

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re	:	Chapter 15
	:	
ARCTIC GLACIER INTERNATIONAL INC.,	:	Case No. 12-10605 (KG)
<i>et al.</i> , ¹	:	
	:	(Jointly Administered)
Debtors in a Foreign Proceeding.	:	
	:	Ref. Docket Nos. <u>123</u>

**ORDER PURSUANT TO SECTIONS 105(A), 363, 1501, 1520, AND 1521
OF THE BANKRUPTCY CODE, AND BANKRUPTCY RULES 2002, 6004, AND
9014 (I) RECOGNIZING AND ENFORCING THE CCAA VESTING ORDER,
(II) AUTHORIZING AND APPROVING THE SALE OF SUBSTANTIALLY
ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ANY AND ALL
LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS,
(III) AUTHORIZING ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS
AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the Motion (the "Motion")² of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized foreign representative (the "Monitor") for the above-captioned debtors (collectively, the "Debtors") in a proceeding (the "Canadian Proceeding") commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and pending before the Court of Queen's Bench Winnipeg Centre (the "Canadian Court"), for entry of an order (the "U.S. Sale Order"),

¹ The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, follow in parentheses: (i) Arctic Glacier California Inc. (7645); (ii) Arctic Glacier Grayling Inc. (0976); (iii) Arctic Glacier Inc. (4125); (iv) Arctic Glacier Income Fund (4736); (v) Arctic Glacier International Inc. (9353); (vi) Arctic Glacier Lansing Inc. (1769); (vii) Arctic Glacier Michigan Inc. (0975); (viii) Arctic Glacier Minnesota Inc. (2310); (ix) Arctic Glacier Nebraska Inc. (7790); (x) Arctic Glacier New York Inc. (2468); (xi) Arctic Glacier Newburgh Inc. (7431); (xii) Arctic Glacier Oregon, Inc. (4484); (xiii) Arctic Glacier Party Time Inc. (0977); (xiv) Arctic Glacier Pennsylvania Inc. (9475); (xv) Arctic Glacier Rochester Inc. (6989); (xvi) Arctic Glacier Services Inc. (6657); (xvii) Arctic Glacier Texas Inc. (3251); (xviii) Arctic Glacier Vernon Inc. (3211); (xix) Arctic Glacier Wisconsin Inc. (5835); (xx) Diamond Ice Cube Company Inc. (7146); (xxi) Diamond Newport Corporation (4811); (xxii) Glacier Ice Company, Inc. (4320); (xxiii) Ice Perfection Systems Inc. (7093); (xxiv) ICEsurance Inc. (0849); (xxv) Jack Frost Ice Service, Inc. (7210); (xxvi) Knowlton Enterprises Inc. (8701); (xxvii) Mountain Water Ice Company (2777); (xxviii) R&K Trucking, Inc. (6931); (xxix) Winkler Lucas Ice and Fuel Company (0049); (xxx) Wonderland Ice, Inc. (8662). The Debtors' executive headquarters is located at 625 Henry Avenue, Winnipeg, Manitoba, R3A 0V1, Canada.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.



pursuant to sections 105(a), 363(b), (f), (m), and (n), 1501, 1520, and 1521 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware: (a) recognizing and enforcing that certain *Amended and Restated Canadian Vesting and Approval Order* [Docket No. 120] that was entered by the Canadian Court on July 12, 2012 in the Canadian Proceeding (the “CCAA Vesting Order”), pursuant to which the Canadian Court authorized and approved the sale (the “Sale”) of the Debtors’ right, title, and interest in and to substantially all of the Debtors’ assets (collectively, the “Purchased Assets”) to the successful bidder, free and clear of all Interests (as defined below), except as set forth in that certain Asset Purchase Agreement, by and between the Debtors and H.I.G. Zamboni, LLC, dated June 7, 2012 (the “Purchase Agreement”), a redacted copy³ of which is annexed to the Motion as Exhibit B; (b) authorizing and approving, pursuant to section 363(f) of the Bankruptcy Code, the sale of the Debtors’ right, title, and interest in and to the Purchased Assets to Arctic Glacier Canada Inc. and Arctic Glacier U.S.A., Inc. (collectively, the “Purchaser”), free and clear of all Interests, except as otherwise provided in the Purchase Agreement; (c) authorizing and approving, to the extent provided for in the CCAA Vesting Order, the assignment of the Assigned Contracts (as defined in the Purchase Agreement); and (d) granting certain related relief, including payment of Lender Claims (as defined in the Sales and Investor Solicitation Process (the “SISP”)); and this Court having previously entered the *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief* [Docket No. 70] (the “Recognition Order”); and upon the *Affidavit of Keith McMahon*, dated June 13, 2012 [Docket No. 105] (the “McMahon Affidavit”); and upon

