

[FORM OF] INTERCREDITOR AGREEMENT[†]

Dated as of

[], 2013

Among

CITIBANK, N.A.,
as Representative with respect to the ABL Credit Agreement,

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Representative with respect to the New Money Term Loans
under the Term Loan Agreement,

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Representative with respect to the Junior Term Loans
under the Term Loan Agreement,

EASTMAN KODAK COMPANY

and

THE OTHER GRANTORS PARTY HERETO

[†] ~~The parties listed herein acknowledge that no commitment or other undertaking yet exists to convert the existing ABL Credit Agreement to exit financing or to refinance the existing ABL Credit Agreement with a new ABL Credit Agreement at exit, and that the lenders providing any such converted or replacement ABL Credit Agreement may require modifications to the provisions of this Agreement.~~



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[FORM OF] INTERCREDITOR AGREEMENT

INTERCREDITOR AGREEMENT (this “Agreement”), dated as of [____], 2013, among CITIBANK, N.A. (“Citibank”), as Representative with respect to the ABL Credit Agreement, WILMINGTON TRUST, NATIONAL ASSOCIATION (“Wilmington Trust”), as Representative with respect to the New Money Term Loans, WILMINGTON TRUST, NATIONAL ASSOCIATION, as Representative with respect to the Junior Term Loans, Eastman Kodak Company (the “Borrower”), and each of the other Grantors party hereto.

WHEREAS, the Borrower, the lenders party thereto, Citibank, as administrative agent (the “ABL Agent”) and the lenders party thereto are parties to that certain Amended and Restated Debtor-in-Possession Revolving Credit Agreement, dated as of [____], 2013 (the “ABL Credit Agreement”), pursuant to which such lenders have agreed to make loans and extend other financial accommodations to the Borrower; and

WHEREAS, the Borrower, the lenders party thereto, Wilmington Trust, as administrative agent with respect to the New Money Term Loans (the “New Money Term Loan Agent”), Wilmington Trust, as administrative agent with respect to the Junior Term Loans (the “Junior Term Loan Agent”), ~~the other agents party thereto~~ and the lenders party thereto are parties to that certain Debtor-in-Possession Loan Agreement, dated as of [____], 2013 (the “Term Loan Agreement”), pursuant to which such lenders have agreed to make loans and extend other financial accommodations to the Borrower; and

WHEREAS, the Grantors and the ABL Agent are parties to that certain Amended and Restated Security Agreement, dated as of [____], 2013 (as the same may be amended, restated, amended and restated, supplemented or otherwise modified, the “ABL Security Agreement”), pursuant to which such Grantors have granted Liens on their assets securing the ABL Secured Obligations; and

WHEREAS, the Grantors, the New Money Term Loan Agent and the Junior Term Loan Agent are parties to that certain Security Agreement, dated as of [____], 2013 (as the same may be amended, restated, amended and restated, supplemented or otherwise modified, the “Term Loan Security Agreement”), pursuant to which such Grantors have granted Liens on their assets securing the New Money Term Loan Secured Obligations and the Junior Term Loan Secured Obligations; and

WHEREAS, it is the desire of the parties hereto to set forth their respective rights and priorities with respect to the Common Collateral;

NOW THEREFORE, in consideration of the foregoing and the mutual covenants herein contained and other good and valuable consideration, the existence and sufficiency of which is expressly recognized by all of the parties hereto, the parties agree as follows:

SECTION 1. *Definitions; Other Interpretive Provisions.*

1.1 Definitions.

The following terms, as used herein, have the following meanings:

“ABL Agent” has the meaning set forth in the first WHEREAS clause of this Agreement; *provided* that the term “ABL Agent” shall also mean the Representative for the holders of any indebtedness outstanding under any Replacement ABL Credit Agreement then extant.

“ABL Credit Agreement” has the meaning set forth in the first WHEREAS clause of this Agreement; *provided* that the term “ABL Credit Agreement” shall also include any Replacement ABL

such agreement may be amended, supplemented or otherwise modified in accordance with the terms hereof and thereof.

