

any Loan Party pursuant to this clause (dd)(2) in the form of term loans that rank *pari passu* in right of payment and security with the Initial Term Loans shall be subject to the MFN Provision;

(ee) Indebtedness, Disqualified Stock or Preferred Stock consisting of obligations of any Borrower Party under deferred compensation or other similar arrangements incurred by such Person in connection with the Transactions or any Permitted Investment or other Investment permitted under Section 7.05;

(ff) unfunded pension fund and other employee benefit plan obligations and liabilities to the extent that they are permitted to remain unfunded under applicable law;

(gg) Indebtedness of any Borrower Party in an aggregate principal amount not greater than the aggregate amount of Restricted Payments that could be made at the time of such Incurrence pursuant to clause (c) of the first paragraph under Section 7.05 and clauses (9), (10), (11), (22) and (24) of the second paragraph under Section 7.05; *provided* that the Incurrence of Indebtedness in reliance on amounts available for making Restricted Payments pursuant to Section 7.05 shall reduce the amount available under any such applicable clause by an amount equal to the outstanding principal amount of such Indebtedness; and

(hh) Indebtedness Incurred by any Borrower Party with respect to trade letters of credit not to exceed the greater of (x) \$28,200,000 and (y) 15.0% of Four Quarter Consolidated EBITDA at the time of Incurrence.

Any Borrower Party may Incur Indebtedness or issue Disqualified Stock, and any Restricted Subsidiary may issue Preferred Stock, permitted by this Section 7.01 including through use of the same basket or other exception used to originally incur the Indebtedness being satisfied and discharged, to satisfy and discharge Indebtedness permitted to be incurred hereunder in the form of senior unsecured notes, at the same time as such senior unsecured notes are outstanding, so long as the net proceeds of such Indebtedness, Disqualified Stock or Preferred Stock, as applicable, are promptly deposited with the trustee to satisfy and discharge such Indebtedness in accordance with the indenture governing such Indebtedness.

For purposes of determining compliance with this Section 7.01, (i) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) meets the criteria of more than one of the categories of Permitted Debt or is entitled to be Incurred or issued as Ratio Debt, the Borrowers shall, in their sole discretion, at the time of Incurrence or issuance, divide, classify or reclassify, or at any later time divide, classify or reclassify, such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) in any manner that complies with this Section 7.01; *provided* that (A) all Indebtedness under this Agreement Incurred on or after the Closing Date shall be deemed to have been Incurred pursuant to Section 7.01(a) and the Borrowers shall not be permitted to reclassify all or any portion of Indebtedness Incurred pursuant to Section 7.01(a) and (ii) in the event that the Borrowers shall classify Indebtedness Incurred on the date of determination as Incurred in part as Ratio Debt or as having been incurred under the Ratio-Based Incremental Facility and in part pursuant to one or more other clauses of this Section 7.01, Consolidated Funded Indebtedness shall not include any such Indebtedness Incurred pursuant to one or more such other clauses of this Section 7.01, and shall not give effect to any discharge of any Indebtedness from the proceeds of any such Indebtedness being disregarded for purposes of the calculation of the Consolidated Funded Indebtedness on such date of determination that otherwise would be included in Consolidated Funded Indebtedness. Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount, the payment of interest or dividends in the form of additional Indebtedness with the same terms, the payment of dividends on Disqualified Stock or Preferred Stock in the form of additional shares of Disqualified Stock or Preferred Stock of the same class, the accretion of maximum fixed repurchase price and increases in the amount of Indebtedness, Disqualified

Stock or Preferred Stock outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness will not be deemed to be an Incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock for purposes of this Section 7.01. Guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that are otherwise included in the determination of a particular amount of Indebtedness shall not be included in the determination of such amount of Indebtedness; *provided* that the Incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was in compliance with this Section 7.01.

For purposes of determining compliance with any Dollar-denominated restriction on the Incurrence of Indebtedness or the issuance of Disqualified Stock or Preferred Stock, the Dollar-equivalent principal amount or maximum fixed repurchase price, as applicable, of Indebtedness, Disqualified Stock or Preferred Stock denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term debt, or first committed or first Incurred (whichever yields the lower Dollar-equivalent), in the case of revolving credit debt or debt financing to fund an acquisition, or first issued in the case of Disqualified Stock or Preferred Stock; *provided* that if such Indebtedness, Disqualified Stock or Preferred Stock is Incurred to refinance other Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, denominated in a foreign currency, and such refinancing would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount or maximum fixed repurchase price, as applicable, of such Refinancing Indebtedness does not exceed the principal amount or maximum fixed repurchase price, as applicable, of such Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, being refinanced (plus any Refinancing Expenses).

The principal amount or maximum fixed repurchase price, as applicable, of any Indebtedness Incurred or Disqualified Stock or Preferred Stock issued to refinance other Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, if Incurred or issued in a different currency from the Indebtedness, Disqualified Stock or Preferred Stock being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness, Disqualified Stock or Preferred Stock is denominated that is in effect on the date of such refinancing.

Section 7.02 Limitations on Liens. Create, incur, assume or suffer to exist any Lien upon any property or assets of any kind (real or personal, tangible or intangible) of any Borrower Party, whether now owned or hereafter acquired (each, a “**Subject Lien**”) that secures obligations under any Indebtedness unless:

- (a) in the case of Subject Liens on any Collateral, such Subject Lien is a Permitted Lien; and
- (b) in the case of any other asset or property, any Subject Lien if (i) the Obligations are equally and ratably secured with (or on a senior basis to, in the case such Subject Lien secures any Junior Financing) the obligations secured by such Subject Lien or (ii) such Subject Lien is a Permitted Lien.

Any Lien created for the benefit of the Secured Parties pursuant to the preceding clause (b) shall provide by its terms that such Lien shall be automatically and unconditionally be released and discharged upon the release and discharge of the Subject Lien that gave rise to the obligation to so secure the Obligations.

No reference herein to Liens permitted hereunder (including Permitted Liens), including any statement or provision as to the acceptability of any Liens (including Permitted Liens), shall in any way

constitute or be construed as to provide for an implied subordination of any rights of the Agents, the Lenders or other Secured Parties hereunder or arising under any of the other Loan Documents in favor of such Liens.

Section 7.03 Fundamental Changes. Merge, dissolve, liquidate, amalgamate, consolidate with or into another Person or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (including, in each case, pursuant to an LLC Division or LP Division, or an allocation of assets to a Series LLC or Series LP), except that, (other than in the case of clause (e) below) so long as no Event of Default would result therefrom:

(a) Parent Borrower and any Restricted Subsidiary may merge, amalgamate or consolidate with (i) any Borrower (including a merger, the purpose of which is to reorganize such Borrower into a new jurisdiction); *provided* that (A) such Borrower shall be a person organized under the laws of the United States, any state thereof or the District of Columbia, and such Borrower (or, in the case of a merger, amalgamation or consolidation with Parent Borrower, Parent Borrower) shall be the continuing or surviving Person or the surviving Person shall expressly assume the obligations of such Borrower pursuant to documents reasonably acceptable to the Administrative Agent and (B) the surviving person shall provide any documentation and other information about such person as shall have been reasonably requested in writing by any Lender through the Administrative Agent that such Lender shall have reasonably determined is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including Title III of the PATRIOT Act, or (ii) any one or more other Restricted Subsidiaries; *provided* that when any Subsidiary Guarantor is merging, amalgamating or consolidating with another Restricted Subsidiary that is not a Subsidiary Guarantor either (A) the Subsidiary Guarantor shall be the continuing or surviving Person or (B) such merger, amalgamation or consolidation shall be deemed to constitute either an Investment or Disposition, as elected by the Borrower, and such Investment must be a Permitted Investment, other Investment permitted under Section 7.05 or Indebtedness of a Restricted Subsidiary which is not a Subsidiary Guarantor in accordance with Section 7.01, respectively or such Disposition must be a Disposition permitted hereunder;

