
SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION

CREDIT AGREEMENT

dated as of March 20, 2012

between

ARCTIC GLACIER INC. AND ARCTIC GLACIER INTERNATIONAL INC.

as Debtors, Debtor Companies, Debtors-in-Possession and Borrowers

and

ARCTIC GLACIER INCOME FUND,
and the direct and indirect subsidiaries
of the Borrowers party hereto from time to time,

as Guarantors

and

CPPIB CREDIT INVESTMENTS INC.,
WEST FACE LONG TERM OPPORTUNITIES LIMITED PARTNERSHIP,
WEST FACE LONG TERM OPPORTUNITIES (USA) LIMITED PARTNERSHIP,
and **WEST FACE LONG TERM OPPORTUNITIES GLOBAL MASTER L.P.,**
and such other Lenders party hereto from time to time

as Lenders

and

CPPIB CREDIT INVESTMENTS INC.

as Agent

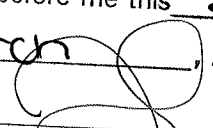
This is Exhibit " B " referred to in the
Affidavit of Kerth McMahon
SWORN before me this 28 day
of March, A.D. 2012

A Notary Public
in and for the Province of Manitoba

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**SENIOR SECURED SUPER-PRIORITY
DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

THIS AGREEMENT is made as of the 20th day of March, 2012

AMONG:

CPIB CREDIT INVESTMENTS INC., and any successor or assignee, as administrative agent

(the “**Agent**”)

-and -

CPIB CREDIT INVESTMENTS INC., WEST FACE LONG TERM OPPORTUNITIES LIMITED PARTNERSHIP, WEST FACE LONG TERM OPPORTUNITIES (USA) LIMITED PARTNERSHIP, WEST FACE LONG TERM OPPORTUNITIES GLOBAL MASTER L.P., and the Lenders from time to time party hereto

(the “**Lenders**”)

-and -

ARCTIC GLACIER INC., a corporation incorporated under the laws of the Province of Alberta

(together with its permitted successors and assigns, the “**Canadian Borrower**”)

-and -

ARCTIC GLACIER INTERNATIONAL INC., a corporation incorporated under the laws of the State of Delaware

(together with its permitted successors and assigns, the “**US Borrower**”)

-and -

ARCTIC GLACIER INCOME FUND and the direct and indirect subsidiaries of the Borrowers party hereto

(collectively, the “**Guarantors**”)

RECITALS:

- A. On February 22, 2012 (the “**CCAA Filing Date**”), the Obligors as debtors-in-possession in proceedings (the “**CCAA Proceedings**”) filed for and obtained protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), with The Queen’s Bench, Winnipeg Centre (the “**CCAA Court**”) pursuant to the order of the Honourable Madame Justice Spivak dated February 22, 2012, as amended, varied, modified or restated from time to time (the “**Initial Order**”).

- B. On February 22, 2012, the Obligors also filed for recognition of the CCAA Proceedings as foreign main proceedings pursuant to Chapter 15 of Title 11 of the United States Code 11 U.S.C. §§101-1532, as amended (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**US Court**”, together with the CCAA Court, the “**Courts**”).
- C. Pursuant to the DIP Term Sheet entered into on February 21, 2012, the Borrowers have requested and the Lenders have agreed to provide a senior secured super-priority loan facility (the “**DIP Facility**”) to the Borrowers for the purposes set forth in Section 2.10. The DIP Term Sheet requires that the parties enter into this Agreement and the other Loan Documents.

In consideration of the premises and mutual covenants set forth herein and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01 Certain Defined Terms

As used in this Agreement, the following terms shall have the following meanings (such terms to be equally applicable to both the singular and plural forms of the terms defined):

“**Accounting Changes**” means (i) changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Canadian Institute of Chartered Accountants (or successor thereto or any agency with similar functions); or (ii) changes in the application of such accounting principles adopted by a Borrower and concurred in by such Borrower’s independent chartered accountants.

“**Advance**” means any drawdown of the DIP Facility by a Borrower.

“**Affidavit**” means the Affidavit of Keith W. McMahan sworn February 21, 2012 and filed in connection with the Proceedings.

“**Affiliate**” means an “affiliate” as defined in the CBCA.

“**Agent**” has the meaning given to such term in the Recitals to this Agreement.

“**AGF**” means Arctic Glacier Inc., a corporation incorporated in Alberta.

“**AGII**” means Arctic Glacier International Inc., a corporation incorporated in Delaware.

“**Agreement**” means this senior secured super-priority debtor-in-possession credit agreement and the schedules and exhibits hereto and any amendments, supplements, restatements or other modifications hereto from time to time.

“**Applicable Exchange**” means, with respect to any Person as at any date of reference, the TSX, the TSX Venture Exchange or the CNSX, in each case being the exchange on which that Person is or was listed as of that date of reference.

“**Applicable Law**” means, in respect of any Person, property, transaction, event or course of conduct, all applicable laws, statutes, rules, by-laws and regulations, regulatory policies and all applicable official directives, orders, judgments and decrees of Governmental Authorities in each case having the force of law (except for the purposes of Section 2.16, which extends to any such policies, directives or orders whether or not having the force of law).

“**Approved Budgets**” means the Initial Approved Budget and subsequent budgets prepared by the Obligors and approved by the Lenders specifying all expenditures of the Obligors (including any disbursement, payment, transfer, distribution or other use of funds, whether borrowed under the DIP Facility or otherwise).

“**Approved Settlement**” has the meaning ascribed thereto in Section 5.02.

“**Arizona Lease**” means the lease option agreement by and between Desert Mountain Ice, LLC as landlord and Arctic Glacier California Inc. as tenant dated May 25, 2006 as amended, restated, modified or supplemented from time to time in accordance with terms of this Agreement.

“**Assignment Agreement**” means an assignment agreement entered into by a Lender and an assignee, and accepted by the Agent, in accordance with Section 9.06 and in substantially the form of Exhibit A hereto.

“**Bankruptcy Code**” has the meaning given to such term in the Recitals to this Agreement.

“**Benefited Creditors**” has the meaning attributed to such term in the Intercreditor Agreement and, as of the Closing Date, includes the Agent on behalf of the Lenders and the First Lien Agent on behalf of the First Lien Lenders and the Second Lien Agent on behalf of the Second Lien Lenders.

“**BIA**” means the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c.B-3, as amended.

“**Borrowers**” means the Canadian Borrower and the US Borrower, *provided that* the US Borrower shall not be considered to be a Borrower hereunder until the entry of the Chapter 15 DIP Order by the US Court.

“**Business**” means the business currently carried on by the Obligors consisting of the ownership and operation of ice production, packaging and distribution facilities and related merchandising, franchising and licensing operations in Canada and the United States.

“**Business Day**” means a day (other than Saturday or Sunday) on which banks are generally open for business in Toronto, Ontario and Winnipeg, Manitoba.

“**Canadian Benefit Plan**” means a benefit plan under Canadian Employee Benefits Legislation for which any Borrower has been an “employer” or has held equivalent status under Canadian Employee Benefits Legislation within the past five (5) years.

“**Canadian Borrower**” means AGI.

“**Canadian Dollars**” and “**\$**” means lawful money of Canada.

“**Canadian Employee Benefits Legislation**” means the *Canada Pension Plan* (Canada), the *Pension Benefits Standards Act* (Canada) and the regulations thereunder, and all provincial counterparts thereof, in each case as amended or replaced from time to time.

“Canadian Employee Plans” means any employee benefit, health, welfare, supplemental unemployment benefit, bonus, pension, profit sharing, deferred compensation, incentive compensation, stock purchase, retirement, life, accident or hospitalization insurance, medical, dental, legal, disability and similar plans or arrangements or practices relating to the employees or former employees of any Borrower which are currently maintained or were maintained at any time in the last five (5) calendar years.

“Canadian Loan” means each Canadian Dollar denominated Advance made by the Lenders to the Borrowers under the DIP Facility.

“Canadian Pension Event” means (a) the termination in whole or in part of any Canadian Benefit Plan or Canadian Employee Plan, (b) the merger of a Canadian Benefit Plan with another pension plan, (c) a material change in the funded status of a Canadian Benefit Plan or Canadian Employee Plan, (d) the receipt by any Borrower of any notice concerning liability arising from the withdrawal or partial withdrawal of any Borrower or any other party from a Canadian Benefit Plan or Canadian Employee Plan, (e) the occurrence of an event under the ITA that could reasonably be expected to affect the registered status of any Canadian Benefit Plan or Canadian Employee Plan, (f) the receipt by any Borrower of any order or notice of intention to issue an order from the applicable pension standards regulator that could reasonably be expected to affect the registered status or cause the termination (in whole or in part) of any Canadian Benefit Plan or Canadian Employee Plan, (g) the receipt of notice by the administrator or the funding agent of any failure to remit contributions to a Canadian Benefit Plan or Canadian Employee Plan, (h) the issuance of either any order (including an order to remit delinquent contributions to the Pension Benefits Guarantee Fund of Ontario) or charges which may give rise to the imposition of any fines or penalties to or in respect of any Canadian Benefit Plan or Canadian Employee Plan or the issuance of such fines or penalties, or (i) any other extraordinary event or condition with respect to a Canadian Benefit Plan or Canadian Employee Plan that could reasonably be expected to result in a lien or any acceleration of any statutory requirements to fund all or a substantial portion of the unfunded accrued benefit liabilities of such plan.

“Canadian Prime Rate” means, for any particular day, the variable rate of interest per annum, calculated on the basis of a year of three hundred and sixty-five (365) days, equal to the rate of interest per annum published by the Bank of Canada for such day as the “prime business rate”.

“Canadian Resident” means a Person who is not a non-resident of Canada for purposes of the ITA or who is an authorized foreign bank deemed to be a resident in Canada for purposes of Part XIII of the ITA in respect of any amounts to be paid or credited to such Person under this Agreement and any other Loan Document.

“Capital Expenditures” means, for any period with respect to any Person, the aggregate expenditures paid or payable during such period by such Person for the acquisition or improvement of fixed assets which extend the life or increase the productivity of such assets and which expenditures will be capitalized and depreciated over the estimated useful life of such assets and any other operating expenses which are capitalized, determined in accordance with GAAP; *provided that* “Capital Expenditures” shall not include routine, day-to-day maintenance of fixed assets including, without limitation, the replacement of worn out parts.

“Capitalized Leases Obligations” of any Person means all monetary obligations of such Person relating to any leasing or similar arrangement which have been (or, in accordance with GAAP, should be) classified as capitalized leases, and for purposes of each Loan Document the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP, and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the

first date upon which such lease may be terminated by the lessee without payment of a premium or a penalty

“**Carve-Out**” means (i) the prior ranking charges expressly specified in the Initial Order (including the Critical Supplier Charge up to an aggregate amount of \$1,000,000), (ii) any statutory encumbrance existing on the date of the Initial 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; (iii) properly registered, valid and enforceable purchase money security interests, as determined by a court of competent jurisdiction, existing as of the date of the DIP Term Sheet, and (iv) the TD LC Security.

“**Cash Management Order**” means paragraph 5 of the Initial Order.

“**Cash Management Procedures**” means the system adopted by the Obligors, and acceptable to the Lenders, with respect to the cash flow operations of the Obligors (including the location of deposit accounts, credit and overdraft arrangements, funds transfer procedures and cash sweep and disbursement protocols).

“**Cashflow Forecast**” has the meaning given to such term in Section 5.03(a)(v).

“**CBCA**” means the *Canada Business Corporations Act*.

“**CCAA**” has the meaning given to such term in the Recitals to this Agreement.

“**CCAA Court**” has the meaning given to such term in the Recitals to this Agreement.

“**CCAA Filing Date**” has the meaning given to such term in the Recitals to this Agreement.

“**CCAA Orders**” means, collectively, the Initial Order and all other orders issued or to be issued by the CCAA Court in connection with the CCAA Proceedings.

“**CCAA Proceedings**” has the meaning given to such term in the Recitals to this Agreement.

“**Chapter 15 Cases**” means the cases filed on February 22, 2012 in the US Court pursuant to Chapter 15 of the Bankruptcy Code and are jointly administered under Case No 12-10605.

“**Chapter 15 DIP Order**” means an order or orders obtained in the US Court in the Chapter 15 Cases recognizing the Initial Order approving the DIP Facility in the main CCAA Proceedings and enforcing the DIP Charge provided in the Initial Order pursuant to Section 364(e) of the Bankruptcy Code against any and all assets and interests in the United States.

“**Change of Control**” means any of the following events:

- (a) the occurrence of any transaction or event as a result of which any Person (or group of Persons acting in concert) shall purchase or acquire legal or beneficial ownership, either directly or indirectly, of voting units of the Fund which carry more than 50% of the votes for the election of trustees of the Fund;
- (b) the failure of the Fund to directly own beneficially and of record on a fully diluted basis 100% of the outstanding Equity Interest of the Canadian Borrower free and clear of all Encumbrances

(other than Encumbrances in favour of the Lenders, the First Lien Lenders or the Second Lien Lenders);

- (c) the failure of the Canadian Borrower to directly or indirectly own beneficially and of record on a fully diluted basis 100% of the outstanding Equity Interests of the US Borrower and each of its other subsidiaries on the date hereof (other than Encumbrances in favour of the Lenders, the First Lien Lenders or the Second Lien Lenders);
- (d) a majority of the seats (other than vacant seats) on the board of directors of any Borrower is occupied by individuals who were neither nominated by the board of directors of such Borrower nor appointed with the approval of directors so nominated; or
- (e) any event, transaction or occurrence as a result of which (i) Keith W. McMahon shall cease to be actively engaged as the President and Chief Executive Officer of the Canadian Borrower or (ii) Doug Bailey shall cease to be actively engaged as Chief Financial Officer of the Canadian Borrower.

“Charges” means the security interests and charges granted over the Property of the Obligors pursuant to the DIP Financing Orders having the priority set out in the DIP Financing Orders.

“Chief Process Supervisor” means 7088418 Canada Inc. o/a Grandview Advisors, appointed as chief process supervisor pursuant to an engagement letter dated February 22, 2012 and the Initial Order.

“Claim” means any claim of any nature whatsoever, including any demand, dispute, liability, obligation, debt, action, cause of action, suit, proceeding, litigation, arbitration, judgment, order, award assessment and reassessment.

“Closing Date” means the date hereof, or such other date as may be agreed upon by the parties hereto.

“CNSX” means the Canadian National Stock Exchange.

“Code” means the Internal Revenue Code of 1986, as the same may be amended or supplemented from time to time, and any successor statute of similar import, and the rules and regulations thereunder, as from time to time in effect;

“Commitment” means, with respect to any Lender at any time, the amount set forth opposite such Lender’s name on Schedule 1.01(A) hereto under the caption “Commitment” or, if such Lender has entered into an Assignment Agreement, the amount set forth for such Lender in the Register maintained by the Agent pursuant to Section 9.06 as such Lender’s **“Commitment.”**

“Confirmation of Security” means the confirmation and amendment of security agreement executed by the Obligors and the First Lien Agent, the Second Lien Agent, the Master Collateral Agent and the Agent, dated February 21, 2012, as amended from time to time.

“Consolidated” refers to the consolidation of accounts in accordance with GAAP.

“Consolidated Depreciation and Amortization Expense” means, for any period, with respect to any Person, depreciation, amortization and depletion charged or credited to the income statement of such Person and its Consolidated Subsidiaries for such period, determined in accordance with GAAP on a consolidated basis.

“Consolidated Earnings” means, for any period, with respect to any Person, Consolidated Net Income, but excluding in each case for such period any gain or loss recorded in income arising from: (a) the Disposition of capital assets, as determined in accordance with GAAP; (b) any write-up or write-down of Property, as determined in accordance with GAAP; (c) the acquisition of any securities of such Person or any of its Consolidated Subsidiaries, as determined in accordance with GAAP; (d) any extraordinary item, as determined in accordance with GAAP; (e) discontinued operations, as determined in accordance with GAAP; (f) transaction expenses and adjustments relating to the Proceedings and specifically identified in the Approved Budget; or (g) items that do not have all the characteristics of extraordinary items but which result from transactions or events that are not expected to occur regularly over several years or do not typify normal business activities of such Person and its Consolidated Subsidiaries, as determined in accordance with GAAP, to the extent that any such gain or loss has been recorded in the determination of Consolidated Net Income.

“Consolidated EBITDA” means, for any period, with respect to any Person, Consolidated Earnings increased (to the extent such items are deducted in calculating Consolidated Earnings) by the sum of (a) Consolidated Interest Charges, (b) Consolidated Income Tax Expense, and (c) Consolidated Depreciation and Amortization Expense, in each case for such period.

“Consolidated Income Tax Expense” means for any period, with respect to any Person, the aggregate of all Taxes (including deferred Taxes) based on income of such Person and its Consolidated Subsidiaries for such period, determined in accordance with GAAP on a consolidated basis.

“Consolidated Interest Charges” means for any period, with respect to any Person, the total of all items properly classified as interest expense of such Person and its Consolidated Subsidiaries for such period, determined in accordance with GAAP on a consolidated basis, including for greater certainty discount and financing fees, commissions, discounts, and other fees and charges payable with respect to letters of credit, letters of guarantee and bankers’ acceptance financing, standby fees, and the interest component of any Capital Lease Obligation and any payment-in-kind interest, all as determined in accordance with GAAP.

“Consolidated Net Income” means for any period, with respect to any Person, the net income (loss) of such Person and its Consolidated Subsidiaries for such period, determined in accordance with GAAP on a consolidated basis; but excluding any income in respect of any Investment in any of the Obligors or any of its Subsidiaries.

“Consolidated Subsidiaries” means in respect of any Person, Subsidiaries of such Person which are included in such Person’s consolidated financial statements, determined in accordance with GAAP.

“Contaminants” means (a) any contaminant, pollutant, deleterious substance, toxic substance, waste, hazardous waste, hazardous material, hazardous substance, petroleum product, oil, flammable explosives, asbestos or radioactive material, (b) any substance, gas, material, chemical, sound, vibration or other forms of energy which is or may now or hereafter be defined as or included in the definition of “contaminant”, “pollutant”, “deleterious substance”, “hazardous substances”, “toxic substances”, “hazardous materials”, “hazardous wastes” or words of similar import under any Environmental Law, (c) any other chemical, material, gas or substance, the exposure or release of which is or may be now or hereafter prohibited, limited or regulated by any Environmental Law, or (d) any chemical, material, gas or substance that does or may pose a hazard to health and/or safety of Persons or the environment.

“Contingent Liability” means an agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable for (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a

debtor, or otherwise to assure a creditor against loss) the Debt of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligations under any Contingent Liability shall (subject to any limitation set forth therein) be deemed to be the maximum potential amount of the Debt, obligation or other liability guaranteed thereby.

"Control Agreement" means a control agreement, in form and substance satisfactory to the Agent, executed and delivered by each applicable Obligor, the Agent (or in the Agent's discretion, the Master Collateral Agent), and the applicable securities intermediary with respect to a Securities Account or a deposit-taking institution with respect to a Deposit Account.

"Controlled Group" means, at any time, each Obligor and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control and all other entities which, together with any Obligor, are treated as a single employer under Section 414 of the Code.

"Conversion Rate" means, in relation to quantification in one Currency of an amount denominated in the other Currency, the Bank of Canada noon rate of exchange for such Currency on the Business Day prior to the date of calculation.

"Corporate Distributions" means in respect of any Person, whether or not a corporation, any form of distribution, including in each case any: (i) declaration or payment of any dividend or other direct or indirect distribution on its Equity Interest; (ii) payment to purchase, redeem, retire or acquire or reduce the stated capital of any of its Equity Interest by itself or by the Fund or any option, warrant or other right to acquire any such Equity Interest, or apply or set apart any of its Property therefor; (iii) payment of any management fees or bonuses to any shareholder, director, officer, agent or employee of such Person, any relative thereof, any affiliate of any one or more of such Persons; (iv) payment on account of or payment to repurchase, retire or acquire any Subordinated Debt or any Debt ranking *pari passu* with the Obligations and (v) loans made by such Person to any shareholder, director, officer agent or employee of such Person, any relative thereof, or any affiliate of such Person or any of its Subsidiaries.

"Courts" has the meaning given to such term in the Recitals to this Agreement and also means any other court having jurisdiction over the Proceedings from time to time.

"Critical Suppliers" has the meaning given to such term in the Initial Order as at the date of issuance, without amendment.

"Critical Supplier Charge" has the meaning given to such term in the Initial Order, as at the date of issuance, without amendment.

"Currency" means either Canadian Dollars or US Dollars.

"Debt" of any Person means, without duplication,

- (a) all obligations of such Person for borrowed money or advances and all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;
- (b) all obligations of such Person, contingent or otherwise, relative to the face amount of all letters of credit, whether or not drawn, and banker's acceptances issued for the account of such Person;
- (c) Capitalized Lease Obligations and obligations under Synthetic Leases;

- (d) all other items which, in accordance with GAAP, would be included as liabilities on the liability side of the balance sheet of such Person as of the date at which Debt is to be determined (excluding trade payables incurred in the ordinary course of business);
- (e) net liabilities of such Person under all Hedge Instruments;
- (f) whether or not so included as liabilities in accordance with GAAP, all obligations of such Person to pay the deferred purchase price of property or services excluding therefrom trade accounts payable in the ordinary course of business which are not overdue for a period of more than ninety (90) days or, if overdue for more than ninety (90) days, as to which a dispute exists and adequate reserves in conformity with GAAP have been established on the books of such Person; and indebtedness secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) an Encumbrance on property owned or being acquired by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (g) all amounts owing by any Obligor under or pursuant to (i) the DOJ Settlement or any other settlement entered into by any Obligor with respect to any action, claim or proceeding (whether threatened or pending) and (ii) any judgment or order for the payment of money rendered against any Obligor; and
- (h) all Contingent Liabilities of such Person in respect of any of the foregoing.

For all purposes of this Agreement, the Debt of any Person shall: (i) include, without duplication, the Debt of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Debt provide that such Person is not liable therefor, and (ii) exclude, non-trade related accounts payable, future tax liabilities and accrued liabilities incurred, in each case, in the ordinary course of business.

"Default" means any event or condition which, upon notice, lapse of time, or both, would constitute an Event of Default.

"Defaulting Lender" means any Lender that (a) fails to make any payment or provide funds to the Agent or a Borrower as required hereunder or fails otherwise to perform its obligations under any Loan Document, and such failure is not cured within one (1) Business Day, or (b) is the subject of any bankruptcy or any insolvency proceeding; *provided that*, solely for the purpose of determining a Lender's right to vote on matters relating the Loan Documents and to share in payments, fees and proceeds thereunder, a Lender shall not be deemed to be a **"Defaulting Lender"** on any date of determination unless it has failed to make any payment or provide funds to the Agent or to a Borrower as required hereunder or failed otherwise to perform its obligations under any Loan Document and such failure has not been cured on or before such date of determination.

"Deposit Account" means any "deposit account" as such term is defined in the UCC.

"DIP Charge" has the meaning given to such term in Section 6.01.

"DIP Facility" has the meaning given to such term in the Recitals to this Agreement.

“DIP Financing Orders” means collectively, the Initial Order, the US Orders and all other orders issued or to be issued by the Courts in connection with the Proceedings in respect of the DIP Facility, the DIP Charge and this Agreement.

“DIP Term Sheet” means the Arctic Glacier DIP Facility Term Sheet dated as of February 22, 2012 and approved by the CCAA Court pursuant to the Initial Order.

“Disposition” means any direct or indirect sale, lease, transfer, exchange, conveyance, release, abandonment, expropriation, seizure, condemnation, forfeiture, actual or constructive total loss or agreed or compromised loss or other disposition, including by means of a Sale and Leaseback, reorganization, consolidation, amalgamation or merger or the granting of options, warrants, other rights or assets (including accounts receivables and Equity Interests of Subsidiaries) to any other Person in a single transaction or series of transactions; and **“Dispose”** and **“Disposed”** shall have meanings correlative thereto; *provided that* the granting of options or warranties by any of the Obligors or its Subsidiaries made in the ordinary course of the Business shall not constitute a “Disposition”.

“DOJ Settlement” means the settlement agreement entered into between the US Borrower and the U.S. Department of Justice Antitrust Division dated October 13, 2009 providing for a settlement of US\$9,000,000 with respect to allegations of allocating packaged ice customers in southeastern Michigan.

“EBITDA Covenant” has the meaning ascribed thereto in Section 5.01(cc).

“Encumbrance” means any mortgage, debenture, pledge, hypothec, lien, charge, assignment by way of security, consignment, lease, hypothecation, security interest (including a purchase money security interest), or other security agreement, trust or arrangement having the effect of security for the payment of any debt, liability or obligation, and **“Encumbrances”**, **“Encumbrancer”**, **“Encumber”** and **“Encumbered”** shall have corresponding meanings.

“Environmental Law” means with respect to any Person or Property any and all present and future Canadian and U.S. federal, state, provincial or territorial, municipal or local, international, supranational and foreign laws, rules, regulations or obligations applicable to such Person or Property arising under common law and any order or decree, in each case as now or thereafter in effect, relating to the regulation or protection of human health, safety or the environment or to Releases or threatened Releases of pollutants, Contaminants, chemicals or toxic or hazardous substances, wastes or recyclables into or in natural environment, including ambient air, soil, surface water, ground water, wetlands, land or subsurface strata, or otherwise relating to the manufacture, generation, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, Contaminants, chemicals or toxic or hazardous substances, wastes or recyclables.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests or units in a trust, warrants, options, or any other equity interests in any Person.

“Equity Issuance” means any issuance or sale by any Borrower or any other Obligor of any Equity Interests of such Borrower or any such Obligor, as applicable, other than in each case (i) any issuance or sale to a Borrower or another Obligor or (ii) any issuance or sale of Equity Interests or options of an Obligor to management or employees of an Obligor under any employee stock option or other employee benefit plan in existence on the date hereof.

