

with U.S. GAAP), and such Investment shall be permitted under Sections 10.05 and 10.06, (iv) no Subsidiary may be designated as an Unrestricted Subsidiary if it would continue, after such designation, to be a “Restricted Subsidiary” for the purpose of the Existing Notes or any other Indebtedness of any Loan Party with a principal amount in excess of the Threshold Amount, (v) immediately after giving effect to the designation of an Unrestricted Subsidiary as a Restricted Subsidiary, Parent shall comply with the provisions of Section 9.12 with respect to such designated Restricted Subsidiary, (vi) no Restricted Subsidiary may be a Subsidiary of an Unrestricted Subsidiary, (vii) in the case of the designation of any Subsidiary as an Unrestricted Subsidiary, no recourse whatsoever (whether by contract or by operation of law or otherwise), other than by Investments by Loan Parties in such Unrestricted Subsidiary permitted under Section 10.05, may be had to any of the Loan Parties or any of their respect properties or assets for any obligations of such Unrestricted Subsidiary, (viii) once any Unrestricted Subsidiary is designated as a Restricted Subsidiary, such Subsidiary may not be re-designated as an Unrestricted Subsidiary and (ix) the Lead Borrower shall have delivered to the Agent and each Lender a certificate executed by its chief financial officer or treasurer, certifying compliance with the requirements of the preceding clauses (i) through (viii), inclusive, and containing the calculations (in reasonable detail) required by the preceding clause (ii). The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (x) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time and (y) a return on any Investment by Parent or any Restricted Subsidiary in Unrestricted Subsidiaries

pursuant to the preceding sentence in an amount equal to the fair market value at the date of such designation of Parent’s or such Restricted Subsidiary’s Investment in such Subsidiary.

9.15 Collateral Monitoring and Reporting.

(a) Borrowing Base Certificates. By the 20th day of each fiscal month of the Lead Borrower, the Lead Borrower shall deliver to the Agent (and the Agent shall promptly deliver same to the Lenders) a Borrowing Base Certificate prepared as of the close of business on the last day of the previous fiscal month of the Lead Borrower (provided that, during any period in which Availability shall have been less than the greater of (i) 12.5% of the Line Cap and (ii) \$12,500,000, the Lead Borrower shall deliver to the Agent weekly Borrowing Base Certificates by the third Business Day of every week prepared as of the close of business on Friday of the previous week, which weekly Borrowing Base Certificates shall be in standard form unless otherwise reasonably agreed to by the Agent; provided, further, that the foregoing delivery requirement shall revert to a fiscal monthly delivery requirement in the event that Availability shall be equal to or greater than the greater of (i) 12.5% of the Line Cap and (ii) \$12,500,000 for a period of no less than 30 consecutive days) (in addition, the Lead Borrower may, at its election, deliver to the Agent (and the Agent shall promptly deliver same to the Lenders) a Borrowing Base Certificate more frequently (prepared as of the close of business on the date specified therein) provided (x) that such election shall be permitted only once during any consecutive sixty (60) day period, (y) that the Lead Borrower shall be required to deliver a Borrowing Base Certificate to the Agent at the same frequency and regularity at all times during such consecutive sixty (60) day period, and (z) that in addition to the Borrowing Base Certificates delivered pursuant to the preceding clause (y), the Lead Borrower shall continue to deliver Borrowing Base Certificates on a fiscal monthly or weekly basis as required by this Section 9.16(a)); it being understood that (i) Inventory amounts shown in any Borrowing Base Certificates delivered on a weekly (or more frequent) basis will be based on the Inventory amount (a) set forth in the most recent weekly report, where possible, and (b) for the most recently ended fiscal month for which such information is available with regard to locations where it is impracticable to report Inventory more frequently, and (ii) the amount of Eligible Accounts shown in any Borrowing Base Certificate delivered on a weekly (or more frequent) basis will be based on the amount of the gross Accounts set forth in the most recent weekly report, less the amount of ineligible Accounts reported for the most recently ended fiscal month). All calculations of Availability in any Borrowing Base Certificate shall be made by the Lead Borrower and certified by a Responsible Officer, provided that the Agent may from time to time review and adjust any such calculation in consultation with the Lead Borrower to the extent the calculation is not made in accordance with this Agreement or does not accurately reflect the Borrowing Base Reserves.