(b) (i) any Restricted Subsidiary (other than Subsidiary Borrower) that is not a Subsidiary Guarantor may merge, amalgamate or consolidate with or into any other Restricted Subsidiary that is not a Subsidiary Guarantor and (ii) any Restricted Subsidiary (other than Subsidiary Borrower) may liquidate or dissolve, or any Borrower Party may (if the validity, perfection and priority of the Liens securing the Obligations is not adversely affected thereby) change its legal form if the Parent Borrower determines in good faith that such action is in the best interest of the Parent Borrower and its Subsidiaries and is not disadvantageous to the Lenders in any material respect (it being understood that in the case of any liquidation or dissolution of a Restricted Subsidiary that is (A) a Co-Borrower, such Subsidiary shall at or before the time of such dissolution cease to be a Co-Borrower under this Agreement in accordance with Section 11.03 or (B) a Loan Party, such Subsidiary shall at or before the time of such liquidation or dissolution transfer its assets to either Borrower or another Restricted Subsidiary that is a Loan Party in the same jurisdiction or a different jurisdiction reasonably satisfactory to the Administrative Agent unless such Disposition of assets is permitted hereunder; and in the case of any change in legal form, a Restricted Subsidiary that is a Co-Borrower or a Guarantor will remain a Co-Borrower or a Guarantor unless such Co-Borrower or Guarantor is otherwise permitted to cease being a Co-Borrower or a Guarantor hereunder);

(c) any Restricted Subsidiary (other than Subsidiary Borrower) may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to a Borrower or to any Restricted Subsidiary; *provided* that if the transferor in such a transaction is (A) a Co-Borrower, such Subsidiary shall at or before the time of such dissolution cease to be a Co-Borrower under this Agreement in accordance with Section 11.03 or (B) a Loan Party, then either (i) the transferee must either be a

Borrower or a Subsidiary Guarantor or (ii) to the extent such Disposition of assets shall be deemed to constitute either an Investment or Disposition, such Investment must be a Permitted Investment or Indebtedness of a Non-Loan Party Subsidiary in accordance with Section 7.01, respectively, or such Disposition must be a Disposition permitted hereunder; *provided, however*, that a Borrower may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to any Loan Party in the same jurisdiction as the disposing party or in another jurisdiction reasonably acceptable to the Administrative Agent;

(d) any Restricted Subsidiary (other than Subsidiary Borrower) may merge, amalgamate or consolidate with, or dissolve into, any other Person in order to effect a Permitted Investment or other Investment permitted under Section 7.05; *provided* that (i) the continuing or surviving Person shall, to the extent subject to the terms hereof, have complied with the requirements of Section 6.12, (ii) to the extent constituting an Investment, such Investment must be a Permitted Investment or other Investment permitted under Section 7.05, (iii) to the extent constituting a Disposition, such Disposition must be permitted hereunder and (iv) to the extent such Restricted Subsidiary is a Co-Borrower, it shall cease to be a Co-Borrower in accordance with Section 11.03;

(e) the Borrower Parties may consummate the Transactions;

(f) the Parent Borrower and any Restricted Subsidiary may effect a Permitted Tax Reorganization;

(g) any Restricted Subsidiary (other than the Subsidiary Borrower) may merge, dissolve, liquidate, amalgamate, consolidate with or into another Person in order to effect a Disposition (whether in one transaction or in a series of transactions) of all or substantially all of its assets (whether now owned or hereafter acquired) permitted pursuant to Section 7.04 (other than Dispositions permitted by this Section 7.03); *provided* that if such Restricted Subsidiary is a Co-Borrower, it shall cease to be a Co-Borrower in accordance with Section 11.03;

(h) any Restricted Subsidiary (other than the Subsidiary Borrower) may merge, dissolve, liquidate, amalgamate, consolidate with or into another Person or Dispose of its assets if (i) such transaction is undertaken in good faith to improve the tax efficiency of the Parent Borrower and its Subsidiaries and (ii) after giving effect to such transaction, each of the security interest of the Collateral Agent in the Collateral, taken as a whole, and the value of the Guarantees, taken as a whole, is not materially impaired;

(i) any Restricted Subsidiary may enter into an Intercompany License Agreement; and

(j) any Permitted Investment may be structured as a merger, consolidation or amalgamation.

For the avoidance of doubt, notwithstanding anything else contained herein, any LLC Conversion shall be permitted under this Agreement and each other Loan Document.

Notwithstanding anything to the contrary, none of the Borrower Parties shall transfer (including by way of an exclusive license) any Material IP to an Unrestricted Subsidiary (or in the case of any Material IP owned by any Loan Party to any Non-Loan Party); provided that the foregoing shall not restrict any Borrower Party from entering into any non-exclusive license of Material IP in the ordinary course of business.

Section 7.04 Asset Sales.

(a) Cause or make an Asset Sale, unless:

(A) (x) any Borrower Party, as the case may be, receives consideration (including by way of relief from, or by any other person assuming responsibility for, any liabilities, contingent or otherwise) at the time of such Asset Sale at least equal to the Fair Market Value (as determined at the time of contractually agreeing to such Asset Sale by the Parent in good faith) of the assets sold or otherwise disposed of and (y) no Specified Event of Default shall exist immediately before, or would immediately result from, such Asset Sale; and

(B) except in the case of a Permitted Asset Swap, if the property or assets sold or otherwise disposed of have, in the aggregate, a Fair Market Value in excess of the greater of (x) \$37,600,000 and (y) 20% of Four Quarter Consolidated EBITDA calculated at the time of such disposition, at least 75.0% of the consideration therefor received by any Borrower Party, as the case may be, is in the form of cash, Cash Equivalents or Replacement Assets; *provided*, that the amount of the following shall be deemed “cash” or Cash Equivalents for purposes of making the foregoing determination:

(1) any liabilities (as shown on the Parent Borrower’s or such Restricted Subsidiary’s most recent balance sheet or in the notes thereto for which internal financial statements are available immediately preceding such date or, if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Parent’s or such Restricted Subsidiary’s balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet in the good faith determination of the Parent Borrower) of any Borrower Party (other than liabilities that are by their terms subordinated to the Obligations) that are extinguished in connection with the transactions relating to such Asset Sale, or that are assumed by the transferee of any such assets or Equity Interests, in each case, pursuant to an agreement that releases or indemnifies any Borrower Party, as the case may be, from further liability;

(2) any notes or other obligations or other securities or assets received by any Borrower Party from such transferee that are converted by any Borrower Party into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received), in each case, within 180 days of the receipt thereof; and

(3) any Designated Non-Cash Consideration received by any Borrower Party in such Asset Sale having an aggregate Fair Market Value, taken together with all other Designated Non-Cash Consideration received pursuant to this subclause (d) that is at that time outstanding, not to exceed the greater of (x) \$84,600,000 and (y) 45.0% of Four Quarter Consolidated EBITDA, calculated at the time of the receipt of such Designated Non-Cash Consideration (or, at the election of the Parent Borrower, as of the date of effectiveness with respect to a binding commitment to effect such asset sale) (with the Fair Market Value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value); shall each be deemed to be Cash Equivalents for the purposes of this clause (2).

Within eighteen (18) months after any Borrower Parties’ receipt of the Net Cash Proceeds of any Asset Sale or Casualty Event, any Borrower Party may apply an amount equal to the Net Cash Proceeds from such Asset Sale or such Casualty Event, at its option:

(4) to prepay Loans and other Permitted Debt in accordance with Section 2.05(b)(ii);

(5) to make an investment in any one or more businesses, assets (other than working capital assets), or property or capital expenditures (including Capitalized Software Expenditures), in each case used or useful in a Similar Business;

(6) to make an investment (including capital expenditures and Capitalized Software Expenditures) in any one or more businesses, properties (other than working capital assets) or assets (other than working capital assets) that replace the businesses, properties and/or assets that are the subject of such Asset Sale or Casualty Event, with any such investment made by way of a capital or other lease valued at the present value of the minimum amount of payments under such lease (as determined by the Parent Borrower in good faith); or

(7) any combination of the foregoing; *provided* that the Parent Borrower Parties will be deemed to have complied with the provisions described in clause (2) or (3) of this paragraph if and to the extent that, within eighteen (18) months after the Asset Sale that generated the Net Cash Proceeds, any Borrower Party, as applicable, has entered into commitment to reinvestment or is subject to a letter of intent in compliance with the provision described in clause (2) or (3) of this paragraph, and that investment is thereafter completed within 180 days after the end of such eighteen (18) month period.

Pending the final application of any such amount of Net Cash Proceeds pursuant to Section 2.05(b)(ii) and this Section 7.04, any Borrower Party may temporarily reduce Indebtedness under the Revolving Credit Facility, or otherwise invest or utilize such Net Cash Proceeds in any manner not prohibited by this Agreement.

Notwithstanding anything to the contrary, none of the Borrower Parties shall transfer (including by way of an exclusive license) any Material IP to an Unrestricted Subsidiary (or in the case of any Material IP owned by any Loan Party to any Non-Loan Party); *provided* that the foregoing shall not restrict any Borrower Party from entering into any non-exclusive license of Material IP in the ordinary course of business.

Section 7.05 Restricted Payments.

(1) declare or pay any dividend or make any payment or distribution on account of the Parent Borrower's or any of its Restricted Subsidiaries' Equity Interests, including any payment made in connection with any merger, amalgamation or consolidation involving the Parent Borrower (other than (A) dividends or distributions by the Parent Borrower payable solely in Equity Interests (other than Disqualified Stock) of the Parent Borrower; or (B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly Owned Restricted Subsidiary, any Borrower Party receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

(2) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Parent Borrower, including in connection with any merger, amalgamation or consolidation;

(3) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness of the Parent Borrower or any Guarantor (other than the payment, redemption, repurchase, defeasance, acquisition or retirement of (A) Subordinated Indebtedness of the Parent Borrower or any Guarantor in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement and (B) Indebtedness permitted under Section 7.01(g) or (i)) in a principal amount, individually for any such Indebtedness, greater than the Threshold Amount (collectively, the “**Junior Financing**”); or

(4) make any Restricted 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 such Restricted Payment:

(a) with respect to any Restricted Payment of the type described in clause (c) below, no Specified Event of Default shall have occurred and be continuing or would occur as a consequence thereof;

(b) [reserved];

(c) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Borrower Parties after the Closing Date (including Restricted Payments permitted by clause (1) of the next succeeding paragraph, but excluding all other Restricted Payments permitted by the next succeeding paragraph), is less than the sum of, without duplication,

(i) (x) 100% of Four Quarter Consolidated EBITDA (subject to Section 1.10) of the Parent Borrower and its Restricted Subsidiaries for the period (taken as one accounting period) from the first date of the first fiscal quarter in which the Closing Date occurs to the last day of the most recent fiscal quarter or fiscal year, as applicable, for which financial statements are available (which may be internal financial statements), *less* (y) 150% of Fixed Charges of the Parent Borrower and its Restricted Subsidiaries for such period (provided that notwithstanding the foregoing, the aggregate amount in respect of this clause (i) shall at no time be less than zero), *plus*

(ii) 100.0% of the aggregate net proceeds, including cash and the Fair Market Value of assets (other than cash), received by the Parent Borrower after the Closing Date from the issue or sale of Equity Interests of the Parent Borrower (other than Excluded Equity), including such Equity Interests issued upon exercise of warrants or options, *plus*

(iii) 100.0% of the aggregate amount of contributions to the capital of the Parent Borrower received in cash and the Fair Market Value of assets (other than cash) after the Closing Date (other than Excluded Equity and any contributions from any Restricted Subsidiaries), *plus*

(iv) the principal amount of any Indebtedness, or the maximum fixed repurchase price, as the case may be, of any Disqualified Stock, in each case, of any Borrower Party issued after

the Closing Date (other than Indebtedness or Disqualified Stock issued to a Borrower Party or an employee stock ownership plan or trust established by any Borrower Party (other than to the extent such employee stock ownership plan or trust has been funded by any Borrower Party)) that, in each case, has been converted into or exchanged for Equity Interests in the Parent Borrower (other than Excluded Equity), *plus*

(v) 100.0% of the aggregate amount of proceeds received by any Borrower Party in cash and the Fair Market Value of assets (other than cash) received after the Closing Date by any Borrower Party (less amounts distributed as Leverage Excess Proceeds) from:

(A) the sale or other disposition (other than to any Borrower Party) of Restricted Investments made after the Closing Date by the Borrower Parties and from repurchases and redemptions of such Restricted Investments from the Borrower Parties by any Person (other than any Borrower Party) and from repayments of loans or advances that constituted Restricted Investments,

(B) the sale (other than to any Borrower Party or an employee stock ownership plan or trust established by any Borrower Party (other than to the extent such employee stock ownership plan or trust has been funded by any Borrower Party)) of the Equity Interests of an Unrestricted Subsidiary, or

(C) any distribution or dividend from an Unrestricted Subsidiary, *plus*

(vi) in the event any Unrestricted Subsidiary has been redesignated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, any Borrower Party, in each case after the Closing Date, the Fair Market Value of the Investment of the Parent Borrower in such Unrestricted Subsidiary at the time of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable), other than in each case to the extent that the designation of such Subsidiary as an Unrestricted Subsidiary constituted a Permitted Investment, *plus*

(vii) the aggregate amount of Retained Declined Proceeds since the Closing Date; *plus*

(viii) the greater of (x) \$94,000,000 and (y) 50.0% of Four Quarter Consolidated EBITDA at the time of making (or at the option of the Parent Borrower, the declaration to make) such Restricted Payment (collectively, this clause (c), the “**Cumulative Amount**”).

Notwithstanding anything to the contrary, this Section 7.05 will not prohibit:

(1) the payment of any dividend or distribution or consummation of any redemption within 60 days after the date of declaration thereof or the giving of a redemption notice related thereto, if at the date of declaration or notice such payment would have complied with the provisions of this Agreement;

(2)

(a) the redemption, repurchase, retirement or other acquisition of any Equity Interests (“**Retired Capital Stock**”) of the Parent Borrower, or Junior Financing of any Borrower or any Subsidiary Guarantor, in exchange for, or out of the proceeds of the issuance or sale of, Equity Interests of the Parent Borrower or

contributions to the equity capital of the Parent Borrower (other than Excluded Equity) (collectively, including any such contributions, “**Refunding Capital Stock**”);

(b) the declaration and payment of accrued dividends on the Retired Capital Stock out of the proceeds of the issuance or sale (other than to a Restricted Subsidiary of the Parent Borrower or to an employee stock ownership plan or any trust established by any Borrower Party) of Refunding Capital Stock; and

(c) if immediately prior to the retirement of the Retired Capital Stock, the declaration and payment of dividends thereon was permitted pursuant to this covenant and has not been made as of such time (the “**Unpaid Amount**”), the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of the Parent Borrower) in an aggregate amount no greater than the Unpaid Amount (with the payment of such Unpaid Amount being treated as a payment under the applicable provision);

(3) the prepayment, redemption, defeasance, repurchase or other acquisition or retirement of Junior Financing of any Borrower or any Subsidiary Guarantor made by exchange for, or out of the proceeds of the Incurrence of, Refinancing Indebtedness thereof;

(4) the prepayment, redemption, purchase, defeasance or other satisfaction of any Indebtedness (1) existing at the time a Person becomes a Subsidiary or (2) assumed in connection with the acquisition of assets, in each case so long as such Indebtedness was not incurred in contemplation of, such Person becoming a Subsidiary or such acquisition;

(5) the purchase, retirement, redemption or other acquisition (or Restricted Payments to the Parent Borrower or any direct or indirect parent of the Parent Borrower to finance any such purchase, retirement, redemption or other acquisition) for value of Equity Interests (including related stock appreciation rights or similar securities) of the Parent Borrower or any direct or indirect parent of the Parent Borrower held directly or indirectly by any future, present or former employee, officer, director, manager, consultant or independent contractor of the Parent Borrower or any direct or indirect parent of the Parent Borrower or any Subsidiary of the Parent Borrower or their estates, heirs, family members, spouses or former spouses or permitted transferees (including for all purposes of this clause (5), Equity Interests held by any entity whose Equity Interests are held by any such future, present or former employee, officer, director, manager, consultant or independent contractor or their estates, heirs, family members, spouses or former spouses or permitted transferees) pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement or any stock subscription or shareholder or similar agreement; *provided, however*, that the aggregate amounts paid under this clause (5) shall not exceed the greater of (x) \$47,000,000 and (y) 25.0% of Four Quarter Consolidated EBITDA at the time of making (or at the option of the Parent Borrower, the declaration to make) such Restricted Payment in any calendar year (in each case, with unused amounts under this clause (5) permitted to be carried forward to the next two immediately succeeding calendar years and amounts projected by the Parent Borrower in good faith to be available under this clause (5) in the immediately succeeding calendar year permitted to be carried back to the then current calendar year); *provided, further*,

however, that such amount in any calendar year may be increased by an amount not to exceed:

(a) the cash proceeds received by the Parent Borrower from the issuance or sale of Equity Interests (other than Disqualified Stock) of the Parent Borrower to any future, present or former employees, officers, directors, managers, consultants or independent contractors of the Parent Borrower or its Restricted Subsidiaries that occurs on or after the Closing Date; *provided* that the amount of such cash proceeds utilized for any such repurchase, retirement, other acquisition or dividend will not increase the amount available for Restricted Payments under clause (c) of the immediately preceding paragraph; *plus*

(b) the cash proceeds of key man life insurance policies received by the Parent Borrower or its Restricted Subsidiaries after the Closing Date; *plus*

(c) the amount of any cash bonuses otherwise payable to employees, officers, directors, managers, consultants or independent contractors of the Parent Borrower or its Restricted Subsidiaries that are foregone in return for the receipt of Equity Interests; *less*

(d) the amount of cash proceeds described in subclause (a), (b) or (c) of this clause (5) previously used to make Restricted Payments pursuant to this clause (5) (*provided* that the Parent Borrower may elect to apply all or any portion of the aggregate increase contemplated by subclauses (a), (b) and (c) above in any calendar year);

provided, further, that cancellation of Indebtedness owing to any Borrower Party from any future, current or former officer, director, employee, manager, consultant or independent contractor (or any permitted transferees thereof) of any Borrower Party, in connection with a repurchase of Equity Interests of the Parent Borrower from such Persons will not be deemed to constitute a Restricted Payment for purposes of this Section 7.05 or any other provisions of this Agreement;

(6) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of any Borrower Party and any class or series of Preferred Stock of any Restricted Subsidiaries issued or Incurred in accordance with the covenant described in Section 7.01;

(7) the declaration and payment of dividends or distributions to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) and the declaration and payment of dividends to the Parent Borrower, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) of the Parent Borrower issued after the Closing Date; *provided* that (A) the Consolidated Interest Coverage Ratio on a Pro Forma Basis is 2.00:1.00 or greater and (B) the aggregate amount of dividends declared and paid pursuant to this clause (7) does not exceed the net cash proceeds actually received by the Parent Borrower from the sale (or the contribution of the net cash proceeds from the sale) of Designated Preferred Stock;

(8) any Restricted Payments made in connection with the consummation of the Transactions, including any dividends, payments or loans made to