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(j) such Credit Card Receivable is not evidenced by Chattel Paper or an Instrument of any kind unless such Chattel Paper or Instrument is in the possession of the Agent, and to the extent necessary or appropriate, endorsed to the Agent.

In determining the amount to be so included in the calculation of the value of an Eligible Credit Card Receivable, the face amount thereof shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all customary fees and expenses in connection with any credit card arrangements and (ii) the aggregate amount of all cash received in respect thereof but not yet applied by the applicable Borrower to reduce the amount of such Eligible Credit Card Receivable.

If the Agent deems Credit Card Receivables ineligible in its Permitted Discretion (and not based upon the criteria set forth above), then the Agent shall give the Borrower Agent five (5) Business Days' prior notice thereof; provided that (i) any modification of the eligibility criteria set forth above shall have a reasonable relationship to circumstances, conditions, events or contingencies which are the basis for such eligibility criteria, as determined by the Agent in its Permitted Discretion and (ii) circumstances, conditions, events or contingencies arising prior to the Effective Date of which the Agent had actual knowledge prior to the Effective Date shall not be the basis for any such modification after the Effective Date unless such circumstances, conditions, events or contingencies shall have changed since the Effective Date.

With respect to any Credit Card Receivables that were acquired or originated by any Person acquired after the Effective Date, the Agent shall use commercially reasonable efforts, at the expense of the Loan Parties, to complete diligence in respect of such Person and such Credit Card Receivables, within a reasonable time following request of the Borrower Agent.

"Eligible Gasoline Inventory" means Gasoline Inventory of a Borrower which is held for sale in the ordinary course of business at a retail store operated by such Borrower that, unless otherwise approved by the Agent in its Permitted Discretion, meet 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 Gasoline Inventory is not located, stored or maintained outside of any retail store owned or leased by a Borrower;  
and

(b) such Gasoline Inventory qualifies as Eligible General Inventory.

"Eligible General Inventory" means items of Inventory of a Borrower subject to the Lien in favor of the Agent held for sale in the ordinary course of the business of such Borrower (but not including packaging or shipping materials or maintenance supplies) that, unless otherwise approved by the Agent in its Permitted Discretion, meet 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 Inventory is owned by a Borrower and is subject to a first priority perfected Lien in favor of the Agent (and, for avoidance of doubt, constitutes ABL Collateral);

(b) such Inventory is not subject to any other Lien other than Liens permitted by Section 6.02 so long as either (i) 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 or (ii) in the case of Petroleum Inventory, such Liens are in favor of an Eligible Carrier and arise under applicable law or contract and for which appropriate amounts have been allocated under the Rent Reserve;

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(c) such Inventory consists of raw materials or finished goods and does not consist of work-in-process, supplies or consigned goods;

(d) such Inventory is in good condition and meets in all material respects all material standards applicable to such goods, their use or sale imposed by any Governmental Authority having regulatory authority over such matters;

(e) such Inventory is currently either usable or saleable, in the normal course of the applicable Borrower's business;

(f) such Inventory is not obsolete or returned or repossessed or used goods taken in trade;

(g) such Inventory is either located within the United States at one of the Permitted Inventory Locations or is in transit within the United States from one Permitted Inventory Location to another Permitted Inventory Location for not more than seven consecutive days;

(h) if such Inventory is located at any location leased by a Loan Party, (i) the lessor has delivered to the Agent a Collateral Access Agreement as to such location or (ii) a Rent Reserve with respect to such location has been established by the Agent in its Permitted Discretion;

(i) such Inventory is not subject to any warehouse receipt or negotiable Document unless in the possession of the Agent, and if such Inventory is located in any third party warehouse or is in the possession of a bailee and is not evidenced by a Document, (i) such warehouseman or bailee has delivered to the Agent a Collateral Access Agreement and such other documentation as the Agent may reasonably require or (ii) an appropriate Reserve has been established by the Agent in its Permitted Discretion; and

(j) such Inventory is in full conformity with the representations and warranties made by the relevant Borrower to the Agent with respect thereto contained in this Agreement or any other Loan Document.

