

**THE QUEEN'S BENCH**

**Winnipeg Centre**

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN  
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO  
ARCTIC GLACIER INCOME FUND, ARCTIC GLACIER INC., ARCTIC GLACIER  
INTERNATIONAL INC. and the ADDITIONAL APPLICANTS LISTED ON SCHEDULE "A" HERETO

(collectively, the "APPLICANTS")

APPLICATION UNDER THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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**AFFIDAVIT OF KEITH MCMAHON,**

**SWORN FEBRUARY 21, 2012**

**(Initial Order Affidavit)**

DATE OF HEARING: WEDNESDAY, FEBRUARY 22, 2012 AT 11 A.M.  
BEFORE THE HONOURABLE MADAM JUSTICE SPIVAK

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**AFFIDAVIT OF KEITH MCMAHON,  
SWORN FEBRUARY 21, 2012  
(Initial Order Affidavit)**

I, Keith McMahon, of the City of Winnipeg, in the Province of Manitoba, MAKE OATH  
AND SAY:

1. I am the chief executive officer of Arctic Glacier Inc. ("**AGI**"), which is an Applicant in these proceedings. AGI is a wholly owned subsidiary of the Applicant Arctic Glacier Income Fund ("**AGIF**") and the parent company of Arctic Glacier International Inc. ("**AGII**"). I am a director of AGI and AGII and as such have personal knowledge of the facts to which I depose, except where I have indicated that I have obtained facts from other sources, in which case I believe those facts to be true. Unless otherwise described herein, copies of original documents attached and marked as exhibits hereto are true copies of the original documents. In this affidavit, I will refer to the Applicants (which term includes the Additional Applicants listed on Schedule "A" hereto (the "**Additional Applicants**")) and Glacier Valley Ice Company, L.P. ("**Glacier LP**") collectively as "**Arctic Glacier**" or the "**Arctic Glacier Parties**".

## OVERVIEW

2. Arctic Glacier manufactures and distributes premium quality packaged ice products in Canada and the United States from 39 production plants and 47 distribution facilities across 6 provinces in Canada and 23 states in the United States, servicing more than 75,000 retail locations (the “**Business**”).
3. The Business’ operations are fully integrated throughout North America and are managed centrally from Arctic Glacier’s head office in Winnipeg, Manitoba (the “**Head Office**”). The Head Office is the “nerve centre” of the Business. All accounting functions, strategic decision-making, communications functions, marketing and pricing decisions, new business development initiatives, negotiation of material contracts and leases, acquisition of equipment and other key functions are managed centrally from the Head Office in Winnipeg. In addition, the secured debt to the Business was provided pursuant to certain loan agreements with the Applicants AGI and AGII as borrowers and the remaining Applicants and Glacier LP as guarantors.
4. The principal secured debt to the Business consists of the following:
  - (a) First Lien Debt under revolving and swing line facilities owing to CPPIB Credit Investments Inc. (“**CPPIB**”) and West Face Capital Inc. and related entities (“**WF**”)(together, the “**Lenders**”) pursuant to a Fourth Amended and Restated Loan Agreement dated February 10, 2010 (as amended and restated, the “**First Lien Credit Agreement**”, with amounts owing thereunder from time to time referred to herein as the “**First Lien Debt**” and obligations of the borrowers thereunder referred to as the “**First Lien Debt Obligations**”), which totals approximately C\$7,032,000 and US\$23,162,000 as set out in the demand delivered by the Lenders on February 21, 2012. AGI and AGII are borrowers and the remaining Applicants and Glacier LP are guarantors of the full amount of the First Lien Debt;
  - (b) Second Lien Debt provided by the Lenders pursuant to Canadian and U.S. non-revolving term loans provided pursuant to an agreement dated February 10, 2010 (as amended and restated, the “**Second Lien Credit Agreement**”, with amounts owing thereunder from time to time referred to herein as the “**Second Lien Debt**” and obligations of the borrowers thereunder referred to as the “**Second Lien Debt**”

**Obligations**”), which totals approximately C\$58,493,000 and US\$161,934,000 plus accrued expenses of C\$428,383 and US\$125,000 as set out in the demand delivered by the Lenders on February 21, 2012. AGI and AGII are borrowers and the remaining Applicants and Glacier LP are guarantors of the full amount of the Second Lien Debt; and,

- (c) A credit facility totalling US\$125,000 maintained by The Toronto-Dominion Bank (“**TD**”) reflecting a letter of credit previously issued under the First Lien Credit Agreement which remains outstanding (the “**TD LC Obligations**”). The TD LC Obligations are secured by a cash deposit held at an account at TD.

5. The Arctic Glacier Parties are insolvent because, as borrowers or guarantors, they are indebted to their secured creditors under certain loan agreements in an amount exceeding \$235 million (the “**Secured Indebtedness**”), they are in default of certain financial covenants thereunder, as described below, which they cannot cure, and, as a consequence of such defaults, the obligations of each Arctic Glacier Party to pay Secured Indebtedness have been accelerated, and the full amount of the Secured Indebtedness is now due and payable and has been demanded. The Arctic Glacier Parties cannot meet the accelerated payment demand.

6. Despite these financial covenant defaults, the Business remains viable, operates profitably (prior to considering current debt service and certain one-time, non-recurring costs), and generates strong cash flow, and Arctic Glacier continues to be a leading North American manufacturer and distributor of packaged ice. Arctic Glacier enjoys a leading market position in Canada and is the leading supplier of packaged ice in most of the markets it serves in the United States.

7. The members of the board of trustees that administers AGIF (the “**Trustees**”) believe that, properly marketed within the context of a transparent, result-oriented and court-sanctioned *Companies’ Creditors Arrangements Act* (Canada) (“**CCAA**”) sales process, the proceeds that could be generated through a sale of the Business may exceed the amounts owing to the Lenders and Arctic Glacier’s other creditors.

8. The Arctic Glacier Parties have filed this Application to seek the assistance of this Honourable Court and its approval of a marketing process for the Business. With the benefit of supervision by the Court and monitoring in accordance with the CCAA, the Arctic Glacier Parties believe that they will find a new owner who will (i) pay a price sufficient to satisfy the Secured Indebtedness, (ii) assume or satisfy all other creditor claims, or pay a price sufficient to enable the Arctic Glacier Parties to propose a compromise or arrangement of these debts, and (iii) carry on the Business profitably and for the benefit of all of its stakeholders.

9. Arctic Glacier has retained TD Securities Inc. (“**TDSI**”) to conduct the Sale and Investor Solicitation Process (“**SISP**”), which has been vetted with and approved by the Lenders and will be described in this Affidavit.

10. Arctic Glacier has retained Alvarez & Marsal Canada ULC as financial advisor to assist in its preparation for this Application. Alvarez & Marsal Canada Inc. (“**A&M**” or the “**Proposed Monitor**”) consents to its appointment as the monitor as required by the CCAA.

11. In addition, in consultation with the Lenders and A&M, AGI retained 7088418 Canada Inc. o/a Grandview Advisors (“**Grandview**”). AGI and Grandview agreed that Bruce Robertson, President and Chief Executive Officer of Grandview, will act as Chief Process Supervisor (“**CPS**”) to supervise the implementation of the SISP under and pursuant to the terms of an engagement agreement, a copy of which is attached hereto as **Exhibit ”A**”. Mr. Robertson will report to the special committee of trustees of AGIF (the “**Special Committee**”). The CPS is experienced in recapitalization and sale processes of this nature and I believe that the experience and expertise of the CPS will be helpful in carrying out the implementation of the SISP.

#### **THE ARCTIC GLACIER PARTIES: AN OVERVIEW**

12. AGIF is an unincorporated, open-end mutual fund trust, having its head office at 625 Henry Avenue, Winnipeg, Manitoba. AGIF trust units (“**Units**” held by “**Unitholders**”) were previously listed and publicly traded on the Toronto Stock Exchange (TSX) under the stock symbol “AG.UN”. From and after January 9, 2012, AGIF trust units have been listed and traded on the Canadian National Stock Exchange (CNSX) under the stock symbol “AG.UN”. I am advised by Joe Brennan of Shea Nerland Calnan LLP that the CNSX is a stock exchange regulated by the *Securities Act* (Ontario).

13. AGI is an Alberta corporation that is wholly owned by AGIF, having its head office at 625 Henry Avenue, Winnipeg, Manitoba. AGI owns and operates a packaged ice manufacturing and distribution business in Canada.

14. AGII is a wholly owned subsidiary of AGI and is a Delaware corporation that does not carry on an active business but is the direct or indirect holding company for the 27 Additional Applicants and Glacier LP. AGII's activities are entirely directed from the head office of Arctic Glacier in Winnipeg. It has no employees and it has no premises.

15. Each Additional Applicant is a corporation incorporated under the laws of one of the United States of America owned directly or indirectly by AGII. In addition, stay protection is requested for Glacier LP, a limited partnership whose general partner is the Additional Applicant, Mountain Water Ice Company. The Additional Applicants and Glacier LP are referred to herein as the "**Additional Arctic Parties**".

16. Attached hereto as **Exhibit "B"** is an organizational chart depicting the corporate structure of Arctic Glacier, including the Additional Arctic Parties. As set out further below, each of the Additional Arctic Parties is part of the integrated Arctic Glacier Business that is centrally managed from the Winnipeg Head Office, with key functions, systems and decision-making all conducted from Winnipeg.

17. Each Arctic Glacier Party has assets in Winnipeg, Manitoba. In the case of the Additional Arctic Parties, their main operating assets are in the United States but they hold bank accounts with funds on deposit in Winnipeg, Manitoba.

## **BACKGROUND**

18. AGI is the largest producer of packaged ice in Canada, and the Additional Arctic Parties are the second largest producer of packaged ice in the United States. Arctic Glacier is the leading producer in most of the markets it serves.

19. In 2010, Arctic Glacier had sales of \$233.5 million and earnings before interest, taxes, depreciation and amortization ("**EBITDA**"), essentially "operating profits," of \$48.9 million. For

the first three quarters of 2011 ending September 30, 2011, Arctic Glacier had sales of \$201.5 million and EBITDA of \$44.7 million.

20. Arctic Glacier has a sound, viable and generally market-leading Business, which has and continues to generate operating profits and, in the past, was able to make significant cash distributions to its Unitholders. Since mid-2008, however, Arctic Glacier's financial performance has suffered from a variety of factors including: (i) substantial extraordinary costs and the negative effects of antitrust investigations and litigation; (ii) poor weather; and (iii) increased financing costs. These factors have resulted in deteriorating earnings and the market price for Units has dropped from a high of \$14.61/Unit in or about July 5, 2007 to the current trading price of \$0.04 per Unit.

21. The combined effect of (i) reduced sales volumes from unseasonably cool and wet spring weather in 2011 in most of Arctic Glacier's markets in Canada and the United States, which reduced demand for Arctic Glacier's products, (ii), lower than expected profits from its California operations, and (iii) increased costs related primarily to debt servicing and litigation matters, resulted in Arctic Glacier breaching certain financial covenants in its credit facilities as at June 30, 2011 (the "**Covenant Defaults**") under both the First Lien Credit Agreement and the Second Lien Credit Agreement. The Covenant Defaults included breaches of the covenants governing maximum leverage ratio, interest coverage ratio, fixed charge coverage ratio and minimum EBITDA levels.

22. The EBITDA default resulted from Arctic Glacier's failure to maintain the \$45 million covenant threshold set by its loan agreements for trailing EBITDA for the 12 month period beginning July 1, 2010 and ending on June 30, 2011. The actual EBITDA was short of this covenant threshold by approximately \$2.1 million.

23. At the request of Arctic Glacier, on July 29, 2011, the Covenant Defaults were temporarily waived by each of the Former First Lien Lenders (as defined herein) and the Second Lien Lenders until September 1, 2011. An extension was granted on August 31, 2011, extending the waiver to September 9, 2011.

24. On July 31, 2011, Arctic Glacier was required to either repay in cash or repay by way of conversion into Units, holders of 6.50% extendible convertible unsecured subordinated debentures (the “**Convertible Debentures**”). Arctic Glacier was unable to refinance the Convertible Debentures and exercised its right as at July 31, 2011 to convert \$90.4 million of convertible debenture debt into new Units. The result was that Arctic Glacier’s balance sheet was significantly de-levered, but Units held by Unitholders prior to the conversion were diluted by approximately 90%, down to approximately 10% of AGIF.

25. On September 10, 2011, after the expiry of the temporary waiver, the Second Lien Lenders served notice of default regarding the Covenant Defaults.

26. Following the receipt of the notice of default received from the Second Lien Lenders, the Former First Lien Lenders (defined below) served notices of default (the “**Notices of Default**”) on September 13<sup>th</sup>, 2011 regarding the Covenant Defaults and, on September 16, 2011, capped availability of operating credits provided by the revolving credit facility under the First Lien Credit Agreement at the amount of the Secured Indebtedness then owing under the First Lien Credit Agreement.