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

“ERISA Affiliate” means any Person that for purposes of Title IV of ERISA is a member of the controlled group of any Obligor, or under common control with any Obligor, within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“ERISA Event” means, except where such event has been approved by the US Court in connection with the Chapter 15 Cases at the Closing Date, (a) (i) the occurrence of a reportable event, within the meaning of Section 4043 of ERISA, with respect to any ERISA Plan unless the 30-day notice requirement with respect to such event has been waived by the PBGC or (ii) the requirements of subsection (1) of Section 4043(b) of ERISA (without regard to subsection (2) of such Section) are met with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of an ERISA Plan, and an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such ERISA Plan within the following 30 days; (b) the application for a minimum funding waiver with respect to an ERISA Plan; (c) the provision by the administrator of any ERISA Plan of a notice of intent to terminate such ERISA Plan, pursuant to Section 4041(a)(2) of ERISA (including any such notice with respect to a plan amendment referred to in Section 4041(e) of ERISA); (d) the cessation of operations at a facility of any Obligor or any ERISA Affiliate in the circumstances described in Section 4062(e) of ERISA; (e) the withdrawal by any Obligor or any ERISA Affiliate from a Multiple Employer Plan during a plan year for which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (f) the conditions for imposition of a lien under Section 303(k) of ERISA shall have been met with respect to any ERISA Plan; or (g) the institution by the PBGC of proceedings to terminate an ERISA Plan pursuant to Section 4042 of ERISA, or the occurrence of any event or condition described in Section 4042 of ERISA that constitutes grounds for the termination of, or the appointment of a trustee to administer, such ERISA Plan.

“ERISA Plan” means a Single Employer Plan or a Multiple Employer Plan.

“Event of Default” has the meaning given to such term in Section 7.01.

“Excess Cash Amount” means an amount equal to the aggregate of all US Dollars and Canadian Dollars in the control or possession of the Obligors on a consolidated basis, in any jurisdiction, which is in excess of \$10,000,000 (with any US Dollar amount converted at the Conversion Rate), calculated by no later than Monday of each calendar week in respect of the immediately prior calendar week.

“Excluded Taxes” means, in relation to any Person, those Taxes on income or capital which are imposed or levied by any jurisdiction or any political subdivision of such jurisdiction solely as a result of such Person (a) being organized under the laws of such jurisdiction or any political subdivision of such jurisdiction, (b) having its principal office or lending office in such jurisdiction, (c) being resident in such jurisdiction, (d) carrying on business in such jurisdiction, or (e) not dealing at arm’s length (as defined for the purposes of any taxing statute in the applicable jurisdiction) with any Borrower but excluding any such Taxes arising solely from the Agent or the Lender having executed, delivered or performed its obligations or received payment under, or enforced this Agreement or any Loan Document.

“Existing Debt” means any indebtedness or liability of any of the Obligors under the First Lien Loan Agreement and the Second Lien Loan Agreement from time to time.

“Existing Security Documents” has the meaning given to such term in Section 4.01(f).

“Fee Letter” means the fee letter dated as of February 21, 2011 between the Borrowers and the Agent, as amended from time to time.

“First Lien Agent” means the administrative agent under the First Lien Loan Agreement, and its successor and assigns.

“First Lien Lenders” means each of the lenders from time to time under the First Lien Loan Agreement.

“First Lien Loan Agreement” means the fourth amended and restated loan agreement dated as of February 10, 2010 by and among, among others, CPPIB Credit Investments Inc., as Canadian and U.S. administration agent (as successor to The Toronto-Dominion Bank and Toronto Dominion (Texas) LLC, respectively), Arctic Glacier Inc., as Canadian borrower, Arctic Glacier International Inc., as US borrower, Arctic Glacier Income Fund and certain direct or indirect subsidiaries of the borrowers, as guarantors, and the lenders party thereto from time to time, as amended, modified, supplemented, amended and restated or replaced from time to time.

“Fiscal Year” means the period of January 1 to December 31 of each year.

“Fund” means Arctic Glacier Income Fund, a limited purpose trust formed under the laws of the Province of Alberta.

“GAAP” means applicable generally accepted accounting principles in Canada applied on a consistent basis.

“Governmental Authority” means any government, parliament, legislature, regulatory authority, agency, department, commission, board, instrumentality or rule making entity of any government, parliament or legislature, or any court, tribunal, arbitration board or arbitrator or (without limitation to the foregoing) other law, regulation or rule making entity having or purporting to have jurisdiction in the relevant circumstances, or any Person acting or purporting to act under the authority of any of the foregoing (including, without limitation, any arbitrator).

“Guarantors” means, collectively, the Fund, each of the Borrowers and each Subsidiary of the Borrowers listed on Schedule 4.01(g) and each other Subsidiary of any Borrower that may from time to time become a guarantor of the Obligations pursuant to Section 6.02 and “Guarantor” means any one of them.

“Hedge Instruments” means, with respect to any Person, any interest rate, foreign exchange or commodity price risk management agreement or product, including interest rate, currency or commodity exchange or swap agreements, futures contracts, forward rate agreements, interest rate cap agreements and interest rate collar agreements, options and all other agreements or arrangements designed primarily to protect such Person against fluctuations in interest rates, currency exchange rates or commodity prices.

“Hedge Obligations” means, with respect to any Person, the Person’s payment obligations under Hedge Instruments calculated on a mark-to-market basis at the date of determination.

“IFRS” means International Financial Reporting Standards established by the International Accounting Standards Board.

“Initial Approved Budget” means the cash flow forecast for the 20-week period ending June 29, 2012 delivered on behalf of the Borrowers by Alvarez & Marsal Canada Inc. at 8:54 pm (Toronto time) on February 21, 2012 and accepted by the Agent on behalf of the Lenders at 10:12 pm (Toronto time) on February 21, 2012.

“**Initial Order**” has the meaning given to such term in the Recitals to this Agreement, and is attached hereto as Exhibit B.

“**Intellectual Property**” means any trademarks, service marks, business names, designs, logos, indicia and/or other source and/or business identifiers, copyrights, unpatented inventions (whether or not patentable), patents, industrial designs, integrated circuit topographies, licenses, license agreements, URLs, Internet domain names and other similar rights (including know how, trade secrets and other proprietary or confidential information and license agreements relating to the manufacturing and marketing of product), applications and registrations related to any of the foregoing, and computer tapes or disks, flow diagrams, specification sheets, source codes, object codes and other physical manifestations, embodiments or incorporations or any of the foregoing, and includes, without limitation, computer software.

“**Inter-Company Balances Charge**” has the meaning given to such term in the Initial Order.

“**Intercompany Loan**” means any intercompany Debt between any of the Obligors and its Subsidiaries in accordance with the Cash Management Procedures and includes, without limitation, the intercompany Debt disclosed on Schedule 4.01(cc) hereto (as updated in accordance with Section 5.03(l)).

“**Intercreditor Agreement**” means the third amended and restated intercreditor agreement dated as of December 14, 2011 entered into between the First Lien Agent, in its capacity as administrative agent for the First Lien Lenders, the Second Lien Agent, in its capacity as administrative agent for the Second Lien Lenders and the Toronto-Dominion Bank, in its capacity as master collateral agent to the Benefited Creditors, as the same may be amended and restated, amended, modified, supplemented, restated or replaced from time to time.

“**Inventory**” means, as to each Obligor, all of such Obligor’s not owned or hereafter acquired goods and merchandise held for sale, all raw materials, finished goods and materials and supplies which are used or consumed in the Business, valued at the lower of cost or market value, determined on a first-in-first-out basis, which is not obsolete, slow moving or unmerchantable, and which otherwise constitutes “inventory” in accordance with GAAP.

“**Investment**” means any direct or indirect loan, advance or other extension of credit (including by way of guarantee) or capital contribution to any Person (including by means of transfers of cash or other property to any Person or payments for property or services for the account or use of others to any Person), purchase or acquisition of any Equity Interest, Debt or any other similar instruments issued by any Person, purchase or acquisition of property or assets or a business or undertaking, the incurrence of any Contingent Liability in respect of such Person, or expansion to or build out or renovation of personal or real property (excluding regular, day-to-day maintenance conducted in the ordinary course of business), by any means, of every nature or kind whatsoever.

“**ITA**” means the *Income Tax Act* (Canada).

“**Leased Real Property**” means the lands and premises leased by any of the Obligors and described in Schedule 4.01(y) (as updated from time to time pursuant to Section 5.03(h)) and includes lands and premises leased by any of the Obligors after the date hereof.

“**Lenders**” has the meaning given to such terms in the Recitals to the Agreement.

“**Loans**” means, collectively at any time, all Canadian Loans and all US Loans made to either of the Borrowers and outstanding at such time and “Loan” means any one of them.

“Loan Documents” means (i) this Agreement, (ii) the DIP Term Sheet, (iii) the Fee Letter, (iv) the Existing Security Documents, (v) the DIP Financing Orders and (vi) any other additional security document or other document, agreement or instrument executed and delivered by a Obligor pursuant to this Agreement, in each case as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“Master Collateral Agent” means CPPIB Credit Investments Inc. in its capacity as Master Collateral Agent under the Intercreditor Agreement, and its successors and assigns.

“Material Adverse Change” means any event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

“Material Adverse Effect” means a material adverse effect (or a series of adverse effects, none of which is material in and of itself but which, cumulatively, results in a material adverse effect) on: (i) the business, operations, Property, financial condition or prospects of the Obligors, measured as a whole; (ii) the ability of any Obligor to perform any of its obligations under or in connection with the DIP Facility; (iii) the ability of the Agent or Lenders to enforce any of the obligations of any of the Obligors under this or in connection with the DIP Facility, in each case in accordance with Applicable law; (iv) the enforceability or priority of security interests and liens in favour of the Agent on behalf of the Lenders; or (v) the value of the Property of the Obligors.

“Material Contract” means at any time, any written agreement entered into by an Obligor which if terminated or expired could reasonably be expected to have a Material Adverse Effect.

“Material Permit” means at any time, any Permit, the loss, termination or the breach of which, or non compliance with, as at such time, could reasonably be expected to have a Material Adverse Effect.

“Maturity Date” means the earliest of: (i) August 8, 2012; (ii) the date of completion of a transaction in compliance with the SISP; and (iii) the date upon which an Event of Default occurs hereunder.

“Milestones” means, collectively, the time deadlines set out in the SISP, without amendment or extension of any kind and **“Milestone”** means any one of such time deadlines.

“Moody’s” means Moody’s Investors Service, Inc., or any successor organization thereto.

“Monitor” means Alvarez & Marsal Canada Inc.

“Multiemployer Plan” means a “multiemployer plan” as defined in Sections 3(37) and 4001(a)(3) of ERISA.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including any Borrower or any member of the Controlled Group) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA to which a Borrower or any member of the Controlled Group contributes or has, within the five (5) preceding years, contributed.

“Net Proceeds” means in respect of any Disposition by any Person, the aggregate of the cash proceeds and the fair market value of any non-cash proceeds of such Disposition, received by such Person after deducting reasonable, *bona fide* direct transaction costs and expenses, including fees and commissions applicable thereto.

“**Notice of Borrowing**” means a notice of a borrowing, in the form of Exhibit C hereto, specifying therein the requested (i) date on which the Advance is to be funded, and (ii) aggregate amount of such Advance.

“**Obligations**” means, with respect to any Obligor, all of its present and future indebtedness, liabilities and obligations of any and every kind, nature or description whatsoever (whether direct or indirect, joint or several or joint and several, absolute or contingent, matured or unmatured, in any currency and whether as principal debtor, guarantor, surety or otherwise, including without limitation any interest that accrues thereon after or would accrue thereon but for the commencement of any case, proceeding or other action, whether voluntary or involuntary, relating to the bankruptcy, insolvency or reorganization whether or not allowed or allowable as a claim in any such case, proceeding or other action) to the Agent and each Lender under, in connection with, relating to or with respect to each of the Loan Documents.

“**Obligors**” means, collectively, the Borrowers and the Guarantors and their respective successors and permitted assigns and “**Obligor**” means any one of them.

“**Officer’s Certificate**” means a certificate in a form satisfactory to the Agent, acting reasonably (a) in the case of any such certificate of any Borrower, signed by a Responsible Officer of such Borrower, and (b) in all other cases, of the applicable Person required to provide such certificate signed by the president or a vice president of such corporation or by such other of its senior officers as may be acceptable to the Agent, acting reasonably.

“**Orders**” means, collectively, the CCAA Orders and the US Orders, and “**Order**” means any one of them.

“**Owned Real Property**” means the real property owned by any of the Obligor and legally described in Schedule 4.01(y) (as updated from time to time pursuant to Section 5.03(I)) and includes real property acquired by any of the Obligor after the date hereof.

“**Payment Date**” means the first Business Day of each calendar month, provided that, if the Borrowers have used their best efforts but have been unable to make the applicable payment required herein by the such date, “Payment Date” shall mean the second Business Day of each calendar month.

“**PBGC**” means the United States Pension Benefit Guaranty Corporation.

“**Pension Benefit Plan**” means at any time any employee pension benefit plan (including a Multiple Employer Plan, but not a Multiemployer Plan) which is covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code and either (i) is maintained by any member of the Controlled Group for employees of any member of the Controlled Group; or (ii) has at any time within the preceding five years been maintained by any entity which was at such time a member of the Controlled Group for employees of any entity which was at such time a member of the Controlled Group.

“**Permits**” means all permits, licenses, approvals, consents, registrations, certificates, privileges, exemptions and similar authorizations issued or granted by any Governmental Authority or any third party, including without limitation, environmental Permits.

“**Permitted Encumbrances**” means, with respect to any Person, any one or more of the following:

- (a) Encumbrances for Taxes, assessments or governmental charges or levies not at the time due and delinquent or the validity of which is being contested at the time by the Person in good faith by proper legal proceedings if, in the Agent’s opinion, upon direction from the Required Lenders (i) adequate security has been provided to the Lenders to ensure the payment of such Taxes,

assessments and charges; (ii) adequate reserves with respect thereto are maintained on the books of such Person, in accordance with GAAP and, in each case, such Encumbrances will not materially interfere with use of such Property by such Person or involve any immediate danger of the sale, forfeiture or loss of such Property;

- (b) Encumbrances resulting from any judgment rendered or Claim filed against such Person which such Person shall be contesting in good faith by proper legal proceedings in the Agent's opinion, upon direction from the Required Lenders (i) adequate security has been provided to the Agent to ensure the payment of such judgment or Claim; (ii) adequate reserves with respect thereto are maintained on the books of such Person, in accordance with GAAP; and, (iii) in each case, such Encumbrances will not materially interfere with use of such Property by such Person or involve any immediate danger of the sale, forfeiture or loss of such Property, and where such judgment or Claim filed to which the Encumbrance relates is for an aggregate amount of not more than \$1,000,000;
- (c) undetermined or inchoate Encumbrances arising in the ordinary course of business which have not at such time been filed pursuant to Applicable Law against such Person or which relate to obligations not due or delinquent;
- (d) Encumbrances affecting real property of such Person which are: (i) title defects, encroachments or irregularities of a minor nature; or (ii) restrictions, easements, rights-of-way, servitudes or other similar rights in land (including, without restriction, rights of way and servitudes for railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light and power and telephone or telegraph or cable television conduits, poles, wires and cables) granted to or reserved by other Persons and, in each case, such Encumbrances will not materially interfere with the use of such real property by such Person;
- (e) the right reserved to or vested in any Governmental Authority by any statutory provision, or by the terms of any lease, licence, franchise, grant or permit of such Person, to terminate any such lease, license, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
- (f) any Encumbrances resulting from the deposit of cash or securities in connection with contracts, tenders or expropriation proceedings, or to secure worker's compensation, surety or appeal bonds, costs of litigation when required by Applicable Law, and public and statutory obligations;
- (g) any Encumbrances resulting from security given to a public utility or Governmental Authority when required by such utility or Governmental Authority in connection with the operation of the business of such Person;
- (h) the reservations, limitations, provisos and conditions, if any, expressed in any original grants of real property from the Crown;
- (i) carriers', warehousemen's, mechanics', material-men's, repairmen's or other similar Encumbrances arising in the ordinary course of business which are not registered against title to the Property, and are not overdue for a period of more than thirty (30) days or which are being contested at the time by the Person in good faith by proper legal proceedings if, in the Agent's opinion, upon direction from the Required Lenders (i) adequate security has been provided to the Agent or to a court of competent jurisdiction to ensure payment of such Encumbrances; (ii) adequate reserves with respect thereto are maintained on the consolidated books of such Person, in accordance with GAAP; and (iii) in each case, such Encumbrances will not materially

interfere with use of such Property by the Person or involve any immediate danger of the sale, forfeiture or loss of such Property;

- (j) any Encumbrance, payment of which has been provided for by the depositing with the Agent of an amount in cash, or the obtaining of a surety bond satisfactory to the Agent, upon direction from the Required Lenders, in their absolute discretion, sufficient in either case to pay or discharge such lien and which deposit or bond the Agent is authorized to use or draw upon for that purpose;
- (k) zoning and building by-laws and ordinances, municipal by-laws, provincial laws, and regulations, which do not adversely affect in any material respect the use of real property concerned in the operation of the business conducted on such real property;
- (l) covenants restricting or prohibiting access to or from lands abutting on controlled access highways, which do not adversely impair in any material respect the use of the real property concerned in the operation of the business conducted on such real property;
- (m) Encumbrances securing permitted Purchase Money Obligations; *provided that*: (i) such Encumbrances shall extend only to the specific Property of the Obligors acquired with the proceeds of such Purchase Money Obligations (and not any other portion of the Property); and (ii) recourse in respect of such Encumbrances shall be limited to such specific Property;
- (n) Encumbrances in favour of the First Lien Agent, the Second Lien Agent, the Security Trustee or the Master Collateral Agent with respect to the First Lien Loan Agreement and the Second Lien Loan Agreement;
- (o) the Inter-Company Balances Charge and such other charges granted pursuant to the Initial Order;
- (p) the TD LC Security; and
- (q) any Encumbrances other than the Encumbrances described in paragraphs (a) to (p) above existing on the date hereof and disclosed in Schedule 1.01(B), but not any extension or renewal thereof (other than in the ordinary course of business) and only to the extent that such Encumbrances are not extended to any other Property and there is no increase in the amount secured thereby as of the date of this Agreement.

“Permitted Financial Investments” means: (i) negotiable instruments or securities in bearer or registered form which are not held for more than thirty (30) days and which evidence (a) obligations of or guaranteed by the Government of Canada so long as they have the Permitted Rating, (b) obligations of or guaranteed by a province or municipality of Canada so long as they have the Permitted Rating, (c) deposits or bankers’ acceptances issued or accepted by any Schedule I Canadian chartered bank so long as they have the Permitted Rating, (d) commercial paper of Canadian corporations or Canadian issuers so long as it has the Permitted Rating, and (e) other similar negotiable instruments or securities which are issued or guaranteed by Persons which have the Permitted Rating; or (ii) demand deposits with the Senior Agent; or (iii) such other investments approved in advance by the Required Lenders, in their sole discretion.

“Permitted Payments” has the meaning given to such term in Section 2.10.

“Permitted Rating” means, with respect to any Permitted Financial Investment, a rating for short term indebtedness of A (High) or better from Dominion Bond Rating Service Limited or a rating for long-term

indebtedness of A (High) or better from Dominion Bond Rating Service Limited or equivalent rating from Standard & Poor's or Moody's.

“**Person**” means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative or Governmental Authority.

“**Plan**” means shall mean any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Benefit Plan), maintained for employees of any Obligor or any member of the Controlled Group or any such Plan to which any Obligor or any member of the Controlled Group is required to contribute on behalf of any of its employees.

“**PPSA**” means the *Personal Property Security Act* (Ontario), or any other applicable Canadian federal or provincial statute pertaining to the granting, perfecting, priority or ranking of security interests, liens, hypothecs on personal property, and any successor statutes, together with any regulations thereunder, in each case as in effect from time to time. References to sections of the PPSA shall be construed to also refer to any successor sections.

“**Proceedings**” means the CCAA Proceedings and the Chapter 15 Cases.

“**Property**” means, with respect to any Person, all of its present and future assets, undertakings and properties, both real and personal of every nature and kind whatsoever, and wherever situated including all proceeds thereof, and for certainty, includes the Leased Real Property and the Owned Real Property and any share in the capital of a corporation or Equity Interest in any Person.

“**Purchase Money Obligations**” means the outstanding balance of the purchase price of real and/or personal property, title to which has been acquired or will be acquired upon payment of such purchase price, or indebtedness to non-vendor third parties incurred to finance the acquisition of new (and not replacement) real and/or personal property, or any refinancing of such indebtedness or outstanding balance (provided the outstanding principal amount thereof is not increased).

“**Recognition Order**” means an order of the US Court recognizing the Initial Order pursuant to Chapter 15 of the Bankruptcy Code and the CCAA Proceedings as foreign main proceedings.

“**Release**” when used as a verb includes release, spill, leak, emit, deposit, discharge, leach, migrate, dump, issue, empty, place, seep, exhaust, abandon, bury, incinerate or dispose into the environment and “**Release**” when used as a noun has a correlative meaning.

“**Relevant Jurisdiction**” means, from time to time, with respect to each Obligor, any province or territory of Canada, any state of the United States or any other country or political subdivision thereof in which such Person has its chief executive office or chief place of business, has Property or in which it is organized or incorporated, as applicable, and, for greater certainty, includes the provinces and states set out in Schedule 4.01(g).

“**Reportable Event**” means a reportable event described in Section 4043(c) of ERISA or the regulations promulgated thereunder with respect to a Pension Benefit Plan.

“**Required Lenders**” means, at any time, Lenders owed or holding more than 50% of the aggregate amount of all Lenders' Commitments.

“Responsible Officer” means the chief executive officer, president, chief financial officer, chief restructuring officer, controller, secretary or treasurer of a Obligor or any Person exercising managerial responsibilities equivalent to the foregoing. Any document delivered hereunder or under any other Loan Document that is signed by a Responsible Officer of a Obligor shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Obligor and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Obligor.

“Sale and Leaseback” means an arrangement under which title to any property or an interest therein is transferred by or on the direction of a Person (“X”) to another Person which leases or otherwise grants the right to use such property, asset or interest (or other property, which X intends to use for the same or a similar purpose) to X (or nominee of X), whether or not in connection therewith X also acquires a right or is subject to an obligation to acquire the property, asset or interest, and regardless of the accounting treatment of such arrangement.

“Second Lien Agent” means the administrative agent under the Second Lien Loan Agreement, and its successors and assigns.

“Second Lien Lenders” means each of the lenders under the Second Lien Loan Agreement.

“Second Lien Loan Agreement” means the loan agreement dated as of February 10, 2010 by and among, among others, CPPIB Credit Investment Inc., as administrative agent, Arctic Glacier Inc., as Canadian borrower, Arctic Glacier International Inc., as US borrower, Arctic Glacier Income Fund and certain direct or indirect subsidiaries of the borrowers, as guarantors, and the lenders party thereto from time to time, as amended, modified, supplemented, amended and restated or replaced from time to time.

“Securities Account” means any “securities account” as such term is defined in the STA and the UCC.

“Securities Commissions” means, collectively, the securities commissions or other securities regulatory authorities in each of the provinces and territories of Canada.

“Securities Laws” means, collectively, all applicable securities legislation in each of the provinces and territories of Canada and the respective regulations made thereunder, together with applicable instruments, rules, policies, policy statements, notices, blanket rulings, decisions and orders, prescribed forms, published fee schedules, and other regulatory instruments issued or adopted by the Securities Commissions.

“Security” means the Encumbrances created by the Security Documents and the DIP Financing Order.

“Security Debentures” means the debentures issued on the date hereof by the Canadian Borrower to the Agent on behalf of the Lenders pursuant to the Trust Deeds.

“Security Trustee” means Computershare Trust Company of Canada in its capacity as security trustee under the Trust Deeds.

“Security Documents” means the DIP Financing Orders, the Existing Security Documents, the Confirmation of Security, the Security Debentures and any additional guarantees and security documents requested by the Agent and the Lenders and granted by each of the Obligors from time to time, in each case, securing or intended to secure repayment of the Obligations.

“Single Employer Plan” means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of any Obligor or any ERISA Affiliate and no Person other than the

Obligors and the ERISA Affiliates or (b) was so maintained and in respect of which any Obligor or any ERISA Affiliate could have liability under Section 4069 of ERISA in the event such plan has been or were to be terminated.

“**SISP**” means the Sale and Investor Solicitation Process attached as Schedule B to the Initial Order.

“**STA**” means the *Securities Transfer Act* (Ontario) and any other applicable Canadian federal or provincial statute pertaining to the granting, perfecting, priority or ranking of security interests on securities, investment property or other financial investments or instruments, and any successor statutes;

“**Stage 1 Availability**” means is defined in Section 2.02.

“**Stage 1 Conditions**” means the conditions to accessing the Stage 1 Availability specified in Section 3.01.

“**Stage 2 Availability**” has the meaning given to such term in Section 2.02.

“**Stage 2 Conditions**” means the conditions to accessing the Stage 2 Availability specified in Section 3.02.

“**Standard & Poor’s**” or “**S&P**” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor organization thereto.

“**Standby Fees**” has the meaning given to such term in Section 2.11.

“**Stay of Proceedings**” means the stay of proceedings against each of the Obligors and its Property and the stay of the exercise of rights and remedies against each of the Obligors and its Property contained in any of the Orders, in each case as it may be extended or amended by any other Order.

“**Subordinated Debt**” means any Debt that is subordinated and postponed to the Obligations or that ranks behind the Obligations in terms of priority of security therefor.

“**Subsidiary**” of a Person, means a subsidiary body corporate within the meaning of the CBCA and any partnership or other organization in respect of which such Person or any Subsidiary of such Person has the direct or indirect right to make or control management decisions, and “**Subsidiaries**” means all of them. Where the term “Subsidiary” or “Subsidiaries” is used herein without further qualification, such term means a Subsidiary or the Subsidiaries of any Borrower.

“**Synthetic Leases**” of any Person means any lease (including leases that may be terminated by the lessee at any time) of any Property (whether real, personal or mixed): (i) that is not a capital lease in accordance with GAAP; and (ii) in respect of which the lessee retains or obtains ownership of the Property so leased for federal income tax purposes; other than any such lease under which that Person is the lessor.

“**Taxes**” means all taxes (including for certainty, real property taxes), assessments, levies, imposts, stamp taxes, duties, deductions, withholdings, charges, retail sales tax, value added taxes, employee and employer portions of unemployment insurance, Canada Pension Plan and workers compensation payments and similar impositions payable, levied, collected or assessed as of the date of this Agreement or at any time in the future, and “**Tax**” shall have a corresponding meaning.