(b) Records and Schedules of Accounts. Each Borrower shall keep accurate and complete records of its Accounts, including all payments and collections thereon, and shall submit to the Agent the sales, collection, reconciliation and other reports identified on Schedule 9.16(b) in form reasonably satisfactory to the Agent on the periodic basis set forth

in Schedule 9.16(b) (but not more frequently than at the time of delivery of each of the Section 9.01 Financials). The Lead Borrower shall also provide to the Agent, on or before the 20th day after the end of each fiscal month of the Lead Borrower, a detailed aged trial balance of all Accounts as of the end of such fiscal month, specifying each Account's Account Debtor name and the amount, invoice date and due date as the Agent may reasonably request.

(c) Maintenance of Dominion Account. Within ninety (90) days (or such later date as the Agent may agree in its reasonable discretion) of the Closing Date (or, with respect to any Deposit Account other than Excluded Deposit Accounts opened by a Loan Party following the Closing Date, within sixty (60) days (or such later date as the Agent may agree in its reasonable discretion) after the date such Loan Party notifies the Agent of the opening of such Deposit Account or the date any Person becomes a Loan Party hereunder),

114

(i) each Loan Party shall cause each bank or other depository institution at which any Deposit Account other than any Excluded Deposit Account is maintained, to enter into a Deposit Account Control Agreement that provides for such bank or other depository institution to transfer to a Dominion Account, on a daily basis, all balances in each Deposit Account (other than any Excluded Deposit Account maintained by any Loan Party with such depository institution) for application to the Obligations then outstanding following the receipt by such bank or other depository institution of a Liquidity Notice (it being understood that the Agent shall reasonably promptly deliver a copy of such Liquidity Notice to the Lead Borrower), (ii) the Borrowers shall establish the Dominion Account and obtain an agreement (in form reasonably satisfactory to the Agent) from the Dominion Account bank, establishing the Agent's control over and Lien in the Dominion Account, which may be exercised by the Agent during any Liquidity Period, requiring immediate deposit of all remittances received to a Dominion Account, (iii) each Loan Party irrevocably appoints the Agent as such Loan Party's attorney-in-fact to collect such balances during a Liquidity Period to the extent any such delivery is not so made and (iv) each Loan Party shall (A) take reasonable steps to ensure that each Account Debtor will make all payments with respect to ABL Priority Collateral into Deposit Accounts subject to Deposit Account Control Agreements, or (B) promptly, and in any event within one Business Day, deposit or cause to be deposited any such payments into Deposit Accounts subject to Deposit Account Control Agreements (it being understood that, except upon the occurrence and during the continuance of an Event of Default, it shall not be a Default or Event of Default if any such payments are deposited in an Excluded Deposit Account pursuant to clause (iv) of the definition thereof). The Agent and the Lenders assume no responsibility to the Borrowers for any lockbox arrangement or Dominion Account, including any claim of accord and satisfaction or release with respect to any check, draft or other item of payment payable to a Borrower (including those constituting proceeds of Collateral) accepted by any bank.

(d) Proceeds of Collateral. If any Borrower receives cash or any check, draft or other item of payment payable to a Borrower with respect to any ABL Priority Collateral, it shall hold the same in trust for the Agent and promptly, and in any event within one Business Day, deposit the same into any such Deposit Account or Dominion Account (it being understood that, except upon the occurrence and during the continuance of an Event of Default, it shall not be a Default or Event of Default if any such payments are deposited in an Excluded Deposit Account).

(e) Administration of Deposit Accounts. Schedule 9.16 to the Disclosure Letter sets forth all Deposit Accounts (other than Excluded Deposit Accounts) maintained by the Loan Parties, including all Dominion Accounts, as of the Closing Date. Subject to Section 9.16(c), each Loan Party shall take all actions necessary to establish the Agent's control (within the meaning of the UCC) over each such Deposit Account other than Excluded Deposit Accounts at all times. Each Loan Party shall be the sole account holder of each Deposit Account maintained by it and shall not allow any other Person (other than the Agent and the applicable depository bank) to have control over a Deposit Account maintained by it or any deposits therein. The Lead Borrower shall promptly notify the Agent of any opening or closing of a Deposit Account (other than any Excluded Deposit Accounts) by any Loan Party, and the Loan Parties shall not open any Deposit Accounts (other than any Excluded Deposit Accounts) at any bank that the Agent has advised the Lead Borrower is unlikely, as reasonably determined by the Agent in good faith, based on prior experience, to provide a Deposit Account Control Agreement as required by Section 9.16(c).

