

US\$138,419,042
Cdn\$50,000,000

**CPPIB CREDIT INVESTMENTS INC.,
WEST FACE LONG TERM OPPORTUNITIES LIMITED PARTNERSHIP,
WEST FACE LONG TERM OPPORTUNITIES (USA) LIMITED PARTNERSHIP,
WEST FACE LONG TERM OPPORTUNITIES MASTER FUND L.P.**

**and such other lenders from time to time party hereto,
as Lenders**

- and -

**CPPIB CREDIT INVESTMENTS INC.,
as Administrative Agent**

- and -

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

- and -

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

- and -

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

February 10, 2010

LOAN AGREEMENT

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

**A Commissioner for Oaths / Notary Public
in and for the Province of Manitoba
My Commission expires: -**

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LOAN AGREEMENT

THIS AGREEMENT is made as of the 10th day of February, 2010.

A M O N G:

CPPIB CREDIT INVESTMENTS INC., as administrative agent

(the “**Agent**”)

- and -

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

(the “**Lenders**”)

- and -

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

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

- and -

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

(together with its permitted successors and assigns, the “**U.S. Borrower**”)

- and -

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

(collectively, the “**Guarantors**”)

- A. The Borrowers have requested the Lenders make available the Loans for the purposes set forth herein;
- B. The Lenders have agreed to provide the Loans to the Borrowers on the terms and conditions herein set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the covenants and agreements herein contained, and other valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

For the purposes of this Agreement:

- 1.1.1 “**Accounting Changes**” means (i) changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Canadian Institute of Chartered Accountants (or successor thereto or any agency with similar functions); or (ii) changes in the application of such accounting principles adopted by a Borrower and concurred in by such Borrower’s independent chartered accountants;
- 1.1.2 “**Accounts Payable**” means, in respect of any period, the aggregate amount of all accounts payable and accrued liabilities of the Canadian Borrower in such period, determined on a consolidated basis, which are shown as “current liabilities” on the consolidated balance sheet of the Canadian Borrower and which otherwise constitute “accounts payable” or “accrued liabilities” in accordance with GAAP;
- 1.1.3 “**Acquisition Holdback**” has the meaning attributed to such term in Section 3.6.2;
- 1.1.4 “**Advance Date**” has the meaning attributed to such term in Section 2.2 of this Agreement;
- 1.1.5 “**Affiliate**” means an “affiliate” as defined by the *Canada Business Corporations Act*;
- 1.1.6 “**Agreement**” means this agreement and all Schedules attached hereto; the expressions “**hercof**”, “**herein**”, “**hereto**”, “**hereunder**”, “**hereby**” and similar expressions refer to this as a whole and not to any particular Article, Section, Schedule, or other portion hereof or thereof;
- 1.1.7 “**Applicable Law**” means, in respect of any Person, property, transaction, event or course of conduct, all applicable laws, statutes, rules, by-laws and regulations, regulatory policies and all applicable official directives, orders, judgments and decrees of Governmental Authorities in each case having the force of law (except

for the purposes of Section 3.17, which extends to any such policies, directives or orders whether or not having the force of law);

- 1.1.8 “**Applicable Margin**” means 9.00% per annum;
- 1.1.9 “**Approved Settlement**” has the meaning attributed to such term in Section 6.4.21 of this Agreement;
- 1.1.10 “**Arizona Lease**” means the lease option agreement by and between Desert Mountain Ice, LLC as landlord and Arctic Glacier California Inc. as tenant dated May 25, 2006 as amended, restated, modified or supplemented from time to time in accordance with terms of this Agreement;
- 1.1.11 “**Automatic Palletizer Installation**” means installation of equipment and technology that automates packing of packaged ice upon pallets;
- 1.1.12 “**BA Rate**” means, with respect to each Interest Period, the greater of (i) 2% per annum and (ii) the per annum rate of interest which is the rate determined by the Agent at approximately 10:00 a.m., Toronto time, on the date that is two Business Days prior to the commencement of the Interest Period, as being the arithmetic average of the rates applicable to Canadian dollar bankers’ acceptances in a comparable face amount as the Principal Amount of the Canadian Term Loan on such day and for a period most nearly comparable to the Interest Period, displayed and identified as such on the Reuters Screen CDOR Page as at 10:00 a.m. on such day, or if such day is not a Business Day, then on the immediately preceding Business Day; provided, however, if such a rate does not appear on the Reuters Screen CDOR Page, then the BA Rate shall be the arithmetic mean of the bid rates of the Reference Banks for Canadian dollar bankers’ acceptances in a comparable face amount as the Principal Amount of the Canadian Term Loan on such day and for a period most nearly comparable to the Interest Period accepted by the Reference Banks as of 10:00 a.m. on such day, or if such day is not a Business Day, then on the immediately preceding Business Day;
- 1.1.13 “**Benefited Creditors**” has the meaning attributed to such term in the Intercreditor Agreement and, as of the Closing Date, includes the Agent on behalf of the Lenders and the Senior Agent on behalf of the Senior Lenders;
- 1.1.14 “**Borrowers**” means collectively the Canadian Borrower and the U.S. Borrower and “**Borrower**” means any one of the Borrowers;
- 1.1.15 “**Borrowing Notice**” means a borrowing notice substantially in the form of Exhibit 1 attached hereto;
- 1.1.16 “**Business**” means the business currently carried on by the Obligors consisting of the ownership and operation of ice production, packaging and distribution facilities and related merchandising, franchising and licensing operations in Canada and the United States;

- 1.1.17 “**Business Day**” means a day (other than Saturday or Sunday) on which banks are generally open for business in Toronto, Ontario and Winnipeg, Manitoba;
- 1.1.18 “**Business Plan**” means a one (1) year business plan for the Fund and its Subsidiaries, prepared on a quarterly, consolidated basis, including, without limitation, historical financial information, in form and substance satisfactory to the Lenders, in their sole discretion;
- 1.1.19 “**Canadian Benefit Plan**” shall mean a benefit plan under Canadian Employee Benefits Legislation for which any Borrower has been an “employer” or has held equivalent status under Canadian Employee Benefits Legislation within the past five (5) years;
- 1.1.20 “**Canadian Term Loan**” has the meaning attributed to such term in Section 2.1.1 of this Agreement;
- 1.1.21 “**Canadian Employee Benefits Legislation**” shall mean the *Canada Pension Plan Act* (Canada), the *Pension Benefits Standards Act* (Canada) and the regulations thereunder, and all provincial counterparts thereof, in each case as amended or replaced from time to time;
- 1.1.22 “**Canadian Employee Plans**” shall mean any employee benefit, health, welfare, supplemental unemployment benefit, bonus, pension, profit sharing, deferred compensation, incentive compensation, stock purchase, retirement, life, accident or hospitalization insurance, medical, dental, legal, disability and similar plans or arrangements or practices relating to the employees or former employees of any Borrower which are currently maintained or were maintained at any time in the last five (5) calendar years;
- 1.1.23 “**Canadian Interest Rate**” means the BA Rate plus the Applicable Margin plus the PIK Interest Rate;
- 1.1.24 “**Canadian Pension Event**” shall mean (a) the termination in whole or in part of any Canadian Benefit Plan or Canadian Employee Plan, (b) the merger of a Canadian Benefit Plan with another pension plan, (c) a material change in the funded status of a Canadian Benefit Plan or Canadian Employee Plan, (d) the receipt by any Borrower of any notice concerning liability arising from the withdrawal or partial withdrawal of any Borrower or any other party from a Canadian Benefit Plan or Canadian Employee Plan, (e) the occurrence of an event under the *Income Tax Act* (Canada) that could reasonably be expected to affect the registered status of any Canadian Benefit Plan or Canadian Employee Plan, (f) the receipt by any Borrower of any order or notice of intention to issue an order from the applicable pension standards regulator that could reasonably be expected to affect the registered status or cause the termination (in whole or in part) of any Canadian Benefit Plan or Canadian Employee Plan, (g) the receipt of notice by the administrator or the funding agent of any failure to remit contributions to a Canadian Benefit Plan or Canadian Employee Plan, (h) the

issuance of either any order (including an order to remit delinquent contributions to the Pension Benefits Guarantee Fund of Ontario) or charges which may give rise to the imposition of any fines or penalties to or in respect of any Canadian Benefit Plan or Canadian Employee Plan or the issuance of such fines or penalties, or (i) any other extraordinary event or condition with respect to a Canadian Benefit Plan or Canadian Employee Plan that could reasonably be expected to result in a lien or any acceleration of any statutory requirements to fund all or a substantial portion of the unfunded accrued benefit liabilities of such plan;

- 1.1.25 “**Canadian Resident**” means a Person who is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada) or who is an authorized foreign bank deemed to be a resident in Canada for purposes of Part XIII of the *Income Tax Act* (Canada) in respect of any amounts to be paid or credited to such Person under this Agreement and any other Loan Document;
- 1.1.26 “**Capex Holdback**” has the meaning given to such term in Section 3.6.1;
- 1.1.27 “**Capital Expenditures**” means, for any period with respect to any Person, the aggregate expenditures paid or payable during such period by such Person for the acquisition or improvement of fixed assets which extend the life or increase the productivity of such assets and which expenditures will be capitalized and depreciated over the estimated useful life of such assets and any other operating expenses which are capitalized, determined in accordance with GAAP; *provided that* “Capital Expenditures” shall not include routine, day-to-day maintenance of fixed assets including, without limitation, the replacement of worn out parts;
- 1.1.28 “**Capitalized Lease Obligation**” 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;
- 1.1.29 “**Canadian dollars**” or “**Cdn \$**” means currency of Canada;
- 1.1.30 “**Change of Control**” means any of the following events:
- (a) the occurrence of any transaction or event as a result of which any Person (or group of Persons acting in concert) shall purchase or acquire legal or beneficial ownership, either directly or indirectly, of voting units of the Fund which carry more than 50% of the votes for the election of trustees of the Fund;
 - (b) the failure of the Fund to directly own beneficially and of record on a fully diluted basis 100% of the outstanding Equity Interest of the Canadian

Borrower free and clear of all Encumbrances (other than Encumbrances in favour of the Senior Lenders and Encumbrances granted pursuant to a Loan Document);

- (c) the failure of the Canadian Borrower to directly or indirectly own beneficially and of record on a fully diluted basis 100% of the outstanding Equity Interests of the U.S. Borrower and each of the other Obligors other than Fund (other than Encumbrances in favour of the Senior Lenders and Encumbrances granted pursuant to a Loan Document);
 - (d) a majority of the seats (other than vacant seats) on the board of directors of any Borrower is occupied by individuals who were neither nominated by the board of directors of such Borrower nor appointed with the approval of directors so nominated; or
 - (e) any event, transaction or occurrence as a result of which 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;
- 1.1.31 “**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;
- 1.1.32 “**Closing Date**” means the date hereof, or such other date as may be agreed upon by the parties hereto;
- 1.1.33 “**Code**” shall mean the Internal Revenue Code of 1986, as the same may be amended or supplemented from time to time, and any successor statute of similar import, and the rules and regulations thereunder, as from time to time in effect;
- 1.1.34 “**Collateral**” means all of the Property of any Obligor or any other Person in respect of which the Lenders have or will have or are intended to have an Encumbrance pursuant to the Loan Documents;
- 1.1.35 “**Compliance Certificate**” means the certificate required to be delivered pursuant to Section 6.3, substantially in the form attached as Exhibit 2 and signed by a senior officer of the Canadian Borrower;
- 1.1.36 “**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;

- 1.1.37 “**Consolidated Earnings**” means, for any period, with respect to any Person, Consolidated Net Income, but excluding in each case for such period any gain or loss recorded in income arising from: (a) the Disposition of capital assets, as determined in accordance with GAAP; (b) any write-up or write-down of Property, as determined in accordance with GAAP; (c) the acquisition of any securities of such Person or any of its Consolidated Subsidiaries, as determined in accordance with GAAP; (d) any extraordinary item, as determined in accordance with GAAP; (e) discontinued operations, as determined in accordance with GAAP; or (f) 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;
- 1.1.38 “**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;
- 1.1.39 “**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.
- 1.1.40 “**Consolidated Fixed Charges**” means, for any period with respect to the Fund on a consolidated basis, the sum of the following which are paid or payable in cash during such period: (a) Consolidated Interest Charges, (b) consolidated Capital Expenditures, excluding Capital Expenditures made in accordance with Section 6.4.10(i)(a) and 6.4.10(i)(c), (c) Corporate Distributions, (d) Consolidated Rent, (e) scheduled principal amounts paid or payable on account of Debt, excluding all payments of Excess Cash Flow pursuant to Section 3.6 of this Agreement; and (f) income taxes actually paid during such period;
- 1.1.41 “**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;
- 1.1.42 “**Consolidated Interest Charges**” means for any period, with respect to any Person, the total of all items properly classified as interest expense of such Person and its Consolidated Subsidiaries for such period, determined in accordance with GAAP on a consolidated basis, including for greater certainty discount and financing fees, commissions, discounts, and other fees and charges payable with respect to letters of credit, letters of guarantee and bankers’ acceptance financing, standby fees, and the interest component of any Capital Lease Obligation, any

PIK Interest and any other payment-in-kind interest, all as determined in accordance with GAAP;

- 1.1.43 “**Consolidated Net Income**” means for any period, with respect to any Person, the net income (loss) of such Person and its Consolidated Subsidiaries for such period, determined in accordance with GAAP on a consolidated basis; but excluding any income in respect of any Investment in any of the Obligor or any of its Subsidiaries;
- 1.1.44 “**Consolidated Rent**” means, for any period, with respect to any Person, the aggregate amount of Rental Expense paid or payable by such Person and its Consolidated Subsidiaries during such period determined in accordance with GAAP on a consolidated basis;
- 1.1.45 “**Consolidated Subsidiaries**” means in respect of any Person, Subsidiaries of such Person which are included in such Person’s consolidated financial statements, determined in accordance with GAAP;
- 1.1.46 “**Consolidated Total Debt**” means, at any time, the aggregate principal amount of all Debt of the Fund (other than the Convertible Debentures and Intercompany Debt) at such time determined on a consolidated basis in accordance with GAAP. For the purposes of this definition, (i) only the drawn portion of the Senior Debt shall be included in the calculation of Consolidated Total Debt and (ii) Consolidated Total Debt shall be reduced by the amount of cash on hand of the Fund, on a consolidated basis, in a deposit account with the Senior Agent up to a maximum of \$15,000,000;
- 1.1.47 “**Contaminant**” means (a) any contaminant, pollutant, deleterious substance, toxic substance, waste, hazardous waste, hazardous material, hazardous substance, petroleum product, oil, flammable explosives, asbestos or radioactive material, (b) any substance, gas, material, chemical, sound, vibration or other forms of energy which is or may now or hereafter be defined as or included in the definition of “contaminant”, “pollutant”, “deleterious substance”, “hazardous substances”, “toxic substances”, “hazardous materials”, “hazardous wastes” or words of similar import under any Environmental Law, (c) any other chemical, material, gas or substance, the exposure or release of which is or may be now or hereafter prohibited, limited or regulated by any Environmental Law, or (d) any chemical, material, gas or substance that does or may pose a hazard to health and/or safety of Persons or the environment;
- 1.1.48 “**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;

- 1.1.49 “**Control Agreement**” means a control agreement, in form and substance satisfactory to the Agent, executed and delivered by each applicable Obligor, the Agent (or in the Agent's discretion, the Master Collateral Agent), and the applicable securities intermediary with respect to a Securities Account or a deposit-taking institution with respect to a Deposit Account;
- 1.1.50 “**Controlled Group**” shall mean, at any time, each Obligor and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control and all other entities which, together with any Obligor, are treated as a single employer under Section 414 of the Code;
- 1.1.51 “**Conversion Rate**” means, in relation to quantification in one Currency of an amount denominated in the other Currency, the Bank of Canada noon rate of exchange for such Currency on the Business Day prior to the date of calculation;
- 1.1.52 “**Convertible Debentures**” means the Cdn. \$100,000,000 6.5% extendible unsecured subordinated convertible debentures issued by the Fund and due July 31, 2011 of which \$90,600,000 principal amount is outstanding as at the date hereof;
- 1.1.53 “**Corporate Distributions**” means in respect of any Person, whether or not a corporation, any form of distribution, including in each case any: (i) declaration or payment of any dividend or other direct or indirect distribution on its Equity Interest; (ii) payment to purchase, redeem, retire or acquire or reduce the stated capital of any of its Equity Interest by itself or by the Fund or any option, warrant or other right to acquire any such Equity Interest, or apply or set apart any of its Property therefor; (iii) payment of any management fees or bonuses to any shareholder, director, officer, agent or employee of such Person, any relative thereof, any affiliate of any one or more of such Persons; (iv) payment on account of or payment to repurchase, retire or acquire any Subordinated Debt or any Debt ranking pari passu with the Obligations and (v) loans made by such Person to any shareholder, director, officer agent or employee of such Person, any relative thereof, or any affiliate of such Person or any of its Subsidiaries;
- 1.1.54 “**Currency**” means either Canadian dollars or U.S. dollars;
- 1.1.55 “**Debt**” of any Person means, without duplication:
- (a) all obligations of such Person for borrowed money or advances and all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;

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

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

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

- 1.1.57 “**Defaulting Lender**” means any Lender that (a) fails to make any payment or provide funds to the Agent or a Borrower as required hereunder or fails otherwise to perform its obligations under any Loan Document, and such failure is not cured within one (1) Business Day, or (b) is the subject of any bankruptcy or any insolvency proceeding; *provided that*, solely for the purpose of determining a Lender’s right to vote on matters relating the Loan Documents and to share in payments, fees and proceeds thereunder, a Lender shall not be deemed to be a “**Defaulting Lender**” on any date of determination unless it has failed to make any payment or provide funds to the Agent or to a Borrower as required hereunder or failed otherwise to perform its obligations under any Loan Document and such failure has not been cured on or before such date of determination;
- 1.1.58 “**Deposit Account**” means any “deposit account” as such term is defined in the UCC.
- 1.1.59 “**Disposed Property**” means at any time, the cumulative aggregate gross proceeds of all Property Disposed of by the Obligors and its Subsidiaries (net of the aggregate amount of such proceeds reinvested in the assets of the Obligors and its Subsidiaries within ninety (90) days of such Disposition), voluntarily or involuntarily, on or after the Closing Date until such time;
- 1.1.60 “**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, reorganization, consolidation, amalgamation or merger or the granting of options, warrants, other rights or assets (including accounts receivables and Equity Interests of Subsidiaries) to any other Person in a single transaction or series of transactions; and “Dispose” and “Disposed” shall have meanings correlative thereto; *provided that* the granting of options or warranties by any of the Obligors or its Subsidiaries made in the ordinary course of the Business shall not constitute a “Disposition”;
- 1.1.61 “**DOJ Settlement**” means the settlement agreement entered into between the U.S. Borrower and the U.S. Department of Justice Antitrust Division dated October 13, 2009 providing for a settlement of US \$9,000,000 with respect to allegations of allocating packaged ice customers in southeastern Michigan;
- 1.1.62 “**Encumbrance**” means any mortgage, debenture, pledge, hypothec, lien, charge, assignment by way of security, consignment, lease, hypothecation, security interest (including a purchase money security interest), or other security agreement, trust or arrangement having the effect of security for the payment of any debt, liability or obligation, and “**Encumbrances**”, “**Encumbrancer**”, “**Encumber**” and “**Encumbered**” shall have corresponding meanings;
- 1.1.63 “**Environmental Law**” means with respect to any Person or Property any and all present and future Canadian and U.S. federal, state, provincial or territorial,

municipal or local, international, supranational and foreign laws, rules, regulations or obligations applicable to such Person or Property arising under common law and any order or decree, in each case as now or thereafter in effect, relating to the regulation or protection of human health, safety or the environment or to Releases or threatened Releases of pollutants, Contaminants, chemicals or toxic or hazardous substances, wastes or recyclables into or in natural environment, including ambient air, soil, surface water, ground water, wetlands, land or subsurface strata, or otherwise relating to the manufacture, generation, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, Contaminants, chemicals or toxic or hazardous substances, wastes or recyclables;

- 1.1.64 “**Equity Issuance**” shall mean any issuance or sale by any Borrower or any other Obligor of any Equity Interests of such Borrower or any such Obligor, as applicable, other than in each case (i) any issuance or sale to a Borrower or another Obligor or (ii) any issuance or sale of Equity Interests or options of an Obligor to management or employees of an Obligor under any employee stock option or other employee benefit plan in existence on the date hereof;
- 1.1.65 “**Equity Interests**” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests or units in a trust, warrants, options, or any other equity interests in any Person;
- 1.1.66 “**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time and the rules and regulations promulgated thereunder;
- 1.1.67 “**Event of Default**” has the meaning attributed to such term in Section 8.1;
- 1.1.68 “**Excess Cash Flow**” means, for any period, Consolidated Net Income of the Fund for such period:
- (a) increased by the sum of the following amounts, without duplication:
 - (i) to the extent deducted in calculating Consolidated Net Income for such period, amortization, depletion and depreciation expense; plus
 - (ii) to the extent deducted in calculating Consolidated Net Income for such period, the aggregate amount of all other non-cash expenses or charges including, without limitation, (x) the aggregate amount of any Unit-based non-cash compensation; (y) the aggregate amount of any non-cash rent expense; (z) the aggregate amount of PIK Interest and any other payment-in-kind or non-cash interest; and (aa) the aggregate amount of any non-cash taxes; plus
 - (iii) the aggregate amount of any cash dividends or investment income received in the period not otherwise included in Consolidated Net Income;

- (b) decreased by the sum of the following amounts for such period, without duplication:
- (i) the aggregate amount of cash paid in such period (net of amounts financed by any Person (other than under the Senior Credit Agreement)) with respect to Capital Expenditures (other than with respect to (x) Capital Expenditures made in accordance with Section 6.4.10(i)(a)) and (y) Capital Expenditures funded from the Capex Holdback in accordance with Section 3.6.1); plus
 - (ii) the aggregate amount of cash paid in such period (net of amounts financed by any Person (other than under the Senior Credit Agreement)) with respect to Permitted Acquisitions that is in excess of \$2,000,000 over the term of this Agreement (other than with respect to Permitted Acquisitions funded from the Acquisition Holdback in accordance with Section 3.6.2); plus
 - (iii) the aggregate amount of all required permanent principal repayments of Debt permitted hereunder excluding payments of Excess Cash Flow made in such period, plus
 - (iv) the aggregate amount of all non-cash gains;

1.1.69 **“Excess Cash Flow Payment”** has the meaning attributed to such term in Section 3.6 of this Agreement;

