

This is Exhibit " U " referred to in the  
Affidavit of Execution Copy Keith McMahon  
SWORN before me this 21st day  
of February, A.D. 2012

**THIRD AMENDED AND RESTATED INTERCREDITOR AGREEMENT**  
~~A Commissioner for Oaths / Notary Public~~  
in (and for the Province of Manitoba  
~~My Commission expires:~~

**THIS THIRD AMENDED AND RESTATED INTERCREDITOR AGREEMENT** (as amended, restated or otherwise modified, the "**Intercreditor Agreement**"), is made and dated as of December 14, 2011 and amends and restates an intercreditor agreement dated as of February 10, 2010, as amended (the "**Second Amended and Restated Intercreditor Agreement**"), and an amended and restated intercreditor agreement dated as of December 9, 2004, as amended, and an amended and restated intercreditor agreement dated as of April 21, 2008; by and among **CPPIB CREDIT INVESTMENTS INC.** (as successor to The Toronto-Dominion Bank), as Canadian administrative agent (in such capacity, together with any permitted successors and assigns, the "**Senior Facility Agent**") for the Senior Facility Lenders (as such term and capitalized terms not otherwise defined are defined in Section 1 below) under the Senior Facility Documents; **CPPIB CREDIT INVESTMENTS INC.**, as administrative agent (in such capacity, together with any permitted successors and assigns, the "**Subordinated Facility Agent**") for the Subordinated Facility Lenders under the Subordinated Facility Documents; and **THE TORONTO-DOMINION BANK**, as Master Collateral Agent appointed and acting under this Intercreditor Agreement (in such capacity, together with any permitted successors and assigns, the "**Master Collateral Agent**") for the Senior Facility Agent, the Senior Facility Lenders, the Subordinated Facility Agent, the Subordinated Facility Lenders and any other Benefited Creditors which from time to time become parties to this Intercreditor Agreement.

#### RECITALS

A. Pursuant to that certain Fourth Amended and Restated Loan Agreement dated as of February 10, 2010 by and among The Toronto-Dominion Bank, as Lead Arranger and Book Manager, the Senior Facility Agent, Toronto Dominion (Texas) LLC, as U.S. Administration Agent, and The Toronto-Dominion Bank, as Syndication Agent, Arctic Glacier Inc., as Canadian Borrower (the "**Canadian Borrower**"), Arctic Glacier International Inc., as U.S. Borrower (the "**U.S. Borrower**"), Arctic Glacier Income Fund (the "**Fund**"), The Toronto-Dominion Bank, The Bank of Nova Scotia and Roynat Inc. as Canadian Lenders (the "**Original Canadian Lenders**") and Toronto Dominion (New York), Inc., The Bank of Nova Scotia and Roynat Business Capital Inc., as U.S. Lenders (the "**Original U.S. Lenders**" and together with the Original Canadian Lenders, the "**Original Senior Facility Lenders**"), and certain direct or indirect Subsidiaries of the Borrowers, as Guarantors (as amended, modified, supplemented, amended and restated or replaced from time to time, the "**Senior Facility Loan Agreement**"), the Original Senior Facility Lenders agreed to extend credit to the Canadian Borrower and the U.S. Borrower on the terms and conditions set forth therein.

B. Pursuant to a loan agreement dated as of February 10, 2010 by and among the Subordinated Facility Agent, the Canadian Borrower, the U.S. Borrower, the Fund, CPPIB Credit Investments Inc., West Face Long Term Opportunities Limited Partnership, West Face Long Term Opportunities (USA) Limited Partnership, West Face Long Term Opportunities Master Fund L.P., and such other lenders from time to time party thereto (together with any permitted successors and assigns being, collectively, the "**Subordinated Facility Lenders**") and certain direct or indirect Subsidiaries of the Borrowers, as Guarantors (as amended, modified,

supplemented, amended and restated or replaced from time to time, the “**Subordinated Facility Loan Agreement**”), the Subordinated Facility Lenders agreed to extend credit to the Canadian Borrower and U.S. Borrower on the terms and conditions set forth therein.

C. Pursuant to an assignment and assumption agreement dated as of the date hereof, the Original Senior Facility Lenders assigned, and each of CPPIB Credit Investments, West Face Long Term Opportunities Limited Partnership and West Face Long Term Opportunities (USA) Limited Partnership (the “**Assignees**”) assumed all of the Original Senior Facility Lenders interest in the Senior Facility Loan Agreement (the Assignees, together with any other lenders party to the Senior Facility Loan Agreement after the date hereof and from time to time, are collectively, the “**Senior Facility Lenders**”).

D. Pursuant to an agency resignation and acceptance agreement dated as of the date hereof, The Toronto-Dominion Bank and Toronto Dominion (Texas) LLC resigned from their position as Canadian Administration Agent and U.S. Administration Agent, respectively, under the Senior Facility Loan Agreement and all other Senior Facility Documents, and CPPIB Credit Investments Inc. has accepted the appointment by the Senior Facility Lenders as Canadian Administration Agent and U.S. Administration Agent.

E. The Senior Facility Obligations and the Subordinated Facility Obligations are guaranteed, either in whole or in part, by the Subsidiary Guarantors and the Fund (the Fund and the Subsidiary Guarantors being, collectively, the “**Guarantors**”) pursuant to certain guarantees issued by the Guarantors in favour of the Master Collateral Agent for the benefit of the Benefited Creditors including, without limitation, the Master U.S. Guaranty, dated as of December 9, 2004, by the U.S. Borrower and certain of its direct and indirect U.S. Subsidiaries in favor of the Master Collateral Agent, as such document has been supplemented by each joinder thereto (as so supplemented, the “**U.S. Guaranty**”) (such guarantees and any similar guarantees issued to the Master Collateral Agent by any Arctic Party in the future, being the “**Joint Guarantees**”). The Joint Guarantees are secured by a security interest in favor of the Master Collateral Agent for the benefit of the Benefited Creditors and the Master Collateral Agent in certain personal and real property of the Arctic Parties, including, without limitation, capital stock of some or all of the direct and indirect Subsidiaries of the Fund (the “**Pledged Shares**”) (together with all additional real and personal property collateral securing the Senior Facility Obligations and the Subordinated Facility Obligations, if any, the “**Joint Collateral**”), pursuant to one or more pledge and/or security agreements, mortgages, deeds of trust or other real estate encumbrances executed by the Arctic Parties in favour of the Master Collateral Agent for the benefit of the Benefited Creditors and the Master Collateral Agent including, without limitation, each security document, mortgage and deed of trust listed on Exhibit A to the Acknowledgment and Confirmation of Security entered into by the U.S. Borrower and each of its U.S. Subsidiaries in favor of the Benefited Creditors on February 10, 2010 (collectively, the “**Joint Security Documents**”).

F. The Senior Facility Agent and the Subordinated Facility Agent desire to amend certain terms of the Second Amended and Restated Intercreditor Agreement.

**NOW, THEREFORE**, in consideration of the above Recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

## AGREEMENT

### 1. Certain Defined Terms.

The meanings of terms defined in this Intercreditor Agreement are equally applicable to the singular and plural forms of such defined terms. For the purposes of the Joint Guarantees and the Joint Security Documents, certain defined terms have been agreed to by the parties and are set out on Schedule A hereto. When used in this Intercreditor Agreement, the following terms have the following respective meanings:

“\$” means Canadian dollars unless other noted herein.

“**Additional Joint Security Document**” means any agreement, document or instrument (other than the Initial Joint Security Documents) creating or evidencing a security interest of the Master Collateral Agent in, or a Lien in favour of the Master Collateral Agent on, or an assignment to the Master Collateral Agent of, any Joint Collateral.

“**Affiliate**” means, with respect to a specified Person, another Person that, directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“**Arctic Parties**” mean the Fund, the Canadian Borrower, the U.S. Borrower, Arctic Glacier Nebraska Inc., Arctic Glacier New York Inc., Ice Perfection Systems Inc., Arctic Glacier Newburgh Inc., Arctic Glacier Pennsylvania Inc., Diamond Ice Cube Company Inc., Arctic Glacier California Inc., Arctic Glacier Lansing Inc., Arctic Glacier Rochester Inc., Arctic Glacier Vernon Inc., Diamond Newport Corporation, Glacier Ice Company Inc., Glacier Valley Ice Company, L.P., Jack Frost Ice Service, Inc., Mountain Water Ice Company, Arctic Glacier Grayling Inc., Arctic Glacier Michigan Inc., Arctic Glacier Minnesota Inc., Arctic Glacier Oregon Inc., Arctic Glacier Party Time Inc., Arctic Glacier Services Inc., Arctic Glacier Texas Inc., Arctic Glacier Wisconsin Inc., Knowlton Enterprises Inc., R & K Trucking Inc., Winkler Lucas Ice and Fuel Company, Wonderland Ice, Inc., ICEsurance Inc. and any other direct or indirect Subsidiary of the Fund formed or acquired after the date hereof.