27. The Notices of Default also provided that no payments could be made by Arctic Glacier on account of interest under its Second Lien Credit Agreement during the pendency of the Covenant Defaults. Until September, 2011 and the delivery of the Notices of Default, Arctic Glacier had not missed any required loan payments and there had been no payment defaults in respect of the Secured Indebtedness. Since the delivery of the Notices of Default Arctic Glacier has not paid interest on account of the Secured Indebtedness accruing under its Second Lien Credit Agreement. Although the payment block ceased to have any effect on December 14, 2011, when the First Lien Credit Facility was assigned to the Second Lien Lenders (discussed below), the suspension of interest payments on the Second Lien Credit Facility has continued.

28. As set out below, Arctic Glacier’s Lenders under the Second Lien Credit Agreement obtained an assignment of the rights and security of the Lenders under the First Lien Credit Agreement in December, 2011. Consequently, CPPIB and WF are the sole Lenders to Arctic Glacier in respect of all its Secured Indebtedness aside from the TD LC Obligations.



29. On February 21, 2012, the Lenders accelerated and demanded payment of the Secured Indebtedness, in the amount of approximately C\$65,525,000 and US\$185,096,00, including principal of C\$58,115,000 and US\$164,505,000, accrued and unpaid interest of C\$3,832,000 and US\$10,686,000 and pre-payment penalty of C\$3,578,000 and US\$9,905,000. The Lenders also claim accrued expenses of C\$428,000 and US\$125,000. The Applicants and Glacier LP are unable to pay the Secured Indebtedness in accordance with the demand and are insolvent.

*The Strategic Review Process*

30. In September, 2010, Arctic Glacier retained TDSI as its financial advisor to conduct a broad process (the “**Strategic Review Process**”) seeking a refinancing or sale of the Business that would permit Arctic Glacier (i) to repay the Secured Indebtedness and the convertible debentures and (ii) recapitalize its business so that it could compete effectively across North America. The Strategic Review Process was conducted under the direction of a Special Committee of Trustees of AGIF chaired by Mr. Gary Filmon.

31. In the course of the Strategic Review Process, a total of 65 parties signed confidentiality agreements and all but 1 of those parties received the confidential information memorandum prepared by TDSI for the Strategic Review Process. Of those, 16 submitted non-binding proposals for a refinancing or sale transaction. Other potential purchasers withdrew their interest or decided not to participate further. Among various concerns expressed by such potential purchasers were concerns about and uncertainty surrounding litigation claims asserted against Arctic Glacier which, at the time, had not been settled. These litigation claims arose from incidents investigated by the U.S. Department of Justice Antitrust Division (the “**DOJ**”) regarding alleged anti-competitive activities. As described further below beginning at paragraph 101, AGII entered into a plea agreement with the DOJ on October 13, 2009 in relation to the DOJ allegations whereby AGII pleaded guilty to one charge of market allocation in southeast Michigan and agreed to pay a US\$9 million fine in instalments over 5 years. Litigation claims relating to the same incidents arose in Canada and the U.S. following the DOJ plea agreement. While these claims and the uncertainty related thereto were a concern at the time of the Strategic Review Process, significant progress has been made in settling claims arising in such litigation since that time, as described below.

32. Beginning in May, 2011, Arctic Glacier began intensive negotiations of a transaction with one party that had submitted an expression of interest in the Strategic Review Process. The proposed transaction would have involved a refinancing of Arctic Glacier's business (the "**Strategic Transaction**"). The Strategic Transaction would have satisfied all creditor claims, would have provided value to the Unitholders and would have permitted the Business to carry on in the usual course.

33. The negotiation of the Strategic Transaction was interrupted in June, 2011 when it became apparent that reductions in revenue from operations due to unseasonably cool and wet weather and margin shortfalls in certain of Arctic Glacier's markets would cause Arctic Glacier to breach financial covenants to the Lenders. Facing the risk of default, Arctic Glacier focused its attention on addressing its financial reporting obligations and on obtaining a temporary waiver of the financial covenant defaults, and so suspended negotiation of the Strategic Transaction terms.

34. It also became apparent that Arctic Glacier would not have sufficient cash available to redeem the \$90.4 million of convertible debentures that matured on July 31, 2011. In July, the Trustees of AGIF authorized the conversion of the convertible debentures to units of AGIF in accordance with the terms of the debentures.

35. After Arctic Glacier had dealt with the crises related to the risk of financial default and the conversion of debenture debt, it resumed negotiation of the terms of the Strategic Transaction in August, 2011.

***The 'Concerned Unitholders'***

36. While the negotiation of the Strategic Transaction continued, the Trustees received correspondence from Coliseum Capital Management LLC (New York) and Talamod Asset Management, LLC (the "**Concerned Unitholders**"), who apparently held units totalling approximately 16% of the units of AGIF outstanding after the conversion of the convertible debentures.

37. In essence, the Concerned Unitholders expressed their belief that, because of the dilution caused by the conversion of \$90.4 million of debentures for Units, representing about 90% of the

equity of AGIF, the existing Trustees did not have a mandate to manage the Business and it was necessary that a meeting of Unitholders be called to appoint a new board of Trustees and to address the serious issues facing Arctic Glacier caused by the Covenant Defaults.

38. AGIF called its annual meeting of Unitholders for October 17, 2011. Further, following meetings and correspondence with the Concerned Unitholders, a settlement was reached whereby they agreed that they would not seek to replace the entire board of Trustees if a transaction satisfactory to the Concerned Unitholders was announced prior to the annual meeting of AGIF. This settlement was extended on October 16, 2011 for five days pursuant to an agreement that required AGIF to announce a transaction satisfactory to the Concerned Unitholders on or before 5:00 PM on Central Time on Friday, October 21, 2011. In addition, AGIF agreed that I would be appointed as an interim Trustee and that I would resign from that position upon the appointment of two nominees of the Concerned Unitholders as Trustees of the Fund. Attached hereto as **Exhibit "C"** is a copy of the news release issued in relation to the settlement.

39. On October 21, 2011 the Concerned Unitholders and AGIF entered into a further agreement whereby the settlement as previously described was amended and restricted so as to provide the Concerned Unitholders with a right exercisable until June 30, 2012, upon notice, to appoint up to two individuals to serve as Trustees and up to two individuals to serve as Directors of AGI. It was further agreed that I would resign as a Trustee effective as of October 21, 2011, which I did. Attached hereto as **Exhibit "D"** is a copy of the news release issued in relation to the revised settlement.

***The Strategic Transaction Does Not Proceed***

40. During August and September, 2011, concurrently with its negotiations with the Concerned Unitholders, Arctic Glacier resumed and continued negotiation of the Strategic Transaction while protected from action by its Lenders by virtue of a temporary waiver of the Covenant Defaults.

41. In keeping with its desire to gain the support of the Concerned Unitholders and announce the Strategic Transaction prior to the annual general meeting of AGIF, Arctic Glacier entered

into intensive and comprehensive negotiations of agreements to implement the Strategic Transaction.

42. In late September, with the Strategic Transaction substantially negotiated, AGIF and its advisors met with the Concerned Unitholders and the other party to the Strategic Transaction to obtain the support of the Concerned Unitholders.

43. The Concerned Unitholders required amendments to the Strategic Transaction as a condition of their support. The amendments required AGIF to raise equity capital through a rights offering of \$30 million backstopped by the Concerned Unitholders, which would, on completion of the Strategic Transaction, entitle Unitholders to receive a larger share of the new company. In addition, without bridge financing from the Lenders to closing, Arctic Glacier was required to arrange alternative financing to repay the Lenders immediately rather than on closing of the Strategic Transaction.

44. From September 27 to October 18, 2011, Arctic Glacier and its advisors and counsel worked feverishly in an effort to complete an entire refinancing of the Business through the combined proceeds of new secured loans and bridge loans from the Concerned Unitholders and others.

45. Despite the extraordinary effort of all parties, negotiations of the Strategic Transaction and the associated financing were halted on or about October 18, 2011 because the Concerned Unitholders withdrew their support for the Strategic Transaction due to concerns relating to the financial status of the potential acquirer.

46. Because it was unable to complete the Strategic Transaction and the associated financing to pay out the Lenders, Arctic Glacier sought the cooperation of its Lenders in a consensual marketing process for the going concern sale of the Business.

#### **NEED FOR CCAA PROTECTION**

47. Since it is publicly traded, AGIF has publicly disclosed its financial performance, financial statements and defaults. In contrast to the public disclosure of Arctic Glacier's challenges, the efforts of the Trustees and management to address these challenges has

necessarily been kept confidential because they involved sensitive negotiations of the Strategic Transaction and related refinancing efforts.

48. Through my first-hand involvement in the Strategic Review Process, I believe that a going concern sale or refinancing of the Business is likely if the Business were offered for sale in an organized and transparent way in the context of a CCAA process. My view that a going concern sale or refinancing of the Business is likely is confirmed by: (i) the receipt of unsolicited expressions of interest submitted to TDSI as our Financial Advisor after AGIF publicly announced that it was working cooperatively with the Lenders; (ii) the Lenders' support of the process through the provision of DIP financing; and (iii) the fact that the Lenders have reserved their right to make, and have expressed their serious interest in making, a credit bid to purchase the Business if a Qualified Bid is not received as part of the SISP.

49. The Court's assistance under the auspices of the CCAA is critical for an outcome that maximizes value and provides for the continued operation of the Business as a going concern. Under the CCAA, the court may consider, and if appropriate, approve the SISP. Further, the Court may ensure the fair working out of the process by authorizing and instructing the monitor appointed under the CCAA to supervise its implementation of the SISP.

50. In addition to ensuring a fair, effective and transparent process for the sale of the Business as a going concern, court supervision under the CCAA may reverse the detrimental effect on the Business of the uncertainty caused by the Covenant Defaults. We believe that this consensual application for relief under the CCAA, coupled with the public support of the Lenders for and the court supervision of the SISP, will alleviate the cloud of uncertainty in the marketplace caused by the Covenant Defaults.

51. In addition, the "cloud of uncertainty" has resulted in a steady and increasing loss of experienced employees, which has been and is detrimental to the success of the Business. We believe that the relative certainty of continuity of Business operations introduced by a sales process operated within the CCAA will be reassuring to our employees and help to alleviate the loss of employees.

52. Finally, because of the protracted but ultimately unsuccessful negotiation of the Strategic Transaction, it is necessary to mark the end of the Strategic Review Process that is now “stale”, and begin a restructuring process that can reset marketing parameters. These steps are necessary to generate fresh interest in a refinancing or sale solution for Arctic Glacier.

53. As the cash flow projections (attached and described below) demonstrate, Arctic Glacier requires interim financing to provide sufficient working capital to fund Business operations. The Lenders have advised Arctic Glacier that they will not increase loan advances to Arctic Glacier without a CCAA process in place and the protection afforded to fresh advances by a court-ordered DIP lending charge. Accordingly, if CCAA protection is not granted as requested, including with the interim financing proposed, Arctic Glacier faces a liquidity crisis that will thwart efforts to identify sale or investment options that maximize value and provide for the continued operation of the Business as a going concern. The CCAA process, interim financing and proposed SISF, on the other hand, will allow for a fair and structured process to take place that will offer the best opportunity for the successful continuation of the Business to optimize the benefit to stakeholders.

## **THE HISTORY OF ARCTIC GLACIER AND THE BUSINESS**

### ***Arctic Glacier’s Business***

54. Arctic Glacier was founded in 1996 as “The Arctic Group Inc.”, which was later reorganized into AGIF, an income trust, described further below. Since being founded in 1996, the Business has grown significantly, both organically and through an aggressive acquisition strategy in the highly fragmented ice production and distribution industry. To date, Arctic Glacier has acquired 79 packaged ice businesses in Canada and the United States at a cost of US\$470 million. These acquisitions have allowed Arctic Glacier to leverage investments in infrastructure and brand development.

55. Packaged ice products, which represent approximately 94% of Arctic Glacier’s sales, are marketed primarily under the “Arctic Glacier® Premium Ice” brand. Ancillary products such as bottled water, dry ice and others represent approximately 6% of sales.

56. The Business involves investment in plant and equipment to manufacture and store the ice products, and the development and operation of a distribution infrastructure, including refrigerated storage and distribution locations and trucks used to supply customers. It is generally not economical to transport product beyond 100 miles or a 2-hour driving radius, so multiple facilities are required to service larger regional markets.

57. Arctic Glacier has production capacity of 11,266 tons of ice per day and refrigerated storage capacity of 65,467 pallets of finished product, each pallet holding approximately one ton of packaged product.

58. The majority of Arctic Glacier's sales are to "resellers" such as supermarkets, mass merchants, convenience stores and gasoline outlets. Its customer base is well diversified, and includes large national and regional chains. Arctic Glacier has a loyal customer base and has, for example, done business with each of its top 10 customers for more than 15 years. For a vast majority of its customers, Arctic Glacier is the sole supplier of packaged ice at any given store location.

59. To expand into smaller markets, Arctic Glacier also licenses its trade names and proprietary technology to independently owned companies in Canada and the United States under 6 franchise and license agreements (5 in the United States and 1 in Canada).

60. The International Packaged Ice Association estimates that the U.S. and Canadian packaged ice market has annual retail sales in the range of \$3.6 billion and wholesale sales in the range of \$1.8 billion. The industry is generally highly fragmented with only three large, multi-regional operators, including Arctic Glacier, Reddy Ice Holdings Inc. and The Home City Ice Company, which combined represent an estimated 38% of the U.S. and Canadian packaged ice market.

61. Weather has a significant impact on consumer demand, and the Business is highly seasonal, with approximately 75% of sales generated between April and September each year.

62. Arctic Glacier presently employs approximately 929 regular, year round employees. Fluctuations in seasonal demand for packaged ice products result in fluctuations in employee levels. During the winter months, Arctic Glacier typically employs in the range of 1,000 regular,

year round employees, while the number of employees typically rises to more than 2,200 regular and seasonal employees during the peak months.

63. No employees are represented by unions or are subject to a collective bargaining agreement.

***AGIF***

64. “The Arctic Group Inc.” was reorganized in 2002 into AGIF, an income trust, pursuant to a Declaration of Trust made as of January 22, 2002, which has been amended and restated from time to time. The settlement and administration of the Trust is presently governed by the Second Amended and Restated Declaration of Trust made as of December 6, 2004 (the “**Trust Declaration**”), a copy of which is attached hereto as **Exhibit “E”**.

65. AGIF qualifies as a “unit trust” and as a “mutual fund trust” pursuant to paragraph 108(2)(a) and section 132(6) of the *Income Tax Act (Canada)*. The Units were listed on the TSX until January 19, 2012 and are currently listed on the CNSX exchange. AGIF is therefore a “debtor company” within the meaning of the CCAA.

66. AGIF was established for the principal purpose of providing persons who became Unitholders with an equity interest in AGIF and, therefore, the opportunity to participate in the growth of the Business and in distributions of profits and excess cashflow.

67. Beneficial interests in AGIF are divided into interests of one class of trust Units. Each Unit has the same rights and privileges and represents an equal undivided interest in AGIF. Unitholders are beneficiaries of AGIF and their rights are those conferred upon them by the Trust Declaration. All Units entitle the holder to one vote per Unit at all meetings of Unitholders, and to participate *pro rata* in any distributions by AGIF and in the net assets of AGIF upon winding up.

68. There are presently 350,318,387 Units issued and outstanding.

69. To the best of my knowledge, the Units are generally widely held, and no person, corporation or other entity beneficially owns, directly or indirectly, or controls or directs more



than 10 % of issued and outstanding Units of AGIF, except Coliseum Capital Management LLC (New York) and Fort Hoosac Management LLC (New York).

70. AGIF is administered by a Board of Trustees, presently comprised of Gary A. Filmon, James E. Clark (Chairman) and David R. Swaine, each of whom is a holder of Units and is also a member of the Board of Directors of AGI. For their services, Trustees are entitled to receive certain fees and receive reimbursement of certain expenses. AGIF is current with respect to such fees and expenses and expects that these amounts will be relatively nominal during the CCAA process.

71. AGIF has no employees, and has little or no trade or general credit but has certain obligations to the Trustees, members of the board of directors of AGI and key employees of AGI and its subsidiaries pursuant to a certain Option Plan (the “**Option Plan**”). AGIF also has obligations in relation to a certain Long Term Incentive Plan (“**LTIP**”) also offered by AGIF, which makes performance-based awards of Units to officers and key employees of AGI. AGIF earns a guarantee fee from AGII to compensate for the secured guarantees given by AGIF in favour of the Lenders.

72. AGIF has received funds from the subscription for Units and has invested those funds in shares of AGI. Presently, AGIF is the holder of 58,669,070.5524 common shares of AGI (the “**AGI Shares**”), being all of the issued and outstanding capital stock of AGI.

73. The key assets of AGIF are the AGI Shares.

74. The principal liabilities of AGIF are its contingent liabilities pursuant to secured guarantees given by AGIF in favour of the Lenders, all as more particularly described below. There is non-interest bearing current intercompany debt at any given point in time to account for movement of cash between companies, as described further below.

75. Up to and including September, 2008, AGIF had been making monthly distributions of cash to Unitholders. To conserve cash, to reduce debt, and to address other underlying business conditions that were then affecting the price at which Units were trading, the Trustees suspended payment of distributions to Unitholders on September 16, 2008. No distributions have been paid since then.

**AGI**

76. AGI is a corporation that is wholly owned by AGIF. In addition to owning all of the issued and outstanding shares of AGII, AGI is the operating company that owns the Canadian portion of the Business, which represents approximately 20% of Arctic Glacier's total sales. AGI also provides head office, executive and certain key centralized functions for all of Arctic Glacier.

77. AGI has its head office at 625 Henry Ave., Winnipeg, Manitoba, and has distribution centres in all of Canada's provinces except Newfoundland, Prince Edward Island, Nova Scotia and New Brunswick. It has approximately 210 employees year-round with its employee ranks swelling to more than 400 in the busy summer months. AGI operates a fleet of 44 trucks year round increasing to 55 through short-term rentals in the summer.

78. AGI's current directors and officers are as follows:

Directors:

James E. Clarke  
Gary A. Filmon  
David R. Swaine  
Richard L. Johnson  
Keith W. McMahon

Officers:

President and Chief Executive Officer	Keith W. McMahon
Chief Financial Officer	Douglas Bailey
Corporate Secretary	Hugh Adams

79. Each of the AGI officers and employees described in the list attached hereto as **Exhibit "F"** (the "**Key Employees**") is skilled with readily marketable skills, has considerable industry experience and is very knowledgeable about Arctic Glacier and its challenges and is vital to a restructuring. I believe that they are truly key employees and that it is in the best interests of Arctic Glacier and its stakeholders to secure the employment of the Key Employees during the restructuring contemplated by this Application, and provide certain incentives and inducements to them to do so, in accordance with the Key Employee Retention Plan (the "**KERP**"). The total

amount of the KERP payments to all Key Employees is approximately C\$2,600,000. Since the KERP retention payments to individual Key Employees is sensitive information, the KERP is attached hereto as **Confidential Exhibit “1”** and described further below beginning at paragraph 177.

80. AGI operates production and distribution facilities at eight owned (the “**Canadian Owned Properties**”) and four leased (the “**Canadian Leased Properties**”) locations in Canada.

81. All of the Canadian Owned Properties are legally and beneficially owned by AGI. Attached hereto as **Exhibit “G”** is a list of the Canadian Owned Properties, identifying civic addresses, legal descriptions, building descriptions and uses for each of the Canadian Owned Properties.

82. AGI is the tenant of each of the Canadian Leased Properties. Attached hereto as **Exhibit “H”** is a list of the Canadian Leased Properties, identifying civic addresses, landlords, lease expiry dates, uses and other information relating to the Canadian Leased Properties.

83. AGI’s principal assets include AGI’s undertaking and its interests in the following:

- (a) the Canadian Owned Properties and the Canadian Leased Properties,
- (b) substantial equipment in Canada, including ice manufacturing and refrigerated storage equipment located variously at its business premises in Canada, a year-round fleet of approximately 44 refrigerated vehicles (1 owned, 43 leased), and approximately 15,000 stand-alone merchandizing freezer units installed at customer locations.
- (c) accounts receivable, in the amount of approximately C\$2,345,397 as at December 31, 2011,
- (d) inventory and prepaid expenses,
- (e) intercompany amounts owed to it by AGII, and
- (f) shareholdings of AGII.

84. AGI's principal liabilities include its liabilities for the following:
- (a) the Secured Indebtedness to the Lenders and the TD LC Obligations,
  - (b) lease obligations for the Canadian Leased Properties, in the total monthly amount of approximately C\$27,607,
  - (c) equipment lease and financing obligations, in the total monthly amount of approximately C\$84,089,
  - (d) payment of amounts owing to Canadian unsecured creditors and suppliers, which totalled approximately C\$85,335 as at February 15, 2012, excluding professionals, which amount is typical of AGI's monthly general creditor and supplier obligations at this time of the year;
  - (e) utility costs, primarily for the supply of electricity to production and distribution facilities in Canada, in the total monthly amount of approximately C\$182,992, and
  - (f) the Canadian Retail Settlement (as defined and described below).

85. AGI is generally current in the payment of its lease obligations for the Canadian Leased Properties, and is generally current (within 7-30 days) in payment of its equipment financing, utility and general creditor and supplier debts. AGI intends to continue to pay these amounts, including pre-filing amounts, during the CCAA proceedings, with payment to the Canadian Critical Suppliers (defined below in paragraph 112) to be made on terms and conditions that are consistent with existing arrangements and past practises as set out below.

86. AGI (and AGII) have obligations for expenses incurred by Macquarie Bank Limited in relation to an aborted attempt to establish a bridge lending facility in relation to the Strategic Transaction described above. AGI and AGII have received invoices totalling approximately \$450,000 for professional fees and expenses in relation thereto (the "**Macquarie Expenses**"). AGI and AGII have not paid these amounts as they did not have available resources to do so and also meet ongoing obligations. AGI and AGII do not intend to pay these amounts during these proceedings and where I refer herein to an intention to pay pre-filing amounts, that does not include the Macquarie Expenses.

87. AGI has obligations to certain of its directors, officers and key employees under the Option Plan and the LTIP. There are no registered pension plans for employees or former employees of AGI. AGI has 3 post-retirement benefit agreements: one self-insured death benefit payable by AGI to the wife of Keith Corbin, one agreement to provide post-retirement life and health benefits to Robert Nagy and his wife; and one retirement allowance payable by AGI to Robert Nagy quarterly in arrears.

88. AGI also has obligations to make contributions or premium payments in relation to a Canadian group retirement plan (RRSP/DPSP), a Canadian health plan, a long-term disability plan, and a group life insurance plan. AGI is presently current in making these payments and contributions, which total approximately \$83,122 per month. There is also a management incentive plan paid once per year by AGI in May. AGI intends to continue to pay these amounts during the CCAA proceedings.

### ***AGII***

89. AGII is a wholly owned subsidiary of AGI and the direct or indirect holding company for the Additional Arctic Parties. AGII is a holding company only. AGII is incorporated in Delaware and has its registered office in Delaware (which is the office of a registered agent). AGII does not carry on an active business, it has no employees and it has no premises. Its activities are entirely directed from head office of Arctic Glacier in Winnipeg. AGII does hold a bank account in which deposits from the Additional Arctic Parties are swept and from which various disbursements are paid, as outlined at paragraphs 153 to 156, below.

90. AGII's principal assets are shares in certain of the AGII Subsidiaries, which have been pledged in favour of the Lenders and are physically located in Canada, a bank account at Wells Fargo Commercial Bank, St. Paul, Minnesota, and intercompany amounts owed by certain of the AGII Subsidiaries.

91. AGII's principal liabilities are its obligations to the Lenders, intercompany amounts outstanding to AGI, and payments in respect of the U.S. Direct Purchaser Settlement Payment and the DOJ Settlement (each as defined below).

*The Additional Arctic Parties*

92. Arctic Glacier's Business in the United States is conducted by the Additional Arctic Parties based on location, service region and the historical connections of an Additional Arctic Party to its customer base, overall representing approximately 80% of Arctic Glacier's total sales. Executive and key administrative functions of the Additional Arctic Parties are generally centralized and provided by AGI and local management reports directly or indirectly to the Head Office in Winnipeg.

93. The Additional Arctic Parties carry on business in 23 states in the Northeast, Northwest, Central and Western United States, from 27 owned ("**U.S. Owned Properties**") and 47 leased ("**U.S. Leased Properties**") locations described in **Exhibits "I" and "J"** respectively, attached hereto.

94. The assets and liabilities of the Additional Arctic Parties are similar in nature, although differing in amount, to those of AGI.

95. The Additional Arctic Parties are generally current in the payment of their lease obligations for the U.S. Leased Properties, and are generally current (within 7-30 days) in payment of its equipment financing, utility and general creditor and supplier debts. The Additional Arctic Parties intend to continue to pay these amounts, including pre-filing amounts, during the CCAA proceedings.

96. The Additional Arctic Parties presently employ approximately 748 regular, year round employees and 124 seasonal employees. During the winter months, the Additional Arctic Parties typically employ in the range of 760 regular, year round and 157 seasonal employees, while the number of employees typically rises to more than 769 regular, year round and 861 seasonal employees during the peak months. All employees of the Additional Arctic Parties are paid by Arctic Glacier Services Inc., a special purpose "payroll company", which is a subsidiary of AGII and is one of the Additional Applicants.

97. The directors of each Additional Applicant are Keith McMahon, David Potter and Richard Johnson. The Corporate Secretary for each Additional Applicant is Hugh Adams.

98. Glacier LP, for which stay protection is requested in the draft initial order, is a limited partnership whose limited partner is the Additional Applicant Arctic Glacier California Inc. and its General Partner is the Additional Applicant Mountain Water Ice Company. Glacier LP is part of the integrated Business and stay protection is required for it to prevent potential deterioration of the Business if Glacier LP were left exposed while the remaining Arctic Glacier entities were protected by a stay of proceedings.