If the Agent deems Inventory ineligible in its Permitted Discretion (and not based upon the criteria set forth above), then the Agent shall give the Borrower Agent five (5) Business Days' prior notice thereof; provided that (i) any modification of the eligibility criteria set forth above shall have a reasonable relationship to circumstances, conditions, events or contingencies which are the basis for such eligibility criteria, as determined by the Agent in its Permitted Discretion and (ii) circumstances, conditions, events or contingencies arising prior to the Effective Date of which the Agent had actual knowledge prior to the Effective Date shall not be the basis for any such modification after the Effective Date unless such circumstances, conditions, events or contingencies shall have changed since the Effective Date.

With respect to any Inventory that was acquired or originated by any Person acquired after the Effective Date, the Agent shall use commercially reasonable efforts, at the expense of the Loan Parties, to complete diligence in respect of such Person and such Inventory, within a reasonable time following request of the Borrower Agent.

"Eligible Inventory" means, collectively, Eligible Gasoline Inventory, Eligible Petroleum Inventory, Eligible Non-Gasoline Inventory and Eligible Other Inventory.

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“Eligible Non-Gasoline Inventory” means Non-Gasoline Inventory of a Borrower which is held for sale in the ordinary course of business at a retail store operated by such Borrower that, unless otherwise approved by the Agent in its Permitted Discretion, meet 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 Non-Gasoline Inventory is not located, stored or maintained outside of any retail store owned or leased by a Borrower; and

(b) such Non-Gasoline Inventory qualifies as Eligible General Inventory.

“Eligible Other Inventory” means Other Inventory of a Borrower which is held for sale in the ordinary course of business that, unless otherwise approved by the Agent in its Permitted Discretion, meet 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) (i) such Other Inventory is subject to a first priority perfected Lien in favor of the Agent or (ii) such Other Inventory has been delivered to an Eligible Carrier subject to a first priority perfected lien in favor of the Agent with UCC financing statements (or any other applicable form filings) perfecting or continuing the perfection of the security interest of the Agent in such Other Inventory having been duly filed where necessary and either (x) no document of title is issued with respect to such Other Inventory by such Eligible Carrier, or (y) if a document of title is issued with respect to such Other Inventory by such Eligible Carrier, the original of such document of title is delivered to the Agent or its designated bailee or agent;

(b) the relevant Borrower has title to such Other Inventory or in the case of Other Inventory described in clause (ii) of paragraph (a) above, the relevant Borrower has the absolute and unconditional right to obtain such Other Inventory or Other Inventory equivalent to such Other Inventory from an Eligible Carrier;

(c) such Other Inventory is either (i) located at a location owned or leased by the relevant Borrower or (ii) delivered to an Eligible Carrier under an arrangement described in clause (ii) of paragraph (a) above;

(d) such Other Inventory is not commingled with Other Inventory of any Person other than another Borrower unless such Other Inventory has been delivered to an Eligible Carrier under an arrangement described in clause (ii) of paragraph (a) above;

(e) such Other Inventory is not located, stored or maintained at any retail service station or in a railroad car, or otherwise in transit upon a railway system; and

(f) such Other Inventory qualifies as Eligible General Inventory.

Notwithstanding anything to the contrary set forth in this Agreement or any other Loan Document, no Other Inventory subject to Liens permitted under Section 7.01(ee) shall constitute Eligible Other Inventory.

“Eligible Other Receivable” means the unpaid portion of a Receivable (other than a Credit Card Receivable) payable in Dollars to a Borrower subject to the Lien in favor of the Agent net of any returns, discounts, credits or other allowances or deductions agreed to by a Borrower and net of any