9.16 Safra Commitment Letter Parent and the Lead Borrower shall enforce the obligations of Safra Bank and Cavendish US under the Safra Commitment Letter, including, but not limited to, enforcing (a) the obligation of Safra Bank to

provide sufficient funds to Cavendish US for the purpose of causing Cavendish US to make the Change of Control Equity Contribution on or prior to March 5, 2015 and (b) the obligation of Cavendish US to make the Change of Control Equity Contribution on or prior to March 5, 2015. Parent and the Lead Borrower agree that the Safra Commitment Letter may not be amended and the

terms thereunder shall not be changed, waived or terminated, in each case, without the reasonable consent of the Agent.

9.17 Liens. Parent will not, and will not permit any of its Restricted Subsidiaries to, create, incur, assume or suffer to exist any Lien upon or with respect to any property or assets (real or personal, tangible or intangible) of Parent or any of its Restricted Subsidiaries, whether now owned or hereafter acquired, or, in the case of Parent or any of its Restricted Subsidiaries that is a U.S. Subsidiary, sell accounts receivable to any Person (other than a Borrower) with recourse to Parent or any of its Restricted Subsidiaries that is a U.S. Subsidiary); provided that the provisions of this Section 10.01 shall not prevent the creation, incurrence, assumption or existence of, or any filing in respect of, the following (Liens described below are herein referred to as “Permitted Liens”):

(iii) Liens for Taxes, assessments or governmental charges or levies not delinquent by more than 30 days or Liens for Taxes being contested in good faith and by appropriate proceedings for which reserves have been established in accordance with U.S. GAAP (or, for Foreign Subsidiaries, in conformity with generally accepted accounting principles that are applicable in their respective jurisdiction of organization);

(iv) Liens in respect of property or assets of Parent or any of its Restricted Subsidiaries imposed by law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers’, warehousemen’s, contractors’, materialmen’s, landlords’, laborers’, mechanics’ and suppliers’ (including vendors of perishable agricultural commodities under PACA) liens and other similar Liens arising in the ordinary course of business, and which secure obligations that are not overdue by more than 30 days or are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property or assets, subject to any such Lien for which reserves have been established in accordance with U.S. GAAP (or, for Foreign Subsidiaries, in conformity with generally accepted accounting principles that are applicable in their respective jurisdiction of organization);

(v) Liens in existence on the Closing Date which are listed, and the property subject thereto described, in Schedule 10.01 to the Disclosure Letter (or to the extent not listed on such Schedule 10.01, (i) the property subject to such Liens under this clause (iii) does not constitute ABL Priority Collateral and (ii) where the fair market value of all property to which such Liens under this clause (iii) not listed on such Schedule 10.01 to the Disclosure Letter attach is less than \$15,000,000 in the aggregate), plus modifications, renewals, replacements, refinancings and extensions of such Liens, provided that (x) the aggregate principal amount of the Indebtedness, if any, secured by such Liens does not increase from that amount outstanding at the time of any such renewal, replacement or extension, plus accrued and unpaid interest and cash fees and expenses (including premium) incurred in connection with such renewal, replacement or extension and (y) any such renewal, replacement or extension does not encumber any additional assets or properties of Parent or any of its Restricted Subsidiaries (other than after-acquired property that is affixed or incorporated into the property encumbered by such Lien on the Closing Date and the proceeds and products thereof) unless such Lien is permitted under the other provisions of this Section 10.01;

(vi) Liens created pursuant to the Loan Documents (including Liens securing Bank Product Obligations);

(vii) Leases, subleases, licenses or sublicenses (including licenses or sublicenses of Intellectual Property) granted to other Persons in the ordinary course of business and not materially

interfering with the conduct of the business (including the business' right to use the licensed Intellectual Property) of Parent or any of its Restricted Subsidiaries;

