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## FOURTH AMENDED AND RESTATED LOAN AGREEMENT

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among  
THE TORONTO-DOMINION BANK,  
as Sole Lead Arranger and Bookrunner  
- and -  
THE TORONTO-DOMINION BANK,  
as Canadian Administration Agent  
- and -  
TORONTO DOMINION (TEXAS) LLC,  
as U.S. Administration Agent  
- and -  
THE TORONTO-DOMINION BANK,  
as Syndication Agent  
- and -  
ARCTIC GLACIER INC., as Canadian Borrower and  
ARCTIC GLACIER INTERNATIONAL INC., as U.S. Borrower  
and as Guarantors  
- and -  
ARCTIC GLACIER INCOME FUND and  
CERTAIN DIRECT AND INDIRECT SUBSIDIARIES OF  
ARCTIC GLACIER INC.,  
as Guarantors  
- and -  
THE TORONTO-DOMINION BANK, ROYNAT INC. and  
THE BANK OF NOVA SCOTIA,  
as Canadian Lenders  
- and -  
TORONTO DOMINION (NEW YORK) LLC, THE BANK OF NOVA SCOTIA and  
ROYNAT BUSINESS CAPITAL INC.,  
and any other Lender or Lenders who become Parties hereto as U.S. Lenders

This is Exhibit "V" referred to

In the affidavit of

Keith McMahon

sworn before me this 21<sup>st</sup> day of

February 2010

  
A NOTARY PUBLIC  
FOR THE PROVINCE OF MANITOBA

DATED FEBRUARY 10TH, 2010

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**Goodmans**

333 Bay Street, Suite 3400  
Toronto, Ontario  
M5H 2S7

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**FOURTH AMENDED AND RESTATED LOAN AGREEMENT**

**DATED** the 10th day of February, 2010.

**A M O N G:**

**THE TORONTO-DOMINION BANK,**  
as Canadian Administration Agent  
(the "Canadian Agent")

- and -

**TORONTO DOMINION (TEXAS) LLC,**  
as U.S. Administration Agent  
(the "U.S. Agent")

- and -

**ARCTIC GLACIER INC.,**  
as Canadian Borrower  
(the "Canadian Borrower")

- and -

**ARCTIC GLACIER INTERNATIONAL INC.,**  
as U.S. Borrower  
(the "U.S. Borrower")

- and -

**ARCTIC GLACIER CALIFORNIA INC.,  
ARCTIC GLACIER GRAYLING INC.,  
ARCTIC GLACIER INC.,  
ARCTIC GLACIER INCOME FUND,  
ARCTIC GLACIER INTERNATIONAL INC.,  
ARCTIC GLACIER IP INC.,  
ARCTIC GLACIER LANSING INC.,  
ARCTIC GLACIER MICHIGAN INC.,  
ARCTIC GLACIER MINNESOTA INC.,  
ARCTIC GLACIER NEBRASKA INC.,  
ARCTIC GLACIER NEWBURGH INC.,  
ARCTIC GLACIER NEW YORK INC.,  
ARCTIC GLACIER OREGON INC.,  
ARCTIC GLACIER PARTY TIME INC.,**

**ARCTIC GLACIER PENNSYLVANIA INC.,  
ARCTIC GLACIER ROCHESTER INC.,  
ARCTIC GLACIER SERVICES INC.,  
ARCTIC GLACIER TEXAS INC.,  
ARCTIC GLACIER VERNON INC.,  
ARCTIC GLACIER WISCONSIN INC.,  
DIAMOND ICE CUBE COMPANY, INC.,  
DIAMOND NEWPORT CORPORATION,  
GLACIER ICE COMPANY, INC.,  
GLACIER VALLEY ICE COMPANY, L.P.,  
ICE PERFECTION SYSTEMS INC.,  
JACK FROST ICE SERVICE, INC.,  
KNOWLTON ENTERPRISES, INC.,  
MOUNTAIN WATER ICE COMPANY,  
R&K TRUCKING, INC.,  
WINKLER LUCAS ICE AND FUEL COMPANY,  
WONDERLAND ICE, INC.,**

(collectively, the "Guarantors")

- and -

**THE TORONTO-DOMINION BANK, THE BANK OF  
NOVA SCOTIA and ROYNAT INC.** and any other lender or  
lenders who become parties hereto as Canadian Lenders from  
time to time

(collectively the "Canadian Lenders")

- and -

**THE TORONTO-DOMINION BANK**, in its capacity as the  
Canadian Swing Line Lender

(the "Canadian Swing Line Lender")

- and -

**TORONTO DOMINION (NEW YORK) LLC, THE BANK  
OF NOVA SCOTIA and ROYNAT BUSINESS CAPITAL  
INC.** and any other lender or lender who become parties hereto  
as U.S. Lender from time to time

(collectively the "U.S. Lenders")

- and -

**THE TORONTO-DOMINION BANK, NEW YORK  
BRANCH**, in its capacity as the U.S. Swing Line Lender  
(the "U.S. Swing Line Lender")

**WHEREAS** the Borrowers and the Lenders entered into a Loan Agreement dated as of March 22, 2002, as amended June 27, 2003, July 24, 2003 and February 27, 2004, and amended and restated on December 9, 2004, as amended June 30, 2005, and amended and restated on May 25, 2006, as amended August 8, 2006, as amended October 31, 2007 and February 29, 2008, and as further amended and restated on April 21, 2008, as amended September 20, 2008, March 31, 2009 and September 30, 2009 (collectively, the "Original Loan Agreement");

**AND WHEREAS** the parties hereto have agreed to make certain amendments to the Original Loan Agreement;

**AND WHEREAS** the parties hereto have agreed that for convenience, the Original Loan Agreement should be amended and restated on the terms and conditions set forth herein;

**NOW THEREFORE** this Agreement witnesses that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

**ARTICLE I  
INTERPRETATION**

**1.1        Defined Terms.**

In this Agreement, defined terms used herein shall have the following meanings:

"**3084435**" means 3084435 Nova Scotia Company, a company that is in the process of being wound up into the Canadian Borrower.

"**Acceptance**" means the creation of Bankers' Acceptances and the purchase of BA Equivalent Notes by the Canadian Lenders.

"**Acceptance Date**" means any Business Day fixed pursuant to Section 4.2 for an Acceptance.

"**Acceptance Fee**" means, with respect to each Draft drawn by the Canadian Borrower hereunder and accepted by a Canadian Lender and each BA Equivalent Note purchased by a Canadian Lender on any Acceptance Date, an amount payable in advance equal to the Bankers' Acceptance Fee Rate multiplied by the aggregate Face Amount of such Draft or BA Equivalent Note, calculated daily on the basis of the term to maturity of such Draft or BA Equivalent Note and a year of three hundred and sixty-five (365) days.

"**Acceptance Notice**" has the meaning specified in Section 4.2.

**"Accommodation"** means (i) an Advance made by the Lenders or any one or more of them on the occasion of any Borrowing; (ii) a Bankers' Acceptance created by the BA Lenders and a BA Equivalent Note purchased by the Non-BA Lenders on the occasion of any Acceptance; (iii) the issue of a Letter by the Canadian Swing Line Lender or the U.S. Swing Line Lender, as applicable, on the occasion of any Issue; (iv) a Canadian Swing Line Loan made by the Canadian Swing Line Lender; and (v) a U.S. Swing Line Loan made by the U.S. Swing Line Lender.

**"Accommodation Notice"** means a Borrowing Notice, an Acceptance Notice or an Issue Notice.

**"Account"** means, with respect to any Person, all accounts receivable, monies and book debts at any time owed to such Person, and all instruments, chattel paper and other documents evidencing or securing any such accounts receivable, monies or book debts.

**"Adjusted U.S./Canadian Facility Commitment"** means, at any time: (i) the sum of the Canadian Facility Commitment and the U.S. Facility Commitment, minus (ii) the Mark to Market Exposure of any existing Hedging Transactions at such time.

**"Advances"** means advances made by the Canadian Lenders or any one or more of them or the U.S. Lenders or any one of them (which does not include Swing Line Loans) under this Agreement and Advance means any one of such Advances. Advances may be denominated in Canadian Dollars (a "Canadian Dollar Advance") or in U.S. Dollars (a "U.S. Dollar Advance"). A Canadian Dollar Advance may be designated a "Floating Rate Advance" and a U.S. Dollar Advance may be designated a "LIBOR Advance" or a "U.S. Base Rate Advance" or a "U.S. Prime Rate Advance". Each of a LIBOR Advance, a Floating Rate Advance, a U.S. Base Rate Advance and a U.S. Prime Rate Advance is a "Type" of Advance.

**"Affected Lender"** has the meaning specified in Section 11.7(2).

**"Affected Properties"** has the meaning specified in Section 7.1(18)(a).

**"Agency Fee Agreement"** means the agency fee agreement dated March 22, 2002 executed by the Borrowers in favour of the Canadian Agent and the U.S. Agent as replaced on April 21, 2008, as such agreement may be further amended and restated, amended, modified, supplemented, restated or replaced from time to time.

**"Agent"** means the Canadian Agent or the U.S. Agent, or both, as the context requires.

**"Agreement"** means this credit agreement and all schedules and instruments in amendment or confirmation of it; "hereof", "hereto" and "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other subdivision; "Article", "Section" or other subdivision of this Agreement followed by a number refers to the specified Article, Section or other subdivision of this Agreement.

“**Ancillary Agreements**” means all Guarantees, Security Documents, agreements relating to Secured Hedging Transactions, Cash Management Agreements and other agreements, certificates and instruments delivered or given or continued pursuant to or in connection with this Agreement, including the Agency Fee Agreement, and “**Ancillary Agreement**” means any one of such Guarantees, Security Documents, agreements, certificates or instruments.

“**Anniversary Date**” means each February 10th during the term hereof.

“**Anti-Money Laundering & Anti-Terrorism Legislation**” means the USA PATRIOT ACT, Title III of Pub. L. 107-56 (as the same has been codified and may be amended from time to time), the *Criminal Code*, R.S.C. 1985, c. C-46, *The Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 and the *United Nations Act*, R.S.C. 1985, c. U-2 or any similar legislation, together with all rules, regulations and interpretations thereunder or related thereto including, without limitation, the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism* and the *United Nations Al-Qaida and Taliban Regulations* promulgated under the *United Nations Act*.

“**Applicable Margin**” means, in respect of any Financial Quarter, the applicable percentage per annum as set forth below based on the Leverage Ratio at the end of the most recent Financial Quarter in respect of which a Compliance Certificate has been, or was required to be, delivered; provided that if the Leverage Ratio is greater than 3.95:1, the Applicable Margin shall be the maximum margins set forth below plus any applicable Default Rate plus any other adjustments agreed to by the Lenders, in accordance with Section 13.14 hereof.

Margins	Leverage Ratio				
	less than or equal to 2.0:1	greater than 2.00:1 and less than or equal to 2.5:1	greater than 2.5:1 and less than or equal to 3.00:1	greater than 3.00:1 and less than or equal to 3.5:1	greater than 3.5:1 and less than or equal to 3.95:1
Floating Rate Advances U.S. Base Rate Advances U.S. Prime Rate Advances Swing Line Loans	2.00%	2.50%	3.00%	3.50%	4.00%
Bankers' Acceptances BA Equivalent Notes LIBOR Advances Letters	3.00%	3.50%	4.00%	4.50%	5.00%
Canadian Commitment Fee Canadian Swing Line Commitment Fee U.S. Commitment Fee U.S. Swing Line Commitment Fee	0.75%	0.875%	1.00%	1.125%	1.25%

“**Arctic California**” means Arctic Glacier California Inc., and its successors and permitted assigns.

**“Arctic Glacier”** means Arctic Glacier Inc. and its successors and permitted assigns.

**“Arctic Grayling”** means Arctic Glacier Grayling Inc. and its successors and permitted assigns.

**“Arctic International”** means Arctic Glacier International Inc. and its successors and permitted assigns.

**“Arctic IP”** means Arctic Glacier IP Inc. and its successors and permitted assigns.

**“Arctic Lansing”** means Arctic Glacier Lansing Inc. and its successors and permitted assigns.

**“Arctic Michigan”** means Arctic Glacier Michigan Inc. and its successors and permitted assigns.

**“Arctic Minnesota”** means Arctic Glacier Minnesota Inc. and its successors and permitted assigns.

**“Arctic Nebraska”** means Arctic Glacier Nebraska Inc. and its successors and permitted assigns.

**“Arctic Newburgh”** means Arctic Glacier Newburgh Inc. and its successors and permitted assigns.

**“Arctic New York”** means Arctic Glacier New York Inc. and its successors and permitted assigns.

**“Arctic Oregon”** means Arctic Glacier Oregon Inc. and its successors and permitted assigns.

**“Arctic Parties”** means each of the Borrowers and the Guarantors and its respective direct and indirect Subsidiaries and includes any Restricted Subsidiaries formed after the date hereof, and **“Arctic Party”** means any one of them.

**“Arctic Party Time”** means Arctic Glacier Party Time Inc. and its successors and permitted assigns.

**“Arctic Pennsylvania”** means Arctic Glacier Pennsylvania Inc. and its successors and permitted assigns.

**“Arctic Rochester”** means Arctic Glacier Rochester Inc. and its successors and permitted assigns.

**“Arctic Services”** means Arctic Glacier Services Inc. and its successors and permitted assigns.

**“Arctic Texas”** means Arctic Glacier Texas Inc. and its successors and permitted assigns.

**“Arctic Vernon”** means Arctic Glacier Vernon Inc. and its successors and permitted assigns.

**“Arctic Wisconsin”** means Arctic Glacier Wisconsin Inc. and its successors and permitted assigns.

**“Arizona Lease”** means that certain lease and option agreement by and between Desert Mountain Ice, LLC as landlord and Arctic Glacier California Inc. as tenant dated May 25, 2006, as amended and restated, amended, modified, supplemented, restated or replaced from time to time.

**“Arizona Lease Option Payments”** means all payments made, directly or indirectly, on account of the purchase option set forth in the Arizona Lease.

**“Assenting Lender”** has the meaning specified in Section 11.7(2).

**“Assignee”** has the meaning specified in Section 12.8(2).

**“Assignment Agreement”** means an Assignment Agreement referred to in Section 12.8(2)(e), substantially in the form as set out in Schedule T.

**“Auditors”** means KPMG LLP or such other independent and nationally recognized firm of chartered accountants as may be approved by the Majority Lenders from time to time in accordance with the provisions of Section 8.2(11).

**“Authorization”** means, with respect to any Person, any authorization, order, permit, approval, grant, licence, consent, right, franchise, privilege, certificate, judgment, writ, injunction, award, determination, direction, decree, by-law, rule or regulation of any Governmental Entity having jurisdiction over such Person, whether or not having the force of Law.

**“BA Discount Rate”** means:

- (A) for Bankers’ Acceptances, Drafts or BA Equivalent Notes denominated in Canadian Dollars that are:
  - (i) Bankers’ Acceptances or Drafts to be purchased by Canadian Lenders that are Schedule I banks under the *Bank Act* (Canada), the average rate for Canadian Dollar Bankers’ Acceptances quoted at approximately 10:00 a.m. (Toronto time) on the Reuters Screen CDOR Page “Canadian Interbank Bid BA Rates” for Banker’s Acceptances of similar terms;



- (ii) BA Equivalent Notes to be purchased by Non-BA Lenders that are Schedule I banks under the *Bank Act* (Canada), the rate referred to above in sub-paragraph (A)(i) of this definition; and
  - (iii) BA Equivalent Notes to be purchased by Non-BA Lenders and Bankers' Acceptances or Drafts to be purchased by Canadian Lenders that are not Schedule I banks under the *Bank Act* (Canada), the rate referred to above in sub-paragraph (A)(i) of this definition plus 10 basis points.
- (B) for Bankers' Acceptances, Drafts or BA Equivalent Notes denominated in U.S. Dollars that are:
- (i) Bankers' Acceptances or Drafts to be purchased by Canadian Lenders that are Schedule I banks under the *Bank Act* (Canada), the rate quoted by such Lenders;
  - (ii) BA Equivalent Notes to be purchased by Non-BA Lenders that are Schedule I banks under the *Bank Act* (Canada), the rate referred to above in sub-paragraph (B)(i) of this definition; and
  - (iii) BA Equivalent Notes to be purchased by Non-BA Lenders and Bankers' Acceptances or Drafts to be purchased by Canadian Lenders that are not Schedule I banks under the *Bank Act* (Canada), the rate referred to above in sub-paragraph (B)(i) of this definition, plus 10 basis points.

**"BA Equivalent Note"** means, at any time, a notional note issued by a Canadian Borrower in favour of any Non-BA Lender and evidenced by the account records maintained by the Canadian Agent.

**"BA Lender"** means each Canadian Lender which is not a Non-BA Lender.

**"Bankers' Acceptance"** has the meaning specified in Section 4.1 and, where the context may require **"Bankers' Acceptances"** includes BA Equivalent Notes.

**"Bankers' Acceptance Fee Rate"** means the Applicable Margin with respect to Bankers' Acceptances.

**"Beneficiary"** means, in respect of any Letter, the beneficiary named in such Letter.

**"Benefited Creditors"** means, each creditor or creditor group (whether acting through its representative agent or not) to the Arctic Parties from time to time that are party to the Intercreditor Agreement.

**"Borrowers"** means the Canadian Borrower and the U.S. Borrower and **"Borrower"** means either the Canadian Borrower or the U.S. Borrower, as the context requires.

**"Borrowing"** means a borrowing consisting of one or more Advances.

**"Borrowing Notices"** means the Canadian Borrowing Notice and the U.S. Borrowing Notice, each in the form of Schedule B attached hereto and **"Borrowing Notice"** means either the Canadian Borrowing Notice or the U.S. Borrowing Notice, as the context requires.

**"Buildings and Fixtures"** means all plant, buildings, structures, erections, improvements, appurtenances and fixtures (including fixed machinery and fixed equipment) situate on the Leaschold Real Estate or on the Real Estate or both, as the context requires.

**"Business"** means the business currently carried on by the Arctic Parties consisting of the ownership and operation of ice production, packaging and distribution facilities and related merchandising, franchising and licensing operations.

**"Business Day"** means any day on which the Canadian Agent, the U.S. Agent and the Lenders are open for business at Toronto, Ontario, Winnipeg, Manitoba and New York, New York and their U.S. head offices but in any event shall not include a Saturday, Sunday or statutory or legal holiday in the Province of Ontario or the Province of Manitoba or recognized as such by the Federal Government of the United States of America.

**"Business Plan"** means a one (1) year business plan for the Fund, the Canadian Borrower and their Subsidiaries, prepared on a quarterly, consolidated basis, including, without limitation, historical financial information, in form and substance satisfactory to the Canadian Agent, the U.S. Agent and the Lenders, in their sole discretion.

**"Canadian Agent"** means The Toronto-Dominion Bank, in its capacity as administration agent for the Canadian Lenders and its successors and permitted assigns.

**"Canadian Agent's Account"** means such account or accounts maintained by the Canadian Agent at 66 Wellington Street West, 5<sup>th</sup> Floor, at The Toronto-Dominion Bank, International Centre, Toronto, Canada, in respect of the Canadian Borrower, as the Canadian Agent from time to time notifies the Canadian Borrower.

**"Canadian Borrower"** means Arctic Glacier Inc., an Alberta corporation.

**"Canadian Borrower's Canadian Dollar Account"** means the Canadian Dollar account maintained by the Canadian Borrower at the branch bank of the Canadian Agent at which such Account and the Canadian Agent's Account are maintained by the Canadian Agent from time to time, the particulars of which shall have been notified by the Canadian Borrower to the Canadian Agent.

**"Canadian Borrower's U.S. Dollar Account"** means the U.S. Dollar account maintained by the Canadian Borrower at the branch bank of the Canadian Agent at which such Account and the Canadian Agent's Account are maintained by the Canadian Agent from time to time, the particulars of which shall have been notified by the Canadian Borrower to the Canadian Agent.

**“Canadian Borrowing Notice”** has the meaning specified in Section 3.2(1) and is in the form attached hereto as Schedule B.

**“Canadian Commitment Fee”** has the meaning specified in Section 2.9(1).

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

**“Canadian Election Notice”** has the meaning set out in Section 3.4(2).

**“Canadian Facility”** means the revolving term credit facility in the aggregate amount set out in Schedule A under the heading **“Canadian Facility”**, to be made available to the Canadian Borrower hereunder.

**“Canadian Facility Commitment”** means the sum of the Individual Commitments of the Canadian Lenders in respect of the Canadian Facility, as set out in Schedule A hereto.

**“Canadian Facility Pro Rata”** means, with respect to a Lender, the *Pro Rata* Share of such Lender with respect to the Canadian Facility.

**“Canadian Lenders”** means The Toronto-Dominion Bank, The Bank of Nova Scotia and Roynat Inc. and any one or more Assignees, their respective successors and permitted assigns as may become a party hereto, in their capacities as Lenders under the Canadian Facility and **“Canadian Lender”** means any one of the Canadian Lenders.

**“Canadian Pension Plan”** means any plan, program, arrangement or understanding that is a pension plan for the purposes of any applicable pension benefits or tax laws of Canada or a province or territory thereof (for greater certainty not including the Canada Pension Plan maintained by the Government of Canada), which is maintained, administered or contributed to by (or to which there is or may be an obligation to contribute by) any of the Arctic Parties in respect of any Person’s employment in Canada or a province or territory thereof, all related funding agreements and all related agreements, arrangements and understandings in respect of, or related to, any benefits to be provided thereunder.

**“Canadian Swing Line Commitment Fee”** has the meaning specified in Section 2.9(2).

**“Canadian Swing Line Facility”** means the revolving facility in the amount set out in Schedule A hereto to be made available to the Canadian Borrower hereunder in accordance with Section 3.7(1).

**“Canadian Swing Line Facility Commitment”** means the Individual Commitment of the Canadian Swing Line Lender in respect of the Canadian Swing Line Facility, as set out on Schedule A hereto.

**“Canadian Swing Line Lender”** means The Toronto-Dominion Bank, in its capacity as the Canadian Swing Line Lender, its successors and permitted assigns.

**"Canadian Swing Line Lender's Account"** means such account or accounts maintained by the Canadian Swing Line Lender at the branch bank of the Canadian Swing Line Lender, the particulars of which shall have been notified to the Canadian Borrower by the Canadian Swing Line Lender.

**"Canadian Swing Line Loan"** means an advance made by the Canadian Swing Line Lender pursuant to Section 3.7(1).

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

**"Capital Stock"** means, with respect to any Person, any and all shares, interests, participation or other equivalents of or interests in (however designated) the equity interest (including, without limitation, common shares, preferred shares, trust units and partnership interests) of such Person and any rights (other than debt securities convertible into an equity interest), warrants or options to subscribe for or acquire an equity interest in such Person.

**"Capitalized Lease Liabilities"** of any Person means all monetary obligations of such Person relating to any leasing or similar arrangement which have been (or, in accordance with GAAP, should be) classified as capitalized leases, and for purposes of each Loan Document the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP, and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a premium or a penalty.

**"Cash Interest Paid"** means, for any period with respect to any Person, cash payments on account of interest made during such period by such Person.

**"Cash Management Agreement"** means any cash management agreement (including any mirror netting agreement) which any of the Arctic Parties enters into with a Person (or an Affiliate of such Person) that is a Lender, the liabilities under which constitute Obligations.

**"Cash Taxes Paid"** means, for any period with respect to any Person, cash payments on account of taxes made during such period by such Person, excluding payments made on account of Intercompany Debt.

**"Change of Control"** means any one of the following events:

- (a) the occurrence of any transaction or event as a result of which any Person (or group of Persons acting in concert) shall purchase or acquire legal or beneficial

ownership, either directly or indirectly, of voting units of the Fund which carry more than 50% of the votes for the election of trustees of the Fund;

- (b) the failure of the Fund to directly own beneficially and of record on a fully diluted basis 100% of the outstanding Capital Stock of the Canadian Borrower, free and clear of all Liens (other than Liens granted pursuant to a Loan Document);
- (c) the failure of the Canadian Borrower to directly own beneficially and of record on a fully diluted basis 100% of the outstanding Capital Stock of the U.S. Borrower free and clear of all Liens (other than Liens granted pursuant to a Loan Document);
- (d) the failure of the U.S. Borrower to directly own, beneficially and of record on a fully diluted basis, 100% of the Capital Stock of each of Arctic California, Arctic Michigan, Arctic Minnesota, Arctic Nebraska, Arctic Newburgh, Arctic New York, Arctic Oregon, Arctic Pennsylvania, Arctic Services, Arctic Texas, Arctic Wisconsin and Ice Perfection Systems, free and clear of all Liens (other than Liens granted pursuant to a Loan Document);
- (e) the failure of Arctic Newburgh to directly own, beneficially and of record on a fully diluted basis, 100% of the Capital Stock of Arctic IP, free and clear of all Liens (other than Liens granted pursuant to a Loan Document);
- (f) the failure of Arctic New York to directly own, beneficially and of record on a fully diluted basis, 100% of the Capital Stock of Diamond and Arctic Rochester, free and clear of all Liens (other than Liens granted pursuant to a Loan Document);
- (g) the failure of Arctic Michigan to directly own, beneficially and of record on a fully diluted basis, 100% of the Capital Stock of Knowlton, Arctic Grayling, Wonderland Ice, Arctic Party Time, R&K Trucking and Arctic Lansing, free and clear of all Liens (other than Liens granted pursuant to a Loan Document);
- (h) the failure of Arctic Michigan and Knowlton to directly own, beneficially and of record on a fully diluted basis, 100% of the Capital Stock of Winkler Lucas Ice, free and clear of all Liens (other than Liens granted pursuant to a Loan Document);
- (i) the failure of Arctic California to directly own, beneficially and of record on a fully diluted basis, 100% of the Capital Stock of Arctic Vernon, Jack Frost, Glacier Ice, Mountain Water and Diamond Newport and 99.9% of Glacier Valley;
- (j) the failure of any Arctic Party to directly own, beneficially and of record on a fully diluted basis, 100% of the Capital Stock of any of its direct Subsidiaries;
- (k) a majority of the seats (other than vacant seats) on the board of directors of the Canadian Borrower is occupied by individuals who were neither nominated by the

board of directors of the Canadian Borrower nor appointed with the approval of directors so nominated;

- (l) any event, transaction or occurrence as a result of which Keith W. McMahon shall cease to be actively engaged as the President and Chief Executive Officer of the Canadian Borrower, unless an interim or permanent successor reasonably acceptable to the Majority Lenders is appointed within 90 days of Keith W. McMahon so ceasing to be actively engaged.

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

**"Closing", "Closing Date" or "Date of Closing"** means the date on which the conditions set forth in Article VI have been fulfilled or performed to the satisfaction of the Canadian Agent, the U.S. Agent and the Majority Lenders.

**"Code"** means the Internal Revenue Code of 1986, as amended, and the regulations thereunder, as amended, and any successor statute thereto of similar import, together with the rules and regulations thereunder, as each case as in effect from time to time. Reference to sections of Code also refer to any successor sections thereto.

**"Collateral"** means the Property of any Arctic Party or any other person in respect of which the Lenders have or will have or are intended to have a Lien pursuant to the Security Documents.

**"Commitment"** means one of the Canadian Swing Line Facility Commitment, U.S. Swing Line Facility Commitment, the Canadian Facility Commitment or the U.S. Facility Commitment, as the context requires and **"Commitments"** means all of them.

**"Commodity Agreement"** means any agreement for the making or taking of delivery of any commodity (including Petroleum Substances), any commodity swap agreement, floor, cap or collar agreement or commodity future or option or other similar agreements or arrangements, or any combination thereof, entered into by a Borrower or another Arctic Party where the subject matter of the same is any commodity or the price, value or amount payable thereunder is dependent or based upon the price of any commodity or fluctuations in the price of any commodity.

**"Commodity Hedging Limit"** has the meaning set out in Section 9.1(2).

**"Commodity Hedging Transaction"** means a transaction pursuant to a Commodity Agreement.

**"Compliance Certificate"** means a certificate in the form of Schedule D.

**"Consent"** means a third-party consent required to effect (i) the Subordinated Facility Documents, (ii) the termination of the Note Purchase Agreement, and (iii) all other transactions contemplated herein.

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

**“Consolidated Earnings”** means, for any period, with respect to any Person, Consolidated Net Income, but excluding in each case for such period any gain or loss recorded in income arising from: (i) the Disposition of capital assets, as determined in accordance with GAAP; (ii) any write-up or write-down of Property, as determined in accordance with GAAP; (iii) the acquisition of any securities of such Person or any of its Consolidated Subsidiaries, as determined in accordance with GAAP; (iv) any extraordinary item, as determined in accordance with GAAP; (v) discontinued operations, as determined in accordance with GAAP; or (vi) items that do not have all the characteristics of extraordinary items but which result from transactions or events that are not expected to occur regularly over several years or do not typify normal business activities of such Person and its Consolidated Subsidiaries, as determined in accordance with GAAP, to the extent that any such gain or loss has been recorded in the determination of Consolidated Net Income.

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

**“Consolidated EBITDAR”** means, for any period, with respect to any Person, the Consolidated EBITDA of such Person increased by the Consolidated Rent of such Person for such period, determined in accordance with GAAP on a consolidated basis.

**“Consolidated Fixed Charges”** means, for any period, the sum of the following during such period: (a) Consolidated Interest Charges, (b) Capitalized Lease Liabilities, (c) Corporate Distributions, (d) consolidated Rental Expense, and (e) scheduled principal amounts paid or payable on account of Consolidated Total Debt including, without limitation, the Subordinated Facility Cash Sweep.

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

**“Consolidated Interest Charges”** means, for any period, with respect to any Person, the total of all items properly classified as interest expense for such Person and its Consolidated Subsidiaries for such period, determined in accordance with GAAP on a consolidated basis and, for greater certainty, includes any payment-in-kind interest accrued during such period under the Subordinated Facility Loan Agreement.

**“Consolidated Long Term Debt”** means, in respect of any Person, Debt obligations of such Person that are due and payable more than one year after issuance and which

any of its ice manufacturing or distribution facilities; provided that **"Construction Projects"** shall not include routine, day-to-day maintenance or non-material renovations conducted in connection with any Real Estate or Leasehold Real Estate of the Arctic Parties.

**"Contingent Liability"** means an agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable for (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the Debt of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligations under any Contingent Liability shall (subject to any limitation set forth therein) be deemed to be the maximum potential amount of the Debt, obligation or other liability guaranteed thereby.

**"Contributing Lender"** has the meaning specified in Section 3.1(2).

**"Controllable Accounts"** has the meaning specified in Section 8.1(19) hereto.

**"Convertible Debentures"** means the \$100,000,000 of 6.5% extendible unsecured convertible subordinated debentures issued by the Fund in connection with the May 2006 Offering.

**"Corporate Distribution Leverage Ratio Maximum"** shall mean a Leverage Ratio of no greater than: (i) 2.50x at any time during the Financial Quarters ending September 30<sup>th</sup> and December 31<sup>st</sup>; and (ii) 2.75x at any time during the Financial Quarters ending March 31<sup>st</sup> and June 30<sup>th</sup>.

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

**"Credit Facilities"** means the Canadian Facility, the Canadian Swing Line Facility, the U.S. Facility and the U.S. Swing Line Facility and a **"Credit Facility"** means any one of the Canadian Facility, the Canadian Swing Line Facility, the U.S. Facility or the U.S. Swing Line Facility, as the context requires.

**"Cure Period"** has the meaning specified in Section 10.1(d).



**“Currency Exchange Protection Agreement”** means any forward exchange agreement, currency swap, currency option or other similar financial agreement or arrangement designed to protect a Borrower or any of its Subsidiaries against, or manage exposure to fluctuations in, foreign currency exchange rates.

**“Currency Hedging Transaction”** means a transaction pursuant to a Currency Exchange Protection Agreement.

**“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;
- (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 and Unamortized Deferred Financing (to a maximum of \$1,000,000).

**"Default"** means an event, condition or circumstance which, with the giving of notice or passage of time, or both (whether or not such notice has been given), would constitute an Event of Default.

**"Defaulting Lender"** has the meaning specified in Section 3.1(2).

**"Default Rate"** means that rate of interest that is 2.0% *per annum* above the rate of interest otherwise payable on the applicable amount.

**"Diamond"** means Diamond Ice Cube Company, Inc. and its successors and permitted assigns.

**"Diamond Newport"** means Diamond Newport Corporation and its successors and permitted assigns.

**"Disposed Property"** means, at any time, the cumulative aggregate gross proceeds of all Property Disposed of by the Arctic Parties (net of the aggregate amount of such proceeds reinvested in the assets of the Arctic Parties within ninety (90) days of such Disposition), voluntarily or involuntarily, on or after the Closing Date until such time.

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

**"Dissolving Guarantor"** means 3084435.

**"Distributable Cash"** means, for any period, Consolidated EBITDA less Cash Taxes Paid less Cash Interest Paid less scheduled principal repayments of Debt less Unfunded Capital Expenditures for such period.

**"Distribution Certificate"** means a certificate in the form of Schedule S hereto.

**"DOJ Investigation"** any current or future investigation into possible antitrust violations by an Arctic Party in the packaged ice industry in the United States by the Antitrust Division of the U.S. Department of Justice.

**"DOJ Payments"** means the proposed payments totalling U.S.\$9,000,000 by the U.S. Borrower to the Government of the United States of America in connection with the

settlement of a DOJ Investigation and the related DOJ Plea Agreement in the amounts and on the dates specified in the DOJ Plea Agreement.

**"DOJ Plea Agreement"** means the plea agreement in respect of a DOJ Investigation entered into by the U.S. Borrower and filed in the United States District Court, Southern District of Ohio Western Division by October 13, 2009, which plea agreement remains subject to court approval as of the date hereof.

**"Draft"** means, at any time, a blank depository bill within the meaning of the *Depository Bills and Notes Act* (Canada) or a blank bill of exchange within the meaning of the *Bills of Exchange Act* (Canada) drawn by the Canadian Borrower on a Canadian Lender and bearing such distinguishing letters and numbers as such Lender may determine, but which at such time, except as otherwise provided herein, has not been completed or accepted by such Canadian Lender.

**"Election Notice"** has the meaning specified in Section 3.4(2), and includes the Canadian Election Notice and/or the U.S. Election Notice, as the context requires.

**"Environment"** means all components of the earth, including air (and all layers of the atmosphere), land (and all surface and subsurface soil, underground spaces and cavities and all land submerged under water) and water (and all surface and ground water), organic and inorganic matter and living organisms, and the interacting natural systems that include components referred to above in this definition of **"Environment"**.

**"Environmental Auditor"** means a qualified environmental auditor at arm's length from the Arctic Parties and acceptable to the Agent, upon direction from the Majority Lenders.

**"Environmental Laws"** means any and all federal, provincial, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions, including but not limited to those promulgated by the Canadian Food Inspection Agency, national and provincial Canadian Ministry(s) of Health, the U.S. Department of Agriculture and the Food and Drug Administration, relating to the production, manufacturing and distribution of water, ice and food products, pollution and the protection of the environment or the release of any materials into the environment, Hazardous Materials, air emissions and discharges to waste or public systems, and including, but not limited to, the following: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11001 et seq.

**"Environmental Liabilities and Costs"** means all Losses and Claims, whether known or unknown, current or potential, past, present or future, imposed by, under or pursuant to Environmental Laws, including all Losses and Claims related to Remedial Actions and all

reasonable fees, disbursements and expenses of counsel, experts, personnel and consultants, where such Losses and Claims are based on, arise out of or are otherwise in respect of: (i) the ownership or operation of the Business or any Affected Property; (ii) the conditions on, under, above or about any Affected Property; (iii) expenditures necessary to cause the operations of the Business or any Affected Property, to comply with any and all requirements, including expenditures necessary to effect the closure, decommissioning or rehabilitation of any of the operations of the Business or Affected Property; (iv) the use, generation, manufacture, refining, treatment, transportation, storage, handling, recycling, disposal, depositing, transferring, producing or processing of Hazardous Substances; (v) liability for personal injury or property damage, including damages assessed for the maintenance of a public or private nuisance; and (vi) any other matter affecting the Affected Properties within the jurisdiction of any Governmental Entity administering any Environmental Law.

**“Environmental Notice”** means any written claim, citation, directive, request for information, statement of claim, notice of investigation, letter or other communication from any Person given in connection with any Environmental Law.

**“Environmental Permits”** means all permits, certificates, approvals, registrations and licences issued by any Governmental Entity to an Arctic Party or to the Business pursuant to Environmental Laws and relating to or required for the operation of the Business or ownership of the Real Estate, Leasehold Real Estate or other Property of an Arctic Party.

**“Equivalent Cdn. \$ Amount”** means, on any day with respect to any amount of U.S. Dollars, the equivalent amount of Canadian Dollars determined by using the spot rate quoted by the Canadian Agent to provide Canadian Dollars in exchange for U.S. Dollars at approximately 12:00 noon (Toronto time) on the Reuters Bank of Canada page on such day.

**“Equivalent U.S. \$ Amount”** means, on any day with respect to any amount of Canadian Dollars, the equivalent amount of U.S. Dollars determined by using the quoted spot rate quoted by the Canadian Agent to provide U.S. Dollars in exchange for Canadian Dollars at approximately 12:00 noon (Toronto time) on the Reuters Bank of Canada page on such day.

**“ERISA”** means the *Employment Retirement Income Security Act of 1974*, as amended, and any successor statute thereto of similar import, together with the rules and regulations thereunder, in each case as in effect from time to time. Reference to sections of ERISA also refer to any successor sections thereto.

**“ERISA Affiliate”** means any trade or business (whether or not incorporated) that is or has been treated as a single employer with any of the Borrowers under Section 414 of the Code or Title IV of ERISA.

**“Event of Default”** has the meaning specified in Section 10.1.

**“Extension Amendment”** has the meaning specified in Section 2.7.

**“Extension Request”** has the meaning specified in Section 2.7.

**"Face Amount"** means, in respect of: (i) a Bankers' Acceptance or BA Equivalent Note, the amount payable to the holder thereof on its maturity; and (ii) a Letter, the maximum amount payable to the Beneficiary thereunder.

**"Fees"** means any and all fees payable by the Borrowers pursuant to this Agreement or any Ancillary Agreement.

**"Financial Quarter"** means, in relation to a Borrower and their respective Consolidated Subsidiaries, each fiscal quarter of such person for financial reporting purposes, which fiscal quarters end on March 31, June 30, September 30 and December 31 of each calendar year.

**"Financial Year"** means, in relation to a Borrower and their respective Consolidated Subsidiaries, the financial year commencing on January 1 of each calendar year and ending on December 31 of the same calendar year.

**"Fixed Charge Coverage Ratio"** means, for any period, with respect to the Fund, the ratio of: (A) (i) Consolidated EBITDAR, plus (ii) Capitalized Lease Liabilities, less (iii) Cash Taxes, less (iv) Unfunded Capital Expenditures; to (B) Consolidated Fixed Charges for such period.

**"Floating Rate"** means, for any particular day, the rate of interest per annum equal to the greater of: (i) the Prime Rate, plus the Applicable Margin for Floating Rate Advances; and (ii) the sum of (A) the rate per annum for Canadian Dollar bankers' acceptances accepted by the Canadian Agent having a term of one month that appears on the Reuters Screen CDOR Page as of 10:00 a.m. (Toronto time) for such day plus 1.00% and (B) the Applicable Margin for Floating Rate Advances.

**"Floating Rate Advance"** means an Advance denominated in Canadian Dollars which bears interest based on the Floating Rate.

**"Fund"** means the Arctic Glacier Income Fund, an unincorporated open-ended mutual fund trust governed by the laws of the Province of Alberta.

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

**"Future Material Agreement"** has the meaning set out in Section 8.1(23).

**"FX Hedging Limit"** has the meaning set out in Section 9.1(2).

**"GAAP"** means, subject to Section 1.8 hereof, generally accepted accounting principles which are in effect from time to time in Canada, as established by the Canadian Institute of Chartered Accountants or any successor institute.

**"Glacier Ice"** means Glacier Ice Company, Inc. and its successors and permitted assigns.

**"Glacier Valley"** means Glacier Valley Ice Company, L.P. and its successors and permitted assigns.

**"Governmental Entity"** means any: (i) multinational, federal, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) any subdivision, agent, commission, board, or authority of any of the foregoing; or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing.

**"Governmental Licenses"** means all governmental licenses, authorizations, consents, registrations, exemptions, permits and other approvals that are necessary or desirable for the operation of the Business of the Arctic Parties, including Provincial and State licenses for quality input and processing of water and ice.

**"Guarantee"** means an unconditional, irrevocable, continuing joint and several guarantee executed by each Guarantor, of the payment and performance of all Obligations and otherwise on terms and conditions consistent with Guarantees delivered at Closing.

**"Guarantors"** means the Fund, Arctic Glacier, Arctic International, Arctic California, Arctic Grayling, Arctic IP, Arctic Lansing, Arctic Michigan, Arctic Minnesota, Arctic Nebraska, Arctic Newburgh, Arctic New York, Arctic Oregon, Arctic Party Time, Arctic Pennsylvania, Arctic Rochester, Arctic Services, Arctic Texas, Arctic Vernon, Arctic Wisconsin, Diamond, Diamond Newport, Ice Perfection Systems, Glacier Ice, Glacier Valley, Jack Frost, Knowlton, Mountain Water, R&K, Winkler Lucas Ice and Wonderland Ice, and any other Person who becomes a Guarantor hereunder, including, without limitation, each Restricted Subsidiary formed after the date hereof and **"Guarantor"** means any one of the Guarantors; provided, however, that (i) the Dissolving Guarantor shall be deemed to be a Guarantor for the purposes hereof, and (ii) the Guarantees and Security Documents previously granted by the Dissolving Guarantor in connection with the Original Loan Agreement shall remain in full force and effect, until such time, in the case of both (i) and (ii) above, as the Canadian Agent, the U.S. Agent and the Lenders and their counsel have received evidence of the dissolution of the Dissolving Guarantor, in form and substance satisfactory to the Canadian Agent, the U.S. Agent and the Lenders, in their sole discretion.

**"Hazardous Material"** means any and all pollutants, toxic or hazardous wastes or any other substances that might pose a hazard to health or safety, the removal of which may be required or the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage, or filtration of which is or shall be restricted, prohibited or penalized by any applicable law (including, without limitation, oil, petroleum products, asbestos, urea formaldehyde foam insulation and polychlorinated biphenyls).

**"Hedging Transactions"** means Interest Rate Hedging Transactions, Currency Hedging Transactions and Commodity Hedging Transactions.

**"Ice Perfection Systems"** means Ice Perfection Systems Inc. and its successors and permitted assigns.

**"IFRS"** has the meaning set out in Section 1.8 hereto.

**"Individual Commitment"** means, at any time with respect to: (i) a Canadian Lender, the amount set forth in Schedule A as the individual commitment of such Canadian Lender under the Canadian Facility; (ii) a U.S. Lender, the amount set forth in Schedule A as the individual commitment of such U.S. Lender under the U.S. Facility, the amount set forth in Schedule A as the individual commitment; (iii) the Canadian Swing Line Lender, the amount set forth in Schedule A as the individual commitment of the Canadian Swing Line Lender; or (iv) the U.S. Swing Line Lender, the amount set forth in Schedule A as the individual commitment of the U.S. Swing Line Lender.

**"Intellectual Property"** means any and all issued patents and patent applications, industrial design registrations, trade marks, 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 Charges"** has the meaning set out in Section 8.2(5).

**"Intercompany Debt"** means any intercompany Debt between any of the Arctic Parties and includes, without limitation, the intercompany Debt disclosed on Schedule P hereto, as such schedule may be updated as updated quarterly or upon the incurrence of new Intercompany Debt.

**"Intercreditor Agreement"** means that certain Intercreditor Agreement dated December 9, 2004, as amended, as amended and restated as of April 21, 2008, as further amended and restated on February 10th, 2010 among, *inter alia*, The Toronto-Dominion Bank, in its capacity as master collateral agent to the Benefited Creditors, the Canadian Agent and the Subordinated Facility Agent, in its capacity as administrative agent for the lenders under and pursuant to the Subordinated Facility Loan Agreement, as the same may be amended and restated, amended, modified, supplemented, restated or replaced from time to time.

**"Interest Period"** means, for each LIBOR Advance, a period which commences: (i) in the case of the initial Interest Period, on the date such Advance is made or converted from another Type of Advance or Accommodation; and (ii) in the case of any subsequent Interest Period, on the last day of the immediately preceding Interest Period, and which ends, in either case, on the day selected by a Borrower in the applicable Borrowing Notice or Election Notice in accordance with this Agreement. The duration of each Interest Period shall be 1, 2, 3, or 6 months, unless the last day of an Interest Period would otherwise occur on a day other than a Business Day, in which case the last day of such Interest Period shall be extended to occur on the next Business Day, or if such extension would cause the last day of such Interest Period to occur

in the next calendar month, the last day of such Interest Period shall occur on the preceding Business Day.

**"Interest Rate Hedging Transaction"** means a transaction pursuant to an Interest Rate Protection Agreement.

**"Interest Rate Protection Agreement"** means any interest rate swap agreement, interest rate cap, collar or floor agreement or other similar financial agreement or arrangement designed to protect against or manage exposure to fluctuations in interest rates.

**"Inventory"** means, with respect to any Person, all inventory now owned or hereafter acquired by such Person, including: (i) finished goods, work in progress, raw materials, new and unused production, packing and shipping supplies; (ii) all new and unused maintenance items; and (iii) all other materials and supplies on hand to be used or consumed, or which might be used or consumed, in connection with the manufacture, packing, shipping, advertising, selling or furnishing of goods.

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

**"Issue"** means an issue of a Letter by the Swing Line Lenders pursuant to Article V.

**"Issue Date"** has the meaning specified in Section 5.2(1).

**"Issue Fee"** means, with respect to each Letter issued hereunder, an amount payable in advance equal to the Applicable Margin with respect to Letters of the Face Amount of such Letter, calculated on the basis of a term to maturity of such Letter and a year of three hundred and sixty-five (365) days.

**"Issue Notice"** has the meaning specified in Section 5.2(1).

**"Issuing Canadian Lender"** means the Canadian Swing Line Lender, in its capacity as Issuing Canadian Lender, its successors and assigns.

**"Issuing Lender"** means the Issuing Canadian Lender or the Issuing U.S. Lender, as the context requires.

**"Issuing U.S. Lender"** means the U.S. Swing Line Lender, in its capacity as Issuing U.S. Lender, its successors and assigns.



**“Jack Frost”** means Jack Frost Ice Service, Inc. and its successors and permitted assigns.

**“Judicial Order”** has the meaning specified in Section 5.7(1).

**“Knowlton”** means Knowlton Enterprises, Inc. and its successors and permitted assigns.

**“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.

**“LC Fronting Fee”** has the meaning specified in Section 5.5(1).

**“Leasehold Real Estate”** means the real estate of the Arctic Parties held under a lease, agreement to lease or other right of occupation.

**“Lenders”** means, collectively, the Canadian Lenders, the Canadian Swing Line Lender, the U.S. Lenders and the U.S. Swing Line Lender and any one or more Assignees, their respective successors and permitted assigns and **“Lender”** means any one of the Canadian Lenders, the Canadian Swing Line Lender, the U.S. Lenders or the U.S. Swing Line Lender, as the context may require.

**“Letter”** means a letter of guarantee or a letter of credit (each of which is a “Type” of Letter), but shall not include documentary or commercial letters of credit, issued or to be issued by the Canadian Swing Line Lender or by the U.S. Swing Line Lender, in each case pursuant to Article V and in such form as the Canadian Swing Line Lender and U.S. Swing Line Lender, as applicable, may from time to time approve.

**“Leverage Ratio”** means the ratio of Consolidated Total Debt of the Fund for the most recent Financial Quarter to Consolidated EBITDA of the Fund for the four most recent Financial Quarters, calculated based on the consolidated financial statements of the Fund and its Subsidiaries as set out in Section 8.3 hereof.

**“Leverage Ratio Maximum”** means (i) 3.25x at any time during the Financial Quarter ending December 31, 2009, (ii) 3.75x at any time during the 2010 Financial Year, and (iii) 3.95x at any time during the Financial Quarters ending March 31, 2011 and June 30, 2011, (iv) 3.75x at any time during the Financial Quarters ending September 30, 2011, December 31, 2011, March 31, 2012 and June 30, 2012, and (v) 3.50x at any time during the Financial Quarter ending September 30, 2012 and thereafter until the Maturity Date.

**“LIBOR”** means the rate of interest per annum, calculated on the basis of a year of three hundred and sixty (360) days, quoted by the Agent for a particular Interest Period to be the rate of interest per annum that appears on the page of the Telerate Screen which displays or

publishes the British Bankers' Association Interest Settlement Rate for US Dollar deposits (being currently "3750") for such Interest Period as of 11:00a.m. (London, England time) on the quotation date for such Interest Period and for a period similar to such Interest Period, expressed to five (5) decimal places. If such page or such service shall cease to be displayed or published, such other page or such other service for the purpose of displaying or publishing the British Bankers' Association Interest Settlement Rate for US Dollar deposits as the Agent shall select, expressed to two (2) decimal places or such other number of decimal places, as selected by the Agent.

**"LIBOR Advance"** means an Advance denominated in U.S. Dollars which bears interest based on the LIBOR Rate.

**"LIBOR Rate"** means the rate of interest per annum equal to LIBOR plus the Applicable Margin for LIBOR Advances.

**"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.

**"Loan Documents"** means this Agreement and the Ancillary Agreements; and **"Loan Document"** means any one of such Loan Documents.

**"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.

**"Majority Lenders"** means at any particular time: (i) prior to termination of the Commitments such group of Lenders whose Individual Commitments under the Credit Facilities at such time aggregate at least two-thirds of the aggregate of the Individual Commitments of all the Lenders under the Credit Facilities; and (ii) after termination of the Commitments, such group of Lenders whose Outstandings at such time aggregate at least two-thirds of the aggregate of the Outstandings of all of the Lenders on the date the Commitments are terminated.

**"Mark to Market Exposure"** means, on any given day, in connection with the Borrowers' liabilities under their Hedging Transaction(s), the "Early Termination Amount(s)" that would be payable by the Borrowers under such Hedging Transaction(s) as though such day was an "Early Termination Date" and the "Transaction" was a "Terminated Transaction" in accordance with the payment measures provided for in Section 6(e)(i) of the 2002 ISDA Master Agreement as published by ISDA, as amended or replaced from time to time. For the purposes of this Agreement, such liability shall be expressed in the Equivalent U.S.\$ Amount, to the extent such liability is expressed in a currency other than U.S. dollars under the applicable Hedging Transaction. Furthermore, the amount of such liability shall be finally determined by the Lender that is party to the Hedging Transaction(s) in good faith after consultation with the

relevant counterparties to such Hedge Transaction who themselves shall determine same in accordance with the aforementioned payment measures.

**“Master Collateral Agency Fee Agreement”** means the master collateral agency fee agreement dated December 9, 2004, as amended and restated on February 10th, 2010, executed by the Borrowers in favour of the Master Collateral Agent, as such agreement may be amended and restated, amended, modified, supplemented, restated or replaced from time to time.

**“Master Collateral Agent”** means The Toronto-Dominion Bank, and its successors and permitted assigns, in its capacity as master collateral agent to the Benefited Creditors under and pursuant to the Intercreditor Agreement.

**“Material Adverse Effect”** means a material adverse effect (or a series of adverse effects, none of which is material in and of itself but which, cumulatively, results in a material adverse effect) on: (i) the Business, operations, Property, financial condition or prospects of any Borrower and its Consolidated Subsidiaries, measured as a whole; or (ii) the ability of any Borrower to perform any of its payment obligations under this Agreement or any Ancillary Agreement to which such Borrower is a party; (iii) the ability of the Agent or the Lenders to enforce any of the obligations of the Borrowers or Guarantors, as the case may be, under this Agreement or any Ancillary Agreement, in each case in accordance with applicable Laws; (iv) the enforceability or priority of the security interests and liens in favour of the Master Collateral Agent for the Benefited Creditors in the Collateral; or (v) the value of the Collateral.

**“Material Agreements”** has the meaning specified in Section 7.1(20).

**“Material Governmental License”** means any governmental license: (a) to which is attached obligations on the part of the Arctic Parties which has an economic value to the Arctic Parties in excess of \$500,000 per annum; or (b) issued to an Arctic Party that, if terminated, would materially impair the ability of the Arctic Parties as a whole to carry on the Business in the ordinary course and would have a Material Adverse Effect on the financial condition or business prospects of the Arctic Parties as a whole.

**“Maturity Date”** means February 10th, 2013.

**“May 2006 Offering”** means the public offering by the Fund of \$50,001,000 of subscription receipts and \$100,000,000 of 6.50% extendible convertible unsecured subordinated debentures that closed on or about May 25, 2006.

**“Mountain Water”** means Mountain Water Ice Company and its successors and permitted assigns.

**“Multiemployer Plan”** means any Plan that is or has been a “multiemployer plan” (as such term is defined in section 3(37) or 4001(a)(3) of ERISA).

**“Net Debt Proceeds”** means with respect to the sale or issuance by any Arctic Party to any Person of any Debt or options to purchase any such Debt, or the exercise of any such options (excluding any dividend reinvestment plans), the excess of the gross cash proceeds

received by such Arctic Party from such sale, exercise or issuance, over all reasonable and customary underwriting commissions and legal, investment banking, brokerage and accounting and other professional fees, sales commissions and disbursements actually incurred by such Arctic Party in connection with such sale, issuance or exercise.

**“Net Equity Proceeds”** means with respect to the sale or issuance by the Fund to any Person of any trust units or other type of equity security, or warrants or options to purchase the foregoing, or the exercise of any such warrants or options, the excess of the gross cash proceeds received by the Fund from such sale, exercise or issuance, over all reasonable and customary underwriting commissions and legal, investment banking, brokerage and accounting and other professional fees, sales commissions and disbursements actually incurred by the Fund in connection with such sale, issuance or exercise.

**“Non-BA Lender”** means: (i) a Canadian Lender which is not permitted by applicable Law or customary market practices to create a Bankers’ Acceptance for the purposes of subsequent sale, or (ii) a Canadian Lender that elects to be a Non-BA Lender by providing notice of same to the Canadian Agent.

**“Note Purchase Agreement”** means that certain note purchase agreement dated as of December 9, 2004 by and among the Canadian Borrower and the U.S. Borrower, as Co-Issuers, the Purchasers specified therein and John Hancock Life Insurance Company, as Administrative Agent (as they same may have been amended and restated, amended, modified, supplemented, restated or replaced from time to time), which is to be terminated on even date herewith.

**“Notice”** means any notice, citation, directive, request for information, writ, summons, statement of claim or other communication from any Person.

**“Obligations”** has the meaning specified in Section 9.1.

**“Operating Cash Flows”** means, for any period in respect of any Person, funds from operations of such Person, excluding extraordinary items such as proceeds from Debt issuances, equity proceeds of the type described in the definition of Net Equity Proceeds or funds from asset sales.

**“Original Currency”** has the meaning specified in Section 11.11.

**“Original Loan Agreement”** has the meaning specified in the recitals hereto.

**“Other Currency”** has the meaning specified in Section 11.11.

**“Other Litigation-Related Payments”** means payments made from time to time incurred by or assessed against any of the Arctic Parties or their Affiliates on account of legal and other professional services rendered in connection with criminal and civil litigation proceedings arising out of or relating to alleged anti-competitive practices of such Persons and all settlement payments (other than the DOJ Payments) made by any of such Persons with respect thereto.

**“Outstandings”** means, with respect to any Lender at any time, an amount calculated in U.S. Dollars (using the Equivalent US\$ Amount for amounts outstanding denominated in Canadian Dollars) at such time equal to the sum of: (i) the aggregate principal amount of all outstanding Advances, Canadian Swing Line Loans and U.S. Swing Line Loans by such Lender; (ii) the aggregate Face Amount of all outstanding Bankers’ Acceptances accepted and all BA Equivalent Notes purchased by such Lender; and (iii) the aggregate Face Amount of all Letters issued by such Lender.

**“Overdraft Loans”** means an advance of funds made by the Canadian Swing Line Lender to the Canadian Borrower, or by the U.S. Swing Line Lender to the U.S. Borrower, as applicable, as described in sub-paragraph (i) or (ii) immediately below:

- (i) *Type 1 – Canadian Dollars.* The Canadian Borrower will have access to Canadian Dollar advances in any amount without notice to the Canadian Swing Line Lender via overdraft from a designated current account. Subject to the immediately preceding sentence, each such overdraft will be deemed to be a Floating Rate Advance made hereunder;
- (ii) *Type 2 -- U.S. Dollars.* The Canadian Borrower and the U.S. Borrower will have access to U.S. Dollar advances in any amount without notice to the Canadian Swing Line Lender or the U.S. Swing Line Lender, as applicable, via overdraft from a designated current account. Subject to the immediately preceding sentence, each such overdraft will be deemed to be a U.S. Base Rate Advance made hereunder.

**“Participant”** has the meaning specified in Section 12.8(2).

**“PBGC”** means, the Pension Benefit Guaranty Corporation referenced and defined in ERISA or any successor thereto.

**“Permitted Acquisitions”** means: (A) an acquisition by a Borrower or any direct or indirect Subsidiary of a Borrower of a business or operating assets related to the Business located in Canada or the United States, whether by way of share purchase or asset purchase, where: (i) in the case of an acquisition of a public company, the acquisition is on a consensual and not hostile basis; (ii) following such acquisition the Borrowers and/or the Arctic Parties will be in compliance with the terms of this Agreement; (iii) the Majority Lenders have provided prior written consent to same, such consent not to be unreasonably withheld subject to the Borrowers’ delivery to the Agent of the finalized purchase and sale agreement in respect of such acquisition, together with all such other documents and due diligence materials as the Agent, the Lenders or their counsel may reasonably request; (iv) the Borrowers have provided pro forma financial statements to the Agent demonstrating that after giving effect to the acquisition, the Borrowers will be able to comply with all applicable financial covenants; (v) in the case of an asset purchase, on or prior to closing of the acquisition, the acquiring Arctic Party has provided to the Agent on behalf of the Lenders, or to the Trustee, as the case may be, Security Documents creating a first charge security and first perfected security interest on all Property acquired in connection with the acquisition, together with such opinions and other documents as the Agent may require, all in form and substance acceptable to the Agent and its counsel; (vi) in the case of

a share purchase, the acquired corporation qualifies as a Restricted Subsidiary; (vii) after giving effect to the acquisition, all representations and warranties contained in this Agreement or in any Ancillary Agreements shall be true and correct as of the date of such acquisition with the same force and effect as if such representations and warranties had been made on and as of such date and the Arctic Parties and their Subsidiaries shall be in compliance with all covenants contained in the Loan Documents and no Default or Event of Default shall have occurred and be continuing; provided that, to the extent the disclosure in the representations and warranties is no longer true and correct, the Borrowers shall be entitled to update such disclosure provided if such disclosure is materially adverse it must be approved by the Majority Lenders; and (viii) on or prior to closing the acquisition, the Borrowers have provided an officers' certificate as to compliance with the foregoing; and (B) an acquisition made in compliance with Section 8.2(8)(iv) hereof.

**"Permitted Construction Projects"** means all Construction Projects contemplated by the annual budget referred to in Section 8.1(1)(d) of this Agreement.

**"Permitted Debt"** means the following Debt: (i) Vendor debt of approximately U.S.\$4,000,000, (ii) executive retirement benefit Debt, to a maximum amount of U.S.\$1,000,000 (iii) the Subordinated Facility Debt (iv) the Convertible Debentures and (v) such other Debt of the Arctic Parties that is or has been approved and consented to from time to time in advance in writing by the Agent and the Lenders, in their sole and absolute discretion all as set out on Schedule U hereto.

**"Permitted Financial Investments"** means: (i) negotiable instruments or securities in bearer or registered form which are not held for more than thirty (30) days and which evidence (A) obligations of or guaranteed by the Government of Canada so long as they have the Permitted Rating, (B) obligations of or guaranteed by a province or municipality of Canada so long as they have the Permitted Rating, (C) deposits or bankers' acceptances issued or accepted by any Schedule E Canadian chartered bank so long as they have the Permitted Rating, (D) commercial paper of Canadian corporations or Canadian issuers so long as it has the Permitted Rating, and (E) other similar negotiable instruments or securities which are issued or guaranteed by Persons which have the Permitted Rating; or (ii) demand deposits with the Agent; or (iii) such other investments approved in advance by the Agent, upon direction from the Majority Lenders, in their sole discretion.

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

- (a) 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 Agent's opinion, upon direction from the Majority Lenders: (i) adequate security has been provided to the Lenders to ensure the payment of such Taxes, assessments and charges; (ii) adequate reserves with respect thereto are maintained on the books of such Person, in accordance with GAAP and, in each case, such 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;

- (b) 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 Lenders: (i) adequate security has been provided to the Agent to ensure the payment of such judgment or Claim; (ii) adequate reserves with respect thereto are maintained on the books of such Person, in accordance with GAAP; and, (iii) in each case, such 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;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) the reservations, limitations, provisos and conditions, if any, expressed in any original grants of real property from the Crown;
- (i) carriers', warehousemen's, mechanics', material-men's, repairmen's or other similar Liens arising in the ordinary course of business which are not registered against title to the 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 Agent's opinion, upon direction from the Majority Lenders (i) adequate security has been provided to the 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;

- (j) any Lien, payment of which has been provided for by the depositing with the Agent of an amount in cash, or the obtaining of a surety bond satisfactory to the Agent, upon direction from the Majority Lenders, in their absolute discretion, sufficient in either case to pay or discharge such Lien and which deposit or bond the Agent is authorized to use or draw upon for that purpose;
- (k) zoning and building by-laws and ordinances, municipal by-laws, provincial laws, and regulations, which do not adversely affect in any material respect the use of real property concerned in the operation of the business conducted on such real property;
- (l) covenants restricting or prohibiting access to or from lands abutting on controlled access highways, which do not adversely impair in any material respect the use of the real property concerned in the operation of the business conducted on such real property;
- (m) Liens securing permitted Purchase Money Debt of the Arctic Parties up to a maximum principal amount of U.S. \$1,500,000 in the aggregate; 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 Collateral); and (ii) recourse in respect of such Liens shall be limited to such specific Property;
- (n) Liens in favour of the Agent, the Lenders or the Trustee created by the Security Documents; and
- (o) any Liens other than the Liens described in paragraphs (a) to (n) above existing on the date hereof and disclosed in Schedule G, but not any extension or renewal thereof (except for those liens described in paragraph 2 of Schedule G) 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.

**"Permitted Rating"** means, with respect to any Permitted Financial Investment, a rating for short-term indebtedness of A (High) or better from Dominion Bond Rating Service Limited or a rating for long-term indebtedness of A (High) or better from Dominion Bond Rating Service Limited or equivalent rating from Standard & Poor's Rating Services, a division of McGraw-Hill Companies, Inc., or Moody's Investors Service, Inc.

**"Person"** means an individual, partnership (including limited partnership), corporation, limited liability company, association, trust, unincorporated association, syndicate, joint venture or other entity or Governmental Entity and pronouns have a similarly extended meaning.



**"Petroleum Substances"** means crude oil, crude bitumen, synthetic crude oil, petroleum, natural gas, natural gas liquids, related hydrocarbons and any and all other substances, whether liquid, solid or gaseous, whether hydrocarbons or not, produced or producible in association with any of the foregoing, including hydrogen sulphide and sulphur.

**"Plan"** means an "employee benefit plan" (as defined in Section 3(3) of ERISA and determined without regard to whether such plan is covered by ERISA) that is or, within the period during which the statute of limitations is open, has been established or maintained, or to which contributions are or, within the period during which the statute of limitations is open, have been made or required to be made, by either of the Borrowers or any ERISA Affiliate or with respect to which either of the Borrowers or any ERISA Affiliate may have any liability or obligation of any kind.

**"Prime Rate"** means, for any particular day, the variable rate of interest per annum, calculated on the basis of a year of three hundred and sixty-five (365) days, equal to the rate of interest per annum established and reported by the Canadian Agent to the Bank of Canada for such day as the variable rate of interest per annum for the determination of interest rates that the Canadian Agent charges to its customers of varying degrees of creditworthiness for Canadian Dollar loans made by it in Canada and which it refers to as its "Prime Rate".

**"Pro Rata Share"** means at any time, with respect to a Lender and a Credit Facility, the ratio of the Individual Commitment of such Lender with respect to such Credit Facility at such time to the aggregate of the Individual Commitments of all the Lenders with respect to such Credit Facility at such time, and shall be calculated in accordance with the Individual Commitments provided for on Schedule A hereto.

**"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.

**"Purchase Money Debt"** means, with respect to any Person, all obligations of such Person incurred to finance the acquisition of Property, which shall not include any improvement or addition to any existing Property, forming part of the Collateral.

**"R&K"** means R&K Trucking, Inc. and its successors and permitted assigns.

**"Rate Hedging Limit"** has the meaning set out in Section 9.1(2).

**"Real Estate"** means the real estate of the Arctic Parties held in fee simple or an interest analogous to a fee simple interest as absolute owner.

**"Receipt Date"** has the meaning specified in Section 2.6(7).

**"Receiver"** means a receiver, receiver and manager or other person having similar powers or authority appointed by the Agent or by a court at the instance of the Agent in respect of the Collateral or any part thereof.

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

**"Remedial Action"** means any action, whether voluntary or compelled, that is reasonably necessary to: (i) clean up, remove, treat or in any other way deal with Hazardous Substances in the Environment; (ii) prevent any Release of Hazardous Substances where such Release would violate any Environmental Laws or would endanger or threaten to endanger public health or welfare or the environment; or (iii) perform remedial studies, investigations, restoration and post-remedial studies, investigations and monitoring on, about or in connection with the Business or any of the Real Estate, Leasehold Real Estate or other Property (including the Collateral).

**"Rental Expense"** means, for any period, with respect to any Person, the aggregate amount of rental payments paid or payable by such Person during such period in respect of the rental of real or personal property. For greater certainty, **"Rental Expense"** is intended to include all such payments that are properly characterized as expenses on an income statement prepared according to GAAP and excludes, *inter alia*, Capitalized Lease Liabilities. Despite anything contained herein, for the purposes of the calculations in Section 8.3 and in order to determine compliance thereunder, the Arctic Parties may calculate the long-term lease portion of **"Rental Expense"** on a cash basis. For the purposes of reporting and deliveries under Section 8.1(2), the Arctic Parties shall calculate and report on the long-term lease portion of **"Rental Expense"** on both a cash basis and a straight-line basis calculated over the life of such long-term leases.

**"Restricted Subsidiary"** means, with respect to any of the Fund, the Borrowers and the Guarantors, any direct or indirect Subsidiary formed or acquired after the date hereof in accordance with the following: (i) a Restricted Subsidiary shall be a corporation formed under the laws of Canada or a province thereof or a state of the United States of America and shall be wholly owned by the Fund, a Borrower, a Guarantor, any direct or indirect Subsidiary or one of their Restricted Subsidiaries; (ii) on or prior to the acquisition or formation of the Restricted Subsidiary, the Restricted Subsidiary shall provide to the Agent, or the Trustee, if applicable, a Guarantee and Security Documents creating first charge security on all Property of the Restricted Subsidiary, together with such opinions and other documents as the Agent and its counsel may require, all in form and substance acceptable to the Agent and its counsel; and (iii) after giving effect to the formation or acquisition of the Restricted Subsidiary, all representations and warranties contained in this Agreement or in any Ancillary Agreements shall be true and correct as of the date of such formation or acquisition with the same force and effect as if such representations and warranties had been made on and as of such date and the Arctic Parties shall be in compliance with all covenants contained in the Loan Documents and no Default or Event of Default shall have occurred and be continuing; and (iv) on or prior to the acquisition or formation of the Restricted Subsidiary, the Fund and the Borrowers shall provide an officers' certificate to the Agent as to compliance with the foregoing.

**"Sale-Leaseback Transaction"** means, with respect to any Person, any direct or indirect arrangement pursuant to which such Person or a Subsidiary of such Person transfers or

causes the transfer of Property to another Person and leases it back from such Person pursuant to a capitalized lease classified and accounted for as a capital lease under GAAP.

**"Secured Hedging Transactions"** means Hedging Transactions between a Borrower and its Subsidiaries and any one or more of the Canadian Lenders and/or the U.S. Lenders (including any Person who was, at the time of entering into a Hedging Transaction, a Canadian Lender or a U.S. Lender) included in Obligations.

**"Security Documents"** means those agreements and other documents in favour of the Trustee or the Master Collateral Agent for the benefit of the Trustee, the Master Collateral Agent, the Benefited Creditors and/or the Lenders, as the case may be, described in Schedule O, as such documents may be amended and restated, amended, modified, supplemented, restated or replaced from time to time, and any other agreement or instrument which may from time to time be held by the Trustee or the Master Collateral Agent for the benefit of the Trustee, the Master Collateral Agent, the Benefited Creditors and/or the Lenders, as the case may be, as security for all or any portion of the Obligations.

**"Senior Leverage Ratio"** means the ratio of Consolidated Senior Debt of the Fund for the most recent Financial Quarter to Consolidated EBITDA of the Fund for the four most recent Financial Quarters, calculated based on the consolidated financial statements of the Fund as set out in Section 8.3 hereof.

**"Senior Leverage Ratio Maximum"** means 1.50:1.00.

**"Subordinated Debt"** means any Debt that is subordinated and postponed, to the satisfaction of the Canadian Agent and the Lenders, to the Obligations including, without limitation, the Convertible Debentures and the Subordinated Facility Debt.

**"Subordinated Facility Agent"** means CPPIB Credit Investments Inc. and its successors and permitted assigns.

**"Subordinated Facility Cash Sweep"** means the annual mandatory prepayments required to be made by the Borrowers pursuant to the Subordinated Facility Loan Agreement of 75% of "Excess Cash Flow" (as defined in the Subordinated Facility Loan Agreement).

**"Subordinated Facility Debt"** means all indebtedness, obligations and liabilities owing by the Borrowers and the Guarantors under and pursuant to the Subordinated Facility Loan Agreement.

**"Subordinated Facility Documents"** means the Subordinated Facility Loan Agreement and all guarantees, promissory notes, mortgages, debentures, hypothecs, pledge agreements, assignments, subordination agreements, deposit account control agreements, and all other security agreements and ancillary documents entered into in connection therewith;

**"Subordinated Facility Lenders"** means the lenders from time to time party to the Subordinated Facility Loan Agreement;

**"Subordinated Facility Loan Agreement"** means that certain subordinated facility loan agreement dated of even date herewith by and among the Subordinated Facility Agent, as administrative agent, the Canadian Borrower and the U.S. Borrower, as borrowers, and the lenders from time to time party thereto, as the same may be amended and restated, amended, modified, supplemented, restated or replaced from time to time, as such amendment and restatements, amendments, modifications, supplements, restatements and replacements shall have been approved from time to time in writing by the Majority Lenders acting in their sole discretion.

**"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.

**"Substance"** means any substance, waste, liquid, gaseous or solid matter, fuel, micro-organism, sound, vibration, ray, heat, odour, radiation, energy vector, plasma, and organic or inorganic matter.

**"Sustaining Capital Expenditures"** shall mean, for any Financial Year, the aggregate capital expenditures of the Borrowers and their Subsidiaries required to maintain their capital assets in a commercially prudent manner in such Financial Year; provided that "Sustaining Capital Expenditures", for any Financial Year, shall be a maximum of 5% of gross sales of the Borrowers and their Subsidiaries for such Financial Year.

**"Swing Line Lenders"** means the Canadian Swing Line Lender and the U.S. Swing Line Lender, and their respective successors and permitted assigns and **"Swing Line Lender"** means any one of the Canadian Swing Line Lender or the U.S. Swing Line Lender, as the context may require.

**"Swing Line Loans"** means the Canadian Swing Line Loans and the U.S. Swing Line Loans.

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

**"Taxes"** means all taxes imposed by any Governmental Entity, including income, profits, real property, personal property, goods and services, sales, transfer, purchase, stampage, registration, capital, excise, import duties, payroll, unemployment, disability, employee's income withholding, social security or withholding.

**"Total Outstandings"** means, at any time:

- (a) with respect to the Canadian Facility, the aggregate amount in U.S. Dollars of all Outstandings thereunder at such time, calculated by reference to the Equivalent U.S. \$ Amount, in the case of Outstandings in Canadian Dollars;
- (b) with respect to the Canadian Swing Line Facility, means the aggregate amount in U.S. Dollars of all Canadian Swing Line Loans;
- (c) with respect to the U.S. Facility, the aggregate amount in U.S. Dollars of all Outstandings thereunder at such time;
- (d) with respect to the U.S. Swing Line Facility, means the aggregate amount in U.S. Dollars of all U.S. Swing Line Loans; and
- (e) with respect to the Credit Facilities, the aggregate of the Total Outstandings under the Credit Facilities, with the Total Outstandings being calculated by reference to the Equivalent U.S. \$ Amount, in the case of any Outstandings in Canadian Dollars.

**"Trust Deed"** means the trust deed dated August 17, 1999 between The Arctic Group Inc. (a predecessor to the Canadian Borrower) and the Trustee.

**"Trustee"** means Computershare Trust Company of Canada in its capacity as Trustee under the Trust Deed.

**"Unamortized Deferred Financing"** means the unamortized portion of costs associated with financing activities that have been deferred and are included as reduction of debt in accordance with GAAP.

**"Unfunded Capital Expenditures"** means, for any period with respect to any Person, Capital Expenditures financed through Operating Cash Flows of such Person less the aggregate amount of undrawn availability under the Canadian Facility and the U.S. Facility; provided, however, that, on the date of any calculation of "Unfunded Capital Expenditures", the foregoing deduction of undrawn availability may be made on such date only to the extent that the Arctic Parties would be in compliance with Article VIII hereof if the amount of such deduction had actually been advanced under the Credit Facilities.

**"Unit Option Plan"** means the Fund Unit option plan established by the Fund.

**"U.S. Agent"** means Toronto Dominion (Texas) LLC, in its capacity as agent for the U.S. Lenders and its successors and permitted assigns.

**"U.S. Agent's Account"** means such account or accounts maintained by the U.S. Agent at Bank of America N.A., ABA 026 009 593, favour of Toronto-Dominion (Texas) LLC, Account No. 6550-6-5300, in respect of the U.S. Borrower, as the U.S. Agent from time to time notifies the U.S. Borrower.

**"U.S. Base Rate"** means, for any particular day, the sum of: (i) the greater of (A) the variable rate of interest per annum, established and announced by the Canadian Agent in Toronto for such day as the reference rate of interest per annum for the determination of interest rates that the Canadian Agent charges to its customers of varying degrees of creditworthiness for U.S. Dollar loans made by it in Canada; and (B) the variable rate of interest per annum, equal to the weighted average rates on overnight federal funds transactions with members of the Federal Reserve System arranged by Federal Funds Brokers as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York plus 1.00% per annum; and (ii) the Applicable Margin for U.S. Base Rate Advances.

**"U.S. Base Rate Advance"** means an Advance denominated in U.S. Dollars bearing interest based on the U.S. Base Rate.

**"U.S. Borrower"** means Arctic Glacier International Inc.

**"U.S. Borrowing Notice"** has the meaning specified in Section 3.2(2) and is in the form of Schedule B attached hereto.

**"U.S. Borrower's U.S. Dollar Account"** means the U.S. Dollar account maintained by the U.S. Borrower at the branch bank of the U.S. Agent at which such account and the U.S. Agent's Account are maintained by the U.S. Agent from time to time, the particulars of which shall have been notified by the U.S. Borrower to the U.S. Agent.

**"U.S. Commitment Fee"** has the meaning specified in Section 2.9(2).

**"U.S. Dollars"** and **"U.S. \$"** means lawful money of the United States of America.

**"U.S. Facility"** means the revolving/reducing term facility in the aggregate amount set out in Schedule A under the heading "U.S. Facility" to be made available to the U.S. Borrower hereunder.

**"U.S. Facility Commitment"** means, the sum of the Individual Commitments of the U.S. Lenders in respect of the U.S. Facility, as set out in Schedule A hereto, as adjusted in accordance with the terms hereof from time to time.

**"U.S. Facility Pro Rata"** means, with respect to a Lender, the *Pro Rata* Share of such Lender under the U.S. Facility.

**"U.S. Lenders"** means Toronto Dominion (New York) LLC, The Bank of Nova Scotia and Roynat Business Capital Inc. and any one or more Assignees, their respective successors and permitted assigns under the U.S. Facility, as may become a party hereto in their capacities as Lenders under the U.S. Facility and **"U.S. Lender"** means any one of the U.S. Lenders.

**"U.S. Prime Rate"** means, at any time, the sum of (i) the greater of: (A) the rate of interest then most recently established by The Toronto-Dominion Bank, New York Branch as its base rate for U.S. dollars loaned in the United States and (B) the variable rate of interest per

annum, equal to the weighted average rates on overnight federal funds transactions with members of the Federal Reserve System arranged by Federal Funds Brokers as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York plus 0.50% per annum; and (ii) the Applicable Margin for U.S. Prime Rate Advances. The U.S. Prime Rate is not necessarily intended to be the lowest rate of interest determined by the U.S. Agent in connection with extensions of credit.

**"U.S. Prime Rate Advance"** means an Advance denominated in U.S. Dollars bearing interest based on the U.S. Prime Rate.

**"U.S. Swing Line Commitment Fee"** has the meaning specified in Section 2.9(4).

**"U.S. Swing Line Facility"** means the revolving facility in the amount set out in Schedule A hereto to be made available to the U.S. Borrower hereunder in accordance with Section 3.7(2).

**"U.S. Swing Line Facility Commitment"** means the Individual Commitment of the U.S. Swing Line Lender in respect of the U.S. Swing Line Facility, as set out on Schedule A hereto.

**"U.S. Swing Line Lender"** means The Toronto-Dominion Bank, New York Branch, in its capacity as the U.S. Swing Line Lender, its successors and permitted assigns.

**"U.S. Swing Line Lender's Account"** means such account or accounts maintained by the U.S. Swing Line Lender at the branch bank of the U.S. Swing Line Lender, the particulars of which shall have been notified to the U.S. Borrower by the U.S. Swing Line Lender.

**"U.S. Swing Line Loan"** means an advance made by the U.S. Swing Line Lender pursuant to Section 3.7(2).

**"Welfare Plan"** means a "welfare plan", as such term is defined in Section 3(1) of ERISA and determined without regard to whether such plan is covered by ERISA for which the Borrower or any ERISA Affiliate has any obligation or liability.

**"Winkler Lucas Ice"** means Winkler Lucas Ice and Fuel Company and its successors and permitted assigns.

**"Wonderland Ice"** means Wonderland Ice, Inc. and its successors and permitted assigns.

## **1.2 Interpretation.**

This Agreement shall be interpreted in accordance with the following:

- (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders;

- (b) headings are inserted for convenience only and shall not affect the interpretation of this Agreement, any Ancillary Agreements or any provisions hereof or thereof;
- (c) references to dollars, unless otherwise specifically indicated, shall be references to Canadian Dollars;
- (d) the word "including" shall mean "including without limitation" and "includes" shall mean "includes without limitation";
- (e) the expressions "the aggregate", "the total", "the sum" and expressions of similar meaning shall mean "the aggregate (or total or sum) without duplication";
- (f) in the computation of periods of time, unless otherwise expressly provided, the word "from" means "from and including" and the words "to" and "until" mean "to but excluding";
- (g) the expression "at arm's length" shall have the meaning ascribed thereto for the purpose of the *Income Tax Act* (Canada); and
- (h) accounting terms not specifically defined shall be construed in accordance with GAAP. Except as otherwise mandated by changes in GAAP from time to time, the financial statements required to be delivered pursuant to this Agreement shall be prepared, and all calculations made for the purposes of this Agreement shall be made, unless otherwise provided for herein, by the application of GAAP applied on a basis consistent with the most recent audited financial statements of the Canadian Borrower, previously delivered to the Canadian Agent.

### **1.3 Ancillary Agreements.**

The provisions of Section 1.2 shall apply to the interpretation of the Ancillary Agreements unless specifically otherwise indicated.

### **1.4 Severability.**

If any provision of this Agreement or any Ancillary Agreement is, or becomes, illegal, invalid or unenforceable, such provision shall be severed from this Agreement or such Ancillary Agreement and be ineffective to the extent of such illegality, invalidity or unenforceability. The remaining provisions hereof or thereof shall be unaffected by such provision and shall continue to be valid and enforceable.

### **1.5 Entire Agreement.**

This Agreement supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties relating to the subject matter hereof and entered into prior to the date of this Agreement and amends, restates, consolidates and supplements certain provisions of the Original Loan Agreement. Any provision hereof which differs from or is inconsistent with a provision of the Original Loan Agreement constitutes an amendment to the Original Loan Agreement with each such amendment being effective as and



from the date hereof. This Agreement is and shall for all purposes be deemed to be an amendment and restatement of the provisions of the Original Loan Agreement and does not constitute a discharge or novation of any debt, obligation, covenant or agreement contained in the Original Loan Agreement or any of the other Loan Documents.

**1.6            Waiver.**

No failure on the part of the Canadian Agent, the U.S. Agent or any of the Lenders to exercise, and no delay in exercising, any right under this Agreement or any Ancillary Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any right under this Agreement or any Ancillary Agreement preclude any other or further exercise thereof or the exercise of any other right; nor shall any waiver of one provision be deemed to constitute a waiver of any other provision (whether or not similar). No notice to or demand on any Borrower in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver of any of the provisions of this Agreement or any Ancillary Agreement shall be effective unless it is in writing duly executed by the waiving party.

**1.7            Governing Law.**

- (1) This Agreement and, unless otherwise provided therein, each Ancillary Agreement, shall be governed by, and interpreted in accordance with, the Laws of the Province of Manitoba and the Laws of Canada applicable therein, without giving effect to any conflicts of law rules thereof, except to the extent that (i) the creation, validity or perfection of any lien or security interest, or remedies related thereto, in any of the Collateral are required to be governed by the laws of another jurisdiction, or (ii) any of the Ancillary Agreements contain a choice of law provision expressly designating that the laws of another jurisdiction shall be applicable.
- (2) The parties hereby irrevocably attorn and submit to the non-exclusive jurisdiction of the courts of Manitoba with respect to any matter arising under or related to this Agreement, and unless otherwise provided therein, any Ancillary Agreement.

**1.8            Application of GAAP.**

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made, for the purposes of this Agreement or any other Loan Document, including the contents of any certificate to be delivered hereunder, such determination, consolidation or computation shall, unless the parties otherwise agree or the context otherwise require, be made in accordance with GAAP applied on a consistent basis. Notwithstanding the foregoing, it is acknowledged and agreed that should GAAP change so as to permit consolidation of economic interests held in other Persons, the parties will negotiate such changes to the financial covenants and calculations set forth herein and all definitions relating thereto as may be required, each party acting reasonably, in order that such financial covenants and calculations as interpreted in accordance with then-current GAAP be applied on a consistent basis. For greater certainty, this Section 1.8 shall not prevent the adoption by the Arctic Parties of International Financial

Reporting Standards ("IFRS"), and upon any adoption by the Arctic Parties of IFRS or in the event of a change in GAAP, the Borrowers and the Agent shall negotiate in good faith to revise (as appropriate) the financial ratios and financial covenants contained herein to give effect to the intention of the parties as provided for in this Agreement as at the Closing Date.

**1.9            Conformance.**

To the extent that there are at any time representations, warranties, covenants or events of default in the Subordinated Facility Documents that would be of benefit to the Lenders and/or the Agent and are not contained herein or are more restrictive as against the Arctic Parties than in this Agreement, such representations, covenants, warranties and events of default shall be incorporated into this Agreement, *mutatis mutandis*.

**1.10          Incorporation of Schedules.**

The following schedules attached shall, for all purposes hereof, be incorporated in and form an integral part of this Agreement:

Schedule A	–	Commitments
Schedule B	–	Notice of Request for Advance
Schedule C	–	Issue Notice
Schedule D	–	Compliance Certificate
Schedule E	–	Subsidiaries and Locations of Collateral
Schedule F	–	Litigation
Schedule G	–	Permitted Liens
Schedule H	–	Intellectual Property
Schedule I	–	Leasehold Real Estate
Schedule J	–	Real Estate
Schedule K	–	Environmental Matters
Schedule L	–	Material Agreements
Schedule M	–	Pension Plans
Schedule N	–	Addresses for Notice
Schedule O	–	Security Documents
Schedule P	–	Authorized and Issued Capital
Schedule Q	–	Deposit Accounts and Securities Accounts
Schedule R	–	Distribution Policy
Schedule S	–	Distribution Certificate
Schedule T	–	Assignment Agreement
Schedule U	–	Permitted Debt
Schedule V	–	Mortgages
Schedule X	–	Repayment Notice

**1.11          Conflicts.**

If a conflict or inconsistency exists between a provision of this Agreement and a provision of any of the other Loan Documents or any part thereof, then the provisions of this

Agreement shall prevail. Notwithstanding the foregoing, if there is any right or remedy of the Canadian Agent, the U.S. Agent or any of the Lenders set out in any of the other Loan Documents or any part thereof which is not set out or provided for in this Agreement, such additional right or remedy shall not constitute a conflict or inconsistency.

## **ARTICLE II CREDIT FACILITIES**

### **2.1        Credit Facilities.**

- (1) Each of the Canadian Lenders severally agrees, on the terms and conditions of this Agreement, to make available to the Canadian Borrower its *Pro Rata* Share of the Canadian Facility by making such Accommodations to the Canadian Borrower as may be requested by the Canadian Borrower thereunder from time to time in accordance with this Agreement.
- (2) The Canadian Swing Line Lender agrees, on the terms and conditions set out in Section 3.7(1) of this Agreement, to make Canadian Swing Line Loans available to the Canadian Borrower.
- (3) Each of the U.S. Lenders severally agrees, on the terms and conditions of this Agreement, to make available to the U.S. Borrower its *Pro Rata* Share of the U.S. Facility by making such Accommodations to the U.S. Borrower as may be requested by the U.S. Borrower thereunder from time to time in accordance with this Agreement.
- (4) The U.S. Swing Line Lender agrees, on the terms and conditions set out in Section 3.7(2) of this Agreement, to make U.S. Swing Line Loans available to the U.S. Borrower.

### **2.2        Commitments and Facility Limits.**

#### Canadian Facility.

- (1) The Canadian Borrower shall at all times cause the Total Outstandings under the Canadian Facility to be no greater than the Canadian Facility Commitment, and the Outstandings in respect of any Canadian Lender under the Canadian Facility to be no greater than the Individual Commitment of such Canadian Lender under the Canadian Facility.
- (2) All or any portion of the Canadian Facility which is not utilized by the Canadian Borrower on the Closing may be utilized from time to time thereafter on the terms and conditions of this Agreement. Except to the extent the Canadian Facility Commitment is permanently reduced in accordance with this Agreement, the Canadian Facility shall revolve until the Maturity Date and no payment under the Canadian Facility shall, of itself, reduce the Canadian Facility Commitment until the Maturity Date, at which time the Canadian Facility shall become due and

payable. All or any portion of the Canadian Facility Commitment may be cancelled by the Canadian Borrower at any time by written notice from the Canadian Borrower to the Canadian Agent in accordance with Section 2.8.

- (3) Upon any reduction of the Canadian Facility Commitment, the Individual Commitment of each Canadian Lender with respect to the Canadian Facility shall thereupon be reduced by an amount equal to such Canadian Lender's *Pro Rata* Share of the amount of such reduction of the Canadian Facility.

#### Canadian Swing Line

- (4) The Canadian Borrower shall at all times cause the Total Outstandings under the Canadian Swing Line Facility to be no greater than the Canadian Swing Line Facility Commitment.

#### U.S. Facility

- (5) The U.S. Borrower shall at all times cause the Total Outstandings under the U.S. Facility to be no greater than the U.S. Facility Commitment, and the Outstandings in respect of any U.S. Lender under the U.S. Facility to be no greater than the Individual Commitment of such U.S. Lender under the U.S. Facility.
- (6) All or any portion of the U.S. Facility which is not utilized by the U.S. Borrower on the Closing may be utilized from time to time thereafter on the terms and conditions of this Agreement. Except to the extent the U.S. Facility Commitment is permanently reduced in accordance with this Agreement, the U.S. Facility shall revolve until the Maturity Date, and no payment on the U.S. Facility shall, of itself, reduce the U.S. Facility Commitment until the Maturity Date, at which time the U.S. Facility shall become due and payable. All or any portion of the U.S. Facility Commitment may be cancelled by the U.S. Borrower at any time by written notice from the U.S. Borrower to the U.S. Agent in accordance with Section 2.8.
- (7) Upon any reduction of the U.S. Facility Commitment, the Individual Commitment of each U.S. Lender with respect to the U.S. Facility shall thereupon be reduced by an amount equal to such U.S. Lender's *Pro Rata* Share of such reduction of the U.S. Facility.

#### U.S. Swing Line

- (8) The U.S. Borrower shall at all times cause the Total Outstandings under the U.S. Swing Line Facility to be no greater than the U.S. Swing Line Facility Commitment.

### Pro Rata Treatment

- (9) In order to give effect to the revised Commitments provided for herein and the allocation of the Commitments among the Lenders as set out in Schedule "A" attached hereto:
- (a) the Agent shall be entitled, in accordance with its normal practices, to have Lenders make Advances other than on a *Pro Rata* Share basis, until such time as the Lenders are in a position to share in all outstanding Advances on a *Pro Rata* Share basis;
  - (b) no Lender shall participate in any Advances to the extent that such participation would result in such Lender exceeding any of its Commitments, and
  - (c) for so long as the Lenders' respective *Pro Rata* Shares of outstanding Advances do not match their respective *Pro Rata* Shares as a result of the foregoing provisions, the applicable provisions of this Agreement (including as amended hereby) relating to determination and payments of amounts owing to the Lenders on a *Pro Rata* Share basis shall be adjusted accordingly.
- (10) The Borrowers acknowledge that the provisions of Section 2.2(9) which contemplate Advances being made by the Lenders other than on a *Pro Rata* Share basis are intended to be temporary. Accordingly, the Borrowers agree that, notwithstanding anything otherwise provided for in this Agreement, until such time as the Lenders share in all outstanding Advances on a *Pro Rata* Share basis, the Borrowers shall select terms of borrowing (including, without limitation, applicable amounts, Interest Periods and maturities for Bankers' Acceptances) as shall permit the Lenders to share in all Advances on a *Pro Rata* Share basis as soon as reasonably practicable after the date hereof (and for such purpose the Borrowers agree to consult with and cooperate with the Agent).

### Effect of Hedging Transactions on Limits

- (11) In addition to the limits set out above, the Borrowers shall at all times cause the aggregate of the Total Outstandings under the U.S. Facility and the Canadian Facility to be no greater than the Adjusted U.S./Canadian Facility Commitment.

## **2.3 Available Accommodations.**

- (1) Each of the Canadian Lenders shall, on the terms and conditions of this Agreement, make its *Pro Rata* Share of the following Accommodations available under the Canadian Facility as follows:
- (a) Floating Rate Advances, U.S. Base Rate Advances and LIBOR Advances on the occasion of any Borrowing; and
  - (b) Bankers' Acceptances denominated in Canadian Dollars or U.S. Dollars on the occasion of any Acceptance.

- (2) The Canadian Swing Line Lender shall, on the terms and conditions of this Agreement make Canadian Swing Line Loans and Letters denominated in U.S. Dollars available under the Canadian Swing Line Facility.
- (3) Each of the U.S. Lenders shall, on the terms and conditions of this Agreement, make its *Pro Rata* Share of U.S. Prime Rate Advances and LIBOR Advances on the occasion of any Borrowing available under the U.S. Facility.
- (4) The U.S. Swing Line Lender shall, on the terms and conditions of this Agreement make U.S. Swing Line Loans and Letters denominated in U.S. Dollars available under the U.S. Swing Line Facility.
- (5) All Advances, Swing Line Loans, Bankers' Acceptances and Letters requested hereunder shall be made available to the Borrowers in accordance with Article III, Article IV and Article V, as applicable.

#### **2.4 Use of Proceeds.**

The Borrowers shall use the proceeds of the Accommodations under the Canadian Facility, the Canadian Swing Line Facility, the U.S. Facility and the U.S. Swing Line Facility, as applicable, (i) for ordinary working capital and general corporate purposes, (ii) to finance Capital Expenditures permitted hereunder, (iii) subject to Section 8.2(8), to finance acquisitions up to a maximum of U.S.\$5,000,000 in the aggregate annually, provided that any individual acquisition in excess of U.S.\$3,000,000 shall require the consent of the Majority Lenders, and (iv) for Permitted Acquisitions and related transaction costs.

#### **2.5 Repayment of Credit Facilities.**

Unless demand is earlier made pursuant to Section 10.1 and subject to the mandatory prepayments and repayments provided for in Section 2.6, the Borrowers shall repay, and there shall become due and payable on the applicable Maturity Date, the Total Outstandings under each of the Credit Facilities and all accrued and unpaid interest thereon.

#### **2.6 Mandatory Prepayments.**

- (1) If, on any day, the Total Outstandings under the Canadian Facility exceeds the Canadian Facility Commitment, the Canadian Borrower shall on that day:
  - (A) prepay Borrowings; or
  - (B) make a payment to the Canadian Agent and irrevocably authorize and direct the Canadian Agent to apply such payment as a prepayment of the Canadian Borrower's reimbursement obligation in respect of any Acceptance or Issue, on the next contract maturity date; or
  - (C) make both a prepayment referred to in clause (A) and a payment referred to in clause (B),

in all cases so that the Total Outstandings under the Canadian Facility after the prepayment referred to in clause (A), and less the amount of any payments held by the Canadian Agent pursuant to clause (B), will not exceed the Canadian Facility Commitment.

- (2) If, on any date, the Total Outstandings of all Canadian Swing Line Loans and Letters made by the Canadian Swing Line Lender exceed the Canadian Swing Line Facility Commitment, the Canadian Borrower shall on that day repay Canadian Swing Line Loans so that the Total Outstandings of all Canadian Swing Line Loans and Letters made by the Canadian Swing Line Lender will not exceed the Canadian Swing Line Facility Commitment.
- (3) If, on any day, the Total Outstandings under the U.S. Facility exceeds the U.S. Facility Commitment, the U.S. Borrower shall on that day prepay Borrowings so that the Total Outstandings under the U.S. Facility, after such prepayment of Borrowings, and less the amount of any payments held by the U.S. Agent, will not exceed the U.S. Facility Commitment.
- (4) If, on any date, the Total Outstandings of all U.S. Swing Line Loans and Letters made by the U.S. Swing Line Lender exceed the U.S. Swing Line Facility Commitment, the U.S. Borrower shall on that day repay U.S. Swing Line Loans so that the Total Outstandings of all U.S. Swing Line Loans and Letters made by the U.S. Swing Line Lender will not exceed the U.S. Swing Line Facility Commitment.
- (5) In addition to all other mandatory repayment obligations provided for in this Agreement, if one or more of the Arctic Parties proposes to Dispose of Property outside of the ordinary course of business and after giving effect to such Disposition, Disposed Property will exceed U.S.\$1,500,000 during any single Financial Year (such amount in excess of U.S.\$1,500,000 during any single Financial Year (net of reasonable transaction costs), the "Excess Disposed Amount"), the Borrowers shall, on a proportionate basis, make a repayment to the Canadian Agent of the Total Outstandings under the Canadian Facility and the U.S. Facility in an amount equal to the Excess Disposed Amount; provided that, the foregoing notwithstanding, if the applicable Arctic Party reasonably expects the Excess Disposed Amount or a portion thereof, to be reinvested in productive assets of a kind then used or usable in the Business and, within one hundred eighty (180) days after receipt of such proceeds, enters into a binding commitment and completes such reinvestment, then such Arctic Party shall be entitled to use the Excess Disposed Amount (or the reinvested portion thereof) to reinvest in the Business, but if not so used, the applicable Arctic Party shall apply the Excess Disposed Amount to the prepayment otherwise required by this Section 2.6(5). Each such mandatory repayment shall be paid to the Canadian Agent immediately after such Disposition. Such repayment shall be applied by the Canadian Agent to the Total Outstandings under the Canadian Facility and the U.S. Facility in accordance with the Canadian Facility Pro Rata and the U.S.

Facility Pro Rata, as applicable, but any such repayment shall not constitute a permanent reduction of the Commitments.

- (6) In addition to all other mandatory repayment obligations provided for in this Agreement, if one or more of the Arctic Parties proposes to issue Debt (excluding the Subordinated Facility Loan Agreement and any other Permitted Debt) in excess of \$0 (net of reasonable transaction costs), and after giving effect to such issuance, Net Debt Proceeds will exceed \$0 (such amount in excess of \$0, the "Excess Issued Amount"), the Borrowers shall, on a proportionate basis, make a repayment to the Canadian Agent in an amount equal to the Excess Issued Amount; provided that such mandatory repayment shall not be required in connection with, and such Excess Issued Amount shall not include, the proceeds of any refinancing of the Convertible Debentures that is completed in accordance with Section 8.2(10) and further provided that no repayment from such proceeds is required to be made pursuant to the Subordinated Facility Documents. Each such mandatory repayment shall be paid to the Canadian Agent immediately after such issuance. Such repayment shall be applied by the Canadian Agent to the Total Outstandings under the Canadian Facility and the U.S. Facility in accordance with the Canadian Facility Pro Rata and the U.S. Facility Pro Rata, as applicable, but any such repayment shall not constitute a permanent reduction of the Commitments.
- (7) In addition to all other mandatory repayment obligations provided for in this Agreement, on any date of receipt (a "Receipt Date") by the Fund of Net Equity Proceeds subsequent to the date hereof, the Canadian Borrower and the U.S. Borrower shall, on a proportionate basis, make a repayment to the Canadian Agent in an amount equal to any Net Equity Proceeds; provided that such mandatory repayment shall not be required in connection with the Net Equity Proceeds arising from any refinancing of the Convertible Debentures that is completed in accordance with Section 8.2(10) and further provided that no repayment from such proceeds is required to be made pursuant to the Subordinated Facility Documents; provided further that the Borrowers shall not be required to pay the Net Equity Proceeds to the Lenders to the extent that such Net Equity Proceeds are used for a Permitted Acquisition or any other Investment approved by the Majority Lenders or to pay for the Settlement of a Claim approved by the Majority Lenders pursuant to Section 8.2(22) hereunder. Any mandatory repayment required to be made in conjunction with the repayment contemplated in this Section 2.6(7) shall be paid to the Canadian Agent immediately after receipt of such Net Equity Proceeds. Such repayment required in connection therewith shall be applied by the Canadian Agent to the Total Outstandings under the Canadian Facility and the U.S. Facility in accordance with the Canadian Facility Pro Rata and the U.S. Facility Pro Rata, as applicable, but any such repayment shall not constitute a permanent reduction of the Commitments. The Fund shall invest such Net Equity Proceeds in the Canadian Borrower and the Canadian Borrower shall invest a sufficient portion of such Net Equity Proceeds in the U.S. Borrower, all in a manner permitted by this



Agreement including by way of Intercompany Debt, for the purpose of funding the repayments required hereby.

- (8) In addition to all other mandatory repayment obligations provided for in this Agreement, if one or more of the Arctic Parties is entitled to receive any insurance proceeds (excluding insurance proceeds arising from insurance claims related to class action claims against one or more of the Arctic Parties):
- (a) in respect of Property in an amount less than \$1,000,000 for any individual incident, the Arctic Parties may retain such proceeds;
  - (b) in respect of Property in an amount greater than \$1,000,000 for any individual incident but up to \$3,000,000 in the aggregate in a Financial Year, the Arctic Parties may retain such proceeds *provided that* the applicable Arctic Party enters into a binding commitment to replace, repair or rebuild the asset or assets to which such insurance proceeds relate within 365 days. Following such 365-day period, if there has been no binding commitment to replace repair or rebuild such assets, the Borrowers shall, on a proportionate basis, make a payment to the Canadian Agent of the Total Outstandings under the Canadian Facility and the U.S. Facility in an amount equal to the Excess Insurance Amount (as defined below). Such repayment shall be applied by the Canadian Agent to the Total Outstandings under the Canadian Facility and the U.S. Facility in accordance with the Canadian Facility Pro Rata and the U.S. Facility Pro Rata, as applicable, but any such repayment shall not constitute a permanent reduction of the Commitments;
  - (c) in respect of Property in excess of \$3,000,000 in the aggregate in a Financial Year, the applicable Arctic Party shall pay such proceeds to the Canadian Agent and the Majority Lenders shall, in their sole discretion, determine whether the proceeds shall be applied to reduce the Obligations (as described in (b) above) or be returned to the applicable Arctic Party to replace, repair or rebuild assets within the time period prescribed by the Majority Lenders.

Each mandatory repayment described above (the "Excess Insurance Amount") shall be paid and such proceeds to be retained by the Arctic Parties described above shall be paid or retained, as the case may be, in accordance with Section 8.1(12)(b).

- (9) In addition to all other mandatory repayment obligations provided for in this Agreement, the U.S. Borrower shall, as a permanent reduction of the U.S. Facility Commitment, on a proportionate basis, make a repayment to the Canadian Agent in an annual aggregate amount equal to U.S.\$2,500,000.00 each year until the third Anniversary Date (or the fourth Anniversary Date, in the event of an Extension Amendment pursuant to Section 2.7 that extends to such date) of the date hereof (such reduced amount during any single year, the "Annual Mandatory Repayment Amount"). The mandatory repayment of the Annual Mandatory Repayment Amount required to be made in conjunction with the permanent

reduction contemplated in this Section 2.6(9) shall be paid to the Canadian Agent annually, on December 31<sup>st</sup> of each year. Such permanent reduction and any repayment required in connection therewith shall be applied by the Canadian Agent to the Total Outstandings under the U.S. Facility in accordance with the U.S. Facility Pro Rata.

- (10) Without limiting the foregoing, if and each time Total Outstandings under a Credit Facility exceed 105% of the Commitment as a result of foreign exchange fluctuations, the Borrowers shall notify the Canadian Agent or the U.S. Agent, as the case may be, immediately and the Canadian Borrower or the U.S. Borrower, as applicable, shall repay to the Lenders such outstanding Advances as may be required to ensure that such excess is eliminated within five (5) Business Days.

The application of the provisions of this Section 2.6 are subject to the terms of the Intercreditor Agreement.

## **2.7           Extension of Maturity Date.**

- (1) The Borrowers may request, by written request given to the Canadian Agent (the "Extension Request") no earlier than one hundred and fifty (150) days nor later than ninety (90) days prior to the initial Maturity Date, that this Agreement be amended to extend the initial Maturity Date to a date to be determined by the Lenders, on terms and conditions satisfactory to the Agent and each of the Lenders, in their sole and absolute discretion, including terms relating to mandatory repayments of Outstandings under the Credit Facilities and extension fees (the "Extension Amendment"). The Agent and the Lenders may accept or reject the request made by the Borrowers for an Extension Amendment, in their sole and absolute discretion. Each Lender shall notify the Canadian Agent as to whether or not it consents to the Extension Amendment within forty-five (45) days following receipt of the Extension Request. If any Lender does not provide such notice within such forty-five (45) day period, such Lender shall be deemed not to have consented to the Extension Amendment. As soon as practicable, following the expiry of such forty-five (45) day period, the Canadian Agent shall give written notice to the Borrowers and the Lenders advising as to whether or not all of the Lenders have consented to the Extension Amendment.
- (2) If all of the Lenders have consented to the Extension Amendment, the Maturity Date shall be extended in accordance with the Extension Request. If all of the Lenders have not consented to the Extension Request, then the Maturity Date shall not be extended and the Credit Facilities shall remain due and payable on the then current Maturity Date.

**Optional Reductions.****Canadian Facility**

- (1) The Canadian Borrower may, subject to the provisions of this Agreement, prepay the Total Outstandings under the Canadian Facility, at any time, or reduce the Commitment under the Canadian Facility, and, if applicable, prepay Total Outstandings pursuant to such reduction, at any time in each case in whole or in part, without penalty or premium but subject, where applicable, to unwinding or redeployment costs relating to the prepayment of LIBOR Advances to be charged for the account of the Canadian Borrower, upon: (i) at least three (3) Business Days' notice (but not more than five (5) Business Days' notice) to the Canadian Agent in the case of a prepayment; (ii) at least ten (10) days' notice to the Canadian Agent in the case of a reduction of the Commitment under the Canadian Facility (each such notice a "Canadian Facility Repayment Notice"). Each Canadian Facility Repayment Notice shall be in substantially the form of Schedule X hereto and shall specify (A) the proposed date of such prepayment or reduction, and (B) the aggregate principal amount of the prepayment or reduction, and, if such Canadian Facility Repayment Notice is given, the Canadian Borrower shall: (C) pay the Canadian Agent in accordance with such Canadian Facility Repayment Notice the amount of the prepayment or the amount, if any, by which the Total Outstandings under the Canadian Facility exceed the proposed reduced total of the Commitment under the Canadian Facility; and (D) pay to the Canadian Agent all interest on the amount of such prepayment or excess amount accrued to the date of such prepayment or reduction.
- (2) Each partial prepayment or reduction made by the Canadian Borrower under the Canadian Facility shall be in a minimum aggregate principal amount of \$500,000 and in an integral multiple of \$100,000, in the case of Floating Rate Advances or other Accommodations denominated in Canadian Dollars, and in a minimum aggregate principal amount of U.S. \$500,000 and in an integral multiple of U.S. \$100,000, in the case of U.S. Base Rate Advances or other Accommodations denominated in U.S. Dollars. No prepayment under the Canadian Facility, which has not been made in connection with a reduction of the Canadian Facility Commitment, shall reduce the Canadian Facility Commitment or the ability of the Canadian Borrower to reborrow such amounts under the Canadian Facility.
- (3) The Canadian Borrower may not pursuant to this Section prepay: (i) a LIBOR Advance, except on the last day of the Interest Period applicable thereto unless the Canadian Borrower shall have also paid any unwinding or redeployment costs in respect of such LIBOR Advance in accordance with Section 11.10 at the time of such prepayment; or (ii) the amount of any Acceptance, except on the contract maturity date for the relevant Bankers' Acceptance or BA Equivalent Note.

### U.S. Facility

- (4) The U.S. Borrower may, subject to the provisions of this Agreement, prepay the Outstandings under the U.S. Facility, at any time, or reduce the Commitment under the U.S. Facility, and, if applicable, prepay Outstandings pursuant to such reduction, in each case in whole or in part, without penalty or premium, but subject, where applicable, to unwinding or redeployment costs relating to the prepayment of LIBOR Advances to be charged for the account of the U.S. Borrower, upon: (i) at least three (3) Business Days' notice (but not more than five (5) Business Days' notice) to the U.S. Agent in the case of a prepayment; (ii) at least ten (10) days' notice to the U.S. Agent in the case of a reduction of the Commitment under the U.S. Facility (each such notice a "U.S. Repayment Notice"). Each U.S. Repayment Notice shall be in substantially the form of Schedule X hereto and shall specify (A) the proposed date of such prepayment or reduction, and (B) the aggregate principal amount of the prepayment or reduction, and, if such U.S. Repayment Notice is given, the U.S. Borrower shall: (A) pay the U.S. Agent in accordance with such U.S. Repayment Notice the amount of the prepayment or the amount, if any, by which the Total Outstandings under the U.S. Facility exceed the proposed reduced total of the Commitment under the U.S. Facility; and (B) pay to the U.S. Agent all interest on the amount of such prepayment or excess amount accrued to the date of such prepayment or reduction.
- (5) Each partial prepayment or reduction made by the U.S. Borrower under the U.S. Facility shall be in a minimum aggregate principal amount of U.S.\$500,000 and in an integral multiple of U.S.\$100,000, in the case of LIBOR Advances and, in minimum aggregate principal amount of U.S. \$500,000 and in an integral multiple of U.S. \$100,000, in the case of U.S. Prime Rate Advances. No prepayment under the U.S. Facility (except a mandatory prepayment made hereunder) which has not been made in connection with a reduction of the U.S. Facility Commitment, shall reduce the U.S. Facility Commitment or the ability of the U.S. Borrower to reborrow such amounts under the U.S. Facility.
- (6) The U.S. Borrower may not pursuant to this Section prepay: (i) a LIBOR Advance, except on the last day of the Interest Period applicable thereto unless the Borrower shall have also paid any unwinding or redeployment costs in respect of such LIBOR Advance in accordance with Section 11.10 at the time of such prepayment.

### **2.9 Commitment Fees.**

- (1) The Canadian Borrower shall pay to the Canadian Agent, for the benefit of the Canadian Lenders a commitment fee (the "Canadian Facility Commitment Fee") equal to the Applicable Margin for the Canadian Facility Commitment Fee, calculated on the basis of a year of three hundred and sixty-five (365) days, on the average daily difference between the Canadian Facility Commitment and the Total Outstandings under the Canadian Facility. The Canadian Facility

Commitment Fee shall be calculated daily in Canadian Dollars and payable in Canadian Dollars quarterly in arrears on the 3<sup>rd</sup> Business Day following each Financial Quarter end so long as such Commitment shall be undrawn.

- (2) The Canadian Borrower shall pay to the Canadian Swing Line Lender, for the benefit of the Canadian Swing Line Lender a commitment fee (the "Canadian Swing Line Commitment Fee") equal to the Applicable Margin for the Canadian Swing Line Commitment Fee, calculated on the basis of three hundred and sixty-five (365) days, on the average daily difference between the Canadian Swing Line Facility Commitment and the Total Outstandings under the Canadian Swing Line Facility. The Canadian Swing Line Commitment Fee shall be calculated daily in U.S. Dollars and payable in U.S. Dollars quarterly in arrears on the 3<sup>rd</sup> Business Day following each Financial Quarter end so long as such Commitment shall be undrawn.
- (3) The U.S. Borrower shall pay to the U.S. Agent for the benefit of the U.S. Lenders a commitment fee (the "U.S. Commitment Fee") equal to the Applicable Margin for the U.S. Commitment Fee, calculated on the basis of a year of three hundred and sixty five (365) days, on the average daily difference between the U.S. Facility Commitment and the Total Outstandings under the U.S. Facility. The U.S. Commitment Fee shall be calculated daily in U.S. Dollars and shall be payable in U.S. Dollars quarterly in arrears on the 3<sup>rd</sup> Business Day following each Financial Quarter end so long as such Commitment shall be undrawn.
- (4) The U.S. Borrower shall pay to the U.S. Swing Line Lender, for the benefit of the U.S. Swing Line Lender a commitment fee (the "U.S. Swing Line Commitment Fee") equal to the Applicable Margin for the U.S. Swing Line Commitment Fee, calculated on the basis of three hundred and sixty-five (365) days, on the average daily difference between the U.S. Swing Line Facility Commitment and the Total Outstandings under the U.S. Swing Line Facility. The U.S. Swing Line Commitment Fee shall be calculated daily in U.S. Dollars and payable in U.S. Dollars quarterly in arrears on the 3<sup>rd</sup> Business Day following each Financial Quarter end so long as such Commitment shall be undrawn.

## **2.10 Evidence of Debt and Determination of Interest Rates and Fees.**

- (1) The indebtedness of the Borrowers in respect of all Accommodations hereunder shall be evidenced by the account records maintained by the applicable Agent, the Canadian Swing Line Lender and the U.S. Swing Line Lender, as the case may be, which shall be *prima facie* evidence of such indebtedness for all purposes absent manifest error. The failure of the applicable Agent to correctly record any amount or date shall not, however, affect the obligation of a Borrower to pay amounts due hereunder to such Agent or any of the Lenders in accordance with this Agreement.
- (2) Wherever the determination of any interest rate or fee payable pursuant to this Agreement may by its terms be dependent upon a financial ratio, such ratio shall,

subject to the balance of this Section 2.10, be based upon the ratio as set forth in the Compliance Certificate delivered to the Canadian Agent for the most recently completed Financial Quarter for which a Compliance Certificate has been delivered. The application by either the Canadian Agent or the U.S. Agent of such ratio in the calculation of any such interest rate or fee shall not, however, affect the obligation of a Borrower to pay amounts of interest or fees due hereunder to the Lenders on the basis of the actual ratio determined in accordance with the terms of this Agreement in the event the ratio set forth in a Compliance Certificate is incorrect. Any resulting increase or reduction in pricing (the "Adjusted Pricing") on Accommodations will be effective on the first day of the Financial Quarter (the "Pricing Adjustment Date") immediately following the delivery of such Compliance Certificate. For greater certainty, the parties hereto agree that any Bankers' Acceptances or BA Equivalent Notes outstanding on a Pricing Adjustment Date shall be unaffected by any increase or decrease to pricing made on such Pricing Adjustment Date and that the Adjusted Pricing will only apply to Bankers' Acceptances accepted or BA Equivalent Notes purchased on or after the Pricing Adjustment Date.

- (3) If a Borrower fails to deliver a Compliance Certificate to the Canadian Agent when due then, from and after such due date, whenever the determination of any interest rate or fee payable by such Borrower pursuant to this Agreement is dependent on the calculation of a financial ratio which would otherwise be the subject of such Compliance Certificate, the financial ratio which will be determinative of such interest rate or fee will be deemed to be the financial ratio which results in the highest interest rate or fee payable under the definition of "Applicable Margin" in all cases until the Compliance Certificate is delivered to the Canadian Agent following which the financial ratio *prima facie* evidenced thereby shall thereafter be determinative of interest rates or fees payable by such Borrower pursuant to this Agreement.
- (4) For purposes of the *Interest Act* (Canada): (i) whenever any interest or fee under this Agreement is calculated using a rate based on a period of time other than a calendar year, such rate determined pursuant to such calculation, when expressed as an annual rate, is equivalent to (x) the applicable rate based on such period of time multiplied by (y) the actual number of days in the calendar year in which the period for which such interest or fee is calculated ends, and divided by (z) the number of days in such period of time; (ii) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement; (iii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.
- (5) The Borrowers and the other Arctic Parties hereby confirm that each of the Master Collateral Agency Fee Agreement and the Agency Fee Agreement is in full force and effect as of the date hereof and is valid, binding and enforceable as against the Arctic Parties that are parties thereto.

2.11

**Default Interest.**

If all or any portion of the principal or interest or any fees or other amounts or other Obligations is not paid when due and payable due hereunder or under any of the other Loan Documents, then the applicable Borrower shall pay interest at the Default Rate on such amount, calculated from the date such amount was due and payable.

**ARTICLE III  
LOAN ADVANCES AND SWING LINE LOANS**

3.1

**The Advances.**

- (1) Each of the Canadian Lenders severally agrees, on the terms and conditions of this Agreement, to make Advances to the Canadian Borrower under the Canadian Facility, and each of the U.S. Lenders severally agrees, on the terms and conditions of this Agreement, to make Advances to the U.S. Borrower under the U.S. Facility, from time to time, on any Business Day. Each Canadian Lender or U.S. Lender, as the case may be, shall make available to the applicable Agent its *Pro Rata* Share of the principal amount of each Advance under the Canadian Facility or the U.S. Facility, as the case may be, in the appropriate currency, prior to 11:00 a.m. (Toronto time) in the case of an Advance under the Canadian Facility or 11:00 a.m. (New York time) in the case of an Advance under the U.S. Facility on the date of the Advance. Unless the applicable Agent has been notified by a Lender at least 2 Business Days prior to the date of the Advance that such Lender will not make available to the Agent its *Pro Rata* Share of such Advance, such Agent may assume that such Lender will make such portion of the Advance available to such Agent on the date of the Advance in accordance with the provisions hereof and such Agent may, in reliance upon such assumption, make available to the applicable Borrower on such date a corresponding amount. If such Agent has made such assumption, to the extent such Lender shall not have so made its *Pro Rata* Share of the Advance available to such Agent such Lender agrees to pay to such Agent forthwith on demand, such Lender's *Pro Rata* Share of the Advance and all reasonable costs and expenses incurred by such Agent in connection therewith, together with interest thereon at the rate payable hereunder by the applicable Borrower in respect of such Advance for each day from the date such amount is made available to such Borrower until the date such amount is paid or repaid to such Agent; provided, however, that notwithstanding such obligation, if such Lender fails so to pay, such Borrower shall repay such amount to such Agent forthwith after demand therefor by such Agent together with interest thereon at the rate payable hereunder by such Borrower in respect of such Advance for each day from the date such amount is made available to such Borrower until the date such amount is paid or repaid to such Agent. The amount payable by each Lender to the applicable Agent pursuant to this Section shall be set forth in a certificate delivered by such Agent to such Lender and such Borrower (which certificate shall contain reasonable details of how the amount

payable is calculated) and shall constitute *prima facie* evidence of such amount payable. If such Lender makes the payment to such Agent required herein, the amount so paid shall constitute such Lender's *Pro Rata* Share of the Advance for purposes of this Agreement and shall entitle the Lender to all rights and remedies against such Borrower in respect of such Advance. The failure of any Lender to make available to the applicable Agent its *Pro Rata* Share of an Advance shall not relieve any other Lender of its obligation hereunder to make available to the applicable Agent its *Pro Rata* Share of the Advance on the date thereof. Any Advance by the applicable Agent in excess of the amounts made available to such Agent by the Lenders shall not be construed as an increase in any Individual Commitment of such Agent in its capacity as a Lender.

- (2) If any Lender fails to make available to the applicable Agent its *Pro Rata* Share of any Advance as required (the "Defaulting Lender") and such Agent has not made the Advance to the applicable Borrower pursuant to Section 3.1(1), such Agent shall forthwith give notice of such failure by the Defaulting Lender to such Borrower and the other Canadian Lenders or U.S. Lenders, as the case may be, and such notice shall state that any Canadian Lender or U.S. Lender, as the case may be, may make available to such Agent all or any portion of the Defaulting Lender's *Pro Rata* Share of such Advance (but in no way shall any other Lender or such Agent be obliged to do so) in the place of the Defaulting Lender. If more than one Lender gives notice that it is prepared to make funds available in the place of a Defaulting Lender in such circumstances and the aggregate of the funds which such Lenders (collectively, the "Contributing Lenders" and, individually, the "Contributing Lender") are prepared to make available exceeds the amount of the Advance which the Defaulting Lender failed to make, then each Contributing Lender shall be deemed to have given notice that it is prepared to make available a portion determined by such Agent in its sole discretion, of such Advance. If any Contributing Lender makes funds available in the place of a Defaulting Lender in such circumstances, then: (i) the Defaulting Lender shall pay to such Agent for the benefit of any Contributing Lender making the funds available in its place, forthwith on demand, any amount advanced on its behalf, together with interest thereon at the rate payable hereunder by the applicable Borrower in respect of such Advance for each day from the date of Advance to the date of payment, against payment by the Contributing Lender making the funds available of all interest received in respect of the Advance from such Borrower; and (ii) such Borrower shall pay all amounts owing by such Borrower to the Defaulting Lender hereunder to such Agent for the benefit of the Contributing Lenders until such time as the Defaulting Lender pays to such Agent for the benefit of the Contributing Lenders all amounts advanced by the Contributing Lenders on behalf of the Defaulting Lender. Any Advance by a Contributing Lender making funds available in the place of a Defaulting Lender shall not be construed as an increase in the Individual Commitment of the Contributing Lender.



- (3) Each Borrowing shall consist of one or more Types of Advances made to a Borrower on the same day. Each Type of Advance shall be in the aggregate minimum amount and in an integral multiple of the amount set forth below:
- (a) a Floating Rate Advance shall be in an aggregate amount not less than \$1,000,000 and in an integral multiple of \$500,000;
  - (b) a U.S. Base Rate Advance shall be in an aggregate amount not less than U.S.\$1,000,000 and in an integral multiple of U.S.\$500,000;
  - (c) a U.S. Prime Rate Advance shall be in an aggregate amount not less than U.S.\$1,000,000 and in an integral multiple of U.S.\$500,000; and
  - (d) a LIBOR Advance to the Canadian Borrower shall be in an aggregate amount not less than U.S.\$1,000,000 and in an integral multiple of U.S.\$500,000 and to the U.S. Borrower shall be in an aggregate amount not less than U.S.\$1,000,000, and in an integral multiple of U.S.\$500,000.
- (4) Until repaid in full or converted in accordance with this Agreement, each Advance shall be: (i) the Type of Advance specified in the applicable Borrowing Notice or Election Notice; or (ii) if no Borrowing Notice or Election Notice is applicable, the Type of Advance specified in Section 3.1(3)(a) (in the case of the Canadian Facility) or 3.1(3)(c) (in the case of the U.S. Facility).
- (5) The Canadian Borrower may borrow up to the Equivalent Cdn. \$ Amount of U.S.\$5,000,000 in Overdraft Loans, which loans shall be deemed to be Swing Line Loans made under the Canadian Swing Line Facility. The aggregate amount of Overdraft Loans outstanding at any time under the Canadian Swing Line Facility shall constitute Outstandings under the Canadian Facility at such time.
- (6) The U.S. Borrower may borrow up to U.S.\$5,000,000 in Overdraft Loans, which loans shall be deemed to be Swing Line Loans made under the U.S. Swing Line Facility. The aggregate amount of Overdraft Loans outstanding at any time under the U.S. Swing Line Loan shall constitute Outstandings under the U.S. Facility at such time.

### **3.2 Procedure for Borrowing.**

- (1) Each Borrowing under the Canadian Facility shall be made on notice (a "Canadian Borrowing Notice") given by the Canadian Borrower to the Canadian Agent not later than 10:00 a.m. (Toronto time), in the case of: (i) a Floating Rate Advance or a U.S. Base Rate Advance, at least two (2) Business Days but not more than five (5) Business Days prior to the date of the proposed Borrowing; and (ii) a LIBOR Advance, at least three (3) Business Days and not more than five (5) Business Days prior to the date of the proposed Borrowing, which Canadian Borrowing Notice shall be irrevocable and binding on the Canadian Borrower. Each Canadian Borrowing Notice shall be in substantially the form of Schedule B

and shall specify: (i) the requested date of such Borrowing; (ii) the Type of Advances comprising such Borrowing; (iii) the aggregate amount of such Borrowing; (iv) in the case of a LIBOR Advance, the initial Interest Period applicable to such Advance; and (v) the then current Mark to Market Exposure of the Arctic Parties. Subject to the terms and conditions of this Agreement, the Canadian Agent will make such funds available to the Canadian Borrower in immediately available funds by crediting or causing the crediting of the Canadian Borrower's Canadian Dollar Account or the Canadian Borrower's U.S. Dollar Account, as applicable.

- (2) Each Borrowing under the U.S. Facility shall be made on notice (a "U.S. Borrowing Notice") given by a U.S. Borrower to the U.S. Agent not later than 10:00 a.m. (New York time), in the case of: (i) a U.S. Prime Rate Advance, at least two (2) Business Days and not more than five (5) Business Days prior to the date of the proposed Borrowing; and (ii) a LIBOR Advance, at least three (3) Business Days and not more than five (5) Business Days prior to the date of the proposed Borrowing, which Borrowing Notice shall be irrevocable and binding on such U.S. Borrower. Each U.S. Borrowing Notice shall be in substantially the form of Schedule B and shall specify: (i) the requested date of such Borrowing; (ii) the Type of Advances comprising such Borrowing; (iii) the aggregate amount of such Borrowing; (iv) in the case of a LIBOR Advance, the initial Interest Period applicable to such Advance; and (v) the then current Mark to Market Exposure of the Arctic Parties. Subject to the terms and conditions of this Agreement, the U.S. Agent will make such funds available to the requesting U.S. Borrower in immediately available funds by crediting or causing the crediting of the requesting U.S. Borrower's U.S. Dollar Account.
- (3) The Canadian Borrower and the U.S. Borrower shall not in any Canadian Borrowing Notice or U.S. Borrowing Notice, respectively, select an Interest Period which ends after the Maturity Date or which conflicts with the definition of Interest Period specified in Section 1.1 or with the repayments provided for in Section 2.5 or 2.6.

### **3.3 Interest on Advances.**

- (1) Each Advance shall bear interest at the rate applicable to such Type of Advance determined in accordance with this Section: (i) in the case of a Floating Rate Advance, U.S. Base Rate Advance or U.S. Prime Rate Advance, from the date such Advance is made or converted from another Type of Advance or Accommodation to the date on which such Advance is repaid in full or is converted to another Type of Advance or Accommodation in accordance with this Agreement; and (ii) in the case of a LIBOR Advance, from the first day of the applicable Interest Period to the last day of such Interest Period. Subject to Sections 11.3, each Advance shall bear interest, and such interest shall be calculated and payable, in the following manner:

- (a) Floating Rate Advances. A Floating Rate Advance shall bear interest at a rate per annum equal at all times to the Floating Rate in effect from time to time. Such interest shall be calculated (but not compounded) daily and payable monthly in arrears on the 3<sup>rd</sup> Business Day of each month following the month for which such interest is payable and on the Maturity Date.
  - (b) U.S. Base Rate Advances. A U.S. Base Rate Advance shall bear interest at a rate per annum equal at all times to the U.S. Base Rate in effect from time to time. Such interest shall be calculated (but not compounded) daily and payable monthly in arrears on the 3<sup>rd</sup> Business Day of each month following the month for which such interest is payable and on the Maturity Date.
  - (c) U.S. Prime Rate Advances. U.S. Prime Rate Advances shall bear interest at a rate per annum equal at all times to the U.S. Prime Rate in effect from time to time. Such interest shall be calculated (but not compounded) daily and payable in arrears on the 3<sup>rd</sup> Business Day of each month following the month for which such interest is payable and on the Maturity Date.
  - (d) LIBOR Advances. A LIBOR Advance shall bear interest at a rate per annum equal at all times during each Interest Period for such LIBOR Advance to the LIBOR Rate for such Interest Period. Such interest shall be calculated (but not compounded) daily and payable: (i) on the last day of each three month period in each Interest Period and on the last day of each Interest Period; and (ii) on the date such LIBOR Advance becomes due and payable in full.
- (2) With each announced change in any of the variable rates of interest (which shall not include LIBOR or Bankers' Acceptance discount rates) used as a component for determining any rate of interest payable under this Agreement, there shall be a corresponding change in the applicable rate of interest payable under this Agreement based on the change in such variable rate, all without necessity of prior notice thereof to the Borrowers or to any other Person. For greater certainty, Applicable Margins change in accordance with Section 2.10.

### **3.4 Conversions and Elections Regarding Types of Advances and Interest Rates.**

- (1) Advances may be converted, subject to the provisions of this Agreement, from time to time from one Type to another, at the election of a Borrower, (subject to the requirement that the Type of Advance to which a Borrower wishes to convert is an Accommodation available to such Borrower hereunder) or automatically in accordance with the provisions of this Section. A Borrower may from time to time elect: (i) to convert any Advances to another Type by changing the currency of such Advances or the type of interest rate applicable thereto; or (ii) to have any LIBOR Advances continued as such Type of Advances by electing an additional Interest Period; subject in each case to the provisions of Sections 3.1(3) and 3.6 and to the following provisions:

- (a) Floating Rate Advances. The Canadian Borrower may elect to convert a Floating Rate Advance as of any Business Day to a LIBOR Advance or a U.S. Base Rate Advance, in a principal amount equal to the Equivalent U.S. \$ Amount of such Floating Rate Advance determined on the date of such conversion.
- (b) U.S. Base Rate Advance. The Canadian Borrower may elect to convert a U.S. Base Rate Advance as of any Business Day to: (i) a Floating Rate Advance, in a principal amount equal to the Equivalent Cdn. \$ Amount of such U.S. Base Rate Advance on the date of such conversion; or (ii) a LIBOR Advance.
- (c) U.S. Prime Rate Advance. A U.S. Borrower may elect to convert a U.S. Prime Rate Advance as of any Business Day to a LIBOR Advance.
- (d) LIBOR Advance. A Borrower may elect, effective on the last day of the then current Interest Period applicable thereto: (i) to convert a LIBOR Advance to: (A) in the case of the Canadian Borrower only, a Floating Rate Advance, in a principal amount equal to the Equivalent Cdn. \$ Amount of such LIBOR Advance on the date of such conversion; (B) in the case of the Canadian Borrower only, a U.S. Base Rate Advance; or (C) in the case of the U.S. Borrower only, a U.S. Prime Rate Advance; or (ii) to have such LIBOR Advance continued as such Type of Advance for an additional Interest Period. If a Borrower has made no such election, on the expiry of the then current Interest Period, such Advance shall be automatically converted to a U.S. Base Rate Advance, in the case of the Canadian Borrower, or a U.S. Prime Rate Advance, in the case of a U.S. Borrower, effective, in each case, on the last day of such Interest Period.
- (e) Intercurrency Conversions. Any conversion by the Canadian Borrower of a Type of Advance denominated in one currency to a Type of Advance denominated in another currency shall be effected by way of a repayment of the outstanding Advance and the making of a subsequent Advance.

- (2) Each such election shall be made on notice (an "Election Notice") given to the Canadian Agent not later than 10:00 a.m. (Toronto time), in the case of the Canadian Borrower, and to the U.S. Agent not later than 10:00 a.m. (Houston Time) in the case of the U.S. Borrower: (i) in the case of an election to convert an Advance to, or continue an Advance as, a LIBOR Advance, at least three (3) Business Days before the effective date of such election; and (ii) in the case of an election to convert an Advance to, or continue an Advance as, a Floating Rate Advance, a U.S. Base Rate Advance or a U.S. Prime Rate Advance, at least two (2) Business Days before the effective date of such election. Each Election Notice shall be substantially in the form of Schedule B and shall specify, with respect to the outstanding Advances to which such Election Notice applies: (i) if the Type of such Advance is to be converted, the new Type of Advance selected, the effective date of such conversion and, if the new Type of Advance selected is a LIBOR Advance, the duration of the initial Interest Period applicable thereto; or (ii) if such Advance is a LIBOR Advance which is to continue as such Type of Advance for an additional Interest Period in whole or in part, the amount of such

Advance to be continued for the duration of the additional Interest Period and the date on which such Interest Period is to begin.

- (3) A Borrower shall not in any Election Notice select an Interest Period which conflicts with the definition of Interest Period specified in Section 1.1 or with the repayments provided for in Section 2.5 or 2.6.
- (4) Any conversion of an Advance under this Section shall not constitute a repayment under Section 2.5, or a prepayment under Section 2.6 or 2.8.

**3.5 Conversions of Floating Rate Advances to Bankers' Acceptances or BA Equivalent Notes.**

- (1) The Canadian Borrower may, subject to the provisions of this Agreement, convert the outstanding principal amount of a Floating Rate Advance, in whole or in part, to Bankers' Acceptances or BA Equivalent Notes or by giving an Acceptance Notice in accordance with Section 4.2 (including in accordance with the period for notice set forth in Section 4.2). The Canadian Borrower shall notify the Canadian Agent at the same time as the Canadian Borrower gives the Acceptance Notice of the amount of any Floating Rate Advance to be converted. If the Floating Rate Advance to be converted cannot be converted to an aggregate Face Amount of Bankers' Acceptances or BA Equivalent Notes in an amount which may be drawn as Bankers' Acceptances or BA Equivalent Notes under this Agreement, then the amount which cannot be so converted shall thereafter continue to be outstanding as a Floating Rate Advance.
- (2) Where any Floating Rate Advances are to be converted, in whole or in part, to Bankers' Acceptances or BA Equivalent Notes, the Canadian Borrower shall repay from proceeds of Bankers' Acceptances and BA Equivalent Notes, and there shall become due and payable on the Acceptance Date, the principal amount of such Floating Rate Advances which are to be so converted.
- (3) Any conversion of an Advance under this Section shall not constitute a repayment under Section 2.5 or a prepayment under Section 2.6 or 2.8.

**3.6 Circumstances Requiring Floating Rate or U.S. Prime Rate Pricing.**

**(1) Canadian Facility.**

If the Canadian Lenders, or any one or more of them, determine in good faith, and the Canadian Agent notifies the Canadian Borrower that: (i) by reason of circumstances affecting financial markets inside or outside Canada, deposits of U.S. Dollars are unavailable to the Canadian Lenders or any one or more of them; (ii) adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided in the definition of LIBOR or U.S. Base Rate, as the case may be; (iii) the making or continuation of any U.S. Dollar Advances has been made impracticable: (A) by the occurrence of a contingency (other than a

mere increase in rates payable by the Canadian Lenders or any one or more of them to fund such Advances) which materially adversely affects the funding of the Canadian Facility at any interest rate computed on the basis of the LIBOR or the U.S. Base Rate, as the case may be; or (B) by reason of a change since the date of this Agreement in any applicable Law or in the interpretation thereof by any Governmental Entity which affects the Canadian Lenders or any one or more of them or any relevant financial market, and which results in the LIBOR or the U.S. Base Rate, as the case may be, no longer representing the effective cost of the Canadian Lenders or any one or more of them of deposits in such market for a relevant Interest Period or for Advances outstanding as U.S. Base Rate Advances; or (iv) any change since the date of this Agreement to any present Law, or any future Law, or any change since the date of this Agreement therein or in the interpretation or application thereof by any Governmental Entity, has made it unlawful for the Canadian Lenders or any one or more of them to make or maintain or to give effect to this obligation in respect of U.S. Dollar Advances as contemplated hereby, then:

- (a) the right of the Canadian Borrower to select any affected Type of U.S. Dollar Advance shall be suspended until the Canadian Lenders determine that the circumstances causing such suspension no longer exist and the Canadian Agent so notifies the Canadian Borrower;
- (b) if any affected Type of U.S. Dollar Advance is not yet outstanding, any applicable Borrowing Notice shall be cancelled and the Advance requested shall not be made;
- (c) if any LIBOR Advance is already outstanding at any time when the right of the Canadian Borrower to select LIBOR Advances is suspended, it and all other LIBOR Advances shall, subject to the Canadian Borrower having the right to select U.S. Base Rate Advances at such time, become U.S. Base Rate Advances on the last day of the then current Interest Period applicable thereto (or on such earlier date as may be required to comply with any applicable Law) or, if the Canadian Borrower does not have the right to select U.S. Base Rate Advances at such time, it and all LIBOR Advances shall become Floating Rate Advances on the last day of the then current Interest Period applicable thereto (or on such earlier date as may be required to comply with any applicable Law) in a principal amount equal to the Equivalent Cdn. \$ Amount of such LIBOR Advances determined on the date on which such Advances become denominated in Canadian Dollars; and
- (d) if any U.S. Base Rate Advance is already outstanding at any time when the right of the Canadian Borrower to select U.S. Base Rate Advances is suspended, it and all other U.S. Base Rate Advances shall become Floating Rate Advances immediately, in a principal amount equal to the Equivalent Cdn. \$ Amount of the related U.S. Base Rate Advances determined on the date on which such Advances become denominated in Canadian Dollars.

(2)

U.S. Facility

If the U.S. Lenders or any one or more of them, determine in good faith, and the U.S. Agent notifies the U.S. Borrower that: (i) adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided in the definition of LIBOR; (ii) the making or contribution of any LIBOR Advance has been made impracticable: (A) by the occurrence of a contingency (other than a mere increase in rates payable by the U.S. Lenders or any one or more of them to fund the Advances) which materially adversely affects the funding of the U.S. Facilities at any interest rate computed on the basis of the LIBOR; or (B) by reason of a change since the date of this Agreement in any applicable Law or in the interpretation thereof by any Governmental Entity which affects the U.S. Lenders or any one or more of them or any relevant financial market, and which results in the LIBOR no longer representing the effective cost of the U.S. Lenders or any one or more of them of deposits in such market for a relevant Interest Period; or (iii) any change since the date of this Agreement to any present Law, or any future Law, or any change since the date of this Agreement therein or in the interpretation or application thereof by any Governmental Entity, has made it unlawful for the U.S. Lenders or any one or more of them to make or maintain or to give effect to this obligation in respect of LIBOR Advances as contemplated hereby, then:

- (a) the right of the U.S. Borrower to select a LIBOR Advance shall be suspended until the U.S. Lenders determine that the circumstances causing such suspension no longer exist and the U.S. Agent, upon direction from the Majority Lenders, so notifies the U.S. Borrower;
- (b) if any affected LIBOR Advance is not yet outstanding, any applicable Borrowing Notice shall be deemed to be a Borrowing Notice requesting a U.S. Prime Rate Advance; and
- (c) if any LIBOR Advance is already outstanding at any time when the right of the U.S. Borrower to select LIBOR Advances is suspended, it and all other LIBOR Advances to the U.S. Borrower shall become U.S. Prime Rate Advances on the last day of the then current Interest Period applicable thereto (or on such earlier date as may be required to comply with any applicable Law).

**3.7**

**Swing Line Loans.**

(1)

Canadian Swing Line Loans.

- (a) Each advance requested by the Canadian Borrower under the Canadian Swing Line Facility, which may be made in Canadian Dollars or in U.S. Dollars. The Canadian Borrower will have access to the Canadian Swing Line Facility by withdrawing funds from its chequing account with the Canadian Swing Line Lender (the "**Canadian Chequing Account**"). In addition to accommodating such withdrawals, the Canadian Swing Line Lender will, provided no Default or

Event of Default has occurred or is continuing, automatically and without notice to the Canadian Borrower, transfer funds from a loan account with the Canadian Swing Line Lender (the "**Canadian Loan Account**") to the Canadian Chequing Account in order to cover any debits made to the Canadian Chequing Account from time to time, if the funds held in the Canadian Chequing Account are insufficient to cover such debits. The Canadian Swing Line Lender will, provided no Default or Event of Default has occurred and is continuing, automatically and without notice to the Canadian Borrower, transfer all or part of the funds held from time to time in the Canadian Chequing Account to the Canadian Loan Account to repay all or any part of any amounts outstanding to the Canadian Swing Line Lender under the Canadian Swing Line Facility.

- (b) Each Canadian Swing Line Loan advanced in Canadian Dollars shall bear interest at a rate per annum equal at all times to the Floating Rate in effect from time to time, from and including the date the Canadian Swing Line Loan is made to but excluding the date such Canadian Swing Line Loan is repaid in full, calculated (but not compounded) daily and payable in arrears on the third Business Day of each month following the month for which such interest is payable and on the Maturity Date. Each Canadian Swing Line Loan advanced in U.S. Dollars shall bear interest at a rate per annum equal at all times to the U.S. Base Rate in effect from time to time, from and including the date the Canadian Swing Line Loan is made to but excluding the date such Canadian Swing Line Loan is repaid in full, calculated (but not compounded) daily and payable in arrears on the third Business Day of each month following the month for which such interest is payable and on the Maturity Date. All amounts owing to the Canadian Swing Line Lender hereunder shall be paid by the Canadian Borrower by depositing the amount owing to the Canadian Swing Line Lender's Account.
- (c) In the event that the Canadian Swing Line is fully drawn hereunder and/or the satisfaction of any withdrawal requests or advances (each a "**Canadian Overadvance**") under the Canadian Swing Line Facility would cause the Outstandings under the Canadian Swing Line Facility to exceed the Canadian Swing Line Facility Commitment, the Canadian Swing Line Lender will not be obligated to make such Canadian Overadvance (including automatically transferring additional funds from the Canadian Loan Account to cover insufficiently funded debits, as set out in Section 3.7(1)(a) above). Any Canadian Overadvances made under the Canadian Swing Line Facility will be honoured on an exception basis only at the sole discretion of the Canadian Swing Line Lender, will be repayable on demand, will not constitute a formal or permanent increase to the Canadian Swing Line Commitment and are subject to all terms and conditions of this Agreement.

(2) U.S. Swing Line Loans.

- (a) The U.S. Borrower will have access to the U.S. Swing Line Facility by withdrawing funds from its chequing account with the U.S. Swing Line Lender (the "**U.S. Chequing Account**"). In addition to accommodating such



withdrawals, the U.S. Swing Line Lender will, provided no Default or Event of Default has occurred or is continuing, automatically and without notice to the U.S. Borrower, transfer funds from a loan account with the U.S. Swing Line Lender (the "**U.S. Loan Account**") to the U.S. Chequing Account in order to cover any debits made to the U.S. Chequing Account from time to time, if the funds held in the U.S. Chequing Account are insufficient to cover such debits. The U.S. Swing Line Lender will, provided no Default or Event of Default has occurred and is continuing, automatically and without notice to the U.S. Borrower, transfer all or part of the funds held from time to time in the U.S. Chequing Account to the U.S. Loan Account to repay all or any part of any amounts outstanding to the U.S. Swing Line Lender under the U.S. Swing Line Facility.

- (b) Each U.S. Swing Line Loan shall bear interest at a rate per annum equal at all times to the U.S. Prime Rate in effect from time to time, from and including the date the U.S. Swing Line Loan is made to but excluding the date such U.S. Swing Line Loan is repaid in full, calculated (but not compounded) daily and payable in arrears on the third Business Day of each month following the month for which such interest is payable and on the Maturity Date. All amounts owing to the U.S. Swing Line Lender hereunder shall be paid by the U.S. Borrower by depositing the amount owing to the U.S. Swing Line Lender's Account.
- (c) In the event that the U.S. Swing Line is fully drawn hereunder and/or the satisfaction of any withdrawal requests or advances (each a "**U.S. Overadvance**") under the U.S. Swing Line Facility would cause the Outstandings under the U.S. Swing Line Facility to exceed the U.S. Swing Line Facility Commitment, the U.S. Swing Line Lender will not be obligated to make such U.S. Overadvance (including automatically transferring additional funds from the U.S. Loan Account to cover insufficiently funded debits, as set out in Section 3.7(2)(a) above). Any U.S. Overadvances made under the U.S. Swing Line Facility will be honoured on an exception basis only at the sole discretion of the U.S. Swing Line Lender, will be repayable on demand, will not constitute a formal or permanent increase to the U.S. Swing Line Commitment and are subject to all terms and conditions of this Agreement.

#### **ARTICLE IV BANKERS' ACCEPTANCES**

##### **4.1 Acceptances and Drafts.**

- (1) Each of the Canadian Lenders severally agrees on the terms and conditions of this Agreement: (i) if such Lender is a BA Lender, to create acceptances ("Bankers' Acceptances") by accepting Drafts of a Canadian Borrower under the Credit Facilities; or (ii) if such Lender is a Non-BA Lender, to purchase BA Equivalent Notes of such Canadian Borrower under the Credit Facilities, in each case on the Closing or thereafter from time to time on any Business Day at least one month

prior to the Maturity Date, which Drafts have an aggregate Face Amount equal to such Lender's *Pro Rata* Share of the total Accommodation being made by way of Bankers' Acceptances or BA Equivalent Notes; except that, if the Face Amount of a Bankers' Acceptance in the case of a BA Lender, or the Face Amount of a BA Equivalent Note, in the case of a Non-BA Lender, would not be an integral multiple of Cdn. \$100,000 in the case of a Bankers' Acceptance or BA Equivalent Note denominated in Canadian Dollars or U.S. \$100,000 in the case of a Bankers' Acceptance or BA Equivalent Note denominated in U.S. Dollars, such Face Amount shall be increased or reduced by the Canadian Agent in its sole discretion and in accordance with normal market practices, to the nearest integral multiple of Cdn. \$100,000 in the case of a Bankers' Acceptance or BA Equivalent Note denominated in Canadian Dollars or U.S. \$100,000 in the case of a Bankers' Acceptance or BA Equivalent Note denominated in U.S. Dollars. Bankers' Acceptances shall be created through the acceptance of Drafts by a BA Lender upon the Canadian Borrower paying the Acceptance Fee, which shall be deducted by each BA Lender from the proceeds it receives from the sale of such Bankers' Acceptances. BA Equivalent Notes shall be purchased by each Non-BA Lender upon the Canadian Borrower paying the Acceptance Fee, which shall be deducted by each Non-BA Lender from the purchase price it pays for such BA Equivalent Notes. In each case, following deduction of the Acceptance Fee, each BA Lender and Non-BA Lender will remit the net proceeds to the Canadian Agent and the Canadian Agent shall credit such net proceeds to the Canadian Borrower's Canadian Dollar Account or U.S. Dollar Account, as applicable. The Total Outstandings under the Canadian Facility after any Acceptance shall not exceed the Canadian Facility Commitment.

#### **4.2      Procedure for Acceptances.**

- (1) Each Acceptance shall be made on notice (an "Acceptance Notice") given not later than 10:00 a.m. (Toronto time) at least two (2) Business Days but not more than five (5) Business Days prior to the date of the proposed Acceptance by the Canadian Borrower to the Canadian Agent. Each Acceptance Notice shall be in substantially the form of Schedule B hereto and shall specify: (i) the requested date for such Acceptance (the "Acceptance Date"); (ii) the aggregate Face Amount of Drafts to be accepted and BA Equivalent Notes to be purchased in Canadian Dollars or U.S. Dollars, as applicable; and (iii) the contract maturity date for such Drafts and BA Equivalent Notes.
- (2) Upon receipt of an Acceptance Notice, the Canadian Agent shall be responsible for making all necessary arrangements with each of the Canadian Lenders, as applicable, with respect to the stamping of Bankers' Acceptances and the purchasing of BA Equivalent Notes in the manner contemplated in this Article IV.
- (3) The BA Lenders shall accept the Bankers' Acceptances, and the Non-BA Lenders shall purchase the BA Equivalent Notes, pursuant to Section 4.5. The Canadian Agent shall as soon as practical deliver to the Canadian Borrower a notice

confirming the acceptance of Bankers' Acceptances and BA Equivalent Notes and specifying the net proceeds derived therefrom.

- (4) The Canadian Borrower shall not in any Acceptance Notice under the Credit Facilities select a contract maturity for a Draft which ends after the applicable Maturity Date or which conflicts with the repayments provided for in Section 2.5 or 2.6.

#### **4.3 Form of Drafts.**

- (1) Each Draft presented by a Canadian Borrower for acceptance by a BA Lender and each BA Equivalent Note presented by a Canadian Borrower for purchase by a Non-BA Lender: (i) shall be in a Face Amount of not less than Cdn. \$100,000 in the case of a Bankers' Acceptance or BA Equivalent Note denominated in Canadian Dollars or U.S. \$100,000 in the case of a Bankers' Acceptance or BA Equivalent Note denominated in U.S. Dollars and in an integral multiple of Cdn. \$100,000 in the case of a Bankers' Acceptance or BA Equivalent Note denominated in Canadian Dollars or U.S. \$100,000 in the case of a Dollar Bankers' Acceptance or BA Equivalent Note denominated in U.S. Dollars; (ii) shall be dated the date of Acceptance; and (iii) shall mature and be payable by such Canadian Borrower on a Business Day which occurs approximately one, two, three or six months after the Acceptance Date and on or prior to the Maturity Date.
- (2) Each Canadian Borrower hereby renounces, and shall not claim, any days of grace for the payment of any Bankers' Acceptances or BA Equivalent Notes.

#### **4.4 Acceptance of Drafts.**

Not later than 12:00 noon (Toronto time) on the Acceptance Date specified for an Acceptance, each Lender that is a BA Lender: (i) shall complete one or more Drafts dated the date of such Acceptance in an aggregate Face Amount equal to its *Pro Rata* Share of the amount of such Acceptance and with the maturity date specified by the Canadian Borrower in its Acceptance Notice; (ii) shall accept the Drafts; and (iii) shall purchase the Bankers' Acceptance(s) thereby created in the manner provided in Section 4.5.

#### **4.5 Purchase of Bankers' Acceptances.**

- (1) The purchase price of any Bankers' Acceptances and BA Equivalent Notes purchased by a Lender shall be calculated based on the BA Discount Rate applicable to such Canadian Lenders on the Acceptance Date for such Bankers' Acceptances and BA Equivalent Notes. The purchase price for any Bankers' Acceptances and BA Equivalent Notes purchased by a Lender shall be paid and satisfied by the Lender making payment to the Canadian Agent for the account of the Canadian Borrower of the net proceeds thereof, following the deduction of the Acceptance Fee by such Lender, on the Acceptance Date.

- (2) Bankers' Acceptances purchased by a BA Lender hereunder may be held by it for its own account until maturity or sold by it at any time prior thereto in the relevant market therefor in Canada, in such BA Lender's sole discretion.

**4.6 Reimbursement at Contract Maturity Date.**

- (1) Subject to Section 4.7, the Canadian Borrower shall pay to the Canadian Agent for the account of each applicable Lender in same day funds, and there shall become due and payable at 11:00 a.m. (Toronto time) on the contract maturity date for each Bankers' Acceptance or BA Equivalent Note, an amount in Canadian Dollars or in U.S. Dollars, as applicable equal to the Face Amount of such Bankers' Acceptance accepted or BA Equivalent Note purchased by such Lender. The Canadian Borrower shall make each payment hereunder in respect of Bankers' Acceptances or BA Equivalent Notes by deposit of the required funds to the Canadian Agent's Account.
- (2) If the Canadian Borrower fails to pay the Canadian Agent on behalf of a Lender pursuant to Section 4.6(1), or to convert or renew the Face Amount of such Bankers' Acceptance pursuant to Section 4.7, the unpaid amount due and payable to such Lender in respect of such Bankers' Acceptance shall automatically be funded on the contract maturity date by: (i) a Floating Rate Advance, in the case of a Bankers' Acceptance denominated in Canadian Dollars, or (ii) a U.S. Base Rate Advance, in the case of a Bankers' Acceptance denominated in U.S. Dollars.

**4.7 Renewal or Conversion of Bankers' Acceptances or BA Equivalent Notes.**

- (1) For effect on the contract maturity date of a Bankers' Acceptance or BA Equivalent Note, the Canadian Borrower may elect: (i) to renew all or a portion of the Face Amount of such Bankers' Acceptance or BA Equivalent Note by giving an Acceptance Notice in accordance with Section 4.2 (including in accordance with the period for notice set forth in Section 4.2); or (ii) to have all or a portion of the Face Amount of such Bankers' Acceptance or BA Equivalent Note converted to: (A) a Floating Rate Advance, in the case of a Bankers' Acceptance or BA Equivalent Note denominated in Canadian Dollars, or (B) a U.S. Base Rate Advance, in the case of a Bankers' Acceptance or BA Equivalent Note denominated in U.S. Dollars, by giving a Borrowing Notice in accordance with Section 3.2 (including in accordance with the period for notice set forth in Section 3.2). If the Bankers' Acceptance or BA Equivalent Note to be converted cannot be converted into a Floating Rate Advance or U.S. Base Rate Advance, as the case may be, in an amount which may be outstanding as a Floating Rate Advance or U.S. Base Rate Advance, as the case may be, under this Agreement, then the amount which cannot be so converted shall be repaid to the Canadian Agent on behalf of the Canadian Lenders on the date of such conversion in accordance with Section 4.6.

- (2) Any renewal or conversion of Bankers' Acceptances or BA Equivalent Note under this Section 4.7 shall not constitute a repayment under Section 2.5 or a prepayment under Section 2.6 or 2.8.

#### **4.8 Payments.**

Except as required by Section 2.5, 2.6 or 10.1, no repayment of Bankers' Acceptances or BA Equivalent Notes shall be made by the Canadian Borrower to a Lender prior to the contract maturity date of such Bankers' Acceptances or BA Equivalent Notes as have been accepted or purchased by such Lender. If the Canadian Borrower shall be required to repay the Accommodations under the Credit Facility pursuant to Section 2.5, 2.6 or 10.1, then the Canadian Borrower shall pay to the Canadian Agent an amount in Canadian Dollars or U.S. Dollars, as applicable, equal to the Face Amount of all Bankers' Acceptances and BA Equivalent Notes. Such Amounts paid to the Canadian Agent shall be invested (the "Repaid Amount") by the Canadian Agent until the contract maturity date of such Bankers' Acceptances or BA Equivalent Notes. As soon as practicable after the applicable contract maturity date(s), the Canadian Agent shall apply all interest earned on the Repaid Amount in accordance with Section 11.4 and the Repaid Amount shall be paid by the Canadian Agent to the Lenders and applied against, and shall reduce, pro rata among the Lenders the obligations of the Canadian Borrower to pay amounts then or thereafter payable under such Bankers' Acceptances and BA Equivalent Notes, at the times such amounts become payable thereunder. If the Canadian Borrower shall prepay any Bankers' Acceptances accepted or BA Equivalent Notes purchased by a Lender, then (unless such prepayment has been rescinded or otherwise is required to be returned by such Lender for any reason), as between the Canadian Borrower and such Lender, such Lender shall thereafter be solely responsible for the payment of the Face Amount of such Bankers' Acceptances as have been accepted or BA Equivalent Notes as have been purchased by such Lender to the holder or holders thereof in accordance with the terms thereof.

#### **4.9 Circumstances Making Bankers' Acceptances Unavailable.**

If the Lenders or any one or more of them (other than a Non-BA Lender) determine in good faith, and the Canadian Agent notifies the Canadian Borrower that by reason of circumstances affecting the money market there is no market for Bankers' Acceptances, then the right of the Canadian Borrower to request an Acceptance shall be suspended until the Lenders or any one or more of them determines that the circumstances causing such suspension no longer exist and the Canadian Agent so notifies the Canadian Borrower. Any Acceptance Notice which is outstanding at the time of such notice by the Lenders or any one or more of them (other than a Non-BA Lender) shall be deemed to be a Borrowing Notice requesting: (i) a Floating Rate Advance, in the case of an Acceptance denominated in Canadian Dollars or (ii) a U.S. Base Rate Advance in the case of an Acceptance denominated in U.S. Dollars in the principal amount equal to the requested Face Amount in such Acceptance Notice.

of any Lien against any of the assets or Property of any Arctic Party, other than Permitted Liens and those security interests or notices of security interests consented to by the Canadian Agent, on behalf of the Lenders, in writing;

- (p) evidence of payment of an arrangement fee to each of the parties listed below:

<u>Lender</u>	<u>Fee</u>
(a) The Toronto-Dominion Bank (re: Canadian Facility and re: Canadian Swing Line Facility)	U.S.\$100,000
(b) Toronto Dominion (New York) LLC (re: U.S. Facility)	U.S.\$200,000
(c) The Toronto-Dominion Bank, New York Branch (re: U.S. Line Facility)	U.S.\$50,000
(d) The Bank of Nova Scotia (re: Canadian Facility)	U.S.\$50,000
(e) The Bank of Nova Scotia (re: U.S. Facility)	U.S.\$170,000
(f) Roynat Inc. (re: Canadian Facility)	U.S.\$50,000
(g) Roynat Business Capital Inc. (re: U.S. Facility)	U.S.\$80,000

- (q) all Consents, estoppel certificates and other documents required from third parties in connection with the Security Documents;
- (r) a copy of each Material Agreement, each in form and substance acceptable to the Canadian Agent, in its sole discretion;
- (s) a copy of an updated corporate organizational chart showing all Arctic Parties;
- (t) an agreement executed and delivered by the Fund pursuant to which the Fund agrees to:
- (i) fully subordinate and postpone in favour of the Canadian Agent, the U.S. Agent and the Lenders any amounts payable to it by any of the other Arctic Parties; and
  - (ii) maintain its status as a reporting issuer in good standing and to maintain the listing of the Fund Units on the Toronto Stock Exchange; and
- (u) Compliance Certificate in form and substance satisfactory to the Canadian Agent, (a) demonstrating compliance with the financial covenants contained in this Agreement on a pro forma basis (i) as at December 31, 2009, and (ii) of projected results from the Closing Date to the Maturity Date; and (b) confirming that all

other covenants contained in (i) the Original Loan Agreement, and (ii) this Agreement, are, in each case, in compliance;

- (v) an officer's certificate of the Canadian Borrower attaching financial calculations satisfactory to the Lenders that demonstrate compliance with the financial covenants contained in the Subordinated Facility Documents on a pro forma basis from March 31, 2010 through to the Maturity Date;
- (w) copies of all Subordinated Facility Documents;
- (x) such other certificates and documentation as the Canadian Agent and the Lenders may reasonably request to give effect to this Agreement.

- (2) **Proceedings.** All proceedings to be taken in connection with the transactions contemplated by: (i) this Agreement; and (ii) any Ancillary Agreement, including the distribution policy of the Fund set out in Schedule R, shall be satisfactory in form and substance to the Canadian Agent and the Lenders and the Canadian Agent and the Lenders shall have received copies of all such instruments and other evidence as they may reasonably request in order to establish the consummation of such transactions and the taking of all proceedings in connection therewith.
- (3) **No Material Adverse Effect.** The Canadian Agent shall have received evidence satisfactory to the Canadian Agent and the Lenders that no event, condition or circumstance has arisen or is likely to arise which would have a Material Adverse Effect.
- (4) **Environmental Due Diligence and Compliance with Environmental Laws.** The Canadian Agent and the Lenders shall have completed their environmental due diligence on the Property of the Arctic Parties and shall have received evidence, satisfactory to them, acting reasonably, that the Arctic Parties are in compliance with all Environmental Laws, in all material respects.
- (5) **Intercompany Debt Due Diligence.** The Canadian Agent and the Lenders shall have completed their due diligence on the intercompany debt (existing and new) among the Arctic Parties, be satisfied with the terms thereof and shall have received evidence, satisfactory to them, acting reasonably, that all issuances of intercompany debt made by any of the Arctic Parties have been properly documented and that Schedule P is accurate and complete and all debt and equity securities referred to therein and owned by any Arctic Party have been pledged to the Canadian Agent or the U.S. Agent, as the case may be, and certificates representing such securities have been delivered to and where desirable registered in the name of the applicable Agent.
- (6) **Financial Due Diligence.** The Lenders shall have completed their financial due diligence on the Arctic Parties and the Subordinated Facility Documents and be satisfied, in their sole discretion, with the pro-forma projections and pro-forma

compliance of the financial covenants in the Subordinated Facility Documents of the Fund after giving effect to the creation of the Subordinated Facility Debt.

- (7) **Other Due Diligence.** The Canadian Agent and the Lenders shall have completed due diligence in respect of: (i) all matters pertaining to the business, property, operations, financial condition or prospects of the Arctic Parties; (ii) the Subordinated Facility Documents; and (iii) the transactions contemplated hereby, as is required by them in their sole discretion, including review of all agreements and documents referred to in the schedules hereto and confirmation of all contingent obligations and guarantees of all of the Arctic Parties, and shall be satisfied with the results of such due diligence, in their sole discretion.
- (8) **Subordinated Debt Proceeds.** An amount of not less than \$185,000,000 minus usual transaction costs and other usual items shall have been received by the Arctic Parties, all as set out in the flow of funds delivered by the Borrowers to the Lenders and the Agent and approved by them, in their sole discretion.
- (9) **Other Conditions.** The conditions set forth in Section 6.2 and any closing checklist prepared by counsel to the Agent and the Lenders shall have been fulfilled or performed.

## 6.2 Conditions of All Accommodations.

At any time, the obligation of the Lenders or any of them to make an Accommodation and the right of a Borrower to deliver an Accommodation Notice shall be subject to the following conditions being satisfied on the date of such Accommodation, and after giving effect thereto and to the application of proceeds therefrom, which conditions are for the exclusive benefit of the Canadian Agent and the Lenders and may be waived in whole or in part by the Canadian Agent with the approval of the Majority Lenders, in their sole discretion,:

- (1) **Facility Limits.** The Total Outstandings under each of the Credit Facilities, shall not exceed the respective Commitments.
- (2) **Available Accommodation.** Any Accommodation requested by a Borrower shall be subject to the requirement that the Accommodation requested is an available Accommodation for such Borrower.
- (3) **Truth of Representations and Warranties.** The representations and warranties of each of the Arctic Parties contained in this Agreement or in any Ancillary Agreement to which it is a party, shall be true and correct as of the date on which any Accommodation is made with the same force and effect as if such representations and warranties had been made on and as of such date; provided that, to the extent the disclosure in the representations and warranties is no longer true and correct, the Arctic Parties shall be entitled to update such disclosure provided that if such disclosure is materially adverse it must be approved by the Majority Lenders.



- (4) **Performance of Covenants.** Each of the Arctic Parties shall have fulfilled or complied with all covenants herein contained or contained in any Ancillary Agreement to be performed or caused to be performed by it at or prior to the date of any Accommodation.
- (5) **No Default or Event of Default.** No Default or Event of Default shall have occurred and be continuing.
- (6) **No Material Adverse Effect.** No event, condition or circumstance shall have arisen or is likely to arise which would have a Material Adverse Effect.
- (7) **Payment of Fees and Expenses.** The Borrowers shall have paid all fees, costs and expenses, including legal expenses, incurred by the Canadian Agent, the U.S. Agent and the Lenders in connection with the Loan Documents and all fees payable to the Canadian Agent, the U.S. Agent and the Lenders or any of the Lenders as consideration for agreeing to make the Credit Facilities available to the Borrowers or under and pursuant to the Agency Fee Agreement and the Master Collateral Agency Fee Agreement.
- (8) **Consents and Authorizations.** All Consents and Authorizations shall have been obtained on terms acceptable to the Canadian Agent, upon direction from the Majority Lenders, in order to permit any Accommodation to be made on the terms and conditions set out in this Agreement without adversely affecting the Collateral or the Business, or resulting in the violation or a breach of, or a default under or any termination, cancellation, amendment or acceleration of any material obligation under, any licence, permit, lease or contract relating to the Collateral or the Business.
- (9) **No Change in Laws.** No Law, proposed Law, any change in any Law, or the interpretation or enforcement of any Law shall have been introduced, enacted or announced (including the introduction, enactment or announcement of any Law respecting Taxes or environmental matters or any change therein or in the interpretation or enforcement thereof), the effect of which will be to prohibit the Lenders from making any Accommodation or to increase materially the cost thereof to the Lenders.
- (10) **Accommodation Notice.** Except in the case of a Swing Line Loan, the applicable Agent shall have received an Accommodation Notice in compliance with this Agreement.
- (11) **DOJ Documents.** Copies of all material documents relating to any DOJ Investigation and any settlement thereof that are not protected by solicitor/client privilege shall have been delivered (in draft form, prior to execution) by the applicable Arctic Parties to the Canadian Agent, the U.S. Agent, the Lenders and their counsel, in form and substance satisfactory to each of them in their sole discretion.

## ARTICLE VII REPRESENTATIONS AND WARRANTIES

### 7.1 Representations and Warranties.

To induce each of the Lenders to make Accommodations available hereunder, each of the Arctic Parties collectively and severally represents and warrants to the Canadian Agent, the U.S. Agent and the Lenders that each of the following representations and warranties is true and correct:

- (1) **Status and Power.** Each of the Arctic Parties (other than the Fund) is a corporation duly incorporated and organized and validly subsisting under the laws of its jurisdiction of incorporation, and has full corporate power and capacity to own its Property and to carry on its Business. The Fund is an open-ended, mutual fund trust duly formed and organized and validly subsisting under the laws of the Province of Alberta. Each of the Arctic Parties has obtained all material Authorizations required in respect of its Business and is not in default and has received no notice of any Claim or default with respect to any such Authorizations. Each of the Arctic Parties is duly qualified, licensed or registered to carry on business in the jurisdictions in which the nature of its Property or the Business carried on by it make such qualification necessary.
- (2) **Corporate Authorization.** Each of the Arctic Parties has full power and capacity and full legal right to enter into and perform its obligations under this Agreement and all Ancillary Agreements to which it is or will be a party and, in the case of the Borrowers, to obtain Accommodations hereunder, and each of the Arctic Parties has or will have by Closing taken all action necessary to be taken by it to authorize such acts.
- (3) **Enforceability of Agreement.** This Agreement and any Ancillary Agreement constitute legal, valid and binding obligations of each Arctic Party which is a party thereto enforceable against it in accordance with their respective terms, subject only to any limitation under applicable Laws relating to: (i) bankruptcy, insolvency, reorganization, moratorium or creditors' rights generally; and (ii) the discretion that a court may exercise in the granting of equitable remedies.
- (4) **Government Approval, Regulation, etc.** No authorization or approval or other action by, and no notice to or filing with, any Governmental Entity or other Person (other than those that have been, or at Closing will be, duly obtained or made and which are, or at Closing will be, in full force and effect) is required for the due execution, delivery or performance by any Arctic Party of any Loan Document to which it is a party. None of the Arctic Parties is an "investment company" or a company "controlled" by an "investment company" within the meaning of the *Investment Company Act of 1940*, as amended, or a "holding company", or a "subsidiary company" of a "holding company", or an "affiliate" of a "holding company", or of a "subsidiary company" of a "holding company", or "public utility" within the meaning of the *Public Utility Holding Company Act*

of 2005, as amended. None of the Borrowers is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock, and no proceeds of the Advances will be used to purchase or carry margin stock or otherwise for a purpose which violates, or would be inconsistent with, Federal Reserve System Board Regulation U or Regulation X. Terms for which meanings are provided in Federal Reserve System Board Regulation U or Regulation X or any regulations substituted therefor, as from time to time in effect, are used in this Section with such meanings.

- (5) **Litigation.** Except as disclosed in Schedule F, there is no material action, suit or proceeding which has been commenced (notice of which has been served on any Arctic Party), or to the best of the knowledge of any Arctic Party, commenced (notice of which has not been served on any Arctic Party), pending or threatened, against any Arctic Party before or by any Governmental Entity, in Canada, the United States or elsewhere, or before any arbitrator or board, nor is there any such material action, suit or proceeding which would prevent any Arctic Party from proceeding with the Closing and complying with all conditions precedent to the Closing set forth in Article VI or any Accommodations. No Arctic Party is in default with respect to any judgment, order, writ, injunction, decree, award or other Notice of any court, arbitrator, board or other Governmental Entity, in Canada, the United States or elsewhere nor is there any judgment, order, writ, injunction, decree, or award or Notice which would prevent any Arctic Party from proceeding with the Closing and complying with all conditions precedent to the Closing set forth in Article VI or any Accommodation or from performing its obligations under this Agreement or any Ancillary Agreement to which it is a party. For the purposes of this paragraph a "material" action, suit or proceeding shall be an action, suit or proceeding involving an Arctic Party where the claim in question is in excess of \$500,000.
- (6) **Compliance with Other Instruments.** The consummation of the transactions hereby contemplated and the compliance with the terms, conditions and provisions of this Agreement and any of the Ancillary Agreements will not: (i) conflict with, or result in a breach of, or constitute a default under any of the terms, conditions or provisions of the certificate of incorporation, constating documents or by-laws of any Arctic Party or any Material Agreement or instrument to which any Arctic Party is a party or by which it is bound; or (ii) result in or require the creation or imposition of any Lien on any Property of the Arctic Parties (except as permitted by this Agreement).
- (7) **No Other Material Facts.** None of: (i) this Agreement; (ii) any of the Ancillary Agreements; or (iii) any certificate or statement in writing which has been supplied by or on behalf of any Arctic Party by any of the directors, officers, administrators, trustees, agents or employees of any Arctic Party in connection with the transactions contemplated hereby or by any of the Ancillary Agreements contains any untrue statement of a material fact, or omits any statement of a material fact necessary in order to make the statements contained herein or therein

not misleading. There is no fact known to any of the Arctic Parties which could, if known to the Canadian Agent, the U.S. Agent or any of the Lenders, be material to the decision by the Canadian Agent, the U.S. Agent or such Lender to enter into any of the Loan Documents, and which has not been disclosed to the Lenders in writing.

- (8) **Restrictive Documents.** None of the Arctic Parties is subject to, or a party to, any restriction in its constating documents or by-laws, any Notice, any Law, any Claim, any contract or instrument, any Lien or any other restriction of any kind or character which would prevent the consummation of the transactions contemplated by this Agreement or any Ancillary Agreement or compliance by any Arctic Party with the terms, conditions and provisions hereof or thereof or the continued operation of the Business after the date hereof on substantially the same basis as operated to the date hereof in each case.
- (9) **Subsidiaries and Locations.** The only Subsidiaries of the Arctic Parties (and the jurisdictions in which the Arctic Parties are incorporated to carry on business and the percentage of shares of each class of its Capital Stock or similar equity interests owned by the Arctic Parties and each other Subsidiary ) are listed in Schedule E. The address of each location at which any Arctic Party carries on business and the address at which any of the Collateral is located is set out in Schedule E. The affiliates of each Arctic Party (other than Subsidiaries) is set out on Schedule E. Each of the Borrower's directors and senior officers is set out on Schedule E.
- (10) **Title to Property.** Each Arctic Party is the sole beneficial owner of, and has a good and marketable title to, and will be lawfully possessed of its Property, including the Collateral, free and clear of all Liens, except Permitted Liens, and each of the Arctic Parties has full right to mortgage, pledge, charge and assign to the Trustee or the Agent on behalf of the Lenders the property mortgaged, pledged, charged or assigned to the Trustee or the Agent on behalf of the Lenders pursuant to the Security Documents as contemplated herein. No Person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming any agreement, option, understanding or commitment, for the purchase from any of the Arctic Parties of any of the Collateral, except in the ordinary course of the Business or as otherwise permitted hereunder.
- (11) **Personal Property.** A complete and accurate list of any item of personal Property of the Arctic Parties having a value of \$500,000 or more which is used in connection with the Business (in which is specified an accurate description of such personal Property in sufficient detail so as to make such personal Property easily identifiable) has been provided to the Canadian Agent.
- (12) **Intellectual Property.** All Intellectual Property used by the Arctic Parties is described in Schedule H and is used in compliance with all material terms and conditions under which such Persons are permitted to use such Intellectual

Property, and none of the rights to use such Intellectual Property, which failure to have the right to use would have individually or in the aggregate a Material Adverse Effect is, to the best of the knowledge of such Persons, threatened to be terminated other than upon expiry of the licence or other agreement under which the Intellectual Property is used. Except as disclosed in Schedule H, all Intellectual Property disclosed in Schedule H is owned by the Canadian Borrower and no Arctic Party has received any notice of any Claim of infringement or similar Claim or proceeding relating to any of the Intellectual Property, and, to the best of the knowledge of such Persons, no present or former employee of such Persons and no other Person owns or claims to own or has or claims to have any interest, direct or indirect, in whole or in part, in any of the Intellectual Property.

- (13) **Leasehold Real Estate.** Schedule I contains a complete and accurate list of all leases relating to Leasehold Real Estate (in which is specified the parties, the date of execution and expiry date, any options to renew, the locations of the lands and premises demised therein and the use to which such lands and premises are put) and any amendments or additions thereto to which any Arctic Party is a party, by which it is bound, or in respect of which it is entitled to benefit. Such leases are in good standing and the relevant Arctic Party is not in default in payment of rent or in the performance of its obligations thereunder. In addition, the landlords under such leases are not in breach of any of their obligations thereunder. No set of facts exists which after notice or lapse of time or both or otherwise would result in a breach or default under any of such leases which would result in a Material Adverse Effect if such lease were terminated by the landlord pursuant to such breach or default.
- (14) **Real Estate.** Schedule J contains a complete and accurate list of all Real Estate (in which is specified the legal description and the commonly known address thereof, the use to which such Real Estate is put, a description of any buildings or structures situate thereon and the registered and beneficial owner thereof). All of the Real Estate is used in connection with the Business. Except as set out in Schedule J, none of the Real Estate is leased by any of the Arctic Parties to third parties.
- (15) **Insurance Policies.** All of the Property of the Arctic Parties, including the Collateral, is insured against loss or damage to the extent, and in the manner, described in Section 8.1(12). Subject to the Intercreditor Agreement, the proceeds of such policies are fully payable to the Arctic Parties or the Master Collateral Agent on behalf of the Trustee, the Canadian Agent and the Lenders, as the case may be, as their interests may appear.
- (16) **No Material Adverse Effect.** Except as disclosed prior to the date hereof to the Lenders and the Agent, since September 30, 2009, no event, condition or circumstance has arisen or is likely to arise which would have a Material Adverse Effect.

(17) **Compliance with Laws.** Each of the Arctic Parties is in material compliance with all applicable Laws.

(18) **Environmental Disclosure.**

(a) Compliance with Environmental Laws. Except as disclosed in Schedule K, the Business has always been and is now being operated, and the Leasehold Real Estate and the Real Estate or any of the property currently or formerly owned or leased by or under the charge, management or control of the Arctic Parties (the "Affected Properties") have always been and are now being owned, operated and/or managed by the Arctic Parties and their respective predecessors in material compliance with all Environmental Laws. None of the Arctic Parties nor, to the best of the knowledge of the Arctic Parties, any of their respective directors, officers or employers has ever: (i) been convicted of any offence for non-compliance with any Environmental Laws; (ii) been fined or otherwise penalized for non-compliance with Environmental Laws; or (iii) settled any prosecution in respect thereof short of conviction. Without limiting the generality of the foregoing:

- (i) *Environmental Permits.* Each Arctic Party holds, and is conducting the Business in material compliance with, all Environmental Permits which are required for the operation of the Business. All Environmental Permits required for the operation of the Business are valid and in full force and effect and no violations thereof have been experienced, noted or recorded and no proceeding is pending or, to the best of the knowledge of the Arctic Parties, threatened which will review, make subject to limitations or conditions, suspend, revoke, terminate or limit any of such Environmental Permits;
- (ii) *Dealing with Substances.* None of the Arctic Parties nor their respective predecessors has (A) used any of the Affected Properties or permitted them to be used to generate, manufacture, refine, treat, transport, store, handle, recycle, dispose of, deposit, transfer, produce or process Hazardous Materials, except in compliance with all Environmental Laws; or (B) disposed of, treated, transported and stored any waste or other material Substance, except in compliance with all Environmental Laws;
- (iii) *Environmental Reports.* Each of the Arctic Parties and their respective predecessors has made all reports required by Environmental Laws to all appropriate Governmental Entities on the happening of all events which are required to be so reported pursuant to Environmental Laws; and
- (iv) *Record Keeping.* Each of the Arctic Parties and their respective predecessors has maintained all environmental and operating documents and records relating to the Affected Properties and their business in the manner and for the periods required by all Environmental Laws.

- (b) Environmental Liabilities. Except as disclosed in Schedule K, none of the Arctic Parties has incurred or is incurring any material liability pursuant to any Environmental Law, including any material Environmental Liabilities and Costs, To the best of the knowledge of the Arctic Parties, there is no past or present fact, condition or circumstance relating to the Business or the Affected Properties that could result in any material liability or material potential liability under any Environmental Laws. None of the Arctic Parties nor any of their respective predecessors has received an Environmental Notice pursuant to, or raising concerns in respect of, any material liability pursuant to any Environmental Laws and, to the best of the knowledge of the Arctic Parties, there are no reasonable grounds which would give rise to the issuance of any Environmental Notice concerning material liability pursuant to any Environmental Law.
- (c) Disclosure Regarding Properties. Except as disclosed in Schedule K, none of the Affected Properties: (i) has ever been used by any Person as a landfill site, a waste disposal site, or as a location for the disposal of Hazardous Substances or waste; (ii) has ever had any urea formaldehyde foam insulation, asbestos, PCB waste, radioactive substances or underground storage vessels, active or abandoned, located thereon, except in compliance with Environmental Laws; or (iii) has ever been subject to a Release of any Hazardous Substance by, or caused or permitted by any of the Arctic Parties in material violation of Environmental Laws. There are no Hazardous Substances at, in, on or under the Affected Properties at levels or in concentrations in excess of levels or concentrations set out in Environmental Laws.

Notwithstanding anything contained in this Section 7.1(18), the representations contained in Subsection (a) through (c) above, to the extent they relate solely to operation, ownership or management of the Business, the Real Estate or the Leasehold Real Estate by any arm's length predecessor, are made to the best of the knowledge of the Arctic Parties.

- (d) Change of Laws. The Arctic Parties are not aware of any pending or proposed changes to Environmental Laws other than as publicly announced by any Governmental Entity.
- (e) Policy. Each of the Arctic Parties has a comprehensive environmental management policy in place and, to the best of the knowledge of the Arctic Parties, all officers, employees and agents of the Arctic Parties are complying with such policy in all material respects in relation to the Business. To the best of the knowledge of the Arctic Parties, all environmental audits, assessments or investigations of the Affected Properties are disclosed in Schedule K.
- (f) Remedial Action. Except as disclosed in Schedule K, no Remedial Action is currently being taken by the Arctic Parties and no Environmental Notice has been received by the Arctic Parties nor are there any grounds which would give rise to Environmental Notice that any Remedial Action is required to be taken as a

condition of continued compliance with any Environmental Permits or Environmental Laws.

- (g) Site Designated for Clean-Up. None of the Affected Properties is listed or proposed for listing on any list maintained by any Governmental Entity of sites identified for investigation or clean-up pursuant to any Environmental Law, and none of the Arctic Parties has transported or arranged for the transportation of any Hazardous Materials to, or generated or disposed of any Hazardous Materials present at, any location which is on such a list, which is proposed for listing on such a list or which is the subject of a federal, provincial, state or local enforcement action or other investigation which may reasonably be expected to lead to material Environmental Liabilities and Costs to the Arctic Parties.

- (19) **Real Property.** All of the Buildings and Fixtures: (i) are in good operating condition and in a state of good maintenance and repair (having regard for the use and purpose thereof); (ii) are adequate and suitable for the purposes for which they are presently being used; and (iii) with respect to each (and to the Real Estate and the Leasehold Real Estate), the owner has adequate rights of ingress and egress for the operation of the Business in the ordinary course. None of the Real Estate, the Leasehold Real Estate or the Buildings and Fixtures, nor the use, operation or maintenance thereof for the purpose of carrying on the Business, violates any restrictive covenant or any provision of Law or encroaches in any material respect on any property owned by any other Person. No condemnation or expropriation proceeding has been commenced or, to the best of the knowledge of the Arctic Parties, pending or threatened which would preclude or impair the use of any such property or any part thereof for the purposes for which it is currently used. Except as otherwise disclosed on Schedule K, there are no outstanding work orders with respect to any of the Collateral from or required by any municipality, police department, fire department, sanitation, health or safety authorities or from any other Person and there are no matters under discussion with or by the Arctic Parties relating to work orders. The representations contained in this Section 7.1(19), to the extent they relate solely to the use or operation of the Real Estate or the Leasehold Real Estate or the Buildings and Fixtures thereon by any arm's length predecessor, or the condition or suitability of such Buildings and Fixtures prior to the acquisition from any arm's length predecessor, are made to the best of the knowledge of the Arctic Parties.

- (20) **No Breach of Contracts.** Schedule L contains a complete and accurate list of all agreements to which any Arctic Party is a party or by which it is bound having liabilities or obligations of any party thereto over a period of one year in excess of \$500,000 (the "Material Agreements") (in which is specified the parties, the date of execution and expiry date and any options to renew) and any amendments or additions thereto. On the date of execution of each Future Material Agreement (as defined below in Section 8.1(23)), Schedule L hereto shall be deemed to be amended to include such Future Material Agreement and such Future Material Agreement shall be a "Material Agreement" for the purposes of this Agreement,



without the necessity of any further action by any of the parties hereto. Each Material Agreement is in full force and effect, unamended, and there exists no default or event of default or event, occurrence, condition or act (including the completion of the transactions contemplated under this Agreement and the Ancillary Agreements) which, with the giving of notice, the lapse of time or the happening of any other event or condition, would become a default or event of default thereunder. No Arctic Party has violated or breached, in any respect, any of the terms or conditions of any Material Agreements or any one or more other agreements having, in the aggregate, liabilities or obligations of any party thereto over the term thereof in excess of \$500,000 and, to the best of the knowledge of the Arctic Parties, all the material covenants to be performed by any other party thereto have been fully performed.

(21) **Books and Records.** All books and records of each of the Arctic Parties have been fully, properly and accurately kept and completed in accordance with GAAP and there are no material inaccuracies or discrepancies of any kind contained or reflected therein.

(22) **Tax Liability.** Except for any Taxes which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books: (i) each of the Arctic Parties has in a timely manner filed all tax returns, elections, filings and reports with respect to Taxes required by Law to be filed by it and such returns, elections, filings and reports are true, complete and correct; (ii) each of the Arctic Parties has paid, or reserved in its financial statements, all Taxes which are due and payable, and has paid all assessments and reassessments and all other Taxes, governmental charges penalties, interest and fines due and payable by it; (iii) each of the Arctic Parties has no liability, contingent or otherwise, for Taxes, except Taxes not now due and payable with respect to ordinary operations during the current fiscal period adequate provision for the payment of which has been made; (iv) each of the Arctic Parties has paid as and when due all applicable Taxes and remitted as required by Law all applicable Taxes and deductions and any interest or penalties related thereto; and (v) each of the Arctic Parties has paid all realty Taxes as and when due.

(23) **Pension Plans.**

(a) Each of the Borrowers and the Fund and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable Laws except for such instances of noncompliance as have not resulted in and could not reasonably be expected to result in a Material Adverse Effect. None of the Borrowers and the Fund nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to a Plan, and no event, transaction or condition has occurred or exists that could reasonably be expected to result in the incurrence of any such liability by the Borrowers or the Fund or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of any of the Borrowers or the Fund or any ERISA

Affiliate, in either case pursuant to Title I or IV of ERISA or pursuant to such penalty, excise tax, funding or security provisions, including, but not limited to Section 401(a)(29) or 412 of the Code, other than such liabilities or Liens as would not be individually or in the aggregate likely to have a Material Adverse Effect.

- (b) The present value of the aggregate benefit liabilities under each of the Plans subject to Title IV of ERISA, determined as of the end of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities. The term "benefit liabilities" has the meaning specified in Section 4001 of ERISA and the terms "current value" and "present value" have the meaning specified in Section 3 of ERISA.
- (c) None of the Borrowers, the Fund nor any ERISA Affiliate is or has ever been a party to, or has any obligation or liability with respect to, any Multiemployer Plan.
- (d) The expected postretirement benefit obligation (determined as of the last day of each respective Borrower's most recently ended fiscal year in accordance with Financial Accounting Standards Board Statement No. 106 (or any successor to such statement), without regard to liabilities attributable to continuation coverage mandated by Section 4980B of the Code) of the Borrowers is not material.
- (e) The execution and delivery of this Agreement and the other Loan Documents will not involve any transaction that is subject to the prohibitions of Title I of ERISA or in connection with which a tax could be imposed pursuant to Section 4975 of the Code.
- (f) With respect to each Canadian Pension Plan:
  - (i) Such Canadian Pension Plan is in good standing and is fully funded and the applicable Arctic Party is in compliance in all material respects with such plan and all applicable pension benefits and tax laws;
  - (ii) All contributions (including employee contributions made by authorized payroll deductions) required to be made to the appropriate funding agency in accordance with all applicable laws and the terms of such Canadian Pension Plan have been made in accordance with applicable laws and the terms of such Canadian Pension Plan; and
  - (iii) No event has occurred and no condition exists with respect to such Canadian Pension Plan that has resulted or could reasonably be expected to result in such Canadian Pension Plan having its registration revoked or refused for the purposes of any applicable pension benefits or tax laws or being placed under the administration of any relevant pension benefits

regulatory authority or being required to pay any taxes or penalties under any applicable pension benefits tax laws except in each case to the extent that any of the foregoing would not in the aggregate reasonably be expected to have a Material Adverse Effect.

- (g) Schedule M contains a complete and accurate list of all of the Arctic Parties' Plans and Canadian Pension Plans, and none of the Arctic Parties maintain any other pension and benefit plans.
- (24) **Shareholders.** The Canadian Borrower is a direct, wholly-owned subsidiary of the Fund and the U.S. Borrower is a direct, wholly-owned subsidiary of the Canadian Borrower. Except as disclosed in Schedule P, no Person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming any agreement, option, understanding, commitment, right or privilege for the purchase of any Capital Stock of the Arctic Parties or to receive payment based on the value of any such Capital Stock. The issued and outstanding Capital Stock and Debt (excluding Debt under this Agreement) of the Arctic Parties (other than the Fund), and the registered and beneficial holders of such Capital Stock and Debt (excluding Debt under this Agreement) are as described in Schedule P. The Fund owns all of the Capital Stock of the Canadian Borrower.
- (25) **Deposit Accounts, Investment Accounts, Securities Accounts.** The Arctic Parties do not have any deposit accounts, investments accounts or securities accounts or similar accounts with any bank, savings and loan, or other financial institution, except as are described in Schedule Q, for the purposes and of the types specified therein.
- (26) **Liabilities.** The Arctic Parties do not have any liabilities, whether accrued, absolute, contingent or otherwise, of any kind or nature whatsoever, except as otherwise disclosed to the Agent and the Lenders and except pursuant to the Loan Documents, and except incurred after the date hereof in compliance with the Loan Documents.
- (27) **Compliance with Securities Laws.** The Fund has complied and will comply in all material respects with its obligations to file all forms, reports, statements, schedules, proxy statements, information circulars, prospectuses, certifications, and documents required to be filed by the Fund with the applicable securities regulatory authorities (as they have been amended since the time of their filing, and including any documents filed as exhibits, annexes or schedules thereto, collectively, the "Reports"), and complete and correct copies of all such Reports are available to the Agent and the Lenders through public sources. Each Report complied in all material respects with the requirements of securities Laws applicable to the Fund, as in effect on the date so filed. None of such Reports (including any financial statements, schedules, documents or exhibits included or incorporated by reference therein) or any other document, as of the date of filing pursuant to such securities Laws and of any amendment or supplement and, in the

case of any proxy statement, information circular, prospectus or like document at the date mailed to shareholders and at the date of the meeting, contained any misrepresentation (as defined under such securities Laws).

- (28) **No Default or Event of Default.** No Default and no Event of Default has occurred, nor has any event or condition occurred which, with the giving of notice or passage of time, or both, would constitute a default under any one or more material agreements or agreements relating to Debt to which any Arctic Party is a party and which could result in the acceleration of amounts owing by any Arctic Party under any such agreements.
- (29) **Financial Information.** The financial statements of each Arctic Party furnished to the Canadian Agent and the Lenders pursuant to this Agreement have been prepared in accordance with GAAP consistently applied, and present fairly the consolidated financial condition of the Persons covered thereby as at the dates thereof and the results of their operations for the periods then ended. All balance sheets, all statements of operations, shareholders' equity and cash flow and all other financial information of each Arctic Party furnished pursuant to Section 8.1(1) have been and will for periods following Closing be prepared in accordance with GAAP consistently applied, and do or will present fairly the consolidated financial condition of the Persons covered thereby as at the dates thereof and the results of their operations for the periods then ended.

Each of the representations and warranties contained in this Section 7.1 shall be deemed to be continually repeated by the Arctic Parties at the time of each Accommodation.

## **7.2 Survival of Representations and Warranties.**

All the representations and warranties of the Arctic Parties contained in Section 7.1 shall survive the execution and delivery of this Agreement and shall continue in full force and effect until all amounts owing hereunder have been repaid and the Credit Facilities have been terminated notwithstanding any investigation made at any time by or on behalf of the Canadian Agent, the U.S. Agent or the Lenders.

## **7.3 No Representations by Lenders.**

No representation, warranty or other statement made by the Canadian Agent, the U.S. Agent or any one or more of the Lenders in respect of the Credit Facilities or any Accommodations made hereunder shall be binding on the Canadian Agent, the U.S. Agent or such Lender unless made by it in writing as a specific amendment to this Agreement.

## ARTICLE VIII COVENANTS OF THE BORROWERS

### 8.1 Affirmative Covenants.

So long as any amount owing under the Loan Documents remains unpaid or any of the Lenders has any Commitment under this Agreement, and unless the Canadian Agent, upon direction from the Majority Lenders, shall otherwise consent, each of the Borrowers and the Fund shall:

- (1) **Financial Reporting and Deliveries.** Cause to be delivered to the Canadian Agent sufficient copies to deliver to the Canadian and U.S. Lenders, respectively, of the following documents, in form and substance satisfactory to the Canadian Agent and the Lenders, acting reasonably;

#### Consolidated Annual Financial Statements

- (a) as soon as available, and in any event within ninety (90) days after the end of each Financial Year, the audited consolidated financial statements (including, at a minimum, a balance sheet, income statement and statement of changes in financial position) of each Borrower and the Fund for such Financial Year, all certified as to fairness in accordance with GAAP and as to consistency (or exceptions therefrom) by the respective Chief Financial Officer (or the equivalent, in the case of the Fund) of each such Borrower and the Fund and subject to an unqualified opinion of the Auditors;

#### Consolidated Quarterly Financial Statements

- (b) (i) as soon as available, and in any event within forty-five (45) days after the end of each of the first three Financial Quarters of each Fiscal Year (excluding the last Financial Quarter of a Financial Year), the unaudited consolidated financial statements (including, at a minimum, a balance sheet, income statement and statement of cash flow) of the Canadian Borrower (or an authorized signatory designated by the Chief Financial Officer acceptable to the Lenders, acting reasonably) and the Fund for such Financial Quarter as of the end of such Financial Quarter, all certified as to fairness in accordance with GAAP and as to consistency (or exceptions therefrom) by the respective Chief Financial Officer (or the equivalent, in the case of the Fund) of the Canadian Borrower and the Fund; (ii) as soon as available and in any event within forty-five (45) days of the end of the fourth Financial Quarter of each Fiscal Year, preliminary unaudited internal consolidated financial statements (including, at a minimum, a balance sheet, income statement, and statement of cash flow) of the Canadian Borrower and the Fund for such period, provided that such financial statements relating to the fourth Financial Quarter shall not be required to be certified as to fairness in accordance with GAAP and as to consistency (or exceptions therefrom), shall not be accompanied by a Compliance Certificate and shall be for informational purposes only.

## IFRS

- (c) To the extent that the Arctic Parties prepare more than one set of financial statements in anticipation of or upon the adoption of IFRS or otherwise, all such financial statements shall be required to be delivered to the Agent and the Lenders hereunder.

## Annual Budget and Business Plan

- (d) as soon as available, and in any event not later than sixty (60) days following the end of each Financial Year (or ninety (90) days following the end of the Financial Year ended December 31, 2009) of each Borrower, the annual budget for each of the Borrowers and the Subsidiaries (including, at a minimum, a projected balance sheet, a projected income statement, a projected statement of changes in cash flow, and a Capital Expenditures budget which shall also identify Capital Expenditures made (i) for maintenance purposes, and (ii) in connection with the expansion of the Business), prepared on a quarterly, consolidated basis, for the following Financial Year, together with projections for covenant compliance for each Financial Year until the Maturity Date and a current Business Plan.

- (2) **Additional Reporting and Deliveries.** Cause to be delivered to the Canadian Agent sufficient copies to deliver to the Canadian and U.S. Lenders, respectively, of the following documents, in form and substance satisfactory to the Canadian Agent and the Lenders acting reasonably:

- (a) as soon as available and in any event together with each delivery of financial statements referred to in Sections 8.1(1)(a) and 8.1(1)(b), a Compliance Certificate of the Chief Financial Officer of the Canadian Borrower (or a Person designated by the Chief Financial Officer, acceptable to the Canadian and the U.S. Lenders, acting reasonably) together with detailed calculations (pursuant to GAAP) relating to such Compliance Certificate (including, without limitation, the information related to Hedging Transactions, the DOJ Payments, any other settlements of Claims and any Capital Stock consisting of redeemable or retractable preferred shares, all as specifically contemplated by Schedule D hereto) and an updated copy of Schedule P, only where there have been changes to Schedule P;
- (b) a copy of each management letter or report submitted to the board of directors or trustees (or any committee thereof) or senior management of any of the Arctic Parties by the Auditors in connection with any annual, interim or special audit made by them of the books of the Arctic Parties together with the related response of the applicable Arctic Party to be delivered promptly upon the issuance of the response of the applicable Arctic Party but in any event not later than 10 days following receipt of such management letter or report;

- (c) promptly upon receipt thereof, a copy of each environmental report or audit submitted to the board of directors (or any committee thereof) or senior management of any of the Arctic Parties;
- (d) promptly after the occurrence of each Default or Event of Default, a statement of the Chief Financial Officers of the Fund and each of the Borrowers setting forth the details of such Default or Event of Default and the action which such parties propose to take or have taken with respect thereto;
- (e) promptly after the commencement thereof, notice of Claims which have been commenced (notice of which has been served on any of the Arctic Parties), or to the best of the knowledge of any of the Arctic Parties, have been commenced (notice of which has not been served on any of the Arctic Parties) or are pending or threatened affecting any of the Arctic Parties or any of the Collateral, for amounts which exceed \$500,000 in the aggregate at any time;
- (f) promptly after (i) the occurrence of any material adverse development, and in any event within three (3) days after any of the Arctic Parties obtain knowledge of the occurrence thereof, and (ii) the receipt of any documentation, with respect to any Claims referred to in Section 8.1(2)(e), notice thereof and copies of all such documentation to the extent such documents are material to such Claim and are not protected by solicitor/client privilege;
- (g) promptly upon request of the Canadian Agent evidence of the maintenance of all insurance required to be maintained by Section 8.1(12), including such originals or copies as the Agent may request of policies, certificates of insurance, riders and endorsements relating to such insurance and proof of premium payments;
- (h) promptly upon request of the Canadian Agent in respect of each Financial Year, evidence of the payment of all realty Taxes by each Arctic Party;
- (i) promptly upon the issuance thereof and contemporaneously with the distribution to security holders of the Fund, copies of all Notices, reports (including, without limitation, all auditor's reports and opinions), press releases, circulars, financial statements, offering documents and other documents filed by any Arctic Party with any securities commission or stock exchange or distributed to holders of Fund Units or other securities;
- (j) immediately, but in any event within two (2) Business Days of the receipt thereof by the Arctic Parties, copies of all Notices delivered or received pursuant to or in connection with the Subordinated Facility Documents. Examples of Notices to be delivered pursuant to this provision include regular reporting deliveries, compliance certificates, monthly litigation reports, and any other reports or written notices delivered or received pursuant to the Subordinated Facility Documents. This provision is not intended to require delivery of normal course written correspondence, by email or otherwise, in connection with the day-to-day, ordinary-course administration of the Subordinated Facility Loan Agreement;

- (k) immediately upon becoming aware of: (i) the institution of any steps by any Person to terminate any Plan; (ii) the failure to make a required contribution to any Plan if such failure is sufficient to give rise to a Lien under Section 303 of ERISA or Section 412 of the Code; (iii) the taking of any action with respect to a Plan which could result in the requirement that any of the Arctic Parties furnish a bond or other security to the PBGC, or such Plan; or (iv) the occurrence of any event with respect to any Plan which could result in the incurrence by any of the Arctic Parties of any material liability, fine or penalty; (v) notification that any Plan or related trust is under examination by the United States Internal Revenue Service, Department of Labor, or the PBGC; (vi) notice of any pending, threatened or anticipated claims (other than routine claims for benefits) by, on behalf of, or against an Arctic Party with respect to any Plan or related trust; (vii) with respect to any Plan subject to Title IV of ERISA, any reportable event, as defined in Section 4043 of ERISA and the regulations thereunder, for which notice thereof has not been waived pursuant to such regulations as in effect on the date hereof; (viii) the taking by the PBGC of steps to institute, or the threatening by the PBGC of the institution of, proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by any of the Arctic Parties or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan; or (ix) any event, transaction or condition that could result in the incurrence of any liability by any of the Arctic Parties or any ERISA Affiliate pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to any Plan, or in the imposition of any Lien on any of the rights, properties or assets of any of the Arctic Parties or any ERISA Affiliate pursuant to Title I or IV of ERISA or such penalty or excise tax provisions, if such liability or Lien, taken together with any other such liabilities or Liens then existing, could reasonably be expected to have a Material Adverse Effect, notice thereof and copies of all documentation relating thereto within five (5) Business Days;
- (l) promptly following the mailing or receipt of any Notice or report, and immediately upon becoming aware of any default, event of default or demand for payment under the terms of any Debt of the Arctic Parties, all information pertaining to such default or demand, such as the date of the default or demand, the amount demanded, and the facts and circumstances which caused such default or demand and copies of such Notice or report;
- (m) included with each Compliance Certificate, the applicable Arctic Party shall provide to the Canadian Agent a certificate certifying the particulars of such Hedging Transaction including the notional amount being hedged, the name of the applicable counterparty and the cumulative aggregate notional amount of Interest Rate Hedging Transactions, Currency Hedging Transactions and Commodity Hedging Transactions entered into by the Arctic Parties (including such Hedging Transaction) as of such date and that, after entering into such Hedging



Transaction, the Arctic Parties have not exceeded the FX Hedging Limit, the Rate Hedging Limit and Commodity Hedging Limit.

- (n) such other information and reports relating to any of the Arctic Parties, their respective Property (including the Collateral), or the Business, as the Canadian Agent may from time to time reasonably request.
- (3) **Corporate Existence.** Preserve and maintain, and cause each of its Subsidiaries to preserve and maintain, and keep in full force and effect its corporate existence or in the case of the Fund, its existence as an open-ended mutual fund trust, rights (charter and statutory) and its agreements, licenses, operations, contracts, franchises and other arrangements necessary to carry on the Business.
- (4) **Compliance with Laws and Governmental License Fees.** Comply, and cause each of its Subsidiaries to comply, in all material respects with the requirements of all applicable Laws, including Environmental Laws and all Governmental Licenses issued to and held by the Arctic Parties, where a failure to comply with such applicable Laws individually or in the aggregate will result in a Material Adverse Effect including, without limitation, requirements of all applicable Laws and licensing requirements related to water input quality that the Arctic Parties must comply with to operate the Business.
- (5) **Payment of Taxes, Claims and Governmental License Fees.** Subject to Section 8.2(22), pay and discharge, and cause each of its Subsidiaries to pay and discharge, before the same shall become delinquent: (i) all Taxes, governmental assessments, charges or levies and Claims imposed upon it or upon any of its Property, income or franchises; (ii) all lawful Claims which, if unpaid, might by Law become a Lien upon its Property, in each case except for any such Tax, assessment, charge, levy or Claim which would result in a Lien which is a Permitted Lien; and (iii) all fees payable to Governmental Entities or other authorities in connection with all Governmental Licenses issued to and held by the Arctic Parties.
- (6) **Keeping of Books.** Keep, and cause each of its Subsidiaries to keep, proper books, records and accounts, in which full and correct entries shall be made of all financial transactions of it and each of its Subsidiaries in accordance with GAAP.
- (7) **Visitation and Inspection.** At any reasonable time or times and upon reasonable prior notice given to the Borrowers by the Canadian Agent permit the Canadian Agent, the U.S. Agent, the Lenders or any of their authorized representatives, full and reasonable access to the premises of the Arctic Parties and obtain any consents and waivers from any Person necessary, in the reasonable opinion of the Canadian Agent to ensure such access, and to all Property of the Arctic Parties (including the Collateral) and to discuss the business, affairs, finances and accounts of, and the compliance with the terms of this Agreement and the Ancillary Agreements by, the Arctic Parties with the management and auditors thereof and in the case of the Canadian Agent or the U.S. Agent, as the case may

be, on behalf of the Lenders, full and reasonable access to all business, financial and computer records of the Arctic Parties, if in the reasonable opinion of the Canadian Agent a Default or Event of Default has or may have occurred and to take copies of such records, and to reimburse the Canadian Agent or the U.S. Agent, as the case may be, for all reasonable costs and expenses incurred by such Agent in connection with an annual visit, if reasonably required by the Canadian Agent to protect its and the Lenders' rights and interests under the Loan Documents, to all of the premises where the Arctic Parties carry on the Business, including all reasonable travel and lodging expenses.

- (8) **Environmental Reporting.** Promptly, and in any event within ten (10) days of becoming aware of its existence, notify the Lenders in writing of any Notice or other facts or circumstances or state of affairs (providing details of any actions taken by the Arctic Parties in response) which could reasonably be expected to give rise to: (i) Environmental Liabilities and Costs; or (ii) any violation of Environmental Laws; or (iii) the possible imposition of a fine or the shutting down of any facility forming part of the Property of any Arctic Party for any period, in each case whether or not any Governmental Entity has taken or threatened any action in connection therewith.
- (9) **Environmental Audits.** Promptly if requested by the Canadian Agent, upon direction from the Majority Lenders, and upon reasonable prior notice given to the Borrowers by the Agent: (i) if a Default has occurred and is continuing or the Canadian Agent, the U.S. Agent or the Majority Lenders have a good faith concern as to the financial condition of any Borrower, conduct at its own expense environmental audits having a scope acceptable to the Canadian Agent upon direction from the Majority Lenders, with respect to the potential liability under applicable Environmental Laws of the Arctic Parties, their respective Real Estate and Leasehold Real Estate or other Property, and the Business, such environmental audits to be conducted by an Environmental Auditor, and provide copies of such environmental audits to the Canadian Agent which environmental audits shall be addressed to the Canadian Agent, the U.S. Agent and the Lenders and accompanied by a written authorization from such Environmental Auditor entitling the Canadian Agent, the U.S. Agent and the Lenders to rely on such audits; (ii) if the Canadian Agent, the U.S. Agent or the Majority Lenders have a good faith concern that there is any non-compliance by any Arctic Party with Environmental Laws, conduct such environmental audits concerning alleged non-compliance as the Canadian Agent, upon direction from the Majority Lenders, may require, such audits to be conducted by an Environmental Auditor, and provide copies of such environmental audits to the Canadian Agent which environmental audits shall be addressed to the Canadian Agent, the U.S. Agent and the Lenders and accompanied by a written authorization from such Environmental Auditor entitling the Canadian Agent, the U.S. Agent and the Lenders to rely on such audits; and (iii) diligently remedy any non-compliance with Environmental Laws revealed by any such audit.

- (10) **Environmental Remediation.** Promptly, upon becoming aware of the existence of any violation of Environmental Laws, implement any and all Remedial Action that is appropriate or necessary to maintain the value and marketability of the Real Estate and Leasehold Real Estate or other Property, and the Business, or to otherwise comply in all material respects with Environmental Laws, environmental permits or orders pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Substances on, at, in, into, under, above, to, from or about any of its Real Estate and Leasehold Real Estate or other Property, whether or not any Governmental Entity has taken or threatened any action in connection therewith.
- (11) **Condition of Property.** Keep, and cause each of its Subsidiaries to keep, its Property in all material respects in good repair, working order and condition (reasonable wear and tear excepted) and with regard to the use and purpose of such property and, from time to time, make all necessary repairs, renewals, replacements, additions and improvements thereto.
- (12) **Insurance.**
- (a) Maintain in force with reputable and creditworthy insurers, insurance coverage of the nature and kind and in such amounts as is customary and prudent for companies engaged in the same or similar business in the same jurisdiction as the Arctic Parties, respectively, including for greater certainty: (i) broad form all risk property damage and boiler and machinery insurance, including business interruption coverage; and (ii) third party liability insurance which shall include product and warehouseman's liability coverage. All such insurance of the Arctic Parties shall be in such form and scope as the Canadian Agent, upon direction from the Majority Lenders and from any reputable insurance consultants hired by the Canadian Agent, at the sole cost of the Borrower, may reasonably require, shall contain the Insurance Bureau of Canada standard mortgage clause or U.S. equivalent and shall name the Master Collateral Agent, the Canadian Agent, the U.S. Agent and the Trustee as their interests may appear, as loss payees in respect of property damage insurance covering the Collateral and as additional named insureds in respect of third party liability insurance. All such insurance shall also provide that: (A) if it is cancelled or amended in any adverse respect, or the same is allowed to lapse for non-payment of premium, the cancellation, amendment or lapse shall not be effective as to the Master Collateral Agent, the Canadian Agent, the U.S. Agent and the Trustee for thirty (30) days after receipt by them of notice of such cancellation, amendment or lapse from the insurers, or as otherwise agreed by the Canadian Agent, upon direction from the Majority Lenders; and (B) in respect of the interest of the Master Collateral Agent, the Canadian Agent, the U.S. Agent and the Trustee in such insurance, the insurance shall not be invalidated by any action or inaction of the Master Collateral Agent, the Canadian Agent, the U.S. Agent or the Trustee. Each insured Arctic Party shall use its best efforts to cause such insurance to also provide that the insurers waive all rights of defence, set-off, counterclaim or abatement, legal or equitable, against the Master

Collateral Agent, the Canadian Agent, the U.S. Agent and the Trustee in connection with the obligations of the insureds to make payments under such insurance but without prejudice to the insurers' right to maintain a separate action against the named insured for any unpaid premium with respect to such insurance;

- (b) Cause the insurance proceeds under all policies required to be maintained hereunder to be made payable to the Master Collateral Agent, (or to the extent that the Security Documents in favour of the Canadian Agent or the Trustee provide for the application of insurance proceeds, the Master Collateral Agent shall direct the Trustee or the Canadian Agent to proceed in accordance with this Section 8.1(12)), on behalf of the Lenders, as loss payees as their interests may appear and otherwise deal with such policies in such manner as to enable all insurance proceeds payable thereunder in respect of the Collateral or otherwise to be paid to and collected by the Master Collateral Agent. The net proceeds received by the Master Collateral Agent (after deducting any expenses incurred in a collection or handling of such proceeds) under any property insurance policies shall be applied as follows:
- (i) if an Event of Default shall have occurred and is continuing, the entire net proceeds of any insurance claim received by the Master Collateral Agent shall, at the option of the Majority Lenders, be applied towards repayment of the Credit Facilities whether then due or not without any prepaid penalty; or
  - (ii) if no Event of Default shall have occurred and be continuing and so long as (A) the insurance proceeds are sufficient to fully restore the Collateral, and (B) the Borrowers are able, whether from proceeds of business interruption insurance or otherwise, to continue to make the principal and interest payments owing hereunder when due and payable, and the net proceeds of any claim shall be held by the Master Collateral Agent for the benefit of the Borrowers and shall, in accordance with Section 2.6(8) hereof, be either retained by the Agent or advanced from time to time, but not advanced more often than weekly nor for a total period of greater than three hundred and sixty-five (365) days, against such requisition or other evidence of restoration or repair of the Collateral which is subject to the claim (or claims), including architects' or engineers' certificates and copies of invoices for work and materials used in connection therewith, as the Master Collateral Agent may, in its sole discretion, reasonably require. In no event, however, shall any advance of any such proceeds be made which will result in the funds remaining with the Master Collateral Agent or payable to the Lenders under the policies being less than the cost of completion or restoration of the Collateral as estimated by an architect or engineer satisfactory to the Master Collateral Agent. If, upon completion of restoration of the Collateral there remains funds with the Master Collateral Agent, the Master Collateral Agent shall apply such funds to repay the Obligations in accordance with the last sentence of Section

2.6(8)(b). Any funds remaining with the Master Collateral Agent after three hundred and sixty-five (365) days shall be subject to the mandatory prepayment provision in Section 2.6(8)(c). Neither the Canadian Agent nor the Master Collateral Agent nor any Lender shall be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure. The foregoing provisions shall apply *mutatis mutandis* to any proceeds of expropriation or condemnation of the Collateral or any part thereof.

- (c) Proceeds of liability insurance shall be paid to the person to whom the affected Arctic Party is liable and the proceeds of business interruption insurance shall be paid to the affected Arctic Party; provided that such proceeds are used to carry on the Business or otherwise in accordance with this Section 8.1(12).
- (13) **Protect Liens.** At all times take all action and supply the Master Collateral Agent, the Trustee, Canadian Agent and the U.S. Agent with all information necessary to create, maintain, perfect, protect and preserve the Liens provided for under the Security Documents and confer upon the Master Collateral Agent, the Trustee, the Agent and the Lenders the security interests intended to be created thereby.
- (14) **Payments.** Pay and cause its Subsidiaries to pay all amounts of principal, interest, fees, costs and expenses on the dates, at the times and at the places specified in this Agreement or under any other Loan Document.
- (15) **Use of Proceeds.** Apply the proceeds of the Credit Facilities only in accordance with Section 2.4.
- (16) **Intercompany Debt.** Cause and cause its respective Subsidiaries to cause all Intercompany Debt to be evidenced by subordinated notes satisfactory in form and substance to the Canadian Agent and its counsel and to be pledged to the Canadian Agent for the benefit of the Lenders pursuant to a Loan Document, subject to the Intercreditor Agreement.
- (17) **Reporting Issuer Status.** In the case of the Fund only (i) maintain its status as a reporting issuer in good standing, (ii) maintain the listing of the Fund Units on the Toronto Stock Exchange, and (iii) remain a single-purpose holding entity.
- (18) **Mortgages.** Cause the Arctic Parties to execute and deliver to the Trustee, the Canadian Agent or the U.S. Agent, as the case may be, mortgages, deeds of trust or agreements securing the Obligations, under which a Lien is granted on the Real Estate and Leasehold Real Estate and any related fixtures as indicated on Schedule V, together with, in the case of Real Estate located in the United States, customary mortgagee's title insurance policies in amounts, in form and substance (including, without limitation, a revolving credit endorsement) satisfactory to the Canadian Agent, the U.S. Agent and their counsel, and issued by reputable and

creditworthy insurers, and such policies shall be accompanied by evidence of the payment in full of all premiums thereon.

- (19) **Control Agreements.** Cause the Arctic Parties to execute and deliver to the Trustee, the Canadian Agent or the U.S. Agent, as the case may be, control agreements securing the Obligations in respect of each deposit account, investment account or securities account of the Arctic Parties in the United States of America, all of which are set out on Schedule Q hereto (the "Controllable US Accounts"), in form and substance satisfactory to the Canadian Agent, the U.S. Agent and their counsel in their sole discretion.
- (20) **Single Purpose Entity.** With respect to the Fund only, remain a single-purpose holding entity.
- (21) **Payment of Preferred Claims.** Pay, and cause its Subsidiaries to pay, all amounts related to Taxes, wages, vacation pay, severance pay, termination pay, workers' compensation obligations, government royalties or pension fund obligations and any other amount which may result in a Lien under applicable Law, other than a Permitted Lien whether or not entitled to priority over the Security Documents;
- (22) **Construction Liens.** Comply, and cause its Subsidiaries to comply, with the provisions of the *Construction Lien Act* (Ontario) and corresponding legislation of other jurisdictions and pay, and cause its Subsidiaries to pay, from time to time when the same shall be due, all claims and demands of contractors, subcontractors, labourers, suppliers of materials, builders, workmen and others, which if unpaid, might result in, or permit the creation of, a privilege of Lien on the Property of the Arctic Parties or any part thereof or on the revenues, income and profits arising therefrom; if a construction lien or other similar Lien is registered against title to the Collateral, promptly pay and discharge or cause its Subsidiaries to do the same; if the applicable Arctic Party *bona fide* disputes the validity or correctness of a registered Lien it may contest such Lien in any manner properly contemplated by applicable Law; provided it promptly discharges or vacates, or causes to be discharged or vacated, the Lien from the title to the Collateral by posting of a payment bond in such amount, or by payment in court of such amount, as are necessary to obtain such removal or otherwise posting such security as may be acceptable to the Canadian Agent, upon direction from the Majority Lenders.
- (23) **Material Agreements.** Comply, and cause its Subsidiaries to at all times comply, with the provisions of all Material Agreements and Future Material Agreements (as defined below). In respect of each Material Agreement executed after the date hereof (each a "Future Material Agreement"), provide to the Canadian Agent: (i) a certified copy of each Future Material Agreement, certified by an officer of each Arctic Party that is a party thereto; and (ii) written consent if required by the terms of the Future Material Agreement (dated as of the date of such Future Material Agreement) to the assignment of such Future Material Agreement to the

Canadian Agent, as security from each party to such Future Material Agreement that is not an Arctic Party, in form and substance satisfactory to the Canadian Agent, in its sole discretion.

- (24) **Notice of Defaults and Material Adverse Effect.** The Arctic Parties shall immediately notify the Canadian Agent and the Lenders: (i) of any Event of Default or pending Event of Default, or of any material default (either by an Arctic Party or by any other party) under any Material Agreement or Material Governmental License, or of any event which, with or without the giving of notice, lapse of time or any other condition subsequent, would be a material default under or would otherwise allow the termination of any Material Agreement or Material Governmental License and shall from time to time provide the Lenders with all information reasonably requested by any of the Lenders concerning the status thereof; (ii) on becoming aware of the occurrence of any circumstance which could have a Material Adverse Effect on the ability of any Arctic Party to perform its obligations under this Agreement, or the Ancillary Documents to which it is or will be a party, and shall upon request provide the Lenders with all information requested by any of the Lenders, acting reasonably, concerning the status thereof.
- (25) **Arizona Lease.** The Arctic Parties shall cause Arctic Glacier California Inc. to, during the term of the Arizona Lease, either: (i) extend the then current term of the Arizona Lease at least six months and one day prior to the expiration of the then current term of the lease, or (ii) failing such extension, exercise the purchase option at least four months and one day prior to the expiration of the then current term of the Arizona Lease, in each case in accordance with the terms thereof and, in the case of (ii), subject to the delivery by the Arctic Parties to the Canadian Agent of evidence acceptable to the Canadian Agent, including, without limitation, an independent appraisal of the subject property, demonstrating to the reasonable satisfaction of the Canadian Agent that the option price accurately reflects the actual fair market value of the subject property
- (26) **DOJ Investigation and DOJ Plea Agreement.** Each of the Arctic Parties shall comply with each of the terms and conditions of the DOJ Plea Agreement and provide evidence of (i) payment of the DOJ Payments on the dates specified in the DOJ Plea Agreement and receipt thereof by the applicable Governmental Entity within 5 Business Days of such payment, and (ii) compliance with the DOJ Plea Agreement upon request by the Canadian Agent.
- (27) **Further Assurances.** At its cost and expense, upon request of the Canadian Agent duly execute and deliver or cause to be duly executed and delivered to the Canadian Agent, the U.S. Agent or any of the Lenders such further instruments and other documents and do and cause to be done such further acts as may be necessary or desirable in the opinion of the Canadian Agent acting reasonably, to carry out more effectively the provisions and purposes of the Loan Documents.

**Negative Covenants.**

So long as any amount owing under the Loan Documents remains unpaid or any of the Lenders has any Commitment under this Agreement and unless the Canadian Agent, upon direction from the Majority Lenders or Lenders, as the case may be, shall otherwise consent, each of the Fund and the Borrowers agrees not to:

- (1) **Business Activity.** Engage, or permit any of its Subsidiaries to engage, in any business activity except: (i) in the case of the Borrowers and the Subsidiaries of the Borrowers, the Business; and (ii) in the case of the Fund, those activities permitted by the constating documents of the Fund.
- (2) **Liens.** Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Lien on any of its Property other than Permitted Liens.
- (3) **Disposal of Property.** Dispose of, or permit any Subsidiary to Dispose of, any of its Property without the prior written consent of the Lenders except that, as long as no Default or Event of Default has occurred and is continuing, such parties may Dispose of Property at fair market value to an arm's length purchaser in the ordinary course of business if after giving effect to the Disposition, Disposed Property for all such parties, based upon the higher of book value and fair market value for each such Property will not exceed \$1,500,000 in any single Financial Year.
- (4) **Sale and Leaseback.** Enter into, or permit any Subsidiary to enter into, directly or indirectly, any Sale-Leaseback Transaction.
- (5) **Debt.** Create, incur, assume or suffer to exist, or permit any Subsidiary to create, incur, assume or suffer to exist, directly, contingently or otherwise, any Debt, other than: (i) Debt to the Lenders hereunder or pursuant to Hedging Transactions with the Lenders or any one of them; (ii) Intercompany Debt, if any, only if all notes representing such Intercompany Debt have been assigned and delivered to the Trustee, the Canadian Agent or the U.S. Agent, as applicable, as security pursuant to Security Documents and are in form and substance acceptable to the Canadian Agent and its counsel; (iii) Purchase Money Debt in the ordinary course of business which together with all other Purchase Money Debt of the Arctic Parties then existing does not exceed \$1,500,000 in aggregate principal amount (including capitalized interest); (iv) unsecured current liabilities (which for greater certainty are not the result of borrowing) incurred and payable in the ordinary course of the Business and not represented by any note, bond or debenture, including any management, transfer or MIS fees or other administrative charges charged between the Arctic Parties in the ordinary course of the Business (subject to Section 8.2(9)) (the "Intercompany Charges"); (v) Guarantees included in the Security Documents or otherwise permitted hereunder; (vi) in the case of the Fund, any other Debt incurred after the date hereof and subordinated to the Obligations, on terms acceptable to the Canadian



Agent and its counsel, where the Net Debt Proceeds are applied in accordance with Section 2.6(6) and (vii) Permitted Debt; and without limiting the foregoing, no Arctic Party shall enter into Hedging Transactions for speculative purposes nor in amounts in excess of the Rate Hedging Limit, the FX Hedging Limit or the Commodity Hedging Limit, as applicable.

- (6) **Mergers.** Other than the Dissolving Guarantor, enter into, or permit any Subsidiary to enter into, any transaction (whether by way of Disposition, reorganization, consolidation, amalgamation, merger, transfer, sale, lease or otherwise) (i) whereby all or substantially all of its Property would become the property of any other Person or any Person resulting or continuing from such transaction, or (ii) which would otherwise be detrimental to the rights or interests of the Canadian Agent, the U.S. Agent or any of the Lenders under any of the Loan Documents.
- (7) **Guarantees and Indemnities.** Guarantee or indemnify or give financial assistance in respect of, or permit any Subsidiary to guarantee or indemnify or give financial assistance or incur any Contingent Liability in respect of, any Debt or any other obligations or liabilities of any other Person at any time other than: (i) Debt or indemnities to the Lenders hereunder; or (ii) any guarantee or indemnity which is granted in the ordinary course of the Business; provided that all such guarantees and indemnities outstanding at such time would not result in liability to the Arctic Parties in excess of \$500,000 in the aggregate at such time.
- (8) **Investments.** Make or commit to make, or permit any Subsidiary to make or commit to make, any direct or indirect Investment, except: (i) Permitted Financial Investments; (ii) Investments in Restricted Subsidiaries; (iii) Permitted Acquisitions (iv) on five (5) Business Days notice and with sufficient detail to the Agent, acquisitions costing up to U.S.\$5,000,000 in the aggregate annually, provided that any acquisition in excess of U.S.\$3,000,000 shall require the consent of the Majority Lenders, and further provided that at the time of each such acquisition, there is no Event of Default, the Leverage Ratio immediately following such acquisition will not be greater than the Leverage Ratio Maximum and following such acquisition the Borrowers and/or the Arctic Parties will be in compliance with the terms of this Agreement, including without limitation, (A) in the case of an asset purchase, on or prior to closing of the acquisition, the acquiring Arctic Party shall have provided to the Agent on behalf of the Lenders, or to the Trustee, as the case may be, Security Documents creating a first charge security and first perfected security interest on all Property acquired in connection with the acquisition, together with such opinions and other documents as the Agent may require, all in form and substance acceptable to the Agent and its counsel, and (B) in the case of a share purchase, the acquired corporation shall have qualified as a Restricted Subsidiary, and in each case the Borrowers shall promptly deliver to the Canadian Agent executed copies of all agreements related to such acquisition, in form and substance satisfactory to the Canadian Agent, the Lenders and their respective counsel; (v) an Investment which has been approved

by the Canadian Agent, upon direction from the Majority Lenders, in its sole discretion; (vi) in the case of the Fund, Investments in the Canadian Borrower, and in the case of the Canadian Borrower, Investments in the U.S. Borrower; (vii) Intercompany Debt and other Debt permitted by Section 8.2(5) or 8.2(7); or (viii) Permitted Construction Projects.

- (9) **Transactions with Insiders.** Directly or indirectly purchase, acquire or lease any Property from, or sell, transfer or lease any Property to, or enter into any other arrangements or transactions with, or permit any of its Subsidiaries to purchase, acquire or lease any Property from, or sell, transfer or lease any Property to, or enter into any other arrangements or transactions with any shareholder, director, officer, agent or employee of any Arctic Party, any relative thereof, or any affiliate of any one or more of such Persons, except: (i) for any purchase, sale, acquisition, transfer, lease, arrangement or transaction at prices and on terms not less favourable to the Arctic Party, as the case may be, than those which would have been obtained in an arm's-length transaction with a non-affiliated third party; (ii) the issue and exercise of options granted under the Unit Option Plan; (iii) employment agreements with employees on terms not less favourable to the Arctic Party, as the case may be, than those which would have been obtained in an arm's length transaction with a non-affiliated third party; (iv) the participation of directors, officers and key senior management of any Arctic Party in a long-term incentive plan ("LTIP") to be implemented to provide eligible participants with compensation opportunities that will encourage ownership of Fund Units, enhance the Arctic Parties' ability to attract, maintain and motivate key personnel, and reward Trustees, directors, officers, and key senior management for significant performance and associated per Fund Unit cash flow growth of the Fund; and (v) the Arizona Lease and any amendments and extensions thereto.

- (10) **Corporate Distributions.** (i) Make or commit to make, or permit any of its Subsidiaries to make or commit to make, any Corporate Distributions except for (A) distributions by the Fund to unitholders of the Fund in the manner contemplated by its distribution policy as set out in Schedule R, including, without limitation, distributions by the Canadian Borrower to the Fund of Capital Stock; (B) in the case of the Fund only, to the extent deducted from Distributable Cash, regularly scheduled repayments by the Fund to the applicable holders of Permitted Debt set out on Schedule U hereto; (C) Corporate Distributions by the other Arctic Parties to: (I) either of the Borrowers for the purpose of funding the payments described in (A) and (B); (II) to the applicable holders of Permitted Debt set out on Schedule U hereto, in respect of regularly scheduled repayments of Permitted Debt; (D) payment of Intercompany Charges in the ordinary course of the Business; (E) Corporate Distributions made for the full or partial purchase, defeasance, repurchase, redemption, other acquisition or retirement for value of: (I) any class of equity of any of the Arctic Parties or (II) any Debt of the Arctic Parties that does not form a part of the Obligations, provided that the amount of such equity or debt (and the related net proceeds received by the Arctic Parties and used to refinance such Debt) that is so purchased, defeated, repurchased,

redeemed, acquired or retired for value, is concurrently replaced by an equal or greater amount of such equity or Permitted Debt on terms satisfactory to the Lenders and the Agent; nor (ii) make or commit to make any Corporate Distributions after the occurrence of a Default or Event of Default; nor (iii) make, or commit to make any Corporate Distributions, in any other circumstances if, after the making of such Corporate Distributions: (A) the Arctic Parties will not be able to meet their obligations under the Loan Documents, including payment obligations and compliance with the financial covenants in Section 8.3, (B) the Corporate Distribution Leverage Ratio Maximum would be exceeded or (C) if the making of such Corporate Distributions were to cause a Default or Event of Default. Notwithstanding the foregoing, the maximum aggregate amount of Corporate Distributions that may be made by the Arctic Parties during any twelve (12) month period shall not exceed 100% of Distributable Cash for such twelve (12) month period.

- (11) **Financial Year and Auditors.** Change or permit any of its Subsidiaries to change its Financial Year end or the Auditors without the prior written consent of the Canadian Agent, upon direction from the Majority Lenders, acting reasonably.
- (12) **Change in Incorporation or Business or Authorized and Issued Capital.** (i) Make, or permit any of its Subsidiaries to make, any change in: (A) the constating documents or by-laws delivered to the Canadian Agent which would amend the authorized shares, units or other equity securities of the Arctic Parties; or (B) the provisions of the Arctic Parties authorized shares, units or other equity securities; or (C) which would otherwise be detrimental to the rights or interests of the Canadian Agent, the U.S. Agent or any of the Lenders under any of the Loan Documents; nor (ii) issue or permit any Subsidiary to issue any Capital Stock that would cause a Default or Event of Default to occur.
- (13) **Change in Location of Inventory or Records.** Maintain, or permit any Subsidiary to maintain, Inventory or any records relating to the Accounts at any location other than the locations listed in Schedule E, as amended from time to time, each of which locations is owned or leased by an Arctic Party.
- (14) **Transfer of Collateral.** Move or otherwise transfer, or permit any Subsidiary to move or otherwise transfer, any Collateral to any location other than the locations listed in Schedule E, as amended from time to time; provided that the movement of ice merchandisers in the ordinary course of business shall be permitted to jurisdictions where the Lenders (or Agent or Master Collateral Agent on behalf of the Lenders) will have a continuously perfected security interest in such merchandisers; provided further that the movement of such merchandisers to jurisdictions where the Lenders (or Agent or Master Collateral Agent on behalf of the Lenders) will not have a continuously perfected security interest in such merchandisers shall be permitted on fifteen (15) Business Days prior notice to the Lenders and the Canadian Agent; provided that up to \$250,000 in the aggregate of such merchandisers in transit at any one time can be transferred without consent or notice.

- (15) **Material Agreements.** Amend, supplement, terminate or waive, or enter into any forbearance from exercising any rights with respect to, any of the terms of any Material Agreement or permit any Subsidiary to take any such action, except with the prior approval of the Canadian Agent, upon direction from the Majority Lenders, except in the ordinary course of business so long as a copy of such amendment, supplement, termination or waiver is delivered to the Canadian Agent.
- (16) **Change of Control.** Permit any Change of Control.
- (17) **Change in Corporate Structure.** Permit any material changes to the corporate structure of the Arctic Parties' corporate group as of the date hereof, except for the formation of Restricted Subsidiaries.
- (18) **Fund.** In the case of the Fund only, issue Capital Stock or any other securities without the approval in advance of the Canadian Agent, upon direction from the Majority Lenders, in their sole discretion; provided that the Fund may, without such approval, issue Fund Units; provided such Fund Units are issued for cash consideration and all of the net proceeds of such issuance constitute Net Equity Proceeds and are used to repay the Credit Facilities, as required by Section 2.6 and provided further that the Fund may, without such approval, issue Units pursuant to the Unit Option Plan and the LTIP.
- (19) **Rental Expense.** Permit Rental Expense of the Arctic Parties, on a consolidated basis, to exceed \$22,500,000 in any Financial Year.
- (20) **Capital Expenditures.** Permit Capital Expenditures in any Financial Year of the Arctic Parties, on a consolidated basis, to exceed the budgeted amount of Capital Expenditures set out in the annual budget for such Financial Year delivered to the Canadian Agent and the Lenders pursuant to Section 8.1(1) hereunder by 5% or more without prior approval from the Lenders; provided that, for the purposes of this Section 8.2(20), the Borrowers shall be entitled to exclude from the calculation of Capital Expenditures any research and development expenditures that have been expensed.
- (21) **Construction Projects.** Except for Permitted Construction Projects, begin, continue or complete, or permit the beginning, continuation or completion of any Construction Projects without security being delivered to the Canadian Agent on behalf of the Lenders in respect of such Construction Project, including the assignment to the Canadian Agent on behalf of the Lenders of the applicable Arctic Party's rights under the principal project agreement and any related project document and the posting of any performance bonds or guarantees deemed necessary by the Agent and the Lenders, in their sole discretion.
- (22) **Claims.** Except with the prior written consent of the Majority Lenders in their sole discretion, settle any Claims in excess of U.S.\$1,000,000 individually or U.S.\$5,000,000 in the aggregate, annually.

- (23) **Controllable Accounts.** Except with the prior written consent of the Lenders, create any new Controllable Accounts; provided that no consent shall be required if any such Controllable Accounts are opened contemporaneously with the delivery to Agent and/or Lenders of control agents or amendments to existing control agents in favour of the Master Collateral Agent, satisfactory to Master Collateral Agent.
- (24) **Subordinated Facility Debt, Subordinated Facility Documents.** Except with the prior written consent of the Majority Lenders acting in their sole discretion: (A) other than payments to the Subordinated Lenders permitted under the Intercreditor Agreement, make any payments to the Subordinated Lenders owing under, pursuant to, or in connection with the Subordinated Facility Documents (or otherwise); or (B) amend, restate, supplement, modify or terminate or request or agree to or receive any waiver of, or waive any of its rights under any of the terms of any Subordinated Facility Document, or permit any Subsidiary to take any such action.
- (25) **Membership/Partnership Interests.** Elect to treat or permit any Subsidiary (x) to treat its limited liability company membership interests or partnership interests, as the case may be, as securities as contemplated by the definition of "security" in Section 8-102(15) and by Section 8-103 of Article 8 of Uniform Commercial Code or (y) to certificate its limited liability company membership interests or partnership interests, as the case may be unless the Obligor owning the Equity Interests in the Subsidiary that elects to treat its limited liability company or limited partnership as "securities" or certificates such interests, promptly provides the Agent or its designee control over such securities and/or delivers such certificates to the Agent or its designee.

### 8.3 **Financial Covenants.**

So long as any amount owing under the Loan Documents remains unpaid or any of the Lenders has any Commitment under this Agreement, and unless the Canadian Agent, upon direction from the Majority Lenders shall otherwise consent, the Borrowers agree that they shall not:

- (1) Permit, at any time, the Fixed Charge Coverage Ratio as of the end of any Financial Quarter for such Financial Quarter and the immediately preceding three Financial Quarters, in the aggregate, to be less than 1.0:1.0.
- (2) Permit, at any time, the Senior Leverage Ratio to exceed the Senior Leverage Ratio Maximum.
- (3) Permit, at any time, the Leverage Ratio to exceed the Leverage Ratio Maximum.
- (4) Permit, at any time, the Arctic Parties to not be in compliance with the financial covenants set out in Sections 6.2.1, 6.2.4 and 6.2.5 (or any successor provisions) of the Subordinated Facility Loan Agreement. In furtherance of the foregoing,

Sections 6.2.1, 6.2.4 and 6.2.5 (or any successor provisions) of the Subordinated Facility Loan Agreement are hereby incorporated by reference, *mutatis mutandis* and shall, as they exist on the date hereof, be operative within this agreement regardless of whether the Subordinated Facility Loan Agreement is amended, modified, replaced, restated or terminated after the date hereof;

provided, however, in respect of 8.3(2) and 8.3(3) above, from and after the date of any Permitted Acquisition and subject to the satisfaction of the Agent and the Lenders with any financial due diligence conducted in respect of the Permitted Acquisition and the approval of the Lenders set out below, the Consolidated EBITDA of the Fund (for the purposes of those financial covenants only) shall: (i) include the most recent actual Consolidated EBITDA attributable to such Permitted Acquisition, including such pre-acquisition Consolidated EBITDA occurring prior to the date of such acquisition (the "Pre-Acquisition EBITDA") as is necessary to permit the Fund to include one full year of Consolidated EBITDA attributable to such Permitted Acquisition in its calculation of the Leverage Ratio and (ii) exclude the most recent actual Consolidated EBITDA attributable to any divestitures occurring prior to the date of such acquisition ("Excluded EBITDA") as is necessary to exclude one full year of Consolidated EBITDA attributable to such divestitures. To the extent that any Pre-Acquisition EBITDA is included in or Excluded EBITDA is excluded from a calculation of the Leverage Ratio or the Senior Leverage Ratio, as applicable, the Fund shall deliver the externally prepared statements prepared in accordance with GAAP (if applicable) evidencing such Pre-Acquisition EBITDA and/or Excluded EBITDA, as the case may be, to the Agent along with the applicable Compliance Certificate. Use of any Pre-Acquisition EBITDA and the quantum of Excluded EBITDA to calculate the Leverage Ratio is subject to the approval of the Lenders and any adjustments to actual Pre-Acquisition EBITDA or Excluded EBITDA shall require consent of the Lenders.

For the purposes of the calculations above in 8.3(2) and 8.3(3), all cash balances of any of the Arctic Parties held by The Toronto-Dominion Bank shall be taken into account up to a maximum principal amount of U.S.\$15,000,000. The calculation of Consolidated Total Debt (or any component thereof) shall include all out of the money mark to market positions of any Hedging Transactions, the DOJ Payments (on a net present value basis), any other settlements of Claims, and Capital Stock consisting of redeemable or retractable preferred shares. Additionally, the Borrowers shall be entitled to add back to Consolidated EBITDA, on a one-time basis: (i) any litigation costs related to DOJ Investigation and related civil claims incurred in the 2010 Financial Year up to a maximum aggregate amount of U.S.\$4,000,000 (ii) corporate re-organization expenses to a maximum of US\$2,000,000 and (iii) the costs of Permitted Acquisitions funded by Debt that is due and payable more than one year after issuance and which would not be shown on a balance sheet as a current liability, as determined in accordance with GAAP on a consolidated basis. The Convertible Debentures shall be excluded from the calculation of the financial covenants set out in this Section 8.3.

All financial covenants are to be tested based on the consolidated financial statements of the Canadian Borrower or the Fund, as applicable for the relevant period, notwithstanding that the definitions of the terms "Consolidated Depreciation and Amortization Expense", "Consolidated Earnings", "Consolidated EBITDA", "Consolidated EDITDAR", "Consolidated Income Tax

Expense", "Consolidated Interest Charges", "Consolidated Long Term Debt" "Consolidated Net Income", "Consolidated Net Short Term Debt", "Consolidated Rent" and "Consolidated Short Term Debt" and certain defined terms used in such definitions are stated to be calculated in respect of any Person and its Consolidated Subsidiaries, on a consolidated basis.

## ARTICLE IX SECURITY

### 9.1 Security.

- (1) The Borrowers and the Guarantors have executed and delivered and shall execute and deliver, and have caused and shall cause their Subsidiaries to execute and deliver, the Security Documents in form and substance satisfactory to the Master Collateral Agent and the Benefited Creditors, acting reasonably, as and when required hereunder or under the Ancillary Agreements, as continuing collateral security for the due, prompt and complete payment, performance and satisfaction by the Borrowers and the Guarantors of all of their indebtedness, liabilities and obligations of every nature whatsoever (whether present or future, direct or indirect, absolute or contingent, matured or unmatured, at any time due or accruing due, wheresoever and howsoever incurred, including any ultimate unpaid balance thereof, in any currency, and whether incurred prior to, at the time of or subsequent to the execution of this Agreement) to: (i) the Master Collateral Agent, or and on behalf of the Benefited Creditors, in connection with the Intercreditor Agreement and the Benefited Creditor Documents, (ii) the Canadian Agent, the U.S. Agent and the Lenders, in connection with this Agreement and the Loan Documents; (iii) each of the Lenders in connection with any Hedging Transactions (subject to the limitations described in (2) below), (iv) any other Debt, the proceeds of which are used to repay and permanently reduce the Commitments, as the Borrowers and the Canadian Agent, upon direction from the Majority Lenders, may from time to time agree in writing; and (v) such other indebtedness, liabilities and obligations as the Borrowers and the Canadian Agent, upon direction from all of the Lenders, may from time to time agree in writing (collectively the "Obligations").
- (2) Unless otherwise agreed by the Canadian Agent upon direction from the Majority Lenders, the aggregate notional amount of Interest Rate Hedging Transactions, Currency Hedging Transactions and the Commodity Hedging Transactions (excluding options in favour of the Borrowers and Guarantors which create no liability to them) which will be Obligations and will be secured by the Security Documents on a *pari passu* basis with all other Obligations shall not exceed U.S.\$100 million (the "Rate Hedging Limit"), U.S.\$45 million (the "FX Hedging Limit") and U.S.\$5 million (the "Commodity Hedging Limit") the Commodity Hedging Limit, respectively. If an Interest Rate Hedging Transaction does not exceed the Rate Hedging Limit on the date it is entered into, it cannot be considered to exceed the Rate Hedging Limit for the purposes of determining under this Section 9.1(2) whether the Rate Hedging Limit has been exceeded and

any amount by which the Rate Hedging Limit has been exceeded will be secured by the Security Documents on a *pari passu* basis with all other Obligations at any later date due to currency fluctuations. In the case of Currency Hedging Transactions with a notional amount denominated in a currency other than U.S. Dollars, the notional amount shall be converted to U.S. Dollars on the date the Currency Hedging Transaction is entered into for purposes of determining whether the FX Hedging Limit is exceeded and the Currency Hedging Transaction shall be deemed for purposes of applying the FX Hedging Limit at any time to have a notional amount equal to the Equivalent U.S. Dollar Amount determined on the date the Currency Hedging Transaction was entered into. If a Currency Hedging Transaction does not exceed the FX Hedging Limit on the date it is entered into, it cannot at any later date due to currency fluctuations be considered to exceed the FX Hedging Limit for the purposes of determining under this Section 9.1(2) whether the FX Hedging Limit has been exceeded and any amount by which the Rate Hedging Limit has been exceeded as a result of currency fluctuations will be secured by the Security Documents on a *pari passu* basis with all other Obligations. If the Commodity Hedging Transaction does not exceed the Commodity Hedging Limit on the date it is entered into, it cannot be considered to exceed the Commodity Hedging Limit for the purposes of determining under this Section 9.1(2) whether the Commodity Hedging Limit has been exceeded and any amount by which the Commodity Hedging Limit has been exceeded as a result of currency fluctuations will be secured by the Security Documents on a *pari passu* basis with all other Obligations. Obligations pursuant to Hedging Transactions in excess of the Rate Hedging Limit, FX Hedging Limit or the Commodity Hedging Limit, as applicable, shall be secured by the Security Documents, but shall be subordinate to all other Obligations. Each Lender shall satisfy itself at the time of entering into a Hedging Transaction that such transaction is not in excess of the Rate Hedging Limit or the FX Hedging Limit or the Commodity Hedging Limit, as applicable.

- (3) For the purposes of holding any security granted by any of the Arctic Parties pursuant to the laws of the Province of Quebec, the Canadian Agent shall be the holder of an irrevocable power of attorney authorizing the Canadian Agent to act on behalf of all present and future Lenders. By executing an Assignment Agreement, any future Lender shall be deemed to ratify the power of attorney granted to the Canadian Agent hereunder. The Lenders and the Arctic Parties agree that notwithstanding Section 32 of the *Act respecting the Special Powers of Legal Persons* (Quebec), the Canadian Agent may, as the person holding the power of attorney of the Lenders, acquire any debenture or other title of indebtedness secured by any hypothec granted by any of the Arctic Parties to the Canadian Agent pursuant to the laws of the Province of Quebec.

## 9.2 Discharge of Security.

Provided that no Default or Event of Default has occurred which is continuing, the Master Collateral Agent, Canadian Agent, and the Lenders, if necessary, shall from time to



time execute and deliver, at the expense of the Borrowers, releases and discharges from the security under the Security Documents of any Property, both real and personal, which the Borrowers or any of the Guarantors is permitted to Dispose of under the terms of this Agreement or to which Disposition the Lenders have given their unanimous prior written consent.

**9.3           Registrations.**

- (1)           The Master Collateral Agent, the Canadian Agent or the Trustee, as the case may be, in its sole discretion, may register, file or record the Liens constituted by the Security Documents in all jurisdictions where such registration, filing, or recording is necessary or of advantage to the creation, perfection, preservation or protection of such Liens.
- (2)           The Master Collateral Agent, the Canadian Agent or the Trustee, as the case may be, may renew such registrations, filings and recordings from time to time as and when required or of advantage, in the sole discretion of the Majority Lenders, to keep them in full force and effect. The Borrowers and the Guarantors acknowledge that the forms of the Security Documents have been prepared based upon the laws of the jurisdictions indicated therein as being applicable thereto in effect at the date hereof and that such Laws may change. The Borrowers and the Guarantors agree that, following prior notice to and consultation with the Borrowers, the Canadian Agent, the Master Collateral Agent or the Trustee, as the case may be, upon direction from the Majority Lenders, shall have the right to require that the forms of the Security Documents be amended, restated or supplemented, at the expense of the Borrowers, to reflect any changes in such Laws, whether arising as a result of statutory amendments, court decisions or other similar changes, in order to confer upon the Trustee, the Canadian Agent, the U.S. Agent and the Lenders the Liens intended to be created thereby, in the sole discretion of the Majority Lenders.

**ARTICLE X  
EVENTS OF DEFAULT**

**10.1           Events of Default.**

If any of the following events, conditions or circumstances (each an "Event of Default") shall occur and be continuing:

- (a)           a Borrower or Guarantor shall fail to pay any portion of the principal due or of the interest or any fees or other amounts due hereunder or under any of the other Loan Documents on the date when due hereunder and thereunder;
- (b)           any representation or warranty or certification made in writing made or deemed to be made by any Arctic Parties (or any director or officer thereof) pursuant to or in connection with any of the Loan Documents delivered to the Canadian Agent, the U.S. Agent or any one or more of the Lenders shall prove to have been incorrect

in any material respect when made or deemed to be made, and such representation, warranty or certification shall remain incorrect in any material respect for 30 days following written notice from Agent;

- (c) the Borrowers shall fail to comply with, perform or observe the financial covenants contained in Section 8.3;
- (d) any of the Arctic Parties shall fail to perform or observe any other term, covenant or agreement contained in any of the Loan Documents on its part to be performed or observed (other than those referred to in Subsections (a), (b), (c) and (r) of this Section 10.1) and such failure shall remain unremedied for ten (10) Business Days (a "**Cure Period**") after the earlier of: (1) an officer of such Arctic Party obtaining actual knowledge of such default and (2) the receipt by any Arctic Party of written notice of such default from the Canadian Agent; provided however, that there shall be no Cure Period for the failure to observe the covenants contained in Section 8.2 hereunder (excluding non-material breaches of 8.2(1), 8.2(12), 8.2(13) and 8.2(14)) including, without limitation, failure to give notice of Corporate Distributions or the making of improper Corporate Distributions hereunder and, in each case, any such failure shall immediately become an Event of Default;
- (e) any of the Loan Documents, at any time, is not or ceases to be valid or enforceable in whole or in part, or if any Lien intended to be created by any of the Security Documents is not or ceases to be a valid and perfected Lien having the ranking or priority contemplated thereby, or if the validity or enforceability of any of the Loan Documents or the validity or perfection of any such Lien shall be contested by any party thereto or any other Person (unless such contestation by such other Person is being opposed diligently, in good faith and by proper legal proceedings by the relevant Arctic Parties and the Canadian Agent is provided with an opinion, reasonably satisfactory to the Canadian Agent, upon direction from the Majority Lenders, of counsel to the relevant Arctic Parties confirming the validity and enforceability of such Loan Document and/or the validity and perfection of the contested Lien, as the case may be), or if any Person (other than the Lenders) obtains any interest in the Collateral or any part thereof (except for Permitted Liens);
- (f) with respect to Debt of the Arctic Parties under any one or more agreements other than the Debt under the Loan Documents, (i) the Arctic Parties shall fail to pay any principal, interest or other amount pursuant to the agreements governing such other Debt in an aggregate amount in excess of \$500,000 (or the equivalent amount in another currency) when such amount becomes due and payable (whether by scheduled maturity, required repayment, acceleration, demand or otherwise) and such failure shall continue after any applicable grace period specified in such agreement or agreements; or (ii) any other event, condition or circumstance shall occur and shall continue after any applicable grace period specified in such agreement or agreements, if the effect of such event, condition or circumstance is to accelerate the maturity of such other Debt in an aggregate amount in excess of \$500,000 (or the equivalent amount in another currency); or

- (iii) other Debt of the Arctic Parties in an aggregate amount in excess of \$500,000 (or the equivalent amount in another currency) shall be declared to be due and payable prior to the stated maturity thereof under any such agreement or agreements;
- (g) the occurrence of any event or condition which, with the giving of notice or passage of time, or both: (i) would constitute an "Event of Default" by any Arctic Party under any Material Agreement including, without limitation, the Subordinated Facility Documents; (ii) would constitute a default by any Arctic Party under any one or more agreements to which any Arctic Party is a party and which has resulted in the acceleration of amounts owing by any Arctic Party under any such agreement or agreements in excess of \$500,000 (or the equivalent amount in another currency) in the aggregate; or (iii) would constitute a default by any Arctic Party under any Customer Contract which has a Material Adverse Effect;
- (h) any Arctic Party shall: (i) become insolvent or generally not pay its debts as such debts become due; (ii) admit in writing its inability to pay its debts generally or shall make a general assignment for the benefit of creditors; (iii) file a notice of intention to file a proposal under any Law relating to bankruptcy, insolvency or reorganization or relief of debtors; (iv) institute or have instituted against it any proceeding seeking (x) to adjudicate it a bankrupt or insolvent, (y) any liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Law relating to bankruptcy, insolvency or reorganization or relief of debtors, or (z) the entry of an order for relief or the appointment of a Receiver, interim receiver, Receiver and manager, assignee, liquidator, sequestrator, trustee or other similar official for it or for any substantial part of its Property, and in the case of any such proceeding instituted against it (but not instituted by it), it shall not be dismissed or stayed within thirty (30) days of its commencement or issuance or any of the actions sought in such proceeding (including the entry of an order for relief against it or the appointment of a Receiver, trustee, custodian or other similar official for it or for any substantial part of its Property) shall occur; or (v) take any corporate action to authorize any of the foregoing actions;
- (i) a notice is sent to or received by any Arctic Party from any creditor with respect to the intention of such creditor to enforce a Lien on: (i) any of the Collateral; or (ii) any Property of any Arctic Party (other than the Collateral) unless such notice is being contested in good faith by appropriate legal proceedings and such notice has not resulted in, or does not involve, any immediate danger of the sale, forfeiture or loss of any of the Property of any Arctic Party that are the subject of such notice;
- (j) any one or more final judgments or judgment or orders for the payment of money in excess of U.S.\$500,000 (or the equivalent amount in another currency) in the aggregate or any one or more orders, directives, letters of credit or other communications from any Governmental Entity which may be reasonably likely

to require the Arctic Parties to expend an amount in excess of U.S.\$500,000 (or the equivalent amount in another currency) in the aggregate shall be rendered against the Arctic Parties, and either: (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment(s) or order(s); or (ii) there shall be any period of sixty (60) consecutive calendar days during which a stay of enforcement of any such judgment or order, directive, letter or other communication by reason of a pending appeal or otherwise, shall not be in effect;

- (k) the audited financial statements of any Arctic Party in respect of any Financial Year are qualified in any material adverse respect by the Auditors;
- (l) the occurrence of a Change of Control;
- (m) the loss, suspension or failure to renew any Material Governmental License or any other license or permit held by an Arctic Party or any agreement to which any Arctic Party is a party the effect of which would prohibit or otherwise restrict any Arctic Party from conducting all or a material part of the Business;
- (n) (1) Any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof (without regard to whether a waiver of such standards or extension of any amortization period is sought or granted under Section 412 of the Code), any of which failure individually or in the aggregate exceeds \$1,000,000, (2) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under Section 4042 of ERISA to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified either of the Borrowers or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (3) the aggregate "amount of unfunded benefit liabilities" (within the meaning of section 4001 (a)(18) of ERISA) under all Plans, determined in accordance with Title IV of ERISA as if such Plan then terminated, shall exceed Cdn\$100,000, (4) either of the Borrowers or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability or obligation pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to any Plan, (5) either of the Borrowers or any ERISA Affiliate withdraws from any Multiemployer Plan, (6) either of the Borrowers or any ERISA Affiliate establishes or amends any Welfare Plan that provides post-employment welfare benefits in a manner that would increase the liability of such Borrowers or any ERISA Affiliate thereunder or (7) the institution of any steps to terminate a Plan if as a result of such termination, any Borrower is or could be required to incur a liability or obligation to such Plan; and any such event or events described in clauses (2), (4), (5), (6) and (7) above, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect.
- (o) any Arctic Party is enjoined or restrained in any material way by an order of any Governmental Entity, arbitrator or board in Canada or elsewhere from conducting all or a material part of the Business;

- (p) the occurrence of a Material Adverse Effect;
- (q) the settlement of any DOJ Investigation of an Arctic Party other than with the approval of the Canadian Agent, the U.S. Agent, the Canadian Lenders and the U.S. Lenders and, other than the DOJ Plea Agreement, where such settlement obligates such Arctic Party to make a settlement payment in excess of \$500,000 or where such settlement would otherwise cause a Material Adverse Effect;
- (r) any Arctic Party shall fail to comply with any of the terms and conditions of the DOJ Plea Agreement;
- (s) the occurrence of an Event of Default as defined in the Subordinated Facility Loan Agreement;
- (t) any Guarantor shall attempt to rescind or revoke any Loan Document to which it is party, with respect to future transaction or otherwise; or
- (u) any Arctic Party shall transfer any Property to the Dissolving Guarantor,

then, and in any such event, the Canadian Agent shall by written notice to the Borrowers: (i) if so instructed by the Majority Lenders at any time, terminate the obligation of the Lenders or any one or more of them to make Accommodations under the Credit Facilities; and/or (ii) if so instructed by the Majority Lenders at any time, demand repayment of all indebtedness of the Borrowers to any of the Lenders under the Credit Facilities, whereupon the principal amount of all outstanding Advances and Swing Line Loans, all amounts owing under each Bankers' Acceptance then outstanding, all interest accrued thereunder, and, in the case of a LIBOR Advance or a Bankers' Acceptance, all losses, costs and expenses in respect of such LIBOR Advance or Bankers' Acceptance for which the Borrowers are responsible pursuant to Section 11.10, and all fees and other amounts payable thereunder shall become forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrowers; and/or (iii) if so instructed by the Majority Lenders at any time, enforce the Liens constituted by the Security Documents and any other security now or hereafter held by the Lenders; provided, however, that upon any Event of Default specified in Section 10.1(h), the obligation of the Lenders or any one or more of them to make Accommodations hereunder shall automatically terminate and the principal amount of all outstanding Accommodations and all interest accrued hereunder, and all fees and other amounts payable under this Agreement shall automatically become forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrowers and the Guarantors.

## **10.2 Expense of Agents and Lenders.**

Upon the occurrence of any Default or Event of Default which has not been waived and is continuing, the Canadian Agent may take any action the Canadian Agent considers advisable, acting reasonably, to remedy the effect of such Default or Event of Default. All reasonable expenses, costs and charges incurred by or on behalf of the Canadian Agent in connection with: (i) any remedial action taken pursuant to this Section; (ii) any obligation of the

Arctic Parties to any one or more of the Lenders hereunder or under any Ancillary Agreement; or (iii) the realization of the Collateral, including all reasonable fees, court costs, Receiver's or agent's remuneration and other expenses of taking possession of, repairing, protecting, insuring, preparing for disposition, realizing, collecting, selling, transferring, delivering or obtaining payment of the Collateral, in all cases shall be added to and form a part of the Obligations.

### **10.3           Right to Combine and Set Off.**

Upon the occurrence and during the continuance of any Default or Event of Default, the Canadian Agent, the U.S. Agent or any one or more of the Lenders is hereby authorized at any time and from time to time, to the fullest extent permitted by Law, to combine, set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Canadian Agent, the U.S. Agent or such Lender to or for the credit or the account of the Borrowers and/or the Guarantors with or against any and all of the obligations of the Borrowers and/or the Guarantors now or hereafter existing under any of the Loan Documents, irrespective of whether or not the Canadian Agent, the U.S. Agent or the Lenders shall have made any demand under any of the Loan Documents and although such obligations may be unmatured. The Canadian Agent, the U.S. Agent or such Lender agrees promptly to notify the Borrowers and/or the Guarantors after any such combination or set off and application made by the Canadian Agent, the U.S. Agent or such Lender; provided that the failure to give such notice shall not affect the validity of such combination or set off and application. The rights of the Canadian Agent, the U.S. Agent and the Lenders under this Section are in addition to other rights and remedies (including other rights of combination and set off) which the Canadian Agent, the U.S. Agent and the Lenders may have.

### **10.4           Remedies Cumulative.**

The remedies provided for in this Agreement and each Ancillary Agreement are cumulative and do not exclude any other right or remedy provided by Law.

## **ARTICLE XI PAYMENTS, COMPUTATIONS AND INDEMNITIES**

### **11.1           Timing of Payments under this Agreement, etc.**

- (1) Unless otherwise expressly provided in this Agreement, each of the Borrowers shall make any payment required to be made by it to the Agent by depositing the amount of such payment in the Canadian Agent's Account or the U.S. Agent's Account, as applicable, not later than 11:00 a.m. (Toronto time) on the date such payment is due.
- (2) Unless otherwise expressly provided in this Agreement, the applicable Agent shall make any Accommodation or other payment to the Canadian Borrower or the U.S. Borrower, as the case may be, hereunder by crediting or causing the crediting of the Canadian Agent's Account or the U.S. Agent's Account, as applicable, with the amount of such Accommodation on the date such

Accommodation is to be made. The Borrowers hereby authorize such Agent if and to the extent a payment owed to such Agent by a Borrower is not made when due hereunder, to charge from time to time against such Borrower's accounts with such Agent any amount so due.

- (3) Unless otherwise expressly provided in this Agreement, each Lender shall make any payment required to be made by it to the applicable Agent hereunder by depositing the amount of such payment in the Canadian Agent's Account or the U.S. Agent's Account, as applicable, not later than 1:00 p.m. (Toronto time) on the date such payment is due.

#### **11.2 Payments on Non-Business Days.**

Whenever any payment hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be. If any such extension would cause payment of interest on a LIBOR Advance to be made in the next following calendar month, such payment shall be made on the last preceding Business Day.

#### **11.3 Overdue Amounts.**

All amounts owed by a Borrower or a Guarantor to the Canadian Agent, the U.S. Agent or any of the Lenders which are not paid when due (whether at stated maturity, on demand, by acceleration or otherwise) shall bear interest (both before and after judgment), from the date on which such amount is due until such amount is paid in full, payable on demand, at a rate per annum equal at all times, (i) in the case of amounts payable in Canadian Dollars, to the rate per annum payable in respect of Floating Rate Advances, (ii) in the case of amounts payable in U.S. Dollars, to the rate per annum payable in respect of U.S. Base Rate Advances.

#### **11.4 Application of Payments, Repayments and Prepayments.**

All amounts received by the Canadian Agent, the U.S. Agent or any one or more of the Lenders from or on behalf of a Borrower, including a realization of the Security, and not previously applied pursuant to this Agreement shall be applied by the relevant Agent as follows or as the Canadian Agent and the Majority Lenders may agree:

- (a) first, in reduction of such Borrower's obligation to pay any fees which are due and owing to the Canadian Agent and the U.S. Agent, and any costs, expenses, reimbursable amounts or Losses which are due and owing to the Canadian Agent and the U.S. Agent;
- (b) second, in reduction of such Borrower's obligation to pay any unpaid interest accrued on the principal amount of Advances and Swing Line Loans or on any other amount owing hereunder or under Secured Hedging Transactions;

- (c) third, in reduction of such Borrower's obligation to pay any fees which are due and owing to the Lenders, and any costs, expenses or Losses which are due and owing to the Lenders;
- (d) fourth, in reduction of such Borrower's obligation to pay any amounts due and owing on account of Outstandings and Secured Hedging Transactions, all on a *pari passu* basis;
- (e) fifth, in reduction of any other obligation of such Borrower under this Agreement, the Loan Documents and Secured Hedging Transactions;
- (f) sixth, in reduction of any other amounts owing to the Canadian Agent, the U.S. Agent or the Lenders; and
- (g) seventh, to such Borrower or such other Persons as may lawfully be entitled to the remainder, or as any court of competent jurisdiction may otherwise direct.

## 11.5

### **Computations of Interest and Fees.**

- (1) All computations of interest shall be made by the Canadian Agent and the U.S. Agent according to its practice daily, taking into account the actual number of days occurring in the period for which such interest is payable pursuant to Section 3.3 and, (i) if based on the Floating Rate, on the basis of a year of 365; (ii) if based on LIBOR or the U.S. Base Rate, on the basis of a year of three hundred and sixty (360) days; or (iii) if based on the U.S. Prime Rate, on the basis of a year of three hundred and sixty-five or three hundred and sixty-six days, as the case may be;
- (2) Except as otherwise provided in this Agreement, all computations of fees shall be made by the Canadian Agent and the U.S. Agent on the basis of a year of three hundred and sixty-five (365) days, taking into account the actual number of days (including the first day but excluding the last day) occurring in the period for which such fees are payable.
- (3) Notwithstanding any provision to the contrary contained in this Agreement, in no event shall the aggregate "interest" (as defined in Section 347 of the *Criminal Code* (Canada), as the same may be amended, replaced or re-enacted from time to time) payable under this Agreement exceed the maximum amount of interest on the "credit advanced" (as defined in that Section) under this Agreement lawfully permitted under that Section and, if any payment, collection or demand pursuant to this Agreement in respect of "interest" (as defined in that Section) is determined to be contrary to the provisions of that Section, such payment, collection or demand shall be deemed to have been made by mutual mistake of a Borrower and the Canadian Agent or the U.S. Agent, as the case may be, and the Lenders and the amount of such payment or collection shall be refunded to such Borrower. For purposes of this Agreement, the effective annual rate of interest shall be determined in accordance with generally accepted actuarial practices and



principles over the term that the relevant Credit Facilities are outstanding on the basis of annual compounding of the lawfully permitted rate of interest and, in the event of any dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Canadian Agent will be conclusive for the purposes of such determination.

- (4) Each determination by the Canadian Agent or the U.S. Agent of any amount payable hereunder by a Borrower shall be *prima facie* evidence of the amount payable for all purposes absent manifest error.

#### **11.6 Costs and Expenses.**

The Borrowers shall, whether or not the transactions hereby contemplated are consummated, pay all costs and expenses contemplated by the Loan Documents, including, without limitation, administration fees, if any, agreed to from time to time by the Borrowers, and legal fees and expenses of the Canadian Agent, the U.S. Agent and the Lenders (and, following the occurrence of an Event of Default, such separate legal counsel as may be retained by any Lender), on a substantial indemnity basis, incurred in connection with its due diligence conducted in respect of the Arctic Parties and the preparation, execution, delivery, registration, filing, recording or enforcement of, and refinancing, renegotiation, waiver, amendment or restructuring, or ongoing administration of the Credit Facilities and of the Loan Documents (including the maintenance of the Liens provided for therein and all future registrations, filings, recordings and other actions in connection therewith) or syndicating or assigning the Credit Facilities.

#### **11.7 Indemnity for Change in Circumstances.**

- (1) If with respect to the Canadian Agent, the U.S. Agent or any of the Lenders:
- (i) any change in Law, or any change in the interpretation or application by any Governmental Entity of any Law occurring or becoming effective after the date hereof; or (ii) any compliance by such Lender with any direction, request or requirement (whether or not having the force of Law) of any Governmental Entity made or becoming effective after the date hereof, in either case shall have the effect of causing Loss to the Canadian Agent, the U.S. Agent or such Lender by:
- (a) increasing the cost to such Lender of performing its obligations under this Agreement or in respect of any Accommodation (including the costs of maintaining any capital, reserve or special deposit requirements in connection therewith);
  - (b) requiring the Canadian Agent, the U.S. Agent or any of the Lenders to maintain or allocate any capital or additional capital or affecting its allocation of capital in respect of its obligations under this Agreement or in respect of any Accommodation;
  - (c) reducing any amount payable to the Canadian Agent, the U.S. Agent or any of the Lenders under this Agreement or in respect of any Accommodation by any

amount it deems material (other than a reduction resulting from a higher rate of income tax or other special tax relating to the Canadian Agent, the U.S. Agent or such Lender's income in general); or

- (d) causing the Canadian Agent, the U.S. Agent or any of the Lenders to make any payment or to forego any return on, or calculated by reference to, any amount received or receivable by the Canadian Agent, the U.S. Agent or any of the Lenders under this Agreement in respect of any Accommodation,

then the Canadian Agent may give notice to the Borrowers specifying the nature of the event giving rise to such Loss and the Borrowers shall, on demand, pay such amounts as the Canadian Agent may specify to be necessary to compensate the Canadian Agent, the U.S. Agent or any of the Lenders for any such Loss incurred after the date of such notice. A certificate as to the amount of any such Loss, submitted in good faith by the Canadian Agent to the Borrowers shall be *prima facie* evidence of the amount of such Loss for all purposes absent manifest error.

- (2) If any Lender (the "Affected Lender") seeks additional compensation or amounts pursuant to Section 11.7(1) or (3), then the Borrowers may indicate to the Canadian Agent in writing that they desire to replace the Affected Lender with one or more of the other Lenders, and the Canadian Agent shall then forthwith give notice to the other Lenders that any Lender or Lenders may, in the aggregate, acquire all (but not part) of the Affected Lender's Individual Commitment (but in no event shall any other Lender or the Canadian Agent or the U.S. Agent be obliged to do so). If one or more Lenders (herein collectively called the "Assenting Lenders" and, individually, called an "Assenting Lender") has given notice to the Canadian Agent that it wishes to acquire all (but not part) of the Individual Commitment of such Affected Lender, then each Assenting Lender shall acquire a portion determined by the Canadian Agent pursuant to (ii) below of the Individual Commitment of such Affected Lender on a date mutually acceptable to the Assenting Lenders and the Affected Lender, provided that (i) a U.S. Lender shall not acquire any Individual Commitment in respect of the Canadian Facility and a Canadian Lender shall not acquire any Individual Commitment in respect of the U.S. Facility; and (ii) the acquired Individual Commitments shall be allocated to the Assenting Lenders rateably based on their aggregate Commitments under the Credit Facilities. On such date, the Canadian Agent shall give notice to each of the Assenting Lenders and the Borrowers setting out the amount of the Individual Commitments to be acquired by each of the Assenting Lenders and the amount of the Outstandings of the Affected Lender to be acquired by each of the Assenting Lenders, together with all interest accrued thereon and all other amounts owing to the Affected Lender hereunder, and each of Assenting Lenders shall deposit with the Canadian Agent an amount equal to its portion of, and the Canadian Agent shall pay to the Affected Lender, the Outstandings of the Affected Lender, together with all interest accrued thereon and all other amounts owing to the Affected Lender hereunder, and, upon such

payment, the Affected Lender shall cease to be a "Lender" for purposes of this Agreement and shall no longer have any obligations hereunder. Upon the assumption of the Affected Lender's Individual Commitment, with respect to the Credit Facilities, by Assenting Lenders, Schedule A shall be deemed to be amended to increase the Individual Commitment, with respect to the applicable Credit Facilities, of such Assenting Lenders by the amount of such assumption.

- (3) Except as required by Applicable Law, the Borrowers shall make all payments under this Agreement to the U.S. Agent or the Canadian Agent, as the case may be, without deducting or withholding of any Taxes. To the extent that deduction or withholding of Taxes is required by Applicable Law, the Borrowers will:
- (a) promptly notify the applicable Agent of such requirement;
  - (b) pay to the appropriate authority the full amount required to be so withheld or deducted before penalties attach thereto or interest accrues thereon;
  - (c) promptly forward to such Agent an official receipt or other documentation reasonably satisfactory to such Agent evidencing such payment to such authority; and
  - (d) pay to such Agent on behalf of the Lenders an additional amount so that such Agent and the Lenders receive the full amount they would have received had no such deduction or withholding been required.

If any Taxes are directly asserted against U.S. Agent or the Canadian Agent and/or any of the Lenders with respect to any payment under this Agreement, the Canadian Agent, the U.S. Agent or such Lender, as the case may be, may pay such Taxes and the Borrowers shall promptly pay such additional amount (including any penalties, interest and expenses) necessary so that the net amount received by the Canadian Agent, the U.S. Agent or such Lender after the payment of such Taxes, including any Taxes on such additional amounts, shall equal the amount the Agent or such Lender would have received had the Canadian Agent, the U.S. Agent or such Lender not paid such Taxes.

The Borrowers will indemnify the Canadian Agent, the U.S. Agent and/or any of the Lenders for all incremental Taxes, interest or penalties that the Canadian Agent, the U.S. Agent or such Lender(s) must pay if the Borrowers fail to deduct or withhold any Taxes when due or to send the Agent the required receipts or other documentation.

## **11.8**

### **Indemnity for Transactional and Environmental Liability.**

- (1) Each Borrower hereby agrees to indemnify, exonerate and hold each of the Canadian Agent, the U.S. Agent and the Lenders (including the Swing Line Lenders), and their officers, directors, employees, agents and other representatives (collectively in this Section 11.8(1) and in Section 11.8(2), the "Indemnified

Parties”) free and harmless from and against any and all claims, demands, actions, causes of action, suits, losses, costs (including all documentary, recording, filing, mortgage or stamp taxes or duties), charges, liabilities and damages, and expenses in connection therewith (irrespective of whether such Indemnified Party is a party to the action for which such indemnification hereunder is sought), and including reasonable legal fees and disbursements (collectively, in this Section 11.8(1), the “Indemnified Liabilities”) paid, incurred or suffered by, or asserted against, the Indemnified Parties or any of them or, with respect to, or as a direct or indirect result of: (i) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any Accommodations obtained hereunder; or (ii) the execution, delivery, performance or enforcement of this Agreement or any Ancillary Agreement, except for such Indemnified Liabilities that a court of competent jurisdiction determines or rules to be on account of the relevant Indemnified Party’s gross negligence or wilful misconduct.

- (2) Each Borrower hereby further agrees to indemnify, exonerate and hold the Indemnified Parties free and harmless from and against any and all claims, demands, actions, causes of action, suits, losses, costs, charges, liabilities and damages, and expenses in connection therewith (irrespective of whether such Indemnified party is a party to the action for which such indemnification hereunder is sought), and including reasonable legal fees and disbursements (collectively, in this Section 11.8(2), the “Indemnified Liabilities”) paid, incurred or suffered by, or asserted against, the Indemnified Parties or any of them for, with respect to, or as a direct or indirect result of any Environmental Liabilities and Costs.
- (3) All obligations provided for in this Section 11.8 shall not be reduced or impaired by any investigation made by or on behalf of the Canadian Agent, the U.S. Agent or any of the Lenders.
- (4) The Borrowers hereby agree that, for the purposes of effectively allocating the risk of loss placed on the Borrowers by this Section 11.8, the Canadian Agent, the U.S. Agent and each of the Lenders shall be deemed to be acting as the agent or trustee on behalf of and for the benefit of its respective officers, directors and agents.
- (5) If, for any reason, the obligations of the Borrowers pursuant to this Section 11.8 shall be unenforceable, the Borrowers agree to make the maximum contribution to the payment and satisfaction of each obligation that is permissible under Law, except to the extent that a court of competent jurisdiction determines such obligations arose on account of the gross negligence or wilful misconduct of any Indemnified Party.

#### **11.9 Survival of Indemnities; Contribution.**

- (1) The provisions of Sections 11.6, 11.7, 11.8, 11.10 and 11.11 and this Section 11.9 shall survive the termination of this Agreement and the repayment of all amounts

owing pursuant to the Loan Documents. Each of the Borrowers acknowledges that neither its obligation to indemnify, nor any actual indemnification by it, of the Canadian Agent, the U.S. Agent or any of the Lenders hereunder in respect of legal fees and disbursements shall in any way affect the confidentiality or privilege relating to any information communicated by the Canadian Agent, the U.S. Agent or any Lender to its counsel.

- (2) If any provision in any of the Loan Documents providing for indemnification by the Borrowers or any of the Guarantors (the "Indemnitor") in favour of the Canadian Agent, the U.S. Agent or any of the Lenders or any of the Indemnified Parties (as defined in Section 11.8) (the "Indemnatee") is found by reason of the occurrence of an event, other than the gross negligence or wilful misconduct of the Indemnatee, to be unenforceable by a court of competent jurisdiction in a final judgment that has become non-appealable, then the Indemnitor shall contribute to the amount paid or payable by the Indemnatee which is subject to the indemnification provision in such proportion as is appropriate to reflect not only the relative benefits received by the Indemnitor on the one hand and the Indemnatee on the other hand but also the relative fault of the Indemnitor and the Indemnatee. The rights of contribution herein provided shall be in addition to and not in derogation of any other right to contribution which the Indemnatee may have under this Agreement or applicable Laws.

#### **11.10      Indemnity Relating to Accommodations.**

Upon notice from the Canadian Agent, on behalf of the Majority Lenders, to a Borrower (which notice shall be accompanied by a detailed calculation of the amount to be paid by such Borrower), such Borrower shall pay to the Canadian Agent, the U.S. Agent or the Lenders such amount or amounts as will compensate the Canadian Agent, the U.S. Agent or the Lenders for any Loss, cost or expense incurred by them: (i) in the liquidation or redeposit of any funds acquired by the Lenders to fund or maintain any portion of a LIBOR Advance as a result of (A) the failure of such Borrower to borrow or make repayment on the date specified in this Agreement or in any notice from such Borrower to the Canadian Agent; or (B) the repayment or prepayment of any amounts on a day other than the payment dates prescribed herein; or (ii) with respect to any Bankers' Acceptance arising from any Claim, and including legal fees and disbursements, respecting the collection of amounts owing by such Borrower hereunder in respect of such Bankers' Acceptance or the enforcement of the Canadian Agent or Lenders' rights hereunder in respect of such Bankers' Acceptance, including legal proceedings attempting to restrain the Canadian Agent or the Lenders from paying any amount under such Bankers' Acceptance; or (iii) with respect to any Secured Hedging Transaction, arising from any Claim, and including legal fees and disbursements by such Borrower hereunder or and/or any Ancillary Agreements in respect of such Secured Hedging Transaction.

#### **11.11      Judgment Currency.**

- (1) If, for the purposes of obtaining judgment in any court, it is necessary to convert any sum due, or owing hereunder or under any other Loan Document to the Canadian Agent, the U.S. Agent or any one or more of the Lenders in any

currency (the "Original Currency") into another currency (the "Other Currency"), the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Canadian Agent could purchase the Original Currency with the Other Currency on the Business Day preceding that on which final judgment is granted.

- (2) The obligations of a Borrower or Guarantor in respect of any sum due in the Original Currency from it to the Canadian Agent, the U.S. Agent or any one or more of the Lenders under any of the Loan Documents shall, notwithstanding any judgment in any Other Currency, be discharged only to the extent that on the Business Day following receipt by the Canadian Agent of any sum adjudged to be so due or owing in such Other Currency, the Canadian Agent may in accordance with normal banking procedures purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the sum originally due or owing to the Canadian Agent, the U.S. Agent or any one or more of the Lenders in the Original Currency, such Borrower or Guarantor shall, as a separate obligation and notwithstanding any such judgment, indemnify the Canadian Agent, the U.S. Agent or such Lender, as applicable, against such Loss, and if the amount of the Original Currency so purchased exceeds the sum originally due or owing to the Lender in the Original Currency, the Agent or such Lender shall remit such excess to such Borrower or Guarantor.

## ARTICLE XII GENERAL PROVISIONS

### 12.1 Notices.

- (1) All Notices provided for in this Agreement or in the Loan Documents shall be in writing and shall be personally delivered to an officer or other responsible employee of the addressee or sent by facsimile, charges prepaid, at or to the applicable addresses or facsimile numbers, as the case may be, set opposite the party's name in Schedule N hereto or at or to such other address or addresses or facsimile number or numbers as any party hereto may from time to time designate to the other parties in such manner. Any communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a Business Day and such delivery was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of delivery. Any communication which is transmitted by facsimile as aforesaid shall be deemed to have been validly and effectively given on the date of transmission if such date is a Business Day and such transmission was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of transmission.

- (2) Each Borrowing Notice, Canadian Repayment Notice and U.S. Repayment Notice shall be irrevocable and binding on the applicable Borrower. With respect to any Borrowing Notice, the applicable Agent may act upon the basis of telephonic notice believed by it in good faith to be from a Borrower prior to receipt of a Borrowing Notice. In the event of conflict between the records of the Canadian Agent or the U.S. Agent of the applicable terms of any Accommodation and such Borrowing Notice, such Agent's records shall prevail and the applicable Borrower hereby irrevocably waives its rights, if any, to dispute the terms of such Accommodation absent manifest error.

**12.2      Public Announcements and Exchange of Information.**

Except as required by Law or by any stock exchange, none of the parties hereto shall issue any press release or make any other public statement or announcement relating to the Canadian Agent, the U.S. Agent or any of the Lenders or to the terms and conditions of the financing contemplated hereby, without obtaining the prior written approval of the other parties hereto to the contents and the manner of presentation and publication thereof.

**12.3      Time of the Essence.**

Time shall be of the essence of this Agreement.

**12.4      Third Party Beneficiaries.**

Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person, other than the parties hereto and the Persons contemplated in Section 11.8 or Section 12.8, and no Person, other than the parties hereto and the Persons contemplated in Section 11.8 or Section 12.8, shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

**12.5      Enurement.**

This Agreement shall enure to the benefit of and be binding upon the parties hereto and any Person becoming a party to this Agreement through the procedure set out in Section 12.8. This Agreement shall be binding upon any assigns and enure to the benefit of any permitted assigns.

**12.6      Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

**12.7      Knowledge.**

Where any representation or warranty contained in this Agreement or any Ancillary Agreement is expressly qualified by reference to the best of the knowledge of an Arctic Party, or where any other reference is made herein or in any Ancillary Agreement to the

knowledge of an Arctic Party, it shall be deemed to refer to the best of the knowledge of such Arctic Party and its Subsidiaries. Each of the Guarantors and the Borrowers confirms that it has made due and diligent inquiry of those of its officers, senior employees, consultants and agents (including appropriate officers, senior employees, consultants and agents of the Arctic Parties) as it considers necessary as to the matters that are the subject of such representations, warranties or references.

## **12.8            Participant Assignment.**

- (1)            None of the rights or obligations hereunder shall be assignable or transferable by the Fund, the Borrowers or the Guarantors.
- (2)            (a)        Any Lender may, upon the consent of the Borrowers prior to a Default or Event of Default, any applicable Issuing Lenders and the Agent, not to be unreasonably withheld (i) grant participations in all or any part of the Credit Facilities to one or more Persons (who, unless a Default or Event of Default has occurred, will be bona fide financial institutions) (each a "Participant"); or (ii) assign all or any part of their respective interests in the Credit Facilities to one or more Persons (who, until a Default or Event of Default has occurred, will be bona fide financial institutions) (each an "Assignee"); provided any such assignment shall be in a principal amount of no less than U.S.\$5,000,000. A Lender shall pay a fee of \$3,500 to the Canadian Agent on completion of any assignment in respect of the Canadian Facility and a fee of U.S. \$3,500 to the U.S. Agent on completion of any assignment in respect of the U.S. Facility. For greater certainty, the parties hereto acknowledge and agree that the foregoing provisions of Section 12.8(2)(a) provide the Lenders the right to grant participations in or assign less than all of the Credit Facilities. For example, all of the Canadian Facility may be assigned or syndicated notwithstanding that none of the U.S. Facility will be assigned or syndicated.
- (b)        The Canadian Agent or any of the Lenders may deliver a copy of any financial statement or any other information relating to the prospects, business, Property or condition (financial or otherwise) of the Arctic Parties which may be furnished to it under this Agreement or otherwise to any Participant or Assignee or any prospective Participant or Assignee; provided that each such delivery is made on the understanding that the information contained therein is confidential in nature.
- (c)        Without limitation of their obligations hereunder, the parties hereto shall give, and shall cause their Subsidiaries to give, full access for due diligence investigation to its properties, officers, agents, employees and books and records and shall give such certificates, acknowledgements and further assurances in respect of this Agreement and the Credit Facilities as the Canadian Agent, the U.S. Agent or any Lender may reasonably require in connection with any participation or assignment pursuant to this Section and the Borrowers shall be responsible for all reasonable costs and expenses incurred by the Canadian Agent, the U.S. Agent and/or the Lenders in connection therewith.



- (d) A Lender granting a participation shall act on behalf of all of its Participants in all dealings with the Borrowers in respect of the Credit Facilities.
- (e) Any Assignee shall deliver to the Fund, the Borrowers and the Guarantors, the Canadian Agent, the U.S. Agent and the other Lenders an Assignment Agreement in the form of Schedule T. Upon execution of an Assignment Agreement and payment of fees, the assigning Lender and the Fund, the Borrowers and the Guarantors shall be mutually released from their respective obligations to each other hereunder to the extent of such assignment and assumption and shall thenceforth have no liability or obligations to each other to such extent, except in respect of matters which shall have arisen prior to such assignment.

#### **12.9      Non-Merger.**

Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties of the parties contained in this Agreement and the Ancillary Agreements shall not merge on and shall survive the Closing and the making of any Accommodation, and notwithstanding such Closing or Accommodation, or any investigation made by or on behalf of any party, shall continue in full force and effect. Neither the Closing nor the making of any Accommodation shall prejudice any right of one party against any other party in respect of anything done or omitted hereunder or under any of the Ancillary Agreements or in respect of any right to damages or other remedies.

#### **12.10      Certificates and Opinions.**

Whenever the delivery of a certificate or opinion is a condition precedent to the taking of any action by the Canadian Agent, the U.S. Agent or any or all of the Lenders or under any of the Loan Documents, the truth and accuracy of the facts and opinion stated in such certificate or opinion shall in each case be conditions precedent to the rights of the Arctic Parties to have such action taken, and each statement of fact contained therein shall be deemed to be a representation and warranty of the Fund, the Borrowers and the Guarantors for the purpose of this Agreement. Except as otherwise expressly provided in this Agreement, whenever any certificate or declaration is to be delivered by an officer or a senior officer of an Arctic Party, such certificate shall be signed on behalf of such Arctic Party by one or more of the Chairman, President, Chief Executive Officer, Chief Financial Officer, Treasurer, Secretary or any Vice President of such Arctic Party.

#### **12.11      Limitation of Trustee Liability.**

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

**12.12 Most Favoured Nations.**

In the event that any Borrower amends any of the terms, conditions or covenants applicable to the Subordinated Facility Loan Agreement or any other debt issued to another Benefited Creditor that ranks at least equally with the Lenders, or issues any new or replacement notes or debt thereunder, such that the terms, conditions, securities and covenants of Benefited Creditor by virtue of such amendments or replacements becomes more favourable than those in favour of Lenders, then the Borrower shall promptly amend this Agreement to provide such amended terms, conditions and covenants to the Lenders.

**12.13 Anti-Money Laundering & Anti-Terrorism Compliance**

The Lenders and the Agent are subject to Anti-Money Laundering & Anti-Terrorism Legislation and "know your customer" rules and regulations, and they hereby notify the Arctic Parties that in order to comply with such legislation, rules and regulations, they may be, among other things, required to obtain, verify and record information pertaining to the Arctic Parties, which information may relate to, among other things, the names, addresses, corporate directors, corporate registration numbers, corporate tax numbers, corporate shareholders and banking transactions of the Arctic Parties. The Arctic Parties hereby agree to take such actions and to provide, upon request, such information and access to information regarding the Arctic Parties that is required to enable the Lenders and the Agent to comply with such Anti-Money Laundering & Anti-Terrorism Legislation and "know your customer" rules and regulations.

**12.14 Jury Trial Waiver**

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

**Interpretation (Québec)**

For purposes of any Property, liabilities or Persons located in the Province of Québec and for all other purposes pursuant to which the interpretation or construction of this Agreement or the Security Documents may be subject to the laws of the Province of Québec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) **"personal property"** shall include **"movable property"**, (b) **"real property"** or **"real estate"** shall include **"immovable property"**, (c) **"tangible property"** shall include **"corporeal property"**, (d) **"intangible property"** shall include **"incorporeal property"**, (e) **"security interest"**, **"mortgage"** and **"lien"** shall include a **"hypothec"**, **"right of retention"**, **"prior claim"** and a resolutory clause, (f) all references to filing, perfection, priority, remedies, registering or recording under *The Personal Property Security Act* (Manitoba), *The Securities Transfer Act* (Manitoba), or the Uniform Commercial Code shall include, without limitation, publication under the Civil Code of Québec, (g) all references to **"perfection"** of or **"perfected"** liens or security interest shall include a reference to an **"opposable"** or **"set up"** lien or security interest as against third parties, (h) any **"right of offset"**, **"right of setoff"** or similar expression shall include a **"right of compensation"**, (i) **"goods"** shall include **"corporeal movable property"** other than chattel paper, documents of title, instruments, money and securities, (j) **"construction liens"** shall include **"legal hypothecs"**, (k) **"joint and several"** shall include **"solidary"**, (l) **"gross negligence or willful misconduct"** shall be deemed to be **"intentional or gross fault"**, (m) **"easement"** shall include **"servitude"**, (n) **"priority"** shall include **"prior claim"**, (o) **"survey"** shall include **"certificate of location and plan"**, (p) **"state"** shall include **"province"**, (q) **"fee simple title"** shall include **"absolute ownership"**, and (r) **"accounts"** shall include **"claims"**. The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en langue anglaise seulement.

**ARTICLE XIII  
THE AGENT**

**13.1 Appointment and Authorization of Agent.**

Each Lender hereby appoints and authorizes, and hereby agrees that it will require any assignee of any of its interest in the Loan Documents (other than the holder of a participation in its interest herein or therein) to appoint and authorize, the Agent to take such actions as agent on its behalf and to exercise such powers under the Loan Documents as are delegated to the Agent by such Lender by the terms hereof, together with such powers as are reasonably incidental thereto. Neither the Agent nor any of its directors, officers, employees or agents shall be liable to any of the Lenders for any action taken or omitted to be taken by it or them thereunder or in connection therewith, except for its own gross negligence or wilful misconduct

and each Lender hereby acknowledges that the Agent is entering into the provisions of this Section 13.1 on its own behalf and as agent and trustee for its respective directors, officers, employees and agents.

**13.2      Interest Holders.**

The Agent may treat each Lender set forth in Schedule A or the Person designated in the last notice delivered to it under Section 12.8 as the holder of all of the interests of such Lender under the Loan Documents.

**13.3      Consultation with Counsel.**

The Agent may consult with legal counsel selected by it as counsel for the Agent and the Lenders and shall not be liable for any action taken or not taken or suffered by it in good faith and in accordance with the advice and opinion of such counsel.

**13.4      Documents.**

The Agent shall not be under any duty to the Lenders to examine, inquire into or pass upon the validity, effectiveness or genuineness of the Loan Documents or any instrument, document or communication furnished pursuant to or in connection with the Loan Documents and the Agent shall, as regards the Lenders, be entitled to assume that the same are valid, effective and genuine, have been signed or sent by the proper parties and are what they purport to be.

**13.5      Agent as Lender.**

With respect to those portions of the Credit Facilities made available by it, the Agent shall have the same rights and powers under the Loan Documents as any other Lender and may exercise the same as though it were not the Agent. The Agent and its affiliates may accept deposits from, lend money to and generally engage in any kind of business with a Borrower and its affiliates and Persons doing business with such Borrower and any of its affiliates as if it were not the Agent and without any obligation to account to the Lenders therefor and the Agent may exercise its rights and powers with respect thereto as though it were not the Agent.

**13.6      Responsibility of Agent.**

The duties and obligations of the Agent to the Lenders under the Loan Documents are only those expressly set forth herein. The Agent shall not have any duty to the Lenders to investigate whether a Default or an Event of Default has occurred. The Agent shall, as regards the Lenders, be entitled to assume that no Default or Event of Default has occurred and is continuing unless the Agent has actual knowledge or has been notified by a Borrower of such fact or has been notified by a Lender that such Lender considers that a Default or Event of Default has occurred and is continuing, such notification to specify in detail the nature thereof.

**13.7****Action by Agent.**

The Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights which may be vested in it on behalf of the Lenders by and under this Agreement; provided, however, that the Agent shall not exercise any rights under Section 10.1 or under the Security Documents or expressed to be on behalf of or with the approval of the Majority Lenders, without the request, consent or instructions of the Majority Lenders. Furthermore any rights of the Agent expressed to be on behalf of or with the approval of the Majority Lenders shall be exercised by the Agent upon the request or instructions of the Majority Lenders. The Agent shall incur no liability to the Lenders under or in respect of any of the Loan Documents with respect to anything which it may do or refrain from doing in the reasonable exercise of its judgment or which may seem to it to be necessary or desirable in the circumstances, except for its gross negligence or wilful misconduct. The Agent shall in all cases be fully protected in acting or refraining from acting under any of the Loan Documents in accordance with the instructions of the Majority Lenders and any action taken or failure to act pursuant to such instructions shall be binding on all Lenders. In respect of any notice by or action taken by the Agent hereunder, a Borrower shall at no time be obliged to inquire as to the right or authority of the Agent to so notify or act.

**13.8****Notice of Events of Default.**

In the event that the Agent shall acquire actual knowledge or shall have been notified of any Default or Event of Default, the Agent shall promptly notify the Lenders and shall take such action and assert such rights under Section 10.1 of this Agreement and under the Loan Documents as the Majority Lenders shall request in writing and the Agent shall not be subject to any liability by reason of its acting pursuant to such request. If the Majority Lenders shall fail for five (5) Business Days after receipt of the notice of any Default or Event of Default to request the Agent to take such action or to assert such rights under any of the Loan Documents in respect of such Default or Event of Default, the Agent may, but shall not be required to, and subject to subsequent specific instructions from the Majority Lenders, take such action or assert such rights (other than rights under Section 10.1 of this Agreement or under the other Loan Documents and other than giving an express waiver of any Default or any Event of Default) as it deems in its discretion to be advisable for the protection of the Lenders except that, if the Majority Lenders have instructed the Agent not to take such action or assert such rights, in no event shall the Agent act contrary to such instructions unless required by Law to do so.

**13.9****Responsibility Disclaimed.**

The Agent shall be under no liability or responsibility whatsoever as agent hereunder:

- (a) to a Borrower or any other person as a consequence of any failure or delay in the performance by, or any breach by, any Lender or Lenders of any of its or their obligations under any of the Loan Documents;

- (b) to any Lender or Lenders as a consequence of any failure or delay in performance by, or any breach by, a Borrower or any Guarantor of any of its obligations under any of the Loan Documents; or
- (c) to any Lender or Lenders for any statements, representations or warranties in any of the Loan Documents or in any other documents contemplated thereby, or in any other information provided pursuant to any of the Loan Documents, or any other documents contemplated thereby, or for the validity, effectiveness, enforceability or sufficiency of any of the Loan Documents or any other document contemplated thereby.

**13.10      Indemnification.**

The Lenders agree to indemnify the Agent (to the extent not reimbursed by the Borrowers) pro rata based on their respective *Pro Rata* Shares under the Credit Facilities from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any nature whatsoever which may be imposed on, incurred by or asserted against the Agent in any way relating to or arising out of any of the Loan Documents or any other document contemplated thereby or any action taken or omitted by the Agent under any of the Loan Documents or any document contemplated thereby, except that no Lender shall be liable to the Agent for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the gross negligence or wilful misconduct of the Agent.

**13.11      Credit Decision.**

Each Lender represents and warrants to the Agent that:

- (a) in making its decision to enter into this Agreement and to make the Credit Facilities available to the Borrowers, it is independently taking whatever steps it considers necessary to evaluate the financial condition and affairs of the Borrowers and that it has made an independent credit judgment without reliance upon any information furnished by the Agent or another Lender; and
- (b) so long as any portion of the Credit Facilities is being utilized by the Borrowers, it will continue to make its own independent evaluation of the financial condition and affairs of the Borrowers.

**13.12      Successor Agent.**

Subject to the appointment and acceptance of a successor Agent as provided in this Section 13.12, the Agent: (i) may resign at any time by giving thirty (30) days written notice thereof to the Lenders; (ii) may be removed by a Borrower at any time when any action taken or omitted to be taken by it under the Loan Documents or in connection therewith was taken or omitted to be taken in a manner which was grossly negligent or exhibited wilful misconduct, as determined by a court of competent jurisdiction, or (iii) may be removed by the Majority Lenders at any time upon thirty (30) days written notice thereof to the Agent. Upon any such resignation

or removal, the Majority Lenders shall have the right to appoint a successor Agent who shall be one of the Lenders unless none of the Lenders wishes to accept such appointment. If no successor Agent shall have been so appointed and shall have accepted such appointment by the time of such resignation or removal, then the retiring or removed Agent may, on behalf of the Lenders, appoint a successor Agent which shall be a Person organized under the laws of Canada. Upon the acceptance of any appointment as Agent hereunder by a successor Agent such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges, duties and obligations of the retiring or removed Agent (other than in its capacity as a Lender) and the retiring or removed Agent shall be discharged from its duties and obligations hereunder (other than in its capacity as a Lender). After any resignation or removal hereunder as the Agent, the provisions of this Article XIII shall continue in effect for the benefit of such Agent in respect of any actions taken or omitted to be taken by such Agent while it was acting as the Agent.

**13.13      Delegation by Agent.**

With the prior approval of the Majority Lenders, the Agent shall have the right to delegate any of its duties or obligations hereunder as Agent to any affiliate of the Agent so long as the Agent shall not thereby be relieved of such duties or obligations.

**13.14      Waivers and Amendments.**

- (1) Subject to Sections 13.14(2) and 13.14(3), any term, covenant or condition of any of the Loan Documents may only be amended with the consent of the Borrowers and the Majority Lenders or compliance therewith by the Borrowers may be waived (either generally or in a particular instance and either retroactively or prospectively) by the Majority Lenders and, in the event that any such amendment or waiver is approved by the Majority Lenders, the failure to observe, perform or discharge any such covenant, condition or obligation, so amended or waived (whether such amendment is executed or such consent or waiver is given before or after such failure), shall not be construed as a breach of such covenant, condition or obligation or as a Default or Event of Default.
- (2) Notwithstanding Section 13.14(1), without the prior written consent of each Lender, no such amendment or waiver shall directly or indirectly:
  - (a) increase the amount of the Canadian Swing Line Facility, the U.S. Swing Line Facility, the Canadian Facility or the U.S. Facility or the amount of the Individual Commitments of any Lender;
  - (b) extend the term of the Canadian Swing Line Facility, the U.S. Swing Line Facility, the Canadian Facility or the U.S. Facility or amend the provisions of this Agreement dealing with the types of Accommodations available hereunder;
  - (c) extend the time for the payment of the interest on the Advances, forgive any portion of principal thereof, reduce the stated rate of interest thereon or amend Section 13.16;

- (d) amend or waive the distribution policy in Schedule R or the covenants in Section 8.2(10) or the definition of Distributable Cash;
  - (e) change the percentage of the Lenders' requirement to constitute the Majority Lenders or otherwise amend the definition of Majority Lenders;
  - (f) reduce the stated amount of any Fees to be paid pursuant to this Agreement;
  - (g) permit any subordination of the indebtedness hereunder;
  - (h) release or amend any of the Security Documents, in whole or in part; or
  - (i) alter the terms of this Section 13.14.
- (3) Notwithstanding Sections 13.14(1) and 13.14(2), if any one of: (i) The Bank of Nova Scotia, (ii) Roynat Business Capital Inc. and Roynat Inc. or (iii) The Toronto-Dominion Bank and Toronto Dominion (New York) LLC and The Toronto-Dominion Bank, New York Branch cease to be Lenders hereunder, then no amendment to or waiver of any term, covenant or condition of any of the Loan Documents may be made without the prior written consent of each Lender.
- (4) Without the prior written consent of the Agent, the Canadian Swing Line Lender or the U.S. Swing Line Lender, no amendment to or waiver of any provision of this Agreement to the extent it affects the rights or obligations of the Agent, the Canadian Swing Line Lender or the U.S. Swing Line Lender, as applicable, shall be effective.

**13.15      Determination by Agent Conclusive and Binding.**

Any determination to be made by the Agent on behalf of or with the approval of the Lenders or the Majority Lenders under this Agreement shall be made by the Agent in good faith and, if so made, shall be binding on all parties, absent manifest error.

**13.16      Remittance of Payments.**

Forthwith after the withdrawal from the Canadian Agent's Account or the U.S. Agent's Account, as the case may be, by the applicable Agent of any payment of principal, interest, fees or other amounts for the benefit of the Canadian Lenders or the U.S. Lenders pursuant to this Agreement such Agent shall, subject to Sections 2.7, 3.1(2) and 12.8(2), remit to each such Lender, in immediately available funds, such Lender's *Pro Rata* Share of such payment based on such Lender's Individual Commitment under the Canadian Facility or the U.S. Facility, as the case may be, provided that if such Agent, on the assumption that it will receive, on any particular date, a payment of principal (including, without limitation, a prepayment), interest, fees or other amount pursuant to such Credit Facility, remits to each Lender its *Pro Rata* Share of such payment, as the case may be, and the Canadian Borrower or a U.S. Borrower, as applicable, fails to make such payment, each of the Canadian Lenders or the U.S. Lenders, as the case may be, agrees to repay to such Agent forthwith on demand, to the extent that such amount is not recovered from such Borrower on demand such Lender's *Pro Rata* Share of the payment



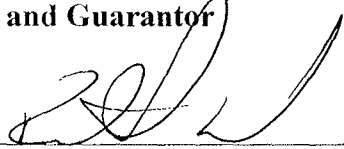
made to it pursuant to this Section, as the case may be, together with interest thereon at the rate payable hereunder by such Borrower in respect of such amount for each day from the date such amount is remitted to the applicable Lenders, until the date such amount is paid or repaid to such Agent the exact amount of the repayment required to be made by such Lenders pursuant to this Section to be as set forth in a certificate delivered by such Agent to each such Lender which certificate shall constitute *prima facie* evidence of such amount of repayment.

**13.17        Hedging Transactions**

Within two (2) Business Days of receipt of a request by Agent therefor, each Lender that is a counterparty to a Hedging Transaction with a Borrower shall advise the Agent in writing of the Mark to Market Exposure of such Hedging Transaction. The Arctic Parties hereby agree to the release of such information and the information contemplated by Section 15 of the Intercreditor Agreement by the Agent and the Lenders to the Subordinated Facility Lenders.

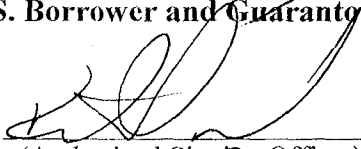
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**ARCTIC GLACIER INC., as Canadian  
Borrower and Guarantor**

Per:   
(Authorized Signing Officer)

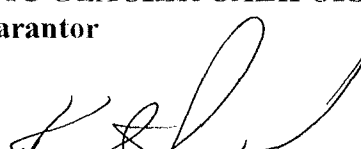
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(Authorized Signing Officer)

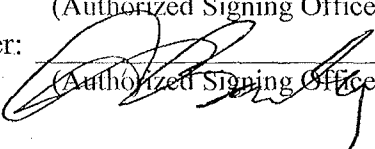
**ARCTIC GLACIER INTERNATIONAL INC.,  
as U.S. Borrower and Guarantor**

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

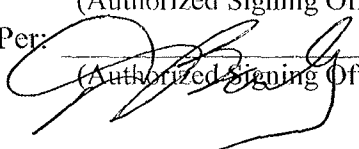
**ARCTIC GLACIER CALIFORNIA INC.,  
as Guarantor**

Per:   
(Authorized Signing Officer)


Per:   
(Authorized Signing Officer)

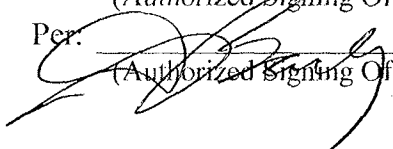
**ARCTIC GLACIER GRAYLING INC.,  
as Guarantor**

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

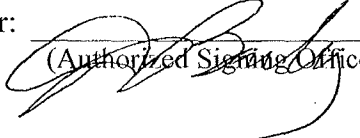
**ARCTIC GLACIER INCOME FUND,  
as Guarantor**

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

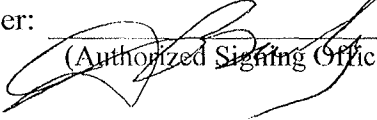
**ARCTIC GLACIER NEWBURGH INC.,  
as Guarantor**

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

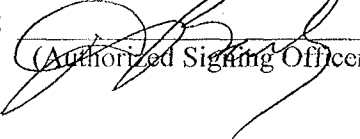
**ARCTIC GLACIER NEW YORK INC.,  
as Guarantor**

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

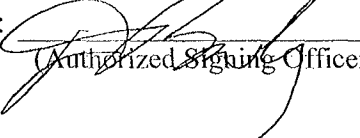
**ARCTIC GLACIER OREGON INC.,  
as Guarantor**

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

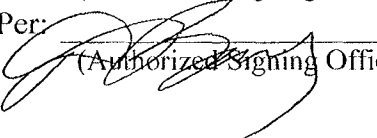
**ARCTIC GLACIER PARTY TIME INC.,  
as Guarantor**

Per:   
(Authorized Signing Officer)

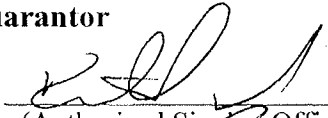
Per:   
(Authorized Signing Officer)

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

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

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

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

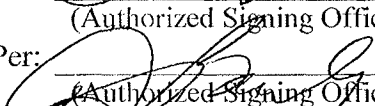
**ARCTIC GLACIER LANSING INC.,  
as Guarantor**

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

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

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

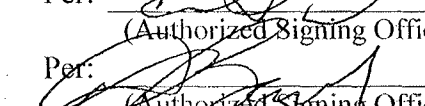
**ARCTIC GLACIER MINNESOTA INC.,  
as Guarantor**

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

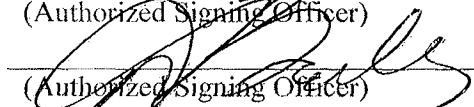
**ARCTIC GLACIER NEBRASKA INC.,  
as Guarantor**

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

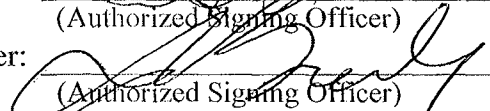
**ARCTIC GLACIER ROCHESTER INC.,  
as Guarantor**

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

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

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

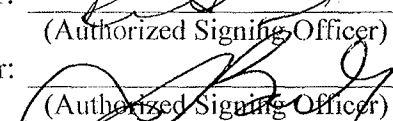
**ARCTIC GLACIER TEXAS INC.,  
as Guarantor**

Per:   
(Authorized Signing Officer)


Per:   
(Authorized Signing Officer)

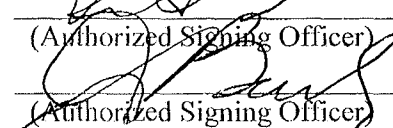
**ARCTIC GLACIER VERNON INC.,  
as Guarantor**

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

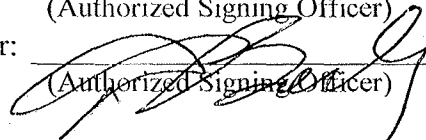
**ARCTIC GLACIER WISCONSIN INC.,  
as Guarantor**

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

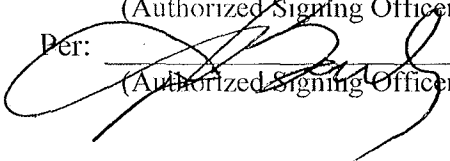
**DIAMOND ICE CUBE COMPANY, INC.,  
as Guarantor**

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

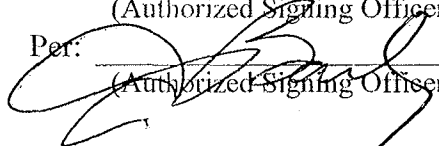
**DIAMOND NEWPORT CORPORATION,  
as Guarantor**

Per:   
(Authorized Signing Officer)


Per:   
(Authorized Signing Officer)

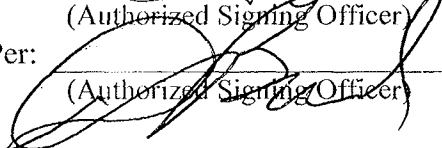
**GLACIER ICE COMPANY, INC.,  
as Guarantor**

Per:   
(Authorized Signing Officer)

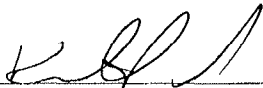
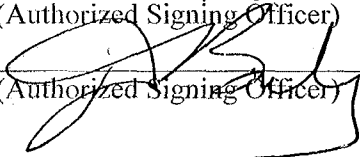
Per:   
(Authorized Signing Officer)

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


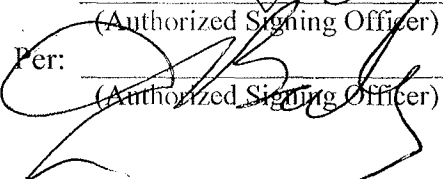
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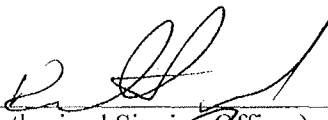
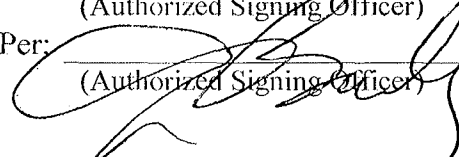
**ICE PERFECTION SYSTEMS INC.,  
as Guarantor**

Per:   
(Authorized Signing Officer)  
Per:   
(Authorized Signing Officer)


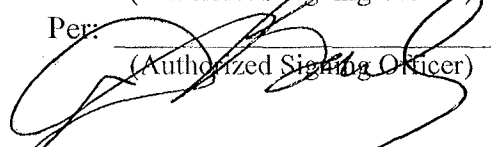
**JACK FROST ICE SERVICE, INC.  
as Guarantor**

Per:   
(Authorized Signing Officer)  
Per:   
(Authorized Signing Officer)

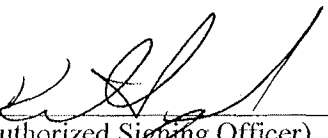
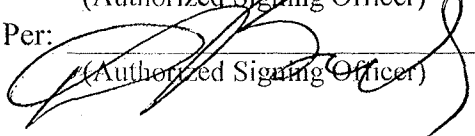
**KNOWLTON ENTERPRISES, INC.,  
as Guarantor**

Per:   
(Authorized Signing Officer)  
Per:   
(Authorized Signing Officer)

**MOUNTAIN WATER ICE COMPANY,  
as Guarantor**

Per:   
(Authorized Signing Officer)  
Per:   
(Authorized Signing Officer)

**R&K TRUCKING, INC.,  
as Guarantor**

Per:   
(Authorized Signing Officer)  
Per:   
(Authorized Signing Officer)

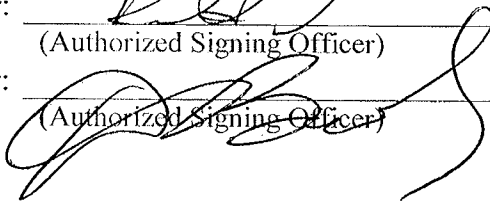
**WINKLER LUCAS ICE AND FUEL  
COMPANY,  
as Guarantor**

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

**WONDERLAND ICE, INC.,  
as Guarantor**


Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)



**THE TORONTO-DOMINION BANK,**  
as Canadian Lender

**Ella Cholakis, Analyst**  
**Commercial**  
**National Accounts**

Per:   
(Authorized Signing Officer)

Per:   
(Authorized Signing Officer)

**Joe Seidel**  
**Associate Vice President**  
**Commercial National Accounts**

**THE BANK OF NOVA SCOTIA**  
as Canadian Lender

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)


**ROYNAT INC.,**  
as Canadian Lender

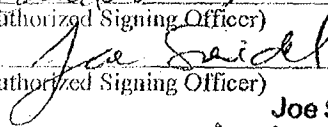
Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

**THE TORONTO-DOMINION BANK, as**  
**Canadian Swing Line Lender**

**Ella Cholakis, Analyst**  
**Commercial**  
**National Accounts**

Per:   
(Authorized Signing Officer)

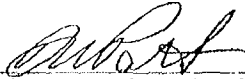
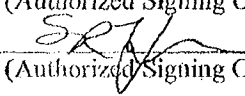
Per:   
(Authorized Signing Officer)

**Joe Seidel**  
**Associate Vice President**  
**Commercial National Accounts**

**THE TORONTO-DOMINION BANK,  
as Canadian Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)  
Per: \_\_\_\_\_  
(Authorized Signing Officer)

**THE BANK OF NOVA SCOTIA, as Canadian  
Lender**

Per:  David Patterson  
Director  
(Authorized Signing Officer)  
Per:  Steve Holyman  
Associate Director  
(Authorized Signing Officer)

**ROYNAT INC.,  
as Canadian Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)  
Per: \_\_\_\_\_  
(Authorized Signing Officer)

**THE TORONTO-DOMINION BANK, as  
Canadian Swing Line Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)  
Per: \_\_\_\_\_  
(Authorized Signing Officer)

**THE TORONTO-DOMINION BANK,  
as Canadian Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

**THE BANK OF NOVA SCOTIA, as Canadian  
Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

**ROYNAT INC.,  
as Canadian Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)  **GLENN TAYLOR,**

Per: \_\_\_\_\_  
(Authorized Signing Officer) **DIRECTOR & DISTRICT MANAGER**

**THE TORONTO-DOMINION BANK, as  
Canadian Swing Line Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

**THE TORONTO-DOMINION BANK,  
as Canadian Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

**THE BANK OF NOVA SCOTIA, as Canadian  
Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

**ROYNAT INC.,  
as Canadian Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

**GREG STEENSON**  
MANAGING DIRECTOR, RISK MANAGEMENT

**THE TORONTO-DOMINION BANK, as  
Canadian Swing Line Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

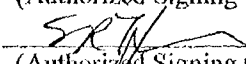
**TORONTO DOMINION (NEW YORK) LLC,  
as U.S. Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

**THE BANK OF NOVA SCOTIA, as U.S.  
Lender**

Per:  David Patterson  
Director Person  
(Authorized Signing Officer)

Per:  Steve Holyman  
Associate Director  
(Authorized Signing Officer)

**ROYNAT BUSINESS CAPITAL INC.,  
as U.S. Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)

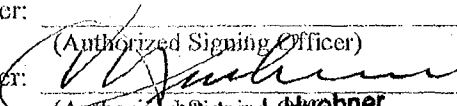
Per: \_\_\_\_\_  
(Authorized Signing Officer)

**THE TORONTO-DOMINION BANK, NEW  
YORK BRANCH, as U.S. Swing Line Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

**TORONTO DOMINION (NEW YORK) LLC,  
as U.S. Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)  
Per:  \_\_\_\_\_  
(Authorized Signing Officer)  
**Victor J. Huebner**  
Authorized Signing Officer

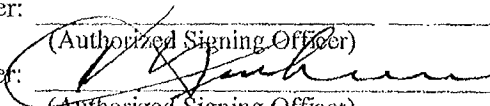
**THE BANK OF NOVA SCOTIA, as U.S.  
Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)  
Per: \_\_\_\_\_  
(Authorized Signing Officer)

**ROYNAT BUSINESS CAPITAL INC.,  
as U.S. Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)  
Per: \_\_\_\_\_  
(Authorized Signing Officer)

**THE TORONTO-DOMINION BANK, NEW  
YORK BRANCH, as U.S. Swing Line Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)  
Per:  \_\_\_\_\_  
(Authorized Signing Officer)  
**Victor J. Huebner**  
Authorized Signing Officer

**TORONTO DOMINION (NEW YORK) LLC,  
as U.S. Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)


Per: \_\_\_\_\_  
(Authorized Signing Officer)

**THE BANK OF NOVA SCOTIA, as U.S.  
Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

**ROYNAT BUSINESS CAPITAL INC.,  
as U.S. Lender**

Per:  J.C. Chernin  
(Authorized Signing Officer) *800.800.8000 Risk Management*

Per: \_\_\_\_\_  
(Authorized Signing Officer)

**THE TORONTO-DOMINION BANK, NEW  
YORK BRANCH, as U.S. Swing Line Lender**

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

**THE TORONTO-DOMINION BANK,  
as Canadian Agent**

Per: Wayne M. Shiplo  
(Authorized Signing Officer)  
Per: Wayne M. Shiplo  
Vice President  
(Authorized Signing Officer)

**TORONTO DOMINION (TEXAS) LLC,  
as U.S. Agent**

Per: \_\_\_\_\_  
(Authorized Signing Officer)  
Per: \_\_\_\_\_  
(Authorized Signing Officer)



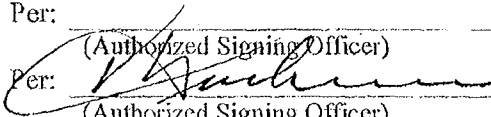
**THE TORONTO-DOMINION BANK,  
as Canadian Agent**

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

**TORONTO DOMINION (TEXAS) LLC,  
as U.S. Agent**

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per:  \_\_\_\_\_  
(Authorized Signing Officer)  
**Victor J. Huebner**  
Authorized Signing Officer

V5807741

**SCHEDULE A  
INDIVIDUAL COMMITMENTS**

<b>Lender</b>	<b>Canadian Swing Line Facility (U.S. \$)</b>	<b>Canadian Facility (U.S. \$)</b>	<b>U.S. Swing Line Facility (U.S.\$)</b>	<b>U.S. Facility (U.S. \$)</b>	<b>Totals (US\$)</b>
The Toronto- Dominion Bank	\$5,000,000	\$5,000,000		--	\$10,000,000
Toronto Dominion (New York) LLC	--	--		\$20,000,000	\$20,000,000
The Toronto- Dominion Bank, New York Branch	--	--	\$5,000,000	--	\$5,000,000
The Bank of Nova Scotia	--	\$5,000,000	--	\$17,000,000	\$22,000,000
Roynat Business Capital Inc.	--	--	--	\$8,000,000	\$8,000,000
Roynat Inc.		\$5,000,000	--	--	\$5,000,000
<b>Total Commitments</b>	\$5,000,000*	\$15,000,000	\$5,000,000	\$45,000,000*	\$70,000,000

\* As of February 10th, 2010, the Commitments of the U.S. Lenders under the U.S. Facility and the Commitments of the Canadian Lenders under the Canadian Facility are as set out above. The Commitments of the U.S. Lenders under the U.S. Facility shall be reduced on an annual basis on December 31<sup>st</sup> of each year, commencing December 31, 2010 and ending on December 31, 2012, by an amount equal to the Annual Mandatory Repayment Amount (equal to U.S.\$2,500,000.00 per annum, less the aggregate principal amount of any mandatory repayments in each such year pursuant to Sections 2.62.6(5), 2.62.6(6), 2.62.6(7) and 2.62.6(8)), with such annual reductions to be applied as shall have been specified by the Borrowers with notice to the Agent at least 5 Business Days prior to such scheduled reduction, to the U.S. Commitment. For certainty, each such annual reduction shall be allocated in accordance with the U.S. Facility Pro Rata.

**SCHEDULE B  
NOTICE OF REQUEST FOR ADVANCE**

TO: [THE TORONTO-DOMINION BANK, as Canadian Agent]  
[TORONTO DOMINION (TEXAS) LLC as U.S. Agent]

FROM: [ARCTIC GLACIER INC. (the "Canadian Borrower")]  
[ARCTIC GLACIER INTERNATIONAL INC. (the "U.S. Borrower")]

DATE: ●

1. This notice of request for Advances is delivered to you, as Agent, pursuant to the fourth amended and restated loan agreement dated February 10th, 2010, among, *inter alia*, Arctic Glacier Inc. and Arctic Glacier International Inc., as borrowers (the "**Borrowers**"), the Canadian Agent, the U.S. Agent and the Lenders specified therein, as amended and restated, amended, modified, supplemented, restated or replaced from time to time (the "**Loan Agreement**"). All defined terms used, but not otherwise defined, in this notice shall have the respective meanings set forth in the Loan Agreement.

2. The [Canadian] [U.S.] Borrower hereby requests an Advance as follows:

(a) Date of Advance:

(b) Applicable Credit: Canadian Facility

U.S. Facility

Canadian Swing Line Facility

U.S. Swing Line Facility

(c) Aggregate amount of Advances Cdn.\$

U.S.\$

(d) Type and amount of Advances

Amount

(i) Floating Rate Advance: Cdn.\$

(ii) U.S. Base Rate Advance: U.S.\$

(iii) U.S. Swing Line Loans: U.S.\$

(iv) Bankers' Acceptances (BA Equivalent Loans):

<u>Amount</u> <u>[Cdn.\$/U.S.\$]</u>	<u>Term in Months</u>	<u>Rollover Amount</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

(v) LIBOR Advance:

<u>Amount</u> <u>[U.S.\$]</u>	<u>Term in Months</u>	<u>Rollover Amount</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

(vi) Letters: [Cdn.\$]  
[U.S.\$]

3. The requested Advances **[are/are not]** being used to finance an acquisition pursuant to Section 2.4 (iii) hereof and such acquisition **[does/does not]** cause the limitations set out in Section 8.2 (8) (iv) hereof to be exceeded.

4. The Mark to Market Exposure of the Arctic Parties, as of the date hereof, is: \$[●].

5. All of the representations and warranties of the Arctic Parties set forth in Section 7.1 of the Loan Agreement, other than those which by their terms are made only as of a specific date, are true and accurate as at the date hereof, as though made on and as of the date hereof.

6. All of the covenants of the Borrowers and the Trust contained in Articles 8 and 9 of the Loan Agreement together with all of the conditions precedent to the Advances hereby requested contained in Article 6 of the Loan Agreement and all other terms and conditions contained in the Loan Agreement to be complied with by the Borrowers or the Guarantors, not properly waived in writing by or on behalf of the Lenders, have been fully complied with.

7. No Default, or Event of Default has occurred and is continuing nor will any such event occur as a result of the aforementioned Advances.

**[INSERT NAME OF BORROWER]**

Per: \_\_\_\_\_

Name:

Title:

**SCHEDULE C  
FORM OF ISSUE NOTICE**

[Issue Date]

[The Toronto-Dominion Bank, as Canadian Lender]  
[Address]

[The Toronto-Dominion Bank, New York Branch, as U.S. Swing Line Lender]  
[Address]

Attention:       ●

Dear Sirs:

The undersigned, [Arctic Glacier Inc.] [Arctic Glacier International Inc.], refers to the fourth amended and restated loan agreement dated February 10th, 2010 among, *inter alia*, Arctic Glacier Inc. and Arctic Glacier International Inc., as Borrowers, the Canadian Agent, the U.S. Agent and the Lenders specified therein, as amended and restated, amended, modified, supplemented, restated or replaced from time to time (the "Loan Agreement"), and hereby gives you notice pursuant to Section 5.2 of the Loan Agreement that the [Canadian Borrower] [U.S. Borrower] hereby requests an Issue under the Loan Agreement, and in that connection sets forth below the information relating to such Issue (the "Proposed Issue") as required by Section 5.2 of the Loan Agreement. All defined terms used, but not otherwise defined, in this notice shall have the respective meanings set forth in the Loan Agreement.

- (b) The Business Day of the Proposed Issue is ●, ●.
- (c) The type of Letter is ●.
- (d) The aggregate Face Amount and currency of the Letter is [insert amount and currency].
- (e) The expiration date of the Letter is ●.
- (f) The name and address of the Beneficiary of the Letter is ●.
- (g) The purpose of the Letter is ●.

The undersigned certifies that:

- (i) the representations and warranties of each of the Arctic Parties contained in the Loan Documents are true and correct as of the date hereof with the same force and effect as if such representations and warranties had been made on and as of the date hereof;
- (ii) each of the Arctic Parties has fulfilled and complied with all covenants contained in the Loan Documents to be performed or caused to be performed by it on or prior to the date hereof; and

- (iii) no Default or Event of Default has occurred and is continuing nor will any such event occur as a result of the issue of the aforementioned Letter.

Yours truly,

**[ARCTIC GLACIER INC.]**  
**[ARCTIC GLACIER INTERNATIONAL INC.]**

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

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

**SCHEDULE D  
COMPLIANCE CERTIFICATE**

**TO: THE TORONTO-DOMINION BANK, as Canadian Agent**

Reference is made to the fourth amended and restated loan agreement dated February 10th, 2010 among, *inter alia*, Arctic Glacier Inc. and Arctic Glacier International Inc., as Borrowers, the Canadian Agent, the U.S. Agent and the Lenders specified therein, as amended and restated, amended, modified, supplemented, restated or replaced from time to time (the "Loan Agreement"). All defined terms used, but not otherwise defined, in this notice shall have the respective meanings set forth in the Loan Agreement. This **[annual/quarterly]** Compliance Certificate is delivered pursuant to Section 8.1(2)(a) of the Loan Agreement for the Financial **[Year/Quarter]** ending ● (the "Period").

I, ●, the ● of each of the Borrowers, in such capacity and not personally, hereby certify that:

1. I am the duly appointed ● of each of the Borrowers and as such I am providing this certificate for and on behalf of the Borrowers pursuant to the Loan Agreement.
2. I am familiar with and have examined the provisions of the Loan Agreement Including, without limitation, those of Articles 7, 8 and 9 therein.
3. To the best of my knowledge, information and belief, and after due inquiry;
  - (a) the representations and warranties of each of the Arctic Parties contained in the Loan Documents are true and correct as of the date hereof with the same force and effect as if such representations and warranties had been made on and as of the date hereof;
  - (b) each of the Arctic Parties have fulfilled and complied with all covenants contained in the Loan Documents to be performed or caused to be performed by it at or prior to the date hereof;
  - (c) enclosed herewith is a copy of Schedule "P" to the Loan Agreement as at **[date of last Financial Quarter]** which has been blacklined to show changes to the copy of Schedule "P" most recently delivered to the Agent with notes explaining the changes in reasonable detail;
  - (d) each of the Arctic Parties have paid all realty taxes due and payable by them during the Period; and
  - (e) no Default or Event of Default has occurred and is continuing as at the date hereof.



4. Without limiting the generality of Paragraph 3 above, the Arctic Parties were, at the end of the Period and as of the date of this Compliance Certificate, in compliance, in all material respects, with all applicable Environmental Laws.
5. The amounts and financial ratios referred to in Section 8.3 of the Loan Agreement for the Period or as of the end of the Period were as follows (detailed calculations are attached hereto as Annex I):

Financial Ratio	Actual Amount	Required Amount of Limit
(1) Leverage Ratio	●:1.0	Leverage Ratio Maximum <sup>1</sup>
(2) Senior Leverage Ratio	●:1.0	1.50:1.0
(3) Fixed Charge Coverage Ratio	●:1.0	1.00:1.0
(4) Interest Coverage Ratio	●:1.0	1.25:1.0
(5) Minimum Consolidated EBITDA	\$●	\$48,000,000
(6) Minimum Liquidity	\$● (Q1)	\$15,000,000
	\$● (Q2)	\$15,000,000
	\$● (Q3)	\$30,000,000
	\$● (Q4)	\$40,000,000

6. Certain additional compliance items referred to in the Loan Agreement for the Period or as of the end of the Period were as follows (detailed calculations are attached hereto as Annex I):

Additional Compliance Items	Maximum Amount	Actual Amount
(a) Notional amount of Hedging Transactions (Aggregate)	U.S.\$150,000,000	\$●
(b) Mark to market amount of Hedging Transactions (Aggregate)	-	\$●
(c) Notional amount of Hedging Transactions (Foreign Exchange)	U.S.\$45,000,000	\$●
(d) Mark to market amount of Hedging Transactions (Foreign Exchange)	-	\$●

<sup>1</sup> The Leverage Ratio Maximum is as follows: (i) 3.25x at any time during the Financial Quarter ending December 31, 2009, (ii) 3.75x at any time during the 2010 Financial Year, and (iii) 3.95x at any time during the Financial Quarters ending March 31, 2011 and June 30, 2011, (iv) 3.75x at any time during the Financial Quarters ending September 30, 2011, December 31, 2011, March 31, 2012 and June 30, 2012, and (v) 3.50x at any time during the Financial Quarter ending September 30, 2012 and thereafter until the Maturity Date.

(e) Notional amount of Hedging Transactions (Interest Rate Swaps)	U.S.\$100,000,000	\$●
(f) Mark to market amount of Hedging Transactions (Interest Rate Swaps)	-	\$●
(g) Notional amount of Hedging Transactions (Commodity Hedging)	U.S.\$5,000,000	\$●
(h) Mark to market amount of Hedging Transactions (Commodity Hedging)	-	\$●
(i) Disposed Property Amount (Section 8.2(3))	\$1,500,000/ Financial Year	\$●
(j) Purchase Money Debt (Section 8.2(5))	\$1,500,000 (Aggregate)	\$●
(k) Acquisitions to Date (Section 8.2(8)(iv))	U.S.\$5,000,000 (Aggregated Annually)	\$● <sup>2</sup>
(l) Corporate Distributions (Section 8.2(10))	-	\$●
(m) Distributable Cash (Section 8.2(10))	-	\$●

7. Based on the Leverage Ratio for the Financial Quarter ending ●, the Applicable Margin to become effective on ● is:

Floating Rate Advances U.S. Base Rate Advances U.S. Prime Rate Advances Swing Line Loans Canadian Swing Line Loans U.S. Swing Line Loans	Bankers' Acceptances BA Equivalent Notes LIBOR Advances Letters	Canadian Commitment Fee U.S. Commitment Fee Canadian Swing Line Commitment Fee U.S. Swing Line Commitment Fee
●%	●%	●%

8. The DOJ Payments (present value) as of the date hereof are U.S. \$● (detailed calculations are attached hereto as Annex I).
9. Capital Stock consisting of redeemable or retractable preferred shares as of the date hereof are [Cdn.\$][U.S.\$].

<sup>2</sup> Please list date and amount of each acquisition, as well as aggregate amount of all acquisitions to date made pursuant to Section 8.2(8)(iv).

**DATED** this            day of            , 20\_\_.

**ARCTIC GLACIER INC.**

---

Name:

Title: Chief Financial Officer

**ANNEX I**  
**DETAILED CALCULATIONS**

*[see attached]*

**SCHEDULE E**  
**SUBSIDIARIES AND LOCATIONS OF COLLATERAL**

**SCHEDULE F**  
**LITIGATION**

**SCHEDULE G**  
**PERMITTED LIENS**

**SCHEDULE H**  
**INTELLECTUAL PROPERTY**



**SCHEDULE I**  
**LEASEHOLD REAL ESTATE**

**SCHEDULE J**  
**REAL ESTATE**

**SCHEDULE K**  
**ENVIRONMENTAL MATTERS**

**SCHEDULE L**  
**MATERIAL AGREEMENTS**

**[Note To Draft: to include CPP Documents, as they exist on closing date prior to any changes.]**

**SCHEDULE M**  
**PENSION PLANS**

**SCHEDULE N  
ADDRESSES FOR NOTICE**

**CANADIAN AGENT**

To:

The Toronto-Dominion Bank  
c/o Loan Syndications – Agency  
Royal Trust Tower  
77 King Street West, 18<sup>th</sup> Floor  
Toronto, Ontario  
M5K 1A2

Attention: Wayne Shiplo

Fax No.: (416) 982-5535

**CANADIAN BORROWER**

To:

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

Attention: Chief Financial Officer

Fax No.: (204) 783-9857

**U.S. AGENT**

To:

The Toronto-Dominion Bank  
c/o Loan Syndications – Agency  
Royal Trust Tower  
77 King Street West, 18<sup>th</sup> Floor  
Toronto, Ontario  
M5K 1A2

Attention: Wayne Shiplo

Fax No.: (416) 982-5535

**U.S. BORROWER**

To:

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

Attention: Chief Financial Officer

Fax No.: (204) 783-9857

**SCHEDULE O**  
**SECURITY DOCUMENTS**

**Note To Draft** – to be updated to include the following additional documents:

1. deposit account control agreements with respect to all deposit accounts of the Arctic Parties;
2. security account control agreements with respect to all securities accounts of the Arctic Parties;
3. additional security as may be required by CPP pursuant to the Subordinated Facility Loan Agreement.

**SCHEDULE P**  
**AUTHORIZED AND ISSUED CAPITAL AND INTERCOMPANY NOTES**



**SCHEDULE Q**  
**DEPOSIT ACCOUNTS, INVESTMENT ACCOUNTS, SECURITIES ACCOUNTS**

**SCHEDULE R**  
**DISTRIBUTION POLICY**

**SCHEDULE S**  
**DISTRIBUTION CERTIFICATE**

**TO: THE AGENT AND THE LENDERS**

Reference is made to the fourth amended and restated loan agreement dated February 10th, 2010 among, *inter alia*, Arctic Glacier Inc. and Arctic Glacier International Inc., as Borrowers, the Canadian Agent, the U.S. Agent and the Lenders specified therein, as amended and restated, amended, modified, supplemented, restated or replaced from time to time (the "Loan Agreement"). All defined terms used, but not otherwise defined, in this notice shall have the respective meanings set forth in the Loan Agreement. This Distribution Certificate is delivered pursuant to 8.2(10) of the Loan Agreement in connection with the distribution (the "Distribution") of \$● represent \$● per Unit to be made by the Trust in respect of the quarter ended ● (the "Period").

I, [Name], the [Title] of each of the Borrowers, in such capacities and not personally, hereby certify that:

1. I am the duly appointed [Title] of each of the Canadian Borrower and the U.S. Borrower, and as such I am providing this certificate for and on behalf of the Canadian Borrower and the U.S. Borrower pursuant to the Loan Agreement.
2. I am familiar with and have examined the provisions of the Loan Agreement.
3. To the best of my knowledge, information and belief, and after due inquiry:
  - (a) no Default or Event of Default has occurred and is continuing as of the date hereof;
  - (b) after giving effect to the Distribution, the Arctic Parties will be able to meet their obligations under the Loan Agreement including payment obligations and financial covenants in Section 8.3;
  - (c) the amount of the Distribution has been determined in accordance with the distribution policy described in Schedule R to the Loan Agreement on a basis consistent with past practice and the attached calculation, and
  - (d) for purposes of this certificate, amounts in respect of the most recent Financial Quarter have been estimated in good faith by management of ●.

Consolidated Statement of Operations and Distributable Cash

**ARCTIC GLACIER INC.  
STATEMENT OF DISTRIBUTABLE CASH**

Consolidated EBITDA	\$ _____
Less:	
Cash Taxes Paid	
Cash Interest Paid	
Unfunded Capital Expenditures	
Scheduled Principal Repayments of Debt	
Distributable Cash for the Period	_____

DATED this        day of        .

\_\_\_\_\_  
[Name]

**SCHEDULE T**  
**FORM OF ASSIGNMENT AGREEMENT**

**THIS AGREEMENT** made the ● of ●, ●.

**TO: ARCTIC GLACIER INC., and**  
**ARCTIC GLACIER INTERNATIONAL INC.**  
(collectively, the "Borrowers")

**TO: ARCTIC GLACIER CALIFORNIA INC.,**  
**ARCTIC GLACIER GRAYLING INC.,**  
**ARCTIC GLACIER INC.,**  
**ARCTIC GLACIER INCOME FUND,**  
**ARCTIC GLACIER INTERNATIONAL INC.,**  
**ARCTIC GLACIER IP INC.,**  
**ARCTIC GLACIER LANSING INC.;**  
**ARCTIC GLACIER MICHIGAN INC.,**  
**ARCTIC GLACIER MINNESOTA INC.,**  
**ARCTIC GLACIER NEBRASKA INC.,**  
**ARCTIC GLACIER NEWBURGH INC.,**  
**ARCTIC GLACIER NEW YORK INC.,**  
**ARCTIC GLACIER OREGON INC.,**  
**ARCTIC GLACIER PARTY TIME INC.,**  
**ARCTIC GLACIER PENNSYLVANIA INC.,**  
**ARCTIC GLACIER ROCHESTER INC.;**  
**ARCTIC GLACIER SERVICES INC.,**  
**ARCTIC GLACIER TEXAS INC.,**  
**ARCTIC GLACIER VERNON INC.;**  
**ARCTIC GLACIER WISCONSIN INC.;**  
**DIAMOND ICE CUBE COMPANY, INC.,**  
**DIAMOND NEWPORT CORPORATION,**  
**GLACIER ICE COMPANY, INC.,**  
**GLACIER VALLEY ICE COMPANY, L.P.,**  
**ICE PERFECTION SYSTEMS INC.,**  
**JACK FROST ICE SERVICE, INC.,**  
**KNOWLTON ENTERPRISES, INC.,**  
**MOUNTAIN WATER ICE COMPANY,**  
**R&K TRUCKING, INC.,**  
**WINKLER LUCAS ICE AND FUEL COMPANY, and**  
**WONDERLAND ICE, INC.**  
(the "Guarantors")

**TO: THE CANADIAN AGENT AND THE U.S. AGENT, UNDER THE LOAN**  
**AGREEMENT (AS DEFINED BELOW)**  
(collectively, the "Agent")

**TO: THE TORONTO-DOMINION BANK,**  
**TORONTO DOMINION (NEW YORK) LLC,**  
**ROYNAT INC.,**

**ROYNAT BUSINESS CAPITAL INC., and  
THE BANK OF NOVA SCOTIA**  
(collectively with the Agent, the "Lenders")

**WHEREAS** the Borrowers, the Guarantors, the Agent, and the Lenders entered into a fourth amended and restated loan agreement dated as of February 10th, 2010, as amended and restated, amended, modified, supplemented, restated or replaced from time to time (the "**Loan Agreement**");

**AND WHEREAS** 12.8(2)(a) of the Loan Agreement contemplates that the Lenders may assign all or any part of their respective interests in the Credit Facilities to one or more Assignees;

**AND WHEREAS** Section 12.8(2)(e) of the Loan Agreement provides that any Assignee shall be bound, upon the assignment of all or any part of an interest in the Credit Facilities, to execute and deliver an assignment agreement to each of the Agent, the Lenders, the Borrowers and the Trust, whereby it shall assume the obligations and agree to be bound by all the terms and conditions of the Loan Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the covenants herein contained and the mutual covenants contained in the Loan Agreement, each of the undersigned hereby agrees as follows:

1. **Definitions.**

In this Agreement, unless otherwise provided, all capitalized terms shall have the meanings ascribed thereto in the Loan Agreement.

2. **Assumption of Obligations.**

The undersigned hereby undertakes and agrees to assume, perform and discharge, from and after the date hereof, all duties, Obligations, covenants and agreements of a Lender in accordance with the terms contained in the Loan Agreement and to be bound by the terms of the Loan Agreement in all respects, and the assigning Lender shall be released therefrom, to the extent of the amount of the individual Commitments assigned to the undersigned, being [U.S.\$● of the Canadian Facility, U.S.\$● of the Canadian Swing Line Facility, U.S.\$● of the U.S. Facility and U.S.\$ ● of the U.S. Swing Line Facility].

3. **Assignment of Rights.**

The undersigned shall have the rights and obligations of the assigning Lender with respect to the Individual Commitments assigned to it.

4. **Address for Notice.**

All notices and other communications provided for in this Agreement shall be in writing and shall be personally delivered to an officer or other responsible employee of the addressee or sent by facsimile, charges prepaid, at or to the address or facsimile number set forth below it~

signature hereto or set opposite the party's name in Schedule N to the Loan Agreement or at or to such other address or addresses or facsimile number or numbers as any party hereto may from time to time designate to the other parties in such manner.

Any communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a Business Day and such delivery was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of delivery.

Any communication which is transmitted by facsimile as aforesaid shall be deemed to have been validly and effectively given on the date of transmission if such date is a Business Day and such transmission was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of transmission.

5. **Successors and Assigns.**

The terms of this Agreement shall be binding upon and enure to the benefit of each of the Borrowers, the Guarantors, the Agent, the Lenders and the undersigned and their respective successors and permitted assigns,

6. **Governing Law.**

This Agreement shall be governed by and construed in accordance with the Laws of the Province of Manitoba and the Laws of Canada applicable therein.

**IN WITNESS WHEREOF** this Agreement has been duly executed.

**[ASSIGNEE]**

**[Address]**

**[Facsimile Number]**

Per: \_\_\_\_\_

Authorized Signing Officer

Per: \_\_\_\_\_

Authorized Signing Officer

**[ASSIGNOR]**

**[Address]**

**[Facsimile Number]**

Per: \_\_\_\_\_  
Authorized Signing Officer

Per: \_\_\_\_\_  
Authorized Signing Officer

**THE TORONTO-DOMINION BANK,  
AS AGENT**

**[Address]**

**[Facsimile Number]**

Per: \_\_\_\_\_  
Authorized Signing Officer

Per: \_\_\_\_\_  
Authorized Signing Officer

**[ISSUING CANADIAN LENDER]**

**[Address]**

**[Facsimile Number]**

Per: \_\_\_\_\_  
Authorized Signing Officer

Per: \_\_\_\_\_  
Authorized Signing Officer



**[ISSUING U.S. LENDER]**

**[Address]**

**[Facsimile Number]**

Per: \_\_\_\_\_  
Authorized Signing Officer

Per: \_\_\_\_\_  
Authorized Signing Officer

**ARCTIC GLACIER INC.,  
AS BORROWER**

**[Address]**

**[Facsimile Number]**

Per: \_\_\_\_\_  
Authorized Signing Officer

Per: \_\_\_\_\_  
Authorized Signing Officer

**ARCTIC GLACIER INTERNATIONAL  
INC., AS BORROWER**

**[Address]**

**[Facsimile Number]**

Per: \_\_\_\_\_  
Authorized Signing Officer

Per: \_\_\_\_\_  
Authorized Signing Officer

**SCHEDULE U**  
**PERMITTED DEBT**

**SCHEDULE V**  
**MORTGAGES**

**SCHEDULE X  
REPAYMENT NOTICE**

**[Date]**

**[The Toronto-Dominion Bank, as Canadian Agent]  
[Address]**

**[Toronto-Dominion (Texas) LLC, as U.S. Agent]  
[Address]**

Attention:     ●

Dear Sirs:

The undersigned refers to the fourth amended and restated loan agreement dated February 10th, 2010 among, *inter alia*, Arctic Glacier Inc. and Arctic Glacier International Inc., as Borrowers, the Canadian Agent, the U.S. Agent and the Lenders specified therein, as amended and restated, amended, modified, supplemented, restated or replaced from time to time (the "**Loan Agreement**"), and hereby gives you notice pursuant to Section 2.8 of the Loan Agreement that the **[Canadian Borrower]** or **[U.S. Borrower]** shall **[make a repayment of the Outstandings (the "Repayment")]** or **[reduce the amount of the applicable Commitment (the "Reduction")]** under the Loan Agreement, and in that connection sets forth below the information relating to such **[Repayment]** or **[Reduction]** as required by Section 2.8 of the Loan Agreement:

- (i)       The country in which such Repayment shall be made is ●.<sup>3</sup>
- (ii)      The **[Repayment]** or **[Reduction]** is in respect of **[the Canadian Facility]** or **[the U.S. Facility]**.
- (iii)     The Business Day of the **[Repayment]** or **[Reduction]** is ●.
- (iv)      The aggregate principal amount of the **[Repayment]** or **[Reduction]** is **[insert currency, amount]**.
- (v)       The Type of Advance to which the Repayment should be applied is ●.<sup>1</sup>
- (vi)      The Payment Account to which the Repayment should be credited is ●.<sup>1</sup>

---

<sup>3</sup> Omit clauses (i), (v) and (vi) in the case of a Reduction.

Yours truly,

**[ARCTIC GLACIER INC.] or  
[ARCTIC GLACIER INTERNATIONAL  
INC.]**

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

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

\5803621