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amounts owed by a Borrower to the Account Debtor on such Receivable (including to the extent of any set-off), 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 Receivable is owned by a Borrower and represents a complete *bona fide* transaction which requires no further act under any circumstances on the part of any Borrower to make such Receivable payable by the Account Debtor;
- (b) such Receivable is not past due more than 60 days after the invoice date;
- (c) such Receivable does not arise out of any transaction with any Subsidiary of a Borrower;
- (d) such Receivable is not owing by an Account Debtor from which an aggregate amount of more than 50% of the Receivables owing therefrom are, based on the most recent Borrowing Base Certificate, ineligible pursuant to clause (b) above;
- (e) the Account Debtor with respect thereto is not located outside of the United States of America, Canada or Puerto Rico unless the Account Debtor is backed by a letter of credit acceptable to the Agent in its Permitted Discretion, which is in the possession of, and is directly drawable by, the Agent;
- (f) such Receivable is not subject to the Assignment of Claims Act of 1940, as amended from time to time, or any other applicable law now or hereafter existing similar in effect thereto, unless the applicable Borrower has assigned its right to payments of such Receivable so as to comply with the Assignment of Claims Act of 1940, as amended from time to time, or any such other applicable law, or to any contractual provision accepted in writing by such Borrower prohibiting its assignment or requiring notice of or consent to such assignment which notice or consent has not been made or obtained;
- (g) such Receivable is in conformity, in all material respects, with the representations and warranties made by the relevant Borrower to the Agent with respect thereto contained in this Agreement or any other Loan Document;
- (h) such Receivable is not disputed, and is not subject to a claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback that has been asserted with respect thereto by the applicable Account Debtor (but only to the extent of such dispute, claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback);
- (i) such Receivable is not owed by an Account Debtor that is subject to a Bankruptcy Event or that is liquidating, dissolving or winding up its affairs or otherwise deemed not creditworthy by the Agent in its Permitted Discretion;
- (j) the goods the sale of which gave rise to such Receivable were shipped or delivered to the Account Debtor on an absolute sale basis and not on a bill and hold sale basis, a consignment sale basis, a guaranteed sale basis, a sale or return basis or on the basis of any other similar understanding, and such goods have not been returned or rejected;

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(k) such Receivable is not owing by an Account Debtor with a rating of BB+ or lower by S&P and Ba1 or lower by Moody's (or the equivalent of such rating organization, or if no rating of S&P's or Moody's then exists, the equivalent of such rating by any other nationally recognized securities rating agency) whose then-existing Receivables owing to the Borrowers, based on the most recent Borrowing Base Certificate, exceed 15% of the net amount of all Eligible Other Receivables, but such Receivable shall be ineligible only to the extent of such excess;

(l) such Receivable is evidenced by a customary invoice or other customary documentation reasonably satisfactory to the Agent in its Permitted Discretion;

(m) such Receivable is a valid, legally enforceable obligation of the Account Debtor with respect thereto and is not subject to any present or contingent (and no facts exist which are the basis for any future), offset, deduction or counterclaim, dispute or other defense on the part of such Account Debtor, except that any Receivable that is subject to any offset, deduction or counterclaim shall be ineligible only to the extent of such offset, deduction or counterclaim;

(n) such Receivable does not arise under or is not related to any warranty obligation of a Borrower or any charges by a Borrower of fees for the time value of money;

(o) such Receivable is not evidenced by Chattel Paper or an Instrument of any kind;

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

(q) such 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; and

(r) such Receivable is not subject to any offset letter.

If the Agent deems Receivables ineligible in its Permitted Discretion (and not based upon the criteria set forth above), then the Agent shall give the Borrower Agent five (5) Business Days' prior notice thereof; provided that (i) any modification of the eligibility criteria set forth above shall have a reasonable relationship to circumstances, conditions, events or contingencies which are the basis for such eligibility criteria, as determined by the Agent in its Permitted Discretion and (ii) circumstances, conditions, events or contingencies arising prior to the Effective Date of which the Agent had actual knowledge prior to the Effective Date shall not be the basis for any such modification after the Effective Date unless such circumstances, conditions, events or contingencies shall have changed since the Effective Date.

With respect to any Receivables that were acquired or originated by any Person acquired after the Effective Date, the Agent shall use commercially reasonable efforts, at the expense of the Loan Parties, to complete diligence in respect of such Person and such Receivables, within a reasonable time following request of the Borrower Agent.

"Eligible Petroleum Inventory" means Petroleum Inventory of a Borrower which is held for sale or lease or refining in the ordinary course of business or furnished under any contract of service by a Borrower in the ordinary course of business that, unless otherwise approved by the Agent in its Permitted Discretion, meet all of the following requirements, subject to the ability of the Agent to

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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) (i) such Petroleum Inventory is subject to a first priority perfected Lien in favor of the Agent or (ii) such Petroleum Inventory has been delivered to an Eligible Carrier subject to a first priority perfected lien in favor of the Agent with UCC financing statements (or any other applicable form filings) perfecting or continuing the perfection of the security interest of the Agent in such Petroleum Inventory having been duly filed where necessary and either (x) no document of title is issued with respect to such Petroleum Inventory by such Eligible Carrier, or (y) if a document of title is issued with respect to such Petroleum Inventory by such Eligible Carrier, the original of such document of title is delivered to the Agent or its designated bailee or agent;

(b) the relevant Borrower has title to such Petroleum Inventory or in the case of Petroleum Inventory described in clause (ii) of paragraph (a) above, the relevant Borrower has the absolute and unconditional right to obtain such Petroleum Inventory or Petroleum Inventory equivalent to such Petroleum Inventory from an Eligible Carrier;

(c) such Petroleum Inventory is (i) located at a location owned by the relevant Borrower, (ii) delivered to an Eligible Carrier under an arrangement described in clause (ii) of paragraph (a) above, or (iii) located at a location leased by the relevant Borrower so long as such location is subject to a Collateral Access Agreement or such location is subject to the Rent Reserve;

(d) such Petroleum Inventory is not commingled with Petroleum Inventory of any Person other than another Borrower unless such Petroleum Inventory has been delivered to an Eligible Carrier under an arrangement described in clause (ii) of paragraph (a) above; and

(e) such Petroleum Inventory qualifies as Eligible General Inventory.

Notwithstanding anything to the contrary set forth in this Agreement or any other Loan Document, no Petroleum Inventory (x) located, stored or maintained at any retail service station or in a railroad car, or otherwise in transit upon a railway system or (y) subject to Liens permitted under Section 7.01(ee) shall constitute Eligible Petroleum Inventory.

“Eligible Positive Exchange Balance” means, at any date of determination, the amount of the positive balance, valued at a mark to market basis, of the Petroleum Inventory that a Borrower has a right to receive from a trading partner (other than a trading partner determined by the Agent to be unacceptable in its reasonable discretion) under an exchange agreement or money owing to such Borrower in connection with such exchange of petroleum inventory under an exchange agreement, net of any offsets or counterclaims, and only to the extent such Borrower’s rights in petroleum inventory are subject to a valid, first priority (subject only to Liens permitted by this Agreement that by operation of law have priority), perfected security interest in favor of the Agent as security for the Obligations; provided that the value of the eligible positive exchange agreement balance shall be subject to Reserves as determined by the Agent in its Permitted Discretion.

“Eligible Receivables” means, collectively, Eligible Credit Card Receivables and Eligible Other Receivables.

“Environmental Laws” means all applicable laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into

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by any Governmental Authority, relating to the protection of the environment, the preservation or reclamation of natural resources, the management, transportation, disposal, release or threatened release of any Hazardous Material or to health and safety matters (to the extent related to the exposure to any Hazardous Material).

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of Holdings or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement in writing pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Contribution” has the meaning assigned to such term in the recitals to this Agreement.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated thereunder.

“ERISA Affiliate” means, at any time, any trade or business (whether or not incorporated) that, together with any Borrower, would be treated as a single employer under Title IV of ERISA or Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any Reportable Event; (b) the conditions for imposition of a lien under Section 303(k) of ERISA shall have been met with respect to any Plan; (c) a determination that any Plan is in “at risk” status (within the meaning of Section 303(i) (4) of ERISA); (d) the filing pursuant to Section 412(d) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (e) the incurrence by a Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (f) the receipt by a Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice of an intent to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (g) the incurrence by a Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (h) the receipt by a Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from a Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is Insolvent, in Reorganization (each within the meaning of Title IV of ERISA) or in “endangered” or “critical” status (each within the meaning of Section 432 of the Code or Section 305 of ERISA).

“Event of Default” has the meaning assigned to such term in Article VII.

“Excess Availability” means, at any time, an amount equal to (a) the lesser of (i) the aggregate total Revolving Commitments at such time and (ii) the Borrowing Base at such time, (as determined by reference to the most recent Borrowing Base Certificate delivered to the Agent pursuant to Section 5.01(i)), minus (b) the aggregate Revolving Exposures (including the LC Exposure) of all Revolving Lenders at such time.

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“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Excluded Accounts” has the meaning assigned to such term in the Security Agreement.

“Excluded Equity Interests” shall mean (a) any Equity Interests with respect to which the Borrower Agent and the Agent have reasonably determined that the cost or other consequences (including any material adverse tax consequences) of pledging such Equity Interests shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom, (b) solely in the case of any pledge of Equity Interests of any direct or indirect Foreign Subsidiary to secure the Obligations, any Equity Interests that are voting Equity Interests of such Foreign Subsidiary in excess of 65% of the outstanding voting Equity Interests of such class, (c) any Equity Interests to the extent the pledge thereof would be prohibited by any Requirement of Law, (d) the Equity Interests of any Subsidiary that is not wholly owned by Holdings and its Subsidiaries at the time such Subsidiary becomes a Subsidiary (for so long as such Subsidiary remains a non-wholly owned Subsidiary), to the extent the organizational agreements applicable thereto restrict the pledge of such Equity Interests, (e) the Equity Interests of any Immaterial Subsidiary or Unrestricted Subsidiary, (f) the Equity Interests of any direct or indirect Subsidiary of a Foreign Subsidiary and (g) any Equity Interests of a joint venture to the extent that the joint venture agreement applicable thereto restricts the pledge of such Equity Interests.

“Excluded Subsidiary” shall mean (a) any Subsidiary that is not a wholly owned Subsidiary on any date such Subsidiary would otherwise be required to become a Loan Party pursuant to the requirements of Section 5.10 (for so long as such Subsidiary remains a non-wholly owned Subsidiary), (b) any Subsidiary that (i) is prohibited by any Contractual Obligation existing on the Effective Date or by any Requirement of Law from guaranteeing the Obligations (and for so long as such restrictions or any replacement or renewal thereof is in effect) or (ii) would require consent, approval, license or authorization from any Governmental Authority to provide a Loan Guaranty unless such consent, approval, license or authorization has been received, (c) any Domestic Subsidiary that is (i) treated as a disregarded entity for U.S. federal income tax purposes and substantially all of its assets consist of the stock of one or more Foreign Subsidiaries that are controlled foreign corporations within the meaning of Section 957 of the Code or (ii) a direct or indirect Subsidiary of a Foreign Subsidiary that is a controlled foreign corporation within the meaning of Section 957 of the Code, (d) any Immaterial Subsidiary and any Unrestricted Subsidiary, (e) any other Subsidiary with respect to which the Borrower Agent and the Agent have reasonably determined that the cost or other consequences (including any material adverse tax consequences) of providing a guarantee shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom, (f) each Foreign Subsidiary and (g) any not-for-profit Subsidiary. Notwithstanding the foregoing, no Subsidiary shall constitute an “Excluded Subsidiary” if and for so long as such Subsidiary Guarantees any Note and Specified Hedge Obligations.

“Excluded Taxes” means, with respect to the Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of Holdings or any other Loan Party hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America or any political subdivision thereof, or by the jurisdiction or any political subdivision thereof under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any political subdivision thereof or any similar tax imposed by any other jurisdiction in which Holdings or any other Loan Party is located and (c) in the case of a Lender, other than in the case of an assignee pursuant to a request by the Borrower Agent under Section 2.19(b), any United States withholding tax that is imposed on amounts payable to such Lender and that is the result of any law in effect on the date on which such Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Lender’s failure to comply with



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Section 2.17(e) or (f), as applicable, except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from Holdings or any other Loan Party with respect to such withholding tax pursuant to Section 2.17(a), and (d) any withholding tax that is imposed by reason of FATCA other than by reason of a Change in Law imposed after the Effective Date.

“Existing Class” means each Class of Existing Revolving Commitments.

“Existing Revolving Commitments” has the meaning assigned to such term in Section 2.27(a).

“Existing Revolving Loans” has the meaning assigned to such term in Section 2.27(a).

“Extended Loans/Commitments” means Extended Revolving Loans and/or Extended Revolving Commitments.

“Extended Revolving Commitments” has the meaning assigned to such term in Section 2.27(a).

“Extended Revolving Loans” has the meaning assigned to such term in Section 2.27(a).

“Extending Lender” has the meaning assigned to such term in Section 2.27(b).

“Extension Agreement” has the meaning assigned to such term in Section 2.27(c).

“Extension Election” has the meaning assigned to such term in Section 2.27(b).

“Extension Request” shall mean Revolving Extension Requests.

“Extension Series” shall mean all Extended Revolving Commitments that are established pursuant to the same Extension Agreement (or any subsequent Extension Agreement to the extent such Extension Agreement expressly provides that Extended Revolving Commitments provided for therein are intended to be a part of any previously established Extension Series) and that provide for the same interest margins and extension fees.

“FATCA” means Sections 1471 through 1474 of the Code as of the date hereof, including any regulations or official interpretations thereof issued after the Effective Date.

“Federal Funds Effective Rate” means, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by JPMCB from three federal funds brokers of recognized standing selected by it

“Financial Officer” of any Person, means the chief financial officer, treasurer or controller of such Person.

“First Priority Lien” means any Lien on any asset of any Loan Party that is granted under the Note and Specified Hedge Security Documents and that, pursuant and subject to the provisions of the Intercreditor Agreement, is senior in priority to the Liens of the Agent in the Collateral.

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“Fixed Charges” means, with reference to any period, without duplication, the sum of (a) Interest Expense actually paid in cash for such period, *plus* (b) the aggregate amount of scheduled principal payments in respect of long-term Consolidated Total Indebtedness of Holdings and the Subsidiaries made during such period (other than payments made by Holdings or any Subsidiary to Holdings or a Subsidiary) *plus* (c) any payments on account of Disqualified Equity Interests or preferred Equity Interests (whether in the nature of dividends, redemption, repurchase or otherwise) required to be made in such period, all calculated for such period for Holdings and its Subsidiaries on a consolidated basis *plus* (d) any payments of the type described in Section 6.09(h) or (m), but, in the case of this clause (d), only to the extent the aggregate amount thereof exceeds \$3,000,000 during the relevant Test Period.

“Fixed Charge Coverage Ratio” means, at any date of determination, the ratio of:

(i)(A) EBITDA of Holdings and its Subsidiaries for the most recent Test Period ended on or prior to such date of determination *plus* (B) only for purposes of the calculation of the Fixed Charge Coverage Ratio under, and as provided in, Section 7.02, Permitted Cure Securities *minus* (C) taxes based on income, profits or capital, including federal, foreign, state, franchise, excise and similar taxes (including in respect of repatriated funds), net of cash refunds received, of Holdings and its Subsidiaries paid in cash during such Test Period *minus* (D) Unfinanced Capital Expenditures made by Holdings and its Subsidiaries during such Test Period, to

(ii) Fixed Charges payable by Holdings and its Subsidiaries in cash during such Test Period;

In calculating the Fixed Charge Coverage Ratio in connection with the making of any Permitted Payment or Permitted Acquisition or otherwise consummating any transaction in reliance on a pro forma calculation of the Fixed Charge Coverage Ratio (each, a “Fixed Charge Transaction”), the amount of Fixed Charges included in clause (ii) above shall include, without duplication of any payments already constituting Fixed Charges, all Specified Payments made during the period from the first day of the relevant Test Period to and including the date such Fixed Charge Transaction is consummated.

For purposes of calculating the Fixed Charge Coverage Ratio for any period ending prior to the first anniversary of the Effective Date, Interest Expense shall be an amount equal to actual Interest Expense from the Effective Date through the date of determination multiplied by a fraction the numerator of which is 365 and the denominator of which is the number of days from the Effective Date through the date of determination.

“Foreign Lender” means a Lender that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“Formation Agreement” means the Formation Agreement, dated as of October 6, 2010, by and among Marathon, Speedway SuperAmerica LLC and Northern Tier Investors LLC, together with all exhibits, schedules and appendices thereto.

“Funding Account” has the meaning assigned to such term in Section 4.01(i).

“GAAP” means generally accepted accounting principles in the United States of America in effect and applicable to that accounting period in respect of which reference to GAAP is being made, subject to the provisions of Section 1.05.