“**TD LC Security**” has the meaning given to such term in the Affidavit.

“Termination Event” means (i) a Reportable Event with respect to any Pension Benefit Plan or Multiemployer Plan for which a member of the Controlled Group is required to provide notice to the PBGC; (ii) the withdrawal of any Obligor or any member of the Controlled Group from a Pension Benefit Plan or Multiemployer Plan during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA; (iii) the providing of notice of intent to terminate a Pension Benefit Plan in a distress termination described in Section 4041(c) of ERISA; (iv) the institution by the PBGC of proceedings to terminate a Plan or Multiemployer Plan; (v) any event or condition (a) which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Benefit Plan or Multiemployer Plan, or (b) that may result in termination of a Multiemployer Plan pursuant to Section 4041A of ERISA; or (vi) the partial or complete withdrawal within the meaning of Sections 4203 and 4205 of ERISA, of any Obligor or any member of the Controlled Group from a Multiemployer Plan.

“Total Availability” means US\$24.0 million and \$26.0 million, being the aggregate maximum principal amount of Stage 1 Availability and Stage 2 Availability under the DIP Facility, as such amount may be reduced from time to time in accordance with this Agreement.

“TRO Order” means the temporary restraining order of the US Court entered on February 23, 2012, attached hereto as Exhibit D, which also provides for recognition of the DIP Charge pursuant to Section 364(e) of the Bankruptcy Code on an interim basis.

“Trust Deed” means collectively, each of the deeds of trust listed under the heading “Trust Deeds” on Schedule 4.01(f).

“TSX” means the Toronto Stock Exchange.

“UCC” means the Uniform Commercial Code as adopted in the State of New York from time to time.

“Units” means units of the Fund issued pursuant to the declaration of trust dated as of January 22, 2002, as amended and restated as of March 11, 2002 and as further amended and restated as of December 6, 2004, pursuant to which the Fund was created, with each unit representing an equal undivided beneficial interest in the Fund.

“US Borrower” means AGII.

“US Court” has the meaning given to such term in the Recitals to this Agreement, having jurisdiction over the Chapter 15 Cases.

“US Dollars” and **“US\$”** each mean currency of the United States of America.

“US Loan” means each US Dollar denominated Advance made by the Lenders to the Borrowers under the DIP Facility.

“US Obligors” means, collectively, the US Borrower and all of its direct and indirect Subsidiaries and **“US Obligor”** shall mean any one of them.

“US Orders” means, collectively, the TRO Order, the Recognition Order and all other orders issued by the US Court in connection with the Chapter 15 Cases.

“US Prime Rate” means, for any particular day, the variable rate of interest per annum, reported by the Wall Street Journal for such day as the prime rate of interest per annum for US Dollar loans in Canada.

“Wage Earners’ Protection Program” means the wage earner protection program established under the *Wage Earner Protection Act* (Canada).

“Withdrawal Liability” has the meaning specified in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02 Interpretation

As used in this Agreement, the words **“include”**, **“includes”** and **“including”** will be deemed to be followed by **“without limitation”**. Pronouns in masculine, feminine, and neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words **“this Agreement”**, **“herein”**, **“hereof”**, **“hereby”**, **“hereunder”** and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited.

SECTION 1.03 Interpretation Not Affected by Headings, etc.

The division of this Agreement into Articles, Sections, subsections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

SECTION 1.04 Monetary References

Any reference in this Agreement to “Dollars”, “dollars” or the sign “\$” shall be deemed to be a reference to lawful money of Canada, unless expressly provided otherwise.

SECTION 1.05 References

Except as otherwise specifically provided, reference in this Agreement to any contract, agreement, document or any other instrument shall be deemed to include references to the same as varied, amended, supplemented, restated or replaced from time to time and reference in this Agreement to any enactment, including without limitation, any statute, law, by law, regulation, ordinance or order, shall be deemed to include references to such enactment as re enacted, amended or extended from time to time.

SECTION 1.06 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

SECTION 1.07 This Agreement to Govern

If there is any inconsistency between the terms of this Agreement and the terms of the DIP Term Sheet or any Security Document, the provisions hereof shall prevail to the extent of the inconsistency.

SECTION 1.08 Actions on Days Other Than Business Days

Except as otherwise specifically provided herein, where any payment is required to be made or any other action is required to be taken on a particular day and such day is not a Business Day and, as a result, such payment cannot be made or action cannot be taken on such day, then this Agreement shall be deemed to provide that such payment shall be made or such action shall be taken on the first Business Day after such day.

SECTION 1.09 Interest Act

For the purposes of the *Interest Act* (Canada) and disclosure under such act, whenever interest to be paid under this Agreement or any Loan Document is to be calculated on the basis of a year of 365 days or 360 days or any other period of time that is less than a calendar year, the yearly rate of interest to which the rate determined pursuant to such calculation is equivalent is the rate so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by either 365, 360 or such other period of time, as the case may be.

SECTION 1.10 Accounting Terms

All accounting terms not specifically defined in this Agreement shall be interpreted in accordance with GAAP. If any Accounting Changes occur and such changes result in a material change in the calculation of the financial covenants, standards or terms used in this Agreement or any other Loan Document, the Borrowers and the Lenders agree to enter into negotiations in order to amend such provisions of this Agreement or such Loan Document, as applicable, so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the Borrowers' financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made.

If the Borrowers and the Lenders agree upon the required amendments, then after appropriate amendments have been executed and the underlying Accounting Changes with respect thereto has been implemented, any reference to GAAP contained in this Agreement or in any other Loan Document shall, only to the extent of such Accounting Changes, refer to GAAP, consistently applied after giving effect to the implementation of such Accounting Changes.

If the Borrowers and the Lenders cannot agree upon the required amendments within thirty (30) days following the date of implementation of any Accounting Change, then all calculations of financial covenants and other standards and terms in this Agreement and the other Loan Documents shall continue to be prepared, delivered and made without regard to the underlying Accounting Change. In such case, the Borrowers shall, in connection with the delivery of any financial statements under this Agreement, provide a management prepared reconciliation of the financial covenants to such financial statements in light of such Accounting Changes.

ARTICLE II

THE FACILITY

SECTION 2.01 The Facility

Subject to the terms and conditions of this Agreement, the Lenders hereby establish, on a several and not joint or joint and several basis, a non-revolving term loan facility in favour of the Borrowers up to the maximum amounts set out in Section 2.02 of this Agreement solely for the purposes set out in Section 2.10 of this Agreement (the "DIP Facility").

SECTION 2.02 Availability

- (a) Subject to the maximum weekly aggregate Advance amounts set out in Schedule 2.02 and upon satisfaction of each of the Stage 1 Conditions to the satisfaction of the Lenders, the Lenders shall make available to the Borrowers Advances under the DIP Facility (i) in US Dollars, up to a maximum amount of US\$10,000,000 and (ii) in Canadian Dollars, up to a maximum amount of \$15,000,000 (the "Stage 1 Availability").

- (b) Subject to the maximum weekly aggregate Advance amounts set out in Schedule 2.02 and upon satisfaction of each of the Stage 2 conditions to the satisfaction of the Lenders, in addition to the Stage 1 Availability, the Lenders shall make available to the Borrowers additional Advances under the DIP Facility (i) in US Dollars, up to an additional maximum amount of US\$14,000,000 and (ii) in Canadian Dollars, up to an additional maximum amount of \$11,000,000 (the "Stage 2 Availability") for an aggregate availability (inclusive of Stage 1 Advances and Stage 2 Advances) of US\$24,000,000 and \$26,000,000.
- (c) For certainty, the US Borrower shall not be considered to be a Borrower hereunder and shall not have any ability to request Advances hereunder until such time as the Chapter 15 DIP Order shall be entered by the US Courts in form and substance satisfactory to the Agent and the Lenders; provided that immediately following the entry of the Chapter 15 DIP Order by the US Courts, the US Borrower shall be deemed to be a Borrower hereunder and shall have the ability to request Advances hereunder.

SECTION 2.03 Advances under DIP Facility

- (a) Subject to Section 2.02(c) and the satisfaction of the Stage 1 Conditions and, if applicable, the Stage 2 Conditions, a Borrower shall make each request for an Advance under the DIP Facility by delivering to the Lenders a duly completed and executed Notice of Borrowing four (4) Business Days prior to the proposed date of the Advance (or such shorter period as the Agent and the Lenders in their sole discretion may agree).
- (b) Every Notice of Borrowing must include or be accompanied with: (i) an acknowledgement of a Responsible Officer confirming that the Stage 1 Conditions and, if applicable, the Stage 2 Conditions, have been satisfied and (ii) the Cashflow Forecast prepared in the immediately preceding week.
- (c) No more than one Advance shall be made by the Lenders to the Borrowers in any one calendar week period.
- (d) The aggregate amount of all Canadian Loans and all US Loans shall not, as at any calendar week, exceed the maximum aggregate amount specified in Schedule 2.02 in respect of such calendar week.
- (e) Once delivered all requests in respect of a proposed Advance are irrevocable and binding on the Borrower. All Advances must be in a minimum amount of \$2,000,000 and increments of \$1,000,000 in excess thereof with respect to each Currency.

SECTION 2.04 Interest

- (a) All principal amounts and any other amounts due and payable under the DIP Facility shall bear interest at a per annum rate equal to (i) with respect to the Canadian Loans and all other Canadian Dollar denominated amounts, the Canadian Prime Rate plus 5.50% (plus, until the Stage 2 Conditions have been satisfied to the satisfaction of the Agent, an additional 2.0% per annum) and (ii) with respect to the US Loans and all US Dollar denominated amounts, the US Prime Rate plus 5.50% (plus, until the Stage 2 Conditions have been satisfied to the satisfaction of the Agent, an additional 2.0% per annum).
- (b) All computations of interest shall be made by the Agent on the basis of (i) in respect of Canadian Loans, a year of 365 or (for leap years) 366 days and (ii) in respect of US Loans, a year of 365

days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or fees are payable. Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error. Interest shall accrue from day to day, both before and after default, demand, maturity and judgment.

- (c) All interest payable hereunder compounds daily and is payable in arrears on each Payment Date.

SECTION 2.05 Repayment of the Loans

To the extent not previously repaid, the principal amount of each Loan, together with all accrued and unpaid interest and all other Obligations payable hereunder, shall be due and payable in full in cash on the Maturity Date. The US Loans shall be repaid in US Dollars and the Canadian Loans shall be repaid in Canadian Dollars.

SECTION 2.06 Voluntary Prepayment of the Loans

- (a) The Borrowers may, at their option, prepay the outstanding principal amount of the Loans, in whole or in part, at any time together with all accrued and unpaid interest thereon up to the date of prepayment, *provided that* any voluntary partial prepayment (i) shall be a minimum principal amount of \$1,000,000 or US\$1,000,000, as applicable, and in increments of \$1,000,000 or US\$1,000,000, as applicable, and (ii) shall be applied by the Lenders against outstanding Obligations in accordance with Section 2.12. Any amounts prepaid may not be re-borrowed.
- (b) Any prepayment made pursuant to Section 2.06 shall only be made on a Business Day and shall only be effected on at least one (1) Business Day prior written notice to the Agent which notice, once given, shall be irrevocable and binding upon the Borrowers.

SECTION 2.07 Mandatory Prepayment of the Loans

- (a) If any Obligor sells, transfers or otherwise Disposes of any Property other than a Disposition permitted in Section 5.02(b), the Borrowers shall pay to the Lenders an amount equal to 100% of the Net Proceeds of such Disposition, *provided that*, the Borrowers shall not be required to make such payment in connection with the Disposition of any equipment if it or the applicable Obligor intends to (and does) purchase replacement equipment with such Net Proceeds within the earlier of (i) the Maturity Date and (ii) 90 days of the date of Disposition of such equipment. Any such replacement equipment so purchased must be subject to the Security and otherwise be in compliance with all of the terms contained herein. If it is not the intention of the Borrowers or the applicable Obligor to use the Net Proceeds to purchase replacement equipment within such time period or if such replacement equipment is not purchased within such time period, the Borrowers shall forthwith pay to the Lenders such Net Proceeds or the portion thereof that has not been so used.
- (b) If any Obligor receives proceeds of insurance in respect of (which, for certainty, shall be a Deposit Account listed on Schedule 4.01(vv) and specifically disclosed to the Agent as the Deposit Account used for such purposes) or on account of any loss of or damage to any Property of any Obligor, the Borrowers shall pay to the Lenders an amount equal to 100% of the proceeds received in connection therewith, *provided that* the Borrowers shall not be required to make such payment if it or the applicable Obligor intends to (and does) use such proceeds to replace, repair or rebuild the Property to which such insurance proceeds relate within the earlier of (i) the Maturity Date and (ii) 180 days from receipt of such proceeds (and, pending any such application,

the applicable Obligor shall retain such proceeds in a segregated Deposit Account). If it is not the intention of the Borrowers or the applicable Obligor to use the proceeds within such time period or if such proceeds are not so used during such time period, the Borrowers shall forthwith pay to the Lenders an amount equal to such proceeds or the portion thereof that has not been so used.

- (c) Prior to 1:00 p.m., Toronto time on the Tuesday of each week (or the following Business Day if any such Tuesday is not a Business Day) during the term of this Agreement, commencing on March 20, 2012, the Borrowers shall pay to the Lenders an amount equal to the Excess Cash Amount from the immediately prior week.
- (d) Any prepayment made by the Borrowers pursuant to Section 2.07 (a), (b) or (c) will be applied, without penalty or premium, to the repayment and permanent reduction of the Loans in accordance with Section 2.12. Such amounts may not be re-borrowed by the Borrowers unless otherwise agreed by the Lenders.
- (e) Notwithstanding the foregoing, the Obligors shall not be entitled to any Net Proceeds or any proceeds of insurance, including business interruption insurance, if there exists a Default or Event of Default.
- (f) For greater certainty, Section 2.07(b) shall not apply to proceeds of insurance in respect of any Directors and Officers insurance policies arising from litigation claims *provided that* such proceeds of insurance are applied against such litigation claims or fees incurred in connection therewith in accordance with the terms of such policies.

SECTION 2.08 Default Interest

Upon the occurrence and during the continuance of an Event of Default, the Borrower shall pay interest on (i) to the fullest extent permitted by law, the unpaid principal amount of the Loans, payable in arrears on the dates referred to in Section 2.04 and on demand, at a rate per annum equal at all times to 2% per annum above the applicable rate per annum required to be paid pursuant to Section 2.04 and (ii) to the fullest extent permitted by law, the amount of any interest, fee or other amount payable hereunder that is not paid when due, from the date such amount shall be due until such amount shall be paid in full, payable in arrears on the date such amount shall be paid in full and on demand, at a rate per annum equal at all times to 2% per annum above the applicable rate per annum required to be paid pursuant to Section 2.04.

SECTION 2.09 Additional Amounts

All payments of principal with respect to the Loans under this Agreement (whether at maturity, on prepayment or otherwise) shall be made together with (without duplication) (i) all accrued interest thereon to the date of such payment or prepayment on the principal amount paid or prepaid and (ii) any and all costs and expenses then due and owing hereunder pursuant to this Agreement.

SECTION 2.10 Use of Proceeds

The proceeds of the Loans shall be available (and the Borrower agrees that it shall use such proceeds) solely for the following purposes, in each case to the extent permitted by the Orders and provided for in the Approved Budgets (collectively, the "Permitted Payments"):

- (a) operating expenses of the Obligors incurred in the ordinary course of Business;

- (b) costs and expenses incurred by the Obligors in the administration of the Proceedings including, without limitation, the payment of fees and expenses of the Obligors' legal and financial advisors, the Chief Process Supervisor and the Monitor and its legal advisors;
- (c) payment of the costs and expenses of the Agent, the Lenders, the First Lien Lenders and the Second Lien Lenders as provided for herein;
- (d) payment of interest (including default interest) and other amounts payable under the DIP Facility and the First Lien Loan Agreement (including, without limitation, all fees payable to the Agent and Lenders); and
- (e) any other costs and expenses permitted in the applicable Orders and specifically provided for in the Approved Budgets.

SECTION 2.11 Standby Fee

The Borrowers shall pay a standby fee (the "Standby Fee") to each Lender calculated daily at the rate per annum specified in the Fee Letter multiplied by the unused portion of Total Availability from time to time, and will be earned and payable monthly in arrears on each Payment Date. The Standby Fee shall be non-refundable once paid.

SECTION 2.12 Application of Payments

Any amounts prepaid or repaid shall not be re-borrowed. All amounts prepaid or repaid shall be applied (i) firstly in reduction of the accrued and unpaid interest and all other amounts then outstanding (other than the principal amount of each Loan), and (ii) thereafter in reduction of the principal amount of each Loan being prepaid or repaid in inverse order of maturity. All obligations in respect of Canadian Loans shall be paid in Canadian Dollars and all obligations in respect of US Loans shall be paid in US Dollars.

SECTION 2.13 Payments Generally

All payments made pursuant to this Agreement (including, without limitation, in respect of principal, interest, fees, expenses or otherwise) shall be made by a Borrower or Obligor directly to each Lender on a *pro rata* basis, based on their respective Commitments, by way of wire transfer to the account specified therefor by each Lender to the Borrowers from time to time no later than 1:00 p.m. (Toronto time) on the due date thereof. Any payments received after such time shall be considered for all purposes as having been made on the next following Business Day unless such Lender otherwise agrees in writing. Any fees or amounts owing directly to the Agent shall be paid by the Borrowers directly to the Agent by wire transfer to the account specified therefor by the Agent to the Borrowers from time to time no later than 1:00 p.m. (Toronto time) on the due date thereof.

SECTION 2.14 Payments - No Deduction

- (a) All payments made in respect of this Agreement (in respect of principal, interest or otherwise) shall be made in full without set off or counterclaim, and free of and without deduction or withholding for any present or future Taxes, other than Excluded Taxes, *provided that* if a Borrower or any other Obligor shall be required by law to deduct or withhold any Taxes, other than Excluded Taxes, from or in respect of any payment or sum payable to the Agent or the Lenders, the payment or sum payable shall be increased as may be necessary so that after making all required deductions or withholdings, the Agent or the Lenders, as the case may be, receive an amount equal to the sum it would have received if no deduction or withholding had been made

and a Borrower or the applicable Obligor shall pay the full amount deducted to the relevant taxation or other authority in accordance with Applicable Law.

- (b) If any Borrower fails to pay any Taxes (other than Excluded Taxes) when due to the appropriate taxing authority or fails to remit such Taxes when due, the payor shall indemnify such Lender for such Tax (to the extent that such Lender is liable) and any interest and penalties thereon, and the indemnity payment shall be increased as necessary so that after the imposition of any Tax in that jurisdiction on the indemnity payment (including Tax in respect of any such increase in the indemnity payment), such Lender shall receive the full amount of Taxes, interest and penalties for which it is liable in that jurisdiction.

SECTION 2.15 Illegality

If after the date hereof the adoption of any Applicable Law or any change therein or in the interpretation or application thereof by any court or by any governmental or other authority or central bank or comparable agency or any other entity charged with the interpretation or administration thereof or compliance by a Lender with any request or direction (whether or not having the force of law) of any such authority, central bank or comparable agency or entity, now or hereafter makes it unlawful or impossible for any Lender to make, fund or maintain the Loans or to give effect to its obligations in respect of the Loans, such Lender may, by written notice thereof to the Borrowers and to the Agent declare its obligations under this Agreement to be terminated whereupon the same shall forthwith terminate, and the Borrowers shall prepay within the time required by such law (or at the end of such longer period as such Lender at its discretion has agreed) such Lender's rateable portion of the principal amount of the Loans together with accrued interest, any additional amounts as may be applicable to the date of such payment and all costs, losses and expenses incurred by the Lenders by reason of the liquidation or re-employment of deposits or other funds or for any other reason whatsoever resulting from the repayment of such principal amount of the Loans. If any such change shall only affect a portion of such Lender's obligations under this Agreement which is, in the opinion of such Lender, severable from the remainder of this Agreement so that the remainder of this Agreement may be continued in full force and effect without otherwise affecting any of the obligations of the Agent, the other Lenders or the Obligors hereunder, such Lender shall only declare its obligations under that portion so terminated.

SECTION 2.16 Change in Circumstances

If the introduction of or any change in any Applicable Law relating to a Lender or any change in the interpretation of application thereof by any Governmental Authority or compliance by a Lender with any request or direction of any Governmental Authority:

- (a) subjects a Lender or causes the withdrawal or termination of a previously granted exemption with respect to, any Taxes or changes the basis of taxation of payments due to a Lender or increases any existing Taxes on payments of amounts owing to a Lender (other than Taxes of application to the overall net income of a Lender);
- (b) imposes, modifies or deems applicable any reserve, liquidity, cash margin, capital, or any other regulatory or similar requirement against assets held by, or loans by, a Lender; or
- (c) imposes on a Lender any other condition or requirement with respect to this Agreement (other than Taxes of application to the overall net income of a Lender);

and such occurrence has the effect of:

- (d) increasing the cost to a Lender of agreeing to make or making, maintaining or funding this Agreement or any portion thereof;
- (e) reducing the amount of the Obligations owing to a Lender;
- (f) directly or indirectly reducing the effective return to a Lender under this Agreement or on its overall capital as a result of entering into this Agreement or as a result of any of the transactions or obligations contemplated by this Agreement (other than a reduction resulting from a higher rate of income tax being imposed on the Lender's overall income); or
- (g) causing a Lender to make any payment or to forego any interest, fees or other return on or calculated by reference to any sum received or receivable by a Lender hereunder;

then, such Lender shall also advise the Borrowers and the Agent by way of a certificate of an officer of the Lender setting forth, with sufficient particulars (including for greater certainty, the details of calculations relevant thereto), the facts relevant to the application of this Section 2.16, and, absent manifest error in such officer's certificate, the Borrowers shall promptly upon demand by the Lender pay or cause to be paid to the Lender such additional amounts as shall be sufficient to fully indemnify the Lender for such additional cost, reduction, payment, foregone interest or other return *provided that* the Borrowers shall not be required to pay such additional amounts unless such additional amounts are being demanded by the Lender as a general practice from its borrowers similarly obligated. The applicable Lender shall provide to the Borrowers a certificate in respect of the foregoing which incorporates reasonable supporting evidence thereof and any such certificate will be prima facie evidence thereof except for manifest error.

SECTION 2.17 Payment of Costs and Expenses

Each Borrower shall pay to the Agent and the Lenders on demand all reasonable costs and expenses of the Agent, the Lenders and their respective advisors and agents and any receiver or receiver manager appointed by them or by a court (including, without limitation, all fees, expenses and disbursements of legal counsel) in connection with this Agreement and the other Loan Documents and the Proceedings, including, without limitation:

- (a) the preparation of this Agreement or any of the other Loan Documents, including in connection with due diligence;
- (b) the preparation of any actual or proposed amendment or modification hereof or thereof or any waiver hereunder or thereunder and all instruments supplemental or ancillary thereto;
- (c) the registration and/or discharge of any of the Security Documents in any public record office;
- (d) ongoing due diligence with respect to, among other things, any pending or threatened litigation;
- (e) obtaining advice as to the Lenders' rights and responsibilities under this Agreement or the other Loan Documents; and
- (f) the defence, establishment, protection or enforcement of any of the rights or remedies of the Lenders under this Agreement or any of the other Loan Documents including, without limitation, all costs and expenses of establishing the validity and enforceability of, or of collection of amounts owing under, any of the Security Documents or any enforcement of the Security and all costs and expenses incurred during the Proceedings.

All amounts due under this Section 2.17 shall be payable within three (3) Business Days after demand therefor accompanied by an invoice. If such amounts are not paid by such time, the Agent and the Lenders shall be authorized to pay such amounts as an Advance under the DIP Facility and such amounts will be deemed to be a Canadian Loan or a US Loan, as applicable, and will accrue interest at the rate applicable thereto.

SECTION 2.18 Indemnities

- (a) Each Borrower shall indemnify and save harmless the Agent and the Lenders from all claims, demands, liabilities, damages, losses, costs, charges and expenses (including the fees, expenses and disbursements of legal counsel to the Agent and the Lenders), which may be reasonably incurred by the Agent or the Lenders as a consequence of or in respect of (a) default by a Borrower or any other Obligor in the payment when due of any Obligation or any other Default or Event of Default hereunder, (b) the entering into by the Agent and the Lenders of this Agreement and any amendment, waiver or consent relating hereto, and the performance by the Lenders of its obligations under this Agreement (which for greater certainty will not include any grossly negligent act or willful misconduct on the part of the Agent or the Lenders), (c) any payment or prepayment of the Obligations made on a date which is not a Payment Date, (d) any investigation, claim, action or other proceeding threatened or pending against any Obligor, or (e) the application by a Borrower of the proceeds of this Agreement; provided that the Borrowers shall not be required to indemnify and save harmless the Agent and the Lenders from any claim, demand, liability, damage, loss, cost, charge or expense resulting from the gross negligence or willful misconduct of the Agent or any Lender. A certificate of an officer of the Agent or any Lender as to any such claim, demand, liability, damage, loss, cost, charge or expense and containing reasonable details of the calculation shall be, absent manifest error, prima facie evidence of the amount of such claim, demand, liability, damage, loss, cost, charge or expense.

- (b) Each Borrower shall indemnify and save harmless the Agent, the Lenders and its respective Affiliates, agents, officers, directors and employees (each an "Indemnified Party") from all claims, demands, liabilities, damages, losses, costs, charges and expenses (including without limitation any investigatory, remedial, clean up, compliance or preventative costs, charges and expenses) (collectively, "Indemnified Claims") which may be asserted against or incurred by such Indemnified Party under or on account of any applicable Environmental Law (including the assertion of any Encumbrance thereunder), whether upon realization of the Security, or as a lender to a Borrower, or as successor to or assignee of any right or interest of a Borrower or any other Obligor or as a result of any order, investigation or action by any Governmental Authority relating to any one of its or their business or property, including without limitation any Indemnified Claims arising from:
 - (i) the Release of a Contaminant, the threat of the Release of any Contaminant, or the presence of any Contaminant affecting the real or personal property of a Borrower or any other Obligor, whether or not the Contaminant originates or emanates from such Person's property or any other real property or personal property located thereon;
 - (ii) the Release of a Contaminant owned by, or under the charge, management or control of, a Borrower or any other Obligor or any predecessors or assignors thereof;
 - (iii) any costs of investigation, removal or remedial action incurred by any Governmental Authority or any costs incurred by any other Person or damages from injury to, or destruction of, or loss of or damages to natural resources in relation to, the real property or personal property of a Borrower or any other Obligor or any contiguous real property

or elsewhere or personal property located thereon or any loss or damages to natural resources in relation thereto, including in relation to the foregoing, reasonable costs of assessing such injury, destruction or loss incurred pursuant to Environmental Law;

- (iv) liability for personal injury or property damage arising by reason of any civil law offences or quasi criminal or criminal offences or under any statutory or common tort law theory and any and all other third party Indemnified Claims of any and every nature whatsoever, arising in respect of or relating to a Borrower or any other Obligor or the property thereof, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of a dangerous activity at, near, or with respect to the real or personal property of a Borrower, or any other Obligor or elsewhere; and/or
- (v) any other matter relating to the environment and Environmental Law affecting the property or the operations and activities of a Borrower or any of other Obligor (including the operation of the Business) within the jurisdiction of any Governmental Authority;

provided that the Borrowers shall not be required to indemnify and save harmless any Indemnified Party from any Indemnified Claim under or on account of any applicable Environmental Law resulting from the gross negligence or willful misconduct of any Indemnified Party.

SECTION 2.19 Maximum Rate of Interest

Notwithstanding anything herein or in any of the other Loan Documents to the contrary:

- (a) in the event that any provision of this Agreement or any other Loan Documents would oblige a Borrower or any other Obligor to make any payment of interest or other amount payable to the Lenders in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Lenders of interest at a criminal or prohibited rate (as such terms are construed under the Criminal Code (Canada) or any other Applicable Law), then notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with the same effect as if adjusted at the Closing Date to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the Lenders of interest at a criminal or prohibited rate, such adjustment to be effected to the extent necessary in each case, as follows:
 - (i) by reducing any fees and other amounts which would constitute interest for the purposes of Section 347 of the Criminal Code (Canada) or any other Applicable Law; and
 - (ii) by reducing the amount or rate of interest exigible under Section 2.04 of this Agreement; and
 - (iii) any amount or rate of interest referred to in this Section 2.19 shall be determined in accordance with generally accepted actuarial practices and principles over the maximum term of this Agreement (or over such shorter term as may be required by Section 347 of the Criminal Code (Canada) or any other Applicable Law) and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Lenders shall be conclusive for the purposes of such determination, absent manifest error.

SECTION 2.20 Replacement of Lenders

- (a) If any Lender otherwise constitutes a Defaulting Lender hereunder, then either (A) the Agent or (B) so long as no Default then exists or would exist after giving effect to such replacement, the Borrowers, shall have the right to replace such Lender with another bank or financial institution (in the case of the Borrowers, with the consent of the Agent, which consent shall not be unreasonably withheld), *provided that* (a) the obligations of the Borrowers owing hereunder or under any other Loan Document to the Lender being replaced (including such increased costs and additional amounts) that are not being assigned to the replacement lender shall be paid in full to the Lender being replaced concurrently with such replacement, (b) the replacement lender shall execute an Assignment Agreement pursuant to which it shall become a party hereto as provided in Section 9.06 (such Assignment Agreement shall not require execution by the Defaulting Lender in order to be effective) and such assignment shall be effectuated in accordance with Section 9.06, (c) upon compliance with the provisions for assignment provided in Section 9.06 and the payment of amounts referred to in clause (a), the replacement lender shall constitute a “Lender” hereunder and the Lender being so replaced shall no longer constitute a “Lender” hereunder, and (d) any such replacement shall be effected within ninety (90) days after a Borrower became aware of circumstances giving rise to such right of replacement.
- (b) In the event that a Lender constitutes a Defaulting Lender at any time hereunder, Agent may (but shall not be required to), in its discretion, retain any payments or other funds received by Agent that are to be provided to a Defaulting Lender hereunder, and may apply such funds to such Lender’s defaulted obligations or readvance the funds to the Borrowers in accordance with this Agreement. The failure of any Lender to perform its obligations hereunder shall not relieve any other Lender of its obligations, and no Lender shall be responsible for default by another Lender.

ARTICLE III

CONDITIONS TO ADVANCES

SECTION 3.01 Conditions Precedent to the Stage 1 Availability

The obligations of the Lenders hereunder to make any Advance of the Stage 1 Availability are subject to the compliance with each of the following conditions precedent, which conditions precedent are for the sole and exclusive benefit of the Lenders and may be waived in writing by the Lenders in their sole discretion (the “Stage 1 Conditions”):

- (a) the Initial Order shall have been entered by the CCAA Court in form and substance satisfactory to the Agent and the Lenders in their sole and absolute discretion and such Initial Order shall not have been reversed, modified, amended, stayed or vacated, appealed or subject to a stay pending appeal or otherwise challenged, unless otherwise consented to by the Agent;
- (b) the TRO Order shall have been entered by the US Court in form and substance satisfactory to the Agent and the Lenders in their sole and absolute discretion and the TRO Order shall not have been reversed, modified, amended, stayed or vacated, appealed or subject to a stay pending appeal or otherwise challenged, unless otherwise consented to by the Agent;
- (c) no Material Adverse Change shall have occurred with respect to any of the Obligors or the business of any of the Obligors since February 21, 2012;

- (d) the Chief Process Supervisor shall have been engaged (and remain engaged) by the Obligors on terms and conditions satisfactory to the Agent and the Lenders and shall have been appointed pursuant to the Initial Order;
- (e) the Obligors shall be in compliance with all Orders entered in the Proceedings and shall be diligently pursuing the successful completion of the Proceedings with a view to, among other things, the implementation and performance of the SISP as a mechanism to achieve full satisfaction and payment of all obligations owing to the Agent, the Lenders, the First Lien Lenders and the Second Lien Lenders;
- (f) the Obligors shall be in compliance with all of the terms and conditions set forth in the DIP Term Sheet;
- (g) the Agent and the Lenders shall have received evidence satisfactory to them that DIP Financing Order shall have created in favour of the Agent and the Lenders valid enforceable liens on the Property having the priority specified herein securing all Obligations and amendments to the Existing Security Documents satisfactory to the Lenders shall have been executed such that the Existing Security Documents shall secure the Obligations;
- (h) all Orders issued in the Proceedings and all motions and other documents filed by any of the Obligors in the Proceeding shall be satisfactory in form and substance to the Agent and the Lenders;
- (i) no examiner or any trustee, receiver, interim receiver or receiver and manager shall have been appointed with respect to any or all of the Obligors or their Property in either the United States or Canada;
- (j) the representations and warranties contained in this Agreement and each Loan Document shall be true and correct in all material respects except to the extent that such representations or warranties relate only to an earlier date, in which case such representations and warranties shall be true and correct in all material respects at such earlier date;
- (k) no Default or Event of Default has occurred and is continuing under this Agreement or any other Loan Document (other than any event of default existing and known to the Agent or the Lenders on the Closing Date under any Existing Security Documents) prior to the Closing Date nor shall there be any such Default or Event of Default after giving effect to this Agreement;
- (l) the Obligors shall be in compliance in all respects with all Milestones;
- (m) the Cash Management Procedures shall be satisfactory to the Agent and the Lenders in all material respects;
- (n) the Agent have received the following, in form and substance satisfactory to the Agent:
 - (i) an Officer's Certificate in respect of each Obligor certifying that attached thereto are true and correct copies of the following documents, and that such documents are in full force and effect, unamended:
 - (A) the articles, memorandum, by laws, constating documents or other organizational documents of the applicable Obligor;

- (B) a certificate of incumbency including sample signatures of officers and directors of the Obligor who have executed this Agreement or any of the Loan Documents; and
 - (C) the resolutions or other documentation evidencing that all necessary action (if any), corporate or otherwise, has been taken by the Obligor to authorize the execution, delivery and performance of the Loan Documents to which it is a party; and
- (ii) a certificate of status, certificate of compliance or similar certificate with respect to the jurisdiction of incorporation or formation of each Obligor and any other jurisdiction in which a Obligor conducts business;
- (o) the Lenders shall have received opinions of counsel to the Borrowers and the Fund with respect to (i) the due authorization, execution and delivery by each of the Borrowers and the Fund of this Agreement and the Confirmation of Security, and (ii) the enforceability of this Agreement and the Confirmation of Security as against each of the Obligors;
 - (p) all fees set out in the Fee Letter and all other amounts and fees payable to or for the account of the Lenders or the Agent that are due and payable on or before the Closing Date or the proposed date of the Advance (including the fees and disbursements of counsel to the Lenders) shall have been paid or arrangements shall be in place to pay such amounts and fees concurrently with the applicable Advance and the Borrowers shall be in compliance with all the terms of any fee letters between the Lenders and the Borrowers;
 - (q) all approvals, consents and authorizations required to permit the transactions contemplated by the Loan Documents to proceed in compliance with Applicable Law and the DIP Financing Order shall have been obtained and evidence thereof provided to the Lenders; and
 - (r) the Lenders shall be in receipt of any other documentation or information that they have reasonably requested.

SECTION 3.02 Conditions Precedent to the Stage 2 Availability

The obligations of the Lenders hereunder to make any Advance of the Stage 2 Availability are subject to the compliance with each of the following conditions precedent, which conditions precedent are for the sole and exclusive benefit of the Lenders and may be waived in writing by the Lenders in their sole discretion (the "Stage 2 Conditions"):

- (a) each of the Stage 1 Conditions shall have been and continue to be satisfied;
- (b) the Obligors shall have obtained entry by the US Court of (i) the Recognition Order providing for the recognition of the CCAA Proceeding as a "foreign main proceeding" as such term is defined under section 1502(4) of the Bankruptcy Code and (ii) the Chapter 15 DIP Order approving the DIP Facility and recognizing the DIP Charge; and the Recognition Order and the Chapter 15 DIP Order shall each be in form and substance satisfactory to the Agent and the Lenders in their sole and absolute discretion;
- (c) the Recognition Order and the Chapter 15 DIP Order shall be in full force and effect, and shall have not (in whole or in part) been reversed, modified, amended, stayed, vacated, appealed or subject to a stay pending appeal unless otherwise consented to by the Agent;

- (d) the Obligors shall be in compliance in all respects with the Chapter 15 DIP Order and the Loan Documents;
- (e) the Cash Management Order shall have been entered in the CCAA Court and shall have been recognized in the Recognition Order or otherwise by the US Court and shall be in full force and effect and in form and substance satisfactory to the Agent and the Lenders and shall have not (in whole or in part) been reversed, modified, amended, stayed, vacated, appealed or subject to a stay pending appeal unless otherwise consented to by the Agent; and
- (f) all Orders shall be in full force and effect and no Order shall have been (in whole or in part) reversed, modified, amended, stayed, vacated, appealed or subject to any stay pending appeal or otherwise challenged.

SECTION 3.03 Conditions Precedent to each Advance

Any Advance requested by a Borrower (whether under the Stage 1 Availability or the Stage 2 Availability) is subject to the following additional conditions precedent:

- (a) delivery of a Notice of Borrowing in accordance with Section 2.03;
- (b) after giving effect to the Advance, the aggregate principal amount outstanding under the DIP Facility, as at any week, shall not exceed the maximum aggregate applicable to such week specified in Schedule 2.02;
- (c) the Borrowers have, prior to delivery of the related Notice of Borrowing, submitted to the Agent the Cashflow Forecast for the 13-week period commencing in the immediately preceding week;
- (d) after giving effect to the Advance and determined on a pro forma basis with respect to any related expenditures that constitute Permitted Payments, no amounts would be payable to the Lenders pursuant to Section 2.07(b);
- (e) the representations and warranties contained in this Agreement and each Loan Document shall be true and correct in all material respects except to the extent that such representations or warranties relate only to an earlier date, in which case such representations and warranties shall be true and correct in all material respects at such earlier date; and
- (f) no Default or Event of Default has occurred and is continuing under this Agreement or any other Loan Document (other than any event of default existing and known to the Agent or the Lenders on the Closing Date under any Existing Security Documents) nor shall there be any such Default or Event of Default after giving effect to proposed Advance.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

SECTION 4.01 Representations and Warranties of the Obligors

To induce each of the Lenders to make the Loans available hereunder, each of the Obligors, collectively and severally represents and warrants to the Lenders that each of the following representations and warranties is true and correct in respect of itself and each Obligor (except where expressly limited to a

specific Obligor, that such representations and warranties are true and correct with respect to that specific Obligor):

- (a) Incorporation and Qualification. It is duly incorporated, amalgamated, formed, merged or continued, as the case may be, and validly existing as a corporation, company or partnership, under the laws of its jurisdiction of organization or formation and is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions in which the nature of its Property or business makes such qualification necessary except where failure to be so qualified, licensed, registered could not reasonably be expected to have a Material Adverse Effect. The Fund is a limited purpose trust being an unincorporated open ended mutual fund trust, established under the laws of the Province of Alberta and created pursuant to a declaration of trust.
- (b) Corporate Power. It has all requisite corporate or other power and authority to (i) own and operate its Property and to carry on the Business carried on by it; and (ii) enter into and perform its obligations under this Agreement and the other Loan Documents to which it is a party. Each of the trustees of the Fund has the power and authority to cause the Fund to guarantee the Obligations and provide security over the Property of the Fund.
- (c) Authorization, Execution and Binding Obligation. The execution, delivery and performance of each of the Loan Documents to which it is a party has been duly authorized by all corporate and other actions required, and each such Loan Document has been duly executed and delivered by it, and constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms and the DIP Financing Orders, subject to the availability of equitable remedies and the effect of bankruptcy, insolvency and similar laws affecting the rights of creditors generally.
- (d) Conflict with Other Instruments. The execution and delivery of the Loan Documents to which it is a party and the performance of its obligations thereunder and compliance with the terms, conditions and provisions thereof, will not (i) conflict with or result in a breach of any of the terms, conditions or provisions of (1) its constating documents or by laws, (2) any Applicable Law, or (3) any judgment, injunction, determination or award which is binding on it; or (ii) result in, require or permit (x) the imposition of any material Encumbrance in, on or with respect to its Property now owned or hereafter acquired by it (other than pursuant to the Security Documents or the DIP Financing Orders), or (y) any third party to terminate, or acquire any rights materially adverse to it under, any Material Contract.
- (e) DIP Priority. The DIP Financing Orders and the Loan Documents create a valid and perfected super-priority security interest in favour of the Agent on behalf of the Lenders in the Obligors' Property, having the priority set forth in the DIP Financing Orders securing the payment of the Obligations.
- (f) Existing Security. Schedule 4.01(f) sets out a complete list of all of the security agreements, pledge agreements, guarantees and all other security documents executed by any of the Obligors prior to the date hereof in favour of the Security Trustee and in favour of the Master Collateral Agent (or any of its predecessors), and all amendments thereto (the "Existing Security Documents"). The Borrowers have provided to the Agent true and complete copies of all of the Existing Security Documents and such Existing Security Documents are in full force and effect and unamended.

- (g) Ownership Structure. The ownership structure of the Fund and its Subsidiaries as at the date hereof is as set out in Schedule 4.01(g) (as at the date hereof and as updated from time to time pursuant to Section 5.03(h)), which contains:
- (i) a list of each Subsidiary of the Fund; and
 - (ii) a complete and accurate list of:
 - (A) each such Person's full and correct name (including any French and English forms of name) and the jurisdiction in which each such Person was formed,
 - (B) the full address (including postal code or zip code) of the Borrowers and each Guarantor's chief executive office and chief place of business and, if such address is different, the address at which the books and records of such Person are located, the address at which senior management of such Person are located and conduct their deliberations and make their decisions with respect to the business of such Person and the address from which the invoices and accounts of such Person are issued, and
 - (C) the Relevant Jurisdiction of each Obligor.

The Fund has no Subsidiaries other than the Subsidiaries set out on Schedule 4.01(i) and each Subsidiary of the Fund is a Guarantor.

- (h) Share Capital. Schedule 4.01(h) sets out a complete and accurate description (as at the date hereof and as updated from time to time pursuant to Section 5.03(h)) (i) the authorized capital or membership interests of each Obligor, by class, (ii) a description of the number of shares or membership interests of each such class that are issued and, if applicable, outstanding and (iii) the registered owner of such issued and outstanding Equity Interests. All of the outstanding Equity Interests of each Obligor have been validly issued and is fully paid and non-assessable.
- (i) Agreements to Acquire Shares. Except as set out in Schedule 3.01(i), no Person has any agreement, option, right or privilege (whether by law, preemptive or contractual) or any other right capable of becoming an agreement, option, right or privilege for the acquisition, purchase, subscription, allotment or issuance of any Equity Interests of any Obligor or any securities or obligations of any kind convertible into or exchangeable for Equity Interests of any Obligor, or to require an Obligor to purchase, redeem or otherwise acquire any of its issued and outstanding Equity Interests. No shareholder of any Obligor has any preemptive right or right of first refusal in respect of the allotment and issuance of any unissued Equity Interests of any Obligor. No Obligor is a party to any agreement and, to the knowledge of each Obligor, no agreement exists that in any way affects the voting rights attaching to or control of any Equity Interests of any Obligor.
- (j) Governmental Approvals. The entering into and the performance by each Obligor of the Loan Documents to which it is a party do not require any filing, notice, consent, approval, authorization or order of any court or Governmental Authority except for approvals and filings required by the US Court or the CCAA Court or with respect to the transactions contemplated in the Fee Letter, which approvals have been obtained and filings have been made.
- (k) Reporting Issuer Status. As at the date hereof, the Fund is a reporting issuer under the Securities Laws of each of the provinces and territories of Canada and it is in compliance with such

Securities Laws and is not listed as being in default of any requirement of the Securities Laws in any such province.

- (l) Compliance with CNSX Rules. The Fund is in compliance in all material respects with the rules and regulations of the CNSX.
- (m) No Misrepresentation in Public Filings. The Fund has, in accordance in all material respects with Applicable Laws, filed with the securities regulatory authorities and the TSX, as applicable, true and complete copies of all forms, reports, schedules, statements, material change reports, circulars, press releases, disclosures relating to options and other stock based incentive plans, prospectuses, other offering documents and all other documents required to be filed by it with the Securities Commissions and the Applicable Exchange, as applicable, since January 1, 2002 (such forms, reports, schedules, statements and other documents, including any financial statements or other documents, including any schedules included therein, are referred to herein as the “Fund Public Documents”). The Fund Public Documents (i) at the time filed did not, and (ii) as of the date hereof (taken as a whole after giving effect to all filings made prior to the date hereof), do not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The Fund has not filed any confidential material change report with any of the Securities Commissions, the Applicable Exchange, or any other self regulatory authority that remains confidential.
- (n) Disclosure Controls. The Fund maintains an effective system of “disclosure controls and procedures” (as defined in National Instrument 52-109 – Certification of Disclosure in Issuers’ Annual and Interim Filings (“NI 52-109”)) that is designed to ensure that information required to be disclosed by the Fund in reports that it files or submits under Securities Laws is recorded, processed, summarized and reported within the time periods specified in the Securities Commissions’ rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Fund’s management as appropriate to allow timely decisions regarding required disclosure. The Fund has carried out evaluations of the effectiveness of its disclosure controls and procedures as contemplated under NI 52-109.
- (o) Accounting Controls. The Fund maintains systems of “internal control over financial reporting” (as defined in NI 52-109) that comply with the requirements of NI 52-109 and have been designed by, or under the supervision of, the Fund’s principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including internal accounting controls sufficient to provide reasonable assurance (i) that transactions are executed in accordance with management’s general or specific authorizations; (ii) that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) that access to assets is permitted only in accordance with management’s general or specific authorization; (iv) that the recorded accountability for material individual assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and (v) regarding prevention or timely detection of any unauthorized acquisition, use or disposition of the Fund’s assets that could have a material effect on the Fund’s annual financial statements or interim financial statements. Since the date of the most recent balance sheet of the Fund publicly disclosed by the Fund, the Fund’s auditors and the audit committee of the Fund’s board of trustees have not been advised of: (A) any significant deficiencies in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the

Fund's ability to record, process, summarize and report financial information; and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the Fund's internal control over financial reporting. Except as publicly disclosed by the Fund, there are no material weaknesses in the Fund's internal controls.

- (p) Independent Accountants. KPMG LLP, which has audited certain financial statements of the Fund, is an independent registered public accounting firm with respect to the Fund and its Subsidiaries within the applicable rules and regulations adopted by the Securities Commissions. There has not been any reportable event (within the meaning of National Instrument 51-102 — Continuous Disclosure Obligation) with KPMG LLP or any former auditors of the Fund.
- (q) Contingent Liabilities. Except as disclosed in Schedule 4.01(q), it has no contingent liabilities in excess of the liabilities that are either disclosed or reserved against in the Fund's audited financial statements and interim financial statements which would reasonably be expected to be material to the financial condition of the Fund on a consolidated basis.
- (r) No Cease Trade Orders. Since December 19, 2011, no order ceasing or suspending trading in securities of the Fund or prohibiting the sale of securities by the Fund has been issued and the Fund has not been served with or otherwise received notice of or become aware of any proceedings for this purpose having been instituted, or being pending, contemplated or threatened.
- (s) Conflicts of Interest. Except as disclosed as related party transactions in the Borrowers financial statements and also on Schedule 4.01(s), none of the directors or officers of any Borrower or any associate or affiliate of any of the foregoing had, has or intends to have any material interest, direct or indirect, in the transactions contemplated by this Agreement, the Loan Documents or in any proposed material transaction with a Borrower which, as the case may be, materially affects, is material to or will or may reasonably be expected to materially affect a Borrower on a consolidated basis.
- (t) Litigation. There are no material actions, suits or proceedings outstanding and there are no material actions, suits or proceedings pending or, to the knowledge of each Obligor, threatened, against it, the Business or in respect of its Property, other than as set out on Schedule 4.01(t). There are no pending or, to the knowledge of each Obligor, threatened investigation(s) or other proceeding(s) by the Canadian Competition Bureau, the U.S. Federal Department of Justice Antitrust Division or any other Governmental Authority against it, the Business or in respect of its Property. For the purposes of this paragraph, a "material" action, suit or proceeding, shall be any action, suit or proceeding where the claim in question is in excess of \$500,000.
- (u) No Expropriation. At the date hereof, there are no expropriation or similar proceedings, actual or threatened, of which a Borrower or any Guarantor has notice, or reason to believe such notice is pending or threatened, against the Leased Real Property, the Owned Real Property or any part thereof.
- (v) Compliance with Laws. It is conducting its business in compliance in all material respects with all Applicable Laws of each jurisdiction in which it carries on the Business including any proposed or upcoming amendments to any Applicable Laws relating to the Business of which it is aware.
- (w) Material Contracts. Schedule 4.01(w) sets out all Material Contracts of the Obligors (as at the date hereof and as updated from time to time pursuant to Section 5.03(h)); all Material Contracts

are in full force and effect and unamended except as disclosed to the Lenders and true and complete copies of each Material Contract have been provided to the Lenders; and no Obligor is, and to the knowledge of each Obligor, no other party thereto is, in default in any material respect under any Material Contract nor does any material dispute exist under any Material Contract.

