

Plan complies with all minimum funding requirements under ERISA. Except as provided on Schedule 6.9, as of the Effective Date, neither the Borrower nor any member of the Controlled Group is party to a Multiemployer Plan or has, or would reasonably be expected to have, any liability to a Multiemployer Plan.

6.10. Accuracy of Information. The information, exhibits or reports furnished by the Borrower to the SEC on Form 10-K and Form 10-Q do not contain any material misstatement of fact or omit to state a material fact or any fact necessary to make the statements contained therein not misleading.

6.11. Material Agreements. Neither the Borrower nor any Restricted Subsidiary is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (i) any agreement or instrument to which it is a party, which default would reasonably be expected to have a Material Adverse Effect or (ii) any agreement or instrument evidencing or governing Material Indebtedness.

6.12. Regulation U. Neither the Borrower nor any of its Restricted Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate of buying or carrying margin stock (as defined in Regulation U), and after applying the proceeds of each Loan, margin stock (as defined in Regulation U) constitutes less than 25% of the value of those assets of the Borrower and its Restricted Subsidiaries which are subject to any limitation on sale, pledge, or any other restriction hereunder.

6.13. Compliance With Laws. The Borrower and its Restricted Subsidiaries have complied with all applicable statutes, rules, regulations, orders and restrictions of any domestic or foreign government or any instrumentality or agency thereof having jurisdiction over the conduct of their respective businesses or the ownership of their respective Property, except where the failure to do so has not caused or resulted in the occurrence of a Material Adverse Effect.

6.14. Ownership of Properties. On the Effective Date, the Borrower and its Restricted Subsidiaries have good title, free of all Liens other than those permitted by Section 8.6, to all of the assets reflected in the Borrower's most recent consolidated financial statements provided to the Administrative Agent, as owned by the Borrower and its Restricted Subsidiaries.

6.15. Plan Assets; Prohibited Transactions. The Borrower is not an entity deemed to hold "plan assets" within the meaning of 29 C.F.R. § 2510.3-101, as modified by Section 3(42) of ERISA, of an employee benefit plan (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA or any plan (within the meaning of Section 4975 of the Code), and neither the execution of this Agreement nor the making of Loans hereunder gives rise to a prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code.

6.16. Environmental Matters. In the ordinary course of its business, the officers of the Borrower consider the effect of Environmental Laws on the business of the Borrower and its Restricted Subsidiaries, in the course of which they identify and evaluate potential risks and liabilities accruing to the Borrower due to Environmental Laws. On the basis of this considera-

tion, the Borrower has concluded that, in its good faith determination, the risks and liabilities accruing to the Borrower due to Environmental Laws are not reasonably expected to have a Material Adverse Effect. Neither the Borrower nor any Restricted Subsidiary has received any notice to the effect that its operations are not in material compliance with any of the requirements of applicable Environmental Laws or are the subject of any federal or state investigation evaluating whether any remedial action is needed to respond to a release of any Hazardous Material into the environment, which non-compliance or remedial action would reasonably be expected to have a Material Adverse Effect.

6.17. Investment Company Act. Neither the Borrower nor any Restricted Subsidiary is an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

6.18. Insurance. The Borrower maintains, and has caused each Restricted Subsidiary to maintain, with financially sound and reputable insurance companies, insurance on all their Property in such amounts, subject to such deductibles and self-insurance retentions and covering such properties and risks as is consistent with sound business practice. The Borrower has delivered to the Administrative Agent and the Lenders a complete and accurate list of its insurance policies and programs and the Property subject thereto as of the Effective Date. The Borrower has caused all such policies to be subject to provisions which prohibit the cancellation thereof by the provider thereof without at least thirty (30) days’ prior written notice to the Borrower and each loss payee thereof.

6.19. No Default or Unmatured Default. No Default or Unmatured Default has occurred and is continuing.

6.20. USA PATRIOT Act.

(a) Neither the Borrower nor any of its Restricted Subsidiaries or, to the knowledge of the Borrower, any of their respective Affiliates over which any of the foregoing exercises management control (each, a “**Controlled Affiliate**”) is a Prohibited Person, and the Borrower, its Restricted Subsidiaries and, to the knowledge of the Borrower, such Controlled Affiliates are in compliance with all applicable orders, rules and regulations of OFAC.

