

abstains from voting as a director of Parent or such Parent Company, as the case may be, on any matter involving such other Person.

Notwithstanding anything to the contrary contained above in this Section 10.06, in no event shall Parent or any of its Restricted Subsidiaries pay any management, consulting or similar fee to the Sponsor or any Affiliate of the Sponsor except as specifically provided in clauses (v) and (viii) of this Section 10.06.

9.23 Limitations on Payments of Junior Lien, Subordinated or Unsecured Indebtedness; Modifications of Related Documents, Certificate of Incorporation, By-Laws and Certain Other Agreements, etc. Parent will not, and will not permit any of its Restricted Subsidiaries to:

(a) make (or give any notice (other than any such notice that is expressly contingent upon the repayment in full in cash of all Obligations other than any indemnification obligations arising hereunder which are not due and payable) in respect of) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, Change of Control or similar event of (including, in each case without limitation, by way of depositing with the trustee with respect thereto or any other Person money or securities before due for the purpose of paying when due), any Permitted Junior Debt (or any other subordinated, junior lien or unsecured Indebtedness), in each case with a principal amount in excess of the Threshold Amount, except that (b) Permitted Junior Debt or such other Indebtedness may be repaid, redeemed, repurchased or defeased (so long as then retired or the required deposit under the applicable indenture or loan document is then made) or the applicable indenture or loan document is discharged (so long as the Permitted Junior Debt or such other Indebtedness will be paid in full within the time period set forth in the applicable indenture or loan document), (A) so long as the

Payment Conditions are satisfied on a pro forma basis immediately after giving effect to the consummation of the proposed repayment or prepayment or (B) with the Available Equity Amount, (ii) Permitted Junior Debt or such other Indebtedness may be refinanced in accordance with Section 10.04 and (iii) the Convertible Senior Notes may be repaid, redeemed, repurchased or defeased with the proceeds of Permitted Parent Debt permitted under Section 10.04 (including the repurchase of any Convertible Senior Notes required as a result of the Transaction in accordance with the terms of the Convertible Senior Notes Indenture); provided that the restrictions set forth in this clause (a) shall not apply to the 7.875% Senior Notes or any Additional Debt;

(c) make any payment or prepayment, optional or mandatory, including any payment of interest, in respect of Permitted Parent Debt; provided that, so long as (x) no Event of Default has occurred and is continuing or would result therefrom and (y) the Distribution Conditions are satisfied on a pro forma basis immediately after giving effect to the consummation of the proposed payment or prepayment, Permitted Parent Debt may be repaid or prepaid with the net after-tax proceeds of sales of assets not constituting Collateral and interest and other amounts (other than principal) in respect of Permitted Parent Debt may be paid, in each case, when and as due and payable thereunder (to the extent, and only to the extent, in accordance with the definition of Permitted Parent Debt);

(d) amend or modify, or permit the amendment or modification of any provision of, any Permitted Junior Debt Document (after the entering into thereof) or the definitive documentation (after the entering into thereof) governing any other subordinated, junior lien or unsecured Indebtedness, in each case with a principal amount in excess of the Threshold Amount, other than any amendment or modification that is not adverse to the interests of the Lenders in any material respect, provided that restrictions set forth in this clause (c) shall not apply to the 7.875% Senior Notes Indenture or any other definitive documentation governing the 7.875% Senior Notes or any Additional Debt; and

(e) amend, modify or change its certificate or articles of incorporation (including, without limitation, by the filing or modification of any certificate or articles of designation), certificate of formation, limited liability company agreement or by-laws (or the equivalent organizational documents), as applicable, or any agreement entered into by

it with respect to its Equity Interests, or enter into any new agreement with respect to its Equity Interests, unless such amendment, modification, change or other action contemplated by this clause (d) is not adverse to the interests of the Lenders in any material respect.

9.24 Limitation on Certain Restrictions on Subsidiaries. Parent will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any agreement or instrument binding upon it or any of its assets that restricts the ability of any Restricted Subsidiary that is not a Loan Party (1) to pay Dividends or make any other distributions on its capital stock or any other interest or participation in its profits owned by Parent or any of its Restricted Subsidiaries or (2) to pay any Indebtedness owed to any Loan Party, except for such restrictions existing under or by reason of:

- (i) applicable law;
- (ii) any Loan Document;
- (iii) any Existing Note Document;

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(iv) customary provisions in leases, subleases, licenses or sublicenses and other contracts restricting the right of assignment, pledge, sublease, sublicense or mortgage, as the case may be, thereof;

(v) restrictions on the transfer of any asset or Equity Interests pending the close of the sale of such asset or Equity Interests, provided that such restrictions apply only to the assets or Equity Interests to be sold;

(vi) any agreement or instrument governing Indebtedness assumed in connection with a Permitted Acquisition, to the extent the relevant encumbrance or restriction was not agreed to or adopted in connection with, or in anticipation of, such Permitted Acquisition and does not apply to Parent or any Restricted Subsidiary, or the properties of any such Person, other than the Persons or the properties acquired in such Permitted Acquisition;

(vii) encumbrances or restrictions on (a) net worth imposed by customers, suppliers or landlords or (b) cash or other deposits, in each case pursuant to agreements entered into in the ordinary course of business;

(viii) any agreement or instrument relating to Indebtedness of a Foreign Subsidiary incurred pursuant to Section 10.04 to the extent such encumbrance or restriction only applies to such Foreign Subsidiary and its Subsidiaries;

(ix) an agreement effecting a refinancing, replacement or substitution of Indebtedness issued, assumed or incurred pursuant to an agreement or instrument referred to in clause (vi) above; provided that the provisions relating to such encumbrance or restriction contained in any such refinancing, replacement or substitution agreement are no less favorable to Parent or the Lenders in any material respect than the provisions relating to such encumbrance or restriction contained in the agreement or instruments referred to in such clause (vi);

(x) restrictions on the transfer of any asset subject to a Lien permitted by Section 10.01;

(xi) restrictions and conditions imposed by the terms of the documentation governing any Indebtedness of a Restricted Subsidiary of Parent that is not a Loan Party, which Indebtedness is permitted by Section 10.04;

(xii) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 10.05 and applicable solely to such joint venture;

(xiii) on or after the execution and delivery thereof, the Permitted Junior Debt Documents and the Additional Debt Documents;

(xiv) negative pledges and restrictions on Liens in favor of any holder of Indebtedness for borrowed money permitted under Section 10.04 but only if such negative pledge or restriction expressly permits Liens for the benefit of the Agent and the Secured Parties with respect to the credit facilities established hereunder and the Obligations under the Loan Documents on a senior basis and without a requirement that such holders of such Indebtedness be secured by such Liens securing the Obligations under the Loan Documents equally and ratably or on a junior basis;

(xv) covenants and agreements made in connection with any agreement relating to secured Indebtedness permitted by this Agreement but only if such covenant or agreement applies solely to the specific asset or assets to which the Lien securing such Indebtedness relates;

(xvi) contractual obligations binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such contractual obligations were not entered into in contemplation of such Person becoming a Restricted Subsidiary;

(xvii) any restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (iii), (viii), (xi), (xiii), (xiv) and (xvi) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of Parent, no more restrictive with respect to such restrictions than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing; and

(xviii) encumbrances or restrictions existing on the Closing Date, or any extension, renewal, amendment, modification or replacement thereof, except to the extent any such extension, renewal, amendment, modification or replacement, taken as a whole, expands the scope of any such encumbrance or restriction in any material respect.

9.25 Business.

(a) Parent will not permit at any time the business activities taken as a whole conducted by Parent and its Restricted Subsidiaries to be materially different from the business activities taken as a whole conducted by Parent and its Restricted Subsidiaries on the Closing Date (after giving effect to the Transaction) and Similar Business.

(b) Parent will not engage in any business other than its ownership of the Equity Interests of, and the management of, the Lead Borrower and, indirectly, its Subsidiaries and activities incidental thereto; provided that Parent may engage in those activities that are incidental to (i) the maintenance of its corporate existence in compliance with applicable law, including the ability to incur fees, costs and expenses related to such maintenance, (ii) legal, tax and accounting matters in connection with any of the foregoing or following activities, (iii) the entering into, and performing its obligations under, the Loan Documents and the definitive documentation relating to other Indebtedness permitted to be incurred or guaranteed by Parent hereunder and other agreements contemplated thereby and hereby, (iv) the issuance, sale or repurchase of its Equity Interests and the receipt of capital contributions, (v) the making of dividends or distributions on its Equity Interests, (vi) the filing of registration statements, and compliance with applicable reporting and other obligations, under federal, state or other securities laws, (vii) the listing of its Equity Interests and compliance with applicable reporting and other obligations in connection therewith or in connection with any issuance or sale, including any public offering, of any Parent Company's Equity Interests, (viii) the retention of (and the entry into, and exercise of rights and performance of obligations in respect of, contracts and agreements with) transfer agents, private placement agents, underwriters, counsel, accountants and other advisors and consultants, (ix) the performance of obligations under and compliance with its certificate of incorporation and by-laws, or any applicable law, ordinance, regulation, rule, order, judgment, decree or permit, including, without limitation, as a result of or in connection with the activities of its Subsidiaries, (x) the incurrence and payment of its operating and business expenses and any taxes for which it may be liable (including reimbursement to Affiliates for such expenses paid on

its behalf), (xi) the consummation of the Transaction, (xii) the holding of any cash and Cash Equivalents, (xiii) the entry into, and performance

of its obligations with respect to, contracts and other arrangements with management, officers, directors, employees, managers, partners, consultants or independent contractors of Parent or any of its Subsidiaries relating to their employment or directorships (including the providing of indemnification to such Persons), (xiv) the maintaining of deposit accounts in connection with the conduct of its business, (xv) the preparing of reports to Governmental Authorities and to its shareholders, (xvi) the holding of director and shareholder meetings, preparation of organizational records and other organizational activities required to maintain its separate organizational structure and (xvii) the making of loans to or other Investments in, or incurrence of Indebtedness from, its Subsidiaries, the making of other Investments permitted by Section 10.05 and other transactions as and to the extent not prohibited by this Agreement. Notwithstanding anything to the contrary contained in Section 10.02 or this Section 10.09 (other than as specified in this sentence), Parent may merge, amalgamate or consolidate with or into any other Person (other than the Lead Borrower or any Subsidiary) so long as (A) no Event of Default then exists and no Default or Event of Default would result therefrom, (B) Parent shall have given the Agent at least a 10 Business Days (or such shorter period as may be reasonably acceptable to the Agent) prior written notice of such merger, amalgamation or consolidation, (C) such merger, amalgamation or consolidation does not materially impair the interests of the Agent or the Lenders, (D) prior to or contemporaneously with the consummation of such merger, amalgamation or consolidation, Parent shall have delivered all opinions, certificates and other documents reasonably requested by the Agent and (E)(1) in the case of any such merger, amalgamation or consolidation, Parent shall be the continuing or surviving Person or (2) if the Person formed by or surviving any such merger, amalgamation or consolidation is not Parent (any such Person, “Successor Parent”), (w) the Person into which Parent is to be merged, amalgamated or consolidated shall, immediately prior to such transaction, be a newly formed corporation or limited liability company organized under the laws of Delaware, Florida or New Jersey, formed solely for the purpose of such transaction, and, prior to giving effect to such transaction, shall have no Indebtedness or liabilities (other than liabilities relating to its formation) and shall not have engaged in any other business (other than relating to its formation), (x) Successor Parent shall be a corporation or limited liability company organized under the laws of Delaware, Florida or New Jersey, (y) Successor Parent shall expressly assume in writing all the obligations of Parent under this Agreement and the other Loan Documents and the other Loan Parties shall expressly ratify and reaffirm in writing their obligations under the Loan Documents, in each case, pursuant to agreements in form and substance reasonably satisfactory to the Agent and (z) Parent shall have given the Agent all organizational and constituent documents of Successor Parent at least 10 Business Days (or such shorter period as may be reasonably acceptable to the Agent) prior to such merger, amalgamation or consolidation and such organizational and constituent documents of Successor Parent shall be in form and substance reasonably satisfactory to the Agent; provided that if the foregoing requirements are satisfied, Successor Parent will succeed to, and be substituted for, Parent under this Agreement and the other Loan Documents.

