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(iii) any Subsidiary may liquidate or dissolve if the Borrower Agent determines in good faith that such liquidation or dissolution is in the best interests of the Group Members, is not materially disadvantageous to the Lenders and such liquidation or dissolution is accompanied by a disposition of the assets of such Subsidiary to any other Group Member (provided that, if such Subsidiary is a Loan Party, then such assets shall be transferred to another Loan Party);

(iv) any Subsidiary may merge with any Person who is not a Loan Party or Subsidiary to effect an investment permitted under Section 6.04 (other than Section 6.04(m)); provided, however, if such Subsidiary is a Loan Party, the surviving Person of such merger shall be a Loan Party;

(v) so long as the same does not result in the liquidation, dissolution or cessation of existence of Holdings, any merger, dissolution or liquidation may be effected for the purposes of effecting a transaction permitted by Section 6.05 (other than sales, transfers and dispositions under Section 6.05(j)) that constitute a merger, dissolution or liquidation which is not otherwise permitted under Section 6.05;

(vi) Northern Tier Bakery LLC (“Bakery”) may liquidate, dissolve or merge with any Person so long as at the time thereof, unless the recipient of Bakery’s assets or the survivor of such merger is a Loan Party, the aggregate fair market value of Bakery’s assets does not exceed \$7,500,000; and

(vii) the Transactions may be consummated.

(b) Each Subsidiary that is a Loan Party will not, and will not permit any of its Subsidiaries to (i) carry on and conduct its business in all material respects other than in substantially the same manner as it is presently conducted or in a manner reasonably related or ancillary thereto or (ii) engage to any material extent in any business other than businesses of the type conducted by the Subsidiaries, taken as a whole, on the date of hereof and businesses reasonably related or ancillary thereto.

(c) Notwithstanding anything to the contrary in this Agreement, Holdings will not engage in any business or operations, other than (i) the ownership, direct or indirect, of all the outstanding shares of capital stock of any Borrower, (ii) performance of its obligations under and in connection with the Loan Documents, the Senior Secured Note Documents and the other agreements contemplated hereby and thereby, (iii) actions incidental to the consummation of the Transactions (including, for the avoidance of doubt, actions incidental to operating the Borrowers and any other actions contemplated by the Transaction Agreement and any agreements or arrangements contemplated thereby), (iv) actions required by law to maintain its existence, (v) any public offering of its common stock, any other issuance of its Equity Interests and performance of its obligations under any agreements related thereto, (vi) any transaction Holdings is permitted to enter into in this Article VI and (vii) activities incidental to the foregoing.

SECTION 6.04 Investments, Loans, Advances, Guarantees and Acquisitions. No Loan Party will, nor will it permit any Subsidiary to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a Loan Party and a wholly owned Subsidiary prior to such merger) any Equity Interests, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) all or substantially all of the

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property and assets or business of another Person or assets of any other Person constituting a business unit (whether through purchase of assets, merger or otherwise), except:

- (a) Permitted Investments, Investment Grade Securities and loans and advances in connection with the sale, transfer or disposition of assets other than Collateral;
- (b) investments in existence or contemplated on the date of this Agreement and described in Schedule 6.04; and any modification, replacement, renewal, reinvestment or extension thereof (provided that the amount of the original investment is not increased except as otherwise permitted by this Section 6.04), and any investments, loans and advances existing on the date hereof by any Group Member in or to any other Group Member;
- (c) (i) loans and advances to employees, directors, officers, managers, distributors and consultants for business-related travel expenses, moving expenses and other similar expenses or payroll advances, in each case incurred in the ordinary course of business or consistent with past practices or (ii) to fund such Person's purchase of Equity Interests of Holdings or any Parent (provided that the amount of such loans and advances shall be contributed to a Borrower in cash as common equity) or (iii) advances to, or guarantees of Indebtedness of, employees not in excess of \$5,000,000 outstanding at any one time, in the aggregate;
- (d) investments (i) in Holdings or any other Loan Party, (ii) by any Subsidiary that is not a Loan Party in Holdings or any other Loan Party, and (iii) by Holdings or any other Loan Party in any Subsidiary that is not a Loan Party in an aggregate amount for all such investments under this clause (iii) not to exceed the sum of \$10,000,000 and an amount equal to any repayments, interest, returns, profits, distributions, income and similar amounts actually received in cash in respect of any such investment (which amount shall not exceed the amount of such investment valued at the fair market value of such investment at the time such Investment was made);
- (e) investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business and investments as a result of the foreclosure on any secured investment or other transfer of title with respect to any secured investment in default;
- (f) investments made to repurchase or retire Equity Interests of Holdings (or any Parent) owned by any employee stock ownership plan or key employee stock ownership plan of Holdings (or any Parent);
- (g) investments in the form of Swap Agreements permitted by Section 6.01;
- (h) investments of any Person existing at the time such Person becomes a Subsidiary or consolidates or merges with any Group Member (including in connection with a Permitted Acquisition) so long as such investments were not made in contemplation of such Person becoming a Subsidiary or of such merger;
- (i) investments and other assets received in connection with the dispositions of assets permitted by Section 6.05;
- (j) investments constituting deposits described in Section 6.02;

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(k) accounts receivable or notes receivable arising and trade credit granted in the ordinary course of business and other credits to suppliers or vendors in the ordinary course of business;

(l) Permitted Acquisitions;

(m) Liens, Indebtedness, fundamental changes, dispositions, Restricted Payments and Restricted Debt Payments permitted under Sections 6.01, 6.02, 6.03 (except to the extent constituting the acquisition of a Person that becomes a Subsidiary or the acquisition by any Group Member of all or substantially all the assets or businesses of a Person or of assets constituting a business unit, line of business or division of such Person), 6.05, 6.06 and 6.08, respectively, solely to the extent constituting Liens, Indebtedness, fundamental changes, dispositions, Restricted Payments and Restricted Debt Payments which are permitted under the foregoing Sections 6.01, 6.02, 6.03, 6.05, 6.06 and 6.08, respectively, which Liens, Indebtedness, fundamental changes, dispositions, Restricted Payments and Restricted Debt Payments are not otherwise permitted by this Section 6.04;

(n) the Transactions;

(o) investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers consistent with past practices;

(p) in exchange for any other investment or investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement or delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary course of business or received upon the foreclosure with respect to any secured investment or other transfer of title with respect to any secured investment and investments in satisfaction of judgments against such other Person;

(q) loans and advances to any Parent in lieu of, and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof), Restricted Payments to the extent permitted to be made to such Parent in accordance with Section 6.08(a);

(r) advances of payroll payments in the ordinary course of business to satisfy ordinary course payroll and other obligations of such company;

(s) (i) investments, purchases and other acquisitions of assets to the extent that payment for such investments, purchases and other acquisitions of assets is made solely with Qualified Equity Interests or Qualified Debt of Holdings (or of any Parent) or (ii) investments, purchases and other acquisitions of assets to the extent the payment for such investment, purchases and other acquisitions of assets is made with the cash proceeds from the issuance by Holdings (or any Parent) of Qualified Equity Interests or Qualified Debt or a substantially contemporaneous capital contribution in respect of Qualified Equity Interests of Holdings so long as, in each case with respect to this clause (s), (A) such investment, purchase or other acquisition could satisfy the requirements set forth in the definition of "Permitted Acquisition" (other than clauses (iii) and (iv) of such definition) and (B) no Loans are made in connection therewith;

(t) extensions or advances of trade credit, asset purchases (including purchases of Inventory, supplies and materials), the lease of any asset and the licensing or contribution of

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intellectual property pursuant to joint marketing or other arrangements with other Persons, in each case in the ordinary course of business;

(u) guarantees by any Group Member of leases (other than capitalized leases) for which another Loan Party is the lessee or of other obligations of another Loan Party that do not constitute Indebtedness, in each case entered into in the ordinary course of business;

(v) other investments, loans and advances constituting Permitted Payments;

(w) other investments, loans and advances which, together with any Restricted Payments made pursuant to Section 6.08(a)(x) and Restricted Debt Payments made pursuant to Section 6.08(b)(vi), do not exceed \$15,000,000 in the aggregate; provided that, at the time such investment, loan or advance is made and after giving effect thereto, no Event of Default or Liquidity Event exists or has occurred and is continuing;

(x) any investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business;

(y) investments consisting of purchases and acquisitions of assets or services in the ordinary course of business;

(z) investments made in the ordinary course of business in connection with obtaining, maintaining or reviewing client contacts and loans or advances made to franchisees in the ordinary course of business; and

(aa) investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business.

