

(viii) cash payments in lieu of the issuance of fractional shares, or the purchase by the Borrower of fractional shares in connection with (A) the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Borrower or (B) stock dividends or distributions, stock splits, revenue stock splits, merger, consolidation or other business combinations;

(ix) the declaration and payment of dividends on mandatorily convertible preferred stock of the Borrower (other than Disqualified Equity) issued after the Effective Date in an aggregate amount not to exceed the amount of Designated Proceeds;

(x) (A) the payment of dividends or other distributions on Equity Interests of the Borrower and (B) the repurchase, redemption or other acquisition or retirement for value of Equity Interests, in each case, on any date where such series of the Loans are rated Baa or better by Moody's and BB or better by S&P (or in either case, if such entity ceases to rate such Loans for reasons outside of the control of the Borrower, the equivalent credit rating from any other Rating Agency), *provided* that on the date of such dividend, other distribution or repurchase, redemption or other acquisition or retirement for value after giving *pro forma* effect thereto and to any related financing transactions as if the same had occurred at the beginning of the Borrower's most recently ended four full fiscal quarters for which internal financial statements are available, the Borrower's Leverage Ratio would have been equal to or less than 2.0 to 1.0;

(xi) other Restricted Payments made pursuant to this clause (xi) in an aggregate amount not to exceed at any one time outstanding \$200.0 million;

(xii) payments made or expected to be made by the Borrower or any Restricted Subsidiary in respect of withholding or similar taxes payable upon exercise of Equity Interests and repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants; or

(xiii) payments or distributions to dissenting shareholders pursuant to applicable law in connection with a merger, consolidation or transfer of assets that complies with Section 8.8 of this Agreement.

In determining whether any Restricted Payment is permitted by this Section 8.1, the Borrower may allocate or reallocate all or any portion of such Restricted Payment among the clauses (i) through (xiii) of the preceding paragraph or among such clauses and the first paragraph of this Section 8.1 including clauses (a), (b) and (c), *provided* that at the time of such allocation or reallocation, all such Restricted Payments, or allocated portions thereof, would be permitted under this Section 8.1. The amount of all Restricted Payments (other than cash) shall be the Fair Market Value on the date of the transfer, incurrence or issuance of such non-cash Restricted Payment.

The Board of Directors may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary only if: (i) immediately after giving effect to such designation, the Borrower could incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge

Coverage Ratio test under the first paragraph of Section 8.3 hereof or the Fixed Charge Coverage Ratio of the Borrower immediately after giving effect to such designation would not be less than the Fixed Charge Coverage Ratio of the Borrower immediately prior to such designation; and (ii) no Default or Unmatured Default would be in existence following such designation. Any such designation by the Board of Directors shall be evidenced by the Borrower promptly filing with the Administrative Agent a copy of the resolution giving effect to such designation and an Officers' Certificate certifying that such designation complied with the foregoing provisions.

The Board of Directors may designate any Subsidiary of the Borrower to be an Unrestricted Subsidiary under the circumstances and pursuant to the requirements described in the definition of "Unrestricted Subsidiary," which requirements include that such designation shall be made in compliance with this Section 8.1. For purposes of making the determination as to whether such designation would be made in compliance with this Section 8.1, all outstanding Investments by the Borrower and its Restricted Subsidiaries (except to the extent repaid in cash) in the Subsidiary so designated shall be deemed to be Restricted Payments at the time of such designation and shall reduce the amount available for Restricted Payments under the first paragraph of this Section 8.1. All such outstanding Investments shall be deemed to constitute Investments in an amount equal to the Fair Market Value of such Investments at the time of such designation.

If, at any time, any Unrestricted Subsidiary would fail to meet the foregoing requirements as an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary for purposes hereof, and any Indebtedness of such Subsidiary shall be deemed to be incurred as of such date.

8.2. Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries. The Borrower shall not, and shall not permit any of its Restricted Subsidiaries that is not a Guarantor to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary of the Borrower that is not a Guarantor to:

(i) (x) pay dividends or make any other distributions to the Borrower or any of its Restricted Subsidiaries (1) on its Capital Stock or (2) with respect to any other interest or participation in, or measured by, its profits, or (y) pay any Indebtedness owed to the Borrower or any of its Restricted Subsidiaries, *provided that* the priority of any preferred stock in receiving dividends or liquidating distributions prior to the payment of dividends or liquidating distributions on common stock shall not be deemed to be a restriction on the ability to make distributions on Capital Stock;

(ii) make loans or advances to the Borrower or any of its Restricted Subsidiaries; or

(iii) transfer any of its properties or assets to the Borrower or any of its Restricted Subsidiaries.

