

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

In Re: PARKING HEATERS ANTITRUST LITIGATION	Case No. 15-MC-940 (DLI) (JO)
THIS DOCUMENT RELATES TO: <i>All Direct Purchaser Class Actions</i>	

**SETTLEMENT AGREEMENT BETWEEN
DIRECT PURCHASER PLAINTIFFS AND ESPAR DEFENDANTS**

This settlement agreement (“Settlement Agreement” or “Agreement”) is made and entered into this 29th day of November, 2017, by and between Defendants Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc. (collectively, “Espar”), and Direct Purchaser Plaintiff Class Representatives Triple Cities Acquisition LLC d/b/a Cook Brothers Truck Parts, National Trucking Financial Reclamation Services, TrailerCraft Inc., and Myers Equipment Corporation, individually and on behalf of the Settlement Class (as defined in Paragraph 1.g) (collectively, “Direct Purchaser Plaintiffs”).

WHEREAS, on April 22, 2016, Direct Purchaser Plaintiffs filed a Consolidated Class Action Complaint and Jury Demand (“CAC”), on behalf of themselves and a putative class of others similarly situated, in case number 1:15-MC-0940 (JG) (JO) (Dkt.

No. 82) in the United States District Court for the Eastern District of New York;

WHEREAS, Direct Purchaser Plaintiffs have alleged, among other things, that Espar participated in an unlawful conspiracy to raise, fix, maintain, and/or stabilize the price of Parking Heaters sold in the aftermarket for use in commercial vehicles in the United States, as defined here and in the CAC, at artificially high levels in violation of Section 1 of the Sherman Act (15 U.S.C. § 1);

WHEREAS, Direct Purchaser Plaintiffs have concluded, after an investigation into the facts and the law, and after carefully considering the circumstances of claims made by Direct Purchaser Plaintiffs and the Settlement Class, and the possible legal and factual defenses thereto, that it is in the best interests of Direct Purchaser Plaintiffs and the Settlement Class to enter into this Settlement Agreement with Espar to avoid the uncertainties and risks of litigation, and that the settlement set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class;

WHEREAS, Espar, despite its belief that it is not liable for the claims asserted and its belief that it has good defenses thereto, has nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the releases, orders and judgments contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against Espar with respect to Parking Heaters based on the allegations in the Action, as more particularly set out below;

WHEREAS, Direct Purchaser Plaintiffs, for themselves individually and on behalf of each Settlement Class Member, as defined in Paragraph 1.e, and Espar agree

that neither this Settlement Agreement nor any statement made in negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Espar or of the truth of any of the claims or allegations alleged in the Action, and evidence thereof shall not be discoverable or used in any way in any action, arbitration, or proceeding whatsoever, against Espar;

WHEREAS, this Settlement Agreement is the product of arm's-length negotiations between Class Co-Lead Counsel and Espar's Counsel under the guidance and oversight of Mediator United States District Judge Vaughn Walker (Ret'd.), and this Settlement Agreement embodies all of the terms and conditions of the settlement agreed upon between Espar and Direct Purchaser Plaintiffs, both for themselves individually and on behalf of the Settlement Class, and is intended to supersede all prior agreements or understandings;

NOW, THEREFORE, in consideration of the covenants, terms, and releases in this Settlement Agreement, it is agreed, by and amongst Direct Purchaser Plaintiffs (for themselves individually and on behalf of the Settlement Class and each member thereof) and Espar, by and through Class Co-Lead Counsel and Espar's Counsel, that, subject to the approval of the Court, the Action be settled, compromised, and dismissed on the merits with prejudice as to Espar and the other Released Parties only, without costs as to Direct Purchaser Plaintiffs, the Settlement Class, or Espar, except as stated herein, and releases be extended, as set forth in this Settlement Agreement.

I. DEFINITIONS

1. As used in this Settlement Agreement, the following terms have the

meanings specified below:

a. “Action” means *In re Parking Heaters Antitrust Litigation*, No. 1:15-MC-00940 (DLI) (JO), which is currently pending in the United States District Court for the Eastern District of New York, and includes all actions filed in or transferred to the United States District Court for the Eastern District of New York and consolidated thereunder and all actions that are otherwise based on the alleged conduct in the above-captioned litigation.

b. “Eligible Class Member” means any Settlement Class Member and any Settled Customer, as defined in Paragraph 32, who will be entitled to a distribution from the Net Settlement Fund, as defined in Paragraph 1.s, pursuant to the Plan of Distribution approved by the Court in accordance with the terms of this Settlement Agreement.

c. “Class Co-Lead Counsel” means Hausfeld, LLP and Roberts Law Firm, P.A.

d. “Class Distribution Order” has the meaning given to it in Paragraph 48.

e. “Settlement Class Member” means a person who is a member of the Settlement Class and has not timely and validly excluded himself, herself, or itself in accordance with the procedures establish by the Court.

f. “Class Notice” means, collectively, the Mail Notice and/or Publication Notice to the Settlement Class, which shall be subject to consultation and agreement with Espar before being submitted to the Court for approval.

- g. “Settlement Class” has the meaning given to it in Paragraph 2.
- h. “Court” means the United States District Court for the Eastern District of New York.
- i. “Espar’s Counsel” means the law firm O’Melveny & Myers LLP, representing Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc.
- j. “Defendants” means Webasto Products North America, Inc., Webasto Thermo & Comfort North America, Inc., and Webasto Thermo & Comfort SE (collectively, “Webasto”), and Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc. (collectively, “Espar”).
- k. “Direct Purchaser Plaintiffs” means Triple Cities Acquisition LLC d/b/a Cook Brothers Truck Parts, National Trucking Financial Reclamation Services, TrailerCraft Inc., and Myers Equipment Corporation.
- l. “Effective Date” or “Effective Date of Settlement” has the meaning given to it in Paragraph 12.
- m. “Escrow Agent” means a qualified financial institution that can serve as an escrow agent for this Settlement Agreement.
- n. “Execution Date” means the date the Settlement Agreement is signed by all Settlement Parties.
- o. “Fairness Hearing” means the hearing to be held by the Court to determine whether this Settlement Agreement shall receive final approval pursuant to Fed. R. Civ. P. 23.

p. “Fee and Expense Application” has the meaning given to it in Paragraph 23.

q. “Final Judgment and Order of Dismissal” means the order of the Court finally approving this Settlement Agreement and entering a final judgment in the Action dismissing on the merits with prejudice the claims of Direct Purchaser Plaintiffs and the Settlement Class against the Released Parties without costs other than those provided for in this Agreement. The Final Judgment and Order of Dismissal shall become final when: (i) no appeal from the Final Judgment and Order of Dismissal has been filed and the prescribed time for commencing any appeal or seeking permission to file such an appeal has expired; or (ii) an appeal from the Final Judgment and Order of Dismissal has been filed and either (1) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (2) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this Paragraph, an appeal includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times.

r. “Mail Notice” means the notice of proposed settlement of class action to be provided to the Settlement Class as provided in this Settlement Agreement, the Preliminary Approval Order, and the Notice Order.

s. “Net Settlement Fund” is the Settlement Fund, as defined in

Section IX of this Agreement, less the Settlement Refund and Court-approved: (1) costs used for administration of the Settlement Fund, including taxes, as permitted by this Settlement Agreement; (2) costs to issue Class Notice; and (3) costs or attorneys' fees the Court has ordered to be paid from the Settlement Fund.

t. "Notice Order" means an order of the Court that approves the form of Class Notice and preliminarily approves the proposed Plan of Distribution.

u. "Opt Out Deadline" means the deadline established by the Court, and set forth in the Settlement Class Notice, by which potential Settlement Class Members that wish to request exclusion from the Settlement Class must do so.

v. "Opt Outs" means those potential Settlement Class Members who have exercised their right to request exclusion from the Settlement Class by the Opt Out Deadline.

w. "Parking Heaters" means parking heaters for commercial vehicles sold in the aftermarket in the United States, including the heaters themselves, accessories sold for use with the heaters, and parking heater kits containing heaters and selected accessories.

x. "Settlement Parties" means Espar and Direct Purchaser Plaintiffs.

y. "Plan of Distribution" means a plan or formula of allocation of the Net Settlement Fund whereby the Settlement Fund shall be distributed to Eligible Class Members after payment of expenses of notice and administration of the settlement, Taxes and tax expenses, and such attorneys' fees, costs, expenses, interest, and other expenses as may be awarded by the Court. At a time and in a manner determined by the Court,

Class Co-Lead Counsel shall submit for Court approval a Plan of Distribution for the Settlement Class that will provide for the distribution of the applicable Net Settlement Fund. Each Plan of Distribution shall be devised and implemented with the assistance of the Settlement Administrator.

z. “Preliminary Approval Order” means an order of the Court that preliminarily approves this Settlement Agreement.

aa. “Publication Notice” means the summary notice of this Settlement Agreement and hearing by the Court in a newspaper, magazine, trade journal, or other similar printed media. Publication Notice will only be issued if the Settlement Parties, in conjunction with the Settlement Administrator, deem such notice necessary.

bb. “Released Claims” means any and all claims, demands, actions, suits and causes of action, whether class, individual or otherwise in nature, (whether or not any Settlement Class Member has objected to the Settlement Agreement or makes a claim upon or participates in the Net Settlement Fund, whether directly, representatively, derivatively or in any other capacity) under any federal, state, or local law of any jurisdiction in the United States that Releasing Parties, or each of them, ever had, now have, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, arising out of, or relating to any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries or damages, and the consequences thereof, in any way arising out of or relating to any actions or conduct alleged in the CAC (ECF No. 82, filed April 22, 2016) or any act or omission of any Released Party relating to the production or capacity

restrictions, pricing, marketing, distribution, and/or sale of Parking Heaters or products containing Parking Heaters in the United States (including any conduct, whether or not concealed or hidden, alleged and causes of action asserted, or that could have been alleged or asserted, in the CAC) that may have occurred or did occur from the beginning of time through the Execution Date, including any claims, demands, actions, suits and causes of action under federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, fraud, RICO, civil conspiracy law, unjust enrichment, or similar laws, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 et seq. Releasing Parties shall not, after the Execution Date, seek to establish liability against any of the Released Parties based, in whole or in part, on any of the Released Claims or conduct at issue in the Released Claims, unless this Agreement is terminated or not finally approved. Provided, however, Released Claims do not include, and this Settlement Agreement shall not and does not release, acquit or discharge, claims (1) based solely on purchases of Parking Heaters outside of the United States, on behalf of persons or entities located outside of the United States at the time of such purchases, under laws other than those of the United States; or (2) claims based on any dispute from a Settlement Class Member not based on or related to activity that either was or could have been alleged in the CAC, including claims for personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defects, or securities law violations. This Release is made without regard to the possibility of subsequent discovery or the existence of different or additional facts.

cc. “Released Parties” means Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc., and each of their past, present, and future, direct and indirect parents (including holding companies), subsidiaries, affiliates, associates, divisions, predecessors, successors, assigns, and each of their respective officers, directors, principals, partners, supervisors, stockholders, members, representatives, insurers, employees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators, advisors, and assigns. Released Parties do not include Webasto or any of Webasto’s past, present, and future, direct and indirect parents (including holding companies), subsidiaries, affiliates, associates, divisions, predecessors, successors, and each of their respective officers, directors, employees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators, advisors, and assigns.

dd. “Releasing Party” means, individually and collectively, Direct Purchaser Plaintiffs and each Settlement Class Member, on behalf of themselves and any of their respective past, present or future officers, directors, stockholders, agents, principals, partners, supervisors, members, representatives, insurers, employees, legal or other representatives, partners, associates, trustees, parents, subsidiaries, divisions, affiliates, heirs, executors, administrators, purchasers, predecessors, successors, assigns, and all other persons, partnerships or corporations with whom any of the foregoing have been, or are now, affiliated, whether or not they object to this Settlement Agreement, and whether or not they are eligible for and/or do receive payment from the Net Settlement Fund.

ee. “Settlement Administrator” means a company qualified to administer the notice and claims process necessary to effectuate the Settlement Agreement.

ff. “Settlement Agreement” means this Stipulation and Agreement of Settlement.

gg. “Settlement Amount” means eight million United States dollars (\$8,000,000).

hh. “Settlement Class Period” shall mean the period from and including October 1, 2007 up to and including December 31, 2012.

ii. “Settlement Refund” shall have the meaning given to it in Paragraph 35.

jj. “Settlement Fund” means the escrow account established pursuant to Paragraphs 26-27 of this Settlement Agreement, including all monies held therein in accordance with the terms of this Settlement Agreement.

kk. “Taxes” has the meaning given to it in Paragraph 53.

II. CERTIFICATION OF THE SETTLEMENT CLASS

2. The Settlement Parties hereby stipulate solely for settlement purposes that the requirements of Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) are satisfied, and, subject to Court approval, the following settlement class (the “Settlement Class”) shall be certified for settlement purposes:

All persons or entities (but excluding federal and state government entities and Defendants, their officers, directors, and employees, as well as Defendants’ parents, predecessors, successors, subsidiaries, affiliates) that

purchased Parking Heaters in the United States, its territories or possessions, directly from any Defendant, or from any of their parents, predecessors, successors, subsidiaries, or affiliates, at any time during the period from and including October 1, 2007 up to and including December 31, 2012.

III. GOOD-FAITH EFFORTS TO EFFECTUATE THIS SETTLEMENT AGREEMENT

3. The Settlement Parties agree to cooperate with one another in good faith to effectuate and implement the terms and conditions of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the terms of this Settlement Agreement. Espar's Counsel shall serve, or cause to be served, notice on those entities required to receive notice pursuant to 28 U.S.C. § 1715.

IV. PRELIMINARY APPROVAL ORDER, NOTICE, AND FAIRNESS HEARING

4. Within sixty (60) days following the Execution Date, or such later date agreed to in writing by the Settlement Parties, Class Co-Lead Counsel shall submit to the Court, and Espar shall not oppose, a motion requesting entry of the Preliminary Approval Order ("Motion"). Espar shall not oppose the Motion unless its terms are inconsistent with those called for by this Settlement Agreement. At least forty-eight (48) hours prior to the filing of any motions or other papers in connection with this Agreement, Class Co-Lead Counsel shall send working drafts of the Motion to Espar's Counsel. The Motion shall:

- i. seek certification of the Settlement Class solely for settlement purposes, pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3);
- ii. request preliminary approval of the settlement set forth in

this Settlement Agreement as fair, reasonable, and adequate;

iii. seek the appointment of Direct Purchaser Plaintiffs as representatives of the Settlement Class, and Class Co-Lead Counsel as Settlement Class counsel under Fed. R. Civ. P. 23(g);

iv. submit a separate application, seeking approval of the form, and method of dissemination, of: (1) the Mail Notice, which shall include information on how to obtain additional information regarding the Settlement Agreement and be mailed via first-class mail; and (2) if deemed necessary, the Publication Notice; which the Settlement Parties intend to be the best notice practicable under the circumstances and which shall be given in such manner and scope as is reasonable, and consistent with the requirements of Fed. R. Civ. P. 23;

v. seek appointment of a qualified Settlement Administrator;

vi. seek appointment of a qualified Escrow Agent;

vii. stay all proceedings in the Action against Espar until the Court renders a final decision on approval of this Settlement Agreement; and

viii. attach a proposed form of order, which includes such provisions as are typical in such orders, including: (1) setting a date for the Fairness Hearing, and (2) a provision that, if final approval of the settlement is not obtained, the settlement is null and void, and the Settlement Parties will revert to their positions *ex ante* without prejudice to their rights, claims, or defenses.

5. Class Notice shall apprise each member of the Settlement Class of his, her, or its right to exclude themselves from, or object to, the settlement. The Settlement

Parties shall endeavor to include information in the Mail Notice that informs potential Settlement Class Members how to obtain additional information regarding the Settlement Agreement.

6. Espar shall, at its own expense and as reasonably available to Espar and permissible by law, supply to Class Co-Lead Counsel in electronic format, or other such form as may be reasonably requested by Class Co-Lead Counsel and the Settlement Administrator, the names and addresses of all potential Settlement Class Members who can be reasonably identified based on customer records that Espar has in its possession, custody, or control. Any information provided pursuant to this provision shall be subject to the provisions of the Confidentiality Stipulation and Protective Order (ECF No. 69, filed October 28, 2015) (the “Protective Order”). Moreover, any information provided pursuant to this provision shall be used solely for purposes of providing notice and administering and verifying eligibility for the amount of payment, as set forth in this Section and Sections VI and XII, and any distribution of such information shall be limited to what is necessary for those purposes. Mail Notice shall be mailed only to those persons or entities that are identified by Espar. Publication Notice to other potential members of the Settlement Class, if deemed necessary, shall be by publication as set forth above in Paragraphs 1.aa and 4.iv, if approved by the Court.

7. With the object of reducing the costs of Class Notice, Class Co-Lead Counsel shall use their reasonable best efforts to coordinate the provision of Class Notice pertaining to this Settlement Agreement with the provision of notice for any other settlements that may be reached in the Action. In no event shall Espar have any liability

for the costs of provision of notice, except as set forth in Paragraphs 6 and 27.

8. Any person falling within the definition of the Settlement Class may request to be excluded from the Settlement Class by filing a request for exclusion that meets all of the conditions specified in this Paragraph (“Request for Exclusion”). To be valid, a Request for Exclusion must be: (i) in writing, (ii) signed and dated by the person or his, her, or its authorized representative, (iii) state the full legal name, address, and telephone number of that person, and (iv) include: (1) proof of membership in the Settlement Class; and (2) a signed statement that “I/we hereby request that I/we be excluded from the settlement with Espar in the *In Re: Parking Heaters Antitrust Litigation.*” To be valid, a Request for Exclusion also must be mailed to the Settlement Administrator at the address provided in the Mail Notice and be both (i) postmarked no later than the Opt Out Deadline set by the Court and (ii) received by the Settlement Administrator no later than twenty (20) calendar days after the Opt Out Deadline. Unless the Court orders otherwise, a Request for Exclusion that does not meet all of the conditions specified in this Paragraph shall be invalid, and the person(s) filing such an invalid request shall be a Settlement Class Member and shall be bound by the Settlement Agreement, if approved by the Court. All persons who submit valid and timely Requests for Exclusion in the manner set forth in this Paragraph shall be excluded from the Settlement Class, shall have no rights under the Settlement Agreement, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Settlement Agreement. Class Co-Lead Counsel shall cause to be provided to Espar copies of all Requests for Exclusion, together with all documents and information provided by the

persons filing such Requests, and any written revocation of Requests for Exclusion, within three (3) business days of receipt by Class Co-Lead Counsel of that Request for Exclusion. In addition, Class Co-Lead Counsel shall prepare a summary of the Opt Outs that includes only the name, city and state of the person or entity requesting exclusion, which summary Class Co-Lead Counsel shall file with the Court when seeking entry of the Final Judgment and Order of Dismissal referred to in Paragraph 11.

9. With respect to any potential Settlement Class Member who requests exclusion from the Settlement Class, Espar reserves all of its legal rights and defenses, including, but not limited to, any defenses relating to whether the excluded Settlement Class Member is a direct purchaser of any allegedly price-fixed Parking Heaters, has previously released its claims against Espar, and/or has standing to bring any claim.

10. Any person who has not requested exclusion from the Settlement Class and who objects to this Settlement Agreement may appear in person or through counsel, at that person's own expense, at the Fairness Hearing to present any evidence or argument that the Court deems proper and relevant. No such person shall be heard, and no papers, briefs, pleadings, or other documents submitted by any such person shall be received and considered by the Court, unless such person properly submits a written objection that includes: (i) a notice of intention to appear, (ii) proof of membership in the Settlement Class, (iii) the specific grounds for the objection and any reasons why such person desires to appear and be heard, and (iv) all documents or writings that such person desires the Court to consider. Such a written objection must be both (i) filed with the Court no later than thirty (30) calendar days prior to the date set for the Fairness Hearing

and (ii) mailed to Class Co-Lead Counsel and Espar's Counsel at the addresses provided in the Settlement Class Notice and postmarked no later than thirty (30) calendar days prior to the date set for the Fairness Hearing. Any person that fails to object in the manner prescribed herein shall be deemed to have waived his, her, or its objections and will forever be barred from making any such objections in the Action, unless otherwise excused for good cause shown, as determined by the Court.

11. If the Preliminary Approval Order and the Notice Order are entered by the Court, Direct Purchaser Plaintiffs shall seek, and Espar shall not unreasonably object to, entry of a Final Judgment and Order of Dismissal, the text of which Direct Purchaser Plaintiffs and Espar shall agree upon, that:

- i. certifies the Settlement Class pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) solely for the purposes of the settlement;
- ii. approves finally this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to Settlement Class Members and directing its consummation according to its terms;
- iii. finds that the Settlement Class Notice constituted due, adequate, and sufficient notice of the Settlement Agreement and the Fairness Hearing and meets the requirements of Due Process and the Federal Rules of Civil Procedure;
- iv. directs that, as to the Released Parties, the Action shall be dismissed with prejudice and, except as provided for in this Settlement Agreement, without costs. Such dismissal shall not affect, in any way, the right of Direct Purchaser Plaintiffs or Class Members to pursue claims, if any, outside the scope of the Released

Claims;

v. orders that the Releasing Parties are permanently enjoined and barred from instituting, commencing, or prosecuting any action or other proceedings asserting any Released Claims against any Released Party;

vi. reserves to the Court exclusive jurisdiction over the settlement and this Settlement Agreement, including the interpretation, administration, and consummation of the settlement; and

vii. determines under Fed. R. Civ. P. 54(b) that there is no just reason for delay and directs that the judgment of dismissal as to Espar shall be final and entered forthwith.

V. EFFECTIVE DATE OF SETTLEMENT

12. The Effective Date of Settlement shall be the date when all of the following events shall have occurred and shall be conditioned on the occurrence of all the following events:

i. the contribution to the Settlement Fund has been made pursuant to this Settlement Agreement;

ii. the Settlement Refund, if any is due, has been paid to Espar;

iii. entry of the Preliminary Approval Order;

iv. entry of the Notice Order;

v. entry of the Final Judgment and Order of Dismissal;

vi. no Settlement Party has exercised his, her, or its rights to

terminate this Settlement Agreement pursuant to Section XIV; and

vii. entry by the Court of a Final Judgment and Order of Dismissal, and the Final Judgment and Order of Dismissal becomes final within the meaning of Paragraph 1.q.

13. Notwithstanding any other provision herein, any proceeding or order, or motion for reconsideration, appeal, petition for a writ of certiorari or its equivalent, pertaining solely to any Plan of Distribution and/or Fee and Expense Application, shall not in any way delay or preclude the Effective Date.

14. On the date that Direct Purchaser Plaintiffs and Espar have executed this Settlement Agreement, Direct Purchaser Plaintiffs and Espar shall be bound by its terms, and this Settlement Agreement shall not be rescinded or revoked except in accordance with Paragraph 28, Paragraph 37, or Section XIV of this Settlement Agreement.

VI. SETTLEMENT ADMINISTRATOR

15. Pursuant to the Preliminary Approval Order, and subject to Court approval, Class Co-Lead Counsel shall engage a qualified claims administrator as the Settlement Administrator. The Settlement Administrator will assist with the settlement process as set forth herein.

16. The Settlement Administrator shall assist in the development of the Plan of Distribution and otherwise assist in the effectuation of this Settlement Agreement and any Court orders related thereto.

17. The Settlement Administrator shall effectuate the notice plan approved by the Court in the Preliminary Approval Order and the Notice Order, shall administer and

calculate the amount owed to Eligible Class Members pursuant to the Plan of Distribution, and shall oversee distribution of the Net Settlement Fund to Eligible Class Members in accordance with the Plan of Distribution.

VII. SCOPE AND EFFECT OF SETTLEMENT

18. The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (i) the Action against Espar; and (ii) any and all Released Claims as against all Released Parties.

19. In addition to the effect of any final judgment entered in accordance with this Agreement, upon the Effective Date of Settlement, each of the Releasing Parties: (i) shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal, shall have, fully, finally, and forever, waived, released, relinquished, and discharged all Released Claims against any of the Released Parties, regardless of whether such Releasing Party is eligible for and/or received payment under this Settlement Agreement; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and (iii) agrees and covenants not to sue any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims.

20. The release set forth in Paragraph 19 constitutes a waiver of any and all provisions, rights, and benefits as to Releasing Parties' claims concerning Parking Heaters conferred by Section 1542 of the California Civil Code, which states:

**CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE.
A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**

WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

or by any law of any state or territory of the United States, or provision, statute, regulation, rule, or principle of law or equity, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code, including but not limited to Section 20-7-11 of the South Dakota Codified Laws. The Releasing Parties acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Settlement Agreement, but that it is their intention to release and settle fully, finally, and forever any and all claims released in Paragraph 19, and in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts. The Settlement Parties acknowledge that the foregoing waiver was separately bargained for and is a key and integral element of the Settlement Agreement of which the release is a part.

21. In the event that this Settlement Agreement is terminated pursuant to Paragraph 28, Paragraph 37, or Section XIV, or any condition for the final approval of this Settlement Agreement is not satisfied, the release and covenant not to sue provisions of the foregoing paragraphs shall be null and void and unenforceable.

22. Class Co-Lead Counsel will withdraw all currently pending discovery requests, and will seek no further discovery from Espar, or any other Released Parties, other than as provided for in this Agreement. Espar and the other Released Parties need

not respond to discovery requests from Direct Purchaser Plaintiffs made pursuant to the Federal Rules of Civil Procedure, meet and confer, or otherwise negotiate with Direct Purchaser Plaintiffs regarding discovery requests served in the Action, file a response to any pending complaint in the Action, or otherwise participate in the Action during the pendency of this Agreement, other than to effectuate the terms of this Settlement Agreement and the conditional cooperation provisions set forth in Section XI of this Agreement.

VIII. FEE AND EXPENSE APPLICATION

23. Class Co-Lead Counsel will submit an application or applications (the “Fee and Expense Application”) to the Court for an award from the Settlement Fund of: (i) attorneys’ fees not to exceed 33-1/3% of the Settlement Amount; (ii) reimbursement of litigation expenses incurred in connection with the prosecution of the Action, including any costs associated with notice; and/or (iii) incentive awards for Direct Purchaser Plaintiffs in conjunction with their representation of the Settlement Class. Provided the Fee and Expense Application is consistent with the requirements in this Paragraph and does not seek fees in excess of 33-1/3% of the sum of the Settlement Amount minus the Settlement Refund referred to in Paragraph 35, Espar will take no position on the Fee and Expense Application, but in no event shall Espar or any other Released Parties be responsible to pay any of the fees and expenses referred to in this Paragraph except to the extent that they are paid out of the Settlement Amount. Attorneys’ fees, expenses, and interest as are awarded by the Court (“Fee and Expense Award”) to Class Co-Lead Counsel shall be paid solely from the Settlement Fund to

Class Lead Counsel upon the Effective Date.

24. Notwithstanding any other provision of this Settlement Agreement to the contrary, the Fee and Expense Application shall be considered by the Court separate and apart from its consideration of the fairness, reasonableness, and adequacy of the settlement, and any order or proceeding relating to the Fee and Expense Application, or any appeal of any order relating thereto or reversal or modification thereof, shall not in any way delay or preclude the Effective Date or operate to terminate or cancel this Settlement Agreement or the settlement of the Action, or affect the finality or binding nature of any of the releases granted hereunder.

25. The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any costs, fees or expenses of any Direct Purchaser Plaintiffs or the Settlement Class's respective attorneys, experts, advisors, agents or representatives, except to the extent that such costs, fees, and expenses are approved by the Court and solely paid out of the Settlement Fund.

IX. THE SETTLEMENT FUND

26. The Settlement Fund shall be established as an escrow account and administered by a qualified Escrow Agent, subject to approval by the Court (the "Escrow Account"). The Settlement Fund shall be administered pursuant to this Settlement Agreement and subject to the Court's continuing supervision and control. No Monies shall be paid from the Settlement Fund unless expressly allowed in the Escrow Agreement. Counsel for the Parties agree to cooperate, in good faith, to form an appropriate escrow agreement in conformance with this Settlement Agreement.

27. Subject to the provisions hereof, and in full, complete, and final settlement of the Action as provided herein, Espar shall cause the payment of \$8,000,000 (eight million dollars exactly) to be transferred to the Escrow Agent within thirty (30) calendar days following the later of (i) entry of the Preliminary Approval Order or (ii) the date Espar is provided with the account number, account name, and wire transfer information for the Escrow Account. These funds, together with any interest earned thereon, shall constitute the Settlement Fund. All costs and expenses incurred in connection with providing Class Notice and the administration of the settlement shall be paid exclusively from the Settlement Fund, subject to approval from the Court.

28. Without prejudice to the Direct Purchaser Plaintiffs' right to seek enforcement of this Settlement Agreement, if the Settlement Amount of \$8,000,000 is not timely transferred to the escrow account, Class Co-Lead Counsel may terminate this Settlement Agreement if: (i) Class Co-Lead Counsel has notified Espar's Counsel in writing of Class Co-Lead Counsel's intention to terminate this Settlement Agreement, (ii) Class Co-Lead Counsel has met and conferred with Espar's Counsel concerning this notification, and (iii) the Settlement Amount is not transferred to the Settlement Fund within ten (10) business days after Class Co-Lead Counsel has provided such written notice.

29. The Settlement Fund shall be invested exclusively in accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either: (a) fully insured by the Federal Deposit Insurance Corporation

("FDIC"); or (b) secured by instruments backed by the full faith and credit of the United States Government. The proceeds of these accounts shall be reinvested in similar instruments at their then-current market rates as they mature. All risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this Paragraph shall be borne by the Settlement Fund.

30. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Settlement Agreement and the Plan of Distribution approved by the Court.

31. As set forth in this Settlement Agreement, Espar shall be responsible for paying the Settlement Amount. Espar shall have no responsibility for any other costs, including, but not limited to, as further detailed in this Settlement Agreement, any attorneys' fees and expenses, accountants' expenses, administrative expenses, or any Taxes or tax-related costs (including any estimated taxes, interest, or penalties) relating to the Settlement Fund, but all such fees, expenses, and costs shall be paid from the Settlement Fund, as approved by the Court. Further, Taxes and tax-related costs shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Amount.

X. REDUCTION FOR PREVIOUSLY REACHED SETTLEMENTS

32. Within twenty (20) business days of depositing the Settlement Amount in the escrow account, Espar shall provide Class Co-Lead Counsel, subject to the Protective Order in this Action, the dollar values of any settlements or release of claims relating to

the claims in this Action that Espar paid or caused to be paid to any potential Settlement Class Members before September 20, 2017 (the “Settled Customers”), along with proof of payment for any such settlement or release of claim in the form of a business record from a bank or Espar (or Espar affiliate) of such payment.

33. Within twenty (20) business days of depositing the Settlement Amount in the escrow account, Espar shall provide Class Co-Lead Counsel with the dollar value of all U.S. Parking Heater sales during the Settlement Class Period by Espar to each Settled Customer (the “Settled Sales”), and the total dollar value of all U.S. Parking Heater sales by Espar to the entire proposed Settlement Class (including the sales to all potential Opt Outs and Settled Customers) during the Settlement Class Period (“Total Sales”). The ratio of Settled Sales to Total Sales shall be the Settlement Ratio. Espar and Direct Purchaser Plaintiffs agree that Espar’s transactional data produced in the Action shall be used to determine the Settled Sales, Total Sales, and Settlement Ratio.

34. In the event Direct Purchaser Plaintiffs in good faith dispute both (i) Espar’s claimed Settled Sales amount and/or the resulting Settlement Ratio, and (ii) that the Settlement Ratio is thirty-five percent (35%) or higher, Direct Purchaser Plaintiffs must notify Espar’s Counsel within ten (10) business days from the delivery thereof. Such notification shall include the basis for any dispute, the Settlement Ratio below thirty-five percent (35%) that Direct Purchaser Plaintiffs believe is accurate, and any supporting data or documentation. Espar shall respond to such notification within ten (10) business days. If, after good-faith discussion about the dispute, the parties cannot agree to a resolution, they shall submit the dispute to Mediator Judge Walker (Ret.) (or, if Judge

Walker is unavailable, another mediator mutually acceptable to Direct Purchaser Plaintiffs and Espar) for final and binding resolution within thirty (30) days of Espar's response to Direct Purchaser Plaintiffs' notification. Neither Direct Purchaser Plaintiffs nor their counsel may make any effort to encourage, directly or indirectly, any Settled Customer to seek the cancellation, nullification, rescission, termination, withdrawal, invalidation, amendment, or modification of any of the releases and settlement agreements Espar has reached with any Settled Customers. However, the preceding sentence shall not prohibit Class Co-Lead Counsel from responding to questions potential Settlement Class Members (including any Settled Customers) ask regarding their rights under this Agreement.

35. Within ten (10) business days of the determination of the Settlement Ratio (whether upon a failure of Direct Purchaser Plaintiffs to dispute Espar's calculation, by agreement of the parties, or pursuant to Mediator resolution), and without the need for any further instruction or approval from Direct Purchaser Plaintiffs, Escrow Agent shall remit to Espar an amount equal to \$8,000,000 multiplied by the Settlement Ratio (the "Settlement Refund"). If the Settlement Ratio is thirty-five percent (35%) or higher, the Escrow Agent shall remit thirty-five percent (35%) (\$2,800,000) of the Settlement Amount to Espar. In no event shall Escrow Agent remit to Espar more than \$2,800,000 pursuant to this Paragraph.

36. To the extent the amount a Settled Customer was paid by Espar pursuant to a private settlement, as reported in Paragraph 32, is less than the amount that same Settled Customer would have received under this Settlement Agreement had it not settled

separately with Espar (calculated based on the assumption that only that particular Settled Customer had not settled, but the other customer settlements remained in place, and using only the Settled Customers' purchases from Espar as the basis for the calculation), then Espar shall not oppose the designation of the Settled Customer as an Eligible Class Member and Class Co-Lead Counsel's decision, subject to Court approval, to allocate to that Settled Customer a portion of the Settlement Fund pursuant to the Plan of Distribution up to the amount it would have received had it not entered into a private settlement with Espar less the amount of its private settlement with Espar.

37. Without prejudice to Espar's right to seek enforcement of this Settlement Agreement, failure by Escrow Agent or Direct Purchaser Plaintiffs to timely remit to Espar the Settlement Refund shall entitle Espar to terminate this Settlement Agreement if (i) Espar's Counsel has notified Class Co-Lead Counsel in writing of Espar's intention to terminate this Settlement Agreement, (ii) Espar and Class Co-Lead Counsel have met and conferred concerning this notification, and (iii) the Settlement Refund is not transferred to Espar within ten (10) business days after Espar has provided such written notice.

XI. CONDITIONAL COOPERATION

38. Notwithstanding any other provision of this Settlement Agreement, neither Espar nor any of the other Released Parties shall have any obligations under Section XI of this Agreement unless Direct Purchaser Plaintiffs' settlement agreement with Webasto does not receive final approval, is invalidated, or is otherwise terminated. If that occurs, then Espar shall undertake reasonable efforts to cooperate with Class Co-Lead Counsel as set forth in this Section XI.

39. To the extent any of Espar's documents produced or to be produced in this Action are required to be authenticated and/or shown to be business records, including but not limited to evidence of Espar's sales or costs of Parking Heaters, Espar agrees to produce, to the extent possible, through affidavits or declarations, or if necessary, through deposition or testimony at trial, representatives qualified to authenticate such documents and information, and, to the extent possible, provide confirmation that such documents and information are business records. Class Co-Lead Counsel shall use reasonable efforts to minimize the burden to Espar of any authentication or business record testimony under this Paragraph, including by obtaining stipulations that would avoid the need to call Espar witnesses at trial for the purpose of obtaining such evidentiary foundations.

40. Espar agrees that, after the Execution Date, Espar's Counsel will make themselves available for up to a total of three (3) meetings (not to exceed one business day each) with Class Co-Lead Counsel to provide information known to Espar concerning documents, witnesses, meetings, communications, and events related to claims at issue in this Action not covered by privilege or other protections available under any applicable statute or United States laws, including, but not limited to, identifying individuals such as current or former employees, who may provide information or potential testimony relevant to the Action. Espar's Counsel will make themselves available for reasonable follow-up conversations in connection with the meetings referred to in this Paragraph. Notwithstanding any other provision in this Settlement Agreement, Direct Purchaser Plaintiffs and Class Co-Lead Counsel agree that they shall not use directly or indirectly the information received pursuant to this Section for any purpose

other than the prosecution of the Action. The Settlement Parties and their counsel further agree that any statements made by Espar's Counsel in connection with and/or as part of this Settlement Agreement shall be protected by Federal Rule of Evidence 408, and shall in no event be discoverable by any person or treated as evidence of any kind.

41. Upon reasonable notice after the Execution Date, Espar agrees to use reasonable efforts to make available for interviews and trial testimony at a location or locations to which the parties mutually agree (except for testimony at trial, which shall be at the United States Courthouse of the United States District Court for the Eastern District of New York) a total of two (2) current officers and employees of Espar who Class Co-Lead Counsel, in consultation with Espar's Counsel, reasonably and in good faith believe have knowledge of the claims alleged by Direct Purchaser Plaintiffs in the Action. If it is necessary to preserve testimony before trial, Direct Purchaser Plaintiffs may move the Court for leave to take the deposition of any such individual, and Espar agrees not to unreasonably oppose such motion. Nothing herein shall require Espar to pay any expense of Direct Purchaser Plaintiffs or Class Co-Lead Counsel in connection with any interview, deposition, or testimony provided for in this Paragraph. Upon request of the witness, Direct Purchaser Plaintiffs shall provide a mutually agreeable translator for interviews and/or trial testimony of any witness designated pursuant to this Section who is not prepared to be interviewed or to testify in English. An "interview" for purposes of this Paragraph shall last no longer than seven hours, excluding reasonable breaks, and, subject to reasonable limitations, may occur on more than a single day but not more than two days, which the parties shall endeavor to make consecutive. Direct Purchaser

Plaintiffs agree to bear reasonable travel costs incurred by witnesses pursuant to this Paragraph, and Direct Purchaser Plaintiffs agree to bear lodging and meal expenses for such witnesses, not to exceed \$500.00 per day, and the cost of any translator that may be required pursuant to this Paragraph.

42. If Class Co-Lead Counsel believe that Espar or any current employee of Espar has failed to cooperate under the terms of this Agreement, Class Co-Lead Counsel may seek an Order from the Court compelling such cooperation. Nothing in this provision shall limit in any way Espar's ability to defend the level of Cooperation it has provided or to defend its compliance with the terms of the Cooperation provisions in this Agreement. The release of claims provided for under Paragraph 19 and the covenant not to sue provided under Paragraph 19 shall not apply to any person who has affirmatively refused to comply with a reasonable request by Class Co-Lead Counsel, properly made pursuant to Paragraph 38 of this Settlement Agreement, that the person be interviewed or appear to testify at trial, and who, at the time of the determination, is a current employee or officer of Espar. If Class Co-Lead Counsel believes that such person has refused to cooperate under the terms of this Settlement Agreement and Espar does not in good faith agree, Class Co-Lead Counsel may seek a determination from the Mediator, Judge Vaughn Walker (Ret'd.), who shall make that determination after considering all relevant factors, including an explanation by the person, and taking due account of the person's reasonable scheduling conflicts, any pertinent health or personal problems (including whether the person can travel to the United States without fear of arrest), and the total burden of the cooperation that the person has provided.

43. Espar's obligations to cooperate shall not be affected by the release set forth in Paragraph 19 of this Settlement Agreement. Unless this Settlement Agreement is rescinded, disapproved, or otherwise fails to take effect, Espar's obligations to cooperate under this Settlement Agreement shall continue until the date that final judgment has been rendered in the Action with respect to all Defendants, subject to the provisions of Paragraph 38.

44. In the event that this Agreement's Effective Date fails to occur, as contemplated in Paragraph 12 hereof, or in the event that it is terminated by either party under any provision herein, the parties agree that neither Direct Purchaser Plaintiffs nor Class Co-Lead Counsel nor any potential Settlement Class Member shall be permitted to introduce into evidence against Espar or any other Released Parties, at any hearing or trial, or in support of any motion, opposition or other pleading in the Action or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of the Action, any documents provided by Espar and/or the other Released Parties, their counsel, or any individual made available by Espar pursuant to cooperation under this Section (as opposed to from any other source or pursuant to a court order). This limitation shall not apply to any discovery of Espar that Class Co-Lead Counsel participate in or obtain through the discovery process as part of the Action.

XII. ADMINISTRATION OF THE SETTLEMENT

45. The Settlement Administrator shall process this settlement based upon information provided by the Settlement Parties in connection with the settlement, and, after entry of the Plan of Distribution, distribute the Net Settlement Fund in accordance

with the Plan of Distribution. Except for its obligation to pay the Settlement Amount or cause it to be paid, Espar shall have no liability, obligation, or responsibility for the administration of the settlement or disbursement of the Net Settlement Fund.

46. All proceedings with respect to the administration, processing, and determination of payment to Eligible Class Members and the determination of all controversies relating thereto shall be subject to the jurisdiction of the Court.

47. The Net Settlement Fund shall be distributed by the Settlement Administrator to, or for the account of, Eligible Class Members, as the case may be, only after the Effective Date and after: (i) all matters with respect to the Fee and Expense Application have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; and (ii) all fees and costs of administration have been paid.

48. Class Co-Lead Counsel will apply to the Court for an order (the “Class Distribution Order”) approving the Settlement Administrator’s determinations concerning the payments to Eligible Class Members and approving any fees and expenses not previously applied for, including the fees and expenses of the Settlement Administrator, and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to or for the account of Eligible Class Members, as the case may be.

49. Direct Purchaser Plaintiffs and Settlement Class Members shall look solely to the Settlement Fund as full, final, and complete satisfaction of all Released Claims. Except as set forth in Paragraph 27, Espar shall have no obligation under this Settlement Agreement or the settlement to pay or cause to be paid any amount of money,

and Espar shall have no obligation to pay or reimburse any fees, expenses, costs, liability, losses, Taxes, or damages whatsoever alleged or incurred by Direct Purchaser Plaintiffs, by any Settlement Class Member, or by any Releasing Parties, including, but not limited to, by their attorneys, experts, advisors, agents, or representatives, with respect to the Action and Released Claims. Direct Purchaser Plaintiffs and Settlement Class Members acknowledge that as of the Effective Date, the releases given herein shall become effective immediately by operation of the Final Judgment and Order of Dismissal and shall be permanent, absolute, and unconditional.

50. Except as provided in Paragraph 35 of this Agreement, Espar shall not have a reversionary interest in the Net Settlement Fund unless this Settlement Agreement is rescinded pursuant to Paragraphs 28, 37, or 54. If there is a balance remaining in the Net Settlement Fund after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), or reasonably soon thereafter, the Settlement Administrator shall, if logistically feasible and economically justifiable, reallocate such balances among Eligible Class Members in an equitable fashion. These redistributions shall be repeated until the remaining balance in the Net Settlement Fund is *de minimis* and such remaining balance shall be donated to an appropriate 501(c)(3) non-profit organization selected by Class Co-Lead Counsel and Espar's Counsel and approved by the Court.

XIII. TAXES

51. The Settlement Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1, and

agree not to take any position for Tax purposes inconsistent therewith. The Settlement Fund, less any amounts incurred for notice, administration, and/or Taxes (as defined below), plus any accrued interest thereon, shall be returned to Espar, as provided in Paragraph 54, if the settlement does not become effective for any reason, including by reason of a termination of this Settlement Agreement pursuant to Paragraph 28, Paragraph 37, or Section XIV.

52. For the purpose of § 468B of the United States Internal Revenue Code and the Treasury regulations thereunder, Class Co-Lead Counsel shall be designated as the “administrator” of the Settlement Fund. Class Co-Lead Counsel shall timely and properly file all income, informational, and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns shall be consistent with this Section XIII and in all events shall reflect that all Taxes (as defined below) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

53. All: (i) taxes or other similar imposts or charges (including any estimated taxes, interest, penalties, or additions to tax) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon the Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “Qualified Settlement Fund” within the meaning of Treasury Regulation § 1.468B-1 (or any relevant equivalent for state tax purposes); and (ii) other taxes or tax expenses imposed on or in connection with the Settlement Fund (collectively, “Taxes”), shall promptly be paid out of the Settlement

Fund by the Escrow Agent without prior order from the Court. The Escrow Agent shall also be obligated to, and shall be responsible for, withholding from distribution to Settlement Class Members any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes. The Settlement Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Paragraph. Neither the Settlement Parties nor their counsel shall have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of the Escrow Agent, or Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement Fund or otherwise; (ii) the Plan of Distribution; (iii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of, the Settlement Fund; or (v) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any Tax returns. The Escrow Agent shall indemnify and hold harmless the Settlement Parties out of the Settlement Fund from and against any claims, liabilities, or losses relating to the matters addressed in the preceding sentence.

XIV. TERMINATION OF SETTLEMENT

54. Direct Purchaser Plaintiffs, through Class Co-Lead Counsel, and Espar, through Espar's Counsel, shall, in each of their separate discretions, have the right to terminate this Settlement Agreement by providing written notice of their election to do so ("Termination Notice") to all other Settlement Parties hereto within thirty (30) days of

the date on which any of the following events occur: (i) the Court declines to enter the Preliminary Approval Order in any material respect without leave to file a revised motion for Preliminary Approval, and appellate review is not sought or is denied; (ii) the Court refuses to approve this Settlement Agreement or any material part of it; (iii) the Court declines to enter the Final Judgment and Order of Dismissal in any material respect; or (iv) the Final Judgment and Order of Dismissal is modified or reversed by a court of appeal or any higher court in any material respect. Notwithstanding this Paragraph, the Court's determination as to the Fee and Expense Application and/or any Plan of Distribution, or any determination on appeal from any such order, shall not provide grounds for termination of this Settlement Agreement. Except as otherwise provided herein, in the event the Settlement Agreement is terminated in accordance herewith, is vacated, is not approved, or the Effective Date fails to occur for any reason, then the parties to this Settlement Agreement shall be deemed to have reverted to their respective status in the Action as of the Execution Date, and, except as otherwise expressly provided herein, the Settlement Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered, and any portion of the Settlement Fund previously paid by or on behalf of Espar, together with any interest earned thereon (and, if applicable, repayment of any Fee and Expense Award referred to in Section VIII hereof), less Taxes due, if any, with respect to such income, and less costs of settlement administration and notice to the Settlement Class actually incurred and paid or due from the Settlement Fund, shall be returned to Espar within ten (10) business days from the date of the event causing such termination. At the request of Espar's Counsel, the Escrow

Agent shall apply for any tax refund owed on the Settlement Fund and pay the proceeds to Espar.

55. Neither Direct Purchaser Plaintiffs nor Class Co-Lead Counsel nor Espar nor Espar's Counsel shall initiate discussions encouraging, either directly or indirectly, any potential member of the Settlement Class to request exclusion from the Settlement Class.

XV. RESERVATION OF CLASS MEMBERS' RIGHTS AGAINST OTHER DEFENDANTS

56. All rights of any Settlement Class Member against other former, current, or future Defendants or co-conspirators, or any other person, other than the Released Parties, with respect to any of the Released Claims are specifically reserved by Direct Purchaser Plaintiffs and the Settlement Class Members. The sale of Parking Heaters by Espar shall, to the extent permitted and/or authorized by law, remain in the case against the other current or future Defendants in the Action other than the Released Parties as a potential basis for damage claims and shall be part of any joint and several liability claims against the other former, current, or future defendants in the Action or any other persons other than the Released Parties.

XVI. MISCELLANEOUS

57. This Agreement does not settle or compromise any claim by Direct Purchaser Plaintiffs or any Settlement Class Member against any former or current Defendants or alleged co-conspirator or any other person or entity other than the Released Parties.

58. The parties to this Settlement Agreement intend the settlement to be a final

and complete resolution of all disputes asserted or which could be asserted by Direct Purchaser Plaintiffs and/or any Settlement Class Member against the Released Parties with respect to the Action and the Released Claims. Accordingly, Direct Purchaser Plaintiffs and Espar agree not to assert in any judicial proceeding that the Action was brought by Direct Purchaser Plaintiffs or defended by Espar in bad faith or without a reasonable basis. The Settlement Parties further agree not to assert in any judicial proceeding that any Party violated Fed. R. Civ. P. 11. The Settlement Parties agree that the amount paid and the other terms of the settlement were negotiated at arm's length in good faith by the Settlement Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel and the mediator.

59. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

60. The administration and consummation of the settlement as embodied in this Settlement Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders relating to the Fee and Expense Application, the Plan of Distribution, and enforcing the terms of this Settlement Agreement.

61. For the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision of this Agreement to be construed against its drafter, Direct Purchaser Plaintiffs and Espar agree that this Agreement is to be deemed to have been drafted equally by all Settlement Parties hereto.

62. This Settlement Agreement shall constitute the entire agreement between

Direct Purchaser Plaintiffs and Espar pertaining to the settlement of Direct Purchaser Plaintiffs' claims against Espar in the Action and supersedes any and all prior and contemporaneous undertakings, communications, representations, understandings, negotiations and discussions, either oral or written, between Direct Purchaser Plaintiffs and Espar in connection therewith. All terms of this Settlement Agreement are contractual and not mere recitals. The terms of this Settlement Agreement are and shall be binding upon, and inure to the benefit of, each of the Settlement Parties hereto, their heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, and upon all other persons claiming any interest in the subject matter hereto through any of the parties hereto, including Releasors and any Settlement Class Members.

63. This Settlement Agreement may be modified or amended only by a writing executed by Direct Purchaser Plaintiffs, through Class Co-Lead Counsel, and Espar, through Espar's Counsel, subject (if after preliminary or final approval by the Court) to approval by the Court. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

64. Nothing in this Settlement Agreement constitutes an admission by Espar as to the merits of the allegations made in the Action, the validity of any defenses that could be asserted by Espar, or the appropriateness of certification of any class other than the Settlement Class under Fed. R. Civ. P. 23 solely for settlement purposes. This Settlement Agreement is without prejudice to the rights of Espar to: (i) challenge the Court's certification of any class, including the Settlement Class, in the Action should the

Settlement Agreement not be approved or implemented for any reason; and/or (ii) oppose any certification or request for certification in any other proposed or certified class action.

65. All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of New York without regard to its choice-of-law principles.

66. Except as otherwise provided in Paragraphs 34 and 42, Espar, Direct Purchaser Plaintiffs, their respective counsel, and the Settlement Class Members hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Eastern District of New York, for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein.

67. The proposed Plan of Distribution is not a necessary term of this Settlement Agreement, and it is not a condition of this Settlement Agreement that any particular Plan of Distribution be approved. To the extent the proposed or approved Plan of Distribution is consistent with the terms of this Settlement Agreement, the Released Parties will take no position with respect to the proposed Plan of Distribution or such Plan of Distribution as may be approved by the Court. The Plan of Distribution is a matter separate and apart from the settlement between the Settlement Parties, and any decision by the Court concerning a particular Plan of Distribution shall not affect the validity or finality of the settlement, including the scope of the release.

68. This Settlement Agreement may be executed in counterparts by Direct

Purchaser Plaintiffs and Espar, and a facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

69. Direct Purchaser Plaintiffs and Espar acknowledge that they have been represented by counsel and have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so.

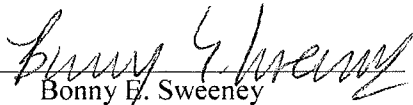
Therefore, Direct Purchaser Plaintiffs and Espar and their respective counsel agree that they will not seek to set aside any part of this Settlement Agreement on the grounds of mistake. Moreover, Direct Purchaser Plaintiffs and Espar and their respective counsel understand, agree, and expressly assume the risk that any fact may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that this Settlement Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

70. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement, subject to Court approval; and the undersigned Class Co-Lead Counsel represent that they are authorized to execute this Settlement Agreement on behalf of Direct Purchaser Plaintiffs. Each of the undersigned attorneys shall use their best efforts to effectuate this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement.

DATED: 11/29/17

HAUSFELD LLP


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On behalf of Direct Purchaser Plaintiffs and the Settlement Class

DATED: Nov. 29, 2017

O'MELVENY & MYERS LLP



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*On behalf of Defendants Eberspaecher
Climate Control Systems GmbH & Co. KG,
Espar, Inc., and Espar Products Inc.*