



(q) Liens on any earnest money deposits required in connection with a Permitted Acquisition or consisting of earnest money deposits required in connection with an acquisition of property not otherwise prohibited hereunder;

(r) Liens securing Subordinated Indebtedness permitted under Section 7.2(f);

(s) Liens that are contractual rights of setoff relating to purchase orders and other agreements entered into with customers of such Person in the ordinary course of business;

(t) Liens securing Indebtedness incurred pursuant to Section 7.2(o); and

(u) other Liens securing obligations in an outstanding amount not to exceed \$5,000,000 at any one time.

**7.4 Fundamental Changes.** Consummate any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its property or business, except that:

(a) (i) any Group Member that is not a Loan Party may be merged, amalgamated or consolidated with or into (A) any Loan Party (provided that a Loan Party shall be the continuing or surviving Person, or the continuing or surviving Person shall become a Loan Party substantially contemporaneous with such merger, amalgamation or consolidation) or (B) any Group Member that is not a Loan Party, and (ii) any Loan Party may be merged, amalgamated or consolidated with or into with any other Loan Party (provided that if such merger, amalgamation or consolidation involves the Borrower, the Borrower shall be the continuing or surviving Person);

(b) (i) any Group Member that is not a Loan Party may Dispose of any or all of its assets (including upon voluntary liquidation, dissolution or otherwise) (A) to any other Group Member or (B) pursuant to a Disposition permitted by Section 7.5; and (ii) any Loan Party (other than the Borrower) may Dispose of any or all of its assets (including upon voluntary liquidation, dissolution or otherwise) (A) to any other Loan Party or (B) pursuant to a Disposition permitted by Section 7.5;

(c) any Investment expressly permitted by Section 7.8 may be structured as a merger, consolidation or amalgamation; and

(d) any Subsidiary that is a limited liability company may consummate a Division as the dividing Person if, immediately upon the consummation of the Division, the assets of the applicable dividing Person are held by one or more Guarantors.

**7.5 Disposition of Property.** Dispose of any of its property, whether now owned or hereafter acquired, or, in the case of any Subsidiary of the Borrower, issue or sell any shares of such Subsidiary's Capital Stock to any Person, except:

(a) Dispositions of obsolete, worn out or surplus property in the ordinary course of business;

(b) Dispositions of Inventory in the ordinary course of business;

(c) Dispositions permitted by Sections 7.4(b)(i)(A) and (b)(ii)(A);



(d) the sale or issuance of the Capital Stock of a Subsidiary of the Borrower (i) to the Borrower or any other Loan Party, or (ii) by a Subsidiary that is not a Loan Party to another Subsidiary that is not a Loan Party or (iii) in connection with any transaction that does not result in a Change of Control;

(e) the use or transfer of money, cash or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents;

(f) the non-exclusive licensing of patents, trademarks, copyrights, and other Intellectual Property rights in the ordinary course of business;

(g) the Disposition of property (i) from any Loan Party to any other Loan Party, and (ii) from any Group Member (which is not a Loan Party) to any other Group Member; provided that in each case in which there is a Lien over the relevant property in favor of the Administrative Agent in advance of the Disposition, an equivalent Lien will be granted to the Administrative Agent by the Group Member which acquires the property;

(h) Dispositions of property subject to a Casualty Event;

(i) leases or subleases of real property;

(j) the sale or discount without recourse of accounts receivable arising in the ordinary course of business in connection with the compromise or collection thereof;

(k) any abandonment, cancellation, non-renewal or discontinuance of use or maintenance of Intellectual Property (or rights relating thereto) of any Group Member that the Borrower determines in good faith is desirable in the conduct of its business and not materially disadvantageous to the interests of the Lenders;

(l) Dispositions of other property having a fair market value not to exceed \$5,000,000 in the aggregate for any fiscal year of the Borrower, provided that at the time of any such Disposition, no Event of Default shall have occurred and be continuing or would result from such Disposition; and

(m) Restricted Payments permitted by Section 7.6 (including the unwinding, settlement or termination of any Permitted Bond Hedge Transaction or Permitted Warrant Transaction in accordance with the terms of Section 7.6), Investments permitted by Section 7.8 and Liens permitted by Section 7.3.

provided, however, that any Disposition made pursuant to this Section 7.5 (other than Dispositions (x) solely between Loan Parties, (y) Dispositions solely between Group Members that are not Loan Parties or (z) Dispositions between a Loan Party and a Group Member that is not a Loan Party in which the terms thereof in favor of a Loan Party are at least arm's length terms) shall be made in good faith on an arm's length basis for fair value.

**7.6 Restricted Payments.** Make any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness, pay any earn-out payment, seller debt or deferred purchase price payments, declare or pay any dividend on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the

purchase, redemption, defeasance, retirement or other acquisition of, any Permitted Bond Hedge Transaction, Permitted Warrant Transaction or Capital Stock of any Group Member, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any Group Member (collectively, “***Restricted Payments***”), except that, so long as no Event of Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

(a) any Group Member may make Restricted Payments to any Loan Party and any Group Member that is not a Loan Party may make Restricted Payments to any other Group Member;

(b) each Loan Party may (i) purchase Capital Stock from present or former officers, directors or employees, of any Group Member upon the death, disability or termination of employment of such officer, director or employee; provided that the aggregate amount of payments made under this clause (i) shall not exceed \$5,000,000 during any fiscal year of the Borrower, and (ii) declare and make dividends payments or other distributions payable solely in Capital Stock (other than Disqualified Stock) of the Borrower;

(c) the Borrower may repurchase its Capital Stock, make any payment in connection with any settlement, termination or unwinding of a Permitted Warrant Transaction, make payments in respect of any earn-out obligation, seller debt or deferred purchase price payments in an unlimited amount so long as immediately before and immediately after giving effect to any such purchase or payment, the Group Members shall be in pro forma compliance with the covenants set forth in Section 7.1 hereof (including for the avoidance of doubt the covenant set forth in Section 7.1(a), if the Borrower’s pro forma Adjusted Current Ratio would have resulted in a Covenant Testing Period) and have a pro forma Adjusted Current Ratio of at least 1.25:1.00, in each case, as of the most recently ended fiscal quarter for which financial statements were required to be delivered, based upon financial statements delivered to the Administrative Agent which give effect, on a pro forma basis, to such purchase or payment;

(d) (i) each Group Member may make repurchases of Capital Stock deemed to occur upon exercise of stock options or warrants if such repurchased Capital Stock represents a portion of the exercise price of such options or warrants, and (ii) each Group Member may make repurchases of Capital Stock deemed to occur upon the withholding of a portion of the Capital Stock issued, granted or awarded to a current or former officer, director, employee or consultant to pay for the taxes payable by such Person upon such issuance, grant or award (or upon vesting thereof);

(e) any Group Member may make payments in respect of Subordinated Indebtedness solely to the extent such payment is made in accordance with Section 7.22;

(f) each Group Member may purchase, redeem or otherwise acquire Capital Stock issued by it solely with the proceeds received from the substantially concurrent issue of new shares of its Capital Stock (other than Disqualified Stock); provided that any such issuance is otherwise permitted hereunder;

(g) [reserved];

(h) the Borrower may deliver its common Capital Stock in connection with the exercise of stock options, warrants, restricted stock units or other equity awards by way of cashless exercise;

(i) the Borrower may make distributions or dividends consisting solely of its Capital Stock (other than Disqualified Stock);

(j) any Subsidiary of the Borrower may make dividends and distributions to the Borrower or another Loan Party;

(k) any Subsidiary of the Borrower may make dividends or any distribution to the Borrower for the purposes of working capital, payment of interest of outstanding debt or other indebtedness obligations;

(l) the Group Members may make other Restricted Payments in an aggregate amount not to exceed \$5,000,000 in any fiscal year of the Group Members, which amount shall increase to \$20,000,000 so long as immediately before and immediately after giving effect to any such purchase, the Group Members shall be in pro forma compliance with each of the financial covenants set forth in Section 7.1 hereof (including for the avoidance of doubt the covenant set forth in Section 7.1(a), if the Borrower's pro forma Adjusted Current Ratio would have resulted in a Covenant Testing Period) as of the most recently ended fiscal quarter for which financial statements were required to be delivered, based upon financial statements delivered to the Administrative Agent which give effect, on a pro forma basis, to such purchase; and

(m) the Borrower may make any required payment or delivery with respect to, or required unwind, settlement or termination of, any Permitted Bond Hedge Transaction or Permitted Warrant Transaction, in each case, in accordance with the terms of the agreement governing such Permitted Bond Hedge Transaction or Permitted Warrant Transaction or otherwise in connection with any conversion or permitted redemption, purchase, retirement or defeasance of Permitted Convertible Indebtedness; provided that, to the extent cash is required to be paid under a Permitted Warrant Transaction as a result of the election of "cash settlement" (or substantially equivalent term) as the "settlement method" (or substantially equivalent term) thereunder by the Borrower (or its Affiliate) (including in connection with the exercise and/or early unwind or settlement thereof), the payment of such cash shall not be permitted by this clause (m) other than to the extent such payment is offset against any payments received by the Borrower or any of its Subsidiaries pursuant to the exercise, settlement, termination or unwind of any related Permitted Bond Hedge Transaction substantially concurrently with, or a commercially reasonable period of time before or after, the unwind or settlement of the relevant Permitted Warrant Transaction.

