
“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” means each of St. Paul Park Refining Co. LLC, Northern Tier Bakery LLC, Northern Tier Retail LLC, SuperAmerica Franchising LLC and each other Domestic Subsidiary of Holdings that becomes a Borrower pursuant to Section 5.10(a).

“Borrower Agent” has the meaning assigned to such term in Section 2.24.

“Borrower Percentage” has the meaning assigned to such term in Section 2.25(f).

“Borrower’s Maximum Liability” has the meaning assigned to such term in Section 2.25(e).

“Borrowing” means any (a) Loans of the same Class and Type made, converted or continued on the same date and, in the case of LIBOR Rate Loans, as to which a single Interest Period is in effect, (b) Swingline Loan or (c) Protective Advance or Overadvance Loan.

“Borrowing Base” means, at any time, (a) 90% of the Value of Eligible Credit Card Receivables; *plus* (b) 85% of the Value of Eligible Other Receivables; *plus* (c) 80% of the fair market value of Eligible Petroleum Inventory, as periodically published by the Value Reference for the appropriate product and product grades in the appropriate region of the country; *plus* (d) the sum of (A) 80% of the fair market value of the Eligible Gasoline Inventory and (B) the lesser of (i) 50% of the Value of the Eligible Non-Gasoline Inventory and (ii) the product of 85% multiplied by the Net Orderly Liquidation Value Percentage as determined from the most recent appraisal of such Eligible Non-Gasoline Inventory ordered by the Agent multiplied by the Value of such Inventory (subject to an aggregate cap of \$20,000,000 in the case of this clause (d)); *plus* (e) for Eligible Other Inventory, the lesser of (i) 80% of the Value of the applicable category of the Eligible Other Inventory and (ii) the product of 85% multiplied by the Net Orderly Liquidation Value Percentage as determined from the most recent appraisal of such Inventory ordered by the Agent multiplied by the Value of the applicable category of such Inventory; *plus* (f) 80% of the fair market value of the Borrowers’ Eligible Positive Exchange Balance (subject to an aggregate cap of \$10,000,000 in the case of this clause (f)); *plus* (g) 100% of Specified Standby Letters of Credit; and *plus* (h) 100% of Eligible Cash, *minus* (i) without duplication, the then amount of all Availability Reserves and other Reserves as the Agent may at any time and from time to time in the exercise of its Permitted Discretion establish or modify in accordance with the provisions of Section 2.22. Notwithstanding the foregoing, the Agent shall be entitled to reduce any of the foregoing advance rates in its Permitted Discretion upon (a) so long as no Event of Default has occurred and is continuing, at least three days’ advance notice to the Borrower Agent, and (b) if an Event of Default has occurred and is continuing, one day’s advance notice to the Borrower Agent (or no advance notice to the Borrower Agent, as may reasonably be determined to be appropriate by the Agent in its Permitted Discretion to protect the interests of the Lenders). The Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Agent pursuant to Section 5.01(i) and adjusted by the Agent in the exercise of its Permitted Discretion and in accordance with Section 2.22 based upon additional information, if any, received after the date of delivery of such Borrowing Base Certificate.

“Borrowing Base Assets” means any Loan Party’s Inventory, Receivables and other assets included in the calculation of the Borrowing Base, together with all other assets directly related thereto, including documents, instruments, general intangibles, deposit accounts and the proceeds of all of the same.

“Borrowing Base Certificate” means a certificate, signed and certified as accurate and complete by a Financial Officer of the Borrower Agent, in substantially the form of Exhibit B or another form which is acceptable to the Agent in its reasonable discretion.

“Borrowing Request” means a request by the Borrower Agent for a Revolving Borrowing in accordance with Section 2.03 and substantially in the form attached hereto as Exhibit F, or such other forms as shall be approved by the Agent.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to remain closed; provided that, when used in connection with a LIBOR Rate Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“Buyer Parent” means Northern Tier Investors LLC, a Delaware limited liability company.

“Capital Expenditures” means, for any period, without duplication, any expenditure for any purchase or other acquisition of any asset which would be classified as a fixed or capital asset on a consolidated balance sheet of Holdings and its Subsidiaries prepared in accordance with GAAP; provided that the term “Capital Expenditures” shall not include (i) expenditures made in connection with the replacement, substitution, restoration or repair of assets to the extent financed from insurance proceeds or compensation awards paid on account of a Recovery Event, (ii) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time, (iii) the purchase of plant, property or equipment to the extent financed with the proceeds of sales, transfers or other dispositions that are not required to be applied to prepay Revolving Loans pursuant to Section 2.11(c), (iv) expenditures that are accounted for as capital expenditures by Holdings or any Subsidiary and that actually are paid for by a Person other than Holdings or any Subsidiary and for which neither Holdings nor any Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such Person or any other Person (whether before, during or after such period, it being understood, however, that only the amount of expenditures actually provided or incurred by Holdings or any Subsidiary in such period and not the amount required to be provided or incurred in any future period shall constitute “Capital Expenditures” in the applicable period), (v) the book value of any asset owned by Holdings or any Subsidiary prior to or during such period to the extent that such book value is included as a capital expenditure during such period as a result of such Person reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period; provided that (x) any expenditure necessary in order to permit such asset to be reused shall be included as a Capital Expenditure during the period in which such expenditure actually is made and (y) such book value shall have been included in Capital Expenditures when such asset was originally acquired, (vi) any expenditures that constitute Permitted Acquisitions (or similar investments) and expenditures made in connection with the Transactions, (vii) any capitalized interest expense reflected as additions to property, plant or equipment in the consolidated balance sheet of Holdings and the Subsidiaries for such period or (viii) any Lease Expenses.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the amount thereof accounted for as a liability determined in accordance with GAAP.

“Cash Management Agreement” means any agreement entered into from time to time between any Loan Party, on the one hand, and the Agent or any Lender or any of their Affiliates on the other, in connection with cash management services for collections, other Banking Services and for operating, payroll and trust accounts of such Loan Party provided by such Agent or Lender or their Affiliates, including ACH services, controlled disbursement services, electronic funds transfer services, information reporting services, lockbox services, stop payment services and wire transfer services.

“Change in Control” shall be deemed to have occurred if (a) prior to a Qualified Public Offering, the Permitted Holders (i) shall fail to have the right, directly or indirectly, by voting power, contract or otherwise, to elect or designate for election at least a majority of the Board of Directors of Holdings or (ii) shall fail to own, directly or indirectly, beneficially and of record, shares of Holdings in an amount equal to more than 50% of the amount of shares owned, directly or indirectly, by the Permitted Holders, beneficially and of record, as of the Effective Date and such ownership by the Permitted Holders shall not represent the largest single block of voting securities of Holdings held, directly or indirectly, by any Person or related group for purposes of Section 13(d) of the Exchange Act, (b) after a Qualified Public Offering, any “person” or “group” (within the meaning of Rule 13d-5 of the Exchange Act but excluding any employee benefit plan of such person and its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than the Permitted Holders shall “beneficially own” (within the meaning of Rule 13d-3 under the Exchange Act), directly or indirectly, shares representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings and the percentage of the aggregate ordinary voting power represented by such Equity Interests beneficially owned by such person or group exceeds the percentage of the aggregate ordinary voting power represented by Equity Interests of Holdings then beneficially owned, directly or indirectly, by the Permitted Holders, unless (i) the Permitted Holders have, at such time, the right or the ability, directly or indirectly, by voting power, contract or otherwise to elect or designate for election at least a majority of the Board of Directors of Holdings or (ii) during any period of twelve (12) consecutive months, a majority of the seats (other than vacant seats) on the board of directors of Holdings shall be occupied by persons who were (x) members of the board of directors of Holdings on the Effective Date or nominated by the board of directors of Holdings or by one or more Permitted Holders or Persons nominated by one or more Permitted Holders or (y) appointed by directors so nominated, (c) any change in control (or similar event, however denominated) with respect to Holdings shall occur under and as defined in the Senior Secured Notes Documents or any other Indebtedness of Holdings or its Subsidiaries constituting Material Indebtedness, or (d) at any time, Holdings shall cease to beneficially own, directly or indirectly, 100% of the issued and outstanding Equity Interests of each Borrower.

“Change in Law” means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or any Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender’s or such Issuing Bank’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement (other than any such request, guideline or directive to comply with any law, rule or Regulation that was in effect on the date of this Agreement); provided, that notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith shall be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Chattel Paper” means any “chattel paper,” as such term is defined in the UCC, including electronic chattel paper, now owned or hereafter acquired by any Loan Party, wherever located.

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Extended Revolving Loans (of the same Extension Series), Swingline Loans or Protective Advances or Overadvance Loans; and when used in reference to any Commitment, refers to whether such Commitment is a Revolving Commitment or an Extended Revolving Commitment (of the same Extension Series).

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and the Treasury regulations thereunder.

“Collateral” means any and all property owned, leased or operated by a Person subject to a security interest or Lien under the Collateral Documents and any and all other property of any Loan Party, now existing or hereafter acquired, that may at any time be or become subject to a security interest or Lien in favor of Agent, on behalf of itself and the Secured Parties, to secure the Secured Obligations; provided however that Collateral shall not at any time include any Margin Stock.

“Collateral Access Agreement” has the meaning assigned to such term in the Security Agreement.

“Collateral Documents” means, collectively, the Security Agreement, the Mortgages and any other documents granting a Lien upon the Collateral as security for payment of the Secured Obligations.

“Collateral Report Trigger” means the circumstance that, at any time, (a) Excess Availability is less than the greater of (i) 20% of the lesser of (x) the aggregate Revolving Commitment and (y) the Borrowing Base and (ii) \$30,000,000 or (b) a Default or Event of Default is in existence. A Collateral Report Trigger shall be deemed to continue to exist until (1) in the case of clause (a) above, Excess Availability has equaled or exceeded the amount set forth therein for at least thirty (30) consecutive days and (2) in the case of clause (b) above, no Default or Event of Default remains in existence.

“Commitment” means a Revolving Commitment or an Extended Revolving Commitment.

“Commitment Fee Rate” means the applicable rate per annum set forth below based upon the Average Revolving Loan Utilization as of the Effective Date or the most recent Adjustment Date:

<u>Average Revolving Loan Utilization</u>	<u>Commitment Fee Rate</u>
Less than or equal to 33 1/3%	0.625%
Greater than 33 1/3% but less than or equal to 66 2/3%	0.500%
Greater than 66 2/3%	0.375%

The Commitment Fee Rate shall be adjusted quarterly on a prospective basis on each Adjustment Date based upon the Average Revolving Loan Utilization in accordance with the table above; provided that if an Event of Default shall have occurred and be continuing at the time any reduction in the Commitment Fee Rate would otherwise be implemented, no such reduction shall be implemented until the date on which such Event of Default shall have been cured or waived.

“Commitment Schedule” means the Schedule attached hereto identified as such.

“Commodities Hedging Arrangement” means a swap, cap, collar, floor, put, call, option, future, other derivative, spot purchase or sale, forward purchase or sale, supply or off-take, transportation agreement, storage agreement or other commercial or trading agreement in or involving crude oil, natural gas, any feedstock, blendstock, intermediate product, finished product, refined product or other hydrocarbons product, or any other energy, weather or emissions related commodity (including any crack spread), or any prices or price indexes relating to any of the foregoing commodities, or any economic index or measure of economic risk or value, or other benchmark against which payments or deliveries are to be made (including any combination of such transactions).

“Commodities Hedging Agreement” means any agreement (including any master agreement or master netting agreement) that evidences or provides for any Commodities Hedging Arrangement between Holdings or any Subsidiary and any other Person.

“Commodities Hedging Obligations” means, with respect to any Person, any and all obligations of such Person, whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under any and all Commodities Hedging Agreements.

“Consolidated Net Tangible Assets” means at any date the total net assets of Holdings and its Subsidiaries determined on a consolidated basis in accordance with GAAP, excluding, however, from the determination of total net assets (i) goodwill, organizational expenses, research and product development expenses, trademarks, trade names, copyrights, patents, patent applications, licenses and rights in any thereof, and other similar intangibles, (ii) all deferred charges or unamortized debt discount and expenses, (iii) all reserves carried and not deducted from assets, (iv) securities which are not readily marketable, (v) cash held in sinking or other analogous funds established for the purpose of redemption, retirement or prepayment of capital stock or other equity interests or Indebtedness, and (vi) any items not included in clauses (i) through (v) above which are treated as intangibles in conformity with GAAP.

“Consolidated Total Indebtedness” means, as at any date of determination, an amount equal to the sum of (a) the aggregate amount of all outstanding Indebtedness of Holdings and its Subsidiaries on a consolidated basis consisting of Indebtedness for borrowed money, (b) obligations in respect of Capital Lease Obligations and (c) debt obligations evidenced by bonds, notes, debentures or similar instruments.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound other than the Obligations.

“Contributed Assets” means the St. Paul, Minnesota refinery and related assets and inventories (other than assets which are part of the Crude Oil Intermediation Agreement), a bakery located at the refinery, certain pipeline interests, retail gas stations and related assets, owned or leased by Marathon and certain of its affiliates.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Controlled Investment Affiliate” means, as to any Person, any other Person, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in Holdings and/or other companies.

“Cost” means the cost of purchase of Inventory determined according to the accounting policies used in the preparation of Holdings’ audited financial statements.

“Crack Spread Hedge” means a cash-settled commodity transaction (including an option, swap, floor, cap, collar, forward sale or forward purchase) which is provided for the purpose of managing risk with respect to the spread created by the purchase by a party of crude oil for delivery in the future and the sale by such party of gasoline, diesel, jet fuel and/or heating oil under contract for future delivery (regardless of whether such transaction is effected by means of one or more futures contracts or over-the-counter hedging agreements).

“Credit Card Receivables” means any Account due to any Borrower in connection with purchases from and other goods and services provided by such Borrower on the following credit cards: Visa, MasterCard, American Express, Diners Club, Discover, Carte Blanche and such other credit cards as the Agent shall reasonably approve from time to time, in each case which have been earned by performance by such Borrower but not yet paid to such Borrower by the credit card issuer or the credit card processor, as applicable; provided that, in any event, “Credit Card Receivables” shall exclude Accounts due in connection with proprietary credit cards.

“Crude Oil Intermediation Agreement” means, collectively, (a) the Inventory Purchase Agreement, dated as of the Effective Date, among J.P. Morgan Commodities Canada Corporation (“JPM CCC”), Marathon Petroleum Company LLC and Marathon Petroleum Trading Canada LLC and (b) the Crude Oil Supply Agreement, dated as of the Effective Date, between St. Paul Park Refining Co. LLC and JPM CCC.

“Cure Amount” shall have the meaning assigned to such term in Section 7.02.

“Cure Period” shall have the meaning assigned to such term in Section 7.02.

“Cure Right” shall have the meaning assigned to such term in Section 7.02.

“DDAs” means any checking or other demand deposit account maintained by the Loan Parties. All funds in such DDAs shall be conclusively presumed to be Collateral and proceeds of Collateral; and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in the DDAs, subject to the Security Agreement and the Intercreditor Agreement.

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Defaulting Lender” means any Revolving Lender that (a) fails to make any payment or provide funds to the Agent or any Borrower as required hereunder or fails otherwise to perform its obligations under any Loan Document, and such failure is not cured within two Business Days, (b) notified the Agent or a Loan Party in writing that it does not intend to satisfy any such obligation (unless such notice indicates that such position is based on such Revolving Lender’s good faith determination that a condition precedent to perform such obligation cannot be satisfied) or (c) has become the subject of a Bankruptcy Event.

“Derivative Transaction” means (a) an interest-rate transaction, including an interest-rate swap, basis swap, forward rate agreement, interest rate option (including a cap, collar, and floor), and any other instrument linked to interest rates that gives rise to similar credit risks (including when-issued securities and forward deposits accepted), (b) an exchange-rate transaction, including a cross-currency interest-rate swap, a forward foreign-exchange contract, a currency option, and any other instrument

linked to exchange rates that gives rise to similar credit risks, (c) an equity derivative transaction, including an equity-linked swap, an equity-linked option, a forward equity-linked contract, and any other instrument linked to equities that gives rise to similar credit risk and (d) a commodity (including precious metal) derivative transaction, including a commodity-linked swap, a commodity-linked option, a forward commodity-linked contract, and any other instrument linked to commodities that gives rise to similar credit risks; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Holdings or its subsidiaries shall be a Derivative Transaction; and provided, further, that no Commodities Hedging Agreement shall be a Derivative Transaction.

“Designated Disbursement Account” has the meaning assigned to such term in Section 2.21(d).

“Dilution Reserve” means an amount equal to the excess of (i) non-cash reductions to the Borrowers’ Eligible Other Receivables (on a combined basis) during a 12-month period prior to the date of determination as established by the Borrowers’ records or by a field examination conducted by the Agent’s employees or representatives, expressed as a percentage of the Borrowers’ Eligible Other Receivables (on a combined basis) outstanding during the same period, as the same may be adjusted by the Agent in the exercise of its Permitted Discretion, over (ii) 5%, multiplied by an amount equal to Eligible Other Receivables as of the date of determination.

“Disqualified Equity Interests” means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests and/or cash in lieu of fractional shares), pursuant to a sinking fund obligation or otherwise (except as a result of a change in control or asset sale so long as any right of the holders thereof upon the occurrence of a change in control or asset sale event shall be subject to the occurrence of the Termination Date, (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests and/or cash in lieu of fractional shares), in whole or in part (except as a result of a change in control or asset sale so long as any right of the holders thereof upon the occurrence of a change in control or asset sale event shall be subject to the occurrence of the Termination Date), (c) requires the payment of any cash dividend or any other scheduled cash payment constituting a return of capital, in each case, prior to the date that is ninety-one (91) days after the earlier of the Maturity Date and the occurrence of the Termination Date or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the earlier of the Maturity Date and the occurrence of the Termination Date; provided that if such Equity Interest is issued to any plan for the benefit of employees of Holdings or any of its subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute Disqualified Equity Interest solely because it may be required to be repurchased by Holdings or any of its subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“Document” has the meaning assigned to such term in Article 9 of the UCC.

“Dollars” or “\$” refers to lawful money of the United States of America.

“Domestic Subsidiaries” means all Subsidiaries incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia.

“Earmout Agreement” has the meaning set forth in Section 2.3(x) of the Formation Agreement.

“Earnout Payment” means any earnout payment payable pursuant to the Earnout Agreement.

“EBITDA” means, for any period, Net Income for such period, plus

(a) without duplication and to the extent already deducted (and not added back) in arriving at such Net Income, the sum of the following amounts for such period:

(i) Interest Expense for such period,

(ii) provision for taxes based on income, profits or capital, including federal, foreign, state, franchise, excise and similar taxes paid or accrued during such period (including in respect of repatriated funds),

(iii) depreciation and amortization (including amortization of intangible assets established through purchase accounting and amortization of deferred financing fees or costs),

(iv) Non-Cash Charges,

(v) extraordinary, unusual or non-recurring charges (excluding charges described in clause (vi) below),

(vi) restructuring charges, accruals or reserves (including restructuring costs related to acquisitions before and after the Effective Date) incurred during any period on or prior to the first anniversary of the Effective Date; provided that, the aggregate amount of restructuring charges, accruals or reserves incurred under this clause (vi) in such Test Period shall not exceed 10% of EBITDA for such Test Period (calculated without giving effect to any adjustments made pursuant to this clause (vi)),

(vii) the amount of any minority interest expense (or income (loss) allocable to non-controlling interests) consisting of Subsidiary income attributable to minority equity interests of third parties in any non-wholly-owned Subsidiary deducted (and not added back in such period to Net Income),

(viii) the amount of management, monitoring, consulting and advisory fees, (including termination and transaction fees) and related indemnities and expenses paid or accrued in such period to (or on behalf of) the Sponsor, to the extent otherwise permitted by Sections 6.09 and 6.11(b),

(ix) losses on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business), and

(x) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing EBITDA or Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of EBITDA pursuant to paragraph (b) below for any previous period and not added back,

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(b) without duplication and to the extent included in arriving at such Net Income, the sum of the following amounts for such period:

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- (i) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Net Income or EBITDA in any prior period),
 - (ii) gains on asset sales, disposals and abandonments (other than asset sales, disposals and abandonments in the ordinary course of business),
 - (iii) the amount of any minority interest income (or income (loss) allocable to non-controlling interests) consisting of Subsidiary loss attributable to minority equity interests of third parties in any non-wholly owned Subsidiary added (and not deducted) in such period in arriving at Net Income,
 - (iv) cash expenditures (or any netting arrangements resulting in increased cash expenditures) not deducted in arriving at EBITDA or Net Income in any period to the extent non-cash losses relating to such income were added in the calculation of EBITDA pursuant to paragraph (a) above for any previous period and not deducted, and
 - (v) extraordinary, unusual and non-recurring noncash gains,

in each case, as determined on a consolidated basis for Holdings and the Subsidiaries in accordance with GAAP; provided that,

- (i) to the extent included in Net Income, there shall be excluded in determining EBITDA currency translation gains and losses,
- (ii) there shall be included in determining EBITDA for any period, without duplication, the Acquired EBITDA of any Person, property, business or asset acquired by Holdings or any Subsidiary during such period to the extent not subsequently sold, transferred or otherwise disposed of (but not including the Acquired EBITDA of any related Person, property, business or assets to the extent not so acquired) (each such Person, property, business or asset acquired, including pursuant to the Transactions or pursuant to a transaction consummated prior to the Effective Date, and not subsequently so disposed of, an “Acquired Entity or Business”), based on the Acquired EBITDA of such Pro Forma Entity for such period (including the portion thereof occurring prior to such acquisition or conversion) determined on a historical Pro Forma Basis; and
- (iii) there shall be excluded in determining EBITDA for any period the EBITDA of any Person, property, business or asset sold, transferred or otherwise disposed of, closed or classified as discontinued operations by Holdings or any Subsidiary during such period (each such Person, property, business or asset so sold, transferred or otherwise disposed of, closed or classified, a “Sold Entity or Business”), based on the EBITDA of such Sold Entity or Business for such period (including the portion thereof occurring prior to such sale, transfer, disposition, closure, classification or conversion) determined on a historical Pro Forma Basis.

Notwithstanding anything to the contrary contained herein and subject to adjustment as provided in clauses (ii) and (iii) of the immediately preceding proviso with respect to acquisitions and dispositions occurring following the Effective Date and adjustments as provided under clause (a)(vi) above, EBITDA shall be deemed to be -\$13,100,000 (negative), \$21,600,000, \$67,700,000 and \$52,100,000 for the fiscal quarters ended December 31, 2009, March 31, 2010, June 30, 2010 and September 30, 2010, respectively.

“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02), which date was December 1, 2010.

“Eligible Carrier” means any of the terminals, warehouses, carriers and pipeline companies listed or described in Schedule 1.01(a), as such Schedule 1.01(a) may be revised by the Borrower Agent from time to time with the consent of the Agent, such consent not to be unreasonably withheld.

“Eligible Cash” means cash and Permitted Investments held by the Borrowers in one or more securities or investment accounts maintained at the Agent subject to control agreements in favor of the Agent that are reasonably satisfactory to the Agent.

“Eligible Credit Card Receivable” means any Credit Card Receivable that has been earned and represents the bona fide amounts due to a Borrower from a credit card processor and/or credit card issuer, and in each case originated in the ordinary course of business of the relevant Borrower, which Receivable, unless otherwise approved by the Agent in its Permitted Discretion, meets all of the following requirements, subject to the ability of the Agent to establish other criteria of eligibility in its Permitted Discretion or modify the criteria established below, in either case subject to the requirements of Section 2.22:

(a) such Credit Card Receivable is owned by a Borrower and such Borrower has good and marketable title to such Credit Card Receivable;

(b) such Credit Card Receivable constitutes an Account;

(c) such Credit Card Receivable has not been outstanding more than five Business Days;

(d) the credit card issuer or credit card processor of the applicable credit card with respect to such Credit Card Receivable is not the subject of any Bankruptcy Event or that is liquidating, dissolving or winding up its affairs or otherwise deemed not creditworthy by the Agent in its Permitted Discretion;

(e) such Credit Card Receivable is a valid, legally enforceable obligation of the applicable credit card issuer with respect thereto;

(f) such Credit Card Receivable is subject to a first priority perfected Lien in favor of the Agent (and, for avoidance of doubt, constitutes ABL Collateral);

(g) such Credit Card Receivable is not subject to any Lien, other than Liens permitted by Section 6.02, so long as such Liens do not have priority over the Lien of the Agent and are junior to the Lien of the Agent on terms reasonably satisfactory to the Agent;

(h) such Credit Card Receivable conforms in all material respects to all representations, warranties or other provisions in the Loan Documents or in the credit card agreements relating to such Credit Card Receivable;

(i) if such Credit Card Receivable is subject to risk of set-off, non-collection or not being processed due to unpaid and/or accrued credit card processor fee balances, the face amount thereof for purposes of determining the Borrowing Base has been reduced by the amount of such unpaid credit card processor fees; and