

amendment is not disadvantageous to the Lenders in any material respect in the good faith judgment of the Borrower when taken as a whole as compared to such agreement as in effect on the date of such acquisition or merger);

(j) the entering into of any Tax sharing agreement or arrangement to the extent payments under such agreement or arrangement would otherwise be permitted under Section 6.05;

(k) any contribution to the capital of the Borrower or any of the Restricted Subsidiaries otherwise permitted by Section 6.07;

(l) the formation and maintenance of any consolidated group or subgroup for Tax, accounting or cash pooling or management purposes in the Ordinary Course of Business;

(m) transactions undertaken in good faith (as certified by a Responsible Officer of the Borrower) for the purpose of improving the consolidated Tax efficiency of the Borrower and the Subsidiaries and not for the purpose of (i) circumventing any covenant set forth in this Agreement or (ii) permitting the release of any Collateral or the guarantee of any Subsidiary Guarantor; and

(n) any other transaction with an Affiliate that is approved by a majority of disinterested members of the board of directors of the Borrower in good faith.

Article VII

EVENTS OF DEFAULT

Section 7.01. Events of Default. If any of the following events (such events, "Events of Default") shall occur and be continuing:

(a) the Borrower shall fail to pay any principal of any Loan on the date the same becomes due and payable; or the Borrower shall fail to pay any interest on any Loan or make any other payment of interest, fees or any other amounts payable under this Agreement or any other Loan Document within five (5) Business Days after the same becomes due and payable; or

(b) any representation or warranty or certification made or deemed made by any Loan Party in any Loan Document or by such Loan Party (or any of its officers) in connection with any Loan Document shall prove to have been incorrect in any material respect (or if qualified by materiality or Material Adverse Effect, in any respect) when made or deemed made; or

(c) (i) any Loan Party shall fail to perform or observe any term, covenant or agreement contained in Sections 5.03 (with respect to the Borrower only), 5.07(c), 5.08 or Article VI; or (ii) any Loan Party shall fail to perform or observe any other term, covenant or agreement contained in this Agreement or in any other Loan Document on its part to be performed or observed if (solely for purposes of this clause (ii)) such failure shall remain unremedied for thirty (30) days after written notice thereof shall have been given to the Borrower by the Agent or any Lender; or

(d) the Borrower or any Restricted Subsidiary shall fail to pay any principal of or premium or interest on any Material Indebtedness (but excluding Indebtedness outstanding hereunder) of the Borrower or any Restricted Subsidiary, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall

continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Material Indebtedness; or any other event shall occur or condition shall exist under any agreement or instrument relating to any such Material Indebtedness and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Material Indebtedness; or any such Material Indebtedness shall be declared to be due and payable, or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption, or, with respect to any secured Material Indebtedness, resulting from a disposition, condemnation, insured loss or similar event relating to the property securing such Material Indebtedness), purchased or defeased, or an offer to prepay, redeem, purchase or defease such Material Indebtedness shall be required to be made, in each case prior to the stated maturity thereof; provided that any failure, event, condition or Event of Default described under this clause (d) remains unremedied and is not waived by the holders of such Material Indebtedness prior to any acceleration of the outstanding Loans pursuant to this Article VII; provided further that this clause (d) shall not apply to (i) any redemption, repurchase, exchange, conversion or settlement with respect to any Permitted Convertible Notes, or satisfaction of any condition giving rise to or permitting the foregoing, pursuant to their terms unless such redemption, repurchase, exchange, conversion or settlement results from a default thereunder or an event of the type that constitutes an Event of Default or (ii) any early payment requirement or unwinding or termination with respect to any Hedge Agreements or Permitted Call Spread Hedge Agreement, or satisfaction of any condition giving rise to or permitting the foregoing, in accordance with the terms thereof where neither the Borrower nor any of its Subsidiaries is the “defaulting party” (or substantially equivalent term) under the terms of such Permitted Call Spread Hedge Agreement; or

(e) the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally;

(f) the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Debtor Relief Laws, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of sixty (60) days, or any of the actions sought in such proceeding (including the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) shall take any corporate action to authorize any of the actions set forth above in this subsection (f); or

(g) one or more final judgments or orders for the payment of money in excess of \$100.0 million in the aggregate shall be rendered against the Borrower or any Restricted Subsidiary and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of sixty (60) consecutive days during which any such judgment or order remains unpaid, undischarged, unvacated, unbonded or unstayed; provided, however, that any such judgment or order shall not be an Event of Default under this Section 7.01(g) if and for so long as (i) (x) the amount of such final judgment or order is covered by a valid and binding policy of insurance between the defendant and the insurer covering payment thereof and (y) such

insurer has been notified of, and has not disputed the claim made for payment of, the amount of such judgment or order or (ii) the amount of such final judgment or order is covered by an enforceable indemnity to the extent that the Borrower or such Restricted Subsidiary shall have made a claim for indemnification and the applicable indemnifying party shall not have disputed such claim; or

(h) a Change in Control shall occur; or

(i) the Borrower or any of its ERISA Affiliates shall incur liability as a result of the occurrence of any ERISA Events that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect; or

(j) any guarantee provided by a Subsidiary Guarantor under any applicable Loan Document or any material provision of this Agreement or any other Loan Document shall for any reason be declared by a court of competent jurisdiction to not be in full force and effect except as expressly permitted hereunder or thereunder, or the Borrower or any Loan Party shall so state in writing, in each case other than in connection with a release of any guarantee in accordance with the terms of this Agreement; or

(k) any security interest over any material portion of the Collateral shall cease to be, or shall be asserted by the Borrower or any other Loan Party not to be, a valid, perfected security interest in the asset or property intended to be covered thereby, with the priority required by the Security and Guarantee Documents, except (A) to the extent that perfection or priority is not required pursuant to the Guarantee and Collateral Agreement or Section 5.10(f), (B) in connection with a release of such Collateral in accordance with the terms of this Agreement or (C) as a result of the Collateral Agent's failure to (1) maintain possession of any stock certificates, promissory notes or other instruments delivered to it under the Security and Guarantee Documents or (2) take any other actions required by it under the Loan Documents, including the filing of Uniform Commercial Code continuation statements;

then, and in any such event, the Agent (a) shall at the request, or may with the consent, of the Required Lenders, by notice to the Borrower, declare the obligation of each Lender to make Loans to be terminated, whereupon the same shall forthwith terminate, (b) shall at the request, or may with the consent, of the Required Lenders, by notice to the Borrower, declare all the Loans, all interest on such Loans and all other amounts payable under this Agreement to be forthwith due and payable, whereupon all such Loans, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower; provided, however, that in the event of an actual or deemed entry of an order for relief with respect to the Borrower or any other Loan Party under any Debtor Relief Law, (i) the obligation of each Lender to make Loans and (ii) the Loans, all such interest thereon and all such other amounts so payable shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower, and (c) shall be entitled to exercise on behalf of itself, the Lenders and the other Secured Parties all rights and remedies available to it, the Lenders and the other Secured Parties under the Loan Documents, in equity and/or under applicable law.

Section 7.02. Application of Funds. After the exercise of any remedies provided for in Section 7.01 (or after an actual or deemed entry of an order for relief with respect to the Borrower or any other Loan Party under any Debtor Relief Law), any amounts received on account of the Obligations (including, for the avoidance of doubt, any proceeds of any collection, sale, foreclosure or other

realization upon any Collateral, including Collateral consisting of cash) shall be applied by the Agent in the following order:

(a) first, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, disbursements and other charges of counsel payable under Section 9.04) payable to the Agent in its capacity as such, including any costs and expenses incurred by the Agent in its capacity as such in connection with the collection, sale, foreclosure or realization or otherwise of Collateral in connection with this Agreement or any other Loan Document or any of the Obligations, the repayment of advances made by the Agent hereunder or under any other Loan Document on behalf of any Loan Party and any other costs or expenses incurred in connection with exercise of any right or remedy hereunder or under any other Loan Document;

(b) second, to payment in full of Unfunded Loans;

(c) third, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest) payable to the Lenders (including fees, disbursements and other charges of counsel payable under Section 9.04) arising under the Loan Documents, ratably among them in proportion to the respective amounts described in this clause (c) held by them;

(d) fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, and obligations of the Loan Parties then arising under Secured Hedging Obligations and Secured Cash Management Obligations;

(e) fifth, to the payment of all other Obligations of the Loan Parties owing under or in respect of the Loan Documents that are then due and payable to the Agent, the Lenders and the other holders or beneficiaries thereof, ratably based upon the respective aggregate amounts of all such Obligations then owing to all of them; and

(f) last, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by law.

Article VIII

THE AGENT

Section 8.01. Authorization and Authority. (a) Each of the Lenders hereby irrevocably appoints, designates and authorizes Citibank, N.A. to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Except as expressly set forth in Section 8.06, the provisions of this Article are solely for the benefit of the Agent and the Lenders, and the Borrower shall not have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any Loan Document (or any other similar term) with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Agent shall also act as the Collateral Agent under the Loan Documents, and each of the Lenders (including in each such Lender's capacity as a potential Cash Management Bank and/or Hedge Bank) hereby irrevocably appoints and authorizes the Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Agent, as the Collateral Agent, and any co-agents, sub-agents and attorneys-in-fact appointed by the Agent pursuant to Section 8.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security and Guarantee Documents, or for exercising any rights and remedies thereunder at the direction of the Agent, shall be entitled to the benefits of all provisions of this Article VIII and of paragraphs (a), (b) and (c) of Section 9.04 (as though such agent, co-agents, sub-agents and attorneys-in-fact were the Agent under the Loan Documents) as if set forth in full herein with respect thereto. Anything contained in any of the Loan Documents to the contrary notwithstanding, but without limiting the rights of any Lender or any of its Affiliates under Section 9.05, each Loan Party, the Agent and each Lender hereby agree that no Lender, in its capacity as such, shall have any right individually to realize upon any collateral subject to any Security and Guarantee Documents, it being understood and agreed that all powers, rights and remedies hereunder or thereunder may be exercised solely by the Agent, on behalf of the Lenders, in accordance with the terms hereof or thereof, as applicable.

Section 8.02. Rights as a Lender. The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent, and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, any member of the Consolidated Group or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

Section 8.03. Duties of Agent; Exculpatory Provisions. (a) The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information

relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

(b) The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 9.01 and 7.01) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Agent in writing by the Borrower or a Lender.

(c) The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article III or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

Section 8.04. Reliance by Agent. The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the Closing Date or the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless the Agent shall have received notice to the contrary from such Lender prior to the occurrence of the Closing Date or the making of such Loan. The Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 8.05. Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of any Facility as well as activities as Agent. The Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 8.06. Resignation of Agent.

(a) The Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrower (which consent shall not be unreasonably withheld or delayed, provided that the Borrower's prior written consent shall not be required if an Event of Default under Section 7.01(a) or, solely with respect to the Borrower, Section 7.01(f) has occurred and is continuing), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders and the Borrower (unless an Event of Default under Section 7.01(a) or under Section 7.01(f) solely with respect to the Borrower has occurred and is continuing)) (the "Resignation Effective Date"), then the retiring Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date, (i) the resigning Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Agent on behalf of the Lenders hereunder, the resigning Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (ii) except for any indemnity payments owed to the resigning Agent, all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Agent as provided for above. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the resigning Agent (other than any rights to indemnity payments owed to the resigning Agent), and the resigning Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents (if not already discharged therefrom as provided above in this Section 8.06). The annual administrative fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the resigning Agent's resignation hereunder, the provisions of this Article and Section 9.04 shall continue in effect for the benefit of such resigning Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the resigning Agent was acting as Agent.

(c) If the Person serving as Agent is a Defaulting Lender pursuant to clause (vi) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Agent and, with the consent of the Borrower (which consent shall not be unreasonably withheld or delayed, provided that the Borrower's consent shall not be required if an Event of Default under Section 7.01(a) or, solely with respect to the Borrower, Section 7.01(f) has occurred and is continuing), appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date") then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

Section 8.07. Non-Reliance on Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will,