(b) Neither the Borrower nor any of its Restricted Subsidiaries or, to the knowledge of the Borrower, any of their respective Controlled Affiliates: (i) is targeted by United States or multilateral economic or trade sanctions currently in force; (ii) is owned or controlled by, or acts on behalf of, any Person that is targeted by United States or multilateral economic or trade sanctions currently in force; or (iii) is named, identified or described on any list of Persons with whom United States Persons may not conduct business, including any such blocked persons list, designated nationals list, denied persons list, entity list, debarred party list, unverified list, sanctions list or other such lists published or maintained by the United States, including OFAC, the United States Department of Commerce or the United States Department of State.

6.21. Embargoed Persons. (a) None of the Borrower’s or its Restricted Subsidiaries’ assets constitute property of, or are beneficially owned, directly or indirectly, by any Person targeted by economic or trade sanctions under United States law, including but not limited

to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq. (the “**Trading with the Enemy Act**”), any of the foreign assets control regulations of the Treasury (31 C.F.R., Subtitle B, Chapter V, as amended) (the “**Foreign Assets Control Regulations**”) or any enabling legislation or regulations promulgated thereunder or executive order relating thereto (which includes, without limitation, (i) Executive Order No. 13224, effective as of September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the “**Executive Order**”) and (ii) the Act), if the result of such ownership would be that any Loan made by any Lender would be in violation of law (“**Embargoed Person**”); (b) no Embargoed Person has any interest of any nature whatsoever in the Borrower if the result of such interest would be that any Loan would be in violation of law; (c) the Borrower has not engaged in business with Embargoed Persons if the result of such business would be that any Loan made by any Lender would be in violation of law; and (d) neither Borrower nor any Controlled Affiliate (i) is or will become a “blocked person” as described in the Executive Order, the Trading with the Enemy Act or the Foreign Assets Control Regulations or (ii) engages or will engage in any dealings or transactions, or be otherwise associated, with any such “blocked person.” For purposes of determining whether or not a representation is true under this Section 6.21, the Borrower shall not be required to make any investigation into (i) the ownership of publicly traded stock or other publicly traded securities or (ii) the beneficial ownership of any collective investment fund.

## SECTION 7. Affirmative Covenants

### 7.1. Financial Reporting.

(a) Whether or not required by the SEC’s rules and regulations, so long as any Loans are outstanding, the Borrower shall furnish (whether through hard copy or internet-accessible data) to the Lenders and the Administrative Agent, within the time periods specified in the SEC’s rules and regulations, (i) all quarterly and annual reports that would be required to be filed with the SEC on Forms 10-Q and 10-K if the Borrower were required to file such reports, and (ii) all current reports that would be required to be filed with the SEC on Form 8-K if the Borrower were required to file such reports.

(b) All such reports shall be prepared in all material respects in accordance with all of the rules and regulations applicable to such reports. Each annual report on Form 10-K shall include a report on the Borrower’s consolidated financial statements by the Borrower’s independent registered public accounting firm. In addition, the Borrower shall file a copy of each of the reports referred to in clauses (a)(i) and (a)(ii) above with the SEC for public availability within the time periods specified in the rules and regulations applicable to such reports (unless the SEC will not accept such a filing) and make such information available to securities analysts and prospective investors upon request.

(c) If at any time, the Borrower is no longer subject to the periodic reporting requirements of the Exchange Act for any reason, the Borrower shall nevertheless continue filing the reports specified in clauses (a) and (b) with the SEC within the time periods specified above unless the SEC will not accept such a filing; *provided* that, for so long as the Borrower is not

subject to the periodic reporting requirements of the Exchange Act for any reason, the time period for filing reports on Form 8-K shall be ten Business Days after the event giving rise to the obligation to file such report. The Borrower agrees that it shall not take any action for the purpose of causing the SEC not to accept any such filings. If, notwithstanding the foregoing, the SEC will not accept the Borrower's filings for any reason, the Borrower shall post the reports referred to in the preceding paragraph on its website within the time periods that would apply if the Borrower were required to file those reports with the SEC, subject to the above proviso.

(d) Delivery of such reports, information and documents to the Administrative Agent is for informational purposes only, and the Administrative Agent's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Borrower's compliance with any of its covenants hereunder (as to which the Administrative Agent is entitled to rely exclusively on Officers' Certificates).

(e) The Borrower shall be deemed to have furnished such reports to the Administrative Agent and the Lenders pursuant to this Section 7.1 if it has filed such reports with the SEC using the EDGAR filing system (or any successor thereto) and such reports are publicly available.

## 7.2. Compliance Certificate.

(a) The Borrower shall deliver to the Administrative Agent, within 90 days after the end of each fiscal year, an Officers' Certificate stating that a review of the activities of the Borrower and its Restricted Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Authorized Officers with a view to determining whether the Borrower has kept, observed, performed and fulfilled its obligations under this Agreement, and further stating, as to each such Authorized Officer signing such certificate, that to the best of his or her knowledge the Borrower has kept, observed, performed and fulfilled each and every covenant contained in this Agreement and is not in default in the performance or observance of any of the terms, provisions and conditions of this Agreement (or, if a Default or Unmatured Default shall have occurred, describing all such Defaults or Unmatured Defaults of which he or she may have knowledge and what action the Borrower is taking or proposes to take with respect thereto) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or interest, if any, on the Loans is prohibited or if such event has occurred, a description of the event and what action the Borrower is taking or proposes to take with respect thereto.

(b) The Borrower shall, so long as any Loans are outstanding, deliver to the Administrative Agent, forthwith upon any Authorized Officer having knowledge that an event or circumstance constitutes a Default or Unmatured Default and that such event or circumstance has occurred and is existing, an Officers' Certificate specifying such Default or Unmatured Default and what action the Borrower is taking or proposes to take with respect thereto.

7.3. Taxes. The Borrower will, and will cause each Restricted Subsidiary to, timely file complete and correct United States federal and applicable material foreign, state and local tax returns required by law and pay when due all taxes, assessments and governmental

charges and levies upon it or its income, profits or Property, except those which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been set aside in accordance with Agreement Accounting Principles.

7.4. Waiver of Stay, Extension and Usury Laws. Subject to Section 4.6 hereof, each of the Borrower and the Guarantors covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Agreement; and each of the Borrower and the Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Administrative Agent, but shall suffer and permit the execution of every such power as though no such law had been enacted.

7.5. Use of Proceeds. The Borrower will, and will cause each Restricted Subsidiary to, use the proceeds of the Loans (a) to finance the BP Acquisition, (b) for general corporate purposes, including, without limitation, for working capital, to repay certain Indebtedness, capital expenditures, Permitted Acquisition Indebtedness, other investments and dividends and other distributions permitted hereunder and to pay fees and expenses incurred in connection with this Agreement. The Borrower shall use the proceeds of the Loans in compliance with all applicable legal and regulatory requirements and any such use shall not result in a violation of any such requirements, including, without limitation, Regulation U and X, the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, and the regulations promulgated thereunder.

7.6. Notice of Default. Within five (5) Business Days after an Authorized Officer has knowledge thereof, the Borrower will, and will cause each Guarantor to, give notice in writing to the Lenders of the occurrence of any Default or Unmatured Default.

7.7. Corporate Existence. Subject to Section 8.8 hereof, the Borrower shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, and the corporate, partnership or other existence of each of its Restricted Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Borrower or any such Restricted Subsidiary; *provided, however*, that the Borrower shall not be required to preserve the existence of any of its Restricted Subsidiaries, if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole. For the avoidance of doubt, this Section 7.7 shall not prohibit any change of the Borrower or any Restricted Subsidiary (i) in its legal name, (ii) in its jurisdiction of organization or location for purposes of the UCC, (iii) in its identity or type of organization or corporate structure or (iv) in its Federal Taxpayer Identification Number or organizational identification number.

7.8. Conduct of Business. The Borrower will, and will cause each Guarantor to, carry on and conduct its business in substantially the same manner and in similar fields of enterprise as it is presently conducted and do all things necessary to remain duly incorporated or

organized, validly existing and (to the extent such concept applies to such entity) in good standing as a corporation, partnership or limited liability company in each of its jurisdictions of incorporation or organization, as the case may be, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted, except where the failure to do so would not reasonably be expected to cause or result in the occurrence of a Material Adverse Effect.

7.9. Insurance. The Borrower will, and will cause each Restricted Subsidiary to, maintain with financially sound and reputable insurance companies insurance in such amounts, subject to such deductibles and self-insurance retentions, and covering such risks as is consistent with sound business practices. The Borrower shall deliver to the Administrative Agent additional insured or lender's loss payable endorsements in form and substance reasonably acceptable to the Administrative Agent for insurance policies providing coverage for the Collateral. Each such policy providing coverage for the Collateral maintained by the Borrower or a Restricted Subsidiary shall provide that the insurer will endeavor to give at least (30) days' prior written notice of any cancellation to the Borrower or the applicable Restricted Subsidiary, and the Administrative Agent.

7.10. Compliance with Laws. The Borrower will, and will cause each Restricted Subsidiary to, comply with all laws, rules, regulations, orders, writs, judgments, injunctions, decrees or awards to which it may be subject, except where the Borrower believes in good faith that the failure to do so would not reasonably be expected to cause or result in the occurrence of a Material Adverse Effect.

7.11. Maintenance of Properties. Subject to Section 8.4, the Borrower will, and will cause each Restricted Subsidiary to, maintain, preserve, protect and keep its Property used in the operation of its business in good repair, working order and condition (ordinary wear and tear excepted), and make all necessary repairs, renewals and replacements so that its business carried on in connection therewith may be properly conducted at all times in the ordinary course; provided, however, that the foregoing shall not prohibit, limit or impair the Borrower's or any Restricted Subsidiary's ability to sell or discontinue the use of, in its reasonable business judgment, any Property.

7.12. Inspection; Keeping of Books and Records. The Borrower will, and will cause each Restricted Subsidiary to, permit the Administrative Agent, by its respective representatives and agents, to inspect any of the Property, books and financial records of the Borrower and each Restricted Subsidiary (including all insurance policies), including, without limitation, at least one field exam per calendar year, to examine and make copies of the books of accounts and other financial records of the Borrower and each Restricted Subsidiary, and to discuss the affairs, finances and accounts of the Borrower and each Restricted Subsidiary with, and to be advised as to the same by, their respective officers, at such reasonable times during the Borrower's or such Restricted Subsidiary's normal business hours not more than one (1) time per fiscal year, provided that, to the extent a Default then exists, as often as reasonably requested. The Borrower shall keep and maintain, and cause each of its Restricted Subsidiaries to keep and maintain, in all material respects, proper books of record and account in which entries in conformity with Agreement Accounting Principles shall be made of all dealings and transactions in relation to their re-

spective businesses and activities. If a Default has occurred and is continuing, the Borrower shall turn over copies of any such records to the Administrative Agent or its representatives as the Administrative Agent shall reasonably request. The Administrative Agent agrees that it shall conduct any such inspection or examination in reasonable accordance with the Borrower's and its Restricted Subsidiaries' safety policies and procedures and shall not materially interfere with or impair the Borrower's or its Restricted Subsidiaries' operations.

7.13. Collateral Documents; Guarantors.

(a) The Borrower shall execute or shall cause to be executed on the date any Person that is organized under the laws of the United States or any state thereof becomes obligated in respect of the Revolving Facility Obligations, (x) a supplement to the Guarantee pursuant to which such Person shall become a party thereto; (y) a Security Agreement in substantially in the form of Exhibit B hereto (or a supplement thereto) solely to the extent that such Person grants a lien on its property to secure the Revolving Facility Obligations; and (z) a supplement to Schedule 6.8 identifying the applicable additional new Guarantor.

(b) In order to further effect the requirements of this Section 7.13, the Borrower shall promptly deliver or cause to be delivered to the Collateral Agent all Collateral Documents, together with appropriate corporate resolutions and other documentation (including opinions of counsel, UCC financing statements, and such other documents as shall be reasonably requested to perfect the Collateral Agent's Lien), in each case in form and substance reasonably satisfactory to the Collateral Agent, necessary to reasonably satisfy the Collateral Agent that it has a perfected pledge of, security interest in and Lien upon the Collateral owned by such new Guarantor subject to Liens permitted pursuant to Section 8.6.

(c) The Borrower shall cause each Guarantor to acknowledge and agree that such Guarantor's entry into the Guarantee is a condition to and is given as an inducement for and in consideration of credit accommodations extended to the Borrower under this Agreement and the other Loan Documents and not for any credit accommodation extended to such Guarantor.

(d) Upon the consummation of the BP Acquisition, (i) the Borrower shall deliver to the Collateral Agent a supplement to "Exhibit E" of such Security Agreement listing those trademarks described in Section 2 of "Exhibit E" as of the Effective Date and (ii) the Borrower shall execute a short form trademark security agreement in form and substance reasonably satisfactory to the Collateral Agent, which grants a security interest in all such newly listed trademarks.

(e) This Section 7.13 shall not apply with respect to Unrestricted Subsidiaries.

SECTION 8. Negative Covenants

8.1. Restricted Payments. The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly: (1) declare or pay any dividend or make any other payment or distribution on account of the Borrower's or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger or consolidation involving the Borrower or any of its Restricted Subsidiaries) or to the direct or in-

direct holders of the Borrower's or any of its Restricted Subsidiaries' Equity Interests in their capacity as such, in each case other than dividends or distributions declared or paid in Equity Interests (other than Disqualified Equity) of the Borrower or declared or paid to the Borrower or any of its Restricted Subsidiaries; (2) purchase, redeem or otherwise acquire or retire for value (including without limitation, in connection with any merger or consolidation involving the Borrower) any Equity Interests of the Borrower (other than any such Equity Interests owned by the Borrower or a Restricted Subsidiary of the Borrower); (3) make any payment to purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness that is subordinated to the Loans, except (i) any intercompany indebtedness between or among the Borrower and any of its Restricted Subsidiaries and (ii) a payment of interest or principal at the Maturity Date or a purchase, redemption, defeasance or other acquisition of such Indebtedness in anticipation of satisfying a sinking fund obligation, principal installment or final maturity in each case due within one year of the date of purchase, redemption, defeasance or other acquisition; or (4) make any Investment other than a Permitted Investment (all such payments and other actions set forth in clauses (1) through (4) above being collectively referred to as "**Restricted Payments**"), unless, at the time of and after giving effect to such Restricted Payment:

- (a) no Default or Unmatured Default shall have occurred and be continuing;
- (b) the Borrower would, at the time of such Restricted Payment and after giving *pro forma* effect thereto as if such Restricted Payment had been made at the beginning of the applicable four-quarter period, have been permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of Section 8.3; and
- (c) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Borrower or any of its Restricted Subsidiaries after September 27, 2012 (excluding Restricted Payments permitted by clauses (ii), (iii), (iv), (v), (vi), (viii), (ix), (x), (xi), (xii) or (xiii) of the next succeeding paragraph), is less than the sum of:
  - (i) 50% of the Consolidated Net Income of the Borrower for the period (taken as one accounting period) from July 1, 2012 to the end of the Borrower's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a loss, less 100% of such loss), *plus*
  - (ii) 100% of the aggregate net cash proceeds (other than Designated Proceeds), or the Fair Market Value of assets or property other than cash, received by the Borrower from the issue or sale, in either case, since September 27, 2012 of (A) Equity Interests of the Borrower (other than Disqualified Equity), or (B) Disqualified Equity or debt securities of the Borrower that have been converted into, or exchanged for, Equity Interests, together with the aggregate cash received at the time of such conversion or exchange, or received by the Borrower from any such conversion or exchange of such debt securities sold or issued prior to September 27, 2012 other than Equity Interests (or Disqualified Equity or con-



vertible or exchangeable debt securities) sold to a Restricted Subsidiary of the Borrower and other than Disqualified Equity or debt securities that have been converted or exchanged into Disqualified Equity, *plus*

(iii) in case any Unrestricted Subsidiary has been redesignated as a Restricted Subsidiary pursuant to the terms hereof or has been merged, consolidated or amalgamated with or into, or transfers or conveys assets to or is liquidated into, the Borrower or a Restricted Subsidiary, 100% of the Fair Market Value of such Investment in such Unrestricted Subsidiary (or of the assets transferred or conveyed, as applicable) as of the time of such redesignation, combination or transfer, *plus*

(iv) to the extent not already included in Consolidated Net Income for such period, (A) if any Restricted Investment that was made by the Borrower or any Restricted Subsidiary after September 27, 2012 is sold, liquidated or repaid, 100% of the aggregate amount received in cash and the Fair Market Value of assets or property other than cash received and (B) with respect to any Restricted Investment that was made by the Borrower or any Restricted Subsidiary after September 27, 2012, the net reduction in such Restricted Investment resulting from payments of interest, dividends, principal repayments and other transfers and distributions of cash, assets or property, in an amount not to exceed the aggregate amount of such Restricted Investment; *plus*

(v) \$1.0 billion.

The foregoing provisions shall not prohibit:

(i) the payment of any dividend or the consummation of an irrevocable redemption of Subordinated Obligations within 60 days after the date of the declaration of such dividend or the delivery of the irrevocable notice of redemption, as the case may be, if at the date of the declaration or the date on which such irrevocable notice is delivered, such dividend or redemption would have complied with the provisions of this Agreement (assuming, in the case of a redemption payment, the giving of the notice of such redemption payment would have been deemed to be a Restricted Payment at such time and such deemed Restricted Payment would have been permitted at such time);

(ii) the making of any Restricted Payments out of the net cash proceeds (other than Designated Proceeds) of the substantially concurrent sale or issuance (a sale or issuance shall be deemed substantially concurrent if such redemption, repurchase, retirement or acquisition occurs not more than 120 days after such sale or issuance) (other than to a Restricted Subsidiary of the Borrower) of Equity Interests of the Borrower (other than any Disqualified Equity), *provided* that the amount of any such net cash proceeds that are utilized for any such redemption, repurchase, retirement, defeasance or other acquisition, or payments, shall be excluded from clause (c)(ii) of the preceding paragraph;

(iii) the making of any principal payment on, or the defeasance, redemption, repurchase or other acquisition of, any Subordinated Obligation with the net cash pro-

ceeds from an incurrence of, or in exchange for the issuance of, Permitted Refinancing Indebtedness;

(iv) the payment of any dividend or distribution by a Restricted Subsidiary of the Borrower to the holders of its Equity Interests (other than Disqualified Equity) on a *pro rata* basis and the payment of any dividend or distribution by the Borrower to the holders of its Disqualified Equity, *provided* that such Disqualified Equity is issued on or after September 27, 2012;

(v) the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of the Borrower or any Restricted Subsidiary of the Borrower held by any current or former officer, employee, consultant or director of the Borrower (or any of its Subsidiaries) pursuant to the terms of any management equity plan or stock option plan or any other management or employee benefit plan, agreement or trust, *provided, however*, that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests pursuant to this clause (v) shall not exceed \$15.0 million in any twelve-month period (with up to \$7.5 million of any unused amount in any 12-month period to be carried forward to successive calendar years and added to such amount); *provided, further*, that such amount in any calendar year may be increased by an amount not to exceed, (A) the cash proceeds from the sale of Equity Interests (other than Disqualified Equity) of the Borrower to any current or former officers, employees, consultants or directors of the Borrower or any of its Subsidiaries that occurs after September 27, 2012, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments by virtue of clause (c)(ii) of the preceding paragraph and are not associated with Indebtedness owing to the Borrower or any Restricted Subsidiary; *plus* (B) the cash proceeds of key man life insurance received by the Borrower or its Restricted Subsidiaries after September 27, 2012; and *provided, further*, that cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from any current or former officers, employees, consultants or directors of the Borrower or any of its Restricted Subsidiaries in connection with a repurchase of Equity Interests of the Borrower shall not be deemed to constitute a Restricted Payment for purposes of this Section 8.1 or any other provision of this Agreement;

(vi) repurchases of Equity Interests deemed to occur upon the exercise of stock options or warrants to the extent that such Equity Interest represents all or a portion of the exercise price thereof;

(vii) the purchase, repurchase, redemption, defeasance, acquisition or other retirement of any Indebtedness that is subordinated in right of payment to the Loans pursuant to provisions similar to those described in Section 8.4; *provided* that, prior to such purchase, repurchase, redemption, defeasance, acquisition or other retirement, the Borrower (or a third party to the extent permitted by this Agreement) has made an Asset Sale Offer with respect to the Loans as a result of such Asset Sale and has repaid all Loans validly tendered and not withdrawn in connection with such Asset Sale Offer;