

**“Lenders”**), JPMorgan Chase Bank, National Association, as Administrative Agent and Collateral Agent. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

Pursuant to Section 4.4(e) and Section 11.6(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Code Section 871(h)(3)(B), (iv) it is not a “controlled foreign corporation” related to any Borrower as described in Section 881(c)(3)(C) of the Code and (v) the interest payments with respect to such participation are not effectively connected with the undersigned's conduct of a U.S. trade or business.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. person status on Internal Revenue Service Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payment.

[Signature Page Follows]

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[Non-U.S. Participant]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Address]

Dated: \_\_\_\_\_, 20[ ]

Signature Page  
Tesoro Corporation –Term Loan Credit Agreement  
Non-Bank Tax Certificate

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**FORM OF  
NON-BANK TAX CERTIFICATE  
(For Foreign Participants That Are Treated As Partnerships For U.S. Federal Income Tax  
Purposes)**

Reference is made to that certain Term Loan Credit Agreement, dated as of January 28, 2013 (as amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among Tesoro Corporation, a Delaware corporation (the “**Borrower**”), the lenders from time to time party thereto (the “**Lenders**”), JPMorgan Chase Bank, National Association, as Administrative Agent and Collateral Agent. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

Pursuant to Section 4.4(e) and Section 11.6(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its partners/members are the sole beneficial owners of such participation, (iii) neither the undersigned nor any of its partners/members is a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its partners/members is a ten percent shareholder of the Borrower within the meaning of Code Section 871(h)(3)(B), (v) none of its partners/members is a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code and (vi) the interest payments with respect to such participation are not effectively connected with the undersigned's or any of its partners/members' conduct of a U.S. trade or business.

The undersigned has furnished its participating Lender with Internal Revenue Service Form W-8IMY accompanied by an Internal Revenue Service Form W-8BEN from each of its partners/members claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payment.

[Signature Page Follows]

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[Non-U.S. Participant]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title:

[Address]

Dated: \_\_\_\_\_, 20[ ]

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Tesoro Corporation – Term Loan Credit Agreement  
Non-Bank Tax Certificate

EXHIBIT K

## FORM OF ABL INTERCREDITOR AGREEMENT

ABL INTERCREDITOR AGREEMENT dated as of January 28, 2013, between JPMorgan Chase Bank, National Association, in its capacity as administrative agent under the ABL Credit Agreement, including its successors and assigns from time to time, and JPMorgan Chase Bank, National Association, in its capacity as collateral agent under the Term Loan Credit Agreement, including its successors and assigns from time to time. Capitalized terms used herein but not otherwise defined herein have the meanings set forth in the ABL Credit Agreement and the Term Loan Credit Agreement, as applicable.

A. Tesoro Corporation, a Delaware corporation (the “**Company**”) is party to that certain Sixth Amended and Restated Credit Agreement dated as of January 4, 2013 (as further amended, restated, supplemented, waived, refinanced or otherwise modified from time to time, the “**ABL Credit Agreement**”), among each lender from time to time party thereto and JPMorgan Chase Bank, National Association, as administrative agent.

B. The Company is party to that certain Term Loan Credit Agreement (as amended, restated, supplemented, waived, refinanced, or otherwise modified from time to time, the “**Term Loan Credit Agreement**”) dated as of January 28, 2013 among the Company, each lender from time to time party thereto, JPMorgan Chase Bank, National Association, as administrative agent and collateral agent.

Accordingly, in consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

**SECTION 1. Definitions.**

1.1. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“**ABL Collateral Agent**” shall mean JPMorgan Chase Bank, National Association in its capacity as administrative agent or agent for the lenders and other secured parties under the ABL Credit Agreement and the other ABL Documents entered into pursuant to the ABL Credit Agreement, together with its successors and permitted assigns under the ABL Credit Agreement exercising substantially the same rights and powers; and in each case provided that if such ABL Collateral Agent is not JPMorgan Chase Bank, National Association, such ABL Collateral Agent shall have become a party to this Agreement and the other applicable ABL Security Documents.