99. While it is critical that an operation in the business of selling ice has locations within a reasonable distance of its key markets, including the key U.S. markets where the Additional Arctic Parties have owned or leased premises, Arctic Glacier is an integrated business that is centrally managed and operated from the Winnipeg Head Office. Among other things:

- (a) management of each of the Additional Arctic Parties reports, directly or indirectly, to Arctic Glacier management in the Winnipeg Head Office;
- (b) all key strategic and operating decisions in respect of the Additional Arctic Parties are made by Arctic Glacier management in Winnipeg;
- (c) leases for each of the premises in which the Additional Arctic Parties manufacture product for delivery in their region are negotiated from the Head Office in Winnipeg;
- (d) acquisition of the equipment located in such leased premises was negotiated by AGI;
- (e) all material contracts required for the operation of the local business by each Additional Arctic Party, including trucking contracts and supply of bags are negotiated and arranged by management from Winnipeg. Trucking leases are typically negotiated under supervision of the Winnipeg Head office; the contract for supply of bags is negotiated by the Winnipeg Head Office and is a contract between the bag supplier and AGI to supply the entire Business;
- (f) all accounting functions, including the Additional Arctic Parties' tax and cash management functions, are managed from the Winnipeg Head Office and local finance staff of the Additional Arctic Parties report to senior finance management in Winnipeg;

- (g) the Secured Indebtedness that provides funding to the Business, and that has AGI and AGII as the borrowers and the Additional Arctic Parties as guarantors, was negotiated and arranged by management from Winnipeg;
- (h) the Additional Arctic Parties' human resources functions are managed from Winnipeg and all local human resources staff report to the Winnipeg Head Office;
- (i) acquisition opportunities and transactions are identified and completed solely by senior management in the Head Office;
- (j) management of payroll functions for Canada and the U.S. is handled from the Winnipeg Head Office;
- (k) the Additional Arctic Parties' information technology and systems are directed from the Winnipeg Head Office;
- (l) all of the Additional Arctic Parties' public company reporting and investor relations are directed from Winnipeg;
- (m) pricing decisions, new business development initiatives and insurance matters are managed from the Winnipeg Head Office;
- (n) sales activities are managed by individuals who report to the Winnipeg Head Office;  
and
- (o) management of accounts receivable and accounts payable is handled from the Winnipeg Head Office.

100. If the relief requested by the Arctic Glacier Parties is granted, it is the intention of the Arctic Glacier Parties to seek recognition of the CCAA Order in the U.S. for AGII and the Additional Arctic Parties under Chapter 15 of the U.S. Bankruptcy Code to obtain protection for those entities, including stay protection in the U.S.



## **ANTITRUST INVESTIGATION AND LITIGATION**

101. Since 2008, Arctic Glacier has been the subject of certain U.S. antitrust investigations and charges, and certain significant civil actions in the U.S. and Canada arising from the same or similar allegations, the most critical of which have been settled or (with respect to certain state attorney general investigations) have been dormant for some time. Arctic Glacier has incurred approximately \$42 million in costs related to these matters including \$23.5 million in settlement expenses since March, 2008, which has had a very significant negative impact on Arctic Glacier's financial performance.

### ***Significant U.S. Litigation Matters***

102. In March, 2008, Arctic Glacier became aware of an investigation by the DOJ into possible antitrust violations in the US packaged ice industry (the "**DOJ Antitrust Investigation**").

103. On October 13, 2009, AGII and the DOJ entered into a plea agreement and AGII pleaded guilty to one charge of market allocation in southeast Michigan, agreeing to pay a US\$9 million fine in instalments over 5 years, thereby settling all charges (the "**DOJ Settlement**"). This plea agreement was accepted by the US District Court on February 11, 2010, concluding the antitrust investigation as it related to Arctic Glacier. These terms have been reflected in a probation agreement (the "**Probation Agreement**"). To date, Arctic Glacier has paid two instalments towards the fine: US\$ 1 million on each of March 5, 2010 and March 3, 2011. The next instalment of US\$ 1.5 Million is due March 3, 2012. Attached hereto as **Exhibits "K"** and "**L**", respectively, are copies of the DOJ Settlement and the Probation Agreement.

104. There are other investigations in the U.S. as follows:

- (a) As a result of the DOJ Antitrust Investigation, on November 25, 2008, the DOJ Civil Division advised Arctic Glacier of the commencement of a civil investigation of the packaged ice industry under the U.S. Federal False Claims Act, to determine if the U.S. federal government had been overcharged in its purchases of packaged ice. Arctic Glacier provided all requested information. On March 21, 2011, the DOJ Civil Division advised that its investigation was closed and no action would be taken;

- (b) Subsequent to the announcement of the DOJ Antitrust Investigation, the states of Florida and Arizona initiated investigations into the Arctic Glacier subsidiaries operating in their jurisdictions, and 17 other state jurisdictions have signed information sharing agreements with the Florida Attorney General to review and share information. Arctic Glacier has provided all requested information. On September 10, 2010, one of the Additional Applicants settled with the Michigan Attorney General for US\$350,000, with no admission of liability, which amount was fully paid in 2010. The other state investigations have been dormant for approximately the past 22 months.

105. Following the announcement of the DOJ Antitrust Investigation, a number of civil lawsuits (the “**U.S. Civil Class Actions**”) were filed by and on behalf of direct and indirect purchasers of Arctic Glacier products, alleging violations of U.S. federal antitrust laws. The U.S. Civil Class Actions were thereafter ordered to be transferred and consolidated for pre-trial proceedings in the U.S. District Court for the Eastern District of Michigan (the “**District Court**”).

- (a) With respect to direct purchasers: On March 30, 2011, without admitting liability, Arctic Glacier defendants, AGIF, AGI and AGII, reached an agreement to settle the direct purchaser class actions by payment of US\$12.5 million by such defendants (the “**U.S. Direct Purchaser Settlement Payment**”). The first instalment in the amount of US\$2.5 million was paid August 4, 2011, with the balance of US\$10 million to be paid after final District Court approval of the said settlement. The settlement received final court approval on December 13, 2011 and the final payment of US\$10 million is due on April 2, 2012. Attached hereto as **Exhibit “M”** is a copy of the U.S. Civil Antitrust Settlement Agreement. Attached hereto as **Exhibit “N”** is a copy of the District Court order approving the settlement.
- (b) With respect to indirect purchasers: On March 11, 2011, and December 12, 2011, the District Court granted the defendants' motions dismissing the state law claims brought by the indirect purchasers in the multi-district litigation pending in the Eastern District of Michigan except under the state laws of Michigan, New York, Wisconsin,

California, Nevada, and Maine. In 2011, a relatively limited number of additional indirect purchasers commenced actions in other states and defendants had those cases transferred to the Michigan proceedings. The District Court's December 12, 2011 order, along with another order entered by the court on January 3, 2012, introduced some ambiguity into the status of this class action. In the short term, these orders have led to new indirect purchaser lawsuits being filed in North Carolina, Iowa, Minnesota, Massachusetts, Nebraska, Arizona, New Mexico and Mississippi on behalf of alleged indirect purchasers whose previously filed claims were dismissed for procedural defects. There may very well be further complaints filed in additional states. Most of these cases have been transferred to the Michigan indirect purchaser proceedings and Arctic Glacier is working with US litigation counsel to transfer the remaining matters.

106. Arctic Glacier is unable to predict the timeline or final outcome of the remaining U.S. lawsuits and state investigations, or any potential effects these may have on Arctic Glacier or its operations.

107. Arctic Glacier has addressed other miscellaneous actions in the U.S., which have either been resolved for a small settlement without admission of liability or have been dismissed or are dormant.

***Significant Canadian Litigation Matters***

108. Four civil actions were commenced in Alberta and Ontario in 2009 and 2010, by two law firms working together, making substantially similar allegations of anticompetitive behaviour against AGI and others on behalf of proposed classes of retail purchasers. Only one action moved forward, in Ontario. On May 4, 2011, AGIF announced an arrangement to settle all four actions; it was agreed that three of the actions would be discontinued, while an agreement was to be placed before the Ontario Superior Court in the fourth action for approval of a settlement requiring a payment by AGI of the total sum of C\$2 million (the “**Canadian Retail Settlement**”). To date, no formal settlement agreement to this effect has been executed or approved by the Court.

109. On October 24, 2008 a civil action was commenced in the Ontario Superior Court (the “**Ontario Securities Class Action**”), representing a proposed class of people or entities that acquired Units between March 13, 2002 and September 16, 2008, alleging that AGIF, its trustees, AGI and its directors and certain officers failed to make full and timely disclosure. On March 1, 2011, the plaintiffs obtained an Order: (i) granting leave to amend the claim to add a statutory cause of action for secondary market misrepresentation, and to add two former officers of AGI as additional defendants; and (ii) certifying the action as a class proceeding. The Arctic Glacier defendants sought leave to appeal that Order, which was argued over two days in late September 2011 in the Ontario Superior Court. On February 1, 2012 Arctic Glacier was granted leave to appeal significant legal issues underlying the plaintiffs' common law claims, and to appeal the certification of the action as a class proceeding. On February 2, an agreement was reached, through mediation, to settle the action at a total cost of \$13.75 million, including compensation to class members and legal fees. The settlement figure will be paid in full by the insurers of AGI's officers and directors named as defendants. The settlement is subject to Court approval and a motion is expected to be brought in the first or second quarter of 2012.

## **SUPPLIERS**

110. Arctic Glacier has a concentrated number of suppliers who supply products or services that are crucial to the operation of the Business. This includes suppliers of utilities (such as water and electricity) and fuel, refrigeration repair and maintenance, vehicle and equipment suppliers, and suppliers of bags and trucking services. Given the nature of Arctic Glacier's business, the ongoing and uninterrupted availability of these supplies and services is essential to the continued operation of the Business.

111. Arctic Glacier also has critical relationships with distributors (which are independent third party companies that deliver Arctic Glacier product, produced in an Arctic Glacier facility, to either their own customers or Arctic Glacier customers) and co-packers (which are independent third party ice manufacturing and distribution companies with which Arctic Glacier contracts to supply Arctic Glacier customers in areas that Arctic Glacier does not supply from an Arctic Glacier manufacturing facility. For example, Arctic Glacier has contracts with national chain stores, and in certain regions where a national chain store operates that Arctic Glacier cannot practically supply from one of its manufacturing facilities, Arctic Glacier arranges with a

co-packer to supply the national chain store (Arctic Glacier's customer) with ice produced in the co-packer's facility) (a "**Co-Packer**").

112. With the assistance of the proposed Monitor, Arctic Glacier has identified a number of Canadian suppliers that are critical to the ongoing operation of the Business. Those suppliers listed on **Exhibit "O"** hereto are critical to the operation of the Business (the "**Critical Suppliers**"). Since an interruption of supply by the Critical Suppliers could materially adversely affect the Business, cash flow, and ultimately the ability to identify sale or investment options that maximize value and provide for the continued operation of the Business as a going concern, the Arctic Glacier Parties seek an Order:

- (a) designating the Canadian Critical Suppliers as critical suppliers;
- (b) requiring the Critical Suppliers to continue to supply AGI with goods and/or services on terms and conditions that are consistent with existing arrangements and past practices, as may be amended by the payment terms set forth in Schedule C to the proposed Order, and declaring that no Critical Supplier may require the payment of a deposit or the posting of any security in connection with the supply of goods and/or services to AGI after the date of the Order, if granted; and
- (c) granting a charge on the assets, property and undertaking of AGI in an amount equal to the value of the goods and services supplied by such Critical Supplier and received by AGI after the date of this Order less all amounts paid to such Critical Supplier in respect of such goods and services (the "**Critical Supplier Charge**"). The Critical Supplier Charge is proposed to have the priority set forth in paragraph 184 hereof.

113. The proposed Order, including the Critical Supplier Charge, Court supervision and monitoring in accordance with the CCAA are all important to provide clarity to these important suppliers, co-packers and distributors, and therefore stability to the Business to enable Arctic Glacier to continue to operate the Business in the usual course while taking steps to identify an appropriate purchaser of or investor in the Business.

## ARCTIC GLACIER FINANCIAL POSITION

### *Cashflow and Funding of Operations*

114. Arctic Glacier's access to its revolving credit facilities has been capped since September, 2011 when Notices of Default were issued by the Former First Lien Lenders. Since then, Arctic Glacier has been operating within the credit limit and, with the benefit of the cash flow generated by its busy summer season, has accumulated cash in the amount of \$10,164,743.54 as at close of business on February 16, 2012.

115. The Arctic Glacier Parties have prepared projections (the "**CCAA Projections**") with the assistance of A&M, which I have reviewed and believe to be reasonable, that provide the projected cash flow of Arctic Glacier on a weekly basis assuming the CCAA application is approved. The CCAA Projections disclose that the Arctic Glacier Parties expect to run out of cash to continue operations within 2 weeks unless additional funding is provided through a loan pursuant to the Interim Financing provisions of the CCAA (a "**DIP Loan**") and that, with the anticipated DIP Loan, described below, the Arctic Glacier Parties have sufficient working capital available to fund operations during these proceedings during the period February 22, 2012 to at least June 29, 2012. Attached hereto as **Exhibit "P"** is a copy of the CCAA Projections and a signed letter from Arctic Glacier to the Proposed Monitor setting out the prescribed representations regarding the preparation of the CCAA Projections.

116. The CCAA Projections are based on certain assumptions as more particularly described therein, but which include the following assumptions as part of Arctic Glacier's filing approach:

- (a) Arctic Glacier suppliers, utilities, landlords, equipment financiers and trade creditors generally will not be stayed and both pre-filing and post-filing obligations to such parties will be paid, with the Canadian Critical Suppliers paid on terms and conditions consistent with existing arrangements and past practise, as set out above. Since pre-filing obligations are relatively small (totalling approximately \$5,725,460) and there are thousands of such suppliers, payment of these pre-filing obligations is manageable and sensible. I believe paying pre-filing obligations is important to assist with continued normal course operation of the Business while steps are taken to identify an appropriate purchaser or investor;

- (b) payments under the DOJ Settlement, the Canadian Retail Settlement, and the U.S. Direct Purchaser Settlement Payment and in relation to certain parties not involved in normal course supply (including the Macquarie Expenses), will be stayed;
- (c) normal weather patterns will occur;
- (d) there will be no material operational restructuring undertaken and no lease or other material contract repudiations or resiliations; and
- (e) DIP interest and other commitment obligations, and interest and commitment obligations in respect of the First Lien Debt, will be paid, and no other debt service costs are funded

117. The requirement for additional funds is in part the result of anticipated costs of the CCAA process, but also reflects the usual need for additional working capital at this time of year resulting from the seasonality of the Business.

#### ***DIP Financing***

118. Because of the seasonal nature of the Business and the expenses associated with these proceedings, Arctic Glacier requires interim financing. According to the CCAA Projections, Arctic Glacier will run out of cash to continue operations within 2 weeks unless interim financing is approved and immediate advances are available. As the Lenders hold security on all of Arctic Glacier's assets and are its only lenders, we approached the Lenders seeking an interim financing facility (the "**DIP Loan**") to ensure that Arctic Glacier would continue to operate on a "business as usual" basis while implementing the SISP. The Lenders have provided their commitment to provide a DIP Loan to the Arctic Glacier Parties on the terms set out in a DIP Loan term sheet, substantially in the form attached hereto as **Exhibit "Q"** (the "**DIP Term Sheet**" or "**Commitment Letter**"). The DIP Term Sheet sets out terms that are acceptable to the Arctic Glacier Parties and will provide sufficient liquidity to the Business to allow it to pay all its operating expenses in accordance with the CCAA Projections. The Proposed Monitor has reviewed the DIP Term Sheet and has advised the Arctic Glacier Parties that its financial terms are generally consistent with market terms for interim financing by existing lenders in CCAA

cases of businesses similar to the Business. The key terms of the DIP Loan include the following:

- (a) AGI and AGII are the borrowers and the Lenders are the lenders. AGIF and the Additional Arctic Parties are guarantors;
- (b) the interim financing provided (the “**DIP Facility**”) is a non-revolving debt facility up to an aggregate maximum amount of US\$24,000,000 and C\$26,000,000;
- (c) availability under the DIP Facility is provided in two stages:
  - (i) Stage 1 is effective upon the Arctic Glacier Parties obtaining an initial order from the CCAA Court and a temporary restraining order of the U.S. Court, among other conditions. Availability under the DIP Facility at Stage 1 is US\$10 million and C\$15 million and only AGI is a borrower under Stage 1;
  - (ii) Stage 2 is effective upon obtaining a Recognition Order in the U.S. providing for the recognition of these CCAA proceedings as a “foreign main proceeding”, and the U.S. Court approving the DIP Facility, among other conditions. Availability under the DIP Facility at Stage 2 is an additional US\$14 million and C\$11 million and each of AGI and AGII is a borrower under Stage 2.
- (d) the DIP Facility will be secured by a charge on all the assets of the Arctic Glacier Parties and the existing security over all the assets of the Arctic Glacier Parties, as amended to secure the DIP Facility;
- (e) the DIP Facility is expressly provided for the limited purpose of facilitating the CCAA proceedings and U.S. recognition proceedings, including the SISP, and is subject to satisfaction of timelines and deadlines set out in the SISP, without amendment or extension. Satisfaction of such timelines and deadlines is a condition precedent to any drawdown under the DIP facility;



- (f) Disbursements are intended to match the cash requirements of the parties: to draw down under the DIP Facility, the borrowers must have provided a cash flow forecast in advance and submit a drawdown request, and draws are not to exceed the amount specified in Schedule 2 to the DIP Term Sheet;
- (g) interest is Prime + 7.50% per annum in Stage 1, and Prime + 5.50% per annum in Stage 2, compounded daily and payable monthly; default interest is an additional 2% per annum.
- (h) fees are payable to CPPIB in its capacity as administrative agent and collateral agent under the DIP Facility (the “**Agent**”) and to the Lenders as set out in the confidential “Fee Letter”, attached below as Confidential Exhibit “3”. These fees include (i) an Upfront Fee as compensation for making the DIP commitment; (ii) a Standby Fee as compensation for the availability of the DIP Facility funding; and (iii) to the Agent only, an Agency Fee as compensation for the Agent’s services under the DIP Facility in its capacity as Agent;
- (i) mandatory prepayments of the DIP Facility are required when, among other things, the cash in the control or possession of the Arctic Glacier Parties as at the end of any week exceeds \$10 million on a consolidated basis; voluntary prepayments result in permanent reduction of the DIP Facility;
- (j) there are requirements to comply with “Approved Budgets”, cash management and administration standards and practises satisfactory to the Agent and Lenders, financial covenants and reporting requirements;
- (k) the parties are to execute Definitive Documents, consistent with the DIP Term Sheet, including a definitive credit agreement, security documents, and opinions of counsel (the “**Definitive Documents**”); and,
- (l) the DIP Facility matures on the earlier of August 8, 2012, completion of a transaction in compliance with the SISP, or an event of default.

***Financial Statements***

119. Attached hereto as **Exhibits “R” ,“S” and “T”** respectively are copies of all financial statements, audited or unaudited, prepared during the year before this application as well as audited financial statements prepared in 2009 and 2010; specifically:

- (a) Audited Consolidated Financial Statements for Arctic Glacier for the fiscal year ending December 31, 2009;
- (b) Audited Consolidated Financial Statements for Arctic Glacier for the fiscal year ending December 31, 2010; and
- (c) Quarterly consolidated financial statements as at March 31, 2011, June 30, 2011 and September 30, 2011, recording the unaudited financial results of Arctic Glacier for the first, second and third quarter, respectively, of 2011, which have been reviewed by the Arctic Glacier auditors.

120. The September 30, 2011 Financial Statements and the related Management Disclosure and Analysis disclose the following:

- (a) Sales for the nine months ended September 30, 2011 totalled \$201.5 million, an increase of \$2.9 million or 1% compared to \$198.6 million for the same period of 2010. The increase is driven primarily by sales in new markets totalling \$1.5 million and the effect of the stronger Canadian dollar, which increased the U.S. dollar value of sales generated in Canadian markets by \$2.7 million. These amounts are offset by a decrease in sales in previously serviced markets of \$1.3 million or 1%, where favourable weather in the key summer months only partially overcame the impact of poor weather from March through June 2011 in most markets, significantly increased competitive activity in west coast markets and the continued weakened state of the North American economy.
- (b) Cost of sales for the nine month period ended September 30, 2011 totalled \$178.7 million, an increase of \$13.3 million or 8% compared to \$165.4 million for the same period of 2010. Cost of sales, excluding depreciation and amortization, for the nine months ended September 30, 2011 was \$149.3 million, an increase of \$7.4 million or

5% compared to \$141.9 million for the same period of 2010. The increase results from higher costs in previously serviced markets of \$5.0 million or 3% due primarily to rising fuel, packaging, vehicle and third-party distribution costs. In addition, the stronger Canadian dollar increased the U.S. dollar value of costs incurred in Canadian markets by \$1.5 million and costs of \$0.9 million were incurred to service customers in new markets. The depreciation and amortization component of cost of sales was \$29.4 million for the nine months ended September 30, 2011, an increase of \$5.9 million compared to \$23.5 million for the same period of 2010 primarily due to a reduction in the amortization period for customer relationship assets in 2011 that increased expense by \$9.2 million. This was partially offset by the effect of certain tangible assets becoming fully depreciated.

- (c) General and administrative expenses totalled \$7.6 million for the nine months ended September 30, 2011, compared to \$6.1 million for the same period of 2010. The increase results primarily from mark-to-market adjustments on unit based compensation related to unit options granted in previous years, severance costs related to restructuring, higher professional fees related to technology based initiatives, increased insurance costs and one-time costs related to the transition to International Financial Reporting Standards.
- (d) Finance costs totalled \$28.6 million for the nine months ended September 30, 2011, an increase of \$3.6 million compared to \$25.0 million for the same period of 2010 primarily due to increased borrowing rates following the March 2011 loan agreement amendments and September 2011 credit agreement defaults, accrual of payment-in-kind interest, increased amortization of deferred financing charges related to the March 2011 loan amendments, accretion of antitrust settlements payable, the maturity of interest rate swaps and the effect of the stronger Canadian dollar, which more than offset the interest savings following the maturity of the convertible debentures.
- (e) Current assets, including cash accounts receivable, inventories and prepaids totalled \$65,218,000 on September 30, 2011, an increase from \$55,331,000 on September 30, 2010. Combined with other assets (deferred tax asset, property, plan and equipment,

intangible assets and goodwill), asset value on September 30, 2011 totalled \$344,030,000, compared to \$384,021,000 on September 30, 2010.

- (f) Current liabilities, including accounts payable and accrued liabilities, provisions, antitrust related litigation settlements, other financial liabilities, convertible debentures and principal due within one year on long-term debt totalled \$240,378,000 on September 30, 2011, up from \$113,803,000 on September 30, 2010. Unit options, warrants, long-term debt, deferred tax liabilities and Unitholders' equity also increased to \$98,767,000 on September 30, 2011 up from \$91,996,000 on September 30, 2010.

### **SECURED DEBT**

121. As set out above, Arctic Glacier's principal secured debt consists of First Lien Debt, Second Lien Debt and the TD LC Obligations.

122. Pursuant to an Assignment and Assumption Agreement dated December 14, 2011 (the "**Assignment and Assumption Agreement**"), Arctic Glacier's Lenders under the Second Lien Credit Agreement obtained an assignment of the rights and security of the Former First Lien Lenders (defined below) pursuant to a purchase option in the Intercreditor Agreement among them.

123. Also on December 14, 2011, CPPIB as successor to TD as Canadian administrative agent for the Lenders of the First Lien Debt, CPPIB as administrative agent for the Lenders of the Second Lien Debt, and TD, as Master Collateral Agent acting under the Intercreditor Agreement, entered into a Third Amended and Restated Intercreditor Agreement. Attached hereto as **Exhibit "U"** is a copy of the Third Amended and Restated Intercreditor Agreement.

124. As a result of obtaining an assignment of the First Lien Debt and security (defined below), CPPIB and WF are the primary secured creditors of Arctic Glacier pursuant to a series of agreements, which are detailed below beginning at paragraph 126, and result in the following:

- (a) AGI and AGII are the principal borrowers (the "**Borrowers**") pursuant to term and revolving credit facilities;

(b) The obligations of the Borrowers are guaranteed by AGIF and the Additional Arctic Parties; and

(c) The principal and guarantee obligations to the Lenders are secured by security interests, mortgages and charges on all of the real and personal property assets of Arctic Glacier in both Canada and the U.S.

125. TD remains a secured creditor in relation to a credit facility, described below, maintained by TD after the assignment of the First Lien Debt to secure payment under a letter of credit previously issued under the First Lien Credit Agreement.

***First Lien Debt***

126. The First Lien Credit Agreement was originally among:

(a) AGI, as Canadian Borrower, and AGII, as U.S. Borrower;

(b) TD, Roynat Inc. and The Bank of Nova Scotia, as Canadian Lenders, and Toronto Dominion (New York) LLC (“**TDNY**”), The Bank of Nova Scotia and Roynat Business Capital Inc., as U.S. Lenders (together, the “**Former First Lien Lenders**”); and

(c) AGIF and the Additional Arctic Parties as guarantors.

Attached hereto as **Exhibit “V”** is a copy of the current First Lien Credit Agreement.

127. As of March 30, 2011, following Arctic Glacier’s decision to enter into proposed settlements relating to certain litigation against it described above, the First Lien Credit Agreement was amended pursuant to a “Consent & Second Amendment to Loan Agreement” attached hereto as **Exhibit “W”**.

128. As described above, CPPIB and WF obtained an assignment of the First Lien Debt and security from the Former First Lien Lenders in December, 2011.

129. The credit facilities pursuant to the First Lien Credit Agreement (the “**First Lien Credit Facilities**”), initially committed to a total of US\$70,000,000, consist of the following, to be used

for the purposes authorized therein, including ordinary working capital and general corporate purposes:

- (a) Canadian revolving term credit available to AGI (the “**Canadian Revolving Facility**”), initially committed in the amount of US\$15,000,000;
- (b) Canadian Swing Line revolving chequing account facility available to AGI (the “**Canadian Swing Line Facility**”), initially committed in the amount of US\$5,000,000;
- (c) U.S. revolving/reducing term credit initially available to the AGII and the Additional Arctic Parties, requiring annual permanent reduction of \$2,500,000 (the **U.S. Revolving Facility**”), initially committed in the amount of US\$45,000,000; and
- (d) U.S. Swing Line revolving chequing account facility available to AGII and the Additional Arctic Parties (the “**U.S. Swing Line Facility**”), initially committed in the amount of US\$5,000,000.

130. Pursuant to an agency resignation and acceptance agreement dated December 14, 2011, TD and The Toronto-Dominion Bank (Texas) LLC resigned from their positions as Canadian Administration Agent and U.S. Administration Agent, respectively, under the First Lien Credit Agreement and CPPIB accepted the appointment as Canadian Administration Agent and U.S. Administration Agent. As such, CPPIB is empowered to administer the First Lien Credit Facilities on behalf of the Lenders. TD was replaced as master collateral agent for the First Lien Credit Agreement and Second Lien Credit Agreement by CPPIB (the “**Master Collateral Agent**”) on January 12, 2012.

131. The commitment under the Revolving Facility has been “capped” by the Former First Lien Lenders as a result of the Covenant Defaults at their levels as at September 16, 2011, such that the present commitment limits are:

Canadian Swing Line Facility - US\$NIL

Canadian Revolving Facility – C\$7,000,000

U.S. Swing Line Facility – US\$NIL

U.S. Revolving Facility – US\$23,000,000

***Second Lien Debt***

132. Pursuant to the Second Lien Credit Agreement between the AGI and AGII, as Borrowers, and the Lenders, AGI and AGII borrowed C\$50,000,000 and US\$138,419,042 respectively pursuant to the following credit facilities:

- (a) C\$50,000,000 non-revolving term loan (the “**Second Lien Canadian Term Loan**”) in favour of AGI; and
- (b) US\$138,419,042 non-revolving term loan (the “**Second Lien U.S. Term Loan**”) in favour of AGII

Attached hereto as **Exhibit “X”** is a copy of the Second Lien Credit Agreement.

133. The Second Lien Credit Agreement provides that interest on the said borrowings is paid quarterly in arrears on April 30, July 31, October 31 and January 31 each year, and that principal is to be repaid by repayments each October 31 in the amounts of C\$500,000 and US\$1,384,190 together with certain excess cash flow payments of 75% of excess cash flow due 7 days after delivery of annual audited financial statements. As described above, Arctic Glacier was prohibited from making payments on account of the Second Lien Credit Facilities following the issuance of the Default Notice under the First Lien Credit Agreement in September, 2011 (and such suspension continued even after the prohibition was lifted as a result of the assignment of the First Lien Credit Facility to the Second Lien Lenders)..

134. As of March 30, 2011, following Arctic Glacier’s decision to enter into proposed settlements relating to certain litigation against it described above, the Second Lien Credit Agreement was amended pursuant to a “First Amendment to Loan Agreement and Consent” a copy of which is attached hereto as **Exhibit “Y”**.

135. Under the Second Lien Credit Agreement, CPPIB is the Administrative Agent for the Second Lien Lenders, empowered to administer the Second Lien Credit Facilities on behalf of the Lenders.

***Guarantees***

136. Payment and performance of the First Lien Debt Obligations and the Second Lien Debt Obligations is jointly guaranteed by guarantees given by AGIF and the Additional Arctic Parties as follows:

- (a) pursuant to an Amended and Restated Master Canadian Guarantee (the “**Canadian Guarantee**”) dated February 10, 2010 made in favour of TD, as Master Collateral Agent, AGIF and AGI guarantee the due, prompt and complete payment, performance and satisfaction of the obligations of the borrowers, AGI and AGII in relation to both the First Lien Credit Facilities and the Second Lien Credit Facilities; and
- (b) pursuant to a Master U.S. Guaranty (the “**U.S. Guaranty**”) dated as of December 9, 2004 and certain joinders of parties given in respect thereof, all made in favour of TD, as Master Collateral Agent, AGII and the Additional Arctic Parties guarantee the due, prompt and complete payment, performance and satisfaction of the obligations of the borrowers, AGI and AGII in relation to both the First Lien Credit Facilities and the Second Lien Credit Facilities.

Attached hereto as **Exhibits “Z”** and “**AA**”, respectively, are copies of the Canadian Guarantee and the U.S. Guaranty.

***TD Obligations***

137. At the time of the assignment of the First Lien rights and security, AGI requested that a letter of credit in the amount of US\$125,000 previously issued under the First Lien Credit Agreement in favour of Marlange Realty Associates (the “**Letter of Credit**”) that is required to carry on business remain outstanding as issued by TD following the assignment and be governed by a Letter of Credit Indemnity Agreement between AGI and TD.

138. In relation thereto AGI executed a Transition Credit Facilities agreement dated December 14, 2011 with TD to provide for the Letter of Credit to remain outstanding and expire in accordance with its terms. AGI also agreed to provide security to TD, contemporaneously with the execution of this agreement, including (i) an assignment of term deposits and credit balances



and an amount of cash collateral sufficient to TD to cover the obligations owing to TD by AGI, (ii) a letter of credit indemnity agreement, and (iii) such other security as TD may from time to time reasonably require. Attached hereto as **Exhibit “BB”** is a copy of the Transition Credit Facilities Agreement.

139. AGI executed a Letter of Credit Indemnity Agreement dated December 14, 2011, which governs the Letter of Credit (previously governed by the First Lien Credit Agreement). Attached hereto as **Exhibit “CC”** is a copy of the Letter of Credit Indemnity Agreement.

140. As security for obligations owing in relation to the Letter of Credit, TD acting in its former capacity as Master Collateral Agent under the Intercreditor Agreement and all costs and expenses of TD in connection with the Subordination Agreement (as defined below), the Assignment and Assumption Agreement, any related agreements or any insolvency proceeding involving AGI (collectively, the “**TD Obligations**”), AGI executed an Assignment of Term Deposits and Credit Balances (the “**Assignment of Credit Balances**”) to the extent of US\$133,305.56 and C\$270,000 all of which “are now or may hereafter be from time to time at the credit of [AGI] with TD”. The Assignment of Credit Balances provides that if TD permits AGI to make withdrawals from such monies, such permission is without prejudice to TD’s right to hold such monies as security.

141. Pursuant to a Subordination Agreement made as of December 14, 2011 (the “**Subordination Agreement**”) among TD, AGI, AGII, CPPIB and Computershare Trust Company of Canada (“**Computershare**”), the parties agreed that the Assignment of Credit Balances provided as security for the TD Obligations (the “**TD LC Security**”) shall rank ahead of the security of the Lenders relating to the Secured Indebtedness. The parties further agreed, among other things (all as more specifically set out in the Subordination Agreement), that in the event of an insolvency proceeding relating to AGI, to the extent permitted by law, the cash collateral under the Assignment of Credit Balances shall not be subject to or affected by any court-ordered super-priority charges; no orders or judgments sought shall affect the Assignment of Credit Balances without consent of TD; no steps shall be taken by either party that could impair or defeat the other party’s security or their enforcement of such security; no claims shall be asserted in an insolvency proceeding that could alter the priorities set out in the Subordination

Agreement; the TD Obligations must be fully and finally paid before any Lender shall be entitled to any payment or distribution in respect of the Sub-Debt Obligations (as defined therein) other than payment of interest, fees, expenses and other costs incurred by the Lenders if so authorized by the Court; and, other than the cash collateral under the Assignment of Credit Balances, nothing in the agreement shall prevent the Borrowers from selling any of their assets or business during an insolvency proceeding with the proceeds of sale being subject to the relative priorities and subordination set out in the agreement. Attached hereto as **Exhibit “DD”** is a copy of the Subordination Agreement made as of December 14, 2011.

## **SECURITY**

### *Canadian Security*

142. Subject to the changes described above arising from and in relation to the assignment of the First Lien Security and the Letter of Credit, payment and performance of the Secured Indebtedness, including guarantee obligations, are secured by certain security given by AGIF and AGI originally in favour of the Master Collateral Agent, including as follows:

- (a) Amended and Restated Master Canadian General Security Agreement made February 10, 2010, granting a general security interest in all present and future property, real and personal, assets and undertakings of Arctic Glacier; and
- (b) Amended and Restated Master Canadian Securities Pledge Agreement made February 10, 2010, by which AGIF mortgages, charges, pledges, assigns and hypothecates originally in favour of TD, as Master Collateral Agent, the AGI Shares and the Shareholder Loan.

143. Payment and performance of AGI’s obligations in respect of the Secured Indebtedness are secured by those certain trust deeds and Deeds of Hypothec (together, as supplemented and amended from time to time, the “**AGI Trust Deeds**”) in which Computershare (the successor to Montreal Trust Company) is the trustee. The AGI Trust Deeds are described in the list attached hereto as **Exhibit “EE”**.

144. The AGI Trust Deeds:

- (a) were either originally made by AGI or were originally made by certain predecessors of AGI in favour of Montreal Trust Company or others and were thereafter assumed and undertaken by AGI and assigned in favour of TD, as Master Collateral Agent,
- (b) provide for the issuance of debentures thereunder, and
- (c) secure the due payment of the such debentures and interest thereon by granting, assigning, mortgaging, and charging, as and by way of a fixed and specific mortgage and charge on the Canadian Owned Properties and by granting a security interest in the undertaking and all of the present and after-acquired real and personal property of AGI, all in favour of the Master Collateral Agent.

Attached hereto as **Exhibit “FF”** are copies of the AGI Trust Deeds.

145. The AGI Trust Deeds provide for the issuance of Series “A” and Series “B” debentures limited to an aggregate principal amount of \$500 million.

146. There are presently \$300 million Series “A” Debentures issued under each of the AGI Trust Deeds originally in favour of TD, as Canadian Administration Agent, and pledged to TD pursuant to that certain Amended and Restated Debenture Pledge Agreement (the “**First Lien Debenture Pledge Agreement**”) made February 10, 2010 between AGI and TD. By agreement, the principal value of the said debentures was reduced to \$150 million on or about February 10, 2010, to accommodate the requirements of the Second Lien Debt. Attached hereto as **Exhibit “GG”** is a copy of the First Lien Debenture Pledge Agreement.

147. There are presently \$350 million Series “B” Debentures issued in favour of CPPIB, as Administrative Agent for the Second Lien Lenders, and pledged in favour of CPPIB pursuant to that certain Debenture Pledge Agreement (the “**Second Lien Debenture Pledge Agreement**”) made February 10, 2010. Attached hereto as **Exhibit “HH”** is a copy of the Second Lien Debenture Pledge Agreement.

148. The security described above granted by the Arctic Glacier Parties is collectively referred to herein as the “**Canadian Security**”.

***Canadian Personal Property Security and Bank Act Registrations***

149. Attached hereto as **Exhibit “II”** is a copy of a Search Report (the “**PPR Search Report**”) which I am advised by G. Bruce Taylor, of Aikins, MacAulay & Thorvaldson LLP (“**Aikins**”), counsel to the Arctic Glacier Parties, was prepared by Arlene Phillips, a paralegal at Aikins, summarizing the results of searches made on or about February 16, 2012 of the Personal Property Registries and the Bank of Canada in each of the Provinces in which the Arctic Glacier Parties carry on business (being British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec), which disclose registrations in favour of:

- (a) the Master Collateral Agent, and CPPIB, as Administrative Agent, in relation to the Canadian Security and the U.S. Security, as defined below;
- (b) Computershare, in relation to the Deed of Hypothec in Quebec; and
- (c) Other parties listed in the PPR Search Report as secured parties, each of which appears to be an equipment lessor or financier.

Attached hereto as **Exhibit “JJ”** are copies of the Certificates of Search summarized in the PPR Search Report.

***Canadian Real Property Registrations***

150. Attached hereto as **Exhibit “KK”** is a copy of a Search Report (the “**Real Property Search Report**”) which I am advised by G. Bruce Taylor was also prepared by Arlene Phillips summarizing the results of searches made of land titles offices in Alberta, Manitoba, Ontario and Quebec respecting the Canadian Owned Properties, which disclose registrations of the AGI Trust Deeds, with no other registrations in the nature of mortgages, charges or security. Attached hereto as **Exhibit “LL”** are copies of the title searches summarized in the Real Property Search Report.

***U.S. Security***

151. The Secured Indebtedness of AGII and the Additional Arctic Parties to the Lenders, including guarantee obligations, is secured by mortgages, charges and security interests of or in all of the personal and real property of AGII and the Additional Arctic Parties pursuant to a

certain Master Security Agreement, certain Trade Mark Security Agreements, and various commercial deeds of trust, security agreements, assignments of leases and related documentation.

### ***TD LC Security***

152. As set out above, AGI executed an Assignment of Credit Balances to the extent of USD\$133,305.56 and C\$270,000 all of which “are now or may hereafter be from time to time at the credit of [AGI] with TD” as security for the TD Obligations. The TD LC Security ranks ahead of the security of the Lenders relating to the Secured Indebtedness pursuant to a Subordination Agreement, which also provided that, in the event of an insolvency proceeding relating to AGI, to the extent permitted by law, the cash collateral under the Assignment of Credit Balances shall not be subject to or affected by, among other things, any court-ordered super-priority charges as described in paragraph 141, above.

### **BANKING AND CASH MANAGEMENT**

153. The Arctic Glacier Parties participate in certain collective banking arrangements to facilitate operation of the Business.

154. In Canada,

- (a) AGI, as the only operating entity in Canada, maintains accounts, including a primary account at TD (the “**Primary AGI Account**”), and other regional accounts chiefly at TD but with one account at CIBC to serve the operations in Fort MacLeod, Alberta (together, the “**Canadian Regional Accounts**”).
- (b) Cash receipts from each Canadian regional location of AGI are deposited to the respective Canadian Regional Account daily, or as required in the off-season. Cheques on credit sales and credit card payments received by AGI are deposited into one of the Canadian Regional Accounts and funds received by electronic fund transfer (“**EFT**”) by AGI are deposited into the EFT account at TD in the name of AGI. Funds are swept from the various TD Canadian Regional Accounts to the Primary AGI Account on a daily basis and funds deposited to the CIBC Canadian

Regional Account are electronically transferred to the Primary AGI Account on a monthly basis in the off season and more frequently in the summer months.

- (c) AGI processes all disbursements from the AGI Primary Account, including Canadian payroll, lease payments, vendor cheques and preauthorized payments. AGI uses a purchasing card for many of its smaller transactions for purchases such as repairs and maintenance and supplies at regional locations. AGI is required to maintain a minimum amount of cash on hand with US Bank (“**US Bank**”), the provider of the purchasing card, and payments are made to US Bank as required from the AGI Primary Account in order to maintain the minimum cash amount on deposit;
- (d) The Additional Arctic Parties also hold accounts in Canada at TD;
- (e) There are three AGI accounts at TD that are identified with the names of certain Arctic Glacier customers which are supplied by both Arctic Glacier and, in certain regions, Co-Packers (certain national chain customers). Payments from these customers are deposited into the TD account designated for that customer (the “**Co-Packer Accounts**”) directly by such customers. Amounts received in Co-Packer Accounts include amounts for the goods provided by AGI as well as amounts for goods provided by the Co-Packer. The Co-Packer is due the amount in consideration for its goods, less a per bag administrative fee retained by AGI. AGI transfers funds from the Co-Packer Accounts to the Primary AGI Account on a periodic basis, as appropriate, in settlement of its administrative fee and the balance of funds are paid to the Co-Packer.

155. In the U.S.,

- (a) AGII holds corporate bank accounts with Wells Fargo Commercial Bank (“**Wells Fargo**”) and TD New York (“**TDNY**”)(the “**TDNY Account**”), including a primary AGII account at Wells Fargo (the “**Primary AGII Account**”) and a disbursements account at Wells Fargo (the “**Disbursements Account**”). The Additional Arctic Parties hold regional accounts with various banks as noted in **Exhibit “MM”** attached hereto (the “**Regional Accounts**”).

- (b) The regional location of each Additional Arctic Party deposits cash receipts into its respective Regional Account daily, or as required in the offseason. Cheques received on credit sales are received at the West St. Paul, MN facility and are sent by courier to accounts receivable at the Head Office in Winnipeg where they are deposited to the Primary AGII Account electronically. Payments received by credit card are deposited in the Primary AGII Account or in an account with Chase Bank for payments relating to the ICESurance business. Payments received by EFT are deposited in the Primary AGII Account or the TDNY Account for payments relating to the ICESurance business. Funds are swept from all Regional Accounts with Wells Fargo to the Primary AGII Account on a daily basis. Funds deposited in other Regional Accounts are electronically transferred to the Primary AGII Account by corporate accounting in Winnipeg once the balance is significant enough to warrant a transfer, which typically happens once per week in offseason and up to three times per week in peak season.
- (c) Disbursements issued from the Disbursements Account are funded by automatic transfers from the Primary Wells Fargo Account and include vendor cheques, pre-authorized payments and payments relating to U.S. business and lease payments. A small number of pre-authorized payments relating to U.S. business are also issued from the AGII accounts at TDNY. U.S. payroll payments are issued from the Wells Fargo payroll direct deposit and cheque accounts, which are funded from the Primary Wells Fargo Account, with the exception of Oregon, which requires its own payroll accounts by State Law.
- (d) AGII uses a purchasing card for many of its smaller transactions for purchases such as repairs and maintenance and supplies at regional locations. AGII is required to maintain a minimum amount of cash on hand with the provider of the purchasing card (US Bank) and payments are made to US Bank as required from the Disbursement Account in order to maintain the minimum cash amount on deposit.
- (e) There are 11 AGII accounts at TD that are identified with the names of certain Arctic Glacier customers which are supplied by both Arctic Glacier and, in certain regions, Co-Packers. Receivables from these customers are deposited into the TD account

designated for that customer (the “**U.S. Co-Packer Accounts**”) directly by such customers. Amounts received in U.S. Co-Packer Accounts include amounts for the goods provided by the Additional Arctic Parties as well as amounts for goods provided by the Co-Packer. The Co-Packer is due the amount in consideration for its goods, less a per bag administrative fee retained by AGII. AGII transfers funds from the U.S. Co-Packer Accounts to the primary US netting account with TD in settlement of its administrative fee and the balance of funds are paid to the Co-Packer.

156. The effect of these arrangements (collectively referred to as the “**Cash Management System**”) is that there could be inter-company balances created among the various Arctic Glacier Parties. That is, (i) from time to time as funds permit and operations require, revenues from the operations of the Additional Arctic Parties in the US may be advanced or transferred to AGI and used to fund AGI’s Canadian operations, and generally not the other way around, and (ii) revenues from the operations of Additional Arctic Parties are routinely swept, comingled and used as a single source of revolving or repaying US credit facilities and funding the operations of the Additional Arctic Parties. The Arctic Glacier Parties’ accounting systems can and do track advances from the US operations to Canada described in (i) above, but do not track the exchanges of funds described in (ii) above. These are usual and necessary inter-company arrangements in the conduct of Arctic Glacier’s Business and, accordingly, the draft Order provides that these existing cash management arrangements may continue and creates a non-priming charge to secure such inter-company amounts.

### **THE MARKETING PROCESS**

157. The purpose of the SISP is to seek out and identify parties that express an interest in refinancing, recapitalizing or purchasing the Business. In my opinion, identifying such parties will assist Arctic Glacier in its decision-making with respect to its restructuring options and will help to identify the best opportunities for optimizing the returns for the Arctic Glacier Parties’ creditors and stakeholders.

158. In summary, the proposed SISP involves the following elements, expected to take approximately 160 days from the date of the granting of an Initial Order herein to closing:



- (a) the Monitor will supervise the SISP;
- (b) to become a “Qualified Bidder”, “Potential Bidders” must provide certain documentation to the Financial Advisor (defined below), including a prescribed non-disclosure agreement and satisfy certain other considerations;
- (c) Qualified Bidders will be provided with a Confidential Information Memorandum and access to an online data room for initial due diligence;
- (d) for a period of 35 days following the granting of the Initial Order (“**Phase 1**”) herein, the Financial Advisor will solicit non-binding letters of intent (“**LOI’s**”) from third party Qualified Bidders;
- (e) within 5 business days of the end of Phase 1, the Monitor, in consultation with TDSI, the CPS and Arctic Glacier will determine if any of the LOI’s meet the prescribed criteria and satisfy other considerations to become “Qualified LOI’s”, as determined by the Monitor in consultation with the Financial Advisor, the CPS and the Arctic Glacier Parties. If the Monitor, after consultation, determines there is a reasonable prospect for a “Qualified Bid”, it may make a recommendation to the Special Committee;
- (f) if there are any Qualified LOIs, there will be a 45 day “Phase 2” (which may be extended to a maximum of 60 days as set out in the SISP), to permit further due diligence and to obtain final “Qualified Bids”, meeting certain prescribed criteria and satisfying other considerations, as determined by the Monitor in consultation with the Financial Advisor, the CPS and the Arctic Glacier Parties, including that the purchase price or funds to be invested will be in an amount sufficient to pay the “Lender Claims” (as defined therein) and as calculated on the closing of the transaction contemplated;
- (g) the Lenders are deemed to be Qualified Bidders;
- (h) Qualified Bids will be evaluated and, if one or more Qualified Bids is received, the Monitor, exercising its reasonable business judgment and following consultation with

the Financial Advisor, CPS and Arctic Glacier will recommend to the Special Committee that the most favourable Qualified Bid be selected;

- (i) Once definitively documented and approved by the Special Committee, a selected Qualified Bid will become the “Successful Bid” and recommended to this Honourable Court for approval.

159. I believe it is important to start the SISP promptly to maximize opportunities to identify appropriate interested parties while preserving the enterprise value of the Business. It must be noted that the DIP loan requires that Arctic Glacier respect and meet the deadlines set out in the SISP and maturity of the DIP coincides with the outside date of the SISP.

160. With the approval of the Lenders and subject to approval of the Court, Arctic Glacier intends to enter into an agreement, prior to the filing, to appoint TDSI as Financial Advisor (the “**Financial Advisor**”). The role of the Financial Advisor will be to assist the Trustees and Arctic Glacier and to work with the CPS to identify interested parties and negotiate the terms of a refinancing or recapitalization of Arctic Glacier or a sale of the Business, in whole or in part, in consultation with the Monitor including such powers and responsibilities as are set out in the engagement letter previously agreed by the Arctic Glacier Parties and TDSI (the “**Engagement Letter**”). This Engagement Letter is provided to the Court as **Confidential Exhibit “2”** under seal. I am advised by Art Chipman at TDSI that this Confidential Exhibit contains highly confidential information, including sensitive information relating to the Strategic Transaction.

161. I am advised by TDSI and believe that the timelines contemplated by the SISP are reasonable and will enable Arctic Glacier to maximize enterprise value.

### **CCAA RELIEF IS APPROPRIATE**

162. Because of the Arctic Glacier Parties’ financial difficulties, the ongoing or ‘uncured’ Covenant Breaches and the acceleration and demand of its Secured Indebtedness, the Arctic Glacier Parties are insolvent and a stay of proceedings is essential for the continued operations of the Business. Such a stay would create the necessary environment to allow the Arctic Glacier Parties to develop and implement a restructuring plan, pursue the SISP and satisfy or arrange its obligations to creditors.

163. Granting the relief requested will enable the Business to be carried on in the ordinary course and will preserve the value of the Business, customer relationships and ongoing employment. Stability is necessary to facilitate on-going customer, supplier and employee support that is critical to a successful restructuring or sale of the Business as a going concern.

164. The Applicants are debtor companies entitled to protection pursuant to the CCAA. The documents required by section 10(2) of the CCAA are attached above as **Exhibits P and R-T**, and the Arctic Glacier Parties are acting and have acted in good faith and with due diligence in respect to this Application and the matters described herein..

### **THE PROPOSED ORDER**

#### ***Administration Charge and Financial Advisor Charge***

165. The proposed Order provides for the payment of certain advisors who will assist the Arctic Glacier Parties throughout the process; specifically, the proposed Order provides for payment of the Arctic Glacier Parties' legal advisors, the Monitor, the Monitor's legal advisors, and the Financial Advisor, among others. This also includes counsel retained by the Directors and the Trustees, which I believe is necessary for their effective participation in these proceedings.

166. The proposed Order creates both an Administration Charge (to the maximum amount of US\$2,000,000) and a Financial Advisor Charge (to the maximum amount of an additional US\$2,000,000), which charges shall rank first, in priority to, among other things, the Secured Indebtedness, on a *pari passu* basis with each other.

167. The maximum amounts of these charges were established based on estimates provided by the various parties who benefit from this charge. The Monitor reviewed these estimates and concluded that the quantum of the proposed charges are reasonable in light of those estimates.

#### ***Indemnity and Directors' Charge***

168. The proposed Order contemplates an indemnification of former, current or future Trustees of AGIF and directors and officers of AGI and the Additional Arctic Parties (the "**Directors**") and the creation of a charge over the present and after-acquired assets of Arctic Glacier as security to protect them from statutory claims and liabilities that they may incur as

Trustees, directors and officers relating to the failure of the Arctic Glacier Parties to pay or perform certain obligations that may arise after the filing date (including but not limited to outstanding and future wages, salaries, employee and any pension benefits, vacation pay, bonuses, expenses and other like amounts) (the “**Directors’ Charge**”).

169. In this regard, the Arctic Glacier Parties estimate that the potential statutory liabilities to which the Directors are exposed over the presently expected 6 month CCAA process, are approximately US\$2,501,000, based on average payrolls and obligations, accrued vacation pay, withholding taxes and the amounts outstanding or average monthly remittances for sales taxes.

170. The Directors do have insurance coverage (the “**D&O Insurance**”) with primary coverage through Arch Insurance Company (Canada Branch) (the “**Insurer**”) with a limit of liability (for all types of coverage, described below) of \$10,000,000, and excess liability policies in the same form from Lloyds Underwriter Syndicates (\$15,000,000 in excess of the primary \$10,000,000 limit of liability) and Chubb Insurance Company of Canada (\$10,000,000 in excess of the \$25,000,000 limit of liability). Based on my experience in obtaining this D&O Insurance policy, I believe that these are the best policies available to the Directors, who would be unable to obtain more extensive coverage at a reasonable cost. Key elements of the D&O Insurance policy include:

- (a) it expires December 31, 2012;
- (b) it provides three types of coverage: (a) Directors and Officers Insurance; (b) Corporate Liability Arising from Indemnifiable Loss; and (c) Corporate Liability Arising from Securities Claims;
- (c) the definition of insured person has been amended to include Bruce Robertson in his capacity as CPS;
- (d) Coverage with respect to Directors and Officers Insurance (coverage “a”) states that the Insurer “shall pay Loss on behalf of the Insured Persons for which the Insured Persons are not indemnified and which the Insured Persons become legally obligated to pay as a result of a Claim first made during the Policy Period or Discovery Period,

if applicable, against the Insured Persons for a Wrongful Act which takes place during or prior to the Policy Period”.

Attached hereto as **Exhibit “NN”** is a copy of the D&O Insurance policy issued by the Insurer.

171. However, there are certain limitations and exclusions to the D&O Insurance coverage that may leave the Directors exposed to personal liability. The proposed Directors’ Charge is to protect the Directors against exposure beyond that which is covered by the D&O Insurance. In my opinion, it is important to have a Directors’ Charge to keep the Directors in place during the restructuring and to protect them against liabilities that they could incur during the restructuring that are not covered by the D&O Insurance.

172. Accordingly, the proposed Order provides for a Directors’ Charge to rank second in priority after the Administration Charge and Financial Advisor Charges, in the maximum amount of US\$2,700,000. The Lenders have agreed to the proposed priority of this charge.

### ***DIP Financing***

173. The proposed Order also includes a provision for interim, debtor-in-possession financing. As set out above the Lenders have offered interim financing to the Arctic Glacier Parties on the terms set out in the DIP Loan Term Sheet, which financing is required during the CCAA stay period to enable the Arctic Glacier Parties to continue the Business and to pursue its sale or restructuring. The DIP Loan Term Sheet is attached above as Exhibit “Q”. The confidential DIP Fee Letter, which contains commercially sensitive pricing information, is attached as **Confidential Exhibit “3”**.

174. The proposed Order provides a DIP Lenders’ Charge, which charge shall not exceed C\$28,600,000 plus US\$26,400,000 (the “**DIP Lenders’ Charge**”), calculated in accordance with Arctic Glacier’s projected cash requirements over the period February 22, 2012 to August 8, 2012, as described in the CCAA Projections. The DIP Lenders’ Charge ranks fourth behind the Administration Charge and the Financial Advisor Charge and the Directors’ Charge and behind the first C\$1,000,000 of the Critical Suppliers’ Charge. As set out below, neither this charge nor any other charge created in the proposed Order ranks in priority to the TD LC Security, any

statutory encumbrance in respect of any amounts under the Wage Earners' Protection Program that are subject to a super priority claim under the *Bankruptcy and Insolvency Act (Canada)*, or any validly perfected purchase money security interest in favour of a secured creditor.

175. The DIP Loan Term sheet does not provide for payment of any indebtedness outstanding to the Lenders prior to the date of the Initial Order other than for continuing payment of interest, costs and expenses on the First Lien Credit Agreement and fees and expenses under the Second Lien Credit Agreement. The DIP Lenders' Charge does not secure any pre-filing obligations.

176. The DIP financing is essential for completion of the SISP and will support a CCAA process that the Arctic Glacier Parties believe will enhance the payment prospects for their creditors and, in any event, in significant part reflects the usual course need for additional working capital at this time of year. Accordingly, I believe that in the circumstances the DIP financing and the DIP Lenders' Charge will not materially prejudice any creditor.

#### ***KERP Charge***

177. On February 16, 2012, the Trustees approved terms of a KERP (attached above as Confidential Exhibit 1) with the Key Employees (set out in the list attached above as Exhibit F). As set out above in paragraph 79, I believe each such person is vital to a restructuring of Arctic Glacier and it is in the best interests of Arctic Glacier and its stakeholders to secure the employment of these officers and employees during the restructuring contemplated by this Application, and provide certain incentives and inducements to them to do so. Accordingly, the proposed Order provides for the payment by AGI to the Key Employees in accordance with the KERP.

178. The proposed Order also contemplates a charge (the "**KERP Charge**") as security for payment of the amounts hereafter owing by AGI to the Key Employees under the KERP. The proposed Order contemplates that the KERP Charge shall rank fifth in priority after the Administration Charge and Financial Advisor Charge, the Directors' Charge, the first C\$1,000,000 of the Critical Supplier Charge and the DIP Lenders' Charge to a maximum amount of C\$2,600,000, and ranks *pari passu* with the Critical Supplier Charge for any amounts above C\$1,000,000.

***Critical Supplier Charge***

179. As set out above, beginning at paragraph 110, the proposed Order includes a Critical Supplier Charge over the assets of AGI only, in the amount of the value of the goods and/or services received by AGI after the date of the Initial Order as security for payment less all amounts paid to the Critical Suppliers in respect of such goods and services.

180. The Critical Supplier Charge is proposed to rank third in priority to a maximum of C\$1,000,000 and then, for any amounts owing under the Critical Supplier Charge above C\$1,000,000, fifth in priority after the DIP Charge, *pari passu* with the KERP Charge. The Critical Supplier Charge is over the assets of AGI only since all Critical Suppliers are Canadian suppliers who supply to AGI.

***Cash Management and Intercompany Balances***

181. As set out above, the effect of the existing cash management arrangements, which the Arctic Glacier Parties intend to continue to use, is that there could be inter-company balances created among the various Arctic Glacier Parties. Accordingly, the proposed Order provides that AGI and AGIF (collectively “**Arctic Canada**”) are authorized to make loans, advances or transfers of funds to AGII and the Additional Arctic Parties (collectively “**Arctic U.S.**”) from time to time in accordance with the Cash Management System (described above beginning at paragraph 153) and Arctic U.S. is authorized to make loans, advances or transfers of funds to Arctic Canada.

182. The proposed Order further provides that such inter-company advances by Arctic Canada are secured by a charge over the present and after-acquired assets of Arctic U.S. and the advances by Arctic U.S. secured by a charge over the present and after-acquired assets of Arctic Canada (collectively, the “**Inter-Company Balances Charge**”). The proposed Order contemplates that the Inter-Company Balances Charge shall rank sixth in priority after the Administration Charge and Financial Advisor Charge, the Directors’ Charge, the DIP Lenders’ Charge, the KERP Charge and the Critical Supplier Charge (both above and below C\$1,000,000) (together with the Inter-Company Balances Charge, the “**Charges**”).

***Charges Not in Priority to TD Obligations, Super Priority Claims and PMSIs***

183. The proposed Order provides that each of the Charges shall constitute a charge on the current and future assets, undertakings and properties of the Arctic Glacier Parties, and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person, notwithstanding the order of perfection or attachment, except for (i) any validly perfected purchase money security interest in favour of a secured creditor, (ii) any statutory Encumbrance existing on the date of the Order in favour of any Person which is a “secured creditor”, as defined in the CCAA, in respect of any amounts under the Wage Earners’ Protection Program that are subject to a super priority claim under the BIA, including source deductions from wages, employer health tax, workers compensation, vacation pay and banked overtime for employees; or (iii) the TD LC Security.

***Summary of Proposed Charges***

184. To summarize, the proposed Order provides for the following ranking of the Charges in relation to one another:

- (a) First – The Administration Charge (to the maximum amount of US\$2,000,000) and the Financial Advisor Charge (to the maximum amount of an additional US\$2,000,000) on a *pari passu* basis;
- (b) Second – The Directors’ Charge (to the maximum amount of US\$2,700,000);
- (c) Third – The Critical Supplier Charge (to the maximum amount of C\$1,000,000, only as against the assets of AGI);
- (d) Fourth - The DIP Lenders’ Charge (to the maximum amount of C\$28,600,000 plus US\$26,400,000);
- (e) Fifth – The KERP Charge (to the maximum amount of C\$2,600,000) and the Critical Supplier Charge (for any amounts above C\$1,000,000) on a *pari passu* basis (with the Critical Supplier Charge as against the assets of AGI only); and,
- (f) Sixth – The Inter-Company Balances Charge.



***The Monitor***

185. In accordance with the requirements of the CCAA, subject to the Court's approval, the Arctic Glacier Parties have engaged A&M to act as the monitor if the Court grants the relief sought herein. A&M has consented to its appointment as Monitor. I am advised by Marc Wasserman, counsel to A&M in these proceedings, that A&M is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act (Canada)* and not subject to any restrictions on who may be a monitor pursuant to section 11.7(2) of the CCAA.

***Documents to be Sealed***

186. The proposed Order provides for the KERP, Financial Advisor Engagement Letter and DIP Fee Letter, which are attached hereto as Confidential Exhibits 1, 2 and 3, respectively, to be provided to the Court on a confidential basis and sealed due to the commercial sensitivity and highly confidential nature of the information contained therein. These documents and their confidential nature are described above, including that these documents contain commercially sensitive information.

***Huntington Transaction***

187. The proposed Order also provides that the Arctic Glacier Parties may complete any transactions provided for in the Commitment Letter or Definitive Documents, including the sale of the land and building located in Huntington, NY, permitted by the terms of the Commitment Letter or Definitive Documents.

188. Arctic Glacier, in the ordinary course of its business, is in the process of moving its distribution operations in its Long Island region from owned premises in Huntington, New York to premises to be leased at another location on Long Island. After listing the Huntington property, Arctic Glacier negotiated an agreement to sell the Huntington property for a selling price of US\$1,065,000. The buyer is presenting completing a phase 2 environmental assessment and has until February 29, 2012 to complete this assessment, which is to close 30 days thereafter. The Lenders have consented to the sale and completion of the sale is permitted under the DIP Commitment Letter.

## **CHAPTER 15 APPLICATION**

189. As set out above, if the relief requested by the Arctic Glacier Parties is granted, it is the intention of the Arctic Glacier Parties to seek protection in the U.S. for AGII and the Additional Arctic Parties under Chapter 15 of the U.S. Bankruptcy Code. The Arctic Glacier Parties intend to file petitions under Chapter 15 on the basis that Winnipeg is their “centre of main interest”. The Arctic Glacier Parties intend that A&M, as proposed Monitor, would be the foreign representative in the Chapter 15 proceedings.

## **CONCLUSION**

190. I believe the CCAA protection requested by Arctic Glacier is appropriate, necessary and in the best interest of the Arctic Glacier Parties and their stakeholders. If this Honourable Court should grant the relief sought by the Arctic Glacier Parties herein, I believe that there would be no material prejudice to the position of the existing creditors and Unitholders when compared to the consequences if the CCAA protection, including the stay and provision for interim financing, is not granted.

191. The Board of Trustees of AGIF and the Boards of Directors of each of the other Applicants have passed resolutions authorizing the making of the within application.

## **RELIEF REQUESTED**

192. Accordingly, this affidavit is sworn in support of an application by the Arctic Glacier Parties for an order pursuant to the CCAA, among other things:

- (a) declaring that the Applicants are debtor companies to which the CCAA applies;
- (b) authorizing the Arctic Glacier Parties to carry on the Business in a manner consistent with the preservation of the property of Arctic Glacier and to make certain payments in connection with the Business and the proceedings herein;
- (c) granting a stay of proceedings against the Applicants and Glacier LP;
- (d) declaring certain suppliers of AGI “critical suppliers”;

- (e) providing an Administration Charge, Financial Advisor Charge, DIP Lenders' Charge, KERP Charge, Critical Supplier Charge and Inter-Company Balances Charge;
- (f) appointing Alvarez & Marsal Canada Inc. as monitor in these proceedings;
- (g) permitting the Arctic Glacier Parties to conduct the SISP; and
- (h) granting such other relief as may be appropriate.

SWORN BEFORE ME at the City )  
of Winnipeg, in the Province of )  
Manitoba, this 21st day of )  
February, 2012. )  
)  
)

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A Notary for and in the Province of  
Manitoba



\_\_\_\_\_  
**KEITH MCMAHON**

## **SCHEDULE A – ADDITIONAL APPLICANTS**

Arctic Glacier California Inc.  
Arctic Glacier Grayling Inc.  
Arctic Glacier Lansing Inc.  
Arctic Glacier Michigan Inc.  
Arctic Glacier Minnesota Inc.  
Arctic Glacier Nebraska Inc.  
Arctic Glacier Newburgh Inc.  
Arctic Glacier New York Inc.  
Arctic Glacier Oregon Inc.  
Arctic Glacier Party Time Inc.  
Arctic Glacier Pennsylvania Inc.  
Arctic Glacier Rochester Inc.  
Arctic Glacier Services Inc.  
Arctic Glacier Texas Inc.  
Arctic Glacier Vernon Inc.  
Arctic Glacier Wisconsin Inc.  
Diamond Ice Cube Company Inc.  
Diamond Newport Corporation  
Glacier Ice Company, Inc.  
Ice Perfection Systems Inc.  
ICESurance Inc.  
Jack Frost Ice Service, Inc.  
Knowlton Enterprises, Inc.  
Mountain Water Ice Company  
R&K Trucking, Inc.  
Winkler Lucas Ice and Fuel Company  
Wonderland Ice, Inc.