

ARTICLE IV  
REPRESENTATIONS AND WARRANTIES  
OF  
THE COMPANY AND THE STOCKHOLDERS

Section 4.02. Qualification. Section 4.02 of the Disclosure Statement accurately lists all the jurisdictions in which each of the Company and the Company Subsidiaries is authorized or qualified to own or lease and to operate its properties or to carry on its business as now conducted, and neither the Company nor any Company Subsidiary owns, leases or operates properties or carries on its business in any jurisdiction not listed in that Section which is Material to the Company.

Section 4.03. Authorization; Enforceability; Absence of Conflicts; Required Consents. (a) The execution, delivery and performance by the Company of this Agreement and each other Transaction Document to which it is a party, and the effectuation of the Merger and the other transactions contemplated hereby and thereby, are within its corporate or other power under its Charter Documents and the applicable Governmental Requirements of its Organization State and have been duly authorized by all proceedings, including actions permitted to be taken in lieu of proceedings, required under its Charter Documents and those Governmental Requirements.

(b) This Agreement has been, and each of the other Transaction Documents to which the Company is a party, when executed and delivered to ARS (or, in the case of the Certificates of Merger, the applicable Governmental Authorities) will have been, duly executed and delivered by the Company and is, or when so executed and delivered will be, the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as that enforceability may be (i) limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and (ii) subject to general principles of equity (regardless of whether that enforceability is considered in a proceeding in equity or at law).

(c) The execution, delivery and performance in accordance with their respective terms by the Company of the Transaction Documents to which it is a party have not and will not (i) violate, breach or constitute a default under (A) the Charter Documents of any of the Company and the Company Subsidiaries, (B) any Governmental Requirement applicable to any of the Company and the Company Subsidiaries or (C) any Material Agreement of the Company, (ii) result in the acceleration or mandatory prepayment of any Indebtedness, or any Guaranty not constituting Indebtedness, of any of the Company and the Company Subsidiaries or afford any holder of any of that Indebtedness, or any beneficiary of any of those Guaranties, the right to require any of the Company and the Company Subsidiaries to redeem, purchase or otherwise acquire, reacquire or repay any of that Indebtedness, or to perform any of those Guaranties, (iii) cause or result in the imposition of, or afford any Person the right to obtain, any Lien upon any property or assets of any of the Company and the Company Subsidiaries (or upon revenues, income or profits of any of the Company and the Company Subsidiaries therefrom) or (iv) except as set forth in Section 4.03 of the

Disclosure Statement, result in the revocation, cancellation, suspension or material modification, in any single case or in the aggregate, of any Governmental Approval possessed by any of the Company and the Company Subsidiaries at the date hereof and necessary for the ownership or lease or the operation of its properties or the carrying on of its business as now conducted, including any necessary Governmental Approval under each applicable Environmental Law and Professional Code.

(d) Except for (i) the filing of the Certificates of Merger with the applicable Governmental Authorities, (ii) filings of the Registration Statement under the Securities Act and the SEC order declaring the Registration Statement effective under the Securities Act and (iii) as may be required by the HSR Act or the applicable state securities or blue sky laws, no Governmental Approvals are required to be obtained, and no reports or notices to or filings with any Governmental Authority are required to be made, by any of the Company and the Company Subsidiaries for the execution, delivery or performance by the Company of the Transaction Documents to which it is a party, the enforcement against the Company of its obligations thereunder or the effectuation of the Merger and the other transactions contemplated thereby.

Section 4.04. Charter Documents and Records: No Violation. The Company has caused true, complete and correct copies of the Charter Documents, each as in effect on the date hereof, and the minute books and similar corporate or other Entity records of each of the Company and the Company Subsidiaries to be delivered or otherwise made available to ARS. No breach or violation of any Charter Document of any of the Company and the Company Subsidiaries has occurred and is continuing.

Section 4.05. No Defaults. No condition or state of facts exists, or, with the giving of notice or the lapse of time or both, would exist, which (a) entitles any holder of any outstanding Indebtedness, or any Guaranty not constituting Indebtedness, of any of the Company and the Company Subsidiaries, or a representative of that holder, to accelerate the maturity, or require a mandatory prepayment, of that Indebtedness or Guaranty, or affords that holder or its representative, or any beneficiary of that Guaranty, the right to require any of the Company and the Company Subsidiaries to redeem, purchase or otherwise acquire, reacquire or repay any of that Indebtedness, or to perform that Guaranty in whole or in part, (b) entitles any Person to obtain any Lien (other than a Permitted Lien) upon any properties or assets of any of the Company and the Company Subsidiaries (or upon revenues, income or profits of any of the Company and the Company Subsidiaries therefrom) or (c) constitutes a violation or breach of, or a default under, any Material Agreement of the Company by any of the Company and the Company Subsidiaries.

Section 4.06. Company Subsidiaries. Section 4.06 of the Disclosure Statement either (a) accurately sets forth the form of organization, legal name, each assumed name and Organization State of each Company Subsidiary or (b) correctly states no Entity is a Company Subsidiary. Except as accurately disclosed in Section 4.06 of the Disclosure Statement, each Company Subsidiary is a Wholly Owned Subsidiary. In the case of any Company Subsidiary that is not a Wholly Owned Subsidiary, Section 4.06 of the Disclosure Statement accurately sets forth,

by each class and each series within each class, the number of outstanding shares of Capital Stock of the Company Subsidiary, (u) the Company's aggregate direct and indirect ownership of those shares and (b) the name and address of record and percentage ownership of those shares of each holder of record thereof other than the Company or a Company Subsidiary. No Lien exists on any outstanding share of Capital Stock of any Company Subsidiary which is owned directly or indirectly by the Company other than (n) the Liens, if any, described in Section 4.06 of the Disclosure Statement, all of which will be released at or before the Effective Time, and (b) Permitted Liens. Except as accurately set forth in Section 4.06 of the Disclosure Statement, the Company does not own, of record or beneficially, directly or indirectly through any Person, and does not control, directly or indirectly through any Person or otherwise, any Capital Stock or Derivative Securities of any Entity other than a Company Subsidiary.

Section 4.07. Capital Stock of the Company and the Company Subsidiaries. All the issued and outstanding shares of Capital Stock of each of the Company and the Company Subsidiaries (a) have been duly authorized and validly issued in accordance with the applicable Governmental Requirements of their issuer's Organization State and Charter Documents and (b) are fully paid and nonassessable. Neither the Company nor any Company Subsidiary has issued or sold any shares of its outstanding Capital Stock in breach or violation of (a) any applicable statutory or contractual preemptive rights, or any other rights of any kind (including any rights of first offer or refusal), of any Person or (b) the terms of any of its Derivative Securities which then were outstanding. No Person has, otherwise than solely by reason of that Person's right, if any, to vote shares of the Capital Stock of the Company or any Company Subsidiary it holds (to the extent those shares afford the holder thereof any voting rights) any right to vote on any matter with the holders of Capital Stock of the Company or any Company Subsidiary.

Section 4.08. Transactions in Capital Stock. Except as accurately set forth in Section 4.08 of the Disclosure Statement: (a) the Company has no obligation (contingent or otherwise) to purchase, redeem or otherwise acquire or reacquire any of its equity securities or any interests therein or to pay any dividend or make any distribution in respect thereof; and (b) no transaction has been effected, and no action in contemplation of the transactions described in this Agreement has been taken, respecting the equity ownership of either the Company or any Company Subsidiary.

Section 4.09. No Bonus Shares. Except as accurately set forth in Section 4.09 of the Disclosure Statement, no outstanding share of Capital Stock of the Company was issued for less than the fair market value thereof at the time of issuance or was issued in exchange for any consideration other than cash.

Section 4.10. Predecessor Status; etc. Section 4.10 of the Disclosure Statement accurately lists all the legal and assumed names of all predecessor companies for the past five years of the Company, including the names of any Entities from which the Company previously acquired material assets. Except as accurately disclosed in Section 4.10 of the Disclosure Statement, the

Company has not been a Subsidiary or division of another corporation or a part of an acquisition that later was rescinded.

Section 4.11. Related Party Agreements. Except as set forth in Schedule 4.11, each Related Party Agreement in effect on the date hereof will have been terminated as of the IPO Closing Date, and no Related Party Agreement will exist then or thereafter to and including the Effective Time.

Section 4.12. Litigation. Except as accurately disclosed in Section 4.12 of the Disclosure Statement, no Litigation is pending or, to the knowledge of the Company or any Stockholder, threatened to which the Company or any Company Subsidiary is or may become a party.

Section 4.13. Financial Statements; Disclosure. (a) Financial Statements. (i) The Financial Statements (including in each case the related schedules and notes) delivered to ARS present fairly, in all material respects, the consolidated financial position of the Company and the Company Subsidiaries at the respective dates of the balance sheets included therein and the consolidated results of their operations and their consolidated cash flows and stockholders' or other owners' equity for the respective periods set forth therein and have been prepared in accordance with GAAP. As of the date of any balance sheet included in those Financial Statements, neither the Company nor any Company Subsidiary then had any outstanding Indebtedness to any Person or any liabilities of any kind (including contingent obligations, tax assessments or unusual forward or long-term commitments), or any unrealized or anticipated loss, which in the aggregate then were Material to the Company and required to be reflected in those Financial Statements or in the notes related thereto in accordance with GAAP which were not so reflected.

(ii) Since the Current Balance Sheet Date, no change has occurred in the business, operations, properties or assets, liabilities, condition (financial or other) or results of operations of the Company or any Company Subsidiary that could reasonably be expected, either alone or together with all other such changes, to have a Material Adverse Effect on the Company.

(b) Disclosure. (i) As of the date hereof, all Information that has been made available to ARS by or on behalf of the Company prior to the date of this Agreement in connection with the transactions contemplated hereby is, taken together, true and correct in all material respects (other than financial budgets and projections) and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which those statements were made.

(ii) All Information that is made available after the date hereof from time to time prior to the Effective Time to ARS by or on behalf of the Company in connection with or pursuant to this Agreement, any other Transaction Document or the transactions contemplated hereby or thereby will be, when made available and taken together, true and correct in all material respects

(other than financial budgets and projections) and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which those statements are made.

(iii) All financial budgets and projections that have been or are hereafter from time to time prepared by the Company or any of its Representatives and made available prior to the Effective Time to ARS pursuant to or in connection with this Agreement, any other Transaction Document or the transactions contemplated hereby or thereby have been and will be prepared and furnished to ARS in good faith and were and will be based on facts and assumptions that are believed by the management of the Company to be reasonable in light of the then current and foreseeable business conditions of the Company and the Company Subsidiaries and represented and will represent that management's good faith estimate of the consolidated projected financial performance of the Company and the Company Subsidiaries based on the information available to the Responsible Officer at the time so furnished.

Section 4.14. Compliance With Laws. (a) Except as accurately disclosed in Section 4.14 of the Disclosure Statement: (i) each of the Company and the Company Subsidiaries possesses, or, if required by the applicable Environmental Laws (including those relating to the maintenance, repair or servicing of appliances, equipment or other products containing chlorofluorocarbons or hydrochlorofluorocarbons) and Professional Codes, one or more of its employees as required by those Environmental Laws and Professional Codes possesses, all necessary master licenses and similar Governmental Approvals required for the conduct of its business; and (ii) to the knowledge of the Company, each of the Company and the Company Subsidiaries and such one or more of its employees are in compliance in all material respects with the terms and conditions of all Governmental Approvals necessary for the ownership or lease and the operation of its properties (including all the facilities and sites it owns or holds under any lease) and the carrying on of its business as now conducted. The Company has provided ARS with an accurate, complete written list of all the Governmental Approvals so possessed (other than permits for particular jobs for customers as may be required under the applicable Professional Codes). To the knowledge of the Company, all the Governmental Approvals so listed are valid, and, except as accurately disclosed in Section 4.14 of the Disclosure Statement, neither the Company nor any Company Subsidiary has received, nor to the knowledge of any Stockholder has any employee of either received, any notice from any Governmental Authority of its intention to cancel, terminate or not renew any of those Governmental Approvals.