³ The unredacted Purchase Agreement was sealed by Order of this Court dated July 17, 2012 (the “Sealing Order”).

the *Affidavit of Keith McMahon*, dated July 10, 2012 [Docket No. 118]; and upon the *Fourth Report of the Monitor* [Docket No. 106] and the Confidential Appendix⁴ thereto (the “Fourth Monitor’s Report”); and upon the *Fifth Report of the Monitor* [Docket No. 119] (the “Fifth Monitor’s Report”); and upon the *Notice Regarding Status of Sale and Investor Solicitation Process and Intent to Invoke 11 U.S.C. Section 363 if Applicable* [Docket No. 99]; and the Canadian Court having entered the CCAA Vesting Order; and this Court having reviewed and considered the Motion, and the arguments of counsel made, and the evidence adduced, at a hearing before this Court (the “Sale Hearing”); and upon the record of the Sale Hearing and these chapter 15 cases, and after due deliberation thereon, and good cause appearing therefor, and in accordance with Rule 7052 of the Bankruptcy Rules, it is hereby

FOUND AND DETERMINED THAT:

A. The Canadian Court has duly entered the CCAA Vesting Order:

(i) approving and authorizing the Debtors’ execution of the Purchase Agreement and consummation of the sale of the Purchased Assets and the assignment of the Assigned Contracts free and clear of all Interests; and (ii) requesting aid and recognition from this Court to give effect to the CCAA Vesting Order.

B. This Court has jurisdiction and authority to hear and determine the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b). Venue of these chapter 15 cases and the Motion in this Court and this District is proper under 28 U.S.C. § 1410.

C. Based on the affidavits of service filed with, and representations made to, this Court: (i) notice of the Motion, the Sale Hearing, and the Sale was proper, timely, adequate, and sufficient under the circumstances of these chapter 15 cases and these proceedings and

⁴ The Confidential Appendix was sealed by the Sealing Order.

complied with the various applicable requirements of the Bankruptcy Code and the Bankruptcy Rules; and (ii) no other or further notice of the Motion, the Sale Hearing, the Sale, or the entry of the U.S. Sale Order is necessary or shall be required.

D. The Debtors and the Monitor provided a reasonable opportunity to object and be heard with respect to the Sale, the Motion, and the relief requested therein to the necessary parties in interest, including the following: (i) all known creditors of the Debtors or holders of Interests; (ii) all parties to litigation pending in the United States in which the Debtors are a party as of the Petition Date; (iii) the Office of the United States Trustee for the District of Delaware; (iv) the United States Attorney's Office for the District of Delaware; (v) the Internal Revenue Service; (vi) the United States Department of Justice; (vii) counsel for the Purchaser; (viii) all persons with claims listed on Schedule C of the CCAA Vesting Order, including, without limitation, all persons or entities having liens on the Purchased Assets; (ix) all counterparties to the Assigned Contracts; (x) all persons, if any, who have filed objections to the Motion; and (xi) all other persons to whom notice is required pursuant to this Court's *Order Scheduling Hearing and Specifying Form and Manner of Service of Notice* [Docket No. 30].

E. The U.S. Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

F. The relief granted herein is necessary and appropriate, is in the interest of the public, promotes international comity, is consistent with the public policy of the United States, is warranted pursuant to sections 105(a), 363(b), (f), (m), and (n), 1501, 1520, and 1521 of the Bankruptcy Code, and will not cause any hardship to any parties in interest that is not outweighed by the benefits of the relief granted.

G. The CCAA Vesting Order provides for the assignment of the Assigned Contracts, as permitted under CCAA section 11.3, and this section of the CCAA is consistent with Bankruptcy Code section 365(f). As such, enforcement in the United States of the assignment of the Assigned Contracts to the Purchaser does not present any public policy conflict or any issue concerning protection of the interests of the parties to the Assigned Contracts that would prevent this Court from entering the U.S. Sale Order.