9.26 Negative Pledges. Parent shall not, and shall not permit any of its Restricted Subsidiaries to, agree or covenant with any Person to restrict in any way the ability of any Loan Party to grant any Lien on its assets in favor of the Lenders to secure the Obligations, other than pursuant to the Intercreditor Agreement, any Additional Debt Intercreditor Agreement or any Permitted Junior Debt Intercreditor Agreement, and except that this Section 10.10 shall not apply to:

- (i) any covenants contained in this Agreement or any other Loan Documents or that exist on the Closing Date;
- (ii) the covenants contained in the Existing Note Documents, any Additional Notes Documents or any Permitted Junior Debt Documents (in each case so long as same do not restrict the granting of Liens to secure Indebtedness pursuant to this Agreement);

- (iii) covenants and agreements made in connection with any agreement relating to secured Indebtedness permitted by this Agreement but only if such covenant or agreement applies solely to the specific

asset or assets to which such Lien relates;

(iv) customary provisions in leases, subleases, licenses or sublicenses and other contracts restricting the right of assignment, pledge, sublease, sublicense or mortgage, as the case may be, thereof;

(v) customary provisions in joint venture agreements and other similar agreements applicable to Joint Ventures that are applicable solely to such Joint Venture;

(vi) restrictions imposed by law;

(vii) customary restrictions and conditions contained in agreements relating to any sale of assets or Equity Interests pending such sale, provided such restrictions and conditions apply only to the assets or Equity Interests to be sold;

(viii) any agreement or instrument governing Indebtedness assumed in connection with a Permitted Acquisition, to the extent the relevant encumbrance or restriction was not agreed to or adopted in connection with, or in anticipation of, such Permitted Acquisition and does not apply to Parent or any Restricted Subsidiary, or the properties of any such Person, other than the Persons or the properties acquired in such Permitted Acquisition;

(ix) an agreement effecting a refinancing, replacement or substitution of Indebtedness issued, assumed or incurred pursuant to an agreement or instrument referred to in clause (viii) above; provided that the provisions relating to such encumbrance or restriction contained in any such refinancing, replacement or substitution agreement are no less favorable to Parent or the Lenders in any material respect than the provisions relating to such encumbrance or restriction contained in the agreement or instruments referred to in such clause (viii);

(x) contractual obligations binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such contractual obligations were not entered into solely in contemplation of such Person becoming a Restricted Subsidiary;

(xi) negative pledges and restrictions on Liens in favor of any holder of Indebtedness for borrowed money entered into after the Closing Date and otherwise permitted under Section 10.04 but only if such negative pledge or restriction expressly permits Liens for the benefit of the Agent and the Secured Parties with respect to the credit facilities established hereunder and the Obligations under the Loan Documents on a senior basis and without a requirement that such holders of such Indebtedness be secured by such Liens securing the Obligations under the Loan Documents equally and ratably or on a junior basis;

(xii) any agreement or instrument relating to Indebtedness of a Foreign Subsidiary incurred pursuant to Section 10.04 to the extent such encumbrance or restriction only applies to such Foreign Subsidiary and its Subsidiaries;

(xiii) restrictions on cash or other deposits, in each case pursuant to agreements entered into in the ordinary course of business; and

(xiv) any restrictions on Liens imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i), (ii), (x), (xi), and (xii) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of Parent, no more restrictive with respect to such encumbrance and other restrictions than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

(a) Parent and its Restricted Subsidiaries shall, on any date when Availability is less than the greater of (a) 10% of the Line Cap, and (b) \$10,000,000 (the “FCCR Test Amount”), have a Fixed Charge Coverage Ratio of at least 1.00 to 1.00, tested for the four fiscal quarter period ending on the last day of the most recently ended fiscal quarter for which the Lead Borrower was required to deliver Section 9.01 Financials, and at the end of each succeeding four fiscal quarter period thereafter until the date on which Availability is equal to or greater than the FCCR Test Amount for 30 consecutive calendar days.