“Additional Debt” has the meaning specified in Section 11.3(b).

“Adequate Protection Liens” means any Liens granted in any Insolvency Proceeding to any Secured Party as adequate protection of the Secured Obligations held by such Secured Party.

“Available Credit Bid Amount” means, at any time during the pendency of the Existing Chapter 11 Cases, (i) \$200,000,000 minus (ii) the aggregate principal amount of New Money Term Loans prepaid with the proceeds of any other Specified Sale consummated prior to the consummation of the applicable transaction with respect to which a credit bid is to be made minus (iii) the amount of all other successful credit bids previously made in connection with any other Specified Sale.

“Bankruptcy Code” means the United States Bankruptcy Code (11 U.S.C. §101 et seq.), as amended from time to time.

“Bankruptcy Court” has the meaning set forth in the ABL Credit Agreement as in effect on the date hereof.

“Borrower” has the meaning set forth in the preamble of this Agreement.

“Cash Equivalents” has the meaning specified in the ABL Credit Agreement.

“Citibank” has the meaning set forth in the preamble of this Agreement.

“Class” refers to the determination (x) in relation to any particular Type of Common Collateral, (i) with respect to any Secured Obligations, whether such Secured Obligations are First Priority Obligations, Second Priority Obligations or Third Priority Obligations and (ii) with respect to any Secured Party, whether such Secured Party is a First Priority Secured Party, a Second Priority Secured Party or a Third Priority Secured Party and (y) in relation to any Secured Obligations, whether such Secured Obligations are ABL Secured Obligations, New Money Term Loan Secured Obligations or Junior Term Loan Secured Obligations.

“Common Collateral” means all assets of the Grantors on which Liens have been granted (or purported to be granted) to secure more than one Class of Secured Obligations.

“Comparable Second Priority Security Document” means, in relation to any Common Collateral subject to any First Priority Security Document, that Second Priority Security Document that creates a security interest in the same Common Collateral, granted by the same Grantor, as applicable.

“Comparable Third Priority Security Document” means, in relation to any Common Collateral subject to any First Priority Security Document or any Second Priority Security Document, that Third Priority Security Document that creates a security interest in the same Common Collateral, granted by the same Grantor, as applicable.

“Defaulting ABL Secured Party” has the meaning specified in Section 4.4(g).

“Defaulting New Money Secured Party” has the meaning specified in Section 4.5(f).

“DIP Financing” means an ABL Priority DIP Financing or a Term Loan Priority DIP Financing.

“Effective Date” means [____], 2013.

“Enforcement Action” means, with respect to any Class of Secured Obligations, the exercise of any rights and remedies with respect to any Common Collateral securing such obligations or the commencement or prosecution of enforcement of any of the rights and remedies under the Loan Documents governing such Class, or applicable law, including without limitation the exercise of any rights of set-off ~~or~~ recoupment or credit bidding, and the exercise of any rights or remedies of a secured creditor under the Uniform Commercial Code, the Bankruptcy Code (including credit bidding rights) or other similar creditors’ rights, bankruptcy, insolvency, reorganization or similar laws of any applicable jurisdiction.

“Existing Chapter 11 Cases” means the Chapter 11 cases filed by Eastman Kodak Company and certain of its subsidiaries on January 19, 2012 in the United States Bankruptcy Court for the Southern District of New York and pending as of the Effective Date.

“Existing Chapter 11 Cases Emergence Date” means the date of the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes of this Agreement shall be no later than the effective date) of a Reorganization Plan in the Existing Chapter 11 Cases that is confirmed pursuant to an order of the Bankruptcy Court.

“First Priority Documents” means, with respect to any Type of Common Collateral, the Loan Documents governing the related First Priority Obligations.

“First Priority Lien” means any Lien on any Type of Common Collateral securing any First Priority Obligation.