(viii) Liens upon assets of Parent or any of its Restricted Subsidiaries subject to Capitalized Lease Obligations to the extent such Capitalized Lease Obligations are permitted by Section 10.04(iii), provided that (x) such Liens serve only to secure the payment of Indebtedness and/or other monetary obligations arising under such Capitalized Lease Obligation and (y) the Lien encumbering the asset or assets giving rise to such Capitalized Lease Obligation does not encumber any asset of Parent or any of its Restricted Subsidiaries other than the proceeds of the assets giving rise to such Capitalized Lease Obligations;

(ix) Liens placed upon equipment, machinery or other fixed assets acquired or constructed after the Closing Date and used in the ordinary course of business of Parent or any of its Restricted Subsidiaries and placed at the time of the acquisition or construction thereof by Parent or such Restricted Subsidiary or within 270 days thereafter to secure Indebtedness incurred to pay all or a portion of the purchase or construction price thereof or to secure Indebtedness incurred solely for the purpose of financing the acquisition or construction of any such equipment, machinery or other fixed assets or extensions, renewals or replacements of any of the foregoing for the same or a lesser amount, provided that (x) the Indebtedness secured by such Liens is permitted by Section 10.04(iii) and (y) in all events, the Lien encumbering the equipment, machinery or other fixed assets so acquired or constructed does not encumber any other asset of Parent or such Restricted Subsidiary; provided that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender on customary terms;

(x) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar charges or encumbrances and minor title deficiencies, which in the aggregate do not materially interfere with the conduct of the business of Parent or any of its Restricted Subsidiaries;

(xi) Liens arising from precautionary UCC or other similar financing statement filings regarding operating leases or consignments entered into in the ordinary course of business;

(xii) attachment and judgment Liens, to the extent and for so long as the underlying judgments and decrees do not constitute an Event of Default pursuant to Section 11.09;

(xiii) statutory and common law landlords' liens under leases to which Parent or any of its Restricted Subsidiaries is a party;

(xiv) Liens (other than Liens imposed under ERISA) incurred in the ordinary course of business in connection with workers' compensation claims, unemployment insurance and social security benefits and Liens securing the performance of bids, tenders, leases and contracts in the ordinary course of business, statutory obligations, surety, stay, customs or appeal bonds, performance bonds and other obligations of a like nature (including (i) those to secure health, safety and environmental obligations and (ii) those required or requested by any Governmental Authority other than letters of credit) incurred in the ordinary course of business;

(xv) Permitted Encumbrances;

(xvi) Liens on property or assets (other than Accounts or Inventory (or any proceeds, respectively, thereof) of a Loan Party, unless such Liens are expressly made junior to the Liens in

favor of the Agent on terms reasonably approved by the Agent), acquired pursuant to a Permitted Acquisition, or on property or assets of a Restricted Subsidiary in existence at the time such Restricted Subsidiary is acquired pursuant to a Permitted Acquisition, provided that (x) any Indebtedness that is secured by such Liens is permitted to exist under Section 10.04, (y) such Liens are not on property or assets of a U.S. Subsidiary of Parent to the extent comprised of Accounts or Inventory (or any proceeds, respectively, thereof) and (z) such Liens are not incurred in

connection with, or in contemplation or anticipation of, such Permitted Acquisition and do not attach to any other asset of Parent or any of its Restricted Subsidiaries; and any extensions, renewals and replacements thereof so long as the aggregate principal amount of the Indebtedness secured by such Liens does not increase from that amount outstanding at the time of any such extension, renewal or replacement, plus accrued and unpaid interest and cash fees and expenses (including premium) incurred in connection with such renewal, replacement or extension, and such extension, renewal or replacement does not encumber any asset or properties of Parent or any of its Restricted Subsidiaries other than the proceeds of the assets subject to such Lien;

(xvii) deposits or pledges to secure bids, tenders, contracts (other than contracts for the repayment of borrowed money), leases, statutory obligations, surety, stay, customs and appeal bonds and other obligations of like nature (including those required or requested by any Governmental Authority other than letters of credit), and as security for the payment of rent, in each case arising in the ordinary course of business;