(b) For purposes of determining compliance with the financial covenant set forth in Section 10.11(a) above, cash equity contributions to Parent or the receipt by Parent of the proceeds from the sale of Qualified Equity Interests in Parent contributed to the Lead Borrower as common equity after the beginning of the final fiscal quarter included in the relevant four fiscal quarter period and on or prior to the day that is the later of 10 Business Days after Parent and its Restricted Subsidiaries become subject to testing the financial covenant set forth in Section 10.11(a) for such fiscal quarter and the day that is 10 Business Days after the day on which Section 9.01 Financials are required to be delivered for such fiscal quarter (such applicable 10-Business Day period being referred to herein as the “Interim Period”) will, at the request of the Lead Borrower and to the extent not otherwise applied, be included in the calculation of Consolidated EBITDA solely for the purposes of determining compliance with such financial covenant at the end of such fiscal quarter and applicable subsequent periods which include such fiscal quarter (any such equity contribution so included in the calculation of Consolidated EBITDA, a “Specified Equity Contribution”); provided that (i) Specified Equity Contributions may be made in respect of no more than two fiscal quarters in any four fiscal quarter period and no more than five times, (ii) the amount of any Specified Equity Contribution shall be no greater than the amount required to cause Parent and its Restricted Subsidiaries to be in pro forma compliance with such financial covenant, (iii) the Borrowers shall not be permitted to borrow hereunder during the Interim Period until the relevant Specified Equity Contribution has been made, (iv) all Specified Equity Contributions shall be disregarded for purposes of determining any baskets calculated on the basis of Consolidated EBITDA contained herein and in the other Loan Documents and (v) there shall be no pro forma or other reduction in Indebtedness with the proceeds of any Specified Equity Contribution for determining compliance with the financial covenant for the fiscal quarter in which such Specified Equity Contribution is made or any applicable subsequent periods which include such fiscal quarter, except to the extent the proceeds thereof have actually been used to prepay Indebtedness, but only from and after the fiscal quarter in which such prepayment is made.

9.28 Accounting Changes. Without the consent of the Agent, Parent shall not make or permit any material changes in the accounting policies of Parent and its Restricted Subsidiaries, except as permitted or required by U.S. GAAP or required by applicable law.

9.29 Payments. Any Borrower shall (i) default in the payment when due of any principal of any Loan or any Note or (ii) default, and such default shall continue unremedied for five or more Business Days,

in the payment when due of any interest on any Loan or Note, or any fees or any other amounts owing hereunder or under any other Loan Document; or

9.30 Representations, etc. Any representation, warranty or statement made or deemed made by any Loan Party herein or in any other Loan Document or in any certificate delivered to the Agent or any Lender pursuant hereto or thereto shall prove to be untrue in any material respect on the date as of which made or deemed made; or

9.31 Covenants. Any Loan Party shall (i) default in the due performance or observance by it of any term, covenant or agreement contained in Section 9.01(f)(i), 9.04 (with respect to the existence of the Lead Borrower), 9.11, 9.15, 9.16(e) or Section 10, (ii) fail to deliver a Borrowing Base Certificate required to be delivered pursuant to Section 9.16(a) within five (5) Business Days of the later of the date such Borrowing Base Certificate is required to be delivered and the day the Agent has provided the Lead Borrower with written notice thereof (other than during the occurrence of a Liquidity Event, in which case such period shall be three (3) Business Days after the date such Borrowing Base Certificate is required to be delivered), or (iii) default in the due performance or observance by it of any other term, covenant or agreement contained in this Agreement or in any other Loan Document (other than those set forth in Sections 11.01 and 11.02), and such default,

other than a default in the preceding clause (i) or (ii), shall continue unremedied for a period of 30 days after written notice thereof to the defaulting party by the Agent or the Required Lenders; or