For purposes of covenant compliance, the amount of any investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value thereof.

Notwithstanding anything to the contrary in this Section 6.04, the aggregate amount of consideration used by any Loan Party pursuant to clauses (l) and (v) of this Section 6.04 to acquire (1) a Person that does not become a Loan Party concurrently therewith and/or (2) assets that do not become assets of a Loan Party concurrently therewith, shall not exceed \$25,000,000 during the term of this Agreement.

In connection with any merger (or other acquisition of the assets) of a Subsidiary that is not a Borrower with and into (or to) a Borrower, or any Permitted Acquisition or other acquisition of assets permitted hereunder, whether by purchase of stock, merger, or purchase of assets and whether in a single transaction or series of related transactions, the Inventory or Receivables so acquired shall not be included in the Borrowing Base until such time as the Agent shall have completed their diligence in respect of such Receivables and Inventory in its Permitted Discretion). In connection with such diligence, the Agent may obtain, at the Borrowers' expense, an appraisal and commercial finance exam with respect to such Receivables and Inventory as it may reasonably deem desirable in its Permitted Discretion and such appraisal and exam shall be paid for by the Borrowers and shall not be limited by or included in the number of appraisals and field exams reimbursable under the terms of Section 5.06(b).

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SECTION 6.05 Asset Sales. No Loan Party will, nor will it permit any Subsidiary to, sell, transfer, lease or otherwise dispose of any asset, including any Equity Interest owned by it, except:

(a) sales, transfers and dispositions of (i) Inventory in the ordinary course of business and (ii) used, obsolete, worn out or surplus equipment or property in the ordinary course of business, or of property no longer used or useful in the conduct of the business of the Subsidiaries;

(b) sales, leases, transfers and dispositions to any Subsidiary, provided that any such sales, transfers or dispositions to a Subsidiary that is not a Loan Party shall be made in compliance with Section 6.09;

(c) sales, leases, transfers and dispositions of accounts receivable in connection with the compromise, settlement or collection thereof;

(d) sales, transfers and dispositions of (i) investments permitted by clauses (a), (h), (i), (j) and (p) of Section 6.04, (ii) investments permitted by clause (b) of Section 6.04 by a Loan Party to another Loan Party and by a Subsidiary that is not a Loan Party to a Loan Party or any Subsidiary and (iii) other investments to the extent required by or made pursuant to customary buy/sell arrangements made in the ordinary course of business between the parties to agreements related thereto;

(e) Sale and Lease-Back transactions permitted by Section 6.06;

(f) dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of Holdings or any Subsidiary (a “Recovery Event”);

(g) sales, transfers and other dispositions of assets that are not otherwise permitted by any other paragraph of this Section made for fair market value; provided that (i) in the case of any sale, transfer or disposition of assets that is not ABL Collateral, with respect to any such sale, transfer or disposition for a purchase price in excess of \$10,000,000, Holdings or a Subsidiary shall receive not less than 75% of such consideration in the form of cash or Permitted Investments; provided that, for purposes of determining what constitutes cash under this clause (i), (A) any liabilities (as shown on Holdings’ or such Subsidiary’s most recent balance sheet provided hereunder or in the footnotes thereto) of Holdings or such Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that are assumed by the transferee with respect to the applicable sale, transfer or disposition and for which Holdings and all of the Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities received by Holdings or such Subsidiary from such transferee that are converted by Holdings or such Subsidiary into cash (to the extent of the cash received) within 180 days following the closing of the applicable sale, transfer or disposition and (C) during the term of this Agreement, up to \$10,000,000 of consideration that is not in the form of cash and Permitted Investments may nevertheless be treated as such so long as the Borrower Agent has given the Agent written notice thereof, (ii) in the case of any sale, transfer or disposition of ABL Collateral, Holdings or a Subsidiary shall receive not less than 100% of such consideration in the form of cash or Permitted Investments and shall, concurrently therewith, submit an updated Borrowing Base Certificate to the Agent after giving effect to such transaction, (iii) after giving effect to any such sale, transfer or disposition, no Default or Event of Default shall have occurred and be continuing, (iv) to the extent applicable, the Net Cash Proceeds thereof are used to prepay

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the Revolving Loans as required by Section 2.11(c) and (v) the aggregate consideration received in connection with all such sales, transfers and other dispositions during any fiscal year of Holdings shall not exceed 20% of Consolidated Net Tangible Assets as of the last day of the immediately preceding fiscal year;

(h) sales, leases, transfers and dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such disposition are promptly applied to the purchase price of such replacement property;

(i) sales, leases, transfers and dispositions permitted by Sections 6.03 and 6.08 and Liens permitted by Section 6.02;

(j) leases, subleases, space leases, licenses or sublicenses, in each case in the ordinary course of business and which do not materially interfere with the business of the Group Members;

(k) sales, leases, transfers and dispositions listed on Schedule 6.05;

(l) sales, transfers and other dispositions of assets pursuant to the Crude Oil Intermediation Agreement; and

(m) sales, transfers and other dispositions of assets not constituting Collateral; provided that (i) after giving effect to any such sale, transfer or disposition, no Event of Default shall have occurred and be continuing and (ii) the Net Cash Proceeds of such sale, transfer or disposition are concurrently reinvested by Holdings and the Subsidiaries in their business for general working capital purposes.

SECTION 6.06 Sale and Lease-Back Transactions. No Loan Party will, nor will it permit any Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred (a “Sale and Lease-Back Transaction”); provided that (a) the Realty Income Sale-Leaseback may be consummated and (b) other Sale and Lease-Back Transactions shall be permitted so long as, in the case of this clause (b), (i) such Sale and Lease-Back Transaction (x) is made for consideration in cash or assets useful to the business of the Loan Parties in an amount not less than the fair value of such property and (y) is pursuant to a lease on market terms and (ii) the aggregate amount of the Attributable Amount of all Sale and Lease-Back Transactions consummated pursuant to this clause (b) does not exceed \$35,000,000 at any time outstanding.

SECTION 6.07 Accounting Changes. Holdings will not make any change in method of determining fiscal year and fiscal quarter end dates; provided, however, that Holdings may, upon written notice to the Agent, change the financial reporting convention specified above to any other financial reporting convention reasonably acceptable to the Agent, in which case Holdings and the Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary in order to reflect such change in financial reporting.

SECTION 6.08 Restricted Payments; Certain Payments of Indebtedness.

(a) Holdings will not declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except:

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(i) Holdings may make (A) Restricted Payments payable solely in Qualified Equity Interests of Holdings and (B) Restricted Payments from the Net Cash Proceeds of the issuance by Holdings of Qualified Equity Interests or a substantially contemporaneous capital contributions in respect of Qualified Equity Interests of Holdings;

(ii) Holdings may make Restricted Payments to any Parent the proceeds of which are used to purchase, repurchase, retire, redeem or otherwise acquire the Equity Interests of Holdings (or of any such Parent) (including related stock appreciation rights or similar securities) held by any future, present or former employee, director, officer, manager or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members) of Holdings or any of its Subsidiaries or any Parent pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, or any stock subscription or shareholder agreement (including, for the avoidance of doubt, any principal and interest payable on any notes issued by Holdings or any Parent in connection with such purchase, repurchase, retirement, redemption or other acquisition); provided that the aggregate amount of Restricted Payments made under this clause does not exceed \$10,000,000 for any fiscal year (which amount shall be permitted to be carried over to any subsequent fiscal year to the extent that purchases, repurchases, retirements, redemptions or other acquisitions permitted to have been made have not been made in any preceding fiscal year (provided that in no event shall more than an aggregate of \$15,000,000 of Restricted Payments be made under this clause in any fiscal year)); provided, further, that each of the amounts in any fiscal year under this clause may be increased by an amount not to exceed:

(A) to the extent contributed to any Borrower, the cash proceeds from the sale of Equity Interests of Holdings or any Parent, in each case to any future, present or former employees, directors, officers, managers, or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of any Group Member or any Parent that occurs after the Effective Date, 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 (i) or (ii) of this Section 6.08(a); plus

(B) the cash proceeds of key man life insurance policies received by any Group Member after the Effective Date; less

(C) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (A) and (B) of this clause (ii);

and provided, further, that cancellation of Indebtedness owing to Holdings from any future, present or former employees, directors, officers, managers, or consultants of Holdings (or their respective Controlled Investment Affiliates or Immediate Family Members), any Parent or any of the Subsidiaries in connection with a repurchase of Equity Interests of Holdings or any Parent will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of this Agreement;