(xviii) Liens on assets of Foreign Subsidiaries (or on assets of other Restricted Subsidiaries that are not Loan Parties (provided that such Liens are not on property or assets of a U.S. Subsidiary of Parent to the extent comprised of Accounts or Inventory (or any proceeds, respectively, thereof)) securing Indebtedness of Foreign Subsidiaries (or Indebtedness of other Restricted Subsidiaries that are not Loan Parties) permitted pursuant to Section 10.04;

(xix) any interest or title of a lessor, sublessor, licensee, sublicensee, licensor or sublicensor under any lease, sublease, license or sublicense agreement (including software and other technology licenses) in the ordinary course of business;

(xx) Liens on property subject to Sale-Leaseback Transactions to the extent such Sale-Leaseback Transactions are permitted by Section 10.02(xiii);

(xxi) any encumbrances or restrictions (including, without limitation, put and call agreements, options, rights of first refusal and similar rights) with respect to the Equity Interests of any Joint Venture or partnership permitted by the terms of this Agreement arising pursuant to the agreements evidencing or governing such Joint Venture or partnership;

(xxii) Liens (a) on Collateral in favor of any Loan Party securing intercompany Indebtedness permitted by Section 10.05, provided that any Liens securing Indebtedness that is required to be subordinated pursuant to Section 10.05 shall be subordinated to the Liens created pursuant to the Security Documents pursuant to an intercreditor agreement and which intercreditor agreement shall be in form and substance reasonably satisfactory to the Agent and the Lead Borrower, as such intercreditor agreement may be amended, amended and restated, modified or supplemented from time to time in accordance with the terms hereof and thereof and (b) on assets of any Restricted Subsidiary that is not a Loan Party securing intercompany obligations of such Restricted Subsidiary owing to Parent or any other Restricted Subsidiary;

(xxiii) Liens on specific items of inventory or other goods (and proceeds thereof) of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods, and pledges or deposits in the ordinary course of business;

(xxiv) Liens on insurance policies and the proceeds thereof (whether accrued or not) and rights or claims against an insurer, in each case securing insurance premium financings permitted under Section 10.04(x);

(xxv) Liens that may arise on inventory or equipment of Parent or any of its Restricted Subsidiaries in the ordinary course of business as a result of such inventory or equipment being located on premises owned by Persons other than Parent and its Restricted Subsidiaries;

(xxvi) 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;

(xxvii) Liens (i) of a collection bank arising under Section 4-210 of the UCC on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking or other financial institution arising as a matter of law or under customary general terms and conditions encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(xxviii) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 10.05(ii); provided that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

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

(xxx) Liens attaching solely to cash earnest money deposits in connection with any letter of intent or purchase agreement in connection with a Permitted Acquisition or other Investment permitted hereunder;

(xxxi) Liens not otherwise permitted by this Section, to the extent securing liabilities not in excess of the greater of \$10,000,000 and 0.625% of Consolidated Total Assets (determined at the time of incurrence of such Liens and the related liabilities) in the aggregate at any time outstanding, provided that, if such Liens are on ABL Priority Collateral, such Liens are junior to the Liens securing the Obligations on terms reasonably approved by the Agent;

(xxxii) cash deposits with respect to the defeasance, discharge, redemption or other prepayment of Indebtedness, in each case to the extent permitted by Section 10.07, to the extent applicable to such Indebtedness, or otherwise not prohibited by this Agreement;

(xxxiii) Liens on Collateral securing Indebtedness to the extent permitted by Section 10.04(xv) so long as such Liens are subject to a Permitted Junior Debt Intercreditor Agreement;

(xxxiv) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by Parent or any Restricted Subsidiary in the ordinary course of business;

(xxxv) 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;

(xxxvi) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business of Parent and the Restricted Subsidiaries complies, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of Parent or any Restricted Subsidiary;

(xxxvii) deposits made in the ordinary course of business to secure liability to insurance carriers;

(xxxviii) receipt of progress payments and advances from customers in the ordinary course of business

to the extent the same creates a Lien on the related inventory and proceeds thereof;

(xxxix) Liens on cash deposits securing any Swap Contracts permitted hereunder;

(xl) Liens on cash or Cash Equivalents (and the related escrow accounts) in connection with the issuance into (and pending the release from) escrow of any Refinancing Indebtedness, any Additional Debt or any Permitted Junior Debt;