9.32 Default Under Other Agreements. (i) Parent, the Lead Borrower or any Restricted Subsidiary shall (x) default in any payment of any Indebtedness (other than the Obligations) beyond the period of grace, if any, provided in an instrument or agreement under which such Indebtedness was created or (y) default in the observance or performance of any agreement or condition relating to any Indebtedness (other than the Obligations) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (determined without regard to whether any notice is required), any such Indebtedness to become due prior to its stated maturity (other than termination events or equivalent events pursuant to the terms of any Hedge Agreement that are not the result of any default or event of default thereunder by Parent, the Lead Borrower or any Restricted Subsidiary), beyond the period of grace, if any, provided in an instrument or agreement under which such Indebtedness was created, or (ii) any Indebtedness (other than the Obligations) of Parent, the Lead Borrower or any Restricted Subsidiary shall be declared to be (or shall become) due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the stated maturity thereof, provided that (A) it shall not be a Default or an Event of Default under this Section 11.04 unless the aggregate principal amount of all Indebtedness as described in preceding clauses (i) and (ii) is at least equal to the Threshold Amount and (B) the preceding clause (ii) shall not apply (1) to Indebtedness that becomes due as a result of a voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is otherwise permitted hereunder, (2) where such declaration or requirement to prepay is rescinded, withdrawn or reversed in writing (and only if such written rescission, withdrawal or reversal has been delivered to the Agent) prior to any termination of the Commitments or acceleration of the Loans pursuant to this Section 11 or the exercise of any rights or remedies by the Agent under the Loan Documents, (3) to any Indebtedness that becomes due (on the date of consummation of a voluntary refinancing) as a result of a voluntary refinancing thereof permitted under Section 10.04, (4) to any Indebtedness permitted to exist or be incurred under the terms of this Agreement that is required to be repaid, prepaid, repurchased or redeemed (or as to which an offer to repay, prepay, repurchase or redeem is required to be made) in connection with any asset sale event, casualty or condemnation event, change of control (without limiting the rights of the Agent and the Lenders under Section 11.10), excess cash flow or other customary provision in such Indebtedness giving rise to such requirement in the absence of any default

or event of default thereunder or (5) to the Existing Notes to the extent required to be repaid, prepaid, repurchased or redeemed (or as to which an offer to repay, prepay, repurchase or redeem is required to be made) as a result of the Transaction; or

9.33 Bankruptcy, etc. Parent, the Lead Borrower or any other Significant Party shall commence a voluntary case concerning itself under the Bankruptcy Code; or an involuntary case is commenced against Parent, the Lead Borrower or any other Significant Party, and the petition is not dismissed within 60 days after commencement of the case; or a custodian (as defined in the Bankruptcy Code), receiver, receiver-manager, trustee, monitor is appointed for all or substantially all of the property of Parent, the Lead Borrower or any other Significant Party and Parent, the Lead Borrower or such Significant Party suffers such appointment to continue undismissed for 60 days, or Parent, the Lead Borrower or any other Significant Party commences any other proceeding under any reorganization, bankruptcy, insolvency, arrangement, winding-up, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to Parent, the Lead Borrower or any other Significant Party, or there is commenced against Parent, the Lead Borrower or any other Significant Party any such proceeding which remains undismissed for a period of 60 days, or Parent, the Lead Borrower or any other Significant Party is adjudicated insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or Parent, the Lead Borrower or any other Significant Party suffers any appointment of any custodian, receiver, receiver-manager, trustee, monitor or the like for it or any substantial part of its property to continue undischarged or unstayed for a period of 60 days; or Parent, the Lead Borrower or any other Significant Party makes a general assignment for the benefit of creditors; or any corporate, limited liability company or similar action is taken by Parent, the Lead Borrower or any other Significant Party for the purpose of effecting any of the foregoing; or

9.34 ERISA. (a) An ERISA Event has occurred with respect to a Plan or Multiemployer Plan which has resulted or would reasonably be expected to result in a Material Adverse Effect, (b) there is or arises Unfunded Pension Liability which has resulted or would reasonably be expected to result in a Material Adverse Effect, (c) a Foreign Pension Plan has failed to comply with, or be funded in accordance with, applicable law which has resulted or would reasonably be expected to result in a Material Adverse Effect, or (d) Parent or any of the other Significant Parties has incurred any obligation in connection with the termination of, or withdrawal from, any Foreign Pension Plan that, in each case, has resulted or would reasonably be expected to result in a Material Adverse Effect; or

9.35 Security Documents. Any of the Security Documents shall cease to be in full force and effect, or shall cease to give the Agent for the benefit of the Secured Parties the Liens, guarantees, rights, powers and privileges purported to be created thereby (including, without limitation (to the extent provided therein), a perfected security interest in, and Lien on, any material Collateral in favor of the Agent, superior to and prior to the rights of all third Persons with respect to the ABL Priority Collateral (and second lien with respect to Noteholder Priority Collateral) (except as permitted by Section 10.01), and subject to no other Liens (except as permitted by Section 10.01)), except as a result of (a) a sale, transfer or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents or (b) the release thereof as provided in the applicable Security Document or Section 13.21; or

9.36 Existing Notes (a) Parent or the Lead Borrower shall fail to enforce the Safra 7.875% Senior Notes Commitment, (b) Safra Bank shall fail 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, (c) Cavendish US shall fail to make the Change of Control Equity Contribution on or prior to March 5, 2015, (d) Parent and the Lead Borrower shall fail to purchase all of the 7.875% Senior Notes that are tendered pursuant to such Offer to Purchase in accordance with the terms of the 7.875% Senior Notes Indenture or

(e) Parent shall fail to consummate the repurchase of any Convertible Senior Notes required as a result of the Transaction in accordance with the terms of the Convertible Senior Notes Indenture; or

9.37 Judgments. One or more judgments or decrees for the payment of money shall be entered against Parent or any other Significant Party involving in the aggregate for Parent and the other Significant Parties a liability or liabilities (to the extent not paid or fully covered by a reputable and solvent insurance company) equal to or exceeding the Threshold Amount and such judgments and decrees either shall be final and non-appealable or shall not be vacated, discharged or stayed or bonded pending appeal for any period of 60 consecutive days; or

9.38 Change of Control. A Change of Control shall occur;

then and in any such event, and at any time thereafter, if any Event of Default shall then be continuing, the Agent, upon the written request of the Required Lenders, shall by written notice to the Lead Borrower, take any or all of the following actions, without prejudice to the rights of the Agent or any Lender to enforce its claims against any Loan Party (provided that, if an Event of Default specified in Section 11.05 shall occur with respect to any Loan Party, the result which would occur upon the giving of written notice by the Agent as specified in clauses (i) and (ii) below shall occur automatically without the giving of any such notice): (i) declare the Aggregate Commitments terminated, whereupon all Commitments of each Lender shall forthwith terminate immediately; (ii) declare the principal of and any accrued interest in respect of all Loans and the Notes and all Obligations owing hereunder and thereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Loan Party; (iii) enforce, as Agent, all of the Liens and security interests created pursuant to the Security Documents; (iv) terminate, reduce or condition any Commitment, or make any adjustment to the Borrowing Base; and (v) require the Loan Parties to Cash Collateralize Letter of Credit Obligations, and, if the Loan Parties fail promptly to deposit such Cash Collateral, the Agent may (and shall upon the direction of Required Lenders) advance the required Cash Collateral as Loans (whether or not an Overadvance exists or is created thereby, or the conditions in Section 7.01 are satisfied).

9.39 Application of Funds. After the exercise of remedies provided for above (or after the Loans have automatically become immediately due and payable and the Letter of Credit Exposure has automatically been required to be Cash Collateralized as set forth above), any amounts received on account of the Obligations (including without limitation, proceeds received by the Agent in respect of any sale of, collection from, or other realization upon, all or any part of the Collateral (including, without limitation, pursuant to the exercise by the Agent of its remedies during the continuance of an Event of Default) or otherwise received on account of the Obligations) shall, subject to the provisions of Sections 2.11 and 2.13(j), be applied in the following order:

First, to the payment of all reasonable costs and out-of-pocket expenses, fees, commissions and taxes of such sale, collection or other realization including, without limitation, compensation to the Agent and its agents and counsel, and all expenses, liabilities and advances made or incurred by the Agent in connection therewith;

Second, to the payment of all other reasonable costs and out-of-pocket expenses of such sale, collection or other realization including, without limitation, costs and expenses and all costs, liabilities and advances made or incurred by the other Secured Parties in connection therewith (other than in respect of Bank Product Obligations);

Third, to interest then due and payable on the Lead Borrower's Swingline Loan;

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Fourth, to the principal balance of the Swingline Loan outstanding until the same has been prepaid in full;

Fifth, to the payment of fees due to the Agent and the Lenders under the Loan Documents;

Sixth, to interest then due and payable on Loans and other amounts due pursuant to Sections 3.01, 3.02 and 5.01;

