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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (date of earliest event reported) July 1, 2009

watsco

WATSCO, INC.

(Exact Name of Registrant as Specified in Its Charter)

Florida

(State or Other Jurisdiction of Incorporation)

1-5581
(Commission File Number)

59-0778222
(IRS Employer Identification No.)

2665 South Bayshore Drive, Suite 901
Coconut Grove, Florida 33133
(Address of Principal Executive Offices, Including Zip Code)

(305) 714-4100
(Registrant's Telephone Number, Including Area Code)

N/A
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement.

On July 1, 2009, Carrier Enterprise, LLC (“Carrier Enterprise”), a subsidiary of Watsco, Inc. (the “Registrant”), entered into a secured three-year \$75.0 million credit agreement (the “Credit Agreement”) with three lenders, Wells Fargo Bank, N.A. as Joint Lead Arranger, Joint Bookrunner and Administrative Agent (the “Administrative Agent”), J.P. Morgan Securities, Inc. as Joint Lead Arranger and Joint Bookrunner and J.P. Morgan Chase Bank, N.A., as Syndication Agent (the “Credit Facility”). Borrowings under the Credit Facility will be used by Carrier Enterprise for general corporate purposes, including working capital and permitted acquisitions.

The terms of the Credit Facility include a \$15.0 million swing loan subfacility and a \$5.0 million letter of credit subfacility. As of the date hereof, approximately \$1.1 million of borrowings were outstanding under the Credit Facility.

The interest rate charged under the Credit Agreement varies depending on the types of advances or loans that Carrier Enterprise selects under the Credit Facility. Borrowings under the Credit Facility bear interest at primarily LIBOR-based rates plus a spread which ranges from 275 to 325 basis-points (LIBOR plus 300 basis-points as of the date hereof) depending upon Carrier Enterprise’s ratio of total debt to EBITDA. 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 under the Credit Facility bear interest at the higher of the prime rate announced by the Administrative Agent, the Federal Funds Rate plus 50 basis-points or a LIBOR-based rate plus 150 basis-points.

The Credit Facility is secured by all tangible and intangible assets of Carrier Enterprise. The 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. It also contains customary Events of Default (as defined in the Credit Agreement). If Carrier Enterprise experiences any Event of Default other than events of bankruptcy in its obligations under the Credit Facility, then, to the extent permitted in the Credit Agreement, the Administrative Agent may terminate the commitments under the Credit Facility and accelerate any outstanding loans. Upon events of bankruptcy, Carrier Enterprise’s obligation under the Credit Facility becomes immediately due and payable. Carrier Enterprise’s performance and payment obligations under the Credit Facility are guaranteed by its direct and indirect domestic subsidiaries.

Certain of the lenders party to the Credit Facility, and their respective affiliates, have performed, and may in the future perform, various commercial banking, investment banking and other financial advisory services for Carrier Enterprise and its subsidiaries and affiliates, for which they have received, and will receive, customary fees and expenses.

The foregoing description of the Credit Facility is qualified in its entirety by reference to the Credit Agreement which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

Item 2.01. Completion of Acquisition or Disposition of Assets.

On July 1, 2009, the Registrant completed the formation of Carrier Enterprise, a joint venture with Carrier Corporation (“Carrier”), pursuant to the definitive purchase and contribution agreement dated May 3, 2009, as amended June 29, 2009, by and between Carrier and the Registrant and, executed an Operating Agreement of Carrier Enterprise (amended and restated) which establishes the manner in which Carrier Enterprise is to be managed (the “Agreements”). Carrier Enterprise will operate 110 locations in 20 states and Puerto Rico and serve over 19,000 air conditioning and heating contractors. The Registrant directly or indirectly owns 60% of Carrier Enterprise with options to purchase an additional 20% interest from Carrier within the next three to eight years. As discussed in Item 3.02 below, the Registrant issued 3,080,469 shares of common stock to Carrier and contributed 15 locations that presently sell Carrier-manufactured products as consideration for its 60% interest in the joint venture.

The foregoing description of the joint venture is qualified in its entirety by reference to the Agreements which are attached hereto as Exhibits 2.1, 2.2 and 10.2 which are incorporated by reference herein.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Company.

See the disclosures set forth in Item 1.01 above, the contents of which are incorporated by reference herein.

Item 3.02. Unregistered Sales of Equity Securities.

On July 1, 2009, in connection with the closing of the transaction discussed in Item 2.01 above, the Registrant entered into a Shareholder Agreement and issued 3,080,469 shares of unregistered common stock (2,985,685 shares of Common stock and 94,784 shares of Class B common stock) having a fair value of \$147.0 million to Carrier. These shares were issued pursuant to Section 4(2) of the Securities Act and Regulation D promulgated thereunder.

The foregoing description of the Shareholder Agreement is qualified in its entirety by reference to the Shareholder Agreement which is attached hereto as Exhibit 10.3 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(a) Financial Statements of Businesses Acquired

The financial statements of Carrier Enterprise are not being furnished in this Current Report on Form 8-K. In accordance with subsection 4 of this Item 9.01(a), such financial statements will be filed by amendment on Form 8-K/A by September 17, 2009.

(b) Pro Forma Financial Information

The pro forma financial information of the Registrant and Carrier Enterprise is not being furnished in this Current Report on Form 8-K. In accordance with subsection 2 of this Item 9.01(b), such pro forma financial information will be filed by amendment on Form 8-K/A by September 17, 2009.

(d) Exhibits

Exhibit Number	Description
2.1	Purchase and Contribution Agreement dated as of May 3, 2009 by and between Carrier Corporation and Watsco, Inc. (incorporated herein by reference to Exhibit 2.1 in Watsco, Inc.'s Current Report on Form 8-K dated May 3, 2009 and filed May 7, 2009).
2.2	Amendment to Purchase and Contribution Agreement dated as of June 29, 2009 by and between Carrier Corporation and Watsco, Inc.
10.1	Credit Agreement, dated as of July 1, 2009, by and among Carrier Enterprise, LLC, as Borrower, the Lenders From Time to Time Party Thereto, Wells Fargo Bank, N.A., as Joint Lead Arranger, Joint Bookrunner and Administrative Agent, J.P. Morgan Securities, Inc., as Joint Lead Arranger and Joint Bookrunner and J.P. Morgan Chase Bank, N.A. as Syndication Agent.
10.2	Operating Agreement of Carrier Enterprise, LLC (Amended and Restated), dated as of July 1, 2009.
10.3	Shareholder Agreement by and between Watsco, Inc. and Carrier Corporation dated as of July 1, 2009.

SIGNATURES

Pursuant to the requirements 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.

Dated: July 8, 2009

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

EXHIBIT INDEX

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AMENDMENT TO
PURCHASE AND CONTRIBUTION AGREEMENT

This **AMENDMENT** to the **PURCHASE AND CONTRIBUTION AGREEMENT** (this "Amendment") is made and entered into on June 29, 2009, by and between (i) Carrier Corporation, a Delaware corporation ("Seller") and (ii) Watsco, Inc., a Florida corporation ("Buyer") (collectively, the "Parties," and each individually, a "Party").

Recitals

A. WHEREAS, on May 3, 2009 Seller and Buyer entered into a Purchase and Contribution Agreement (the "Purchase and Contribution Agreement") under which, among other things, Buyer is to acquire, directly or indirectly, a 60% membership interest in the Company, following which Buyer will own, directly or indirectly, 60% of the Company, Seller will own 39% of the Company, the 1% Holder will own 1% of the Company and the Company will own the Comfort Products Contributed Assets and will have assumed the Comfort Products Liabilities;

B. WHEREAS, the Purchase and Contribution Agreement contemplates that, on or prior to the Closing Date, the Parties shall enter into an amendment to the Purchase and Contribution Agreement addressing, among other things, the allocation of assets and liabilities comprising the Head Office and the allocation of employees of Seller and its Affiliates who are, immediately prior to the Closing, primarily employed in the business of the Head Office (the "Head Office Amendment"); and

C. WHEREAS, the Parties desire to enter into the Head Office Amendment and amend certain other provisions of the Purchase and Contribution Agreement, in each case as set forth below.

Agreement

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, the parties hereto agree as follows:

1. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Purchase and Contribution Agreement.
2. Recital A of the Purchase and Contribution Agreement is hereby amended by replacing the words "Carrier Enterprises, LLC" with the words "Carrier Enterprise, LLC".

3. Section 1.01 of the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as follows:

1.01 Restructuring Transactions. Seller shall, and, to the extent applicable, shall cause its Subsidiaries to (a) before the Closing, transfer and convey to the Company all of Seller's right, title and interest in and to the equity interests in the Division Entities and, prior to the Closing Date, contribute membership interests in the Company which after giving effect to the issuance of membership interests pursuant to Section 1.02(b) will be equal to one percent (1%) of the outstanding membership interests in the Company immediately after Closing to the 1% Holder and (b) take all actions necessary such that, from and after the Closing, (i) the Company and Division Entities shall not contain the assets or liabilities comprising the California Business, the Northeast Business or the Applied Business or the inventory subject to the Consignment Agreement and (ii) the Head Office shall reflect the consummation of the transactions and other actions contemplated by Exhibit J (collectively, the "Restructuring").

4. Exhibit J in the form attached as Annex A hereto is hereby added as Exhibit J to the Purchase and Contribution Agreement.

5. Section 5.01(a) of the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as follows:

(a) Employment Continuity. JV Employees are intended to have continuity of employment upon the Closing. Subject to Exhibit J, no later than immediately prior to the Closing, Seller or its appropriate Affiliate shall transfer the employment of each Carrier Transferred Employee not employed by the Company or a Subsidiary thereof to the Company or a Subsidiary thereof. Subject to Exhibit J, no later than immediately prior to the Closing, Seller or its appropriate Affiliate shall transfer any employee of the Company and its Subsidiaries who is not a Carrier Transferred Employee to Seller or one of its Affiliates other than the Company or a Subsidiary thereof. No later than December 31, 2009, Buyer shall cause the Company to make an offer of employment to each Comfort Employee, effective as of January 1, 2010.

6. Section 5.01(d) of the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as follows:

(d) Seller Plans. (i) Subject to Exhibit J, Seller and its Subsidiaries shall remain solely responsible for all liabilities incurred prior to the Closing by Carrier Transferred Employees under Seller Plans, and (ii) Buyer and its Subsidiaries shall, subject to the terms of the Comfort Products Transition Services Agreement, remain solely responsible for all compensation and employee benefit liabilities incurred prior to January 1, 2010 (or, if later, the date of commencement of employment of the applicable Comfort Employee with the Company) by Comfort Employees. With respect to the period from the Closing Date through December 31, 2009, (x) Carrier Transferred Employees shall continue to participate in welfare benefit plans maintained

by Seller and its Affiliates and (y) Comfort Employees shall remain employed by Buyer and its Affiliates, in each case in accordance with the provisions of the Transition Services Agreement or Comfort Products Transition Services Agreement, as applicable. Following December 31, 2009, the Company shall be solely responsible for compensation and employee benefit plans for all JV Employees.

7. Section 5.01(e) of the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as follows:

(e) Successor Employer. With respect to Carrier Transferred Employees, Seller and the Company shall, and shall cause their respective Subsidiaries to, to the extent permitted by applicable law or practicable, (i) treat the Company (or its applicable Subsidiary) as a “successor employer” and Seller (or its applicable Subsidiary) as a “predecessor,” within the meaning of Section 3121(a)(1) and 3306(b)(1) of the Code, to the extent appropriate, for purposes of Taxes imposed under the United States Federal Insurance Contributions Act, as amended (“FICA”), or the United States Federal Unemployment Tax Act, as amended (“FUTA”), (ii) cooperate with each other to avoid, to the extent possible, the restart of FICA and FUTA with respect to each such JV Employee for the calendar year within which the Closing occurs and (iii) file tax returns, exchange wage payment information and report wage payments made by the respective predecessor and successor employer on separate IRS Forms W-2 to each such JV Employee for the calendar year within which the Closing occurs, consistent with Section 4.02(1) of Revenue Procedure 2004-53.

8. Section 5.03 of the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as follows:

5.03 Intentionally left blank.

9. Section 5.04 of the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as follows:

5.04 Comfort Products Transition Services. Each Party shall endeavor to reach agreement upon the full terms and conditions of a transition services agreement (“Comfort Products Transition Services Agreement”) relating to Comfort Products, the Comfort Products Contributed Assets and the Comfort Products Liabilities, and, subject to the foregoing, on the Closing Date, Seller, Buyer and the Company shall enter into the Comfort Products Transition Services Agreement

10. Section 5.05 of the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as follows:

5.05 Intentionally left blank.

11. Section 7.02 of the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as follows:

7.02 Further Assurances. Following the Closing, Seller and Buyer shall, and shall cause their respective Subsidiaries to, execute and deliver such documents, and take such other action, as shall be reasonably requested by the Company or the other Party to carry out the transactions contemplated by this Agreement, including (i) assigning or transferring back to Buyer (or a Subsidiary thereof) any Comfort Products Excluded Asset or Comfort Products Excluded Obligation, (ii) assigning or transferring to the Company (or a Subsidiary thereof) any (A) Comfort Products Contributed Asset or Comfort Products Liability contemplated hereby to be assigned or transferred prior to or at the Closing which was not so assigned or transferred prior to or at the Closing and (B) Accepted Obligations to the extent a part of or related to the assets and liabilities comprising the Head Office not included in the definition of Seller Excluded Businesses, (iii) assigning or transferring back to Seller (or a Subsidiary thereof), within fifteen (15) days following the Closing, (A) all cash balances held by the Company and the Division Entities as at Closing and (B) any intercompany obligations as at Closing (other than trade payables arising in the ordinary course of business owed by the Company or the Division Entities) between the Company and the Division Entities, on the one hand, and Seller and its Affiliates (other than the Company and the Division Entities), on the other hand, and (iv) assigning or transferring back to Seller (or a Subsidiary thereof) any (A) assets or liabilities comprising the Seller Excluded Businesses contemplated hereby to be assigned or transferred prior to or at the Closing which were not so assigned or transferred prior to or at the Closing, and (B) Excluded Obligations. Seller and Buyer shall, and each shall cause its Affiliates, employees, consultants and agents to, take all reasonable actions necessary, or reasonably requested by the Company or the other Party, to facilitate the orderly transition of the management of the Company, the Division Entities and Comfort Products and the maintenance of all relationships in connection therewith.

12. Section 8.02(b)(i) of the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as follows

(i) Seller shall indemnify and hold harmless Buyer from and against all Damages resulting from (A) liabilities for Company Taxes for any Pre-Closing Tax Period, (B) Company Taxes with respect to any taxable period pursuant to any obligation (whether legal, as a transferee, contractual, or otherwise) to contribute to the payment of a Tax determined on a consolidated, combined or unitary or other group basis with respect to a group of corporations that includes or included the Company or any of its Subsidiaries at any time before the Closing, including any such obligation arising under Treasury Regulations Section 1.1502-6 or similar provision of state, local or foreign law, (C) any breach of any of the covenants required to be performed by Seller or the 1% Holder under this Section 8.02, (D) Taxes for any Post-Closing Tax Period of, or with respect to, the assets and liabilities of the Head Office that are included in the definition of Seller Excluded Businesses, and (E) without duplication of amounts contained in (A), (B), (C) or (D), the failure of the representation contained in Section 8.01(e) to be true and correct except, in each case, (a) to the extent such Taxes are reflected as a liability on the Final Statement on Company Working Capital, (b) any liability for Taxes arising from any action or transaction by Buyer, Company or any of its

Subsidiaries outside of the ordinary course of business on the Closing Date after the Closing and (c) any liability for transfer, sales, use and other similar non-income Taxes incurred in connection with the consummation of the transactions contemplated by this Agreement, including all such non-income Taxes resulting from the Restructuring described in Section 1.01.

13. Section 8.02(b)(ii) of the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as follows:

(ii) The Buyer shall cause the Company to indemnify and hold harmless Seller and its Affiliates and Buyer and its Affiliates from all liability for (A) Company Taxes (such liabilities to be paid entirely by the Company in all circumstances), other than Company Taxes covered by Section 8.02(b)(i), which shall be paid entirely by Seller in all circumstances, (B) any breach of any of the covenants required to be performed, or cause to be performed, by the Company under this Section 8.02 and (C) Taxes, other than Company Taxes, for any Post-Closing Tax Period of, or with respect to, the assets and liabilities of the Head Office that are not included in the definition of Seller Excluded Businesses.

14. Sections 10.01(e), (f), (g) and (h) of the Purchase and Contribution Agreement are hereby amended and restated to read in their entirety as follows:

(e) Seller and the Company shall have entered into the Transition Services Agreement in a form and substance acceptable to Buyer and Seller;
and

(f) Intentionally left blank.

(g) Seller, Buyer, and the Company shall have entered into the Comfort Products Transition Services Agreement in a form and substance acceptable to Buyer and Seller.

(h) Intentionally left blank.

15. Section 13.01(4) of the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as follows:

(4) Accepted Obligations. The term "Accepted Obligations" means all (a) liabilities and obligations of the Company and the Division Entities as at Closing, other than Excluded Obligations and other than liabilities or obligations in respect of Company Taxes, but including, without limiting the foregoing, obligations other than Company Taxes to the extent reflected on the Acquisition Balance Sheet, as well as (b) any liabilities for which reserves are included on the books and records of the Company pursuant to Section 5.24, to the extent such reserves are so taken and (c) any liability or obligation to the extent a part of or related to the assets and liabilities comprising the Head Office not included in the definition of Seller Excluded Businesses.

16. Section 13.01(13) of the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as follows:
- (13) Ancillary Agreements. The term “Ancillary Agreements” shall mean the Operating Agreement, the Transition Services Agreement, the Comfort Products Transition Services Agreement, the Shareholder Agreement, the Distributor Agreements, the Consignment Agreement and the Trade Name Agreement.
17. Section 13.01(97) of the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as follows:
- (97) Intentionally left blank.
18. Section 13.01(123) of the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as follows:
- (123) Intentionally left blank
19. Section 13.01(45) of the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as follows:
- (45) Comfort Employees. The term “Comfort Employees” shall mean the individuals listed on Exhibit A to the Comfort Products Transition Services Agreement.
20. Section 13.01(129) of the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as follows:
- (129) JV Employees. The term “JV Employees” shall mean (i) the Carrier Transferred Employees and (ii) the Comfort Employees, provided that a Comfort Employee shall become a JV Employee only if and when such Comfort Employee commences employment with the Company or its Subsidiaries.
21. Section 13.01(144) of the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as follows:
- (144) Northeast Business. The term “Northeast Business” means any and all business of the Company conducted in the states of Connecticut, New York, Massachusetts, Maine, New Jersey, Pennsylvania, Rhode Island, Vermont, New Hampshire, Ohio and West Virginia (in the case of each of Ohio and West Virginia, other than in respect of counties within such states designated as a portion of the “Territory” in a Distributor Agreement (where the Company is a named party) applies) including the distribution and sale of products, equipment, parts and accessories by the Company in such states or from business locations in such states other than to any locations to which a Distributor Agreement (where the Company is a named party) applies.

22. Section 13.01(194) of the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as follows:
- (194) Seller Excluded Business. The term “Seller Excluded Businesses” shall mean the California Business, the Northeast Business, the Applied Business and the assets and liabilities comprising the Head Office intended to be held by Seller or its Affiliates pursuant to Exhibit J.
23. Exhibit E to the Purchase and Contribution Agreement is hereby amended and restated to read in its entirety as set forth on Annex B hereto.
24. No Further Amendment. Except as expressly amended hereby, the Purchase and Contribution Agreement remains in full force and effect. This Amendment is limited precisely as written and shall not be deemed to be an amendment to any other term or condition of the Purchase and Contribution Agreement or any of the documents referred to therein.
25. Effect of Amendment. This Amendment shall form a part of the Purchase and Contribution Agreement for all purposes, and each Party shall be bound hereby. From and after the execution of this Amendment by the Parties, any reference to the Purchase and Contribution Agreement shall be deemed a reference to the Purchase and Contribution Agreement as amended hereby.
26. Governing Law. The provisions of this Amendment shall be governed by and construed in accordance with the laws of the State of Delaware (excluding any conflict of law rule or principle that would refer to the laws of another jurisdiction).
27. Severability. Any term or provision of this Amendment that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Amendment shall be enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the Parties agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.

28. Multiple Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature Page Follows]

EXECUTED as of the date first written above.

SELLER:

CARRIER CORPORATION

By: /s/ William F. Striebe

Name: William F. Striebe

Title: Vice President, Business Development

BUYER:

WATSCO, INC.

By: /s/ Barry S. Logan

Name: Barry S. Logan

Title: Senior Vice President

[Signature Page to Amendment to Purchase and Contribution Agreement]

CREDIT AGREEMENT

by and among

CARRIER ENTERPRISE, LLC

as Borrower,

THE LENDERS THAT ARE SIGNATORIES HERETO

as the Lenders,

WELLS FARGO BANK, N. A.

as Joint Lead Arranger, Joint Bookrunner and Administrative Agent

J.P. MORGAN SECURITIES, INC.

as Joint Lead Arranger and Joint Bookrunner

and

J.P. MORGAN CHASE BANK, N.A.

as Syndication Agent

Dated as of July 1, 2009

CREDIT AGREEMENT

THIS CREDIT AGREEMENT (this "Agreement"), is entered into as of July 1, 2009, by and among the lenders identified on the signature pages hereof (such lenders, together with their respective successors and permitted assigns, are referred to hereinafter each individually as a "Lender" and collectively as the "Lenders"), **WELLS FARGO BANK, N.A.**, a national banking association, and **J.P. MORGAN SECURITIES, INC.**, as joint lead arrangers and joint bookrunners (in such capacity, together with their successors and assigns in such capacity, collectively, the "Arrangers" and individually an "Arranger"), **WELLS FARGO BANK, N.A.**, a national banking association, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, "Administrative Agent"), **J.P. MORGAN CHASE BANK, N.A.**, a national banking association, as syndication agent (in such capacity, together with its successors and assigns in such capacity, "Syndication Agent"; together with Administrative Agent, collectively, the "Agents" and individually an "Agent"), and **CARRIER ENTERPRISE, LLC**, a Delaware limited liability company formerly known as Carrier Sales and Distribution, LLC ("Borrower").

The parties agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 **Definitions.** Capitalized terms used in this Agreement shall have the meanings specified therefor on Schedule 1.1.

1.2 **Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, however, that if Borrower notifies Administrative Agent that Borrower requests an amendment to any covenant in Section 7 hereof to eliminate the effect of any Accounting Change occurring after the Closing Date or in the application thereof on the operation of such covenant (or if Administrative Agent notifies Borrower that the Required Lenders request an amendment to any covenant in Section 7 hereof for such purpose), regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then Borrower's compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant Accounting Change became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to Borrower and the Required Lenders. When used herein, the term "financial statements" shall include the notes and schedules thereto. Whenever the term "Borrower" is used in respect of a financial covenant or a related definition, it shall be understood to mean Borrower and its Subsidiaries on a consolidated basis, unless the context clearly requires otherwise.

1.3 **Code.** Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein; provided, however, that to the extent that the Code is used to define any term herein and such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern.

1.4 **Construction.** Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless

otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights. Any reference herein or in any other Loan Document to the satisfaction or repayment in full of the Obligations shall mean the repayment in full in cash (or, in the case of Letters of Credit or Bank Products, providing Letter of Credit Collateralization or Bank Product Collateralization, as applicable) of all Obligations other than unasserted contingent indemnification Obligations. Any reference herein to any Person shall be construed to include such Person's successors and assigns. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record.

1.5 **Schedules and Exhibits.** All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

2 LOAN AND TERMS OF PAYMENT.

2.1 **Revolver Advances.**

(a) Subject to the terms and conditions of this Agreement, and during the term of this Agreement, each Lender agrees (severally, not jointly or jointly and severally) to make advances ("Advances") to Borrower in an amount at any one time outstanding not to exceed such Lender's Pro Rata Share of an amount equal to (i) the lesser of the Maximum Revolver Amount and the Borrowing Base at such time *minus* (ii) the Letter of Credit Usage at such time.

(b) Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement. The outstanding principal amount of the Advances, together with interest accrued thereon, shall be due and payable on the Maturity Date or, if earlier, on the date on which they are declared due and payable pursuant to the terms of this Agreement.

(c) Anything to the contrary in this Section 2.1 notwithstanding, Administrative Agent shall have the right, upon not less than 30 days prior written notice to Borrower, to establish reserves against the Borrowing Base in such amounts, and with respect to such matters (but not to include reserves with respect to Bank Product Obligations), as Administrative Agent in its Permitted Discretion shall deem necessary or appropriate, including reserves with respect to (i) sums that Borrower or its Subsidiaries are required to pay under any Section of this Agreement or any other Loan Document (such as taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay, (ii) Collateral located at a third party warehouse or premises leased by Borrower or its Subsidiaries and with respect to which no Collateral Access Agreement is then in effect, and (iii) amounts owing by Borrower or its Subsidiaries to any Person to the extent secured by a Lien on, or trust over, any of the Collateral (other than a Permitted Lien), which Lien or trust, in the Permitted Discretion of Administrative Agent, likely would have a priority superior to Administrative Agent's Liens (such as Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens or trusts for *ad valorem*, excise, sales, or other taxes where given priority under applicable law) in and to such item of the Collateral.

2.2 Increases in Commitment.

(a) **Revolver Increases.** So long as no Default or Event of Default has occurred and is continuing, from time to time after the Closing Date, Borrower may, upon at least 45 days' written notice to Administrative Agent, who shall promptly notify the Lenders, propose to increase the aggregate Commitments by an additional amount not to exceed, in the aggregate, \$50,000,000 minus the sum of all Commitment reductions made prior to such increase pursuant to Section 2.4(c) (the amount of any such increase, the "Additional Commitment Amount"). Each Lender shall have the right for a period of 30 days following receipt of such notice to elect by written notice to Borrower and Administrative Agent to increase its Commitment by a principal amount equal to its Pro Rata Share of the Additional Commitment Amount. No Lender (or any successor thereto) shall have any obligation to increase its Commitment or its other obligations under this Agreement and the other Loan Documents, and any decision by a Lender to increase its Commitment shall be made in its sole discretion independently from any other Lender.

(b) **Additional Lenders.** If any Lender shall not elect to increase its Commitment pursuant to subsection (a) of this Section 2.2, then Borrower may, to the extent necessary to increase the aggregate Commitments by the then unsubscribed Additional 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 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 an Eligible Transferee. The sum of the increases in the Commitments of the existing Lenders plus the Commitments of the Additional Lenders shall not in the aggregate exceed the Additional Commitment Amount.

(c) **Effectiveness of Increase.** An increase in the aggregate amount of the Commitments pursuant to this Section 2.2 shall become effective upon the receipt by Administrative Agent of an agreement in form and substance reasonably satisfactory to Administrative Agent signed by Borrower, by each Additional Lender and by each other Lender whose Commitment is to be increased, setting forth the new 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, and such legal opinions and other evidence of appropriate corporate authorization on the part of Borrower with respect to the increase in the aggregate Commitments and other documents with respect to the increase in the Commitments as Administrative Agent may reasonably request.

(d) **Prepayment of Outstanding Loans.** Upon any increase in the aggregate Commitments pursuant to this Section 2.2 that is not pro rata among all existing Lenders, (i) within 5 Business Days in the case of any Advances then outstanding as Base Rate Loans, and at the end of the then applicable Interest Period in the case of any Advances then outstanding as LIBOR Rate Loans, Borrower shall prepay such Advances in their entirety and, to the extent Borrower elects to do so and subject to the conditions specified in Section 3, Borrower shall reborrow Advances from the Lenders in proportion to their Pro Rata Share after giving effect to such increase, until such time as all outstanding Advances 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 Commitment bears to the aggregate Commitments after giving effect to such increase.

2.3 Borrowing Procedures and Settlements.

(a) **Procedure for Borrowing.** Each Base Rate Loan will be in amounts of at least \$500,000 and multiples of \$100,000 in excess thereof, and each LIBOR Rate Loan will be in amounts of at least \$1,000,000 and multiples of \$500,000 in excess thereof. Each Borrowing shall be made by a written request by an Authorized Person delivered to Administrative Agent. Unless Swing Lender is not obligated to make a Swing Loan pursuant to Section 2.3(b) below, such notice must be received by Administrative Agent no

later than 12:00 noon (New York, New York time) on the Business Day that is the requested Funding Date specifying (i) the amount of such Borrowing, and (ii) the requested Funding Date, which shall be a Business Day; provided, however, that if Swing Lender is not obligated to make a Swing Loan as to a requested Borrowing, such notice must be received by Administrative Agent no later than 12:00 noon (New York, New York time) on the Business Day that is the requested Funding Date. At Administrative Agent's election, in lieu of delivering the above-described written request, any Authorized Person may give Administrative Agent telephonic notice of such request by the required time. In such circumstances, Borrower agrees that any such telephonic notice will be confirmed in writing within 24 hours of the giving of such telephonic notice, but the failure to provide such written confirmation shall not affect the validity of the request.

(b) Making of Swing Loans. In the case of a request for an Advance and so long as either (i) the aggregate amount of Swing Loans made since the last Settlement Date, minus the amount of Collections or payments applied to Swing Loans since the last Settlement Date, plus the amount of the requested Advance does not exceed \$15,000,000, or (ii) Swing Lender, in its sole discretion, shall agree to make a Swing Loan notwithstanding the foregoing limitation, Swing Lender shall make an Advance in the amount of such Borrowing (any such Advance made solely by Swing Lender pursuant to this Section 2.3(b) being referred to as a "Swing Loan" and such Advances being referred to collectively as "Swing Loans") available to Borrower on the Funding Date applicable thereto by transferring immediately available funds to the Designated Account no later than 2:00 p.m. (New York, New York time) on such date. Each Swing Loan shall be deemed to be an Advance hereunder and shall be subject to all the terms and conditions applicable to other Advances, except that all payments on any Swing Loan shall be payable to Swing Lender solely for its own account. Subject to the provisions of Section 2.3(d)(ii), Swing Lender shall not make and shall not be obligated to make any Swing Loan if Swing Lender has actual knowledge that (i) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing, or (ii) the requested Borrowing would exceed the Availability on such Funding Date. Swing Lender shall not otherwise be required to determine whether the applicable conditions precedent set forth in Section 3 have been satisfied on the Funding Date applicable thereto prior to making any Swing Loan. The Swing Loans shall be secured by Administrative Agent's Liens, constitute Obligations hereunder, and bear interest at the rate applicable from time to time to Advances that are Base Rate Loans.

(c) Making of Loans.

(i) In the event that Swing Lender is not obligated to make a Swing Loan, then promptly after receipt of a request for a Borrowing pursuant to Section 2.3(a), Administrative Agent shall notify the Lenders, not later than 1:00 p.m. (New York, New York time) on the Funding Date applicable thereto, by telecopy, telephone, or other similar form of transmission, of the requested Borrowing. Each Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Administrative Agent in immediately available funds, to the Administrative Agent's Account, not later than 3:30 p.m. (New York, New York time) on the Funding Date applicable thereto. After Administrative Agent's receipt of the proceeds of such Advances, Administrative Agent shall make the proceeds thereof available to Borrower on the applicable Funding Date by transferring immediately available funds equal to such proceeds received by Administrative Agent to the Designated Account no later than 4:00 p.m. (New York, New York time) on such date; provided, however, that, subject to the provisions of Section 2.3(d)(ii), Administrative Agent shall not request any Lender to make, and no Lender shall have the obligation to make, any Advance if Administrative Agent has actual knowledge that (1) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing unless such condition has been waived, or (2) the requested Borrowing would exceed the Availability on such Funding Date.

(ii) Unless Administrative Agent receives notice from a Lender prior to 1:30 p.m. (New York, New York time) on the date of a Borrowing, that such Lender will not make available as and when required hereunder to Administrative Agent for the account of Borrower the amount of that Lender's Pro Rata Share of the Borrowing, Administrative Agent may assume that each Lender has made or will make such amount available to Administrative Agent in immediately available funds on the Funding Date and the Administrative Agent may (but shall not be so required), in reliance upon such assumption, make available to Borrower on such date a corresponding amount. If any Lender shall not have made its full amount available to the Administrative Agent in immediately available funds and if Administrative Agent in such circumstances has made available to Borrower such amount, that Lender shall on the Business Day following such Funding Date make such amount available to Administrative Agent, together with interest at the Defaulting Lender Rate for each day during such period. A notice submitted by Administrative Agent to any Lender with respect to amounts owing under this Section 2.3(c)(ii) shall be conclusive, absent manifest error. If such amount is so made available, such payment to the Administrative Agent shall constitute such Lender's Advance on the date of Borrowing for all purposes of this Agreement. If such amount is not made available to the Administrative Agent on the Business Day following the Funding Date, Administrative Agent shall issue a demand therefor to such Lender and if such Lender does not make such amount available, then Administrative Agent will notify Borrower of such failure to fund. Upon demand by Administrative Agent, Borrower shall pay such amount to Administrative Agent for the Administrative Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate per annum equal to the interest rate applicable at the time to the Advances composing such Borrowing; provided, that, Borrower shall not be liable for any Funding Losses resulting from any requirement that Borrower pay such amount to Administrative Agent in accordance with the terms of this sentence. The failure of any Lender to make any Advance on any Funding Date shall not relieve any other Lender of any obligation hereunder to make an Advance on such Funding Date, but no Lender shall be responsible for the failure of any other Lender to make the Advance to be made by such other Lender on any Funding Date.

(iii) Administrative Agent shall not be obligated to transfer to a Defaulting Lender any payments made by Borrower to Administrative Agent for the Defaulting Lender's benefit, and, in the absence of such transfer to the Defaulting Lender, Administrative Agent shall transfer any such payments to each other non-Defaulting Lender member of the Lender Group ratably in accordance with their Commitments (but only to the extent that such Defaulting Lender's Advance was funded by the other members of the Lender Group) or, if so directed by Borrower and if no Default or Event of Default has occurred and is continuing (and to the extent such Defaulting Lender's Advance was not funded by the Lender Group), retain same to be re-advanced to Borrower as if such Defaulting Lender had made Advances to Borrower. Subject to the foregoing, Administrative Agent may hold and, in its Permitted Discretion, re-lend to Borrower for the account of such Defaulting Lender the amount of all such payments received and retained by Administrative Agent for the account of such Defaulting Lender. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents, such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero. This Section shall remain effective with respect to such Lender until (x) the Obligations under this Agreement shall have been declared or shall have become immediately due and payable, (y) the non-Defaulting Lenders, Administrative Agent and Borrower shall have waived such Defaulting Lender's default in writing, or (z) the Defaulting Lender makes its Pro Rata Share of the applicable Advance and pays to Administrative Agent all amounts owing by Defaulting Lender in respect thereof. The operation of this Section shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by Borrower of its duties and obligations hereunder to Administrative Agent or to the Lenders other than such Defaulting Lender. Any such failure to fund by any Defaulting Lender shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle Borrower at its option, upon written notice to Administrative Agent, to arrange for a substitute

Lender to assume the Commitment of such Defaulting Lender, such substitute Lender to be reasonably acceptable to Administrative Agent. In connection with the arrangement of such a substitute Lender, the Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of Assignment and Acceptance in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document if it fails to do so) subject only to being repaid its share of the outstanding Obligations (other than Bank Product Obligations, but including an assumption of its Pro Rata Share of the Letters of Credit) without any premium or penalty of any kind whatsoever; provided, however, that any such assumption of the Commitment of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Lender Groups' or Borrower's rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund.

(d) Protective Advances and Optional Overadvances.

(i) Any contrary provision of this Agreement notwithstanding, the Administrative Agent hereby is authorized by Borrower and the Lenders, from time to time in Administrative Agent's sole discretion, (A) after the occurrence and during the continuance of a Default or an Event of Default, or (B) at any time that any of the other applicable conditions precedent set forth in Section 3 are not satisfied, to make Advances to, or for the benefit of, Borrower on behalf of the Lenders (in an aggregate amount for all such Advances taken together not exceeding 10% of the Maximum Revolver Amount outstanding at any one time) that Administrative Agent, in its Permitted Discretion deem necessary or desirable (1) to preserve or protect the Collateral, or any portion thereof, or (2) to enhance the likelihood of repayment of the Obligations (other than the Bank Product Obligations) (any of the Advances described in this Section 2.3(d)(i) shall be referred to as "Protective Advances").

(ii) Any contrary provision of this Agreement notwithstanding, the Lenders hereby authorize Administrative Agent or Swing Lender, as applicable, and either Administrative Agent or Swing Lender, as applicable, may, but are not obligated to, knowingly and intentionally, continue to make Advances (including Swing Loans) to Borrower notwithstanding that an Overadvance exists or thereby would be created, so long as (A) after giving effect to such Advances, the outstanding Revolver Usage does not exceed the Borrowing Base by more than 10% of the Maximum Revolver Amount, and (B) after giving effect to such Advances, the outstanding Revolver Usage (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) does not exceed the Maximum Revolver Amount. In the event Administrative Agent obtains actual knowledge that the Revolver Usage exceeds the amounts permitted by the immediately foregoing provisions, regardless of the amount of, or reason for, such excess, Administrative Agent shall notify the Lenders as soon as practicable (and prior to making any (or any additional) intentional Overadvances (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) unless Administrative Agent determines that prior notice would result in imminent harm to the Collateral or its value), and the Lenders thereupon shall, together with Administrative Agent, jointly determine the terms of arrangements that shall be implemented with Borrower intended to reduce, within a reasonable time, the outstanding principal amount of the Advances to Borrower to an amount permitted by the preceding sentence. In such circumstances, if any Lender objects to the proposed terms of reduction or repayment of any Overadvance, the terms of reduction or repayment thereof shall be implemented according to the determination of the Required Lenders. In any event: (x) if any unintentional Overadvance remains outstanding for more than 30 days, unless otherwise agreed to by the Required Lenders, Borrower shall immediately repay Advances in an amount sufficient to eliminate all such unintentional Overadvances, and (y) after the date all such Overadvances have been eliminated, there must be at least five consecutive days before intentional Overadvances are made. The foregoing provisions are meant for the benefit of the Lenders and Administrative Agent and are not meant for the benefit of Borrower, which shall continue to be bound by the provisions of Section 2.5. Each Lender shall be obligated to settle with Administrative Agent as provided in Section 2.3(e) for the amount of

such Lender's Pro Rata Share of any unintentional Overadvances by Administrative Agent reported to such Lender, any intentional Overadvances made as permitted under this Section 2.3(d)(ii), and any Overadvances resulting from the charging to the Loan Account of interest, fees, or Lender Group Expenses.

(iii) Each Protective Advance and each Overadvance shall be deemed to be an Advance hereunder, except that no Protective Advance or Overadvance shall be eligible to be a LIBOR Rate Loan and, prior to Settlement therefor, all payments on the Protective Advances shall be payable to the Administrative Agent solely for its own account. The Protective Advances and Overadvances shall be repayable on demand, secured by Administrative Agent's Liens, constitute Obligations hereunder, and bear interest at the rate applicable from time to time to Advances that are Base Rate Loans. The ability of Administrative Agent to make Protective Advances is separate and distinct from its ability to make Overadvances, and its ability to make Overadvances is separate and distinct from its ability to make Protective Advances. For the avoidance of doubt, the limitations on Administrative Agent's ability to make Protective Advances do not apply to Overadvances and the limitations on Administrative Agent's ability to make Overadvances do not apply to Protective Advances. The provisions of this Section 2.3(d) are for the exclusive benefit of Administrative Agent, Swing Lender, and the Lenders and are not intended to benefit Borrower in any way.

(e) **Settlement.** It is agreed that each Lender's funded portion of the Advances is intended by the Lenders to equal, at all times, such Lender's Pro Rata Share of the outstanding Advances. Such agreement notwithstanding, Administrative Agent, Swing Lender, and the other Lenders agree (which agreement shall not be for the benefit of Borrower) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among the Lenders as to the Advances, the Swing Loans, and the Protective Advances shall take place on a periodic basis in accordance with the following provisions:

(i) Administrative Agent shall request settlement ("Settlement") with the Lenders twice each month (on the 15th day and last day of each month), or on a more frequent basis if so determined by Administrative Agent (1) on behalf of Swing Lender, with respect to the outstanding Swing Loans, (2) for itself, with respect to the outstanding Protective Advances, and (3) with respect to Borrower's or its Subsidiaries' Collections or payments received, as to each by notifying the Lenders by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 12:00 noon (New York, New York time) on the date of such requested Settlement (the date of such requested Settlement being the "Settlement Date"). Such notice of a Settlement Date shall include a summary statement of the amount of outstanding Advances, Swing Loans, and Protective Advances for the period since the prior Settlement Date. Subject to the terms and conditions contained herein (including Section 2.3(c)(iii)): (y) if a Lender's balance of the Advances (including Swing Loans and Protective Advances) exceeds such Lender's Pro Rata Share of the Advances (including Swing Loans and Protective Advances) as of a Settlement Date, then the Administrative Agent shall, by no later than 3:30 p.m. (New York, New York time) on the Settlement Date, transfer in immediately available funds to a Deposit Account of such Lender (as such Lender may designate), an amount such that each such Lender shall, upon receipt of such amount, have as of the Settlement Date, its Pro Rata Share of the Advances (including Swing Loans and Protective Advances), and (z) if a Lender's balance of the Advances (including Swing Loans and Protective Advances) is less than such Lender's Pro Rata Share of the Advances (including Swing Loans and Protective Advances) as of a Settlement Date, such Lender shall no later than 3:30 p.m. (New York, New York time) on the Settlement Date transfer in immediately available funds to Administrative Agent's Account, an amount such that each such Lender shall, upon transfer of such amount, have as of the Settlement Date, its Pro Rata Share of the Advances (including Swing Loans and Protective Advances). Such amounts made available to Administrative Agent under clause (z) of the immediately preceding sentence shall be applied against the amounts of the applicable Swing Loans or Protective Advances and, together with the portion of such

Swing Loans or Protective Advances representing Swing Lender's Pro Rata Share thereof, shall constitute Advances of such Lenders. If any such amount is not made available to Administrative Agent by any Lender on the Settlement Date applicable thereto to the extent required by the terms hereof, Administrative Agent shall be entitled to recover for its account such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate.