(xli) Liens that are replacements of Permitted Liens to the extent that the original Indebtedness related thereto is the subject of Refinancing Indebtedness permitted under Section 10.04 and so long as the replacement Liens only encumber those assets that secured the original Indebtedness (or assets replacing such assets);

(xlii) Liens on the Collateral securing (a) Indebtedness permitted by Section 10.04(xxv), so long as such Liens are subject to the Intercreditor Agreement, or (b) Indebtedness permitted by Section 10.04(xxvi), so long as such Liens are subject to an Additional Debt Intercreditor Agreement;

(xliii) to the extent constituting Liens, restrictions on dispositions of assets (to the extent permitted by Section 10.02 (other than pursuant to Section 10.02(xxv))) to be disposed of pursuant to merger agreements, stock or asset purchase agreements and similar agreements;

(xliv) Liens on cash and Cash Equivalents of Foreign Subsidiaries of Parent in an aggregate amount of not more than EUR 17,000,000 to secure the Netherlands Guarantee Facility; and

(xlv) Liens not otherwise permitted by this Section, to the extent securing liabilities not in excess of the greater of \$10,000,000 and 0.625% of Consolidated Total Assets (determined at the time of incurrence of such Liens and the related liabilities) in the aggregate at any time outstanding.

In connection with the granting of Liens of the type described in this Section 10.01 by the Lead Borrower or any of its Restricted Subsidiaries, the Agent shall, and shall be authorized to, take any actions deemed appropriate by it in connection therewith (including, without limitation, by executing appropriate lien releases or lien subordination agreements in favor of the holder or holders of such Liens, in either case solely with respect to the item or items of equipment or other assets subject to such Liens).

9.18 Consolidation, Merger, or Sale of Assets, etc. Parent will not, and will not permit any of its Restricted Subsidiaries to, wind up, liquidate or dissolve its affairs, or merge or consolidate, or convey, sell, lease or otherwise dispose of all or any part of its property or assets, or enter into any sale-leaseback transactions of any Person, except that:

(i) dispositions of Investments (including Equity Interests) in Joint Ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements shall be permitted;

(ii) any Investment permitted by Section 10.05 may be structured as a merger, consolidation or amalgamation;

(iii) Parent and its Restricted Subsidiaries may sell assets (so long as, if any such assets consist of Collateral included in the Borrowing Base, a new pro forma Borrowing Base Certificate is delivered in connection with such sale and if, pursuant to such Borrowing Base Certificate, the Aggregate Exposures exceed the Line Cap, the Borrowers shall, concurrently with such asset sale, prepay Loans or Cash Collateralize Letter of Credit Exposure such that the Aggregate Exposures shall not exceed the Line Cap) so long as (x) each such sale is on terms and conditions not less favorable to Parent or such Restricted Subsidiary as would reasonably be obtained by Parent or such Restricted Subsidiary at that time in a comparable arm's-length transaction with a Person other than an Affiliate and Parent or the respective Restricted Subsidiary receives at least fair market value (as determined in good faith by Parent or such Restricted Subsidiary, as the case may be) and (y) at least 75% of the consideration

received by Parent or such Restricted Subsidiary shall be in the form of cash, Cash Equivalents or, subject to the proviso below, Designated Non-Cash Consideration (taking into account the amount of cash and Cash Equivalents, the principal amount of any promissory notes and the fair market value, as reasonably determined by Parent or such Restricted Subsidiary, as the case may be, in good faith, of any other consideration (including Designated Non-Cash Consideration)) and is paid at the time of the closing of such sale; provided, however, that for purposes of this clause (y), the following shall be deemed to be cash: (A) any liabilities (as shown on Parent's or such Restricted Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto) of Parent or such Restricted Subsidiary (other than liabilities that are by their terms subordinated to the Obligations) that are assumed by the transferee with respect to the applicable disposition and for which Parent and the Restricted Subsidiaries shall have been validly released from all obligations and liabilities by all applicable creditors in writing reasonably acceptable to the Agent, (B) any securities received by Parent or such Restricted Subsidiary from such transferee that are converted by Parent or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received in the conversion) within 180 days following the closing of the applicable asset sale, and (C) any Designated Non-Cash Consideration received by Parent or any of its Restricted Subsidiaries in such asset sale having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (y) that is at that time outstanding, not to exceed the greater of (A) \$25,000,000 and (B) 1.5% of Consolidated Total Assets at the time of the receipt of such Designated Non-Cash Consideration (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);

