market is highest in the second and third quarters with demand for heating equipment usually highest in the fourth quarter. Demand related to the new construction sectors throughout most of the markets is fairly even during the year except for dependence on housing completions and related weather and economic conditions.

(2) Quarterly earnings per Common and Class B common share are calculated on an individual basis and, because of rounding and changes in the weighted-average shares outstanding during the year, the summation of each quarter may not equal the amount calculated for the year as a whole.

(3) Effective January 1, 2009, we adopted the provisions of accounting guidance stating that non-vested share-based payment awards that contain non-forfeitable rights to dividends are considered participating securities and should be included in the computation of earnings per share pursuant to the two-class method for all periods presented.

**WATSCO, INC. AND SUBSIDIARIES**
**INFORMATION ON COMMON STOCK**

Our Common stock is traded on the New York Stock Exchange under the symbol WSO and our Class B common stock is traded on the NYSE Amex under the symbol WSOB. The following table indicates the high and low prices of our Common stock and Class B common stock, as reported by the New York Stock Exchange and NYSE Amex, respectively, and dividends paid per share for each quarter during the years ended December 31, 2009 and 2008. At February 26, 2010, excluding shareholders with stock in street name, there were 304 Common stock shareholders of record and 132 Class B common stock shareholders of record.

| | Common | | Class B | | Cash Dividend | |
|---|---|---|---|---|---|---|
| | High | Low | High | Low | Common | Class B |
| **Year Ended December 31, 2009:** | | | | | | |
| First quarter | $ 40.08 | $ 30.97 | $ 39.75 | $ 30.99 | $ .45 | $ .45 |
| Second quarter | 54.01 | 34.55 | 53.00 | 34.54 | .48 | .48 |
| Third quarter | 56.82 | 44.56 | 56.25 | 44.46 | .48 | .48 |
| Fourth quarter | 53.71 | 48.98 | 53.25 | 48.93 | .48 | .48 |
| **Year Ended December 31, 2008:** | | | | | | |
| First quarter | $ 43.80 | $ 31.44 | $ 44.50 | $ 31.15 | $ .40 | $ .40 |
| Second quarter | 47.47 | 40.27 | 47.82 | 40.30 | .45 | .45 |
| Third quarter | 58.49 | 40.86 | 55.55 | 41.42 | .45 | .45 |
| Fourth quarter | 49.00 | 30.62 | 49.07 | 30.85 | .45 | .45 |

**Exhibit 21**

SUBSIDIARIES OF THE REGISTRANT

The following table sets forth, at February 24, 2010, the Registrant's significant operating subsidiaries and other associated companies and their respective incorporation jurisdictions. The Registrant owns 100% of the voting securities of each of the subsidiaries listed below unless noted otherwise. There are no subsidiaries not listed in the table, which would, in the aggregate, be considered significant.

| Active Subsidiaries | State of Incorporation |
|---|---|
| Air Systems Distributors LLC | Delaware |
| Atlantic Service & Supply LLC | Delaware |
| Baker Distributing Company LLC | Delaware |
| Carrier Enterprise, LLC* | Delaware |
| East Coast Metal Distributors LLC | Delaware |
| Gemaire Distributors LLC | Delaware |
| Heating & Cooling Supply LLC | California |
| Tradewinds Distributing Company LLC | Delaware |
| Watsco Holdings, Inc. | Delaware |
| Watsco Holdings II, Inc. | Delaware |

* 60% owned

**Exhibit 23.1**

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors
Watsco, Inc.:

We consent to the incorporation by reference in the registration statements listed below of Watsco, Inc. of our report dated February 26, 2010, with respect to the consolidated balance sheet of Watsco, Inc. and subsidiaries as of December 31, 2009, and the related consolidated statements of income, cash flows and shareholders' equity for the year ended December 31, 2009.

As discussed in Note 1 to the consolidated financial statements, effective January 1, 2009 the Company changed its accounting and reporting for business combinations, noncontrolling interests, and earnings per share.

- Form S-3 (Registration No. 333-163678)
- Form S-8 (Nos. 333-159776, 333-149467, 333-126824, 333-86006, 333-39380, 333-82011, 333-80341, 333-10363, 33-51934, and 33-72798)

/s/ KPMG LLP

Miami, Florida
February 26, 2010
Certified Public Accountants

**Exhibit 23.2**

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We have issued our report dated February 27, 2009 (except for earnings per share amounts as discussed in Note 1 – Accounting Changes - Earnings per Share, as to which the date is February 26, 2010), with respect to the consolidated financial statements of Watsco, Inc. and subsidiaries which is incorporated by reference in the Annual Report of Watsco, Inc. on Form 10-K for the year ended December 31, 2009. We hereby consent to the incorporation by reference of said report in the following Registration Statements of Watsco, Inc. on Form S-3 (No. 333-163678) and Forms S-8 (No. 333-159776, No. 333-149467, No. 333-126824, No. 333-86006, No. 333-39380, No. 333-82011, No. 333-80341, No. 333-10363, No. 33-51934 and No. 33-72798).

/s/ GRANT THORNTON LLP

Miami, Florida
February 26, 2010

**Exhibit 31.1**

**CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Albert H. Nahmad, certify that:

1. I have reviewed this Annual Report on Form 10-K of Watsco, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of this annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 26, 2010

/s/ Albert H. Nahmad

Albert H. Nahmad
Chief Executive Officer

**Exhibit 31.2**

**CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Barry S. Logan, certify that:

1. I have reviewed this Annual Report on Form 10-K of Watsco, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of this annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 26, 2010

/s/ Barry S. Logan

Barry S. Logan
Senior Vice President

**Exhibit 31.3**

**CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Ana M. Menendez, certify that:

1. I have reviewed this Annual Report on Form 10-K of Watsco, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of this annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 26, 2010

/s/ Ana M. Menendez

Ana M. Menendez
Chief Financial Officer

**Exhibit 32.1**

**CERTIFICATION PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Watsco, Inc. ("Watsco") on Form 10-K for the year ended December 31, 2009, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Albert H. Nahmad, as Chief Executive Officer of Watsco, Barry S. Logan, as Senior Vice President of Watsco and Ana M. Menendez, as Chief Financial Officer of Watsco, each hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to our knowledge:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Watsco.

/s/ Albert H. Nahmad
Albert H. Nahmad
Chief Executive Officer
February 26, 2010

/s/ Barry S. Logan
Barry S. Logan
Senior Vice President
February 26, 2010

/s/ Ana M. Menendez
Ana M. Menendez
Chief Financial Officer
February 26, 2010

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Watsco and will be retained by Watsco and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by Watsco for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.