“First Priority Obligations” means, subject to Section 1.2, (i) with respect to the ABL Priority Collateral, the ABL Secured Obligations and (ii) with respect to the Term Loan Priority Collateral, the New Money Term Loan Secured Obligations. To the extent any payment with respect to any First Priority Obligation (whether by or on behalf of any Grantor, as proceeds of security, enforcement of any right of setoff or otherwise) is declared to be a fraudulent conveyance or a preference in any respect, set aside or required to be paid to a debtor in possession, any Second Priority Secured Party, Third Priority Secured Party, receiver or similar Person, then the obligation or part thereof originally intended to be satisfied shall, for the purposes of this Agreement and the rights and obligations of the First Priority Secured Parties, the Second Priority Secured Parties and the Third Priority Secured Parties, be deemed to be reinstated and outstanding as if such payment had not occurred.

“First Priority Obligations Payment Date” means, with respect to each Type of Common Collateral, the first date on which (i) the First Priority Obligations (other than those that constitute Unasserted Contingent Obligations) with respect to such Common Collateral have been paid in cash in full (or, if applicable, cash collateralized or defeased in accordance with the terms of the applicable First Priority Documents or converted or rolled into DIP Financing), (ii) all commitments to extend credit under the applicable First Priority Documents have been terminated, (iii) there are no outstanding letters of credit or similar instruments issued under the applicable First Priority Documents (other than such as have been cash collateralized or defeased or otherwise provided for in accordance with the terms of the applicable First Priority Documents), and (iv) the First Priority Representative with respect to such Common Collateral has delivered a written notice to the Second Priority Representative and the Third Priority Representative with respect to such Common Collateral stating

“Junior Term Loans” means the “Junior Loans” (as defined in the Term Loan Agreement as in effect on the date hereof).

“Lien” means any lien, security interest, hypothecation, hypothec or other charge or encumbrance of any kind on the property of a Person, including, without limitation, the lien or retained security title of a conditional vendor and any easement, right of way or other encumbrance on title to real property; *provided* the term “Lien” shall not include any license of intellectual property.

“Loan Document” means any of the ABL Loan Documents or the Term Loan Documents.

“Maximum Obligations Amount” means

(I) prior to the Existing Chapter 11 Cases Emergence Date, (x) with respect to the principal amount of New Money Term Loan Secured Obligations (A) \$[]²¹ minus (B) the aggregate amount of all mandatory prepayments of principal of the New Money Term Loans made on or after the date hereof (excluding, for the avoidance of doubt, any such prepayments made in connection with the Refinancing of any such loans that is permitted under this Agreement), (y) with respect to the principal amount of Junior Term Loan Secured Obligations, ~~(A) \$[]³ plus (B) the aggregate amount of interest paid in kind on, and capitalized to, the principal of the Junior Term Loans following the Effective Date and prior to the Existing Chapter 11 Cases Emergence Date in accordance with the Term Loan Agreement as in effect on the Effective Date²~~, and (z) with respect to the principal amount of ABL Secured Obligations, together with the undrawn face amount of and unreimbursed drawings with respect to letters of credit constituting ABL Secured Obligations, (A) \$200,000,000; plus (B) an aggregate amount of obligations under Secured Agreements (or a comparable term in any Replacement ABL Credit Agreement) not to exceed \$75,000,000, plus, in the case of a Refinancing pursuant to this Agreement and in the case of each of clauses (x), (y) and (z), an amount equal to accrued and unpaid interest on, and premium with respect to, the obligations being Refinanced and other reasonable and customary fees and expenses incurred in connection with such Refinancing; and

(II) on and after the Existing Chapter 11 Cases Emergence Date, (x) with respect to the principal amount of Term Loan Secured Obligations (A) [\$830,000,000] [~~\$843,650,000~~]⁴ 848,200,000³ minus (B) the aggregate amount of all mandatory prepayments of principal of the Term Loan Secured

²¹ Insert the aggregate principal amount of New Money Loans to be outstanding under the Term Loan Agreement on the Effective Date; *provided* that such amount shall not exceed \$~~468,650,000~~473,200,000.