Seventh, to Cash Collateralize all Letter of Credit Exposures (to the extent not otherwise Cash Collateralized pursuant to the terms hereof) plus any accrued and unpaid interest thereon;

Eighth, to the principal balance of Borrowings then outstanding and all Obligations on account of Noticed Bank Products with Secured Parties (but only up to the amount of the most recently established Bank Product Reserve in respect of such Noticed Bank Products which Bank Product Reserve was established prior to and not in contemplation of such exercise of remedies or the Loans having become automatically due and payable), *pro rata*;

Ninth, to all other Obligations *pro rata* (other than in respect of Bank Product Obligations);

Tenth, to all Bank Product Obligations *pro rata*; and

Eleventh, the balance, if any, as required by the Intercreditor Agreement, any Additional Debt Intercreditor Agreement or any Permitted Junior Debt Intercreditor Agreement or, in the absence of any such requirement, to the Person lawfully entitled thereto (including the applicable Loan Party or its successors or assigns).

Amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Seventh above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above. Amounts distributed with respect to any Bank Product Obligations shall be the lesser of the maximum Bank Product Obligations last reported to the Agent or the actual Bank Product Obligations as calculated by the methodology reported to the Agent for determining the amount due. The Agent shall have no obligation to calculate the amount to be distributed with respect to any Bank Product Obligations, and may request a reasonably detailed calculation of such amount from the applicable Secured Party. If a Secured Party fails to deliver such calculation within five days following request by the Agent, the Agent may assume the amount to be distributed is zero.

In the event that any such proceeds are insufficient to pay in full the items described in clauses First through Tenth of this Section 11.11, the Loan Parties shall remain liable for any deficiency. Notwithstanding the foregoing provisions, this Section 11.11 is subject to the provisions of the Intercreditor Agreement, any Additional Debt Intercreditor Agreement and any Permitted Junior Debt Intercreditor Agreement.

Section 10. The Agent.

10.01 Appointment and Authorization.

(d) Each Lender hereby irrevocably designates and appoints (i) Bank of America, N.A. as Agent for such Lender, (ii) Wells Fargo Bank, National Association, as syndication agent for such Lender and (iii) Merrill Lynch, Pierce, Fenner & Smith Incorporated and Wells Fargo Bank, National Association, as joint

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lead arranger and joint bookrunning managers for such Lender, each to act as specified herein and in the other Loan Documents. Each Lender hereby irrevocably authorizes the Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, the Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents. The Agent shall have no other rights, powers, obligations, liabilities, responsibilities or duties under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as a Lender, a Swingline Lender or an Issuing Bank hereunder. None of the Agent, the Syndication Agent and the Joint Lead Arrangers shall have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Agent, the Syndication Agent or either of the Joint Lead Arrangers. Without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in the other Loan Documents with reference to the Agent, the Syndication Agent or the Joint Lead Arrangers is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(e) Each of the Lenders (including in its capacity as a Bank Product Provider) hereby further authorizes the Agent to enter into the Intercreditor Agreement, any Additional Debt Intercreditor Agreement and any Permitted Junior Debt Intercreditor Agreement and any respective amendments thereto on behalf of such Lender; provided that any such amendments (except to the extent constituting mechanical changes implementing the joinder and/or replacement of representatives of other Indebtedness or other immaterial changes) shall have been approved by Required Lenders (or all Lenders, to the extent such approval is required by pursuant to the terms thereof). Without limiting the generality of the foregoing, each of the Lenders hereby authorizes and directs the Agent to bind each Lender to the actions required by such Lender under the terms of the Intercreditor Agreement, any Additional Debt Intercreditor Agreement and any Permitted Junior Debt Intercreditor Agreement.

(f) The provisions of this Section 12 (other than Sections 12.09, 12.11 and 12.14) are solely for the benefit of the Agent, the Syndication Agent and the Joint Lead Arrangers, the Lenders and the Issuing Bank, and Parent and the Borrowers shall not have rights as a third party beneficiary of any of such provisions.

10.02 Delegation of Duties. The Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of such Agent’s gross negligence or willful misconduct as determined in a final nonappealable judgment by a court of competent jurisdiction.

10.03 Liability of Agent. No Agent-Related Person shall (a) be liable for any action taken or omitted to be taken by it under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (i) with