(iv) each of Parent and its Restricted Subsidiaries may lease (as lessee) or license (as licensee) real or personal property (so long as any such lease or license does not create a Capitalized Lease Obligation except to the extent permitted by Section 10.04(iii));

(v) each of Parent and its Restricted Subsidiaries may sell or discount, in each case in the ordinary course of business, accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof and not as part of any financing transaction;

(vi) each of Parent and its Restricted Subsidiaries may grant licenses, sublicenses (including licenses or sublicenses of Intellectual Property), leases or subleases to other Persons in the ordinary course of business and not materially interfering with the conduct of the business (including the business' right to use the licensed Intellectual Property) of Parent or any of its Restricted Subsidiaries;

(vii) (v) Parent may merge, consolidate or amalgamate in compliance with the last sentence of Section 10.09(b), (w) any U.S. Subsidiary of the Lead Borrower may be merged, consolidated or amalgamated with or into the Lead Borrower (so long as the surviving Person of such merger, consolidation or amalgamation is the Lead Borrower and the Lead Borrower remains organized or existing under the laws of the United States of America, any State thereof or the District of Columbia) or any other Loan Party (other than Parent or the Lead Borrower) (so long as the surviving Person of such merger, consolidation or amalgamation is a Wholly-Owned U.S. Subsidiary of the Lead Borrower and is or becomes a Loan Party concurrently with such merger, consolidation or amalgamation), (x) any Foreign Subsidiary of Parent or other Excluded Subsidiary may be merged, consolidated or amalgamated with or into any Foreign Subsidiary of Parent or any other Excluded Subsidiary, (y) any Foreign Subsidiary of Parent may be merged, consolidated or amalgamated with or into any Loan Party (so long as such Loan Party is the surviving corporation of such merger, consolidation or amalgamation) and (z) any Restricted Subsidiary may liquidate or dissolve itself in accordance with applicable law so long as, if such Restricted Subsidiary is a Loan Party, the assets of such Restricted Subsidiary are transferred to another Loan Party (other than Parent) in connection with such liquidation or dissolution; provided that any such merger, consolidation, dissolution, amalgamation or liquidation shall only be permitted pursuant to this clause (vii), so long as (I) no Event of Default then exists and no Default or Event of Default would result therefrom and (II) any security interests granted to the Agent for the benefit of the Secured Parties in the assets (and Equity Interests) of any such Person subject to any

such transaction shall remain in full force and effect and perfected and enforceable (to at least the same extent as in effect immediately prior to such merger, consolidation, amalgamation or liquidation);

(viii) each of Parent and its Restricted Subsidiaries may make transfers of condemned property as a result of the exercise of “eminent domain” or other similar powers to the respective Governmental Authority or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise), transfers of property that are subject to any other involuntary seizure, transfer or confiscation or requisition of use of property, and transfers of property that have been subject to a casualty to the respective insurer of such real property as part of an insurance settlement;

(ix) each of Parent and its Restricted Subsidiaries may make sales or leases of (A) inventory, (B) goods held for sale and (C) immaterial assets with a fair market value, in the case of this clause (C), of less than \$7,500,000, in each case, in the ordinary course of business;

(x) each of Parent and its Restricted Subsidiaries may sell, transfer, abandon or otherwise dispose of outdated, obsolete, surplus, damaged or worn out property, in each case, in the ordinary course of business and including property that is the subject of involuntary loss, damage or destruction;

(xi) each of Parent and its Restricted Subsidiaries may sell, transfer or otherwise dispose of assets acquired pursuant to a Permitted Acquisition which assets are not used or useful to the core or principal business of Parent and its Restricted Subsidiaries; provided that (A) the aggregate proceeds received by Parent or such Restricted Subsidiary from all such sales, transfers or dispositions relating to a given Permitted Acquisition shall not exceed 20% of the aggregate consideration paid for such Permitted Acquisition and (B) such assets are sold, transferred or disposed of on or prior to the first anniversary of the relevant Permitted Acquisition;

(xii) in order to effect a sale, transfer or disposition otherwise permitted by this Section 10.02 (other than pursuant to Section 10.02(xxv)), as a substantially concurrent interim step, a Restricted Subsidiary of Parent may be merged, amalgamated or consolidated with or into another Person, or may be dissolved or liquidated;

(xiii) each of Parent and its Restricted Subsidiaries may effect Sale-Leaseback Transactions involving ships, trucks, containers or other similar Equipment or real property acquired after the Closing Date and not more than 180 days prior to such Sale-Leaseback Transaction for cash in an amount at least equal to the cost of such property;

(xiv) each of Parent and its Restricted Subsidiaries may issue or sell Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(xv) each of Parent and its Restricted Subsidiaries may make transfers of property subject to casualty or condemnation proceedings;

(xvi) each of Parent and its Restricted Subsidiaries may abandon Intellectual Property rights or allow Intellectual Property rights to lapse, in each case, in the ordinary course of business and which in the reasonable good faith determination of Parent or a Restricted Subsidiary are not material to the conduct of the business of Parent and its Restricted Subsidiaries taken as a whole;

(xvii) each of Parent and its Restricted Subsidiaries may make voluntary terminations of, or unwind, Swap Contracts;

(xviii) each of Parent and its Restricted Subsidiaries may make dispositions resulting from foreclosures by third parties on properties of Parent or any of its Restricted Subsidiaries and acquisitions by Parent or any of its Restricted Subsidiaries resulting from foreclosures by such Persons or properties of third parties;

(xix) each of Parent and its Restricted Subsidiaries may terminate leases and subleases;

123

(xx) each of Parent and its Restricted Subsidiaries may make Dividends permitted under Section 10.03 and may use cash and Cash Equivalents to make payments that are otherwise permitted under Section 10.07;

(xxi) each of Parent or its Restricted Subsidiaries may sell or otherwise dispose of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such sale or disposition are promptly applied to the purchase price of such replacement property;

(xxii) sales, transfers, dispositions or contributions of property shall be permitted (A) between Loan Parties, (B) between Restricted Subsidiaries (other than Loan Parties), (C) by Restricted Subsidiaries that are not Loan Parties to Loan Parties or (D) by Loan Parties to any Restricted Subsidiary that is not a Loan Party; provided in the case of this clause (D) that (1) the portion (if any) of any such sale, disposition or contribution of property made for less than fair market value and (2) any noncash consideration received in exchange for any such sale, transfer, disposition or contribution of property, shall in each case constitute an Investment in such Restricted Subsidiary;

(xxiii) any sale, transfer or other disposition of any asset between or among the Restricted Subsidiaries as a substantially concurrent interim disposition in connection with a sale, transfer or other disposition otherwise permitted pursuant to this Section 10.02 (other than pursuant to Section 10.02(xxv)) shall be permitted;

(xxiv) dispositions permitted by Section 10.03 shall be permitted;

(xxv) the use or transfer of cash or Cash Equivalents in the ordinary course of business and in a manner that is not prohibited by the terms of any Loan Document shall be permitted, provided that, for the avoidance of doubt, this clause (xxv) shall not permit (A) any winding up, liquidation or dissolution, or any merger or consolidation or sale lease-back transaction or (B) any conveyance, sale, lease or other disposition the subject matter of which is otherwise regulated by another clause of this Section 10.02;

(xxvi) the granting, creation, incurrence, assumption or existence of any Permitted Lien shall be permitted;

(xxvii) the making of Investments permitted under Section 10.05 shall be permitted;

(xxviii) sales, transfers and other dispositions by Persons that are not Significant Parties shall be permitted, provided such sales, transfers and other dispositions are for fair market value on an arm's length basis;

(xxix) so long as no Default or Event of Default has occurred and is continuing, the cancellation of intercompany Indebtedness owing (A) between Loan Parties, (B) between Restricted Subsidiaries that are not Loan Parties and (C) by Loan Parties to Restricted Subsidiaries that are not Loan Parties shall be permitted; and

(xxx) each of the dispositions in Schedule 10.02 of the Disclosure Letter shall be permitted.

To the extent the Required Lenders waive the provisions of this Section 10.02 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 10.02 (other than to Parent or a Restricted

124

Subsidiary thereof), such Collateral shall be sold free and clear of the Liens created by the Security Documents, and the