³ Insert the aggregate principal amount of Junior Term Loans to be outstanding under the Term Loan Agreement on the Effective Date; *provided* that such amount shall not exceed \$375,000,000.

² Insert the aggregate principal amount of Junior Term Loans to be outstanding under the Term Loan Agreement on the Effective Date; *provided* that such amount shall not exceed \$375,000,000.

⁴ Amount shall be \$830,000,000 if the “Put Option Premium” (as defined in the commitment letter in respect of the Term Loan Agreement) is paid in cash, or ~~\$843,650,000~~ if the Put Option Premium is paid via the issuance of incremental Term Loans.

³ Amount shall be \$830,000,000 if the “Put Option Premium” (as defined in the commitment letter in respect of the Term Loan Agreement) is paid in cash, or 848,200,000 if the Put Option Premium is paid via the issuance of incremental Term Loans.

Obligations made on or after the Existing Chapter 11 Cases Emergence Date (excluding, for the avoidance of doubt, any repayment of the ~~First Lien Last Out Loans (as defined in the New Money Term Loan Agreement)~~ Loans on the Existing Chapter 11 Cases Emergence Date and any such prepayments made in connection with the Refinancing of any such loans that is permitted under this Agreement) plus (C) the product of (i) the aggregate principal amount of New Money Term Loan Secured Obligations under the Term Loan Agreement referred to in the second WHEREAS clause of this Agreement that are converted to Term Loan Secured Obligations under the “Exit Loan Agreement” as contemplated by Section 2.21 of such Term Loan Agreement multiplied by (ii) 2%, and (y) with respect to the principal amount of ABL Secured Obligations, together with the undrawn face amount of and unreimbursed drawings with respect to letters of credit constituting ABL Secured Obligations, (A) \$200,000,000, plus (B) an aggregate amount of obligations under Secured Agreements (or a comparable term in any Replacement ABL Credit Agreement) not to exceed \$75,000,000, plus, in the case of a Refinancing pursuant to this Agreement and in the case of each of clauses (x) and (y), an amount equal to accrued and unpaid interest on, and premium with respect to, the obligations being Refinanced and other reasonable and customary fees and expenses incurred in connection with such Refinancing.

“Mortgage” means mortgage, deed of trust, leasehold mortgage, assignment of leases and rents, modifications and any other agreement, document or instrument pursuant to which any Lien on real property is granted to secure any Secured Obligations or under which rights or remedies with respect to any such Lien are governed.

“New DIP Order” means [~~_____~~]; that certain Order (I) Authorizing Debtors (A) to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364 (d)(1) and 364(e) and (B) to Continue to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Certain Pre-Petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 [Docket No. 2926], attached as Exhibit J to the ABL Credit Agreement.⁴

“New Money Term Loan Agent” has the meaning set forth in the second WHEREAS clause of this Agreement; *provided* that the term “New Money Term Loan Agent” shall also mean the Representative for the holders of any indebtedness that has been designated, in accordance with this Agreement, as “New Money Term Loan Secured Obligations” outstanding under each Replacement Term Loan Agreement then extant (and, if more than one New Money Term Loan Agent exists at any time, “New Money Term Loan Agent” shall be deemed to be a collective reference to each New Money Term Loan Agent).

“New Money Term Loan Purchase” has the meaning specified in Section 4.5(a).

“New Money Term Loan Purchase Event” has the meaning specified in Section 4.5(a).

“New Money Term Loan Purchase Price” has the meaning specified in Section 4.5(b).

“New Money Term Loan Purchasing Parties” has the meaning specified in Section 4.5(a).