“**ABL Credit Agreement**” shall have the meaning set forth in the recitals herein.

“**ABL Documents**” means the ABL Credit Agreement and the Loan Documents (as defined in the ABL Credit Agreement), each document relating to Rate Management Obligations and Bank Products (as defined in the ABL Credit Agreement) and each of the other agreements, documents and instruments providing for or evidencing any other ABL Obligation, and any other document or instrument executed or delivered at any time in connection with any ABL

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Obligations, including any intercreditor or joinder agreement among holders of ABL Obligations to the extent such are effective at the relevant time, as each may be amended, restated, supplemented, modified, renewed or extended from time to time in accordance with the provisions of this Agreement.

“**ABL Obligations**” shall mean all “Secured Obligations” as defined in the ABL Security Agreement.

“**ABL Secured Parties**” shall mean, at any relevant time, the holders of ABL Obligations.

“**ABL Security Agreement**” shall mean the Amended and Restated Security Agreement, dated as of March 16, 2011, among the Company, each of the other grantors from time to time party thereto and the ABL Collateral Agent, as it may be amended, supplemented or otherwise modified from time to time.

“**ABL Security Documents**” shall mean the ABL Security Agreement and the other Collateral Documents (as defined in the ABL Credit Agreement) and any other agreement, document or instrument pursuant to which a Lien is granted or purported to be granted securing ABL Obligations or under which rights or remedies with respect to such Liens are governed, in each case to the extent relating to Common Collateral.

“**Additional Debt**” means the indebtedness issued or incurred under any Additional Debt Instrument.

“**Additional Debt Instrument**” means any (A) debt facilities, indentures or commercial paper facilities providing for revolving credit loans, term loans, notes, debentures, receivables financing (including through the sale of receivables to lenders or to special purpose entities formed to borrow from lenders against such receivables) or letters of credit, (B) debt securities, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers’ acceptances), or (C) instruments or agreements evidencing any other indebtedness, in each case, secured by the lien on the Common Collateral on a pari passu basis with the lien securing the Term Loan Obligations, with the same or different borrowers or issuers and, in each case, as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, increased, replaced or refunded in whole or in part from time to time in accordance with each applicable ABL Document and Term Loan Facility Document; provided that neither the ABL Credit Agreement, the Term Loan Credit Agreement, nor any Refinancing of any of the foregoing in this proviso shall constitute an Additional Debt Instrument at any time.

**“Agreement”** shall mean this ABL Intercreditor Agreement, as amended, renewed, extended, supplemented, or otherwise modified from time to time in accordance with the terms hereof.

**“Bankruptcy Code”** shall mean Title 11 of the United States Code, 11 USC § 101, et seq., as amended from time to time.

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**“Bankruptcy Law”** shall mean the Bankruptcy Code and any similar federal, state, or foreign law for the relief of debtors, or any arrangement, reorganization, insolvency, moratorium, assignment for the benefit of creditors, any other marshalling of assets and/or liabilities of the Company and/or its affiliates, or any similar law relating to or affecting creditors’ rights generally.

**“Common Collateral”** shall mean “Collateral” as defined in the ABL Security Agreement as in effect on the date hereof.

**“Company”** shall have the meaning set forth in the recitals hereto.

**“Comparable Term Loan Security Document”** shall mean, in relation to any Common Collateral subject to any Lien created under any ABL Document, those Term Loan Security Documents that create a Lien on the same Common Collateral, granted by the same Grantor.

**“Control Collateral”** means any Common Collateral consisting of any Certificated Security, Instrument, Deposit Account (each as defined in the UCC as from time to time in effect in the State of New York), rights, cash and any other Common Collateral as to which a first priority Lien shall or may be perfected through possession or control by the secured party or any agent therefor.

**“DIP Financing”** shall have the meaning set forth in Section 6.1.

**“Discharge of ABL Obligations”** shall mean, except to the extent otherwise provided in Section 5.6, payment in full in cash (except for contingent indemnities and cost and reimbursement obligations to the extent no claim has been made) of all ABL Obligations, with respect to letters of credit or letter of credit guaranties outstanding under the ABL Documents, delivery of cash collateral or backstop letters of credit in respect thereof in a manner consistent with the ABL Credit Agreement, in each case after or concurrently with the termination of all commitments to extend credit thereunder, and the termination of all commitments of the ABL Secured Parties under the ABL Documents; provided that the Discharge of ABL Obligations shall not be deemed to have occurred if such payments are made with the proceeds of other ABL Obligations that constitute an exchange or replacement for, or a Refinancing of, such Obligations or ABL Obligations.

**“First Priority Liens”** shall mean Liens on Common Collateral securing the ABL Obligations, which Liens are superior and prior in priority to the Liens securing the Term Loan Obligations.

**“Grantors”** means the Company and each Guarantor that has or may from time to time hereafter execute and deliver an ABL Collateral Document as a “grantor” or “pledgor” (or the equivalent thereof).

**“Guarantor”** means, collectively, each “Guarantor” as defined in the Term Loan Credit Agreement and each “Subsidiary Guarantor” as defined in the ABL Credit Agreement.

**“Insolvency or Liquidation Proceeding”** shall mean:

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(1) any voluntary or involuntary case commenced or proceeding by or against the Company or any other Grantor under the Bankruptcy Code or any Bankruptcy Law, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of the Company or any other Grantor, any receivership, assignment for the benefit of creditors, or liquidation relating to the Company or any other Grantor or any similar case or proceeding relative to the Company or any other Grantor or its creditors, as such;

(2) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to the Company or any other Grantor, in each case whether voluntary or involuntary and whether or not involving bankruptcy or insolvency; or

(3) any other proceeding of any type or nature, whether or not involving insolvency or bankruptcy, in which substantially all claims of creditors of the Company or any other Grantor are determined and any payment or distribution is or may be made on account of such claims.

**“Lien”** shall have the meaning assigned to such term in the ABL Credit Agreement.

**“New Agent”** shall have the meaning set forth in Section 5.6.

**“Non-Common Collateral”** means all assets securing or purporting to secure any Term Loan Obligations, but excluding all Common Collateral.

**“Non-Conforming Plan of Reorganization”** shall mean any Plan of Reorganization that either grants the Term Loan Collateral Agent or any Term Loan Secured Party any right or benefit, directly or indirectly, which right or benefit is expressly prohibited by the provisions of this Agreement, or which fails to provide for the Discharge of ABL Obligations upon the effective date thereof.

**“Person”** shall mean any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, entity or other party, including any government or governmental unit, and any political subdivision, agency or instrumentality thereof.

**“Plan of Reorganization”** shall mean any plan of reorganization, plan of liquidation, agreement for composition, or other type of plan of arrangement proposed in or in connection with any Insolvency or Liquidation Proceeding under the Bankruptcy Code or any other Bankruptcy Law.

**“Rate Management Obligations”** has the meaning given to the term in the ABL Credit Agreement; provided that the aggregate outstanding amount of Rate Management Obligations shall be determined in accordance with GAAP.

**“Recovery”** shall have the meaning set forth in Section 6.3.

**“Refinance”** shall mean, in respect of any indebtedness, to refinance, extend, renew, defease, amend, increase, modify, supplement, restructure, refund, replace or repay, or to

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issue other indebtedness or enter alternative financing arrangements, in exchange or replacement for such indebtedness, including by adding or replacing lenders, creditors, agents, borrowers and/or guarantors, and including in each case, but not limited to, after the original instrument giving rise to such indebtedness has been terminated. **“Refinanced”** and **“Refinancing”** have correlative meanings.

**“Reinstatement”** shall have the meaning set forth in Section 5.6.

**“Second Liens”** shall mean the Liens on Common Collateral securing the Term Loan Obligations.

**“Subsidiary”** shall mean any “Subsidiary” of the Company as defined in the ABL Credit Agreement or the Term Loan Credit Agreement.

**“Term Loan Collateral Agent”** shall mean JPMorgan Chase Bank, National Association, in its capacity as collateral agent for the lenders and other secured parties under the Term Loan Credit Agreement and the other Term Loan Documents entered into pursuant to the Term Loan Credit Agreement, together with its successors and permitted assigns under the Term Loan Credit Agreement exercising substantially the same rights and powers; and in each case provided that if such Term Loan Collateral Agent is not JPMorgan Chase Bank, National Association, such Term Loan Collateral Agent shall have become a party to this Agreement and the other applicable Term Loan Security Documents.

**“Term Loan Credit Agreement”** shall have the meaning set forth in the recitals hereto.

**“Term Loan Documents”** shall mean the credit and security documents governing the Term Loan Obligations, including, without limitation, the Term Loan Security Documents.

**“Term Loan Enforcement Date”** means the date which is 180 days after the occurrence of (i) a Default (under and as defined in the Term Loan Credit Agreement) and (ii) the ABL Collateral Agent’s receipt of written notice from the Term Loan Collateral Agent certifying that (x) a Default (under and as defined in the Term Loan Credit Agreement) has occurred and is continuing and (y) the Term Loan Obligations are currently due and payable in full (whether as a result of acceleration thereof or otherwise) in accordance with the terms of the Term Loan Credit Agreement; provided that the Term Loan Enforcement Date shall be stayed and shall not occur and shall be deemed not to have occurred (1) at any time the ABL Collateral Agent or the ABL Secured Parties have commenced and are diligently pursuing any enforcement action with respect to a material portion of the Common Collateral, (2) at any time any Grantor is then a debtor under or with respect to (or otherwise subject to) any Insolvency or Liquidation Proceeding or (3) if the acceleration of the Term Loan Obligations (if any) is rescinded in accordance with the terms of the Term Loan Credit Agreement.

**“Term Loan Obligations”** shall mean all “Secured Obligations” as defined in the Security Agreement (as defined in the Term Loan Credit Agreement).

**“Term Loan Secured Parties”** shall mean, at any relevant time, the holders of Term Loan Obligations at such time.

**“Term Loan Security Documents”** shall mean the Collateral Documents (as defined in the Term Loan Credit Agreement) and any other agreement, document or instrument, in each case pursuant to which a Lien on the Common Collateral is granted or purported to be granted securing Term Loan Obligations or under which rights or remedies with respect to such Liens are governed other than the Pledge Agreement (as defined in the Term Loan Credit Agreement) and any trademark security agreement.

**“UCC”** shall mean the Uniform Commercial Code as from time to time in effect in the State of New York.

1.2. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified in accordance with this Agreement, (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections shall be construed to refer to Sections of this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

## **SECTION 2. Lien Priorities.**

2.1. Subordination of Liens. Notwithstanding (i) the date, time, manner or order of filing or recordation of any document or instrument or grant, attachment or perfection (including any defect or deficiency or alleged defect or deficiency in any of the foregoing) of any Liens granted to the Term Loan Collateral Agent or the Term Loan Secured Parties on the Common Collateral or of any Liens granted to the ABL Collateral Agent or the ABL Secured Parties on the Common Collateral, (ii) any provision of the UCC, the Bankruptcy Code, any applicable Bankruptcy Law or other applicable law, the Term Loan Documents or the ABL Documents, (iii) whether the ABL Collateral Agent, either directly or through agents, holds possession of, or has control over, all or any part of the Common Collateral, (iv) the fact that any such Liens may be subordinated, voided, avoided, invalidated or lapsed or (v) any other circumstance of any kind or nature whatsoever, the Term Loan Collateral Agent, on behalf of itself and each Term Loan Secured Party, hereby agrees that: (a) any Lien on the Common Collateral securing any ABL Obligations now or hereafter held by or on behalf of the ABL Collateral Agent or any ABL Secured Parties or any agent or trustee therefor regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall

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have priority over and be senior and prior to any Lien on the Common Collateral securing any Term Loan Obligations in all respects, and (b) any Lien on the Common Collateral securing any Term Loan Obligations now or hereafter held by or on behalf of the Term Loan Collateral Agent or any Term Loan Secured Party or any agent or trustee therefor regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Common Collateral securing any ABL Obligations. All Liens on the Common Collateral securing any ABL Obligations shall be and remain senior in all respects and prior to all Liens on the Common Collateral securing any Term Loan Obligations for all purposes, whether or not such Liens securing any ABL Obligations are subordinated to any Lien securing any other obligation of the Company, any other Grantor or any other Person. The Term Loan Collateral Agent, for itself and on behalf of the Term Loan Secured Parties, expressly agrees that any Lien purported to be granted on any Common Collateral as security for the ABL Obligations shall be



deemed to be, and shall be deemed to remain, senior in all respects and prior to all Liens on the Common Collateral securing any Term Loan Obligations for all purposes regardless of whether the Lien purported to be granted is found to be improperly granted, improperly perfected, preferential, a fraudulent conveyance or legally or otherwise deficient in any manner.

2.2. Prohibition on Contesting Liens. The Term Loan Collateral Agent, for itself and on behalf of each applicable Term Loan Secured Party, agrees that (a) it shall not (and hereby waives any right to) take any action to challenge, contest or support any other Person in contesting or challenging, directly or indirectly, in any proceeding (including any Insolvency or Liquidation Proceeding), the validity, perfection, priority or enforceability of a Lien in any Common Collateral securing any ABL Obligations held (or purported to be held) by or on behalf of the ABL Collateral Agent or any of the ABL Secured Parties or any agent or trustee therefor and (b) none of them will oppose or otherwise contest (or support any Person contesting) any other request for judicial relief made in any court by the ABL Collateral Agent or any ABL Secured Parties relating to the lawful enforcement of any First Priority Lien on Common Collateral.

2.3. Perfection of Liens. Except as expressly set forth in Section 5.5 hereof, neither the ABL Collateral Agent nor any ABL Secured Party shall be responsible for perfecting and maintaining the perfection of Liens with respect to the Common Collateral for the benefit of the Term Loan Collateral Agent or any other Term Loan Secured Parties. The provisions of this Agreement are intended solely to govern the respective Lien priorities as between the ABL Secured Parties and the Term Loan Secured Parties and shall not impose on the ABL Collateral Agent, the Term Loan Collateral Agent, the Term Loan Secured Parties or the ABL Secured Parties or any agent or trustee therefor any obligations in respect of the disposition of proceeds of any Common Collateral which would conflict with prior perfected claims therein in favor of any other Person or any order or decree of any court or governmental authority or any applicable law.

2.4. Nature of ABL Obligations. The Term Loan Collateral Agent, for itself and on behalf of the other Term Loan Secured Parties, acknowledges that (a) the ABL Obligations are revolving in nature, (b) the amount thereof that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed, (c) the terms of the ABL Obligations may be modified, extended or amended from time to time, and (d) the

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aggregate amount of the ABL Obligations may be increased or Refinanced, in either event, without notice to or consent by the Term Loan Secured Parties and without affecting the provisions hereof. The lien priorities provided in Section 2.1 shall not be altered or otherwise affected by any such amendment, modification, supplement, extension, repayment, reborrowing, increase, replacement, renewal, restatement or Refinancing of either the ABL Obligations or the Term Loan Obligations, or any portion thereof.

### **SECTION 3. Enforcement.**

#### **3.1. Exercise of Remedies.**

(a) So long as the Discharge of ABL Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, (i) the Term Loan Collateral Agent and each Term Loan Secured Party (x) from the date hereof until the occurrence of the Term Loan Enforcement Date will not exercise or seek to exercise any rights or remedies (including, but not limited to, setoff, recoupment, and the right to credit bid debt, if any) with respect to any Common Collateral in respect of any applicable Term Loan Obligations, or institute any action or proceeding with respect to such rights or remedies (including any action of foreclosure), (y) will not contest, protest or otherwise object to any foreclosure or enforcement proceeding or action brought with respect to the Common Collateral by the ABL Collateral Agent or any ABL Secured Party in respect of the ABL Obligations, the exercise of any right by the ABL Collateral Agent or any ABL Secured Party (or any agent or sub-

agent on their behalf) in respect of the Common Collateral under any control agreement, lockbox agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which the Term Loan Collateral Agent or any Term Loan Secured Party either is a party or may have rights as a third party beneficiary, or any other exercise by any such party, of any rights and remedies as a secured party relating to the Common Collateral under the ABL Documents or otherwise in respect of the ABL Obligations, and (z) will not object to any waiver or forbearance by the ABL Secured Parties from or in respect of bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the Common Collateral in respect of ABL Obligations and (ii) except as otherwise provided herein, the ABL Collateral Agent and the ABL Secured Parties shall have the sole and exclusive right to enforce rights, exercise remedies (including, but not limited to, setoff, recoupment, and any right to credit bid their debt), marshal, process and make determinations regarding the release, disposition or restrictions, or waiver or forbearance of rights or remedies with respect to the Common Collateral without any consultation with or the consent of the Term Loan Collateral Agent or any Term Loan Secured Party; provided, however, that (A) in any Insolvency or Liquidation Proceeding commenced by or against the Company or any other Grantor, the Term Loan Collateral Agent may file a proof of claim or statement of interest with respect to the Term Loan Obligations, (B) the Term Loan Collateral Agent may take any action (not adverse to the prior Liens on the Common Collateral securing the ABL Obligations, or the rights of the ABL Collateral Agent or the ABL Secured Parties to exercise remedies in respect thereof), including sending such notices of the existence of, or any evidence or confirmation of, the Term Loan Obligations or the Liens of Term Loan Collateral Agent in the Common Collateral to any court or governmental agency, or file or record any such notice or evidence, in order to prove, preserve, or protect (but not enforce) its rights in, including the perfection and priority of any Lien on, the Common Collateral, (C) the Term Loan Secured Parties shall be entitled to file any necessary or appropriate

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responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any person objecting to or otherwise seeking the disallowance of the claims or Liens of the Term Loan Secured Parties, including without limitation any claims secured by the Common Collateral, if any, in each case if not otherwise in contravention of the terms of this Agreement, (D) the Term Loan Secured Parties shall be entitled to file any pleadings, objections, motions or agreements which assert rights or interests available to unsecured creditors of the Grantors arising under either the applicable Bankruptcy Law or applicable non-bankruptcy law, in each case if not otherwise in contravention of the terms of this Agreement, or as may otherwise be consented to by the ABL Collateral Agent, (E) the Term Loan Collateral Agent or any Term Loan Secured Party shall be entitled to vote on any Plan of Reorganization, in a manner and to the extent consistent with the provisions hereof, and (F) the Term Loan Collateral Agent or any Term Loan Secured Party may exercise any of its rights or remedies with respect to (1) the Common Collateral upon the occurrence and during the effective continuation of the Term Loan Enforcement Date and (2) with respect to the Non-Common Collateral, at any time, including, without limitation, objecting to any action by the ABL Collateral Agent or any ABL Secured Party with respect to the Non-Common Collateral. In exercising rights and remedies with respect to the Common Collateral, the ABL Collateral Agent and the ABL Secured Parties may enforce the provisions of the ABL Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise dispose of Common Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured lender under the Uniform Commercial Code of any applicable jurisdiction and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(b) So long as the Discharge of ABL Obligations has not occurred, the Term Loan Collateral Agent, on behalf of itself and each applicable Term Loan Secured Party, agrees that it will not, in the context of its role as secured lender or otherwise as a Term Loan Secured Party, take or receive any Common Collateral or any proceeds of Common Collateral in connection with the exercise of any right or remedy or otherwise in an Insolvency or Liquidation Proceeding (including, but not limited to, setoff, recoupment, or the right to credit bid debt) with respect to any Common Collateral in respect of the applicable Term Loan Obligations. Without limiting the generality of the foregoing, unless and until the Discharge of ABL Obligations has occurred, except as expressly provided in the proviso in Section 3.1(a), the