“**Bankruptcy Code**” means Title 11 of the United States Code in effect from time to time, or any successor statutes thereof.

“**Bankruptcy Law**” means the *Bankruptcy and Insolvency Act* (Canada), the *Companies Creditors Arrangement Act* (Canada) and the *Winding-Up and Restructuring Act* (Canada), and the *Bankruptcy Code* in each case as now or hereafter in effect (including any successor statutes thereto) and any other liquidation, bankruptcy, insolvency, receivership, arrangement or similar statutes or laws of Canada, the United States or in any other jurisdiction that become applicable in connection with the insolvency or restructuring of any Obligor.

“**Benefited Creditor Documents**” means the Principal Agreements and all agreements, documents, instruments and any other ancillary documentation related to the Principal Agreements in effect from time to time. As of the date hereof, “**Benefited Creditor Documents**” includes (i) the Senior Facility Documents and (ii) the Subordinated Facility Documents.

**"Benefited Creditors"** means each creditor or creditor group (acting through its representative pursuant to the applicable Principal Agreement) to the Arctic Parties from time to time that are now party (or become parties, pursuant to the terms of an amendment to this Intercreditor Agreement entered into pursuant to Section 17(b) hereof) to this Intercreditor Agreement and entitled to the benefit of the Joint Guarantees, the Joint Security Documents and the Joint Collateral. As of the date hereof, **"Benefited Creditors"** includes (i) the Senior Facility Group and (ii) the Subordinated Facility Group.

**"Borrowers"** means the Canadian Borrower and the U.S. Borrower.

**"Canadian Borrower"** has the meaning set forth in Recital A to this Intercreditor Agreement.

**"Contingent Senior Facility Obligations"** means any portion of the Senior Facility Obligations, the liability under which has not been liquidated (e.g., unliquidated asserted indemnification obligations).

**"Contingent Subordinated Facility Obligations"** means any portion of the Subordinated Facility Obligations, the liability under which has not been liquidated (e.g., unliquidated asserted indemnification obligations).

**"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **"Controlling"** and **"Controlled"** have meanings correlative thereto.

**"Default"** means a Default as defined in the Subordinated Facility Loan Agreement or the Senior Facility Loan Agreement, as the context requires.

**"Deficiency Amount"** has the meaning set forth in Section 13.

**"EDI Amounts"** means amounts required to be applied as mandatory repayments of the Senior Facility Obligations pursuant to sections 2.6 (5), (6), (7) or (8) of the Senior Facility Loan Agreement as in effect at the date hereof, if and when such amounts are required to be paid under the Senior Facility Loan Agreement and, to the extent not included in the foregoing, shall also include any amounts required to be applied as mandatory repayments of the Subordinated Facility Obligations pursuant to sections 3.7, 3.8, 3.9 or 3.10 of the Subordinated Facility Loan Agreement as in effect at the date hereof, if and when such amounts are required to be paid under the Subordinated Facility Loan Agreement.

**"Event of Default"** means an Event of Default as defined in the Subordinated Facility Loan Agreement or the Senior Facility Loan Agreement, as the context requires.

**"Facility Agent"** means the Senior Facility Agent or the Subordinated Facility Agent, as the context requires.

**"Fund"** has the meaning set forth in Recital A to this Intercreditor Agreement.

**“Guarantors”** has the meaning set forth in Recital E to this Intercreditor Agreement.

**“Initial Joint Security Documents”** means Joint Security Documents in existence on February 10, 2010.

**“Insolvency Proceeding”** means (a) any insolvency, bankruptcy, receivership, liquidation, reorganization, readjustment, custodianship, composition, restructuring, proposal, enforcement, proceeding or other proceeding or case seeking similar relief relating to any Person, or any of its respective assets, (b) any dissolution or winding up of any Person, whether voluntary or involuntary and whether or not involving an insolvency or bankruptcy case (except, to the extent such dissolution or winding up is permitted under the terms of the Principal Agreements) or (c) any assignment for the benefit of creditors or any other marshalling of any assets of any Person.

**“Intercreditor Agreement”** has the meaning set forth in the introduction to this agreement.

**“Joint Collateral”** has the meaning set forth in Recital E to this Intercreditor Agreement.

**“Joint Guarantees”** has the meaning set forth in Recital E to this Intercreditor Agreement.

**“Joint Security Documents”** has the meaning set forth in Recital E to this Intercreditor Agreement.

**“Lien”** means any mortgage, charge, hypothec, assignment, pledge, lien, priority, vendor’s privilege, supplier’s right of reclamation or other security interest or encumbrance of whatever kind or nature, regardless of form and whether consensual or arising by law (statutory or otherwise), that secures the payment of any indebtedness or liability or the observance or performance of any obligation (including any agreement to give any of the foregoing and any filing of or agreement to give any effective financing statement under any personal property security statute or any similar action under any similar law of any other jurisdiction).

**“Master Collateral Agent”** has the meaning set forth in the introduction to this Intercreditor Agreement.

**“Obligations”** means all obligations, indebtedness and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, liquidated or unliquidated, as principal or as surety, alone or with others, of whatsoever nature or kind, of the Arctic Parties to the Master Collateral Agent and the Benefited Creditors pursuant to the Benefited Creditor Documents, and any unpaid balance thereof and whether incurred before, at the time of or after the execution hereof, including any extensions or renewals thereof and further including, without limitation, any post-petition interest, fees and expenses accruing on such Obligations after any Obligor becomes subject to an Insolvency Proceeding (whether or not such interest, fees or expenses are allowable or enforceable against such Obligor or recoverable against such Obligor or its bankruptcy estate). As of the date hereof, **“Obligations”** includes, without limitation, the Senior Facility Obligations and the Subordinated Facility Obligations.

“**Obligors**” means the Fund, the Canadian Borrower, the U.S. Borrower and the Subsidiary Guarantors and “**Obligor**” means any one of the “**Obligors**”.

“**Original Senior Facility Lenders**” has the meaning set forth in Recital A to this Intercreditor Agreement.

“**Person**” means any corporation, limited liability company, association, natural person, firm, joint venture, partnership, trust, unincorporated organization, government or any department or agency of any government.

“**Pledged Shares**” has the meaning set forth in Recital E to this Intercreditor Agreement.

“**Principal Agreement Commitments**” has the meaning set forth in Section 14.

“**Principal Agreements**” means all principal agreements in effect from time to time between a Borrower and/or an Arctic Party with a Benefited Creditor providing for the establishment of credit in favour of such Borrower and/or other Arctic Party that is permitted by the terms of the then existing Principal Agreements and “**Principal Agreement**” shall mean any one of the “**Principal Agreements**”. On the date hereof, “**Principal Agreements**” includes: (i) the Senior Facility Loan Agreement and (ii) the Subordinated Facility Loan Agreement.

“**Priority Payment Receipt**” shall be deemed to have occurred when the Senior Facility Group has irrevocably received payment in full of all Senior Facility Obligations then due and payable (including cash collateralizing any Contingent Senior Facility Obligations, if required under the Senior Facility Documents) and “**Priority Payment Date**” shall be the date upon which Priority Payment Receipt shall have occurred.

“**Pro Rata Share**” means, as of any date of determination the portion of the Total Obligations (including any undisbursed binding commitment of such Benefited Creditor) owing to such Benefited Creditor divided by the Total Obligations (including the aggregate undisbursed binding commitment of all Benefited Creditors).

“**Related Parties**” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“**Senior Facility Agent**” has the meaning set forth in the introduction to this Intercreditor Agreement.

“**Senior Facility Documents**” shall have the meaning ascribed to the term “Loan Documents” in the Senior Facility Loan Agreement in effect as of the date hereof.

“**Senior Facility Group**” means (i) the Senior Facility Agent and (ii) the Senior Facility Lenders as a group acting through the Senior Facility Agent in its representative capacity under the terms of the Senior Facility Loan Agreement .

“**Senior Facility Lenders**” has the meaning set forth in Recital C to this Intercreditor Agreement.

“**Senior Facility Loan Agreement**” has the meaning set forth in Recital A to this Intercreditor Agreement.

“**Senior Facility Obligations**” shall have the meaning ascribed to the term “Obligations” in the Senior Facility Loan Agreement in effect as of the date hereof.

“**Subordinated Facility Agent**” has the meaning set forth in the introduction to this Intercreditor Agreement.

“**Subordinated Facility Documents**” shall have the meaning ascribed to the term “Loan Documents” in the Subordinated Facility Loan Agreement in effect as of the date hereof.

“**Subordinated Facility Group**” means (i) the Subordinated Facility Agent and (ii) the Subordinated Facility Lenders as a group acting through the Subordinated Facility Agent in its representative capacity under the terms of the Subordinated Facility Loan Agreement.

“**Subordinated Facility Lenders**” has the meaning set forth in Recital B to this Intercreditor Agreement.

“**Subordinated Facility Loan Agreement**” has the meaning set forth in Recital B to this Intercreditor Agreement.

“**Subordinated Facility Obligations**” shall have the meaning ascribed to the term “Obligations” in the Subordinated Facility Loan Agreement in effect as of the date hereof.

“**Subsidiary**” means, at any time, as to any Person, any corporation or other Person, if at such time the first-mentioned Person owns, directly or indirectly, securities or other ownership interests in such corporation or other Person, having ordinary voting power to elect a majority of the board of directors or persons performing similar functions for such corporation or other Person or has the power to determine the policies and conduct of the management of such corporation or other Person and for greater certainty includes a Subsidiary of a Subsidiary.

“**Subsidiary Guarantor**” means each now existing and hereafter acquired or formed direct or indirect Subsidiary of the Fund that enters into a Joint Guarantee pursuant to the Senior Facility Documents or the Subordinated Facility Documents.

“**TD**” means The Toronto-Dominion Bank.

“**Total Obligations**” means the aggregate principal amount of (i) Senior Facility Obligations of the Canadian Borrower and the U.S. Borrower (including Contingent Senior Facility Obligations (other than unliquidated asserted indemnification obligations) on a date on or about the date of determination as reported by the Senior Facility Agent to the Subordinated Facility Agent) and (ii) the Subordinated Facility Obligations of the Canadian Borrower and the U.S. Borrower (excluding Contingent Subordinated Facility Obligations).

“**Trust Deeds**” means, collectively,

- (i) the Trust Deed made as of August 17, 1999 between Martin Dorfman Holdings Ltd. and Montreal Trust Company, as supplemented by the First

Supplemental Trust Deed dated as of March 22, 2002 made between Arctic Glacier Inc., Montreal Trust Company and Computershare Trust Company of Canada;

- (ii) the Trust Deed made as of August 17, 1999 between The Arctic Group Inc. and Montreal Trust Company, as supplemented by the First Supplemental Trust Deed dated as of March 22, 2002 made between Arctic Glacier Inc., Montreal Trust Company and Computershare Trust Company of Canada and as further supplemented by the Second Supplemental Trust Deed dated as of December 6th, 2004 made between Arctic Glacier Inc. and Computershare;
- (iii) the Trust Deed made as of August 17, 1999 between Cataract Ice Limited and Montreal Trust Company, as supplemented by the First Supplemental Trust Deed dated as of March 22, 2002 made between Arctic Glacier Inc., Montreal Trust Company and Computershare Trust Company of Canada;
- (iv) the Trust Deed made as of August 17, 1999 between 3149030 Canada Limited and Montreal Trust Company, as supplemented by the First Supplemental Trust Deed dated as of March 22, 2002 made between Arctic Glacier Inc., Montreal Trust Company and Computershare Trust Company of Canada;
- (v) the Trust Deed made as of August 17, 1999 between Montreal Trust Company and 1334202 Ontario Inc., as supplemented by the First Supplemental Trust Deed dated as of March 22, 2002 made between Arctic Glacier Inc., Montreal Trust Company and Computershare Trust Company of Canada; and
- (vi) the Trust Deed made as of August 17, 1999 between Montreal Trust Company and 1179554 Ontario Inc., as supplemented by the First Supplemental Trust Deed dated as of March 22, 2002 made between Arctic Glacier Inc., Montreal Trust Company and Computershare Trust Company of Canada.

“**U.S. Borrower**” has the meaning set forth in Recital A to this Intercreditor Agreement.

“**U.S. Guaranty**” has the meaning set forth in Recital E to this Intercreditor Agreement.

“**U.S. Subsidiaries**” means each Subsidiary that is organized under the laws of the United States of America, any State thereof or the District of Columbia.

2. Parties Intended To Be Benefited; Persons Bound.

- (a) Any and all understandings and agreements contained in this Intercreditor Agreement are solely for the benefit of the Benefited Creditors and the Master Collateral Agent, and there is no other Person who is intended to be benefited in



any way by this Intercreditor Agreement. The provisions of this Intercreditor Agreement are and are intended solely for the purpose of defining the relative rights and obligations of (i) the Master Collateral Agent, (ii) the Senior Facility Agent and the Senior Facility Lenders, and (iii) the Subordinated Facility Agent and the Subordinated Facility Lenders.

- (b) By acknowledgement of this Intercreditor Agreement, each of the Obligors acknowledges and agrees, and any future Subsidiary Guarantor upon its execution of a Joint Guarantee shall automatically be deemed to have acknowledged and to have agreed, that: (1) it has actual knowledge of this Intercreditor Agreement and consents hereto, (2) it is and will be bound by the terms hereof, (3) at all times during the continuance of this Intercreditor Agreement, it will, and will cause each of the other Obligors to, comply and act in accordance with the terms and provisions of this Intercreditor Agreement and (4) the terms of this Intercreditor Agreement, including the agreements of the Obligors under or with respect hereto, are for the sole benefit of the Benefited Creditors and the Master Collateral Agent, and nothing in this Intercreditor Agreement shall be construed as conferring any rights upon any Obligor or any other Person other than the Benefited Creditors and the Master Collateral Agent.
- (c) By acknowledgement of this Intercreditor Agreement, the U.S. Borrower and each of its U.S. Subsidiaries further acknowledges and agrees, and any future Subsidiary Guarantor that is a U.S. Subsidiary upon its execution of a Joint Guarantee or joinder thereto shall automatically be deemed to have acknowledged and to have agreed, that: (1) the term 'Obligations,' as used in the U.S. Guaranty, includes all "Obligations" as defined in this Intercreditor Agreement, including without limitation, the Subordinated Facility Obligations, (2) the term 'Benefited Creditors,' as used in the U.S. Guaranty, includes the "Benefited Creditors" as defined in this Intercreditor Agreement, including without limitation, the Subordinated Facility Group, (3) the term 'Benefited Creditor Documents,' as used in the U.S. Guaranty, includes the "Benefited Creditor Documents" as defined in this Intercreditor Agreement, including without limitation, the Subordinated Facility Documents, and (4) its guarantee obligations under Section I of the U.S. Guaranty are expanded to include without limitation the Subordinated Facility Obligations.
- (d) The Senior Facility Agent hereby agrees not to contest in any way the Subordinated Facility Documents or the Subordinated Facility Obligations or the enforceability thereof. The Subordinated Facility Agent hereby agrees not to contest in any way the Senior Facility Documents or the Senior Facility Obligations or the enforceability thereof.
- (e) The Master Collateral Agent hereby covenants and agrees that, with respect to any Joint Collateral at any time in which it has been granted a Lien, the Master Collateral Agent shall be the agent and bailor of the Benefited Creditors for the purpose of perfection of the Benefited Creditors' respective Liens in such Joint Collateral, subject to the provisions set forth herein.

3. Appointment and Responsibilities of Master Collateral Agent.

- (a) The Senior Facility Agent, on behalf of the Senior Facility Agent and the Senior Facility Lenders, and the Subordinated Facility Agent, on behalf of the Subordinated Facility Agent and the Subordinated Facility Lenders, hereby reconfirm the appointment of TD to serve as Master Collateral Agent for itself and the Benefited Creditors and authorize the Master Collateral Agent to take such actions on their behalf and to exercise such rights, remedies, powers and privileges as are delegated to the Master Collateral Agent by the terms of this Intercreditor Agreement, the Joint Guarantees and the Joint Security Documents, together with such rights, remedies, powers and privileges as are reasonably incidental thereto, subject to receipt by the Master Collateral Agent of the necessary approvals required hereunder. Except as expressly set forth herein, the Master Collateral Agent shall not, and shall have no duty to, take any affirmative steps with respect to the administration or collection on the Pledged Shares or any other Joint Collateral, and shall incur no liability (except to the extent the actions or omissions of the Master Collateral Agent in connection therewith constitute gross negligence or wilful misconduct) as a result of any disposition of Joint Collateral. The Master Collateral Agent shall hold any insurance proceeds remitted to it pursuant to the Senior Facility Documents or the Subordinated Facility Documents for application in accordance with the terms hereof.
- (b) The Master Collateral Agent shall not have any duties or obligations except those expressly set forth in this Intercreditor Agreement, the Joint Guarantees and Joint Security Documents. Without limiting the generality of the foregoing, (i) the Master Collateral Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred, (ii) the Master Collateral Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers that the Master Collateral Agent is directed to exercise in writing by the Person entitled to direct it hereunder, and (iii) except as expressly set forth in the Joint Guarantees and the Joint Security Documents, or as required in connection with its obligations under this Intercreditor Agreement, the Master Collateral Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any of the Arctic Parties that is communicated to or obtained by the Master Collateral Agent or any of its Related Parties in any capacity. The Master Collateral Agent shall not be liable for any action taken or not taken by it at the written request of the Person entitled to direct it hereunder in the absence of its own gross negligence or wilful misconduct. The Master Collateral Agent shall be deemed not to have knowledge of any event that could result in a Default or Event of Default unless and until actual written notice of such Default or Event of Default is delivered to and received by the Master Collateral Agent, and, except as expressly set forth herein, the Master Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (A) any statement, warranty or representation made in or in connection with any Joint Guarantee, Joint Security Document or Principal Agreement, (B) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (C) the performance or observance of any of the covenants,

agreements or other terms or conditions set forth in any Joint Guarantee, Joint Security Document or Principal Agreement (D) the validity, enforceability, effectiveness or genuineness of any Joint Guarantee, Joint Security Document, Principal Agreement or any other agreement, instrument or document executed in connection with the Obligations, or (E) the satisfaction of any condition set forth in any Joint Guarantee, Joint Security Document or Principal Agreement.