(iii) non-cash repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent all or a portion of the exercise price of such options or warrants;

(iv) Restricted Payments made to any Parent used to pay, in each case, without duplication,

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(A) franchise and excise taxes and other fees, taxes and expenses required to maintain the corporate existence of any Parent;

(B) foreign, federal, state and local income and similar taxes, to the extent such income taxes are attributable to the income of Holdings or the Borrowers and, to the extent of the amount actually received from its Unrestricted Subsidiaries, in amounts required to pay such taxes to the extent attributable to the income of such Unrestricted Subsidiaries; provided that in each case the amount of such payments in any fiscal year does not exceed the amount that the Subsidiaries would be required to pay in respect of foreign, federal, state and local taxes for such fiscal year were the Restricted Subsidiaries and the Unrestricted Subsidiaries (to the extent described above) to pay such taxes separately from any such Parent;

(C) customary salary, bonus and other benefits payable to employees, directors, officers and managers of any Parent to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Subsidiaries, including the Subsidiaries' proportionate share of such amounts relating to such Parent being a public company;

(D) so long as no Event of Default is in existence at the time of the making thereof, general corporate operating and overhead costs and expenses of any Parent not in excess of \$2,000,000 in any fiscal year, to the extent such costs and expenses are attributable to the ownership or operation of the Subsidiaries;

(E) fees and expenses other than to Affiliates of the Subsidiaries related to any unsuccessful equity or debt offering of any Parent;

(F) amounts payable pursuant to the Management Services Agreements, (including any amendment thereto so long as any such amendment is not materially disadvantageous in the good faith judgment of the board of directors of Holdings to the Lenders when taken as a whole, as compared to the Management Services Agreement as in effect on the Effective Date), solely to the extent such amounts are not paid directly by the Subsidiaries; and

(G) cash payments in lieu of issuing fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of Holdings or any Parent;

(v) Restricted Payments may be made to consummate the Transactions;

(vi) to the extent constituting Restricted Payments, Holdings may enter into and consummate transactions expressly permitted by any provision of Section 6.03 or 6.09 (other than Section 6.09(e));

(vii) Holdings may make Restricted Payments with the proceeds of the issuance of Indebtedness of Holdings permitted by Section 6.01 (other than (x) Section 6.01(c)) and (y) any such Indebtedness Guaranteed by or secured directly or indirectly by the assets of any Subsidiary;

(viii) in addition to the foregoing Restricted Payments, Holdings may make additional Restricted Payments constituting Permitted Payments;



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(ix) the distribution, as a dividend or otherwise (and the declaration of such dividend), of shares of capital stock of, or Indebtedness owed to Holdings by, any Unrestricted Subsidiary;

(x) other Restricted Payments by Holdings which, together with investments, loans and advances made pursuant to Section 6.04(w) and Restricted Debt Payments made pursuant to Section 6.08(b)(vi), do not exceed \$15,000,000 in the aggregate; provided that, at the time such Restricted Payments are made and after giving effect thereto, no Liquidity Event or Event of Default exists or has occurred and is continuing;

(xi) to the extent constituting Restricted Payments, Holdings may make any non-compete, bonus or “earn out” payments payable to current or former stockholders of Holdings (or any direct or indirect Parent) pursuant to agreements in effect on the Effective Date (including, for the avoidance of doubt, the Earnout Agreement); and

(xii) Holdings may make Restricted Payments in respect of any payments made or expected to be made by Holdings or any Subsidiary or any Parent in respect of withholding or similar taxes payable upon exercise of Equity Interests by any future, present or former employee, director, officer, manager or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members) and any repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent all or a portion of the exercise price of such options or warrants or required withholding or similar taxes.

(b) No Loan Party will, nor will it permit any Subsidiary to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal on the Senior Secured Notes, any Subordinated Indebtedness or any Indebtedness that refinances, extends, refunds, replaces or renews any such Indebtedness (collectively, “Restricted Indebtedness”), or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Restricted Indebtedness (collectively, “Restricted Debt Payments”), except:

(i) extensions, refinancings, refundings, replacements and renewals of any such Restricted Indebtedness to the extent permitted by Section 6.01;

(ii) payment of secured Indebtedness that becomes due as a result of the sale or transfer of the property or assets securing such Indebtedness (other than Borrowing Base Assets) so long as such sale is permitted by Section 6.05 (other than sales, transfers and dispositions under Section 6.05(j));

(iii) payment of Restricted Indebtedness in exchange for or with Net Cash Proceeds of any substantially contemporaneous issuance of Qualified Equity Interests of Holdings or substantially contemporaneous capital contribution in respect of Qualified Equity Interests of Holdings;

(iv) payment of Restricted Indebtedness under the Senior Secured Notes (or any extensions, renewals, refinancing, refundings or replacements thereof permitted under Section 6.01(g) and Section 6.02(v)), with the Net Cash Proceeds of any sale, transfer or other disposition of any Note and Specified Hedge Collateral (as defined in the Intercreditor Agreement), or, in the case of any such extensions, refinancings, refundings, renewals or replacements, any property or assets in respect of which the security interest of the holders thereunder has priority over the

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security interest of the Agent, for the benefit of the Secured Parties, in such property or assets, pursuant to the Intercreditor Agreement or another intercreditor agreement in form and substance reasonably satisfactory to the Agent that is no less favorable to the Secured Parties than the Intercreditor Agreement;

(v) other Restricted Debt Payments constituting Permitted Payments (it being understood and agreed that, if an irrevocable notice or contractual obligation is given in, made or arises in respect of any such Restricted Debt Payment, the conditions set forth in the definition of “Permitted Payments” only need to be satisfied at the time of the giving of such irrevocable notice or entering into (or effectiveness of) any such contractual obligation); and

(vi) other Restricted Debt Payments which, together with any investments, loans or advances made pursuant to Section 6.04(w) and Restricted Payments made pursuant to Section 6.08(a)(x), do not exceed \$5,000,000 in the aggregate; provided that, at the time such Restricted Debt Payments are made and after giving effect thereto, no Liquidity Event or Event of Default exists or has occurred and is continuing.

(c) Holdings will not, nor will it permit any Subsidiary to, make any investment, loan or advance in or to, or otherwise furnish any funds to, any Person for the purpose of enabling such Person, directly or indirectly, to make any Restricted Payment or any Restricted Debt Prepayment (or payment equivalent to any of the foregoing) that could not be made directly by Holdings in accordance with the provisions of this Section 6.08.

SECTION 6.09 Transactions with Affiliates. No Loan Party will, nor will it permit any Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions that are on terms and conditions substantially as favorable to such Loan Party as would be obtainable by such Loan Party at the time in a comparable arm’s-length transaction from unrelated third parties that are not Affiliates, (b) transactions between or among Group Members (other than an Unrestricted Subsidiary) not involving any other Affiliate, (c) any investment permitted by Section 6.04, (d) any Indebtedness permitted under Section 6.01 or Lien permitted under Section 6.02, (e) any Restricted Payment or Restricted Debt Payment permitted by Section 6.08, (f) the payment of reasonable fees and out-of-pocket costs to directors of Holdings (or any Parent) or any Subsidiary, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of Holdings (or any Parent) or any Subsidiary in the ordinary course of business, (g) any issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, stock options and stock ownership plans approved by Holdings’ (or any Parent’s) board of directors, (h) the payment of (A) management or monitoring or similar fees to the Sponsor and Sponsor termination fees and related indemnities and reasonable expenses, and (B) transaction advisory services fees with respect to transactions in respect of which the Sponsor provides any transaction, advisory or other similar services, in each case pursuant to, and in accordance with, the Management Services Agreements as such agreements are in effect as of the Effective Date; provided that, other than in the case of the payment of indemnities and expenses, no Event of Default has occurred and is continuing or would result after giving effect to such payment (and during the existence of any such Event of Default, such fees may accrue but may not be paid), (i) any contribution to the capital of Holdings (or any Parent) by the Sponsor or any Affiliate thereof or any purchase of Equity Interests of Holdings (or any Parent) by the Sponsor or any Affiliate thereof, (j) the Transactions, (k) payments by Holdings (and any Parent) or any Subsidiary pursuant to the tax sharing agreements among Holdings (and any such Parent) and the Subsidiaries on customary terms to the extent attributable to the ownership or operation of the Subsidiaries, (l) transactions pursuant to permitted agreements in existence on the Effective Date and set forth on