(ii) In determining whether a Lender's balance of the Advances, Swing Loans, and Protective Advances is less than, equal to, or greater than such Lender's Pro Rata Share of the Advances, Swing Loans, and Protective Advances as of a Settlement Date, Administrative Agent shall, as part of the relevant Settlement, apply to such balance the portion of payments actually received in good funds by Administrative Agent with respect to principal, interest, fees payable by Borrower and allocable to the Lenders hereunder, and proceeds of Collateral.

(iii) Between Settlement Dates, Administrative Agent, to the extent Protective Advances or Swing Loans are outstanding, may pay over to Administrative Agent or Swing Lender, as applicable, any Collections or payments received by Administrative Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Advances, for application to the Protective Advances or Swing Loans. Between Settlement Dates, Administrative Agent, to the extent no Protective Advances or Swing Loans are outstanding, may pay over to Swing Lender any Collections or payments received by Administrative Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Advances, for application to Swing Lender's Pro Rata Share of the Advances. If, as of any Settlement Date, Collections or payments of Borrower or its Subsidiaries received since the then immediately preceding Settlement Date have been applied to Swing Lender's Pro Rata Share of the Advances other than to Swing Loans, as provided for in the previous sentence, Swing Lender shall pay to Administrative Agent for the accounts of the Lenders, and Administrative Agent shall pay to the Lenders, to be applied to the outstanding Advances of such Lenders, an amount such that each Lender shall, upon receipt of such amount, have, as of such Settlement Date, its Pro Rata Share of the Advances. During the period between Settlement Dates, Swing Lender with respect to Swing Loans, Administrative Agent with respect to Protective Advances, and each Lender (subject to the effect of agreements between Administrative Agent and individual Lenders) with respect to the Advances other than Swing Loans and Protective Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the daily amount of funds employed by Swing Lender, Administrative Agent, or the Lenders, as applicable.

(f) **Notation.** Administrative Agent, as a non-fiduciary agent for Borrower, shall maintain a register showing the principal amount of the Advances owing to each Lender, including the Swing Loans owing to Swing Lender, and Protective Advances owing to Administrative Agent, and the interests therein of each Lender, from time to time and such register shall, absent manifest error, conclusively be presumed to be correct and accurate.

(g) **Lenders' Failure to Perform.** All Advances (other than Swing Loans and Protective Advances) shall be made by the Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Advance (or other extension of credit) hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (ii) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

2.4 **Payments; Reductions of Commitments; Prepayments.**

(a) **Payments by Borrower.**

(i) Except as otherwise expressly provided herein, all payments by Borrower shall be made to the Administrative Agent's Account for the account of the Lender Group and shall be made in immediately available funds, no later than 2:00 p.m. (New York, New York time) on the date specified herein. Any payment received by Administrative Agent later than 2:00 p.m. (New York, New York time) shall be deemed to have been received on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(ii) Unless Administrative Agent receives notice from Borrower prior to the date on which any payment is due to the Lenders that Borrower will not make such payment in full as and when required, Administrative Agent may assume that Borrower has made (or will make) such payment in full to Administrative Agent on such date in immediately available funds and Administrative Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent Borrower does not make such payment in full to Administrative Agent on the date when due, each Lender severally shall repay to Administrative Agent on demand such amount distributed to such Lender, together with interest thereon at the Defaulting Lender Rate for each day from the date such amount is distributed to such Lender until the date repaid.

(b) **Apportionment and Application.**

(i) So long as no Application Event has occurred and is continuing and except as otherwise provided with respect to Defaulting Lenders, all principal and interest payments shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the Obligations to which such payments relate held by each Lender) and all payments of fees and expenses (other than fees or expenses that are for an Agent's separate account) shall be apportioned ratably among the Lenders having a Pro Rata Share of the type of Commitment or Obligation to which a particular fee or expense relates.

(ii) At any time that an Application Event has occurred and is continuing and except as otherwise provided with respect to Defaulting Lenders, all payments remitted to Administrative Agent and all proceeds of Collateral received by Administrative Agent shall be applied as follows:

(A) first, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to Administrative Agent under the Loan Documents, until paid in full,

(B) second, to pay interest due in respect of all Protective Advances until paid in full,

(C) third, to pay the principal of all Protective Advances until paid in full,

(D) fourth, ratably to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to any of the Lenders under the Loan Documents, until paid in full,

(E) fifth, to pay any fees or premiums then due to Administrative Agent under the Loan Documents until paid in full,

(F) sixth, ratably to pay any fees or premiums then due to any of the Lenders under the Loan Documents until paid in full,

(G) seventh, ratably to pay interest due in respect of the Advances (other than Protective Advances) and the Swing Loans until paid in full,

(H) eighth, ratably (i) to pay the principal of all Swing Loans until paid in full, (ii) to pay the principal of all Advances until paid in full, (iii) to the Issuing Lender as reimbursement for any unreimbursed Letter of Credit Disbursements, and (iv) to Administrative Agent, to be held by Administrative Agent, for the benefit of Issuing Lender (and for the ratable benefit of each of the Lenders that have an obligation to pay to the Administrative Agent, for the account of the Issuing Lender, a share of each Letter of Credit Disbursement), as cash collateral in an amount up to 105% of the Letter of Credit Usage,

(I) ninth, to pay any other Obligations (other than Bank Product Obligations),

(J) tenth, to Administrative Agent, to be held by Administrative Agent, for the benefit of the Bank Product Providers, as cash collateral in an amount up to the amount the Bank Product Providers reasonably determine to be the credit exposure of Borrower and its Subsidiaries in respect of Bank Products, and

(K) eleventh, to Borrower (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(iii) Administrative Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive, subject to a Settlement delay as provided in Section 2.3(e).

(iv) In each instance, so long as no Application Event has occurred and is continuing, Section 2.4(b)(i) shall not apply to any payment made by Borrower to Administrative Agent and specified by Borrower to be for the payment of specific Obligations then due and payable (or prepayable) under any provision of this Agreement or any other Loan Document.

(v) For purposes of Section 2.4(b)(ii), "paid in full" means payment in cash of all amounts owing under the Loan Documents, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(vi) In the event of a direct conflict between the priority provisions of this Section 2.4 and any other provision contained in any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.4 shall control and govern.

(c) **Reductions of Commitments.** The Commitments shall terminate on the Maturity Date. Borrower may reduce the Commitments to an amount not less than the greater of \$40,000,000 and the sum of (A) the Revolver Usage as of such date, plus (B) the principal amount of all Advances not yet made as to which a request has been given by Borrower under Section 2.3(a), plus (C) the amount of all Letters of Credit not yet issued as to which a request has been given by Borrower pursuant to Section 2.11(a).

Each such reduction shall be in an amount which is not less than \$5,000,000, shall be made by providing not less than 10 Business Days prior written notice to Administrative Agent and shall be irrevocable. Once reduced, the Commitments may not be increased. Each such reduction of the Commitments shall reduce the Commitments of each Lender proportionately in accordance with its Pro Rata Share thereof.

(d) Optional Prepayments.

(i) **Base Rate Loans.** Borrower may prepay the principal of any Base Rate Loan on any Business Day with advance notice (which notice may be provided on the date of prepayment, including by email or other electronic communication). Prepayments of Base Rate Loans will be in amounts of at least \$500,000 and multiples of \$100,000 in excess thereof.

(ii) **LIBOR Rate Loans.** Borrower may prepay the principal of any LIBOR Rate Loan without penalty (but subject to the payment of any amounts due under Section 2.12 in connection therewith) on three Business Days advance notice. Prepayments of LIBOR loans will be in amounts of at least \$1,000,000 and multiples of \$500,000 in excess thereof. All such prepayments will include interest accrued to the prepayment date and will be accompanied by any amounts due under Section 2.12.

(e) **Mandatory Prepayments.** If, at any time, (i) the Revolver Usage on such date exceeds (ii) the Borrowing Base (such excess being referred to as the "Borrowing Base Excess Amount"), then Borrower shall promptly, but in any event, within 1 Business Day, prepay the Obligations in accordance with Section 2.4(f) in an aggregate amount equal to the Borrowing Base Excess Amount.

(f) **Application of Payments.** Each prepayment pursuant to Section 2.4(e) shall, (i) so long as no Application Event shall have occurred and be continuing, be applied, *first*, to the outstanding principal amount of the Advances until paid in full, and *second*, to cash collateralize the Letters of Credit in an amount equal to 105% of the then extant Letter of Credit Usage, and (ii) if an Application Event shall have occurred and be continuing, be applied in the manner set forth in Section 2.4(b)(ii).

2.5 **Overadvances.** If, at any time or for any reason, the amount of Obligations owed by Borrower to the Lender Group pursuant to Section 2.1 or Section 2.11 is greater than any of the limitations set forth in Section 2.1 or Section 2.11, as applicable (an "Overadvance"), Borrower shall promptly, but in any event, within two Business Days of the initial occurrence of an Overadvance pay to Administrative Agent, in cash, the amount of such excess, which amount shall be used by Administrative Agent to reduce the Obligations in accordance with the priorities set forth in Section 2.4(b). Borrower promises to pay the Obligations (including principal, interest, fees, costs, and expenses) in Dollars in full on the Maturity Date or, if earlier, on the date on which the Obligations are declared due and payable pursuant to the terms of this Agreement.

2.6 **Interest Rates and Letter of Credit Fee:** Rates, Payments, and Calculations.

(a) **Interest Rates.** Except as provided in Section 2.6(c), all Obligations (except for undrawn Letters of Credit and except for Bank Product Obligations) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest on the Daily Balance thereof as follows:

- (i) if the relevant Obligation is a LIBOR Rate Loan, at a per annum rate equal to the LIBOR Rate plus the Applicable Margin, and
- (ii) otherwise, at a per annum rate equal to the Base Rate plus the Applicable Margin.

(b) **Letter of Credit Fees.** Borrower shall pay (i) Administrative Agent (for the ratable benefit of the Lenders, subject to any agreements between Administrative Agent and individual Lenders), Letter of Credit fees (in addition to the charges, commissions, fees, and costs set forth in Section 2.11(e)) at a per annum rate equal to the Daily Balance of the undrawn amount of all outstanding Letters of Credit times the Applicable Margin with respect to LIBOR Rate Loans as of each applicable date, such fees to be due and payable quarterly in arrears on the first day of each January, April, July and October and on the Payoff Date, and (ii) the Issuing Lender, for its own account, a fronting fee at the rate of 0.125% per annum on the Daily Balance of the undrawn amount of all outstanding Letters of Credit, such fronting fee to be due and payable quarterly in arrears on the first day of each January, April, July and October and on the Payoff Date.

(c) **Default Rate.** Upon the occurrence and during the continuation of an Event of Default and at the election of the Required Lenders,

(i) all Obligations (except for undrawn Letters of Credit and except for Bank Product Obligations) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest on the Daily Balance thereof at a per annum rate equal to 2 percentage points above the per annum rate otherwise applicable hereunder, and

(ii) the Letter of Credit fee provided for in Section 2.6(b) shall be increased to 2 percentage points above the per annum rate otherwise applicable hereunder.

(d) **Payment.** Except to the extent provided to the contrary in Section 2.6(b), Section 2.10 or Section 2.12(a), interest, Letter of Credit fees, all other fees payable hereunder or under any of the other Loan Documents, and all costs, expenses, and Lender Group Expenses payable hereunder or under any of the other Loan Documents shall be due and payable, in arrears, on the first Business Day of each month at any time that Obligations or Commitments are outstanding. Borrower hereby authorizes Administrative Agent, from time to time with prior notice to Borrower, to charge all interest, Letter of Credit fees, and all other fees payable hereunder or under any of the other Loan Documents (in each case, as and when due and payable), all costs, expenses, and Lender Group Expenses payable hereunder or under any of the other Loan Documents (in each case, as and when incurred), all charges, commissions, fees, and costs provided for in Section 2.11(e) (as and when accrued or incurred), all fees and costs provided for in Section 2.10 (as and when accrued or incurred), and all other payments as and when due and payable under any Loan Document (other than any amounts due and payable to the Bank Product Providers in respect of Bank Products) to the Loan Account, which amounts thereafter shall constitute Advances hereunder and shall accrue interest at the rate then applicable to Advances that are Base Rate Loans. Any interest, fees, costs, expenses, Lender Group Expenses, or other amounts payable hereunder or under any other Loan Document not paid when due shall be compounded by being charged to the Loan Account and shall thereafter constitute Advances hereunder and shall accrue interest at the rate then applicable to Advances that are Base Rate Loans.

(e) **Computation.** All interest and fees (other than pursuant to Section 2.6(b)) chargeable under the Loan Documents shall be computed on the basis of a 365 day year (or, in the case of LIBOR Rate Loans and fees pursuant to Section 2.6(b), on the basis of a 360 day year), in each case, for the actual number of days elapsed in the period during which the interest or fees accrue. In the event the Base Rate is changed from time to time hereafter, the rates of interest hereunder based upon the Base Rate automatically and immediately shall be increased or decreased by an amount equal to such change in the Base Rate.

(f) **Intent to Limit Charges to Maximum Lawful Rate.** In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of

competent jurisdiction shall, in a final determination, deem applicable. Borrower and the Lender Group, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, however, that, anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, *ipso facto*, as of the date of this Agreement, Borrower is and shall be liable only for the payment of such maximum as allowed by law, and payment received from Borrower in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

2.7 **Crediting Payments.** The receipt of any payment item by Administrative Agent shall not be considered a payment on account unless such payment item is a wire transfer (or other payment) of immediately available federal funds made to the Administrative Agent's Account or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then Borrower shall be deemed not to have made such payment and interest shall be calculated accordingly. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Administrative Agent only if it is received into the Administrative Agent's Account on a Business Day on or before 2:00 p.m. (New York, New York time). If any payment item is received into Administrative Agent's Account on a non-Business Day or after 2:00 p.m. (New York, New York time) on a Business Day, it shall be deemed to have been received by Administrative Agent as of the opening of business on the immediately following Business Day

2.8 **Designated Account.** Administrative Agent is authorized to make the Advances, and Issuing Lender is authorized to issue the Letters of Credit, under this Agreement based upon telephonic or other instructions received from anyone purporting to be an Authorized Person or, without instructions, if pursuant to Section 2.6(d). Borrower agrees to establish and maintain the Designated Account with the Designated Account Bank for the purpose of receiving the proceeds of the Advances requested by Borrower and made by Administrative Agent or the Lenders hereunder. Unless otherwise specified by Borrower to Administrative Agent, any Advance or Swing Loan requested by Borrower and made by Administrative Agent or the Lenders hereunder shall be made to the Designated Account.

2.9 **Maintenance of Loan Account; Statements of Obligations.** Administrative Agent shall maintain an account on its books in the name of Borrower (the "Loan Account") on which Borrower will be charged with all Advances (including Protective Advances and Swing Loans) made by Administrative Agent, Swing Lender, or the Lenders to Borrower or for Borrower's account, the Letters of Credit issued or made by Issuing Lender for Borrower's account, and with all other payment Obligations hereunder or under the other Loan Documents (except for Bank Product Obligations), including, accrued interest, fees and expenses, and Lender Group Expenses. In accordance with Section 2.7, the Loan Account will be credited with all payments received by Administrative Agent from Borrower or for Borrower's account. Administrative Agent shall render monthly statements regarding the Loan Account to Borrower, including principal, interest, fees, and including an itemization of all charges and expenses constituting Lender Group Expenses owing, and such statements, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrower and the Lender Group unless, within 30 days after receipt thereof by Borrower, Borrower shall deliver to the Administrative Agent written objection thereto describing the error or errors contained in any such statements.

2.10 **Fees.** Borrower shall pay to Administrative Agent,

(a) for the account of the Agents (except as otherwise provided in the Fee Letter), as and when due and payable under the terms of the Fee Letter, the fees set forth therein; and

(b) for the ratable account of the Lenders, on the first day of each January, April, July and October and on the Payoff Date, an unused line fee in an amount equal to 0.50% per annum times the result of (i) the Maximum Revolver Amount, less (ii) the average Daily Balance of the Revolver Usage (other than outstanding Swing Loans) during the immediately preceding quarter (or portion thereof).

2.11 **Letters of Credit.**

(a) Subject to the terms and conditions of this Agreement, upon the request of Borrower made in accordance herewith, the Issuing Lender agrees to issue, or to cause an Underlying Issuer, as Issuing Lender's agent, to issue, a requested Letter of Credit. If Issuing Lender, at its option, elects to cause an Underlying Issuer to issue a requested Letter of Credit, then Issuing Lender agrees that it will obligate itself to reimburse such Underlying Issuer (which may include, among, other means, by becoming an applicant with respect to such Letter of Credit or entering into undertakings which provide for reimbursements of such Underlying Issuer with respect to such Letter of Credit; each such obligation or undertaking, irrespective of whether in writing, a "Reimbursement Undertaking") with respect to Letters of Credit issued by such Underlying Issuer. By submitting a request to Issuing Lender for the issuance of a Letter of Credit, Borrower shall be deemed to have requested that Issuing Lender issue or that an Underlying Issuer issue the requested Letter of Credit and to have requested Issuing Lender to issue a Reimbursement Undertaking with respect to such requested Letter of Credit if it is to be issued by an Underlying Issuer (it being expressly acknowledged and agreed by Borrower that Borrower is and shall be deemed to be an applicant (within the meaning of Section 5-102(a)(2) of the Code) with respect to each Underlying Letter of Credit). Each request for the issuance of a Letter of Credit, or the amendment, renewal, or extension of any outstanding Letter of Credit, shall be made in writing by an Authorized Person and delivered to the Issuing Lender via hand delivery, telefacsimile, or other electronic method of transmission reasonably in advance of the requested date of issuance, amendment, renewal, or extension. Each such request shall be in form and substance reasonably satisfactory to the Issuing Lender and shall specify (i) the amount of such Letter of Credit, (ii) the date of issuance, amendment, renewal, or extension of such Letter of Credit, (iii) the expiration date of such Letter of Credit (which shall not be later than the Business Day prior to the Maturity Date or, if earlier, one year from the date of issuance or extension, in the case of standby Letters of Credit, and 120 days from the date of issuance or extension, in the case of commercial/documentary Letters of Credit), (iv) the name and address of the beneficiary of the Letter of Credit, and (v) such other information (including, in the case of an amendment, renewal, or extension, identification of the Letter of Credit to be so amended, renewed, or extended) as shall be necessary to prepare, amend, renew, or extend such Letter of Credit. Borrower agrees that this Agreement (along with the terms of the applicable application) will govern each Letter of Credit and its issuance. The Issuing Lender shall have no obligation to issue a Letter of Credit or a Reimbursement Undertaking in respect of an Underlying Letter of Credit, in either case, if any of the following would result after giving effect to the requested issuance:

- (i) the Letter of Credit Usage would exceed the Borrowing Base *less* the outstanding amount of Advances, or
- (ii) the Letter of Credit Usage would exceed \$5,000,000, or
- (iii) the Letter of Credit Usage would exceed the Maximum Revolver Amount *less* the outstanding amount of Advances.

Each Letter of Credit shall be in form and substance reasonably acceptable to the Issuing Lender, including the requirement that the amounts payable thereunder must be payable in Dollars. If Issuing Lender makes a payment under a Letter of Credit or an Underlying Issuer makes a payment under an Underlying Letter of Credit, Borrower shall pay to Administrative Agent an amount equal to the

applicable Letter of Credit Disbursement not later than 2:00 p.m., New York, New York time, on the date that Borrower receives written or telephonic notice of such Letter of Credit Disbursement if such notice is received prior to 12:00 noon, New York, New York time, or not later than 2:00 p.m., New York, New York time, on the following Business Day, if such notice is received after 12:00 noon, New York, New York time, and, in the absence of such payment, the amount of the Letter of Credit Disbursement immediately and automatically shall be deemed to be an Advance hereunder and, initially, shall bear interest at the rate then applicable to Advances that are Base Rate Loans. If a Letter of Credit Disbursement is deemed to be an Advance hereunder, Borrower's obligation to pay the amount of such Letter of Credit Disbursement to Issuing Lender shall be discharged and replaced by the resulting Advance. Promptly following receipt by Administrative Agent of any payment from Borrower pursuant to this paragraph, Administrative Agent shall distribute such payment to the Issuing Lender or, to the extent that Lenders have made payments pursuant to Section 2.11(b) to reimburse the Issuing Lender, then to such Lenders and the Issuing Lender as their interests may appear.

(b) Promptly following receipt of a notice of a Letter of Credit Disbursement pursuant to Section 2.11(a), each Lender agrees to fund its Pro Rata Share of any Advance deemed made pursuant to Section 2.11(a) on the same terms and conditions as if Borrower had requested the amount thereof as an Advance and the Administrative Agent shall promptly pay to Issuing Lender the amounts so received by it from the Lenders. By the issuance of a Letter of Credit or a Reimbursement Undertaking (or an amendment to a Letter of Credit or a Reimbursement Undertaking increasing the amount thereof) and without any further action on the part of the Issuing Lender or the Lenders, the Issuing Lender shall be deemed to have granted to each Lender, and each Lender shall be deemed to have purchased, a participation in each Letter of Credit issued by Issuing Lender and each Reimbursement Undertaking, in an amount equal to its Pro Rata Share of such Letter of Credit or Reimbursement Undertaking, and each such Lender agrees to pay to Administrative Agent, for the account of the Issuing Lender, such Lender's Pro Rata Share of any Letter of Credit Disbursement made by Issuing Lender or an Underlying Issuer under the applicable Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Lender, such Lender's Pro Rata Share of each Letter of Credit Disbursement made by Issuing Lender or an Underlying Issuer and not reimbursed by Borrower on the date due as provided in Section 2.11(a), or of any reimbursement payment required to be refunded to Borrower for any reason. Each Lender acknowledges and agrees that its obligation to deliver to Administrative Agent, for the account of the Issuing Lender, an amount equal to its respective Pro Rata Share of each Letter of Credit Disbursement pursuant to this Section 2.11(b) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of an Event of Default or Default or the failure to satisfy any condition set forth in Section 3. If any such Lender fails to make available to Administrative Agent the amount of such Lender's Pro Rata Share of a Letter of Credit Disbursement as provided in this Section, such Lender shall be deemed to be a Defaulting Lender and Administrative Agent (for the account of the Issuing Lender) shall be entitled to recover such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(c) Borrower hereby agrees to indemnify, save, defend, and hold the Lender Group and each Underlying Issuer harmless from any loss, cost, expense, or liability, and reasonable attorneys fees incurred by Issuing Lender, any other member of the Lender Group, or any Underlying Issuer arising out of or in connection with any Reimbursement Undertaking or any Letter of Credit; provided, however, that Borrower shall not be obligated hereunder to indemnify for any loss, cost, expense, or liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of the Issuing Lender, any other member of the Lender Group, or any Underlying Issuer. Borrower agrees to be bound by the Underlying Issuer's regulations and interpretations of any Letter of Credit or by Issuing Lender's interpretations of any Reimbursement Undertaking even though this

interpretation may be different from Borrower's own (so long as any such regulations and interpretations are administered in good faith and without gross negligence), and Borrower understands and agrees that none of the Issuing Lender, the Lender Group, or any Underlying Issuer shall be liable for any error, negligence, or mistake, whether of omission or commission, in following Borrower's instructions or those contained in the Letter of Credit or any modifications, amendments, or supplements thereto; provided, however, that Borrower shall not be obligated hereunder to indemnify for any loss, cost, expense, or liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of the Issuing Lender, any other member of the Lender Group, or any Underlying Issuer. Borrower understands that the Reimbursement Undertakings may require Issuing Lender to indemnify the Underlying Issuer for certain costs or liabilities arising out of claims by Borrower against such Underlying Issuer. Borrower hereby agrees to indemnify, save, defend, and hold Issuing Lender and the other members of the Lender Group harmless with respect to any loss, cost, expense (including reasonable attorneys fees), or liability incurred by them as a result of the Issuing Lender's indemnification of an Underlying Issuer; provided, however, that Borrower shall not be obligated hereunder to indemnify for any such loss, cost, expense, or liability resulting from the gross negligence or willful misconduct of the Issuing Lender or any other member of the Lender Group. Borrower hereby acknowledges and agrees that none of the Issuing Lender, any other member of the Lender Group, or any Underlying Issuer shall be responsible for delays, errors, or omissions resulting from the malfunction of equipment in connection with any Letter of Credit.

(d) Borrower hereby authorizes and directs any Underlying Issuer to deliver to the Issuing Lender all instruments, documents, and other writings and property received by such Underlying Issuer pursuant to such Underlying Letter of Credit and to accept and rely upon the Issuing Lender's instructions with respect to all matters arising in connection with such Underlying Letter of Credit and the related application.

(e) Any and all issuance charges, usage charges, commissions, fees, and costs incurred or charged (in each case, at the Issuing Lender's customary rates therefor) by the Issuing Lender relating to Underlying Letters of Credit shall be Lender Group Expenses for purposes of this Agreement and shall be reimbursable promptly, but in any event, within two Business Days by Borrower to Administrative Agent for the account of the Issuing Lender, it being acknowledged and agreed by Borrower that, the Underlying Issuer also imposes a schedule of charges for amendments, extensions, drawings and renewals.

(f) If by reason of (i) any change after the Closing Date in any applicable law, treaty, rule, or regulation or any change in the interpretation or application thereof by any Governmental Authority, or (ii) compliance by the Issuing Lender, any other member of the Lender Group, or Underlying Issuer with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the Federal Reserve Board as from time to time in effect (and any successor thereto):

(i) any reserve, deposit, or similar requirement is or shall be imposed or modified in respect of any Letter of Credit issued or caused to be issued hereunder or hereby, or

(ii) there shall be imposed on the Issuing Lender, any other member of the Lender Group, or Underlying Issuer any other condition regarding any Letter of Credit or Reimbursement Undertaking,

and the result of the foregoing is to increase, directly or indirectly, the cost to the Issuing Lender, any other member of the Lender Group, or an Underlying Issuer of issuing, making, guaranteeing, or maintaining any Reimbursement Undertaking or Letter of Credit or to reduce the amount receivable in respect thereof, then, and in any such case, Administrative Agent may, at any time within a

reasonable period after the additional cost is incurred or the amount received is reduced, notify Borrower, and Borrower shall pay within 30 days after demand therefor, such amounts as Administrative Agent may reasonably specify to be necessary to compensate the Issuing Lender, any other member of the Lender Group, or an Underlying Issuer for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder; provided, however, that Borrower shall not be required to provide any compensation pursuant to this Section 2.12(f) for any such amounts incurred more than 180 days prior to the date on which the demand for payment is first made to Borrower; provided further, however, that if an event or circumstance giving rise to such amounts is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. The determination by Administrative Agent of any amount due pursuant to this Section 2.12(f), as set forth in a certificate setting forth the calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

2.12 LIBOR Option.

(a) **Interest and Interest Payment Dates.** In lieu of having interest charged at the rate based upon the Base Rate, Borrower shall have the option (the "LIBOR Option") to have interest on all or a portion of the Advances be charged (whether at the time when made (unless otherwise provided herein), upon conversion from a Base Rate Loan to a LIBOR Rate Loan, or upon continuation of a LIBOR Rate Loan as a LIBOR Rate Loan) at a rate of interest based upon the LIBOR Rate. Interest on LIBOR Rate Loans shall be payable on the earliest of (i) the last day of the Interest Period applicable thereto; provided, however, that, subject to the following clauses (ii) and (iii), in the case of any Interest Period greater than 3 months in duration, interest shall be payable at 3 month intervals after the commencement of the applicable Interest Period and on the last day of such Interest Period; (ii) the date on which all or any portion of the Obligations are accelerated pursuant to the terms hereof; or (iii) the date on which this Agreement is terminated pursuant to the terms hereof. On the last day of each applicable Interest Period with respect to a LIBOR Rate Loan, unless Borrower properly has exercised the LIBOR Option with respect thereto or elected to convert such LIBOR Rate Loan to a Base Rate Loan, such LIBOR Rate Loan automatically shall be continued as or converted to a LIBOR Rate Loan with a one month Interest Period. At any time that an Event of Default has occurred and is continuing, unless Administrative Agent elects otherwise, Borrower no longer shall have the option to request that Advances bear interest at a rate based upon the LIBOR Rate.

(b) LIBOR Election.

(i) Borrower may, at any time and from time to time, so long as no Event of Default has occurred and is continuing, elect to exercise the LIBOR Option by notifying Administrative Agent prior to 12:00 noon (New York, New York time) at least 3 Business Days prior to the commencement of the proposed Interest Period (the "LIBOR Deadline"). Notice of Borrower's election of the LIBOR Option for a permitted portion of the Advances and an Interest Period pursuant to this Section shall be made by delivery to Administrative Agent of a LIBOR Notice received by Administrative Agent before the LIBOR Deadline, or by telephonic notice received by Administrative Agent before the LIBOR Deadline (to be confirmed by delivery to Administrative Agent of a LIBOR Notice received by Administrative Agent prior to 5:00 p.m. (New York, New York time) on the same day). Promptly upon its receipt of each such LIBOR Notice, Administrative Agent shall provide a copy thereof to each of the affected Lenders.

(ii) Each LIBOR Notice shall be irrevocable and binding on Borrower. In connection with each LIBOR Rate Loan, Borrower shall indemnify, defend, and hold Administrative Agent and the Lenders harmless against any loss, cost, or expense

actually incurred by Administrative Agent or any Lender as a result of (A) the payment of any principal of any LIBOR Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (B) the conversion of any LIBOR Rate Loan other than on the last day of the Interest Period applicable thereto, or (C) the failure to borrow, convert, continue or prepay any LIBOR Rate Loan on the date specified in any LIBOR Notice delivered pursuant hereto (such losses, costs, or expenses, "Funding Losses"). A certificate of Administrative Agent or a Lender delivered to Borrower setting forth in reasonable detail any amount or amounts that Administrative Agent or such Lender is entitled to receive pursuant to this Section 2.12 shall be conclusive absent manifest error. Borrower shall pay such amount to Administrative Agent or the Lender, as applicable, within 30 days of the date of its receipt of such certificate. If a payment of a LIBOR Rate Loan on a day other than the last day of the applicable Interest Period would result in a Funding Loss, Administrative Agent may, in its sole discretion at the request of Borrower, hold the amount of such payment as cash collateral in support of the Obligations until the last day of such Interest Period and apply such amounts to the payment of the applicable LIBOR Rate Loan on such last day, it being agreed that Administrative Agent has no obligation to so defer the application of payments to any LIBOR Rate Loan and that, in the event that Administrative Agent does not defer such application, Borrower shall be obligated to pay any resulting Funding Losses.

(iii) Borrower shall have not more than six LIBOR Rate Loans in effect at any given time. Borrower only may exercise the LIBOR Option for proposed LIBOR Rate Loans of at least \$1,000,000.

(c) **Conversion.** Borrower may convert LIBOR Rate Loans to Base Rate Loans at any time; provided, however, that in the event that LIBOR Rate Loans are converted or prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any automatic prepayment through the required application by Administrative Agent of proceeds of Borrower's and its Subsidiaries' Collections in accordance with Section 2.4(b) or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, Borrower shall indemnify, defend, and hold Administrative Agent and the Lenders and their Participants harmless against any and all Funding Losses in accordance with Section 2.12 (b)(ii).

(d) Special Provisions Applicable to LIBOR Rate.

(i) The LIBOR Rate may be adjusted by Administrative Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (but without duplication of any of Borrower's obligations under Section 16 and in any event excluding changes in the imposition of, or any change in the rate of, income or similar taxes applicable to such Lender) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), excluding the Reserve Percentage, which additional or increased costs would increase the cost of funding or maintaining loans bearing interest at the LIBOR Rate. In any such event, the affected Lender shall give Borrower and Administrative Agent notice of such a determination and adjustment and Administrative Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrower may, by notice to such affected Lender (y) require such Lender to furnish to Borrower a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (z) repay the LIBOR Rate Loans with respect to which such adjustment is made (together with any amounts due under Section 2.12(b)(ii)).

(ii) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation or application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain LIBOR Rate Loans or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Administrative Agent, and Borrower and Administrative Agent promptly shall transmit the notice to each other Lender and (y) in the case of any LIBOR Rate Loans of such Lender that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such LIBOR Rate Loans, and interest upon the LIBOR Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to Base Rate Loans, and (z) Borrower shall not be entitled to elect the LIBOR Option until such Lender determines that it would no longer be unlawful or impractical to do so.

(e) **No Requirement of Matched Funding.** Anything to the contrary contained herein notwithstanding, neither Administrative Agent, nor any Lender, nor any of their Participants, is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues at the LIBOR Rate.

2.13 **Capital Requirements.**

(a) If, after the date hereof, any Lender determines that (i) the adoption of or change in any law, rule, regulation or guideline regarding capital requirements for banks or bank holding companies, or any change in the interpretation or application thereof by any Governmental Authority charged with the administration thereof, or (ii) compliance by such Lender or its parent bank holding company with any guideline, request or directive of any such entity regarding capital adequacy (whether or not having the force of law), has the effect of reducing the return on such Lender's or such holding company's capital as a consequence of such Lender's Commitments hereunder to a level below that which such Lender or such holding company could have achieved but for such adoption, change, or compliance (taking into consideration such Lender's or such holding company's then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount deemed by such Lender to be material, then such Lender may notify Borrower and Administrative Agent thereof. Following receipt of such notice, Borrower agrees to pay such Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable within 30 days after presentation by such Lender of a statement in the amount and setting forth in reasonable detail such Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, such Lender may use any reasonable averaging and attribution methods. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that Borrower shall not be required to compensate a Lender pursuant to this Section for any reductions in return incurred more than 180 days prior to the date that such Lender notifies Borrower of such law, rule, regulation or guideline giving rise to such reductions and of such Lender's intention to claim compensation therefor; provided further that if such claim arises by reason of the adoption of or change in any law, rule, regulation or guideline that is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(b) If any Lender requests additional or increased costs referred to in Section 2.12(d)(i) or amounts under Section 2.13(a) (any such Lender, an "Affected Lender"), then such Affected Lender shall use reasonable efforts to promptly designate a different one of its lending offices or to assign its rights and obligations hereunder to another of its offices or branches, if (i) in the reasonable judgment of such Affected Lender, such designation or assignment would eliminate or reduce amounts payable pursuant to Section 2.12(d)(i) or Section 2.13(a), as applicable, and (ii) in the reasonable judgment of such Affected Lender, such designation or

assignment would not subject it to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to it. Borrower agrees to pay all reasonable out-of-pocket costs and expenses incurred by such Affected Lender in connection with any such designation or assignment. If, after such reasonable efforts, such Affected Lender does not so designate a different one of its lending offices or assign its rights to another of its offices or branches so as to eliminate Borrower's obligation to pay any future amounts to such Affected Lender pursuant to Section 2.12(d)(i) or Section 2.13(a), as applicable, then Borrower (without prejudice to any amounts then due to such Affected Lender under Section 2.12(d)(i) or Section 2.13(a), as applicable) may, unless prior to the effective date of any such assignment the Affected Lender withdraws its request for such additional amounts under Section 2.12(d)(i) or Section 2.13(a), as applicable, may seek a substitute Lender reasonably acceptable to Administrative Agent to purchase the Obligations owed to such Affected Lender and such Affected Lender's Commitments hereunder (a "Replacement Lender"), and if such Replacement Lender agrees to such purchase, such Affected Lender shall assign to the Replacement Lender its Obligations and Commitments, pursuant to an Assignment and Acceptance Agreement, and upon such purchase by the Replacement Lender, such Replacement Lender shall be deemed to be a "Lender" for purposes of this Agreement and such Affected Lender shall cease to be a "Lender" for purposes of this Agreement.

3 **CONDITIONS; TERM OF AGREEMENT.**

3.1 **Conditions Precedent to the Initial Extension of Credit.** The obligation of each Lender (including the Issuing Lender) to make its initial extension of credit provided for hereunder is subject to the fulfillment, to the reasonable satisfaction of Administrative Agent and each Lender of each of the conditions precedent set forth on Schedule 3.1 (the making of such initial extension of credit by a Lender being conclusively deemed to be its satisfaction or waiver of the conditions precedent).

3.2 **Conditions Precedent to all Extensions of Credit.** The obligation of the Lender Group (or any member thereof) to make any Advances hereunder (or to extend any other credit hereunder, including the issuance, amendment, renewal or extension of any Letter of Credit) at any time shall be subject to the following conditions precedent:

(a) the representations and warranties of Borrower and its Subsidiaries contained in this Agreement or in the other Loan Documents shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date);

(b) since March 31, 2009, no event, circumstance, or change has occurred that has or could reasonably be expected to result in a Material Adverse Change; and

(c) no Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof.

3.3 **Maturity.** This Agreement shall continue in full force and effect for a term ending on July 1, 2012 (the "Maturity Date"). The foregoing notwithstanding, the Lender Group, upon the election of the Required Lenders, shall have the right to terminate its obligations under this Agreement immediately and without notice upon the occurrence and during the continuation of an Event of Default.

3.4 **Effect of Maturity/Termination.** On the Maturity Date or other termination of the Commitments, (a) all commitments to provide additional credit hereunder shall automatically be terminated, (b) all Obligations (other than contingent reimbursement

obligations of Borrower with respect to outstanding Letters of Credit and Bank Product Obligations) immediately shall become due and payable without notice or demand, and (c) Borrower shall provide (i) Letter of Credit Collateralization with respect to all outstanding Letters of Credit, and (ii) Bank Product Collateralization to the extent contemplated in the definition thereof and in Section 17.5(c). No termination of the obligations of the Lender Group shall relieve or discharge any Loan Party of its duties, Obligations, or covenants hereunder or under any other Loan Document and Administrative Agent's Liens in the Collateral shall remain in effect until all Obligations (other than contingent reimbursement obligations of Borrower with respect to Letters of Credit and Bank Product Obligations) have been paid in full and Borrower has provided all Letter of Credit Collateralization and Bank Product Collateralization described above. When all of the Obligations (other than contingent reimbursement obligations of Borrower with respect to Letters of Credit and Bank Product Obligations) have been paid in full, the Lender Group's obligations to provide additional credit under the Loan Documents have been terminated irrevocably, and Borrower has provided all Letter of Credit Collateralization and Bank Product Collateralization described above, Administrative Agent will, at Borrower's sole expense, execute and deliver any termination statements, lien releases, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary to release, as of record, Administrative Agent's Liens and all notices of security interests and liens previously filed by Administrative Agent with respect to the Obligations.

3.5 **Conditions Subsequent.** The obligation of the Lender Group (or any member thereof) to continue to make Advances (or otherwise extend credit hereunder) is subject to the fulfillment, on or before the date applicable thereto, of the conditions subsequent set forth on Schedule 3.5 (the failure by Borrower to so perform or cause to be performed such conditions subsequent as and when required by the terms thereof, shall constitute an immediate Event of Default).

3.6 **Early Termination by Borrower.** Borrower has the option, at any time upon 10 Business Days prior written notice to Administrative Agent, to terminate this Agreement and the other Loan Documents and to terminate the Commitments hereunder by paying to Administrative Agent the Obligations (including (a) providing Letter of Credit Collateralization with respect to the then outstanding Letters of Credit, and (b) providing Bank Product Collateralization to the extent contemplated in the definition thereof and in Section 17.5(c)) in full.

4 REPRESENTATIONS AND WARRANTIES.

In order to induce the Lender Group to enter into this Agreement, Borrower makes the following representations and warranties to the Lender Group which shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the Closing Date, and shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the date of the making of each Advance (or other extension of credit) made thereafter, as though made on and as of the date of such Advance (or other extension of credit) (except to the extent, in each case, that such representations and warranties relate solely to an earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement:

4.1 **Due Organization and Qualification; Subsidiaries.**

(a) Each Loan Party (i) is duly organized and existing and in good standing under the laws of the jurisdiction of its organization, (ii) qualified to do business in any state where the failure to be so qualified reasonably could be expected to result in a

Material Adverse Change, and (iii) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

(b) Set forth on Schedule 4.1(b) is a complete and accurate description of the issued and outstanding membership interests of Borrower as of the Closing Date. Other than as described on Schedule 4.1(b) or created pursuant to the Joint Venture Documents, there are no subscriptions, options, warrants, or calls relating to Borrower's membership interests, including any right of conversion or exchange under any outstanding security or other instrument. Other than as created pursuant to the Joint Venture Documents, Borrower is not subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire any of its membership interests or any security convertible into or exchangeable for any of its membership interests.

(c) Set forth on Schedule 4.1(c) (as such Schedule may be updated from time to time to reflect changes permitted to be made under Section 5.11 or with respect to other changes relating to the matters described in clauses (i) and (ii) below that are not materially adverse to the interests of the Lenders), is a complete and accurate list of the Loan Parties' direct and indirect Subsidiaries, showing: (i) the number of shares of each class of common and preferred Stock authorized for each of such Subsidiaries, and (ii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by Borrower. All of the outstanding capital Stock of each such Subsidiary has been validly issued and is fully paid and non-assessable.

(d) Except as set forth on Schedule 4.1(c) or created pursuant to the Joint Venture Documents, there are no subscriptions, options, warrants, or calls relating to any shares of Borrower's Subsidiaries' capital Stock, including any right of conversion or exchange under any outstanding security or other instrument. Neither Borrower nor any of its Subsidiaries is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of Borrower's Subsidiaries' capital Stock or any security convertible into or exchangeable for any such capital Stock.

4.2 Due Authorization; No Conflict.

(a) As to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party have been duly authorized by all necessary action on the part of such Loan Party.

(b) As to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party do not and will not (i) violate any material provision of federal, state, or local law or regulation applicable to any Loan Party or its Subsidiaries, the Governing Documents of any Loan Party or its Subsidiaries, or any order, judgment, or decree of any court or other Governmental Authority binding on any Loan Party or its Subsidiaries, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any Material Contract of any Loan Party or its Subsidiaries except to the extent that any such conflict, breach or default could not individually or in the aggregate reasonably be expected to have a Material Adverse Change, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any assets of any Loan Party, other than Permitted Liens, or (iv) require any approval of any Loan Party's interestholders or any approval or consent of any Person under any Material Contract of any Loan Party, other than consents or approvals that have been obtained and that are still in force and effect and except, in the case of Material Contracts, for consents or approvals, the failure to obtain could not individually or in the aggregate reasonably be expected to cause a Material Adverse Change.

4.3 Governmental Consents. The execution, delivery, and performance by each Loan Party of the Loan Documents to which such Loan Party is a party and the consummation of the transactions contemplated by the Loan Documents do not and will not require any registration with, consent, or approval of, or notice to, or other action with or by, any Governmental Authority, other than registrations, consents, approvals, notices, or other actions that have been obtained and that are still in force and effect and except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Administrative Agent for filing or recordation, as of the Closing Date, except to the extent that the failure to obtain any of the foregoing could not reasonably be expected to cause, individually or in the aggregate, a Material Adverse Change.

4.4 Binding Obligations; Perfected Liens.

(a) 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 a party thereto and this Agreement is, and each other Loan Document when delivered hereunder will be, the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

(b) Administrative Agent's Liens on the Collateral pursuant to the Loan Documents which have been delivered hereunder are validly created and perfected to the extent a security interest may be created pursuant to Article 9 of the Code (subject to the filing of financing statements), and are first priority Liens, subject only to Permitted Liens and the matters described in Schedule 3.5.

4.5 Title to Assets; No Encumbrances. Each of the Loan Parties and its Subsidiaries has (i) good, sufficient and legal title to (in the case of fee interests in Real Property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (iii) good and marketable title to (in the case of all other personal property), all of their respective assets reflected in their most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of since the date of such financial statements to the extent permitted hereby (or, in the case of financial statements with respect to periods prior to the Closing Date, as disposed of pursuant to the Joint Venture Documents) and, except to the extent the failure to obtain the same could not reasonably be expected to cause, individually or in the aggregate, a Material Adverse Change. All of such assets are free and clear of Liens except for Permitted Liens.

4.6 Jurisdiction of Organization; Location of Chief Executive Office; Organizational Identification Number; Commercial Tort Claims.

(a) The name of (within the meaning of Section 9-503 of the Code) and jurisdiction of organization of each Loan Party and each of its Subsidiaries is set forth on Schedule 4.6(a) (as such Schedule may be updated from time to time to reflect changes permitted to be made under Section 6.5).

(b) The chief executive office of each Loan Party and each of its Subsidiaries is located at the address indicated on Schedule 4.6(b) (as such Schedule may be updated from time to time to reflect changes permitted to be made under Section 5.15).

(c) Each Loan Party's and each of its Subsidiaries' tax identification numbers and organizational identification numbers, if any, are identified on Schedule 4.6(c) (as such Schedule may be updated from time to time to reflect changes permitted to be made under Section 6.5).

4.7 Litigation.

(a) There are no actions, suits, or proceedings pending or, to the best knowledge of Borrower, threatened in writing against a Loan Party or any of its Subsidiaries that either individually or in the aggregate could reasonably be expected to result in a Material Adverse Change.

(b) Schedule 4.7(b), sets forth a description, with respect to each of the actions, suits, or proceedings with asserted liabilities in excess of, or that could reasonably be expected to result in liabilities in excess of, \$2,000,000 that, as of the Closing Date, is pending or, to the best knowledge of Borrower, threatened against a Loan Party or any of its Subsidiaries.

4.8 Compliance with Laws. No Loan Party nor any of its Subsidiaries (a) is in violation of any applicable laws, rules, regulations, executive orders, or codes (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

4.9 Financial Statements.

(a) As of the Closing Date, the financial statements relating to Comfort Products Distributing LLC, a Delaware limited liability company (“Comfort Products”), that have been delivered by Borrower to Administrative Agent are the “Comfort Products Financial Statements” as defined in Section 4.09(a) of the Joint Venture Agreement and (i) have been prepared from the books and records of Comfort Products in accordance with GAAP consistently applied during the periods covered thereby (except (A) as otherwise disclosed therein and (B) for failures to be so prepared that would not result in an unfair presentation of the financial position and the results of operations of Comfort Products) and (ii) fairly present in all material respects the financial position and the results of operations of Comfort Products as of the dates and during the periods therein.

(b) As of the Closing Date, the financial statements relating to Borrower and the Division Entities that have been delivered by Borrower to Administrative Agent are the “Financial Statements” as defined in Section 3.08(a) of the Joint Venture Agreement and (i) have been prepared from the books and records of the Borrower and the Division Entities (except (A) as otherwise disclosed therein and (B) for failures to be so prepared that would not result in an unfair presentation of the financial position and the results of operations of the Borrower and the Division Entities, in the aggregate, on the basis of presentation outlined in the Financial Statements); (ii) have been prepared in the manner set forth in Financial Statements; and (iii) fairly present in all material respects the financial position and the results of operations of Borrower and the Division Entities, in the aggregate, on the basis of presentation outlined in the Financial Statements.

(c) All historical financial statements relating to the Loan Parties and their Subsidiaries (except in all cases, the financial statements referenced in the foregoing Sections 4.9(a) and 4.9(b)) that have been delivered by Borrower to Administrative Agent have been prepared in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and present fairly in all material respects, the Loan Parties’ and their Subsidiaries’ consolidated financial condition as of the date thereof and results of operations for the period then ended.

4.10 Fraudulent Transfer.

(a) Each Loan Party is Solvent.

(b) No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

4.11 **Employee Benefits.** 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 Change.

4.12 **Environmental Condition.** Except as set forth on Schedule 4.12, (a) to Borrower's knowledge, no Loan Party's or its Subsidiaries' properties or assets has ever been used by a Loan Party, its Subsidiaries, or, to Borrower's knowledge, by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, except to the extent such violation would not reasonably be expected to be material to the Borrower and its Subsidiaries, taken as a whole, (b) to Borrower's knowledge, no Loan Party's or its Subsidiaries' properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site, (c) no Loan Party nor any of its Subsidiaries nor any of their respective facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law or Environmental Liability that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

4.13 **Intellectual Property.** Each Loan Party and its Subsidiaries own, or hold licenses in, all trademarks, trade names, copyrights, patents, and licenses that are necessary to the conduct of its business as currently conducted, and attached hereto as Schedule 4.13 (as updated from time to time) is a true, correct, and complete (in all material respects) listing of all material trademarks, trade names, copyrights, patents, and licenses of Borrower or one of its Subsidiaries registered with any Governmental Authority; provided, however, that Borrower may amend Schedule 4.13 to add intellectual property acquired after the Closing Date so long as such amendment occurs by written notice to Administrative Agent at the time that Borrower provides its quarterly financial statements pursuant to Section 5.1.

4.14 **Leases.** Each Loan Party and its Subsidiaries enjoy peaceful and undisturbed possession under all leases material to their business and to which they are parties or under which they are operating, and, subject to Permitted Protests, all of such material leases are valid and subsisting and no material default by the applicable Loan Party or its Subsidiaries exists under any of them, except to the extent any impairment under such leases could not reasonably be expected to cause, individually or in the aggregate, a Material Adverse Change.

4.15 **Deposit Accounts and Securities Accounts.** Set forth on Schedule 4.15 (as updated pursuant to the provisions of the Security Agreement from time to time) is a listing of all of the Loan Parties' and their Subsidiaries' Deposit Accounts and Securities Accounts, including, with respect to each bank or securities intermediary (a) the name and address of such Person, and (b) the account numbers of the Deposit Accounts or Securities Accounts maintained with such Person.

4.16 **Complete Disclosure.** All factual information (taken as a whole) furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Administrative Agent or any Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement, the other Loan Documents, or any transaction contemplated herein or therein is, and all other such factual information (taken as a whole) hereafter furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Administrative Agent or any Lender will be, true and accurate, in all material respects, on

the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided. The Projections that were most recently delivered to Administrative Agent (and were accepted by Administrative Agent) prior to the Closing Date represent Borrower's good faith estimate as of the Closing Date of the Loan Parties' and their Subsidiaries future performance for the periods covered thereby based upon assumptions believed by Borrower to be reasonable as of the Closing Date (it being understood that such Projections are subject to uncertainties and contingencies which are beyond the control of the Loan Parties and their Subsidiaries, and no assurances can be given that such Projections will be realized). As of the date on which any other Projections are delivered to Administrative Agent, such additional Projections represent Borrower's good faith estimate of the Loan Parties' and their Subsidiaries future performance for the periods covered thereby based upon assumptions believed by Borrower to be reasonable at the time of the delivery thereof to Administrative Agent (it being understood that such Projections are subject to uncertainties and contingencies which are beyond the control of the Loan Parties and their Subsidiaries, and no assurances can be given that such Projections will be realized).

4.17 **Material Contracts.** Set forth on Schedule 4.17 is a list of the Material Contracts of each Loan Party and its Subsidiaries as of the Closing Date. Except for matters which, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change, each Material Contract (other than those that have expired at the end of their normal terms, including those entered into or amended after the Closing Date) (a) is in full force and effect and is binding upon and enforceable against the applicable Loan Party or its Subsidiary and, to Borrower's knowledge, each other Person that is a party thereto in accordance with its terms, (b) has not been otherwise amended or modified (other than amendments or modifications permitted by Section 6.7(b)), and (c) is not in default due to the action or inaction of the applicable Loan Party or its Subsidiary.

4.18 **Patriot Act.** To the extent applicable, each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "Patriot Act"). No part of the proceeds of the loans made hereunder will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

4.19 **Indebtedness.** Set forth on Schedule 4.19 is a true and complete list of all material Indebtedness of each Loan Party and each of its Subsidiaries outstanding immediately prior to the Closing Date that is to remain outstanding after the Closing Date and such Schedule accurately sets forth the aggregate principal amount of such Indebtedness as of the Closing Date.

4.20 **Payment of Taxes.** Except as otherwise permitted under Section 5.5 or not material to Borrower and its Subsidiaries, taken as a whole, all tax returns and reports of each Loan Party and its Subsidiaries required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon a Loan Party and its Subsidiaries and upon their respective assets, income, businesses and franchises that are due and payable have been paid when due and payable. Each Loan Party and each of its Subsidiaries have made adequate provision in accordance with GAAP for all taxes not yet due and payable. No Loan Party nor any of its Subsidiaries has ever been a party to any understanding or arrangement constituting a "tax shelter" within the meaning of Section 6662(d)(2)(C)(iii) of the IRC or within the meaning of

Section 6111(c) or Section 6111(d) of the IRC as in effect immediately prior to the enactment of the American Jobs Creation Act of 2004, or has ever “participated” in a “reportable transaction” within the meaning of Treasury Regulation Section 1.6011-4, except as would not be reasonably expected to, individually or in the aggregate, result in a Material Adverse Change.

4.21 **Margin Stock.** No Loan Party nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the loans made to Borrower will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of said Board of Governors.

4.22 **Governmental Regulation.** No Loan Party nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. No Loan Party nor any of its Subsidiaries is a “registered investment company” or a company “controlled” by a “registered investment company” or a “principal underwriter” of a “registered investment company” as such terms are defined in the Investment Company Act of 1940.

4.23 **OFAC.** No Loan Party nor any of its Subsidiaries is in violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC. No Loan Party nor any of its Subsidiaries (a) is a Sanctioned Person or a Sanctioned Entity, (b) has more than 10% of its assets located in Sanctioned Entities, or (c) derives more than 10% of its revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. The proceeds of any Advance will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity.

4.24 **Employee and Labor Matters.** Except as such could not reasonably be expected to cause, individually or in the aggregate, a Material Adverse Change, there is (i) no unfair labor practice complaint pending or, to the knowledge of Borrower, threatened in writing against Borrower or its Subsidiaries before any Governmental Authority and no grievance or arbitration proceeding pending or, to the knowledge of the Borrower, threatened in writing against Borrower or its Subsidiaries which arises out of or under any collective bargaining agreement or (ii) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or, to the knowledge of the Borrower, threatened in writing against Borrower or its Subsidiaries.

4.25 **Joint Venture Documents.**

(a) Borrower has delivered to Administrative Agent a complete and correct copy of the Joint Venture Documents, including all schedules and exhibits thereto.

(b) As of the Closing Date, the Joint Venture Transaction has been consummated in all material respects in accordance with the Joint Venture Documents and all applicable laws. As of the Closing Date, all requisite approvals by Governmental Authorities having jurisdiction over Borrower and its Affiliates with respect to the Joint Venture Transaction have been obtained (including filings or approvals required under the Hart-Scott-Rodino Antitrust Improvements Act), except for any approval the failure to obtain could not reasonably be expected to be materially adverse to the interests of the Lenders. As of the Closing Date, after giving effect to the transactions contemplated by the Joint Venture Documents, Borrower will have good title to the Joint Venture Assets, except to the extent the failure to obtain the same could not reasonably be expected to cause, individually or in the aggregate, a Material Adverse Change. All of such Joint Venture Assets are free and clear of Liens except for Permitted Liens.

5 **AFFIRMATIVE COVENANTS.**

Borrower covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations, the Loan Parties shall and shall cause each of their Subsidiaries to comply with each of the following:

5.1 **Financial Statements, Reports, Certificates.** Deliver to Administrative Agent each of the financial statements, reports, and other items set forth on Schedule 5.1 at the times specified therein. In addition, Borrower agrees that no Subsidiary of a Loan Party will have a fiscal year different from that of Borrower. In addition, Borrower agrees to maintain a system of accounting that enables Borrower to produce financial statements in accordance with GAAP.

5.2 **Collateral Reporting.** Provide Administrative Agent with each of the reports set forth on Schedule 5.2 at the times specified therein.

5.3 **Existence.** Except as otherwise permitted under Section 6.3 at all times maintain and preserve in full force and effect its existence and except to the extent that the failure to maintain and preserve the same could not, individually or in the aggregate, reasonably be expected to cause a Material Adverse Change, all rights and franchises, licenses and permits material to its business.

5.4 **Maintenance of Properties.** Maintain and preserve all of its assets that are necessary in the proper conduct of its business in good working order and condition, ordinary wear, tear and casualty, and Permitted Dispositions, excepted, and comply with the material provisions of all material leases to which it is a party as lessee so as to prevent the loss or forfeiture thereof, unless such provisions are the subject of a Permitted Protest.

5.5 **Taxes.** Cause all assessments and taxes imposed, levied, or assessed against any Loan Party or its Subsidiaries, or any of their respective assets or in respect of any of its income, businesses, or franchises to be paid in full, before delinquency or before the expiration of any extension period, except to the extent that the validity of such assessment or tax shall be the subject of a Permitted Protest and so long as, in the case of an assessment or tax that has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such assessment or tax. Borrower will and will cause each of its Subsidiaries to make timely payment or deposit of all tax payments and withholding taxes required of it and them by applicable laws, including those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Administrative Agent with proof reasonably satisfactory to Administrative Agent indicating that Borrower and its Subsidiaries have made such payments or deposits.

5.6 **Insurance.** At Borrower's expense, maintain insurance respecting each of the Loan Parties' and their Subsidiaries' assets wherever located, covering loss or damage by fire, theft, explosion, and all other hazards and risks as ordinarily are insured against by other Persons engaged in the same or similar businesses. Borrower also shall maintain (with respect to each of the Loan Parties and their Subsidiaries) business interruption, general liability, product liability insurance, director's and officer's liability insurance, fiduciary liability insurance, and employment practices liability insurance, as well as insurance against larceny, embezzlement, and criminal misappropriation. All such policies of insurance shall be with responsible and reputable insurance companies acceptable to Administrative Agent and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located. All property insurance policies covering the Collateral are to be made payable to

Administrative Agent, as its interests may appear, in case of loss, pursuant to a standard loss payable endorsement with a standard non contributory “lender” or “secured party” clause and are to contain such other provisions as Administrative Agent may reasonably require to fully protect its interest in the Collateral and to any payments to be made under such policies. All certificates of property and general liability insurance are to be delivered to Administrative Agent, with the loss payable (but only in respect of Collateral) and additional insured endorsements in favor of Administrative Agent and shall provide for not less than 30 days (10 days in the case of non-payment) prior written notice to Administrative Agent of the exercise of any right of cancellation. If Borrower fails to maintain such insurance, Administrative Agent may arrange for such insurance, but at Borrower’s expense and without any responsibility on Administrative Agent’s part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims, and will give notice to Borrower if Administrative Agent has done so. Borrower shall give Administrative Agent prompt notice of any loss exceeding \$3,000,000 covered by its casualty or business interruption insurance. Upon the occurrence and during the continuance of an Event of Default, Administrative Agent shall have the sole right to file claims under any property insurance policies in respect of the Collateral, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

5.7 **Inspection.** Permit Administrative Agent and/or any Lender, and each of their respective duly authorized representatives or agents, to visit any of its properties and inspect and audit any of its assets or books and records, to conduct appraisals, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees at such reasonable times and intervals as Administrative Agent and/or any Lender may designate and, so long as no Event of Default exists, with reasonable prior notice to Borrower.

5.8 **Compliance with Laws.** Comply with the requirements of all applicable laws, rules, regulations, and orders of any Governmental Authority, other than laws, rules, regulations, and orders the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change.

5.9 **Environmental.**

(a) Keep any property either owned or operated by Borrower or its Subsidiaries free of any Environmental Liens or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Environmental Liens,

(b) comply with Environmental Laws except to the extent that non-compliance therewith, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change,

(c) promptly notify Administrative Agent of any release of which Borrower has knowledge of a Hazardous Material in any reportable quantity from or onto property owned or operated by Borrower or its Subsidiaries and take any Remedial Actions required by applicable Environmental Law to abate said release or otherwise to come into compliance with applicable Environmental Law, to the extent failure to so comply could reasonably be expected to result in a Material Adverse Change, and

(d) promptly, but in any event within 30 days of its receipt thereof, provide Administrative Agent with written notice of any of the following:

(i) written notice that an Environmental Lien has been filed against any of the real or personal property of Borrower or its Subsidiaries, (ii) commencement of any Environmental Action or written notice that an Environmental Action will be

filed against Borrower or its Subsidiaries, and (iii) written notice of a violation, citation, or other administrative order issued pursuant to any applicable Environmental Law which could reasonably be expected to result in a Material Adverse Change.

5.10 **Disclosure Updates.** Promptly and in no event later than 30 days after obtaining knowledge thereof, notify Administrative Agent if any written information, exhibit, or report furnished to the Lender Group contained, at the time it was furnished, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances in which made. The foregoing to the contrary notwithstanding, any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto.

5.11 **Formation of Subsidiaries.** At the time that any Loan Party forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Closing Date, such Loan Party shall (a) within 30 days of such formation or acquisition cause any such new Subsidiary to provide to Administrative Agent a joinder to the Guaranty and the Security Agreement, together with such other security documents, as well as appropriate financing statements, all in form and substance reasonably satisfactory to Administrative Agent (including being sufficient to grant Administrative Agent a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary); provided that the Guaranty, the Security Agreement, and such other security documents shall not be required to be provided to Administrative Agent with respect to any Subsidiary of Borrower that is a Foreign Subsidiary, (b) within 30 days of such formation or acquisition (or such later date as permitted by Administrative Agent in its sole discretion) provide to Administrative Agent a pledge agreement and appropriate certificates and powers or financing statements, hypothecating all of the direct or beneficial ownership interest in such new Subsidiary reasonably satisfactory to Administrative Agent; provided that only 65% of the total outstanding voting Stock of any first tier Subsidiary of Borrower that is a Foreign Subsidiary and none of the total outstanding voting Stock of any other Subsidiary of such Foreign Subsidiary shall be required to be pledged, and (c) within 30 days of such formation or acquisition (or such later date as permitted by Administrative Agent in its sole discretion) provide to Administrative Agent all other documentation, including one or more opinions of counsel reasonably satisfactory to Administrative Agent, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above. Any document, agreement, or instrument executed or issued pursuant to this Section 5.11 shall be a Loan Document.

5.12 **Further Assurances.** At any time upon the reasonable request of Administrative Agent, execute or deliver to Administrative Agent any and all financing statements, fixture filings, security agreements, pledges, assignments, endorsements of certificates of title, opinions of counsel, and all other documents (collectively, the "Additional Documents") that Administrative Agent may reasonably request in form and substance reasonably satisfactory to Administrative Agent, to create, perfect, and continue perfected or to better perfect Administrative Agent's Liens in all of the personal property of Borrower and its Subsidiaries (whether now owned or hereafter arising or acquired, tangible or intangible), and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents; provided that the foregoing shall not apply to any Subsidiary of Borrower that is a Foreign Subsidiary. To the maximum extent permitted by applicable law, Borrower authorizes Administrative Agent to execute any such Additional Documents in the applicable Loan Party's or its Subsidiary's name, as applicable, and authorizes Administrative Agent to file such executed Additional Documents in any appropriate filing office; provided, that Administrative Agent shall provide Borrower with prompt notice if Administrative Agent has done so. In furtherance and not in limitation of the foregoing, each Loan Party shall take such actions as Administrative Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the personal property of Borrower and its Subsidiaries and all of the outstanding capital Stock of Borrower's Subsidiaries (subject to limitations contained in the Loan Documents with respect to Foreign Subsidiaries).

5.13 **Lender Meetings.** Within 90 days after the close of each fiscal year of Borrower, at the request of Administrative Agent or of the Required Lenders and upon reasonable prior notice, hold a meeting (at a mutually agreeable location and time or, at the option of Administrative Agent, by conference call) with all Lenders who choose to attend such meeting at which meeting shall be reviewed the financial results of the previous fiscal year and the financial condition of Borrower and its Subsidiaries and the projections presented for the current fiscal year of Borrower.

5.14 **Material Contracts.** Contemporaneously with the delivery of (a) each Compliance Certificate pursuant hereto, provide Administrative Agent with copies of (i) each Material Contract of the type described in clause (b) of the definition of "Material Contract" entered into since the delivery of the previous Compliance Certificate, and (ii) each material amendment or modification of any such Material Contract entered into since the delivery of the previous Compliance Certificate, and (b) each Compliance Certificate pursuant hereto with respect to the fiscal year end of Borrower, provide Administrative Agent with copies of (i) each Material Contract of the type described in clause (a) of the definition of "Material Contract" entered into since the delivery of the previous fiscal year end Compliance Certificate, and (ii) each material amendment or modification of any such Material Contract entered into since the delivery of the previous fiscal year end Compliance Certificate.

5.15 **Location of Inventory and Equipment.** Keep each Loan Parties' and its Subsidiaries' Inventory and Equipment (other than vehicles and Equipment out for repair) only at locations previously disclosed in writing to Administrative Agent and their chief executive offices only at the locations identified on Schedule 4.6(b); provided, however, that Borrower may amend Schedule 4.6(b) so long as such amendment occurs by written notice to Administrative Agent not less than 10 days prior to the date on which such chief executive office is relocated and so long as such new location is within the continental United States, and so long as, at the time of such written notification, Borrower provides Administrative Agent a Collateral Access Agreement with respect thereto.

6 **NEGATIVE COVENANTS.**

Borrower covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations, the Loan Parties will not and will not permit any of their Subsidiaries to do any of the following:

6.1 **Indebtedness.** Create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except for Permitted Indebtedness.

6.2 **Liens.** Create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens. Nothing contained in this Section or elsewhere in this Agreement shall restrict Borrower or any of its Subsidiaries from taking actions in the ordinary course of their business to protect their rights under applicable mechanic's and materialmen's, supplier, and other similar Lien statutes and laws with respect to Inventory sold by Borrower and its Subsidiaries to customers and the resulting Accounts.

6.3 **Restrictions on Fundamental Changes.**

(a) Other than in order to consummate a Permitted Acquisition, enter into any merger, consolidation, reorganization, or recapitalization, or reclassify its Stock, except for (i) any merger between Loan Parties or between a Loan Party and a Subsidiary of any Loan Party, provided that (A) Borrower must be the surviving entity of any such merger to which it is a party and (B) any Loan Party (other than Borrower) must be the surviving entity of any such merger to which it is a party, and (ii) any merger between Subsidiaries of Borrower that are not Loan Parties,

(b) Liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution), except for (i) the liquidation or dissolution of non-operating Subsidiaries of Borrower with nominal assets and nominal liabilities, (ii) the liquidation or dissolution of a Loan Party (other than Borrower) or any of its Subsidiaries so long as all of the assets (including any interest in any Stock) of such liquidating or dissolving Loan Party or Subsidiary are transferred to a Loan Party that is not liquidating or dissolving, or (iii) the liquidation or dissolution of a Subsidiary of Borrower that is not a Loan Party (other than any such Subsidiary the Stock of which (or any portion thereof) is subject to a Lien in favor of Administrative Agent) so long as all of the assets of such liquidating or dissolving Subsidiary are transferred to a Subsidiary of Borrower that is not liquidating or dissolving, or

(c) Suspend or go out of a substantial portion of its or their business, except as permitted pursuant to clauses (a) or (b) above or in connection with the transactions permitted pursuant to Section 6.4.

6.4 **Disposal of Assets.** Other than Permitted Dispositions, Permitted Investments, or transactions expressly permitted by Sections 6.3 and 6.11, convey, sell, lease, license, assign, transfer, or otherwise dispose of (or enter into an agreement to convey, sell, lease, license, assign, transfer, or otherwise dispose of) any of Borrower's or its Subsidiaries assets.

6.5 **Change of Name.** Change Borrower's or any of other Loan Parties' name, organizational identification number, state of organization or organizational identity; provided, however, that Borrower or any other Loan Party may change its name upon at least 10 days prior written notice to Administrative Agent of such change.

6.6 **Nature of Business.** Borrower will not, and will not permit any of its Subsidiaries to, engage to any material extent in any business other than of the type conducted by Borrower and its Subsidiaries on the date hereof and businesses reasonably related thereto.

6.7 **Prepayments and Amendments.**

(a) Except in connection with Refinancing Indebtedness permitted by Section 6.1, make any payment on account of Indebtedness that has been contractually subordinated in right of payment if such payment is not permitted at such time under the subordination terms and conditions.

(b) Directly or indirectly, amend, modify, change or waive any of the terms or provisions of

(i) any agreement, instrument, document, indenture, or other writing evidencing or concerning Permitted Indebtedness other than (A) the Obligations in accordance with this Agreement, (B) Permitted Intercompany Advances, and (C) Permitted Indebtedness so long as such Indebtedness continues to qualify as Permitted Indebtedness hereunder,

(ii) any Material Contract except to the extent that such amendment, modification, change or waiver could not, in the aggregate, reasonably be expected to result in a Material Adverse Change, or

(iii) the Governing Documents of any Loan Party or any of its Subsidiaries if the effect thereof, either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

6.8 **Change of Control.** Cause, permit, or suffer, directly or indirectly, any Change of Control.

6.9 **Restricted Distributions.** Make any Restricted Distribution, except for Permitted Distributions.

6.10 **Accounting Methods.** Modify or change its fiscal year or its method of accounting (other than as may be required to conform to GAAP or in connection with the Initial Accounting Changes).

6.11 **Investments.** Except for Permitted Investments, directly or indirectly make or acquire any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment. Without limitation of the foregoing, but subject to the post-closing period provided to Borrower pursuant to the terms of Schedule 3.5, (a) Borrower and the other Loan Parties shall not have Permitted Investments consisting of cash, Cash Equivalents, or amounts credited to Deposit Accounts or Securities Accounts, unless Borrower or the other Loan Party, as applicable, and the applicable bank or securities intermediary, have entered into Control Agreements with Administrative Agent governing such Permitted Investments in order to perfect (and further establish) Administrative Agent's Liens in such Permitted Investments, and (b) Borrower shall not and shall not permit any other Loan Party to establish or maintain any Deposit Account or Securities Account unless Administrative Agent shall have received a Control Agreement in respect of such Deposit Account or Securities Account; provided, however, that no Control Agreement shall be required with respect to (i) an aggregate amount of not more than \$1,000,000 at any one time, in the case of Borrower and the other Loan Parties, on deposit in Deposit Accounts and Securities Accounts, (ii) amounts deposited into Deposit Accounts specially and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for Borrower's or its Subsidiaries' employees, and (iii) Deposit Accounts maintained with Wells Fargo (so long as Wells Fargo serves as Administrative Agent) or J.P Morgan Chase Bank, N.A. (so long as J.P. Morgan Chase Bank, N.A. is a Lender hereunder).

6.12 **Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any transaction with any Affiliate of Borrower or any of its Subsidiaries except for:

(a) transactions (other than the payment of management, consulting, monitoring, or advisory fees) between Borrower or its Subsidiaries, on the one hand, and any Affiliate of Borrower or its Subsidiaries, on the other hand, so long as such transactions are no less favorable, taken as a whole, to Borrower or its Subsidiaries, as applicable, than would be obtained in an arm's length transaction with a non-Affiliate; provided, that this Section 6.12 is not intended to, and shall not, preclude or impair any transaction or series of related transactions entered between Borrower, on the one hand, and any of its Subsidiaries, on the other hand, or between any Subsidiaries of Borrower, in each case in the ordinary course of business,

(b) so long as it has been approved by Borrower's Board of Directors in accordance with applicable law, any indemnity provided for the benefit of directors of Borrower,

(c) so long as it has been approved by Borrower's Board of Directors, the payment of reasonable fees, compensation, or employee benefit arrangements to employees, officers, and outside directors of Borrower in the ordinary course of business,

(d) transactions permitted by Section 6.3, 6.9 or 6.11, any Permitted Intercompany Advance, and

(e) the Affiliate transactions expressly contemplated by the Joint Venture Documents.

6.13 **Use of Proceeds.** Use the proceeds of the Advances for any purpose other than (a) on the Closing Date, to pay transactional fees, costs, and expenses incurred in connection with this Agreement, the other Loan Documents, and the transactions contemplated hereby and thereby, and (b) thereafter, consistent with the terms and conditions hereof, for its lawful and permitted purposes, including for working capital, Permitted Acquisition funding, and general corporate purposes.

7 FINANCIAL COVENANTS.

Borrower covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations, Borrower will comply with each of the following financial covenants:

(a) **Interest Coverage Ratio.** Have an Interest Coverage Ratio of at least 3.00 to 1.00, measured on a fiscal quarter-end basis.

(b) **Leverage Ratio.** Have a Leverage Ratio of not more than 3.00 to 1.00, measured on a fiscal quarter-end basis.

(c) **Capital Expenditures.** Make Capital Expenditures in any fiscal year in an amount less than or equal to, but not greater than, \$15,000,000.

8 EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

8.1 If Borrower fails to pay when due and payable, or when declared due and payable, (a) all or any portion of the Obligations consisting of interest, fees, or charges due the Lender Group, reimbursement of Lender Group Expenses, or other amounts (other than any portion thereof constituting principal) constituting Obligations (including any portion thereof that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), and such failure continues for a period of 3 Business Days, or (b) all or any portion of the principal of the Obligations;

8.2 If any Loan Party or any of its Subsidiaries:

(a) fails to perform or observe any covenant or other agreement contained in any of (i) Sections 3.5, 5.1 (solely regarding the delivery of annual and quarterly financial statements and Compliance Certificates), 5.3 (solely if Borrower is not in good standing in its jurisdiction of organization, unless, in the case of any involuntary administrative dissolution of Borrower, such failure to preserve, renew or maintain its legal existence is remedied within 10 days after Borrower becomes aware of such failure, provided, that until Borrower's legal existence is lawfully reinstated by the appropriate Governmental Authority, the Lenders or the Issuing

Lender, as applicable, may withhold any further Borrowing or issuance of any additional Letter of Credit), 5.7 (solely if Borrower refuses to allow Administrative Agent or its representatives or agents to visit Borrower's properties, inspect its assets or books or records, examine and make copies of its books and records, or discuss Borrower's affairs, finances, and accounts with officers and employees of Borrower), 5.10, or 5.11 of this Agreement, (ii) Sections 6.1 through 6.13 of this Agreement, (iii) Section 7 of this Agreement, or (iv) Section 6 of the Security Agreement;

(b) fails to perform or observe any covenant or other agreement contained in Sections 5.2 and such failure continues for a period of 15 days after the earlier of (i) the date on which such failure shall first become known to any officer of Borrower or (ii) the date on which written notice thereof is given to Borrower by Administrative Agent; or

(c) fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is the subject of another provision of this Section 8 (in which event such other provision of this Section 8 shall govern), and such failure continues for a period of 30 days after the earlier of (i) the date on which such failure shall first become known to any officer of Borrower or (ii) the date on which written notice thereof is given to Borrower by Administrative Agent;

8.3. If one or more judgments, orders, or awards for the payment of money involving an aggregate amount of \$5,000,000 or more (except to the extent fully covered by insurance pursuant to which the insurer has accepted liability therefor in writing) is entered or filed against a Loan Party or any of its Subsidiaries, or with respect to any of their respective assets, and either (a) there is a period of 30 consecutive days at any time after the entry of any such judgment, order or award during which (1) the same is not discharged, or (2) a stay of enforcement thereof is not in effect, or (b) enforcement proceedings are commenced upon such judgment, order, or award;

8.4 If an Insolvency Proceeding is commenced by a Loan Party or any of its Subsidiaries;

8.5 If an Insolvency Proceeding is commenced against a Loan Party or any of its Subsidiaries and any of the following events occur: (a) such Loan Party or such Subsidiary consents to the institution of such Insolvency Proceeding against it, (b) the petition commencing the Insolvency Proceeding is not timely controverted, (c) the petition commencing the Insolvency Proceeding is not dismissed within 60 calendar days of the date of the filing thereof, (d) an interim trustee is appointed to take possession of all or any substantial portion of the properties or assets of, or to operate all or any substantial portion of the business of, such Loan Party or its Subsidiary, or (e) an order for relief shall have been issued or entered therein;

8.6 If a Loan Party or any of its Subsidiaries is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, except to the extent that any such court action could not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Change;

8.7 If there is a default in one or more agreements to which a Loan Party or any of its Subsidiaries is a party with one or more third Persons relative to a Loan Party's or any of its Subsidiaries' Indebtedness involving an aggregate amount of \$5,000,000 or more, and such default (i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by such third Person, irrespective of whether exercised, to accelerate the maturity of such Loan Party's or its Subsidiary's obligations thereunder;

8.8 If (a) the Primary Carrier Distribution Agreement terminates, expires or no longer is in full force and effect for any reason, unless replaced with a new distribution agreement covering the same or, in the aggregate, no less than reasonably equivalent markets and on terms that, in the aggregate, are not substantially less favorable to Borrower, (b) any other Carrier Distribution Agreement terminates, expires or no longer is in full force and effect for any reason and such termination, expiration or lack of effectiveness could reasonably be expected to result in a Material Adverse Change or be materially adverse to the interests of the Lenders, or (c) there is a default by any party to any Material Contract to which a Loan Party is a party and such default could reasonably be expected to result in a Material Adverse Change or be materially adverse to the interests of the Lenders;

8.9 If any representation or warranty made or deemed made by or on behalf of Borrower or any Subsidiary 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 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;

8.10 If the obligation of any Guarantor under the Guaranty is limited or terminated by operation of law or by such Guarantor, except with respect to termination by operation of law regarding any merger, consolidation, reorganization, or other similar matter permitted under this Agreement;

8.11 If the Security Agreement or any other Loan Document that purports to create a Lien, shall, for any reason, fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien on the Collateral covered thereby, except (a) as a result of a disposition of the applicable Collateral in a transaction permitted under this Agreement, (b) with respect to Collateral the aggregate value of which, for all such Collateral, does not exceed at any time, \$5,000,000, or (c) as the result of an action or failure to act on the part of Administrative Agent; or

8.12 The validity or enforceability of any Loan Document shall at any time for any reason (other than solely as the result of an action or failure to act on the part of Administrative Agent) be declared to be null and void, or a proceeding shall be commenced by a Loan Party or its Subsidiaries, or by any Governmental Authority having jurisdiction over a Loan Party or its Subsidiaries, seeking to establish the invalidity or unenforceability thereof, or a Loan Party or its Subsidiaries shall deny that such Loan Party or its Subsidiaries has any liability or obligation purported to be created under any Loan Document.

8.13 If the Carrier Access Agreement shall for any reason cease to be in full force and effect, except to the extent that Borrower has made other arrangements reasonably satisfactory to Administrative Agent to provide Administrative Agent with access to the books, records, computers and other information relating to Borrower's Accounts as Administrative Agent may reasonably require.

9 RIGHTS AND REMEDIES.

9.1 **Rights and Remedies.** Upon the occurrence and during the continuation of an Event of Default, Administrative Agent may, and, at the instruction of the Required Lenders, shall, in each case by written notice to Borrower and in addition to any other rights or remedies provided for hereunder or under any other Loan Document or by applicable law, do any one or more of the following on behalf of the Lender Group:

(a) declare the Obligations, whether evidenced by this Agreement or by any of the other Loan Documents immediately due and payable, whereupon the same shall become and be immediately due and payable, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by Borrower; and

(b) declare the Commitments terminated, whereupon the Commitments shall immediately be terminated together with any obligation of any Lender hereunder to make Advances and the obligation of the Issuing Lender to issue Letters of Credit.

The foregoing to the contrary notwithstanding, upon the occurrence of any Event of Default described in Section 8.4 or Section 8.5, in addition to the remedies set forth above, without any notice to Borrower or any other Person or any act by the Lender Group, the Commitments shall automatically terminate and the Obligations then outstanding, together with all accrued and unpaid interest thereon and all fees and all other amounts due under this Agreement and the other Loan Documents, shall automatically and immediately become due and payable, without presentment, demand, protest, or notice of any kind, all of which are expressly waived by Borrower.

9.2 Remedies Cumulative. The rights and remedies of the Lender Group under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. The Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

10 WAIVERS; INDEMNIFICATION.

10.1 Demand; Protest; etc. Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by the Lender Group on which Borrower may in any way be liable.

10.2 The Lender Group's Liability for Collateral. Borrower hereby agrees that: (a) so long as Administrative Agent complies with its obligations, if any, under the Code, the Lender Group shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by Borrower.

10.3 Indemnification. Borrower shall pay, indemnify, defend, and hold the Agent-Related Persons, the Lender-Related Persons, and each Participant (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery (provided that Borrower shall not be liable for costs and expenses (including attorneys fees) of any Lender (other than Wells Fargo) incurred in advising, structuring, drafting, reviewing, administering or syndicating the Loan Documents), enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby or the monitoring of Borrower's and its Subsidiaries' compliance with

the terms of the Loan Documents (other than disputes solely between the Lenders), (b) with respect to any investigation, litigation, or proceeding related to this Agreement, any other Loan Document, or the use of the proceeds of the credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by Borrower or any of its Subsidiaries or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such assets or properties of Borrower or any of its Subsidiaries (each and all of the foregoing, the "Indemnified Liabilities"). The foregoing notwithstanding, Borrower shall have no obligation to any Indemnified Person under this Section 10.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person or its officers, directors, employees, attorneys, or agents. This provision shall survive the termination of this Agreement and the repayment of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrower was required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrower with respect thereto. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON (OTHER THAN ANY SUCH ACT OR OMISSION ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PERSON).**

11 NOTICES.

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to Borrower, Administrative Agent or any Lender, as the case may be, they shall be sent to the respective address set forth below:

If to Borrower:

Carrier Enterprise, LLC
c/o Watsco, Inc.
2665 S. Bayshore Drive, Suite 901
Coconut Grove, FL 33133
Attn: Ana M. Menendez
Fax: 305-858-6898

with copies to:

Moore & Van Allen PLLC
100 North Tryon Street, Suite 4700
Charlotte, NC 28202-4003
Attn: Stephen D. Hope, Esq.
Fax: 704-378-2036

If to Administrative Agent:

Wells Fargo Bank, N.A.
401 E. Jackson Street
Suite 1450
Tampa, Florida 33602
Attn: Edward Wooten
Fax No.: 813-202-7201

with copies to:

Greenberg Traurig LLP
3290 Northside Parkway, Suite 400
Atlanta, Georgia 30327
Attn: Michael Leveille, Esq.
Fax No.: 678-553-7315

If to any Lender:

To its address set forth on **Schedule 11**

Any party hereto may change the address at which they are to receive notices hereunder by notice in writing in the foregoing manner given to the other parties hereto. All notices or demands sent in accordance with this Section 11 shall be deemed received on the earlier of the date of actual receipt or 3 Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment).

12 CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

(a) THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(b) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK; PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT ADMINISTRATIVE AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE ADMINISTRATIVE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. BORROWER AND EACH MEMBER OF THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 12(b).

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS

CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. BORROWER AND EACH MEMBER OF THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

13 ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS.

13.1 Assignments and Participations.

(a) With the prior written consent of Borrower, which consent of Borrower shall not be unreasonably withheld, delayed or conditioned, and shall not be required (1) if an Event of Default has occurred and is continuing, and (2) in connection with an assignment to a Person that is a Lender or an Affiliate (other than individuals) of a Lender, and with the prior written consent of Administrative Agent, which consent of Administrative Agent shall not be unreasonably withheld, delayed or conditioned, and shall not be required in connection with an assignment to a Person that is a Lender or an Affiliate (other than individuals) of a Lender, any Lender may assign and delegate to one or more assignees so long as such prospective assignee is an Eligible Transferee (each, an “Assignee”; provided, however, that no Loan Party or Affiliate of a Loan Party shall be permitted to become an Assignee) all or any portion of the Obligations, the Commitments and the other rights and obligations of such Lender hereunder and under the other Loan Documents, in a minimum amount (unless waived by Administrative Agent) of \$5,000,000 (except such minimum amount shall not apply to (x) an assignment or delegation by any Lender to any other Lender or an Affiliate of any Lender or (y) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least \$5,000,000); provided, however, that Borrower and Administrative Agent may continue to deal solely and directly with such Lender in connection with the interest so assigned to an Assignee until (i) written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Borrower and Administrative Agent by such Lender and the Assignee, (ii) such Lender and its Assignee have delivered to Borrower and Administrative Agent an Assignment and Acceptance and Administrative Agent has notified the assigning Lender of its receipt thereof in accordance with Section 13.1(b), and (iii) unless waived by Administrative Agent, the assigning Lender or Assignee has paid to Administrative Agent for Administrative Agent’s separate account a processing fee in the amount of \$3,500.

(b) From and after the date that Administrative Agent notifies the assigning Lender (with a copy to Borrower) that it has received an executed Assignment and Acceptance and, if applicable, payment of the required processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 10.3) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender’s rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto); provided, however, that nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender’s obligations under Section 15 and Section 17.9(a).

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or the performance or observance by Borrower of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto, (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such Assignee will, independently and without reliance upon Administrative Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement, (v) such Assignee appoints and authorizes Administrative Agent to take such actions and to exercise such powers under this Agreement and the other Loan Documents as are delegated to Administrative Agent, by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon Administrative Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 13.1(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender *pro tanto*.

(e) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons (a "Participant") participating interests in all or any portion of its Obligations, its Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, however, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrower, Administrative Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender, or (E) change the amount or due dates of scheduled principal repayments or prepayments or premiums, and (v) all amounts payable by Borrower hereunder shall be determined as if such Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing

under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Administrative Agent, Borrower, the Collections of Borrower or its Subsidiaries, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves.

(f) In connection with any such assignment or participation or proposed assignment or participation or any grant of a security interest in, or pledge of, its rights under and interest in this Agreement, a Lender may, subject to the provisions of Section 17.9, disclose all documents and information which it now or hereafter may have relating to Borrower and its Subsidiaries and their respective businesses.

(g) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.24, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law.

13.2 **Successors.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Borrower may not assign this Agreement or any rights or duties hereunder without the Lenders' prior written consent and any prohibited assignment shall be absolutely void *ab initio*. No consent to assignment by the Lenders shall release Borrower from its Obligations. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to Section 13.1 and, except as expressly required pursuant to Section 13.1, no consent or approval by Borrower is required in connection with any such assignment.

14 AMENDMENTS; WAIVERS.

14.1 Amendments and Waivers.

(a) No amendment, waiver or other modification of any provision of this Agreement or any other Loan Document (other than Bank Product Agreements or the Fee Letter), and no consent with respect to any departure by Borrower therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Administrative Agent at the written request of the Required Lenders) and Borrower and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall, unless in writing and signed by all of the Lenders directly affected thereby and Borrower, do any of the following:

(i) increase the amount of or extend the expiration date of any Commitment of any Lender,

(ii) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document,

(iii) reduce the principal of, or the rate of interest on, any loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document (except (y) in connection with the waiver of applicability of Section 2.6(c) (which waiver shall be effective with the written consent of the Required Lenders), and (z) that any amendment or modification of defined terms used in the financial covenants in this Agreement shall not constitute a reduction in the rate of interest or a reduction of fees for purposes of this clause (iii)),

(iv) amend or modify this Section or any provision of this Agreement providing for consent or other action by all Lenders,

(v) other than as permitted by Section 15.11, release Administrative Agent's Lien in and to any of the Collateral,

(vi) change the definition of "Required Lenders" or "Pro Rata Share",

(vii) contractually subordinate any of Administrative Agent's Liens,

(viii) other than in connection with a merger, liquidation, dissolution or sale of such Person expressly permitted by the terms hereof or the other Loan Documents, release Borrower or any Guarantor from any obligation for the payment of money or consent to the assignment or transfer by Borrower or any Guarantor of any of its rights or duties under this Agreement or the other Loan Documents,

(ix) amend any of the provisions of Section 2.4(b)(i) or (ii),

(x) amend Section 13.1(a) to permit a Loan Party or an Affiliate of a Loan Party to be permitted to become an Assignee, or

(xi) change the definition of Borrowing Base or any of the defined terms (including the definitions of Eligible Accounts and Eligible Inventory) that are used in such definition to the extent that any such change results in more credit being made available to Borrower based upon the Borrowing Base, but not otherwise, or the definition of Maximum Revolver Amount.

(b) No amendment, waiver, modification, or consent shall amend, modify, or waive (i) the definition of, or any of the terms or provisions of, the Fee Letter, without the written consent of Administrative Agent and Borrower (and shall not require the written consent of any of the Lenders), and (ii) any provision of Section 15 pertaining to Administrative Agent, or any other rights or duties of Administrative Agent under this Agreement or the other Loan Documents, without the written consent of Administrative Agent, Borrower, and the Required Lenders.

(c) No amendment, waiver, modification, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Issuing Lender, or any other rights or duties of Issuing Lender under this Agreement or the other Loan Documents, without the written consent of Issuing Lender, Administrative Agent, Borrower, and the Required Lenders.

(d) No amendment, waiver, modification, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Swing Lender, or any other rights or duties of Swing Lender under this Agreement or the other Loan Documents, without the written consent of Swing Lender, Administrative Agent, Borrower, and the Required Lenders.

(e) No amendment, waiver, modification, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to the Arrangers, or any other rights or duties of the Arrangers under this Agreement or the other Loan Documents, without the written consent of the Arrangers, Administrative Agent, Borrower, and the Required Lenders.

(f) No amendment, waiver, modification, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to the Syndication Agent, or any other rights or duties of the Syndication Agent under this Agreement or the other Loan Documents, without the written consent of the Syndication Agent, Administrative Agent, Borrower, and the Required Lenders.

(g) Anything in this Section 14.1 to the contrary notwithstanding, any amendment, modification, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of Borrower, shall not require consent by or the agreement of Borrower.

14.2 Replacement of Certain Lenders.

(a) If (i) any action to be taken by the Lender Group or Administrative Agent hereunder requires the unanimous consent, authorization, or agreement of all Lenders and if such action has received the consent, authorization, or agreement of the Required Lenders but not all of the Lenders or (ii) any Lender makes a claim for compensation under Section 16, then Borrower or Administrative Agent, upon at least 5 Business Days prior irrevocable notice, may permanently replace any Lender (a “Holdout Lender”) that failed to give its consent, authorization, or agreement or made a claim for compensation (a “Tax Lender”) with one or more Replacement Lenders, and the Holdout Lender or Tax Lender, as applicable, shall have no right to refuse to be replaced hereunder. Such notice to replace the Holdout Lender or Tax Lender, as applicable, shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given.

(b) Prior to the effective date of such replacement, the Holdout Lender and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Holdout Lender being repaid its share of the outstanding Obligations (including an assumption of its Pro Rata Share of the Letters of Credit) without any premium or penalty of any kind whatsoever. If the Holdout Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, the Holdout Lender shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Holdout Lender shall be made in accordance with the terms of Section 13.1. Until such time as the Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Holdout Lender hereunder and under the other Loan Documents, the Holdout Lender shall remain obligated to make the Holdout Lender’s Pro Rata Share of Advances and to purchase a participation in each Letter of Credit, in an amount equal to its Pro Rata Share of such Letters of Credit.

14.3 No Waivers; Cumulative Remedies. No failure by Administrative Agent or any Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Administrative Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Administrative Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Administrative Agent or any Lender on any occasion shall affect or diminish Administrative Agent’s and each Lender’s rights thereafter to require strict performance by Borrower of any provision of this Agreement. Administrative Agent’s and each Lender’s rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Administrative Agent or any Lender may have.

15.1 **Appointment and Authorization of Administrative Agent.** Each Lender hereby designates and appoints Administrative Agent as its representative under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes Administrative Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Administrative Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Administrative Agent agrees to act as such on the express conditions contained in this Section 15. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Administrative Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Administrative Agent; it being expressly understood and agreed that the use of the word "Administrative Agent" is for convenience only, that Wells Fargo is merely the representative of the Lenders, and only has the contractual duties set forth herein. Except as expressly otherwise provided in this Agreement, Administrative Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Administrative Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Administrative Agent, Lenders agree that Administrative Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, the Collections of Borrower and its Subsidiaries, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, (c) make Advances, for itself or on behalf of Lenders, as provided in the Loan Documents, (d) exclusively receive, apply, and distribute the Collections of Borrower and its Subsidiaries as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management arrangements as Administrative Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes with respect to the Collateral and the Collections of Borrower and its Subsidiaries, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to Borrower or its Subsidiaries, the Obligations, the Collateral, the Collections of Borrower and its Subsidiaries, or otherwise related to any of same as provided in the Loan Documents, and (g) incur and pay such Lender Group Expenses as Administrative Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

15.2 **Delegation of Duties.** Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

15.3 **Liability of Administrative Agent.** None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders for any

recital, statement, representation or warranty made by Borrower or any of its Subsidiaries or Affiliates, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Administrative Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of Borrower or its Subsidiaries or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of Borrower or its Subsidiaries.

15.4 **Reliance by Administrative Agent.** Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrower or counsel to any Lender), independent accountants and other experts selected by Administrative Agent. Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Administrative Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Administrative Agent shall act, or refrain from acting, as it deems advisable. If Administrative Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the requisite Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

15.5 **Notice of Default or Event of Default.** Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Administrative Agent for the account of the Lenders and, except with respect to Events of Default of which Administrative Agent has actual knowledge, unless Administrative Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." Administrative Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Administrative Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Administrative Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 15.4, Administrative Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 9; provided, however, that unless and until Administrative Agent has received any such request, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

15.6 **Credit Decision.** Each Lender acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Administrative Agent hereinafter taken, including any review of the affairs of Borrower and its Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by Agent-Related Person to any Lender. Each Lender represents to Administrative Agent that it has, independently and without reliance upon Agent-Related Person and based on

such due diligence, documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower. Each Lender also represents that it will, independently and without reliance upon Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Administrative Agent, Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Borrower or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons. Each Lender acknowledges that Administrative Agent does not have any duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender with any credit or other information with respect to Borrower, its Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into Administrative Agent's or its Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement.

15.7 **Costs and Expenses; Indemnification.** Administrative Agent may incur and pay Lender Group Expenses to the extent Administrative Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, reasonable attorneys fees and expenses, reasonable fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrower is obligated to reimburse Administrative Agent or Lenders for such expenses pursuant to this Agreement or otherwise. Administrative Agent is authorized and directed to deduct and retain sufficient amounts from the Collections of Borrower and its Subsidiaries received by Administrative Agent to reimburse Administrative Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders. In the event Administrative Agent is not reimbursed for such costs and expenses by Borrower or its Subsidiaries, each Lender hereby agrees that it is and shall be obligated to pay to Administrative Agent such Lender's Pro Rata Share thereof. Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), according to their Pro Rata Shares, from and against any and all Indemnified Liabilities; provided, however, that no Lender shall be liable for the payment to Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct nor shall any Lender be liable for the obligations of any Defaulting Lender in failing to make an Advance or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse Administrative Agent upon demand for such Lender's Pro Rata Share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Administrative Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Administrative Agent.

15.8 Administrative Agent in Individual Capacity. Wells Fargo and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Borrower and its Subsidiaries and Affiliates and any other Person party to any Loan Document as though Wells Fargo were not Administrative Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge that, pursuant to such activities, Wells Fargo or its Affiliates may receive information regarding Borrower or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Borrower or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Administrative Agent will use its reasonable best efforts to obtain), Administrative Agent shall not be under any obligation to provide such information to them. The terms “Lender” and “Lenders” include Wells Fargo in its individual capacity.

15.9 Successor Administrative Agent. Administrative Agent may resign as Administrative Agent upon 30 days prior written notice to the Lenders (unless such notice is waived by the Required Lenders) and Borrower (unless such notice is waived by Borrower). If Administrative Agent resigns under this Agreement, the Required Lenders shall be entitled, with (so long as no Event of Default has occurred and is continuing) the consent of Borrower (such consent not to be unreasonably withheld, delayed, or conditioned), appoint a successor Administrative Agent for the Lenders. If, at the time that Administrative Agent’s resignation is effective, it is acting as the Issuing Lender or the Swing Lender, such resignation shall also operate to effectuate its resignation as the Issuing Lender or the Swing Lender, as applicable, and it shall automatically be relieved of any further obligation to issue Letters of Credit or make Swing Loans. If no successor Administrative Agent is appointed prior to the effective date of the resignation of Administrative Agent, Administrative Agent may appoint, after consulting with the Lenders and Borrower, a successor Administrative Agent. If Administrative Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, the Required Lenders may agree in writing to remove and replace Administrative Agent with a successor Administrative Agent from among the Lenders with (so long as no Event of Default has occurred and is continuing) the consent of Borrower (such consent not to be unreasonably withheld, delayed, or conditioned). In any such event, upon the acceptance of its appointment as successor Administrative Agent hereunder, such successor Administrative Agent shall succeed to all the rights, powers, and duties of the retiring Administrative Agent and the term “Administrative Agent” shall mean such successor Administrative Agent and the retiring Administrative Agent’s appointment, powers, and duties as Administrative Agent shall be terminated. After any retiring Administrative Agent’s resignation hereunder as Administrative Agent, the provisions of this Section 15 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement. If no successor Administrative Agent has accepted appointment as Administrative Agent by the date which is 30 days following a retiring Administrative Agent’s notice of resignation, the retiring Administrative Agent’s resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Administrative Agent hereunder until such time, if any, as the Lenders appoint a successor Administrative Agent as provided for above.

15.10 Lender in Individual Capacity. Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Borrower and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding Borrower or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Borrower or such other Person and that prohibit the disclosure of such information to the Lenders, and the

Lenders acknowledge that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

15.11 **Collateral Matters.**

(a) The Lenders hereby irrevocably authorize Administrative Agent, at its option and in its sole discretion, to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by Borrower of all Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Borrower certifies to Administrative Agent that the sale or disposition is permitted under Section 6.4 or the other Loan Documents (and Administrative Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which Borrower or its Subsidiaries owned no interest at the time Administrative Agent's Lien was granted nor at any time thereafter, or (iv) constituting property leased to Borrower or its Subsidiaries under a lease that has expired or is terminated in a transaction permitted under this Agreement. The Lenders hereby irrevocably authorize Administrative Agent, based upon the instruction of the Required Lenders, to credit bid and purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted by Administrative Agent under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code, or at any other sale or foreclosure conducted by Administrative Agent (whether by judicial action or otherwise) in accordance with applicable law. Except as provided above, Administrative Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders, or (z) otherwise, the Required Lenders. Upon request by Administrative Agent or Borrower at any time, the Lenders will confirm in writing Administrative Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 15.11; provided, however, that (1) Administrative Agent shall not be required to execute any document necessary to evidence such release on terms that, in Administrative Agent's opinion, would expose Administrative Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of Borrower in respect of) all interests retained by Borrower, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. The Lenders further hereby irrevocably authorize Administrative Agent, at its option and in its sole discretion, to subordinate any Lien granted to or held by Administrative Agent under any Loan Document to the holder of any Permitted Lien on such property if such Permitted Lien secures Permitted Purchase Money Indebtedness.

(b) Administrative Agent shall have no obligation whatsoever to any of the Lenders to assure that the Collateral exists or is owned by Borrower or its Subsidiaries or is cared for, protected, or insured or has been encumbered, or that Administrative Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Administrative Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Administrative Agent may act in any manner it may deem appropriate, in its sole discretion given Administrative Agent's own interest in the Collateral in its capacity as one of the Lenders and that Administrative Agent shall have no other duty or liability whatsoever to any Lender as to any of the foregoing, except as otherwise provided herein.

15.12 Restrictions on Actions by Lenders; Sharing of Payments.

(a) Each of the Lenders agrees that it shall not, without the express written consent of Administrative Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Administrative Agent, set off against the Obligations (other than Bank Product Obligations), any amounts owing by such Lender to Borrower or its Subsidiaries or any deposit accounts of Borrower or its Subsidiaries now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Administrative Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against Borrower or any Guarantor or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations (other than Bank Product Obligations), except for any such proceeds or payments received by such Lender from Administrative Agent pursuant to the terms of this Agreement, or (ii) payments from Administrative Agent in excess of such Lender's Pro Rata Share of all such distributions by Administrative Agent, such Lender promptly shall (A) turn the same over to Administrative Agent, in kind, and with such endorsements as may be required to negotiate the same to Administrative Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, however, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

15.13 **Agency for Perfection.** Administrative Agent hereby appoints each other Lender as its agent (and each Lender hereby accepts such appointment) for the purpose of perfecting Administrative Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Administrative Agent thereof, and, promptly upon Administrative Agent's request therefor shall deliver possession or control of such Collateral to Administrative Agent or in accordance with Administrative Agent's instructions.

15.14 **Payments by Administrative Agent to the Lenders.** All payments to be made by Administrative Agent to the Lenders shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Administrative Agent. Concurrently with each such payment, Administrative Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

15.15 **Concerning the Collateral and Related Loan Documents.** Each member of the Lender Group authorizes and directs Administrative Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees that any action taken by Administrative Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Administrative Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders.

15.16 **Audits and Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information.**

By becoming a party to this Agreement, each Lender:

- (a) is deemed to have requested that Administrative Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report respecting Borrower or its Subsidiaries (each a "Report" and collectively, "Reports") prepared by or at the request of Administrative Agent, and Administrative Agent shall so furnish each Lender with such Reports,
- (b) expressly agrees and acknowledges that Administrative Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,
- (c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Administrative Agent or other party performing any audit or examination will inspect only specific information regarding Borrower and its Subsidiaries and will rely significantly upon Borrower's and its Subsidiaries' books and records, as well as on representations of Borrower's personnel,
- (d) agrees to keep all Reports and other material, non-public information regarding Borrower and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 17.9, and
- (e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Administrative Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrower, and (ii) to pay and protect, and indemnify, defend and hold Administrative Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, reasonable attorneys fees and costs) incurred by Administrative Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

In addition to the foregoing: (w) any Lender may from time to time request of Administrative Agent in writing that Administrative Agent provide to such Lender a copy of any report or document provided by Borrower or its Subsidiaries to Administrative Agent that has not been contemporaneously provided by Borrower or such Subsidiary to such Lender, and, upon receipt of such request, Administrative Agent promptly shall provide a copy of same to such Lender, (x) to the extent that Administrative Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from Borrower or its Subsidiaries, any Lender may, from time to time, reasonably request Administrative Agent to exercise such right as specified in such Lender's notice to Administrative Agent, whereupon Administrative Agent promptly shall request of Borrower the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Borrower or such Subsidiary, Administrative Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Administrative Agent is entitled, under Section 5.7, to conduct a field examination or inspection at Borrower's expense and Administrative Agent has not done so during the previous 12 month period, any Lender may, from time to time, reasonably request Administrative Agent to exercise such right as specified in such Lender's notice to Administrative Agent, whereupon Administrative Agent promptly shall exercise such right, and (z) any time that Administrative Agent renders to Borrower a statement regarding the Loan Account, Administrative Agent shall send a copy of such statement to each Lender.

15.17 **Several Obligations; No Liability.** Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Administrative Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Administrative Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 15.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to Borrower or any other Person for any failure by any other Lender to fulfill its obligations to make credit available hereunder, nor to advance for it or on its behalf in connection with its Commitment, nor to take any other action on its behalf hereunder or in connection with the financing contemplated herein.

15.18 **Syndication Agent and Arrangers.** Except as otherwise set forth herein, the Syndication Agent and Arrangers shall not have any right, power, obligation, liability, responsibility or duty under this Agreement (or any other Loan Document) other than those applicable to all Lenders as such. Without limiting the foregoing, the Syndication Agent and Arrangers shall not have or be deemed to have any fiduciary relationship with any other Lender. Each Lender acknowledges that it has not relied, and will not rely, on the Syndication Agent or any Arranger in deciding to enter into this Agreement and each other Loan Document to which it is a party or in taking or not taking action hereunder or thereunder.

16 WITHHOLDING TAXES.

(a) All payments made by Borrower hereunder or under any note or other Loan Document will be made without setoff, counterclaim, or other defense. In addition, all such payments will be made free and clear of, and without deduction or withholding for, any present or future Taxes, and in the event any deduction or withholding of Taxes is required, Borrower shall comply with the next sentence of this Section 16(a). If any Taxes are so levied or imposed, Borrower agrees to pay the full amount of such Taxes and such additional amounts as may be necessary so that every payment of all amounts due under this Agreement, any note, or Loan Document, including any amount paid pursuant to this Section 16(a) after withholding or deduction for or on account of any Taxes, will not be less than the amount provided for herein; provided, however, that Borrower shall not be required to increase any such amounts if the increase in such amount payable results from Administrative Agent's or such Lender's own willful misconduct or gross negligence (as finally determined by a court of competent jurisdiction). Borrower will furnish to Administrative Agent as promptly as possible after the date the payment of any Tax is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by Borrower.

(b) Borrower agrees to pay any present or future stamp, value added or documentary taxes or any other excise or property taxes, charges, or similar levies that arise from any payment made hereunder or from the execution, delivery, performance, recordation, or filing of, or otherwise with respect to this Agreement or any other Loan Document.

(c) If a Lender or Participant is entitled to claim an exemption or reduction from United States withholding tax, such Lender or Participant agrees with and in favor of Administrative Agent, to deliver to Administrative Agent (or, in the case of a Participant, to the Lender granting the participation only) one of the following before receiving its first payment under this Agreement:

(i) if such Lender or Participant is entitled to claim an exemption from United States withholding tax pursuant to the portfolio interest exception, (A) a statement of the Lender or Participant, signed under penalty of perjury, that it is not a (I) a "bank" as described in Section 881(c)(3)(A) of the IRC, (II) a 10% shareholder of Borrower (within the meaning of Section 871(h)(3)(B) of the IRC), or (III) a controlled foreign corporation related to Borrower within the meaning of Section 864(d)(4) of the IRC, and (B) a properly completed and executed IRS Form W-8BEN or Form W-8IMY (with proper attachments);

(ii) if such Lender or Participant is entitled to claim an exemption from, or a reduction of, withholding tax under a United States tax treaty, a properly completed and executed copy of IRS Form W-8BEN;

(iii) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Lender, a properly completed and executed copy of IRS Form W-8ECI;

(iv) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because such Lender or Participant serves as an intermediary, a properly completed and executed copy of IRS Form W-8IMY (with proper attachments); or

(v) a properly completed and executed copy of any other form or forms, including IRS Form W-9, as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding tax.

Each Lender or Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Administrative Agent (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If a Lender or Participant claims an exemption from withholding tax in a jurisdiction other than the United States, such Lender or such Participant agrees with and in favor of Administrative Agent, to deliver to Administrative Agent (or, in the case of a Participant, to the Lender granting the participation only) any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax before receiving its first payment under this Agreement, but only if such Lender or such Participant is legally able to deliver such forms, provided, however, that nothing in this Section 16(d) shall require a Lender or Participant to disclose any information that it deems to be confidential (including without limitation, its tax returns). Each Lender and each Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Administrative Agent (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(e) If a Lender or Participant claims exemption from, or reduction of, withholding tax and such Lender or Participant sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrower to such Lender or Participant, such

Lender or Participant agrees to notify Administrative Agent (or, in the case of a sale of a participation interest, to the Lender granting the participation only) of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrower to such Lender or Participant. To the extent of such percentage amount, Administrative Agent will treat such Lender's or such Participant's documentation provided pursuant to Section 16(c) or 16(d) as no longer valid. With respect to such percentage amount, such Participant or Assignee may provide new documentation, pursuant to Section 16(c) or 16(d), if applicable. Borrower agrees that each Participant shall be entitled to the benefits of this Section 16 with respect to its participation in any portion of the Commitments and the Obligations so long as such Participant complies with the obligations set forth in this Section 16 with respect thereto.

(f) If a Lender or a Participant is entitled to a reduction in the applicable withholding tax, Administrative Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any interest payment to such Lender or such Participant an amount equivalent to the applicable withholding tax after taking into account such reduction. If the forms or other documentation required by Section 16(c) or 16(d) are not delivered to Administrative Agent (or, in the case of a Participant, to the Lender granting the participation), then Administrative Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any interest payment to such Lender or such Participant not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(g) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Administrative Agent (or, in the case of a Participant, to the Lender granting the participation) did not properly withhold tax from amounts paid to or for the account of any Lender or any Participant due to a failure on the part of the Lender or any Participant (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Administrative Agent (or such Participant failed to notify the Lender granting the participation) of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify and hold Administrative Agent harmless (or, in the case of a Participant, such Participant shall indemnify and hold the Lender granting the participation harmless) for all amounts paid, directly or indirectly, by Administrative Agent (or, in the case of a Participant, to the Lender granting the participation), as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Administrative Agent (or, in the case of a Participant, to the Lender granting the participation only) under this Section 16, together with all costs and expenses (including attorneys fees and expenses). The obligation of the Lenders and the Participants under this subsection shall survive the payment of all Obligations and the resignation or replacement of Administrative Agent.

(h) If Administrative Agent or a Lender determines, in its reasonable discretion, that it has received a refund of any Taxes as to which it has been indemnified by Borrower or with respect to which Borrower has paid additional amounts pursuant to this Section 16, so long as no Default or Event of Default has occurred and is continuing, it shall pay over such refund to Borrower (but only to the extent of payments made, or additional amounts paid, by Borrower under this Section 16 with respect to Taxes giving rise to such a refund), net of all out-of-pocket expenses of Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such a refund); provided, that Borrower, upon the request of Administrative Agent or such Lender, agrees to repay the amount paid over to Borrower (plus any penalties, interest or other charges, imposed by the relevant Governmental Authority, other than such penalties, interest or other charges imposed as a result of the willful misconduct or gross negligence of Administrative Agent hereunder) to Administrative Agent or such Lender in the event Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything in this Agreement to the contrary, this Section 16 shall not be construed to require Administrative Agent or any Lender to make available its tax returns (or any other information which it deems confidential) to Borrower or any other Person.

17 **GENERAL PROVISIONS.**

17.1 **Effectiveness.** This Agreement shall be binding and deemed effective when executed by Borrower, Administrative Agent, and each Lender whose signature is provided for on the signature pages hereof.

17.2 **Section Headings.** Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

17.3 **Interpretation.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender Group or Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

17.4 **Severability of Provisions.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

17.5 **Bank Products and Bank Product Providers.**

(a) Each Bank Product Provider shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom Administrative Agent is acting; it being understood and agreed that the rights and benefits of such Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests granted to Administrative Agent and the right to share in payments and collections out of the Collateral as more fully set forth herein. In connection with any such distribution of payments and collections, Administrative Agent shall be entitled to assume no amounts are due and payable to any Bank Product Provider unless such Bank Product Provider has notified Administrative Agent in writing of the amount of any such liability owed to it prior to such distribution.

(b) Nothing contained in this Agreement shall obligate Borrower or any of its Subsidiaries to use any Lender or its Affiliates for the provisions of bank product services as described in the definition of "Bank Products" or otherwise.

(c) Each Lender (on behalf of itself and its Affiliates) hereby acknowledges that, except in the case of a termination of the Commitments in connection an Event of Default, nothing contained in this Agreement or any other Loan Document shall require Borrower to post any Bank Product Collateralization with respect to any Bank Products other than Swaps.

17.6 **Debtor-Creditor Relationship.** The relationship between the Lenders and Administrative Agent, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. No member of the Lender Group has (or shall be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between the members of the Lender Group, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.7 Counterparts; Electronic Execution. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

17.8 Revival and Reinstatement of Obligations. If the incurrence or payment of the Obligations by Borrower or Guarantor or the transfer to the Lender Group of any property should for any reason subsequently be asserted, or declared, to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (each, a "Voidable Transfer"), and if the Lender Group is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that the Lender Group is required or elects to repay or restore, and as to all reasonable costs, expenses, and reasonable attorneys fees of the Lender Group related thereto, the liability of Borrower or Guarantor automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

17.9 Confidentiality.

(a) Administrative Agent and Lenders each individually (and not jointly or jointly and severally) agree that material, non-public information regarding Borrower and its Subsidiaries, their operations, assets, and existing and contemplated business plans ("Confidential Information") shall be treated by Administrative Agent and the Lenders in a confidential manner, and shall not be disclosed by Administrative Agent and the Lenders to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group ("Lender Group Representatives"), (ii) to Subsidiaries and Affiliates of any member of the Lender Group (including the Bank Product Providers), provided that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 17.9, (iii) as may be required by regulatory authorities so long as such authorities are informed of the confidential nature of such information, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Borrower with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrower pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance by Borrower or as requested or required by any Governmental Authority pursuant to any subpoena or other legal process, provided, that, (x) prior to any disclosure under this clause (v) the disclosing party agrees to provide Borrower with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrower pursuant to the terms of the subpoena or other legal process and (y) any disclosure under this clause (v) shall be limited to the portion of the Confidential Information as may be required by such governmental authority pursuant to such subpoena or other legal process, (vi) as to any such information that is or becomes generally

available to the public (other than as a result of prohibited disclosure by Administrative Agent or the Lenders or the Lender Group Representatives), (vii) in connection with any assignment, participation or pledge of any Lender's interest under this Agreement, provided that any such assignee, participant, or pledgee shall have agreed in writing to receive such information hereunder subject to the terms of this Section, (viii) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents; provided, that, prior to any disclosure to any Person (other than any Loan Party, Administrative Agent, any Lender, any of their respective Affiliates, or their respective counsel) under this clause (viii) with respect to litigation involving any Person (other than Borrower, Administrative Agent, any Lender, any of their respective Affiliates, or their respective counsel), the disclosing party agrees to provide Borrower with prior notice thereof, and (ix) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document. The provisions of this Section 17.9(a) shall survive for 2 years after the payment in full of the Obligations.

(b) Anything in this Agreement to the contrary notwithstanding, Administrative Agent may provide information concerning the terms and conditions of this Agreement and the other Loan Documents to loan syndication and pricing reporting services.

17.10 **Lender Group Expenses.** Borrower agrees to pay any and all Lender Group Expenses promptly after demand therefor by Administrative Agent (or, in the case of any Lender Group Expenses of any Lender, promptly after demand therefor by such Lender) and agrees that its obligations contained in this Section 17.10 shall survive payment or satisfaction in full of all other Obligations.

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

17.12 **Integration.** This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

17.13 **Conversion of Facility.** In the event Borrower requests that Lenders convert the loan facility evidenced by this Agreement to a traditional asset-based lending facility, the Lenders agree that they shall consider such request in good faith; provided, that, any such conversion shall be subject to (a) mutually acceptable amendments to the borrowing base, collateral reporting, financial covenant and certain other provisions of this Agreement, (b) credit approval of such transaction by each of the Lenders (and any Affiliate of a Lender that may become a party to this Agreement in connection therewith) in its sole discretion, and (c) the Lenders' receipt of field examinations of all borrowing base collateral, appraisals of inventory collateral, borrowing base certificates, collateral reports, and such other items, agreements, documents and certificates as the Lenders may require in connection with such conversion, in each case in form and substance acceptable to the Lenders.

17.14 **Modifications regarding Fee Letter.** Effective immediately upon the satisfaction of the conditions precedent set forth in Section 3.1 on the Closing Date and without the need for any further action, (a) Watsco hereby assigns to Borrower all of the rights, obligations and liabilities of Watsco under the Fee Letter, (b) Borrower hereby assumes all of the rights, obligations and liabilities of Watsco under the Fee Letter, (c) Wells Fargo, J.P. Morgan Securities, Inc. and J.P. Morgan Chase Bank, N.A. hereby release Watsco from any and all obligations and liabilities under the Fee Letter, and (d) the Fee Letter is hereby deemed amended to replace all references to Watsco with references to Borrower.

[Signature pages to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

CARRIER ENTERPRISE, LLC,
a Delaware limited liability company

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

WELLS FARGO BANK, N.A.,
as Administrative Agent, a Lender, Joint Lead Arranger and
Joint Bookrunner

By: /s/ Edward E. Wooten
Name: Edward E. Wooten
Title: Senior Vice President

J.P. MORGAN CHASE BANK, N.A.,
as Syndication Agent and a Lender

By: /s/ Robert P. Carswell

Name: Robert P. Carswell

Title: Vice President

J.P. MORGAN SECURITIES, INC.,
as Joint Lead Arranger and Joint Bookrunner

By: /s/ Sean J. Lynch

Name: Sean J. Lynch

Title: Senior Vice President

THE NORTHERN TRUST COMPANY,
as a Lender

By: /s/ Rick J. Gomez

Name: Rick J. Gomez

Title: Second Vice President

**OPERATING AGREEMENT
OF
CARRIER ENTERPRISE, LLC
(AMENDED AND RESTATED)**

Dated as of July 1, 2009

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OPERATING AGREEMENT
OF
CARRIER ENTERPRISE, LLC
(AMENDED AND RESTATED AS OF JULY 1, 2009)

THIS AMENDED AND RESTATED OPERATING AGREEMENT of CARRIER ENTERPRISE, LLC (formerly known as “Carrier Sales and Distribution, LLC,” and, for purposes of this Agreement, the “Company.”) is made as of July 1, 2009 by and among the Persons who become Members of the Company in accordance with the terms and provisions of this Agreement and whose names and signatures appear on counterpart signature pages to this Agreement or other equivalent instrument indicating such Member’s agreement to be bound by the terms and provisions hereof.

R E C I T A L S

A. On June 18, 1998, the Company was formed as a limited liability company under the laws of the State of Delaware by filing a Certificate of Formation for the Company with the Secretary of State of Delaware, and Carrier, as the initial member, entered into a Limited Liability Company Agreement on June 18, 1998 (as amended and restated on November 27, 2000, and further amended on October 17, 2001 and June 29, 2009, the “Initial Agreement”) pursuant to the provisions of the Delaware Limited Liability Company Act for the purposes and on the terms and conditions set forth in the Initial Agreement.

B. On October 17, 2001, the Company changed its name from Carrier Enterprises, LLC to Carrier Sales and Distribution, LLC, effective as of January 1, 2002. On May 29, 2009, the Company changed its name to Carrier Enterprise, LLC.

C. Pursuant to that certain Purchase and Contribution Agreement dated as of May 3, 2009 (as amended, the “Purchase and Contribution Agreement”), Watsco, Inc., a Florida corporation (“Watsco”), acquired Membership Interests in the Company (“Interest Purchase”), following which Watsco owns an approximately 42.1% Membership Interest in the Company, Comfort Products Distributing LLC, a Delaware limited liability company (“Comfort Products”), owns an approximately 17.9% Membership Interest in the Company, Carrier Corporation, a Delaware corporation (“Carrier”), owns a thirty nine percent (39%) Membership Interest in the Company and Carlyle Scroll Holdings Inc., a Delaware corporation (the “1% Holder”), owns a one percent (1%) Membership Interest in the Company, and Watsco caused the Comfort Products Contributed Assets (as defined in the Purchase and Contribution Agreement) to be contributed to the Company, and the Company assumed the Comfort Products Liabilities (as defined in the Purchase and Contribution Agreement).

D. The parties acknowledge that, for United States federal income tax purposes, the transaction contemplated in the Purchase and Contribution Agreement is intended to be treated as a sale by Carrier of a membership interest in the Company to Watsco and a contribution of property by a Subsidiary of Watsco to the Company in exchange for a membership interest.

E. As a result of the Interest Purchase and Contribution, the Members desire to enter into this Amended and Restated Operating Agreement in order to, among other things, amend and restate the Initial Agreement in its entirety, formally establish the manner in which the business and affairs of the Company shall be managed and to determine their respective rights, duties and obligations with respect to the Company.

NOW, THEREFORE, in consideration of the premises and agreements of the parties set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members hereby agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Certain Definitions.

As used herein, the following terms have the following meanings:

(a) “**1% Holder**” shall have the meaning set forth in Recital C.

(b) “**Act**” means the Delaware Limited Liability Company Act, Delaware Code, Title 6, §§ 18-101, et seq., as the same may be amended from time to time.

(c) “**Additional Capital Contribution**” means any Capital Contribution made by a Member in addition to such Member’s Initial Capital Contribution.

(d) “**Additional Distribution**” has the meaning set forth in Section 9.3.

(e) “**Affiliate**” means, with respect to a specified Person, any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Person. As used in this definition, and elsewhere herein in relation to control of Affiliates, the term “**control**” means the possession, directly or indirectly, of the power to substantially direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, as director or manager, as trustee or executor, by contract or credit arrangement or otherwise. For the avoidance of doubt, neither Watsco (or its ultimate parent entity) nor any of its (or its ultimate parent entity’s) Subsidiaries (other than, if applicable, the

Company and the Company's Subsidiaries) shall be deemed an Affiliate of a Carrier Holder for any purpose hereunder, and neither Carrier (or its ultimate parent entity) nor any of its (or its ultimate parent entity's) Subsidiaries (other than, if applicable, the Company and the Company's Subsidiaries) shall be deemed an Affiliate of a Watsco Holder for any purpose hereunder.

(f) "**Agreement**" means this Amended and Restated Operating Agreement of Carrier Enterprise, LLC, as amended, modified, supplemented or restated from time to time.

(g) "**Ancillary Agreements**" has the meaning set forth in Section 13.01 of the Purchase and Contribution Agreement.

(h) The phrases "**Approved by,**" "**Approval of,**" "**Consent of,**" "**Determined by,**" or any equivalent, each mean, with respect to the Board, approval or consent as set forth in Section 4.5(f), and, with respect to the Members, approval or consent of or by the Members as set forth in Section 6.4(f).

(i) "**Board**" means the Board of Directors of the Company.

(j) "**Book Value**" of an asset means its adjusted basis for federal income tax purposes, subject to the following provisions. The initial Book Value of an asset contributed by a Member is its gross fair market value as initially recorded on the Company's books. Company Assets shall be revalued (i) when and as contemplated by Treasury Regulation Section 1.704-1(b)(2)(iv)(e), and, (ii) if the Board determines in its discretion that a revaluation is necessary to reflect economic arrangements among Members, when and as contemplated by Treasury Regulation Section 1.704-1(b)(2)(iv)(f). Upon any such revaluation, Book Values shall be adjusted to equal the revalued amounts. Book Values shall be reduced for cost recovery deductions, determined pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(g)(3).

(k) "**Business Day**" means any day, except a Saturday, Sunday or other day on which commercial banking institutions in New York City are authorized or directed by law or executive order to close.

(l) "**Business Plan**" means an annual business plan mutually acceptable to the parties that shall include a Company budget for the Fiscal Year covered by the Business Plan setting forth projected revenues and all projected costs and expenses for such Fiscal Year.

(m) "**Capital Account**" means the account maintained for a Member in accordance with the provisions of Section 3.2.

(n) "**Capital Contribution**" means the total cash and Book Value of other property contributed to the Company by a Member. The transfer of liabilities to the Company within the meaning of Code § 752 in connection with a transfer of money or

property to the Company, including, without limitation, liabilities that are secured by such other property that the Company is considered to assume or take subject to, shall reduce the net amount of the Capital Contribution by the amount of said liabilities.

(o) “**Carrier**” has the meaning set forth in Recital C.

(p) “**Carrier Deciding Member**” means Carrier, until such time as one or more Carrier Holders (other than Carrier) hold(s) a Percentage Interest which is greater than the Percentage Interest then held by Carrier; thereafter, “Carrier Deciding Member” shall mean, at any time, the Carrier Holder holding the greatest Percentage Interest at such time (or as may be otherwise agreed by the Carrier Holders). Notwithstanding anything to the contrary herein, the Carrier Deciding Member may, without limitation, assign all or any portion of its rights granted under this Agreement (including, without limitation, with respect to the purchase and/or Transfer of Membership Interests) to one or more Carrier Holders.

(q) “**Carrier Holders**” means Carrier, the 1% Holder, any direct or indirect wholly-owned Subsidiary of Carrier’s ultimate parent entity that is a Transferee of Membership Interests pursuant to Section 12.1(b).

(r) “**Carrier Offeror**” has the meaning set forth in Section 12.2(a).

(s) “**Carrier Scale-Down Percentage Interest**” has the meaning set forth in Section 4.2(a).

(t) “**Certificate**” means a certificate evidencing Membership Interests thereon held by a Member stamped or imprinted with legends as set forth in Section 7.3 and otherwise in a form approved by the Board from time to time.

(u) “**Certificate of Formation**” means the Certificate of Formation of the Company and any and all amendments thereto and restatements thereof filed on behalf of the Company with the office of the Delaware Secretary of State pursuant to the Act.

(v) “**Code**” means the Internal Revenue Code of 1986, and any successor statute, each as amended from time to time.