H. The CCAA Vesting Order provides for the payment in full of the Lender Claims in cash at or before the time of the closing of the Sale (the “Time of Closing”).

I. Based on information contained in the Monitor’s Reports⁵ and the McMahon Affidavit, the Debtors, the Financial Advisor, and the Chief Process Supervisor, and their respective professionals, extensively marketed the Purchased Assets and conducted the marketing and sale process in accordance with the SISP, as supervised and reported on by the Monitor, and as approved by the Canadian Court in its Initial Order (including any extensions, amendments, or modifications thereto, the “Initial Order”) and recognized by this Court in the Recognition Order. As described in the Monitor’s Reports and the McMahon Affidavit, potential buyers were afforded a reasonable opportunity to participate in the SISP.

J. The Monitor has recommended the Sale in accordance with the Purchase Agreement, including the assignment of the Assigned Contracts; the Purchaser is able and has agreed to assume and perform the obligations of the Debtors under the Assigned Contracts in

⁵ The term “Monitor’s Reports” includes (a) the *Pre-Filing Report of the Proposed Monitor*, filed on the Petition Date as Exhibit C to the *Declaration of Philip J. Reynolds in Support of Verified Petition of Alvarez & Marsal Canada Inc., as Foreign Representative of Arctic Glacier Inc. and Certain of its Affiliates, for: (I) Recognition of Foreign Main Proceeding; and (II) Certain Related Relief* [Docket No. 2], (b) the *First Report of the Monitor*, filed with this Court on March, 13, 2012 [Docket No. 56], (c) the *Second Report of the Monitor*, filed with this Court on April 4, 2012 [Docket No. 83], (d) the *Third Report of the Monitor*, filed with this Court on May 15, 2012 [Docket No. 101], (e) the Fourth Monitor’s Report, and (f) the Fifth Monitor’s Report.

accordance with their terms, including the payment of arrears in accordance with the Purchase Agreement; and it is appropriate that the Purchased Assets, including the Assigned Contracts, be transferred, assigned, and vested in the Purchaser.

K. The consideration provided by the Purchaser for the Purchased Assets is the highest or otherwise best offer received under the SISP.

L. The Purchase Price constitutes fair consideration and reasonably equivalent value for the Purchased Assets under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and the laws of the United States, any state, territory, possession thereof, or the District of Columbia.

M. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale.

N. Time is of the essence in consummating the Sale. To maximize the value of the Purchased Assets, it is essential that the Sale occur promptly and within the time constraints set forth in the Purchase Agreement and the SISP. Accordingly, there is cause to waive the stay that would otherwise be applicable under Bankruptcy Rules 6004 and 6006.

O. The Purchase Agreement and the CCAA Vesting Order provide for the payment of the entire balance of the Arctic Lender Claims to the Arctic Lenders from the sale proceeds, the Purchaser has agreed to assume certain current liabilities of the Debtors, and the proceeds of the Sale are sufficient to satisfy all known creditor claims.

P. Based upon information contained in the Monitor's Reports filed with this Court and the McMahon Affidavit, the SISP was conducted fairly, in good faith, without collusion, and in accordance with the Initial Order, and thus the Purchaser has acted in good faith within the meaning of section 363(m) of the Bankruptcy Code, and neither the Debtors nor the

Purchaser engaged in any conduct that would cause or permit the Purchase Agreement or the consummation of the Sale to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

Q. Neither the Purchaser nor any of its affiliates or their respective representatives is an “insider” of any of the Debtors, as that term is defined in Bankruptcy Code section 101(31).

R. The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding present or future creditors of the Debtors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia.

S. The Debtors may sell the Purchased Assets free and clear of all Interests, to the extent provided in the Purchase Agreement, the CCAA Vesting Order, and the U.S. Sale Order, because, with respect to each creditor asserting an Interest, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Interests who did not object or who withdrew their objections to the Sale or the Motion are deemed to have consented to the Motion and Sale pursuant to Bankruptcy Code section 363(f)(2). All holders of Interests in the Purchased Assets are adequately protected by having their Interests attach to the sale proceeds attributable to the Purchased Assets in respect of which such Interests are asserted.

T. Notwithstanding any other provision in the U.S. Sale Order or the Purchase Agreement, all claims of the United States (the DOJ, as defined in the Stipulation and Order Among the Monitor, Debtors, and the United States Attorney’s Office for the Southern District of Ohio (“Stipulation”)) against the Debtors arising from the Plea Agreement and

Judgment will be determined pursuant to the Stipulation approved and ordered by this Court on July 17, 2012, and such Stipulation and Order resolved the objections of the DOJ to the sale.

U. The Purchaser would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtors, their creditors, and other parties in interest if either: (i) the sale of the Purchased Assets to the Purchaser was not free and clear of all Interests, except as otherwise provided in the Purchase Agreement; or (ii) the Purchaser would, or in the future could, be liable for any of such Interests or any claims against the Debtors based upon successor or vicarious liability or otherwise, except as otherwise may be provided in paragraph 9 hereof.

V. A sale of the Purchased Assets other than one free and clear of all Interests, except as otherwise provided in the Purchase Agreement, would yield substantially less value than the Sale; thus, the Sale free and clear of all Interests, in addition to all of the relief provided herein, is in the best interests of the Debtors, their creditors, and other parties in interest.

W. All findings of fact and conclusions of law announced by this Court at the Sale Hearing are incorporated herein.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted.
2. The CCAA Vesting Order, a copy of which is annexed to the Motion as Exhibit A, approving the Sale and assigning the Assigned Contracts to the Purchaser, is recognized in full and given full force and effect in the United States.

3. All objections to the entry of the U.S. Sale Order that have not been withdrawn, waived, or settled, or otherwise resolved pursuant to the terms hereof, are denied and overruled on the merits, with prejudice.

4. Pursuant to sections 105, 363, and 1521 of the Bankruptcy Code, and to the extent permitted by the CCAA Vesting Order, each of the Debtors, the Purchaser, and the Monitor are authorized to take any and all actions necessary or appropriate to: (a) consummate the Sale of the Purchased Assets to the Purchaser in accordance with the Purchase Agreement, the CCAA Vesting Order, and the U.S. Sale Order; and (b) perform, consummate, implement, and close fully the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Sale.

Transfer of the Purchased Assets

5. Pursuant to sections 105(a), 363(f), and 1521 of the Bankruptcy Code, and as provided for in the CCAA Vesting Order, upon delivery of the Monitor's Certificate to the Purchaser in accordance with the CCAA Vesting Order:

- (a) Without further instrument of transfer or assignment, all of the Debtors' rights, title, and interests in and to the U.S. Assets (as defined in the CCAA Vesting Order) shall absolutely vest in Arctic Glacier U.S.A., Inc. (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate (as such term is defined in the Purchase Agreement) of the Purchaser that agrees to be jointly and severally liable with the Purchaser), and the Sale shall be a legal, valid, and effective transfer of the U.S. Assets free and clear of any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, pledges, options, warrants, trusts or deemed trusts (whether contractual, statutory, or otherwise), encumbrances, obligations, liabilities, demands, guarantees, restrictions, contractual commitments, rights, including without limitation, rights of first refusal and rights of set-off, liens, executions, levies, penalties, charges, or other financial or monetary claims, adverse claims, or rights of use, puts or forced sales provisions exercisable as a consequence of or arising from the closing of the Sale, whether arising prior to or subsequent to the commencement of the Canadian Proceeding and these chapter 15 cases, whether or not they have

attached or been perfected, registered or filed and whether secured, unsecured, legal, equitable, possessory or otherwise, actual or threatened civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, complaint, suit, investigation, dispute, petition or proceeding by or before any governmental authority or person at law or in equity whether imposed by agreement, understanding, law, equity or otherwise, and any claim or demand resulting therefrom including but not limited to antitrust proceedings commenced by the United States Department of Justice and various State's Attorney Generals (all the foregoing, collectively, the "Interests"), including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by the Initial Order and/or any subsequent charges created by the Canadian Court; (b) all charges, security interests, or claims evidenced by any personal property registry system in the United States; (c) Excluded Liabilities (as defined in the Purchase Agreement); and (d) those claims listed on Schedule C of the CCAA Vesting Order; provided, however, that nothing contained herein shall derogate from the obligations of Arctic Glacier U.S.A., Inc. (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) to assume all Assumed Liabilities relating to the U.S. Assets, including the Assumed Accounts Payable relating to the U.S. Assets, and to perform its obligations under the applicable Assigned Contracts, as set forth in the Purchase Agreement.

- (b) Without further instrument of transfer or assignment, all of the Debtors' rights, title, and interests in and to the Canadian Assets (as defined in the CCAA Vesting Order) shall absolutely vest in Arctic Glacier Canada Inc. (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate (as such term is defined in the Purchase Agreement) of the Purchaser that agrees to be jointly and severally liable with the Purchaser), and the Sale shall be a legal, valid, and effective transfer of the Canadian Assets free and clear of any and all Interests; provided, however, that nothing contained herein shall derogate from the obligations of Arctic Glacier Canada Inc. (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) to assume all Assumed Liabilities relating to the Canadian Assets, including the Assumed Accounts Payable relating to the Canadian Assets, and to perform its obligations under the applicable Assigned Contracts, as set forth in the Purchase Agreement.

6. Except as expressly provided in the Purchase Agreement, the CCAA

Vesting Order, and/or the U.S. Sale Order (including, but not limited to, paragraphs 24 and 25

hereof), pursuant to sections 105(a), 363(f), and 1521 of the Bankruptcy Code, upon the Time of

Closing: (a) the Purchased Assets shall be sold, transferred, or otherwise conveyed to Purchaser

(or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) free and clear of all Interests, with all such Interests to attach to the proceeds of Sale of the Purchased Assets in the order of their priority, and with the same validity, priority, force, and effect which they now have as against the Purchased Assets, subject to the rights, claims, defenses, and objections, if any, of the Debtors and all parties in interest with respect to such Interests; (b) no holder of an Interest against the Debtors shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets based on or related to such Interests; and (c) the Purchase Agreement, the Sale, and any instruments contemplated thereby shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors or any successor thereof. All persons or entities holding Interests in, to or against the Purchased Assets are forever barred from asserting such Interests against the Purchaser, its affiliates, successors and assigns, and current affiliates, officers, directors, employees, managers, partners, members, financial advisors, attorneys, agents, and representatives (the "Purchaser Releasees") or such Purchased Assets after the Time of Closing.

7. None of the Purchaser Releasees shall have or incur any liability to, or be subject to any action by any Debtor, or any of the Debtors' predecessors, successors, or assigns, arising out of the negotiation, investigation, preparation, execution, or delivery of the Purchase Agreement, or the entry into and consummation of the Sale, except as expressly provided in the Purchase Agreement, the CCAA Vesting Order, and/or the U.S. Sale Order.

8. Except as otherwise provided in the Purchase Agreement, any and all Purchased Assets and in the possession or control of any person or entity, including, without

limitation, any vendor, supplier, or employee of the Debtors shall be transferred to the Purchaser (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) free and clear of all Interests, and, upon reasonable request of the Purchaser, all such persons or entities are directed to surrender possession of the Purchased Assets to the Purchaser (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) at the Time of Closing.

9. To the extent permissible under the CCAA Vesting Order, the Purchaser, or its affiliates, members, and shareholders, shall not be deemed, as a result of any action taken in connection with the Sale or the Purchaser's post-closing use or operation of the Purchased Assets, to: (a) be a successor to the Debtors; (b) have, de facto or otherwise, merged or consolidated with or into the Debtors; or (c) be a continuation or substantial continuation of the Debtors or any enterprise of the Debtors. Except for the Assumed Liabilities, the transfer of the Purchased Assets to the Purchaser under the Purchase Agreement, the CCAA Vesting Order, and the U.S. Sale Order shall not result in the Purchaser Releasees having any liability or responsibility whatsoever: (y) for any Interest against the Debtors or against an insider of the Debtors; or (z) to the Debtors, except as is expressly set forth in the Purchase Agreement, the CCAA Vesting Order, the U.S. Sale Order, and/or any other order of the Canadian Court. Without limiting the generality of the foregoing, except as otherwise provided in the Purchase Agreement, the CCAA Vesting Order, or any other order of the Canadian Court, the conveyance of the Debtors' rights, title, and interest in the Purchased Assets to Purchaser under the Purchase

Agreement shall not result in any Purchaser Releasee having any liability or responsibility whatsoever for any: (a) Interest, whether at law or in equity, whether by payment, setoff, or otherwise, directly or indirectly; (b) obligation under any of the Debtors' labor or employment agreements; (c) of the Debtors' mortgages, deeds of trust, and security interests; (d) intercompany loans and receivables between the Debtors and any non-debtor subsidiary; (e) of the Debtors' pension, welfare, compensation or other employee benefit plans, agreements, practices and programs (f) any of the Debtors' other employee, worker's compensation, occupational disease, unemployment, or temporary disability related claim, including without limitation, claims that might arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Act of 1988, (vii) the Age Discrimination and Employee Act of 1976 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) state discrimination laws, (xi) state unemployment compensation laws or any other similar state laws, (xii) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors; or (g) successor or vicarious liabilities of any kind or character, including, but not limited to, federal, state or other tax liabilities, U.S. or foreign pension liabilities, or liabilities based on any theory of antitrust, environmental (except as provided in paragraphs 24 and 25 hereof), labor law, alter ego, veil piercing, continuity of enterprise, mere continuation, product line, de facto merger or substantial continuity, whether known or unknown, whether legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted,

whether arising prior to or subsequent to the commencement of these chapter 15 cases, whether imposed by agreement, understanding, law, equity or otherwise with respect to any of the Debtors or any obligations of the Debtors, including, but not limited to, in the case of liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the Time of Closing or any taxes in connection with, or in any way relating to the cancellation of debt of the Debtors or their affiliates. The Canadian Court shall have jurisdiction to resolve any dispute concerning the scope of this paragraph 9, including, but not limited to, determining whether the relief granted by this paragraph 9 is permissible under the CCAA Vesting Order and Canadian law.

10. The entry of the U.S. Sale Order: (a) is and shall be effective as a determination that, upon the Time of Closing, except as expressly provided in the Purchase Agreement, the CCAA Vesting Order, and/or the U.S. Sale Order, all Interests existing as to the Purchased Assets prior to the Time of Closing, have been released, extinguished, expunged, and discharged as against the Purchased Assets; and (b) shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, recorders of fees, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities, who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments that reflect that the Purchaser (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) is the assignee of the Purchased Assets free and clear of all Interests, except as

expressly provided in the Purchase Agreement, the CCAA Vesting Order, and/or the U.S. Sale Order.

11. Each and every federal, state, and local governmental agency or department is authorized and directed to accept any and all documents and instruments necessary and appropriate to consummate the transaction contemplated by the Purchase Agreement.

12. Except with respect to enforcing the terms of the Purchase Agreement, the CCAA Vesting Order, or the U.S. Sale Order, absent a stay pending appeal, no person shall take any action to prevent or enjoin or otherwise interfere with consummation of the transaction contemplated in or by the Purchase Agreement.

13. Effective as of the Time of Closing, the CCAA Vesting Order and the U.S. Sale Order shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Debtors' interests in the Purchased Assets.

Treatment of Executory Contracts and Unexpired Leases

14. As provided in the Purchase Agreement and the CCAA Vesting Order, upon delivery of the Monitor's Certificate, the Assigned Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) in accordance with their respective terms. The transfer and assignment of the Assigned Contracts shall be valid notwithstanding any restriction, condition, or prohibition contained in any such Assigned Contract relating to the assignment thereof, (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer or requires the consent of any party to such assignment or transfer.

15. As provided in paragraph 7 of the CCAA Vesting Order, the assignment of the rights and obligations of the Debtors under the Assigned Contracts to the Purchaser (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser), pursuant to section 2.12 of the Purchase Agreement, is valid and binding upon all of the counterparties to the Assigned Contracts, without further documentation, as if the Purchaser was a party to the Assigned Contracts, notwithstanding any restriction or prohibition contained in any such Assigned Contract relating to the assignment thereof, including any provision requiring the consent of any party to an Assigned Contract.

16. As provided in paragraph 8 of the CCAA Vesting Order, each counterparty to the Assigned Contracts is prohibited from exercising any right or remedy under the Assigned Contracts by reason of any defaults thereunder arising from the commencement or pendency of the Canadian Proceeding or these chapter 15 cases or the solvency or financial condition of the Debtors.

17. To the extent there may be any dispute arising from the U.S. Sale Order's treatment of any Assigned Contract, including, but not limited to, disputes related to an attempted post-Sale modification or termination of any Assigned Contract subject to this Court's jurisdiction, regardless of whether such modification or termination is based upon restrictions or prohibitions contained in any Assigned Contract relating to the assignment thereof, this Court shall retain jurisdiction to enforce any and all terms and provisions of the Purchase Agreement, the CCAA Vesting Order, and/or U.S. Sale Order with respect to any such Assigned Contract.