(b) Except as accurately disclosed in Section 4.14 of the Disclosure Statement, each of the Company and the Company Subsidiaries: (i) to the knowledge of the Company, has been and continues to be in compliance with all Governmental Requirements applicable to it or any of its presently or previously owned or operated properties (including all the facilities and sites now or previously owned or held by it under any lease), businesses or operations, including all applicable Governmental Requirements under ERISA, Environmental Laws and Professional Codes; and (ii)(A) neither the Company nor any Company Subsidiary has received, nor to the knowledge of the Company has any employee of either received, any notice from any Governmental Authority which

asserts, or raises the possibility of assertion of, any noncompliance with any of those Governmental Requirements and, to the knowledge of each of the Company, the Company Subsidiaries and the Stockholders, (B) no condition or state of facts exists which would provide a valid basis for any such assertion.

Section 4.15. Certain Environmental Matters. Except as accurately disclosed in Section 4.15 of the Disclosure Statement: (a) to the knowledge of the Company, the Company and each Company Subsidiary have complied, and remain in compliance, to the knowledge of the Company, with the provisions of all Environmental Laws applicable to any of them or any of their respective presently owned or operated facilities, sites or other properties, businesses and operations and which relate to the reporting by the Company and each Company Subsidiary of all sites presently owned or operated by any of them where Solid Wastes, Hazardous Wastes or Hazardous Substances have been treated, stored, disposed of or otherwise handled; (b) no release (as defined in those Environmental Laws) at, from, in or on any site owned or operated by the Company or any Company Subsidiary has occurred which, if all relevant facts were known to the relevant Governmental Authorities, reasonably could be expected to require remediation to avoid deed record notices, restrictions, liabilities or other consequences that would not be applicable if that release had not occurred; (c) neither the Company nor any Company Subsidiary (or any agent or contractor of either) has transported or arranged for the transportation of any Solid Wastes, Hazardous Wastes or Hazardous Substances to, or disposed or arranged for the disposition of any Solid Wastes, Hazardous Wastes or Hazardous Substances at, any off-site location that could lead to any claim against the Company, any Company Subsidiary, ARS or Newco, as a potentially responsible party or otherwise, for any clean-up costs, remedial work, damage to natural resources, personal injury or property damage, including any claim under CERCLA; and (d) no storage tanks exist on or under any of the properties owned or operated by the Company or any Company Subsidiary from which any Solid Wastes, Hazardous Wastes or Hazardous Substances have been released into the surrounding environment. The Company has provided ARS with copies (or if not available, accurate written summaries) of all environmental investigations, studies, audits, reviews and other analyses conducted by or on behalf, or which otherwise are in the possession, of the Company or any Company Subsidiary respecting any facility, site or other property presently owned or operated by the Company and each Company Subsidiary.

Section 4.16. Liabilities and Obligations. Section 4.16 of the Disclosure Statement accurately lists all present liabilities, of every kind, character and description and whether accrued, absolute, fixed, contingent or otherwise, of each of the Company and the Company Subsidiaries which (a) (i) exceed or reasonably could be expected to exceed \$10,000 and (ii) (A) had been incurred prior to the Current Balance Sheet Date, but are not reflected on the Current Balance Sheet, or (B) were incurred after the Current Balance Sheet otherwise than in the ordinary course of business, and consistent with the past practice, of that Entity. That Section also accurately lists and describes, for each of the Company and the Company Subsidiaries: (a) each of its outstanding secured and unsecured Guaranties not constituting its Indebtedness and, for each of those Guaranties, whether any Stockholder or Related Person or Affiliate of any Stockholder is a Person whose obligation is covered by that Guaranty, and (b) for each of the items listed under clause (a)

of this sentence, (i) if that item is secured by any property or asset of the Company or any Company Subsidiary, the nature of that security, and (ii) if that item is covered in whole or in part by a Guaranty of any Stockholder or any Related Person or Affiliate of any Stockholder, the name of the guarantor.

Sec on 4.17. Receivables. Except as accurately set forth in Section 4.17 of the Disclosure Statement; all the accounts and notes or other advances receivable of the Company and the Company Subsidiaries reflected on the Current Balance Sheet were collected, or are, in the good faith belief of the Company's management, collectible, in the respective amounts so reflected, net of the reserves, if any, reflected in the Current Balance Sheet.

Section 4.18. Owned and Leased Real Properties. (a) Section 4.18 of the Disclosure Statement accurately lists and correctly describes in all material respects: (i) all real properties owned by any of the Company and the Company Subsidiaries and, for each of those properties, the address thereof, the type and square footage of each structure located thereon and the use thereof in the business of the Company and the Company Subsidiaries; (ii) all real properties of which any of the Company and the Company Subsidiaries is the lessee and, for each of those properties, the address thereof, the type and square footage of each structure located thereon the Company or a Company Subsidiary is leasing and the expiration date of its lease and the use thereof in the business of the Company and the Company Subsidiaries; and (iii) in the case of each real property listed as being owned, whether it was previously owned, and in the case of each real property listed as being leased, whether it is presently owned, by any Stockholder or any of his Related Persons or Affiliates (other than the Company and the Company Subsidiaries, if the Stockholder is an Affiliate of the Company).

(b) The Company has provided ARS with true, complete and correct copies of all title reports and insurance policies owned or in the possession of any of the Company and the Company Subsidiaries and relating to any of the real properties listed as being owned in Section 4.18 of the Disclosure Statement. Except as accurately set forth in that Section or those reports and policies, and except for Permitted Liens, the Company or a Company Subsidiary owns in fee, and has good, valid and marketable title to, free and clear of all Liens, each property listed in that Section as being owned.

(c) The Company has provided ARS with true, correct and complete copies of all leases under which the Company or a Company Subsidiary is leasing each of the properties listed in Section 4.18 of the Disclosure Statement as being leased and, except as accurately set forth in Section 4.18 of the Disclosure Statement, (i) each of those leases is, to the knowledge of the Company, valid and binding on the lessor party thereto, and (ii) the lessee party thereto has not sublet any of the leased space to any Person other than the Company or a Company Subsidiary.

(d) The fixed assets of each of the Company and the Company Subsidiaries are affixed only to one or more of the real properties listed in Section 4.18 of the Disclosure Statement

and, except as accurately set forth in that Section, are well-maintained and adequate for the purposes for which they presently are being used or held for use, ordinary wear and tear excepted.

(c) The Company has accurately disclosed in all material respects in writing to ARS all plans or projects involving the opening of new operations, the expansion of any existing operations or the acquisition of any real property or existing business, with respect to which management of the Company or any Company Subsidiary has made any expenditure in the two-year period prior to the date of the Agreement in excess of \$25,000, or which if pursued by the Company or any Company Subsidiary would require additional capital expenditures in excess of \$25,000.

**Section 4.19. Owned and Leased Property, Plant and Equipment** (a) The Company has provided ARS with a list accurate and complete in all material respects of the Property, Plant and Equipment owned and leased by any of the Company and the Company Subsidiaries, which list states, in the case of each of those properties listed as being owned, whether it was previously owned, and in the case of each of those properties listed as being leased, whether it is presently owned, by any Stockholder or any of his Related Persons or Affiliates (other than the Company and the Company Subsidiaries, if the Stockholder is an Affiliate of the Company).

(b) Except as accurately set forth in Section 4.19 of the Disclosure Statement and except for Permitted Liens, the Company or a Company Subsidiary has good, valid and marketable title to, free and clear of all Liens, each property listed in that Section as being owned.

(c) The Company has provided ARS with true, correct and complete copies of all leases under which the Company or a Company Subsidiary is leasing each of the properties listed in Section 4.19 of the Disclosure Statement as being leased and all leases referred to in Section 4.21 and, except as accurately set forth in Section 4.19 of the Disclosure Statement, (i) each of those leases is, to the knowledge of the Company, valid and binding on the lessor party thereto, and (ii) the lessee party thereto has not sublet any of the leased property to any Person other than the Company or a Company Subsidiary.

(d) Except as accurately set forth in Section 4.19 of the Disclosure Statement, all the Property, Plant and Equipment listed therein are in good working order and condition, ordinary wear and tear excepted, and adequate for the purposes for which they presently are being used or held for use.

**Section 4.20. Proprietary Rights** Except as accurately set forth in Section 4.20 of the Disclosure Statement, each of the Company and the Company Subsidiaries owns or has the legal right to use all Proprietary Rights that are necessary to the conduct of its business as now conducted, in each case free of any claims or infringements known to the Company or any Stockholder. Section 4.20 of the Disclosure Statement accurately (a) lists these Proprietary Rights and (b) indicates those owned by the Company or any Company Subsidiary and, for those not listed as so owned, the agreement or other arrangement pursuant to which they are possessed. Except as accurately set forth in that Section, (a) no consent of any Person will be required for the use of any



of these Proprietary Rights by ARS or any Subsidiary of ARS following the Effective Time and (b) no governmental registration of any of these Proprietary Rights has lapsed or expired or been canceled, abandoned, opposed or the subject of any reexamination request.

Section 4.21. Title to Other Properties. In each case, free and clear of all Liens except for Permitted Liens and as accurately set forth in Section 4.21 of the Disclosure Statement, each of the Company and the Company Subsidiaries has good and valid title to, or holds under a lease valid and binding on the lessor party thereto, all its tangible personal properties and assets (other than Property, Plant and Equipment) that individually is or in the aggregate are Material to the Company.

Section 4.22. Commitments. (a) Except as accurately set forth in Section 4.22(a) of the Disclosure Statement, the Company has provided ARS with a complete, accurate list of each of the following (each a "Company Commitment") to which any of the Company and the Company Subsidiaries is a party or by which any of its properties is bound and which presently remains executory in whole or in any part:

- (i) each partnership, joint venture or cost-sharing agreement;
- (ii) each guaranty or suretyship, indemnification or contribution agreement or performance bond;
- (iii) each instrument, agreement or other obligation evidencing or relating to Indebtedness of any of the Company and the Company Subsidiaries or to money lent or to be lent to another Person;
- (iv) each contract to purchase or sell real property;
- (v) each agreement with dealers or sales or commission agents, public relations or advertising agencies, accountants or attorneys (other than in connection with this Agreement and the transactions contemplated hereby) involving total payments within any 12-month period in excess of \$10,000 and which is not terminable without penalty and on no more than 30 days' prior notice;
- (vi) each Related Party Agreement involving total payments within any 12-month period in excess of \$10,000 and which is not terminable without penalty on no more than 30 days' prior notice;
- (vii) each agreement for the acquisition or provision of services, supplies, equipment, inventory, fixtures or other property involving more than \$10,000 in the aggregate;

(viii) each contract containing any noncompetition agreement, covenant or undertaking;

(ix) each agreement providing for the purchase from a supplier of all or substantially all the requirements of the Company or any Company Subsidiary of a particular product or service; or

(x) each other agreement or commitment not made in the ordinary course of business or that is Material to the Company.

True, correct and complete copies of all written Company Commitments, and true, correct and complete written descriptions of all oral Company Commitments, have heretofore been delivered or made available to ARS. Except as accurately set forth in Section 4.22(a) of the Disclosure Statement: (i) there are no existing or asserted defaults, events of default or events, occurrences, acts or omissions that, with the giving of notice or lapse of time or both, would constitute defaults or events of default under any Company Commitment Material to the Company by any of the Company and the Company Subsidiaries or, to the knowledge of the Company, any other party thereto; and (ii) no penalties have been incurred, nor are amendments pending, with respect to the Company Commitments Material to the Company. The Company Commitments are in full force and effect and are valid and enforceable obligations of the Company or the Company Subsidiaries parties thereto and, to the knowledge of the Company, the other parties thereto in accordance with their respective terms, and no defenses, off-sets or counterclaims have been asserted or, to the knowledge of the Company, may be made by any party thereto (other than by the Company or a Company Subsidiary), nor has the Company or a Company Subsidiary, as the case may be, waived any rights thereunder, except as accurately described in Section 4.22 of the Disclosure Statement.