1.1.70 **“Excess Cash Flow Payment Date”** has the meaning attributed to such term in Section 3.6 of this Agreement;

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

1.1.72 **“Facility Replacement”** means the replacement or significant refurbishment of existing facilities including, if necessary, costs of facility closures followed by replacement upon a different property within the same market or significant renovation of the infrastructure of an existing facility and replacement of ice manufacturing, storage, handling and packaging equipment within such facility;

- 1.1.73 “**Fee Letter**” means the fee letter dated as of the date hereof between the Borrowers and the Agent, as amended from time to time;
- 1.1.74 “**Fiscal Quarter**” means each calendar quarter ending on March 31, June 30, September 30 and December 31 of each year;
- 1.1.75 “**Fiscal Year**” means the period of January 1 to December 31 of each year;
- 1.1.76 “**Fixed Charge Coverage Ratio**” means for any applicable Four Quarter Period, the ratio of the Fund’s (i) Consolidated EBITDAR for such period to (ii) Consolidated Fixed Charges for such period, calculated as set out in Section 6.2;
- 1.1.77 “**Four Quarter Period**” means as at the last day of any particular Fiscal Quarter of the applicable Obligor, the period of four consecutive Fiscal Quarters which includes the Fiscal Quarter ending on such day and the immediately preceding three Fiscal Quarters;
- 1.1.78 “**Fund**” means Arctic Glacier Income Fund, a limited purpose trust formed under the laws of the Province of Alberta;
- 1.1.79 “**Fund Public Documents**” has the meaning attributed to such term in Section 4.1.11;
- 1.1.80 “**GAAP**” means generally accepted accounting principles in Canada applied on a consistent basis;
- 1.1.81 “**Governmental Authority**” means any government, parliament, legislature, regulatory authority, agency, department, commission, board, instrumentality or rule-making entity of any government, parliament or legislature, or any court, tribunal, arbitration board or arbitrator or (without limitation to the foregoing) other law, regulation or rule making entity having or purporting to have jurisdiction in the relevant circumstances, or any Person acting or purporting to act under the authority of any of the foregoing (including, without limitation, any arbitrator);
- 1.1.82 “**Guarantors**” means, collectively, the Fund, each of the Borrowers and each Subsidiary of the Borrowers listed on Schedule 1.1.82 and each other Subsidiary of any Borrower that may from time to time become a guarantor of the Obligations pursuant to Section 5.2 and “**Guarantor**” means any one of them;
- 1.1.83 “**Hedge Instrument**” means, with respect to any Person, any interest rate, foreign exchange or commodity price risk management agreement or product, including interest rate, currency or commodity exchange or swap agreements, futures contracts, forward rate agreements, interest rate cap agreements and interest rate collar agreements, options and all other agreements or arrangements designed primarily to protect such Person against fluctuations in interest rates, currency exchange rates or commodity prices;

- 1.1.84 “**Hedging Obligations**” means, with respect to any Person, the Person’s payment obligations under Hedge Instruments calculated on a mark-to-market basis at the date of determination;
- 1.1.85 “**Intellectual Property**” means any trademarks, service marks, business names, designs, logos, indicia and/or other source and/or business identifiers, copyrights, unpatented inventions (whether or not patentable), patents, industrial designs, integrated circuit topographies, licenses, license agreements, URLs, Internet domain names and other similar rights (including know-how, trade secrets and other proprietary or confidential information and license agreements relating to the manufacturing and marketing of product), applications and registrations related to any of the foregoing, and computer tapes or disks, flow diagrams, specification sheets, source codes, object codes and other physical manifestations, embodiments or incorporations or any of the foregoing, and includes, without limitation, computer software;
- 1.1.86 “**Intercreditor Agreement**” means the amended and restated intercreditor agreement dated as of the date hereof entered into between the Senior Agent, in its capacity as administrative agent for the Senior Lenders, the Agent, in its capacity as administrative agent for the Lenders and The Toronto-Dominion Bank, in its capacity as master collateral agent to the Benefited Creditors, as the same may be amended and restated, amended, modified, supplemented, restated or replaced from time to time.
- 1.1.87 “**Intercompany Charges**” has the meaning attributed to such term in Section 6.4.6;
- 1.1.88 “**Intercompany Debt**” means any intercompany Debt between any of the Obligor and its Subsidiaries and includes, without limitation, the intercompany Debt disclosed on Schedule 1.1.88 hereto (as updated in accordance with Section 6.3.4);
- 1.1.89 “**Interest Coverage Ratio**” means the ratio of Consolidated EBITDA of the Fund for the four most recent Fiscal Quarters to Consolidated Interest Charges of the Fund for the four most recent Fiscal Quarters, calculated as set out in Section 6.2.6;
- 1.1.90 “**Interest Payment Date**” has the meaning attributed to such term in Section 3.2;
- 1.1.91 “**Interest Period**” means (i) the period commencing on the Closing Date and ending three months thereafter and (ii) any subsequent period of three months; *provided that* any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day;
- 1.1.92 “**Inventory**” shall mean, as to each Obligor, all of such Obligor’s now owned or hereafter acquired goods and merchandise held for sale, all raw materials, finished goods and materials and supplies which are used or consumed in the Business, valued at the lower of cost or market value, determined on a first-in-first-out

basis, which is not obsolete, slow moving or unmerchantable, and which otherwise constitutes "inventory" in accordance with GAAP;

- 1.1.93 "**Investment**" means any direct or indirect loan, advance or other extension of credit (including by way of guarantee) or capital contribution to any Person (including by means of transfers of cash or other property to any Person or payments for property or services for the account or use of others to any Person), purchase or acquisition of any Equity Interest, Debt or any other similar instruments issued by any Person, purchase or acquisition of property or assets or a business or undertaking, the incurrence of any Contingent Liability in respect of such Person, or expansion to or build out or renovation of personal or real property (excluding regular, day-to-day maintenance conducted in the ordinary course of business), by any means, of every nature or kind whatsoever;
- 1.1.94 "**ISB**" means the Borrowers' In-Store Bagging and automatic ice production and packaging system and related equipment;
- 1.1.95 "**Leased Real Property**" means the lands and premises leased by any of the Obligors and described in Schedule 4.1.23 (as updated from time to time pursuant to Section 6.3.5) and includes lands and premises leased by any of the Obligors after the date hereof;
- 1.1.96 "**Lenders**" means, collectively, the entities listed on the signature pages hereof, as Lenders, and any Person who may become a Lender pursuant to Section 10.6, and their respective successors and assigns, and in the singular, any one of them;
- 1.1.97 "**Leverage Ratio**" means the ratio of Consolidated Total Debt of the Fund as at the end of the most recent Fiscal Quarter to Consolidated EBITDA of the Fund for the four most recent Fiscal Quarters, calculated based on the consolidated financial statements of the Fund and its Subsidiaries as set out in Section 6.2.6;
- 1.1.98 "**LIBOR**" means, with respect to each Interest Period, an interest rate per annum equal to the greater of (a) 2.0% per annum or (b) (i) the rate per annum determined by the Agent at approximately 11:00 a.m., London time, on the date that is two Business Days prior to the commencement of the Interest Period by reference to Telexrate Page 3750 for a maturity most nearly comparable to such Interest Period or (ii) to the extent that an interest rate in (i) above is not ascertainable pursuant to the foregoing provisions of this definition, "LIBOR" shall be the interest rate per annum determined by the Agent to be the arithmetic mean of the rates per annum offered by Schedule I Canadian chartered banks to the prime banks in the London interbank market for deposits in U.S. dollars for a comparable Interest Period and in a comparable amount at approximately 11:00 a.m., London time, on the date that is two Business Days prior to the beginning of such period;
- 1.1.99 "**Liquidity**" has the meaning attributed to such term in Section 6.2.5 of this Agreement;

- 1.1.100 “**Loan Documents**” means, collectively, this Agreement, the Security Documents, the Intercreditor Agreement, any other Postponement and Subordination Agreement, the Fee Letter and all other agreements, instruments and documents from time to time (both before and after the date of this Agreement) delivered to the Agent or the Lenders in connection with this Agreement or the other Loan Documents;
- 1.1.101 “**Loans**” means collectively the Canadian Term Loan and the U.S. Borrower Loan, and “**Loan**” means any one of the Loans;
- 1.1.102 “**Majority Lenders**” means at any time, Lenders holding at least 50.1% of the outstanding aggregate Principal Amount of the Loans at such time;
- 1.1.103 “**Master Collateral Agent**” means the master collateral agent appointed by the Senior Lenders and the Lenders under the Intercreditor Agreement from time to time;
- 1.1.104 “**Material Adverse Effect**” means a material adverse effect (or a series of adverse effects, none of which is material in and of itself but which, cumulatively, results in a material adverse effect) on: (i) the Business, operations, Property, financial condition or prospects of the Borrowers and the Obligors, measured as a whole; or (ii) the ability of any Obligor to perform any of its obligations under this Agreement or any Loan Document to which it is a party; (iii) the ability of the Agent or the Lenders to enforce any of the obligations of any of the Obligors under this Agreement or any Loan Document, in each case in accordance with Applicable Laws; (iv) the enforceability or priority of the security interests and liens in favour of the Agent on behalf of the Lenders or the Master Collateral Agent on behalf of the Benefited Creditors, as applicable, in the Property of any Obligor; or (v) the value of the Property of any Obligor;
- 1.1.105 “**Material Contract**” means at any time, any written agreement entered into by an Obligor which if terminated or expired could reasonably be expected to have a Material Adverse Effect;
- 1.1.106 “**Material Permit**” means at any time, any Permit, the loss, termination or the breach of which, or non-compliance with, as at such time, could reasonably be expected to have a Material Adverse Effect;
- 1.1.107 “**Maturity Date**” means the later of (a) January 15, 2014 or (b) four years less a day from the Closing Date;
- 1.1.108 “**Maximum Senior Debt**” means the lesser of (i) \$70,000,000 reduced by a minimum amount of \$2,500,000 on December 31 of each year to not greater than \$62,500,000 by the maturity date of the Senior Credit Agreement and (ii) the aggregate of the Commitments (as defined in the Senior Credit Agreement) under the Senior Credit Agreement;

- 1.1.109 “**Multiemployer Plan**” shall mean a “multiemployer plan” as defined in Sections 3(37) and 4001(a)(3) of ERISA;
- 1.1.110 “**Multiple Employer Plan**” shall mean a Plan which has two or more contributing sponsors (including any Borrower or any member of the Controlled Group) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA to which a Borrower or any member of the Controlled Group contributes or has, within the five (5) preceding years, contributed;
- 1.1.111 “**Net Proceeds**” means in respect of any Equity Issuance, Disposition or incurrence of Debt by any Person, the aggregate of the cash proceeds and the fair market value of any non-cash proceeds of such Equity Issuance, Disposition or incurrence of Debt, as the case may be, received by such Person after deducting reasonable, *bona fide* direct transaction costs and expenses, including fees and commissions applicable thereto;
- 1.1.112 “**NI 52-109**” has the meaning attributed to such term in Section 4.1.12;
- 1.1.113 “**Noteholder Debt**” means all indebtedness, obligations and liabilities owing by the Borrowers or any Obligor under or pursuant to the note purchase agreement dated April 21, 2008 among the Canadian Borrower and the U.S. Borrower, as co-issuers, the initial purchasers of the notes issued thereunder and the Noteholder Agent (as defined therein), as amended, modified, supplemented or replaced from time to time;
- 1.1.114 “**Obligations**” means, with respect to any Obligor, all of its present and future indebtedness, liabilities and obligations of any and every kind, nature or description whatsoever (whether direct or indirect, joint or several or joint and several, absolute or contingent, matured or unmatured, in any currency and whether as principal debtor, guarantor, surety or otherwise, including without limitation any interest that accrues thereon after or would accrue thereon but for the commencement of any case, proceeding or other action, whether voluntary or involuntary, relating to the bankruptcy, insolvency or reorganization whether or not allowed or allowable as a claim in any such case, proceeding or other action) to the Agent and each Lender under, in connection with, relating to or with respect to each of the Loan Documents;
- 1.1.115 “**Obligors**” means, collectively, the Borrowers and the Guarantors and their respective successors and permitted assigns and “**Obligor**” means any one of them;
- 1.1.116 “**Officer’s Certificate**” means a certificate in form satisfactory to the Lenders (a) in the case of any such certificate of any Borrower, signed by the Chief Executive Officer or the Chief Financial Officer of such Borrower, and (b) in all other cases, of the applicable Person required to provide such certificate signed by

the president or a vice president of such corporation or by such other of its senior officers as may be acceptable to the Lenders;

- 1.1.117 **“Owned Real Property”** means the real property owned by any of the Obligors and legally described in Schedule 4.1.23 (as updated from time to time pursuant to Section 6.3.5) and includes real property acquired by any of the Obligors after the date hereof;
- 1.1.118 **“PBGC”** means the United States Pension Benefit Guaranty Corporation;
- 1.1.119 **“Pension Benefit Plan”** shall mean at any time any employee pension benefit plan (including a Multiple Employer Plan, but not a Multiemployer Plan) which is covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code and either (i) is maintained by any member of the Controlled Group for employees of any member of the Controlled Group; or (ii) has at any time within the preceding five years been maintained by any entity which was at such time a member of the Controlled Group for employees of any entity which was at such time a member of the Controlled Group;
- 1.1.120 **“Permits”** means all permits, licenses, approvals, consents, registrations, certificates, privileges, exemptions and similar authorizations issued or granted by any Governmental Authority or any third party, including without limitation, environmental Permits;
- 1.1.121 **“Permitted Acquisitions”** means an acquisition by any Obligor of a business or operating assets related to the Business located in Canada or the United States, whether by way of purchase of Equity Interest 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) no Default or Event of Default shall have occurred and be continuing, nor will any Default or Event of Default occur as a result thereof; (iii) the aggregate consideration paid for such acquisitions does not exceed \$5,000,000 in each Fiscal Year; (iv) in the case of any single acquisition for which the consideration exceeds \$3,000,000, the consent of the Majority Lenders shall be required; (v) the Borrowers will be in compliance with the financial covenants in Section 6.2 both before and after giving effect to such acquisition on a pro forma basis, in accordance with the calculation methodology in Section 6.2.6 (vi) the Borrowers have provided pro forma financial statements to the Lenders (other than in respect of those acquisitions in compliance with clauses (iii) and (iv) above) demonstrating compliance with clause (v) above; (vii) in the case of an asset purchase, on or prior to closing of the acquisition, the acquiring Obligors have provided to the Lenders Security Documents creating a first charge security and first perfected security interest (subject to Permitted Encumbrances) on all Property acquired in connection with the acquisition (other than Owned Real Property or Leased Real Property), together with such opinions and other documents as the Lenders may require, all in form and substance acceptable to the Lenders and their counsel; (viii) in the case of a purchase of Equity Interests, the acquired entity has provided the security required by Section 5.2 of this

Agreement; (ix) after giving effect to the acquisition, all representations and warranties contained in this Agreement or in any Loan Documents 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; *provided that*, to the extent the disclosure in the representations and warranties is no longer true and correct solely as a result of matters relating to such acquisition, 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, (other than in respect of those acquisitions in compliance with clauses (iii) and (iv) above) the Borrowers have provided an Officers' Certificate to the Lenders as to compliance with the foregoing.

- 1.1.122 **"Permitted Debt"** has the meaning attributed to such term in Section 6.4.6;
- 1.1.123 **"Permitted Encumbrances"** means, with respect to any Person, any one or more of the following:
- (a) Encumbrances for Taxes, assessments or governmental charges or levies not at the time due and delinquent or the validity of which is being contested at the time by the Person in good faith by proper legal proceedings if, in the Agent's opinion, upon direction from the 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 Encumbrances will not materially interfere with use of such Property by such Person or involve any immediate danger of the sale, forfeiture or loss of such Property;
 - (b) Encumbrances resulting from any judgment rendered or Claim filed against such Person which such Person shall be contesting in good faith by proper legal proceedings in the Agent's opinion, upon direction from the 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 Encumbrances will not materially interfere with use of such Property by such Person or involve any immediate danger of the sale, forfeiture or loss of such Property, and where such judgment or Claim filed to which the Encumbrance relates is for an aggregate amount of not more than \$1,000,000;
 - (c) undetermined or inchoate Encumbrances arising in the ordinary course of business which have not at such time been filed pursuant to Law against such Person or which relate to obligations not due or delinquent;
 - (d) Encumbrances affecting real property of such Person which are: (i) title defects, encroachments or irregularities of a minor nature; or (ii)

restrictions, easements, rights-of-way, servitudes or other similar rights in land (including, without restriction, rights of way and servitudes for railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light and power and telephone or telegraph or cable television conduits, poles, wires and cables) granted to or reserved by other Persons and, in each case, such Encumbrances will not materially interfere with the use of such real property by such Person;

- (c) the right reserved to or vested in any Governmental Authority by any statutory provision, or by the terms of any lease, licence, franchise, grant or permit of such Person, to terminate any such lease, license, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
- (f) any Encumbrances resulting from the deposit of cash or securities in connection with contracts, tenders or expropriation proceedings, or to secure worker's compensation, surety or appeal bonds, costs of litigation when required by Applicable Law, and public and statutory obligations;
- (g) any Encumbrances resulting from security given to a public utility or Governmental Authority when required by such utility or Governmental Authority in connection with the operation of the business of such Person;
- (h) the reservations, limitations, provisos and conditions, if any, expressed in any original grants of real property from the Crown;
- (i) carriers', warehousemen's, mechanics', material-men's, repairmen's or other similar Encumbrances arising in the ordinary course of business which are not registered against title to the 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 Encumbrances; (ii) adequate reserves with respect thereto are maintained on the consolidated books of such Person, in accordance with GAAP; and (iii) in each case, such Encumbrances will not materially interfere with use of such Property by the Person or involve any immediate danger of the sale, forfeiture or loss of such Property;
- (j) any Encumbrance, payment of which has been provided for by the depositing with the Agent of an amount in cash, or the obtaining of a surety bond satisfactory to the Agent, upon direction from the 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) Encumbrances securing permitted Purchase Money Obligations; *provided that*: (i) such Encumbrances shall extend only to the specific Property of the Obligors acquired with the proceeds of such Purchase Money Obligations (and not any other portion of the Collateral); and (ii) recourse in respect of such Encumbrances shall be limited to such specific Property;
- (n) Encumbrances in favour of the Senior Agent, the Trustee or the Master Collateral Agent with respect to the Senior Credit Agreement;
- (o) any Encumbrances other than the Encumbrances described in paragraphs (a) to (n) above existing on the date hereof and disclosed in Schedule 1.1.123, but not any extension or renewal thereof (other than in the ordinary course of business) and only to the extent that such Encumbrances are not extended to any other Property and there is no increase in the amount secured thereby as of the date of this Agreement.

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

1.1.125 **“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.;

- 1.1.126 “**Person**” means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative or Governmental Authority;
- 1.1.127 “**Phoenix Expansion**” means the Borrowers’ planned expansion into the Arizona packaged ice market including commissioning of the Borrowers’ leased facility located in Tolleson, Arizona;
- 1.1.128 “**PIK Interest**” means the interest payable on the Principal Amount at the PIK Interest Rate;
- 1.1.129 “**PIK Interest Rate**” means 1% per annum;
- 1.1.130 “**Plan**” shall mean any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Benefit Plan), maintained for employees of any Obligor or any member of the Controlled Group or any such Plan to which any Obligor or any member of the Controlled Group is required to contribute on behalf of any of its employees;
- 1.1.131 “**Postponement and Subordination Agreement**” means a postponement and subordination agreement among the Lenders, the Borrowers and another Person which agreement shall provide for (i) the postponement and subordination in favour of the Lender of all amounts owing to such Person by any Borrower or any other Obligor on terms reasonably satisfactory to the Lenders and (ii) the subordination in favour of the Security of any Encumbrance granted to such Person;
- 1.1.132 “**PPSA**” shall mean the *Personal Property Security Act* (Ontario), or any other applicable Canadian federal or provincial statute pertaining to the granting, perfecting, priority or ranking of security interests, liens, hypothecs on personal property, and any successor statutes, together with any regulations thereunder, in each case as in effect from time to time. References to sections of the PPSA shall be construed to also refer to any successor sections;
- 1.1.133 “**Prepayment Premium**” means, in respect of any repayment or prepayment of the Principal Amount, in whole or in part, pursuant to Sections 3.5, 3.7, 3.9, 3.10 or 3.11, the percentage of the Principal Amount repaid or prepaid set out below (for the period set out below during which prepayment occurs):

<u>Period</u>	<u>Prepayment Premium</u>
Prior to or on the first anniversary of the Closing Date	6% of the Principal Amount
After the first anniversary of the Closing Date but prior to or on the second anniversary of the Closing Date	4% of the Principal Amount

<u>Period</u>	<u>Prepayment Premium</u>
After the second anniversary of the Closing Date but prior to or on the third anniversary of the Closing Date	2% of the Principal Amount
After the third anniversary of the Closing Date	0% of the Principal Amount

1.1.134 “**Principal Amount**” means, with respect to each Loan, the aggregate principal amount of such Loans outstanding under this Agreement from time to time as increased by the amount of the PIK Interest payable hereunder with respect to such Loan;

1.1.135 “**Property**” means, with respect to any Person, all of its present and future undertaking, property and assets, both real and personal, and for certainty, includes the Leased Real Property and the Owned Real Property and any share in the capital of a corporation or Equity Interest in any other Person;

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

1.1.137 “**Reference Banks**” means The Toronto-Dominion Bank, Bank of Nova Scotia and Canadian Imperial Bank of Commerce;

1.1.138 “**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;

1.1.139 “**Relevant Jurisdiction**” means, from time to time, with respect to each Obligor, any province or territory of Canada, any state of the United States or any other country or political subdivision thereof in which such Person has its chief executive office or chief place of business, has Property or in which it is organized or incorporated, as applicable, and, for greater certainty, includes the provinces and states set out in Schedule 4.1.5;

1.1.140 “**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 6.2 and in order

to determine compliance thereunder, the Obligors may calculate the long-term lease portion of "Rental Expense" on a cash basis;