Additional Provisions

18. In accordance with paragraph 12 of the CCAA Vesting Order, the Monitor is authorized and directed to pay the Arctic Lenders (as defined in the Purchase Agreement) from the net proceeds of the Sale of the Purchased Assets an amount sufficient to pay the Lender Claims in full and in cash, as specified in a pay-out letter to be provided by the Arctic Lenders at or before the Time of Closing. As provided in the CCAA Vesting Order, such payment shall be made concurrently with, and as a condition precedent to, the closing of the Sale.

19. The Purchaser, as a purchaser in good faith within the meaning of section 363(m) of the Bankruptcy Code, shall be entitled to all of the protections of section 363(m) of the Bankruptcy Code. The reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale unless, prior to the Time of Closing, such authorization is duly stayed pending appeal.

20. The terms and provisions of the Purchase Agreement and the U.S. Sale Order shall be binding on and inure to the benefit of the Debtors, the Purchaser, the Debtors' creditors, and all other parties in interest, and any successors of the Debtors, the Purchaser and the Debtors' creditors, including any trustee(s), examiner(s), or receiver(s) appointed in these cases or under any chapter of the Bankruptcy Code or any other law, and all such terms and provisions shall likewise be binding on such trustee(s), examiner(s), or receiver(s) and shall not be subject to rejection or avoidance by the Debtors, the Debtors, their creditors, or any trustee(s), examiner(s), or receiver(s).

21. Subject to the terms and conditions of the CCAA Vesting Order and the Purchase Agreement, provisions of the Purchase Agreement and any related agreements may be waived, modified, amended, or supplemented by agreement among the Debtors and the

Purchaser in a writing signed by the Debtors and the Purchaser without further action or order of this Court.

22. The failure to include any particular provision of the CCAA Vesting Order, the Purchase Agreement, or any related agreements in the U.S. Sale Order shall not diminish or impair the effectiveness of that provision, it being the intent of this Court that the CCAA Vesting Order, the Purchase Agreement, and any related agreements, with such amendments thereto as may be made by the parties in accordance with the CCAA Vesting Order, and the Purchase Agreement be approved and authorized in their entirety.

23. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the contrary: (a) the terms of the U.S. Sale Order shall be immediately effective and enforceable upon its entry; (b) the Debtors, the Purchaser, and the Monitor are not subject to any stay in the implementation, enforcement or realization of the relief granted in the U.S. Sale Order; and (c) the Debtors, the Purchaser, and the Monitor may, in their discretion and without further delay, take any action and perform any act authorized under the CCAA Vesting Order and/or the U.S. Sale Order.

24. Nothing in the U.S. Sale Order or the Purchase Agreement discharges, releases, or precludes any environmental liability under United States law (or any law enforceable by the United States) to the United States or any department, agency, or instrumentality thereof (each, a "U.S. Governmental Unit") of any entity based on its ownership or operation after the Time of Closing of real property. Nor shall anything in this Order enjoin or otherwise bar a U.S. Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence.

25. The Debtors' actions to transfer to the Purchaser any licenses, permits, registrations, or other governmental authorizations pursuant to the Purchase Agreement are authorized under the U.S. Sale Order, provided that nothing in the U.S. Sale Order or the Purchase Agreement relieves the purchaser from compliance with all applicable legal requirements governing such transfers under United States environmental laws, including, without limitation, the Resource Conservation and Recovery Act, the Clean Air Act, and the Clean Water Act.

26. To the extent permitted by Bankruptcy Code section 525, no governmental unit may revoke or suspend any permit or license relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these chapter 15 cases or the consummation of the Sale.

27. Nothing in the U.S. Sale Order shall be deemed to waive, release, extinguish or estop the Debtors from asserting, or otherwise impair or diminish, any right (including, without limitation, any right of recoupment), claim, cause of action, defense, offset or counterclaim in respect of any asset that is not a Purchased Asset.

28. The provisions of the U.S. Sale Order are nonseverable and mutually dependent.

29. Other than as explicitly set forth herein, this Court shall retain jurisdiction with respect to any and all matters, claims, rights, or disputes arising from or related to the implementation or interpretation of the U.S. Sale Order.

Dated: July 17, 2012
Wilmington, Delaware


The Honorable Kevin Gross
United States Bankruptcy Judge