(b) Except as accurately disclosed in Section 4.22(b) of the Disclosure Statement or contemplated hereby or by any other Transaction Document to which the Company or any Company Subsidiary or Stockholder is a party: (i) neither the Company nor any Company Subsidiary or Stockholder has received notice of any plan or intention of any other party to any Company Commitment to exercise any right to cancel or terminate any Company Commitment, and neither the Company nor any Company Subsidiary or Stockholder knows of any condition or state of facts which would justify the exercise of such a right; and (ii) neither the Company nor any Company Subsidiary or Stockholder currently contemplates, or has reason to believe any other Person currently contemplates, any amendment or change to any Company Commitment.

**Section 4.23. Capital Expenditures.** Section 4.23 of the Disclosure Statement accurately sets forth the total amount of capital expenditures currently budgeted to be incurred by the Company and the Company Subsidiaries during the balance of the Company's current fiscal year. Except as accurately set forth in that Section, to the knowledge of the Company and the Stockholders, no condition or state of facts exists which will cause the total capital expenditures of the Company and the Company Subsidiaries which will be required to replace worn-out Property, Plant and Equipment in any of the Company's five fiscal years following that current fiscal year to

exceed by a material amount the amount budgeted for capital expenditures of that type by the Company and the Company Subsidiaries for that current fiscal year in order to maintain the types and levels of sales and services the Company and the Company Subsidiaries presently provide.

**Section 4.24. Inventories.** Except as accurately set forth in Section 4.24 of the Disclosure Statement: (a) all inventories, net of reserves determined in accordance with GAAP, of each of the Company and the Company Subsidiaries which are classified as such on the Current Balance Sheet are, to the knowledge of the Company, merchantable and salable or usable in the ordinary course of business of the Company and the Company Subsidiaries; (b) the inventories reflected in the Financial Statements, as at the Current Balance Sheet Date, (i) were reasonable in relation to the then existing circumstances of the Company and the Company Subsidiaries on a consolidated basis and classified as current assets in accordance with GAAP, (ii) were consistent with their past practices and (iii) fairly reflected the average inventory levels maintained during the 12-month periods ended on that date; and (c) neither the Company nor any Company Subsidiary depends on any single vendor for its inventories the loss of which could have a Material Adverse Effect on the Company or ever has sustained a difficulty Material to the Company in obtaining its inventories.

**Section 4.25. Insurance.** Except as accurately set forth in Section 4.25 of the Disclosure Statement: (a) the Company has provided ARS with: (i) a list accurate as of the Current Balance Sheet Date of all insurance policies then carried by each of the Company and the Company Subsidiaries; (ii) an accurate list of all insurance loss runs and worker's compensation claims received for the most recently ended three policy years; and (iii) true, complete and correct copies of all insurance policies carried by each of the Company and the Company Subsidiaries which are in effect, all of which (A) have been issued by insurers of recognized responsibility and (B) currently are, and will remain without interruption through the IPO Closing Date, in full force and effect; (b) no insurance carried by the Company or any Company Subsidiary has been canceled by the insurer during the past five years, and neither the Company nor any Company Subsidiary has ever been denied coverage; and (c) neither the Company nor any Company Subsidiary or Stockholder has received any notice or other communication from any issuer of any such insurance policy of any material increase in any deductibles, retained amounts or the premiums payable thereunder, and, to the knowledge of the Company and the Stockholders, no such increase in deductibles, retainages or premiums is threatened.

**Section 4.26. Employee Matters.** (a) **Cash Compensation.** The Company has provided ARS with an accurate, complete written list of the names, titles and rates of annual Cash Compensation, at the Current Balance Sheet Date and at the date hereof (and the portions thereof attributable to salary or the equivalent, fixed bonuses, discretionary bonuses and other Cash Compensation, respectively) of all key employees (including all employees who are officers or directors), nonemployee officers, nonemployee directors and key consultants and independent contractors of each of the Company and the Company Subsidiaries.

(b) Employment Agreements. Section 4.26(b) of the Disclosure Statement accurately lists all Employment Agreements remaining executory in whole or in part on the date hereof, and the Company has provided ARS with true, complete and correct copies of all those Employment Agreements. Neither the Company nor any Company Subsidiary is a party to any oral Employment Agreement.

(c) Other Compensation Plans. Section 4.26(c) of the Disclosure Statement accurately lists all Other Compensation Plans either remaining executory at the date hereof or to become effective after the date hereof. The Company has provided ARS with a true, correct and complete copy of each of those Other Compensation Plans that is in writing and an accurate description of each of those Other Compensation Plans that is not written. Except as accurately set forth in Section 4.26(c) of the Disclosure Statement, each of the Other Compensation Plans, including each that is a Welfare Plan, may be unilaterally amended or terminated by the Company or any Company Subsidiary without liability to any of them, except as to benefits accrued thereunder prior to that amendment or termination.

(d) ERISA Benefit Plans. Section 4.26(d) of the Disclosure Statement accurately (i) lists each ERISA Pension Benefit Plan (A)(1) the funding requirements of which (under Section 301 of ERISA or Section 412 of the Code) are, or at any time during the six-year period ending on the date hereof were, in whole or in part, the responsibility of the Company or any Company Subsidiary or (2) respecting which the Company or any Company Subsidiary is, or at any time during that period was, a "contributing sponsor" or an "employer" as defined in Sections 4001(a)(13) and 3(5), respectively, of ERISA (each plan described in this clause (A) being a "Company ERISA Pension Plan"), (B) each other ERISA Pension Benefit Plan respecting which an ERISA Affiliate is, or at any time during that period was, such a "contributing sponsor" or "employer" (each plan described in this clause (B) being an "ERISA Affiliate Pension Plan") and (C) each other ERISA Employee Benefit Plan that is being, or at any time during that period was, sponsored, maintained or contributed to by the Company or any Company Subsidiary (each plan described in this clause (C) and each Company ERISA Pension Plan being a "Company ERISA Benefit Plan"), (ii) states the termination date of each Company ERISA Benefit Plan and ERISA Affiliate Pension Plan that has been terminated and (iii) identifies for each ERISA Affiliate Pension Plan the relevant ERISA Affiliates. The Company has provided ARS with (i) true, complete and correct copies of (A) each Company ERISA Benefit Plan and ERISA Affiliate Pension Plan, (B) each trust agreement related thereto and (C) all amendments to those plans and trust agreements. Except as accurately set forth in Section 4.26(d) of the Disclosure Statement, (i) neither the Company nor any Company Subsidiary is, or at any time during the six-year period ended on the date hereof was, a member of any ERISA Group that currently includes, or included when the Company or a Company Subsidiary was a member, among its members any Person other than the Company and the Company Subsidiaries and (ii) no Person is an ERISA Affiliate of the Company or any Company Subsidiary (other than the Company or any Company Subsidiary in the case of any other Company Subsidiary or any Company Subsidiary in the case of the Company, if the Company and the Company Subsidiaries comprise an ERISA Group).

(e) Employee Policies and Procedures. Section 4.26(e) of the Disclosure Statement accurately lists all Employee Policies and Procedures. The Company has provided ARS with a copy of all written Employee Policies and Procedures and a written description of all material unwritten Employee Policies and Procedures.

(f) Unwritten Amendments. Except as accurately described in Section 4.26(f) of the Disclosure Statement, no material unwritten amendments have been made, whether by oral communication, pattern of conduct or otherwise, with respect to any of the Employment Agreements, Other Compensation Plans or Employee Policies and Procedures.

(g) Labor Compliance. To the knowledge of the Company, each of the Company and the Company Subsidiaries has been and is in compliance with all applicable Governmental Requirements respecting employment and employment practices, terms and conditions of employment and wages and hours, and neither the Company nor any Company Subsidiary is liable for any arrears of wages or penalties for failure to comply with any of the foregoing. Neither the Company nor any Company Subsidiary has engaged in any unfair labor practice or discriminated on the basis of race, color, religion, sex, national origin, age, disability or handicap in its employment conditions or practices. Except as accurately set forth in Section 4.26(g) of the Disclosure Statement, there are no (i) unfair labor practice charges or complaints or racial, color, religious, sex, national origin, age, disability or handicap discrimination charges or complaints pending or, to the knowledge of the Company, threatened against the Company or any of the Company Subsidiaries before any Governmental Authority (nor, to the knowledge of the Company, does any valid basis therefor exist) or (ii) existing or, to the knowledge of the Company, threatened labor strikes, disputes, grievances, controversies or other labor troubles affecting the Company or any of the Company Subsidiaries (nor, to the knowledge of the Company, does any valid basis therefor exist).

(h) Unions. Neither the Company nor any Company Subsidiary or ERISA Affiliate has ever been a party to any agreement with any union, labor organization or collective bargaining unit. No employees of the Company and the Company Subsidiaries are represented by any union, labor organization or collective bargaining unit. Except as accurately set forth in Section 4.26(h) of the Disclosure Statement, to the knowledge of the Company, none of the employees of the Company and the Company Subsidiaries has threatened to organize or join a union, labor organization or collective bargaining unit.

(i) No Aliens. All employees of each of the Company and the Company Subsidiaries are citizens of, or are authorized in accordance with federal immigration laws to be employed in, the United States.

(j) Change of Control Benefits. Except as accurately set forth in Section 4.26(j) of the Disclosure Statement, neither the Company nor any of the Company Subsidiaries is a party to any agreement, or has established any policy, practice or program, requiring it to make a payment or provide any other form of compensation or benefit or vesting rights to any person performing

services for the Company or any of the Company Subsidiaries which would not be payable or provided in the absence of this Agreement or the consummation of the transactions contemplated by this Agreement, including any parachute payment under Section 280G of the Code.

(k) Retirees. Neither the Company nor any of the Company Subsidiaries has any obligation or commitment to provide medical, dental or life insurance benefits to or on behalf of any of its employees who may retire or any of its former employees who have retired except as may be required pursuant to the continuation of coverage provisions of Section 4980B of the Code and the applicable parallel provisions of ERISA.

Section 4.27. Compliance With ERISA, etc. (a) Compliance. Each of the Company ERISA Benefit Plans and Other Compensation Plans (each, a "Plan") (i) is in substantial compliance with all applicable provisions of ERISA, as well as with all other applicable Governmental Requirements, and (ii) has been administered, operated and managed in accordance with its governing documents.

(b) Qualification. All Plans that are intended to qualify under Section 401(a) of the Code (the "Qualified Plans") are so qualified and have been determined by the IRS to be so qualified (or application for determination letters have been timely submitted to the IRS). The Company has provided ARS with true, complete and correct copies of the current plan determination letters, most recent actuarial valuation reports, if any, most recent Form 5500, or, as applicable, Form 5500-C/R, filed with respect to each such Qualified Plan and most recent trustee or custodian report. To the extent that any Qualified Plans have not been amended to comply with applicable Governmental Requirements, the remedial amendment period permitting retroactive amendment of these Qualified Plans has not expired and will not expire within 120 days after the Effective Time. All reports and other documents required to be filed with any governmental agency or distributed to plan participants or beneficiaries (including annual reports, summary annual reports, actuarial reports, PBGC-1 Forms, audits or Returns) have been timely filed or distributed.