- (c) The Master Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Master Collateral Agent also may rely upon any statement made to it orally or by telephone and reasonably believed by it to be made by the proper Person, and shall not incur any liability for relying thereon, absent gross negligence or wilful misconduct. The Master Collateral Agent may consult with legal counsel, independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts except to the extent that relying on such advice constitutes gross negligence or wilful misconduct.
- (d) The Master Collateral Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Master Collateral Agent and subject to the same obligations as the Master Collateral Agent hereunder. The Master Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers through their respective Related Parties, each of whom shall be subject to the same obligations as the Master Collateral Agent hereunder. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Master Collateral Agent and any such sub-agent, and shall apply to their respective activities in connection with the activities as Master Collateral Agent.
- (e) The Master Collateral Agent shall (i) file financing change statements or continuation statements under applicable personal property security statutes or any equivalent law in any applicable jurisdiction with respect to those financing statements filed in connection with the Joint Collateral of which it has actual knowledge, and (ii) upon receipt of written instruction by either the Senior Facility Agent or the Subordinated Facility Agent, execute, procure, acknowledge, deliver and record, or cause to be executed, procured, acknowledged, delivered or recorded, all such further instruments, deeds, conveyances, mortgages, supplemental indentures, transfers, financing statements, financing change or amendment statements, continuation statements and assurances as reasonably deemed necessary by the Facility Agent issuing the instruction, and as are presented to, the Master Collateral Agent for filing or recording to preserve, continue and protect the Liens granted pursuant to the Joint Security Documents on all or any portion of the Joint Collateral. The Master Collateral Agent will, at all times, act upon the joint written instruction of the Senior Facility Agent and the Subordinated Facility Agent. The Master Collateral

Agent shall promptly forward to the Senior Facility Agent and the Subordinated Facility Agent any document, notice or other communication it receives in its capacity as Master Collateral Agent.

- (f) The Master Collateral Agent shall not be responsible to any Benefited Creditor for any recital, statement, representation or warranty in any Senior Facility Documents, Subordinated Facility Documents or any certificate representing the Pledged Shares or for any Lien on any Joint Collateral or, except as expressly set forth herein, the perfection or priority of any such Lien. By its acknowledgement of this Intercreditor Agreement, each Obligor agrees that it will indemnify the Master Collateral Agent (and, if the Obligors shall fail promptly to indemnify the Master Collateral Agent as required hereby, the Benefited Creditors agree that they will in accordance with their Pro Rata Shares, without excusing the Obligors for their failure to so indemnify, indemnify the Master Collateral Agent, any such indemnification by the Benefited Creditors to the extent actually paid or applied for the benefit of the Master Collateral Agent, to be included in, and without limitation on, the Senior Facility Obligations and Subordinated Facility Obligations, as the case may be) for any liabilities, obligations, losses, damages, penalties, actions, judgments, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by or asserted against the Master Collateral Agent in any way relating to or arising out of this Intercreditor Agreement; provided, however, that no Benefited Creditor shall be liable for any such payment to the extent that the obligation to make such payment is found in a final judgment of a court of competent jurisdiction to have arisen from the Master Collateral Agent's gross negligence or wilful misconduct. Except for any action expressly required of the Master Collateral Agent hereunder, the Master Collateral Agent shall be fully justified in failing or refusing to act hereunder unless it shall be further indemnified to its reasonable satisfaction by the Benefited Creditors against any and all liabilities and expenses that may be incurred by it by reason of taking or continuing to take any such action.
- (g) The Master Collateral Agent may resign at any time by giving at least sixty (60) days' notice thereof to the Senior Facility Agent and the Subordinated Facility Agent, such resignation to take effect upon the earlier of: (i) 60 days after the giving of notice by the Master Collateral Agent and (ii) acceptance by a successor Master Collateral Agent appointed in accordance herewith, and the resigning Master Collateral Agent shall thereupon be discharged and released from its duties and obligations hereunder. The Master Collateral Agent may be removed with or without cause by the direction consented to or otherwise agreed to by the Senior Facility Agent and the Subordinated Facility Agent. Upon the removal or resignation of the Master Collateral Agent, a successor Master Collateral Agent shall be appointed by the joint direction of the Senior Facility Agent and the Subordinated Facility Agent; provided, however, that if the Senior Facility Agent and the Subordinated Facility Agent do not agree on a successor Master Collateral Agent concurrently with removing an incumbent, or within 10 days following receipt of a notice of resignation, the Senior Facility Agent shall select the successor Master Collateral Agent. Upon the acceptance by a successor Master Collateral Agent of any appointment as Master Collateral Agent hereunder, such

successor Master Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Master Collateral Agent. The removed Master Collateral Agent shall thereupon be discharged from its duties and obligations hereunder. After any retiring Master Collateral Agent's resignation or removal hereunder as Master Collateral Agent, the indemnification provision under this Section 3 shall continue for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Master Collateral Agent. On or prior to the date of the appointment of a successor Master Collateral Agent under this Intercreditor Agreement and at the request of either Facility Agent, acting reasonably, the retiring Master Collateral Agent shall execute such directions, certificates, notices, instruments, assignments, agreements and other documents as are necessary, in order to maintain, preserve and protect the interest of the Benefited Creditors in the Joint Guarantees, the Joint Security Documents and the Joint Collateral.

- (h) Each Benefited Creditor acknowledges that it has, independently and without reliance upon the Master Collateral Agent, any other Benefited Creditor or any Related Party of any of them, and based on such documents, information and due diligence as it has deemed appropriate, made its own credit, legal and structuring analysis and decision to extend credit to the Canadian Borrower, the U.S. Borrower and any other Arctic Party pursuant to the applicable Principal Agreement or otherwise and enter into this Intercreditor Agreement. Each Benefited Creditor also acknowledges that it will, independently and without reliance upon the Master Collateral Agent, any other Benefited Creditor or any Related Party of any of them, and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Intercreditor Agreement, any Joint Guarantee or Joint Security Document or any related agreement or any document furnished hereunder or thereunder.

4. Provisions Concerning Trust Deeds.

- (a) Notwithstanding anything to the contrary contained herein or in any Trust Deed, each Benefited Creditor with rights under a Trust Deed agrees that it shall not issue, or instruct its agents or the trustees under the Trust Deed to issue, demands or exercise enforcement rights under such Trust Deed, except to the extent it is entitled to issue instructions to the Master Collateral Agent pursuant to Section 10, and then only in conjunction with the exercise by the Master Collateral Agent of its rights under the Joint Guarantees, the Joint Security Documents or otherwise in respect of the Joint Collateral. Any such Benefited Creditor shall promptly cause any proceeds of any Joint Collateral payable or paid to such Benefited Creditor or its agent or the trustee (after deduction of any fees or expenses the agent or trustee is entitled to collect under the Trust Deed) under any of the Trust Deeds to be delivered to or put in the custody, possession or control of the Master Collateral Agent for disposition or distribution in accordance with the provisions of Section 11(a) below. To the extent that any consent, direction or resolution is required of the Benefited Creditors under any of the Trust Deeds as holders of debentures thereunder, such consent, direction or

resolution shall be given or made so as to instruct the trustee in writing to act in accordance with the provisions of this Section 4(a), with any such consent, direction or resolution to be provided in a timely manner and in any event with a view to permitting the trustee to act under a Trust Deed at the same time as the Master Collateral Agent can be instructed pursuant to Section 10.

- (b) If any Benefited Creditor (i) acquires custody, control or possession of any Joint Collateral or proceeds therefrom (including, for certainty, collateral or proceeds therefrom paid under any of the Trust Deeds) or (ii) receives any payment pursuant to enforcement of any of the Joint Guarantees, the Joint Security Documents or pursuant to any payment or prepayment made, or right of set-off exercised, in respect of the Senior Facility Obligations or Subordinated Facility Obligations, other than in accordance with the terms of this Intercreditor Agreement, then such Benefited Creditor shall immediately cause such Joint Collateral, proceeds or payments to be delivered to or put in the custody, possession or control of the Master Collateral Agent for disposition or distribution in accordance with the provisions of Section 11(a) below.

Until such time as the provisions of the immediately preceding sentence have been complied with, such Benefited Creditor shall be deemed to hold such Joint Collateral, proceeds or payments in trust for the parties entitled thereto hereunder.

5. Additional Joint Security Documents.

- (a) If after the date hereof any Arctic Party is required by any Principal Agreement, Joint Security Document or other agreement to grant a security interest in or Lien on, or assignment of, any of the assets (other than assets constituting Joint Collateral under the Initial Joint Security Documents) of such Arctic Party to secure any Obligations, the Fund and the Borrowers shall, or shall cause the applicable Arctic Party to, grant such security interest in or Lien on, or assignment of, such assets to the Master Collateral Agent for the benefit of the Benefited Creditors to secure all the Obligations pursuant to an Additional Joint Security Document.
- (b) Each of the Benefited Creditors hereby covenants and agrees that from and after the date hereof until this Intercreditor Agreement is terminated as provided herein, it (a) will not accept any guarantee of any of the Obligations by any Person unless such Person's guarantee is provided pursuant to a Joint Guarantee and (b) will not take any security interest in or Lien on or assignment of any assets of any Arctic Party or any Affiliate thereof to secure any of the Obligations unless such security interest or Lien or assignment is granted to the Master Collateral Agent and such assets form a part of the Joint Collateral to secure the payment of all the Obligations on the basis set forth herein pursuant to an Additional Joint Security Document; provided that the foregoing shall not apply to any insurance or other credit support acquired by a Benefited Creditor at its own expense from a Person (other than any Arctic Party or an Affiliate thereof) with respect to the Obligations.

6. Basic Understanding.

The provisions of this Intercreditor Agreement are intended, *inter alia*, to result in Priority Payment Receipt prior to the payment or repayment of any Subordinated Facility Obligations, subject to the exceptions expressly set out in this Intercreditor Agreement. Notwithstanding anything else to the contrary contained in any of the Senior Facility Loan Documents or the Subordinated Facility Loan Documents, or any other document relating thereto and irrespective of the time, order or method of attachment, perfection, filing or recording of any Lien in favour of any of the Benefited Creditors, any provision of, or filing or recording under, any applicable personal property security statutes or other applicable law, it is acknowledged and agreed that at all times, whether before, during or after the commencement of any Insolvency Proceedings, the Senior Facility Obligations shall rank in priority to the Subordinated Facility Obligations and shall be repaid in priority to the Subordinated Facility Obligations, subject to the exceptions expressly set out in this Intercreditor Agreement.

7. Postponement of Payment.

- (a) Except to the extent permitted pursuant to paragraphs (b) and (c) below, payment of the Subordinated Facility Obligations is hereby postponed to payment of the Senior Facility Obligations.
- (b) Notwithstanding Section 7(a), the Borrowers may pay and the Subordinated Facility Lenders may receive cash interest on the principal amount of the Subordinated Facility Obligations at the rate set out in the Subordinated Facility Loan Agreement, including default interest, if payable under, and at the rate set out in the Subordinated Facility Loan Agreement.
- (c) Notwithstanding Section 7(a), the Borrowers may pay and the Subordinated Lenders may receive:
  - (i) scheduled amortization payments of U.S. \$1,384,190.42 and C\$500,000 annually, or a prorated portion thereof, on October 31 in each year;
  - (ii) payments on account of principal in an amount up to 75% of annual Excess Cash Flow (as defined the Subordinated Facility Loan Agreement as at the date hereof), and including any Capex Holdback or Acquisition Holdback (as therein defined);
  - (iii) repayments and prepayments of EDI Amounts, to the extent contemplated by Section 7(c), including any "Prepayment Premium" (as defined in the Subordinated Facility Loan Agreement) applicable thereto;
  - (iv) to the extent not paid pursuant to Section 7(b), payment of default interest, if payable under, and at the rate stipulated in, the Subordinated Facility Loan Agreement and post-petition interest, if applicable; and
  - (v) payment of fees, costs, expenses, gross-ups and crystallized indemnity obligations required to be paid under the Subordinated Facility Loan Agreement, and payment of any fees in connection with any amendment

or waiver requested by the Borrowers under the Subordinated Facility Loan Agreement.

- (d) Notwithstanding any other provision of this Agreement, nothing contained herein shall affect the Subordinated Facility Lenders' entitlement to (i) payment in kind interest under the Subordinated Facility Loan Agreement, or (ii) any warrants issued by the Fund, or the ability of the Subordinated Facility Lenders' to exercise any such warrants, or any proceeds received by them on the disposition of the warrants or any units of the Fund resulting from the exercise thereof.
- (e) Notwithstanding anything to the contrary contained in the Senior Facility Documents or the Subordinated Facility Documents, if EDI Amounts are required to be paid to the Senior Facility Lenders under the Senior Facility Loan Agreement, the Senior Facility Agent shall be entitled to decline all or any portion of such EDI Amounts, in which case any amounts so declined shall be paid to the Subordinated Facility Agent.

8. No Effect on Priority.

The subordination and postponement provided for in this Intercreditor Agreement and all other rights established in, altered by, or specified in, this Intercreditor Agreement shall be effective, irrespective of:

- (a) the creation, validation, attachment or perfection of any Liens purported to be granted under the Joint Security Documents or the Trust Deeds;
- (b) the date or dates of any existing or future advance or advances made or other credit accommodations granted by the Senior Facility Lenders or the Subordinated Facility Lenders to any of the Obligor;
- (c) a date or dates of any Defaults by any of the Obligor;
- (d) the priorities otherwise accorded by any applicable principle of law or statute;
- (e) any lack of validity, legality or enforceability of the Senior Facility Obligations or the Subordinated Facility Obligations or any of the Senior Facility Loan Documents or the Subordinated Facility Loan Documents;
- (f) any failure of, or delay by, the Senior Facility Group to assert any claim or demand or to enforce any right, power or remedy against any Obligor under any of the Senior Facility Loan Documents, any applicable law under this Intercreditor Agreement or otherwise, except as expressly contemplated hereby;
- (g) any change in the time, manner, or place of payment of, or in any other term of, all or any of the Senior Facility Obligations, the Senior Facility Loan Documents, the Subordinated Facility Obligations or the Subordinated Facility Loan Documents, except as expressly contemplated hereby;



- (h) any reduction, limitation, impairment or termination of any of the Senior Facility Obligations or any of the Subordinated Facility Obligations for any reason, including any claim of waiver, release, surrender, alteration or compromise;
- (i) any forbearance whatsoever, whether as to time, performance or otherwise or any release, discharge, loss or alteration in or dealing with all or any part of the Senior Facility Obligations;
- (j) any failure or delay in giving any notice required under this Intercreditor Agreement;
- (k) any defence, compensation, set-off or counterclaim which any Obligor may have or assert in connection with the Senior Facility Obligations;
- (l) any other circumstance which might (i) otherwise constitute a defence available to, or (ii) otherwise constitute a legal or equitable discharge of or (iii) otherwise prejudicially affect, the subordination and postponement provided for in this Intercreditor Agreement.

9. Restrictions on Actions.

Each Benefited Creditor agrees that, unless and until this Intercreditor Agreement is terminated as provided herein, the provisions of this Intercreditor Agreement shall provide the exclusive method by which any Benefited Creditor may exercise, or direct the exercise of, rights and remedies under the Principal Agreements, the Joint Guarantees, the Joint Security Documents and the Trust Deeds. Therefore, each Benefited Creditor shall, for the mutual benefit of all Benefited Creditors, except as permitted under this Intercreditor Agreement:

- (a) refrain from taking or filing any action, judicial or otherwise, to enforce any rights or pursue any remedies under the Principal Agreements, Joint Guarantees, Joint Security Documents and the Trust Deeds, except for delivering notices hereunder or contemplated hereunder; and
- (b) refrain from exercising any rights or remedies under the Principal Agreements, Joint Guarantees, Joint Security Documents and the Trust Deeds which may be exercisable as a result of an Event of Default;

provided that the foregoing shall not prevent (i) any Benefited Creditor from suspending or terminating its obligations to make further credit accommodations as provided under the applicable Principal Agreement, (ii) any Benefited Creditor from imposing a default rate of interest in accordance with the applicable Principal Agreement, (iii) the Master Collateral Agent from exercising any right or remedy or taking any other action that it is authorized to exercise or take pursuant to this Intercreditor Agreement, (iv) a Benefited Creditor from accelerating the maturity of any Obligations, (v) any Benefited Creditor from filing materials in any Insolvency Proceeding affecting any Obligor, (vi) any Benefited Creditor from filing proofs of claim in any Insolvency Proceeding or (vii) any Benefited Creditor from otherwise taking such steps reasonably necessary to preserve and protect its rights to receive proceeds in accordance with the priority provisions in this Intercreditor Agreement and otherwise to exercise rights and remedies afforded to it as a secured creditor of the Obligors, if and when it is entitled to do so under

applicable law and subject to the terms of this Intercreditor Agreement, and (viii) a Benefited Creditor from providing any notice, consent, direction, certificate or resolution required by a Trust Deed in order to give effect to the last clause of Section 4(a).

10. Enforcement of Joint Security Documents.

The Master Collateral Agent shall at all times take such actions and exercise such remedies under the Joint Guarantees and Joint Security Documents at the joint written request or joint written instruction of, or with the joint written consent or approval of, the Senior Facility Agent and the Subordinated Facility Agent.

11. Distributions/Turnover of Collateral.

- (a) Any and all amounts actually received by the Master Collateral Agent in connection with the enforcement of this Intercreditor Agreement or the Joint Guarantees or Joint Security Documents or Trust Deeds and any amounts otherwise received by the Master Collateral Agent on account of the Obligations, including any proceeds, shall be disbursed as soon as practicable by the Master Collateral Agent as provided in this Intercreditor Agreement. Until the proceeds are so disbursed, the Master Collateral Agent shall hold such proceeds in its custody for the benefit of the Benefited Creditors in accordance with its customary procedures for handling deposited funds. The Master Collateral Agent shall distribute all such proceeds:
- (i) FIRST, to itself to pay its reasonable costs and expenses and other amounts payable to it under this Intercreditor Agreement arising in its capacity as Master Collateral Agent;
  - (ii) SECOND, to the Senior Facility Agent on account of the Senior Facility Obligations;
  - (iii) THIRD, to cash collateralize Contingent Senior Facility Obligations;
  - (iv) FOURTH, to the Subordinated Facility Agent on account of the Subordinated Facility Obligations;
  - (v) FIFTH, to cash collateralize Contingent Subordinated Facility Obligations;
  - (vi) SIXTH, the balance, if any, to the Canadian Borrower, the U.S. Borrower or other Arctic Party (as applicable) or its successors and assigns, or such other Person or Persons as shall be entitled thereto, or as a court of competent jurisdiction may otherwise direct.
- (b) To the extent that the Senior Facility Agent or the Subordinated Facility Agent receives amounts in excess of the amounts which such party is entitled to receive pursuant to the provisions of this Intercreditor Agreement, such party shall hold such excess amount in trust for the Master Collateral Agent and forthwith pay such excess portion to the Master Collateral Agent in the form received (except

for any endorsement or assignment required by the recipient thereof) for distribution in accordance with the provisions of Section 11(a) above.

12. Insolvency Proceedings

The Master Collateral Agent shall at all times during any Insolvency Proceeding take such actions and exercise such remedies at the joint written request or joint written instruction of, or with the joint written consent or approval of, the Senior Facility Agent and the Subordinated Facility Agent.

13. Realization Proceeds on Insolvency or Dissolution.

In the event of any payment or distribution of assets of any Obligor pursuant to any Insolvency Proceeding (a "**Distribution**"), any such payment or distribution of assets shall be treated for all purposes as realization proceeds and shall be shared by the Benefited Creditors in accordance with the provisions of Section 11(a). To the extent that any payment of Senior Facility Obligations (whether by or on behalf of the Borrowers, as proceeds of security or enforcement or any right of set off or otherwise) is declared by a final order of a court of competent jurisdiction to be a fraudulent preference or otherwise preferential, set aside or required to be paid to a trustee in bankruptcy or receiver, then if such payment is recoverable by, or paid over to, such trustee in bankruptcy or receiver, the amount of the Senior Facility Obligations or part thereof (the "**Deficiency Amount**") originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred and shall be paid in the manner set forth in Section 11(a), and to the extent that the Subordinated Facility Agent shall have received any payment of the Subordinated Facility Obligations as realization proceeds or in any Insolvency Proceeding, it shall forthwith pay, and cause the Subordinated Facility Lenders to pay, to the Senior Facility Agent, the Deficiency Amount, until the Senior Facility Lenders have recovered the Deficiency Amount in full.

14. Determination of Amounts of Obligations.

Whenever the Master Collateral Agent is required to determine the existence or amount of any of the Obligations or commitments of the Benefited Creditors under the applicable Principal Agreements (the "**Principal Agreement Commitments**") or any portion thereof for any purposes of this Agreement, it shall be entitled to make such determination on the basis of one or more certificates of the Senior Facility Agent, the Subordinated Facility Agent or any future Benefited Creditor; provided that if, notwithstanding the request of the Master Collateral Agent, such Person shall fail or refuse promptly to certify as to the existence or amount of any Obligations or Principal Agreement Commitment any portion thereof, the Master Collateral Agent shall be entitled to determine such existence or amount by such method as the Master Collateral Agent may, in its reasonable discretion, determine, including by reliance upon a certificate of the Fund and/or the Borrowers; provided further that, promptly following determination of any such amount, the Master Collateral Agent shall notify such Person of such determination and thereafter shall correct any error that such Person brings to the attention of the Master Collateral Agent. The Master Collateral Agent may rely conclusively, and shall be fully protected in so relying, on any determination made by it in accordance with the provisions of the preceding sentence (or as otherwise directed by a court of competent jurisdiction) and shall have no liability to the Fund, the Borrowers, any other Obligor, any Benefited Creditor or any other Person as a result of any action taken by the Master Collateral Agent based upon such

determination prior to receipt of notice of any error in such determination or unless arising from the gross negligence or the wilful misconduct or the Master Collateral Agent.

15. Release of Collateral and Guarantees.

- (a) In connection with any sale, transfer or disposition of any Joint Collateral to any Person other than a Borrower or any Subsidiary or any other Arctic Party that is expressly permitted by each Principal Agreement and that is consummated at a time when no Event of Default has occurred and is continuing, the Benefited Creditors agree that any Liens on such Joint Collateral created pursuant to the Joint Security Documents will be released upon the delivery of evidence satisfactory to the Master Collateral Agent that such sale, transfer or disposition (and the release of such Liens and, if applicable, any guarantee of the Obligations) is in compliance with the requirements of each Principal Agreement (including a certificate from a senior officer of the applicable Arctic Party to such effect). In the event any such sale, transfer or disposition to a Person other than a Borrower or any Subsidiary or any other Arctic Party shall be 100% of the issued and outstanding capital stock of a Subsidiary, the Benefited Creditors hereby authorize the Master Collateral Agent upon the delivery of such evidence to release such Subsidiary and its assets from its obligations under the Joint Security Documents and the Liens created by the Joint Security Documents and to execute amendments, releases and other documents in form and substance satisfactory to the Master Collateral Agent confirming such release.
- (b) Collateral may be released in connection with the exercise of any rights, remedies, powers or privileges by the Master Collateral Agent pursuant to and in accordance with Section 10 and such release shall not require any approval under this Section 15.
- (c) The Benefited Creditors hereby authorize the Master Collateral Agent to execute releases and other documents in form and substance satisfactory to the Master Collateral Agent in respect of any release of Joint Collateral permitted under this Section 15.
- (d) The Benefited Creditors hereby authorize the Master Collateral Agent, from time to time, to register any financing change statements or similar documentation that may be required as a result of a change in the identity of the Master Collateral Agent.

16. Waivers: Modifications, etc.

- (a) The Senior Facility Agent and the Senior Facility Lenders may, from time to time, without the consent of, or notice to, the Subordinated Facility Agent or the Subordinated Facility Lenders, without impairing any benefits provided in this Intercreditor Agreement waive, amend, supplement, restate or replace the Senior Facility Documents
- (b) The Subordinated Facility Agent and the Subordinated Facility Lenders may, from time to time, without the consent of, or notice to the Senior Facility Agent or

the Senior Facility Lenders, without impairing any benefits provided in this Intercreditor Agreement waive, amend, supplement, restate or replace the Subordinated Facility Documents.

- (c) None of the Benefited Creditors, directly or indirectly, shall take any action, consent to taking of any action, or cause or assist any Person to take any action, to challenge the validity, legality, perfection, priority or enforcement of any Joint Guarantee or security interest in the Pledged Shares or in any other Joint Collateral.

17. Miscellaneous.

- (a) All notices and other communications provided for herein shall be in writing and may be sent by courier, facsimile or electronic mail communication, and shall be deemed to have been given when delivered by courier or upon receipt of facsimile communication if concurrently a copy thereof shall be sent by overnight courier to the address specified in such notice or communication. For purposes hereof, the addresses and facsimile numbers of the Senior Facility Agent shall be:

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

Attention: Mark Jenkins  
Facsimile: (416) 874-5329,  
Email: [mjenkins@cppib.ca](mailto:mjenkins@cppib.ca) with a copy to [aedgell@cppib.ca](mailto:aedgell@cppib.ca)

and the Subordinated Facility Agent shall be:

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

Attention: Mark Jenkins  
Facsimile: (416) 874-5329,  
Email: [mjenkins@cppib.ca](mailto:mjenkins@cppib.ca) with a copy to [aedgell@cppib.ca](mailto:aedgell@cppib.ca)

and the Mater Collateral Agent shall be:

The Toronto Dominion Bank  
Loan Syndications-Agency  
Royal Trust Tower  
77 King Street West, 18th Floor  
Toronto, Ontario  
M5K1A2

Attention: Wayne M. Shiplo  
Facsimile: (416) 982-5535,  
Email: wayne.shiplo@tdsecurities.com

or such other address or telecopy number as Benefited Creditor or the Master Collateral Agent shall notify the other pursuant to the terms of this Section 17(a)

- (b) This Intercreditor Agreement may be amended, terminated or waived only by an instrument or instruments in writing signed by the Senior Facility Agent, the Subordinated Facility Agent and the Master Collateral Agent.
- (c) This Intercreditor Agreement shall be binding upon and inure to the benefit of the Master Collateral Agent, each Benefited Creditor and their respective successors and assigns. Each assignee, participant or transferee of any Senior Facility Obligations or Subordinated Facility Obligations shall take such obligation subject to the provisions of this Intercreditor Agreement and to any request made, waiver or consent or other action taken or authorized hereunder, by each previous holder thereof.
- (d) The parties hereto acknowledge that the trustees of the Fund (referred to in this Section as the "Fund Trustees") are acknowledging 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 of the Fund ("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.
- (e) This Intercreditor Agreement, which the parties expressly acknowledge is a "Subordination Agreement" under Section 510(a) of the Bankruptcy Code, shall be effective among of the Benefited Creditors before, during and after the commencement of an Insolvency Proceeding. All references in this Intercreditor Agreement to any Obligor shall include such Person as a debtor in possession and any receiver, examiner, trustee or similar official for such Person in any Insolvency Proceeding.
- (f) With respect to the value of any payments or distributions in cash, property or other assets that the Subordinated Facility Agent or any Subordinated Facility Lender pays over to the Senior Facility Agent or the Senior Facility Lenders under the terms of this Intercreditor Agreement, the Subordinated Facility Agent and the Subordinated Facility Lenders shall be subrogated to the rights of the Senior Facility Agent and the Senior Facility Lenders.
- (g) Each of the Senior Facility Agent and the Subordinated Facility Agent agrees to do such further acts and things and to execute and deliver such additional agreements, powers and instruments as the other may reasonably request to carry into effect the terms, provisions and purposes of this Intercreditor Agreement or

to better assure and confirm to the Benefited Creditors their respective rights, powers and remedies hereunder.

- (h) This Intercreditor Agreement may be executed in any number of counterparts each of which taken together shall constitute one and the same instrument, and the parties hereto may execute this Intercreditor Agreement by signing any such counterpart. A telecopy of any signature of any party on any counterpart shall be effective as the signature of the party executing such counterpart for purposes of the effectiveness of this Intercreditor Agreement.
- (i) THIS INTERCREDITOR AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF MANITOBA.
- (j) Headings of sections in this Intercreditor Agreement have been included for convenience of reference only and shall not be considered in interpreting this Intercreditor Agreement.
- (k) If any provision in or obligation under this Intercreditor Agreement shall be invalid, illegal or unenforceable in any jurisdiction, The validity, legality and enforceability of the remaining provisions or obligations or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.
- (l) The parties expressly request that this agreement as well as all documents relating thereto be drawn up in English. Les parties ont expressément exigé que cette convention ainsi que tous les documents s'y rattachant soient rédigés en anglais.

\* \* \*


**[Remainder of Page Intentionally Blank]**

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Intercreditor Agreement effective as of the date first above written.

**SENIOR FACILITY AGENT:**

**CPPIB CREDIT INVESTMENTS INC.,**

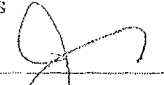
as Senior Facility Agent for itself and for each of the Senior Facility Lenders

By:   
Name: ~~Mark Jenkins~~ André Bourbonnais  
Title: ~~Authorized Signatory~~ Authorized Signatory

**SUBORDINATED FACILITY AGENT:**

**CPPIB CREDIT INVESTMENTS INC.,**

as Subordinated Facility Agent for itself and for each of the Subordinated Facility Lenders

By:   
Name: ~~Mark Jenkins~~ André Bourbonnais  
Title: ~~Authorized Signatory~~ Authorized Signatory

**MASTER COLLATERAL AGENT:**

**THE TORONTO-DOMINION BANK,**

as Master Collateral Agent for itself and for each of the Benefited Creditors

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



IN WITNESS WHEREOF, the parties hereto have executed and delivered this Intercreditor Agreement effective as of the date first above written.

**SENIOR FACILITY AGENT:**

**CPIB CREDIT INVESTMENTS INC.,**

as Senior Facility Agent for itself and for each of the Senior Facility Lenders

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SUBORDINATED FACILITY AGENT:**

**CPIB CREDIT INVESTMENTS INC.,**

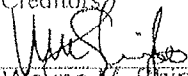
as Subordinated Facility Agent for itself and for each of the Subordinated Facility Lenders

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MASTER COLLATERAL AGENT:**

**THE TORONTO-DOMINION BANK,**

as Master Collateral Agent for each of the Benefited Creditors

By:  \_\_\_\_\_  
Name: Wayne M. Shiplo  
Title: Vice President  
Loan Syndications

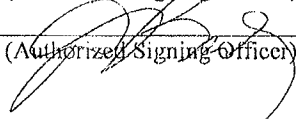
**ACKNOWLEDGMENT BY OBLIGORS**

Each of the undersigned Obligors hereby acknowledges and agrees to the terms and provisions contained in the foregoing Intercreditor Agreement and agrees to be bound by the provisions thereof as they relate to the relative rights of the Benefited Creditors. Each of the Obligors further agrees that the terms of the Intercreditor Agreement do not give any Obligor any substantive rights against any Benefited Creditor or the Master Collateral Agent, and no Obligor shall use the violation of this Intercreditor Agreement by any party as a defense to the enforcement by any Benefited Creditor of any rights under the Senior Facility Loan Documents or the Subordinated Facility Loan Documents.


Each of the undersigned Obligors (other than Arctic Glacier Income Fund and Arctic Glacier Inc.), hereby further acknowledges and agrees that: (1) the term 'Obligations,' as used in the U.S. Guaranty, includes all "Obligations" as defined in this Intercreditor Agreement, including without limitation, the Subordinated Facility Obligations, (2) the term 'Benefited Creditors,' as used in the U.S. Guaranty, includes the "Benefited Creditors" as defined in this Intercreditor Agreement, including without limitation, the Subordinated Facility Group, (3) the term 'Benefited Creditor Documents,' as used in the U.S. Guaranty, includes the "Benefited Creditor Documents" as defined in this Intercreditor Agreement, including without limitation, the Subordinated Facility Documents, and (4) its guarantee obligations under Section 1 of the U.S. Guaranty are expanded to include without limitation the Subordinated Facility Obligations.

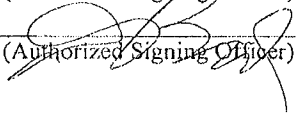
**ARCTIC GLACIER INCOME FUND**

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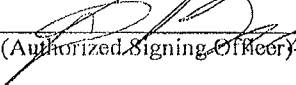
**ARCTIC GLACIER INC.**

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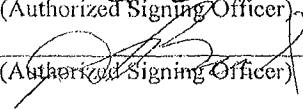
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**ARCTIC GLACIER INTERNATIONAL INC.**


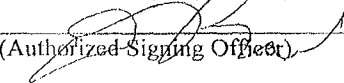
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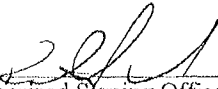

**ARCTIC GLACIER NEBRASKA INC.**

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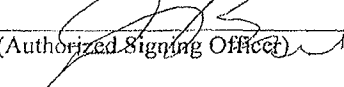
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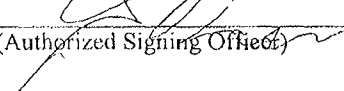
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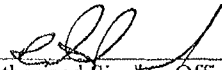
**ARCTIC GLACIER NEWBURGH INC.**

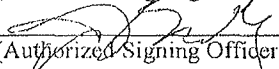
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**ARCTIC GLACIER PENNSYLVANIA INC.**

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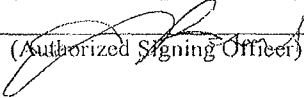
**DIAMOND ICE CUBE COMPANY INC.**

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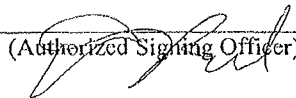
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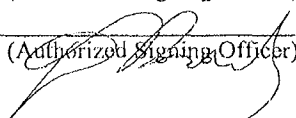
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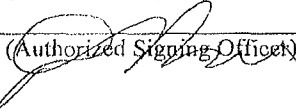
**ARCTIC GLACIER MICHIGAN INC.**

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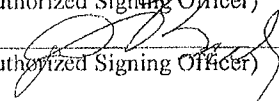
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**R & K TRUCKING, INC.**


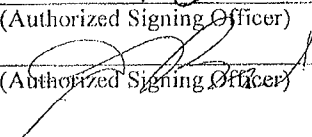
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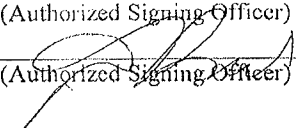
**ARCTIC GLACIER PARTY TIME INC.**

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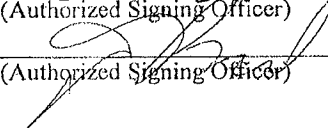
**WONDERLAND ICE, INC.**

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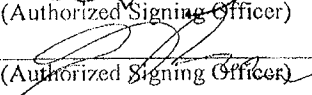
**ARCTIC GLACIER GRAYLING INC.**

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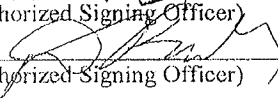
**KNOWLTON ENTERPRISES, INC.**

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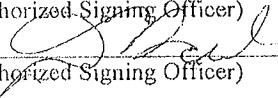
**WINKLER LUCAS ICE AND FUEL  
COMPANY d/b/a MID-MICHIGAN ICE CO.  
INC.**

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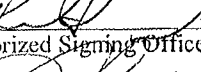
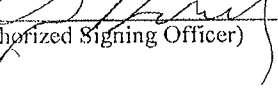
**ARCTIC GLACIER CALIFORNIA INC.**

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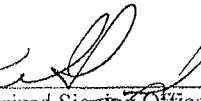
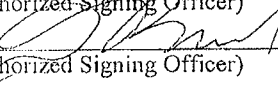
**ARCTIC GLACIER VERNON INC.**

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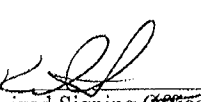
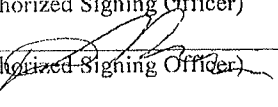
**GLACIER VALLEY ICE COMPANY, L.P., by  
Mountain Water Ice Company, its sole general  
partner**

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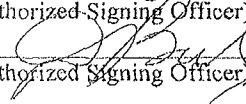
**ARCTIC GLACIER ROCHESTER INC.**

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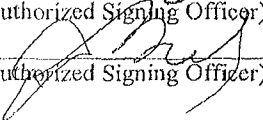
**JACK FROST ICE SERVICE, INC.**

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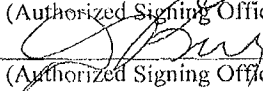
**GLACIER ICE COMPANY, INC.**

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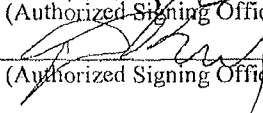
**MOUNTAIN WATER ICE COMPANY**

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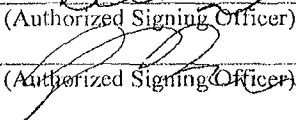
**DIAMOND NEWPORT CORPORATION**

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**ARCTIC GLACIER LANSING INC.**

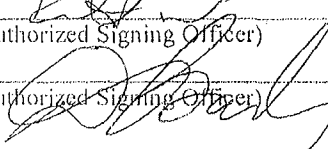
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**ARCTIC GLACIER MINNESOTA INC.**

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**ARCTIC GLACIER OREGON INC.**

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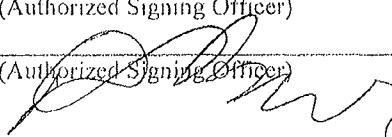
**ARCTIC GLACIER TEXAS INC.**

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**ICESURANCE INC.**

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## Schedule A

### **Defined Terms for Joint Guarantees and Joint Security Documents**

*Defined terms used in this Schedule but not defined herein shall have the meanings set out in Section 1 to this Intercreditor Agreement.*

“**Business Day**” means any day on which the Master Collateral Agent, is open for business at Toronto, Ontario, but in any event shall not include a Saturday, Sunday or statutory or legal holiday in the Province of Ontario.

“**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.

“**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 liabilities 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 hedging transactions permitted under the Principal Agreements;
- (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) a Lien 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; and

- (g) 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 Event"** means an Event of Default, as defined in the Intercreditor Agreement.

**"Intellectual Property"** means any and all issued patents and patent applications, industrial design registrations, trademarks, registrations and applications therefor, trade names and styles, logos, copyright registrations and applications therefor, all of the foregoing owned by or licensed to an Arctic Party and used in or necessary to the operation of its respective businesses.

**"Intercompany Debt"** means any intercompany indebtedness between any of the Arctic Parties incurred in compliance with the Principal Agreements.

**"Laws"** means all statutes, codes, ordinances, decrees, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, policies, guidelines, or any provisions of the foregoing, including general principles of common and civil law and equity, binding on or affecting the person referred to in the context in which such word is used; and **"Law"** means any one of such Laws.

**"Lien"** means, with respect to any Property, any charge, mortgage, pledge, hypothecation, security interest, lien, conditional sale (or other title retention agreement or lease in the nature thereof), lease, servitude, assignment, adverse claim, defect of title, restriction, trust, right of set-off or other encumbrance of any kind in respect of such Property (including any Lien accounted for as a capitalized lease obligation for purposes of a balance sheet prepared in accordance with GAAP), whether or not filed, recorded or otherwise perfected under applicable Law.

**"Loss"** means any loss whatsoever, whether direct or indirect, including expenses, costs, damages, judgments, penalties, fines, charges, claims, demands, liabilities, loss of profits, debts, interest, any and all legal fees and disbursements, on a solicitor and own client basis.

**"Permitted Debt"** means the following Debt: (i) management contracts applicable to the Arctic Parties including vendor debt of approximately \$750,000, (ii) the Subordinated Facility Obligations and (iii) such other Debt of the Arctic Parties that is approved and consented to from time to time in advance in writing by the Master Collateral Agent, in its sole and absolute discretion.

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

- (h) Liens 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 Master Collateral Agent’s opinion, upon direction from the Majority Benefited Creditors: (i) adequate security has been provided to the Master Collateral Agent 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 Liens 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;
- (i) Liens resulting from any judgment rendered or Claim filed against such Person which such Person shall be contesting in good faith by proper legal proceedings if, in the Agent’s opinion, upon direction from the Majority Benefited Creditors: (i) adequate security has been provided to the Master Collateral 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 Liens 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;
- (j) undetermined or inchoate Liens arising in the ordinary course of business which have not at such time been filed pursuant to Law against such Person or which relate to obligations not due or delinquent;
- (k) Liens 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 Liens will not materially interfere with the use of such real property by such Person;
- (l) the right reserved to or vested in any governmental entity 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;
- (m) any Lien 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 Law, and public and statutory obligations;

- (n) any Lien resulting from security given to a public utility or governmental entity when required by such utility or governmental entity in connection with the operation of the business of such Person;
- (o) the reservations, limitations, provisos and conditions, if any, expressed in any original grants of real property from the Crown;
- (p) carriers', warehousemen's, mechanics', material-men's, repairmen's or other similar Liens arising in the ordinary course of business which are not registered against title to the Joint Collateral 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 Master Collateral Agent's opinion, upon direction from the Majority Benefited Creditors (i) adequate security has been provided to the Master Collateral Agent or to a court of competent jurisdiction to ensure payment of such Liens; (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 Liens 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;
- (q) any Lien, payment of which has been provided for by the depositing with the Master Collateral Agent of an amount in cash, or the obtaining of a surety bond satisfactory to the Master Collateral Agent, upon direction from the Majority Benefited Creditors, in their absolute discretion, sufficient in either case to pay or discharge such Lien and which deposit or bond the Master Collateral Agent is authorized to use or draw upon for that purpose;
- (r) 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;
- (s) 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;
- (t) Liens securing permitted purchase money debt; provided that: (i) such Liens shall extend only to the specific Property of the Arctic Parties acquired with the proceeds of such purchase money debt (and not any other portion of the Joint Collateral); and (ii) recourse in respect of such Liens shall be limited to such specific Property;
- (u) Liens in favour of the Master Collateral Agent or Computershare Trust Company of Canada created by the Joint Security Documents; and
- (v) any Liens other than the Liens described in paragraphs (a) to (u) above existing on the date hereof and disclosed in Appendix A attached hereto, but not any extension or renewal thereof (except for those liens described in paragraph 2 of

Appendix A attached hereto) and only to the extent that such Liens are not extended to any other Property and there is no increase in the amount secured thereby as of the date of this Agreement.

**“Property”** means, with respect to any Person, any interest of such Person in any land or property or asset of every kind, wherever situate, whether now owned or hereafter acquired, whether real or immovable, personal, movable or mixed, tangible or corporeal, intangible or incorporeal, including capital stock in any other Person.

## **Appendix A**

### **Permitted Liens**

- (1) All Liens granted by any of the Arctic Parties in connection with the Permitted Debt as disclosed to the Master Collateral Agent.
- (2) Liens on equipment and the proceeds thereof created or assumed to finance the acquisition or improvement or secure the unpaid purchase price thereof (including the principal amount of any Capital Lease) that are in existence as of December 9, 2004, and any extensions or renewals thereof, as disclosed by results of searches of public records conducted on behalf of the Lenders and accepted by the Lenders.