However, the preceding restrictions shall not apply to encumbrances or restrictions existing under or by reason of:

(a) agreements in effect on September 27, 2012 and any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings (collectively, for the purposes of this Section 8.2, “**amendments**”) of any such agreements or any Indebtedness outstanding on September 27, 2012 to which such agreements relate, *provided* that such amendments are not materially more restrictive, taken as a whole, with respect to such dividend, distribution and other payment restrictions than those contained in such agreement, as in effect on the September 27, 2012, as determined by the Borrower;

(b) any Credit Facility in effect after the Effective Date to the extent its provisions are not materially more restrictive, taken as a whole, with respect to such dividend, distribution or other payment restrictions and loan or investment restrictions than those contained in any Credit Facility as in effect on the Effective Date, as determined by the Borrower;

(c) this Agreement, the Loans, the Guarantees or any indenture governing debt securities issued by the Borrower or any Guarantor that are not materially more restrictive, taken as a whole, with respect to such dividend, distribution or other payment restrictions and other loan or investment restrictions than those contained in this Agreement and the Guarantees, as determined by the Borrower;

(d) any future Liens that may be permitted to be granted under, or incurred not in violation of, any other provisions hereof;

(e) applicable law, rule, regulation or order;

(f) any instrument governing Indebtedness or Capital Stock, or any other agreement relating to any property or assets, of a Person acquired by or merged or consolidated with or into the Borrower or any of its Restricted Subsidiaries as in effect at the time of such acquisition or at the time it merges with or into the Borrower or any Restricted Subsidiary, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person or such Person's subsidiaries, so acquired and any amendments, modifications, restatements, renewals, extensions, supplements, refundings, replacements or refinancings thereof, *provided* that the restrictions in any such amendments, modifications, restatements, renewals, extensions, supplements, refundings, replacement or refinancings are not materially more restrictive taken as a whole than those in effect on the date of the acquisition;

(g) restrictions of the nature described in clause (iii) above by reason of customary non-assignment provisions in contracts, agreements, licenses, leases and conveyances entered into in the ordinary course of business;

(h) purchase money obligations for property acquired in the ordinary course of business and Capital Lease Obligations that impose restrictions of the nature described in clause (iii) above on the property acquired or leased;

- (i) customary provisions in bona fide contracts for the sale of property or assets that restricts the sale or disposition of such property or assets pending such sale;
- (j) any agreement for the sale or other disposition of a Subsidiary that restricts distributions by that Subsidiary pending its sale or other disposition;
- (k) agreements relating to secured Indebtedness otherwise permitted to be incurred pursuant to Section 8.3 hereof, and not in violation of Section 8.6 hereof, that limit the right of the debtor to dispose of assets subject to such Liens;
- (l) Permitted Refinancing Indebtedness, *provided* that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced, as determined by the Borrower;
- (m) provisions with respect to the disposition or distribution of assets in partnership agreements, limited liability company organizational governance documents, joint venture agreements, asset sale agreements, agreements relating to Sale and Leaseback Transactions, stock sale agreements and other similar agreements entered into in the ordinary course of business;
- (n) other Indebtedness, Disqualified Equity or preferred stock permitted to be incurred subsequent to the Effective Date pursuant to Section 8.3 hereof, *provided* that the encumbrances and restrictions contained therein shall not materially impair the Borrower's ability to make payments under the Loans when due, as determined in good faith by the Borrower;
- (o) encumbrances or restrictions contained in, or in respect of, Hedging Obligations permitted under this Agreement from time to time; and
- (p) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business.

8.3. Incurrence of Indebtedness and Issuance of Disqualified Equity. The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "**incur**") any Indebtedness (including Acquired Debt), other than Permitted Debt, and the Borrower shall not issue, and shall not permit any of its Restricted Subsidiaries to issue, any Disqualified Equity; *provided, however*, that the Borrower or any Restricted Subsidiary may incur Indebtedness (including Acquired Debt) or issue shares of Disqualified Equity if the Borrower's Fixed Charge Coverage Ratio for the Borrower's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Equity is issued would have been at least 2.0 to 1.0, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if such additional Indebtedness had been incurred, or such Disqualified Equity had been issued, as the case may be, at the beginning of such four-quarter period.

The provisions of the first paragraph of this Section 8.3 shall not apply to the incurrence of any Permitted Debt. Notwithstanding anything to the contrary contained in this Section 8.3, accrual of interest, the accretion of accreted value or the amortization of original issue discount and the payment of interest or dividends in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 8.3.

The Borrower shall not incur any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of the Borrower unless such Indebtedness is also contractually subordinated in right of payment to the Loans on substantially identical terms; *provided, however*, that no Indebtedness of the Borrower shall be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Borrower solely by virtue of being unsecured or by virtue of being secured on a first or junior Lien basis.

For purposes of determining compliance with this Section 8.3, in the event that an item of proposed Indebtedness (including Acquired Debt) meets the criteria of more than one of the categories of Permitted Debt described in clauses (i) through (xvi) of the definition of “Permitted Debt” or is entitled to be incurred pursuant to the first paragraph of this Section 8.3, the Borrower shall, in its sole discretion, classify (or later classify or reclassify) in whole or in part such item of Indebtedness in any manner that complies with this Section 8.3 and such item of Indebtedness or a portion thereof may be classified (or later classified or reclassified) in whole or in part as having been incurred under more than one of the applicable clauses or pursuant to the first paragraph of this Section 8.3; *provided* that all Indebtedness outstanding under the ABL Credit Facility on the Effective Date shall be treated as incurred on the Effective Date under clause (i) of the definition of Permitted Debt.

For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness; *provided* that if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced, plus the amount of any reasonable premium (including reasonable tender premiums), defeasance costs and any reasonable fees and expenses incurred in connection with the incurrence of such new Indebtedness.

The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing.

The amount of any Indebtedness outstanding as of any date shall be: (i) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue dis-

count; (ii) the principal amount of the Indebtedness, in the case of any other Indebtedness; and (iii) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of: (a) the Fair Market Value of such assets at the date of determination; and (b) the amount of the Indebtedness of the other Person.

#### 8.4. Asset Sales.

(a) The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless: (i) the Borrower or the Restricted Subsidiary, as the case may be, receives consideration at least equal to the Fair Market Value (such Fair Market Value to be determined on the date of contractually agreeing to such Asset Sale and which shall give effect to the assumption by another Person of any liabilities as provided for in clause (ii)(a) of this paragraph) of the assets or Equity Interests issued or sold or otherwise disposed of; (ii) at least 75% of the consideration received in such Asset Sale (provided such requirement shall be 50% for any Asset Sale to an MLP Party, other than sales of core refinery assets) is in the form of cash or Cash Equivalents; *provided* that any of the following items shall be deemed to be cash and Cash Equivalents for the purposes of this clause (ii): (A) the assumption (by contract or otherwise) of any liabilities (as shown on the Borrower's or the Restricted Subsidiary's most recent balance sheet) of the Borrower or any Restricted Subsidiary (other than liabilities that are by their terms subordinated to the Loans or any Guarantee) by the transferee of any such assets that releases the Borrower or the Restricted Subsidiary from further liability with respect to such liabilities; (B) any securities, notes or other obligations received by the Borrower or any such Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into cash or Cash Equivalents within 180 days following their receipt (to the extent of cash or Cash Equivalents received); (C) other assets or rights used or useful in a Permitted Business, including, without limitation, assets or Investments of the nature or type described in clause (m) of the definition of "Permitted Investments"; (D) accounts receivable of a business retained by the Borrower or any of its Restricted Subsidiaries following the sale of such business; *provided* that such accounts receivable (i) are not past due more than 60 days and (ii) do not have a payment date greater than 90 days from the date of the invoice creating such accounts receivable; and (E) any Designated Non-cash Consideration received by the Borrower or such Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (E) not to exceed 10% of the Consolidated Net Worth of the Borrower 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 without giving effect to subsequent changes in value.

(b) Within 365 days after the receipt of any Net Proceeds from an Asset Sale, the Borrower or such Restricted Subsidiary, as the case may be, may apply such Net Proceeds, at its option:

(i) to permanently reduce:

(A) ABL Obligations or other Obligations under Senior Indebtedness (other than any Equal Priority Obligations or Junior Lien Obligations) that is secured by a Lien permitted under this Agreement (which Lien is either (x) senior to

the Lien of the Loans with respect to the Collateral or (y) on an asset not constituting Collateral (in the case of this clause (y), such permanent reduction shall only be permitted with the Net Asset Sale Proceeds of an Asset Sale consisting of assets which do not constitute Collateral)), and, in each case, to correspondingly reduce commitments with respect thereto;