- 1.1.141 "**Reportable Event**" shall mean a reportable event described in Section 4043(c) of ERISA or the regulations promulgated thereunder with respect to a Pension Benefit Plan;
- 1.1.142 "**Sale-Leaseback**" means an arrangement under which title to any property or an interest therein is transferred by or on the direction of a Person ("X") to another Person which leases or otherwise grants the right to use such property, asset or interest (or other property, which X intends to use for the same or a similar purpose) to X (or nominee of X), whether or not in connection therewith X also acquires a right or is subject to an obligation to acquire the property, asset or interest, and regardless of the accounting treatment of such arrangement;
- 1.1.143 "**Securities Commissions**" means, collectively, the securities commissions or other securities regulatory authorities in each of the provinces and territories of Canada;
- 1.1.144 "**Securities Account**" means any "securities account" as such term is defined in the STA and the UCC;
- 1.1.145 "**Securities Laws**" means, collectively, all applicable securities legislation in each of the provinces and territories of Canada and the respective regulations made thereunder, together with applicable instruments, rules, policies, policy statements, notices, blanket rulings, decisions and orders, prescribed forms, published fee schedules, and other regulatory instruments issued or adopted by the Securities Commissions;
- 1.1.146 "**Security**" means the Encumbrances created by the Security Documents;
- 1.1.147 "**Security Documents**" means any guarantees and security documents granted by each of the Obligors to the Agent on behalf of the Lenders securing or intended to secure repayment of the Obligations, including, without limitation, the security described in Section 5.1;
- 1.1.148 "**SEDAR**" has the meaning given to such term in National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;
- 1.1.149 "**Segregated Account**" means a single-purpose Deposit Account of a Borrower (i) at a branch of the Senior Agent or (ii) at another deposit-taking financial institution that has provided a Control Agreement with respect to such Deposit Account;
- 1.1.150 "**Senior Agent**" means The Toronto-Dominion Bank, as administrative agent under the Senior Credit Agreement, its successors and assigns;

- 1.1.151 “**Senior Credit Agreement**” means the fourth amended and restated credit agreement dated as of the date hereof between, among others, the Borrowers, the Guarantors, the Senior Agent and the Senior Lenders, in form and substance satisfactory to the Lenders;
- 1.1.152 “**Senior Debt**” means the Debt incurred by the Borrowers under the Senior Credit Agreement;
- 1.1.153 “**Senior Debt Revolver**” means the revolving credit facility provided by the Senior Lenders to the Borrowers under the Senior Credit Agreement in an amount not greater than \$70,000,000, subject to the total commitment of the Senior Lenders under the Senior Credit Agreement reducing by a minimum of \$2,500,000 on December 31 of each year to not greater than \$62,500,000 by the maturity date of the Senior Credit Agreement;
- 1.1.154 “**Senior Lenders**” means the Lenders from time to time party to the Senior Credit Agreement;
- 1.1.155 “**Solvent**” means with respect to any Person on a particular date, the condition that, on such date, (a) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, Contingent Liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liabilities of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature, and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small amount of capital;
- 1.1.156 “**STA**” means the *Securities Transfer Act* (Ontario) and any other applicable Canadian federal or provincial statute pertaining to the granting, perfecting, priority or ranking of security interests on securities, investment property or other financial investments or instruments, and any successor statutes;
- 1.1.157 “**Subordinated Debt**” means any Debt that is subordinated and postponed to the Obligations to the satisfaction of the Agent and the Lenders, including, without limitation, the Convertible Debentures;
- 1.1.158 “**Subsidiary**” of a Person, means a subsidiary body corporate within the meaning of the *Canada Business Corporations Act* and any partnership or other organization in respect of which such Person or any Subsidiary of such Person has the direct or indirect right to make or control management decisions, and “**Subsidiaries**” means all of them. Where the term “Subsidiary” or “Subsidiaries” is used herein without further qualification, such term shall mean a Subsidiary or the Subsidiaries of any Borrower;

was created, with each unit representing an equal undivided beneficial interest in the Fund;

- 1.1.168 “**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;
- 1.1.169 “**U.S. Dollar**” or “**US \$**” means currency of the United States;
- 1.1.170 “**U.S. Dollar Equivalent**” means, in relation to any particular amount of money in Canadian dollars at any particular time, the value thereof at such time in U.S. dollars determined at the Conversion Rate;
- 1.1.171 “**U.S. Interest Rate**” means LIBOR plus the Applicable Margin plus the PIK Interest Rate;
- 1.1.172 “**U.S. Term Loan**” has the meaning attributed to such term in Section 2.2.1 of this Agreement;
- 1.1.173 “**Vendor Debt**” means any deferred purchase price obligations to a vendor in connection with a Permitted Acquisition;
- 1.1.174 “**West Face Agent**” has the meaning attributed to such term in Section 9.16 of this Agreement; and
- 1.1.175 “**West Face Lenders**” has the meaning attributed to such term in Section 9.16 of this Agreement.

1.2 Gender and Number

Words importing the singular include the plural and *vice versa* and words importing gender include all genders.

1.3 Interpretation Not Affected by Headings, etc.

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

1.4 Monetary References

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

1.5 References

Except as otherwise specifically provided, reference in this Agreement to any contract, agreement, document or any other instrument shall be deemed to include references to

the same as varied, amended, supplemented, restated or replaced from time to time and reference in this Agreement to any enactment, including without limitation, any statute, law, by-law, regulation, ordinance or order, shall be deemed to include references to such enactment as re-enacted, amended or extended from time to time.

1.6 Invalidity of Provisions

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

1.7 This Agreement to Govern

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

1.8 Actions on Days Other Than Business Days

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

1.9 Interest Act

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

1.10 Accounting Terms

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

If the Borrowers and the Lenders agree upon the required amendments, then after appropriate amendments have been executed and the underlying Accounting Changes with respect thereto has been implemented, any reference to GAAP contained in this Agreement or in

any other Loan Document shall, only to the extent of such Accounting Changes, refer to GAAP, consistently applied after giving effect to the implementation of such Accounting Changes.

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

1.11 Schedules, etc.

The following are the schedules attached to this Agreement:

- Schedule 1.1.82 – Guarantors
- Schedule 1.1.88. – Intercompany Debt
- Schedule 1.1.123 – Permitted Encumbrances
- Schedule 4.1.5 – Ownership Structure
- Schedule 4.1.6 – Share Capital
- Schedule 4.1.7 – Agreements to Acquire Shares
- Schedule 4.1.15 – Contingent Liabilities
- Schedule 4.1.17 – Conflict of Interest
- Schedule 4.1.18 – Litigation
- Schedule 4.1.21 – Material Contracts
- Schedule 4.1.22 – Material Permits
- Schedule 4.1.23 – Owned Real Property and Leased Real Property
- Schedule 4.1.24 – Title to Property
- Schedule 4.1.25 – Property Not in Operating Condition
- Schedule 4.1.26 – Environmental Matters
- Schedule 4.1.27 – Debt
- Schedule 4.1.28 – Taxes
- Schedule 4.1.30 – Affiliated Transactions
- Schedule 4.1.31 – Intellectual Property
- Schedule 4.1.34 – Employee Benefit Plans
- Schedule 4.1.35 – Employment and Labour

- Schedule 4.1.37 – Material Adverse Change
- Schedule 4.1.46 – Deposit Accounts and Securities Accounts
- Schedule 4.1.47 – Existing Security Documents
- Schedule 4.1.48 – Motor Vehicles
- Schedule 6.1.23 – Post Closing Undertaking

ARTICLE 2 THE LOANS

2.1 Canadian Term Loan

- 2.1.1 Subject to the terms and conditions of this Agreement, the Lenders hereby establish, on a several and not joint or joint and several basis, a non-revolving term loan facility in favour of the Canadian Borrower in an aggregate amount of up to Cdn \$50,000,000 (the “**Canadian Term Loan**”).
- 2.1.2 The Canadian Term Loan shall be available to the Canadian Borrower by way of advances on the Advance Date in Canadian dollars or U.S. Dollar Equivalent or a combination thereof.

2.2 U.S. Term Loan

- 2.2.1 Subject to the terms and conditions of this Agreement, the Lenders hereby establish, on a several and not joint or joint and several basis, a non-revolving term loan facility in favour of the U.S. Borrower in an aggregate amount up to U.S. \$138,419,042 (the “**U.S. Term Loan**”).
- 2.2.2 The U.S. Term Loan shall be available to the U.S. Borrower solely in U.S. dollars.

2.3 Availment

Each of the Canadian Term Loan and the U.S. Term Loan will be available to the respective Borrower in advances on the Closing Date or such later date as may be agreed to in writing by the Lenders (the “**Advance Date**”) in accordance with Sections 2.1 and 2.2 and may be drawn upon receipt by the Lenders of a borrowing notice in the form of Exhibit 1 hereto at least two (2) Business Days prior to the Closing Date.

ARTICLE 3 PAYMENT

3.1 Interest Rate

Subject to Section 8.5,

- 3.1.1 interest on the Canadian Term Loan shall accrue from and including the Advance Date on the Principal Amount of the Canadian Term Loan outstanding from time to time at the Canadian Interest Rate; and
- 3.1.2 interest on the U.S. Term Loan shall accrue from and including the Advance Date on the Principal Amount of the U.S. Term Loan outstanding from time to time at the U.S. Interest Rate.

3.2 Calculation and Payment of Interest

Interest (including for certainty, PIK Interest) on the Principal Amount of each of the Loans shall accrue from day to day, both before and after default, demand, maturity and judgment, and shall be calculated on the basis of the actual number of days elapsed and on the basis of a year of 365 days, and shall be payable to the Lenders in arrears on April 30, July 31, October 31, and January 31 (each an “**Interest Payment Date**”) in each year (or, if not a Business Day on the immediately following Business Day) in accordance with Section 3.14. The first Interest Payment Date shall be April 30, 2010. The aggregate amount of the accrued PIK Interest applicable to each of the Loans shall be deemed to have been advanced by the Lenders to the applicable Borrower as an additional principal advance and shall be added to the Principal Amount outstanding of each Loan on each Interest Payment Date.

3.3 Amortization

- 3.3.1 The U.S. Borrower shall repay to the Lenders on October 31 in each year following the Closing Date (or, if not a Business Day on the immediately following Business Day) an aggregate principal amount of the U.S. Term Loan equal to US \$1,384,190, together with accrued and unpaid interest on such principal amount (such repayment amount to be prorated for any partial year based on the number of days in such year). Such repayment shall be at par without premium or penalty and shall be applied against outstanding Obligations under the U.S. Term Loan. For certainty, the requirement to make such repayment shall not be affected by any other prepayment or repayment that may occur in such year (other than repayment in full of the Obligations).
- 3.3.2 The Canadian Borrower shall repay to the Lenders on October 31 in each year following the Closing Date (or, if not a Business Day on the immediately following Business Day) an aggregate principal amount of the Canadian Term Loan equal to Cdn \$500,000, together with accrued and unpaid interest on such principal amount (such repayment amount to be prorated for any partial year based on the number of days in such year). Such repayment shall be at par without premium or penalty and shall be applied against outstanding Obligations under the Canadian Term Loan. For certainty, the requirement to make such repayment shall not be affected by any other prepayment or repayment that may occur in such year (other than repayment in full of the Obligations).

3.4 Repayment on Maturity

To the extent not previously repaid, the Principal Amount of each Loan, together with all accrued and unpaid interest and other amounts payable hereunder, shall be due and payable in full in cash on the Maturity Date. The U.S. Term Loan shall be repaid in U.S. dollars and the Canadian Term Loan shall be repaid in Canadian dollars.

3.5 Voluntary Prepayment

- 3.5.1 The Borrowers may, at their option, prepay the Principal Amount of each Loan, in whole or in part, at any time upon payment, in addition to the Principal Amount being prepaid, of the Prepayment Premium then applicable and all accrued and unpaid interest on the Principal Amount being prepaid, *provided that* any voluntary partial prepayment (i) shall be a minimum principal amount of \$10,000,000 and in increments of \$1,000,000, (ii) shall not, when aggregated with the principal amount of all other voluntary prepayments made under this Section 3.5, be greater than \$85,000,000, (iii) shall be on a proportionate basis between the Loans and (iv) shall be applied by the Lenders against outstanding Obligations in accordance with Section 3.13.
- 3.5.2 Any prepayment made pursuant to Section 3.5.1 shall only be made on a Business Day and shall only be effected on at least five (5) Business Days' prior written notice to the Lenders which notice, once given, shall be irrevocable and binding upon the Borrowers.

3.6 Mandatory Repayment - Cash Sweep

Not later than seven (7) days after the earlier of (i) the date on which the annual audited financial statements for such Fiscal Year are delivered to the Lenders pursuant to Section 6.3.2 or (ii) the date the financial statements referred to in clause (i) are required to be delivered to the Lenders under Section 6.3.2 (the "**Excess Cash Flow Payment Date**"), the Borrowers shall pay to the Lenders on a proportionate basis an amount equal to 75% of Excess Cash Flow for such Fiscal Year (the "**Excess Cash Flow Payment**"), which payment shall be applied by the Lenders on a proportionate basis between the Loans as a prepayment of the outstanding Obligations in accordance with Section 3.13; *provided that*, so long as no Default or Event of Default shall have occurred and be continuing, the Borrowers shall be permitted to deduct and retain from the Excess Cash Flow Payment in any Fiscal Year the following:

- 3.6.1 an amount up to \$3,000,000 to be used to fund Capital Expenditures relating to Facility Replacement in the 36 month period following the Excess Cash Flow Payment Date (the "**Capex Holdback**") *provided that* any amount of the Capex Holdback that is not so used within such 36 month period shall be paid to the Lenders on the Business Day following the expiration of such period to be applied by the Lenders in accordance with this Section; and
- 3.6.2 an amount up to the aggregate amount of the purchase price of any Permitted Acquisitions not yet completed in such Fiscal Year and for which a letter of intent has been executed (the "**Acquisition Holdback**") *provided that* the full amount of

the Acquisition Holdback is deposited by the Borrowers into a Segregated Account and used for such purpose only and *provided further that* any amount of the Acquisition Holdback that is not used for such purpose by the earlier of (i) the date that is 12 months from the Excess Cash Flow Payment Date and (ii) the date that the letter of intent with respect to such Permitted Acquisition expires, shall be paid to the Lenders on the Business Day following such date to be applied by the Lenders in accordance with this Section.

For greater certainty, the aggregate amount of the Capex Holdback and the Acquisition Holdback that is deducted by the Borrowers in any Fiscal Year in accordance with this Section 3.6 shall not exceed the amount of the Excess Cash Flow Payment that would have been payable but for such deduction in such Fiscal Year.

3.7 Mandatory Repayment from Equity Issuances

- 3.7.1 If any Equity Issuance by any Obligor occurs at any time after the date of this Agreement, the Borrowers shall, on a proportionate basis, pay to the Lenders an amount equal to 100% of the Net Proceeds from such Equity Issuance within three (3) Business Days of the closing of the transaction under which such Equity Issuance occurs. Any amount paid to the Lenders under this Section 3.7 shall be subject to the Prepayment Premium then applicable and shall be applied by the Lenders on a proportionate basis between the Loans against outstanding Obligations in accordance with Section 3.13.
- 3.7.2 Notwithstanding Section 3.7.1 but to the extent that this provision is permitted to be given effect to by the Senior Credit Agreement, the Borrowers shall not be required to pay the Net Proceeds of any Equity Issuance to the Lenders in accordance with Section 3.7.1 to the extent that such Net Proceeds are used for a Permitted Acquisition or any other Investment approved by the Majority Lenders or to pay an Approved Settlement or to the extent the Net Proceeds of such Equity Issuance are employed to replace, refinance, defease or refund in full the Convertible Debentures, *provided that* in each case such Net Proceeds are held by the Borrowers in a Segregated Account and used for such purposes within 30 days of the closing of the transaction under which such Equity Issuance occurs.
- 3.7.3 The application of this section 3.7 is subject to the terms of the Intercreditor Agreement.

3.8 Mandatory Repayment from Proceeds of Insurance

- 3.8.1 If any Obligor receives proceeds of insurance in respect of Property in an amount less than \$1,000,000 for any individual incident, the Obligors may retain such proceeds.
- 3.8.2 If any Obligor receives proceeds of insurance 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 Fiscal Year, the Obligors may retain such proceeds *provided that* the applicable Obligor 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, immediately pay to the Lenders an amount equal to such insurance proceeds, which amount shall be applied against outstanding Obligations in accordance with Section 3.13.

- 3.8.3 If the aggregate amount of proceeds of insurance received by all of the Obligor in any Fiscal Year is in excess of \$3,000,000, then such proceeds in excess of \$3,000,000 shall be paid by the applicable Obligor to the Agent and the Majority Lenders shall, in their sole discretion, determine whether the proceeds shall be applied on a proportionate basis between the Loans against outstanding Obligations as provided herein or be returned to the applicable Obligor to replace, repair or rebuild assets within the time period prescribed by the Majority Lenders.
- 3.8.4 Notwithstanding the foregoing, the Obligor shall not be entitled to any proceeds of insurance, including business interruption insurance, if there exists a Default or Event of Default.
- 3.8.5 For greater certainty, the foregoing shall not apply to proceeds of insurance in respect of any Directors and Officers insurance policies arising from litigation claims *provided that* such proceeds of insurance are applied against such litigation claims or fees incurred in connection therewith in accordance with the terms of such policies.
- 3.8.6 The application of this section 3.8 is subject to the terms of the Intercreditor Agreement.

3.9 Mandatory Prepayment for Proceeds of Debt Incurrence

- 3.9.1 If any Borrower or any other Obligor incurs any Debt, the Borrowers shall, on a proportionate basis, pay to the Lenders an amount equal to 100% of the Net Proceeds of such Debt irrespective of which Obligor incurred such Debt, immediately upon the closing of the transaction under which such Debt is incurred. Any amount paid to the Lenders under this Section 3.9 shall be subject to the Prepayment Premium then applicable and shall be applied by the Lenders on a proportionate basis between the Loans against outstanding Obligations in accordance with Section 3.13.
- 3.9.2 Notwithstanding the foregoing, the repayment provisions of this Section 3.9 shall not apply to the incurrence of any Permitted Debt.
- 3.9.3 The application of this section 3.9 is subject to the terms of the Intercreditor Agreement.

3.10 Mandatory Prepayment from Proceeds of Dispositions

3.10.1 If any Obligor sells, transfers or otherwise Disposes of any Property and after giving effect to such Disposition, Disposed Property will exceed \$1,500,000 during any single Fiscal Year (such amount in excess of \$1,500,000 during any single Fiscal Year (net of reasonable transaction costs), the “**Excess Disposed Amount**”) the Borrowers shall, on a proportionate basis, pay to the Lenders an amount equal to 100% of the Excess Disposed Amount *provided that*, the Borrowers shall not be required to make such payment if it or the applicable Obligor intends to (and does) purchase replacement Property with such Excess Disposed Amount within 365 days (or such shorter period as may be provided for in the Senior Credit Agreement or agreed to by the Majority Lenders (as defined in the Senior Credit Agreement) under the Senior Credit Agreement) of the Disposition of such Property. Any such replacement Property so purchased must be subject to the Security and otherwise be in compliance with all of the terms contained herein. If it is not the intention of the Borrowers or the applicable Obligor to use the Excess Disposed Amount to purchase replacement Property within such 365 day time period (or such shorter period as may be provided for in the Senior Credit Agreement or agreed to by the Majority Lenders (as defined in the Senior Credit Agreement) under the Senior Credit Agreement) or if such replacement property is not purchased within such time period, the Borrowers shall forthwith pay to the Lenders such Excess Disposed Amount or the portion thereof that has not been so used. Any amount paid to the Lenders under this Section 3.10 shall be subject to the Prepayment Premium then applicable and shall be applied by the Lenders on a proportionate basis between the Loans against outstanding Obligations in accordance with Section 3.13.

3.10.2 The application of this section 3.10 is subject to the terms of the Intercreditor Agreement.

3.11 Mandatory Prepayment - Change of Control

Upon the occurrence of a Change of Control, the Lenders may, in their sole discretion, require that the Borrowers repay the Principal Amount (or a portion thereof as requested by the Lenders), in which case the Borrowers shall, on a proportionate basis, repay the Principal Amount (or portion thereof) so required to be repaid, plus the Prepayment Premium then applicable and all accrued and unpaid interest on the Principal Amount so repaid. Any amount paid to the Lenders under this Section 3.11 shall be applied by the Lenders on a proportionate basis between the Loans against outstanding Obligations in accordance with Section 3.13.

3.12 Prepayments

All repayments by a Borrower pursuant to Sections 3.6, 3.8 and 3.15 shall be at par without premium or penalty.

3.13 Application of Payments

Any amounts prepaid or repaid shall not be reborrowed. All amounts prepaid or repaid shall be applied (i) firstly in reduction of the accrued and unpaid interest (which for certainty shall include PIK Interest that has not yet been applied to the Principal Amount of each Loan) and all other amounts then outstanding (other than the Principal Amount of each Loan and any Prepayment Premium), and (ii) thereafter in reduction of the Principal Amount of each Loan being prepaid or repaid (and, where applicable, any Prepayment Premium applicable thereto) in inverse order of maturity. To the extent that amounts prepaid or repaid hereunder are in one Currency and are required to be applied to a Loan in the other Currency, such amounts shall be converted by the Agent at the Conversion Rate.

3.14 Payments Generally

All payments made pursuant to this Agreement (in respect of principal, interest or otherwise) shall be made by a Borrower to each Lender by way of deposit by or on behalf of such Borrower to the account specified therefor by each Lender to the Borrowers from time to time no later than 1:00 p.m. (Toronto time) on the due date thereof. Any payments received after such time shall be considered for all purposes as having been made on the next following Business Day unless the Lenders otherwise agrees in writing.

3.15 Payments - No Deduction

- 3.15.1 All payments made in respect of this Agreement (in respect of principal, interest or otherwise) shall be made in full without set-off or counterclaim, and free of and without deduction or withholding for any present or future Taxes, other than Excluded Taxes, *provided that* if a Borrower or any other Obligor shall be required by law to deduct or withhold any Taxes, other than Excluded Taxes, from or in respect of any payment or sum payable to the Agent or the Lenders, the payment or sum payable shall be increased as may be necessary so that after making all required deductions or withholdings, the Agent or the Lenders, as the case may be, receive an amount equal to the sum it would have received if no deduction or withholding had been made and a Borrower or the applicable Obligor shall pay the full amount deducted to the relevant taxation or other authority in accordance with Applicable Law.
- 3.15.2 If any Borrower fails to pay any Taxes (other than Excluded Taxes) when due to the appropriate taxing authority or fails to remit such Taxes when due, the payor shall indemnify such Lender for such Tax (to the extent that such Lender is liable) and any interest and penalties thereon, and the indemnity payment shall be increased as necessary so that after the imposition of any Tax in that jurisdiction on the indemnity payment (including Tax in respect of any such increase in the indemnity payment), such Lender shall receive the full amount of Taxes, interest and penalties for which it is liable in that jurisdiction.

3.16 Illegality

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

3.17 Change in Circumstances

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

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

and such occurrence has the effect of:

- 3.17.4 increasing the cost to a Lender of agreeing to make or making, maintaining or funding this Agreement or any portion thereof;
- 3.17.5 reducing the amount of the Obligations owing to a Lender;

- 3.17.6 directly or indirectly reducing the effective return to a Lender under this Agreement or on its overall capital as a result of entering into this Agreement or as a result of any of the transactions or obligations contemplated by this Agreement (other than a reduction resulting from a higher rate of income tax being imposed on the Lender's overall income); or
- 3.17.7 causing a Lender to make any payment or to forego any interest, fees or other return on or calculated by reference to any sum received or receivable by a Lender hereunder;

then, such Lender shall also advise the Borrowers and the Agent by way of a certificate of an officer of the Lender setting forth, with sufficient particulars (including for greater certainty, the details of calculations relevant thereto), the facts relevant to the application of this Section 3.17, and, absent manifest error in such officer's certificate, the Borrowers shall promptly upon demand by the Lender pay or cause to be paid to the Lender such additional amounts as shall be sufficient to fully indemnify the Lender for such additional cost, reduction, payment, foregone interest or other return *provided that* the Borrowers shall not be required to pay such additional amounts unless such additional amounts are being demanded by the Lender as a general practice from its borrowers similarly obligated. The applicable Lender shall provide to the Borrowers a certificate in respect of the foregoing which incorporates reasonable supporting evidence thereof and any such certificate will be *prima facie* evidence thereof except for manifest error.

3.18 Payment of Costs and Expenses

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

- 3.18.1 the preparation of this Agreement or any of the other Loan Documents, including in connection with due diligence;
- 3.18.2 the preparation of any actual or proposed amendment or modification hereof or thereof or any waiver hereunder or thereunder and all instruments supplemental or ancillary thereto;
- 3.18.3 the registration and/or discharge of any of the Security Documents in any public record office;
- 3.18.4 ongoing due diligence with respect to, among other things, any pending or threatened litigation;
- 3.18.5 obtaining advice as to the Lenders' rights and responsibilities under this Agreement or the other Loan Documents; and
- 3.18.6 the defence, establishment, protection or enforcement of any of the rights or remedies of the Lenders under this Agreement or any of the other Loan

Documents including, without limitation, all costs and expenses of establishing the validity and enforceability of, or of collection of amounts owing under, any of the Security Documents or any enforcement of the Security.

3.19 Indemnities

- 3.19.1 Each Borrower shall indemnify and save harmless the Agent and the Lenders from all claims, demands, liabilities, damages, losses, costs, charges and expenses (including the fees, expenses and disbursements of legal counsel to the Agent and the Lenders), which may be reasonably incurred by the Agent or the Lenders as a consequence of or in respect of (a) default by a Borrower or any other Obligor in the payment when due of any Obligation or any other Default or Event of Default hereunder, (b) the entering into by the Agent and the Lenders of this Agreement and any amendment, waiver or consent relating hereto, and the performance by the Lenders of its obligations under this Agreement (which for greater certainty will not include any grossly negligent act or willful misconduct on the part of the Agent or the Lenders), (c) any payment or prepayment of the Obligations made on a date which is not the last day of the applicable Interest Period, (d) any investigation, claim, action or other proceeding threatened or pending against any Obligor, or (e) the application by a Borrower of the proceeds of this Agreement. A certificate of an officer of the Agent or any Lender as to any such claim, demand, liability, damage, loss, cost, charge or expense and containing reasonable details of the calculation shall be, absent manifest error, *prima facie* evidence of the amount of such claim, demand, liability, damage, loss, cost, charge or expense.
- 3.19.2 Each Borrower shall indemnify and save harmless the Agent, the Lenders and its respective Affiliates, agents, officers, directors and employees (each an "**Indemnified Party**") from all claims, demands, liabilities, damages, losses, costs, charges and expenses (including without limitation any investigatory, remedial, clean-up, compliance or preventative costs, charges and expenses) (collectively, "**Indemnified Claims**") which may be asserted against or incurred by such Indemnified Party under or on account of any applicable Environmental Law (including the assertion of any Encumbrance thereunder), whether upon realization of the Security, or as a lender to a Borrower, or as successor to or assignee of any right or interest of a Borrower or any other Obligor or as a result of any order, investigation or action by any Governmental Authority relating to any one of its or their business or property, including without limitation any Indemnified Claims arising from:
- (a) the Release of a Contaminant, the threat of the Release of any Contaminant, or the presence of any Contaminant affecting the real or personal property of a Borrower or any other Obligor, whether or not the Contaminant originates or emanates from such Person's property or any other real property or personal property located thereon;

- (b) the Release of a Contaminant owned by, or under the charge, management or control of, a Borrower or any other Obligor or any predecessors or assignors thereof;
- (c) any costs of investigation, removal or remedial action incurred by any Governmental Authority or any costs incurred by any other Person or damages from injury to, or destruction of, or loss of or damages to natural resources in relation to, the real property or personal property of a Borrower or any other Obligor or any contiguous real property or elsewhere or personal property located thereon or any loss or damages to natural resources in relation thereto, including in relation to the foregoing, reasonable costs of assessing such injury, destruction or loss incurred pursuant to Environmental Law;
- (d) liability for personal injury or property damage arising by reason of any civil law offences or quasi-criminal or criminal offences or under any statutory or common tort law theory and any and all other third party Indemnified Claims of any and every nature whatsoever, arising in respect of or relating to a Borrower or any other Obligor or the property thereof, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of a dangerous activity at, near, or with respect to the real or personal property of a Borrower, or any other Obligor or elsewhere; and/or
- (e) any other matter relating to the environment and Environmental Law affecting the property or the operations and activities of a Borrower or any of other Obligor (including the operation of the Business) within the jurisdiction of any Governmental Authority.

3.20 Maximum Rate of Interest

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

- 3.20.1 in the event that any provision of this Agreement or any other Loan Documents would oblige a Borrower or any other Obligor to make any payment of interest or other amount payable to the Lenders in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Lenders of interest at a criminal or prohibited rate (as such terms are construed under the *Criminal Code* (Canada) or any other Applicable Law), then notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with the same effect as if adjusted at the Closing Date to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the Lenders of interest at a criminal or prohibited rate, such adjustment to be effected to the extent necessary in each case, as follows:

- (a) by reducing any fees and other amounts which would constitute interest for the purposes of Section 347 of the *Criminal Code* (Canada) or any other Applicable Law; and
- (b) by reducing the amount or rate of interest exigible under Article 3 of this Agreement; and
- (c) any amount or rate of interest referred to in this Section 3.20 shall be determined in accordance with generally accepted actuarial practices and principles over the maximum term of this Agreement (or over such shorter term as may be required by Section 347 of the *Criminal Code* (Canada) or any other Applicable Law) and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Lenders shall be conclusive for the purposes of such determination, absent manifest error.

3.21 Replacement of Lenders

- (a) If any Lender otherwise constitutes a Defaulting Lender hereunder, then either (A) the Agent or (B) so long as no Default then exists or would exist after giving effect to such replacement, the Borrowers, shall have the right to replace such Lender with another bank or financial institution (in the case of the Borrowers, with the consent of the Agent, which consent shall not be unreasonably withheld), *provided that* (a) the obligations of the Borrowers owing hereunder or under any other Loan Document to the Lender being replaced (including such increased costs and additional amounts) that are not being assigned to the replacement lender shall be paid in full to the Lender being replaced concurrently with such replacement, (b) the replacement lender shall execute an Assignment and Acceptance pursuant to which it shall become a party hereto as provided in Section 10.6 and such assignment shall be effectuated in accordance with Section 10.6, (c) upon compliance with the provisions for assignment provided in Section 10.6 and the payment of amounts referred to in clause (a), the replacement lender shall constitute a “**Lender**” hereunder and the Lender being so replaced shall no longer constitute a “**Lender**” hereunder, and (d) any such replacement shall be effected within ninety (90) days after a Borrower became aware of circumstances giving rise to such right of replacement.
- (b) In the event that a Lender constitutes a Defaulting Lender at any time hereunder, Agent may (but shall not be required to), in its discretion, retain any payments or other funds received by Agent that are to be provided to a Defaulting Lender hereunder, and may apply such funds to such Lender’s defaulted obligations or readvance the funds to the Borrowers in accordance with this Agreement. The failure of any Lender to perform its obligations hereunder shall not relieve any other Lender of

its obligations, and no Lender shall be responsible for default by another Lender.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties

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

- 4.1.1 **Incorporation and Qualification.** It is duly incorporated, amalgamated, formed, merged or continued, as the case may be, and validly existing as a corporation, company or partnership, under the laws of its jurisdiction of organization or formation and is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions in which the nature of its Property or business makes such qualification necessary except where failure to be so qualified, licensed, registered could not reasonably be expected to have a Material Adverse Effect. The Fund is a limited purpose trust being an unincorporated open-ended mutual fund trust, established under the laws of the Province of Alberta and created pursuant to a declaration of trust.
- 4.1.2 **Corporate Power.** It has all requisite corporate or other power and authority to (i) own and operate its Property and to carry on the Business carried on by it; and (ii) enter into and perform its obligations under this Agreement and the other Loan Documents to which it is a party. Each of the trustees of the Fund has the power and authority to cause the Fund to guarantee the Obligations and provide security over the Property of the Fund.
- 4.1.3 **Authorization, Execution and Binding Obligation.** The execution, delivery and performance of each of the Loan Documents to which it is a party has been duly authorized by all corporate and other actions required, and each such Loan Document has been duly executed and delivered by it, and constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms, subject to the availability of equitable remedies and the effect of bankruptcy, insolvency and similar laws affecting the rights of creditors generally.
- 4.1.4 **Conflict with Other Instruments.** The execution and delivery of the Loan Documents to which it is a party and the performance of its obligations thereunder and compliance with the terms, conditions and provisions thereof, will not (i) conflict with or result in a breach of any of the terms, conditions or provisions of (a) its constituting documents or by-laws, (b) any Applicable Law, or (c) any judgment, injunction, determination or award which is binding on it; or (ii) result in, require or permit (x) the imposition of any material Encumbrance in, on or

with respect to its Property now owned or hereafter acquired by it (other than pursuant to the Security Documents or which is a Permitted Encumbrance), or (y) any third party to terminate, or acquire any rights materially adverse to it under, any Material Contract.

4.1.5 **Ownership Structure.** The ownership structure of the Fund and its Subsidiaries as at the date hereof is as set out in Schedule 4.1.5 (as at the date hereof and as updated from time to time pursuant to Section 6.3.5), which contains:

- (a) a list of each Subsidiary of the Fund;
- (b) a complete and accurate list of
 - (i) each such Person's full and correct name (including any French and English forms of name) and the jurisdiction in which each such Person was formed,
 - (ii) the full address (including postal code or zip code) of the Borrowers and each Guarantor's chief executive office and chief place of business and, if such address is different, the address at which the books and records of such Person are located, the address at which senior management of such Person are located and conduct their deliberations and make their decisions with respect to the business of such Person and the address from which the invoices and accounts of such Person are issued, and
 - (iii) the Relevant Jurisdiction of each Obligor.

The Fund has no Subsidiaries other than the Subsidiaries set out on Schedule 4.1.5 and each Subsidiary of the Fund, other than a Subsidiary in Dissolution, is a Guarantor. No Subsidiary in Dissolution owns any assets or engages in any business or activities.

4.1.6 **Share Capital.** Schedule 4.1.6 sets out a complete and accurate description (as at the date hereof and as updated from time to time pursuant to Section 6.3.5) (i) the authorized capital or membership interests of each Obligor, by class, (ii) a description of the number of shares or membership interests of each such class that are issued and, if applicable, outstanding and (iii) the registered owner of such issued and outstanding Equity Interests. All of the outstanding Equity Interests of each Obligor have been validly issued and is fully paid and non-assessable.

4.1.7 **Agreements to Acquire Shares.** Except as set out in Schedule 4.1.7, no Person has any agreement, option, right or privilege (whether by law, pre-emptive or contractual) or any other right capable of becoming an agreement, option, right or privilege for the acquisition, purchase, subscription, allotment or issuance of any Equity Interests of any Obligor or any securities or obligations of any kind convertible into or exchangeable for Equity Interests of any Obligor, or to require

an Obligor to purchase, redeem or otherwise acquire any of its issued and outstanding Equity Interests. No shareholder of any Obligor has any pre-emptive right or right of first refusal in respect of the allotment and issuance of any unissued Equity Interests of any Obligor. No Obligor is a party to any agreement and, to the knowledge of each Obligor, no agreement exists that in any way affects the voting rights attaching to or control of any Equity Interests of any Obligor.

- 4.1.8 **Governmental Approvals.** The entering into and the performance by it of the Loan Documents to which it is a party do not require any filing, notice, consent, approval, authorization or order of any court or Governmental Authority except for approvals and filings required with respect to the transactions contemplated in the Fee Letter, which approvals have been obtained and filings have been made.
- 4.1.9 **Reporting Issuer Status.** As at the date hereof, the Fund is a reporting issuer under the Securities Laws of each of the provinces and territories of Canada and it is in compliance with such Securities Laws and is not listed as being in default of any requirement of the Securities Laws in any such province.
- 4.1.10 **Compliance with TSX Rules.** The Fund is in compliance in all material respects with the rules and regulations of the TSX.
- 4.1.11 **No Misrepresentation in Public Filings.** The Fund has, in accordance in all material respects with Applicable Laws, filed with the securities regulatory authorities and the TSX, as applicable, true and complete copies of all forms, reports, schedules, statements, material change reports, circulars, press releases, disclosures relating to options and other stock-based incentive plans, prospectuses, other offering documents and all other documents required to be filed by it with the Securities Commissions and the TSX, as applicable, since January 1, 2002 (such forms, reports, schedules, statements and other documents, including any financial statements or other documents, including any schedules included therein, are referred to herein as the “**Fund Public Documents**”). The Fund Public Documents (i) at the time filed did not, and (ii) as of the date hereof (taken as a whole after giving effect to all filings made prior to the date hereof), do not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The Fund has not filed any confidential material change report with any of the Securities Commissions, the TSX, or any other self-regulatory authority that remains confidential.
- 4.1.12 **Disclosure Controls.** The Fund maintains an effective system of “disclosure controls and procedures” (as defined in National Instrument 52-109 – Certification of Disclosure in Issuers’ Annual and Interim Filings (“**NI 52-109**”)) that is designed to ensure that information required to be disclosed by the Fund in reports that it files or submits under Securities Laws is recorded, processed, summarized and reported within the time periods specified in the Securities

Commissions' rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Fund's management as appropriate to allow timely decisions regarding required disclosure. The Fund has carried out evaluations of the effectiveness of its disclosure controls and procedures as contemplated under NI 52-109.

- 4.1.13 **Accounting Controls.** The Fund maintains systems of "internal control over financial reporting" (as defined in NI 52-109) that comply with the requirements of NI 52-109 and have been designed by, or under the supervision of, the Fund's principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including internal accounting controls sufficient to provide reasonable assurance (i) that transactions are executed in accordance with management's general or specific authorizations; (ii) that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) that access to assets is permitted only in accordance with management's general or specific authorization; (iv) that the recorded accountability for material individual assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and (v) regarding prevention or timely detection of any unauthorized acquisition, use or disposition of the Fund's assets that could have a material effect on the Fund's annual financial statements or interim financial statements. Since the date of the most recent balance sheet of the Fund publicly disclosed by the Fund, the Fund's auditors and the audit committee of the Fund's board of trustees have not been advised of: (A) any significant deficiencies in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the Fund's ability to record, process, summarize and report financial information; and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the Fund's internal control over financial reporting. Except as publicly disclosed by the Fund, there are no material weaknesses in the Fund's internal controls.
- 4.1.14 **Independent Accountants.** KPMG LLP, which has audited certain financial statements of the Fund, is an independent registered public accounting firm with respect to the Fund and its Subsidiaries within the applicable rules and regulations adopted by the Securities Commissions. There has not been any reportable event (within the meaning of National Instrument 51-102 — Continuous Disclosure Obligation with KPMG LLP or any former auditors of the Fund.
- 4.1.15 **Contingent Liabilities.** Except as disclosed in Schedule 4.1.15, it has no contingent liabilities in excess of the liabilities that are either disclosed or reserved against in the Fund's audited financial statements and interim financial statements which would reasonably be expected to be material to the financial condition of the Fund on a consolidated basis.

- 4.1.16 **No Cease Trade Orders.** No order ceasing or suspending trading in securities of the Fund or prohibiting the sale of securities by the Fund has been issued and the Fund has not been served with or otherwise received notice of or become aware of any proceedings for this purpose having been instituted, or being pending, contemplated or threatened.
- 4.1.17 **Conflicts of Interest.** Except as disclosed as related party transactions in the Borrowers financial statements and also on Schedule 4.1.17, none of the directors or officers of any Borrower or any associate or affiliate of any of the foregoing had, has or intends to have any material interest, direct or indirect, in the transactions contemplated by this Agreement, the Loan Documents or in any proposed material transaction with a Borrower which, as the case may be, materially affects, is material to or will or may reasonably be expected to materially affect a Borrower on a consolidated basis.
- 4.1.18 **Litigation.** There are no material actions, suits or proceedings outstanding and there are no material actions, suits or proceedings pending or, to the knowledge of each Obligor, threatened, against it, the Business or in respect of its Property, other than as set out on Schedule 4.1.18. There are no pending or to the knowledge of each Obligor, threatened investigation(s) or other proceeding(s) by the Canadian Competition Bureau, the U.S. Federal Department of Justice Antitrust Division or any other Governmental Authority against it, the Business or in respect of its Property. For the purposes of this paragraph, a “material” action, suit or proceeding, shall be any action, suit or proceeding where the claim in question is in excess of \$500,000.
- 4.1.19 **No Expropriation.** At the date hereof, there are no expropriation or similar proceedings, actual or threatened, of which a Borrower or any Guarantor has notice, or reason to believe such notice is pending or threatened, against the Leased Property, the Owned Property or any part thereof.
- 4.1.20 **Compliance with Laws.** It is conducting its business in compliance in all material respects with all Applicable Laws of each jurisdiction in which it carries on its business, including any proposed or upcoming amendments to any Applicable Laws relating to its Business of which it is aware.
- 4.1.21 **Material Contracts.** Schedule 4.1.21 sets out all Material Contracts of the Obligors (as at the date hereof and as updated from time to time pursuant to Section 6.3.5); all Material Contracts are in full force and effect and unamended except as disclosed to the Lenders and true and complete copies of each Material Contract have been provided to the Lenders; and no Obligor is, and to the knowledge of each Obligor, no other party thereto is, in default in any material respect under any Material Contract nor does any dispute exist under any Material Contract.
- 4.1.22 **Material Permits.** Schedule 4.1.22 sets out all Material Permits held by the Obligor (as at the date hereof and as updated from time to time pursuant to

Section 6.3.5) all Material Permits are in good standing and the Obligors, as applicable, are in compliance with all material provisions of all Material Permits. No Obligor has received any correspondence or any notice of proceedings or other document from any Governmental Authority concerning the cancellation, amendment, non-renewal or refusal of such Material Permits, or concerning other related proceedings which, individually or collectively, if they gave rise to an unfavorable decision, order or judgment, would result in a Material Adverse Effect, and, to the knowledge of each Obligor, no such proceeding is threatened.

4.1.23 **Owned and Leased Real Property.** Schedule 4.1.23 sets out all of the Owned Real Property and the Leased Real Property; other than the Owned Real Property and the Leased Real Property, it is not the owner or lessee of, or under any agreement or option to own, any real property or any interest therein, and it has no tangible assets having a book value in excess of \$1,000,000 at any location or that is material to the Business other than as disclosed in Schedule 4.1.23.

4.1.24 **Title to Property.** Except as disclosed in Schedule 4.1.24, its Property is owned or leased by it as the beneficial and registered owner thereof with good and (in the case of Owned Property) marketable title thereto, none of its Property is subject to any Encumbrance except for Permitted Encumbrances and it is not in default in any material respect under any of the Permitted Encumbrances relating to it or its Property. No Encumbrance has been registered against any Obligor with respect to any judgment rendered or Claim filed against any Obligor and no Obligor has provided any security to the Senior Lenders or any other Person with respect to any such Encumbrance.

4.1.25 **With Respect to the Property.** Except as disclosed in Schedule 4.1.25, all tangible Property of the Obligors and tangible property used but not owned by an Obligor, taken as a whole and required in the operation of the Business, is in operating condition, reasonable wear and tear excepted, is used by the applicable Obligor in the operation of the Business for the purposes for which it was intended and its use is not subject to any restriction, contestation or claim.

4.1.26 **Environmental Matters.** Except as disclosed in Schedule 4.1.26 and except as would not individually or in the aggregate reasonably be expected to cause material liability to any Obligor:

- (a) each Obligor, through its operations, its equipment and the properties it owns, leases or occupies, or in any other manner, is not in violation of any Environmental Law;
- (b) each Obligor has all Permits required under any applicable Environmental Law and is in material compliance with their requirements;
- (c) each Obligor has or expects to be able to obtain all Permits required under any applicable Environmental Laws in order to carry out its Business;

- (d) there are no pending or, to the knowledge of each Obligor, threatened administrative, regulatory, judicial or other actions, suits, orders, demands, demand letters, claims, liens, notices of non-compliance or violation, investigation or proceedings relating to any Environmental Laws against any Obligor or claim involving a demand for damages or other potential liability under Environmental Laws;
- (e) to the knowledge of each Obligor, the soil and subsoil, and the surface and ground water in, on or under the Owned Real Property and Leased Real Property do not contain any Contaminants;
- (f) to the knowledge of each Obligor, there are no events or circumstances that would reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or Governmental Authority, against or affecting any Obligor relating to Contaminants or any Environmental Laws.

4.1.27 **Debt.** It does not have any Debt other than Debt set out in Schedule 4.1.27, and Debt incurred after the date hereof in compliance with the Loan Documents.

4.1.28 **Taxes.** Except as disclosed in Schedule 4.1.28, it has:

- (a) made adequate provision for Taxes payable by it for the current period and any previous period for which tax returns are not yet required to be filed;
- (b) delivered, or caused to be delivered, when due, all required income tax returns, sales, property, franchise and value-added tax returns and other Tax returns to the appropriate governmental bodies and paid all Taxes due and payable and whether or not shown on such returns;
- (c) withheld and collected all Taxes required to be withheld and collected by it and remitted such Taxes when due to the appropriate governmental bodies, except where any such remittance is being contested in good faith by appropriate proceedings and an adequate reserve in accordance with GAAP has been established in its books and records;
- (d) no knowledge and is unaware of any assessment, appeal or claim, being asserted or processed against it with respect to the matters referred to in paragraphs (a) and (c) above; and
- (e) paid and discharged when due all obligations incidental to any trust imposed upon it by statute which, if unpaid beyond the applicable due date, might become an Encumbrance upon the Property and no appeal or claim is, as far as either Borrower is aware, being asserted or processed with respect to such claim or obligations.

4.1.29 **Insurance.** Each of the Obligors:

- (a) maintains insurance policies with reputable insurers against risks of loss or damage to its properties, assets and business of such types as are customary in the case of Persons engaged in the same or similar businesses to the full insurable value of its Properties (except for self-insurance with respect to U.S. required medical and dental and U.S. truck physical damage, provided that the Obligors, as applicable, will continue to maintain stop-loss insurance with respect to such self-insurance in accordance with past practices);
- (b) has paid promptly all premiums and other amounts payable and has fulfilled all other material obligations with respect to the insurance policies currently in force and no misrepresentation, voluntary omission or delay can be alleged against any Obligor with respect to any notice or claim pursuant to such insurance policies;
- (c) has at the date hereof no reason to believe that it will not be able to renew the insurance policies currently in force or to obtain similar coverage from financially sound, reputable independent insurance companies, at a cost that is not significantly higher;
- (d) except as disclosed on Schedule 4.1.18, at the date hereof has no material claim pending against any insurer or pursuant to any insurance policy, and no knowledge of any fact, event or circumstance that could give rise to any such claim;

4.1.30 **Affiliated Transactions.** Except as set out in Schedule 4.1.30 and transactions entered into after the Closing Date in accordance with Sections 6.4.8 and 6.4.15, it is not:

- (a) indebted or obligated, contingently or otherwise, to any director, officer or shareholder of an Obligor or any other corporation or entity with whom any director, officer or shareholder of such Obligor does not deal at arm's length, except for current liabilities or obligations in favour of any director or officer for director's fees, expenses, salaries, wages or benefits arising from services provided to such Obligor which are fair and reasonable for such services; and
- (b) a party to any contract or agreement with any director, officer, employee, shareholder, Affiliate or any other Person not dealing at arm's length with the applicable Borrower or the applicable Obligor (within the meaning of the *Income Tax Act* (Canada)).

4.1.31 **Intellectual Property.**

- (a) Schedule 4.1.31 (at the date hereof and as updated from time to time pursuant to Section 6.3.5) contains a complete and accurate list and description of all Intellectual Property used in the Business and owned by or licensed to it and the registration particulars (if any) applicable thereto;

- (b) it has good and valid title to all of the Intellectual Property, free and clear of all Encumbrances, except Permitted Encumbrances and except for any Intellectual Property licensed to it as disclosed in Schedule 4.1.31; and
- (c) to the knowledge of each Obligor, the conduct of the Business does not infringe and the use of the Intellectual Property does not infringe, and no Obligor has received any notice, complaint, threat or claim alleging infringement of, any Intellectual Property of any other Person.

4.1.32 **Forecasts.** The forecasts and budgets provided to the Lenders, including for greater certainty, forecasts relating to Taxes, have been and will be prepared in good faith based upon assumptions that are reasonable at the time when made and at the time such forecasts and budgets are made available to the Lenders.

4.1.33 **Financial Statements.** The audited consolidated financial statements and the related notes thereto of the Fund for the years ended December 31, 2008, 2007 and 2006 and interim consolidated financial statements and the related notes thereto of the Fund for the nine months ended September 30, 2009 (and for any other period hereafter reported on) comply in all material respects with the applicable requirements of the Securities Laws and present fairly, in all material respects, the financial position of the Fund and the Borrowers as of the dates indicated and the results of its operations and the changes in its cash flows for the periods specified, and have been prepared in conformity with GAAP, applied on a consistent basis throughout the periods covered thereby.

4.1.34 **Employee Benefit Plans**

- (a) No Obligor nor any member of the Controlled Group maintains or contributes to any Plan other than (i) as of the Closing Date, those listed on Schedule 4.1.34 hereto and (ii) thereafter, as permitted under this Agreement. Except as set forth in Schedule 4.1.34, (i) no Plan has incurred any "accumulated funding deficiency," as defined in Section 302(a)(2) of ERISA and Section 412(a) of the Code, whether or not waived, and each Obligor and each member of the Controlled Group has met all applicable minimum funding requirements under Section 302 of ERISA in respect of each Plan; (ii) each Plan which is intended to be a qualified plan under Section 401(a) of the Code as currently in effect has either received a favorable determination or opinion letter from the Internal Revenue Service that it is so qualified and the trust related thereto is exempt from federal income tax under Section 501(a) of the Code or is still within the period during which such a letter may be requested; (iii) neither any Obligor nor any member of the Controlled Group has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due which are unpaid; (iv) no Pension Benefit Plan has been terminated by the plan administrator thereof nor by the PBGC, and there is no occurrence which would reasonably be expected to cause the PBGC to institute

proceedings under Title IV of ERISA to terminate any Pension Benefit Plan; (v) as of the date of the most recent actuarial valuation, the value of the assets of each Pension Benefit Plan exceeds the present value of the accrued benefits and other liabilities of such Pension Benefit Plan; (vi) neither any Obligor nor any member of the Controlled Group has breached in any material respect any of the responsibilities, obligations or duties imposed on it by ERISA with respect to any Plan; (vii) neither any Obligor nor any member of a Controlled Group has incurred any material liability for any excise tax arising under Section 4972 or 4980B of the Code, and no fact exists which could reasonably be expected to give rise to any such liability; (viii) neither any Obligor nor any member of the Controlled Group nor, to the knowledge of the Borrowers, any fiduciary of any Plan, has engaged in a non-exempt "prohibited transaction" described in Section 406 of the ERISA or Section 4975 of the Code nor has any Obligor or any member of the Controlled Group taken any action which would constitute or result in a Termination Event with respect to any such Plan which is subject to ERISA; (ix) each Obligor and each member of the Controlled Group has made all contributions due and payable with respect to each Plan; (x) within the five preceding years, there has been no event described in Section 4043(b) of ERISA, for which the thirty (30) day notice period has not been waived and for which notice to the PBGC is or was required with respect to a Pension Benefit Plan; (xi) neither any Obligor nor any member of the Controlled Group has any fiduciary responsibility for investments with respect to any plan existing for the benefit of persons other than employees or former employees of any Obligor and any member of the Controlled Group; (xii) neither any Obligor nor any member of the Controlled Group maintains or contributes to any Plan which provides health, accident or life insurance benefits to former employees, their spouses or dependents, other than in accordance with Section 4980B of the Code; and (xiii) neither any Obligor nor any member of the Controlled Group has withdrawn, completely or partially, from any Multiemployer Plan so as to incur liability under the Multiemployer Pension Plan Amendments Act of 1980 and there exists no fact which would reasonably be expected to result in any such liability.

- (b) Except as set forth in Schedule 4.1.34, none of the Obligors maintains or contributes to any Canadian Benefit Plan.
- (c) Except as set forth in Schedule 4.1.34, none of the Obligors has, or is subject to, any present or future obligation or liability under, any pension plan, deferred compensation plan, retirement income plan, stock option or stock purchase plan, profit sharing plan, bonus plan or policy, employee group insurance plan, program policy or practice, formal or informal, with respect to its employees.
- (d) Schedule 4.1.34 sets forth the Canadian Employee Plans of the Obligors.

- (e) All of the Canadian Employee Plans are and have been established, registered, qualified, invested and administered in all material respects in accordance with the terms of such Canadian Employee Plans including the terms of the material documents that support such Canadian Employee Plans, any applicable collective agreement and all Applicable Laws to the Canadian Employee Plans. To the knowledge of each Obligor, no fact or circumstance exists that could adversely affect the tax-exempt status of an Canadian Employee Plan.
- (f) Except as disclosed in Schedule 4.1.34, to the knowledge of each Obligor, all obligations regarding the Canadian Employee Plans have been satisfied, there are no outstanding defaults or violations by any part to any Canadian Employee Plan and no taxes, penalties or fees are owing or eligible under any of the Canadian Employee Plans.
- (g) No amendments have been made to any Canadian Employee Plan and no improvements to Canadian Employee Plan have been promised and no amendments or improvements to an Canadian Employee Plan will be made or promised by the Obligors, as applicable before the Closing Date.
- (h) Each Canadian Employee Plan is fully funded.
- (i) Except as disclosed in Schedule 4.1.34, none of the Canadian Employee Plans provides benefits to retired employees or to the beneficiaries or dependents of retired employees.

4.1.35 **Employment and Labour.** The Obligors are and have operated in all material respects in compliance with all Applicable Laws relating to employees. Except as disclosed on Schedule 4.1.35, there is no proceeding, action, suit or claim pending or threatened, to the knowledge of the Obligors, involving any employee of the Obligors. There are no outstanding or, to the knowledge of each Obligor, threatened unfair labour practices or complaints or applications of any kind, including any proceedings which could result in certification of a trade union as bargaining agent for any persons in respect of the Obligors and there have not been any such proceedings within the last five (5) years. There are no threatened or apparent union organizing activities involving employees of the Obligors, not already covered by the collective agreements. None of the Obligors is in violation of any provision under any collective agreement. There is no strike or lock out occurring or, to the knowledge of each Obligor, threatened affecting the Obligors. None of the Obligors has any grievances or pending arbitration cases outstanding. None of the Obligors has any serious labour relations problems that might materially affect the value of any of the Obligors or lead to an interruption of their respective operations at any location. None of the Obligors has engaged in any unfair labour practices and, during the past five years, has not suffered any strike, lock-out, work stoppage, or other material labour dispute. None of the Obligors has engaged in any plant closing or employee lay-off activities within the past

five years that would violate or in any way subject the Obligors to the group termination or lay-off requirements of the Applicable Laws.

- 4.1.36 **No Default.** No Default or Event of Default has occurred and is continuing.
- 4.1.37 **No Material Adverse Change.** Except as disclosed to the Lenders prior to the date hereof and as set out on Schedule 4.1.37, since September 30, 2009, no change has occurred in any of the assets, business, financial condition or results of operation of the Fund on a consolidated basis or the Business which has had or is reasonably likely to have a Material Adverse Effect.
- 4.1.38 **Off Balance Sheet Transactions.** There are no off-balance sheet transactions arrangements, obligations (including contingent obligations) or other relationships of any Obligor with unconsolidated entities or other Persons that may have a material current or future effect on the financial condition, changes in financial condition, results of operations, earnings, cash flow, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses of the Fund on a consolidated basis or that would reasonably be expected to be material to an investor.
- 4.1.39 **Compliance with Regulations T, U and X.** It is not engaged principally in or has as one of its important activities the business of extending credit for the purpose of purchasing or carrying any "margin security" or "margin stock" as defined in Regulations T, U, and X of the Board of Governors of the Federal Reserve System. Neither the making of the Loans nor the use of proceeds thereof will violate the provisions of Regulation T, U, or X of said Board of Governors.
- 4.1.40 **Investment and Holding Company Status.** It is not an "investment company" as defined in, or subject to registration under, the Investment Company Act of 1940, as amended.
- 4.1.41 **Patriot Act.** To the extent applicable, each Obligor is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation in force in the United States or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "**Patriot Act**"). No part of the proceeds of the Loans made hereunder will be used by any Obligor or any of their Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.
- 4.1.42 **Solvency.** Before and after giving effect to (a) the Loans to be made on the Closing Date, (b) the disbursement of the proceeds of the Loans pursuant to the

instructions of Borrowers, and (c) the payment of and accrual of all transaction costs in connection with the foregoing, each Obligor (other than Arctic Glacier IP Inc.) is and will be Solvent.

- 4.1.43 **Transfer Agent.** Computershare Trust Company of Canada has been duly appointed by the Fund as the transfer agent and registrar for the Units.
- 4.1.44 **Accuracy of Information.** All information which has been provided by or on behalf of the Borrowers to the Agent and the Lenders and its respective representatives prior to the date hereof was and remains true and correct in all material respects as at the time provided and does not, as of such time, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make such information not misleading.
- 4.1.45 **Recalls, etc.** Since January 1, 2004, there have been no product or food recalls, advisories, warnings, health hazard alerts, market withdrawals or similar safety alerts issued by any Obligor or issued or required by any Governmental Authority in each case with respect to any finished product or Inventory of the Business.
- 4.1.46 **Deposit Accounts and Securities Accounts.** None of the Obligors has any Deposit Account or Securities Account other than as set out in Schedule 4.1.46 to this Agreement.
- 4.1.47 **Existing Security.** Schedule 4.1.47 sets out a complete list of all of the security agreements, pledge agreements, guarantees and all other security documents executed by any of the Obligors prior to the date hereof in favour of the Trustee and in favour of the Master Collateral Agent, and all amendments thereto (the "Existing Security Documents"). The Borrowers have provided to the Agent true and complete copies of all of the Existing Security Documents and such Existing Security Documents are in full force and effect and unamended.
- 4.1.48 **Motor Vehicles.** Schedule 4.1.48 sets out a complete list of all vehicles owned by any Obligor and used in the business, including the vehicle identification number with respect to each such vehicle.

4.2 **Survival of Representations and Warranties**

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

ARTICLE 5 SECURITY

5.1 **Security**

As security for the due and punctual payment of all of the Obligations, each Obligor shall, on or prior to the Closing Date, as applicable, deliver or cause to be delivered to

and in favour of the Agent on behalf of the Lenders, in form and substance satisfactory to the Lenders and its counsel (which security may, at the option of the Agent in its discretion, be in favour of the Master Collateral Agent for so long as the Agent determines is satisfactory):

- 5.1.1 an unlimited guarantee by each of the Guarantors of the Obligations of each Borrower under this Agreement and the Loan Documents;
- 5.1.2 a general security agreement from each of the Obligors creating a first priority security interest (subject only to Permitted Encumbrances) over all of the present and future Property of such Obligors;
- 5.1.3 a demand debenture of each Guarantor in the principal amount of \$350,000,000 secured by a first fixed and specific mortgage and charge of, and mortgages, deeds of trust, leasehold mortgages, assignments of leases and rents and all other related security documents, as may be applicable, with respect to, all of the Owned Real Property and Leased Real Property set out in Part 1 of Schedule 4.1.23 and all other after acquired Owned Real Property and Leased Real Property as may be reasonably required by the Agent, and any equipment described in the schedules thereto and a floating charge over all Property not subject to such fixed and specific mortgages and charges, and title insurance policies and endorsements in form and substance and from title insurers satisfactory to the Lenders in amounts and subject to exceptions reasonably satisfactory to the Lenders, confirming among other things the marketability of title of the Obligors to their Owned Real Property and Leased Real Property charged by the Security and the priority of such Security;
- 5.1.4 fully executed and notarized mortgage modifications in proper form for recording in all appropriate jurisdictions with respect to the Owned Real Property and Leased Real Property mortgaged in favor of the Master Collateral Agent as of the date hereof and evidence reasonably satisfactory to the Agent of payment of all expenses and premiums of the Title Company and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with the recording thereof in all appropriate real estate records;
- 5.1.5 a pledge by each Obligor of (i) Equity Interests owned by it in any of the other Obligors and (ii) Equity Interests owned in any other Person;
- 5.1.6 subordination and postponement agreements by each Obligor with respect to any Intercompany Debt;
- 5.1.7 an assignment by each Obligor of all policies of insurance and all proceeds thereunder with respect to all Property that is subject to the foregoing security and all other security hereafter granted by an Obligor pursuant to this Agreement, including any policies providing business interruption insurance, with the Agent on behalf of the Lenders named as loss payee or additional insured, as applicable, with a standard mortgage clause endorsement, and if requested by the Lenders, certificates evidencing all such insurance; and

- 5.1.8 a trademark security agreement, patent security agreement and copyright security agreement by each Obligor that owns any such Intellectual Property creating a first priority security interest (subject only to Permitted Encumbrances) in the collateral subject thereto.
- 5.1.9 a first ranking (subject only to Permitted Encumbrances) deed of hypothec governed by the laws of Québec, in the principal amount of Cdn. \$350,000,000 by each Obligor with Property located in the Province of Quebec, charging all of such Obligors Property located in the Province of Québec, both real and personal, movable and immovable as security for the Obligations and such other document as may be required in the Province of Quebec;
- 5.1.10 deposit account control agreements with respect to all (or any portion thereof satisfactory to the Agent) deposit accounts of the Obligors and security account control agreements with respect to all securities accounts of the Obligors;
- 5.1.11 all share certificates, stock powers of attorney, consents, authorizations and other documents necessary in order to make valid and effective the aforementioned agreement; and
- 5.1.12 such other agreements as the Lenders may require from time to time.

The Agent and each of the Lenders acknowledge that pursuant to the Intercreditor Agreement, the Agent on behalf of the Lenders and the Senior Agent on behalf of the Senior Lenders have appointed The Toronto-Dominion Bank as Master Collateral Agent on behalf of the Benefited Creditors and that the Security Documents as at the Closing Date and the security interests granted therein are in favour of the Master Collateral Agent on behalf of the Benefited Creditors. So long as the Intercreditor Agreement is in place, any requirement in this Article 5 to provide security by any Person in favour of the Agent on behalf of the Lenders shall be satisfied by providing such security in favour of the Master Collateral Agent on behalf of the Benefited Creditors.

5.2 Additional Security from Subsidiaries

Each Borrower shall cause each Person that becomes a Subsidiary of the Fund or a Borrower after the date hereof (by way of Investment or otherwise) to deliver to the Agent on behalf of the Lenders (a) an unlimited guarantee of the Obligations owing by the Borrowers in favour of the Agent on behalf of the Lenders, (b) security over the Property of such Subsidiary to secure the payment and performance of such guarantee and any other Obligations owing by it, (c) a third party legal opinion from the Borrowers' counsel concerning such Subsidiary, guarantee and security, to be delivered to the Agent all contemporaneously with such Person first becoming a Subsidiary, together with all other share certificates, stock powers of attorney, consents, authorizations and other documents necessary in order to make valid and effective the aforementioned agreements.

5.3 Further Assurances - Security

Each Borrower shall and shall cause each Guarantor to take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the Agent such agreements, documents and instruments as the Lenders shall reasonably request, pay premiums with respect to title insurance policies in favour of the Agent on behalf of the Lenders or the Master Collateral Agent on behalf of the Benefited Creditors, as applicable, and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with the recording of the Security over any Leased Real Property or Owned Real Property in all appropriate real estate records and register, file or record the same (or a notice or financing statement in respect thereof) in all offices where such registration, filing or recording is, in the opinion of the Lenders' counsel, necessary or advisable to constitute, perfect and maintain the Security Documents referred to in Section 5.1 and 5.2 as first ranking Encumbrances of the Borrowers and the Guarantors or such other Person granting such Encumbrances, subject only to the Permitted Encumbrances, in all jurisdictions reasonably required by the Lenders, in each case within a reasonable time after the request therefor by the Lenders' counsel, and in each case in form and substance satisfactory to the Lenders' counsel, acting reasonably.

5.4 Security Effective Notwithstanding Date of Advance

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

5.5 No Merger

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

5.6 Release of Security

- 5.6.1 Following indefeasible payment and performance in full of all Obligations (other than unasserted contingent indemnification obligations) of the Borrowers under this Agreement and the other Loan Documents, the Lenders will, at the request, cost and expense of the Borrowers, release and discharge the right and interest of the Lenders in the Property subject to the Security.
- 5.6.2 If any Property is Disposed of as permitted by this Agreement or is otherwise released from the Security in accordance with the Agreement, the Lenders, at the request, costs and expense of the Borrowers (on satisfaction, or on being assured

of concurrent satisfaction, of any condition to or obligation imposed with respect to such Disposition), shall discharge such property from the Security and deliver and re-assign to the Borrowers (without any representation or warranty but free and clear of any Encumbrances created in favour of the Lender) any of such property as is then in the possession of the Lenders.

ARTICLE 6 COVENANTS

6.1 Affirmative Covenants

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

- 6.1.1 **Payment of Obligations.** Duly and punctually pay the Obligations at the times and places and in the manner required by the terms of the Loan Documents;
- 6.1.2 **Existence and Qualifications.** Maintain its corporate or other existence; keep proper books of account and record; maintain its qualification to carry on business in all jurisdictions where it carries on business and where the absence of such qualification would have a Material Adverse Effect; and operate its business and Property in accordance with sound business practice and in compliance with Applicable Law (including Environmental Law) and all Material Contracts in all material respects;
- 6.1.3 **Inspection.** (a) At the request of the Lenders, once per Fiscal Year at the cost and expense of the Borrowers, or (b) at any other time, at the cost and expense of the Lenders, and in each case upon reasonable prior written notice from the Lenders, permit representatives of the Agent or the Lenders to enter into or onto its Property, to inspect any of its Property (including by means of environmental investigations) and to examine its financial books, accounts and records and to discuss its financial condition with its senior officers and its auditors; *provided that* nothing in this Section shall restrict the ability of representatives of the Agent or the Lenders to inspect any Property of the Obligors, at the Borrowers' cost and expense, upon the occurrence and during the continuance of an Event of Default;
- 6.1.4 **Use of Proceeds.** Use the proceeds of the Loans only for the purpose of (a) repaying in full all Notcholder Debt, (b) paying fees in connection with this Agreement, the Loan Documents and the Senior Credit Agreement, and (d) for general corporate purposes;
- 6.1.5 **TSX, Reporting Issuer Status.** Use commercially reasonable efforts to maintain the listing of the Units of the Fund on the TSX and maintain the status of the Fund as a reporting issuer under the Canadian Securities Laws of all provinces and territories of Canada;

- 6.1.6 **Maintenance of Properties.** Maintain (a) all Property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted and (b) all of its interests in the Properties in good standing except where failure to do so could not reasonably be expected to have a Material Adverse Effect;
- 6.1.7 **Insurance.** Keep insured with financially sound and reputable insurance companies all of its Property, in amounts and against losses, including property damage and public liability, to the extent that such Property and assets are usually insured by businesses comparable to its business; cause the policies of insurance referred to above to contain customary endorsements for the benefit of the Agent on behalf of the Lenders as loss payee in respect of property insurance and additional insured in respect of public liability insurance, all in a form acceptable to the Lenders acting reasonably; and cause such policies to include a provision that such policies will not be amended in any manner which is prejudicial to the Lenders or be cancelled without thirty days' prior written notice being given to the Lenders by the issuers thereof;
- 6.1.8 **Permits and Material Contracts.** Obtain, as and when required, comply with and preserve and maintain, all Material Permits and Material Contracts which are required to lawfully (i) acquire, own, operate and maintain the Business and Property in the manner currently carried on, and (ii) perform its obligations under the Loan Documents to which it is a party;
- 6.1.9 **Taxes.** Pay all Taxes as they become due and payable unless they are being contested in good faith by appropriate legal proceedings and, with respect to Taxes which are overdue, make arrangements satisfactory to the Lenders regarding adequate provision for their payment; and perform all obligations incidental to any trust imposed upon it by statute;
- 6.1.10 **Notice of Default, Etc.** Promptly notify the Lenders of the occurrence of:
- (a) any Default or Event of Default;
 - (b) any Material Adverse Effect or any event which could reasonably be expected to result in a Material Adverse Effect;
 - (c) any damage or destruction of any property, real or personal, of any Obligor having a replacement cost in excess of \$750,000;
 - (d) any Encumbrance registered against any Property of any Obligor, other than a Permitted Encumbrance;
 - (e) any material default by any party under or termination or threatened termination of any Material Contract of which it becomes aware;
 - (f) the failure to obtain, loss of or material non-compliance with the terms of any Material Permit where such failure, loss or material non-compliance

could reasonably be expected to result in an inability to operate the Business or any part thereof in accordance with Applicable Law;

- (g) any material communication from any regulating body or other Governmental Authority applicable to the Business or any part thereof, including with respect to any product or food recalls, advisories, warnings, health hazard alerts, market withdrawals or other safety alerts; and
- (h) the expropriation or initiation of proceedings for the expropriation of any material assets of any Obligor;

6.1.11 **Notice of Material Litigation.** Promptly notify the Lenders on becoming aware of the occurrence of any litigation, dispute, arbitration, proceeding or other circumstance affecting it (i) where the amount claimed thereunder is in excess of \$500,000 but less than \$2,000,000 and where the claim could reasonably be expected to not be covered by insurance, (ii) where the amount claimed is in excess of \$2,000,000, (iii) which relates to any Material Contract or a Material Permit, (iv) which relates to any allegations of anti-trust or anti-competition practices or (v) which could reasonably be expected to have a Material Adverse Effect, and from time to time provide the Lenders with all information reasonably requested by the Lenders concerning the status thereof;

6.1.12 **Notice of Environmental Matters.** Promptly notify the Lenders upon:

- (a) learning of any material claim, complaint, notice or order under any Environmental Law which could reasonably be expected to cause material environmental liability to any Obligor;
- (b) learning of the existence of Contaminants located on, in, above or below the surface of any Property which it occupies or controls (except Contaminants being stored, used or otherwise handled in compliance with Environmental Law), which could reasonably be expected to cause material environmental liability to any Obligor;
- (c) the occurrence of any reportable Release of Contaminants that has occurred on or from such land which could reasonably be expected to cause material environmental liability to any Obligor;
- (d) the occurrence of any change in business activity conducted by it which involves the storage, use or handling of Contaminants (including for greater clarity, wastes) and which could reasonably be expected to cause material environmental liability to any Obligor;
- (e) any proposed change in the use or occupation of its Property which could reasonably be expected to cause material environmental liability to any Obligor; and

with respect to any of the information provided in clauses (a) to (e) above, from time to time provide the Lenders with all information reasonably requested by the Lenders concerning the status thereof;

6.1.13 **ERISA Notices and Requests.** Promptly furnish the Lenders with written notice in the event that (i) any Obligor or any member of the Controlled Group knows or has reason to know that a Termination Event has occurred, together with a written statement describing such Termination Event and the action, if any, which such Obligor or any member of the Controlled Group has taken, is taking, or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, Department of Labor or PBGC with respect thereto, (ii) any Obligor or any member of the Controlled Group knows or has reason to know that a non-exempt prohibited transaction (as defined in Sections 406 of ERISA and 4975 of the Code) has occurred that could reasonably be expected to result in material liability to an Obligor or member of the Controlled Group, together with a written statement describing such transaction and the action which such Obligor or any member of the Controlled Group has taken, is taking or proposes to take with respect thereto, (iii) a funding waiver request has been filed with respect to any Pension Benefit Plan together with all communications received from the Internal Revenue Service by any Obligor or any member of the Controlled Group with respect to such request, (iv) any material increase in the benefits of any existing Plan or the establishment of any new Plan or the commencement of contributions to any Plan to which any Obligor or any member of the Controlled Group was not previously contributing shall occur, (v) any Obligor or any member of the Controlled Group shall receive from the PBGC a notice of intention to terminate a Pension Benefit Plan or to have a trustee appointed to administer a Pension Benefit Plan, together with copies of each such notice, (vi) any Obligor or any member of the Controlled Group shall receive any favorable or unfavorable determination letter from the Internal Revenue Service regarding the qualification of a Plan under Section 401(a) of the Code, together with copies of each such letter; (vii) any Obligor or any member of the Controlled Group shall receive a notice regarding the imposition of withdrawal liability, together with copies of each such notice; (viii) any Obligor or any member of the Controlled Group shall fail to make a required installment or any other required payment under Section 412 of the Code on or before the due date for such installment or payment; or (ix) any Obligor or any member of the Controlled Group knows that (a) a Multiemployer Plan has been terminated, (b) the administrator or plan sponsor of a Multiemployer Plan intends to terminate a Multiemployer Plan, or (c) the PBGC has instituted or will institute proceedings under Section 4042 of ERISA to terminate a Multiemployer Plan.

6.1.14 **Canadian Benefit Plan Notices and Requests.** Furnish the Lenders with immediate written notice in the event that (i) any Obligor knows or has reason to know that a Canadian Pension Event has occurred, together with a written statement describing such Canadian Pension Event and the action, if any, which such Obligor has taken, is taking, or proposes to take with respect thereto and, when known, any action taken or threatened by any applicable regulatory

authority, (ii) any increase in the benefits of any existing Canadian Benefit Plan or Canadian Employee Plan or the establishment of any new plan or the commencement of contributions to any plan to which any Canadian Obligor was not previously contributing shall occur, (iii) any Obligor shall receive any letter from the Canada Revenue Agency or the applicable pension standards regulator regarding the registered status of any Canadian Benefit Plan or Canadian Employee Plan, together with copies of each such letter, (iv) any Obligor knows that (a) a Canadian Benefit Plan or Canadian Employee Plan has been terminated, in whole or in part, (b) the administrator or plan sponsor of a Canadian Benefit Plan or Canadian Employee Plan intends to terminate, in whole or in part, a Canadian Benefit Plan or Canadian Employee Plan, or (c) the applicable Governmental Authority has instituted or will institute proceedings to terminate, in whole or in part, a Canadian Benefit Plan or Canadian Employee Plan, (v) any Obligor receives notice (or a notice of intent to issue such a notice) to terminate in whole or in part any Canadian Benefit Plan or Canadian Employee Plan or receives a notice of intent from any applicable Governmental Authority to require the termination in whole or in part of any Canadian Benefit Plan or Canadian Employee Plan, revoking the registration of same or appointing a new administrator of such a plan, (vi) an event or condition has occurred which constitutes grounds under applicable Canadian Employee Benefits Legislation or tax legislation for the issuance of an order, direction or other communication from any regulatory authority requiring any Obligor to take or refrain from taking any action in respect of a Canadian Benefit Plan or Canadian Employee Plan, or any Obligor receives a notice of an intent to issue an order, direction or other communication requiring any Obligor to take or refrain from taking any action in respect of a Canadian Benefit Plan or Canadian Employee Plan, (vii) any Obligor receives notice from an administrator, a trustee or other funding agent or other person or entity that a Obligor has failed to remit any contribution to a Canadian Benefit Plan or Canadian Employee Plan or a similar notice from a Governmental Authority relating to a failure to pay any fees or other amounts (including payments in respect of the Pension Benefits Guarantee Fund of Ontario), or (viii) any Obligor receives any statement of claim or notice of dispute brought against a Canadian Benefit Plan or Canadian Employee Plan or an Obligor in its capacity as sponsor of a Canadian Benefit Plan or Canadian Employee Plan or as party to a Canadian Benefit Plan or Canadian Employee Plan.

- 6.1.15 **Remediation.** Conduct all environmental remedial activities which a Person acting in a commercially reasonable manner would perform in similar circumstances to meet its environmental responsibilities and conduct and pay for any environmental investigations, assessments or remedial activities with respect to any of its Property that the Lenders may reasonably request;
- 6.1.16 **Defence of Title to Property.** Warrant and defend the right, title and interest of any Borrower and any Guarantor in and to the Properties material to the conduct of the Business against the claims of any Person, subject only to Permitted Encumbrances;

6.4.5 **Corporate Distributions.** Make or commit to make any Corporate Distributions except for, provided no Default or Event of Default has occurred or would result therefrom:

- (i) Corporate Distributions by the one Obligor to another Obligor;
- (ii) payments to the applicable holders of Permitted Debt set out on Schedule 4.1.27 hereto, in respect of regularly scheduled repayments of Permitted Debt; and
- (iii) payment of Intercompany Charges in the ordinary course of the Business; and
- (iv) salaries, benefits and bonuses and other compensation paid to employees and officers in the ordinary course of business (which for greater certainty, shall not include any non-recurring, extraordinary fees to an employee or officer or any distributions with respect to any Equity Interests owned by an employee or officer in any Obligor (other than pursuant to (a) the unit option plan of the Fund as it exists as of the date hereof, (b) the executive long term incentive plan of the Fund in accordance with past practices, (c) the management incentive plan of the Canadian Borrower in accordance with past practices, (d) retirement allowances to be paid to Robert Nagy authorized by the board of directors of the Fund prior to the date hereof, (e) payments upon a change of control to be paid to employees, officers, directors or trustees, in each case, as authorized by the board of directors of the Fund prior to the date hereof, and (f) performance bonuses for officers of the Borrowers and the Fund approved by the board of directors of the Borrowers or the Fund in accordance with past practices)).

6.4.6 **Debt.** Create, incur, assume or suffer to exist directly, contingently or otherwise, any Debt, other than, provided no Default or Event of Default has occurred or would result therefrom:

- (i) Debt owing to the Lenders hereunder;
- (ii) Debt owing to the Senior Lenders in connection with the Senior Credit Agreement, provided that the aggregate amount of Debt owing under the Senior Credit Agreement at any time plus the aggregate amount of all Hedging Obligations of the Borrowers at such time does not exceed the Maximum Senior Debt;
- (iii) Debt owing under the DOJ Settlement or any other Approved Settlement;

- (iv) Intercompany Debt, if any, provided that such Intercompany Debt is subordinated to the Obligations and has been assigned and, where applicable, delivered to the Agent as security pursuant to Security Documents and any notes relating thereto are in form and substance acceptable to the Lenders;
- (v) Purchase Money Obligations in the ordinary course of business which together with all other Purchase Money Obligations of the Obligors then existing does not exceed \$1,500,000 in aggregate principal amount (including capitalized interest);
- (vi) unsecured current liabilities (which for greater certainty are not the result of borrowing) incurred and payable in the ordinary course of the Business and not represented by any note, bond or debenture, including any management, transfer or other administrative charges charged between the Obligors in the ordinary course of the Business (the “**Intercompany Charges**”);
- (vii) Contingent Liabilities included in the Security Documents or otherwise permitted;
- (viii) in the case of the Fund, any other Debt incurred after the date thereof and subordinated to the Obligations, on terms acceptable to the Lenders, *provided that* (a) the Net Proceeds are applied in accordance with Section 3.9 and (b) the Fund will be in proforma compliance with the financial covenants in Sections 6.2.1, both before and after giving effect to the incurrence of such Debt;
- (ix) Vendor Debt not in excess of \$4,000,000 in the aggregate at any time with respect to all Obligors;
- (x) the Convertible Debentures;
- (xi) Hedging Obligations incurred in connection with Section 6.4.7 provided that the aggregate amount of all Hedging Obligations of the Borrowers at any time plus the aggregate amount of Debt outstanding under the Senior Credit Agreement at such time shall not exceed the Maximum Senior Debt;
- (xii) Debt incurred by the Fund to refinance, renew, replace, defease or refund, in whole but not in part, the Convertible Debentures *provided that* (a) any such Debt shall be subordinate to the Obligations on terms and conditions satisfactory to the Lenders and (b) the Fund will be in proforma compliance with the financial covenants in Section 6.2 both before and after giving effect to the incurrence of such Debt; and

(xiii) such other Debt of the Obligors that is approved and consented to from time to time in advance in writing by the Lenders, in their sole and absolute discretion;

(items (ii), (iii), (iv), (v), (vi), (vii), (ix), (xi) and (xii) being “Permitted Debt”).

6.4.7 **Hedging.** Enter into any Hedge Instrument or incur any Hedge Obligations other than Hedge Instruments with a Senior Lender on commercially reasonable terms and for commercially reasonable purposes in connection with the Business and not for speculative purposes;

6.4.8 **Guarantees and Indemnities.** Guarantee or indemnify or give financial assistance in respect of, or incur any Contingent Liability in respect of, any Debt or any other obligations or liabilities of any other Person at any time other than: (i) Debt or indemnities to the Lenders hereunder; (ii) Debt or indemnities to the Senior Lenders pursuant to the Senior Credit Agreement; or (iii) any guarantee or indemnity which is granted in the ordinary course of the Business *provided that* all such guarantees and indemnities outstanding at such time would not result in liability of the Obligors in excess of \$500,000 in the aggregate at such time.

6.4.9 **Investments.** Make or commit to make any direct or indirect Investment, except:

- (i) Permitted Financial Investments;
- (ii) Investments in Obligors;
- (iii) Permitted Acquisitions;
- (iv) an Investment which has been approved by the Majority Lenders, in their sole discretion;
- (v) Intercompany Debt and other Debt permitted by Section 6.4.6 or 6.4.8; or
- (vi) Investments with respect to Capital Expenditures made in accordance with Section 6.4.10;

provided that, in each case above, no Default or Event of Default has occurred or would result therefrom

6.4.10 **Capital Expenditures.** Make any Capital Expenditure other than the following:

- (i) growth Capital Expenditures made by the Borrowers relating to ISB, Phoenix Expansion, Automatic Palletizer Installation and Facility Replacement in the aggregate amounts not greater than the amounts set out below over the term of this Agreement:

(a) ISB and Phoenix Expansion	\$13,500,000
(b) Automatic Palletizer Installation	\$2,500,000
(c) Facility Replacement	\$14,000,000

- (ii) other Capital Expenditures in an amount which, when combined with the aggregate amount of all Capital Expenditures made by all of the Obligors in the same Fiscal Year (other than pursuant to clause (i) above) would not exceed \$12,000,000 (of which \$3,000,000, if not used in the applicable Fiscal Year may be carried forward or backward six months from the end of such Fiscal Year);

provided that, in each case above, no Default or Event of Default has occurred or would result therefrom.

- 6.4.11 **Environmental Liabilities.** Assume, by contract or otherwise, any material environmental liabilities.
- 6.4.12 **Amend Material Contracts.** Amend any provisions of or terminate or give notice of termination of any Material Contracts or waive or grant indulgences in respect of any default or event of default under any of the Material Contracts, except where any such amendment, termination, notice, waiver indulgence would not be materially adverse to a Borrower or any Guarantor;
- 6.4.13 **Change of Business.** Change in any material respect the nature of its business or operations from the Business, nor engage directly or indirectly in any material business activity, or purchase or otherwise acquire any material property, in either case not related to or in furtherance of the conduct of the Business;
- 6.4.14 **Subsidiaries.** (i) Create any new Subsidiary after the date of this Agreement unless such Subsidiary provides a guarantee and security as required by Section 5.2; and (ii) ensure that no Subsidiary in Dissolution shall own any assets or engage in any business or activities.
- 6.4.15 **Affiliate Transactions.** (i) Directly or indirectly, purchase, acquire or lease any property from, or sell, transfer or otherwise Dispose of any property to, or otherwise deal or enter into any agreement with, any Affiliate (other than a Guarantor), or (ii) amend any provision of the Arizona Lease except, in each case, in the ordinary course of and pursuant to the reasonable requirements of the applicable Obligor's business and upon fair and reasonable terms that are no less favourable to the applicable Obligor than those that could be obtained in an arm's length transaction with an unrelated third party and, with respect to the Arizona Lease, with the approval of the board of directors of the Borrowers.
- 6.4.16 **Fiscal Year.** Change its Fiscal Year;

6.4.17 **Location of Property.** Except on a temporary basis in connection with the provision of services under a contract entered into with a customer in the ordinary course of business of such Obligor, acquire any Property with a market value in excess of \$500,000 outside of such Obligor's Relevant Jurisdiction or move any Property with a market value in excess of \$500,000 from one jurisdiction to another jurisdiction where the acquisition or movement, as the case may be, of such Property would cause the Encumbrance of the Security over such Property to cease to be perfected under Applicable Law, or suffer or permit in any other manner any of its Property to not be subject to the Encumbrance of the Security or to be or become located in a jurisdiction as a result of which the Encumbrance of the Security over such Property is not perfected, unless (x) the Obligor has first given thirty (30) days prior written notice thereof to the Agent, and (y) the applicable Obligor has first executed and delivered to the Lender all Security and all financing or registration statements in form and substance satisfactory to the Lenders which the Lenders or its counsel, acting reasonably, from time to time deem necessary or advisable to ensure that the Security at all times constitutes a perfected first priority Encumbrance (subject only to Permitted Liens) over such Property notwithstanding the movement or location of such Property as aforesaid together with such supporting certificates, resolutions, opinions and other documents as the Lenders may, acting reasonably, deem necessary or desirable in connection with such security and registrations;

6.4.18 **US Employee Benefits.** (i) (x) Maintain, or permit any member of the Controlled Group to maintain, or (y) become obligated to contribute, or permit any member of the Controlled Group to become obligated to contribute, to any Pension Benefit Plan, other than those Pension Benefit Plans disclosed on Schedule 4.1.34 or any other Pension Benefit Plan for which Lenders have provided their prior written consent, (ii) engage, or permit any member of the Controlled Group to engage, in any non-exempt "prohibited transaction", as that term is defined in Section 406 of ERISA and Section 4975 of the Code, (iii) incur, or permit any member of the Controlled Group to incur, any "accumulated funding deficiency", as that term is defined in Section 302 of ERISA or Section 412 of the Code, (iv) terminate, or permit any member of the Controlled Group to terminate, any Plan where such event could result in any liability of any Obligor or any member of the Controlled Group or the imposition of an Encumbrance on the property of any Obligor or any member of the Controlled Group pursuant to Section 4068 of ERISA, (v) assume, or permit any member of the Controlled Group to assume, any obligation to contribute to any Multiemployer Plan not disclosed on Schedule 4.1.34, (vi) incur, or permit any member of the Controlled Group to incur, any withdrawal liability to any Multiemployer Plan; (vii) fail promptly to notify the Lenders of the occurrence of any Termination Event, (viii) fail to comply, or permit a member of the Controlled Group to fail to comply in any material respect, with the requirements of ERISA or the Code or other Applicable Laws in respect of any Plan, (ix) fail to meet, or permit any member of the Controlled Group to fail to meet, all minimum funding requirements under ERISA or the Code or postpone or delay or allow any member of the Controlled Group to postpone or delay any funding requirement with respect of any Pension Benefit Plan;

- 6.4.19 **Canadian Employee Benefits.** With respect to any Borrower, (i) (x) maintain or permit any Borrower to maintain, or (y) become obligated to contribute to any Canadian Benefit Plan, other than those plans disclosed on Schedule 4.1.34, (ii) terminate in whole or in part, any Canadian Benefit Plan where such an event could result in any liability of any Borrower or the imposition of an Encumbrance on the property of any Borrower, (iii) fail to comply with the requires of Canadian Employee Benefits Legislation or other Applicable Laws in respect of any Canadian Benefit Plan, (iv) fail promptly to notify the Lenders of the occurrence of any Canadian Pension Event, or (v) fail to meet all minimum funding requirements under Canadian Employee Benefits Legislation or other Applicable Laws or postpone or delay any funding requirement with respect to any Canadian Benefit Plan;
- 6.4.20 **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;
- 6.4.21 **Settlement of Litigation.** (i) Enter into or agree to enter into or accept or agree to accept any settlement agreement of any kind or make or agree to make any settlement offer of any kind with respect to (a) any of the litigation set out in Exhibit "A" to Schedule 4.1.18 or (b) any other action, claim or proceeding relating to or with respect to any allegations of anti-trust or anti-competition practices, or (c) any other action, claim or proceeding that is not covered by insurance of the applicable Obligor and for which the proposed settlement is in excess of \$500,000 (any proposed settlement where the proposed settlement amount is less than \$500,000 being a "**Minor Settlement**") in each case without the prior written approval of the Majority Lenders (any settlement approved in accordance with this Section being an "**Approved Settlement**"); (ii) make any payment under any settlement agreement or make any other payment to any claimant with respect to any of the litigation set out on Schedule 4.1.18 or any other action, claim or proceeding unless (a) such settlement is an Approved Settlement or a Minor Settlement, (b) the Borrowers are in proforma compliance with each of the financial covenants in Section 6.2 at the time of making such payment before and after giving effect thereto, and (c) no Default or Event of Default shall have occurred or would result therefrom. The DOJ Settlement shall be considered to be an Approved Settlement upon such DOJ Settlement being approved by the U.S. District Court in Cincinnati, Ohio as required by Applicable Law and the terms of the DOJ Settlement; and

6.4.22 **Deposit Accounts and Securities Accounts.** No Obligor shall have any Permitted Financial Investments, cash or Equity Interests in any single Deposit Account or Securities Account located in any province of Canada (if Canada or such provinces has adopted any law requiring a Control Agreement or similar agreement to perfect an Encumbrance in any Deposit Account or Securities Account or making such method a superior form of perfection) or the United States (other than payroll accounts), where the balance in such Deposit Account or Securities Account is in excess of \$1,000,000 at any one time unless the applicable Obligor and the applicable securities intermediary or deposit-taking institution have entered into a Control Agreement or similar agreement governing such Deposit Account or Securities Account in order to perfect (and further establish) the security interests in favour of the Agent on behalf of the Lenders under the Security Documents in such Permitted Financial Investments, cash or Equity Interests, except that the requirements of this proviso shall not apply to any Deposit Account or Securities Account that is required in connection with a Permitted Acquisition until 60 days following the date such acquisition is consummated. The aggregate amount of all Permitted Financial Investments, cash and Equity Interests in all Deposit Accounts and all Securities Accounts owned by any Obligor for which a Control Agreement has not been delivered shall not exceed \$4,000,000 at any time.

6.5 **Entitled to Perform Covenants**

If any Borrower fails to perform any covenant contained in this Article 6, or in any other provision hereof or of any of the other Loan Documents, the Agent or the Lenders may, but shall be under no obligation to, perform, in any manner it deems fit without thereby waiving any rights to enforce this Agreement or the other Loan Documents, any such covenant capable of being performed by it and if any such covenant requires the payment of money, the Agent or the Lenders may make such payments. All sums so expended by the Agent of the Lenders shall be deemed to form part of the Obligations, shall bear interest at the same rate as the Principal Amount and shall be payable by the Borrowers on demand.

ARTICLE 7 CONDITIONS PRECEDENT

7.1 **Conditions Precedent to Advance**

The obligations of the Lenders hereunder are subject to compliance, on or before the Closing Date, with each of the following conditions precedent, which conditions precedent are for the sole and exclusive benefit of the Lenders and may be waived in writing by the Lenders in their sole discretion:

- 7.1.1 no Default or Event of Default shall have occurred and be continuing nor shall there be any such Default or Event of Default after giving effect to this Agreement, and the Lenders shall have received an Officer's Certificate confirming same;

- 7.1.2 the representations and warranties made in or pursuant to this Agreement and all other Loan Documents shall be true and correct on the date of the advance and the Lenders shall have received an Officer's Certificate confirming same;
- 7.1.3 except as disclosed to the Lenders prior to the date hereof, no event shall have occurred since September 30, 2009 which, individually or in the aggregate has, or could reasonably be expected to have, a Material Adverse Effect and the Lenders shall have received an Officer's Certificate confirming same;
- 7.1.4 all approvals, consents and authorizations required on the Closing Date to permit the transactions contemplated by the Loan Documents to proceed in compliance with Applicable Law, Material Contracts, Permitted Debt or otherwise shall have been obtained and evidence thereof provided to the Lenders;
- 7.1.5 each of this Agreement, the Security Documents, the Intercreditor Agreement and all other Loan Documents shall have been executed and delivered by all parties thereto in form and substance satisfactory to the Lenders;
- 7.1.6 the Senior Credit Agreement and such other documents relative to the loans under the Senior Credit Agreement shall have been executed and delivered by the parties thereto and shall be on terms and conditions satisfactory to the Lenders, acting reasonably, including, without limitation, that the maximum amount of credit available under the Senior Credit Agreement is not greater than \$70,000,000, subject to the total commitment of the Senior Lenders under the Senior Credit Agreement declining by a minimum of \$2,500,000 per year to not greater than \$62,500,000 by its maturity; certified copies thereof shall have been delivered to the Agent, and all conditions to drawing under the Senior Credit Agreement will have been satisfied without waiver (except for any written waiver as delivered in respect of a condition that in the opinion of the Lenders is immaterial) and the Senior Credit Agreement shall be undrawn on the Closing Date;
- 7.1.7 the Noteholder Debt shall have been repaid in full and all security therefor shall have been released and discharged (or arrangements satisfactory to the Lenders have been made for such repayment, release and discharge);
- 7.1.8 the minimum Consolidated EBITDA of the Canadian Borrower for the twelve months ended November 30, 2009 shall not be less than \$54,000,000 and the Lenders shall have received an Officer's Certificate confirming same;
- 7.1.9 all filings, registrations and recordations shall have been made to perfect the Security in all Relevant Jurisdictions and each other jurisdictions reasonably required by the Lenders, including without limitation, under the UCC and the PPSA and the Security shall constitute, subject only to Permitted Encumbrances, a first ranking charge over all of the Property of the Obligor and the Agent shall have received an acknowledgment copy, or other evidence satisfactory to it, of

each such filing, registration or recordation and satisfactory evidence of the payment of any necessary fee, tax or expense relating thereto;

7.1.10 the Lenders shall have received the following, in form and substance satisfactory to the Lenders:

- (a) Officer's Certificates in respect of each Obligor certifying that attached thereto are true and correct copies of the following documents, and that such documents are in full force and effect, unamended:
 - (i) the articles, memorandum, by-laws, constating documents or other organizational documents of the applicable Obligor;
 - (ii) a certificate of incumbency including sample signatures of officers and directors of the applicable Obligor who have executed this Agreement or any of the Loan Documents; and
 - (iii) the resolutions or other documentation evidencing that all necessary action (if any), corporate or otherwise, has been taken by the applicable Obligor to authorize the execution, delivery and performance of the Loan Documents to which it is a party;
- (b) a certificate of status, certificate of good standing or similar certificate with respect to the jurisdiction of incorporation or formation of each Obligor or any other jurisdiction in which any Obligor conducts business;
- (c) certified copies of the Material Contracts existing on the date of such certificate;
- (d) certificates of insurance evidencing compliance with Section 6.1.7 showing the Lenders as loss payee or additional insured thereunder, as applicable;
- (e) Officer's Certificates with respect to the Solvency of each Obligor (other than Arctic Glacier IP Inc.); and
- (f) such other documentation or information as the Lender may reasonably request;

7.1.11 all Material Contracts shall be in full force and effect and there shall have occurred no material default by any party thereto;

7.1.12 the Lenders shall have received customary opinions of counsel to the Obligors acceptable to the Lenders and in the jurisdictions required by the Lenders, acting reasonably, including opinions with respect to the enforceability of the Loan Documents, compliance with applicable securities laws, the registration of the Security and such other matters as the Lenders may reasonably request;

- 7.1.13 the Lenders shall have received title insurance policies and endorsements in form and substance and from title insurers satisfactory to the Lenders confirming among other things the marketability of title of the Obligors to their Owned Real Property and Leased Real Property charged by the Security and the priority of such Security;
- 7.1.14 the commitment and funding fees and all other compensation in whatever form separately agreed to between the Borrowers and the Lenders and all other amounts and fees payable to or for the account of the Lenders that are due and payable on or before the Closing Date (including the fees and disbursements of counsel to the Lenders) shall have been paid or arrangements shall be in place to pay such amounts and fees concurrently with the advance on the Closing Date and the Borrowers shall be in compliance with all the terms of any fee letters between the Lenders and the Borrowers;
- 7.1.15 the Lenders shall be satisfied with any settlement or other amount paid to claimants with respect to pending or threatened litigation made prior to or on the Closing Date.

**ARTICLE 8
EVENTS OF DEFAULT AND REMEDIES**

8.1 Events of Default

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

- 8.1.1 any Borrower fails to pay any amount of principal or interest due hereunder by the due date therefor; or
- 8.1.2 any Borrower or any other Obligor fails to pay any fees or other Obligations within three (3) Business Days of the due date therefor; or
- 8.1.3 any default in the compliance or performance any financial covenant contained in Section 6.2 of this Agreement; or
- 8.1.4 any default in compliance or performance of any negative covenant contained in Section 6.4 of this Agreement; or
- 8.1.5 any default in the compliance or performance of any other term, condition or provision of this Agreement, or any of the provisions of any other Loan Document, and such default remains unremedied for a period of ten (10) Business Days after the earlier of (i) written notice by the Agent or any Lender to a Borrower, and (ii) any Obligor becoming aware of such default; or
- 8.1.6 any representation or warranty made by any Obligor under any Loan Document is incorrect or misleading in any material respect or omitted a material fact when made or deemed made under any Loan Document; or

- 8.1.7 any final judgment, execution, writ of seizure and sale or similar process is enforced or levied upon Property of any Obligor having a value of \$1,000,000 (or the equivalent amount in any other currency) or more and remains undischarged, unvacated and unstayed for a period (for each action) of 10 days, *provided that*, during such period, such process is in good faith disputed by the applicable Obligor; or
- 8.1.8 any Obligor (i) fails to make any payment when such payment is due and payable to any Person in relation to any Debt which in the aggregate principal amount then outstanding is in excess of \$1,000,000 and such payment is not made within any applicable cure or grace period; (ii) defaults in the observance or performance of any other agreement or condition in relation to any Debt which in the aggregate principal amount then outstanding is in excess of \$1,000,000 or contained in any instrument or agreement evidencing, securing or relating thereto and such default is not waived or cured within any applicable cure or grace period, or any other event shall occur or condition exist, the effect of which default, event, or other condition referred to in this Section 8.1.8(ii), is to cause, or to permit the holder of such Debt to cause, such Debt to become due prior to its stated maturity date; or
- 8.1.9 any Obligor fails to make any payment when such payment is due and payable to any Person under the DOJ Settlement (when approved by the U.S. District Court in Cincinnati, Ohio) or under any other Approved Settlement;
- 8.1.10 any judgment or order for the payment of money in excess of \$1,000,000 (or the equivalent amount in any other currency), net of any amounts available for the satisfaction of such judgment or order pursuant to an enforceable contract of insurance, shall be rendered against any Obligor and either (i) the same shall remain undischarged, unvacated, unstayed and unbonded pending appeal for a period of 10 consecutive days from the entry thereof or (ii) enforcement proceedings shall have been commenced by any creditor upon such judgment; or
- 8.1.11 any Obligor (i) becomes insolvent, commits an act of bankruptcy or fails to generally pay its debts as such debts become due and payable; (ii) admits in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; (iii) institutes or has instituted against it any proceeding seeking (w) the possession, foreclosure, seizure, retention, sale or other disposition of, or other proceedings to enforce security over, all or any substantial part of its Property, (x) to adjudicate it bankrupt or insolvent, (y) any liquidation, winding-up, reorganization (in each case, other than as specifically permitted hereunder), arrangement, adjustment, protection, relief or composition of it or its debts under any Applicable Law relating to bankruptcy, insolvency, reorganization, incorporation law or relief of debtors including any plan of compromise or arrangement or other similar corporate proceeding involving or affecting its creditors, or (z) the entry of an order for relief or the appointment of a receiver, trustee, interim receiver, receiver and manager, liquidator, custodian, sequestrator 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), either such proceeding shall remain undismissed or unstayed for a period of 30 days, 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, interim receiver, receiver and manager, liquidator, custodian, sequestrate or other similar official for it or for any substantial part of its Property) shall occur; or (iv) takes any corporate action to authorize any of the foregoing actions; or

- 8.1.12 any of the Security or any other Loan Document, ceases to be in full force and effect, is disavowed by the Obligor with respect thereto, or is invalidated by any act, regulation or governmental action or is determined to be invalid by a court or other judicial entity, *provided that* it shall not be an Event of Default hereunder if the Borrowers (or any applicable Guarantor), within five (5) Business Days of receipt of notice of such Security or Loan Document (other than this Agreement) becoming unenforceable or invalidated and receipt of a replacement Loan Document from the Lenders, enters into a new, enforceable agreement in form and substance satisfactory to the Lenders, or takes such other action as may be required to ensure the Security is in full force and effect (*provided that* the Lenders' interest have not been materially adversely affected thereby);
- 8.1.13 an Encumbrancer or any other Person takes possession of any substantial part of the Property of any Obligor by appointment of a receiver, receiver and manager, expropriation or otherwise; or
- 8.1.14 the financial statements of the Borrowers or the Fund are qualified in any material respect which is unacceptable to the Lenders; or
- 8.1.15 the occurrence of any event or circumstance that has a Material Adverse Effect; or
- 8.1.16 any change in any Applicable Law relating to Taxes (including any announcement in a notice of ways and means motion, draft legislation or introduction of a bill but other than a change in general tax rates) that results or could reasonably be expected to result in a material increase in Taxes payable by the Fund on a consolidated basis in the current taxation year or any future taxation year;
- 8.1.17 the Fund ceases (i) to be a reporting issuer in any Province of Canada where it is a reporting issuer on the Closing Date, (ii) to be in compliance in all material respects with Securities Laws, (iii) ceases to be listed on, or ceases to be in compliance in all material respects with, the listing requirements of the TSX; or (iv) if the units of the Fund are permanently delisted on the TSX or are cease traded for greater than twenty (20) consecutive days (while the Fund is otherwise a reporting issuer); or
- 8.1.18 proceedings are commenced for the dissolution, liquidation or winding-up of any Obligor, or for the suspension of the operations of any Obligor unless in the case of any such proceedings instituted against it (but not instituted by it) such

proceedings are being actively and diligently contested in good faith and none of the orders sought in such proceeding are granted; or

- 8.1.19 a material default occurs and is continuing under any Material Contract after giving effect to any cure period thereunder or any Material Contract is terminated other than at scheduled maturity and the applicable Borrower or the applicable Guarantor does not, within 30 days of receipt of notice of such default or termination, enter into a replacement Material Contract with a substitute counterparty of equivalent repute as the original counterparty substantially in the same form and substance as the defaulted or terminated Material Contract; or
- 8.1.20 the Canadian Borrower or the U.S. Borrower ceases to be a wholly-owned subsidiary of the Fund; or
- 8.1.21 an event or condition specified in Sections 6.1.13 or 6.4.18 hereof shall occur or exist with respect to any Plan and, as a result of such event or condition, together with all other such events or conditions, any Obligor or any member of the Controlled Group shall incur, or in the opinion of Lenders be reasonably likely to incur, a liability to a Plan or the PBGC (or both) which, in the reasonable judgment of Lenders, would have a Material Adverse Effect; or
- 8.1.22 an event or condition specified in Sections 4.1.6 or 6.4.18 hereof shall occur or exist with respect to any Canadian Benefit Plan or Canadian Employee Plan and, as a result of such event or condition, together with all other such events or conditions, any Borrower shall incur, or in the opinion of Lender be reasonably likely to incur, a liability to a Canadian Benefit Plan or Canadian Employee Plan which, in the reasonable judgment of the Lenders, would have a Material Adverse Effect; or
- 8.1.23 the occurrence of an Event of Default as defined in the Senior Credit Agreement.

8.2 Remedies Upon Default

Upon the occurrence of an Event of Default in Section 8.1.11, the Obligations shall automatically and immediately become due and payable and upon the occurrence of and during the continuance of any other Event of Default, the Lenders may, by notice given by the Agent to the Borrowers, declare all Obligations to be immediately due and payable and, in either case, the Lenders may then:

- 8.2.1 realize upon all or any part of the Security; and
- 8.2.2 take such actions and commence such proceedings as may be permitted at law or in equity (whether or not provided for herein or in the Security Documents) at such times and in such manner as the Lenders in their sole discretion may consider expedient,

all without any additional notice, presentment, demand, protest, notice of protest, dishonour or any other action except as required by law. The rights and remedies of the Agent and the

Lenders hereunder are cumulative and are in addition to and not in substitution for any other rights or remedies provided by Applicable Law or by any of the other Loan Documents. The Obligations due and payable upon a declaration pursuant to this Section 8.2 will include any Prepayment Premium that, pursuant to Section 3.5, would at such time have been payable upon a voluntary prepayment of the Principal Amount.

8.3 Corporate Distributions

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

8.4 Set-Off

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

8.5 Default Interest

Upon the occurrence and during the continuance of any Event of Default, to the extent not prohibited by Applicable Law, the Principal Amount and any other unpaid amounts hereunder shall bear interest at the rate of per annum otherwise applicable plus 2.0%.

ARTICLE 9

THE AGENT AND THE ADMINISTRATION OF THE CREDIT FACILITIES

9.1 Appointment and Authorization

9.1.1 Each Lender hereby irrevocably appoints and authorizes the Agent to be its attorney in its name and on its behalf to exercise such rights or powers granted to such Lender under this Agreement and the other Loan Documents on the terms hereof and thereof, together with such powers as are reasonably incidental thereto. Each Lender hereby authorizes the Agent to execute, as agent for and on its behalf, any of the other Loan Documents wherein it is expressly stipulated that the Agent is acting in such capacity, and each Lender agrees to be bound thereby as principal.

9.1.2 As to any matters not expressly provided for by this Agreement or the Loan Documents (including, without limitation, enforcement thereof), the Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Majority Lenders, and such instructions shall be binding upon all of the Lenders. The Agent shall not be required to take any action which exposes the Agent to liability in such capacity, which could result in the Agent's incurring any costs and expenses not contemplated by this Agreement or which is contrary to this Agreement or Applicable Law.

9.1.3 The Agent shall have no duties or obligations other than as expressed herein, which duties are solely of a mechanical and administrative nature. Without limiting the generality of the foregoing, the Agent does not undertake, and the Lenders relieve the Agent from, any implied duties, responsibilities, obligations or functions and there shall not be construed against the Agent any implied covenants or terms, whether in respect of matters arising prior to, on, or following the date of this Agreement. The relationship between the Agent and the Lenders is that of agent and principal only, and the Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lenders.

9.2 Duties and Obligations of Agent

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

- (a) may assume that there has been no assignment or transfer by any Lender of its rights hereunder unless and until all of the requirements of Section 10.6 have been complied with;
- (b) may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts;
- (c) shall incur no liability under or in respect of this Agreement or any of the other Loan Documents by acting upon any notice, consent, certificate or other instrument or writing (which may be, by facsimile or other means of electronic communication) believed by it to be genuine and signed or sent by the proper party or parties or by acting upon any representation or warranty of any Borrower made or deemed to be made hereunder or thereunder;

- (d) may assume that no Default or Event of Default has occurred and is continuing unless it has actual knowledge to the contrary;
- (e) may rely as to any matters of fact which might reasonably be expected to be within the knowledge of any Person upon a certificate signed by or on behalf of such Person;
- (f) does not make any warranty or representation to any Lender nor shall it be responsible to any Lender for the accuracy or completeness of the data made available to any of the Lenders in connection with the negotiation of this Agreement, or for any statements, warranties or representations (whether written or oral) made in or in connection with this Agreement;
- (g) shall not have any duty to ascertain or to enquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or any of the other Loan Documents on the part of the Obligor or to inspect the Assets (including the books and records) of any of the Obligor;
- (h) shall be fully justified in failing or refusing to take any action under this Agreement unless it shall first receive such advice or concurrence of the Majority Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take such action; and
- (i) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any of the other Loan Documents or any instrument or document furnished pursuant hereto or thereto or for any failure of any Borrower to perform its obligations hereunder.

9.3 Prompt Notice to the Lenders

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

9.4 Agent's Authority to Deal with Borrowers

With respect to its own participation in the Loans, the Agent shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not the Agent. The Agent may accept deposits from, lend money to, and generally engage in any kind of business with any of the Obligor or any Affiliate of any of them

and any Person which may do business with any of them, all as if the Agent were not the Agent hereunder and without any duties to account therefor to the Lenders or to any other Person.

9.5 Dealings by Borrowers with Agent

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

9.6 Independent Credit Decisions

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

9.7 Indemnification

Each Lender hereby agrees to indemnify the Agent (to the extent not reimbursed by the Borrowers), in accordance with its rateable portion of the Loans, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Agent at any time (including, without limitation, at any time following repayment in full of all Obligations) in any way relating to or arising out of this Agreement or any of the other Loan Documents or any action taken or omitted by the Agent hereunder or thereunder or in respect hereof or thereof; *provided that* no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's gross negligence or wilful misconduct. Without limiting the generality of the foregoing, each Lender agrees to reimburse the Agent

promptly upon demand for its rateable portion of any out-of-pocket expenses (including counsel fees) incurred by the Agent in connection with the preservation of any rights of the Agent or the Lenders as against the Obligors under, or the enforcement of, or legal advice in respect of rights or responsibilities under, this Agreement and the other Loan Documents, to the extent that the Agent is not reimbursed for such expenses by the Borrowers. The indemnity in this Section 9.7 shall survive the payment and satisfaction of all Obligations and the termination of this Agreement.

9.8 Successor Agent

The Agent may, as hereinafter provided, resign at any time by giving written notice thereof to the Lenders and the Borrowers. Upon any such resignation, the Lenders shall have the right to appoint a successor agent (the "**Successor Agent**") which shall be one of the Lenders acceptable to the Borrowers acting reasonably. If no Successor Agent shall have been so appointed by the Lenders and shall have accepted such appointment within 30 days after the retiring Agent's giving of notice of resignation, then the retiring Agent may, on behalf of the Lenders, appoint a Successor Agent from among the Lenders acceptable to the Borrowers acting reasonably. Upon the acceptance of any appointment as Agent hereunder by a Successor Agent, such Successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall thereupon be discharged from its further duties and obligations as Agent under this Agreement. The retiring Agent shall cooperate with the Successor Agent in the performance of its duties for a reasonable period of time after such resignation. After any retiring Agent's resignation hereunder as Agent, the provisions of this Article 9.8 shall continue to enure to its benefit as to any actions taken or omitted to be taken by it while it was Agent hereunder.

9.9 Action by and Consent of Lenders; Waiver and Amendments

- 9.9.1 Subject to Section 9.9.3, where the terms of this Agreement or any of the other Loan Documents refer to any action to be taken hereunder or thereunder by the Lenders or to any such action that requires the consent or other determination of the Lenders, the action taken by and the consent or other determination given or made by the Majority Lenders shall, except to the extent that this Agreement expressly provides to the contrary, constitute the action or consent or other determination of the Lenders herein or therein referred to, and the Agent may exercise its powers under Section 9.1 based upon such action, consent or other determination.
- 9.9.2 Subject to Section 9.9.3, this Agreement and any other Loan Document may be amended only if the Borrowers or applicable Obligors and the Majority Lenders so agree in writing, any consent under this Agreement or any other Credit Document shall be given only by the Agent (at the direction of the Majority Lenders) in writing, and any Event of Default may be waived before or after it occurs only if the Agent (at the direction of the Majority Lenders) so agrees in writing. Any amendment, consent or waiver so made shall be binding upon all of the Lenders.

9.9.3 Any amendment or waiver which changes or relates to:

- (a) the amount, term or currency of the Loans;
- (b) the amount or dates of payment of principal, prepayment premiums, interest or fees;
- (c) the definition of "Majority Lenders";
- (d) Sections 3.17 or 10.6.2;
- (e) a release or subordination of any material part of the Security or of any Guarantee; or
- (f) this Section 9.9 or Section 9.11 to provide for non-ratable sharing;

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

9.9.4 Any waiver and any consent by the Agent or any Lenders under any provision of this Agreement or any other Loan Document may be given subject to any conditions thought fit by the Person giving that waiver or consent. Any waiver or consent shall be effective only in the instance and for the purpose for which it is given.

9.9.5 If, in connection with any proposed amendment, waiver or consent (a "**Proposed Change**") requiring the consent of all Lenders, the consent of Majority Lenders is obtained, but the consent of other Lenders is not obtained (any such Lender whose consent is not obtained as described in this paragraph being referred to as a "**Non-Consenting Party**"), then, so long as the Agent is not a Non-Consenting Party, at the Borrowers request, the Agent, or an assignee that is acceptable to the Agent, shall have the right (but not the obligation) to purchase from the Non-Consenting Parties (and their Affiliates), and the Non-Consenting Parties (and their Affiliates) agree that they shall sell, all the Non-Consenting Parties' (and their Affiliates') Loans in accordance with the provisions of Section 10.6 as if each such Non-Consenting Party (and Affiliate) is an assignor Lender under Section 10.6 at an amount equal to the outstanding Loans of the Non-Consenting Party plus the Prepayment Premium, if any, that would at such time be applicable on a voluntary prepayment of such Loans pursuant to Section 3.5.

9.10 Remittance of Payments

9.10.1 As soon as practicable after receipt of any notice of payment by any Borrower hereunder, the Agent shall give notice to each Lender of the amount of the payment to be made to it on such day and all other relevant particulars of such payment. Subject to Section 9.14, as soon as practicable after receipt of any

repayment or prepayment of the Loans or any payment of interest or any other amount payable by any Borrower hereunder to the extent that such payments were not made directly to the Lenders by the Borrowers, the Agent shall remit to each Lender its rateable portion of such payment or prepayment and its respective entitlement, if any, to any other amount payable by any Borrower hereunder.

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

9.10.3 Each Borrower agrees to indemnify each Lender from and against all costs and expenses imposed on the relevant Lender pursuant to Section 9.10.2.

9.11 Redistribution of Payments

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

9.12 Notification of Default

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

9.13 Taking and Enforcement of Remedies

- 9.13.1 Each of the Lenders hereby acknowledges that, to the extent permitted by Applicable Law, the remedies provided hereunder and under the other Loan Documents to the Lenders are for the benefit of the Lenders collectively and acting together and not severally and further acknowledges that its rights hereunder and thereunder are to be exercised collectively by the Agent upon the instructions of the Majority Lenders. Accordingly, notwithstanding any of the provisions contained herein or therein, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action with respect to the Loans, including, without limitation, any election of remedies in respect of an Event of Default hereunder, but that any such action shall be taken only by the Agent upon the instructions of the Majority Lenders as provided herein. Notwithstanding the foregoing, in the absence of instructions from the Majority Lenders (or, to the extent Section 9.9.3 is applicable, all of the Lenders) where the Agent has requested instructions and in its sole opinion the exigencies of the situation warrant such action, the Agent may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interests of the Lenders. Each of the Lenders further covenants and agrees, that, upon any such instructions being given to the Agent by the Majority Lenders, it shall cooperate fully with the Agent to the extent requested by the Agent in any remedial action hereunder including, without limitation, the appointment of a receiver and manager to act for their collective benefit. Each Lender covenants and agrees to do all acts and things and to make, execute and deliver all agreements and other instruments, including, without limitation, any instruments necessary to effect any registrations, so as to fully carry out the intent and purposes of this Section 9.13.1.
- 9.13.2 Each Lender hereby covenants and agrees that it has not heretofore sought, taken, accepted or received and shall not hereafter seek, take, accept or receive any security for any of the obligations and liabilities of any Borrower hereunder or under the other Loan Documents or under any other document, instrument, writing or agreement ancillary hereto or thereto other than such security as is provided hereunder or thereunder and shall not enter into any agreement with any of the parties hereto or thereto relating in any manner whatsoever to the Loans, unless all of the Lenders shall at the same time obtain the benefit of any such security or agreement.
- 9.13.3 Each of the Lenders and the Borrowers further covenants and agrees that all proceeds from the exercise of the rights and remedies provided hereunder and under the Loan Documents, to the extent permitted by Applicable Law, are held for the benefit of all of the Lenders and, after deduction therefrom of all costs of realization, shall be shared among the Lenders proportionately based upon the respective aggregate amounts of the Obligations which are outstanding to each of the Lenders at the relevant time or times of sharing. To the extent any Lender receives or is entitled to receive any amount hereunder in excess of the amount of

the Obligations owed to it hereunder it shall hold such excess in trust on behalf of and for the benefit of the other Lenders entitled thereto.

- 9.13.4 Each of the Lenders agrees with each of the other Lenders that if it exercises any right of set-off in accordance with Section 8.4 hereof in connection with any Obligations, it shall promptly so advise the Agent and each of the other Lenders and, to the extent permitted by Applicable Law, the Lenders shall share all such set-offs in accordance with the provisions of Section 9.13.3 hereof, *provided that* none of the Lenders shall be liable hereunder to any of the other Lenders by reason of failure to exercise or validly exercise any right of set-off or by reason of any restriction upon any such sharing.

9.14 Adjustments to Reflect Rateable Portions

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

9.15 No Partnership

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

9.16 Appointment of West Face as Agent for the West Face Lenders

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

**ARTICLE 10
GENERAL**

10.1 Reliance and Non-Merger

All covenants, agreements, representations and warranties of any Borrower or any Guarantor made herein or in any other Loan Document or in any certificate or other document signed by any of its directors or officers and delivered by or on behalf of any Borrower or any Guarantor pursuant hereto or thereto are material, shall be deemed to have been relied upon by the Lenders notwithstanding any investigation heretofore or hereafter made by the Lenders or

counsel to or any employee or other representative of any of the Lenders and shall survive the execution and delivery of this Agreement and the other Loan Documents until all obligations owed to the Lenders under this Agreement and the other Loan Documents shall have been satisfied and performed.

10.2 Notices

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

10.3 Time

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

10.4 Press Releases and Public Announcements

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

10.5 Further Assurances

Whether before or after the happening of an Event of Default, each Obligor shall at its own expense do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, things, agreements, documents and instruments in connection with this Agreement and the other Loan Documents as the Lenders may request from time to time for the purpose of giving effect to the terms of this Agreement and the other Loan Documents including, without limitation, for the purpose of facilitating the enforcement of the Security, all promptly upon the request of the Lenders.

10.6 Assignment

- 10.6.1 This Agreement and the other Loan Documents shall enure to the benefit of and be binding upon the parties hereto and thereto, their respective successors and any permitted assignee of some or all of the parties' rights or obligations under this Agreement and the other Loan Documents as permitted under this Section.

- 10.6.2 No Obligor shall assign all or any part of its rights, benefits or obligations under this Agreement or any of the other Loan Documents without the prior written consent of the Lenders, which may be unreasonably withheld.
- 10.6.3 Subject to the terms of this Agreement, the Lenders collectively or individually may assign to one or more assignees (other than an Obligor) all or a portion of their respective rights and obligations under this Agreement without the consent of the Borrowers. The parties to each such assignment shall execute and deliver to the Agent an assignment agreement in form and substance satisfactory to the Agent (the “**Assignment Agreement**”) for its approval and the Agent shall deliver such Assignment Agreement to the Borrowers. The Assignor shall pay a processing and recording fee of \$3,500 to the Agent. Upon such execution, delivery, acknowledgement and recording in the Register (as defined below) (i) the assignee thereunder shall be a party to this Agreement and, to the extent that rights and obligations hereunder have been assigned to it, have the rights and obligations of a Lender hereunder and (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, relinquish its rights and be released from its obligations under this Agreement, other than obligations in respect of which it is then in default, and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto.
- 10.6.4 The agreements of an assignee contained in an Assignment Agreement shall benefit the assigning Lender thereunder, the other Lenders and the Agent in accordance with the terms of the Assignment Agreement.
- 10.6.5 The Agent shall maintain at its address referred to herein a copy of each Assignment Agreement delivered to and acknowledged by it and as agent for the Obligors (solely for the purposes of this paragraph) a register for recording the names and addresses of the Lenders and rateable portion of the Principal Amount under the Loans of each Lender from time to time (the “**Register**”). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error (which the Agent shall correct promptly upon notice). Each of the Borrowers, the Agent and each of the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement, and need not recognize any Person as a Lender unless it is recorded in the Register as a Lender. The Register shall be available for inspection by any Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.
- 10.6.6 Upon its receipt of an Assignment Agreement executed by an assigning Lender and an assignee and approved by the Agent, the Agent shall record the information contained therein in the Register. The requirements of this Section 10.6.6 are intended to result in the Loan being in “registered form” within the meaning of United States Treasury Regulations Section 1.871-14(c) and

Sections 163(f), 871(h) and 881(c) of the Code, and shall be interpreted and applied in a manner consistent therewith.

10.6.7 The Lenders may provide to any permitted assignee or transferee such information, including confidential information, concerning this Agreement, the other Loan Documents and the financial position and the operations of the Fund and its Subsidiaries as, in the reasonable opinion of the applicable Lender, may be relevant or useful in connection with this Agreement, the other Loan Documents or any portion thereof proposed to be acquired by such assignee or transferee, *provided that* each recipient of such information agrees not to disclose such information to any other Person.

10.6.8 In connection with any assignment pursuant to this Section 10.6, each Borrower agrees to enter into such documents as may reasonably be required by the Agent or the Lenders to evidence such assignment and to incorporate into this Agreement outstanding provisions for multi-lender loan arrangements.

10.7 Participations

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

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

no participant shall have any right to approve any amendment or waiver of any provision of this Agreement, or any consent to any departure by any Person therefrom except with respect to any amendment, modification or waiver that would (i) extend the final scheduled maturity of the Loan, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce or subordinate the Principal Amount, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default shall not constitute a change in the terms of such participation), (ii) consent to the assignment or transfer by any Obligor of any of its rights and obligations under this Agreement, or (iii) release all or substantially all of the Security under the Security Documents or all or substantially all of the Guarantors (in each case, except as expressly provided in the Loan Documents). Each Borrower agrees that each participant shall be entitled to the benefits of Section 3.15 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.6.3; *provided that*, a participant shall not be entitled to receive any greater payment under Section 3.15 than the applicable Lender would have been entitled to receive with

respect to the participation sold to such participant, unless the sale of the participation to such participant is made with the Borrowers prior written consent.

10.8 Entire Agreement

This Agreement and the other Loan Documents constitute the entire agreement between the parties pertaining to the subject matter described herein and therein. There are no warranties, conditions or representations (including any that may be implied by statute), and there are no agreements in connection with such subject matter except as specifically set forth or referred to in this Agreement and the other Loan Documents. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made either prior to, contemporaneously with, or after the entering into of this Agreement and the other Loan Documents, or any amendment or supplement thereto, by any party to this Agreement or any of the other Loan Documents or its directors, officers, partners, employees or agents, where applicable, to any other party to this Agreement or any of the other Loan Documents or its directors, officers, partners, employees or agents, where applicable, except to the extent that the same has been reduced to writing and included as a term of this Agreement or any of the Loan Documents.

10.9 Governing Law

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

10.10 Attornment

The parties hereto irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario for all matters arising out of or in connection with this Agreement and the other Loan Documents.

10.11 Counterparts

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

10.12 Currency Indemnity

If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Agreement or any other Loan Document, it becomes necessary to convert into a particular currency (the "**Judgment Currency**") any amount due under this Agreement or under any other Loan Document in any currency other than the Judgment Currency (the "**Currency Due**"), then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which judgment is given. For this purpose "rate of exchange" means the rate at which the Agent is able, on the relevant date, to purchase the Currency Due with the Judgment

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

10.13 Interpretation (Québec)

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

10.14 Jury Trial Waiver

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

10.15 Limitation of Trustee Liability

The parties hereto acknowledge that the trustees of the Fund (referred to in this Section as the "Fund Trustees") are entering into this agreement solely in their capacity as Fund Trustees on behalf of the Fund and the obligations of the Fund hereunder shall not be personally binding upon the Fund Trustees or any holder of Units and that any recourse against the Fund, the Fund Trustees or any holder of Units in any manner in respect of any indebtedness, obligation or liability of the Fund Trustees arising hereunder or arising in connection herewith or from the matters to which this Agreement relates, if any, including, without limitation, claims based on negligence or otherwise tortious behaviour, shall be limited to, and satisfied only out of, the assets of the Fund.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

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

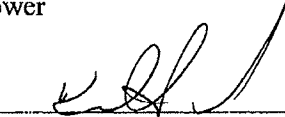
Attention: Chief Executive Officer
Facsimile: (204) 783-9857

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

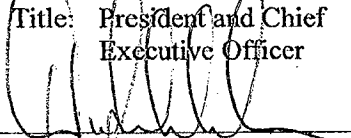
Attention: Chief Executive Officer
Facsimile: (204) 783-9857

ARCTIC GLACIER INC., as Canadian
Borrower

By:

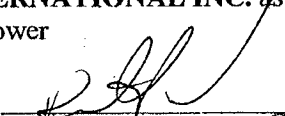

Name: Keith W. McMahon
Title: President and Chief
Executive Officer

By:

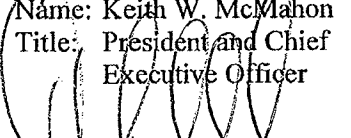

Name: Hugh A. Adams
Title: Secretary

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

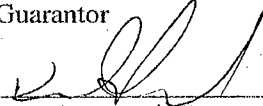
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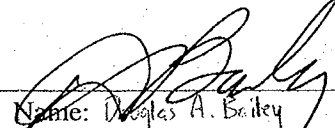

Name: Keith W. McMahon
Title: President and Chief
Executive Officer

By:

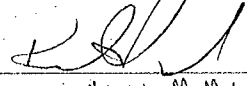

Name: Hugh A. Adams
Title: Secretary

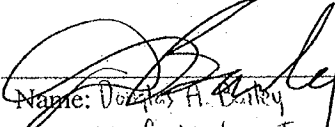
**ARCTIC GLACIER CALIFORNIA
INC., as Guarantor**

By: 
Name: Keith W. McMahon
Title: President


By: 
Name: Douglas A. Bailey
Title: Vice-President and Chief Financial Officer

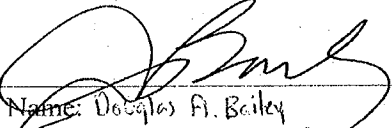
**ARCTIC GLACIER GRAYLING INC.,
as Guarantor**

By: 
Name: Keith W. McMahon
Title: President

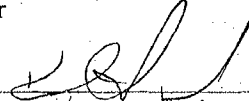
By: 
Name: Douglas A. Bailey
Title: Vice-President and Treasurer

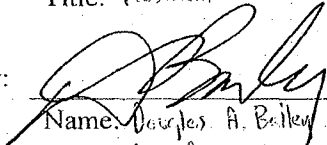
**ARCTIC GLACIER INCOME FUND,
as Guarantor**

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

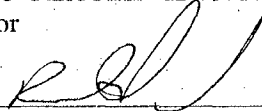
By: 
Name: Douglas A. Bailey
Title: Chief Financial Officer

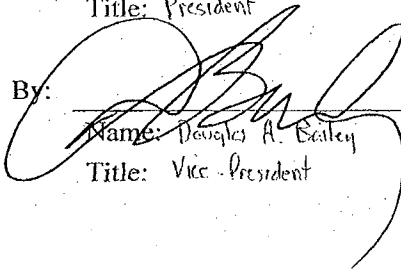
**WONDERLAND ICE, INC., as
Guarantor**

By: 
Name: Keith W. McMahon
Title: President


By: 
Name: Douglas A. Bailey
Title: Vice President and Treasurer

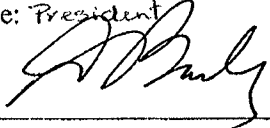
**ARCTIC GLACIER IP INC., as
Guarantor**

By: 
Name: Keith W. McMahon
Title: President


By: 
Name: Douglas A. Bailey
Title: Vice President

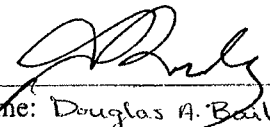
**ARCTIC GLACIER LANSING INC., as
Guarantor**

By: 
Name: Keith W. McMahon
Title: President

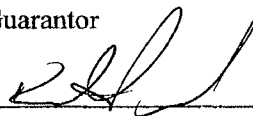
By: 
Name: Douglas A. Bailey
Title: Vice-President and Treasurer

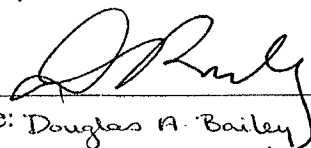
**ARCTIC GLACIER MICHIGAN INC.,
as Guarantor**

By: 
Name: Keith W. McMahon
Title: President


By: 
Name: Douglas A. Bailey
Title: Vice-President and Treasurer


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

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

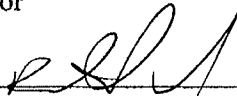
By: 
Name: Douglas A. Bailey
Title: Chief Financial Officer and Treasurer

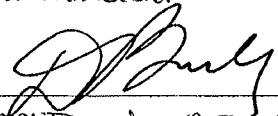
**ARCTIC GLACIER NEBRASKA INC.,
as Guarantor**

By: 
Name: Keith W. McMahon
Title: President

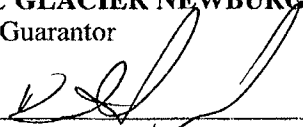
By: 
Name: Douglas A. Bailey
Title: Treasurer

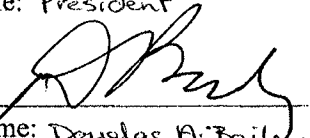
**ARCTIC GLACIER NEW YORK INC.,
as Guarantor**

By: 
Name: Keith W. McMahon
Title: President


By: 
Name: Douglas A. Bailey
Title: Vice-President

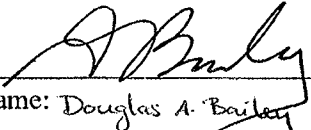
**ARCTIC GLACIER NEWBURGH
INC., as Guarantor**

By: 
Name: Keith W. McMahon
Title: President

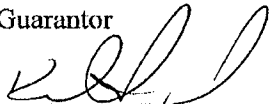
By: 
Name: Douglas A. Bailey
Title: Vice-President

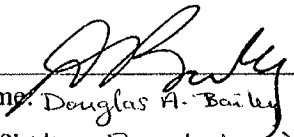
**ARCTIC GLACIER OREGON INC., as
Guarantor**

By: 
Name: Keith W. McMahon
Title: President

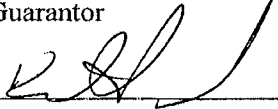
By: 
Name: Douglas A. Bailey
Title: Treasurer

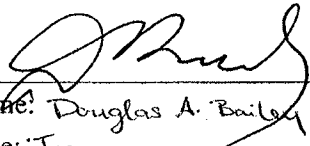
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INC., as Guarantor**

By: 
Name: Keith W. McMahon
Title: President

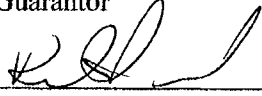
By: 
Name: Douglas A. Bailey
Title: Vice-President and Treasurer


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

By: 
Name: Keith W. McMahon
Title: President

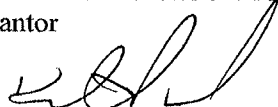
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Name: Douglas A. Bailey
Title: Treasurer

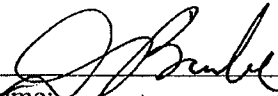
**ARCTIC GLACIER ROCHESTER
INC., as Guarantor**

By: 
Name: Keith W. McMahon
Title: President


By: 
Name: Douglas A. Bailey
Title: Vice-President

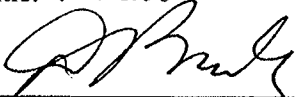
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as Guarantor**

By: 
Name: Keith W. McMahon
Title: President


By: 
Name: Douglas A. Bailey
Title: Treasurer

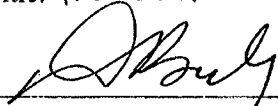
**ARCTIC GLACIER TEXAS INC., as
Guarantor**

By: 
Name: Keith W. McMahon
Title: President


By: 
Name: Douglas A. Bailey
Title: Treasurer


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

By: 
Name: Keith W. McMahon
Title: President

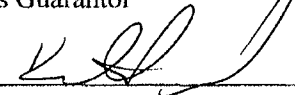
By: 
Name: Douglas A. Bailey
Title: Vice-President and Chief Financial Officer

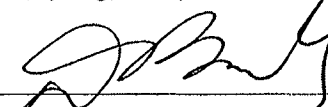
**ARCTIC GLACIER WISCONSIN INC.,
as Guarantor**

By: 
Name: Keith W. McMahon
Title: President


By: 
Name: Douglas A. Bailey
Title: Vice-President and Treasurer

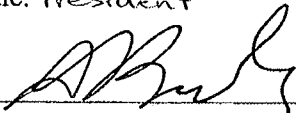
**DIAMOND ICE CUBE COMPANY
INC., as Guarantor**

By: 
Name: Keith W. McMahon
Title: President


By: 
Name: Douglas A. Bailey
Title: Vice-President


DIAMOND NEWPORT CORPORATION, as Guarantor

By: 
Name: Keith W. McMahon
Title: President

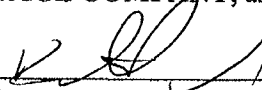
By: 
Name: Douglas A. Bailey
Title: Vice-President and Chief Financial Officer

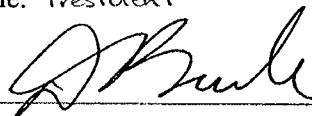
GLACIER ICE COMPANY, INC., as Guarantor

By: 
Name: Keith W. McMahon
Title: President

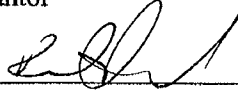
By: 
Name: Douglas A. Bailey
Title: Vice-President and Chief Financial Officer

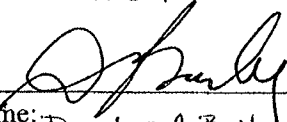
GLACIER VALLEY ICE COMPANY, L.P., by its general partner MOUNTAIN WATER ICE COMPANY, as Guarantor

By: 
Name: Keith W. McMahon
Title: President


By: 
Name: Douglas A. Bailey
Title: Vice-President and Chief Financial Officer

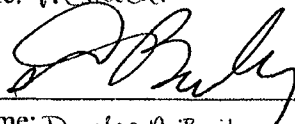
MOUNTAIN WATER ICE COMPANY,
as Guarantor

By: 
Name: Keith W. McMahon
Title: President


By: 
Name: Douglas A. Bailey
Title: Vice-President and Chief Financial Officer

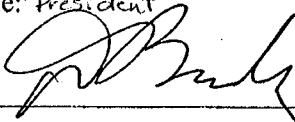
R & K TRUCKING, INC., as Guarantor

By: 
Name: Keith W. McMahon
Title: President

By: 
Name: Douglas A. Bailey
Title: Vice-President and Treasurer

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

By: 
Name: Keith W. McMahon
Title: President

By: 
Name: Douglas A. Bailey
Title: Vice-President and Treasurer

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

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


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

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

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


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

CPPIB CREDIT INVESTMENTS INC.,
as Agent

By: 
Name: John Breen
Title: VP

By: _____
Name:
Title:

CPPIB CREDIT INVESTMENTS INC.,
as Lender

By: 
Name: John Breen
Title: VP

By: _____
Name:
Title:

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

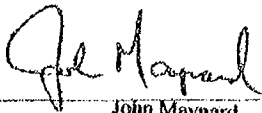
By: _____
Name:
Title:

By: _____
Name:
Title:

West Face Capital Inc.
2 Bloor Street East
Suite 810
Toronto, Ontario
M4W 1A8

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

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

By: 
Name: John Maynard
Title: Chief Financial Officer

By: _____
Name:
Title: