

SECTION 5.11 Designation of Subsidiaries. The board of directors of Holdings may at any time after the Effective Date, in accordance with the definition of Unrestricted Subsidiary, designate any subsidiary as an Unrestricted Subsidiary; provided that (i) immediately before and after such designation, no Default or Event of Default shall have occurred and be continuing, (ii) a subsidiary may be designated as an Unrestricted Subsidiary only if it is a newly created or acquired Subsidiary that has been created or acquired for the sole purpose of making a Permitted Acquisition, (iii) such designation is made substantially concurrently with such creation or acquisition and (iv) no subsidiary may be designated as an Unrestricted Subsidiary if it is a “Restricted Subsidiary” for the purpose of the Senior Secured Notes. The designation of any subsidiary as an Unrestricted Subsidiary shall constitute an investment by Holdings therein at the date of designation in an amount equal to the net book value of Holdings’ investment therein.

SECTION 5.12 Hedging Arrangements. No Loan Party will, nor will it permit any Subsidiary to, at any time, incur any Crack Spread Hedge with respect to expected gasoline production or expected distillate production in excess of the then-applicable Maximum Hedging Limit.

SECTION 5.13 Maintenance of Ratings. Holdings will use commercially reasonable efforts, including, for the avoidance of doubt, the payment of the usual and customary fees and expenses of each of S&P and Moody’s, to cause Holdings to continuously have public corporate credit and corporate family ratings, as applicable, from S&P and Moody’s.

SECTION 5.14 Mortgages. Each Loan Party that owns real property required to be mortgaged hereunder shall, within ninety (90) days after the Effective Date (or such later date approved by the Agent in its reasonable discretion), enter into one or more Mortgages and satisfy the Real Property Collateral Requirements, each with respect to the owned real property specified on Schedule 1.01(c) for the benefit of the Agent.

## ARTICLE VI NEGATIVE COVENANTS

Until the Termination Date, each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the Loan Parties, with the Lenders that:

SECTION 6.01 Indebtedness. No Loan Party will, nor will it permit any Subsidiary to, create, incur or suffer to exist any Indebtedness, except:

(a) Indebtedness created under the Loan Documents;

(b) Indebtedness existing on the date hereof and set forth in Schedule 6.01;

(c) Indebtedness of any Group Member to any other Group Member; provided that (i) Indebtedness of any Group Member that is not a Loan Party to any Group Member that is a Loan Party shall only be permitted to the extent permitted as an investment under Section 6.04 and (ii) Indebtedness of any Group Member that is a Loan Party to any Group Member that is not a Loan Party shall (x) be evidenced by the Intercompany Note or (y) otherwise be outstanding on the Effective Date so long as such Indebtedness is evidenced by an intercompany note substantially in the form of Exhibit H or otherwise subject to subordination terms substantially identical to the subordination terms set forth in Exhibit H within 60 days of the Effective Date or such later date as the Agent shall reasonably agree, in each case, to the extent permitted by applicable law and not giving rise to material adverse tax consequences;

(d) Guarantees (i) by any Group Member that is a Loan Party of any Indebtedness of any Group Member that is a Loan Party expressly permitted to be incurred under this Agreement (including, for the avoidance of doubt, obligations described in clause (c) (i) of the definition of “Indebtedness”), (ii) by any Group Member that is a Loan Party of Indebtedness otherwise expressly permitted hereunder of any Group Member that is not a Loan Party to the extent such Guarantees are permitted as an investment under Section 6.04; provided that Guarantees by any Group Member that is a Loan Party under this clause (d) of any other Indebtedness of a Person that is subordinated to other Indebtedness of such Person shall be expressly subordinated to the Obligations on terms reasonably satisfactory to the Agent, and (iii) by any Group Member that is a Loan Party of any real property lease obligations of any other Group Member that is a Loan Party;

(e) Indebtedness (including Capital Lease Obligations) the proceeds of which are incurred exclusively to finance the acquisition, lease, construction, repair, renovations, replacement, expansion or improvement of any fixed or capital assets or otherwise incurred in respect of Capital Expenditures, whether through the direct purchase of assets or the Equity Interests of any Person owning such assets in an aggregate principal amount, together with all other Indebtedness issued or incurred and outstanding under this clause (e), not to exceed the greater of (i) \$20,000,000 and (ii) 2.5% of Total Assets (in each case determined as of the date of incurrence);

(f) Indebtedness incurred by Holdings or any Subsidiary in respect of any Sale and Lease-Back Transaction that is permitted under Section 6.06;

(g) Indebtedness which represents an extension, refinancing, refunding, replacement or renewal of any of the Indebtedness described in clauses (b), (e), (f), (g), (j), (k), (m), (n) and (z) of this Section 6.01; provided that, (i) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so extended, refinanced, refunded, replaced or renewed, except by an amount equal to unpaid accrued interest and premium (including applicable prepayment penalties) thereon *plus* fees and expenses reasonably incurred in connection therewith, (ii) any Liens securing such Indebtedness are not extended to any additional property of any Loan Party, (iii) no Loan Party that is not originally obligated with respect to repayment of such Indebtedness is required to become obligated with respect thereto, (iv) such extension, refinancing, refunding, replacement or renewal does not result in a shortening of the average weighted maturity of the Indebtedness so extended, refinanced, refunded, replaced or renewed, (v) if the Indebtedness that is extended, refinanced, refunded, replaced or renewed was subordinated in right of payment to the Secured Obligations, then the terms and conditions of the extension, refinancing, refunding, replacement or renewal Indebtedness must include subordination terms and conditions that are at least as favorable to the Lenders as those that were applicable to the extended, refinanced, refunded, replaced or renewed Indebtedness and (vi) with respect to any such extension, refinancing, refunding, replacement or renewal of the Senior Secured Notes, such refinancing Indebtedness, if secured, is secured only by assets of the Loan Parties that constitute Collateral for the Obligations pursuant to a security agreement subject to the Intercreditor Agreement or another intercreditor agreement in form and substance reasonably satisfactory to the Agent and in any event that is no less favorable to the Secured Parties than the Intercreditor Agreement;

(h) Indebtedness incurred by Holdings or any Subsidiary constituting reimbursement obligations with respect to letters of credit, bank guarantees, bankers’ acceptances, warehouse receipts, or similar instruments issued or created in the ordinary course of business, including letters of credit in respect of workers’ compensation claims, health, disability or other employee

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benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance; provided that upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 30 days following such drawing or incurrence;

(i) Indebtedness of Holdings or any Subsidiary in respect of self-insurance and in respect of performance bonds, bid bonds, appeal bonds, surety bonds, performance and completion guarantees and similar obligations, or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case provided in the ordinary course of business;

(j) Indebtedness of a Person that becomes a Subsidiary (or is a Subsidiary that survives a merger with such Person or any of its Subsidiaries) after the Effective Date and Indebtedness acquired or assumed in connection with Permitted Acquisitions; provided that

(i) such Indebtedness exists at the time such Person becomes a Subsidiary or at the time of such Permitted Acquisition and is not created in contemplation of or in connection therewith, and

(ii) such Indebtedness is not guaranteed in any respect by Holdings or any Subsidiary (other than any such Person that so becomes a Subsidiary or is the survivor of a merger with such Person or any of its Subsidiaries).

(k) Indebtedness of any Subsidiary issued or incurred to finance a Permitted Acquisition; provided that

(w) (A) the terms of such Indebtedness do not provide for any scheduled repayment, mandatory redemption or sinking fund obligation prior to the date that is 180 days after the latest Maturity Date, other than customary offers to purchase upon a change of control, asset sale or casualty or condemnation event and customary acceleration rights upon an event of default, (B) if such Indebtedness is secured by a Lien, such Lien shall be subordinated to the Liens securing the Collateral in a manner reasonably satisfactory to the Agent, (C) if the primary obligor of such Indebtedness is not a Loan Party, such Indebtedness shall not be guaranteed in any respect by Holdings or any other Loan Party except to the extent permitted under Section 6.04 and (D) the covenants, events of default, subsidiary guarantees and other terms for such Indebtedness (provided that such Indebtedness shall have interest rates, fees, funding discounts and redemption or prepayment premiums determined by the Borrower Agent to be market rates and premiums at the time of issuance of such Indebtedness), taken as a whole, are determined by the Borrower Agent to be market terms on the date of issuance and in any event are not more restrictive on the Group Members than the terms of this Agreement (as in effect on the Effective Date) and do not require the maintenance or achievement of any financial performance standards other than as a condition to taking specified actions; provided that a certificate of a Responsible Officer of the Borrower Agent delivered to the Agent at least five (5) Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower Agent has determined in good faith that such terms and conditions satisfy the foregoing requirements shall be conclusive evidence that such terms and conditions satisfy the foregoing requirements unless the Agent notifies the Borrower Agent within