(c) No Prohibited Transactions, etc. None of the Stockholders, any Plan or the Company or any Company Subsidiary has engaged in any Prohibited Transaction. No Plan has incurred an accumulated funding deficiency, as defined in Section 412(a) of the Code and Section 302(a) of ERISA, and no circumstances exist pursuant to which the Company or any Company Subsidiary could have any direct or indirect liability whatsoever (including being subject to any statutory Lien to secure payment of any such liability), to the PBGC under Title IV of ERISA or to the IRS for any excise tax or penalty with respect to any Plan now or hereafter maintained or contributed to by the Company or any of its ERISA Affiliates. Further:

(i) there have been no terminations, partial terminations or discontinuances of contributions to any Qualified Plan without a determination by the IRS that such action does not adversely affect the tax-qualified status of that plan;

(ii) no Termination Event has occurred;

(iii) no Reportable Event has occurred with respect to any Plan which was not properly reported;

(iv) the valuation of assets of any Qualified Plan, as of the Effective Time, shall equal or exceed the actuarial present value of all "benefit liabilities" (within the meaning of Section 4001(a)(16) of ERISA) under that plan in accordance with the assumptions contained in the Regulations of the PBGC governing the funding of terminated defined benefit plans;

(v) with respect to Plans qualifying as "group health plans" under Section 4980B of the Code or Section 607(l) or 609 of ERISA and related regulations (relating to the benefit continuation rights imposed by "COBRA" or qualified medical child support orders), the Company, each Company Subsidiary and the Stockholders have complied (and at the Effective Time will have complied) in all material respects with all reporting, disclosure, notice, election and other benefit continuation and coverage requirements imposed thereunder as and when applicable to those plans, and neither the Company nor any Company Subsidiary has incurred (or will incur) any direct or indirect liability or is (or will be) subject to any loss, assessment, excise tax penalty, loss of federal income tax deduction or other sanction, arising on account of or in respect of any direct or indirect failure by the Company, any Company Subsidiary or any Stockholder, at any time prior to the Effective Time, to comply with any such federal or state benefit continuation or coverage requirement, which is capable of being assessed or asserted before or after the Effective Time directly or indirectly against the Company, any Company Subsidiary, any Stockholder, the Surviving Corporation or ARS with respect to any of those group health plans;

(vi) the Financial Statements as of the Current Balance Sheet Date reflect the approximate total pension, medical and other benefit liability for all Plans, and no material funding changes or irregularities are reflected thereon which would cause those Financial Statements to be not representative of prior periods; and

(vii) neither the Company nor any Company Subsidiary has incurred liability under Section 4062 of ERISA.

(d) Multiemployer Plans. Except as set forth in Section 4.27(d) of the Disclosure Statement, neither the Company nor any Company Subsidiary, and no ERISA Affiliate of any of them, is, or at any time during the six-year period ended on the date hereof was, obligated to contribute to a Multiemployer Plan. Neither the Company nor any Company Subsidiary, and no ERISA Affiliate of any of them, has made a complete or partial withdrawal from a Multiemployer Plan so as to incur withdrawal liability as defined in Section 4201 of ERISA.

(e) Claims and Litigation. Except as accurately set forth in Section 4.27(e) of the Disclosure Statement, no Litigation or claims (other than routine claims for benefits) are pending or, to the knowledge of the Company, threatened against, or with respect to, any of the Plans or with

respect to any fiduciary, administrator or sponsor thereof (in their capacities as such), or any party-in-interest thereof.

(f) Excise Taxes, Damages and Penalties. No act, omission or transaction has occurred which would result in the imposition on the Company or any Company Subsidiary of (i) breach of fiduciary duty liability damages under Section 409 of ERISA, (ii) a civil penalty assessed pursuant to subsection (c), (i) or (l) of Section 502 of ERISA or (iii) any excise tax under applicable provisions of the Code with respect to any Plan.

(g) VEBA Welfare Trust. Any trust funding a Plan, which is intended to be exempt from federal income taxation pursuant to Section 501(c)(9) of the Code, satisfies the requirements of that section and has received a favorable determination letter from the IRS regarding that exempt status and has not, since receipt of the most recent favorable determination letter, been amended or operated in a way that would adversely affect that exempt status.

Section 4.28. Taxes. (a) Each of the following representations and warranties in this Section 4.28 is qualified to the extent set forth in Section 4.28 of the Disclosure Statement.

(b) All Returns required to be filed with respect to any Tax for which any of the Company and the Company Subsidiaries is liable have been duly and timely filed with the appropriate Taxing Authority, each Tax shown to be payable on each such Return has been paid, each Tax payable by the Company or a Company Subsidiary by assessment has been timely paid in the amount assessed and adequate reserves have been established on the consolidated books of the Company and the Company Subsidiaries for all Taxes for which any of the Company and the Company Subsidiaries is liable, but the payment of which is not yet due. Neither the Company nor any Company Subsidiary is, or ever has been, liable for any Tax payable by reason of the income or property of a Person other than the Company or a Company Subsidiary. Each of the Company and the Company Subsidiaries has timely filed true, correct and complete declarations of estimated Tax in each jurisdiction in which any such declaration is required to be filed by it. No Liens for Taxes exist upon the assets of the Company or any Company Subsidiary except Liens for Taxes which are not yet due. Neither the Company nor any Company Subsidiary is, or ever has been, subject to Tax in any jurisdiction outside of the United States. No Litigation with respect to any Tax for which the Company or any Company Subsidiary is asserted to be liable is pending or, to the knowledge of the Company or any Stockholder, threatened and no basis which the Company or any Stockholder believes to be valid exists on which any claim for any such Tax can be asserted against the Company or any Company Subsidiary. There are no requests for rulings or determinations in respect of any taxes pending between the Company or any Company Subsidiary and any Taxing Authority. No extension of any period during which any Tax may be assessed or collected and for which the Company or any Company Subsidiary is or may be liable has been granted to any Taxing Authority. Neither the Company nor any Company Subsidiary is or has been a party to any tax allocation or sharing agreement. All amounts required to be withheld by any of the Company and the Company Subsidiaries and paid to governmental agencies for income, social security, unemployment insurance, sales, excise, use and other Taxes have been collected or withheld and



paid to the proper Taxing Authority. The Company and each Company Subsidiary have made all deposits required by law to be made with respect to employees' withholding and other employment taxes.

(c) . Neither the Company nor any Stockholder is a "foreign person," as that term is referred to in Section 1445(f)(3) of the Code.

(d) The Company has not filed a consent pursuant to Section 341(f) of the Code or any comparable provision of any other tax statute and has not agreed to have Section 341(f)(2) of the Code or any comparable provision of any other tax statute apply to any disposition of an asset. The Company has not made, is not obligated to make and is not a party to any agreement that could require it to make any payment that is not deductible under Section 280G of the Code. No asset of the Company or of any Company Subsidiary is subject to any provision of applicable law which eliminates or reduces the allowance for depreciation or amortization in respect of that asset below the allowance generally available to an asset of its type. No accounting method changes of the Company or of any Company Subsidiary exist or are proposed or threatened which could give rise to an adjustment under Section 481 of the Code.

Section 4.29. Government Contracts. Except as accurately set forth in Section 4.29 of the Disclosure Statement, neither the Company nor any Company Subsidiary is a party to any governmental contract subject to price redetermination or renegotiation.

Section 4.30. Absence of Changes. Since the Current Balance Sheet Date, except as accurately set forth in Section 4.30 of the Disclosure Statement, none of the following has occurred with respect to the Company or any Company Subsidiary:

(a) any circumstance, condition, event or state of facts (either singly or in the aggregate), other than conditions generally affecting the Air Conditioning and Refrigeration Contracting or Plumbing businesses, which has caused, is causing or will cause a Material Adverse Effect on the Company;

(b) any change in its authorized Capital Stock or in any of its outstanding Capital Stock or Derivative Securities;

(c) any Restricted Payment, except any declaration or payment of dividends by any Company Subsidiary solely to the Company;

(d) any increase in, or any commitment or promise to increase, the rates of Cash Compensation as of the date hereof, or the amounts or other benefits paid or payable under any Company ERISA Pension Plan or Other Compensation Plan, except for ordinary and customary bonuses and salary increases for employees (other than the Stockholders or their Immediate Family Members) at the times and in the amounts consistent with its past practice;

(e) any work interruptions, labor grievances or claims filed, or any similar event or condition of any character, that will have a Material Adverse Effect on the Surviving Corporation following the Effective Time;

(f) any distribution, sale or transfer of, or any Company Commitment to distribute, sell or transfer, any of its assets or properties of any kind which singly is or in the aggregate are Material to the Company, other than distributions, sales or transfers in the ordinary course of its business and consistent with its past practices to Persons other than the Stockholders and their Immediate Family Members and Affiliates;

(g) any cancellation, or agreement to cancel, any Indebtedness, obligation or other liability owing to it, including any Indebtedness, obligation or other liability of any Stockholder or any Related Person or Affiliate thereof, provided that it may negotiate and adjust bills in the course of good faith disputes with customers in a manner consistent with past practice, if all those adjustments are included in the Supplemental Information provided ARS pursuant to Section 6.08;

(h) any plan, agreement or arrangement granting any preferential rights to purchase or acquire any interest in any of its assets, property or rights or requiring consent of any Person to the transfer and assignment of any such assets, property or rights;

(i) any purchase or acquisition of, or agreement, plan or arrangement to purchase or acquire, any property, rights or assets outside of the ordinary course of its business consistent with its past practices;

(j) any waiver of any of its rights or claims that singly is or in the aggregate are Material to the Company;

(k) any transaction by it outside the ordinary course of its business or not consistent with its past practices;

(l) any incurrence by it of any Indebtedness or any Guaranty not constituting its Indebtedness, or any Company Commitment to incur any Indebtedness or any such Guaranty;

(m) any investment in the Capital Stock, Derivative Securities or Indebtedness of any Person other than a Permitted Investment;

(n) except in accordance with the Company's consolidated capital expenditure budget for the Company's current fiscal year, any capital expenditure or series of related capital expenditures by the Company and the Company Subsidiaries collectively in excess of \$25,000, or commitments by the Company and the Company Subsidiaries to make capital expenditures totaling in excess of \$25,000; or

- (o) any cancellation or termination of a Material Agreement of the Company.

Section 4.31. Bank Relations; Powers of Attorney. The Company has provided ARS with an accurate, complete written statement setting forth:

- (a) the name of each financial institution in which the Company or any Company Subsidiary has borrowing or investment arrangements, deposit or checking accounts or safe deposit boxes;

- (b) the types of those arrangements and accounts, including, as applicable, names in which accounts or boxes are held, the account or box numbers and the name of each Person authorized to draw thereon or have access thereto; and

- (c) the name of each Person holding a general or special power of attorney from the Company or any Company Subsidiary and a description of the terms of each such power.

Section 4.32. Relations With Governments, etc. Neither the Company nor any Company Subsidiary has made, offered or agreed to offer anything of value to any governmental official, political party or candidate for government office which would cause the Company or any Company Subsidiary to be in violation of the Foreign Corrupt Practices Act of 1977 or any Governmental Requirement to a similar effect.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF ARS AND NEWCO

Section 5.02. Organization; Power. ARS is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and each of ARS and Newco has all requisite corporate power and authority under the laws of its Organization State and its Charter Documents to own or lease and to operate its properties presently and following the Effective Time and to carry on its business as now conducted and as proposed to be conducted following the Effective Time. Neither ARS nor Newco has engaged in any operations since its organization other than in connection with their formation and capitalization and the transactions contemplated by this Agreement and the Other Agreements.

Section 5.03. Authorization; Enforceability; Absence of Conflicts; Required Consents. (a) The execution, delivery and performance by each of ARS and Newco of this Agreement and each other Transaction Document to which it is a party, and the effectuation of the Merger and the other transactions contemplated hereby and thereby, are within its corporate power under its Charter Documents and the applicable Governmental Requirements of its Organization State and have been duly authorized by all proceedings, including actions permitted to be taken in lieu of proceedings, required under its Charter Documents and the applicable Governmental Requirements of its Organization State.

(b) This Agreement has been, and each of the other Transaction Documents to which either of ARS or Newco is a party, when executed and delivered to the other parties thereto (or, in the case of the Certificates of Merger, the applicable Governmental Authorities), will have been, duly executed and delivered by it and is, or when so executed and delivered will be, its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as that enforceability may be (i) limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and (ii) subject to general principles of equity (regardless of whether that enforceability is considered in a proceeding in equity or at law).

(c) The execution, delivery and performance in accordance with their respective terms by each of ARS and Newco of the Transaction Documents to which it is a party have not and will not (i) violate, breach or constitute a default under (A) the Charter Documents of ARS or Newco, (B) any Governmental Requirement applicable to ARS or Newco or (C) any Material Agreement of ARS or Newco, (ii) result in the acceleration or mandatory prepayment of any Indebtedness, or any Guaranty not constituting Indebtedness, of ARS or Newco or afford any holder of any of that Indebtedness, or any beneficiary of any of those Guaranties, the right to require ARS or Newco to redeem, purchase or otherwise acquire, reacquire or repay any of that Indebtedness, or to perform any of those Guaranties, (iii) cause or result in the imposition of, or afford any Person the right to obtain, any Lien upon any property or assets of ARS or Newco (or upon any revenues, income or profits of either ARS or Newco therefrom) or (iv) result in the revocation, cancellation,

suspension or material modification, in any single case or in the aggregate, of any Governmental Approval possessed by ARS or Newco at the date hereof and necessary for the ownership or lease and the operation of its properties or the carrying on of its business as now conducted, including any necessary Governmental Approval under each applicable Environmental Law and Professional Code.

(d) Except for (i) the filing of the Certificates of Merger with the applicable Governmental Authorities, (ii) filings of the Registration Statement under the Securities Act and the SEC order declaring the Registration Statement effective under the Securities Act and (iii) as may be required by the HSR Act or the applicable state securities or blue sky laws, no Governmental Approvals are required to be obtained, and no reports or notices to or filings with any Governmental Authority are required to be made, by ARS or Newco for the execution, delivery or performance by ARS or Newco of the Transaction Documents to which it is a party, the enforcement against ARS or Newco, as the case may be, of its obligations thereunder or the effectuation of the Merger and the other transactions contemplated thereby.

Section 5.04. Charter Documents. ARS has delivered to the Company true, complete and correct copies of the Charter Documents of each of ARS and Newco. No breach or violation of any Charter Document of either ARS or Newco has occurred and is continuing.

Section 5.05. Capital Stock of ARS and Newco. (a) Immediately prior to the Effective Time, (i) the authorized Capital Stock of ARS will be comprised of (A) 50,000,000 shares of ARS Common Stock and (B) 10,000,000 shares of preferred stock, \$.001 par value per share, (ii) before giving effect to the Merger and the merger or other acquisition transactions contemplated by the Other Agreements, (A) the number of shares of ARS Common Stock then issued and outstanding will be as set forth in the Registration Statement when it becomes effective under the Securities Act, (B) no shares of the ARS preferred stock then will be issued or outstanding and (C) ARS will have reserved for issuance pursuant to Other Compensation Plans or the exercise of Derivative Securities the number of shares of ARS Common Stock set forth in the Registration Statement when it becomes effective under the Securities Act.

(b) The authorized Capital Stock of Newco is comprised of 1,000 shares of Newco Common Stock, all of which shares are issued, outstanding and owned, of record and beneficially, by ARS.

(c) All shares of ARS Common Stock and Newco Common Stock outstanding immediately prior to the Effective Time, and all shares of ARS Common Stock to be issued pursuant to Section 2.04, when issued, (i) will have been duly authorized and validly issued in accordance with the DGCL and their issuer's Charter Documents and (ii) will be fully paid and nonassessable. None of the shares of ARS Common Stock to be issued pursuant to Section 2.04 will, when issued, have been issued in breach or violation of (i) any applicable statutory or contractual preemptive rights, or any other rights of any kind (including any rights of first offer or refusal), of any Person or (ii) the terms of any of its Derivative Securities then outstanding.

Section 5.06. Subsidiaries. Immediately prior to the IPO Closing Date, (a) ARS will have no Subsidiaries other than Newco and each Entity defined as "Newco" in each of the Other Agreements, (b) Newco will have no Subsidiaries and (c) neither ARS nor Newco will own, of record or beneficially, directly or indirectly through any Person or otherwise (except pursuant hereto or to the Other Agreements), any Capital Stock or Derivative Securities of any Entity not described in this Section 5.06 as a Subsidiary of ARS (in the case of ARS) or any Entity (in the case of Newco).

Section 5.07. Liabilities. Except as disclosed in the Private Placement Memorandum, neither ARS nor Newco has any material liabilities of any kind other than those incurred in connection with this Agreement and the Other Agreements and the transactions contemplated hereby and thereby, including the IPO.

Section 5.08. Compliance With Laws; No Litigation. Each of ARS and Newco is in compliance with all Governmental Requirements applicable to it, and no Litigation is pending or, to the knowledge of ARS, threatened to which ARS or Newco is or may become a party which (a) questions or involves the validity or enforceability of any obligation of ARS or Newco under any Transaction Document, (b) seeks (or reasonably may be expected to seek) (i) to prevent or delay consummation by ARS or Newco of the transactions contemplated by this Agreement to be consummated by ARS or Newco, as the case may be, or (ii) damages from ARS or Newco in connection with any such consummation.

Section 5.09. No Brokers. ARS has not, directly or indirectly, in connection with this Agreement or the transactions contemplated hereby (a) employed any broker, finder or agent or (b) agreed to pay or incurred any obligation to pay any broker's or finder's fee, any sales commission or any similar form of compensation.

Section 5.10. Private Placement Memorandum. At the date hereof, the Private Placement Memorandum (other than the historical financial statements, including the notes thereto, of the Founding Companies (other than the Company) and the historical information contained therein respecting the Company and the Stockholders, to which this Section 5.10 does not apply) does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in the light of the circumstances under which those statements are made.

## ARTICLE VI

### COVENANTS EXTENDING TO THE EFFECTIVE TIME

**Section 6.02 Access and Cooperation: Due Diligence.** (a) From the date hereof and until the IPO Closing Date, the Company will (i) afford to the Representatives of ARS and each Other Founding Company reasonable access to all the key employees, sites, properties, books and records of each of the Company and the Company Subsidiaries, (ii) provide ARS with such additional financial and operating data and other information relating to the business and properties of each of the Company and the Company Subsidiaries as ARS or any Other Founding Company may from time to time reasonably request and (iii) cooperate with ARS and each Other Founding Company and their respective Representatives in the preparation of any documents or other material which may be required in connection with any Transaction Documents or any Other Transaction Documents. Each Stockholder and the Company will treat all Confidential Information obtained by them in connection with the negotiation and performance of this Agreement or the due diligence investigations conducted with respect to each Other Founding Company as confidential in accordance with the provisions of Section 11.01. In addition, ARS will cause each Other Founding Company to enter into a provision similar to this Section 6.02 in order to require each Other Founding Company to keep confidential any Confidential Information respecting any of the Company and the Company Subsidiaries obtained by that Other Founding Company.

(b) Each of the Company and the Stockholders will use its best efforts to secure, as soon as practicable after the date hereof, all approvals or consents of third Persons as may be necessary to consummate the transactions contemplated hereby.

(c) From the date hereof and until the IPO Closing Date, ARS and Newco will (i) afford to the Representatives of the Company and the Stockholders access to all sites, properties, books and records of ARS and Newco, (ii) provide the Company with such additional financial and operating data and other information relating to the business and properties of ARS and Newco as the Company or any Stockholder may from time to time reasonably request and (iii) cooperate with the Company and the Stockholders and their respective Representatives in the preparation of any documents or other material which may be required in connection with any Transaction Documents.

(d) If this Agreement is terminated pursuant to Section 12.1, ARS promptly will return all written Confidential Information of the Company it then possesses to the Company.

**Section 6.03. Conduct of Business Pending Closing.** From the date hereof and until the Effective Time, the Company will, and will cause each Company Subsidiary to, except as and only to the extent set forth in Section 6.03 of the Disclosure Statement:

(a) carry on its businesses in substantially the same manner as it has heretofore and not introduce any material new method of management, operation or accounting;

(b) maintain its properties and facilities, including those held under leases, in as good working order and condition as at present, ordinary wear and tear excepted;

(c) perform all its obligations under agreements relating to or affecting its assets, properties and other rights;

(d) keep in full force and effect without interruption all its present insurance policies or other comparable insurance coverage;

(e) use reasonable commercial efforts to (i) maintain and preserve its business organization intact, (ii) retain its present employees and (iii) maintain its relationships with suppliers, customers and others having business relations with it;

(f) comply with all applicable Governmental Requirements; and

(g) except as required or expressly permitted by this Agreement, maintain the instruments and agreements governing its outstanding Indebtedness and leases on their present terms and not enter into new or amended Indebtedness or lease instruments or agreements involving amounts over \$5,000 in any case or \$25,000 in the aggregate, without the prior written consent of ARS (which consent will not be unreasonably withheld).

Section 6.04. Prohibited Activities. From the date hereof and until the Effective Time, without the prior written consent of ARS or unless as required or expressly permitted by this Agreement, the Company will not, and will not permit any Company Subsidiary to:

(a) make any change in its Charter Documents;

(b) issue any of its Capital Stock or issue or otherwise create any of its Derivative Securities;

(c) make any Restricted Payment (other than as provided in Schedule 6.04);

(d) make any investments (other than Permitted Investments) in the Capital Stock, Derivative Securities or Indebtedness of any Person;

(e) enter into any contract or commitment or incur or agree to incur any liability or make any capital expenditures in a single transaction or a series of related transactions involving an aggregate amount of more than \$25,000 otherwise than in the ordinary course of its business and consistent with its past practice;

(f) increase or commit or promise to increase the Cash Compensation payable or to become payable to any officer, director, stockholder, employee or agent, consultant or independent contractor of any of the Company and the Company Subsidiaries or make any



discretionary bonus or management fee payment to any such Person, except bonuses or salary increases to employees (other than the Stockholders or their Immediate Family Members) at the times and in the amounts consistent with its past practice;

(g) create, assume or permit to be created or imposed any Liens (other than Permitted Liens) upon any of its assets or properties, whether now owned or hereafter acquired, except for purchase money Liens incurred in connection with the acquisition of equipment with an aggregate cost not in excess of \$10,000 and necessary or desirable for the conduct of the business of any of the Company and the Company Subsidiaries;

(h) (i) adopt, establish, amend or terminate any ERISA Employee Benefit Plan, or any Other Compensation Plan or Employee Policies and Procedures or (ii) take any discretionary action, or omit to take any contractually required action, if that action or omission could either (A) deplete the assets of any ERISA Employee Benefit Plan or any Other Compensation Plan or (B) increase the liabilities or obligations under any such plan;

(i) sell, assign, lease or otherwise transfer or dispose of any of its owned or leased property or equipment otherwise than in the ordinary course of its business and consistent with its past practice;

(j) negotiate for the acquisition of any business or the start-up of any new business;

(k) merge, consolidate or effect a share exchange with, or agree to merge, consolidate or effect a share exchange with, any other Entity;

(l) waive any of its material rights or claims, provided that it may negotiate and adjust bills in the course of good faith disputes with customers in a manner consistent with past practice, but such adjustments will not be deemed to be included in Section 4.17 of the Disclosure Statement unless specifically listed in the Supplemental Information;

(m) commit a material breach of or amend or terminate any Material Agreement of the Company or any of its Governmental Approvals; or

(n) enter into any other transaction (i) outside the ordinary course of its business and consistent with its past practice or (ii) prohibited hereby.

**Section 6.05. No Shop; Release of Directors.** (a) Each of the Company and the Stockholders agrees that, from the date hereof and until the first to occur of the Effective Time or the termination of this Agreement in accordance with Article XII, neither the Company nor any Stockholder, nor any of their respective officers and directors shall, and the Company and each Stockholder will direct and use their best efforts to cause each of their respective Representatives not to, initiate, solicit or encourage, directly or indirectly, any inquiries or the making or

implementation of any proposal or offer (including any proposal or offer to the Stockholders) with respect to a merger, acquisition, consolidation or similar transaction involving, or any purchase of all or any significant portion of the assets or any equity securities of, the Company (any such proposal or offer being an "Acquisition Proposal") or engage in any activities, discussions or negotiations concerning, or provide any Confidential Information respecting, the Company, any Other Founding Company or ARS to, or have any discussions with, any Person relating to an Acquisition Proposal or otherwise facilitate any effort or attempt to make or implement an Acquisition Proposal. The Company and each Stockholder will: (i) immediately cease and cause to be terminated any existing activities, discussions or negotiations with any Persons conducted heretofore with respect to any of the foregoing, and each will take the steps necessary to inform the Persons referred to in the first sentence of this Section 6.05(a) of the obligations undertaken in this Section 6.05(a); and (ii) notify ARS immediately if any such inquiries or proposals are received by, any such information is requested from or any such discussions or negotiations are sought to be initiated or continued with the Company or any Stockholder.

(b) Each of the Company and the Stockholders hereby (i) waives every right, if any, the Governmental Requirements of the Company's Organization State afford the Company or Stockholders to require the Company's directors (or their equivalents if the Company is not a corporation), in the exercise of their fiduciary duties in their capacity as such, to engage in any of the activities prohibited by this Section 6.05 and (ii) releases each such person from any and all liability he might otherwise have to the Company or any Stockholders but for this release.

Section 6.06. Notice to Bargaining Agents. Prior to the IPO Closing Date, the Company will (a) satisfy any requirement for notice of the transactions contemplated by this Agreement under applicable collective bargaining agreements and (b) provide ARS with proof that any required notice has been sent.

Section 6.07. Notification of Certain Matters. The Stockholders and the Company shall give prompt notice to ARS of (a) the existence or occurrence of each condition or state of facts which will or reasonably could be expected to cause any representation or warranty of the Company or any Stockholder contained herein to be untrue or incorrect in any material respect at or prior to the Closing or on the IPO Closing Date and (b) any material failure of any Stockholder or the Company to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by that Person hereunder, provided that no such notice shall be required until ARS shall give notice to the Company and the Stockholders of the date scheduled for the Closing with respect to the occurrence in the ordinary course of business and consistent with past practice of the Company or any Company Subsidiary, as the case may be, of any condition or state of facts which would cause any of Sections 4.16, 4.17, 4.18, 4.19 and 4.21 of the Disclosure Statement to be incorrect. ARS shall give prompt notice to the Company of (a) the existence or occurrence of each condition or state of facts which will or reasonably could be expected to cause any representation or warranty of ARS or Newco contained herein to be untrue or inaccurate at or prior to the Closing or on the IPO Closing Date and (b) any material failure of ARS or Newco to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder. The delivery

of any notice pursuant to this Section 6.07 shall not be deemed to (a) modify the representations or warranties herein of the party delivering that notice, or any other party, which modification may be made only pursuant to Section 6.08, (b) modify the conditions set forth in Article VII or (c) limit or otherwise affect the remedies available hereunder to the party receiving that notice.

**Section 6.08. Supplemental Information.** Each of the Company and the Stockholders agrees that, with respect to the representations and warranties of that party contained in this Agreement, that party will have the continuing obligation (except to the extent otherwise provided in Section 6.07) until the Closing to provide ARS promptly with such additional supplemental information (collectively, the "Supplemental Information"), in the form of (a) amendments to then existing Schedules or Sections of the Disclosure Statement or (b) additional Schedules or Sections of the Disclosure Statement, as would be necessary, in the light of the circumstances, conditions, events and states of facts then known to the Company or any Stockholder, to make each of those representations and warranties true and correct as of the Closing and on the IPO Closing Date. For purposes only of determining whether the conditions to the obligations of ARS and Newco which are specified in Sections 7.04(a)(ii)(A) and 7.04(b)(ii) have been satisfied, and not for any purpose under Article IX, the Schedules and the Disclosure Statement as of the Closing and on the IPO Closing Date shall be deemed to be the Schedules and the Disclosure Statement as of the date hereof as amended or supplemented by the Supplemental Information provided to ARS prior to the Closing pursuant to this Section 6.08; provided, however, that if the Supplemental Information so provided discloses the existence of circumstances, conditions, events or states of facts which, in any combination thereof, (a) have had a Material Adverse Effect on the Company which was not reflected in the determination of the Transaction Value or, in the sole judgment of ARS (which shall be conclusive for purposes of this Section 6.08 and Article XII, but not for any purpose of Article IX), (b) are having or will have a Material Adverse Effect on the Company or the Surviving Corporation, as the case may be, ARS will be entitled either (i) to terminate this Agreement pursuant to Section 12.01(d) or (ii) to treat as ARS Indemnified Losses for all purposes of Article IX (which treatment will not prejudice the right of any Stockholder under Article IX to contest Damage Claims made by ARS in respect of those ARS Indemnified Losses) all Damages to the Company or the Surviving Corporation which are attributable to the circumstances, conditions, events and states of facts first disclosed herein after the date hereof in the Supplemental Information. ARS will provide the Company with copies of the Registration Statement, including all pre-effective amendments thereto, promptly after the filing thereof with the SEC under the Securities Act.

**Section 6.09. Cooperation in Connection With the IPO.** The Company and the Stockholders will (a) provide ARS and the Underwriter with all the Information concerning the Company or any of the Stockholders which is reasonably requested by ARS and the Underwriter from time to time in connection with effecting the IPO and (b) cooperate with ARS and the Underwriter and their respective Representatives in the preparation and amendment of the Registration Statement (including the Financial Statements) and in responding to the comments of the SEC staff, if any, with respect thereto. The Company and each Stockholder agree promptly to (a) advise ARS if, at any time during the period in which a prospectus relating to the IPO is required

to be delivered under the Securities Act, any information contained in the then current Registration Statement prospectus concerning the Company or the Stockholders becomes incorrect or incomplete in any material respect and (b) provide ARS with the information needed to correct or complete that information.

Section 6.10. Additional Financial Statements. The Company will furnish to ARS:

(a) as soon as available and in any event within 30 days after the end of each of the Company's fiscal quarters which ends prior to the IPO Pricing Date, an unaudited consolidated balance sheet of the Company and the Company Subsidiaries as of the end of that fiscal quarter and the related consolidated statements of income or operations, cash flows and stockholders' or other owners' equity for that fiscal quarter and for the period of the Company's fiscal year ended with that quarter, in each case (i) setting forth in comparative form the figures for the corresponding portion of the Company's previous fiscal year and (ii) prepared in accordance with GAAP applied on basis consistent (A) throughout the periods indicated (excepting footnotes) and (B) with the basis on which the Initial Financial Statements including the Current Balance Sheet were prepared; and

(b) if requested by ARS in connection with any amendment of the Registration Statement and promptly following any such request, such summary consolidated operating or other financial information of the Company and the Company Subsidiaries as of the end of either the first or second fiscal month in any of the Company's fiscal quarters as ARS may request.

Section 6.11. Termination of Plans. If requested by ARS, the Company will, or will cause the applicable Company Subsidiary to, if permitted by all applicable Governmental Requirements to do so, terminate each Plan identified in Section 4.26(c) or (d) of the Disclosure Statement as a "Plan To Be Terminated" prior to the Effective Time.

Section 6.12. Disposition of Unwanted Assets. At or prior to the Closing, the Company will make all arrangements and take all such actions as are necessary and satisfactory to ARS to dispose, prior to the Effective Time, of those assets of it or of one or more of the Company Subsidiaries which are listed in Schedule 6.12.

Section 6.13. HSR Act Matters. If ARS shall determine that filings pursuant to and under the HSR Act are necessary or appropriate in connection with the effectuation of the Merger or the consummation of the acquisitions contemplated by the Other Agreements, and advises the Company in writing of that determination, the Company promptly will compile and file under the HSR Act such information respecting it as the HSR Act requires of an Entity to be acquired, and the expiration or termination of the applicable waiting period and any extension thereof under the HSR Act shall be deemed a condition precedent set forth in Section 7.02(b).

## ARTICLE VII

### THE CLOSING AND CONDITIONS TO CLOSING AND CONSUMMATION

Section 7.02. Conditions to the Obligations of Each Party. (a) The obligation of each party hereto to take the actions contemplated to be taken by that party at the Closing is subject to the satisfaction of each of the following conditions on or before the date of the Closing:

(i) No Litigation. No Litigation shall be pending on the date of the Closing to restrain, prohibit or otherwise interfere with, or to obtain material damages or other relief from ARS or the Surviving Corporation in connection with, the consummation of the Merger or the IPO;

(ii) Governmental Approvals. All Governmental Approvals (other than the acceptance for filing of the Certificates of Merger) required to be obtained by any of the Company, ARS and Newco in connection with the consummation of the Merger and the IPO shall have been obtained; and

(iii) The Registration Statement. (A) The Registration Statement, as amended to cover the offering, issuance and sale by ARS of such number of shares of ARS Common Stock at the IPO Price (which need not be set forth in the Registration Statement when it becomes effective under the Securities Act) as shall yield aggregate cash proceeds to ARS from that sale (net of the Underwriter's discount or commissions) in at least the amount (the "Minimum Cash Amount") that is sufficient, when added to the funds, if any, available from other sources (if any, and as set forth in the Registration Statement when it becomes effective under the Securities Act) (the "Other Financing Sources") to enable ARS to pay or otherwise deliver on the IPO Closing Date (1) the total cash portion of the Merger Consideration then to be delivered pursuant to Section 2.04, (2) the total cash portion of the Merger or other acquisition consideration then to be delivered pursuant to the Other Agreements as a result of the consummation of the Merger or other acquisition transactions contemplated thereby and (3) the total amount of Indebtedness of the Founding Companies and ARS which the Registration Statement discloses at the time it becomes effective under the Securities Act will be repaid on the IPO Closing Date with proceeds received by ARS from the IPO and the Other Financing Sources, shall have been declared effective under the Securities Act by the SEC; (B) no stop order suspending the effectiveness of the Registration Statement shall have been issued by the SEC, and the SEC shall not have initiated or threatened to initiate Litigation for that purpose; and (C) the Underwriter shall have agreed in writing (the "Underwriting Agreement," which term includes the related pricing agreement, if any) to purchase from ARS on a firm commitment basis for resale to the public initially at the IPO Price, subject to the conditions set forth in the Underwriting Agreement, such number of shares of ARS Common Stock covered by the Registration Statement as, when multiplied by the price per share of ARS Common Stock to be paid by

the Underwriter to ARS pursuant to the Underwriting Agreement, shall equal at least the Minimum Cash Amount.

(b) The obligation of each party hereto with respect to the actions to be taken on the IPO Closing Date is subject to the satisfaction on that date of each of the following conditions:

(i) No Litigation. No Litigation shall be pending on the IPO Closing Date to restrain, prohibit or otherwise interfere with, or to obtain material damages or other relief from ARS or the Surviving Corporation in connection with, the consummation of the Merger or the IPO;

(ii) Governmental Approvals. All Governmental Approvals required to be obtained by the Company, ARS and Newco in connection with the consummation of the Merger and the IPO shall have been obtained;

(iii) Receipt of Certain Certificates. Each party to the Stockholders Agreement or his Representative shall receive the certificates that such party is entitled to receive on the IPO Closing Date pursuant to Section 3.5 of the Stockholders Agreement; and

(iv) Closing of the IPO. ARS shall have issued and sold shares of ARS Common Stock to the Underwriter in accordance with the Underwriting Agreement for initial resale at the IPO Price and received payment therefor in an amount at least equal to the amount by which (A) the Minimum Cash Amount exceeds (B) the aggregate amount of funds actually received on the IPO Closing Date, if any, from any one or more of the Other Financing Sources.

Section 7.03. Conditions to the Obligations of the Company and the Stockholders. The obligations of the Company and each Stockholder with respect to actions to be taken by them at or before the Closing and the actions to be taken on the IPO Closing Date are subject to the satisfaction, or the written waiver by the Company on behalf of itself and each Stockholder pursuant to Section 11.05 on or before the date of the Closing of, in addition to the conditions specified in Section 7.02 (a) or 7.02 (b), as applicable, (i) all the conditions set forth in Section 7.01(b), if any, and (ii) all the following conditions:

(A) Representations and Warranties. All the representations and warranties of ARS and Newco in Article V shall be true and correct as of the Closing as though made at that time;

(B) Delivery of Documents. ARS shall have delivered to the Company, with copies for each Stockholder:

(1) an ARS officer's certificate respecting the representations and warranties of ARS and Newco in Article V and compliance with the covenants of

ARS and Newco in Article VI and in the form thereof attached as an exhibit to the Closing Memorandum;

(2) opinions dated the IPO Closing Date and addressed to the Company and the Stockholders from Counsel for ARS and Newco substantially in the forms thereof attached as exhibits to the Closing Memorandum;

(3) a certificate of the secretary or any assistant secretary of ARS in the form thereof (without attachments thereto) attached as an exhibit to the Closing Memorandum and respecting, and to which is attached, (a) the Charter Documents of ARS and Newco (certified by the Secretary of State of the State of Delaware in the case of the certificates of incorporation included therein); (b) the resolutions of the boards of directors of ARS and Newco respecting the Transaction Documents and the transactions contemplated thereby; (c) a certificate respecting the incumbency and true signatures of the ARS and Newco officers who execute the Transaction Documents on behalf of ARS and Newco, respectively; (d) a specimen certificate evidencing shares of ARS Common Stock; (e) the prospectus included in the Registration Statement when it became effective; and (f) a facsimile copy of the Underwriting Agreement as executed and delivered by ARS and the Underwriter;

(4) the Registration Rights Agreement duly executed and delivered by ARS; and

(5) a certificate, dated as of a Current Date, duly issued by the Secretary of State of the State of Delaware, showing ARS to be in good standing and authorized to do business in that State.

**Section 7.04. Conditions to the Obligations of ARS and Newco.** (a) The obligations of ARS and Newco with respect to actions to be taken by them at or before the Closing are subject to the satisfaction on or before the date of the Closing of, in addition to the conditions specified in Section 7.02 (a), (i) all the conditions set forth in Section 7.01(c), if any, and (ii) all the following conditions:

(A) **Representations and Warranties.** All the representations and warranties of the Stockholders and the Company in Articles III and IV shall be true and correct as of the Closing as though made at that time;

(B) **Delivery of Documents.** The Stockholders and the Company shall have delivered to ARS:

(1) a Company officer's certificate, signed by a Responsible Officer, respecting the representations and warranties of the Stockholders and the Company in Articles III and IV and compliance with the covenants of the Stockholders and the

Company in Article VI and in the form thereof attached as an exhibit to the Closing Memorandum;

(2) opinions dated the IPO Closing Date and addressed to ARS from Counsel for the Company and the Stockholders substantially in the form thereof attached as exhibits to the Closing Memorandum;

(3) a certificate of the secretary or any assistant secretary of the Company in the form thereof (without attachments thereto) attached as an exhibit to the Closing Memorandum and respecting, and to which is attached, (a) the Charter Documents of the Company; (b) the resolutions of the board of directors of the Company respecting the Transaction Documents and the transactions contemplated thereby; and (c) a certificate respecting the incumbency and true signatures of the Responsible Officers who execute the Transaction Documents on behalf of the Company;

(4) from each Stockholder, a General Release duly executed and delivered by that Stockholder;

(5) from each Stockholder, an executed certificate to the effect that no withholding is required under Section 1445 of the Code, in the form of Exhibit 7.04, with the blanks appropriate filled; and

(6) for each of the Company and the Company Subsidiaries, a certificate, dated as of a Current Date, duly issued by the appropriate Governmental Authorities in its Organization State and, unless waived by ARS, in each other jurisdiction listed for it in Section 4.02 of the Disclosure Statement, showing it to be in good standing and authorized to do business in its Organization State and those other jurisdictions and that all state franchise and/or income tax returns and taxes due by it in its Organization State and those other jurisdictions for all periods prior to the Closing have been filed and paid.

(b) The obligations of ARS and Newco with respect to the actions to be taken on the IPO Closing Date are subject to the satisfaction on that date of (i) all the conditions set forth in Section 7.01(d), if any, and (ii) the condition that all the representations and warranties of the Stockholders and the Company in Articles III and IV shall be true and correct as of the IPO Closing Date as though made on that date.



## ARTICLE VIII

### COVENANTS FOLLOWING THE EFFECTIVE TIME

Section 8.02. Disclosure. If, subsequent to the IPO Pricing Date and prior to the 25th day after the date of the Final Prospectus, any Stockholder becomes aware of any fact or circumstance which would change (or, if after the Effective Time, would have changed) a representation or warranty of the Company or any Stockholder in this Agreement or would affect any document delivered pursuant hereto in any material respect, that Stockholder will promptly give notice of that fact or circumstance to ARS.

Section 8.03. Preparation and Filing of Tax Returns. Each party hereto will, and will cause its Affiliates to, provide to each of the other parties hereto such cooperation and information as any of them reasonably may request in filing any Return, amended Return or claim for refund, determining a liability for Taxes or a right to refund of Taxes or in conducting any audit or other proceeding in respect of Taxes. This cooperation and information shall include providing copies of all relevant portions of the relevant Returns, together with such accompanying schedules and work papers, documents relating to rulings or other determinations by Taxing Authorities and records concerning the ownership and Tax bases of property as are relevant which a party possesses. Each party will make its employees, if any, reasonably available on a mutually convenient basis at its cost to provide an explanation of any documents or information so provided. Subject to the preceding sentence, each party required to file Returns pursuant to this Agreement shall bear all costs attributable to the preparation and filing of those Returns.

Section 8.04. Directors. ARS will cause such corporate proceedings as on its part will be necessary to cause each of the persons, if any, who are named in the Final Prospectus as persons who will become members of the board of directors of ARS following the Effective Time to be appointed to that board when that prospectus so provides.

Section 8.05. Removal of Guaranties. At or within 60 days following the Effective Time, ARS will cause the Stockholder Guaranties listed in Schedule 8.05 to be terminated.

ARTICLE IX  
INDEMNIFICATION

Section 9.02. Survival of Representations and Warranties. All the provisions of this Agreement will survive the Closing and the Effective Time indefinitely notwithstanding any investigation at any time made by or on behalf of any party hereto or the provision of any Supplemental Information pursuant to Section 6.08, provided that the representations and warranties set forth in Articles IV, V and VI and in any certificate delivered in connection herewith with respect to any of those representations and warranties will terminate and expire on June 12, 1998, except as follows: (a) the representations and warranties of the Stockholders which relate expressly or by necessary implication to Taxes, ERISA or other employment or labor matters or the Governmental Requirements referred to in clause (iii) of Section 9.03(a) will survive until the expiration of the applicable statutes of limitations (including all periods of extension and tolling); (b) the representations and warranties of the Stockholders which relate expressly or by necessary implication to the environment or Environmental Laws will survive for a period of three years from the Effective Time; and (c) the representations and warranties of the Company will terminate and expire at the Effective Time. After a representation and warranty has terminated and expired, no indemnification will or may be sought pursuant to this Article IX on the basis of that representation and warranty by any Person who would have been entitled pursuant to this Article IX to indemnification on the basis of that representation and warranty prior to its termination and expiration, provided that, in the case of each representation and warranty that will terminate and expire as provided in this Section 9.02, no claim presented in writing for indemnification pursuant to this Article IX on the basis of that representation and warranty prior to its termination and expiration will be affected in any way by that termination and expiration.

Section 9.03. Indemnification of ARS Indemnified Parties. (a) Subject to the applicable provisions of Sections 9.02 and 9.07, the Stockholders covenant and agree that they, jointly and severally, will indemnify each ARS Indemnified Party against, and hold each ARS Indemnified Party harmless from and in respect of, all Damage Claims that arise from, are based on or relate or otherwise are attributable to (i) any breach of the representations and warranties of the Stockholders or the Company set forth herein (other than in Article III) or in certificates delivered in connection herewith (other than in respect of certificates relating only to the representations and warranties in Article III), (ii) any nonfulfillment of any covenant or agreement on the part of the Stockholders or the Company under this Agreement, (iii) any liability under the Securities Act, the Exchange Act or other applicable Governmental Requirement which arises out of or is based on (A) any untrue statement or alleged untrue statement of a material fact relating to the Company and the Company Subsidiaries, or any of them, which is (1) provided to ARS or its counsel by the Company or the Stockholders and (2) contained in any preliminary prospectus relating to the IPO, the Registration Statement or any prospectus forming a part thereof, or any amendment thereof or supplement thereto, or (B) any omission or alleged omission to state therein a material fact relating to the Company and the Company Subsidiaries, or any of them, required to be stated therein or necessary to make the statements therein not misleading, and not provided to

ARS or its counsel by the Company or the Stockholders (each such Damage Claim and each Damage Claim described in Section 9.03(b) being an "ARS Indemnified Loss"); provided, however, that no Stockholder shall be obligated to indemnify any ARS Indemnified Party against any ARS Indemnified Loss to the extent that such untrue statement (or alleged untrue statement) was made in, or such omission (or alleged omission) occurred in, any preliminary prospectus and the Stockholder timely provided, in writing, corrected or the necessary additional information to ARS and its counsel for inclusion in the Final Prospectus.

(b) Each Stockholder, severally and not jointly with any other Person, covenants and agrees that he will indemnify each ARS Indemnified Party against, and hold each ARS Indemnified Party harmless from and in respect of, all Damage Claims that arise from, are based on or relate or otherwise are attributable to (i) any breach of the representations and warranties of that Stockholder solely as to that Stockholder set forth in Article III or in certificates delivered by that Stockholder and relating to those representations and warranties, (ii) any nonfulfillment of any several, and not joint and several, agreement on the part of that Stockholder under this Agreement or (iii) any liability under the Securities Act, the Exchange Act or other applicable Governmental Requirement which arises out of or is based on (A) any untrue statement or alleged untrue statement of a material fact relating solely to that Stockholder which is (1) provided to ARS or its counsel by that Stockholder and (2) contained in any preliminary prospectus relating to the IPO, the Registration Statement or any prospectus forming a part thereof, or any amendment thereof or supplement thereto, or (B) any omission or alleged omission to state therein a material fact relating solely to that Stockholder required to be stated therein or necessary to make the statements therein not misleading, and not provided to ARS or its counsel by that Stockholder; provided, however, that no Stockholder shall be obligated to indemnify any ARS Indemnified Party against any ARS Indemnified Loss to the extent that such untrue statement (or alleged untrue statement) was made in, or such omission (or alleged omission) occurred in, any preliminary prospectus and the Stockholder timely provided, in writing, corrected or the necessary additional information to ARS and its counsel for inclusion in the Final Prospectus.

Section 9.04. Indemnification of Stockholder Indemnified Parties. ARS covenants and agrees that it will indemnify each Stockholder Indemnified Party against, and hold each Stockholder Indemnified Party harmless from and in respect of, all Damage Claims (that arise from, are based on or relate or otherwise are attributable to (i) any breach by ARS or Newco of their representations and warranties set forth herein or in their certificates delivered to the Company or the Stockholders in connection herewith, (ii) any nonfulfillment of any covenant or agreement on the part of ARS or Newco under this Agreement (each such Damage Claim being a "Stockholder Indemnified Loss"); or (iii) any liability under the Securities Act, the Exchange Act or other applicable Governmental Requirement which arises out of or is based on (A) any untrue statement or alleged untrue statement of a material fact relating to ARS, Newco or any of the Other Founding Companies contained in any preliminary prospectus relating to the IPO, the Registration Statement or any prospectus forming a part thereof, or any amendment thereof or supplement thereto, or (B) any omission or alleged omission to state therein a material fact relating to ARS, Newco or any of

the Other Founding Companies, or any of them, required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances under which they were made.

Section 9.05. Conditions of Indemnification. (a) All claims for indemnification under this Agreement shall be asserted and resolved as follows in this Section 9.05.

(b) A party claiming indemnification under this Agreement (an "Indemnified Party") shall promptly (i) notify the party from whom indemnification is sought (the "Indemnifying Party") of any third-party claim or claims asserted against the Indemnified Party ("Third Party Claim") that could give rise to a right of indemnification under this Agreement and (ii) transmit to the Indemnifying Party a written notice ("Claim Notice") describing in reasonable detail the nature of the Third Party Claim, a copy of all papers served with respect to that claim (if any), an estimate of the amount of damages attributable to the Third Party Claim to the extent feasible (which estimate shall not be conclusive of the final amount of such claim) and the basis for the Indemnified Party's request for indemnification under this Agreement. Except as set forth in Section 9.02, the failure to promptly deliver a Claim Notice shall not relieve the Indemnifying Party of its obligations to the Indemnified Party with respect to the related Third Party Claim except to the extent that the resulting delay is materially prejudicial to the defense of that claim. Within 15 days after receipt of any Claim Notice (the "Election Period"), the Indemnifying Party shall notify the Indemnified Party (i) whether the Indemnifying Party disputes its potential liability to the Indemnified Party under this Article IX with respect to that Third Party Claim and (ii) if the Indemnifying Party does not dispute its potential liability to the Indemnified Party with respect to that Third Party Claim, whether the Indemnifying Party desires, at the sole cost and expense of the Indemnifying Party, to defend the Indemnified Party against that Third Party Claim.

(c) If the Indemnifying Party does not dispute its potential liability to the Indemnified Party and notifies the Indemnified Party within the Election Period that the Indemnifying Party elects to assume the defense of the Third Party Claim, then the Indemnifying Party shall have the right to defend, at its sole cost and expense, that Third Party Claim by all appropriate proceedings, which proceedings shall be prosecuted diligently by the Indemnifying Party to a final conclusion or settled at the discretion of the Indemnifying Party in accordance with this Section 9.05(c) and the Indemnified Party will furnish the Indemnifying Party with all information in its possession with respect to that Third Party Claim and otherwise cooperate with the Indemnifying Party in the defense of that Third Party Claim; provided, however, that the Indemnifying Party shall not enter into any settlement with respect to any Third Party Claim that purports to limit the activities of, or otherwise restrict in any way, any Indemnified Party or any Affiliate of any Indemnified Party without the prior consent of that Indemnified Party (which consent may be withheld in the sole discretion of that Indemnified Party). The Indemnified Party is hereby authorized, at the sole cost and expense of the Indemnifying Party, to file, during the Election Period, any motion, answer or other pleadings that the Indemnified Party shall deem necessary or appropriate to protect its interests or those of the Indemnifying Party. The Indemnified Party may participate in, but not control, any defense or settlement of any Third Party Claim controlled by the Indemnifying Party pursuant to this Section 9.05(c) and will bear its own costs and

expenses with respect to that participation; provided, however, that if the named parties to any such action (including any impleaded parties) include both the Indemnifying Party and the Indemnified Party, and the Indemnified Party has been advised by counsel that there may be one or more legal defenses available to it which are different from or additional to those available to the Indemnifying Party, then the Indemnified Party may employ separate counsel at the expense of the Indemnifying Party, and, on its written notification of that employment, the Indemnifying Party shall not have the right to assume or continue the defense of such action on behalf of the Indemnified Party.

(d) If the Indemnifying Party (i) within the Election Period (A) disputes its potential liability to the Indemnified Party under this Article IX, (B) elects not to defend the Indemnified Party pursuant to Section 9.05(c) or (C) fails to notify the Indemnified Party that the Indemnifying Party elects to defend the Indemnified Party pursuant to Section 9.05(c) or (ii) elects to defend the Indemnified Party pursuant to Section 9.05(c) but fails diligently and promptly to prosecute or settle the Third Party Claim, then the Indemnified Party shall have the right to defend, at the sole cost and expense of the Indemnifying Party (if the Indemnified Party is entitled to indemnification hereunder), the Third Party Claim by all appropriate proceedings, which proceedings shall be promptly and vigorously prosecuted by the Indemnified Party to a final conclusion or settled. The Indemnified Party shall have full control of such defense and proceedings. Notwithstanding the foregoing, if the Indemnifying Party has delivered a written notice to the Indemnified Party to the effect that the Indemnifying Party disputes its potential liability to the Indemnified Party under this Article IX and if such dispute is resolved in favor of the Indemnifying Party, the Indemnifying Party shall not be required to bear the costs and expenses of the Indemnified Party's defense pursuant to this Section 9.05 or of the Indemnifying Party's participation therein at the Indemnified Party's request, and the Indemnified Party shall reimburse the Indemnifying Party in full for all reasonable costs and expenses of such litigation. The Indemnifying Party may participate in, but not control, any defense or settlement controlled by the Indemnified Party pursuant to this Section 9.05(d), and the Indemnifying Party shall bear its own costs and expenses with respect to such participation.

(e) In the event any Indemnified Party should have a claim against any Indemnifying Party hereunder that does not involve a Third Party Claim, the Indemnified Party shall transmit to the Indemnifying Party a written notice (the "Indemnity Notice") describing in reasonable detail the nature of the claim, an estimate of the amount of Damages attributable to that claim to the extent feasible (which estimate shall not be conclusive of the final amount of such claim) and the basis of the Indemnified Party's request for indemnification under this Agreement. If the Indemnifying Party does not notify the Indemnified Party within 15 days from its receipt of the Indemnity Notice that the Indemnifying Party disputes such claim, the claim specified by the Indemnified Party in the Indemnity Notice shall be deemed a liability of the Indemnifying Party hereunder. If the Indemnifying Party has timely disputed such claim, as provided above, such dispute shall be resolved by proceedings in an appropriate court of competent jurisdiction if the parties do not reach a settlement of such dispute within 30 days after notice of a dispute is given.

(f) Payments of all amounts owing by an Indemnifying Party pursuant to this Article IX relating to a Third Party Claim shall be made within 30 days after the latest of (i) the settlement of that Third Party Claim, (ii) the expiration of the period for appeal of a final adjudication of that Third Party Claim or (iii) the expiration of the period for appeal of a final adjudication of the Indemnifying Party's liability to the Indemnified Party under this Agreement. Payments of all amounts owing by an Indemnifying Party pursuant to Section 9.05(e) shall be made within 30 days after the later of (i) the expiration of the 30-day Indemnity Notice period or (ii) the expiration of the period for appeal of a final adjudication of the Indemnifying Party's liability to the Indemnified Party under this Agreement.

Section 9.06. Remedies Not Exclusive. The remedies provided in this Agreement shall not be exclusive of any other rights or remedies available to one party against the other, either at law or in equity.

Section 9.07. Limitations on Indemnification. (a) Notwithstanding the provisions of Section 9.03(a), neither the Company nor any of the Stockholders shall be required to indemnify or hold harmless any of the ARS Indemnified Parties on account of any ARS Indemnified Loss under Section 9.03(a) unless the liability of the Company and the Stockholders in respect of that ARS Indemnified Loss, when aggregated with the liability of the Company and the Stockholders in respect of all ARS Indemnified Losses under Section 9.03(a), exceeds, and only to the extent the aggregate amount of all those ARS Indemnified Losses does exceed, the Threshold Amount. In no event shall (i) the aggregate joint and several liability of the Company and the Stockholders under this Agreement, including Section 9.03(a), exceed the Transaction Value or (ii) the aggregate liability of each Stockholder under this Agreement, including Sections 9.03(a) and 9.03(b), exceed that Stockholder's Pro Rata Share of the Transaction Value. For purposes of determining the amount of ARS Indemnified Losses, no effect will be given to any resulting Tax benefit to any ARS Indemnified Party.

(b) Notwithstanding the provisions of Section 9.04, ARS shall not be required to indemnify or hold harmless any of the Stockholder Indemnified Parties on account of any Stockholder Indemnified Loss unless the liability of ARS in respect of that Stockholder Indemnified Loss, when aggregated with the liability of ARS in respect of all Stockholder Indemnified Losses, exceeds, and only to the extent the aggregate amount of all those Stockholder Indemnified Losses does exceed, the Threshold Amount. In no event shall ARS be liable under this Agreement, including Section 9.04, for any amount in excess of the Transaction Value. For purposes of determining the amount of Stockholder Indemnified Losses, no effect will be given to any resulting Tax benefit to any Stockholder Indemnified Party.

## ARTICLE XI

### GENERAL PROVISIONS

Section 11.01. Treatment of Confidential Information. (a) Each of the Company and the Stockholders, severally and not jointly with any other Person, acknowledges that it has or may have had in the past, currently has and in the future may have access to Confidential Information of the Company and the Company Subsidiaries, the Other Founding Companies and their Subsidiaries and ARS and its Subsidiaries. Each of the Company and the Stockholders, severally and not jointly with any other Person, agrees that it will keep confidential all such Confidential Information furnished to it and, except with the specific prior written consent of ARS will not disclose such Confidential Information to any Person except (a) Representatives of ARS, (b) its own Representatives, provided that these Representatives (other than counsel) agree to the confidentiality provisions of this Section 11.01; and provided, further, that Confidential Information shall not include (i) such information which becomes known to the public generally through no fault of any Stockholder, (ii) information required to be disclosed by law or the order of any governmental authority under color of law, provided, that prior to disclosing any information pursuant to this clause (ii), each Stockholder shall, if possible, give prior written notice thereof to ARS and provide ARS with the opportunity to contest such disclosure, or (iii) the disclosing party reasonably believes that such disclosure is required in connection with the defense of a lawsuit against the disclosing party. In the event of a breach or threatened breach by any Stockholder of the provisions of this Section 11.01 with respect to any Confidential Information, ARS shall be entitled to an injunction restraining such Stockholder from disclosing, in whole or in part, that Confidential Information. Nothing herein shall be construed as prohibiting ARS from pursuing any other available remedy for such breach or threatened breach, including the recovery of damages.

(b) Because of the difficulty of measuring economic losses as a result of the breach of the foregoing covenants in Section 11.01(a), and because of the immediate and irreparable damage that would be caused to ARS for which it would have no other adequate remedy, each of the Company and the Stockholders agrees that ARS may enforce the provisions of Section 11.01(a) by injunctions and restraining orders against each of them who breaches any of those provisions.

(c) The obligations of ARS set forth in Section 6.02(d) are incorporated in this Section 11.01 by this reference.

(d) The obligations of the parties under this Section 11.01 shall survive the termination of this Agreement.

P96000049812

ARTICLES OF MERGER  
Merger Sheet

MERGING: -----

FLORIDA HEATING & AIR CONDITIONING, INC., a Florida corporation,  
document number P96000049812

INTO

FLORIDA HEATING AND AIR CONDITIONING SERVICE, INC., a Florida  
corporation, 679478.

File date: November 12, 1996

Corporate Specialist: Karen Gibson

Division of Corporations - P.O. BOX 6327 - Tallahassee, Florida 32314