- (x) Material Permits. Schedule 4.01(x) sets out all Material Permits held by the Obligor (as at the date hereof and as updated from time to time pursuant to Section 5.03(h)) all Material Permits are in good standing and the Obligors, as applicable, are in compliance with all material provisions of all Material Permits. No Obligor has received any correspondence or any notice of proceedings or other document from any Governmental Authority concerning the cancellation, amendment, non-renewal or refusal of such Material Permits, or concerning other related proceedings which, individually or collectively, if they gave rise to an unfavorable decision, order or judgment, would result in a Material Adverse Effect, and, to the knowledge of each Obligor, no such proceeding is threatened.
- (y) Owned and Leased Real Property. Schedule 4.01(y) sets out all of the Owned Real Property and the Leased Real Property (as at the date hereof and as updated from time to time pursuant to Section 5.03(h)); other than the Owned Real Property and the Leased Real Property, it is not the owner or lessee of, or under any agreement or option to own, any real property or any interest therein, and it has no tangible assets having a book value in excess of \$1,000,000 at any location or that is material to the Business other than as disclosed in Schedule 4.01(aa).
- (z) Title to Property. Except as disclosed in Schedule 4.01(z), its Property is owned or leased by it as the beneficial and registered owner thereof with good and (in the case of Owned Property) marketable title thereto, none of its Property is subject to any Encumbrance except for Permitted Encumbrances and it is not in default in any material respect under any of the Permitted Encumbrances relating to it or its Property. No Encumbrance has been registered against any Obligor with respect to any judgment rendered or Claim filed against any Obligor and no Obligor has provided any security to the Lenders or any other Person with respect to any such Encumbrance.
- (aa) With Respect to the Property. Except as disclosed in Schedule 4.01(aa), all tangible Property of the Obligors and tangible property used but not owned by an Obligor, taken as a whole and required in the operation of the Business, is in operating condition, reasonable wear and tear excepted, is used by the applicable Obligor in the operation of the Business for the purposes for which it was intended and its use is not subject to any restriction, contestation or claim.
- (bb) Environmental Matters. Except as disclosed in Schedule 4.01(bb) and except as would not individually or in the aggregate reasonably be expected to cause material liability to any Obligor:
 - (i) each Obligor, through its operations, its equipment and the properties it owns, leases or occupies, or in any other manner, is not in violation of any Environmental Law;
 - (ii) each Obligor has all Permits required under any applicable Environmental Law and is in material compliance with their requirements;
 - (iii) each Obligor has or expects to be able to obtain all Permits required under any applicable Environmental Laws in order to carry out its Business;
 - (iv) there are no pending or, to the knowledge of each Obligor, threatened administrative, regulatory, judicial or other actions, suits, orders, demands, demand letters, claims, liens,

notices of non-compliance or violation, investigation or proceedings relating to any Environmental Laws against any Obligor or claim involving a demand for damages or other potential liability under Environmental Laws;

- (v) to the knowledge of each Obligor, the soil and subsoil, and the surface and ground water in, on or under the Owned Real Property and Leased Real Property do not contain any Contaminants; and
 - (vi) to the knowledge of each Obligor, there are no events or circumstances that would reasonably be expected to form the basis of an order for clean up or remediation, or an action, suit or proceeding by any private party or Governmental Authority, against or affecting any Obligor relating to Contaminants or any Environmental Laws.
- (cc) Debt. It does not have any Debt other than (i) the Existing Debt, (ii) Debt (including Intercompany Loans) listed on Schedule 4.01(cc) (as at the date hereof and, only with respect to Intercompany Loans incurred after the Closing Date in accordance with the terms hereof and of any Order, as updated from time to time in accordance with Section 5.03(h)), and (iii) Debt incurred after the date hereof in compliance with the Loan Documents. The aggregate amount of the Existing Debt as of each corresponding date specified on Schedule 4.01(cc).
- (dd) Taxes. Except as disclosed in Schedule 4.01(dd), it has:
- (i) made adequate provision for Taxes payable by it for the current period and any previous period for which tax returns are not yet required to be filed;
 - (ii) delivered, or caused to be delivered, when due, all required income tax returns, sales, property, franchise and value added tax returns and other Tax returns to the appropriate governmental bodies and paid all Taxes due and payable and whether or not shown on such returns;
 - (iii) withheld and collected all Taxes required to be withheld and collected by it and remitted such Taxes when due to the appropriate governmental bodies, except where any such remittance is being contested in good faith by appropriate proceedings and an adequate reserve in accordance with GAAP has been established in its books and records;
 - (iv) no knowledge and is unaware of any assessment, appeal or claim, being asserted or processed against it with respect to the matters referred to in paragraphs (i) and (iii) above; and
 - (v) paid and discharged when due all obligations incidental to any trust imposed upon it by statute which, if unpaid beyond the applicable due date, might become an Encumbrance upon the Property and no appeal or claim is, as far as either Borrower is aware, being asserted or processed with respect to such claim or obligations.
- (ee) Insurance. Each of the Obligor:
- (i) maintains insurance policies with reputable insurers against risks of loss or damage to its properties, assets and business of such types as are customary in the case of Persons engaged in the same or similar businesses to the full insurable value of its Properties (except for self-insurance with respect to U.S. required medical and dental and U.S. truck

physical damage, *provided that* the Obligors, as applicable, will continue to maintain stop-loss insurance with respect to such self-insurance in accordance with past practices);

- (ii) has paid promptly all premiums and other amounts payable and has fulfilled all other material obligations with respect to the insurance policies currently in force and no misrepresentation, voluntary omission or delay can be alleged against any Obligor with respect to any notice or claim pursuant to such insurance policies;
 - (iii) has, at the date hereof, no reason to believe that it will not be able to renew the insurance policies currently in force or to obtain similar coverage from financially sound, reputable independent insurance companies;
 - (iv) except as disclosed on Schedule 4.01(ee), at the date hereof has no material claim pending against any insurer or pursuant to any insurance policy, and no knowledge of any fact, event or circumstance that could give rise to any such claim;
- (ff) Affiliated Transactions. Except as set out in Schedule 4.01(ff) and transactions entered into after the Closing Date in accordance with Section 5.02(q), it is not:
- (i) indebted or obligated, contingently or otherwise, to any director, officer or shareholder of an Obligor or any other corporation or entity with whom any director, officer or shareholder of such Obligor does not deal at arm's length, except for current liabilities or obligations in favour of any director or officer for director's fees, expenses, salaries, wages or benefits arising from services provided to such Obligor which are fair and reasonable for such services; and
 - (ii) a party to any contract or agreement with any director, officer, employee, shareholder, Affiliate or any other Person not dealing at arm's length with the applicable Borrower or the applicable Obligor (within the meaning of the ITA).
- (gg) Intellectual Property.
- (i) Schedule 4.01(gg) (at the date hereof and as updated from time to time pursuant to Section 5.03(h)) contains a complete and accurate list and description of all Intellectual Property used in the Business and owned by or licensed to it and the registration particulars (if any) applicable thereto;
 - (ii) it has good and valid title to all of the Intellectual Property, free and clear of all Encumbrances, except Permitted Encumbrances and except for any Intellectual Property licensed to it as disclosed in Schedule 4.01(gg); and
 - (iii) to the knowledge of each Obligor, the conduct of the Business does not infringe and the use of the Intellectual Property does not infringe, and no Obligor has received any notice, complaint, threat or claim alleging infringement of, any Intellectual Property of any other Person.
- (hh) Forecasts. The forecasts and budgets provided to the Lenders, including for greater certainty, forecasts relating to Taxes, have been and will be prepared in good faith based upon assumptions that are reasonable at the time when made and at the time such forecasts and budgets are made available to the Lenders.

- (ii) Financial Statements. The audited consolidated financial statements and the related notes thereto of the Fund for the years ended December 31, 2010 and 2009 and interim consolidated financial statements and the related notes thereto of the Fund for the nine months ended September 30, 2011 (and for any other period hereafter reported on) comply in all material respects with the applicable requirements of the Securities Laws and present fairly, in all material respects, the financial position of the Fund and the Borrowers as of the dates indicated and the results of its operations and the changes in its cash flows for the periods specified, and have been prepared in conformity with GAAP, applied on a consistent basis throughout the periods covered thereby.

- (jj) Approved Budgets. The Initial Approved Budget, each subsequent Approved Budget as applicable and all projected Consolidated balance sheets, income statements and cash flow statements of the Borrower and its Subsidiaries delivered to the Lenders pursuant to Section 5.03 were prepared and will be prepared, as applicable, in good faith on the basis of the assumptions stated therein, which assumptions were fair and will be fair in the light of conditions existing at the time of delivery of such Budget or projections, as the case may be, and represented and will represent, at the time of delivery, the Borrowers' good faith estimate of its future financial performance (it being understood that such projections are not a guarantee or warranty of future financial performance).

- (kk) Employee Benefit Plans.
 - (i) No Obligor nor any member of the Controlled Group maintains or contributes to any Plan other than (i) as of the Closing Date, those listed on Schedule 4.01(kk) hereto and (ii) thereafter, as permitted under this Agreement. Except as set forth in Section 4.01(kk), (i) no Plan has incurred any "accumulated funding deficiency," as defined in Section 302(a)(2) of ERISA and Section 412(a) of the Code, whether or not waived, and each Obligor and each member of the Controlled Group has met all applicable minimum funding requirements under Section 302 of ERISA in respect of each Plan; (ii) each Plan which is intended to be a qualified plan under Section 401(a) of the Code as currently in effect has either received a favorable determination or opinion letter from the Internal Revenue Service that it is so qualified and the trust related thereto is exempt from federal income tax under Section 501(a) of the Code or is still within the period during which such a letter may be requested; (iii) neither any Obligor nor any member of the Controlled Group has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due which are unpaid; (iv) no Pension Benefit Plan has been terminated by the plan administrator thereof nor by the PBGC, and there is no occurrence which would reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Benefit Plan; (v) as of the date of the most recent actuarial valuation, the value of the assets of each Pension Benefit Plan exceeds the present value of the accrued benefits and other liabilities of such Pension Benefit Plan; (vi) neither any Obligor nor any member of the Controlled Group has breached in any material respect any of the responsibilities, obligations or duties imposed on it by ERISA with respect to any Plan; (vii) neither any Obligor nor any member of a Controlled Group has incurred any material liability for any excise tax arising under Section 4972 or 4980B of the Code, and no fact exists which could reasonably be expected to give rise to any such liability; (viii) neither any Obligor nor any member of the Controlled Group nor, to the knowledge of the Borrowers, any fiduciary of any Plan, has engaged in a non-exempt "prohibited transaction" described in Section 406 of the ERISA or Section 4975 of the Code nor has any Obligor or any member of the Controlled Group taken any action which would

constitute or result in a Termination Event with respect to any such Plan which is subject to ERISA; (ix) each Obligor and each member of the Controlled Group has made all contributions due and payable with respect to each Plan; (x) within the five preceding years, there has been no event described in Section 4043(b) of ERISA, for which the thirty (30) day notice period has not been waived and for which notice to the PBGC is or was required with respect to a Pension Benefit Plan; (xi) neither any Obligor nor any member of the Controlled Group has any fiduciary responsibility for investments with respect to any plan existing for the benefit of persons other than employees or former employees of any Obligor and any member of the Controlled Group; (xii) neither any Obligor nor any member of the Controlled Group maintains or contributes to any Plan which provides health, accident or life insurance benefits to former employees, their spouses or dependents, other than in accordance with Section 4980B of the Code; and (xiii) neither any Obligor nor any member of the Controlled Group has withdrawn, completely or partially, from any Multiemployer Plan so as to incur liability under the *Multiemployer Pension Plan Amendments Act* of 1980 and there exists no fact which would reasonably be expected to result in any such liability.

- (ii) Except as set forth in Section 4.01(kk), none of the Obligors maintains or contributes to any Canadian Benefit Plan.
- (iii) Except as set forth in Section 4.01(kk), none of the Obligors has, or is subject to, any present or future obligation or liability under, any pension plan, deferred compensation plan, retirement income plan, stock option or stock purchase plan, profit sharing plan, bonus plan or policy, employee group insurance plan, program policy or practice, formal or informal, with respect to its employees.
- (iv) Section 4.01(kk) sets forth the Canadian Employee Plans of the Obligors.
- (v) All of the Canadian Employee Plans are and have been established, registered, qualified, invested and administered in all material respects in accordance with the terms of such Canadian Employee Plans including the terms of the material documents that support such Canadian Employee Plans, any applicable collective agreement and all Applicable Laws to the Canadian Employee Plans. To the knowledge of each Obligor, no fact or circumstance exists that could adversely affect the tax-exempt status of an Canadian Employee Plan.
- (vi) Except as disclosed in Section 4.01(kk), to the knowledge of each Obligor, all obligations regarding the Canadian Employee Plans have been satisfied, there are no outstanding defaults or violations by any part to any Canadian Employee Plan and no taxes, penalties or fees are owing or eligible under any of the Canadian Employee Plans.
- (vii) No amendments have been made to any Canadian Employee Plan and no improvements to Canadian Employee Plan have been promised and no amendments or improvements to an Canadian Employee Plan will be made or promised by the Obligors, as applicable before the Closing Date.
- (viii) Each Canadian Employee Plan is fully funded.
- (ix) Except as disclosed in Section 4.01(kk), none of the Canadian Employee Plans provides benefits to retired employees or to the beneficiaries or dependents of retired employees.

- (ll) Employment and Labour. The Obligors are and have operated in all material respects in compliance with all Applicable Laws relating to employees. Except as disclosed on Schedule Section 4.01(ll) there is no proceeding, action, suit or claim pending or threatened, to the knowledge of the Obligors, involving any employee of the Obligors. There are no outstanding or, to the knowledge of each Obligor, threatened unfair labour practices or complaints or applications of any kind, including any proceedings which could result in certification of a trade union as bargaining agent for any persons in respect of the Obligors and there have not been any such proceedings within the last five (5) years. There are no threatened or apparent union organizing activities involving employees of the Obligors, not already covered by the collective agreements. None of the Obligors is in violation of any provision under any collective agreement. There is no strike or lock out occurring or, to the knowledge of each Obligor, threatened affecting the Obligors. None of the Obligors has any grievances or pending arbitration cases outstanding. None of the Obligors has any serious labour relations problems that might materially affect the value of any of the Obligors or lead to an interruption of their respective operations at any location. None of the Obligors has engaged in any unfair labour practices and, during the past five years, has not suffered any strike, lock-out, work stoppage, or other material labour dispute. None of the Obligors has engaged in any plant closing or employee lay-off activities within the past five years that would violate or in any way subject the Obligors to the group termination or lay-off requirements of the Applicable Laws.
- (mm) No Default. No Default or Event of Default has occurred and is continuing.
- (nn) No Material Adverse Change. Except as disclosed to the Lenders prior to the date hereof and as set out on Schedule 4.01(nn), since February 21, 2012, no change has occurred in any of the assets, business, financial condition or results of operation of the Fund on a consolidated basis or the Business which has had or is reasonably likely to have a Material Adverse Effect.
- (oo) Off Balance Sheet Transactions. There are no off-balance sheet transactions arrangements, obligations (including contingent obligations) or other relationships of any Obligor with unconsolidated entities or other Persons that may have a material current or future effect on the financial condition, changes in financial condition, results of operations, earnings, cash flow, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses of the Fund on a consolidated basis or that would reasonably be expected to be material to an investor.
- (pp) Compliance with Regulations T, U and X. It is not engaged principally in or has as one of its important activities the business of extending credit for the purpose of purchasing or carrying any “margin security” or “margin stock” as defined in Regulations T, U, and X of the Board of Governors of the Federal Reserve System. Neither the making of the Loans nor the use of proceeds thereof will violate the provisions of Regulation T, U, or X of said Board of Governors.
- (qq) Investment and Holding Company Status. It is not an “investment company” as defined in, or subject to registration under, the *Investment Company Act* of 1940, as amended.
- (rr) Patriot Act. To the extent applicable, each Obligor is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation in force in the United States or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the “Patriot Act”). No part of the proceeds of the Loans made hereunder will be used by any Obligor or any of their

Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the *United States Foreign Corrupt Practices Act* of 1977, as amended.

- (ss) Transfer Agent. Computershare Trust Company of Canada has been duly appointed by the Fund as the transfer agent and registrar for the Units.
- (tt) Accuracy of Information. All information which has been provided by or on behalf of the Borrowers to the Agent and the Lenders and its respective representatives prior to the date hereof was and remains true and correct in all material respects as at the time provided and does not, as of such time, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make such information not misleading.
- (uu) Recalls, etc. Except as disclosed in Schedule 4.01(uu), since January 1, 2004, there have been no product or food recalls, advisories, warnings, health hazard alerts, market withdrawals or similar safety alerts issued by any Obligor or issued or required by any Governmental Authority in each case with respect to any finished product or Inventory of the Business.
- (vv) Deposit Accounts and Securities Accounts. None of the Obligors has any Deposit Account or Securities Account other than as set out in Schedule 4.01(vv) to this Agreement.
- (ww) Motor Vehicles. Schedule 4.01(ww) (as updated from time to time in accordance with Section 5.03(h)) sets out a complete list of all vehicles owned by any Obligor and used in the business, including the vehicle identification number with respect to each such vehicle.

SECTION 4.02 Survival of Representations and Warranties.

The representations and warranties made in this Agreement shall survive the execution and delivery of this Agreement and shall continue until payment in full of the Obligations notwithstanding any investigation made at any time by or on behalf of the Agent or the Lenders.

ARTICLE V

COVENANTS OF THE OBLIGORS

SECTION 5.01 Affirmative Covenants

So long as any Loan remains available hereunder or any Obligations remain outstanding, and except as otherwise consented to by the Lenders, each of the Borrowers and the Fund shall and, to the extent applicable, shall cause each Guarantor to:

- (a) Payment of Obligations. Duly and punctually pay the Obligations at the times and places and in the manner required by the terms of the Loan Documents.
- (b) Existence and Qualifications. Maintain its corporate or other existence; keep proper books of account and record; maintain its qualification to carry on business in all jurisdictions where it carries on business and where the absence of such qualification would have a Material Adverse Effect; and operate its business and Property in accordance with sound business practice and in compliance with Applicable Law (including Environmental Law) and all Material Contracts in all material respects.

- (c) Inspection. At the request of the Lenders, at the cost and expense of the Borrowers, upon reasonable prior written notice from the Lenders, permit representatives of the Agent or the Lenders to enter into or onto its Property, to inspect any of its Property (including by means of environmental investigations) and to examine its financial books, accounts and records and to discuss its financial condition with its senior officers and its auditors.
- (d) Access to Monitor and Chief Process Supervisor. Subject to any restrictions set out in the Initial Order in relation to the SISP, at all times permit and facilitate timely and unrestricted access by the Agent and the Lenders to the Monitor, the Chief Process Supervisor, and their respective advisors.
- (e) Use of Proceeds. Use the proceeds of the Loans solely for the purposes, and subject to the restrictions, set forth in Section 2.10.
- (f) CNSX, Reporting Issuer Status. Use commercially reasonable efforts to maintain the listing of the Units of the Fund on the CNSX and maintain the status of the Fund as a reporting issuer under the Canadian Securities Laws of all provinces and territories of Canada.
- (g) Maintenance of Properties. Maintain (i) all Property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted and (ii) all of its interests in the Properties in good standing except where failure to do so could not reasonably be expected to have a Material Adverse Effect.
- (h) Insurance.
 - (i) Keep insured with financially sound and reputable insurance companies all of its Property, in amounts and against losses, including property damage and public liability, to the extent that such Property and assets are usually insured by businesses comparable to its business; cause the policies of insurance referred to above to contain customary endorsements for the benefit of the Agent on behalf of the Lenders as loss payee in respect of property insurance and additional insured in respect of public liability insurance, all in a form acceptable to the Lenders acting reasonably; and cause such policies to include a provision that such policies will not be amended in any manner which is prejudicial to the Lenders or be cancelled without thirty days' prior written notice being given to the Lenders by the issuers thereof.
 - (ii) Within 10 days of the Closing Date, deliver to the Agent a certificate from the Obligors' insurance broker, or other evidence satisfactory to the Agent, that all insurance required to be maintained is in full force and effect, together with endorsements naming the Agent, for the benefit of Lenders, as additional insured and loss payee thereunder.
- (i) Permits and Material Contracts. Obtain, as and when required, comply with and preserve and maintain, all Material Permits and Material Contracts which are required to lawfully (i) acquire, own, operate and maintain the Business and Property in the manner currently carried on, and (ii) perform its obligations under the Loan Documents to which it is a party.
- (j) Taxes. Pay all Taxes which relate to periods after the granting of the Initial Order as they become due and payable unless they are being contested in good faith by appropriate legal proceedings and, with respect to Taxes which are overdue, make arrangements satisfactory to the Lenders regarding adequate provision for their payment.

- (k) Cash Management. Comply in all respects with the Cash Management Procedures and the Cash Management Order. All receipts and collections of the Obligors shall be immediately deposited into Deposit Accounts specifically set out in Schedule 4.01(vv) and specifically disclosed to the Agent and the Lenders as a Deposit Account used in the Cash Management Procedure, and shall be subject to the mandatory prepayments requirements set forth in Section 2.07(c).
- (l) Notice of Default, Etc. Promptly notify the Lenders of the occurrence of:
- (i) any Default or Event of Default;
 - (ii) any Material Adverse Effect or any event which could reasonably be expected to result in a Material Adverse Effect;
 - (iii) any damage or destruction of any property, real or personal, of any Obligor having a replacement cost in excess of \$750,000;
 - (iv) any Encumbrance registered against any Property of any Obligor, other than a Permitted Encumbrance;
 - (v) any material default by any party under or termination or threatened termination of any Material Contract of which it becomes aware;
 - (vi) the failure to obtain, loss of or material non-compliance with the terms of any Material Permit where such failure, loss or material non-compliance could reasonably be expected to result in an inability to operate the Business or any part thereof in accordance with Applicable Law;
 - (vii) any material communication from any regulating body or other Governmental Authority applicable to the Business or any part thereof, including with respect to any product or food recalls, advisories, warnings, health hazard alerts, market withdrawals or other safety alerts; and
 - (viii) the expropriation or initiation of proceedings for the expropriation of any material assets of any Obligor.
- (m) Notice of Material Litigation. Promptly notify the Lenders on becoming aware of the occurrence of any litigation, dispute, arbitration, proceeding or other circumstance affecting it (i) where the amount claimed thereunder is in excess of \$500,000 but less than \$2,000,000 and where the claim could reasonably be expected to not be covered by insurance, (ii) where the amount claimed is in excess of \$2,000,000, (iii) which relates to any Material Contract or a Material Permit, (iv) which relates to any allegations of anti-trust or anti-competition practices, (v) involves any application to lift the Stay of Proceedings or seeks relief against any of the Obligors, or (vi) which could reasonably be expected to have a Material Adverse Effect, and from time to time provide the Lenders with all information reasonably requested by the Lenders concerning the status thereof.
- (n) Notice of Environmental Matters. Promptly notify the Lenders upon:
- (i) learning of any material claim, complaint, notice or order under any Environmental Law which could reasonably be expected to cause material environmental liability to any Obligor;

- (ii) learning of the existence of Contaminants located on, in, above or below the surface of any Property which it occupies or controls (except Contaminants being stored, used or otherwise handled in compliance with Environmental Law), which could reasonably be expected to cause material environmental liability to any Obligor;
 - (iii) the occurrence of any reportable Release of Contaminants that has occurred on or from such land which could reasonably be expected to cause material environmental liability to any Obligor;
 - (iv) the occurrence of any change in business activity conducted by it which involves the storage, use or handling of Contaminants (including for greater clarity, wastes) and which could reasonably be expected to cause material environmental liability to any Obligor;
 - (v) any proposed change in the use or occupation of its Property which could reasonably be expected to cause material environmental liability to any Obligor; and
 - (vi) with respect to any of the information provided in clauses (i) to (v) above, from time to time provide the Lenders with all information reasonably requested by the Lenders concerning the status thereof.
- (o) ERISA Notices and Requests. Promptly furnish the Lenders with written notice in the event that (i) any Obligor or any member of the Controlled Group knows or has reason to know that a Termination Event has occurred, together with a written statement describing such Termination Event and the action, if any, which such Obligor or any member of the Controlled Group has taken, is taking, or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, Department of Labor or PBGC with respect thereto, (ii) any Obligor or any member of the Controlled Group knows or has reason to know that a non-exempt prohibited transaction (as defined in Sections 406 of ERISA and 4975 of the Code) has occurred that could reasonably be expected to result in material liability to an Obligor or member of the Controlled Group, together with a written statement describing such transaction and the action which such Obligor or any member of the Controlled Group has taken, is taking or proposes to take with respect thereto, (iii) a funding waiver request has been filed with respect to any Pension Benefit Plan together with all communications received from the Internal Revenue Service by any Obligor or any member of the Controlled Group with respect to such request, (iv) any material increase in the benefits of any existing Plan or the establishment of any new Plan or the commencement of contributions to any Plan to which any Obligor or any member of the Controlled Group was not previously contributing shall occur, (v) any Obligor or any member of the Controlled Group shall receive from the PBGC a notice of intention to terminate a Pension Benefit Plan or to have a trustee appointed to administer a Pension Benefit Plan, together with copies of each such notice, (vi) any Obligor or any member of the Controlled Group shall receive any favorable or unfavorable determination letter from the Internal Revenue Service regarding the qualification of a Plan under Section 401(a) of the Code, together with copies of each such letter; (vii) any Obligor or any member of the Controlled Group shall receive a notice regarding the imposition of Withdrawal Liability, together with copies of each such notice; (viii) any Obligor or any member of the Controlled Group shall fail to make a required installment or any other required payment under Section 412 of the Code on or before the due date for such installment or payment; or (ix) any Obligor or any member of the Controlled Group knows that (a) a Multiemployer Plan has been terminated, (b) the administrator or plan sponsor of a Multiemployer Plan intends to terminate a Multiemployer Plan, or (c) the PBGC has instituted or will institute proceedings under Section 4042 of ERISA to terminate a Multiemployer Plan.

- (p) Canadian Benefit Plan Notices and Requests. Furnish the Lenders with immediate written notice in the event that (i) any Obligor knows or has reason to know that a Canadian Pension Event has occurred, together with a written statement describing such Canadian Pension Event and the action, if any, which such Obligor has taken, is taking, or proposes to take with respect thereto and, when known, any action taken or threatened by any applicable regulatory authority, (ii) any increase in the benefits of any existing Canadian Benefit Plan or Canadian Employee Plan or the establishment of any new plan or the commencement of contributions to any plan to which any Canadian Obligor was not previously contributing shall occur, (iii) any Obligor shall receive any letter from the Canada Revenue Agency or the applicable pension standards regulator regarding the registered status of any Canadian Benefit Plan or Canadian Employee Plan, together with copies of each such letter, (iv) any Obligor knows that (a) a Canadian Benefit Plan or Canadian Employee Plan has been terminated, in whole or in part, (b) the administrator or plan sponsor of a Canadian Benefit Plan or Canadian Employee Plan intends to terminate, in whole or in part, a Canadian Benefit Plan or Canadian Employee Plan, or (c) the applicable Governmental Authority has instituted or will institute proceedings to terminate, in whole or in part, a Canadian Benefit Plan or Canadian Employee Plan, (v) any Obligor receives notice (or a notice of intent to issue such a notice) to terminate in whole or in part any Canadian Benefit Plan or Canadian Employee Plan or receives a notice of intent from any applicable Governmental Authority to require the termination in whole or in part of any Canadian Benefit Plan or Canadian Employee Plan, revoking the registration of same or appointing a new administrator of such a plan, (vi) an event or condition has occurred which constitutes grounds under applicable Canadian Employee Benefits Legislation or tax legislation for the issuance of an order, direction or other communication from any regulatory authority requiring any Obligor to take or refrain from taking any action in respect of a Canadian Benefit Plan or Canadian Employee Plan, or any Obligor receives a notice of an intent to issue an order, direction or other communication requiring any Obligor to take or refrain from taking any action in respect of a Canadian Benefit Plan or Canadian Employee Plan, (vii) any Obligor receives notice from an administrator, a trustee or other funding agent or other person or entity that a Obligor has failed to remit any contribution to a Canadian Benefit Plan or Canadian Employee Plan or a similar notice from a Governmental Authority relating to a failure to pay any fees or other amounts (including payments in respect of the Pension Benefits Guarantee Fund of Ontario), or (viii) any Obligor receives any statement of claim or notice of dispute brought against a Canadian Benefit Plan or Canadian Employee Plan or an Obligor in its capacity as sponsor of a Canadian Benefit Plan or Canadian Employee Plan or as party to a Canadian Benefit Plan or Canadian Employee Plan.
- (q) Remediation. Conduct all environmental remedial activities which a Person acting in a commercially reasonable manner would perform in similar circumstances to meet its environmental responsibilities and conduct and pay for any environmental investigations, assessments or remedial activities with respect to any of its Property that the Lenders may reasonably request.
- (r) Defence of Title to Property. Warrant and defend the right, title and interest of any Borrower and any Guarantor in and to the Properties material to the conduct of the Business against the claims of any Person, subject only to Permitted Encumbrances.
- (s) Notice of Change of Name. Provide the Lenders with 30 Business Days' prior written notice of any proposed change or change in name or jurisdiction of incorporation or, until such time as the PPSA no longer requires the chief executive office to determine perfection and priority of a security interest, the chief executive office of any Obligor.