⁴ To be revised to reflect new order to be entered in connection with the revisions to the DIP Term Loan Facility.

credit under the applicable Second Priority Documents have been terminated, (iii) there are no outstanding letters of credit or similar instruments issued under the applicable Second Priority Documents (other than such as have been cash collateralized or defeased or otherwise provided for in accordance with the terms of the applicable Second Priority Documents), and (iv) the Second Priority Representative with respect to such Common Collateral has delivered a written notice to the Third Priority Representative with respect to such Common Collateral stating that the events described in clauses (i), (ii) and (iii) have occurred to the satisfaction of the Second Priority Secured Parties with respect to such Common Collateral. For avoidance of doubt, a Refinancing of Second Priority Obligations with respect to any Type of Common Collateral that is permitted hereby (other than with the proceeds of DIP Financing following the Existing Chapter 11 Cases Emergence Date) shall not give rise to the Second Priority Obligations Payment Date with respect to such Common Collateral unless the terms thereof expressly so provide with reference to this Agreement.

“Second Priority Permitted Actions” means the actions permitted to be taken by the Second Priority Secured Parties with respect to each Type of Common Collateral pursuant to Section 3.1(b).

“Second Priority Representative” means, with respect to each Type of Common Collateral, the collective reference to each Representative for the holders of the Second Priority Obligations with respect to such Common Collateral.

“Second Priority Secured Parties” means, with respect to each Type of Common Collateral, the Second Priority Representative and the holders of the Second Priority Obligations with respect to such Common Collateral.

“Second Priority Security Documents” means each agreement or document granting or purporting to grant a Lien on any Common Collateral to secure Second Priority Obligations.

“Second Priority Standstill Period” has the meaning specified in Section 3.1(b).

“Secured Agreements” has the meaning set forth in the ABL Credit Agreement as in effect on the date hereof.

“Secured Obligations” means, collectively, the First Priority Obligations, the Second Priority Obligations and the Third Priority Obligations.

“Secured Parties” means, collectively, the First Priority Secured Parties, the Second Priority Secured Parties and the Third Priority Secured Parties.

“Security Documents” means, collectively, (i) the “Collateral Documents” as defined in the ABL Credit Agreement or, if a Replacement ABL Credit Agreement is in effect, the “Collateral Documents” (or like term) as defined in such Replacement ABL Credit Agreement and (ii) the “Collateral Documents” (or like term) as defined in the Term Loan Agreement.

“Specified Sale” means any sale or disposition, in whole or in part, of any combination of (A) the assets and businesses to be sold in the transaction assigned the code name “Rockford”, (B) the assets and businesses to be sold in the transaction assigned the code name “Walden” and/or (C) trademarks, trademark licenses, domain names or related intellectual property assets and materials of the Borrower or any of its Subsidiaries.

“Subsidiary” of any Person means any corporation, partnership, joint venture, limited liability company, trust or estate of which (or in which) more than 50% of (a) the issued and outstanding

such Person from all claims and liabilities arising pursuant to such Person's role as gratuitous bailee with respect to such Common Collateral.

2.4 No New Liens. The parties hereto agree that there shall be no Lien, and no Grantor shall have any right to create any Lien, on any asset of such Grantor securing any Secured Obligation of such Grantor if such asset is not also subject to a Lien securing each other Secured Obligation of such Grantor, except that (x) nothing contained in this Section 2.4 shall preclude (i) the First Priority Secured Parties from being granted Adequate Protection Liens regardless of whether any Adequate Protection Liens are granted to the Second Priority Secured Parties or the Third Priority Secured Parties or (ii) the Second Priority Secured Parties or the Third Priority Secured Parties from being granted Adequate Protection Liens in accordance with Section 5.4 and (y) this Section 2.4 shall be inapplicable to any Lien securing obligations under any Secured Agreements and/or Hedge Agreement Obligations and/or Letters of Credit (as defined in the ABL Credit Agreement), and not any other obligations, that is permitted under both the ABL Credit Agreement and the Term Loan Agreement. If any Secured Party shall (nonetheless and in breach hereof) acquire or hold any Lien on any assets of any Grantor securing the Secured Obligations of such Grantor, which assets are not also subject to a Lien securing the other Secured Obligations of such Grantor as required by the first sentence of this Section 2.4, then such Secured Party shall, without the need for any further consent of any other Secured Party, and notwithstanding anything to the contrary in any Loan Document, be deemed to hold and have held such Lien for the benefit of the Secured Parties holding Secured Obligations that are required to have a Lien on such assets by the first sentence of this Section 2.4 (and each such Lien so deemed to have been held shall be subject in all respects to the provisions of this Agreement, including without limitation the lien subordination provisions set forth in Section 2.1).

SECTION 3. *Enforcement Rights.*

3.1 Exclusive Enforcement.

(a) With respect to each Type of Common Collateral, until the First Priority Obligations Payment Date, whether or not an Insolvency Proceeding has been commenced by or against any Grantor, the First Priority Secured Parties shall have the exclusive right to take and continue (or refrain from taking or continuing) any Enforcement Action with respect to such Common Collateral, without any consultation with or consent of any Second Priority Secured Party or any Third Priority Secured Party with respect to such Common Collateral; provided that the Second Priority Secured Parties and the Third Priority Secured Parties with respect to any Common Collateral may exercise credit bidding rights with respect to such Common Collateral (A) to the extent expressly permitted under clause (y) of Section 5.6(a) and (B) to the extent expressly permitted under Section 5.6(c). With respect to each Type of Common Collateral, upon the occurrence and during the continuance of an event of default under the First Priority Documents (and subject to the provisions of the First Priority Documents), the First Priority Representative and the other First Priority Secured Parties may take and continue any Enforcement Action with respect to the applicable First Priority Obligations and such Common Collateral in such order and manner as they may determine in their sole discretion.

(b) Notwithstanding Section 3.1(a), with respect to each Type of Common Collateral, the Second Priority Representative and the Second Priority Secured Parties may enforce any of their rights and exercise any of their remedies with respect to the Common Collateral after a period of 180 days has elapsed since the date on which the Second Priority Representative has delivered to the First Priority Representative written notice of the acceleration or non-payment at maturity of the indebtedness then outstanding under the Second Priority Documents (the "Second Priority Standstill Period"); *provided, however,* that notwithstanding the expiration of the Second Priority Standstill

Priority Secured Party of any Enforcement Action with respect to such Common Collateral or to the timing or manner thereof (or, to the extent it may have any such right described in this Section 3.2(b) as a junior lien creditor, they hereby irrevocably waive such right);

(c) With respect to each Type of Common Collateral, (i) each of the Second Priority Representative, on behalf of itself and the other Second Priority Secured Parties, and the Third Priority Representative, on behalf of itself and the other Third Priority Secured Parties, agrees, for the benefit of the First Priority Representative and each other First Priority Secured Party, that until the First Priority Obligations Payment Date, they will not institute any suit or other proceeding or assert in any suit, Insolvency Proceeding or other proceeding any claim against the First Priority Representative or any other First Priority Secured Party seeking damages from or other relief by way of specific performance, instructions or otherwise, with respect to, and none of the First Priority Representative nor any other First Priority Secured Party shall be liable for, any action taken or omitted to be taken by the First Priority Representative or any First Priority Secured Party with respect to such Common Collateral or pursuant to the First Priority Documents and (ii) the Third Priority Representative, on behalf of itself and the other Third Priority Secured Parties, agrees, for the benefit of the Second Priority Representative and each other Second Priority Secured Party, that until the Second Priority Obligations Payment Date, they will not institute any suit or other proceeding or assert in any suit, Insolvency Proceeding or other proceeding any claim against the Second Priority Representative or any other Second Priority Secured Party seeking damages from or other relief by way of specific performance, instructions or otherwise, with respect to, and none of the Second Priority Representative nor any other Second Priority Secured Party shall be liable for, any action taken or omitted to be taken by the Second Priority Representative or any Second Priority Secured Party with respect to such Common Collateral or pursuant to the Second Priority Documents; *provided* that nothing in this Section 3.2(c) shall be construed to prevent or limit any party hereto from instituting any such suit or other proceeding to enforce the terms of this Agreement;

(d) With respect to each Type of Common Collateral, (i) each of the Second Priority Representative, on behalf of itself and the other Second Priority Secured Parties, and the Third Priority Representative, on behalf of itself and the other Third Priority Secured Parties, agrees, for the benefit of the First Priority Representative and each other First Priority Secured Party, that until the First Priority Obligations Payment Date, they will not take any Enforcement Action with respect to such Common Collateral, except as otherwise permitted under [the proviso to the first sentence of Section 3.1\(a\) or under](#) Section 3.1(b) and (ii) the Third Priority Representative, on behalf of itself and the other Third Priority Secured Parties, agrees, for the benefit of the Second Priority Representative and each other Second Priority Secured Party, that until the Second Priority Obligations Payment Date, they will not take any Enforcement Action with respect to such Common Collateral;

(e) With respect to each Type of Common Collateral, (i) each of the Second Priority Representative, on behalf of itself and the other Second Priority Secured Parties, and the Third Priority Representative, on behalf of itself and the other Third Priority Secured Parties, agrees, for the benefit of the First Priority Representative and each other First Priority Secured Party, that until the First Priority Obligations Payment Date, they will not commence judicial or nonjudicial foreclosure proceedings with respect to, seek to have a trustee, receiver, liquidator or similar official appointed for or over, attempt any action to take possession of, exercise any right, remedy or power with respect to, or otherwise take any action to enforce their interest in or realize upon, such Common Collateral, in each case, except as otherwise permitted under [the proviso to the first sentence of Section 3.1\(a\) or under](#) Section 3.1(b) and (ii) the Third Priority Representative, on behalf of itself and the other Third Priority Secured Parties, agrees, for the benefit of the Second

otherwise allocable to them shall instead be allocated and turned over for application in accordance with the priorities set forth in this Agreement.

(b) With respect to each Type of Common Collateral, if any Grantor receives a Recovery from any Second Priority Secured Party, whether received as proceeds of security, enforcement of any right of set-off or otherwise, then the Second Priority Obligations shall be reinstated to the extent of such Recovery and deemed to be outstanding as if such payment had not occurred, and the Second Priority Obligations Payment Date shall be deemed not to have occurred. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto. The Third Priority Secured Parties with respect to each Type of Common Collateral agree that none of them shall be entitled to benefit from any avoidance action affecting or otherwise relating to any distribution or allocation with respect to such Common Collateral made in accordance with this Agreement, whether by preference or otherwise, it being understood and agreed that the benefit of such avoidance action otherwise allocable to them shall instead be allocated and turned over for application in accordance with the priorities set forth in this Agreement.

5.6 Asset Dispositions in an Insolvency Proceeding.

(a) With respect to each Type of Common Collateral, the Second Priority Representative, on behalf of itself and the other Second Priority Secured Parties, and the Third Priority Representative, on behalf of itself and the other Third Priority Secured Parties, agrees that (i) none of them shall, in an Insolvency Proceeding, oppose any sale or disposition of any such Common Collateral that is supported by the First Priority Secured Parties, and (ii) they will be deemed to have consented under Section 363 of the Bankruptcy Code (and otherwise) to any such sale supported by the First Priority Secured Parties and to have released their Liens in such Common Collateral; *provided* that (x) if the Second Priority Secured Parties (or the Second Priority Representative on their behalf) or the Third Priority Secured Parties (or the Third Priority Representative on their behalf) have consented to such sale or disposition of such assets, the Second Priority Representative or the Second Priority Secured Parties, or the Third Priority Representative or the Third Priority Secured Parties, as the case may be, may assert any objection or opposition that could be asserted by an unsecured creditor in any such Insolvency Proceeding and (y) the Second Priority Representative and the Second Priority Secured Parties or the Third Priority Representative and the Third Priority Secured Parties, as the case may be, shall be entitled to seek and exercise credit bid rights in respect of any such sale or disposition so long as (A) the First Priority Obligations ~~are paid in full in cash~~ Payment Date shall occur upon consummation of such sale or disposition or (B) in the case of a credit bid described in Section 5.6(c), the conditions set forth Section 5.6(c) are satisfied.

(b) Notwithstanding anything (other than clause (y) of Section 5.6(a)) to the contrary herein, the New Money Term Loan Agent, on behalf of itself and the New Money Term Loan Secured Parties, agrees that, during the pendency of the Existing Chapter 11 Cases, none of them shall be entitled to, nor shall any of them, credit bid or seek to credit bid any claims in respect of New Money Term Loan Secured Obligations (such claims, the "Applicable Claims") in connection with any Specified Sale to the extent that the aggregate amount of Applicable Claims that have been so credit bid would exceed the Available Credit Bid Amount.

(c) Without limiting clause (y) of Section 5.6(a) and to the extent permitted by applicable law, in the case of any Specified Sale that is to be effected during the pendency of the Existing Chapter 11 Cases, and with respect to any Common Collateral that is to be included in any such

Specified Sale, the New Money Term Loan Secured Parties may credit bid Applicable Claims, subject to the satisfaction of the following conditions:

(i) The aggregate amount of all Applicable Claims that have been credit bid shall not exceed at any time the Available Credit Bid Amount at such time; and

(ii) Immediately after giving effect to any Specified Sale that includes any such credit bid, immediately before and after giving effect thereto and giving effect to the use of proceeds thereof (x) no default under the ABL Credit Agreement shall have occurred and be continuing and (y) the sum of (1) the aggregate principal amount of all Revolving Loans (as defined in the ABL Credit Agreement) then outstanding plus (2) the aggregate Letter of Credit Obligations (as defined in the ABL Credit Agreement) then outstanding and not cash collateralized shall not exceed the Line Cap (as defined in the ABL Credit Agreement).

(i) if to a Grantor, to the address set forth in Section 9.02 of the ABL Credit Agreement as in effect on the date hereof,

(ii) if to Citibank, to the address set forth in Section 9.02 of the ABL Credit Agreement as in effect on the date hereof,

(iii) if to Wilmington Trust, to the address set forth in Section {9.02} of the Term Loan Agreement as in effect on the date hereof,

(iv) if to any other holder of indebtedness or Representative with respect thereto that becomes a party hereto after the date hereof, to the address designated by such holder or such Representative in the Representative Joinder Agreement pursuant to which such holder or Representative shall have become a party hereto, or

(v) with respect to any party hereto, to such other address as may be designated by such party in a written notice to each other party hereto.

11.8 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and each of the First Priority Secured Parties, the Second Priority Secured Parties and the Third Priority Secured Parties and their respective successors and assigns, and nothing herein is intended, or shall be construed to give, any other Person any right, remedy or claim under, to or in respect of this Agreement or any Common Collateral or any Type thereof. All references to any Grantor shall include any Grantor as debtor-in-possession and any receiver or trustee for such Grantor in any Insolvency Proceeding. All references to any Grantor that is, as of the Effective Date, a debtor-in-possession in any of the Existing Chapter 11 Cases shall, following the consummation of a Reorganization Plan in the Existing Chapter 11 Cases (if any of the ABL Secured Obligations or Term Loan Secured Obligations remain outstanding following such consummation), include a reference to such Grantor as a reorganized Person.

11.9 Headings. Section headings used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

11.10 Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

11.11 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page to this Agreement by telecopy or electronic image scan transmission (such as a "pdf" file) shall be effective as delivery of a manually executed counterpart of this Agreement. This Agreement shall become effective when it shall have been executed by each party hereto.

11.12 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE

Summary Report:	
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Style Name: Color Legislative + Moves	
Original Filename: Intercreditor Agreement.121221_1313.doc	
Modified Filename: Intercreditor Agreement.130307_1318.doc	
Changes:	
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Move To	3
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Table Delete	0
Table moves to	0
Table moves from	0
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Embedded Excel	0
Format Changes	0
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