## **7.7 [Reserved].**

**7.8 Investments.** Make any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting a business unit of, or make any other investment in, any Person (all of the foregoing, "**Investments**"), except:

(a) extensions of trade credit in the ordinary course of business;

(b) Investments in cash and Cash Equivalents;

(c) Guarantee Obligations permitted by Section 7.2 and Guarantee Obligations of obligations not constituting Indebtedness in the ordinary course of business;

(d) loans and advances to employees, officers, consultants or directors of any Group Member in the ordinary course of business (including for travel, entertainment and relocation expenses) in an aggregate amount for all Group Members not to exceed \$5,000,000 at any one time outstanding;

(e) Investments existing on the Closing Date and set forth on Schedule 7.8 to the Disclosure Letter;

(f) intercompany Investments by (i) any Loan Party in any other Loan Party, (ii) any Group Member that is not a Loan Party in any other Group Member, (iii) any Loan Party in any Group Member that is not a Loan Party (A) to the extent (x) no Default or Event of Defaults exists or would result therefrom and (y) such Investments (valued at cost) do not exceed \$20,000,000 in any fiscal year of the Group Members (or such greater amount as the Administrative Agent may agree to in its sole discretion) or (B) to the extent arising from customary cost-plus services agreements entered into in the ordinary course of business and on terms that are, when taken as a whole and in the good faith judgment of the Borrower, no less favorable to the Loan Parties than would be obtained in arm's length transactions with a nonaffiliated third party;

(g) Investments in the ordinary course of business consisting of endorsements of negotiable instruments for collection or deposit;

(h) Investments received in settlement of amounts due to any Group Member effected in the ordinary course of business or owing to such Group Member as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of such Group Member;

(i) Investments held by any Person as of the date such Person is acquired in connection with a Permitted Acquisition, provided that (A) such Investments were not made, in any case, by such Person in connection with, or in contemplation of, such Permitted Acquisition, and (B) with respect to any such Person which becomes a Subsidiary as a result of such Permitted Acquisition, such Subsidiary remains the only holder of such Investment;

(j) so long as no Event of Default exists at the time of such Investment or immediately after giving effect thereto, in addition to Investments otherwise expressly permitted by this Section 7.8, any Investments in an aggregate amount not to exceed \$10,000,000 in any fiscal year of the Group Members so long as no Default or Event of Defaults exists or would result therefrom;

(k) deposits made to secure the performance of leases, licenses or contracts in the ordinary course of business, and other deposits made in connection with the incurrence of Liens permitted under Section 7.3;

(l) the licensing or contribution of Intellectual Property pursuant to joint marketing or joint venture arrangements with other Persons in the ordinary course of business;

(m) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 7.5, to the extent not exceeding the limits specified therein with respect to the receipt of non-cash consideration in connection with such Dispositions; and

(n) so long as no Event of Default exists at the time of such Investment or immediately after giving effect thereto, Investments in joint ventures, corporate collaborations, or

strategic alliances; provided that, the aggregate amount of all such Investments made in cash shall not exceed \$20,000,000 in any fiscal year of the Group Members;

(o) purchases or other acquisitions by any Group Member of the Capital Stock in a Person that, upon the consummation thereof, will be a Subsidiary (including as a result of a merger or consolidation) or all or substantially all of the assets of, or assets constituting one or more business units of, any Person (each, a “***Permitted Acquisition***”); provided that, with respect to each such purchase or other acquisition consummated pursuant to this Section 7.8(o):

(i) the newly-created or acquired Subsidiary (or assets acquired in connection with such asset sale) shall be (x) in the same or a related line of business as that conducted by the Borrower on the date hereof, or (y) in a business permitted by Section 7.17;

(ii) all transactions related to such purchase or acquisition shall be consummated in all material respects in accordance with all Requirements of Law;

(iii) no Loan Party shall, as a result of or in connection with any such purchase or acquisition, assume or incur any direct or contingent liabilities (whether relating to environmental, tax, litigation or other matters) that, as of the date of such purchase or acquisition (or in the case of a Limited Condition Acquisition, as of the LCA Test Date), could reasonably be expected to result in the existence or incurrence of a Material Adverse Effect;

(iv) the Borrower shall give the Administrative Agent at least 20 Business Days’ prior written notice of any such purchase or acquisition;

(v) the Borrower shall provide to the Administrative Agent as soon as available but in any event not later than 5 Business Days after the execution thereof, a copy of any executed purchase agreement or similar agreement with respect to any such purchase or acquisition;

(vi) any such newly-created or acquired Subsidiary, or the Loan Party that is the acquirer of assets in connection with an asset acquisition, shall comply or be prepared to comply with the requirements of Section 6.12, except to the extent compliance with Section 6.12 is prohibited by pre-existing Contractual Obligations or Requirements of Law binding on such Subsidiary or its properties;

(vii) immediately before and immediately after giving effect to any such purchase or other acquisition, no Default or Event of Default shall have occurred and be continuing (other than in connection with a Limited Condition Acquisition, in which case there shall be (x) no Default or Event of Default as of the LCA Test Date and (y) no Event of Default under Section 8.1(a) or (f), immediately before and immediately after giving effect to any such purchase or other acquisition);

(viii) immediately before and immediately after giving effect to any such purchase or other acquisition, the Group Members shall be in pro forma compliance with the covenants set forth in Section 7.1 hereof (including for the avoidance of doubt the covenant set forth in Section 7.1(a)), if the Borrower’s pro forma Adjusted Current Ratio would have resulted in a Covenant Testing Period) as of the most recently ended fiscal quarter for which financial statements were required to be delivered, based upon financial statements delivered to the Administrative Agent which give effect, on a Pro Forma Basis, to such acquisition or other purchase (which shall be calculated in accordance with Section 1.4 in the case of a Limited Condition Acquisition);



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- (i) no Indebtedness is assumed or incurred in connection with any such purchase or acquisition other than Indebtedness permitted by the terms of Section 7.2(j);
- (ii) such purchase or acquisition shall not constitute an Unfriendly Acquisition;
- (iii) each such Permitted Acquisition is of a Person that becomes a Loan Party or of assets that become Collateral hereunder; unless in each case otherwise agreed to in writing by the Administrative Agent; and
- (iv) the Borrower shall have delivered to the Administrative Agent, at least 5 Business Days prior to the date on which any such purchase or other acquisition is to be consummated (or such later date as is agreed by the Administrative Agent in its sole discretion), a certificate of a Responsible Officer of the Borrower, in form and substance reasonably satisfactory to the Administrative Agent, certifying that all of the requirements set forth in this definition have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition; and
- (p) Investments in any Permitted Bond Hedge Transaction.

Notwithstanding anything herein to the contrary, no Group Member shall consummate an Unfriendly Acquisition.

**7. 9 ERISA.** The Borrower shall not, and shall not permit any of its ERISA Affiliates to: (a) terminate any Pension Plan so as to result in any material liability to the Borrower or any ERISA Affiliate, (b) permit to exist any ERISA Event, or any other event or condition, which presents the risk of a material liability to any ERISA Affiliate, (c) make a complete or partial withdrawal (within the meaning of ERISA Section 4201) from any Multiemployer Plan so as to result in any material liability to the Borrower or any ERISA Affiliate, (d) enter into any new Pension Plan or Multiemployer Plan or modify any existing Pension Plan or Multiemployer Plan so as to increase its obligations thereunder which could be reasonably likely to result in material liability to any ERISA Affiliate or permit the present value of all nonforfeitable accrued benefits under any Pension Plan (using the actuarial assumptions utilized by the PBGC upon termination of a Plan) materially to exceed the fair market value of Pension Plan assets allocable to such benefits, all determined as of the most recent valuation date for each such Pension Plan, or (e) engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by the Administrative Agent or any Lender of any of its rights under this Agreement, any Note or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under Section 406 of ERISA or Section 4975 of the Code with respect to a Plan, except, in the case of each of the foregoing clauses, to the extent that failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**7. 10 Optional Payments and Modifications of Certain Preferred Stock.** Amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, any of the terms of the Preferred Stock (i) that would move to an earlier date the scheduled redemption date (but only to the extent that moving any such scheduled redemption date would result in the redemption to be prior to 91 days after the Revolving Termination Date) or increase the amount of any scheduled redemption payment or increase the rate or move to an earlier date any date for payment of dividends thereon or (ii) that could reasonably be expected to be otherwise materially adverse to any Lender or any other Secured Party.