- (t) Notice of Acquisition of Material Property or Subsidiary. Promptly notify the Lenders of (i) the acquisition by it of any material real property, whether owned or leased, (ii) any new locations of material tangible assets outside the Relevant Jurisdictions (other than inventory in transit), and (iii) any material Investment (other than Investments in cash equivalents).
- (u) Expenses. Pay promptly all reasonable legal fees and disbursements and other costs and expenses incurred by the Agent, the Lenders, the First Lien Lenders, and the Second Lien Lenders in respect of the DIP Facility, the First Lien Loan Agreement, the Second Lien Loan Agreement, and the Proceedings, including without limitation, all costs and expenses set out in Section 2.17 and all court costs and all reasonable fees and disbursements of lawyers, auditors, consultants and accountants.
- (v) Disclosure Updates. Promptly and in no event later than ten (10) Business Days after obtaining knowledge thereof, notify the Lenders if any written information, exhibit, or report furnished, (other than forecasts or projections) to the Lenders contained, at the time it was furnished, any untrue statement of a material fact omitted to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances in which made. Any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto.
- (w) Agent Syndication. Cooperate with and assist the Agent in completing a syndication of the Loans satisfactory to the Agent, if applicable, including (i) using commercially reasonable efforts to ensure that the syndication efforts benefit from the existing banking relationships of the Obligor, and (ii) direct contact between the senior management and advisors of the Obligors and any proposed lender in all such cases at times mutually reasonably agreed upon.
- (x) Contingency Plan. At all times, including without limitation throughout the process contemplated by the SISP, diligently and in good faith pursue the development, negotiation and documentation of a contingency plan satisfactory to the Agent, the Lenders, the First Lien Lenders and the Second Lien Lenders (the "Contingency Plan") to be promptly implemented upon the non-compliance with any deadline or other requirement of the SISP or the failure of the SISP to give rise to a potential transaction capable of being completed in compliance with its terms and conditions (as set out in the Initial Order) and with those of all applicable agreements and Orders. The Obligors shall at all times engage in timely and diligent discussions and other activities with the Agent, the Lenders, the First Lien Lenders and the Second Lien Lenders with a view to giving effect to this Section and the Contingency Plan.
- (y) Compliance with Court Orders and SISP.
 - (i) At all times remain and take all actions necessary or available to ensure that each Obligor at all times remains in compliance with all Orders issued by the CCAA Court or the US Court in the Proceedings including, for certainty, the SISP and all timelines and deadlines included therein, without amendment or extension of any kind.
 - (ii) Take all actions necessary or available to defend the Initial Order, the Recognition Order, the Chapter 15 DIP Order and the Cash Management Order, from any appeal, reversal, modification, amendment, stay or vacating not expressly consented to in advance by the Agent and the Lenders.

- (z) Confirmation of Priority. Forthwith upon the request of the Agent or any Lender, bring one or more motions in Canada or the United States as the case may be on notice to any creditor that has a registered security interest in the Property or who otherwise claims an interest in any Property, for an order in form and substance satisfactory to the Lenders declaring that the DIP Charge has priority over such creditor's interest in the Property.
- (aa) Further Assurances.
- (i) At its own expense do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, things, agreements, documents and instruments in connection with this Agreement and the other Loan Documents as the Lenders may request from time to time for the purpose of giving effect to the terms of this Agreement and the other Loan Documents including, without limitation, for the purpose of facilitating the enforcement of the Security, all promptly upon the request of the Lenders
- (ii) Promptly upon reasonable request by the Agent, or any Lender through the Agent, do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, conveyances, pledge agreements, mortgages, deeds of trust, trust deeds, assignments, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments, including procuring any intercreditor agreements requested by the Lenders, as the Agent, or any Lender through the Agent, may reasonably request from time to time in order to (A) carry out more effectively the purposes of the Loan Documents, (B) to the fullest extent permitted by Applicable Law, subject any Obligor's Property to the Security, (C) perfect and maintain the validity, effectiveness and priority of any of the Security Documents and any of the Encumbrances required to be created thereunder including the DIP Charge and (D) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Agent and the Lenders the rights granted or now or hereafter intended to be granted to the Agent and the Lenders under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Obligor or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.
- (bb) Inter-Company Balances Charges. Ensure that each US Obligor shall grant to the Canadian Borrower a super-priority, first ranking charge (subject only to the prior ranking charges specified in the Initial Order) in connection with any loans advanced by the Canadian Borrower to such US Obligor after the commencement of the Proceedings.
- (cc) EBITDA Covenant. Ensure that the Canadian Borrower maintains a minimum Consolidated EBITDA of US\$38,000,000 to be tested on the last day of each calendar month for the immediately preceding trailing twelve month period (the "EBITDA Covenant").

SECTION 5.02 Negative Covenants

Except as otherwise provided in this Agreement, so long as any Loan remains available hereunder or any Obligations remain outstanding, each of the Borrowers and the Fund shall not, and shall ensure that each other Guarantor shall not, without the prior written consent of the Required Lenders:

- (a) Reorganization. Enter into any transaction or series of related transactions whereby all or substantially all of its Property and assets would become the property of any other Person whether by way of reorganization, consolidation, amalgamation, arrangement, winding-up,

merger, transfer, sale, lease, Sale-Leaseback or otherwise, *provided that* a Guarantor (other than a Borrower) may amalgamate or merge with another Guarantor (other than a Borrower).

- (b) Disposition. Dispose of any of its Property without the prior written consent of the Lenders, other than: (i) the sale of inventory in the ordinary course of business, (ii) the sale of equipment in the ordinary course of business (subject to the repayment and reinvestment provisions contained in Section 2.07(a)), (iii) so long as no Default or Event of Default has occurred or would result therefrom, (A) the Disposition by Arctic Glacier Michigan Inc. of the real property located at 2765 Universal Drive, Saginaw, Michigan and (B) the Disposition by Arctic Glacier New York Inc. of the real property at 50 Stewart Avenue, Huntington, New York, and (iv) Dispositions by any Obligor that are in compliance with the Initial Order.
- (c) Capital Structure/Constating Documents. Enter into any transaction to change or reorganize its capital structure or corporate form or amend its articles, by-laws or any other constating documents in a manner that could reasonably be expected to be adverse in any material respect to the Lenders.
- (d) Encumbrances. Create, incur, assume or suffer to exist any Encumbrance upon any of its Property, whether now owned or hereafter acquired, other than Permitted Encumbrances existing as at the Closing Date.
- (e) Corporate Distributions. Make or commit to make any Corporate Distributions other than, *provided that* no Default or Event of Default has occurred or would result therefrom and *provided that* such Corporate Distribution is specifically provided for in the Approved Budget:
 - (i) Corporate Distributions by the one Obligor to another Obligor;
 - (ii) payments to the applicable holders of Debt permitted by the Orders and specifically provided for in the Approved Budget;
 - (iii) payment of Intercompany Loans in accordance with the Cash Management Procedures;
 - (iv) (a) fees and expenses of members of the board of trustees of the Fund, and (b) wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of the commencement of the Proceeding; in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements (which for greater certainty, shall not include any non-recurring, extraordinary fees to an employee or officer or any distributions with respect to any Equity Interests owned by an employee or officer in any Obligor); and
 - (v) such other payments specifically provided for in the Approved Budget.
- (f) Debt. Create, incur, assume or suffer to exist directly, contingently or otherwise, any Debt, other than, *provided that* no Default or Event of Default has occurred or would result therefrom:
 - (i) Debt under this Agreement and the other Loan Documents;
 - (ii) Debt relating to the First Lien Loan Agreement and the Second Lien Loan Agreement;
 - (iii) Debt under Intercompany Loans;

- (iv) Debt permitted by the Cash Management Procedures and Cash Management Order;
 - (v) Debt secured by the Critical Supplier Charge which is specifically provided for in the Approved Budget;
 - (vi) Purchase Money Obligations in the ordinary course of business which together with all other Purchase Money Obligations of the Obligor then existing does not exceed \$1,000,000 in aggregate principal amount (including capitalized interest);
 - (vii) unsecured current liabilities (which for greater certainty are not the result of borrowing) incurred and payable in the ordinary course of the Business and not represented by any note, bond or debenture, including any management, transfer or other administrative charges charged between the Obligor in the ordinary course of the Business;
 - (viii) Contingent Liabilities included in the Security Documents or otherwise permitted;
 - (ix) Debt secured by the TD LC Security; and
 - (x) other Debt of the Obligor that is approved and consented to from time to time in advance in writing by the Lenders, in their sole and absolute discretion.
- (g) DIP Refinancing. Solicit, seek, pursue or enter into any arrangements with respect to, any financing intended to replace or supplement the DIP Facility.
- (h) Insolvency Claims. Subject to the Carve-Out, incur, create, assume, suffer to exist or permit any claim that ranks or is capable of ranking *pari passu* with or senior to the Obligations.
- (i) Hedging. Enter into any Hedge Instrument or incur any Hedge Obligations.
- (j) Guarantees and Indemnities. Guarantee or indemnify or give financial assistance in respect of, or incur any Contingent Liability in respect of, any Debt or any other obligations or liabilities of any other Person at any time other than, *provided that* no Default or Event of Default has occurred or would result therefrom: (i) Debt or indemnities to the Lenders hereunder; (ii) Debt or indemnities to the First Lien Lenders or the Second Lien Lenders pursuant to the First Lien Loan Agreement as the Second Lien Loan Agreement, as applicable; or (iii) any guarantee or indemnity which is granted in the ordinary course of the Business *provided that* all such guarantees and indemnities outstanding at such time would not result in liability of the Obligor in excess of \$500,000 in the aggregate at such time.
- (k) Investments. Make or commit to make any direct or indirect Investment, other than, *provided that* no Default or Event of Default has occurred or would result therefrom:
- (i) Permitted Financial Investments;
 - (ii) Intercompany Loans;
 - (iii) Investments specifically permitted by the Initial Order; or
 - (iv) Investments with respect to Capital Expenditures made in accordance with Section 5.02(l);

- (l) Capital Expenditures. Make any Capital Expenditure other than, *provided that* no Default or Event of Default has occurred or would result therefrom, Capital Expenditures permitted by the Orders and specifically provided for in an Approved Budget.
- (m) Environmental Liabilities. Assume, by contract or otherwise, any material environmental liabilities.
- (n) Amend Material Contracts. Amend any provisions of or terminate or give notice of termination of any Material Contracts or waive or grant indulgences in respect of any default or event of default under any of the Material Contracts, except where any such amendment, termination, notice, waiver indulgence would not be materially adverse to a Borrower or any Guarantor.
- (o) Change of Business. Change in any material respect the nature of its business or operations from the Business, nor engage directly or indirectly in any material business activity (including entering into contracts), or purchase or otherwise acquire any material property, in either case not related to or in furtherance of the conduct of the Business.
- (p) Subsidiaries. Create any new Subsidiary after the date of this Agreement unless such Subsidiary provides a guarantee and security as required by Section 6.02.
- (q) Affiliate Transactions. (i) Directly or indirectly, purchase, acquire or lease any property from, or sell, transfer or otherwise Dispose of any property to, or otherwise deal or enter into any agreement with, any Affiliate (other than a Guarantor), or (ii) amend any provision of the Arizona Lease except, in each case, in the ordinary course of and pursuant to the reasonable requirements of the applicable Obligor's business and upon fair and reasonable terms that are no less favourable to the applicable Obligor than those that could be obtained in an arm's length transaction with an unrelated third party and, with respect to the Arizona Lease, with the approval of the board of directors of the Borrowers.
- (r) Fiscal Year. Change its Fiscal Year.
- (s) Location of Property. Except on a temporary basis in connection with the provision of services under a contract entered into with a customer in the ordinary course of business of such Obligor, acquire any Property with a market value in excess of \$500,000 outside of such Obligors Relevant Jurisdiction or move any Property with a market value in excess of \$500,000 from one jurisdiction to another jurisdiction where the acquisition or movement, as the case may be, of such Property would cause the Encumbrance of the Security over such Property to cease to be perfected under Applicable Law, or suffer or permit in any other manner any of its Property to not be subject to the Encumbrance of the Security or to be or become located in a jurisdiction as a result of which the Encumbrance of the Security over such Property is not perfected, unless (i) the Obligor has first given thirty (30) days prior written notice thereof to the Agent, and (ii) the applicable Obligor has first executed and delivered to the Lender all Security and all financing or registration statements in form and substance satisfactory to the Lenders which the Lenders or its counsel, acting reasonably, from time to time deem necessary or advisable to ensure that the Security at all times constitutes a perfected first priority Encumbrance (subject only to Permitted Encumbrances) over such Property notwithstanding the movement or location of such Property as aforesaid together with such supporting certificates, resolutions, opinions and other documents as the Lenders may, acting reasonably, deem necessary or desirable in connection with such security and registrations.

- (t) US Employee Benefits. (i) (x) Maintain, or permit any member of the Controlled Group to maintain, or (y) become obligated to contribute, or permit any member of the Controlled Group to become obligated to contribute, to any Pension Benefit Plan, other than those Pension Benefit Plans disclosed on Schedule 4.01(II) or any other Pension Benefit Plan for which Lenders have provided their prior written consent, (ii) engage, or permit any member of the Controlled Group to engage, in any non-exempt “prohibited transaction”, as that term is defined in Section 406 of ERISA and Section 4975 of the Code, (iii) incur, or permit any member of the Controlled Group to incur, any “accumulated funding deficiency”, as that term is defined in Section 302 of ERISA or Section 412 of the Code, (iv) terminate, or permit any member of the Controlled Group to terminate, any Plan where such event could result in any liability of any Obligor or any member of the Controlled Group or the imposition of an Encumbrance on the property of any Obligor or any member of the Controlled Group pursuant to Section 4068 of ERISA, (v) assume, or permit any member of the Controlled Group to assume, any obligation to contribute to any Multiemployer Plan not disclosed on Schedule 4.01(II), (vi) incur, or permit any member of the Controlled Group to incur, any Withdrawal Liability to any Multiemployer Plan; (vii) fail promptly to notify the Lenders of the occurrence of any Termination Event, (viii) fail to comply, or permit a member of the Controlled Group to fail to comply in any material respect, with the requirements of ERISA or the Code or other Applicable Laws in respect of any Plan, (ix) fail to meet, or permit any member of the Controlled Group to fail to meet, all minimum funding requirements under ERISA or the Code or postpone or delay or allow any member of the Controlled Group to postpone or delay any funding requirement with respect of any Pension Benefit Plan.
- (u) Canadian Employee Benefits. With respect to any Borrower, (i) (x) maintain or permit any Borrower to maintain, or (y) become obligated to contribute to any Canadian Benefit Plan, other than those plans disclosed on Schedule 4.01(II), (ii) terminate in whole or in part, any Canadian Benefit Plan where such an event could result in any liability of any Borrower or the imposition of an Encumbrance on the property of any Borrower, (iii) fail to comply with the requires of Canadian Employee Benefits Legislation or other Applicable Laws in respect of any Canadian Benefit Plan, (iv) fail promptly to notify the Lenders of the occurrence of any Canadian Pension Event, or (v) fail to meet all minimum funding requirements under Canadian Employee Benefits Legislation or other Applicable Laws or postpone or delay any funding requirement with respect to any Canadian Benefit Plan.
- (v) Membership/Partnership Interests. Elect to treat or permit any Subsidiary (x) to treat its limited liability company membership interests or partnership interests, as the case may be, as securities as contemplated by the definition of “security” in Section 8-102(15) and by Section 8-103 of Article 8 of UCC or (y) to certificate its limited liability company membership interests or partnership interests, as the case may be unless the Obligor owning the Equity Interests in the Subsidiary that elects to treat its limited liability company or limited partnership as “securities” or certificates such interests, promptly provides the Agent or its designee control over such securities and/or delivers such certificates to the Agent or its designee.
- (w) Settlement of Litigation. (i) Enter into or agree to enter into or accept or agree to accept any settlement agreement of any kind or make or agree to make any settlement offer of any kind with respect to (a) any of the litigation set out in Exhibit “A” to Schedule 4.01(t) or (b) any other action, claim or proceeding relating to or with respect to any allegations of anti-trust or anti-competition practices, or (c) any other action, claim or proceeding that is not covered by insurance of the applicable Obligor and for which the proposed settlement is in excess of \$250,000 (any proposed settlement where the proposed settlement amount is less than \$250,000

being a “Minor Settlement”) in each case without the prior written approval of the Required Lenders (any settlement approved in accordance with this Section being an “Approved Settlement”); and (ii) make any payment under any settlement agreement or make any other payment to any claimant with respect to any of the litigation set out on Schedule 4.01(t) or any other action, claim or proceeding unless (a), except with respect to a Minor Settlement, such payment is specifically provided for in an Approved Budget, (b) such settlement is an Approved Settlement or a Minor Settlement, (c) the Borrowers are in proforma compliance with each of the financial covenants in Section 4.01(ee) at the time of making such payment before and after giving effect thereto, and (d) no Default or Event of Default shall have occurred and be continuing or would result therefrom.

- (x) Deposit Accounts and Securities Accounts. No Obligor may have any Permitted Financial Investments, cash or Equity Interests in any single Deposit Account or Securities Account located in any province of Canada (if Canada or such provinces has adopted any law requiring a Control Agreement or similar agreement to perfect an Encumbrance in any Deposit Account or Securities Account or making such method a superior form of perfection) or the United States (other than payroll accounts), where the balance in such Deposit Account or Securities Account is in excess of \$1,000,000 at any one time unless the applicable Obligor and the applicable securities intermediary or deposit-taking institution have entered into a Control Agreement or similar agreement governing such Deposit Account or Securities Account in order to perfect (and further establish) the security interests in favour of the Agent on behalf of the Lenders under the Security Documents in such Permitted Financial Investments, cash or Equity Interests, except that the requirements of this proviso shall not apply to any Deposit Account or Securities Account that is required in connection with a Permitted Acquisition until 60 days following the date such acquisition is consummated. The aggregate amount of all Permitted Financial Investments, cash and Equity Interests in all Deposit Accounts and all Securities Accounts owned by any Obligor for which a Control Agreement has not been delivered may not exceed \$4,000,000 at any time.
- (y) Cash Management. Own, hold or use any Deposit Account or other operating account other than a Deposit Account set out in Schedule 4.01(vv). No Obligor shall make any transfer of cash to any US Obligor until entry of the Recognition Order, and the Chapter 15 DIP Order by the US Court, except: (i) strictly to the extent required to conduct the Business of the US Obligors, (ii) in accordance with an Approved Budget and the Cash Management Order and (iii) by way of formally documented Intercompany Loan secured by the Inter-Company Balances Charge.
- (z) Equity Issuances. Authorize or issue any Equity Interests to any Person other than issuances of Equity Interests to such Obligor or any other Obligor.
- (aa) Restricted Action. Take any action (or in any way support the taking of any action by another person) that has, or could have, a material adverse impact on the rights and interests of the Agent, the Lenders, the First Lien Lenders or the Second Lien Lenders including, without limitation, any action in furtherance of challenging the validity, enforceability or amount of the obligations owing in respect of the DIP Facility or the Existing Debt.
- (bb) No Contest. Contest, challenge or in any way oppose (or support any other person in contesting, challenging or opposing): (i) the amount of the First Lien Lenders’ or Second Lien Lenders’ claim for the Existing Debt as acknowledged and agreed pursuant to the DIP Term Sheet, together with all other amounts that may become due or payable in respect of the Existing Debt after February 21, 2012; and (ii) the validity and enforceability of the Existing Debt, the Existing Security Documents or of any agreements and documents relating thereto.

SECTION 5.03 Reporting Requirements

So long as any Loan remains available hereunder or any Obligations remain outstanding, each of the Borrowers shall furnish to the Agent and the Lenders:

- (a) Weekly Reporting. As soon as possible and in any event within four (4) Business Days of the end of each calendar week, reports, in a form reasonably acceptable to the Agent on a weekly basis, setting forth:
 - (i) the actual receipts and disbursements for the applicable reporting period;
 - (ii) a line-by-line comparison of the actual disbursements of the Obligors against the projections set forth in the applicable Approved Budget;
 - (iii) the sum of each line item in the Approved Budget since the commencement of the Proceedings;
 - (iv) a statement disclosing the current cash balance in all accounts of the Obligors;
 - (v) an updated 13-week rolling cashflow forecast, including (x) for the time periods up to and including the week ended March 30, 2012, a rolling totals column to June 29, 2012 and (y) for the time periods subsequent to March 30, 2012, a rolling totals column to September 28, 2012, in form and substance satisfactory to the Agent setting forth all estimated receipts and disbursements on a weekly basis for the next succeeding 13-week period (the "Cashflow Forecast");
 - (vi) the amounts owing to Critical Suppliers which are secured by the Critical Supplier Charge; and
 - (vii) cash-on-hand balances as at the end of the prior week and details of any deviation in the Cash Management Procedures for any Obligor from the Cash Management Procedures previously disclosed to the Agent.
- (b) Financial Statements. As soon as possible and in any event within fifteen (15) Business Days of the end of each fiscal month, a consolidated balance sheet and related statement of operations and cash flows showing the financial position of the Fund on a consolidated basis as of the end of such fiscal month, and setting forth:
 - (i) in comparative form the corresponding figures for the corresponding period in the prior fiscal year; and
 - (ii) the calculation of the EBITDA Covenant.
- (c) Meetings and Calls. On a timely basis at the request of the Lenders, host conference calls and/or meetings to provide the Lenders with updates relating to the Business, the Loan Documents, the Proceedings or other reasonably requested information, excluding any information which has been identified as privileged or confidential.
- (d) Proceedings Reports and Other Information. (i) Promptly after the same is available, advance copies of all pleadings (to the extent practicable), motions, applications, judicial information, financial information and other documents to be filed by or on behalf of any of the Obligors with

the Courts in the Proceedings, or distributed by or on behalf of any of the Obligors to any committee appointed in the Proceedings and any correspondence related to the foregoing, providing copies of same to the Lenders and counsel for the Agent, and (ii) timely and accurate information regarding the Proceedings, including without limitation, the activities of the Obligors or its stakeholders.

- (e) Board Reports. Promptly after the submission thereof, a copy of any reports submitted to the Board of Directors or Board of Trustees of any of the Obligors, excluding any reports which have been identified as privileged or confidential.
- (f) Other Matters. Timely and accurate information regarding any matter (whether in relation to the Proceedings, the Obligors' Business or Properties, or otherwise) which might reasonably be expected to be of interest to, or which could have a material impact on, the Agent, the Lenders, the First Lien Lenders or the Second Lien Lenders or their respective rights and interests in the Obligors, excluding any information which has been identified as privileged or confidential.
- (g) Other Information. Such other information respecting the business, condition (financial or otherwise), operations, performance, properties or prospects of any Obligor or any of its Subsidiaries as any Lender (through the Agent), the Agent or any of their advisors may from time to time reasonably request.
- (h) Update to Scheduled Information. Together with the statements delivered pursuant to Section 5.03(b), any updates required to provide that the information disclosed in Section 4.01(g) (Ownership Structure), Section 4.01(h) (Share Capital), Section 4.01(w) (Material Contracts), Section 4.01(x) (Material Permits), Section 4.01(y) (Owned and Leased Real Property), Section 4.01(cc) (Intercompany Loans), and Section 4.01(gg) (Intellectual Property) remains accurate as of the date of such monthly statements.

ARTICLE VI

SECURITY

SECTION 6.01 Security

To induce the Lenders to make the Advances, each Obligor shall grant to the Agent, for itself and for the ratable benefit of the Lenders, as security for the full and prompt payment when due (whether at stated maturity, by acceleration or otherwise) of the Obligations of such Obligor under the Loan Documents a super-priority, first ranking charge and security interest (subject only to the Carve-Out) and having the priority set forth in the DIP Financing Orders, in and to all of the Property of such Obligor (which for certainty shall include the Inter-Company Balances Charges) (the "**DIP Charge**").

At the request of the Agent or the Lenders, the Intercreditor Agreement shall be amended and/or such other agreements satisfactory to the Agent and the Lenders shall be entered into, to reflect that the Lenders shall be included as "Benefited Creditors" under the Existing Security Documents and that the Obligations hereunder shall be secured by the Existing Security Documents having the priority set forth in the DIP Financing Order.

SECTION 6.02 Additional Security from Subsidiaries

Each Borrower shall cause each Person that becomes a Subsidiary of the Fund or a Borrower after the date hereof (by way of Investment or otherwise) to deliver to the Agent on behalf of the Lenders (a) an

unlimited guarantee of the Obligations owing by the Borrowers in favour of the Agent on behalf of the Lenders, (b) security over the Property of such Subsidiary to secure the payment and performance of such guarantee and any other Obligations owing by it (or in the case of (a) and (b), such documentation as may be required to evidence such Subsidiary's joinder to the Existing Security Documents), and (c) a third party legal opinion from the Borrowers' counsel concerning such Subsidiary, guarantee and security, to be delivered to the Agent all contemporaneously with such Person first becoming a Subsidiary, together with all other share certificates, stock powers of attorney, consents, authorizations and other documents necessary in order to make valid and effective the aforementioned agreements.

SECTION 6.03 Security Effective Notwithstanding Date of Advance

The Security shall be effective and the undertakings in this Agreement and the other Loan Documents with respect thereto shall be continuing, whether the monies hereby or thereby secured or any part thereof shall be advanced before or after or at the same time as the creation of any such Security or before or after or upon the date of execution of this Agreement. The Security shall not be affected by any payments on this Agreement or any of the other Loan Documents, but shall constitute continuing security to and in favour of the Lender, for the Obligations from time to time.

SECTION 6.04 No Merger

The Security shall not merge in any other security. No judgment obtained by or on behalf of the Agent or the Lenders shall in any way affect any of the provisions of this Agreement, the other Loan Documents or the Security. For greater certainty, no judgment obtained by or on behalf of the Agent or the Lenders shall in any way affect the obligation of the Borrowers to pay interest or other amounts at the rates, times and in the manner provided in this Agreement.

SECTION 6.05 Release of Security

Following indefeasible payment and performance in full of all Obligations (other than unasserted contingent indemnification obligations) of the Borrowers under this Agreement and the other Loan Documents, the Lenders will, at the request, cost and expense of the Borrowers, release and discharge the right and interest of the Lenders in the Property subject to the Security.