(w) “**Comfort Products**” has the meaning set forth in Recital C.

(x) “**Company**” shall have the meaning set forth in preamble.

(y) “**Company Assets**” means all of the assets of the Company and any property (real or personal) acquired in exchange therefor or in connection therewith.

(z) “**Company Minimum Gain**” has the same meaning as “partnership minimum gain” in Treasury Regulations Section 1.704-2(b)(2) and 1.704-2(d). A Member’s share of Company Minimum Gain shall be computed in accordance with the provisions of Treasury Regulations Section 1.704-2(g).

(aa) “**Company Subsidiary**” means a Subsidiary of the Company.

(bb) “**Consignment Agreement**” shall have the meaning set forth in Section 13.01 of the Purchase and Contribution Agreement.

(cc) “**Covered Person**” shall have the meaning set forth in Section 14.2(a).

(dd) “**Deciding Member**” means the Carrier Deciding Member and the Watsco Deciding Member.

(ee) “**Default Rule**” has the meaning set forth in Section 15.15.

(ff) “**Director**” means a Person who is listed as a director of the Company in this Agreement, or who becomes a substituted or additional director of the Company as herein provided and who is listed as a director in the books and records of the Company. For purposes of this Agreement and the management of Company affairs, the term “**Director**” shall have the same meaning ascribed to the term “manager” under the Act.

(gg) “**Dispute**” has the meaning set forth in Section 15.3(a).

(hh) “**Distributable Cash**” means, for any Fiscal Year, the cash proceeds from Company operations and from sales and dispositions of Company Assets (plus any reductions in amounts previously set aside as reserves to the extent previously reducing Distributable Cash) net of all Company expenses for such period and less any amounts reasonably set aside as and/or added to reserves for anticipated Company expenses, debt payments, capital improvements, replacements and contingencies, plus any reserves in respect of prior periods, all as Determined by the Board in accordance with the terms of this Agreement.

(ii) “**Distributor Agreements**” has the meaning set forth in Section 13.01 of the Purchase and Contribution Agreement.

(jj) “**Election Notice**” has the meaning set forth in Section 12.3(a).

(kk) “**Entity**” means any corporation, partnership, limited liability company, unincorporated association, joint venture, firm and any other organization, association or other entity, and any trust or estate.

(ll) “**Exculpated Person**” shall have the meaning set forth in Section 14.1.

(mm) “**Final 1065**” shall have the meaning set forth in Section 11.3.

(nn) “**First Refusal Notice**” has the meaning set forth in Section 12.2(a).

(oo) “**Fiscal Quarter**” means any fiscal quarter of any Fiscal Year.

(pp) “**Fiscal Year**” means (i) the period commencing on the date of this Agreement and ending on December 31, 2009, (ii) any subsequent 12-month period commencing on January 1 and ending on December 31, or (iii) any portion of the period described in clause (ii) of this sentence for which the Company is required to allocate Profits, Losses and other items of Company income, gain, loss or deduction pursuant to Article 8 hereof.

(qq) “**Form 1065**” has the meaning set forth in Section 11.3.

(rr) “**Formation Date**” means June 18, 1998, the date on which the Certificate of Formation was filed with the Delaware Secretary of State.

(ss) “**GAAP**” has the meaning set forth in Section 11.1.

(tt) “**HVAC/R Products**” means heating and cooling products, systems, equipment, components, accessories and parts, and brands thereof, in each case to the extent identified as “Products” (i) in any of the Distributor Agreements or (ii) in the Distributor Agreement, dated the date hereof, by and among Carrier, the Company and Watsco, in substantially the form attached hereto as Exhibit A.

(uu) “**Indebtedness**” means, with respect to any Person, (i) indebtedness of such Person for borrowed money, (ii) other indebtedness of such Person evidenced by notes, bonds or debentures, (iii) capitalized leases classified as indebtedness of such Person under GAAP, (iv) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (v) any obligation of such Person for the deferred purchase price of property or services (other than trade payables and other current liabilities), (vi) any Indebtedness of another Person referred to in clauses (i) through (v) above guaranteed directly or indirectly, jointly or severally, in any manner by such Person, (vii) any Indebtedness referred to in clauses (i) through (v) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any lien or encumbrance on property (including, without limitation, accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness, and (viii) the maximum amount of all direct or contingent obligations of such Person with respect to letters of credit, bankers’ acceptances, bank guaranties, surety bonds or similar facilities or instruments.

(vv) “**Initial Agreement**” has the meaning set forth in Recital A.

(ww) “**Initial Capital Contribution**” has the meaning set forth in Section 3.1(a).

(xx) “**Initial Distribution**” shall have the meaning set forth in Section 9.3.

(yy) “**Interest Purchase**” has the meaning set forth in Recital C.

(zz) “**Interested Transaction**” means, with respect to a Person, any transaction or agreement (including, but not limited to, the purchase, sale, lease, or exchange of any property or the rendering of any service, or the establishment of any salary, other compensation, or other terms of employment) with any Affiliate of such Person.

(aaa) “**Liquidating Trustee**” has the meaning set forth in Section 10.3.

(bbb) “**Major Decision**” has the meaning set forth in Section 6.3(a).

(ccc) “**Mediation Termination**” has the meaning set forth in Section 15.3(b).

(ddd) “**Member**” means each Person who is admitted as a Member of the Company and listed on Schedule A and each additional Person who shall hereafter be admitted as a Member hereof in accordance with the provisions of this Agreement.

(eee) “**Membership Interest**” and “**Membership Interests**” shall mean the limited liability company interest(s) of a Member in the Company, as set forth opposite such Member’s name on Schedule A hereto from time to time, including such Member’s share of the Profits and Losses of the Company, and also the right of such Member to any and all of the benefits to which such Member may be entitled as provided in this Agreement and in the Act, together with the obligations of such Member to comply with all the provisions of this Agreement and of the Act. The Company shall maintain records indicating the owners of record of the Membership Interests. Membership Interests shall be certificated and evidenced by Certificates as set forth in Section 7.3. The Company may issue whole or fractional Membership Interests.

(fff) “**Member Minimum Gain**” means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Treasury Regulations Section 1.704-2(i)(3).

(ggg) “**Member Nonrecourse Debt**” has the same meaning as the term “partner nonrecourse debt” in Treasury Regulations Section 1.704-2(b)(4).

(hhh) “**Nonrecourse Liability**” shall have the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

(iii) “**Offer**” shall have the meaning set forth in Section 12.2(a).

(jjj) “**Offeree Notice**” shall have the meaning set forth in Section 12.2(a).

(kkk) “**Offerees**” shall have the meaning set forth in Section 12.2(a).

(lll) “**Offeror**” shall have the meaning set forth in Section 12.2(a).

(mmm) “**Percentage Interest**” means, with respect to any Member at any time, a fraction, expressed as a percentage, the numerator of which is the number of Membership Interests held by such Member at such time and the denominator of which is the total number of Membership Interests held by all Members at such time.

(nnn) “**Permitted Lien**” shall mean a lien, mortgage, pledge, security interest or similar encumbrance of a Member’s Membership Interests granted to a lender or lenders (or agent for a lender or lenders) to secure any obligations under any credit agreements and/or related documents in respect of any loan to the Member and/or any of such Member’s direct or indirect wholly-owned Subsidiaries (or, so long as such Member is, directly or indirectly, a wholly-owned Subsidiary of its ultimate parent entity, such ultimate parent entity’s direct or indirect wholly-owned Subsidiaries).

(ooo) “**Permitted Transferee**” shall have the meaning set forth in Section 12.1(b).

(ppp) “**Person**” means any natural person or Entity.

(qqq) “**Profit**” or “**Loss**” means, for a period, an amount equal to the Company’s taxable income or loss for such period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments: (i) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profit or Loss shall be added to such taxable income or loss; (ii) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv) shall be subtracted from such

taxable income or loss; (iii) in lieu of the amounts of depreciation, amortization or other cost recovery deductions taken into account in computing such taxable income or loss, the amounts taken into account shall be the amounts determined in the manner provided in Treasury Regulations Section 1.704-1(b)(2)(iv)(g)(3); (iv) In the event the Book Value of any asset is adjusted pursuant to the definition of Book Value, the amount of such adjustment shall be taken into account as gain (if the adjustment increases the Book Value of an asset) or loss (if the adjustment decreases the Book Value of an asset) from the disposition of such asset for purposes of computing Profit or Loss; (v) in lieu of any tax gain or tax loss recognized by the Company with respect to the disposition of an asset, there shall be taken into account gain or loss recognized by the Company for book purposes under the principles of Treasury Regulations Section 1.704-1(b)(2)(iv), computed by reference to the Book Value of the asset as of the date disposition rather than by reference to the tax basis of the asset; (vi) to the extent an adjustment to the adjusted tax basis of any asset pursuant to Section 734(b) of the Code is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Membership Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profit or Loss; and (vii) items of income, gain, loss, or deduction allocated separately pursuant to Section 8.4 hereof shall be excluded from the computation of Profit or Loss. If the Company's taxable income or loss for such period, as adjusted in the manner provided above, is a positive amount, such amount shall be the Company's Profit for such period, and if negative, such amount shall be the Company's Loss for such period.

(rrr) "**Proposed 1065**" shall have the meaning set forth in Section 11.3.

(sss) "**Purchase and Contribution Agreement**" has the meaning set forth in Recital C.

(ttt) "**Regulatory Allocations**" shall have the meaning set forth in Section 8.4(b).

(uuu) "**Requisite Members**" means, the Carrier Deciding Member and the Watsco Deciding Member; provided, that if (i) the Percentage Interest owned by the Carrier Holders, in the aggregate, ceases to be at least ten percent (10%), Requisite Members shall be deemed to be the Watsco Deciding Member, and (ii) the Percentage Interest owned by the Watsco Holders, in the aggregate, ceases to be at least ten percent (10%), Requisite Members shall be deemed to be the Carrier Deciding Member.

(vvv) The phrase "**Resolution of the Board**" means a resolution Approved by the Board.

(www) “**Revolving Credit Agreement**” shall have the meaning set forth in Section 13.01 of the Purchase and Contribution Agreement.

(xxx) “**Subsidiary**” means, with respect to any Person, (i) any corporation fifty percent (50%) or more of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation is at the time owned by such Person, directly or indirectly through one or more Subsidiaries, and (ii) any other Person, including but not limited to a joint venture, a general or limited partnership or a limited liability company, in which such Person, directly or indirectly through one or more Subsidiaries, at the time owns at least fifty percent (50%) or more of the ownership interests entitled to vote in the election of managing partners, managers or trustees thereof (or other Persons performing such functions) or acts as the general partner, managing member, trustee (or Persons performing similar functions) of such other Person.

(yyy) “**Tag Notice**” shall have the meaning set forth in Section 12.3.

(zzz) “**Tag Sale**” shall have the meaning set forth in Section 12.3.

(aaaa) “**Tag Seller**” shall have the meaning set forth in Section 12.3.

(bbbb) “**Tax Distributions**” shall have the meaning set forth in Section 9.3.

(cccc) “**Tax Matters Member**” shall have the meaning set forth in Section 11.4(a).

(dddd) “**Tax Rate**” means, in respect of any item of taxable income for any period, the highest marginal blended rate of federal, state and local income, franchise and other similar Taxes applicable to any Member in respect of such item for such period, taking into account the character of such item of income.

(eeee) “**Term**” shall have the meaning set forth in Section 2.3.

(ffff) “**Transfer**” means the voluntary or involuntary sale, assignment, transfer (by gift or otherwise), lien, mortgage, pledge, grant of a security interest, encumbrance, hypothecation, grant of a participation interest or other disposition or conveyance of legal or beneficial interest, directly or indirectly, whether in one transaction or in a series of related transactions. Nothing herein shall be deemed to prevent a change of control of, or any other transfer of capital stock or other equity interests in, a Watsco Holder or a Carrier Holder, provided, that any such transaction does not primarily involve a change of control of, or any other transfer of capital stock or other equity interests in, a Watsco Holder or a Carrier Holder, when such Watsco Holder’s or Carrier Holder’s assets are primarily composed of Membership Interests.

(gggg) “**Transferee**” means any Person that is a transferee of Membership Interests in the Company.

(hhhh) “**Transferor**” means any Member that proposes to Transfer or does Transfer Membership Interests in the Company.

(iii) “**Treasury Regulations**” means the income tax regulations, including temporary regulations and corresponding provisions of succeeding regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

(jjjj) “**Watsco**” has the meaning set forth in Recital C.

(kkkk) “**Watsco Deciding Member**” means Watsco, until such time as one or more Watsco Holders (other than Watsco) hold(s) a Percentage Interest which is greater than the Percentage Interest then held by Watsco; thereafter, “Watsco Deciding Member” shall mean, at any time, the Watsco Holder holding the greatest Percentage Interest at such time (or as may be otherwise agreed by the Watsco Holders). Notwithstanding anything to the contrary herein, the Watsco Deciding Member may, without limitation, assign all or any portion of its rights granted under this Agreement (including, without limitation, with respect to the purchase and/or Transfer of Membership Interests) to one or more Watsco Holders

(llll) “**Watsco Holders**” means Watsco, Comfort Products, a direct or indirect wholly-owned Subsidiary of Watsco that is a Transferee of Membership Interests pursuant to Section 12.1(b).

(mmmm) “**Watsco Offeror**” has the meaning set forth in Section 12.2(a).

(nnnn) “**Watsco Scale-Down Percentage Interest**” has the meaning set forth in Section 4.2(a).

Section 1.2 Construction.

The headings and subheadings in this Agreement are included for convenience and identification and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof. Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine and neutral forms and the singular form of words shall include the plural and vice versa. All references to Articles and Sections refer to articles and sections of this Agreement, and all references to Schedules and Exhibits are to Schedules and Exhibits attached hereto, each of which is made a part hereof for all purposes.

ARTICLE 2
ORGANIZATIONAL MATTERS

Section 2.1 Formation.

The Members hereby confirm the formation of the Company as of the Formation Date as a limited liability company under and pursuant to the provisions of the Act and all other pertinent laws of the State of Delaware for the purposes and upon the terms and conditions hereinafter set forth. The parties hereto agree that the rights, duties, and liabilities of the Members, and any additional Members admitted to the Company in accordance with the terms hereof, shall be as provided in the Act, except as otherwise provided herein. Each of Watsco, Comfort Products, Carrier and the 1% Holder hereby acknowledges the receipt on or prior to the date hereof of the number of Membership Interests indicated in Schedule A, respectively.

Section 2.2 Name.

The name of the Company is Carrier Enterprise, LLC, or such other name as the Board may designate from time to time in compliance with the Act and subject to Section 6.3(a). The business of the Company shall be conducted in that name or in such other names as the Board may designate from time to time in compliance with applicable law.

Section 2.3 Term.

The Term of the Company commenced on the Formation Date and shall continue in existence until wound up and liquidated as set forth in Article 10 or as otherwise provided by law (the "Term").

Section 2.4 Purposes.

The purposes of the Company shall be: (a) to engage in the sale of HVAC/R Products; (b) to engage in, operate and manage such business activities and to take any and all such action as the Board determines to be necessary and appropriate in connection therewith; and (c) to enter into any lawful transaction and contracts and engage in any lawful activities consistent with and in furtherance of the foregoing purposes, in each case subject to Section 6.3.

Section 2.5 Powers of the Company.

Subject to the limitations set forth in this Agreement, the Company will possess and may exercise all of the powers and privileges granted to it by the Act, by any other applicable law or this Agreement, together with all powers incidental thereto, so far as such powers are necessary or convenient to the conduct, promotion, or attainment of the purposes of the Company set forth in Section 2.4.

Section 2.6 Maintenance of Separate Existence.

The Company shall do all things necessary to maintain its limited liability company existence separate and apart from the existence of each Member and any other Person, including, without limitation, maintaining the Company's books and records on a current basis separate from that of any other Person.

Section 2.7 Members.

The name and mailing address of each Member shall be listed on Schedule A attached hereto. Additional Members shall be admitted as Members of the Company only in accordance with the provisions of this Agreement, including, without limitation, Articles 12 and 13. The Board, or a designee of the Board, shall update Schedule A from time to time as necessary to accurately reflect any amendment thereto.

Section 2.8 Registered Agent and Office.

The Company's registered office and the name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19809. At any time, the Board may designate another registered agent and/or registered office.

Section 2.9 Principal Place of Business.

The principal place of business of the Company is in Syracuse, New York. The Board may change the location of the Company's principal place of business, which may be either inside or outside of the State of Delaware.

Section 2.10 Title to Company Assets.

All Company Assets shall be deemed to be owned by the Company as an entity, and no Member, individually, shall have any direct ownership interest in the Company Assets. Each Member, to the extent permitted by applicable law, hereby waives its rights to a partition of the Company Assets and, to that end, agrees that it will not seek or be entitled to a partition of any assets, whether by way of physical partition, judicial sale or otherwise, except as otherwise expressly provided herein.

Section 2.11 Filings.

Each officer designated by the Board as an authorized person, within the meaning of the Act, shall execute, deliver and file, or cause the execution, delivery and filing of, any amendments or restatements of the Certificate of Formation and any other certificates, notices, statements or other instruments (and any amendments or statements thereof) necessary or, in the Board's view, advisable for the formation of the Company or the operation of the Company in all jurisdictions where the Company may elect to do

business, but no such amendment or restatement may be executed, delivered or filed unless adopted in a manner authorized by this Agreement. The Members promptly shall execute and deliver such documents and perform such acts consistent with the terms of this Agreement as may be reasonably necessary to comply with the requirements of law for the formation, qualification and continuation of existence of a limited liability company under the laws of each jurisdiction in which the Company shall conduct business.

Section 2.12 Interested Transactions.

The Company and/or any Company Subsidiary may engage in any Interested Transaction so long as the following conditions are satisfied: (a) the Interested Transaction is not expressly prohibited by this Agreement and, if Major Decisions then require the affirmative vote or consent of the Requisite Members pursuant to the terms of Section 6.3(a), the Interested Transaction has been approved in accordance with Section 6.3; and (b) either (i) the Interested Transaction is in the ordinary course of business at prices and on terms and conditions not less favorable to the Company or such Company Subsidiary than could be obtained on an arm's-length basis from unrelated third parties or (ii) the Interested Transaction is with Carrier or any of its Affiliates. The parties acknowledge that the transactions contemplated in the Purchase and Contribution Agreement and the Ancillary Agreements in each case satisfy the conditions specified in this Section 2.12.

ARTICLE 3
CAPITAL CONTRIBUTIONS AND CAPITAL ACCOUNTS

Section 3.1 Capital Contributions.

(a) Upon the execution hereof, each Member will contribute or be deemed to contribute to the capital of the Company as such Member's Initial Capital Contribution the amount set forth opposite his or her name on Schedule A attached hereto (as to each Member, the "Initial Capital Contribution").

(b) Each Member shall make, or cause to be made, Additional Capital Contributions in the form and manner, and on the terms and conditions, specified for the relevant Member in the Consignment Agreement. No additional Membership Interests will be issued in respect of such Additional Capital Contributions.

(c) Except as specifically provided in this Agreement, no Member shall receive any interest, salary or drawing with respect to its Capital Contributions or its Capital Account or otherwise in his, her or its capacity as a Member. Except as otherwise expressly provided herein or with the prior Approval of the Board, no Member will be permitted to borrow, make an early withdrawal of or demand or receive a return of any Capital Contributions.

(d) Except as otherwise expressly provided herein, no Member shall be required to make any Additional Capital Contributions to the capital of the Company, nor shall any Member be permitted to make any Additional Capital Contributions except pursuant to the issuance of additional Membership Interests by the Company in accordance with Article 13.

Section 3.2 Capital Accounts.

A Capital Account shall be established and maintained for each Member in accordance with Code § 704(b) and the Treasury Regulations thereunder, including Treasury Regulation § 1.704-1(b)(2)(iv). Each Member's Capital Account shall initially reflect such Member's Initial Capital Contribution. Schedule A sets forth each Member's Capital Account balance as of the date hereof.

(a) Without limiting the generality of the foregoing, Capital Accounts will be increased by:

(i) Any Additional Capital Contributions made by a Member;

(ii) Allocations to the Members of Profits and any items in the nature of income or gain that are allocated to such Members pursuant to

Section 8.2; and

(iii) Company liabilities assumed by such Member as provided in Treasury Regulation § 1.704-1(b)(2)(iv)(c)(1).

(b) The Capital Account of the Members will be decreased by:

(i) The amount of distributions of Distributable Cash made to Members by the Company;

(ii) The Book Value of property distributed to the Members by the Company (net of liabilities that are secured by such property that such Member is considered to assume or take subject to, under Code § 752);

(iii) Allocations to the Members of Losses and any items in the nature of loss or deduction that are allocated to such Member pursuant to

Section 8.2; and

(iv) Member liabilities assumed by the Company as provided in Treasury Regulation § 1.704-1(b)(2)(iv)(c)(2).

(c) In the event of a Transfer of all or a part of a Member's Membership Interests in the Company, the Capital Account of the Transferor shall become the Capital Account of the Transferee to the extent it is attributable to the transferred Membership Interests in accordance with Treasury Regulation § 1.704-1(b)(2)(iv)(l).

(d) Except as otherwise required in the Act, no Member shall have any liability to restore all or any portion of a deficit balance in such Member's Capital Account.

(e) A Member shall not receive out of Company Assets any part of such Member's Capital Contributions or Capital Account balance to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the Company, other than liabilities to Members on account of their Membership Interests and liabilities for which the recourse of creditors is limited to specified property of the Company, exceed the fair value of the assets of the Company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the Company only to the extent that the fair value of that property exceeds that liability; and provided that purposes of this Section 3.2(e), the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(f) The Board may cause Capital Accounts to be revalued in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f) including, but not limited to, upon the admission of additional Members to the Company, if such a revaluation is necessary to reflect the economic arrangement of all Members.

ARTICLE 4 BOARD OF DIRECTORS

Section 4.1 Authority of the Board.

Except as otherwise provided in this Agreement, the business and affairs of the Company shall be controlled, directed and managed exclusively by the Board. Except when the Approval of the Members (or the Requisite Members) is expressly required by the Act, the Certificate of Formation or this Agreement, the Board shall have full, complete and exclusive authority, power, and discretion to manage and control the business, property and affairs of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business, property and affairs. The Board shall be responsible, without limitation, at its meetings for (i) review of the performance by the Company's management, (ii) review, approval and update of the Company's annual operating plan and the Company's needs and requirements for growth and development of market share, (iii) review of the Company's financial performance, business issues and opportunities, (iv) distributions and (v) review of leadership and succession, in each case subject to Section 6.3.

Section 4.2 Composition of the Board.

(a) For so long as the Percentage Interest held by the Carrier Holders, in the aggregate, is at least twenty percent (20%) (the “Carrier Scale-Down Percentage Interest”) and the Percentage Interest held by the Watsco Holders, in the aggregate, is at least fifty percent (50%) (the “Watsco Scale-Down Percentage Interest”), the Board shall be composed of five (5) Directors, of whom two (2) Directors shall be designated by the Carrier Deciding Member and three (3) Directors shall be designated by the Watsco Deciding Member. Notwithstanding the forgoing, the number of Directors constituting the entire Board may be increased or decreased beyond the number set forth above from time to time by Approval of the Board, subject to Section 6.3; provided, that, so long as the Percentage Interest of the Carrier Holders is equal to or greater than the Carrier Scale-Down Percentage Interest, in the case of any increase or decrease in the number of Directors constituting the entire Board, the composition of the Board shall be adjusted to provide the Carrier Deciding Member with the right to designate the whole number (rounding up) of Directors that is closest to forty percent (40%) of the entire Board.

(b) Following such time as the Percentage Interest held by the Carrier Holders is less than the Carrier Scale-Down Percentage Interest, the number of Directors designated by the Carrier Deciding Member shall be reduced to the whole number (rounding up) of Directors that is closest to the product of (i) the Percentage Interest held by the Carrier Holders at such time and (ii) the number of Directors constituting the entire Board. Any Directors with respect to whom the Carrier Deciding Member’s designation rights are terminated pursuant to this Section 4.2(b), shall be removed from the Board as of the date of such termination of such designation rights. In such event, the replacements of such removed Directors shall be determined by the Approval of the Members.

(c) Following such time as the Percentage Interest held by the Watsco Holders is less than the Watsco Scale-Down Percentage Interest, the Watsco Deciding Member shall only be entitled to designate the whole number (rounding up) of Directors that is closest to the product of (i) the Percentage Interest held by the Watsco Holders at such time and (ii) the number of Directors constituting the entire Board. Any Directors with respect to whom the Watsco Deciding Member’s designation rights are terminated pursuant to this Section 4.2(c), shall be removed from the Board as of the date of such termination of such designation rights. In such event, the replacements of such removed Directors shall be determined by the Approval of the Members.

Section 4.3 Resignation and Removal.

(a) Subject to Section 4.2, any Director may resign at any time by giving written notice of his or her resignation to the Board. A resignation shall take effect at the time specified therein or if no time is specified therein, immediately upon its receipt, and, unless otherwise specified therein, the acceptance of a resignation shall not be necessary to make it effective.

(b) Each Member may remove any Director designated by it at any time, with or without cause, effective upon written notice to the other Members and the President of the Company.

(c) Any vacancy on the Board resulting from the removal or resignation, death, retirement or disability of any Director shall be filled by the Member that designated such Director, which designation shall become effective upon written notice to the other Members and the President of the Company. If such Member fails to fill the vacancy, the directorship will remain vacant until such time that such vacancy is filled by the Member who designated such Director.

Section 4.4 Compensation.

Subject to Section 6.3, as Determined by the Board, the Directors may be paid their expenses, if any, of attendance at each meeting of the Board and may be paid a fixed sum for attendance at each meeting of the Board or a stated salary as Director. No such payment shall preclude any Director from serving the Company in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Section 4.5 Meetings of the Board.

(a) Quarterly Meetings; Calling of Meetings; Notice. The Board shall hold regular meetings at such times as may be specified by it but no less often than quarterly. Special meetings of the Board may be called at any time and for any purpose or purposes by (i) the President or his designee or by Resolution of the Board in which at least a majority of all Directors call for such meeting, or (ii) by any Member. Subject to the notice provisions set forth in Section 15.2, notice of the place, date and hour of each meeting of the Board will be given by registered or certified mail, by nationally recognized overnight delivery service, by telephone (which shall be deemed given upon oral acknowledgment by the Director receiving notice), by facsimile or by personal delivery, or by email, to each Director entitled to vote at the meeting, not fewer than three (3) Business Days prior to the meeting, and in any case not more than thirty (30) days prior to the meeting. A notice shall state, in general terms, the purpose or purposes for the calling of a meeting. If such notice is mailed, emailed or sent by overnight delivery service, it will be directed to each Director at such Director's address as it appears on the record of Directors, or, if a Director had filed with the Company a written request that notices to such Director be sent to some other address, then directed to such Director at such other address. Notice of a meeting need not be given to any Director who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes of such meeting, whether before or after the meeting, or who participates in the meeting without protesting, prior to the commencement of such Director's participation in the meeting, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the Company records or made a part of the minutes of the meeting.

(b) Time and Place of Meetings. Meetings of the Board may be held at any place within or without the State of Delaware which has been designated in the notice of the meeting or at such place as may be Approved by the Board.

(c) Quorum. A majority of Directors shall constitute a quorum of the Board for the transaction of business. The Directors present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the loss of a quorum.

(d) Adjourned Meetings. A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of such adjournment shall be given prior to the time the adjourned meeting is to be resumed to all Directors who were not present at the time of the adjournment.

(e) Telephonic Participation by Directors at Meetings. Directors may participate in a meeting through the use of conference telephone or similar communications equipment, so long as all Directors participating in such meeting can hear one another. Participation in a meeting in such manner constitutes presence in person at such meeting.

(f) Approval of the Board.

(i) At a Meeting. Unless specifically provided otherwise by law or this Agreement, whenever the Board is entitled to vote on any matter or exercise any power under this Agreement, such matter shall be considered approved or consented to upon the receipt of the affirmative vote of at least a majority of all Directors entitled to vote thereon, with each Director having one (1) vote. Except in such person's capacity as an officer of the Company, as provided in Section 2.11, no Director acting individually shall have the authority or right to act on behalf of, or to take any action to bind, the Company in connection with any matter, except as provided in this Agreement.

(ii) Conduct of Disputes. Notwithstanding anything to the contrary in this Agreement, (A) only Directors designated by Watsco shall be entitled to vote on any matter relating to the conduct and settlement of any claim, action, suit, proceeding or dispute between the Company, and/or any of its Subsidiaries, on the one hand and Carrier, and/or any of its Affiliates, on the other hand, and (B) only Directors designated by Carrier shall be entitled to vote on any matter relating to the conduct and settlement of any claim, action, suit, proceeding or dispute between the Company, and/or any of its Subsidiaries, on the one hand and Watsco, and/or any of its Affiliates, on the other hand.

(iii) By Written Consent. Any action required or permitted to be taken by the Board may be taken by the Directors without a meeting, if a consent in writing, setting forth the action so taken, is signed by all Directors.

(iv) Matters Requiring Approval. The Company may not, without Approval of the Board, engage, directly or indirectly, including, without limitation, through one or more Subsidiaries of the Company, and shall cause its Subsidiaries not to engage, in any transaction or series of related transactions or take any action, which if engaged in or taken by a corporation under the Delaware General Corporation Law would require action by the board of directors of that corporation, other than transactions in the ordinary course of the Company's business.

Section 4.6 No Exclusivity of Duty to Company.

Except as otherwise provided herein, no Director shall be required to serve on the Board as his or her sole and exclusive function and such Director may engage in or possess any interest in another business or venture of any nature and description, independently or with others, and neither the Company nor any Member shall have any rights in or to any such independent ventures or the income or proceeds derived therefrom. Directors shall not incur any liability to the Company or to any of the Members as a result of engaging in any other business or venture. Any Director shall be able to transact business or enter into agreements with the Company to the fullest extent permissible under the Act, subject to the terms and conditions of this Agreement.

Section 4.7 Equity Plans.

Subject to Section 6.3, the Board is authorized to (i) adopt such equity option plans, restricted equity plans and other rights plans as it shall deem necessary from time to time and (ii) grant such options, equity interests and other rights under such plans to such persons, including officers, directors, employees, consultants and others, as the Board may Approve.

**ARTICLE 5
OFFICERS**

Section 5.1 Appointment and Removal of Officers.

(a) The Board shall Approve the appointment of the officers of the Company on an annual basis. The officers of the Company shall consist of a President, a Chief Financial Officer, a Secretary, and other officers, including but not limited to one or more Vice Presidents, and assistant and subordinate officers as the Board may deem necessary, each of whom shall hold their offices for one-year terms and shall exercise such powers and perform such duties as shall be Determined from time to time by the Board until their successors are appointed and qualified. Any officer or agent selected or appointed by the Board may be removed at any time, with or without cause, by Resolution of the Board, provided, however, that if the officer that is subject to removal is also a Director of the Company, he or she shall be permitted to vote at the meeting of the Board, or through a written consent, taken in connection with such officer's removal. Vacancies of officer positions shall be filled by Approval of the Board. The salaries, other

compensation and business expense reimbursement of all officers and agents of the Company shall be Determined and fixed by the Board. Unless otherwise expressly approved herein, subject to Approval of the Board, any two or more offices may be held by the same Person.

(b) In addition, notwithstanding anything to the contrary contained herein, an officer may not be removed without cause unless by Resolution of the Board in which at least a majority of all Directors approve the removal.

Section 5.2 Chairman of the Board.

The Board shall appoint a Director to act as Chairman of the Board. The Chairman of the Board shall preside at all meetings of the Members and of the Board at which he is present, subject to the ultimate authority of the Board to appoint an alternate presiding officer at any meeting. The Chairman of the Board may be an officer of the Company if so designated by the Board and shall also perform such other duties and may exercise such other powers as from time to time may be assigned to him by the Board.

Section 5.3 President.

The President shall have general supervision and control over, and responsibility for, the day-to-day operations of the Company, subject to the ultimate authority of the Board, and shall have such other powers and shall perform such other duties as may from time to time be assigned to him or her by the Board. The initial President shall be the person Determined by the Requisite Members. The initial President shall serve for a one-year term commencing on the date of execution hereof unless the Requisite Members agree otherwise.

Section 5.4 Chief Financial Officer.

The Chief Financial Officer shall have such other powers and shall perform such other duties as may from time to time be assigned to the Chief Financial Officer by the President and by the Board. The initial Chief Financial Officer shall be the person Determined by the Requisite Members. The initial Chief Financial Officer shall serve for a one-year term commencing on the date of execution hereof unless the Requisite Members agree otherwise.

Section 5.5 Vice Presidents.

One or more Vice Presidents shall perform such duties and have such powers as may from time to time be assigned to them by the President or the Board. In the absence or disability of the President, the President's duties will be performed and powers may be exercised by one or more such Vice Presidents, as will be designated by the Board.

Section 5.6 Secretary.

The Secretary will attend all meetings of the Members and the Board will record all votes and the minutes of all proceedings in a book to be kept for that purpose, unless the Members or the Board, as applicable, designate another person for such purpose. Unless otherwise provided in this Agreement, the Secretary will attend to the giving of notice of all meetings of the Members and the Board, have custody of the company seal and, when authorized by the Board, will have authority to affix the same to any instrument and, when so affixed, it will be attested by the Secretary's signature or by the signature of the President, the Chief Financial Officer or an Assistant Secretary.

Section 5.7 Authority and Duties of the Officers.

The Members hereby grant authority and responsibility for the day-to-day operation of the business and affairs of the Company to the officers. Any action required by this Agreement to be performed by the Company shall be deemed to have been taken by the Company if such action is approved by the Board and taken or approved by the President or other authorized officer, unless otherwise indicated in this Agreement. The officers, to the extent of their powers set forth in this Agreement or in a Resolution of the Board, are agents of the Company for the purposes of the Company's business, and the actions of the officers taken in accord with such powers shall bind the Company. Any agreement, deed, lease, note or other document or instrument executed on behalf of the Company by the President or other authorized officer as Approved by the Board, shall be deemed to have been duly executed; no other person's signature shall be required in connection with the foregoing and third parties shall be entitled to rely upon the President's or other authorized officer's power to bind the Company without otherwise ascertaining that the requirements of this Agreement have been satisfied. Notwithstanding the foregoing grant of authority to the officers, no act shall be taken, sum expended, decision made or obligation incurred by the officers (a) which requires for its authorization and/or implementation, the vote, approval or consent of Members pursuant to the Act, or (b) which constitutes a matter designated for Approval of the Board or the Members under this Agreement.

**ARTICLE 6
MEMBERS**

Section 6.1 Power of Members.

Except as expressly provided in this Agreement or the Act, no Member shall take any part in the management of the business or transact any business for the Company or shall have any power, solely in its capacity as a Member, to sign for, act for, bind, or assume any obligation or responsibility on behalf of, any other Member or the Company; provided, however, that the Members shall have the voting, approval and consent rights as described in this Agreement and as provided under the Act. Except as specifically provided in this Agreement, with respect to any action of the Company submitted to a vote of the Members, any Member may vote or refrain from voting for or against any such action of the Company, in such Member's sole and absolute discretion.

Section 6.2 Other Activities

(a) Any Member may engage in or possess any interest in another business or venture of any nature and description, independently or with others, and neither the Company nor any other Member shall have any rights in or to any such independent ventures or the income or proceeds derived therefrom. Any Member shall be able to transact business or enter into agreements with the Company to the fullest extent permissible under the Act, subject to the terms and conditions of this Agreement.

(b) If a Member (or any Director appointed by such Member) acquires knowledge of a potential transaction or matter which may be a business opportunity for both such Member and the Company or another Member, such Member (and its Director designees) shall have no duty to communicate or offer such business opportunity to the Company or any other Member and shall not be liable to the Company or the other Members for breach of any duty (including, without limitation, fiduciary duties) as a Member or Director of the Company by reason of the fact that such Member or Director pursues or acquires such business opportunity for itself, directs such opportunity to another Person, or does not communicate information regarding such opportunity to the Company.

(c) In connection with the exercise of any voting rights pursuant to this Agreement, a Member may consider its own best interests when determining how to cast its vote and shall in no event be deemed to have any fiduciary duty to any other Member or to the Company.

(d) Watsco shall not, and shall procure that its Affiliates do not, amend or alter the Revolving Credit Agreement, or any lien, mortgage, pledge, security interest or similar encumbrance entered into or granted in connection with the Revolving Credit Agreement in any way that, (i) directly or indirectly reverses or otherwise alters the effect of Amendment No. 1 to Revolving Credit Agreement dated July 1, 2009, by and among Watsco, certain Subsidiaries of Watsco, Bank of America N.A., in its capacity as administrative agent for the lenders parties thereto, and the lenders party thereto, on the Company or any of its Subsidiaries, or (ii) imposes obligations or liabilities, or otherwise has a direct adverse impact, on the Company or any of its Subsidiaries.

Section 6.3 Actions Requiring Approval of the Requisite Members.

(a) Notwithstanding anything in this Agreement to the contrary, for so long as the Percentage Interest owned by the Carrier Holders, in the aggregate, or the Watsco Holders, in the aggregate, is at least twenty percent (20%), the Company shall not, and shall cause its Subsidiaries not to, take, cause to be taken, or agree to or authorize, any of the following actions (each, a "Major Decision")

and collectively, the “Major Decisions”), without the affirmative vote or consent of the Requisite Members (it being understood that the thresholds below shall apply to the Company and its Subsidiaries in the aggregate):

(i) the entry into any new line of business outside of its existing business, including but not limited to any change in the scope of the business purpose of the Company beyond the sale of HVAC/R Products;

(ii) the entry into an agreement to effect, or, in the absence of such an agreement, the consummation, of any merger, sale of all or substantially all of the assets of the Company, consolidation, reorganization, joint venture or alliance involving a material amount of assets of the Company, or similar transaction;

(iii) the entry into an agreement to effect, or, in the absence of such an agreement, the consummation of any acquisition (A) with an aggregate purchase price (including, without limitation, the assumption of liabilities) in excess of \$5 million in the aggregate in any Fiscal Year or (B) reasonably expected to generate cash flow in excess of \$1 million in the aggregate in any Fiscal Year;

(iv) any divestiture, sale or other disposal of any investments, properties or assets in a single transaction or a series of related transactions in excess of \$5 million in the aggregate in any Fiscal Year;

(v) the incurrence or assumption of any Indebtedness or other obligation with respect to any such Indebtedness other than (A) in the ordinary course of the business or (B) amounts not in excess of \$25 million in the aggregate outstanding at any given time;

(vi) the creation or imposition of any lien, mortgage or encumbrance on any properties or assets in excess of \$25 million in the aggregate at any given time;

(vii) the incurrence or assumption of any Indebtedness that provides for lender(s) to have recourse to the Members;

(viii) the issuance, sale, repurchase, or redemption of any equity interest, any other securities or rights convertible into, exchangeable or exercisable for, or evidencing the right to subscribe for, or any warrants or options to acquire, any such shares, interests, voting securities or convertible securities of the Company or any Subsidiary of the Company;

(ix) the making of any capital expenditures in excess of \$25 million in the aggregate during any Fiscal Year;

(x) except as otherwise expressly provided herein, any amendment or modification to the terms of this Agreement or any material terms of any other governance document of the Company or any of its Subsidiaries or any material terms of any security issued by the Company or any of its Subsidiaries;

(xi) the entry by the Company or any Company Subsidiary into any Interested Transaction other than the transactions contemplated in the Purchase and Contribution Agreement and the Ancillary Agreements;

(xii) the entry into any “non-compete” or any other agreement or the taking of any action that would purport to limit or could reasonably be expected to limit, the freedom of the Company or any of its Subsidiaries or Affiliates that it controls to compete freely in any line of business or in any geographic area;

(xiii) the filing of a registration statement under the Securities Act of 1933, as amended;

(xiv) the entry into (and any amendment, alteration or cancellation of), any contract (other than contracts entered into, amended, altered or cancelled in the ordinary course of business), involving the commitment or transfer of value in excess of \$1 million in the aggregate in any Fiscal Year;

(xv)(A) the commencement of a voluntary case, proceeding or other action (1) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to the Company or any of its Subsidiaries, or seeking to adjudicate the Company or any such Subsidiary bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to the Company or any such Subsidiary or the Company’s or any such Subsidiary’s debts, or (2) seeking appointment of a receiver, trustee, custodian or other similar official for the Company or any such Subsidiary or for all or any substantial part of the Company’s or any such Subsidiary’s assets, or (B) the making of a general assignment for the benefit of the Company’s or any such Subsidiary’s creditors;

(xvi) the commencement of any termination, plan of liquidation or dissolution or winding-up of the business and affairs of the Company or any of its Subsidiaries, or the selection of any Liquidating Trustee;

(xvii) any change to the name of the Company;

(xviii) the increase or decrease of the number of Directors constituting the entire Board; and

(xix) any material change in any accounting methods or practices, except as required by GAAP or as is necessary for conformity with any change in accounting methods or practices of Watsco that is required by GAAP.

(b) For the avoidance of doubt, the Company shall cause its Subsidiaries not to, at any time, take any action or effect any transaction, or enter any agreement to take any action or effect any transaction, to which the prior approval provisions of Section 6.3(a) apply, unless such action or transaction has been approved by the Requisite Members of the Company in accordance with the provisions of Section 6.3(a).

(c) Carrier, Watsco, and each Member, shall not, and shall ensure that its Subsidiaries (other than the Company and its Subsidiaries) do not, at any time, take any action or effect any transaction, or enter any agreement to take any action or effect any transaction, binding, on behalf of, or in relation to, the Company or any of its Subsidiaries which action or transaction, if undertaken by the Company or any of its Subsidiaries, would require the prior approval under Sections 6.3(a) or 6.3(b) unless such action or transaction has been approved by the Requisite Members of the Company in accordance with the provisions of Section 6.3(a).

Section 6.4 Meetings of Members.

(a) Calling of Meetings; Notice. Meetings of the Members may be called at any time and for any purpose or purposes by Resolution of the Board in which at least a majority of all Directors call for such meeting, or by any Member. Subject to the notice provisions set forth in Section 15.2, notice of the place, date and hour of each meeting of the Members will be given by registered or certified mail, by nationally recognized overnight delivery service, by telephone (which shall be deemed given upon oral acknowledgment by the Member receiving notice), by facsimile or by personal delivery or by email, to each Member entitled to vote at such meeting, not fewer than five (5) Business Days prior to the meeting, and in any case not more than thirty (30) days prior to the meeting. A notice shall state, in general terms, the purpose or purposes for the calling of a meeting. If such notice is mailed, emailed or sent by overnight delivery service, it will be directed to each Member at such Member's address as it appears on the record of Members, or, if a Member had filed with the Company a written request that notices to such Member be sent to some other address, then directed to such Member at such other address. Notice of a meeting need not be given to any Member who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes of such meeting, whether before or after the meeting, or who participates in the meeting without protesting, prior to the commencement of such Member's participation in the meeting, the lack of notice to such Member. All such waivers, consents and approvals shall be filed with the Company records or made a part of the minutes of the meeting.

(b) Time and Place of Meetings. Meetings of the Members may be held at any place within or without the State of Delaware which has been designated in the notice of the meeting or at such place as may be Determined by the Board from time to time.

(c) Quorum. Except as otherwise provided by this Agreement, at all meetings, all Members will be required for and will constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the loss of a quorum.

(d) Adjourned Meetings. Member(s) holding at least a majority Percentage Interest calculated with reference to all Members present, whether or not a quorum is present, may adjourn any meeting to another time and place. At any such adjourned meeting at which a quorum will be present, any business may be transacted that might have been transacted at the meeting as originally called. If the meeting is adjourned for more than twenty-four (24) hours, notice of such adjournment shall be given prior to the time the adjourned meeting is resumed to all Members who were not present at the time of the adjournment.

(e) Telephonic Participation by Members at Meetings. Members may participate in a meeting through the use of conference telephone or similar communications equipment, so long as all Members participating in such meeting can hear one another. Participation in a meeting in such manner constitutes presence in person at such meeting.

(f) Approval of Members.

(i) At a Meeting. Unless specifically provided otherwise in this Agreement, whenever the Members are entitled to vote on any matter under the Act or this Agreement, such matter shall be considered approved or consented to upon the receipt of the affirmative vote at a meeting at which a quorum is present, of the Member(s) holding at least a majority Percentage Interest calculated with reference to all Members entitled to vote thereon at such meeting; provided that any Major Decision shall be considered approved or consented to only as provided by Section 6.3(a).

(ii) By Written Consent. Unless specifically provided otherwise in this Agreement, any action required or permitted to be taken by the Members may be taken by the Members without a meeting, if a consent in writing, setting forth the action so taken, is signed by all Members.

Section 6.5 Proxies.

Each Member holding Membership Interests entitled to vote at a meeting of Members or to express consent or dissent without a meeting may authorize another Person or Persons to act for such Member by proxy. Without limiting the manner in which a Member may authorize another Person to act for such Member as proxy, a writing which has been executed by such Member and

entered into the books and records of the Company, shall be a valid means by which a Member may grant such authority. Each proxy is revocable at the pleasure of the Member executing it, except in those cases where a proxy is made irrevocable and an irrevocable proxy is permitted by the Act.

Section 6.6 No Liability.

(a) No Member shall be liable, responsible or accountable in damages or otherwise to the Company or to any other Member for (i) any act performed within the scope of the authority conferred on the Members by this Agreement except for the willful misconduct of such Member in carrying out the obligations of such Member hereunder, (ii) such Member's failure or refusal to perform any act, except those expressly required by or pursuant to the terms of this Agreement, or (iii) such Member's performance of, or failure to perform, any act on the reasonable reliance on advice of legal counsel.

(b) The debts, obligations, expenses and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations, expenses and liabilities of the Company, and no Member or Director shall be obligated personally for any such debt, obligation, expense or liability of the Company solely by reason of being a Member or Director. No Member shall be required by this Agreement to loan the Company any funds or otherwise provide any financial or credit support.

Section 6.7 Nature of Obligations between Members.

Except as otherwise expressly provided herein, nothing contained in this Agreement shall be deemed to constitute any Member an agent or legal representative of any other Member or to create any fiduciary relationship for any purpose whatsoever, apart from such obligations between the members of a limited liability company as may be created by the Act. Except as otherwise expressly provided in this Agreement, a Member shall not have any authority to act for, or to assume any obligation or responsibility on behalf of, any other Member or the Company.

Section 6.8 Withdrawal of Members.

Except as otherwise specifically set forth herein, no Member shall be entitled to retire or withdraw from being a Member of the Company without the consent of the Requisite Members. No withdrawal of a Member shall cause the dissolution of the Company. If any withdrawal would as a matter of law cause dissolution of the Company, then any remaining Member shall be permitted to take appropriate action prior to such withdrawal to prevent such dissolution, including, without limitation, Transfer of a portion of such remaining Member's Membership Interest to a third party and admission of such Transferee as a Member of the Company. Any purported withdrawal which is not in accordance with this Agreement shall be null and void. Notwithstanding the foregoing, any Member that Transfers all of its, and owns no, Membership Interests shall immediately cease to be a Member.

Section 6.9 Non-Solicitation.

(a) Each Member will not and from and after the date hereof will cause its Affiliates (other than the Company and Company Subsidiaries) not to, without the prior written approval of the Requisite Members, directly or indirectly, hire or solicit, encourage, entice or induce to terminate his or her employment with the Company or any Company Subsidiary, any person who is an employee of the Company or any Company Subsidiary at the date hereof or at any time hereafter. For purposes of this Section 6.9, each Comfort Employee (as defined in the Purchase and Contribution Agreement) shall be treated as an employee of the Company as of the date hereof.

(b) Notwithstanding anything to the contrary in this Agreement, in the event, and from the date, that a party is no longer a Member hereunder, the provisions of this Section 6.9 shall survive for a period of three (3) years.

**ARTICLE 7
MEMBERSHIP INTERESTS**

Section 7.1 Membership Interests.

A Member's interest in the Company shall be represented by Membership Interests held by such Member. Except as otherwise expressly provided in this Agreement, all Membership Interests shall have identical rights in all respects as all other Membership Interests and shall for all purposes be personal property.

Section 7.2 Membership Interests are Securities.

All Membership Interests in the Company shall be deemed to be securities governed by Article 8 of the Uniform Commercial Code as in effect in the State of Delaware and in any other applicable jurisdiction, as provided in Section 8-103 thereof, for all purposes, including without limitation the perfection of security interests therein under Article 8 of each applicable Uniform Commercial Code.

Section 7.3 Certificates.

Each Certificate and each instrument issued in exchange for or upon the Transfer of any Membership Interests shall be stamped or otherwise imprinted with a legend in substantially the following form, or such similar legend as may be specified in any other agreement with the Company:

THE MEMBERSHIP INTERESTS REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN TRANSFER AND OTHER RESTRICTIONS SET FORTH IN THE OPERATING AGREEMENT OF CARRIER ENTERPRISE, LLC (AMENDED AND RESTATED AS OF July 1, 2009) AMONG CARRIER ENTERPRISE,

LLC AND CERTAIN OF ITS MEMBERS AND, AMONG OTHER THINGS, MAY NOT BE OFFERED OR SOLD EXCEPT IN COMPLIANCE WITH SUCH TRANSFER RESTRICTIONS. COPIES OF THE AFORESAID AGREEMENT ARE ON FILE WITH THE SECRETARY OF THE COMPANY AND ARE AVAILABLE WITHOUT CHARGE UPON WRITTEN REQUEST THEREFOR. THE HOLDER OF THIS CERTIFICATE, BY ACCEPTANCE OF THIS CERTIFICATE, AGREES TO BE BOUND BY ALL OF THE PROVISIONS OF THE AFORESAID AGREEMENT.

THE MEMBERSHIP INTERESTS REPRESENTED BY THIS CERTIFICATE SHALL CONSTITUTE A "SECURITY" WITHIN THE MEANING OF (I) SECTION 8-102(A)(15) OF THE UNIFORM COMMERCIAL CODE AS IN EFFECT FROM TIME TO TIME IN THE STATE OF DELAWARE AND (II) THE UNIFORM COMMERCIAL CODE OF ANY OTHER APPLICABLE JURISDICTION (AND SHALL BE TREATED AS SUCH A "SECURITY" GOVERNED BY ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE AS PROVIDED IN SECTION 8-103(C) THEREOF FOR ALL PURPOSES, INCLUDING WITHOUT LIMITATION PERFECTION OF A SECURITY INTEREST THEREIN UNDER ARTICLE 8 OF EACH APPLICABLE UNIFORM COMMERCIAL CODE).

If a Certificate is lost or destroyed, the Secretary shall cancel the Certificate so lost or destroyed upon receiving a sworn declaration of the Member recorded in the Company's books as the holder of the Certificate, as to such loss or destruction, and reissue a replacement Certificate to the Member.

ARTICLE 8 ALLOCATION OF PROFITS AND LOSSES

Section 8.1 Determination of Profits and Losses.

Profits and Losses of the Company shall be allocated among the Members in the manner provided herein.

Section 8.2 Allocations.

After giving effect to the special allocations set forth in Section 8.4, Profits and Losses for any Fiscal Year shall be allocated among the Members pro rata in accordance with their Percentage Interests.

Section 8.3 Tax Allocations.

(a) Except as otherwise provided in this Agreement, for Federal income tax purposes, all items of Company income, gain, loss, deduction, basis, amount realized and credit, and the character and source of such items, shall be allocated among the Members in the same manner as the corresponding items of income, gain, loss, deduction or credit are allocated to Capital Accounts in accordance with Sections 8.2 or 8.4. The Company shall maintain such books, records and accounts as are necessary to make such allocations.

(b) The Company shall make, for tax purposes only, allocations of income, gain, loss or deduction or adopt conventions as are necessary or appropriate to comply with the relevant Treasury Regulations or Internal Revenue Service pronouncements under Section 704(c) of the Code, and in particular, in respect of a Capital Contribution of property other than cash and adjustments to the Book Value of Company Assets at the times specified in the definition of Book Value. Allocations will be made in a manner consistent with Treasury Regulations Section 1.704-3 and in conformity with Treasury Regulations Section 1.704-1(b)(2)(iv)(f) and 1.704-1(b)(4)(i), provided that, notwithstanding any other provision, the traditional method described in Treasury Regulations Section 1.704-3(b) (without curative or remedial allocations) shall be used to comply with Code Section 704(c) and the Treasury Regulations thereunder in respect of the assets contributed or deemed to be contributed in the Initial Capital Contribution by Carrier, the 1% Holder, Watsco, Comfort Products (or any other Affiliate of Watsco), including, without limitation, the Comfort Products Contributed Assets.

Section 8.4 Special Allocations.

(a) Certain Regulatory Allocations. Notwithstanding anything to the contrary set forth in this Agreement, the allocations set forth in clauses (i), (ii), (iii), (iv), (v), (vi) and (vii) below shall be made to the extent applicable in the order set forth below.

(i) Except as otherwise provided in Treasury Regulations Section 1.704-2(f), if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 8.4(a)(i) is intended to comply with the minimum gain chargeback requirements set forth in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith;

(ii) Except as otherwise provided in Treasury Regulations Section 1.704-2(i)(4), if there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to the portion of such Member's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 8.4(a)(ii) is intended to comply with Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith;

(iii) In the event any Member unexpectedly receives any adjustments, allocations or distributions described in subparagraphs (4), (5) or (6) of Treasury Regulations Section 1.704-1(b)(2)(ii)(d), such Member shall be allocated items of Company income or gain in an amount and manner sufficient to eliminate the deficit balance in such Member's Capital Account as quickly as possible to the extent required by the Treasury Regulations; provided, that an allocation pursuant to this Section 8.4(a)(iii) shall be made only if and to the extent that such Member would have a deficit balance in its Capital Account after tentatively making all other allocations provided in this Article 8 as if this Section 8.4(a)(iii) were not in this Agreement;

(iv) To the extent an adjustment to the adjusted tax basis of any Company Asset pursuant to Sections 734(b) or 743(b) of the Code is required pursuant to an election under Section 754 of the Code to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of its interest, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their Percentage Interests in the event Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies;

(v) Nonrecourse deductions within the meaning of Regulations Section 1.704-2(b)(1) shall be allocated to the Members pro rata in accordance with their Percentage Interests;

(vi) Partner nonrecourse deductions within the meaning of Regulations Section 1.704-2(i) shall be allocated to the Member who bears the economic risk of loss with respect to the particular partner nonrecourse liabilities to which they relate in accordance with said Regulations; and

(vii) Notwithstanding the foregoing, allocations of Losses or items of expense or deductions to a Member shall not exceed the maximum amount that can be allocated to the Member pursuant to the limit set forth in Regulations Section 1.704-1(b)(2)(ii)(d). Allocations of said items in excess of said limit shall be made to the other Members pro rata, in accordance with the amounts not in excess of such amount for such other Members.

(b) Unwind of Special Allocations. Allocations provided for above in this Section 8.4 ("Regulatory Allocations") are intended to cause allocations of Company items to be respected under Treasury Regulations, but may not be consistent with the manner in which the Members intend to allocate Profit and Loss or make Company distributions. Accordingly, subject to the Regulatory Allocations, the Company is directed to reallocate items of income, gain, deduction, loss or credit among the Members so as to offset and eliminate the effect of the Regulatory Allocations as quickly as possible consistently with Treasury Regulations, and cause the respective Capital Account balances of the Members to be in the amounts (or as close thereto as possible) they would have been if Profit and Loss and items thereof had been allocated without regard to the Regulatory Allocations.

(c) Priority. The allocations under this Section 8.4 shall be made prior to the allocations under Section 8.2.

Section 8.5 Section 754 Election.

The parties agree that, at the request of the Transferee of a Membership Interest following an acquisition of such Membership Interest (but not the acquisition by the 1% Holder of Membership Interests prior to the Closing Date, as defined in the Purchase and Contribution Agreement and not the Transfer of a Membership Interest by any of the Carrier Holders pursuant to Section 12.1(b) hereof if such Transfer occurs in a tax year such that the election would also apply to Watsco (or any Affiliate of Watsco other than the Company) with respect to the Interest Purchase), the Company shall make (including, if requested by Watsco, for the tax year of the Company that ends on the date of the Interest Purchase, if applicable) the election referred to in Code § 754 and any like provision of any state income tax law or any similar provision or provisions enacted in lieu thereof and the Company shall not apply to the Internal Revenue Service to revoke any such election unless it has received the consent of all the Members.

Section 8.6 Changes in Membership Interests.

If the Membership Interests of any one or more Members changes during a Fiscal Year, all Company items of income, gain, loss, deduction and credit shall be allocated among the Members for such Fiscal Year in a reasonable manner, as Determined by the Board, that takes into account the varying Membership Interests of the Members in the Company during such taxable year in accordance with Code § 706. The Members acknowledge that if the Interest Purchase causes a termination of the Company under

Code Section 708(b)(1)(B), then all items of income, gain, deduction and loss of the Company realized on or before the date of the Interest Purchase shall be allocated to Carrier and the 1% Holder.

Section 8.7 Application of Code and Regulations.

For purposes of applying the Code and Regulations to the Company and the Members, references in the Code and Regulations to partnerships and partners shall be interpreted as applying to the Company and Members, respectively.

Section 8.8 Rules of Construction.

An allocation to a Member of Profits or Losses shall be treated as an allocation to such Member of each item of income, gain, loss and deduction that has been taken into account in computing such Profits or Losses.

**ARTICLE 9
DISTRIBUTIONS**

Section 9.1 Distributions.

(a) Subject to and in accordance with this Article 9, the Company shall make distributions out of Distributable Cash to the Members from time to time, when and in the amounts as determined by the Board.

(b) All Distributable Cash or other property if distributed by the Company shall be distributed to the Members in proportion to their respective Percentage Interests.

(c) The Company may offset damages for a judicially and finally determined breach of this Agreement by a Member whose interest is liquidated (either upon the withdrawal of the Member or the liquidation of the Company) against the amount otherwise distributable to the Member.

(d) Notwithstanding anything in the Act to the contrary, no Member will have the right to receive distributions in the form of anything other than cash, except pursuant to Article 10.

(e) Distributions made upon liquidation of the Company shall be made as provided in Sections 10.4 and 10.5.

Section 9.2 Limitations on Distributions.

Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make a distribution to any Member on account of its interest in the Company if such distribution would violate the Act or other applicable law or any agreement in relation to the incurrence or assumption of Indebtedness by the Company.

Section 9.3 Tax Distributions.

The distributions made by the Company to any Member for each Fiscal Year shall be in an amount at least equal to the product of (x) the Tax Rate and (y) the amount of taxable income (as determined for federal income tax purposes) allocated to the Member in respect of such Fiscal Year pursuant to Sections 8.2, 8.3 and 8.4, and, in the case of Watsco (or any Affiliate of Watsco), taking into account any adjustments to tax basis under Section 743 of the Code that may increase or decrease Watsco's (or such Affiliate's) tax liability for such Fiscal Year ("Tax Distributions"). If the distributions made by Company to a Member prior to the application of this Section 9.3 for any given Fiscal Year (the "Initial Distribution") would be in an amount less than the Tax Distributions for such Member, then, notwithstanding any other provision, the Company shall make a distribution (the "Additional Distribution") to the Members (in addition to the distributions made prior to the application of this Section 9.3), in proportion to their respective Percentage Interests, in an amount that results in each Member receiving an Additional Distribution such that each has received at least an amount equal to the excess of the Tax Distribution over the Initial Distribution.

ARTICLE 10
DISSOLUTION, LIQUIDATION & TERMINATION

Section 10.1 No Dissolution.

The Company shall not be dissolved by the admission of additional Members in accordance with the terms of this Agreement.

Section 10.2 Events Causing Dissolution.

The Company shall be dissolved and its affairs shall be wound up upon the occurrence of any of the following events:

- (a) a determination by the Requisite Members to dissolve, wind up and liquidate the Company; or
- (b) the entry of a decree of judicial dissolution under the Act.

Section 10.3 Notice of Dissolution.

Upon the dissolution of the Company, the Person or Persons Approved by the Board (subject to Section 6.3) to carry out the winding up of the Company (which can include any one or more of the Directors or Members) (the "Liquidating Trustee") shall promptly notify the Members of such dissolution.

Section 10.4 Liquidation.

Upon dissolution of the Company, the Liquidating Trustee shall immediately commence to wind up the Company's affairs; provided, however, that a reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the satisfaction of liabilities to creditors so as to enable the Members to minimize the normal losses attendant upon a liquidation. The Members shall continue to share Profits and Losses during liquidation in the same proportions, as specified in Article 8 hereof, as before liquidation. Each Member shall be furnished with a statement prepared by the Company's independent certified public accountants that shall set forth the assets and liabilities of the Company as of the date of dissolution. Each Member shall pay to the Company all amounts then owing by such Person to the Company. The proceeds of liquidation shall be distributed, as realized, in the following order and priority:

(a) First, to the payment of the expenses of liquidation;

(b) Second, to the setting up of any reserves which the Liquidating Trustee reasonably determines to be necessary or desirable for any contingent or unforeseen liabilities, expenses or other obligations of the Company;

(c) Third, to the payment of the debts and liabilities of the Company, other than debts and liabilities to any Member;

(d) Fourth, to the payment of the debts and liabilities of the Company owed to any Members or to any other beneficial holder of any interest in the Company; and

(e) Then, pro rata to the Members in accordance with their relative Capital Accounts.

To the extent that the Board Determines that any or all of the assets of the Company shall be sold, the Liquidating Trustee shall arrange for the sale of such assets to be sold as promptly as possible, provided that such sale is conducted in a business-like and commercially reasonable manner.

Section 10.5 Liquidating Distributions.

(a) Upon the liquidation of the Company, any liquidating distributions will be made in accordance with Section 10.4. Liquidation proceeds will be paid within sixty (60) days of the end of the taxable year (or, if later, within one hundred and twenty (120) days after the date of the liquidation).

(b) For purposes of making the liquidating distributions required by Section 10.4, the Liquidating Trustee shall distribute all or any portion of the assets of the Company in kind or to sell all or any portion of the assets of the Company and distribute the

proceeds therefrom. If any property or assets of the Company are to be distributed in kind to the Members, (i) the Capital Accounts of the Members shall be adjusted to reflect the amount, if any, of unrealized gain or loss with respect to such property, as though such property had been sold for its fair market value (determined in good faith by the Liquidating Trustee) and any gain or loss allocated among the Members in accordance with the provisions of this Agreement and (ii) such property will be distributed in such a manner that each Member will receive such Member's proportionate interest in each of the assets available for such distribution; that is to say, each Member shall receive an undivided interest, corresponding to the proportion to which such Member is entitled pursuant to Section 10.4, in all interests in real estate and leaseholds and other indivisible properties, as nearly as practicable, of each divisible asset.

Section 10.6 Termination.

The Company shall terminate when all of the Company Assets, after payment of or due provision established for all debts, liabilities, expenses and other obligations of the Company, shall have been distributed to the Members in the manner provided for in this Article 10, and the Certificate of Formation shall have been canceled in the manner required by the Act.

Section 10.7 Claims of the Members.

The Members shall look solely to the Company's assets for the return of their Capital Contributions and Capital Account balances, and if the assets of the Company remaining after payment of or due provision for all debts, liabilities and obligations of the Company are insufficient to return such Capital Contributions or Capital Account balances, the Members shall have no recourse against the Company, the Board, any individual Director or other Member or any other Person. No Member with a negative balance in such Member's Capital Account shall have any obligation to the Company or to the other Members or to any creditor or other Person to restore such negative balance upon dissolution or termination of the Company or otherwise.

ARTICLE 11
BOOKS AND RECORDS; FINANCIAL AND TAX MATTERS

Section 11.1 Books and Records.

(a) At all times during the Term, the Company shall maintain, at its principal place of business, separate books of account for the Company that shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received and all income derived in connection with the operation of the Company business in accordance with United States generally accepted accounting principles ("GAAP") consistently applied, and, to the extent inconsistent therewith, in accordance with this Agreement. Notwithstanding any provision to the contrary of the Act, such books of account, together with a certified copy of this Agreement and of the Certificate of Formation, shall at all times be maintained at the principal place of business of the Company. In

addition to any other rights specifically set forth in this Agreement, each Member shall have access to all information to which a Member is entitled to have access pursuant to the Act. The books of account and the records of the Company shall be audited by and reported upon as of the end of each Fiscal Year by a firm of independent certified public accountants of recognized national standing that shall be selected by the Board. The Company shall maintain its books of account and its records in accordance with applicable laws and regulation, including, without limitation, the Sarbanes-Oxley Act of 2002.

(b) A Member may, at its own expense, use its internal resources, or appoint an accounting firm on behalf of such Member, to audit the accounts of the Company and its Subsidiaries and to perform internal controls assessments of the Company and its Subsidiaries. The Company shall provide reasonable cooperation and complete access to the books and records, including, without limitation, original expense reports, invoices, contracts, and other original records and documents, to such auditor provided, that, if the auditor is a third party, such auditor executes an appropriate confidentiality agreement and undertakes to keep such records confidential and withhold from unaffiliated third parties the information disclosed during the course of this audit, except as is otherwise required by applicable law. Such audits and assessments may be conducted at any time with or without prior notice

Section 11.2 Financial Information.

(a) The Company shall:

(i) Furnish (i) to each Member, as soon as practicable after the end of each Fiscal Year, but in any event not less than sixty (60) days after the end of the relevant Fiscal Year, audited consolidated financial statements, including, without limitation, a final audited consolidated balance sheet as of the end of such Fiscal Year, a final audited consolidated statement of operations and a final audited consolidated statement of cash flows of the Company and its Subsidiaries for such year, setting forth in each case in comparative form the figures from the Company's previous Fiscal Year (if any), all prepared in accordance with GAAP and accompanied by an opinion, unqualified as to scope or compliance with GAAP, of the Company's independent certified public accountants; and (ii) upon request of a Member, furnish to such Member an annual report summarizing the Company's finances, operations and performance for the Fiscal Year in question and its Business Plan for the following year;

(ii) Furnish to each Member, as soon as practicable after the end of each Fiscal Quarter of the Company, but in any event not less than thirty (30) days after the end of the relevant Fiscal Quarter, final unaudited consolidated financial statements for such quarterly period, including, without limitation, a final unaudited consolidated statement of operations and a final unaudited consolidated statement of cash flows of the Company and its Subsidiaries for such quarterly period and for the period from the

beginning of the Fiscal Year to the end of such Fiscal Quarter, and a final unaudited consolidated balance sheet of the Company and its Subsidiaries as of the end of such quarterly period; and all such statements shall have been prepared in accordance with GAAP, subject to the absence of footnote disclosures and to normal year-end adjustments for recurring accruals and shall have been reviewed by the Company's independent certified public accountants;

(iii) Furnish to all Members as soon as practicable following the end of each month, but in any event not more than seven (7) Business Days thereafter, monthly unaudited financial statements, including an unaudited balance sheet and an unaudited statement of operations and financial performance data by region and brand;

(iv) Furnish to all Members within ten (10) Business Days after generation thereof, copies of any internal valuation study or analyses regarding a material portion of the Company's and its Subsidiaries' business taken as a whole;

(v) For so long as Carrier or any Affiliate of Carrier is a Member, not transmit to the public any press releases or other written statements concerning material developments in the Company's and its Subsidiaries' businesses without the prior written consent (not to be unreasonably withheld or delayed) of the Carrier Deciding Member; and

(vi) Submit, on a confidential basis, to Members complete and accurate schedules and reports in and on such forms and at such times as Members may reasonably request; and permit Members, on a confidential basis, to inspect the Company's books and records.

(b) In addition, for so long as Carrier or any Affiliate of Carrier is a Member, neither Watsco, nor any Watsco Holder nor any of their respective Affiliates shall transmit to the public any press releases or other written statements concerning material developments in the Company's and its Subsidiaries' businesses without the prior written consent (not to be unreasonably withheld or delayed) of the Carrier Deciding Member.

Section 11.3 Reporting Requirements.

The Directors shall use reasonable best efforts to cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required by each jurisdiction in which the Company does business, provided however that the Directors shall only cause the preparation and filing of tax returns for taxable periods that end after the Closing Date of the Purchase and Contribution Agreement, as defined in such agreement, and provided further that if such tax return is with respect to a Straddle Period, as defined in the Purchase and Contribution Agreement, this Section 11.3 shall be subject to Section 8.02(g)(iii) of the Purchase and Contribution Agreement. No later than ninety (90) days

prior to the due date for filing such tax returns, taking into account extensions, the Company shall provide each Member with a proposed federal Form 1065 setting forth such Member's allocable share of the Company's income, gain, loss, deductions and credits and other items required to be set forth thereon (the "Proposed 1065"). No later than thirty (30) days following the receipt of the Proposed 1065, the Members shall endeavor to agree on the content of the Proposed 1065. If the Members fail to agree on the content of the Proposed 1065 before the date that is sixty (60) days following the receipt of the Proposed 1065, the content of the Form 1065 shall be determined by a firm of independent certified public accountants of recognized national standing mutually selected by the Members. The Form 1065 as agreed upon by the Members or determined by a firm of accountants under this Section 11.3 (the "Final 1065") shall be final and binding upon the Members. Each of the Members shall bear all fees and costs incurred by it in connection with the determination of the content of the Form 1065, except that the Members shall each pay fifty percent (50%) of the fees and expenses of such accounting firm. The Company shall furnish or cause to be furnished to each Member (and, otherwise, to each Person to whom it is required to be furnished), by no later than ninety (90) days following the end of each taxable year of the Company, a Schedule K-1 of federal Form 1065 (and any corresponding schedules, documents, forms, etc. required to be furnished to such Member or Person) setting forth such Member's, or Person's allocable share of the Company's income, gain, loss, deductions and credits and other items required to be set forth thereon in respect of such taxable year and conforming with the Final 1065. The Company shall also furnish such other tax-related information to any Member as such Member may reasonably request or require.

Section 11.4 Tax Matters.

(a) The Board shall designate the "Tax Matters Member" within the meaning of Code § 6231(a)(7). The Board shall initially designate Watsco as the Tax Matters Member, and if Watsco subsequently ceases to be a Member pursuant to a Transfer of all of its Membership Interests to one or more Permitted Transferees of Watsco under Section 12.1(b), the Board shall designate the Permitted Transferee (or one of the Permitted Transferees) as the Tax Matters Member. All decisions for the Company relating to tax matters including, without limitation, whether to make any tax elections, the positions to be taken on the Company's tax returns and the settlement or further contest or litigation of any audit matters raised by the Internal Revenue Service or any other taxing authority, shall be taken by the Tax Matters Member acting with Approval of the Board.

(b) Except to the extent otherwise required by applicable law (disregarding for this purpose any requirement that can be avoided through the filing of an election or similar administrative procedure), the Tax Matters Member shall cause the Company to take the position that the Company is a partnership for federal, state and local income tax purposes and shall cause to be filed with the appropriate tax authorities any elections or other documents necessary to give due legal effect to such position.

(c) Neither the Company nor any Member shall file (and each Member hereby represents that it has not filed) any income tax election or other document that is inconsistent with the classification of the Company as a partnership for applicable federal, state and local income tax purposes and the classification of Carrier InterAmerica Corporation, a United States Virgin Islands corporation, and Carrier (Puerto Rico), Inc., a Delaware corporation, as corporations for federal income tax purposes. Neither the Company nor any Member shall take any action inconsistent with such classifications. Neither Carrier InterAmerica Corporation nor Carrier (Puerto Rico), Inc. shall be liquidated, converted or merged without Carrier's prior written consent, which consent shall not be unreasonably withheld or delayed.

(d) No Member shall file a notice with the United States Internal Revenue Service under Code § 6222(b) in connection with such Member's intention to treat an item on such Member's Federal income tax return in a manner which is inconsistent with the treatment of such item on the Company's federal income tax return unless such Member has, not less than thirty (30) days prior to the filing of such notice, provided the Tax Matters Member with a copy of the notice and thereafter in a timely manner provides such other information related thereto as the Tax Matters Member shall reasonably request.

ARTICLE 12 TRANSFER OF MEMBERSHIP INTERESTS

Section 12.1 Transfer of Membership Interests.

(a) Restriction on Transfer. Other than pursuant to Section 12.1(b) or Section 12.1(f), a Transfer of Membership Interests approved by the Requisite Members or a Transfer of Membership Interests between Carrier and Watsco as contemplated by the options granted to Watsco pursuant to Section 7.03 of the Purchase and Contribution Agreement, prior to the tenth (10th) anniversary of the date of this Agreement no Transfer or offer to Transfer may be made by a Member of all or any part of such Member's Membership Interests in the Company. Transfer of all of a Member's Membership Interests shall terminate the Transferor's status as a Member, and the Members are hereby authorized to continue the business of the Company without dissolution.

(b) Intra-group Transfers. Subject to Section 8.02(l) of the Purchase and Contribution Agreement, each Member shall have, and at all times retain the right to Transfer, all or any portion of such Member's Membership Interests, and the rights granted under this Agreement relating to such Member, to such Member's wholly-owning ultimate parent entity or to any direct or indirect wholly-owned Subsidiary of such Member's wholly-owning ultimate parent entity (each, a "Permitted Transferee"); provided, that if any Permitted Transferee ceases to be such a wholly-owned Subsidiary, it shall no longer be a Permitted Transferee hereunder and all of its Membership Interests, if any, shall be deemed to have been Transferred back to such Member for all purposes hereunder.

(c) Effectiveness. A Transfer of Membership Interests in the Company shall be effective only upon satisfaction of the following conditions:

(i) The Membership Interests so transferred were acquired by means of a Transfer permitted under this Article 12; and

(ii) The Transferee furnishes copies of all instruments effecting the Transfer and such other customary certificates, instruments and documents as the Company may reasonably require as necessary and appropriate to memorialize and confirm the Transfer.

(d) Substitute Members. Any Person who is a Transferee of any portion of a Member's Membership Interests pursuant to this Article 12 (other than Section 12.1(f) hereof) shall become a substitute Member.

(e) Distribution entitlement. For purposes of receiving distributions, a Transfer of Membership Interests made in accordance with this Article 12 shall be effective on the first day of the month following the day on which the requirements of this Article 12 have been satisfied, or at such earlier time as the Board reasonably Determines. Distributions made after the effective date shall be made to the Transferee.

(f) Pledges of Membership Interests.

(i) Notwithstanding any other provision in this Agreement, including, without limitation, the other provisions of this Article 12, a Member shall be entitled to grant a Permitted Lien over its Membership Interests in favor of, any lender or lenders (or agent on behalf of such lender or lenders) pursuant to a bona fide financing transaction.

(ii) No consent of the Company or any Member shall be required under this Agreement to the Transfer to the lienee under a Permitted Lien of a Member's Membership Interest that is subject to the Permitted Lien upon the exercise of such lienee's rights under the Permitted Lien. Upon the exercise of such lienee's foreclosure rights in respect of such Permitted Lien, the lienee shall have the rights, powers and entitlements of an assignee as set out in Section 18-702(b)(1) and (2) of the Act.

(iii) As of the date hereof, Watsco and Comfort Products have (A) pledged their Membership Interests to, and granted a security interest in all of their right, title and interest under this Agreement in favor of, the agent for the lenders under the Revolving Credit Agreement and (B) Watsco has agreed to pledge any Membership Interests it may acquire in the future as contemplated by the options granted to Watsco pursuant to Section 7.03 of the Purchase and Contribution Agreement, or otherwise, to, and will grant a security interest in all of its right, title and interest under this Agreement in favor of, the agent for the lenders under the Revolving Credit Agreement.

(g) Transfers in Violation. No Transfer of Membership Interests, or any part thereof, that is in violation of this Article 12, shall be valid or effective against, or shall bind, the Company, and neither the Company nor the Members shall recognize the same for the purpose of making allocations, distributions or other payments pursuant to this Agreement with respect to such Membership Interests or part thereof. Neither the Company nor the non-transferring Members shall incur any liability as a result of refusing to make any such distributions to the Transferee of any such invalid Transfer, or any other Person, and no such purported Transferee shall have any right to receive allocations or payments of any Profits or Losses or distributions. In addition, notwithstanding any other provision of this Agreement to the contrary, (i) any Transfer, as a whole or in part, of Membership Interests shall be prohibited if, in the reasonable opinion of the Board such Transfer poses a material risk that the Company would be treated as a “publicly traded partnership” within the meaning of Code § 7704 and the Treasury Regulations promulgated thereunder; and (ii) a Member may not Transfer all or any part of such Person’s Membership Interests in the Company if such Transfer would jeopardize the status of the Company as a partnership for federal income tax purposes or would violate any provision of Federal or state securities or blue sky laws or breach the conditions to any exemption from registration of the Membership Interests under any such laws or breach any undertaking or agreement of a Member entered into pursuant to such laws or in connection with obtaining an exemption thereunder.

Section 12.2 Rights of First Refusal.

(a) Right of First Refusal. In the event that, after the tenth (10th) anniversary of the date of this Agreement, any Carrier Holder (“Carrier Offeror”) or any Watsco Holder (“Watsco Offeror”) and, together with Carrier Offeror, “Offeror”) desires to Transfer any or all of its Membership Interests in a transaction (other than a Transfer permitted by Section 12.1(a)), the Offeror shall deliver to the Company, in any case, and the Watsco Deciding Member, in the case of a Carrier Offeror, or the Company and the Carrier Deciding Member, in the case of a Watsco Offeror (the Watsco Deciding Member or the Carrier Deciding Member, as applicable, together with the Company, the “Offerees”), a written notice of the proposed transaction (hereinafter referred to as a “First Refusal Notice”) to Transfer the Membership Interests which shall set forth the name and address of the proposed purchaser and the material terms and conditions of the proposed transactions, including, without limitation, the purchase price and the number of Membership Interests proposed to be transferred. The First Refusal Notice shall be accompanied by a written offer (hereinafter referred to as the “Offer”), irrevocable for ten (10) Business Days from its receipt by the Offerees to sell to the Offerees all but not less than all of the Membership Interests covered by the First Refusal Notice, for a price determined in accordance with Section 12.2(c), and on the same terms and conditions as are contained in the First Refusal Notice. The Offer shall further state that (i) the Company, subject to Section 6.3, may acquire, in accordance with the provisions of this Agreement, any of the Membership Interests subject to the Offer for the price and upon the other terms and conditions set forth therein, and (ii) if all such Membership Interests are not purchased by

the Company, the other Offeree may purchase all but not less than all of the Membership Interests subject to the Offer not purchased by the Company for the price and upon the other terms and conditions set forth in the Offer. An Offeree may accept the Offer by delivering a written notice (an “Offeree Notice”) to the Offeror and the other Offeree within such ten (10) Business Days. If an Offeree fails to timely deliver an Offeree Notice to the Offeror, it shall be deemed to have waived any right to participate in the Offer. If the Offeree (other than the Company), and/or the Company, as applicable, accepts the Offer, such Offeree, and/or the Company, as applicable, shall purchase and pay for all of such Membership Interests in accordance with the terms of the Offer. Notwithstanding the foregoing, the Offer may not be accepted by any of the Offerees unless, following such acceptances, all of the Membership Interests covered by the First Refusal Notice are accepted by the Offerees.

(b) Right of First Refusal Procedure. If the Offer is not accepted by the Offerees, or payment for all of the Membership Interests offered by an Offeror is not made in accordance with Sections 12.2(c) and (d), the Offeror may sell the Membership Interests that were the subject of the First Refusal Notice to the third party purchaser on terms and conditions which are no less favorable to the Offeror in the aggregate than the terms and conditions set forth in the First Refusal Notice, during the ninety (90) day period immediately following expiration of the Offer pursuant to a binding agreement entered into during such ninety (90) day period which contains an agreement to be bound by the terms of this Agreement. If the Membership Interests are not purchased pursuant to an Offer or by the third party purchaser, such Membership Interests may not be sold or otherwise disposed of without again offering them to the Offerees in accordance with this Agreement.

(c) Purchase Price. The purchase price to the Offerees for Membership Interests offered pursuant to an Offer shall be, on a per Membership Interest basis, an amount equal to one hundred percent (100%) of the cash per Membership Interest purchase price and one hundred percent (100%) of the fair market value of any non-cash per Membership Interest consideration identified in the First Refusal Notice with the fair market value of such non-cash consideration as determined within twenty (20) days after the last date on which the Offer must be accepted by a mutually agreed nationally recognized investment banking firm or other valuation expert. If the Offeror and Offerees are unable to agree upon an investment banking firm or other valuation expert within two (2) days after the last date on which the Offer must be accepted, either the Offeror or the Offerees may request the American Arbitration Association to appoint a nationally recognized investment banking firm or other valuation expert to perform the services required under this Section 12.2(c).

(d) Terms of Payment. Subject to Section 12.2(c), if the Offerees have the right to purchase Membership Interests pursuant to the terms of this Section 12.2, the Offerees will purchase such Membership Interests on the same terms as is specified in the First Refusal Notice.

(e) Closing. The closing of the purchase of Membership Interests subscribed pursuant to this Section 12.2 shall be determined by written notice by the Offerees purchasing Membership Interests to the Offeror, which shall specify a closing date, which date shall not be later than thirty (30) days after the last date on which the Offer must be accepted. At such closing, the Offeror shall deliver documentation reasonably satisfactory to the Offerees, effecting Transfer of such Membership Interests. The Offerees shall deliver at the closing payment of the purchase price determined pursuant to Section 12.2(c).

(f) No Waiver of Subsequent Rights. The exercise or non-exercise of the rights of an Offeree under this Section 12.2 shall not affect its rights under this Section 12.2 with respect to any future Transfers of Membership Interests that meet the conditions specified in this Section 12.2.

Section 12.3 Tag-Along Rights

Subject to the terms of the other Sections of this Article 12, including, without limitation, Section 12.2, unless Watsco Holders have, in the aggregate, Transferred (excluding for these purposes Transfers pursuant to Section 12.1(b)), but giving effect to proposed Transfers which are the subject of this Section 12.3) Membership Interests representing a Percentage Interest of not more than five percent (5%) during the three-year period preceding the applicable date of determination, in the event any Watsco Holder (the “Tag Seller”) proposes to Transfer (any such Transfer, a “Tag Sale”) any Membership Interests held by the Tag Seller to a third party (which, for purposes hereof, shall not include any Permitted Transferee of the Tag Seller) in a single transaction or in a series of related transactions, then the Watsco Deciding Member shall provide written notice to the Carrier Deciding Member (the “Tag Notice”). The Tag Notice shall specify the identity of the prospective purchaser and the terms and conditions of such proposed Transfer, including, without limitation, the number of Membership Interests proposed to be transferred and the amount and type of consideration to be paid in respect thereof. Subject to the terms and conditions of this Section 12.3, the Carrier Deciding Member shall have the right to participate in such Tag Sale for the same consideration and on the same terms and conditions set forth in the Tag Notice and to Transfer a number of its Membership Interests equal to the number of Membership Interests proposed to be sold by the Tag Seller multiplied by a fraction, the numerator of which is the Percentage Interest of the Carrier Holders, in the aggregate, and the denominator of which is the aggregate Percentage Interest of the Carrier Holders and the Watsco Holders, and the number of Membership Interests to be sold by the Tag Seller pursuant to the Tag Sale shall be reduced accordingly. This right of co-sale shall be on the following terms and conditions:

(a) Option to Participate. The Carrier Deciding Member may elect to participate in the contemplated Tag Sale by delivering a written notice (an “Election Notice”) to the Watsco Deciding Member within twenty (20) Business Days after receipt of a Tag

Notice relating to such sale and the Carrier Deciding Member may elect to sell in the contemplated Tag Sale up to that number of Membership Interests owned by the Carrier Holders as is set forth in this Section 12.3 above. If the Carrier Deciding Member fails to deliver in a timely manner an Election Notice to the Watsco Deciding Member, it shall be deemed to have waived any right to participate in the Tag Sale. To the extent that the Carrier Deciding Member exercises such right of participation in accordance with the terms and conditions hereof, the number of Membership Interests which the Tag Seller may sell shall be correspondingly. Promptly following expiration of the offering period for the Tag Notice, the Watsco Deciding Member will notify the Carrier Deciding Member whether the Membership Interests offered by the Tag Seller in the Tag Notice will be purchased and shall confirm the final terms of the Tag Sale to the third party purchaser.

(b) Transfer Restrictions Binding on Third Party Purchaser. If any Membership Interests are sold pursuant to this Section 12.3 to any third party purchaser who is not a party to this Agreement, such purchaser shall agree to be bound by the terms, conditions and obligations of this Agreement in the same manner as the Transferor of such Membership Interests as a precondition to the purchase of such Membership Interests and such Membership Interests shall continue to be subject to the provisions set forth in this Agreement.

(c) No Waiver of Subsequent Rights. The exercise or non-exercise of the rights of the Carrier Deciding Member under this Section 12.3 shall not affect its rights to participate in subsequent sales by Watsco Holders that meet the conditions specified in this Section 12.3.

ARTICLE 13 ISSUANCE OF ADDITIONAL INTERESTS; ADMISSION OF NEW MEMBERS

Section 13.1 Issuance of Additional Membership Interests.

(a) In order to raise additional capital or to acquire assets or for any other Company purposes, subject to Section 3.1, if the Board Determines to raise additional capital, the Board is authorized to cause the Company to issue additional Membership Interests at any time or from time to time to any Person, provided it first obtains the approval of the Requisite Members as provided in Section 6.3(a). Purchasers of Membership Interests directly from the Company shall be admitted to the Company as new Members at such time as all conditions to their admission have been satisfied, as Determined in good faith by the Board.

(b) Subject to the approval of the Requisite Members, the Board shall have the right to amend, or cause the officers to amend, any provision of this Agreement and to execute, swear to, acknowledge, deliver, file, publish and record such documents as necessary and appropriate in connection therewith in order to reflect the authorization and issuance of each such class or series of Membership Interests. The Board, and the officers as authorized by the Board, is hereby authorized to do all things it deems to be

appropriate or necessary to effectuate issuance of Membership Interests as provided in this Section 13.1, including, without limitation, compliance with the Act and any other statute, rule, regulation or guideline of any federal, state or other governmental agency.

ARTICLE 14 INDEMNIFICATION

Section 14.1 Liability for Certain Acts.

Subject to applicable law, no Members and officers, employees or agents appointed pursuant to this Agreement (each in their capacity as such an “Exculpated Person”) shall be liable, in damages or otherwise, to the Company, the Members or their Affiliates, or any other Exculpated Person for any act or omission performed or omitted by them in good faith (including, without limitation, any act or omission performed or omitted by any of them in reliance upon and in accordance with the opinion or advice of experts, including, without limitation, of legal counsel as to matters of law, of accountants as to matters of accounting, or of investment bankers or appraisers as to matters of valuation). A Director’s liability for breach of fiduciary duty to the Company, any other Member, any other Person that is a party to this Agreement and any Person otherwise bound by this Agreement is hereby eliminated to the full extent permitted by the Act.

Section 14.2 Indemnification.

(a) The Company shall indemnify to the fullest extent permitted by law any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Company), or any appeal thereof by reason of the fact that such Person is or was a Member, Director, an officer, employee or agent of the Board or the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another Person (any such Person in their capacity as such, a “Covered Person”), against any losses or damages, (including, without limitation, reasonable attorneys’ fees and any amount expended in settlement of any claim or loss or damage), actually incurred by such Person in connection with investigating, preparing or defending any such action, suit or proceeding except that no Covered Person shall be entitled to be indemnified in respect of such losses and damages incurred by such Covered Person (i) by reason of willful misconduct, fraud or bad faith, (ii) resulting from any breach of this Agreement, or (iii) where, with respect to any criminal action or proceeding, such Covered Person had reasonable cause to believe such Person’s conduct was unlawful.

(b) The Company shall indemnify to the fullest extent permitted by law any Covered Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by or in the right of the Company

to procure a judgment in its favor by reason of the fact that such Covered Person is or was a Director, an officer, employee or agent of the Board or the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another Person against any losses or damages, (including, without limitation, reasonable attorneys' fees and any amount expended in settlement of any claim or loss or damage), actually incurred by such Covered Person in connection with investigating, preparing or defending any such action, suit or proceeding except that no Covered Person shall be entitled to be indemnified in respect of such losses and damages incurred if such Covered Person did act in bad faith or fraudulently; provided that no indemnification shall be made in respect of any claim, issue or matter as to which such Covered Person shall have been determined upon final adjudication after all possible appeals have been exhausted to be liable to the Company unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such Covered Person is fairly and reasonably entitled to indemnity for such expenses which a court shall deem proper.

(c) Expenses (including, without limitation attorneys' fees) reasonably incurred by any Covered Person in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Company in advance of the final disposition of such action, suit or proceeding promptly upon receipt of an undertaking by or on behalf of such officer to repay such amount if it shall be determined upon final adjudication after all possible appeals have been exhausted that such Person is not entitled to be indemnified by the Company authorized in this Section 14.2. In addition, any expenses (including, without limitation, attorneys' fees) reasonably incurred by any Covered Person in enforcing their right to indemnification pursuant to this Section 14.2 shall be paid or reimbursed by the Company promptly upon receipt by it of an undertaking by such Covered Person to repay such expenses if it shall ultimately be determined that such Covered Person is not entitled to indemnification by the Company.

(d) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 14.2 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any law, agreement, or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office.

(e) The Company may purchase and maintain insurance on behalf of any Covered Person against any liability asserted against such Covered Person and incurred by such Covered Person in any such capacity, or arising out of such Covered Person's status as such, whether or not the Company would have the power to indemnify such Person against such liability under this Section 14.2.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 14.2 shall, unless otherwise provided when authorized or ratified, continue as to a Covered Person who has ceased to be a Member, Director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a Person.

(g) The termination of any civil, criminal, administrative or investigative action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the Covered Person was not entitled to indemnification pursuant to this Section 14.2.

(h) Notwithstanding anything to the contrary in this Agreement, the provisions of this Section 14.2 shall survive the termination of this Agreement or dissolution of the Company.

(i) Nothing in this Section 14.2 is intended to relieve any Member or any other Person from any liability or other obligation of such Person pursuant to the Purchase and Contribution Agreement or any Ancillary Agreement, or to in any way impair the enforceability of any provision of such agreements against any party thereto.

(j) Any indemnity under this Section 14.2 shall be provided solely out of, and only to the extent of, the Company's assets, and no Member shall be required directly to indemnify any Covered Person pursuant to this Section 14.2. None of the provisions of this Article 14 shall be deemed to create any rights in favor of any person other than Covered Persons and Exculpated Persons.

ARTICLE 15 MISCELLANEOUS

Section 15.1 Further Assurances.

Each Member agrees to execute, acknowledge, deliver, file, record and publish such further certificates, amendments to certificates, instruments and documents as may be reasonably requested by the Company, and do all such other acts and things as may be required by law, or as may be required to carry out the intent and purposes of this Agreement.

Section 15.2 Notices.

Any notice to be given hereunder shall be in writing and delivered personally or mailed by registered or certified mail, postage prepaid and return receipt requested, or by telecopier, as follows:

IF TO WATSCO OR THE WATSCO DECIDING MEMBER:

Watsco, Inc.
2665 South Bayshore Drive
Suite 901
Coconut Grove, FL 33133
Attn: Barry S. Logan,
Senior Vice President
Telecopy No. (305) 858-4492

With a copy to:

Akerman Senterfitt
One S.E. 3rd Avenue, 28th Floor
Miami, Florida 33131
Attn: Stephen K. Roddenberry
Telecopy No. (305) 374-5095

IF TO CARRIER OR THE CARRIER DECIDING MEMBER:

Carrier Corporation
One Carrier Place
Farmington, CT 06034-4015
Attn: Donald K. Cawley, Esq.,
General Counsel
Telecopy No. (860) 674-3246

IF TO ANY OTHER MEMBER

To such addresses reflected in the books and records of the Company.

Any Member may designate another addressee (and/or change its address) for notices hereunder by a notice given pursuant to this Section 15.2. Notice given by personal delivery or registered mail shall be effective upon actual receipt. Notice given by telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next normal business day after receipt if not received during the recipient's normal business hours. All notices by telecopier shall be confirmed by the sender thereof promptly after transmission in writing by registered mail or personal delivery. Anything to the contrary contained herein notwithstanding, notices to any party shall not be deemed effective with respect to such party until such notice would, but for this sentence, be effective both as to such party and as to all other Persons to whom copies are to be given as provided above

Section 15.3 Dispute Resolution.

(a) Initial Dispute Resolution Procedures. Any dispute, claim or controversy (a "Dispute") arising out of or relating to this Agreement, including, without limitation, any such Dispute between the Company, Carrier Holders and Watsco Holders, shall be subject to the following dispute resolution procedure: first, such Dispute shall be addressed to the President of the Company and the President of the Carrier North America operating division (or equivalent level manager) for discussion and attempted resolution;

second, if any such Dispute cannot be resolved by such individuals within twenty (20) business days from the date that the Dispute is submitted to such persons, then such Dispute shall be immediately referred to the appropriate, respective senior officer of each Member (or equivalent level person) for discussion and attempted resolution; third, if any such Dispute cannot be resolved by such officers within twenty (20) business days from the date that the Dispute is submitted to such persons, then such Dispute shall be immediately referred to the appropriate, respective Chief Executive Officers of each Member (or equivalent level person) for discussion and attempted resolution; and fourth, if any such Dispute cannot be resolved by such Chief Executive Officers within twenty (20) business days from the date that the Dispute is submitted to such persons, then such Dispute shall be immediately referred to non-binding mediation as provided in Section 15.3(b) below.

(b) Mediation. Following the initial dispute resolution procedures set forth in Section 15.3(a), the parties agree to submit any Dispute to mediation before a neutral mediator in Wilmington, Delaware who will be requested to conduct informal, nonbinding mediation of the Dispute. Each party will work with the other to select an acceptable mediator and to work with the mediator to resolve the Dispute. The mediation process shall continue until the case is resolved or until either the mediator makes a finding that there is no possibility of settlement through the mediation or one of the parties elects not to continue the mediation (“Mediation Termination”).

(c) Litigation. In the event of a Mediation Termination, then such Dispute shall be resolved through legal action or proceeding in state or federal courts located in the State of Delaware. Each party hereto irrevocably submits to the jurisdiction of the state and federal courts located in the State of Delaware, in any action or proceeding arising out of or relating to this Agreement, and each party hereby irrevocably agrees that all claims in respect of any such action or proceeding must be brought and/or defended in such court; provided, however, that matters which are under the exclusive jurisdiction of the Federal courts shall be brought in the Federal District Court for the District of Delaware and any court of appeal therefrom; and each party hereby waives any obligation or requirement to post any bond on appeal. Each party agrees that service of process on such party as provided in Section 15.2 shall be deemed effective service of process on such party. Service made pursuant to the foregoing sentence shall have the same legal force and effect as if served upon such party personally within the State of Delaware, and each party irrevocably waives, to the fullest extent each may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. **EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING HEREUNDER.**

(d) Governing Law. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (excluding any conflict of law rule or principle that would refer to the laws of another jurisdiction).

Section 15.4 Headings.

All titles or captions contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 15.5 No Third Party Beneficiaries.

This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable rights benefit or remedy of any nature whatsoever.

Section 15.6 Extension Not a Waiver.

No delay or omission in the exercise of any power, remedy or right herein provided or otherwise available to a party or the Company shall impair or affect the right of such party or the Company thereafter to exercise the same. Any extension of time or other indulgence granted to a party hereunder shall not otherwise alter or affect any power, remedy or right of any other party or of the Company, or the obligations of the party to whom such extension or indulgence is granted. The single or partial exercise of any power, remedy or right herein provided or otherwise available to a party or the Company shall not preclude any other or further exercise of any power, remedy, or right.

Section 15.7 Severability.

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 15.8 Assignment.

Neither this Agreement nor any rights hereunder may be assigned by operation of law or otherwise without the express written Consent of all the Members, except as permitted pursuant to Article 12.

Section 15.9 Entire Agreement.

This Agreement (including the Schedules hereto) constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and all prior oral or written agreements relative hereto which are not contained herein are terminated.

Section 15.10 Amendment.

(a) Except as contemplated by Article 13 and as otherwise provided in this Section 15.10, this Agreement may be amended only by the written approval of all of the Members.

(b) This Agreement may be amended from time to time by the Board to amend any of the schedules to this Agreement to provide any necessary information regarding any Member.

(c) Amendments, variations, modifications or changes herein may be made effective and binding upon the parties by, and only by, the setting forth of same in a document duly executed in accordance with the foregoing, and any alleged amendment, variation, modification or change herein which is not so documented shall not be effective as to any party.

Section 15.11 Counterparts.

This Agreement may be executed in one or more counterparts (including by facsimile transmission), and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which when taken together shall constitute one and the same agreement.

Section 15.12 Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the Members and their respective successors and permitted assigns.

Section 15.13 Advice and Construction.

Each Member has been advised, or has had the opportunity to be advised, by respective counsel as to its respective rights and obligations under this Agreement and clearly understands and agrees with all terms and conditions of this Agreement as set forth herein; and the principle of construction against draftsmen shall have no application in the interpretation of this Agreement.

Section 15.14 Specific Performance.

The parties hereto agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in addition to any other remedy to which they are entitled at law or in equity.

Section 15.15 General Statutory Override.

To the extent permitted by law, the provisions of this Agreement shall govern over all provisions of the Act which would apply but for (and inconsistently with) the Agreement. For each question (a) with respect to which the Act provides a rule (a "Default Rule") but permits a limited liability company's operating agreement to provide a different rule and (b) which is addressed by this Agreement, the Default Rule shall not apply to the Company.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW]

THE COMPANY:

CARRIER ENTERPRISE, LLC

By: /s/ Barry S. Logan

Name: Barry S. Logan

Title: Vice President

MEMBERS:

WATSCO, INC.

By: /s/ Barry S. Logan

Name: Barry S. Logan

Title: Senior Vice President

COMFORT PRODUCTS DISTRIBUTING LLC

By: /s/ Barry S. Logan

Name: Barry S. Logan

Title: Vice President and Secretary

CARRIER CORPORATION

By: /s/ Brian E. Kelleher

Name: Brian E. Kelleher

Title: Vice President, Legal Affairs, Business Development

CARLYLE SCROLL HOLDINGS INC.

By: /s/ Brian E. Kelleher

Name: Brian E. Kelleher

Title: Authorized Signatory

[Signature Page to Operating Agreement of Carrier Enterprise, LLC (Amended and Restated), dated as of July 1, 2009]

SHAREHOLDER AGREEMENT

by and between

WATSCO, INC.

and

THE SHAREHOLDER IDENTIFIED ON THE SIGNATURE PAGE HERETO dated as of July 1, 2009

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SHAREHOLDER AGREEMENT

This Shareholder Agreement (this "Agreement") is entered into as of this 1st day of July, 2009, by and between Watsco, Inc., a Florida corporation (the "Company"), and the Shareholder identified on the signature page hereto.

WITNESSETH:

WHEREAS, the Company has entered into that certain Purchase and Contribution Agreement, dated as of May 3, 2009 (as amended, the "Purchase and Contribution Agreement");

WHEREAS, the Company and Shareholder are entering into this Agreement in consideration, in part, for the Company and Shareholder entering into, and consummating the transactions contemplated by, the Purchase and Contribution Agreement;

WHEREAS, as of the date of this Agreement and as a result of the consummation of the transactions contemplated by the Purchase and Contribution Agreement, Shareholder owns of record as of the date hereof, that number of shares of Capital Stock set forth opposite the name of Shareholder on Annex I attached hereto and incorporated herein by reference; and

WHEREAS, each of the Company and Shareholder are desirous of entering into this Agreement, upon the terms and conditions contained hereinafter.

NOW, THEREFORE, in consideration of the foregoing and the mutual premises, representations, warranties, covenants and agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby agreed to and acknowledged by the parties hereto, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

Section 1.1 Certain Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(a) "Affiliate" shall mean, with respect to a specified Person, any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Person. As used in this definition, and elsewhere herein in relation to control of Affiliates, the term "control" means the possession, directly or indirectly, of the power to substantially direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, as director or manager, as trustee or executor, by contract or credit arrangement or otherwise. For the avoidance of doubt, neither the Company nor any of its Subsidiaries shall be deemed an Affiliate of a Shareholder Group Member for any purpose hereunder, and no Shareholder Group Member shall be deemed an Affiliate of the Company or any of its Subsidiaries for any purpose hereunder.

(b) "Agreement" shall have the meaning ascribed to such term in the caption to this Agreement.

(c) "AMEX" shall mean the American Stock Exchange.

(d) "Ancillary Agreements" shall have the meaning ascribed to such term in the Purchase and Contribution Agreement.

(e) "beneficially own" shall have the meaning ascribed to such term in Rule 13d-3 (as in effect as of the date hereof) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act") (including, but not limited to the entitlement to dispose of (or to direct the disposition of) and to vote (or to direct the voting of), and the right to acquire beneficial ownership of within sixty (60) days). For purposes of this Agreement, the terms "beneficially owns" and "beneficially owned" shall have correlative meanings.

(f) "Board" shall mean the Board of Directors of the Company.

(g) "Capital Stock" shall mean shares of the Company's common stock, par value \$.50 per share (the "Common Stock"), and shares of the Company's Class B common stock, par value \$.50 per share (the "Class B Common Stock").

(h) "Carrier" shall mean Carrier Corporation.

(i) "Carrier Enterprises" shall mean Carrier Enterprises, LLC, a Delaware limited liability company.

(j) "Chosen Courts" shall have the meaning ascribed to such term in Section 8.7(b) of this Agreement.

(k) "Class B Common Stock" shall have the meaning ascribed to such term in the definition of "Capital Stock" set forth above.

(l) "Closing Date" shall have the meaning ascribed to such term in the Purchase and Contribution Agreement.

(m) "Commission" shall mean the Securities and Exchange Commission or any other federal agency administering the Securities Act.

(n) "Common Stock" shall have the meaning ascribed to such term in the definition of "Capital Stock" set forth above.

(o) "Company" shall have the meaning ascribed to such term in the caption to this Agreement.

(p) "Company Change of Control" shall mean a transaction or series of transactions (or the entry by the Company, its stockholders, or any of its Subsidiaries into an agreement to effect such a transaction or series of transactions) with the Company, its stockholders, or any of its Subsidiaries, on one hand, and any Person or group (within the meaning of Section 13(d)(3) or

Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) on the other hand, with respect to (i) a merger, reorganization, share exchange, consolidation, business combination, recapitalization, dissolution, liquidation or similar transaction involving the Company or its Subsidiaries in which the shareholders of the Company immediately prior to such transaction shall own less than fifty percent (50%) of the total voting power of all shares of voting securities of the surviving entity (or its ultimate parent) outstanding immediately after such transaction, (ii) any purchase of an equity interest (including by means of a tender or exchange offer) resulting in any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) beneficially owning (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) greater than a fifty percent (50%) of the total voting power in the Company, other than, in each case, Mr. Albert Nahmad and any Related Affiliate or (iii) any purchase of assets, securities or ownership interests resulting in any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) owning greater than fifty percent (50%) of the consolidated assets of the Company and its Subsidiaries taken as a whole (including stock of the Company's Subsidiaries). A Company Change of Control shall also be deemed to have occurred if the Continuing Directors cease for any reason to constitute at least a majority of the Board.

(q) "Company Equity Securities" shall mean the equity securities of the Company, including shares of Capital Stock or other equity securities of the Company issuable upon exercise, conversion, exchange or redemption of any warrants, options, rights or other securities issued by the Company.

(r) "Continuing Director" shall mean (i) any member of the Board as of the date of this Agreement, or (ii) any member of the Board who becomes such a member subsequent to the date of this Agreement whose nomination for election or election to the Board was recommended or approved by a majority of the individuals described in clause (i) or this clause (ii) then on the Board.

(s) "Control Solicitation" shall have the meaning ascribed to such term in Section 2.2(b) of this Agreement.

(t) "Covered Person" shall have the meaning ascribed to such term in Section 3.8(a) of this Agreement.

(u) "Demand Registration" shall have the meaning ascribed to such term in Section 3.1(b)(i) of this Agreement.

(v) "Dispute" shall have the meaning ascribed to such term in Section 8.7(a) of this Agreement.

(w) “Exchange Act” shall have the meaning ascribed to such term in the definition of “beneficially own.”

(x) “Family Member” shall mean, with respect to Albert Nahmad, any spouse, child (including any child by adoption and any child as to whom Albert Nahmad or his spouse has legal custody), and grandchild (including by adoption) and/or their respective spouses.

(y) “Governmental Authority” shall mean any nation or country (including but not limited to the United States) and any commonwealth, territory or possession thereof and any political subdivision of any of the foregoing, including but not limited to courts, departments, commissions, boards, bureaus, agencies, ministries or other instrumentalities.

(z) “Holdback Period” shall mean with respect to any registered offering covered by this Agreement, (i) one hundred twenty (120) days after and during the ten (10) days before, the effective date of the related Registration Statement or, in the case of a takedown from a Shelf Registration Statement, ninety (90) days after the date of the prospectus supplement filed with the Commission in connection with such takedown and during such prior period (not to exceed ten (10) days) as the Company has given reasonable written notice to Shareholder or (ii) such shorter period as Shareholder, the Company and the underwriter of such offering, if any, shall agree.

(aa) “Issuer Free Writing Prospectus” shall mean an issuer free writing prospectus, as defined in Rule 433 under the Securities Act, relating to an offer of the Registrable Securities.

(bb) “Law” when described as being applicable to any Person, shall mean any and all laws (statutory, judicial or otherwise), ordinances, regulations, judgments, orders, directives, injunctions, writs, decrees or awards of any Governmental Authority, in each case as and to the extent applicable to such Person or such Person’s business, operations or properties.

(cc) “Market Value” of a share of Common Stock or a share of Class B Common Stock, as the case may be, on any trading day means the last reported sale price, regular way, of a share of Common Stock or Class B Common Stock, as applicable, on such trading day or, in case there is no last reported sale price on such trading day, the average of the reported closing bid and ask prices, regular way, of a share of Common Stock or Class B Common Stock, as applicable, on such trading day, in either case on the principal stock exchange on which shares of Common Stock are traded, in the case of a share of Common Stock, and the principal stock exchange on which shares of Class B Common Stock are traded, in the case of a share of Class B Common Stock. The Market Value of a share of Common Stock or Class B Common Stock on any day which is not a trading day on the applicable stock exchange shall be deemed to be the Market Value of a share of Common Stock or Class B Common Stock, as applicable, on the immediately preceding trading day. The “Market Value” of any other security shall have a correlative meaning.

(dd) “Mediation Termination” shall have the meaning ascribed to such term in Section 8.7(a) of this Agreement.

(ee) “Notices” shall have the meaning ascribed to such term in Section 8.2 of this Agreement.

(ff) “NYSE” shall mean the New York Stock Exchange.

(gg) “Ownership Limit” shall have the meaning ascribed to such term in Section 4.1(a) of this Agreement.

(hh) “Percentage Interest” as to a Person means the number of shares of Capital Stock that are owned by such Person, expressed as a percentage of the total number of shares of Capital Stock actually outstanding.

(ii) “Person” shall mean any natural person, corporation, general partnership, limited partnership, limited liability company, joint venture, union, trust, association, court, agency, government, tribunal, instrumentality, commission, arbitrator, board, bureau or other entity or authority.

(jj) “Piggyback Registration” shall have the meaning ascribed to such term in Section 3.2(a) of this Agreement.

(kk) “Prospectus” shall mean the prospectus included in any Registration Statement (including a prospectus that discloses information previously omitted from a prospectus filed as part of an effective Registration Statement in reliance upon Rule 430A or Rule 430B promulgated under the Securities Act), as amended or supplemented by any prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement, any Issuer Free Writing Prospectus related thereto, and all other amendments and supplements to such prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such prospectus.

(ll) “Purchase and Contribution Agreement” shall have the meaning ascribed to such term in the recitals to this Agreement.

(mm) “Registration Expenses” shall have the meaning ascribed to such term in Section 3.4(a) of this Agreement.

(nn) “Registration Request” shall have the meaning ascribed to such term in Section 3.1(b)(i) of this Agreement.

(oo) “Registrable Securities” shall mean all shares of Capital Stock issued to Shareholder pursuant to the Purchase and Contribution Agreement and all shares of Common Stock issued to any Shareholder Group Member pursuant to the conversion of any shares of Class B Common Stock issued to Shareholder pursuant to the Purchase and Contribution Agreement; provided, that such shares will cease to be Registrable Securities when (i) they have been effectively registered or qualified for sale by a Prospectus filed under the Securities Act and disposed of in accordance with the applicable Registration Statement, (ii) they have been sold to the public pursuant to Rule 144 or Rule 145 or other exemption from registration under the Securities Act, (iii) they have been sold (other than to another Shareholder Group Member) in a private transaction or other exemption from registration under the Securities Act or

(iv) they have been acquired by the Company. In the event of a stock dividend or distribution, or any change in the Capital Stock by reason of any stock dividend or distribution, split-up, recapitalization, combination, exchange of shares or the like, the term “Registrable Securities” shall be deemed to refer to and include the Registrable Securities as well as all such stock dividends and distributions and any securities into which or for which any or all of the Registrable Securities may be changed or exchanged or which are received in such transaction.

(pp) “Registration Statement” shall mean the Prospectus and other documents filed with the Commission to effect a registration under the Securities Act.

(qq) “Related Affiliate” shall mean, with respect to Albert Nahmad, (a) a foundation or similar entity established by Albert Nahmad or any Family Member for the principal purpose of serving charitable goals, controlled by Albert Nahmad or any Family Member; (b) any trust and/or estate (so long as such trust and/or estate, and the voting and/or disposition of assets, including securities, held by such trust and/or estate, is controlled by Albert Nahmad or any Family Member), the beneficiaries of which principally include Albert Nahmad, Family Members or the Persons named in clause (a); and (c) any corporation, limited liability company or partnership, the stockholders, members or general or limited partners of which include only Albert Nahmad, Family Members or the Persons named in clauses (a) or (b).

(rr) “Restricted Transfer” shall have the meaning ascribed to such term in Section 4.4(a) of this Agreement.

(ss) “Rule 144” shall mean Rule 144 under the Securities Act, as in effect from time to time.

(tt) “Rule 144A” shall mean Rule 144A under the Securities Act, as in effect from time to time.

(uu) “Rule 145” shall mean Rule 145 under the Securities Act, as in effect from time to time.

(vv) “Rule 415” shall mean Rule 415 under the Securities Act, as in effect from time to time.

(ww) “Rule 424” shall mean Rule 424 under the Securities Act, as in effect from time to time.

(xx) “Securities Act” shall mean the Securities Act of 1933, as amended.

(yy) “Selling Expenses” shall mean all underwriting discounts, selling commissions and transfer taxes applicable to the sale of Registrable Securities hereunder and any other Registration Expenses applicable to the sale of Registrable Securities hereunder required by Law to be paid by a selling shareholder.

(zz) “Shareholder” means Carrier.

(aaa) “Shareholder Group Member” means United Technologies Corporation, a Delaware corporation, and each of its Subsidiaries, including Shareholder.

(bbb) “Shareholder’s Counsel” shall have the meaning ascribed to such term in Section 3.4(b) of this Agreement.

(ccc) “Shelf Demand Notice” shall have the meaning ascribed to such term in Section 3.1(a)(ii) of this Agreement.

(ddd) “Shelf Demand Offering” shall have the meaning ascribed to such term in Section 3.1(a)(ii) of this Agreement.

(eee) “Shelf Period” shall have the meaning ascribed to such term in Section 3.1(a)(i) of this Agreement.

(fff) “Shelf Registration” shall have the meaning ascribed to such term in Section 3.1(a)(i) of this Agreement.

(ggg) “Shelf Registration Statement” shall have the meaning ascribed to such term in Section 3.1(a)(i) of this Agreement.

(hhh) “Subject Shares” shall mean, with respect to any particular Person, the shares of Capital Stock beneficially owned by such Person (including, without limitation, any shares of Capital Stock set forth opposite the name of such Person in Annex I hereto), together with any other shares of Capital Stock (including the voting power with respect thereto) which are directly or indirectly acquired by such Person at any one or more times prior to the termination of this Agreement pursuant to the terms hereof. In the event of a stock dividend or distribution, or any change in the Capital Stock by reason of any stock dividend or distribution, split-up, recapitalization, combination, exchange of shares or the like, the term “Subject Shares” shall be deemed to refer to and include the Subject Shares as well as all such stock dividends and distributions and any securities into which or for which any or all of the Subject Shares may be changed or exchanged or which are received in such transaction.

(iii) “Subsidiary” shall mean, with respect to any Person, (i) any corporation fifty percent (50%) or more of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation is at the time owned by such Person, directly or indirectly through one or more Subsidiaries, and (ii) any other Person, including but not limited to a joint venture, a general or limited partnership or a limited liability company, in which such Person, directly or indirectly through one or more Subsidiaries, at the time owns at least fifty percent (50%) or more of the ownership interests entitled to vote in the election of managing partners, managers or trustees thereof (or other Persons performing such functions) or acts as the general partner, managing member, trustee (or Persons performing similar functions) of such other Person.

(jjj) “Suspension Period” shall have the meaning ascribed to such term in Section 3.1(c) of this Agreement.

ARTICLE II

VOTING AGREEMENT

Section 2.1 Agreement to Vote the Subject Shares.

(a) The parties hereto hereby agree that from and after the date hereof, for as long as the Percentage Interest of Shareholder exceeds five percent (5%), at any meeting of the Company's shareholders (or any adjournment or postponement thereof), however called, or in connection with any action by written consent or other action of the Company's shareholders, Shareholder shall vote (or cause to be voted) all of the Subject Shares beneficially owned by it and by Shareholder Group Members in the same proportion of votes cast for, against or abstain by all other holders of Capital Stock, except that at any meeting of the Company's shareholders (or any adjournment or postponement thereof), however called, or in connection with any action by written consent or other action of the Company's shareholders, pursuant to which holders of any class of Capital Stock are entitled to vote as a separate class, Shareholder shall vote (or cause to be voted) all of the shares of such class of Capital Stock beneficially owned by it and by Shareholder Group Members in the same proportion of votes cast for, against or abstain by all other holders of such class of Capital Stock. Any such vote shall be cast or consent shall be given in accordance with such procedures relating thereto so as to ensure that it is duly counted for purposes of determining that a quorum is present and for purposes of recording the results of such vote or consent. Shareholder agrees not to enter into any agreement or commitment with any Person the effect of which would violate or be inconsistent with the provisions and agreements set forth in this Article II. In order to enable Shareholder to comply with its obligations under this Section 2.1(a), the Company shall (prior to the first vote of the Company's shareholders subject to this Section 2.1(a)) develop, together with its proxy solicitor and/or transfer agent, a form of proxy, in form and substance reasonably satisfactory to Shareholder, to be used by Shareholder (and/or any other Shareholder Group Member, as applicable) to enable it to vote the Subject Shares in the manner required by this Section 2.1(a) at any meeting of the Company's shareholders (or any adjournment or postponement thereof), however called, or in connection with any action by written consent or other action of the Company's shareholders. For the avoidance of doubt, any vote of Shareholder (or any other Shareholder Group Member) pursuant to the proper use of such form of proxy shall be deemed to have been made in compliance with this Section 2.1(a).

(b) Notwithstanding anything contained in Section 2.1(a), Shareholder Group Members shall not be required to vote (or cause to be voted) any or all of the Subject Shares beneficially owned by the relevant Shareholder Group Members as provided in Section 2.1(a) with respect to:

(i) any merger, consolidation, combination, acquisition or sale of assets, reorganization or recapitalization, which, if consummated, would result in a Company Change of Control (except when the Company's proposal is to merge with its wholly-owned Subsidiary);

(ii) dissolution, liquidation or winding up involving the Company; and

(iii) any matter which involves an alteration of any right of any class of Company Equity Securities.

However, for the avoidance of doubt nothing in this Section 2.1(b) requires the Company to obtain the approval of the Company's shareholders in circumstances where it is not otherwise being proposed to shareholders for approval.

Section 2.2 Fall-Away of Voting Rights and Standstill. The provisions of Section 2.1(a), Section 2.1(b), Section 4.1 and Section 4.2 shall terminate and be of no further effect in the event:

(a) of a Company Change of Control,

(b) that any Person or group (as defined, as of the date hereof, under Section 13(d) of the Exchange Act) announces publicly an offer with respect to any transaction, or commences a proxy solicitation, involving the Company, any of its Subsidiaries, or any of their securities or assets, the consummation, or success, of which would result in a Company Change of Control (any such offer or proxy solicitation, a "Control Solicitation"), but only if and after the Board either (i) accepts or recommends in favor of such Control Solicitation or (ii) fails to recommend that its stockholders reject such Control Solicitation within ten (10) business days from the date of commencement of such Control Solicitation; provided, that, if the relevant Person or group announces publicly the withdrawal or discontinuation of such Control Solicitation prior to a Company Change of Control, the provisions of Section 2.1(a), Section 2.1(b), Section 4.1 and Section 4.2 shall be reinstated and shall again bind Shareholder and the Company from the date of such announcement; provided, however, that if, before the relevant Person or group announces publicly the withdrawal or discontinuation of such Control Solicitation, a Shareholder Group Member has publicly announced a Control Solicitation, Section 2.1(a), Section 2.1(b) and Section 4.1 shall not bind Shareholder in relation to any action in connection with the conduct of such Control Solicitation unless and until the Shareholder Group Member has publicly withdrawn or discontinued such Control Solicitation, or

(c) that the Board resolves to engage in a formal process that is intended to result in a transaction that if consummated would constitute a Company Change of Control, provided, that if the Board subsequently resolves to terminate the process prior to a Company Change of Control, the provisions of Section 2.1(a), Section 2.1(b), Section 4.1 and Section 4.2 shall be reinstated and shall again bind Shareholder and the Company from such date as the Board notifies Shareholder that the process has terminated.

ARTICLE III

REGISTRATION RIGHTS

Section 3.1 Required Registrations.

(a) Shelf Registration.

(i) Shelf Registration Statement. As soon as practicable after the Closing Date, but in no event more than one hundred eighty (180) days following the Closing Date, the Company shall use reasonable best efforts to prepare and file with the

Commission a Registration Statement covering the resale of all of the Registrable Securities (the “Shelf Registration”) that are not then registered on an effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415 (such Registration Statement, together with any post-effective amendment thereto and any new Registration Statement filed pursuant to this Section 3.1(a)), are collectively referred to herein as the “Shelf Registration Statement”). The Shelf Registration Statement filed hereunder shall be on Form S-3 or any successor form (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance herewith). Subject to the terms of this Agreement, the Company shall use its reasonable best efforts to cause the Shelf Registration Statement filed hereunder to be declared effective under the Securities Act as promptly as possible after the filing thereof, and shall use its reasonable best efforts to keep such Shelf Registration Statement continuously effective (including by filing any necessary post-effective amendments to such Shelf Registration Statement or a new Shelf Registration Statement) under the Securities Act until all Registrable Securities covered by such Shelf Registration Statement have been sold pursuant to such Shelf Registration Statement or another Registration Statement filed under the Securities Act or otherwise cease to be Registrable Securities (such period of effectiveness, the “Shelf Period”). The Company will pay all Registration Expenses in connection with the Shelf Registration, whether or not any registration or Prospectus becomes effective or final.

(ii) Shelf Demand Notice. At any time that a Shelf Registration Statement covering Registrable Securities pursuant to Section 3.1(a)(i) is effective, if a Shareholder Group Member desires to sell all or any portion of the Registrable Securities under such Shelf Registration Statement in an underwritten offering (“Shelf Demand Offering”), Shareholder shall notify (such notice being the “Shelf Demand Notice”) the Company of such intent at least fifteen (15) days prior to such proposed sale (or, in the case of a Shelf Demand Offering that does not involve a “road show”, at least three (3) days prior to such proposed sale), which notice shall specify the number of the Registrable Securities to be included in such Shelf Demand Offering.

(iii) Shelf Demand Offering. The Company shall prepare and file a prospectus supplement, post-effective amendment to the Shelf Registration Statement and/or Exchange Act reports incorporated by reference into the Shelf Registration Statement and take such other actions as reasonably necessary or appropriate to permit the consummation of such Shelf Demand Offering. In the case of a Shelf Demand Offering that does not involve a “road show”, the Company shall take all actions to enable the Shareholder Group Member to price such offering within three (3) days of receipt of the Shelf Demand Notice; provided, that if a “comfort” letter is required in connection with the pricing of such offering, and the Company was unable to obtain such “comfort” letter within three (3) days of receipt of such Shelf Demand Notice, then the Company shall use its reasonable best efforts to obtain such “comfort” letter and price such offering as soon as reasonably practicable.

(b) Demand Registrations.

(i) If at any time (x) the Shelf Registration Statement contemplated by Section 3.1(a) is not effective to register all the Registrable Shares and (y) a Shareholder Group Member continues to hold any Registrable Securities, Shareholder may request in writing that the Company effect the registration of all or any part of the Registrable Securities (a “Registration Request”), provided, that the aggregate offering price applicable to any such Registration Request shall not be less than \$25 million (determined in accordance with the aggregate Market Value of the Registrable Securities included in such Registration Request on the day on which such Registration Request is received by the Company). Promptly after its receipt of any Registration Request, the Company will use its reasonable best efforts to register, in accordance with the provisions of this Agreement, all Registrable Securities that have been requested to be registered in the Registration Request. The Company will pay all Registration Expenses incurred in connection with any registration pursuant to this Section 3.1(b), whether or not any registration or Prospectus becomes effective or final. Any registration requested by Shareholder pursuant to this Section 3.1(b) is referred to in this Agreement as a “Demand Registration.”

(ii) Limitation on Demand Registrations. Shareholder will be entitled to initiate no more than three (3) Demand Registrations. No request for registration will count for the purposes of the limitations in this Section 3.1(b)(ii), if (i) the relevant Shareholder Group Member determines in good faith to withdraw the proposed registration prior to the effectiveness of the Registration Statement relating to such request due to adverse business developments at the Company that were not known to Shareholder at the time of the request to initiate such registration proceedings, (ii) the Registration Statement relating to such request is not declared effective within one hundred eighty (180) days of the date such Registration Statement is first filed with the Commission (other than solely by reason of the relevant Shareholder Group Member having refused to proceed) and Shareholder withdraws its Registration Request prior to such Registration Statement being declared effective, (iii) prior to the sale of at least ninety percent (90%) of the Registrable Securities included in the applicable registration relating to such request, such registration is adversely affected by any stop order, injunction or other order or requirement of the Commission or other Governmental Authority for any reason and the Company fails to have such stop order, injunction or other order or requirement removed, withdrawn or resolved to Shareholder’s reasonable satisfaction within thirty (30) days of the date of such order, (iv) more than fifteen percent (15%) of the Registrable Securities requested by Shareholder to be included in the registration are not so included pursuant to Section 3.1(e), or (v) the conditions to closing specified in the underwriting agreement or purchase agreement entered into in connection with the registration relating to such request are not satisfied (other than as a result of a default or breach thereunder by the relevant Shareholder Group Member). Notwithstanding the foregoing, the Company will pay all Registration Expenses in connection with any request for a registration pursuant to Section 3.1(b)(i) regardless of whether or not such request counts toward the limitation set forth above.

(c) Restrictions on Required Registrations. If the filing, initial effectiveness or continued use of a Registration Statement with respect to the Shelf Registration or a Demand Registration would (i) require the Company to make a public disclosure of material non-public information, which disclosure in the good faith judgment of the Board (A) would be required to be made in any

such Registration Statement so that such Registration Statement would not be materially misleading, (B) would not be required to be made at such time but for the filing, effectiveness or continued use of any such Registration Statement and (C) would in the good faith judgment of the Board reasonably be expected to have a material adverse effect on the Company or its business if made at such time, or (ii) in the good faith judgment of the Board reasonably be expected to have a material adverse effect on the Company or its business or on the Company's ability to effect a planned or proposed acquisition, disposition, financing, reorganization, recapitalization or similar transaction, then the Company may upon giving prompt written notice of such action to Shareholder (which hereby agrees to maintain the confidentiality of all information disclosed to such participants) delay the filing or initial effectiveness of, or suspend use of, any such Registration Statement, provided, that the Company shall not be permitted to do so (x) more than two (2) times during any twelve-month period or (y) for periods exceeding, in the aggregate, one hundred twenty (120) days during any twelve-month period (a "Suspension Period"). In the event the Company exercises its rights under the preceding sentence, Shareholder agrees to suspend, and to cause any relevant Shareholder Group Member to suspend, promptly upon receipt of the notice referred to above, its use of any Prospectus relating to such registration in connection with any sale or offer to sell Registrable Securities. Any Suspension Period shall terminate at such time as the public disclosure of such information is made or the requisite financial information becomes publicly available, as applicable. In the case of the Shelf Registration, or a Demand Registration not withdrawn pursuant to the immediately following sentence, after the expiration of any Suspension Period and without any further request from Shareholder (or any Shareholder Group Member), the Company shall as promptly as reasonably practicable prepare a post-effective amendment or supplement to the applicable Registration Statement or Prospectus, or any document incorporated therein by reference, or file any other required document so that, as thereafter delivered to purchasers of the Registrable Securities included therein, the applicable Prospectus will not include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. In the case of a Demand Registration, if the Company postpones the filing of a Prospectus or the effectiveness of a Registration Statement pursuant to this Section 3.1(c), Shareholder will be entitled to withdraw its request and, if such request is withdrawn, such registration request will not count for the purposes of the limitation set forth in Section 3.1(b)(ii). The Company will pay all Registration Expenses incurred in connection with any registration or Prospectus aborted pursuant to this Section 3.1(c).

(d) Selection of Underwriters.

(i) If pursuant to Section 3.1(a) or 3.1(b), a Shareholder Group Member intends that Registrable Securities be distributed by means of an underwritten offering, Shareholder will so advise the Company. In such event, the lead underwriter to administer the offering will be chosen by Shareholder subject to the prior written consent, not to be unreasonably withheld or delayed, of the Company.

(ii) If the offering is underwritten, the relevant Shareholder Group Member will (together with the Company) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting. If the relevant Shareholder Group Member disapproves of the terms of the underwriting, Shareholder may elect to withdraw any Registrable Securities therefrom by written notice to the Company and the managing underwriter.

(e) Priority on Required Registrations. The Company will not include in any registration pursuant to this Section 3.1 any securities that are not Registrable Securities, without the prior written consent of Shareholder. If the managing underwriter (or, if the applicable offering is not an underwritten offering, a nationally recognized independent investment bank selected by the Company) advises the Company that in its reasonable opinion the number of Registrable Securities (and, if permitted hereunder, other securities requested to be included in such offering) exceeds the number of securities that can be sold in such offering without adversely affecting the marketability of the offering (including an adverse effect on the per share offering price), the Company will include in such offering only such number of securities that in the reasonable opinion of such underwriters can be sold without adversely affecting the marketability of the offering (including an adverse effect on the per share offering price), which securities will be so included in the following order of priority: (i) first, the Registrable Securities requested by Shareholder to be included in such offering; (ii) second, securities the Company proposes to sell; and (iii) third, any other securities of the Company that have been requested to be so included.

(f) Effective Registration Statement. A registration pursuant to this Section 3.1 shall not be deemed to have been effected unless it is declared effective by the Commission and remains effective for the period specified in Section 3.3(b).

Section 3.2 Piggyback Registrations.

(a) Right to Piggyback. For so long as any Shareholder Group Member continues to hold any Registrable Securities, whenever the Company proposes to register any of its securities, other than a registration pursuant to Section 3.1, and the registration form to be filed may be used for the registration or qualification for distribution of Registrable Securities, the Company will give prompt written notice no later than fifteen (15) business days prior to the anticipated filing of a Registration Statement (other than in connection with a registration statement on Forms S-4, F-4 or S-8 or any similar or successor form) with respect to such registration to Shareholder of its intention to effect such a registration (a "Piggyback Registration"). Subject to Section 3.2(d), the Company will include in such registration all Registrable Securities with respect to which the Company has received written requests from Shareholder for inclusion therein within ten (10) business days after the date of the Company's notice. Shareholder may withdraw the Registrable Securities from any Piggyback Registration by giving written notice to the Company and the managing underwriter, if any, on or before the tenth business day prior to the planned effective date of such Piggyback Registration. The Company may terminate or withdraw any registration under this Section 3.2 prior to the effectiveness of such registration, whether or not Shareholder has elected to include Registrable Securities in such registration, and except for the obligation to pay Registration Expenses pursuant to Section 3.2(c) the Company will have no liability to any relevant Shareholder Group Member in connection with such termination or withdrawal.

(b) Underwritten Registration. If the registration referred to in Section 3.2(a) is proposed to be underwritten by the Company or the Persons who have sought to have securities of the Company registered in such Piggyback Registration pursuant to a

demand right, the Company will so advise Shareholder as a part of the written notice given pursuant to Section 3.2(a). In such event, the right of Shareholder to request the registration of Registrable Securities pursuant to this Section 3.2 will be conditioned upon the relevant Shareholder Group Member's participation in such underwriting and the inclusion of Registrable Securities in the underwriting, and the relevant Shareholder Group Member will (together with the Company) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company. If Shareholder disapproves of the terms of the underwriting, Shareholder may elect to withdraw any Registrable Securities therefrom by written notice to the Company and the managing underwriter.

(c) Piggyback Registration Expenses. The Company will pay all Registration Expenses in connection with any Piggyback Registration, whether or not any registration or Prospectus becomes effective or final.

(d) Priority on Piggyback Registrations. If, in connection with a Piggyback Registration, the managing underwriter (or, if such Piggyback Registration is not an underwritten registration, a nationally recognized independent investment bank selected by the Company) advises the Company that in its reasonable opinion the number of securities requested to be included in such registration exceeds the number which can be sold without adversely affecting the marketability of such offering (including an adverse effect on the per share offering price), the Company will include in such registration or Prospectus only such number of securities that in the reasonable opinion of such underwriters can be sold without adversely affecting the marketability of the offering (including an adverse effect on the per share offering price), which securities will be so included in the following order of priority:

(i) If the Piggyback Registration relates to an offering for the Company's own account, then (A) first, the securities the Company proposes to sell (B) second, Registrable Securities that Shareholder has requested to be registered pursuant to Section 3.2(a), and (C) third, any other securities of the Company that have been requested to be so included;

(ii) If the Piggyback Registration relates to an offering other than for the Company's own account, then (A) first, the securities of the Person or Persons who initiated the Piggyback Registration by seeking to have securities of the Company registered in such Piggyback Registration, (B) second, the securities the Company proposes to sell, (C) third, the Registrable Securities requested by Shareholder to be registered pursuant to Section 3.2(a), and (D) fourth, any other securities of the Company that have been requested to be so included.

Section 3.3 Registration Procedures. Subject to the provisions of Sections 3.1 and 3.2, pursuant to the Shelf Registration and, if applicable, each Demand Registration and each Piggyback Registration, the Company will use its reasonable best efforts to effect the registration and sale of such Registrable Securities as soon as reasonably practicable in accordance with the intended method of disposition thereof and pursuant thereto. The Company shall use its reasonable best efforts to as expeditiously as possible:

(a) prepare and file with the Commission a Registration Statement with respect to such Registrable Securities in accordance with the intended method or methods of distribution thereof, make all required filings with the Financial Industry Regulatory Authority and thereafter use its reasonable best efforts to cause such Registration Statement to become effective as soon as reasonably practicable, provided that before filing a Registration Statement or a Prospectus or any amendments or supplements thereto, the Company will furnish to Shareholder's Counsel copies of all such documents proposed to be filed, which documents will be subject to review of such counsel at the Company's expense;

(b) prepare and file with the Commission such amendments and supplements to such Registration Statement as may be necessary to keep such Registration Statement effective either (i) for a period of not less than (A) three months or (B) if such Registration Statement relates to an underwritten offering, such longer period as a Prospectus is required by Law to be delivered in connection with sales of Registrable Securities by an underwriter or dealer or (C) in the case of the Shelf Registration Statement, the Shelf Period or (ii) such shorter period as ends when all of the securities covered by such Registration Statement have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof set forth in such Registration Statement (but in any event not before the expiration of any longer period required under the Securities Act), and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement, and cause the related Prospectus to be supplemented by any Prospectus supplement or Issuer Free Writing Prospectus as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of the securities covered by such Registration Statement, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) under the Securities Act, until such time as all of such securities have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof set forth in such Registration Statement;

(c) furnish to Shareholder such number of copies, without charge, of such Registration Statement, each amendment and supplement thereto, including each Prospectus (including each preliminary Prospectus), all exhibits and other documents filed therewith and such other documents as Shareholder may reasonably request including in order to facilitate the disposition of the Registrable Securities;

(d) register or qualify such Registrable Securities under such other securities or blue sky laws of such jurisdictions as any seller reasonably requests and do any and all other acts and things that may be reasonably necessary or reasonably advisable to enable the relevant Shareholder Group Member to consummate the disposition in such jurisdictions of the Registrable Securities (provided that the Company will not be required to (i) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subsection, (ii) subject itself to taxation in any such jurisdiction or (iii) consent to general service of process in any such jurisdiction);

(e) notify Shareholder and Shareholder's Counsel, at any time when a Prospectus relating thereto is required to be delivered under the Securities Act, upon discovery that, or upon the discovery of the happening of any event as a result of which, the Prospectus included in such Registration Statement contains an untrue statement of a material fact or omits any fact necessary to

make the statements therein not misleading in the light of the circumstances under which they were made, and, as soon as reasonably practicable, prepare and furnish to Shareholder a reasonable number of copies of a supplement or amendment to such Prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such Prospectus will not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading in the light of the circumstances under which they were made;

(f) notify Shareholder and Shareholder's Counsel (i) when such Registration Statement or the Prospectus or any prospectus supplement or post-effective amendment has been filed and, with respect to such Registration Statement or any post-effective amendment, when the same has become effective, (ii) of any request by the Commission for amendments or supplements to such Registration Statement or to amend or to supplement such Prospectus for additional information and (iii) of the issuance by the Commission of any stop order suspending the effectiveness of such Registration Statement or the initiation of any proceedings for any of such purposes;

(g) cause all such Registrable Securities to be listed on each securities exchange on which similar securities issued by the Company are then listed or, if no similar securities issued by the Company are then listed on any securities exchange, use its reasonable best efforts to cause all such Registrable Securities to be listed on the NYSE, the AMEX or the NASDAQ stock market, as determined by the Company;

(h) provide a transfer agent and registrar for all such Registrable Securities not later than the effective date of such Registration Statement;

(i) enter into such customary agreements (including underwriting agreements and, subject to [Section 3.7](#), lock-up agreements in customary form, and including provisions with respect to indemnification and contribution in customary form) and take all such other customary actions as Shareholder or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of such Registrable Securities (including, without limitation, causing members of senior management of the Company to use their reasonable best efforts to support the marketing, offering or selling of the Registrable Securities covered by such Registration Statement, including by participation in "road show" (including before analysts and ratings agencies) and other customary marketing activities);

(j) make available for inspection by Shareholder, the relevant Shareholder Group Member and Shareholder's Counsel, any underwriter participating in any disposition pursuant to such Registration Statement and any attorney, accountant or other agent retained by Shareholder, the relevant Shareholder Group Member or any such underwriter, all relevant financial and other records, pertinent corporate documents and documents relating to the business of the Company, and cause the Company's officers, directors, employees and independent accountants to supply all information reasonably requested by Shareholder, the relevant Shareholder Group Member or any such underwriter, attorney, accountant or agent in connection with such Registration Statement, provided that it shall be a condition to such inspection and receipt of such information that the inspecting Person (i) enter into a confidentiality agreement in form and substance reasonably satisfactory to the Company and (ii) agree to minimize the disruption to the Company's business in connection with the foregoing;

(k) timely provide to its security holders earning statements satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder;

(l) in the event of the issuance of any stop order suspending the effectiveness of a Registration Statement, or of any order suspending or preventing the use of any related Prospectus, or ceasing trading of any securities included in such Registration Statement for sale in any jurisdiction, use every reasonable effort to promptly obtain the withdrawal of such order;

(m) obtain one or more comfort letters and updates thereof, addressed to the underwriters, if any, signed by the Company's independent public accountants in customary form (including, in each case, with respect to the date thereof) and covering such matters of the type customarily covered by comfort letters in connection with underwritten offerings as such underwriters reasonably request; and

(n) provide legal opinions of the Company's counsel, addressed to the underwriters, if any, dated the date of the closing under the underwriting agreement, with respect to the Registration Statement, each amendment and supplement thereto (including the preliminary Prospectus) and such other documents relating thereto as such underwriters shall reasonably request in customary form and covering such matters of the type customarily covered by legal opinions of such nature.

As a condition to registering Registrable Securities, the Company may require Shareholder to furnish the Company with such information regarding the relevant Shareholder Group Member and pertinent to the disclosure requirements relating to the registration and the distribution of such securities as the Company may from time to time reasonably request in writing.

Section 3.4 Registration Expenses.

(a) Except as otherwise provided in this Agreement, all expenses incidental to the Company's performance of or compliance with this Agreement, including, without limitation, all registration and filing fees, fees and expenses of compliance with securities or blue sky laws, word processing, duplicating and printing expenses, messenger and delivery expenses, and fees and disbursements of counsel for the Company and all independent certified public accountants, underwriters and other Persons retained by the Company (all such expenses, "Registration Expenses"), will be borne by the Company. The Company will, in any event, pay its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expenses of any annual audit or quarterly review, the expenses of any liability insurance and the expenses and fees for listing the securities to be registered on each securities exchange on which similar securities issued by the Company are then listed or on the NYSE, the AMEX or NASDAQ. All Selling Expenses will be borne by Shareholder (or the relevant Shareholder Group Member, as the case may be).

(b) In connection with the Shelf Registration, each Demand Registration and each Piggyback Registration in which a Shareholder Group Member participates, as applicable, the Company will reimburse Shareholder for the reasonable fees and disbursements of one counsel ("Shareholder's Counsel").

Section 3.5 Participation in Underwritten Registrations.

(a) A Shareholder Group Member may not participate in any registration hereunder that is underwritten unless the Shareholder Group Member (i) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements approved by Shareholder and (ii) cooperates with the Company's reasonable requests in connection with such registration or qualification (it being understood that the Company's failure to perform its obligations hereunder, which failure is caused by the Shareholder Group Member's failure to cooperate with such reasonable requests, will not constitute a breach by the Company of this Agreement).

(b) Shareholder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3.3(e), Shareholder will forthwith discontinue, or ensure that the relevant Shareholder Group Member discontinues, the disposition of its Registrable Securities pursuant to the Registration Statement until Shareholder receives copies of a supplemented or amended Prospectus as contemplated by such Section 3.3(e). In the event the Company gives any such notice, the applicable time period mentioned in Section 3.3(b) during which a Registration Statement is to remain effective will be extended by the number of days during the period from and including the date of the giving of such notice pursuant to this Section 3.5(b) to and including the date when Shareholder will have received the copies of the supplemented or amended Prospectus contemplated by Section 3.3(e).

Section 3.6 Rule 144; Legended Securities; etc.

(a) With a view to making available to Shareholder Group Members the benefits of Rule 144 promulgated under the Securities Act and any other similar rule or regulation of the Commission that may at any time permit a Shareholder Group Member to sell securities of the Company to the public without registration, the Company agrees to:

(i) make and keep public information available, as those terms are understood and defined in Rule 144;

(ii) file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act so long as the Company remains subject to such requirements (it being understood that nothing herein shall limit the Company's obligations with respect to such requirements under the Purchase and Contribution Agreement) and the filing of such reports and other documents as is required for the applicable provisions of Rule 144; and

(iii) furnish to Shareholder so long as a Shareholder Group Member owns Registrable Securities, promptly upon written request, (A) a written statement by the Company that it has complied with the reporting requirements of Rule 144, the Securities Act and the Exchange Act, (B) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (C) such other information as may be reasonably requested to permit Shareholder Group Members to sell such securities pursuant to Rule 144 without registration.

(b) The Company will not issue new certificates for shares of Registrable Securities without a legend restricting further transfer unless (i) such shares have been sold to the public pursuant to an effective Registration Statement under the Securities Act or Rule 144, or (ii) (A) otherwise permitted under the Securities Act and applicable Laws, and (B) Shareholder shall have delivered to the Company an opinion of counsel, which opinion and counsel shall be reasonably satisfactory to the Company, to such effect.

Section 3.7 Holdback. In consideration for the Company agreeing to its obligations under this Agreement, Shareholder agrees in connection with any registration of the Company's securities (whether or not a Shareholder Group Member is participating in such registration) upon the request of the Company and the underwriters managing any underwritten offering of the Company's securities, not to effect and not to permit any Shareholder Group Member to effect (other than pursuant to such registration) any public sale or distribution of Registrable Securities, including, but not limited to, any sale pursuant to Rule 144 or Rule 144A, or make any short sale of, loan, grant any option for the purchase of, enter into any hedging or similar transaction with the same economic effect of a sale, or otherwise dispose of any Registrable Securities, any other equity securities of the Company or any securities convertible into or exchangeable or exercisable for any equity securities of the Company without the prior written consent of the Company or such underwriters, as the case may be, during the Holdback Period, provided that nothing herein will prevent a Shareholder Group Member, if it is a partnership or corporation, from making a distribution of Registrable Securities to the partners or shareholders thereof or a transfer to an Affiliate of the Shareholder Group Member that is otherwise in compliance with applicable securities Laws, so long as such distributees or Affiliates agree to be so bound. With respect to an underwritten offering of Registrable Securities covered by a registration pursuant to Section 3.1 or 3.2, the Company further agrees not to effect (other than pursuant to such registration) any public sale or distribution, or to file any Registration Statement (other than pursuant to such registration) covering any, of its equity securities, or any securities convertible into or exchangeable or exercisable for such securities, during the Holdback Period with respect to such underwritten offering, if required by the managing underwriter; provided, that notwithstanding anything to the contrary herein, the Company's obligations under this Section 3.7 shall not apply during any twelve-month period for more than an aggregate of ninety (90) days.

Section 3.8 Indemnification.

(a) The Company agrees to indemnify and hold harmless, to the fullest extent permitted by Law, Shareholder, each other Shareholder Group Member that has Registrable Securities, their respective officers, directors and managers and each Person who is a controlling Person of Shareholder, or of the relevant Shareholder Group Members, within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each such person being referred to herein as a "Covered Person") against, and pay and reimburse such Covered Persons for, any losses, claims, damages, liabilities, joint or several, to which such Covered Person may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities and expenses (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon (i) any untrue or alleged untrue statement of material fact contained or incorporated by reference in any Registration Statement, Prospectus, preliminary Prospectus or any amendment thereof or supplement thereto, or any document incorporated by reference therein, or (ii) any omission or alleged

omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, and the Company will pay and reimburse such Covered Persons for any legal or any other expenses actually and reasonably incurred by them in connection with investigating, defending or settling any such loss, claim, liability, action or proceeding, provided that the Company shall not be liable to a Covered Person in any such case to the extent that any such loss, claim, damage, liability or expense (or action or proceeding in respect thereof) or expense arises out of or is based upon an untrue statement or alleged untrue statement, or omission or alleged omission, made or incorporated by reference in such Registration Statement, any such Prospectus, preliminary Prospectus or any amendment thereof or supplement thereto, or any document incorporated by reference therein, in reliance upon, and in conformity with, written information prepared and furnished to the Company by any Covered Persons expressly for use therein or arises out of or is based on the relevant Shareholder Group Member's failure to deliver a copy of the Registration Statement or Prospectus, preliminary Prospectus or any amendments or supplements thereto after the Company has furnished Shareholder with a sufficient number of copies thereof. In connection with an underwritten offering, the Company, if requested, will indemnify such underwriters, their officers and directors and each Person who controls such underwriters (within the meaning of the Securities Act) to the same extent as provided above with respect to the indemnification of the Covered Persons.

(b) In connection with any Registration Statement in which a Shareholder Group Member is participating, Shareholder will furnish to the Company in writing such information as the Company reasonably requests for use in connection with any such Registration Statement or Prospectus and, will indemnify and hold harmless the Company, its directors and officers, each underwriter and any Person who is or might be deemed to be a controlling person of the Company, any of its subsidiaries or any underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any losses, claims, damages, liabilities, joint or several, to which the Company or any such director or officer, any such underwriter or controlling person may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon (i) any untrue or alleged untrue statement of material fact contained in the Registration Statement, Prospectus, preliminary Prospectus or any amendment thereof or supplement thereto or (ii) any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission is made in such Registration Statement, any such Prospectus, preliminary Prospectus or any amendment or supplement thereto in reliance upon and in conformity with written information prepared and furnished to the Company by a Shareholder Group Member expressly for use therein, and Shareholder will reimburse the Company and each such director, officer, underwriter and controlling Person for any legal or any other expenses actually and reasonably incurred by them in connection with investigating, defending or settling any such loss, claim, liability, action or proceeding, provided that the obligation to indemnify and hold harmless will be individual and several to Shareholder and will be limited to the net amount of proceeds actually received by Shareholder Group Members from the sale of Registrable Securities pursuant to such Registration Statement.

(c) Any Person entitled to indemnification hereunder will (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party will not, without the indemnified party's prior consent, settle or compromise any action or claim or consent to the entry of any judgment unless such settlement or compromise includes as an unconditional term thereof the release of the indemnified party from all liability, which release shall be reasonably satisfactory to the indemnified party. An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim.

(d) The indemnification provided for under this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling Person of such indemnified party and will survive the registration and sale of any securities by any Person entitled to any indemnification hereunder and the expiration or termination of this Agreement.

(e) If the indemnification provided for in Section 3.8(a) or Section 3.8(b) is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party thereunder, will contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other hand in connection with the statements or omissions which resulted in such loss, liability, claim, damage or expense as well as any other relevant equitable considerations. The relevant fault of the indemnifying party and the indemnified party will be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. Notwithstanding the foregoing, the amount Shareholder will be obligated to contribute pursuant to this Section 3.8(e) will not exceed an amount equal to the net proceeds to the Shareholder Group Members of the Registrable Securities sold pursuant to the Registration Statement which gives rise to such obligation to contribute (less the aggregate amount of any damages which Shareholder Group Members have otherwise been required to pay in respect of such loss, claim, damage, liability or action or any substantially similar loss, claim, damage, liability or action arising from the sale of such Registrable Securities). No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

Section 3.9 No Inconsistent Agreements. The Company will not hereafter enter into any agreement with respect to its securities which is inconsistent with or violates the rights granted to the holders of Registrable Securities in this Agreement or grant any

registration rights to any other Person that rank equally with, or in priority to, the rights granted to holders of Registrable Securities in this Agreement without obtaining the prior approval of Shareholder.

ARTICLE IV

STANDSTILL AND RESTRICTIONS

Section 4.1 Standstill. Shareholder hereby agrees that, from and after the date hereof, Shareholder shall not, and shall not permit any Shareholder Group Member to, directly or indirectly, unless (1) specifically requested by the Company in writing, (2) as the result of the transactions contemplated by Section 7.03 of the Purchase and Contribution Agreement, or (3) otherwise expressly contemplated by the terms of this Agreement, the Purchase and Contribution Agreement or the Ancillary Agreements (as defined in the Purchase and Contribution Agreement):

(a) acquire, offer to acquire, or agree to acquire, by purchase or otherwise, (i) any shares of Capital Stock that results in the aggregate Percentage Interest of all Shareholder Group Members exceeding nineteen and nine-tenths percent (19.9%) of the total number of shares of Capital Stock then outstanding, or (ii) the power to vote and/or direct the vote of shares of Capital Stock (after taking into account that shares of Class B Common Stock have ten (10) votes per share) in excess of nineteen and nine-tenths percent (19.9%) of the total voting power of all shares of Capital Stock then outstanding (each of (A) and (B), the "Ownership Limit"). Notwithstanding the foregoing, (x) Shareholder shall not be deemed to be in violation of the Ownership Limit as the result of the acquisition (whether by merger, consolidation, exchange of equity interests, purchase of all or part of the equity interests or assets or otherwise) by any Shareholder Group Member of any Person that beneficially owns Capital Stock, or as the result of any repurchase of Capital Stock by the Company, or any other action taken by the Company or any of its Affiliates and (y) if at any time Shareholder (together with other Shareholder Group Members) acquires Capital Stock such that the Shareholder Group Members own Capital Stock in the aggregate representing more than the Ownership Limit (other than pursuant to the clause (x) of this sentence), then Shareholder shall, and shall cause other Shareholder Group Members to, as soon as is reasonably practicable (but in no event longer than one hundred twenty (120) days after such ownership of Capital Stock first exceeds the Ownership Limit or such longer period as may be necessary due to the possession of material non-public information or so that neither Shareholder nor any other Shareholder Group Member incurs any liability under Section 16(b) of the Exchange Act if, for purposes of Section 16(b), Shareholder has not acquired beneficial ownership of any other shares of Capital Stock after the date of the transaction that resulted in Shareholder exceeding the Ownership Limit) transfer to a third party a number of shares of Capital Stock sufficient to reduce the amount of Capital Stock owned in the aggregate by the Shareholder Group Members to an amount not in excess of the Ownership Limit; provided, however, that, notwithstanding anything in this Agreement to the contrary, if at any time the Shareholder Group Members own Capital Stock in the aggregate representing more than the Ownership Limit, the Shareholder Group Members will not be entitled to vote (or cause to be voted) the shares of Capital Stock representing voting power (after taking into account that shares of Class B Common Stock have ten (10) votes per share) in excess of nineteen and nine-tenths percent (19.9%) of the total voting power of all shares of Capital Stock then outstanding.

For purposes of calculating the Ownership Limits, the Capital Stock outstanding at a particular time shall be the amount of Capital Stock outstanding as set out in the Company's then most recent filings with the Commission;

(b) acquire, offer to acquire, or agree to acquire, by purchase or otherwise, any material assets of the Company or any Subsidiary thereof, other than (A) in the ordinary course of business or (B) assets of Carrier Enterprises or any of its Subsidiaries;

(c) make, or in any way participate in, any "solicitation" of "proxies" (as such terms are used in the rules of the Commission) to vote (including by consent), or seek to advise or influence any Person with respect to the voting of, any voting securities of the Company;

(d) submit to the Company any shareholder proposal for inclusion in any proxy statement;

(e) seek or propose to obtain representation on the Board;

(f) make any public announcement with respect to, or submit a proposal (whether or not public) for, or offer of (with or without conditions) any extraordinary transaction involving the Company or its securities or assets;

(g) form, join or in any way participate in a group (as defined, as of the date hereof, under Section 13(d) of the Exchange Act) (other than such a group consisting solely of Shareholder's Affiliates) in connection with any of the foregoing;

(h) seek in any way which would require public disclosure under applicable Law to have any provision of this Section 4.1 amended, modified or waived; or

(i) otherwise take any actions with the purpose or effect of avoiding or circumventing any provision of this Section 4.1.

Section 4.2 Anti-Takeover Provisions. From the date hereof, the Company shall take all reasonable actions to ensure that (i) none of Section 607.0901 and Section 607.0902 of the Florida Business Corporation Act or any "fair price," "moratorium," "control share acquisition" or other form of anti-takeover statute or regulation under Florida law, (ii) no anti-takeover provision in the articles of incorporation or by-laws of the Company or other similar organizational documents of its Subsidiaries, and (iii) no shareholder rights plan, "poison pill" or similar measure, in each case that contains restrictions that are different from or in addition to those contained in Section 4.1, is applicable to any Shareholder Group Member's ownership of Company Equity Securities.

Section 4.3 Restrictive Legend. Each certificate representing any of the Subject Shares beneficially owned by Shareholder shall be marked conspicuously with at least the following legend:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS, INCLUDING WITH RESPECT TO THE DIRECT OR INDIRECT TRANSFER THEREOF AND RESTRICTIONS ON THE VOTING OF THE SHARES, UNDER A SHAREHOLDER AGREEMENT, DATED AS OF JULY 1, 2009.

Section 4.4 Rights of First Refusal on Transfer. Any Restricted Transfer shall be subject to the rights of refusal set forth in this Section 4.4. For the purposes of this Agreement, “Restricted Transfer” shall mean the sale in a private transaction by Shareholder Group Members of Subject Shares representing more than 50,000 shares to any Person. Prior to any Restricted Transfer, Shareholder shall consider in good faith, and discuss with the Company the possibility of, (i) the relevant Shareholder Group Members offering to sell such Subject Shares to the Company, (ii) negotiating with the Company with respect to the sale of such Subject Shares to the Company and (iii) selling such Subject Shares to the Company; provided, that nothing herein shall be deemed to restrict Shareholder’s or any Shareholder Group Member’s ability to determine, in its sole discretion, (i) to terminate any discussions with the Company at any time or (ii) not to (A) offer to sell such Subject Shares to the Company, (B) negotiate with the Company with respect to the sale of such Subject Shares to the Company and (C) sell such Subject Shares to the Company, or prevent any relevant Shareholder Group Member from engaging in any Restricted Transfer.

Section 4.5 Conversion of Class B Common Stock. For so long as a Shareholder Group Member beneficially owns any shares of Class B Common Stock, the Company shall not amend or repeal, or adopt any provision in its governing documents that is inconsistent with, Section III(A)(4) of the Company’s Amended and Restated Articles of Incorporation, and shall at all times reserve and keep available, out of the aggregate of its authorized but unissued Common Stock, and issued Common Stock held in its treasury, for the purpose of effecting the conversion of the Class B Common Stock contemplated by Section III(A)(4) of the Company’s Amended and Restated Articles of Incorporation, the full number of shares of Common Stock then deliverable upon the conversion of all outstanding shares of Class B Common Stock beneficially owned by Shareholder. The Company shall use its reasonable best efforts to cause such shares of Common Stock to be at all times approved for listing on the NYSE, subject to official notice of issuance, as applicable.

Section 4.6 Sections 607.0901 and 607.0902 of the Florida Business Corporation Act. The Company shall not, and shall cause its controlled Affiliates, including its Subsidiaries, not to, take (or cause to be taken) any action that would, or would be reasonably likely to, cause any Shareholder Group Member to be an “interested shareholder” (as such term is defined in Section 607.0901 of the Florida Business Corporation Act) with respect to the Company, and shall, and shall cause its controlled Affiliates, including its Subsidiaries, to take (or cause to be taken) all actions necessary so that the restrictions contained in Section 607.0901 and Section 607.0902 of the Florida Business Corporation Act or any “fair price,” “business combination,” “takeover” or “control share acquisition” statute or other similar statute or regulation of any jurisdiction shall not apply to the execution, delivery or performance of the Purchase and Contribution Agreement or any of the Ancillary Agreements or the transactions contemplated by the Purchase and Contribution Agreement or any of the Ancillary Agreements; provided, that nothing herein shall be deemed to relieve the Company or any of its Subsidiaries (including Carrier Enterprises) of any of their respective obligations under the Purchase and Contribution Agreement or any of the Ancillary Agreements.

ARTICLE V

REPRESENTATIONS AND WARRANTIES
OF SHAREHOLDER

Shareholder hereby represents and warrants to the Company as of the date hereof:

Section 5.1 Due Organization, etc. Shareholder is duly organized and validly existing under the laws of the jurisdiction of its formation. Shareholder has all necessary power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby by Shareholder have been duly authorized by all necessary action on the part of Shareholder. This Agreement constitutes a valid and binding obligation of Shareholder, enforceable against Shareholder in accordance with its terms, except as limited by the application of bankruptcy, moratorium and other Laws affecting creditors' rights generally and as limited by the availability of specific performance and the application of equitable principles.

Section 5.2 No Conflicts. None of the execution and delivery of this Agreement by Shareholder, the consummation by Shareholder of the transactions contemplated hereby or compliance by Shareholder with any of the provisions hereof shall (a) conflict with or result in any breach of the organizational documents of Shareholder, (b) result in, or give rise to, a violation or breach of or a default under any of the material terms of any material contract, agreement or other instrument or obligation to which Shareholder is a party or by which Shareholder or any of its assets may be bound or by which any of the Subject Shares of Shareholder or any of its Affiliates may be bound, or (c) result in the creation of, or impose any obligation on Shareholder or any of its Affiliates to create, any lien upon the Subject Shares of Shareholder or any of its Affiliates, other than liens created pursuant to this Agreement, the Purchase and Contribution Agreement, or any of the Ancillary Agreements, except for any of the foregoing as does not and could not reasonably be expected to materially impair Shareholder's ability to perform its obligations under this Agreement.

Section 5.3 No Control Intent. Shareholder, on behalf of itself and the Shareholder Group Members, does not intend to acquire, and, except to the extent not prohibited by this Agreement, including Section 4.1, shall not acquire, directly or indirectly, alone or together with another Person or group (as defined, as of the date hereof, under Section 13(d) of the Exchange Act) (a) an interest in the Company exceeding nineteen and nine-tenths percent (19.9%) of the total number of shares of Capital Stock then outstanding, or (b) the power to vote and/or direct the vote of shares of Capital Stock (after taking into account that shares of Class B Common Stock have ten (10) votes per share) in excess of nineteen and nine-tenths percent (19.9%) of the total voting power of all shares of Capital Stock then outstanding.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to Shareholder as of the date hereof:

Section 6.1 Due Organization, etc. The Company is a corporation duly organized and validly existing under the laws of the State of Florida. The Company has all necessary power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby by the Company have been duly authorized by all necessary action on the part of the Company. This Agreement constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by the application of bankruptcy, moratorium and other Laws affecting creditors' rights generally and as limited by the availability of specific performance and the application of equitable principles.

Section 6.2 No Conflicts. Neither the execution and delivery of this Agreement by the Company nor the consummation by the Company of the transactions contemplated hereby shall (a) conflict with or result in any breach of the organizational documents of the Company, or (b) result in, or give rise to, a violation or breach of or a default under any of the material terms of any material contract, agreement or other instrument or obligation to which the Company or any of its Subsidiaries is a party or by which the Company, any of its Subsidiaries or any of their respective assets may be bound, except for any of the foregoing as does not and could not reasonably be expected to materially impair the Company's ability to perform its obligations under this Agreement.

ARTICLE VII

TERMINATION

Section 7.1 Termination.

(a) Subject to Section 7.1(b), this Agreement shall terminate and neither the Company nor Shareholder shall have any rights or obligations hereunder upon the termination of this Agreement by mutual written consent of the Company and Shareholder; provided, that (i) Article II and Article IV shall terminate and be of no further force and effect at such time as Albert Nahmad and/or any of his Family Members and/or Related Affiliates ceases to hold collectively more than twenty percent (20%) of the total voting power of all shares of Capital Stock then outstanding; and (ii) Article II (other than Section 2.2, to the extent such Section relates to Section 4.1 or Section 4.2) shall terminate and be of no further force and effect at such time as the Percentage Interest of the Shareholder Group Members, in the aggregate, no longer exceeds five percent (5%); and (iii) Article III shall terminate and be of no further force and effect at such time as the Shareholder Group Members, in the aggregate, no longer hold Registrable Securities constituting more than two percent (2%) (subject to customary anti dilution adjustments) of the total number of shares of Capital Stock outstanding as of the date hereof.

(b) Notwithstanding the foregoing, Section 3.4, Section 3.6(a), Section 3.8, this Section 7.1, and Article VIII of this Agreement shall survive the termination of this Agreement or any Article hereof.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Further Actions. Each of the parties hereto agrees that it will use commercially reasonable efforts to do all things necessary to effectuate the intent and provisions of this Agreement.

Section 8.2 Notices. Except as otherwise provided herein, all notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement ("Notices") shall be in writing and shall be deemed to have been given (i) if personally delivered, on the date of delivery, (ii) if delivered by express courier service of national standing (with charges prepaid) or by registered mail, upon actual receipt, or (iii) if delivered by telecopy, (x) upon actual receipt if received at or prior to 5:00 p.m., local time of the recipient party, or (y) at the beginning of the recipient's next business day following actual receipt if received after 5:00 p.m., local time of the recipient party. All Notices by telecopier shall be confirmed by the sender thereof promptly after transmission in writing by registered mail or personal delivery. Notices, demands and communications to any party hereto shall, unless another address or facsimile number is specified in writing pursuant to the provisions hereof, be sent to the address or facsimile number indicated below:

If to the Company to:

Watsco, Inc.
2665 South Bayshore Drive
Suite 901
Coconut Grove, FL 33133
Attention: Barry S. Logan
Senior Vice President
Facsimile No.: 305-858-4492

with a copy (which shall not constitute notice) to

Akerman Senterfitt
One SE 3rd Ave
28th Floor
Miami, FL 33131
Attention: Stephen K. Roddenberry, Esq.
Facsimile No.: 305-374-5095

If to Shareholder, to:

Carrier Corporation
One Carrier Place
Farmington, CT 06034-4015
Attention: Donald K. Cawley, Esq.
General Counsel
Facsimile No.: 860-660-0777

Section 8.3 Assignment; Binding Effect. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of law or otherwise, by any of the parties hereto without the prior written consent of the other parties; provided, that no such assignment shall relieve the assigning party of its obligations hereunder if such assignee does not perform such obligations; provided, further, that (a) this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns, and (b) Shareholder may assign its rights under this Agreement in connection with a transfer of Capital Stock to any Affiliate of Shareholder which agrees to be bound by this Agreement. Any purported assignment not permitted under this Section shall be null and void.

Section 8.4 Third Party Beneficiaries. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to or shall confer on any Person, other than Shareholder Group Members who from time to time own Subject Shares, the parties hereto or their respective permitted successors and assigns, any rights, benefits, remedies, obligations or liabilities whatsoever under or by reason of this Agreement; provided, that Shareholder Group Members who hold any Registrable Securities are intended third party beneficiaries of Article III and the Persons indemnified under Section 3.8 are intended third party beneficiaries of Section 3.8.

Section 8.5 Amendments. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by the Company and Shareholder.

Section 8.6 Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the parties, or any of them, with respect thereto.

Section 8.7 Mediation; Governing Law; Jurisdiction; Waiver of Jury Trial.

(a) Mediation. The parties agree to submit any dispute, claim or controversy (a "Dispute") related to or arising out of this Agreement to mediation before a neutral mediator in Wilmington, Delaware, who will be requested to conduct informal, nonbinding mediation of the dispute. Each party will work with the other to select an acceptable mediator and to work with the mediator to resolve the dispute. The mediation process shall continue until the case is resolved or, if not resolved, until either the mediator makes a finding that there is no possibility of settlement through the mediation or one of the parties elects not to continue the mediation ("Mediation Termination").

(b) Litigation. In the event of a Mediation Termination, then such Dispute shall be resolved through legal action or proceeding in State of Delaware. Each party hereto irrevocably submits to the jurisdiction of the state and federal courts located in the State of Delaware, in any action or proceeding arising out of or relating to this Agreement, and each party hereby irrevocably agrees that all claims in respect of any such action or proceeding must be brought and/or defended in such court; provided, however, that matters which are under the exclusive jurisdiction of the Federal courts shall be brought in the Federal District Court for the District of Delaware and any court of appeal therefrom (the "Chosen Courts"); and each party hereby waives any obligation or requirement to post any bond on appeal. Each of the parties hereto agrees that service of process on such party as provided in Section 8.2 shall be deemed effective service of process on such party. Service made pursuant to the foregoing sentence shall have the same legal force and effect as if served upon such party personally within the State of Delaware, and each party irrevocably waives, to the fullest extent each may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. **EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING HEREUNDER.**

(c) Governing Law. All disputes, claims or controversies arising out of or relating to this Agreement, or the negotiation, validity or performance of this Agreement, or the transactions contemplated hereby shall be governed by and construed in accordance with the Laws of the State of Delaware without regard to the principles of conflicts of law.

Section 8.8 Fees and Expenses. Except as otherwise provided herein, all costs and expenses incurred by a party hereto in connection with this Agreement and the transactions contemplated hereby shall be paid and borne by such party.

Section 8.9 Headings. Headings of the articles and sections of this Agreement are for the convenience of the parties only, and shall be given no substantive or interpretive effect whatsoever.

Section 8.10 Interpretation. In this Agreement, unless the context otherwise requires, words describing the singular number shall include the plural and vice versa, words denoting any gender shall include all genders and words denoting natural Persons shall include corporations, partnerships, and other entities and vice versa. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be understood to be followed by the words "without limitation."

Section 8.11 Waivers. No action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, nor any failure or delay on the part of any party hereto in the exercise of any right hereunder, shall be deemed to constitute a waiver by the party taking such action of compliance of any representations, warranties, covenants or agreements contained in this Agreement. The waiver by any party hereto of a breach of any provision hereunder shall not operate or be construed as a waiver of any prior or subsequent breach of the same or any other provision hereunder.

Section 8.12 Severability. Any term or provision of this Agreement that is invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

Section 8.13 Enforcement of this Agreement. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions (without requirement to post bond) to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in the Chosen Courts, this being in addition to any other remedy to which they are entitled at law or in equity.

Section 8.14 Counterparts. This Agreement may be executed by the parties hereto in two or more separate counterparts, each of which, when so executed and delivered, shall be deemed to be an original. All such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Shareholder Agreement to be duly executed as of the day and year first above written.

WATSCO, INC.

By: /s/ Barry S. Logan
Name: Barry S. Logan
Title: Senior Vice President

IN WITNESS WHEREOF, the parties hereto have caused this Shareholder Agreement to be duly executed as of the day and year first above written.

CARRIER CORPORATION

By: /s/ Brian E. Kelleher

Name: Brian E. Kelleher

Title: Vice President, Legal Affairs, Business Development