(B) Equal Priority Obligations of the Borrower or any Restricted Subsidiary (and to correspondingly reduce any outstanding commitments with respect thereto); *provided* that to the extent the Borrower or any Restricted Subsidiary reduces or makes an offer to prepay, as applicable, Equal Priority Obligations other than the Loans, the Borrower shall equally and ratably reduce or make an offer to prepay, as applicable, the Loans at 100% of the principal amount thereof, plus the amount of accrued but unpaid interest, if any, on the principal amount of the Loans that would otherwise be prepaid; or

(C) Indebtedness of a Restricted Subsidiary that is not a Guarantor, other than Indebtedness owed to the Borrower or another Restricted Subsidiary that is not a Guarantor;

(ii) to acquire a controlling interest in another business or all or substantially all of the assets of, or Capital Stock or operating line of, another business, in each case engaged in a Permitted Business,

(iii) to make capital expenditures, or

(iv) to acquire other non-current assets to be used or useful in a Permitted Business, including, without limitation, assets or Investments of the nature or type described in clause (m) of the definition of “Permitted Investments”;

*provided* that the Borrower or the applicable Restricted Subsidiary shall be deemed to have complied with clause (b), (c) or (d) if, within 365 days of such Asset Sale, the Borrower or such Restricted Subsidiary shall have commenced and not completed or abandoned an expenditure or Investment, or a binding agreement with respect to an expenditure or Investment, in compliance with clause (b), (c) or (d), and that expenditure or Investment is substantially completed within a date one year and six months after the date of such Asset Sale; *provided further*, pending the final application of any such Net Proceeds pursuant to this Section 8.4, the Borrower or the applicable Restricted Subsidiary may temporarily reduce Indebtedness under any Credit Facility or otherwise expend or invest such Net Proceeds in any manner that is not prohibited by this Agreement.

(c) Any Net Proceeds from Asset Sales that are not invested or applied within the time period set forth in the last paragraph of Section 8.4(b) shall be deemed to constitute “**Excess Asset Sale Proceeds.**”

Within five days after the date on which the aggregate amount of Excess Asset Sale Proceeds exceeds \$100.0 million (or at the Borrower’s option, an earlier date), the Borrower shall be required to make an offer to all Lenders and the holders of any Indebtedness the Liens

securing which rank equally and ratably to the Loans (“**Equal Priority Indebtedness**”), that is subject to requirements with respect to the application of net proceeds from asset sales that are substantially similar to those contained in this Agreement (an “**Asset Sale Offer**”) to purchase on a *pro rata* basis the maximum principal amount of the Loans and such other Equal Priority Indebtedness that may be purchased or prepaid, as applicable, out of the prorated Excess Asset Sale Proceeds, at an offer price in cash in an amount equal to 100% of the principal amount (or accreted value) thereof plus accrued and unpaid interest, if any, thereon, to the date of prepayment or purchase, subject to the right of Lenders of record on the relevant record date to receive interest due on the relevant interest payment date, in accordance with the procedures set forth in Section 4.2 hereof. To the extent that the aggregate principal amount (or accreted value) of Loans and other Equal Priority Indebtedness tendered (and electing to be redeemed or repaid, as applicable) pursuant to an Asset Sale Offer is less than the Excess Asset Sale Proceeds, the Borrower and its Restricted Subsidiaries may use any remaining Excess Asset Sale Proceeds for general corporate purposes and any other purpose not prohibited by this Agreement. If the aggregate principal amount (or accreted value) of Loans or Equal Priority Indebtedness surrendered by holders thereof exceeds the amount of the prorated Excess Asset Sale Proceeds, the Administrative Agent shall select such Loans and such other Equal Priority Indebtedness to be prepaid or purchased on a *pro rata* basis based on the principal amount or accreted value tendered. Upon completion of the offer to purchase, the amount of Excess Asset Sale Proceeds shall be reset at zero.

8.5. Transactions with Affiliates. The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with any Affiliate of any such Person (each of the foregoing, an “**Affiliate Transaction**”) if such Affiliate Transaction involves aggregate consideration in excess of \$5.0 million, unless

(i) the terms of such Affiliate Transaction are no less favorable in any material respect to the Borrower or the relevant Restricted Subsidiary, as the case may be, than those that could have been obtained in a comparable arm’s-length transaction by the Borrower or such Restricted Subsidiary with a Person that is not an Affiliate of the Borrower; and

(ii) if such Affiliate Transaction involves aggregate payments or value in excess of \$50.0 million, the Borrower delivers to the Administrative Agent a resolution adopted by its Board of Directors approving such Affiliate Transaction and confirming that such Affiliate Transaction complies with clause (ii) above;

*provided* that none of the following shall be deemed to be Affiliate Transactions and therefore shall not be subject to the provisions of this Section 8.5:

(1) Affiliate Transactions involving the purchase, sale, gathering, marketing, storage, terminalling, construction, transportation, and related logistical and operating activities, of crude oil, natural gas and other hydrocarbons, and re-



financed products therefrom, in the ordinary course of any Permitted Business, so long as such transactions are priced in line with industry accepted benchmark prices and the pricing of such transactions are equivalent to the pricing of comparable transactions with unrelated third parties;

(2) reasonable fees and compensation paid to or for the benefit of any employee, officer or director of the Borrower or any of its Restricted Subsidiaries, and any employment agreement, customary benefit program or arrangement, equity award, equity option or equity appreciation agreement or plan, agreement or other similar compensation plan or arrangement entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of its business, and any indemnities or other transactions permitted or required by bylaw, statutory provisions or any of the foregoing agreements, plans or arrangements;

(3) transactions between or among (A) the Borrower and one or more Restricted Subsidiaries and (B) any Restricted Subsidiaries;

(4) the existence of, or performance by the Borrower or any Restricted Subsidiary of its obligations under the terms of, any written agreement in effect on September 27, 2012, as such agreement may be amended, modified or supplemented from time to time and any similar agreements which it may enter into thereafter; *provided, however*, that any amendment, modification or supplement to any such agreement or any such similar agreements entered into after September 27, 2012 shall be permitted only to the extent that its terms, taken as a whole, are not materially less favorable to the Borrower or any Restricted Subsidiary as compared to the terms of the agreement in effect on September 27, 2012, as determined by the Borrower;

(5) loans or advances to officers, directors and employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures and other purposes, in each case, in the ordinary course of business;

(6) maintenance in the ordinary course of business of customary benefit programs or arrangements for employees, officers or directors, including vacation plans, health and life insurance plans, deferred compensation plans and retirement or savings plans and similar plans;

(7) fees and compensation paid and other benefits made available to, and indemnity provided on behalf of, officers, directors, employees or consultants of the Borrower or any of its Restricted Subsidiaries in their capacity as such, including reimbursement or advancement of out-of-pocket expenses and provisions of officers' and directors' liability insurance, to the extent such fees and compensation are customary;

(8) issuances of Equity Interests of the Borrower (other than Disqualified Equity) to Affiliates of the Borrower or any of its Restricted Subsidiaries and performance of reasonable and customary registration rights;

(9) Restricted Payments that are permitted by Section 8.1 hereof and the definition of “Permitted Investments”;

(10) any transactions between the Borrower or any Restricted Subsidiary and any Person, a director of which is also a director of the Borrower or a Restricted Subsidiary; *provided* that such director abstains from voting as a director of the Borrower or the Restricted Subsidiary, as applicable, in connection with the approval of the transaction;

(11) any sale or other disposition or related transaction specified by the Omnibus Agreement;

(12) transactions with a Person that is an Affiliate of the Borrower solely because the Borrower owns, directly or indirectly, an Equity Interest in, or controls, such Person;

(13) any transaction in which the Borrower or any of its Restricted Subsidiaries, as the case may be, delivers to the trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or that such transaction meets the requirements of clause (i) above;

(14) guarantees of performance by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business, except for guarantees of Indebtedness in respect of borrowed money; and

(15) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Agreement which are fair to the Borrower and its Restricted Subsidiaries, in the reasonable determination of the Borrower or that meet the requirements of clause (i) above.

8.6. Liens. The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien securing any Indebtedness (other than Permitted Liens) upon any of its property or assets (including Capital Stock of a Restricted Subsidiary), whether owned on the Effective Date or acquired after the Effective Date, unless (i) in the case of Liens securing Subordinated Obligations of the Borrower or a Restricted Subsidiary, the Loans or the Guarantees, as applicable, are contemporaneously secured by a Lien on such property or assets on a senior basis to the Subordinated Obligations so secured with the same priority that the Loans or the Guarantees, as applicable, have to such Subordinated Obligations until such time as such Subordinated Obligations are no longer so secured by a Lien; and (ii) in the case of Liens securing Senior Indebtedness of the Borrower or a Restricted Subsidiary, the Loans or the Guarantees, as applicable, are contemporaneously secured by a Lien on such property or assets on an equal and ratable basis with the Senior Indebtedness so secured until such time as such Senior Indebtedness is no longer so secured by a Lien.