ARTICLE VII

EVENTS OF DEFAULT

SECTION 7.01 Events of Default

The occurrence of any of the following events shall constitute an Event of Default:

- (a) any Borrower fails to pay any amount of principal or interest due hereunder by the due date therefor; or
- (b) any Borrower or any other Obligor fails to pay any fees, expenses or other Obligations within three (3) Business Days of the due date therefor; or
- (c) any default in the compliance or performance of the EBITDA Covenant contained in Section 5.01(bb) of this Agreement; or

- (d) any default in compliance or performance of any covenant contained in Section 5.02 or Section 5.03 of this Agreement; or
- (e) any default in the compliance or performance of any other term, condition or provision of this Agreement, or any of the provisions of any other Loan Document (other than as a result of compliance by the Obligors with the DIP Financing Orders and other than any event of default existing and known to the Agent or the Lenders on the Closing Date under any Existing Security Documents), and such default remains unremedied for a period of ten (10) Business Days after the earlier of (i) written notice by the Agent or any Lender to a Borrower, and (ii) any Obligor becoming aware of such default; or
- (f) any representation or warranty made by any Obligor under any Loan Document is incorrect or misleading in any material respect or omitted a material fact when made or deemed made under any Loan Document; or
- (g) any final judgment, execution, writ of seizure and sale or similar process is enforced or levied upon Property of any Obligor having a value of \$1,000,000 (or the equivalent amount in any other currency) or more and remains undischarged, unvacated and unstayed for a period (for each action) of ten (10) days, *provided that*, during such period, such process is in good faith disputed by the applicable Obligor; or
- (h) any of the Security Documents or any other Loan Document, ceases to be in full force and effect, is disavowed by the Obligor with respect thereto, or is invalidated by any act, regulation or governmental action or is determined to be invalid by a court or other judicial entity or ceases to create a valid and perfected Encumbrance on any of the Property;
- (i) an Encumbrancer or any other Person takes possession of any substantial part of the Property of any Obligor by appointment of a receiver, receiver and manager, expropriation or otherwise; or
- (j) the financial statements of the Borrowers or the Fund are qualified in any material respect which is unacceptable to the Lenders;
- (k) any change in any Applicable Law relating to Taxes (including any announcement in a notice of ways and means motion, draft legislation or introduction of a bill but other than a change in general tax rates) that results or could reasonably be expected to result in a material increase in Taxes payable by the Fund on a consolidated basis in the current taxation year or any future taxation year;
- (l) the Fund ceases (i) to be a reporting issuer in any Province of Canada where it is a reporting issuer on the Closing Date, (ii) to be in compliance in all material respects with Securities Laws, (iii) ceases to be listed on, or ceases to be in compliance in all material respects with, the listing requirements of the CNSX; or (iv) if the units of the Fund are permanently delisted on the CNSX or are cease traded for greater than twenty (20) consecutive days (while the Fund is otherwise a reporting issuer); or
- (m) the Canadian Borrower or the US Borrower ceases to be a wholly-owned subsidiary of the Fund; or
- (n) an event or condition specified in Section 5.01(o) or Section 5.02(s) hereof shall occur or exist with respect to any Plan and, as a result of such event or condition, together with all other such events or conditions, any Obligor or any member of the Controlled Group shall incur, or in the

opinion of Lenders be reasonably likely to incur, a liability to a Plan or the PBGC (or both) which, in the reasonable judgment of Lenders, would have a Material Adverse Effect; or

- (o) other than where such event has been approved by the CCAA Court in connection with the Proceedings, an event or condition specified in Section 5.01(p) or Section 5.02(t) hereof shall occur or exist with respect to any Canadian Benefit Plan or Canadian Employee Plan and, as a result of such event or condition, together with all other such events or conditions, any Borrower shall incur, or in the opinion of Lender be reasonably likely to incur, a liability to a Canadian Benefit Plan or Canadian Employee Plan which, in the reasonable judgment of the Lenders, would have a Material Adverse Effect; or
- (p) the occurrence of an Event of Default as defined in the First Lien Loan Agreement or the Second Lien Loan Agreement not existing and known to the Agent or the Lenders prior to the Closing Date; or
- (q) other than where such event has been approved by the CCAA Court in connection with the CCAA Proceedings, a contribution or premium required to be paid to or in respect of any Canadian Pension Plan is not paid in a timely fashion in accordance with the terms thereof and all Applicable Law, or material taxes, penalties or fees are owing or exigible under any Canadian Pension Plan beyond the date permitted for payment of same; a proceeding, action, suit or claim (other than routine claims for benefits) is commenced or instituted involving any Canadian Pension Plan or its assets; an event with respect to any Canadian Pension Plan which would entitle any Person (without the consent of the applicable Obligor) to wind-up or terminate any Canadian Pension Plan, in whole or in part, or which could reasonably be expected to adversely affect the tax status thereof, shall occur; a going concern unfunded actuarial liability, past service unfunded liability or solvency deficiency shall exist with respect to any single Canadian Pension Plan which exceeds \$100,000; or an improper withdrawal or transfer of assets from any Canadian Pension Plan shall occur; or
- (r) any of the Proceedings shall be dismissed or any proceedings or case shall be commenced (whether voluntary or involuntary) under any chapter of the Bankruptcy Code, or any insolvency proceedings under state or federal laws, by or in respect of the Obligors, except with the prior written consent of the Required Lenders in their sole discretion or a bankruptcy order shall be made under the BIA or any Obligor shall file a motion or other pleading seeking the dismissal of any of the Proceedings under the Bankruptcy Code, the CCAA or otherwise; a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or the BIA, a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) and Section 1106(b) of the Bankruptcy Code) or a receiver, receiver and manager or liquidator shall be appointed in any of the Proceedings or otherwise and the order appointing such trustee, responsible officer or a receiver, receiver and manager or liquidator or examiner shall not be reversed or vacated within 30 days after the entry thereof; or, other than as set forth in the DIP Financing Orders, an application shall be filed by any Obligor for the approval of any superpriority claim (other than the Charges set out in the DIP Financing Orders) in any of the Proceedings which is pari passu with or senior to the claims of the Agent and the Lenders against the Obligors, or, other than as set forth in the DIP Financing Orders, there shall arise or be granted any such pari passu or senior superpriority claim; or
- (s) any Order of any of the Courts is made, varied, or vacated or otherwise entered the effect of which would be materially prejudicial to the interests of the Lenders as determined by the Lenders in their sole and absolute discretion; or

- (t) any Order shall have been amended, supplemented or otherwise modified without the prior written consent of the Agent, or the Obligors shall have failed to comply in any material respect with any provision of any Order, or the Stay of Proceedings shall have expired; or
- (u) the authorization, approval or payment by or on behalf of the Obligors of any expenditure not permitted by the applicable Orders or not specifically provided for in the Approved Budgets; or
- (v) (i) the seeking or support by any Obligor of any court order (in the Proceedings or otherwise) which is adverse or potentially adverse to the interests of the Agent, Lenders, First Lien Lenders or Second Lien Lenders; or (ii) the issuance of any order in the Proceedings which is adverse in any material respect to the interests of the Agent, the Lenders, the First Lien Lenders, or the Second Lien Lenders (including, without limitation, as to the amount of the Existing Debt as acknowledged and agreed herein); or
- (w) the issuance of any court order lifting or granting relief from the Stay of Proceedings in, or discontinuing, the Proceedings or the issuance of any court order staying, reversing, vacating or otherwise modifying the terms of the DIP Facility or the DIP Charge; or
- (x) the termination of the Chief Process Supervisor without the prior consent of the Agent, or the resignation of the Chief Process Supervisor without the Obligors' prompt appointment of a replacement satisfactory to the Agent and the Lenders; or
- (y) the initiation of any challenge to the validity, perfection, priority or enforceability of the DIP Charge, the DIP Facility, the Loan Agreements, the Security Documents, the First Lien Lenders' rights and interests, or the Second Lien Lenders' rights and interests; or
- (z) the occurrence of a Change of Control; or
- (aa) the failure of the Obligors to comply with any of the requirements set out in the SISP approved by the Initial Order, including but not limited to the Milestones, or any amendment, modification or revision thereto without the prior written consent of the Agent and the Lenders; or
- (bb) the occurrence of an event or condition which results, considered alone or together with all such other events and conditions, in a Material Adverse Effect (determined in the reasonable judgement of the Agent and the Lenders); or
- (cc) if the aggregate amount secured by the Critical Supplier Charge at any time exceeds \$2,000,000.

SECTION 7.02 Remedies Upon Default

Upon the occurrence of and during the continuance of an Event of Default, the Lenders may, upon four (4) days' notice (but only to the extent that such notice is required by the Initial Order) given by the Agent to the Obligors and the Monitor, declare all Obligations to be immediately due and payable and, in either case, the Lenders may then:

- (a) exercise any and all of the rights and remedies under or pursuant to the Loan Documents and the Security and realize upon all or any part of the Security; and
- (b) take such actions and commence such proceedings as may be permitted at law or in equity (whether or not provided for herein or in the Security Documents) at such times and in such manner as the Lenders in their sole discretion may consider expedient,

all without any additional notice, presentment, demand, protest, notice of protest, dishonour or any other action except as required by law. The rights and remedies of the Agent and the Lenders hereunder are cumulative and are in addition to and not in substitution for any other rights or remedies provided by Applicable Law or by any of the other Loan Documents.

SECTION 7.03 Corporate Distributions

All distributions under or in respect of any of the Loan Documents shall be held by the Agent on behalf of the Lenders on account of the Obligations without prejudice to any claim by the Agent or the Lenders for any deficiency after such distributions are received by the Agent or the Lenders and the Borrowers shall remain liable for any such deficiency. All such distributions may be applied to such part of the Obligations as the Lenders may see fit in their sole discretion, and the Lenders may at any time change any appropriation of any such distributions or other moneys received by them and reapply the same on any other part of the Obligations as the Lenders may see fit, in their sole discretion, notwithstanding any previous application.

SECTION 7.04 Set Off

Upon the occurrence and during the continuance of an Event of Default, the Lenders or any one of them may, without notice to any Obligor or to any other Person, combine, consolidate and merge all or any of the Borrowers' liabilities to the Lenders and set off any other indebtedness and liability of the Lenders to either of the Borrowers, matured or unmatured, against and on account of the Obligations when due. The Lenders shall notify the Borrowers of any such set off promptly after taking such set off, however, the failure to provide such notice shall not invalidate the set off by the Lenders.

ARTICLE VIII

THE AGENT AND THE ADMINISTRATION OF THE DIP FACILITY

SECTION 8.01 Appointment and Authorization

- (a) Each Lender hereby irrevocably appoints and authorizes the Agent to be its attorney in its name and on its behalf to exercise such rights or powers granted to such Lender under this Agreement and the other Loan Documents on the terms hereof and thereof, together with such powers as are reasonably incidental thereto. Each Lender hereby authorizes the Agent to execute, as agent for and on its behalf, any of the other Loan Documents wherein it is expressly stipulated that the Agent is acting in such capacity, and each Lender agrees to be bound thereby as principal.
- (b) As to any matters not expressly provided for by this Agreement or the Loan Documents (including, without limitation, enforcement thereof), the Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders, and such instructions shall be binding upon all of the Lenders. The Agent shall not be required to take any action which exposes the Agent to liability in such capacity, which could result in the Agent's incurring any costs and expenses not contemplated by this Agreement or which is contrary to this Agreement or Applicable Law.
- (c) The Agent shall have no duties or obligations other than as expressed herein, which duties are solely of a mechanical and administrative nature. Without limiting the generality of the foregoing, the Agent does not undertake, and the Lenders relieve the Agent from, any implied duties, responsibilities, obligations or functions and there shall not be construed against the Agent

any implied covenants or terms, whether in respect of matters arising prior to, on, or following the date of this Agreement. The relationship between the Agent and the Lenders is that of agent and principal only, and the Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lenders.

SECTION 8.02 Duties and Obligations of Agent

Neither the Agent nor any of its directors, officers, agents or employees (and, for purposes hereof, the Agent shall be deemed to be contracting as agent for and on behalf of such Persons) shall be liable to any Lender for any action taken or omitted to be taken by it or them under or in connection with this Agreement or any of the other Loan Documents (whether before, on or after the date of this Agreement) except for its or their own gross negligence or wilful misconduct. Without limiting the generality of the foregoing, the Agent:

- (a) may assume that there has been no assignment or transfer by any Lender of its rights hereunder unless and until all of the requirements of Section 9.06 have been complied with;
- (b) may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts;
- (c) shall incur no liability under or in respect of this Agreement or any of the other Loan Documents by acting upon any notice, consent, certificate or other instrument or writing (which may be, by facsimile or other means of electronic communication) believed by it to be genuine and signed or sent by the proper party or parties or by acting upon any representation or warranty of any Borrower made or deemed to be made hereunder or thereunder;
- (d) may assume that no Default or Event of Default has occurred and is continuing unless it has actual knowledge to the contrary;
- (e) may rely as to any matters of fact which might reasonably be expected to be within the knowledge of any Person upon a certificate signed by or on behalf of such Person;
- (f) does not make any warranty or representation to any Lender nor shall it be responsible to any Lender for the accuracy or completeness of the data made available to any of the Lenders in connection with the negotiation of this Agreement, or for any statements, warranties or representations (whether written or oral) made in or in connection with this Agreement;
- (g) shall not have any duty to ascertain or to enquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or any of the other Loan Documents on the part of the Obligors or to inspect the Properties (including the books and records) of any of the Obligors;
- (h) shall be fully justified in failing or refusing to take any action under this Agreement unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take such action; and
- (i) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any of the other Loan Documents or any

instrument or document furnished pursuant hereto or thereto or for any failure of any Borrower to perform its obligations hereunder.

SECTION 8.03 Prompt Notice to the Lenders

The Agent shall provide to the Lenders, in hard copy or electronic format, copies of all information, notices and reports given to the Agent by any Borrower as soon as practicable after receipt of the same, except information, notices and reports (i) relating solely to the role of Agent hereunder, (ii) distributed directly by any Borrower to the Lenders pursuant to this Agreement, or (iii) otherwise considered by the Agent to be irrelevant or immaterial to the Lenders or to any particular category or group thereof.

SECTION 8.04 Agent's Authority to Deal with Borrowers

With respect to its own participation in the Loans, the Agent shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not the Agent. The Agent may accept deposits from, lend money to, and generally engage in any kind of business with any of the Obligors or any Affiliate of any of them and any Person which may do business with any of them, all as if the Agent were not the Agent hereunder and without any duties to account therefor to the Lenders or to any other Person.

SECTION 8.05 Dealings by Borrowers with Agent

Unless otherwise specifically provided herein, the Borrowers shall deal with the Agent in lieu of the Lenders for all purposes of this Agreement. The Borrowers may rely, and shall be fully protected in so relying, without any obligation to inquire into the correctness thereof, upon any action taken, notice, direction, waiver, consent, determination, communication or agreement by the Agent purporting to be on behalf of the Required Lenders or the Lenders hereunder, as the case may be, any of which shall, as regards the Borrowers, be deemed to be an action, notice, direction, waiver, consent, determination, communication or agreement of the Required Lenders or the Lenders, as applicable.

SECTION 8.06 Independent Credit Decisions

Each Lender acknowledges that it has itself been, and will continue to be, solely responsible for making its own independent appraisal of and investigations into the financial condition, creditworthiness, condition, affairs, status and nature of the Obligors. Accordingly, each Lender confirms with the Agent that it has not relied, and will not hereafter rely, on the Agent (i) to check or enquire on its behalf into the adequacy, accuracy or completeness of any information provided by any Borrower or any other Person under or in connection with this Agreement or the transactions herein contemplated (whether or not such information has been or is hereafter distributed to such Lender by the Agent), or (ii) to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of the Obligors. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Agent hereunder, the Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, assets, condition (financial or otherwise), prospects or creditworthiness of the Obligors which may come into the possession of the Agent or any of its officers, directors, employees or agents. Each Lender acknowledges that a copy of this Agreement and each of the other Loan Documents has been made available to it for review and each Lender acknowledges that it is satisfied with the form and substance of the same.

SECTION 8.07 Indemnification

Each Lender hereby agrees to indemnify the Agent (to the extent not reimbursed by the Borrowers), in accordance with its rateable portion of the Loans, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Agent at any time (including, without limitation, at any time following repayment in full of all Obligations) in any way relating to or arising out of this Agreement or any of the other Loan Documents or any action taken or omitted by the Agent hereunder or thereunder or in respect hereof or thereof; *provided that* no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's gross negligence or wilful misconduct. Without limiting the generality of the foregoing, each Lender agrees to reimburse the Agent promptly upon demand for its rateable portion of any out-of-pocket expenses (including counsel fees) incurred by the Agent in connection with the preservation of any rights of the Agent or the Lenders as against the Obligors under, or the enforcement of, or legal advice in respect of rights or responsibilities under, this Agreement and the other Loan Documents, to the extent that the Agent is not reimbursed for such expenses by the Borrowers. The indemnity in this Section 8.07 shall survive the payment and satisfaction of all Obligations and the termination of this Agreement.

SECTION 8.08 Successor Agent

The Agent may, as hereinafter provided, resign at any time by giving written notice thereof to the Lenders and the Borrowers. Upon any such resignation, the Lenders shall have the right to appoint a successor agent (the "Successor Agent") which shall be one of the Lenders acceptable to the Borrowers acting reasonably. If no Successor Agent shall have been so appointed by the Lenders and shall have accepted such appointment within 30 days after the retiring Agent's giving of notice of resignation, then the retiring Agent may, on behalf of the Lenders, appoint a Successor Agent from among the Lenders acceptable to the Borrowers acting reasonably. Upon the acceptance of any appointment as Agent hereunder by a Successor Agent, such Successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall thereupon be discharged from its further duties and obligations as Agent under this Agreement. The retiring Agent shall cooperate with the Successor Agent in the performance of its duties for a reasonable period of time after such resignation. After any retiring Agent's resignation hereunder as Agent, the provisions of this Article VIII shall continue to enure to its benefit as to any actions taken or omitted to be taken by it while it was Agent hereunder.

SECTION 8.09 Action by and Consent of Lenders; Waiver and Amendments

- (a) Subject to Section 8.09(c), where the terms of this Agreement or any of the other Loan Documents refer to any action to be taken hereunder or thereunder by the Lenders or to any such action that requires the consent or other determination of the Lenders, the action taken by and the consent or other determination given or made by the Required Lenders shall, except to the extent that this Agreement expressly provides to the contrary, constitute the action or consent or other determination of the Lenders herein or therein referred to, and the Agent may exercise its powers under Section 8.01 based upon such action, consent or other determination.
- (b) Subject to Section 8.09(c), this Agreement and any other Loan Document may be amended only if the Borrowers or applicable Obligors and the Required Lenders so agree in writing, any consent under this Agreement or any other Loan Document shall be given only by the Agent (at the direction of the Required Lenders) in writing, and any Event of Default may be waived before or

after it occurs only if the Agent (at the direction of the Required Lenders) so agrees in writing. Any amendment, consent or waiver so made shall be binding upon all of the Lenders.

- (c) Any amendment or waiver which changes or relates to:
 - (i) the amount, term or currency of the Loans;
 - (ii) the amount or dates of payment of principal, interest or fees (including the Standby Fee);
 - (iii) the definition of "Required Lenders";
 - (iv) Section 2.16 or Section 9.06(b);
 - (v) a release or subordination of all or substantially all of the Security or the value of any guarantee provided by an Obligor or all or a material portion of the Property; or
 - (vi) this Section 8.09 or Section 8.11 to provide for non-ratable sharing;

shall require the agreement of all of the Lenders affected thereby and also (in the case of an amendment) of the Borrowers. An amendment or waiver which changes or relates to the rights and/or obligations of the Agent shall also require the agreement of the Agent thereto.

- (d) Any waiver and any consent by the Agent or any Lenders under any provision of this Agreement or any other Loan Document may be given subject to any conditions thought fit by the Person giving that waiver or consent. Any waiver or consent shall be effective only in the instance and for the purpose for which it is given.
- (e) If, in connection with any proposed amendment, waiver or consent (a "Proposed Change") requiring the consent of all Lenders, the consent of Required Lenders is obtained, but the consent of other Lenders is not obtained (any such Lender whose consent is not obtained as described in this paragraph being referred to as a "Non-Consenting Party"), then, so long as the Agent is not a Non-Consenting Party, at the Borrowers request, the Agent, or an assignee that is acceptable to the Agent, shall have the right (but not the obligation) to purchase from the Non-Consenting Parties (and their Affiliates), and the Non-Consenting Parties (and their Affiliates) agree that they shall sell, all the Non-Consenting Parties' (and their Affiliates') Loans in accordance with the provisions of Section 9.06 as if each such Non-Consenting Party (and Affiliate) is an assignor Lender under Section 9.06 at an amount equal to the outstanding Loans of the Non-Consenting Party plus accrued and unpaid interest, if any, that would at such time be applicable on a voluntary prepayment of such Loans pursuant to Section 2.06.

SECTION 8.10 Remittance of Payments

- (a) As soon as practicable after receipt of any notice of payment by any Borrower hereunder, the Agent shall give notice to each Lender of the amount of the payment to be made to it on such day and all other relevant particulars of such payment. Subject to Section 8.14, as soon as practicable after receipt of any repayment or prepayment of the Loans or any payment of interest or any other amount payable by any Borrower hereunder to the extent that such payments were not made directly to the Lenders by the Borrowers, the Agent shall remit to each Lender its rateable portion of such payment or prepayment and its respective entitlement, if any, to any other amount payable by any Borrower hereunder.

- (b) If the Agent, on the assumption that it will receive on any particular date a payment of principal, interest or fees hereunder, remits any amount to the relevant Lender and a Borrower fails to make such payment, each such Lender agrees to repay to the Agent forthwith on demand the amount so received by it together with all reasonable costs and expenses incurred by the Agent in connection therewith (to the extent not reimbursed by a Borrower) and interest thereon at the rate and calculated in the manner applicable to the Loans for each day from the date such amount is remitted to the relevant Lender. The amount payable to the Agent pursuant hereto shall be as set forth in a certificate delivered by the Agent to each such Lender, which certificate shall be conclusive and binding for all purposes, absent manifest error.
- (c) Each Borrower agrees to indemnify each Lender from and against all costs and expenses imposed on the relevant Lender pursuant to Section 8.10(b).

SECTION 8.11 Redistribution of Payments

Except as otherwise expressly contemplated in this Agreement, a Lender (a "Remitting Lender") which obtains any payment (whether voluntary, involuntary, by way of set-off or otherwise) on account of its portion of the Loans which has not been repaid to the other Lender in accordance with their respective rateable portions shall, and each Borrower hereby irrevocably authorizes any such Lender to, remit such payment or portion thereof to the Agent for redistribution to the Lenders in accordance with their respective rateable portions. In any such case, the Remitting Lender, upon such payment by it to the Agent, shall be deemed for all purposes not to have received from any Borrower that payment so remitted to the Agent, and the Lenders (the "Receiving Lender") receiving such payment or portions thereof upon a redistribution thereof by the Agent shall be deemed for the purposes hereof to have received such payment or portion thereof (as the case may be) from such Borrower. If all or part of any such payment made by such Remitting Lender shall be recovered by a Borrower from such Remitting Lender, such amount so paid by such Remitting Lender to the Agent shall forthwith be repaid by the Receiving Lender to the Agent (for the benefit of the Remitting Lender).

SECTION 8.12 Notification of Default

Each Lender shall promptly notify the Agent, and the Agent shall promptly notify each of the Lenders, of any event of which it has actual notice which constitutes a Default or an Event of Default. The Agent shall not be deemed to have actual notice of the occurrence of a Default or Event of Default unless the Agent has received notice from any of the Lenders or any Borrower referring to this Agreement, describing the default and stating that the notice is a "Notice of Default".

SECTION 8.13 Taking and Enforcement of Remedies

- (a) Each of the Lenders hereby acknowledges that, to the extent permitted by Applicable Law, the remedies provided hereunder and under the other Loan Documents to the Lenders are for the benefit of the Lenders collectively and acting together and not severally and further acknowledges that its rights hereunder and thereunder are to be exercised collectively by the Agent upon the instructions of the Required Lenders. Accordingly, notwithstanding any of the provisions contained herein or therein, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action with respect to the Loans, including, without limitation, any election of remedies in respect of an Event of Default hereunder, but that any such action shall be taken only by the Agent upon the instructions of the Required Lenders as provided herein. Notwithstanding the foregoing, in the absence of instructions from the Required Lenders (or, to the extent Section 8.09(c) is applicable, all of the Lenders) where the Agent has requested instructions and in its sole opinion the exigencies of the situation warrant such action, the Agent

may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interests of the Lenders. Each of the Lenders further covenants and agrees, that, upon any such instructions being given to the Agent by the Required Lenders, it shall cooperate fully with the Agent to the extent requested by the Agent in any remedial action hereunder including, without limitation, the appointment of a receiver and manager to act for their collective benefit. Each Lender covenants and agrees to do all acts and things and to make, execute and deliver all agreements and other instruments, including, without limitation, any instruments necessary to effect any registrations, so as to fully carry out the intent and purposes of this Section 8.13.

- (b) Each Lender hereby covenants and agrees that it has not heretofore sought, taken, accepted or received and shall not hereafter seek, take, accept or receive any security for any of the obligations and liabilities of any Borrower hereunder or under the other Loan Documents or under any other document, instrument, writing or agreement ancillary hereto or thereto other than such security as is provided hereunder or thereunder and shall not enter into any agreement with any of the parties hereto or thereto relating in any manner whatsoever to the Loans, unless all of the Lenders shall at the same time obtain the benefit of any such security or agreement.
- (c) Each of the Lenders and the Borrowers further covenants and agrees that all proceeds from the exercise of the rights and remedies provided hereunder and under the Loan Documents, to the extent permitted by Applicable Law, are held for the benefit of all of the Lenders and, after deduction therefrom of all costs of realization, shall be shared among the Lenders proportionately based upon the respective aggregate amounts of the Obligations which are outstanding to each of the Lenders at the relevant time or times of sharing. To the extent any Lender receives or is entitled to receive any amount hereunder in excess of the amount of the Obligations owed to it hereunder it shall hold such excess in trust on behalf of and for the benefit of the other Lenders entitled thereto.
- (d) Each of the Lenders agrees with each of the other Lenders that if it exercises any right of set-off in accordance with Section 7.04 hereof in connection with any Obligations, it shall promptly so advise the Agent and each of the other Lenders and, to the extent permitted by Applicable Law, the Lenders shall share all such set-offs in accordance with the provisions of Section 8.13(c) hereof, *provided that* none of the Lenders shall be liable hereunder to any of the other Lenders by reason of failure to exercise or validly exercise any right of set-off or by reason of any restriction upon any such sharing.