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such five (5) Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees);

(x) (A) the relevant Loan Party pledges the Equity Interests of any Person acquired in such Permitted Acquisition (the “acquired Person”) to the Agent to the extent required under Section 5.10 and (B) such acquired Person executes a Joinder Agreement to the extent required under Section 5.10;

(y) before and after giving effect to such issuance or incurrence of Indebtedness, no Event of Default shall have occurred or be continuing; and

(z) the Fixed Charge Coverage Ratio as of the end of the most recently ended Test Period prior to the issuance or incurrence of such Indebtedness and the consummation of such acquisition, calculated on a Pro Forma Basis, after giving effect to such incurrence or issuance and to such acquisition, as if such incurrence or issuance and acquisition had occurred on the first day of such Test Period, shall be equal to or greater than 1.00 to 1.00.

(l) unsecured Indebtedness in respect of obligations of Holdings or any Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that (i) such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money or (ii) such obligations are unsecured Indebtedness in respect of intercompany obligations of Holdings or any Subsidiary in respect of accounts payable incurred in connection with goods sold or services rendered in the ordinary course of business and not in connection with the borrowing of money;

(m) Indebtedness of Holdings pursuant to and any Guarantees by any Loan Party of the Senior Secured Notes (and any exchange notes and related exchange guarantees to be issued in exchange for such Senior Secured Notes) in an aggregate principal amount that is not in excess of \$290,000,000;

(n) other Indebtedness not otherwise permitted under this Section 6.01 in an aggregate outstanding principal amount not exceeding \$50,000,000;

(o) Swap Obligations pursuant to Swap Agreements incurred in the ordinary course of business and not for speculative purposes;

(p) to the extent constituting Indebtedness, obligations under the Crude Oil Intermediation Agreement or any similar agreement and any agreements constituting a refinancing, replacement, refunding, renewal, extension or amendment of the foregoing;

(q) Indebtedness consisting of promissory notes issued by any Loan Party to future, current or former officers, directors, employees, managers and consultants thereof or their respective Controlled Investment Affiliates or Immediate Family Members, in each case to finance the purchase or redemption of Equity Interests of Holdings (or any Parent) permitted by Section 6.08;

(r) Indebtedness arising from agreements providing for indemnification, adjustment of purchase price, earnouts or similar obligations, in each case, incurred in connection with the disposition of any business, assets or a Subsidiary, other than Guarantees of Indebtedness

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incurred by any Person acquiring all or any portion of such business, assets or Subsidiaries for the purpose of financing such acquisition; provided, however, that (i) such Indebtedness is not reflected on the consolidated balance sheet of Holdings and its Subsidiaries prepared in accordance with GAAP (contingent obligations referred to in a footnote to financial statements and not otherwise reflected on the balance sheet will not be deemed to be reflected on such balance sheet for purposes of this clause (i)) and (ii) the maximum aggregate liability in respect of all such Indebtedness shall not exceed the gross proceeds, including the fair market value of non-cash proceeds (the fair market value of such non-cash proceeds being measured at the time such proceeds are received and without giving effect to any subsequent changes in value), actually received by the Group Members in connection with such disposition;

(s) Indebtedness consisting of obligations of any Group Member under deferred compensation or other similar arrangements incurred by such Person in connection with the Transactions and Permitted Acquisitions or any other investment expressly permitted hereunder;

(t) Indebtedness (i) arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; provided that such Indebtedness is extinguished within five Business Days of its incurrence, (ii) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business, and (iii) Indebtedness in respect of Banking Services provided by banks or other financial institutions to any Group Member in the ordinary course of business, in each case incurred or undertaken in the ordinary course of business on arm's length commercial terms on a recourse basis;

(u) Indebtedness consisting of (x) the financing of insurance premiums or (y) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(v) Indebtedness incurred by Holdings or any Subsidiary in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created in the ordinary course of business;

(w) Indebtedness supported by a Letter of Credit, in a principal amount not to exceed the face amount of such Letter of Credit;

(x) Commodities Hedging Obligations pursuant to Commodities Hedging Agreements incurred in accordance with prudent industry practice; and

(y) (i) unsecured Subordinated Indebtedness of Holdings or any Subsidiary and (ii) other unsecured Indebtedness of Holdings or any Subsidiary so long as at the time of any such incurrence under this clause (ii) and after giving Pro Forma Effect thereto, Excess Availability is equal to or in excess of the greater than (A) 17.5% of the lesser of (x) the aggregate Revolving Credit Commitment and (y) the Borrowing Base and (B) \$26,250,000.

The accrual of interest and the accretion or amortization of original issue discount on Indebtedness and the payment of interest in the form of additional Indebtedness originally incurred in accordance with this Section 6.01 will not constitute an incurrence of Indebtedness.

SECTION 6.02 Liens. No Loan Party will, nor will it permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter

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acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens created pursuant to any Loan Document;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of any Group Member existing on the date hereof and set forth in Schedule 6.02 and any replacements, renewals, refinancings, refundings or extensions thereof; provided that (i) such Lien does not extend to any other property or asset of any Group Member other than after acquired property that is (A) affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted by Section 6.01 and, in each case the proceeds and products thereof and (ii) such Lien shall secure only those obligations that it secures on the Effective Date and extensions, renewals, refinancings, refundings and replacements thereof that do not increase the outstanding principal amount thereof (except to the extent permitted under Section 6.01(g));

(d) Liens securing Indebtedness permitted under Section 6.01(e) or (f); provided that (i) such Liens attach concurrently with or within 270 days after the acquisition, repair, replacement, construction, renovation, expansion or improvement (as applicable) of the property subject to such Liens, (ii) such Liens do not at any time encumber any property except for accessions to such property other than the property financed by such Indebtedness and the proceeds and the products thereof and (iii) with respect to Capital Lease Obligations, such Liens do not at any time extend to or cover any assets (except for accessions to such assets) other than the assets subject to the applicable capitalized lease; provided that individual financings of property provided by one lender may be cross collateralized to other financings of property provided by such lender;

(e) Liens on the Equity Interests in, or other similar Liens resulting from standard joint venture agreements or stockholder agreements and other similar agreements applicable to joint ventures;

(f) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(g) Liens (i) on cash advances in favor of the seller of any property to be acquired in an investment permitted pursuant to Section 6.04 to be applied against the purchase price for such investment, and (ii) consisting of an agreement to transfer any property in a disposition permitted under Section 6.05 (other than sales, transfers and dispositions under Section 6.05(j)) which constitute Liens, which sales, transfers and dispositions constituting Liens are not otherwise permitted under Section 6.05), in each case, solely to the extent such investment or disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(h) Liens on property (i) of any Subsidiary that is not a Loan Party and (ii) that does not constitute Collateral, which Liens secure Indebtedness of the applicable Subsidiary permitted under Section 6.01;

(i) Liens in favor of any Group Member securing Indebtedness permitted under Section 6.01, including Liens granted by a Subsidiary that is not a Loan Party in favor of any

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Loan Party in respect of Indebtedness owed by such Subsidiary, but excluding Liens granted by any Loan Party in favor of any Subsidiary that is not a Loan Party;

(j) any interest or title of a lessor, sublessor, grantor or holder of any superior real property interest under leases, subleases, easement or other use and possession instrument or secured by a lessor's, sublessor's grantor's or holder's interests under such party's instrument entered into in the ordinary course of business or which do not, in the aggregate, materially impair the use by any Loan Party or Subsidiary in the operation of the business of such Person;

(k) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by Holdings or a Subsidiary in the ordinary course of business and Liens arising by operation of law under Article 2 of the UCC in the ordinary course of business;

(l) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(m) Liens that are rights of set-off (i) relating to the establishment of depository relations with banks in the ordinary course of business and not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or (iii) relating to purchase orders and other agreements entered into with customers in the ordinary course of business;

(n) Liens solely on any cash earnest money deposits made in connection with any letter of intent or purchase agreement permitted hereunder;

(o) Liens in respect of the licensing of patents, copyrights, trademarks, trade names, other indications of origin, domain names and other forms of intellectual property in the ordinary course of business;

(p) Other Liens (other than Liens on Borrowing Base Assets) securing obligations or Indebtedness not in excess of the greater of (i) \$20,000,000 and (ii) 2.5% of Total Assets (in each case determined as of the date of incurrence);

(q) any Lien existing on any property or asset prior to the acquisition thereof by any Group Member or existing on any property or asset of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be; (ii) such Liens attach at all times only to the specific assets that such Liens secure on the date of such acquisition or the date such Person becomes a Loan Party or the date of such merger, amalgamation or consolidation, as the case may be, and not to any Borrowing Base Assets of Borrowers (other than after-acquired property that is (A) affixed or incorporated into the property covered by such Lien, (B) after-acquired property subject to a Lien securing such Indebtedness, the terms of which Indebtedness require or include a pledge of after-acquired property (it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition) and (C) the proceeds and products thereof); (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Loan Party or the date of such merger, amalgamation or consolidation, as the case may be, and extensions, refinancing,

refunding, renewals and replacements thereof that do not increase the outstanding principal amount thereof (except to the extent permitted under Section 6.01(g)); (iv) before and after giving effect to the assumption of such Lien (and the related secured obligation), no Event of Default shall have occurred or be continuing; and (v) the Fixed Charge Coverage Ratio as of the end of the most recently ended Test Period prior to the assumption of such Lien (and the related secured obligation) and the consummation of such acquisition, calculated on a Pro Forma Basis, after giving effect to such incurrence, to such acquisition, as if such incurrence and acquisition had occurred on the first day of such Test Period, shall be equal to or greater than 1.00 to 1.00;

(r) Liens (i) of a collecting bank arising in the ordinary course of business under Section 4-208 and Section 4-210 of the Uniform Commercial Code in effect in the relevant jurisdiction covering only the items being collected upon, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business, and (iii) in favor of banking institutions arising as a matter of law or under general terms and conditions encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(s) Liens (other than Liens on Borrowing Base Assets) arising out of Sale and Lease-Back transactions permitted by Section 6.06 and any extensions, refinancing, refunding, replacements and renewals thereof;

(t) Liens on goods or inventory the purchase, shipment or storage price of which is financed by a documentary letter of credit or bankers' acceptance issued or created for the account of Holdings or any Subsidiary; provided that such Lien secures only the obligations of Holdings or such Subsidiary in respect of such letter of credit to the extent permitted under Section 6.01; and provided, further, that any such goods or inventory and the proceeds thereof, up to the value of the Lien, shall not be Eligible Inventory or Eligible Receivables under this Agreement;

(u) Liens arising from precautionary UCC (or equivalent statute) financing statements or similar filings made in respect of operating leases or consignments;

(v) Liens granted under the Note and Specified Hedge Security Documents (or, in the case of Note Refinancing Debt (as defined below), a separate security agreement or agreements substantially similar in all material respects to the Note and Specified Hedge Security Documents) and any extensions, refinancing, renewals, refundings and replacements thereof incurred pursuant to Section 6.01(g) ("Note Refinancing Debt"); provided that (i) such Liens secure only the obligations referred to in the Note and Specified Hedge Security Documents or such separate security agreements (and Note Refinancing Debt), (ii) such Liens do not apply to any asset other than Collateral that is subject to a Lien granted under a Collateral Document to secure the Secured Obligations and (iii) all such Liens shall be subject to the terms of, and have the priorities with respect to the Collateral as set forth in, the Intercreditor Agreement (or, in the case of Note Refinancing Debt, another intercreditor agreement in form and substance reasonably acceptable to the Agent that is not materially less favorable to the Secured Parties than the Intercreditor Agreement);

(w) Liens securing Commodities Hedging Obligations; provided that (i) such Liens do not apply to any asset other than Collateral that is subject to a Lien granted under a Collateral Document to secure the Secured Obligations and (ii) all such Liens shall be subject to the terms of, and have the priorities with respect to the Collateral as set forth in, the Intercreditor Agreement (or another intercreditor agreement in form and substance reasonably acceptable



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to the Agent that is not materially less favorable to the Secured Parties than the Intercreditor Agreement);

(x) Liens deemed to exist in connection with investments in repurchase agreements under Section 6.04; provided that such Liens do not extend to any assets other than those assets that are the subject of such repurchase agreements;

(y) ground leases in respect of real property on which facilities owned or leased by Holdings or any Subsidiary are located;

(z) pledges, deposits or security by such Person under workmen's compensation laws, unemployment insurance, employers' health tax, and other social security laws or similar legislation or other insurance related obligations (including, but not limited to, in respect of deductibles, self insured retention amounts and premiums and adjustments thereto) or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case incurred in the ordinary course of business;

(aa) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds or with respect to other regulatory requirements or letters of credit or bankers acceptances issued, and completion guarantees provided for, in each case, issued pursuant to the request of and for the account of such Person in the ordinary course of its business or consistent with past practice prior to the Effective Date and so long as the Lien of such Person does not attach to any ABL Collateral or if such Lien attaches to any ABL Collateral, such Person has entered into a subordination agreement with the Agent in form and satisfactory to the Agent;

(bb) minor survey exceptions, minor encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects and irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental, to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially impair their use in the operation of the business of such Person;

(cc) (i) Liens securing Secured Swap Obligations and (ii) Liens on cash and Permitted Investments securing other Swap Obligations or Commodities Hedging Obligations (other than Secured Commodities Hedging Obligations) if the aggregate amount of all cash and Permitted Investments subject to Liens permitted by this clause (ii) at no time exceeds \$15,000,000;

(dd) leases, sub-leases, licenses or sub-licenses granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of any Group Member and do not secure any Indebtedness;

(ee) Liens (other than Liens on Borrowing Base Assets) arising under the Crude Oil Intermediation Agreement as in effect as of the Effective Date or any successor or replacement

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supply agreement providing for Liens that are not more favorable to the supplier under such agreement than the Liens to the supplier under the Crude Oil Intermediation Agreement;

(ff) Liens solely on any cash earnest money deposits made by any Group Member in connection with any letter of intent or purchase agreement permitted;

(gg) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto and deposits made or other security provided in the ordinary course of business to secure liability to insurance carriers;

(hh) Liens on Capital Stock of an Unrestricted Subsidiary that secure Indebtedness or other obligations of such Unrestricted Subsidiary;

(ii) deposits securing obligations owed by any Group Member in respect of any overdraft and related liabilities arising from Banking Services, including treasury, depository and cash management services or any ACH transfers of funds;

(jj) pledges of cash and/or Permitted Investments to secure the Borrowers' obligations in the ordinary course of business under the Crude Oil Intermediation Agreement or any other supply agreement with respect to crude oil, in each case in lieu of letters of credit that would otherwise be required thereby;

(kk) pledges of cash and/or Permitted Investments to secure Secured Commodities Hedging Obligations under Commodities Hedging Agreements in lieu of letters of credit that would otherwise be required thereby; and

(ll) additional Liens securing Indebtedness permitted to be incurred under Section 6.01; provided that, (i) on a Pro Forma Basis, at the time of, and after giving effect to, the incurrence of such Indebtedness, the Senior Secured Leverage Ratio would be no greater than 3.50 to 1.00 and (ii) to the extent that such Liens are contemplated to be on assets that are Collateral, the holders of such Indebtedness (or a representative thereof of behalf of such holders) shall have entered into the Intercreditor Agreement or a similar agreement providing that the Liens securing such Indebtedness shall rank junior to the Liens of the Agent (or with the same priority as the Senior Secured Notes) with respect to Collateral.

SECTION 6.03 Fundamental Changes. (a) No Loan Party will, nor will it permit any Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred and be continuing.

(i) any Person may merge with or into Holdings in a transaction in which the surviving entity is Holdings, as applicable, or another Person organized or existing under the laws of the United States of America, any State thereof or the District of Columbia and such Person expressly assumes, in writing, all the obligations Holdings under the Loan Documents, in which event such Person will succeed to, and be substituted for Holdings;

(ii) any Person may merge into any Subsidiary in a transaction in which the surviving entity is a Subsidiary and, if any party to such merger is a Subsidiary that is a Loan Party, is or becomes a Subsidiary that is a Loan Party, concurrently with such merger;