SECTION 8.14 Adjustments to Reflect Rateable Portions

The Agent shall determine all adjustments to amounts required to be advanced by the Lenders or to amounts of payments to which the respective Lenders are entitled to reflect as nearly as practicable the respective rateable portions of the Lenders under the Loans.

SECTION 8.15 No Partnership

Nothing contained in this Agreement and no action taken by the Lenders pursuant hereto shall be deemed to constitute the Lenders a partnership, association, joint venture or other collective entity.

SECTION 8.16 Appointment of West Face as Agent for the West Face Lenders

Each of West Face Long Term Opportunities Limited Partnership, West Face Long Term Opportunities (USA) Limited Partnership and West Face Long Term Opportunities Global Master L.P. (collectively, the

“West Face Lenders”), as Lenders, hereby designate and appoint West Face Capital Inc. as its representative and agent for the purposes of receipt of all communications and deliveries under the Loan Documents (in such capacity, the “West Face Agent”), including delivery or receipt of communications with the Agent, any Borrower or any Lender, receipt of certificates and financial reports and requests for waivers, amendments or other accommodations. West Face Agent hereby accepts such appointment. The Agent, the Lenders and the Borrowers shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication delivered to West Face Agent on behalf of the West Face Lenders.

ARTICLE IX

GENERAL

SECTION 9.01 Reliance and Non Merger

All covenants, agreements, representations and warranties of any Borrower or any Guarantor made herein or in any other Loan Document or in any certificate or other document signed by any of its directors or officers and delivered by or on behalf of any Borrower or any Guarantor pursuant hereto or thereto are material, shall be deemed to have been relied upon by the Lenders notwithstanding any investigation heretofore or hereafter made by the Lenders or counsel to or any employee or other representative of any of the Lenders and shall survive the execution and delivery of this Agreement and the other Loan Documents until all obligations owed to the Lenders under this Agreement and the other Loan Documents shall have been satisfied and performed.

SECTION 9.02 Notices

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by facsimile or other means of electronic communication or by hand delivery as hereinafter provided. Any such notice, if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the day of sending, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address. Notices of change of address shall also be governed by this Section. Notices and other communications shall be addressed as set out on the signature pages of this Agreement.

SECTION 9.03 Time

Time is of the essence of this Agreement and the other Loan Documents.

SECTION 9.04 Press Releases and Public Announcements

Each of the Obligors agrees that it will not issue any press release or make any other kind of public announcement, or consent to the issuance of any press release or the making of any other kind of public announcement, regarding this Agreement and the terms contained herein or the identity of the Lenders unless the text of any such release or announcement, and the time and manner in which such release or announcement is made, has been approved by the Lenders in writing acting reasonably, except to the extent required by Applicable Law (in which case the Borrowers or the applicable Obligor, as applicable shall make all commercially reasonable efforts to provide advance notice of such release or announcement to the Lenders and consult with the Lenders as to the content thereof).

SECTION 9.05 Intentionally Deleted

SECTION 9.06 Assignment

- (a) This Agreement and the other Loan Documents shall enure to the benefit of and be binding upon the parties hereto and thereto, their respective successors and any permitted assignee of some or all of the parties' rights or obligations under this Agreement and the other Loan Documents as permitted under this Section.
- (b) No Obligor shall assign all or any part of its rights, benefits or obligations under this Agreement or any of the other Loan Documents without the prior written consent of the Lenders, which may be unreasonably withheld.
- (c) Subject to the terms of this Agreement, the Lenders collectively or individually may assign to one or more assignees (other than an Obligor) all or a portion of their respective rights and obligations under this Agreement without the consent of the Borrowers. The parties to each such assignment shall execute and deliver to the Agent an Assignment Agreement for its approval and the Agent shall deliver such Assignment Agreement to the Borrowers. The Assignor shall pay a processing and recording fee of \$3,500 to the Agent. Upon such execution, delivery, acknowledgement and recording in the Register (as defined below) (i) the assignee thereunder shall be a party to this Agreement and, to the extent that rights and obligations hereunder have been assigned to it, have the rights and obligations of a Lender hereunder and (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, relinquish its rights and be released from its obligations under this Agreement, other than obligations in respect of which it is then in default, and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto.
- (d) The agreements of an assignee contained in an Assignment Agreement shall benefit the assigning Lender thereunder, the other Lenders and the Agent in accordance with the terms of the Assignment Agreement.
- (e) The Agent shall maintain at its address referred to herein a copy of each Assignment Agreement delivered to and acknowledged by it and as agent for the Obligors (solely for the purposes of this paragraph) a register for recording the names and addresses of the Lenders and rateable portion of the principal amount under the Loans of each Lender from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error (which the Agent shall correct promptly upon notice). Each of the Borrowers, the Agent and each of the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement, and need not recognize any Person as a Lender unless it is recorded in the Register as a Lender. The Register shall be available for inspection by any Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.
- (f) Upon its receipt of an Assignment Agreement executed by an assigning Lender and an assignee and approved by the Agent, the Agent shall record the information contained therein in the Register. The requirements of this Section 9.06 are intended to result in the Loan being in "registered form" within the meaning of United States Treasury Regulations Section 1.871-14(c) and Sections 163(f), 871(h) and 881(c) of the Code, and shall be interpreted and applied in a manner consistent therewith.

- (g) The Lenders may provide to any permitted assignee or transferee such information, including confidential information, concerning this Agreement, the other Loan Documents, the Proceedings and the financial position and the operations of the Fund and its Subsidiaries as, in the reasonable opinion of the applicable Lender, may be relevant or useful in connection with this Agreement, the other Loan Documents or any portion thereof proposed to be acquired by such assignee or transferee, *provided that* each recipient of such information agrees not to disclose such information to any other Person.
- (h) In connection with any assignment pursuant to this Section 9.06, each Borrower agrees to enter into such documents as may reasonably be required by the Agent or the Lenders to evidence such assignment and to incorporate into this Agreement outstanding provisions for multi lender loan arrangements.

SECTION 9.07 Participations

Each Lender may sell participation to one or more banks, financial institutions, commercial lenders or other Persons in or to all or a portion of its rights and obligations under this Agreement, but the participant shall not become a Lender and:

- (a) the Lender's obligations under this Agreement shall remain unchanged;
- (b) the Lender shall remain solely responsible to the other parties hereto for the performance of such obligations;
- (c) the Borrowers, the Agent and the other Lenders shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement and shall have no rights, duties or obligations with respect to such participants; and

no participant shall have any right to approve any amendment or waiver of any provision of this Agreement, or any consent to any departure by any Person therefrom except with respect to any amendment, modification or waiver that would (i) extend the final scheduled maturity of the DIP Facility, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce or subordinate the Obligations, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default shall not constitute a change in the terms of such participation), (ii) consent to the assignment or transfer by any Obligor of any of its rights and obligations under this Agreement, or (iii) release all or substantially all of the Security under the Security Documents or all or substantially all of the Guarantors (in each case, except as expressly provided in the Loan Documents). Each Borrower agrees that each participant shall be entitled to the benefits of Section 2.14 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.06; *provided that*, a participant shall not be entitled to receive any greater payment under Section 2.14 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, unless the sale of the participation to such participant is made with the Borrowers prior written consent.

SECTION 9.08 Entire Agreement

This Agreement and the other Loan Documents constitute the entire agreement between the parties pertaining to the subject matter described herein and therein. There are no warranties, conditions or representations (including any that may be implied by statute), and there are no agreements in connection with such subject matter except as specifically set forth or referred to in this Agreement and the other

Loan Documents. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made either prior to, contemporaneously with, or after the entering into of this Agreement and the other Loan Documents, or any amendment or supplement thereto, by any party to this Agreement or any of the other Loan Documents or its directors, officers, partners, employees or agents, where applicable, to any other party to this Agreement or any of the other Loan Documents or its directors, officers, partners, employees or agents, where applicable, except to the extent that the same has been reduced to writing and included as a term of this Agreement or any of the Loan Documents.

SECTION 9.09 Governing Law

This Agreement and the other Loan Documents shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

SECTION 9.10 Attornment

The parties hereto irrevocably submit and attorn to the non-exclusive jurisdiction of the CCAA Court and, to the extent applicable, the US Court, and to the extent that such courts do not have or do not exercise jurisdiction, to any court of competent jurisdiction in the Province of Ontario, for all matters arising out of or in connection with this Agreement and the other Loan Documents.

SECTION 9.11 Counterparts

This Agreement may be signed in counterparts and each such counterpart shall constitute an original document and all of such counterparts, when taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopier or by other electronic communication shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.12 Currency Indemnity

If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Agreement or any other Loan Document, it becomes necessary to convert into a particular currency (the "Judgment Currency") any amount due under this Agreement or under any other Loan Document in any currency other than the Judgment Currency (the "Currency Due"), then conversion shall be made at the Conversion Rate. In the event that there is a change in the Conversion Rate prevailing between the Business Day before the day on which the judgment is given and the date of receipt by the Agent of the amount due, the Borrowers will, on the date of receipt by the Agent, pay such additional amounts, if any, or be entitled to receive reimbursement of such amount, if any, as may be necessary to ensure that the amount received by the Agent on such date is the amount in the Judgment Currency which when converted at the Conversion Rate prevailing on the date of receipt by the Agent is the amount then due under this Agreement or such other Loan Document in the Currency Due. If the amount of the Currency Due which the Agent is so able to purchase is less than the amount of the Currency Due originally due to it, the Borrowers shall indemnify and save the Agent and the Lenders harmless from and against all loss or damage arising as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Agreement and the other Loan Documents, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Agent from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due under this Agreement or any other Loan Document or under any judgment or order.

SECTION 9.13 Interpretation (Québec)

For purposes of any assets, liabilities or entities located in the Province of Québec and for all other purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Québec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) “personal property” shall include “movable property”, (b) “real property” or “real estate” shall include “immovable property”, (c) “tangible property” shall include “corporeal property”, (d) “intangible property” shall include “incorporeal property”, (e) “security interest”, “mortgage” and “lien” shall include a “hypothec”, “right of retention”, “prior claim” and a resolatory clause, (f) all references to filing, perfection, priority, remedies, registering or recording under the Personal Property Security Act shall include publication under the Civil Code of Québec, (g) all references to “perfection” of or “perfected” liens or security interest shall include a reference to an “opposable” or “set up” lien or security interest as against third parties, (h) any “right of offset”, “right of setoff” or similar expression shall include a “right of compensation”, (i) “goods” shall include “corporeal movable property” other than chattel paper, documents of title, instruments, money and securities, (j) “construction liens” shall include “legal hypothecs”, (k) “joint and several” shall include “solidary”, (l) “gross negligence or willful misconduct” shall be deemed to be “intentional or gross fault”, (m) “easement” shall include “servitude”, (n) “priority” shall include “prior claim”, (o) “survey” shall include “certificate of location and plan”, (p) “state” shall include “province”, (q) “fee simple title” shall include “absolute ownership”, and (r) “accounts” shall include “claims”. The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. Les parties aux présentes confirment que c’est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en langue anglaise seulement.

SECTION 9.14 Jury Trial Waiver

THE BORROWERS, GUARANTORS, AGENT AND LENDERS EACH HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. THE BORROWERS, GUARANTORS, AGENT AND LENDERS EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY BORROWER, ANY GUARANTOR, AGENT OR ANY LENDER MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

SECTION 9.15 Limitation of Trustee Liability

The parties hereto acknowledge that the trustees of the Fund (referred to in this Section as the “Fund Trustees”) are entering into this agreement solely in their capacity as Fund Trustees on behalf of the Fund and the obligations of the Fund hereunder shall not be personally binding upon the Fund Trustees or any holder of Units and that any recourse against the Fund, the Fund Trustees or any holder of Units in any

manner in respect of any indebtedness, obligation or liability of the Fund Trustees arising hereunder or arising in connection herewith or from the matters to which this Agreement relates, if any, including, without limitation, claims based on negligence or otherwise tortious behaviour, shall be limited to, and satisfied only out of, the assets of the Fund.

- signature pages follow -

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

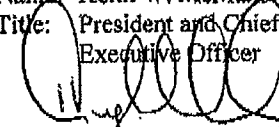
Arctic Glacier Inc.
625 Henry Avenue
Winnipeg, Manitoba
R3A 0V1

Attention: Chief Executive Officer
Facsimile: (204) 783-9857

**ARCTIC GLACIER INC., as Canadian
Borrower**

By: 

Name: Keith W. McMahon
Title: President and Chief
Executive Officer


By: 

Name: Hugh A. Adams
Title: Secretary

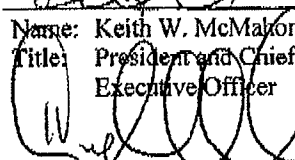
Arctic Glacier International Inc.
625 Henry Avenue
Winnipeg, Manitoba
R3A 0V1

Attention: Chief Executive Officer
Facsimile: (204) 783-9857

**ARCTIC GLACIER INTERNATIONAL
INC. as U.S. Borrower**

By: 

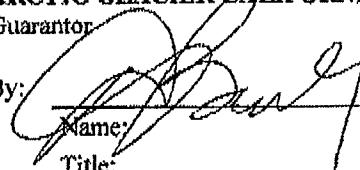
Name: Keith W. McMahon
Title: President and Chief
Executive Officer

By: 

Name: Hugh A. Adams
Title: Secretary

c/o Arctic Glacier Inc. at the address above

**ARCTIC GLACIER CALIFORNIA INC., as
Guarantor**

By: 

Name:
Title:

By: 

Name:
Title:

c/o Arctic Glacier Inc. at the address above

ARCTIC GLACIER GRAYLING INC., as
Guarantor

By: 

Name:

Title:

By: 

Name:

Title:

c/o Arctic Glacier Inc. at the address above

ARCTIC GLACIER INCOME FUND, as
Guarantor

By: 

Name:

Title:

By: 

Name:

Title:

c/o Arctic Glacier Inc. at the address above

ARCTIC GLACIER LANSING INC., as
Guarantor

By: 

Name:

Title:

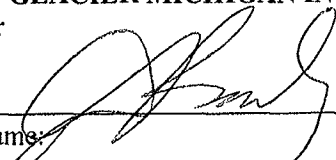
By: 


Name:

Title:

c/o Arctic Glacier Inc. at the address above

ARCTIC GLACIER MICHIGAN INC., as Guarantor


By: 
Name: _____
Title: _____

By: 
Name: _____
Title: _____

c/o Arctic Glacier Inc. at the address above


ARCTIC GLACIER MINNESOTA INC., as Guarantor

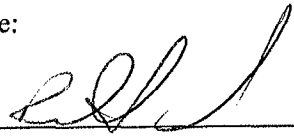
By: 
Name: _____
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c/o Arctic Glacier Inc. at the address above

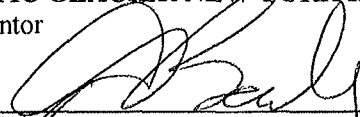
ARCTIC GLACIER NEBRASKA INC., as Guarantor

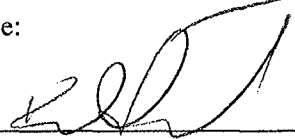
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c/o Arctic Glacier Inc. at the address above

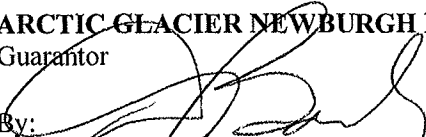
ARCTIC GLACIER NEW YORK INC., as
Guarantor


By: 
Name:
Title:

By: 
Name:
Title:

c/o Arctic Glacier Inc. at the address above

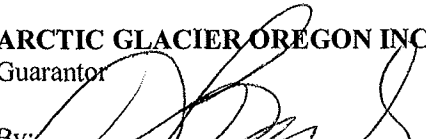
ARCTIC GLACIER NEWBURGH INC., as
Guarantor

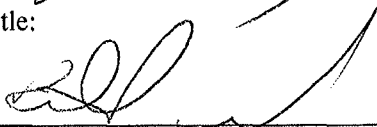
By: 
Name:
Title:

By: 
Name:
Title:

c/o Arctic Glacier Inc. at the address above

ARCTIC GLACIER OREGON INC., as
Guarantor


By: 
Name:
Title:

By: 
Name:
Title:

c/o Arctic Glacier Inc. at the address above

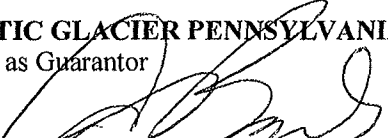
ARCTIC GLACIER PARTY TIME INC., as Guarantor


By: 
Name:
Title:

By: 
Name:
Title:

c/o Arctic Glacier Inc. at the address above


ARCTIC GLACIER PENNSYLVANIA INC., as Guarantor

By: 
Name:
Title:

By: 
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c/o Arctic Glacier Inc. at the address above

ARCTIC GLACIER ROCHESTER INC., as Guarantor

By: 
Name:
Title:

By: 
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Title:

c/o Arctic Glacier Inc. at the address above

**ARCTIC GLACIER SERVICES INC., as
Guarantor**

By:

Name:

Title:

By:

Name:

Title:

c/o Arctic Glacier Inc. at the address above

**ARCTIC GLACIER TEXAS INC., as
Guarantor**

By:

Name:

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By:

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c/o Arctic Glacier Inc. at the address above

**ARCTIC GLACIER VERNON INC., as
Guarantor**

By:

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Title:

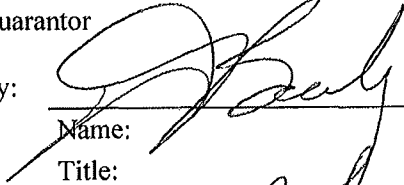
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c/o Arctic Glacier Inc. at the address above

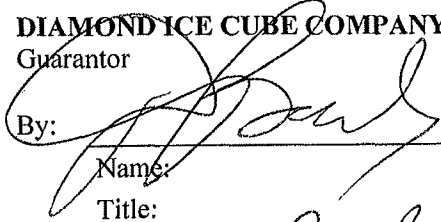
ARCTIC GLACIER WISCONSIN INC., as
Guarantor


By: 
Name: _____
Title: _____

By: 
Name: _____
Title: _____

c/o Arctic Glacier Inc. at the address above

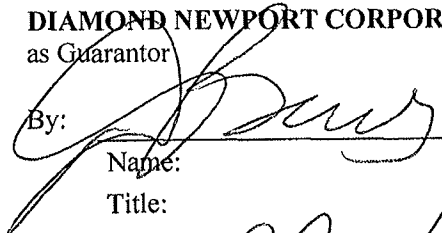
DIAMOND ICE CUBE COMPANY INC., as
Guarantor

By: 
Name: _____
Title: _____

By: 
Name: _____
Title: _____

c/o Arctic Glacier Inc. at the address above

DIAMOND NEWPORT CORPORATION,
as Guarantor

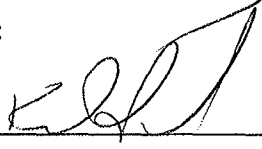
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c/o Arctic Glacier Inc. at the address above

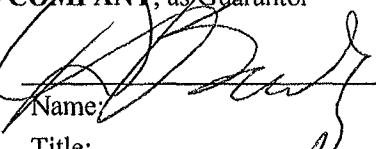
GLACIER ICE COMPANY, INC., as Guarantor

By: 
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By: 
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c/o Arctic Glacier Inc. at the address above

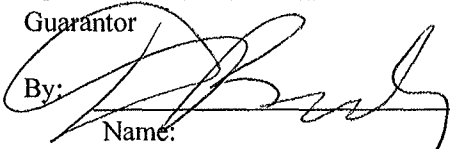
GLACIER VALLEY ICE COMPANY, L.P., by its general partner MOUNTAIN WATER ICE COMPANY, as Guarantor


By: 
Name:
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By: 
Name:
Title:

c/o Arctic Glacier Inc. at the address above

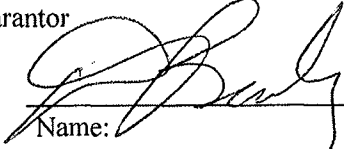
ICE PERFECTION SYSTEMS INC., as Guarantor

By: 
Name:
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By: 
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c/o Arctic Glacier Inc. at the address above

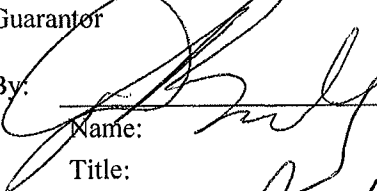
JACK FROST ICE SERVICE, INC., as
Guarantor


By: 
Name: _____
Title: _____

By: 
Name: _____
Title: _____

c/o Arctic Glacier Inc. at the address above

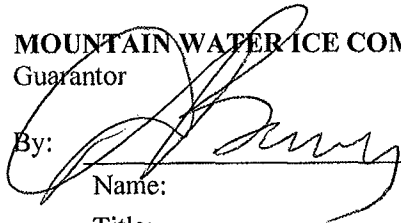
KNOWLTON ENTERPRISES, INC., as
Guarantor


By: 
Name: _____
Title: _____

By: 
Name: _____
Title: _____

c/o Arctic Glacier Inc. at the address above

MOUNTAIN WATER ICE COMPANY, as
Guarantor

By: 
Name: _____
Title: _____

By: 
Name: _____
Title: _____

c/o Arctic Glacier Inc. at the address above

R & K TRUCKING, INC., as Guarantor

By: _____

Name:

Title:

By: _____

Name:

Title:

c/o Arctic Glacier Inc. at the address above

**WINKLER LUCAS ICE AND FUEL
COMPANY d/b/a MID-MICHIGAN ICE
CO. INC.,** as Guarantor

By: _____

Name:

Title:

By: _____

Name:

Title:

c/o Arctic Glacier Inc. at the address above

WONDERLAND ICE, INC., as Guarantor

By: _____

Name:

Title:

By: _____

Name:

Title:

c/o Arctic Glacier Inc. at the address above

ICESURANCE INC., as Guarantor

By: _____

Name:

Title:

By: _____

Name:

Title:

CPPIB Credit Investments Inc.
One Queen Street East
Suite 2600
Toronto, Ontario
M5C 2W5

Attention: Mark Jenkins
Facsimile: (416) 874-5329

CPPIB CREDIT INVESTMENTS INC., as Agent

By: _____

Name:

Title:

By: _____

Name:

Title:

CPPIB Credit Investments Inc.
One Queen Street East
Suite 2600
Toronto, Ontario
M5C 2W5

Attention: Mark Jenkins
Facsimile: (416) 874-5329

CPPIB CREDIT INVESTMENTS INC., as Lender

By: _____

Name:

Title:

By: _____

Name:

Title:

c/o Arctic Glacier Inc. at the address above

ICESURANCE INC., as Guarantor


By: _____
Name:
Title:


By: _____
Name:
Title:

CPPIB Credit Investments Inc.
One Queen Street East
Suite 2600
Toronto, Ontario
M5C 2W5

Attention: Mark Jenkins
Facsimile: (416) 874-5329

CPPIB CREDIT INVESTMENTS INC., as Agent

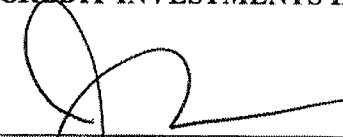
By: 
Name: **MARK JENKINS**
Title: **AUTHORIZED SIGNATORY**


By: 
Name: Graeme Eadie
Title: Authorized Signatory

CPPIB Credit Investments Inc.
One Queen Street East
Suite 2600
Toronto, Ontario
M5C 2W5

Attention: Mark Jenkins
Facsimile: (416) 874-5329

CPPIB CREDIT INVESTMENTS INC., as Lender

By: 
Name: **MARK JENKINS**
Title: **AUTHORIZED SIGNATORY**

By: 
Name: Graeme Eadie
Title: Authorized Signatory

West Face Long Term Opportunities Limited
Partnership
c/o West Fact Capital Inc.
2 Bloor Street East
Suite 810
Toronto, Ontario
M4W 1A8

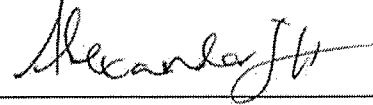
Attention: John Maynard
Facsimile: (647) 724-8910

West Face Long Term Opportunities (USA)
Limited Partnership
c/o West Fact Capital Inc.
2 Bloor Street East
Suite 810
Toronto, Ontario
M4W 1A8

Attention: John Maynard
Facsimile: (647) 724-8910

**WEST FACE CAPITAL INC. in its capacity
as advisor for WEST FACE LONG TERM
OPPORTUNITIES LIMITED
PARTNERSHIP, as Lender**

By:



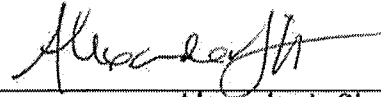
Name: Alexander A. Singh
Title: General Counsel & Secretary

By:

Name:
Title:

**WEST FACE CAPITAL INC. in its capacity
as advisor for WEST FACE LONG TERM
OPPORTUNITIES (USA) LIMITED
PARTNERSHIP, as Lender**

By:



Name: Alexander A. Singh
Title: General Counsel & Secretary

By:

Name:
Title:

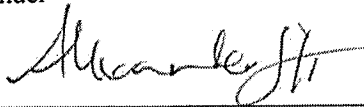
West Face Long Term Opportunities Master
Fund L.P.
c/o West Fact Capital Inc.
2 Bloor Street East
Suite 810
Toronto, Ontario
M4W 1A8

Attention: John Maynard
Facsimile: (647) 724-8910

West Face Capital Inc.
2 Bloor Street East
Suite 810
Toronto, Ontario
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Attention: John Maynard
Facsimile: (647) 724-8910

**WEST FACE CAPITAL INC. in its capacity
as advisor for WEST FACE LONG TERM
OPPORTUNITIES GLOBAL MASTER
L.P., as Lender**

By: 

Name: Alexander A. Singh
Title: ~~General~~ Counsel & Secretary

By:

Name:
Title:

**WEST FACE CAPITAL INC., as agent for
the West Face Lenders**

By: 

Name: Alexander A. Singh
Title: ~~General~~ Counsel & Secretary

By:

Name:
Title: