

**THE QUEEN'S BENCH  
WINNIPEG CENTRE**

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

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

**NINTH REPORT OF THE MONITOR  
ALVAREZ & MARSAL CANADA INC.  
FEBRUARY 26, 2013**

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## 1.0 INTRODUCTION

- 1.1 Pursuant to an order of The Court of Queen's Bench (Winnipeg Centre) (the "**Court**") dated February 22, 2012 (the "**Initial Order**"), Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as Monitor (the "**Monitor**") in respect of an application filed by Arctic Glacier Income Fund ("**AGIF**"), Arctic Glacier Inc. ("**AGI**"), Arctic Glacier International Inc. ("**AGII**") and those entities listed on **Appendix "A"**, (collectively, and including Glacier Valley Ice Company L.P., the "**Applicants**") seeking certain relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The proceedings commenced by the Applicants under the Initial Order are referred to herein as the "**CCAA Proceedings**".
- 1.2 The Monitor has previously filed eight reports with this Honourable Court. Capitalized terms not otherwise defined in this Ninth Report are as defined in the Initial Order or in the reports previously filed with this Honourable Court by the Monitor.
- 1.3 As reported in the Monitor's Sixth Report dated August 29, 2012 (the "**Sixth Report**"), on June 7, 2012, Arctic Glacier, LLC (formerly known as H.I.G. Zamboni LLC), an affiliate of H.I.G. Capital ("**HIG**" or the "**Original Purchaser**"), and the Applicants, excluding AGIF (the "**Vendors**") entered into an asset purchase agreement (as amended by an Assignment, Assumption and Amending Agreement dated July 26, 2012, the "**APA**"), pursuant to which the Original Purchaser agreed to purchase all of the Vendors' assets except the Excluded Assets, and would assume all of the Vendors' liabilities except the Excluded Liabilities (the "**Assumed Liabilities**"), on an "as is, where is" basis (the "**Sale Transaction**").

- 1.4 The Sale Transaction was approved by an Approval and Vesting Order dated June 21, 2012 (the “**Approval and Vesting Order**”) granted by this Honourable Court on a hearing held on such date (the “**Sale Approval Hearing**”).
- 1.5 Pursuant to the provisions of the APA, the Original Purchaser designated certain of its affiliates to acquire the Assets and entered into a Designated Purchaser Agreement with its designees Arctic Glacier, LLC, Arctic Glacier U.S.A., Inc., and Arctic Glacier Canada, Inc. (collectively, the “**Purchaser**”). The vesting of the Assets in the Purchaser was approved by this Honourable Court pursuant to an Amended and Restated Approval and Vesting Order dated July 12, 2012.
- 1.6 The U.S. Court issued an Order dated July 18, 2012 recognizing the Amended and Restated Approval and Vesting Order.
- 1.7 The Sale Transaction contemplated by the APA closed effective 12:01 a.m. on July 27, 2012. On that date, the Monitor delivered the Monitor’s Certificate to the Purchaser and subsequently filed same with the Court.
- 1.8 As a consequence of the Sale Transaction, the business formerly operated by the Applicants is now being operated by the Purchaser. As such, and in anticipation of the closing of the Sale Transaction (the “**Closing**”), the Applicants sought and obtained the Transition Order dated July 12, 2012. Among other things, the Transition Order provides that, on and after the Closing, the Monitor is empowered and authorized to take such additional actions and execute such documents, in the name of and on behalf of the Applicants, as the Monitor considers necessary in order to perform its functions and fulfill its obligations as Monitor, or to assist in facilitating the administration of these CCAA Proceedings. A copy of the Transition Order is attached as **Appendix “B”**.

- 1.9 As a result of the Closing, the Monitor is holding significant funds for distribution. Accordingly, in the Sixth Report, the Monitor recommended a claims process to identify and determine the claims of creditors of the Applicants (the “**Claims Process**”).
- 1.10 On September 5, 2012, this Honourable Court issued an order approving the Claims Process and, among other things, authorizing, directing and empowering the Monitor to take such actions as contemplated by the Claims Process (the “**Claims Procedure Order**”). The U.S. Court recognized the Claims Procedure Order by Order dated September 14, 2012. A copy of the Claims Procedure Order is attached as **Appendix “C”**.
- 1.11 This report (the “**Ninth Report**”) is being filed by the Monitor in respect of a motion brought by Desert Mountain Ice, LLC (“**Desert Mountain**”) pursuant to a Notice of Motion dated October 15, 2012 (the “**DMI Motion**”). In essence, the DMI Motion is seeking the payment by the Applicants and/or the Purchaser of \$12,500,000 plus certain other amounts pursuant to a purchase option (the “**Purchase Option**”) contained in a lease dated May 25, 2006 between Desert Mountain and the Applicant Arctic Glacier California Inc. (“**AGCI**”) (as amended, the “**Arizona Lease**”) that Desert Mountain claims has been deemed to have been exercised.
- 1.12 Prior to the service of the DMI Motion and after the Closing, the Monitor was contacted by current counsel for Desert Mountain to discuss the treatment of the Arizona Lease under such transaction. Since being contacted by such counsel, the Monitor has attempted, on a without prejudice basis, to assist Desert Mountain, the Applicants and the Purchaser to reach a commercial resolution of the matters at issue in the DMI Motion. The Monitor has facilitated and participated in numerous bi-lateral and multi-lateral

meetings, negotiations and discussions with respect to the Arizona Lease. The Monitor engaged in these activities since it believed that reaching a commercial resolution to this dispute without resorting to contested litigation was in the best interests of the estate and its stakeholders. The Monitor also believed that a commercial resolution was possible due to the continuing landlord/tenant relationship that exists between Desert Mountain and the Purchaser. The Monitor facilitated the exchange of oral and written proposals between Desert Mountain and the Purchaser that were aimed at reaching a revised commercial landlord/tenant relationship on a go-forward basis. Despite these efforts, which have been ongoing for many months and continued in the weeks prior to the filing of this Ninth Report, no resolution to the issues raised in the DMI Motion has been achieved.

1.13 The Monitor has engaged in an independent review of the evidence and documentation concerning the issues raised in the DMI Motion. The Monitor has reviewed the affidavits and briefs filed by Desert Mountain, the Applicants and the Purchaser and the documents produced by the parties in the course of the litigation. The Monitor or its counsel attended the cross-examinations conducted with respect to the DMI Motion. The Monitor has delivered this Ninth Report to address certain aspects of the DMI Motion that have been raised by the parties to the litigation, including certain matters that have been discussed in previous reports of the Monitor.

1.14 The Monitor has presented certain portions of this Ninth Report in chronological order as a means of assisting the Court in assessing the issues raised in the DMI Motion. However, the Monitor notes that the issues raised in the Applicants' and Purchaser's affidavits and briefs concerning which party is responsible to satisfy the Purchase Option



should it be payable are only relevant to the DMI Motion if this Honourable Court first determines that Desert Mountain is entitled to relief amending, modifying or affecting the Approval and Vesting Order as it relates to the Arizona Lease. It is the Monitor's view that the Approval and Vesting Order, as a final order of this Court that has not been appealed, should stand.

- 1.15 Further information regarding these proceedings can be found on the Monitor's website at <http://www.alvarezandmarsal.com/arcticglacier>.

## **2.0 TERMS OF REFERENCE**

- 2.1 In preparing this Ninth Report, A&M has necessarily relied upon unaudited financial and other information supplied, and representations made, by certain former senior management of Arctic Glacier ("**Senior Management**") certain of whom are continuing to operate the Arctic Glacier business for the Purchaser. Although this information has been subject to review, A&M has not conducted an audit or otherwise attempted to verify the accuracy or completeness of any of the information of the Applicants. Accordingly, A&M expresses no opinion and does not provide any other form of assurance on or relating to the accuracy of any information contained in this Ninth Report, or otherwise used to prepare this Ninth Report.
- 2.2 Certain of the information referred to in this Ninth Report consists of financial forecasts and/or projections or refers to financial forecasts and/or projections. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by the Canadian Institute of Chartered Accountants, has not been performed. Any future-oriented financial information referred to in this Ninth Report

was prepared based on estimates and assumptions provided by Senior Management. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, and such variations could be material.

2.3 The information contained in this Ninth Report is not intended to be relied upon by any prospective purchaser or investor in any transaction with the Applicants.

2.4 Unless otherwise stated, all monetary amounts contained in this Ninth Report are expressed in United States dollars, which is the Applicants' common reporting currency.

### **3.0 THE ARIZONA LEASE**

3.1 As part of its diligence leading up to the commencement of the CCAA Proceedings and the implementation of the SISP approved by the Initial Order, the Monitor became aware that the Applicants' operations in Arizona involved a facility leased pursuant to the terms of the Arizona Lease (the "**Arizona Facility**"). Through its involvement with the SISP, the Monitor was aware that potential purchasers were asking questions of the Applicants and their Financial Advisor with respect to the Purchase Option set out in Section 24 of the Arizona Lease. Participants in the SISP were encouraged to provide a bid for the assets of the Applicants that dealt with the Purchase Option and the Arizona Lease in a manner that was beneficial to the Applicants' stakeholders as a whole, including Desert Mountain.

3.2 The Monitor also became aware during the course of the SISP that potential purchasers may not be willing to assume the obligations set out in the Arizona Lease as part of any sale transaction (i) as a result of the legal and financial terms of the Arizona Lease; and

(ii) due to the Applicants' loss of a significant customer in Arizona to a competitor shortly before the bid deadline. With respect to the status of the Applicants' Arizona operations in 2011, on February 19, 2013, counsel for Desert Mountain sent correspondence to counsel for the Monitor enclosing a memorandum dated August 15, 2011 from the Applicants' President and CEO (Keith McMahon) to the Applicants' employees that contains, among other things, information regarding the favourable state of the Applicants' operations in Arizona at that time. A copy of such correspondence and attached memorandum are attached as **Appendix "D"**.

#### **4.0 THE SALE TRANSACTION**

##### ***(i) The HIG Bid Letter***

4.1 In accordance with the timelines set out in the SISP, H.I.G. Capital (an affiliate of the Purchaser) provided a bid letter to the Financial Advisor and the Monitor dated June 4, 2012 (the "**Bid Letter**"). In accordance with the directions to potential bidders who were participating in the SISP, the Bid Letter stated that the Purchaser would be responsible for any required payment with respect to the Purchase Option. The HIG Bid Letter was the highest offer received with the fewest conditions to closing. In addition to being by far the best bid received under the SISP, the HIG bid was the only Qualified Bid that included the assumption of the Arizona Lease and/or the payment of the Purchase Option at no cost to the Applicants. According to the Bid Letter:

The purchase price includes an amount of US\$12.5 million representing the price of the Tolleson facility [i.e. the Arizona Facility], based on the deemed exercise of the put option set out in the Tolleson lease. Should the property be acquired for a lower price, the amount will be adjusted accordingly with no negative impact to the Vendors, subject to the potential upside described below.

While H.I.G. is prepared to purchase the Tolleson facility for the full put price of US\$12.5 million, H.I.G. proposes to share in any purchase price reduction negotiated with the Tolleson landlord prior to closing. Specifically, H.I.G. will increase its purchase price by an amount corresponding to 25% of the amount of any reduction in the required payment for the put. . . . If no savings are negotiated, H.I.G. will bear the full cost of the required payment (US\$12.5 million).

- 4.2 As described in the Fourth Report of the Monitor dated June 15, 2012 (the “**Fourth Report**”) filed in support of the Applicants’ motion seeking approval of the Sale Transaction, on June 7, 2012, the Monitor advised the Special Committee that one or more Qualified Bids had been received in accordance with the SISP. The Monitor also confirmed that the terms of the court-approved SISP had been followed. The Monitor, after consulting with the Financial Advisor, the CPS and the Applicants, and after taking into account the evaluation criteria set out in paragraph 27 of the SISP, recommended to the Special Committee that the Qualified Bid submitted by HIG be selected. The Financial Advisor and the CPS concurred with the Monitor’s recommendation. The Special Committee accepted the Monitor’s recommendation and authorized the Applicants to enter into the APA.
- 4.3 A description of the treatment of the Arizona Lease under the Final Bids received under the SISP was provided by the Monitor and disclosed to the Court in the Confidential Appendix to the Fourth Report dated June 18, 2012 (the “**Confidential Appendix**”). The Confidential Appendix contained confidential and sensitive information concerning the bids received in Phase II of the SISP and was sealed pursuant to the terms of the Approval and Vesting Order. The Confidential Appendix was subsequently unsealed pursuant to an Order of this Honourable Court dated November 29, 2012.

***(ii) The Asset Purchase Agreement***

- 4.4 Section 2.05 of the APA (as amended) provides that the Purchase Price payable to the Vendors under the Sale Transaction is “\$422,000,000 plus the dollar value of (i) the price paid by the Vendors for the purchase of the land and building at 600 South 80<sup>th</sup> Avenue, Tolleson, Arizona; (ii) the Petty Cash; and (iii) the Assumed Liabilities, subject to adjustment as provided in Section 2.07”.
- 4.5 According to the Affidavit of Bruce Robertson, the CPS of the Applicants, sworn October 31, 2012 (the “**Robertson Affidavit**”), the legal and financial risk of the Arizona Lease was specifically transferred to the Purchaser pursuant to the terms of the APA through two separate mechanisms. The Robertson Affidavit states that if the Vendors elected to exercise the Purchase Option or otherwise purchase the Arizona Facility prior to the Closing for another amount negotiated with Desert Mountain, the Purchaser would acquire the Arizona Facility on Closing as an Asset of the Applicants and would pay the Applicants any amount that the Applicants actually paid to purchase the Arizona Facility prior to Closing. Second, the Robertson Affidavit states that the APA provides that the “Assumed Liabilities” are paid by the Purchaser. Section 2.03 of the APA sets out what is included in the “Assumed Liabilities” and provides that “the Purchaser will assume, fulfill, perform and discharge . . . all Liabilities arising from or in connection with the performance of any of the Assigned Contracts (or breach thereof) after the Time of Closing”. According to the Robertson Affidavit, if the Applicants did not acquire the Arizona Facility prior to Closing, the Purchaser would take an assignment of the Arizona Lease and assume all obligations under the Arizona Lease, including the rights and obligations associated with the Purchase Option, as an Assumed Liability.

- 4.6 In the Affidavit of Brian McMullen of the Purchaser sworn October 31, 2012 (the “**McMullen Affidavit**”), the Purchaser disagrees with the Applicants’ interpretation of the APA. According to the McMullen Affidavit, the inclusion of a reference to the purchase of the Arizona Facility in section 2.05 of the APA was originally provided for in the event a payment was required by the Vendors to Desert Mountain prior to Closing. However, when the Approval and Vesting Order was obtained which overrode the Purchase Option, no further amount was payable or paid by the Applicants to Desert Mountain, and consequently, upon Closing, the Arizona Lease was acquired as a leasehold interest by the Purchaser. With respect to the argument that the deemed exercise of the Purchase Option was an “Assumed Liability”, the McMullen Affidavit states, among other things, that if the Purchase Option was triggered by the Sale Transaction, it was triggered at the time of Closing (not after it) and therefore does not fall within the definition of Assumed Liabilities. The Applicants contend that, due to the mechanism in the Arizona Lease which provides that the closing of the Purchase Option transaction will not occur until “the first business day after the thirtieth day after Landlord’s receipt of Tenant’s notice exercising the Purchase Option”, any obligation to satisfy the Purchase Option occurred after Closing.
- 4.7 Another interpretation of these provisions of the APA is simply that the Purchaser has agreed in section 2.05 to add to the Purchase Price for the Assets “the price paid by the Vendors for the purchase of the land and building at [the Arizona Facility]”, whether the Vendors are required to make such purchase before, contemporaneous with or after the Closing of the Sale Transaction.

- 4.8 During the periods that the Applicants (i) were negotiating the APA with HIG based on the framework set out in the Bid Letter; (ii) seeking court approval of the Sale Transaction by this Honourable Court and the US Court; and (iii) preparing for the Closing of the Sale Transaction, the Monitor had no reason to question that the legal and financial risk of the Arizona Lease was to be assumed by and be the responsibility of the Purchaser. While counsel for the parties were discussing the Assignment, Assumption and Amending Agreement in the days immediately prior to Closing, counsel for the Monitor and the Applicants were informed by Purchaser's counsel that the Purchaser's interpretation of the APA and the Approval and Vesting Order was that the Purchaser would be taking an assignment of the Arizona Lease and was not required to satisfy the Purchase Option should it be payable as a consequence of the Sale Transaction.
- 4.9 It has been the Monitor's stated view throughout in its discussions with the Purchaser that the APA was intended to fully protect the estate in the event that the Purchase Option was payable as a result of the Sale Transaction. The Monitor does recognize that the parties to the litigation have differing views on the interpretation of the APA and thus notes the following additional factors that have helped form the Monitor's view: (i) the language in the Bid Letter that the Purchaser will bear the full cost of any required payment of the Purchase Option; (ii) the purpose of the SISP and the Sale Transaction was for the Applicants to enter into a Sale Transaction that would not see it retaining surplus assets unless specifically stipulated to be an "Excluded Asset"; (iii) the Purchase Price is explicitly defined in order to reimburse the Vendors if they had purchased the Arizona Facility; and (iv) the APA as a whole provides that the Purchaser is to broadly assume the liabilities of the Vendors, including those arising under the Arizona Lease.

## 5.0 THE SALE APPROVAL HEARING

### *(i) Notice of the Sale Approval Hearing*

- 5.1 One week after the execution of the APA, on June 14, 2012, the Applicants served their motion materials in support of the approval of the Sale Transaction. The details of such service are set out at paragraph 8 of the Robertson Affidavit. The court materials were served on contractual counterparties by the Applicants' U.S. Noticing Agent on June 14, 2012 via first class mail.
- 5.2 Desert Mountain has raised issues regarding the form and manner of notice it was provided in connection with the Sale Approval Hearing. In his cross-examination with respect to the DMI Motion, the principal of Desert Mountain, Robert Nagy, states that he was not served with the motion materials for the Sale Approval Hearing heard June 21, 2012 until approximately one week after the court hearing (i.e. between June 28 and July 3, 2012). No other party who was served with the materials for the Sale Approval Hearing in the manner described in the Robertson Affidavit has contacted the Monitor taking any issue with the timing, form or manner of service.
- 5.3 The Monitor notes that the motion materials for the Sale Approval Hearing were posted on its website on June 15, 2012. The Monitor also notes based on a review of AGIF's SEDAR filings that the APA was not filed on SEDAR until June 20, 2012. A copy of AGIF's SEDAR filings from the relevant period that show the filing of the APA as a "Material Document" is attached as **Appendix "E"**.
- 5.4 On June 26, 2012, notice of the U.S. recognition hearing brought by the Monitor in its capacity as foreign representative of the Applicants, and scheduled for July 17, 2012, was



served on Desert Mountain by the Applicants' U.S. Noticing Agent. At no time prior to the U.S. recognition hearing did any representative of Desert Mountain contact the Monitor in its capacity as foreign representative of the Applicants with respect to the U.S. recognition hearing.

5.5 The motion briefs delivered by the Applicants and the Purchaser refer to certain evidence provided by Mr. Nagy during his cross-examination concerning (i) his knowledge of and involvement and interest in the CCAA Proceedings; (ii) his knowledge of how to obtain information with respect to the CCAA Proceedings; (iii) his involvement with HIG prior to the submission of HIG's Bid Letter with respect to the potential acquisition of the Applicants' business; (iv) his communications with the Applicants regarding the potential treatment of the Arizona Lease by bidders or the Applicants as part of any transaction that may result from the SISP; and (v) his belief that it was unnecessary to retain counsel upon his review of the court materials concerning the Sale Transaction.

5.6 When the Monitor was first contacted by current counsel for Desert Mountain with respect to issues surrounding the Arizona Lease, the Monitor provided its views on certain procedural issues relating to the Sale Approval Hearing. In particular, in a letter dated October 11, 2012, the Monitor stated that Desert Mountain was provided with proper notice of the Sale Approval Hearing and that the Monitor is not aware of any fact or circumstance that would suggest that an amendment or variance of the Approval and Vesting Order would be appropriate. The Monitor believes that all of the Applicants' stakeholders, including Desert Mountain, were afforded a sufficient and appropriate opportunity to participate in the CCAA Proceedings, and in particular, the Sale Approval Hearing by (i) contacting the Monitor by e-mail or through its dedicated hotline to raise

any questions or concerns a stakeholder may have; (ii) contacting the Monitor's counsel whose particulars are noted on the Monitor's website to raise any questions or concerns a stakeholder may have; and/or (iii) retaining counsel to participate in the CCAA Proceedings. The Monitor in particular notes that Desert Mountain was provided with numerous opportunities to participate in the CCAA Proceedings, including receiving a memorandum from the Applicants, engaging in multiple discussions with representatives of the Applicants, and engaging in discussions with the Purchaser prior to the submission of the Bid Letter, and did not to retain counsel to do so. In all of the circumstances of the case, including after reviewing the materials associated with the DMI Motion and considering Desert Mountain's knowledge about the CCAA Proceedings and its ability to participate in such proceeding by retaining counsel or otherwise, the Monitor's view with respect to the Approval and Vesting Order as set out in the October 11, 2012 letter has not changed, including the treatment of the Purchase Option contained therein. A copy of the October 11, 2012 letter is attached as **Appendix "F"**.

***(ii) Materials before the Court at the Sale Approval Hearing***

- 5.7 Desert Mountain also argues that the Applicants and the Purchaser failed to make full and frank disclosure of all material facts related to the Arizona Lease in conjunction with the Sale Approval Hearing. The Monitor notes that the court materials that were not filed on a confidential basis did not make specific reference to the Arizona Lease and the Purchase Option and that these issues were not otherwise specifically brought to the attention of the Court. However, as set out above, there were references to the Arizona Lease in the Confidential Appendix, including a description of how each final bidder proposed to deal with the Arizona Lease as part of an overall transaction.

5.8 Multiple communications had occurred between Mr. Nagy and representatives or advisors of the Applicants, and in one instance with the participation of the Monitor. In addition to these communications, as a result of (i) the general publicity associated with this case in Winnipeg; (ii) the ability for stakeholders to obtain information with respect to the CCAA Proceedings through customary means such as the Monitor's Website, the Applicants' public disclosure and otherwise; and (iii) the service of the motion materials for the Sale Approval Hearing on all contractual counterparties, the Monitor believed that Mr. Nagy was aware of the Sale Transaction and the requirement for court approval. Mr. Nagy could have easily contacted the Applicants, the Monitor or their respective counsel, or retained counsel to appear before the Court at the Sale Approval Hearing, but did not do so.

***(iii) Form of Approval and Vesting Order***

5.9 Desert Mountain has also raised an issue with respect to certain modifications to the draft Approval and Vesting Order that were made between the time of service of the court materials for the Sale Approval Hearing and the Sale Approval Hearing itself. The final form of Approval and Vesting Order deleted certain language originally found at paragraph 4 which provided that the "Assigned Contracts shall not be or be deemed to be amended or modified by the terms of this Order". The remainder of the end of the original paragraph 4 was largely incorporated in paragraph 10 of the final Approval and Vesting Order. Paragraph 4 of the draft Order was deleted as it did not reflect the commercial reality of the effect of an Order assigning contracts under the CCAA. For example, contracts are assigned that can contain clauses stipulating that the contract is not to be assigned without the counterparty's consent which would be considered an

amendment or modification of the contract. Paragraph 10 of the Approval and Vesting Order requires that the Purchaser comply with its obligations under the APA which included the assumption of the Assumed Liabilities and the performance of its obligations under the Assigned Contracts.

***(iv) The Closing of the Sale Transaction***

5.10 As previously described in the Sixth Report, certain modifications to the Sale Transaction were required by the Purchaser and agreed to by the Applicants immediately prior to the Closing. The effect of these modifications was a reduction in the proceeds of sale of between approximately \$9 million and \$14 million, depending on the quantum of the Closing Working Capital. Once these modifications were agreed to by the Applicants and the Purchaser, the Monitor sent an e-mail on July 24, 2012 to Madam Justice Spivak in order to inform the Court of the modifications to the approved Sale Transaction. The Monitor's e-mail also reflects the fact that the Purchaser would assume the Arizona Lease on Closing. The e-mail further stated that the effect of such assumption was that the \$12.5 million payment referred to in the APA will not be paid "at this time as contemplated by the APA". The Monitor felt that it was important to inform the Court that this payment would not be made "at this time" as a revised purchase price would be reflected in the press release to be issued by the Applicants after Closing. A copy of the July 24, 2012 e-mail is attached as **Appendix "G"**.

5.11 As set out above, the Monitor filed its Monitor's Certificate with respect to the Closing of the Sale Transaction on July 27, 2012. It is the Monitor's view that the filing of the Monitor's Certificate does not change the rights and obligations of the parties set out in the APA, nor does it affect the transfer to the Purchaser of the legal and financial

responsibility for the Arizona Lease, including for any payment of the Purchase Option as a result of the Sale Transaction.

***(v) Assignment of the Arizona Lease***

5.12 As set out in the Monitor's letter to counsel for Desert Mountain dated October 11, 2012, it is the Monitor's view that notice was properly given to Desert Mountain with respect to the Sale Approval Hearing and that the Monitor does not believe that an amendment or variance of the Approval and Vesting Order with respect to its treatment of the Arizona Lease is appropriate. The Monitor notes that the parties to this litigation have provided arguments on whether or not it was appropriate in the Approval and Vesting Order to suspend the operation of the Purchase Option for the purposes of the Sale Transaction and to assign the Arizona Lease to the Purchaser in those circumstances. It appears that the parties have chosen to raise these arguments to put the Court in a position to consider issues relating to the Arizona Lease that may have been argued had Desert Mountain retained counsel and appeared at the Sale Approval Hearing.

5.13 With respect to the portions of the Approval and Vesting Order assigning the Assigned Contracts to the Purchaser, the Monitor repeats its comments set out at paragraph 5.12 of the Fourth Report which stated as follows: "The APA provides for the assignment of the Assigned Contracts by Court order in the event that consents are not obtained from the counterparties. The draft Approval and Vesting Order contains a provision ordering the assignment of the Assigned Contracts pursuant to Section 11.3 of the CCAA. The Monitor approves of the proposed assignment of the Assigned Contracts. It is the Monitor's view that the Purchaser will be able to perform the obligations under the Assigned Contracts and in light of the fact that the Purchaser is acquiring the Business it

is appropriate for an order to be made assigning the Assigned Contracts”. The evidence demonstrates that the Purchaser has performed its obligations under the Arizona Lease as an Assigned Contract through the payment of ongoing rent (not taking into account the ongoing dispute concerning the Purchase Option).

## **6.0 CLAIMS PROCESS**

6.1 As described in the Eighth Report of the Monitor dated November 23, 2012 (the “**Eighth Report**”), in addition to the DMI Motion, Desert Mountain has submitted a Proof of Claim (on a secured basis), as well as a DO&T Proof of Claim, in the Claims Process, seeking payment of the amount of \$12.5 million (plus certain additional amounts) in respect of the Purchase Option. The Proofs of Claim relies on, *inter alia*, the Notice of Motion and initial affidavit of Robert Nagy filed with respect to this motion. Paragraph 36 of the Supplementary Affidavit of Robert Nagy sworn November 7, 2012 states that Desert Mountain and Robert Nagy personally have filed claims in the Claims Process seeking to recover the Purchase Option amount, to protect their rights pending the determination of the within motion. Mr. Nagy has also filed a Proof of Claim that includes, *inter alia*, a claim for the \$500,000 personal guarantee he had provided to Roynat with respect to the mortgage on the Arizona Facility. Copies of the Desert Mountain Proof of Claim and DO&T Proof of Claim (without attachments) are collectively attached as **Appendix “H”**. A copy of the Eighth Report without appendices is attached as **Appendix “I”**.

6.2 As described herein, the Monitor has engaged in an independent review of the facts and circumstances surrounding the Arizona Lease and the matters set out in the DMI Motion and the Desert Mountain Proofs of Claim. As the issues relating to the Arizona Lease are

currently before the Court in a contested hearing, the Monitor did not believe it was appropriate to formally respond to the Proof of Claim pursuant to the Claims Procedure Order prior to the adjudication of the issues set out in the DMI Motion. The Monitor notes that certain of the observations contained in this Ninth Report will equally apply to the Proofs of Claim filed by Desert Mountain.

## **7.0 DESERT MOUNTAIN APPEAL OF U.S. RECOGNITION ORDER**

- 7.1 As described in the Sixth Report, on July 31, 2012, Desert Mountain filed a Notice of Appeal from the U.S. Order recognizing the Amended and Restated Approval and Vesting Order. On August 14, 2012, Desert Mountain filed a statement of issues on appeal (the “**Statement of Issues**”). The Statement of Issues identifies the following issues on appeal: (i) whether the U.S. Court erred with respect to recognizing and enforcing the Amended and Restated Approval and Vesting Order; and (ii) whether the U.S. Court erred in authorizing and approving, to the extent provided for in the Amended and Restated Approval and Vesting Order, the assignment of the Assigned Contracts.
- 7.2 The Monitor has been provided with a “Show Cause” notice from the United States District Court for the District of Delaware (the “**U.S. District Court**”) dated January 16, 2013. Pursuant to such notice, Desert Mountain was required prior to February 20, 2013 to show cause as to why the appeal should not be dismissed. Desert Mountain provided a response to the “Show Cause” notice and the U.S. District Court ordered on February 20, 2013 that “Desert Mountain has shown cause why the above-captioned appeal should not be dismissed”. A copy of the U.S. District Court Order dated February 20, 2013 is attached as **Appendix “J”**. A mediation of Desert Mountain U.S. appeal has been scheduled for March 27, 2013.

## 8.0 THE ARIZONA LEASE TRANSACTION

- 8.1 The Arizona Facility is owned by Desert Mountain which is indirectly owned by Robert Nagy. Mr. Nagy is the former Chief Executive Officer of AGI and a former trustee of AGIF. Desert Mountain was indirectly acquired by Mr. Nagy as part of the same overall transaction that saw the Applicants acquire six ice companies located in California in May 2006. Upon such acquisition, the Arizona Facility was then leased to AGCI on financial terms equivalent to the required payments under the Roynat mortgage on the property and other expenses. Mr. Nagy stated in his cross-examination that he did not invest any of his own money in the Arizona Facility, but provided a pledge of 250,000 units of AGIF and a personal guarantee of \$500,000.
- 8.2 The Applicants have stated that any payment of the Purchase Option to Desert Mountain, and in effect Mr. Nagy, would give Mr. Nagy a windfall at the expense of creditors and unit holders. The Applicants refer to AGIF's Code of Conduct and Ethics (the "**Code of Conduct**") and argue that under the law of fiduciary duty Mr. Nagy cannot profit from the acquisition of the Arizona Facility. A copy of the Code of Conduct is attached as **Appendix "K"**.
- 8.3 Canadian business corporations statutes generally provide that transactions with the corporation in which a director or officer has an interest will not be void or voidable if certain disclosure requirements are met. Typically, an officer is required to disclose his or her interest in the transaction as soon as he or she becomes aware of the transaction. The extent of the disclosure required is fact-specific.
- 8.4 AGIF's Second Amended and Restated Declaration of Trust made as of December 6, 2004 contains a conflict of interest policy that obliges a trustee to disclose in writing the



nature and extent of the interest and forbids the trustee from voting on resolutions relating to the actual or potential conflict. The Code of Conduct forbids trustees, officers and directors from engaging in activities that present a conflict of interest, however waivers of such conflicts by the Board of Trustees are contemplated by the Code of Conduct. A copy of AGIF's Declaration of Trust is attached as **Appendix "L"**.

8.5 The Monitor notes from its document review the following with respect to the 2006 Arizona Lease transaction:

- (i) Memoranda from the former Chief Financial Officer of AGI to the Board of Directors/Trustees dated February 12 and April 3, 2006 noted that AGI would take title to the Arizona Facility as part of the California transaction;
- (ii) A subsequent memorandum from the Chief Financial Officer to the Boards dated May 4, 2006 stated that Mr. Nagy would indirectly acquire Desert Mountain and the Arizona Facility for \$10 million and noted that Desert Mountain, in its capacity as landlord, would be a related party;
- (iii) On May 8, 2006, the AGIF Board of Trustees approved a resolution effecting the overall California transaction. One of the recitals to the resolution indicated that a corporation related to AGI would purchase Desert Mountain and would enter into a lease with AGCI. The resolution also stated that the acquisition of the Arizona Facility was conditional upon and in conjunction with the California transaction; and
- (iv) Based on its review, the Monitor found no evidence as to whether or not Mr. Nagy either recused himself from either AGIF's deliberations concerning the

entering into of the Arizona Lease as part of the overall California transaction or from voting on such transaction.

## **9.0 CONCLUSION**

9.1 As set out above, the Monitor has been actively involved in attempting to facilitate a commercial resolution to the dispute between the Applicants, the Purchaser and Desert Mountain concerning the treatment of the Arizona Lease under the Sale Transaction. The Monitor believed that it was in the best interests of the estate to attempt to resolve this dispute to prevent the cost, uncertainty and distraction of prolonged litigation. The Monitor and its counsel have had numerous discussions with the principals of the parties to the litigation and their counsel in an attempt to develop a creative solution to the dispute. Unfortunately, despite these efforts, no resolution to the dispute has been achieved.

9.2 The Monitor has provided this Ninth Report to assist the Court in its consideration of the issues raised by the parties to the DMI Motion. The Monitor intends to incorporate any guidance received from the Court in its response to Desert Mountain's Proof of Claim submitted in the Claims Process.

\*\*\*\*\*

All of which is respectfully submitted to this Honourable Court this 26<sup>th</sup> day of February, 2013.

**Alvarez & Marsal Canada Inc., in its capacity  
as Monitor of Arctic Glacier Income Fund,  
Arctic Glacier Inc., Arctic Glacier International Inc. and  
the other Applicants listed on Appendix "A".**

A handwritten signature in black ink, appearing to read "Morawetz", with a large, stylized flourish at the end.

Per: Richard A. Morawetz  
Senior Vice President

**List of Applicants**

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

# Appendix “B”

**THE QUEEN'S BENCH**

Winnipeg Centre

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

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

(collectively, the "Applicants")

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

---

**CERTIFIED COPY**

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**TRANSITION ORDER**

DATE OF HEARING: THURSDAY JULY 12, 2012 AT 10 A.M.  
BEFORE THE HONOURABLE MADAM JUSTICE SPIVAK

---

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File No.: 1103500

**THE QUEEN'S BENCH**  
**Winnipeg Centre**

THE HONOURABLE MADAM	)	THURSDAY, THE 12th
	)	
JUSTICE SPIVAK	)	DAY OF JULY, 2012

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

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

(collectively, the "**Applicants**")

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

**CERTIFIED COPY**

**of**  
**TRANSITION ORDER**

THIS MOTION, made by the Applicants for an order, among other things, approving the Transition Services Agreement among Arctic Glacier, LLC (formerly known as H.I.G. Zamboni, LLC) (the "**Original Purchaser**"), the Applicants and the Monitor, made as of July 12, 2012 and dealing with certain transition matters in respect of the Applicants, was heard this day at the Law Courts Building at 408 York Avenue, in The City of Winnipeg, in the Province of Manitoba.

ON READING the Affidavit of Keith McMahon sworn July 10, 2012 (the "July 10 Affidavit"), and the Fifth Report of Alvarez & Marsal Canada Inc. (the "**Monitor**") dated July 10, 2012 (the "**Fifth Report**"), and on hearing the submissions of counsel for the Monitor and counsel for the Applicants; counsel for the Purchaser, the Arctic Lenders, the US Direct Purchaser Antitrust Settlement Class and the Trustees of Arctic Glacier Income Fund also appearing, a representative of Talamod Master Fund L.P. also present by telephone, no one

appearing for any other person on the Service List, although properly served as appears from the affidavit of Corrine Smorhay sworn July 12, 2012, filed:

1. THIS COURT ORDERS that all capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Transition Services Agreement (the “**Transition Services Agreement**”) attached and marked as Exhibit\* to the July 10 Affidavit.

#### **SERVICE**

2. THIS COURT ORDERS that the time for service of the Notice of Motion, the July 10 Affidavit and the Fifth Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

#### **APPROVAL OF TRANSITION SERVICES AGREEMENT**

3. THIS COURT ORDERS AND DECLARES that the Transition Services Agreement is hereby approved, and the execution of the Transition Services Agreement by the Applicants and the Monitor is hereby authorized and approved, with such minor amendments as the Applicants, the Purchaser and the Monitor may deem necessary.

#### **TRANSITION POWERS OF THE MONITOR**

4. THIS COURT ORDERS that on and after the closing of the transactions contemplated by the Purchase Agreement (the “**Closing**”), the Monitor is authorized, but not required, in the name of and on behalf of the Applicants, to prepare and file various returns, remittances, statements, records or other documentation on behalf of Applicants, including but not limited to, tax returns, employee-related remittances, T4 statements, W2 and W3 forms and records of employment for the Applicants’ former employees based solely upon information provided by the Applicants and on the basis that the Monitor shall incur no liability or obligation to any person or entity with respect to such returns, remittances, statements, records or other documentation.

5. THIS COURT ORDERS that on and after the Closing, the Monitor shall be at liberty to engage such persons or entities as the Monitor deems necessary or advisable respecting the exercise of its powers and performances under this Order and any other Order of this Honourable Court and to assist in facilitating the administration of these proceedings.



6. THIS COURT ORDERS that in addition to its prescribed rights in the CCAA and the powers granted by Orders of this Honourable Court, the Monitor is empowered and authorized, on and after the Closing, to take such additional actions and execute such documents, in the name of and on behalf of the Applicants, as the Monitor considers necessary or desirable in order to perform its functions and fulfill its obligations under this Order, any other Order of this Honourable Court or in connection with the Transition Services Agreement, or to assist in facilitating the administration of these proceedings.

7. THIS COURT ORDERS that, without limiting the provisions of the Initial Order, on and after the Closing, the Applicants shall remain in possession and control of the Property (as defined in the Initial Order), if any, which remains following the Closing and the Monitor shall not be deemed to be in possession and/or control of any such remaining Property.

8. THIS COURT ORDERS AND DECLARES that nothing in this Order shall constitute or be deemed to constitute the Monitor as a trustee, receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of any of the Applicants within the meaning of any relevant legislation.

9. THIS COURT ORDERS AND DECLARES that in addition to the rights and protections afforded the Monitor under the CCAA, any plan of arrangement and any Order of this Honourable Court, the Monitor shall not be liable for any act or omission on the part of the Monitor, or any reliance thereon, including without limitation, with respect to any information disclosed, any act or omission pertaining to the discharge of duties or obligations under any Order of this Honourable Court, in connection with the Transition Services Agreement or as otherwise requested by the Applicants, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA, any other applicable legislation, the Initial Order or any other Order of this Honourable Court.

#### **TRANSITION POWERS OF THE CHIEF PROCESS SUPERVISOR**

10. THIS COURT ORDERS that notwithstanding anything to the contrary in the CPS Engagement Letter (as defined in the Initial Order), the Initial Order or any other Order of this Honourable Court, the CPS (as defined in the Initial Order) is hereby empowered and authorized,

but not required, on and after the Closing to take such additional actions as the Applicants or the Monitor, as applicable, considers necessary or desirable to assist (i) the Applicants in connection with the administration of these proceedings and (ii) the Monitor in performing the Monitor's functions and fulfilling its obligations under this Order, any other Order of this Honourable Court or in connection with the Transition Services Agreement.

11. THIS COURT ORDERS that the CPS shall continue to be paid its fees, expenses and any other amounts payable to the CPS under and pursuant to the CPS Engagement Letter after Closing until it is no longer necessary or desirable for the CPS to provide the assistance to the Applicants and Monitor as set out in this Order. Nothing in Order shall derogate from the protections afforded to the CPS by the Initial Order.

#### **AMENDED AND RESTATED VESTING AND APPROVAL ORDER**

12. THIS COURT ORDERS that the Canadian Vesting and Approval Order dated June 21, 2012 is hereby amended and restated in the form attached as **Schedule "1"** hereto.

#### **ADDITIONAL PROVISIONS**

13. THIS COURT ORDERS that the Fifth Report of the Monitor and the activities described therein are hereby approved.

14. THIS COURT ORDERS that the Applicants, the Purchaser or the Monitor may apply to this Honourable Court for advice and direction, or to seek relief in respect of, any matters arising from or under this Order.

15. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the United States Bankruptcy Court for the District of Delaware, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Monitor and its agents in carrying out the terms of this Order.

16. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

July 12, 2012

A handwritten signature in dark ink, appearing to read "J. Spivak", is written over a horizontal line.

Spivak, J.

CERTIFIED A TRUE COPY

  
DEPUTY REGISTRAR

## **SCHEDULE "A" - Additional Applicants**

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

**THE QUEEN'S BENCH**  
Winnipeg Centre

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

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

(collectively, the "Applicants")

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

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**AMENDED AND RESTATED CANADIAN VESTING AND APPROVAL ORDER**  
DATE OF HEARING: THURSDAY, JUNE 21, 2012 AT 10 A.M.  
BEFORE THE HONOURABLE MADAM JUSTICE SPIVAK

---

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File No.: 1103500

**THE QUEEN'S BENCH**  
**Winnipeg Centre**

THE HONOURABLE MADAM	)	THURSDAY, THE 21 <sup>st</sup>
	)	
JUSTICE SPIVAK	)	DAY OF JUNE, 2012

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

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

(collectively, the "**Applicants**")

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

**AMENDED AND RESTATED CANADIAN VESTING AND APPROVAL ORDER**

THIS MOTION, made by the Applicants for an order, among other things, approving the sale transaction (the "**Transaction**") contemplated by the Asset Purchase Agreement (the "**Asset Purchase Agreement**") between the Applicants and Glacier Valley Ice Company, L.P. (California) (together, the "**Vendors**"), as vendors, and H.I.G. Zamboni, LLC (now known as Arctic Glacier LLC), as purchaser, made as of June 7, 2012; vesting the Vendors' right, title and interest in and to the assets described in the Asset Purchase Agreement (the "**Assets**"), to Arctic Glacier LLC, Arctic Glacier Canada Inc. and Arctic Glacier U.S.A., Inc. (collectively, the "**Purchaser**"); and, extending the Stay Period defined in paragraph 30 of the Initial Order of the Honourable Madam Justice Spivak dated February 22, 2012 (the "**Stay Period**"), was heard this day at the Law Courts Building at 408 York Avenue, in The City of Winnipeg, in the Province of Manitoba.

ON READING the Affidavit of Keith McMahon sworn June 13, 2012 (the "**Affidavit**"), and the Fourth Report of Alvarez & Marsal Canada Inc. (the "**Monitor**") dated June 15, 2012 (the "**Fourth Report**"), and on hearing the submissions of counsel for the Monitor, the Applicants, the Purchaser, the Arctic Lenders, TD Bank and the US Direct Purchaser Antitrust Settlement Class, counsel for the Trustees of Arctic Glacier Income Fund also appearing, counsel for Centerbridge Partners L.P. appearing on a watching brief, representatives of Talamod Master Fund, L.P. and TD Securities Inc. also present in person or by telephone, and no one appearing for any other person, including the U.S. Department of Justice Antitrust Division and parties to Assigned Contracts that are being assigned pursuant to this Order, although properly served as appears from the Affidavit of Corrine Smorhay and the Affidavit of Kelly Peters, both sworn June 20, 2012, both filed:

1. THIS COURT ORDERS that all capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Asset Purchase Agreement.

#### **SERVICE**

2. THIS COURT ORDERS that the time for service of the Notice of Motion, the Affidavit, the Fourth Report and the supporting materials is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

#### **SALE TRANSACTION**

3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Asset Purchase Agreement by the Vendors is hereby authorized and approved, with such minor amendments as the Vendors may deem necessary. The Vendors are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Assets to the Purchaser or such other person(s) as the Purchaser may direct and the Monitor may agree.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule "B" hereto (the "**Monitor's Certificate**");

- (a) all of the Vendors' right, title, benefit and interest in and to the Assets other than the Canadian Assets (as herein defined) (the "**U.S. Assets**"), including, without limitation, the Vendors' rights, title and interest in and to any applicable Assigned Contracts, including all leases of real property, shall vest, without further instrument of transfer or assignment, absolutely in Arctic Glacier U.S.A., Inc. or such other person(s) as the Purchaser may direct and the Monitor may agree (provided that no agreement will be required if such transfer is to an Affiliate that agrees to be jointly and severally liable with the Purchaser), free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, pledges, options, warrants, trusts or deemed trusts (whether contractual, statutory, or otherwise), encumbrances, obligations, liabilities, demands, guarantees, restrictions, contractual commitments, rights, including without limitation, rights of first refusal and rights of set-off, liens, executions, levies, penalties, charges, or other financial or monetary claims, adverse claims, or rights of use, puts or forced sales provisions exercisable as a consequence of or arising from closing of the Transaction, whether arising prior to or subsequent to the commencement of these CCAA Proceedings, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured, legal, equitable, possessory or otherwise, actual or threatened civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, complaint, suit, investigation, dispute, petition or proceeding by or before any Governmental Authority or person at law or in equity whether imposed by agreement, understanding, law, equity or otherwise, and any claim or demand resulting therefrom including but not limited to Antitrust proceedings commenced by the U.S. Department of Justice and various State's Attorney Generals (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Spivak dated February 22, 2012 and any subsequent charges created by the Court (the "**Court Charges**"); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Manitoba) or any other personal property registry system; (iii) Excluded Liabilities as defined in the Asset Purchase Agreement; and (iv) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D") and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the U.S. Assets are hereby released, extinguished, expunged and discharged as against the U.S. Assets; and
- (b) all of Arctic Glacier Inc.'s right, title, benefit and interest in and to the Assets (the "**Canadian Assets**"), including, without limitation, the Vendors' rights, title and interest in and to any applicable Assigned Contracts, including all leases of real property, shall vest, without further instrument of transfer or assignment, absolutely in Arctic Glacier Canada Inc. or such other person(s) as the Purchaser may direct and the Monitor may agree (provided that no agreement will be required if such transfer is to an Affiliate that agrees to be jointly and severally liable with the Purchaser), free and clear of and from any and all Claims including, without limiting the generality of the foregoing: (i) any Court Charges; (ii) all charges, security interests or claims evidenced by registrations pursuant to



the Personal Property Security Act (Manitoba) or any other personal property registry system; (iii) Excluded Liabilities as defined in the Asset Purchase Agreement; and (iv) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D") and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Canadian Assets are hereby released, extinguished, expunged and discharged as against the Canadian Assets.

5. THIS COURT ORDERS that upon the registration in the applicable land registry office or land titles office of a Transfer/Deed of Land or equivalent document, or of an application for registration of this vesting order in the applicable prescribed form, the applicable land registrar or equivalent official is hereby directed to enter the applicable Purchaser (or such other person(s) as the Purchaser may direct and the Monitor may agree) (provided that no agreement will be required if such transfer is to an Affiliate that agrees to be jointly and severally liable with the Purchaser) as the owner of the subject real property in fee simple, and is hereby directed to delete and expunge from title to the real property any and all Claims and Encumbrances, including, without limitation, all of the Claims and Encumbrances listed in Schedule "C" hereto.

6. THIS COURT ORDERS that upon delivery of the Monitor's Certificate all of the rights and obligations of the Vendors under the Assigned Contracts (as defined in the Asset Purchase Agreement) shall be assigned to the applicable Purchaser or such other person(s) as the Purchaser may direct and the Monitor may agree (provided that no agreement will be required if such transfer is to an Affiliate that agrees to be jointly and severally liable with the Purchaser) (the "Assignee") pursuant to section 2.12 of the Asset Purchase Agreement and pursuant to section 11.3 of the CCAA and remain in full force and effect for the benefit of the Purchaser in accordance with their respective terms.

7. THIS COURT ORDERS that the assignment of the rights and obligations of the Vendors under the Assigned Contracts to the Assignee pursuant to section 2.12 of the Asset Purchase Agreement and pursuant to this order is valid and binding upon all of the counterparties to the Assigned Contracts, without further documentation, as if the Assignee was a party to the Assigned Contracts, notwithstanding any restriction, condition or prohibition contained in any such Assigned Contracts relating to the assignment thereof, including any provision requiring the consent of any party to the assignment.

8. THIS COURT ORDERS that each counterparty to the Assigned Contracts is prohibited from exercising any right or remedy under the Assigned Contracts by reason of any defaults thereunder arising from these CCAA proceedings or the insolvency of the Vendors, or any failure of the Vendors to perform a non-monetary obligation under the Assigned Contracts, or as a result of any actions taken pursuant to or as a result of the Asset Purchase Agreement. All notices of default and demands given in connection with any such defaults under, or non-compliance with the Assigned Contracts shall be deemed to have been rescinded and shall be of no further force or effect.

9. THIS COURT ORDERS that as a condition of the closing of the Transaction, all existing monetary defaults in relation to the Assigned Contracts, other than those arising by reason of the Vendors' insolvency, the commencement of these CCAA Proceedings, or the Vendors' failure to perform a non-monetary obligation, shall be paid in accordance with section 2.12 of the Asset Purchase Agreement.

10. THIS COURT ORDERS that notwithstanding anything contained in this order, nothing shall derogate from the obligations of the Purchaser (or such other person(s) as the Purchaser may direct and the Monitor may agree) (provided that no agreement will be required if such transfer is to an Affiliate that agrees to be jointly and severally liable with the Purchaser) to assume the Assumed Liabilities, including the Assumed Accounts Payable, and to perform its obligations under the Assigned Contracts, as set out the Asset Purchase Agreement and the Designated Purchaser Agreement.

11. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Assets shall stand in the place and stead of the Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Assets with the same priority as they had with respect to the Assets immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

12. THIS COURT ORDERS that the Monitor shall, in accordance with the provisions of the SISF (as defined in the Affidavit), be authorized and directed to pay to the Arctic Lenders (as defined in the Asset Purchase Agreement) from the net proceeds of the sale of the Assets an

amount sufficient to pay the Lender Claims (as defined in the SISP and as calculated on the closing of the Transaction) in full and in cash, as specified in a pay-out letter to be provided by the Arctic Lenders on or before the closing of the Transaction. Such payment shall be made concurrently with, and as a condition precedent to, the closing of the Transaction. The balance of the net proceeds of the sale of the Assets shall be held by the Monitor in accordance with the terms hereof or any further order of the Court; provided that the Monitor may pay any amounts owing from time to time to persons who are entitled to the benefit of a Court Charge.

13. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* and any equivalent legislation in any other jurisdiction applicable, the Vendors are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Vendors' records pertaining to the Vendors' past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendors.

15. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of and of the Vendors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of and of the Vendors;

the vesting of the Assets in the Purchaser (or such other person(s) as the Purchaser may direct and the Monitor may agree) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Vendors and shall not be void or voidable by creditors of the Vendors, nor shall it constitute nor be deemed to be a settlement, fraudulent preference,

assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

16. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario) and any equivalent legislation in any other jurisdiction in which all or any part of the Assets are located.

17. THIS COURT ORDERS AND DECLARES that nothing in this Order or the Asset Purchase Agreement discharges, releases, or precludes any environmental liability under United States law to the United States or any department, agency, or instrumentality thereof (each, a "U.S. Governmental Unit") of any entity based on its ownership or operation after the Time of Closing (as defined in the Asset Purchase Agreement) of real property. Nor shall anything in this Order enjoin or otherwise bar a U.S. Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence.

18. THIS COURT ORDERS that any interested party served with notice of this motion after Friday, June 15, 2012, including those additional parties identified by the Purchaser as parties to receive service after the issuance of this Order, may apply to this Court by notice of motion served on or before July 3, 2012 for hearing on July 12, 2012 to vary or amend this Order other than paragraph 12 hereof. Service on such parties in such manner is hereby validated. If no such application is brought on or before July 3, 2012, this Order shall be deemed effective, nunc pro tunc, and without such further right of comeback, as against such parties.

#### **STAY EXTENSION**

19. THIS COURT ORDERS that the Stay Period is hereby extended until and including September 14, 2012.

#### **MONITOR'S REPORT AND ACTIVITIES**

20. THIS COURT ORDERS that the Third Report of the Monitor dated May 14, 2012 and the Fourth Report and the activities described therein are hereby approved.

**SEALING**

21. THIS COURT ORDERS that the Confidential Appendix to the Fourth Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

22. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the United States Bankruptcy Court for the District of Delaware, to give effect to this Order and to assist the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

23. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

June 21, 2012

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## **SCHEDULE "A" - Additional Applicants**

Arctic Glacier California Inc.

Arctic Glacier Grayling Inc.

Arctic Glacier Lansing Inc.

Arctic Glacier Michigan Inc.

Arctic Glacier Minnesota Inc.

Arctic Glacier Nebraska Inc.

Arctic Glacier Newburgh Inc.

Arctic Glacier New York Inc.

Arctic Glacier Oregon Inc.

Arctic Glacier Party Time Inc.

Arctic Glacier Pennsylvania Inc.

Arctic Glacier Rochester Inc.

Arctic Glacier Services Inc.

Arctic Glacier Texas Inc.

Arctic Glacier Vernon Inc.

Arctic Glacier Wisconsin Inc.

Diamond Ice Cube Company Inc.

Diamond Newport Corporation

Glacier Ice Company, Inc.

Ice Perfection Systems Inc.

ICESurance Inc.

Jack Frost Ice Service, Inc.

Knowlton Enterprises, Inc.

Mountain Water Ice Company

R&K Trucking, Inc.

Winkler Lucas Ice and Fuel Company

Wonderland Ice, Inc.

**Schedule B – Form of Monitor’s Certificate**

**THE QUEEN’S BENCH**  
**Winnipeg Centre**

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

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

(collectively, the “**Applicants**”)

**MONITOR’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Madam Justice Spivak of the Manitoba Court of Queen’s Bench (the “**Court**”) dated February 22, 2012, Alvarez & Marsal Canada Inc. was appointed as the monitor (the “**Monitor**”) in the Applicants’ proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

B. Pursuant to an Order of the Court dated June 21, 2012 (the “**Canadian Vesting and Approval Order**”), the Court approved an asset purchase agreement made as of June 7, 2012 (the “**Asset Purchase Agreement**”) between the Applicants and Glacier Valley Ice Company, L.P. (California) (together, the “**Vendors**”), as vendors, and H.I.G. Zamboni, LLC (now known as Arctic Glacier LLC), and provided for the vesting of all of the Vendors’ right, title and interest in and to the Assets described in the Asset Purchase Agreement, including, without limitation, the Vendors’ rights, title and interest in and to any Assigned Contracts (as defined therein), including all leases of real property in Arctic Glacier LLC, Arctic Glacier Canada Inc. and Arctic Glacier U.S.A., Inc. (collectively the “**Purchaser**”), which vesting is to be effective with respect to the Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the

payment by the Purchaser of the Purchase Price for the Assets; (ii) that the conditions to Closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Vendors and the Purchaser, respectively; and (iii) the Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Asset Purchase Agreement.

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Vendors have received the Purchase Price for the Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;
2. The conditions to Closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Vendors and the Purchaser, respectively; and
3. The Transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**Alvarez & Marsal Canada Inc., in its capacity  
as Monitor, and not in its personal or  
corporate capacity**

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

Name:

Title:



**Schedule C – Claims to be deleted and expunged**

**REAL PROPERTY ENCUMBRANCES TO BE DISCHARGED**

**A. OWNED PROPERTY**

**1. 12132 & 12136 - 121 A Street, Edmonton, Alberta, T5L 0A4**

**(a) Title No.:** 012 170 358

**Legal Description:** Plan RN64, Block 24, Lot 8 excepting thereout the Westerly 10 feet throughout of the said lot, excepting thereout all mines and minerals.

**Municipality:** City of Edmonton

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

Registration No.	Date	Instrument Type/ Description	From/By
992 255 839	27/08/1999	Mortgage	Montreal Trust Company

**(b) Title No.:** 012 170 700

**Legal Description:** Plan RN64, Block 24, Lots 9 and 10 excepting thereout the most Westerly 10 feet in uniform width throughout said lots, taken for lane, as shown on Road Plan 2199NY excepting thereout all mines and minerals.

**Municipality:** City of Edmonton

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

Registration No.	Date	Instrument Type/ Description	From/By
992 255 839	27/08/1999	Mortgage	Montreal Trust Company

**2. 412 - 41 Avenue N.E. Calgary, Alberta, T2E 2N3**

**(a) Title No.:** 981 406 325

**Legal Description:** Plan Calgary 7410938, Block 13, that portion of Lot "A", which lies to the west of the easterly Fifty Four and Thirty Hundredths (54.30) metres in perpendicular width throughout containing 0.203 hectare more or less, excepting thereout all mines and minerals

**Municipality:** City of Calgary

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

Registration No.	Date	Instrument Type/ Description	From/By
991 250 891	31/08/1999	Mortgage	Montreal Trust Company

**3. 625 Henry Avenue, Winnipeg, Manitoba, R3A 0B1**

**(a) Winnipeg Land Titles Office Title No.: 2028565/1**

**Legal Description:** Parcels A to E Plan 42917 WLTO

Said Parcel A being together with a right-of-way for all purposes and as appurtenant to the land above described over and upon Parcel 2 Plan 2547 WLTO in RL 35 Parish of St. John.

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

Registration No.	Date	Instrument Type/ Description	From/By
2410597/1	1999/08/25	Mortgage	Montreal Trust Company

**(b) Winnipeg Land Titles Office Title No.: 2030254/1**

**Legal Description:** Firstly: Lot 3 and all those portions of Lots 1 and 2 Block 41 Plan No. 331 WLTO (W Div) lying to the NW of those portions of said Lots 1 and 2 shewn as Parcel 2 Plan No. 2547 WLTO Lot 35 Parish of St. John

Secondly: All those portions of said Lots 1 and 2 shewn as Parcel 2 on said Plan No. 2547 WLTO subject to a right-of-way for all purpose and as appurtenant to that portion of said Lot 1, lying to the SE of said Parcel 2 and appurtenant to Block 7 Plan 94 WLTO (W Div) over and upon the whole of said Parcel 2.

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

Registration No.	Date	Instrument Type/ Description	From/By
3075752/1	2004/12/10	Mortgage	Computershare Trust Company of Canada

**(c) Winnipeg Land Titles Office Title No.: 2030253/1**

**Legal Description:** ELY 20 feet of Lot 4 Block 41 Plan 331 WLTO (W Div) in RL 35 Parish of St John.

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

Registration No.	Date	Instrument Type/ Description	From/By
3075752/1	2004/12/10	Mortgage	Computershare Trust Company of Canada

**4. 200 Statesman Drive, Mississauga, Ontario, L5S 1X7**

**(a) Land Registry Office #43, Parcel Register for Property Identifier: 14029-1139 (LT)**

**Legal Description:** Parcel Block 33-1, Section 43M-957; Block 33, Plan 43M957, together with Part Lot 11, Concession 1, East of Hurontario Street, Part 4, Plan 43R16717 as in TT81032; subject to LT1098087 Mississauga

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

Registration No.	Date	Instrument Type	Description
LT1098091Z	1990/02/12	Application to Annex Restrictive Covenants	Lostrack Corp.
LT1979090	1999/08/23	Charge	From 1179554 Ontario Inc. to Montreal Trust Company
PR180019	2001/12/14	Transfer	From 1394332 Ontario Inc. to The Arctic Group Inc.
PR255417	2002/06/04	APL Ch Name Owner	From The Arctic Group Inc. to Arctic Glacier Inc.

**5. 6 McKinsty Street, Hamilton, Ontario, L8L 6C1**

**(a) Land Registry Office #62, Parcel Register for Property Identifier: 17192-0005 (LT)**

**Legal Description:** Part Reserve 3, Survey 32, as in AB319263; Part Reserve 3, Survey 32, Part 1, 62R9795; Part Reserve 3, Survey 32, Part 2, 62R7060, except Part 1, 62R7413; Reserving Minerals in CD306923; together with access over Part 1 on 62R7413, as in CD305159; Hamilton

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

Registration No.	Date	Instrument Type	Description
LT566928	1999/08/23	Deed Trust Mort	From 1334202 Ontario Inc. to Montreal Trust Company
WE70318	2001/12/13	Transfer	From 1394332 Ontario Inc. to The Arctic Group Inc.
WE98279	2002/06/04	APL Ch Name Owner	From The Arctic Group Inc. to Arctic Glacier Inc.

**6. 745 Park Avenue W., Chatham, Ontario, N7M 1X3**

**(a) Land Registry Office #24, Parcel Register for Property Identifier: 00527-0044 (LT)**

**Legal Description:** Part of Lot 20, Concession 1 Eastern Boundary Raleigh as in 590170, except Part 1, 24R6402; together with 590170; subject to 495938, 495939; Chatham-Kent

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

Registration No.	Date	Instrument Type	Description
593547	1999/08/23	Deed Trust Mort	From 1334202 Ontario Inc. to Montreal Trust Company
595536	1999/11/04	Deed Trust Mort	From 1334202 Ontario Inc. to Montreal Trust Company
612238	2001/12/12	Transfer	From 1394332 Ontario Inc. to The Arctic Group Inc.
CK43065	2010/02/18	APL Ch Name Owner	From The Arctic Group Inc. to Arctic Glacier Inc.
CK43433	2010/03/03	APL (General)	Arctic Glacier Inc.

**7. 2655 – 2677 Reading Street, Montreal, Quebec, H3K 1P6**

- (a) **Description:** An immovable property fronting on Reading Street, in the City of Montreal, Province of Quebec, known and designated as lot number ONE MILLION THREE HUNDRED AND EIGHTY-TWO THOUSAND THREE HUNDRED AND FIFTY-FIVE (1 382 355) of the Cadastre of Quebec, Registration Division of Montreal.

With the building thereon erected bearing civic numbers 2655, 2675 and 2677 Reading Street, City of Montreal, Province of Quebec.

**Registered Owner:** Arctic Glacier Inc. Deed of Transfer registered under number 5 293 999 on October 12, 2001.

**Hypothecs and Encumbrances:**

- i. Deed of Hypothec and Issue of Bonds executed before Mtre. Jean Mousseau, Notary, on August 19, 1999 and registered on August 20, 1999 under number 5 118 118 by 3149030 Canada Limited in favour of Montreal Trust Company for an amount of \$ 500,000,000.00 bearing interest at the rate of 25% per annum and an additional hypothec in the amount of \$100,000,000.
- ii. Deed of Hypothec and Issue of Bonds executed before Mtre. Steve Collins, Notary, on March 22, 2002 and registered on the same day under number 5 331 878 by Arctic Glacier Inc. in favour of Computershare Trust Company of Canada for an amount of \$ 500,000,000.00 bearing interest at the rate of 25% per annum.
- iii. Supplemental Deed of Hypothec executed before Me Tamar Chamelian, Notary, on February 8, 2010 and registered on the same day under number 16 919 886 by Arctic Glacier Inc. in favour of Computershare Trust Company of Canada for an amount of \$ 500,000,000.00 bearing interest at the rate of 25% per annum.

**8. 2760 Reading Street, Montreal, Quebec, H3K 1P6**

- (a) **Description:** An immovable property fronting on Reading Street, in the City of Montreal, Province of Québec, known and designated as lot number ONE MILLION THREE HUNDRED AND EIGHTY-TWO THOUSAND THREE HUNDRED AND THIRTEEN (1 382 313) of the Cadastre of Québec, Registration Division of Montreal.

With a building thereon erected bearing civic number 2760 Reading Street, City of Montreal, Province of Québec.

**Registered Owner:** Arctic Glacier Inc. Deed of Transfer registered under number 5 293 999 on October 12, 2001.

**Hypothecs and Encumbrances:**

- i. Deed of Hypothec and Issue of Bonds executed before Mtre. Jean Mousseau, Notary, on August 19, 1999 and registered on August 20, 1999 under number 5 118 118 by 3149030 Canada Limited in favour of Montreal Trust Company for an amount of \$ 500,000,000.00 bearing interest at the rate of 25% per annum and an additional hypothec in the amount of \$100,000,000.
- ii. Deed of Hypothec and Issue of Bonds executed before Mtre. Steve Collins, Notary, on March 22, 2002 and registered on the same day under number 5 331 878 by Arctic Glacier Inc. in favour of Computershare Trust Company of Canada for an amount of \$ 500,000,000.00 bearing interest at the rate of 25% per annum.
- iii. Supplemental Deed of Hypothec executed before Me Tamar Chamelian, Notary, on February 8, 2010 and registered on the same day under number 16 919 886 by Arctic Glacier Inc. in favour of Computershare Trust Company of Canada for an amount of \$ 500,000,000.00 bearing interest at the rate of 25% per annum.

## B. LEASED PROPERTY

### 1. 9679 (also known as 9669) 186<sup>th</sup> Street, Surrey, British Columbia, V4N 3N8

#### (a) New Westminster Land Title Office Title No.: AA60615E

**Legal Description:** Parcel Identifier: 007-144-431. Lot A (AA60615) District Lot 99 Group 2 New Westminster District Plan 54762.

**Registered Owner:** Shogun Compu-Time Ltd.

#### Encumbrances:

Registration No.	Date	Instrument Type/ Description	From/By
BT97364 (of Lease BT97363)	2002-03-25	Mortgage, transferred to BT130238	Computershare Trust Company of Canada (Inc. No. A52313)

### 2. 1625 McAra Street, Regina, Saskatchewan, S4N 6H4

#### (a) Title No.: 139229321

**Legal Description:** Lot K Blk/Par 96 Plan No. 87R08061 Extension 0 as described on Certificate of Title 87R08068.

**Registered Owners:** Cynthia Hughes, James Hughes, Darlene Panchuk and Clayton Panchuk

#### Encumbrances:

Interest No./ Int. Register No.	Date	Instrument Type/ Description	From/By
151304183 100851612	26 May 1998	Personal Property Security Interest	RoyNat
151304172 100851601	26 Aug 1999	Personal Property Security Interest	Montreal Trust Company
153713718 117035883	17 Dec 2010	Mortgage of Lease	Arctic Glacier Inc. to Computershare Trust Company of Canada
153736768 117041914	21 Dec 2010	Mortgage of Lease	Arctic Glacier Inc. to Computershare Trust Company of Canada

#### (b) Title No.: 139229376

**Legal Description:** Lot K Blk/Par 96 Plan No. 87R08061 Extension 0 as described on Certificate of Title 87R08068.

**Registered Owners:** Cynthia Hughes, James Hughes, Darlene Panchuk and Clayton Panchuk

#### Encumbrances:

<b>Interest No./ Int. Register No.</b>	<b>Date</b>	<b>Instrument Type/ Description</b>	<b>From/By</b>
151304251 100851612	26 May 1998	Personal Property Security Interest	RoyNat
151304240 100851601	26 Aug 1999	Personal Property Security Interest	Montreal Trust Company
153713729 117035883	17 Dec 2010	Mortgage of Lease	Arctic Glacier Inc. to Computershare Trust Company of Canada
153736779 117041914	21 Dec 2010	Mortgage of Lease	Arctic Glacier Inc. to Computershare Trust Company of Canada

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**(unaffected by the Vesting Order)**

1. Reservations, limitations, provisos and conditions expressed in any original grant from any Governmental Authority.
2. Liens for Taxes, local improvements, assessments or governmental charges or levies not at the time due or delinquent.
3. Applicable municipal by-laws, development agreements, subdivision agreements, site plan agreements, other agreements, building and other restrictions, easements, servitudes, rights of way and licences affecting the use or value of the Lands which do not materially impair the use or value of the Lands affected thereby as presently used.
4. Defects or irregularities in title to the Lands affecting the use or value of the Lands which do not materially impair the use or value of the Lands affected thereby as presently used.
5. Any matters which might be revealed by (i) an up-to-date survey of any Lands; or (ii) an inspection and/or site investigation of any owned Lands together with any errors in the survey, which do not materially impair the use or value of the Lands affected thereby as presently used.
6. Any rights of expropriation, access or use, or any other similar rights conferred or reserved by or in any statute of Canada or any province or territory thereof or of the United States or any state, jurisdiction, territory or possession thereof.
7. Undetermined, inchoate or statutory Liens (including the Liens of public utilities, workers, suppliers of materials, builders, contractors, architects and unpaid vendors of moveable property) incidental to the current operation of the Lands which relate to obligations not yet due or delinquent and which have not been registered in accordance with Applicable Law.

# Appendix “C”



**THE QUEEN'S BENCH**  
**Winnipeg Centre**

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

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

(collectively, the "APPLICANTS")

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CERTIFIED COPY  
of  
CLAIMS PROCEDURE ORDER

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**THE QUEEN'S BENCH**  
**Winnipeg Centre**

THE HONOURABLE MADAM	)	WEDNESDAY, THE 5 <sup>th</sup> DAY
	)	
JUSTICE SPIVAK	)	OF SEPTEMBER, 2012.
	)	

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

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

CERTIFIED COPY      (collectively, the "APPLICANTS")  
of  
**CLAIMS PROCEDURE ORDER**

THIS MOTION, made by Alvarez & Marsal Canada Inc. in its capacity as monitor of the Applicants (the "**Monitor**") for an order establishing a claims process to identify and determine claims of creditors of the Applicants (the "**Claims Process**") was heard this day at the Law Courts Building at 408 York Avenue, in The City of Winnipeg, in the Province of Manitoba.

ON READING the Notice of Motion and the Sixth Report of the Monitor (the "**Sixth Report**"), and on hearing the submissions of counsel for the Monitor, counsel for the Applicants and Glacier Valley Ice Company, L.P. (California) (together, "**Arctic Glacier**" or the "**Arctic Glacier Parties**"), counsel for the Direct Purchaser Claimants (as hereinafter defined), counsel for the Plaintiffs in the Indirect Purchaser Litigation (as hereinafter defined), counsel for the Trustees of the Applicant Arctic Glacier Income Fund, counsel for Desert Mountain Ice LLC, counsel for the Executive Vice-President of Operations for Arctic Glacier, the Chief Process Supervisor and representatives of Talamod Fund LP and Coliseum

Capital Partners LP, also present in person or by telephone, no one appearing for any other party although duly served as appears from the affidavit of service, filed:

### **SERVICE**

1. THIS COURT ORDERS that the time for service of this Motion and the Sixth Report is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.

### **DEFINITIONS AND INTERPRETATION**

2. THIS COURT ORDERS that, for the purposes of this Order establishing a Claims Process for the Creditors of Arctic Glacier (and in addition to terms defined elsewhere herein), the following terms shall have the following meanings ascribed thereto:

**"Administration Charge"** has the meaning given to that term in paragraph 50 of the Initial Order.

**"Asset Purchase Agreement"** means the asset purchase agreement between Arctic Glacier Income Fund et al. and H.I.G. Zamboni, LLC made as of June 7, 2012, as amended.

**"Assumed Liabilities"** means the liabilities the Purchaser assumed, fulfilled, performed and discharged as set out in Section 2.03 of the Asset Purchase Agreement.

**"BIA"** means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

**"Business Day"** means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Winnipeg, Manitoba.

**"Calendar Day"** means a day, including a Saturday, Sunday and any statutory holidays.

**"Canadian Retail Litigation"** means the class actions listed on Schedule "G" to this Order, commenced in Canada.

**"Canadian Retail Litigation Claimants"** means each of the members of the class(es) described in the Canadian Retail Litigation class actions.

**"CCAA"** means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C36, as amended.

**"CCAA Proceedings"** means the proceedings commenced by Arctic Glacier in the Court at Winnipeg under Court File No. CI 12-01-76323.

**"CCAA Service List"** means the service list in the CCAA Proceedings as defined in paragraph 66 of the Initial Order and posted on the Monitor's Website, as amended from time to time.

**"Chapter 15 Cases"** means the proceedings commenced by the Monitor as the foreign representative on behalf of the Applicants on February 22, 2012 in the United States Bankruptcy Court for the District of Delaware under Chapter 15 of title 11 of the *United States Code* under Case No. 12-10605 (KG).

**"Claim"** means any right or claim of any Person, other than an Excluded Claim, but including an Equity Claim, that may be asserted or made in whole or in part against an Arctic Glacier Party, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, by

guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person (including Directors, Officers and Trustees) to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (A) is based in whole or in part on facts prior to the Claims Bar Date, (B) relates to a time period prior to the Claims Bar Date, or (C) is a right or claim of any kind that would be a claim provable in bankruptcy within the meaning of the BIA had the Arctic Glacier Party become bankrupt on the Claims Bar Date.

**"Claimant"** means any Person having a Claim, including a DO&T Indemnity Claim, or a DO&T Claim and includes the transferee or assignee of a Claim, a DO&T Indemnity Claim or a DO&T Claim or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through any such Person.

**"Claimants' Guide to Completing the DO&T Proof of Claim"** means the guide to completing the DO&T Proof of Claim form, in substantially the form attached as Schedule "D-2" hereto.

**"Claimants' Guide to Completing the Proof of Claim"** means the guide to completing the Proof of Claim form, in substantially the form attached as Schedule "C-2" hereto.

**"Claims Bar Date"** means October 31, 2012.

**"Class Claim"** means a Claim that may be proven by a Class Representative in accordance with the terms of this Order.

**"Class Representative"** means, for the purposes of this Order establishing a Claims Process for the Creditors of Arctic Glacier, Dickinson Wright LLP in respect of the Direct Purchaser Claimants, Harrison Pensa LLP in respect of the Canadian Retail Litigation Claimants, and Wild Law Group PLLC in respect of the Indirect Purchaser

Claimants described in the Indirect Purchaser Litigation commenced in the United States, or such other class representative who is acceptable to the Monitor.

**"Court"** means the Court of Queen's Bench of Manitoba.

**"Creditor"** means any Person having a Claim (including a Class Claim), DO&T Claim or a DO&T Indemnity Claim and includes, without limitation, the transferee or assignee of a Claim, DO&T Claim or DO&T Indemnity Claim transferred and recognized as a Creditor in accordance with paragraph 48 hereof or a trustee, executor, liquidator, receiver, receiver and manager or other Person acting on behalf of or through such Person.

**"Creditors' Meeting"** means any meeting of creditors called for the purpose of considering and/or voting in respect of any Plan, if one is filed, to be scheduled pursuant to further order of the Court.

**"Deemed Proven Claims"** means: (i) a Claim in favour of the Direct Purchaser Claimants in the principal amount of US\$10,000,000 plus applicable interest against the Applicants Arctic Glacier Income Fund, Arctic Glacier Inc. and Arctic Glacier International Inc.; and (ii) the DOJ Claim.

**"Direct Purchaser Claimants"** means each of the members of the class(es) described in the statements of claim issued in the Direct Purchaser Litigation.

**"Direct Purchaser Litigation"** means the class actions listed on Schedule "I" to this Order.

**"Direct Purchasers' Advisors' Charge"** has the meaning given to that term in paragraph 4 of the Order of the Honourable Madam Justice Spivak in the CCAA Proceedings on May 15, 2012.

**"Director"** means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of an Arctic Glacier Party.

**"Directors' Charge"** has the meaning given to that term in paragraph 40 of the Initial Order.

**"Dispute Notice"** means a written notice to the Monitor, in substantially the form attached as Appendix "1" to Schedule "F" hereto, delivered to the Monitor by a Person who has received a Notice of Revision or Disallowance, of its intention to dispute such Notice of Revision or Disallowance.

**"DOJ Claim"** means the Claim of the United States against Arctic Glacier International Inc. in the amount of US\$7,032,046.96 as of July 9, 2012, plus interest compounding annually until the date of payment of such Claim at the United States federal post-judgment interest rate of 0.34%, as provided for in the *Stipulation and Order Among the Monitor, Debtors, and the United States Attorney's Office for the Southern District of Ohio Regarding March 2010 Criminal Judgment of Arctic Glacier International Inc.*, dated July 17, 2012, as entered by the U.S. Court in the Chapter 15 Cases.

**"DO&T Claim"** means (i) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors, Officers or Trustees that relates to a Claim for which such Directors, Officers or Trustees are by law liable to pay in their capacity as Directors, Officers or Trustees, or (ii) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors, Officers or Trustees, in that capacity, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal,

equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity from any such Directors, Officers or Trustees or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (A) is based in whole or in part on facts prior to the Claims Bar Date, or (B) relates to a time period prior to the Claims Bar Date, but not including an Excluded Claim.

**"DO&T Indemnity Claim"** means any existing or future right of any Director, Officer or Trustee against an Arctic Glacier Party, which arose or arises as a result of any Person filing a DO&T Proof of Claim in respect of such Director, Officer or Trustee for which such Director, Officer or Trustee is entitled to be indemnified by such Arctic Glacier Party.

**"DO&T Indemnity Claims Bar Date"** has the meaning set out in paragraph 21 hereof.

**"DO&T Indemnity Proof of Claim"** means the indemnity proof of claim in substantially the form attached as Schedule "E" hereto to be completed and filed by a Director, Officer or Trustee setting forth its purported DO&T Indemnity Claim and which shall include all supporting documents in respect of such DO&T Indemnity Claim.

**"DO&T Proof of Claim"** means the proof of claim, in substantially the form attached as Schedule "D" hereto, to be completed and filed by a Person setting forth its DO&T Claim and which shall include all supporting documentation in respect of such DO&T Claim.

**"Equity Claim"** has the meaning set forth in Section 2(1) of the CCAA.

**"Excluded Claim"** means:



- (i) any Claim entitled to the benefit of the Administration Charge, the Inter-Company Balances Charge (as defined in the Initial Order) or the Direct Purchasers' Advisors' Charge;
- (ii) any Claim of an Arctic Glacier Party against another Arctic Glacier Party; and
- (iii) any Claim in respect of Assumed Liabilities.

**"Government Authority"** means a federal, provincial, state, territorial, municipal or other government or government department, agency or authority (including a court of law) having jurisdiction over an Arctic Glacier Party.

**"Indirect Purchaser Claimants"** means each of the members of the putative classes described in the complaints or statements of claim issued in the Indirect Purchaser Litigation.

**"Indirect Purchaser Litigation"** means the putative class actions listed on Schedule "H" to this Order, commenced in the United States.

**"Initial Order"** means the Initial order of the Honourable Madam Justice Spivak made February 22, 2012 in the CCAA Proceedings, as amended, extended, restated or varied from time to time.

**"Monitor's Website"** means [www.alvarezandmarsal.com/arcticglacier](http://www.alvarezandmarsal.com/arcticglacier).

**"Notice of Revision or Disallowance"** means a notice, in substantially the form attached as Schedule "F" hereto, advising a Claimant or a Class Representative, as the case may be, that the Monitor has revised or disallowed all or part of a Claim, Class Claim, DO&T Claim or DO&T Indemnity Claim submitted by such Claimant or Class Representative pursuant to this Order.

**"Notice to Claimants"** means the notice to Claimants for publication in substantially the form attached as Schedule "B" hereto.

**"Officer"** means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of an Arctic Glacier Party.

**"Person"** is to be broadly interpreted and includes any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, Government Authority or any agency, regulatory body, officer or instrumentality thereof or any other entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on their own or in a representative capacity.

**"Plan"** means any proposed plan(s) of compromise or arrangement to be filed by any or all of the Applicants pursuant to the CCAA as amended, supplemented or restated from time to time in accordance with the terms thereof.

**"Proof of Claim"** means the proof of claim in substantially the form attached as Schedule "C" hereto to be completed and filed by a Person setting forth the Claim (including a Class Claim) it is entitled to file and which shall include all supporting documentation in respect of such Claim.

**"Proof of Claim Document Package"** means a document package that includes a copy of the Notice to Claimants, the Proof of Claim form, the DO&T Proof of Claim form, the Claimants' Guide to Completing the Proof of Claim form, the Claimants' Guide to Completing the DO&T Proof of Claim form, and such other materials as the Monitor, in consultation with Arctic Glacier, may consider appropriate or desirable.

**"Proven Claim"** means each of the Deemed Proven Claims and each Claim that has been proven in accordance with this Order.

**"Purchaser"** means Arctic Glacier LLC, formerly known as H.I.G. Zamboni, LLC, and its affiliates Arctic Glacier U.S.A., Inc. and Arctic Glacier Canada Inc.

**"Trustee"** means any Person who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a trustee or *de facto* trustee of the Applicant Arctic Glacier Income Fund, in such capacity.

**"U.S. Court"** means the United States Bankruptcy Court for the District of Delaware having jurisdiction over the Chapter 15 Cases.

3. THIS COURT ORDERS that all references as to time herein shall mean local time in Winnipeg, Manitoba, Canada, and any reference to an event occurring on a Calendar Day or a Business Day shall mean prior to 5:00 p.m. Winnipeg time on such Calendar Day or Business Day unless otherwise indicated herein.

4. THIS COURT ORDERS that all references to the word "including" shall mean "including without limitation", that all references to the singular herein include the plural, the plural include the singular, and that any gender includes all genders.

#### **GENERAL PROVISIONS**

5. THIS COURT ORDERS that the Monitor, in consultation with Arctic Glacier, is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and the time in which they are submitted, and may, where it is satisfied that a Claim, a DO&T Claim or a DO&T Indemnity Claim has been adequately proven, waive strict compliance with the requirements of this Order, including in respect of completion, execution and time of delivery of such forms. Further, the Monitor may request any further documentation from a Person that the Monitor, in consultation with Arctic Glacier, may require in order to enable it to determine the validity of a Claim, a DO&T Claim or a DO&T Indemnity Claim.

6. THIS COURT ORDERS that if any Claim, DO&T Claim or DO&T Indemnity Claim arose in a currency other than Canadian dollars, then the Person making the Claim, DO&T Claim or DO&T Indemnity Claim shall complete its Proof of Claim, DO&T Proof of Claim or DO&T Indemnity Proof of Claim, as applicable, indicating the

amount of the Claim, DO&T Claim or DO&T Indemnity Claim in such currency, rather than in Canadian dollars or any other currency.

7. THIS COURT ORDERS that Claims, DO&T Claims and DO&T Indemnity Claims shall be claimed and paid in the currency in which they are owed and, to the extent that there are insufficient funds to pay a Claim, DO&T Claim and/or DO&T Indemnity Claim in the currency in which it is owed, the Monitor is hereby authorized to convert the currency at the Bank of Canada noon exchange rate on the date of the Initial Order.

8. THIS COURT ORDERS that a Person making a Claim, DO&T Claim or DO&T Indemnity Claim shall complete its Proof of Claim, DO&T Proof of Claim or DO&T Indemnity Proof of Claim, as applicable, indicating the amount of the Claim, DO&T Claim or DO&T Indemnity Claim, including interest calculated to the Claims Bar Date.

9. THIS COURT ORDERS that the form and substance of each of the Notice to Claimants, Proof of Claim, Claimants' Guide to Completing the Proof of Claim, DO&T Proof of Claim, Claimants' Guide to Completing the DO&T Proof of Claim, DO&T Indemnity Proof of Claim, Notice of Revision or Disallowance and the Dispute Notice attached as Appendix "1" thereto, substantially in the forms attached as Schedules "B", "C", "C-2", "D", "D-2", "E" and "F" respectively to this Order are hereby approved. Notwithstanding the foregoing, the Monitor, in consultation with Arctic Glacier, may from time to time make non-substantive changes to such forms as the Monitor, in consultation with Arctic Glacier, considers necessary or advisable.

10. THIS COURT ORDERS that copies of all forms delivered by a Creditor or the Monitor hereunder, as applicable, shall be maintained by the Monitor and, subject to further order of the Court, the relevant Creditor will be entitled to have access thereto by appointment during normal business hours on written request to the Monitor.

11. THIS COURT ORDERS that consultation with the Chief Process Supervisor appointed pursuant to paragraph 25 of the Initial Order (the "CPS") shall satisfy any obligation of the Monitor in this Order to consult with Arctic Glacier and obtaining the

consent of the CPS shall satisfy any obligation of the Monitor in this Order to obtain the consent of Arctic Glacier. The protections provided to the CPS in the Initial Order and/or the Transition Order dated July 12, 2012, shall apply to any activities undertaken by the CPS in accordance with this Order.

#### **MONITOR'S ROLE**

12. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA and under the Initial Order, is hereby directed and empowered to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

13. THIS COURT ORDERS that (i) in carrying out the terms of this Order, the Monitor shall have all of the protections given to it by the CCAA, the Initial Order, other orders in the CCAA Proceeding, and this Order, or as an officer of the Court, including the stay of proceedings in its favour, (ii) the Monitor shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, (iii) the Monitor shall be entitled to rely on the books and records of the Arctic Glacier Parties and any information provided by the Arctic Glacier Parties, all without independent investigation, and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

#### **NOTICE TO CLAIMANTS, DIRECTORS AND OFFICERS**

14. THIS COURT ORDERS that:
- (a) the Monitor shall, no later than two (2) Business Days following the making of this Order, post a copy of the Proof of Claim Document Package on the Monitor's Website;
  - (b) the Monitor shall, no later than five (5) Business Days following the making of this Order, cause the Notice to Claimants to be published in (i) The Globe and Mail newspaper (National Edition) on one such day, (ii) the Wall Street

Journal (National Edition) on one such day, and (iii) the Winnipeg Free Press on one such day;

- (c) the Monitor shall, provided such request is received in writing by the Monitor prior to the Claims Bar Date, deliver, as soon as reasonably possible following receipt of a request therefor, a copy of the Proof of Claim Document Package to any Person requesting such material; and
- (d) the Monitor shall send to any Director, Officer or Trustee named in a DO&T Proof of Claim received on or before the Claims Bar Date a copy of such DO&T Proof of Claim, including copies of any documentation submitted to the Monitor by the Claimant making the DO&T Claim, as soon as practicable.

15. THIS COURT ORDERS that within seven (7) Business Days following the making of this Order, the Monitor shall send a Proof of Claim Document Package to all known Creditors based on the books and records of Arctic Glacier, except that, in respect of Class Claims, the Monitor shall send the Proof of Claim Document Package only to the Class Representative and, in respect of any other putative class actions, the Monitor shall send the Proof of Claim Document Package only to the first listed plaintiff's counsel on the originating process associated with that putative class action.

16. THIS COURT ORDERS that, except as otherwise set out in this Order or any other orders of the Court, neither the Monitor nor any Arctic Glacier Party is under any obligation to send or provide notice to any Person holding a Claim, a DO&T Claim or a DO&T Indemnity Claim, and without limitation, neither the Monitor nor any Arctic Glacier Party shall have any obligation to send or provide notice to any Person having a security interest in a Claim, DO&T Claim or DO&T Indemnity Claim (including the holder of a security interest created by way of a pledge or a security interest created by way of an assignment of a Claim, DO&T Claim or DO&T Indemnity Claim), and all Persons shall be bound by any notices published pursuant to paragraphs 14(a) and 14(b) of this Order regardless of whether or not they received actual notice, and any steps taken

in respect of any Claim, DO&T Claim or DO&T Indemnity Claim in accordance with this Order.

17. THIS COURT ORDERS that the delivery of a Proof of Claim Document Package, Proof of Claim, DO&T Proof of Claim, or DO&T Indemnity Proof of Claim by the Monitor to a Person shall not constitute an admission by the Arctic Glacier Parties or the Monitor of any liability of any Arctic Glacier Party or any Director, Officer or Trustee to any Person.

### **CLAIMS BAR DATE**

#### *Claims and DO&T Claims*

18. THIS COURT ORDERS that Proofs of Claim and DO&T Proofs of Claim shall be filed with the Monitor on or before the Claims Bar Date. For the avoidance of doubt, a Proof of Claim or DO&T Proof of Claim, as applicable, must be filed in respect of every Claim or DO&T Claim, regardless of whether or not a legal proceeding in respect of a Claim or DO&T Claim has been previously commenced.

19. THIS COURT ORDERS that any Person that does not file a Proof of Claim as provided for herein such that the Proof of Claim is received by the Monitor on or before the Claims Bar Date (a) shall be and is hereby forever barred from making or enforcing such Claim against the Arctic Glacier Parties and all such Claims shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such Claim as against any other Person who could claim contribution or indemnity from the Arctic Glacier Parties; (c) shall not be entitled to vote such Claim at any Creditors' Meeting in respect of any Plan or to receive any distribution thereunder in respect of such Claim; and (d) shall not be entitled to any further notice in and shall not be entitled to participate as a Claimant or Creditor in the CCAA Proceedings in respect of such Claim.

20. THIS COURT ORDERS that any Person that does not file a DO&T Proof of Claim as provided for herein such that the DO&T Proof of Claim is received by the Monitor on or before the Claims Bar Date (a) shall be and is hereby forever barred from

making or enforcing such DO&T Claim against any Directors, Officers or Trustees, and all such DO&T Claims shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such DO&T Claim as against any other Person who could claim contribution or indemnity from any Directors, Officers or Trustees; (c) shall not be entitled to receive any distribution in respect of such DO&T Claim; and (d) shall not be entitled to any further notice in and shall not be entitled to participate as a Claimant or Creditor in the CCAA Proceedings in respect of such DO&T Claim.

*DO&T Indemnity Claims*

21. THIS COURT ORDERS that any Director, Officer or Trustee wishing to assert a DO&T Indemnity Claim shall deliver a DO&T Indemnity Proof of Claim to the Monitor so that it is received by no later than fifteen (15) Business Days after the date of deemed receipt of the DO&T Proof of Claim pursuant to paragraph 51 hereof by such Director, Officer or Trustee (with respect to each DO&T Indemnity Claim, the **"DO&T Indemnity Claims Bar Date"**).

22. THIS COURT ORDERS that any Director, Officer or Trustee that does not file a DO&T Indemnity Proof of Claim as provided for herein such that the DO&T Indemnity Proof of Claim is received by the Monitor on or before the applicable DO&T Indemnity Claims Bar Date (a) shall be and is hereby forever barred from making or enforcing such DO&T Indemnity Claim against any Arctic Glacier Party, and such DO&T Indemnity Claim shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such DO&T Indemnity Claim as against any other Person who could claim contribution or indemnity from an Arctic Glacier Party; and (c) shall not be entitled to vote such DO&T Indemnity Claim at any Creditors' Meeting in respect of any Plan or to receive any distribution in respect of such DO&T Indemnity Claim.

*Excluded Claims*

23. THIS COURT ORDERS that Persons with Excluded Claims shall not be required to file a Proof of Claim in this process in respect of such Excluded Claims, unless required to do so by further order of the Court.



### **PROOFS OF CLAIM**

24. THIS COURT ORDERS that each Person shall include any and all Claims it asserts against the Arctic Glacier Parties in a single Proof of Claim.

25. THIS COURT ORDERS that each Person shall include any and all DO&T Claims it asserts against one or more Directors, Officers or Trustees in a single DO&T Proof of Claim.

26. THIS COURT ORDERS that if a Person submits a Proof of Claim and a DO&T Proof of Claim in relation to the same matter, then that Person shall cross-reference the DO&T Proof Claim in the Proof of Claim and the Proof of Claim in the DO&T Proof of Claim.

### **DOJ CLAIM**

27. THIS COURT ORDERS that the Government of the United States shall be deemed to have submitted a Proof of Claim in the amount of and on account of the DOJ Claim, and the Government of the United States does not need to take any further action to prove the DOJ Claim in this Claims Process unless it wishes to do so; provided, however, that this paragraph only addresses the rights of the United States Attorney's Office for the Southern District of Ohio and the U.S. Department of Justice Antitrust Division on account of the DOJ Claim, and nothing contained herein shall excuse any other United States federal or state agency from otherwise complying with the terms of this Order.

### **CLASS CLAIMS**

28. THIS COURT ORDERS that the Class Representative in respect of the Direct Purchaser Litigation shall be deemed to have submitted a Proof of Claim on behalf of the Direct Purchaser Claimants in the principal amount of US\$10,000,000 plus applicable interest against the Applicants Arctic Glacier Income Fund, Arctic Glacier Inc. and Arctic Glacier International Inc. and such Claim shall be a Deemed Proven Claim.

29. THIS COURT ORDERS that the Class Representative in respect of the Canadian Retail Litigation may submit a Proof of Claim in respect of Claims of the Canadian Retail Litigation Claimants in the Canadian Retail Litigation for which they are Class Representative, indicating the amount claimed by such Canadian Retail Litigation Claimants and the basis of such Claim.

30. THIS COURT ORDERS that the Class Representative in respect of the Indirect Purchaser Litigation may submit a Proof of Claim in respect of Claims of the Indirect Purchaser Claimants set out in the Indirect Purchaser Litigation for which they are Class Representative, indicating the amount claimed by such Indirect Purchaser Claimants and the basis of such Claim.

31. THIS COURT ORDERS that, notwithstanding any other provisions of this Order, Canadian Retail Litigation Claimants and Indirect Purchaser Claimants are not required to file individual Proofs of Claim in respect of Claims relating solely to the Class Claims described in the Indirect Purchaser Litigation or Canadian Retail Litigation. However, any Canadian Retail Litigation Claimant or Indirect Purchaser Claimant may file a Proof of Claim to assert her claim individually and, in such event, such Canadian Retail Litigation Claimant or Indirect Purchaser Claimant shall be deemed to have elected not to authorize the Class Representative to include her Claim.

32. THIS COURT ORDERS that:

- (a) nothing contained in this Order shall prejudice the Arctic Glacier Parties' or the Monitor's rights to object to or otherwise oppose, on any and all bases, the validity and/or amount of any Class Claim that may be filed by the Canadian Retail Litigation Claimants or Indirect Purchaser Claimants in the CCAA Proceedings, including on the basis that the class cannot be certified under applicable law or the claim is not otherwise qualified as a Class Claim in the Claims Process established by this Order or further order of this Court;
- (b) nothing contained in this Order, this motion or the evidence submitted in the CCAA Proceedings is an admission or recognition of the Class

Representative's right to represent the Class for any other purpose other than filing a Proof of Claim on behalf of Canadian Retail Litigation Claimants or Indirect Purchaser Claimants and resolving such Claim in accordance with this Order or further order of the Court; and

- (c) this Order is without prejudice to the right of the Canadian Retail Litigation Claimants and Indirect Purchaser Claimants, their Class Representatives or their counsel, with leave of this Court, to seek an order in the Canadian Retail Litigation or Indirect Purchaser Litigation, as applicable, granting rights of representation in these CCAA Proceedings.

#### **REVIEW OF PROOFS OF CLAIM & DO&T PROOFS OF CLAIM**

33. THIS COURT ORDERS that the Monitor, subject to the terms of this Order, shall review all Proofs of Claim and DO&T Proofs of Claim filed, and at any time:

- (a) may request additional information from a Claimant or Class Representative, as the case may be;
- (b) may request that a Claimant or Class Representative, as the case may be, file a revised Proof of Claim or DO&T Proof of Claim, as applicable;
- (c) may, (i) with the consent of the Arctic Glacier Parties and any Person whose liability may be affected or (ii) with Court approval in a further order of the Court and (iii) in respect of a Class Claim, subject to the approval of a court of competent jurisdiction over the Indirect Purchaser Litigation or Canadian Retail Litigation resolve and settle any issue or Claim arising in a Proof of Claim or DO&T Proof of Claim or in respect of a Claim or DO&T Claim; and
- (d) may, in consultation with Arctic Glacier with respect to the Proofs of Claim and the Directors, Officers and Trustees named in the applicable DO&T Proof of Claim with respect to the DO&T Proofs of Claim, as applicable, by

notice in writing, revise or disallow (in whole or in part) any Claim or DO&T Claim.

34. THIS COURT ORDERS that where a Claim or DO&T Claim has been accepted by the Monitor in accordance with this Order, such Claim or DO&T Claim shall constitute such Claimant's Proven Claim.

35. THIS COURT ORDERS that where a Claim or DO&T Claim is revised or disallowed (in whole or in part), the Monitor shall deliver to the Claimant or, in the case of a Class Claim, to the Class Representative, a Notice of Revision or Disallowance, attaching the form of Dispute Notice.

36. THIS COURT ORDERS that where a Claim or DO&T Claim has been revised or disallowed (in whole or in part), the revised or disallowed Claim or DO&T Claim (or revised or disallowed portion thereof) shall not be a Proven Claim until determined otherwise in accordance with the procedures set out in paragraphs 41 to 47 hereof or as otherwise ordered by the Court.

#### **REVIEW OF DO&T INDEMNITY PROOFS OF CLAIM**

37. THIS COURT ORDERS that the Monitor, subject to the terms of this Order, shall review all DO&T Indemnity Proofs of Claim filed, and at any time:

- (a) may request additional information from a Director, Officer or Trustee;
- (b) may request that a Director, Officer or Trustee file a revised DO&T Indemnity Proof of Claim;
- (c) may attempt to resolve and settle any issue or Claim arising in a DO&T Indemnity Proof of Claim or in respect of a DO&T Indemnity Claim;
- (d) may accept (in whole or in part) any DO&T Indemnity Claim; and
- (e) may, by notice in writing, revise or disallow (in whole or in part) any DO&T Indemnity Claim.

38. THIS COURT ORDERS that where a DO&T Indemnity Claim has been accepted by the Monitor in accordance with this Order, such DO&T Indemnity Claim shall constitute such Director, Officer or Trustee's Proven Claim.

39. THIS COURT ORDERS that where a DO&T Indemnity Claim is revised or disallowed (in whole or in part), the Monitor shall deliver to the Director, Officer or Trustee a Notice of Revision or Disallowance, attaching the form of Dispute Notice.

40. THIS COURT ORDERS that where a DO&T Indemnity Claim has been revised or disallowed (in whole or in part), the revised or disallowed DO&T Indemnity Claim (or revised or disallowed portion thereof) shall not be a Proven Claim until determined otherwise in accordance with the procedures set out in paragraphs 41 to 47 hereof or as otherwise ordered by the Court.

#### **DISPUTE NOTICE**

41. THIS COURT ORDERS that a Person who has received a Notice of Revision or Disallowance in respect of a Claim (including a Class Claim), a DO&T Claim or a DO&T Indemnity Claim who intends to dispute such Notice of Revision or Disallowance shall file a Dispute Notice with the Monitor not later than the twenty-first (21<sup>st</sup>) Calendar Day following deemed receipt of the Notice of Revision or Disallowance pursuant to paragraph 51 of this Order. The filing of a Dispute Notice with the Monitor in accordance with this paragraph shall result in such Claim, DO&T Claim or DO&T Indemnity Claim being determined as set out in paragraphs 41 to 47 of this Order.

42. THIS COURT ORDERS that where a Claimant that receives a Notice of Revision or Disallowance fails to file a Dispute Notice with the Monitor within the time period provided therefor in paragraph 41 of this Order, the amount of such Claimant's Claim, DO&T Claim or DO&T Indemnity Claim, as applicable, shall be deemed to be as set out in the Notice of Revision or Disallowance and such amount, if any, shall constitute such Claimant's Proven Claim, and the balance of such Claimant's Claim, DO&T Claim, or DO&T Indemnity Claim, if any, shall be forever barred and extinguished.

**RESOLUTION OF CLAIMS, DO&T CLAIMS AND DO&T INDEMNITY CLAIMS**

43. THIS COURT ORDERS that, as soon as practicable after the delivery of the Dispute Notice in respect of a Claim or DO&T Claim to the Monitor, the Monitor shall attempt to resolve and settle the Claim or DO&T Claim with the Claimant or Class Representative, as applicable, in accordance with paragraph 33 of this Order.

44. THIS COURT ORDERS that as soon as practicable after the delivery of the Dispute Notice in respect of a DO&T Indemnity Claim to the Monitor, the Monitor shall attempt to resolve and settle the purported DO&T Indemnity Claim with the applicable Director, Officer or Trustee, in accordance with paragraph 37 of this Order.

45. THIS COURT ORDERS that in the event that a dispute raised in a Dispute Notice is not settled within a time period or in a manner satisfactory to the Monitor in consultation with the Arctic Glacier Parties and the applicable Claimant, the Monitor shall seek directions from the Court concerning an appropriate process for resolving the dispute.

46. THIS COURT ORDERS that any Claims and related DO&T Claims and/or DO&T Indemnity Claims shall be determined at the same time and in the same proceeding.

47. THIS COURT ORDERS that, notwithstanding any provision of this Order, in the event that a dispute is raised in a Dispute Notice in respect of any Class Claim made on behalf of the Indirect Purchaser Claimants in the Indirect Purchaser Litigation, the Monitor shall appoint a special claims officer for the purpose of determining such dispute, which special claims officer:

- (a) is a lawyer resident and licensed to practice in the United States of America;
- (b) has substantial experience as counsel in U.S. antitrust class actions; and
- (c) is acceptable to each of the Arctic Glacier Parties, the Monitor and the applicable Class Representative, provided that, should the parties fail to agree

on a special claims officer within a reasonable time, the Monitor shall apply for directions pursuant to this Order to appoint a special claims officer with the qualifications set out in subparagraphs (a) and (b).

#### **NOTICE OF TRANSFEREES**

48. THIS COURT ORDERS that neither the Monitor nor the Arctic Glacier Parties shall be obligated to send notice to or otherwise deal with a transferee or assignee of a Claim, DO&T Claim or DO&T Indemnity Claim as the Claimant in respect thereof unless and until (i) actual written notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received by the Monitor, and (ii) the Monitor shall have acknowledged in writing such transfer or assignment, and thereafter such transferee or assignee shall for all purposes hereof constitute the "Claimant" in respect of such Claim, DO&T Claim or DO&T Indemnity Claim. Any such transferee or assignee of a Claim, DO&T Claim or DO&T Indemnity Claim shall be bound by all notices given or steps taken in respect of such Claim, DO&T Claim or DO&T Indemnity Claim in accordance with this Order prior to the written acknowledgement by the Monitor of such transfer or assignment.

49. THIS COURT ORDERS that the transferee or assignee of any Claim, DO&T Claim or DO&T Indemnity Claim (i) shall take the Claim, DO&T Claim or DO&T Indemnity Claim subject to the rights and obligations of the transferor/assignor of the Claim, DO&T Claim or DO&T Indemnity Claim, and subject to the rights of the Arctic Glacier Parties and any Director, Officer or Trustee against any such transferor or assignor, including any rights of set-off which any Arctic Glacier Party, Director, Officer or Trustee had against such transferor or assignor, and (ii) cannot use any transferred or assigned Claim, DO&T Claim or DO&T Indemnity Claim to reduce any amount owing by the transferee or assignee to an Arctic Glacier Party, Director, Officer or Trustee, whether by way of set off, application, merger, consolidation or otherwise.

## **DIRECTIONS**

50. THIS COURT ORDERS that the Monitor, the Arctic Glacier Parties and any Person (but only to the extent such Person may be affected with respect to the issue on which directions are sought) may, at any time, and with such notice as the Court may require, seek directions from the Court with respect to this Order and the claims process set out herein, including the forms attached as Schedules hereto.

## **SERVICE AND NOTICE**

51. THIS COURT ORDERS that the Monitor may, unless otherwise specified by this Order, serve and deliver the Proof of Claim Document Package, the DO&T Indemnity Proof of Claim, the Notice of Revision or Disallowance, and any letters, notices or other documents to Claimants, Directors, Officers, Trustees, or other interested Persons, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to such Persons (with copies to their counsel as appears on the CCAA Service List if applicable) at the address as last shown on the records of the Arctic Glacier Parties or set out in such Person's Proof of Claim, DO&T Proof of Claim or DO&T Indemnity Proof of Claim. Any such service or notice shall be deemed to have been received: (i) if sent by ordinary mail, on the fourth Business Day after mailing; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by electronic transmission by 5:00 p.m. on a Business Day, on such Business Day, and if delivered after 5:00 p.m. or on a day other than on a Business Day, on the following Business Day. Notwithstanding anything to the contrary in this paragraph 51, Notices of Revision or Disallowance shall be sent only by (i) email or facsimile to an address or number or email address that has been provided in writing by the Claimant, Director, Officer or Trustee, or (ii) courier.

52. THIS COURT ORDERS that any notice or other communication (including Proofs of Claim, DO&T Proofs of Claims, DO&T Indemnity Proofs of Claim and Dispute Notices) to be given under this Order by any Person to the Monitor shall be in writing in substantially the form, if any, provided for in this Order and will be



sufficiently given only if delivered by prepaid ordinary mail, prepaid registered mail, courier, personal delivery or electronic transmission addressed to:

Alvarez & Marsal Canada Inc., Arctic Glacier Monitor

Address: Royal Bank Plaza, South Tower  
200 Bay Street

Suite 2900

P.O. Box 22

Toronto, Ontario Canada

M5J 2J1

Fax No.: 416-847-5201

Email: [mmackenzie@alvarezandmarsal.com](mailto:mmackenzie@alvarezandmarsal.com)  
[jnevsky@alvarezandmarsal.com](mailto:jnevsky@alvarezandmarsal.com)

Attention: Melanie MacKenzie and Joshua Nevsky

53. THIS COURT ORDERS that if, during any period during which notices or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary mail and then not received shall not, absent further Order of the Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery or electronic transmission in accordance with this Order.

54. THIS COURT ORDERS that, in the event that this Order is later amended by further order of the Court, the Monitor shall post such further order on the Monitor's Website and such posting shall constitute adequate notice of such amendment.

#### **MISCELLANEOUS**

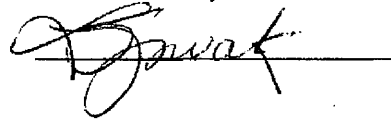
55. THIS COURT ORDERS that nothing in this Order shall constitute or be deemed to constitute an allocation or assignment of Claims, DO&T Claims, DO&T Indemnity Claims, or Excluded Claims into particular affected or unaffected classes for the purpose of a Plan and, for greater certainty, the treatment of Claims, DO&T Claims, DO&T

Indemnity Claims, Excluded Claims or any other claims are to be subject to a Plan or further order of the Court and the class or classes of Creditors for voting and distribution purposes shall be subject to the terms of any proposed Plan or further order of the Court.

56. THIS COURT ORDERS that nothing in this Order shall prejudice the rights and remedies of any Directors, Officers or Trustees or other Persons under the Directors' Charge or any applicable insurance policy or prevent or bar any Person from seeking recourse against or payment from the Arctic Glacier Parties' insurance and any Director's, Officer's and/or Trustee's liability insurance policy or policies that exist to protect or indemnify the Directors, Officers, Trustees and/or other persons, whether such recourse or payment is sought directly by the Person asserting a Claim or a DO&T Claim from the insurer or derivatively through the Director, Officer, Trustee or any Arctic Glacier Party; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Claim or DO&T Claim or portion thereof for which the Person receives payment directly from or confirmation that she is covered by the Arctic Glacier Parties' insurance or any Director's, Officer's or Trustee's liability insurance or other liability insurance policy or policies that exist to protect or indemnify the Directors, Officers, Trustees and/or other Persons shall not be recoverable as against an Arctic Glacier Party or Director, Officer or Trustee, as applicable.

57. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, including the United States Bankruptcy Court for the District of Delaware, or in any other foreign jurisdiction, to give effect to this Order and to assist the Arctic Glacier Parties, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Arctic Glacier Parties and to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign

proceeding, or to assist the Arctic Glacier Parties and the Monitor and their respective agents in carrying out the terms of this Order.

A handwritten signature in cursive script, appearing to read "G. J. G. J.", written over a horizontal line.

CERTIFIED A TRUE COPY

A handwritten signature in cursive script, appearing to read "M. J. M. J.", written over the text "DEPUTY REGISTRAR".  
DEPUTY REGISTRAR

**SCHEDULE "A" - Additional Applicants**

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

**SCHEDULE "B"**

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**NOTICE TO CLAIMANTS  
AGAINST THE ARCTIC GLACIER PARTIES**

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**RE: NOTICE OF CLAIMS PROCESS FOR ARCTIC GLACIER INCOME FUND, ARCTIC GLACIER INC., ARCTIC GLACIER INTERNATIONAL INC., ARCTIC GLACIER CALIFORNIA INC., ARCTIC GLACIER GRAYLING INC., ARCTIC GLACIER LANSING INC., ARCTIC GLACIER MICHIGAN INC., ARCTIC GLACIER MINNESOTA INC., ARCTIC GLACIER NEBRASKA INC., ARCTIC GLACIER NEWBURGH INC., ARCTIC GLACIER NEW YORK INC., ARCTIC GLACIER OREGON INC., ARCTIC GLACIER PARTY TIME INC., ARCTIC GLACIER PENNSYLVANIA INC., ARCTIC GLACIER ROCHESTER INC., ARCTIC GLACIER SERVICES INC., ARCTIC GLACIER TEXAS INC., ARCTIC GLACIER VERNON INC., ARCTIC GLACIER WISCONSIN INC., DIAMOND ICE CUBE COMPANY INC., DIAMOND NEWPORT CORPORATION, GLACIER ICE COMPANY, INC., ICE PERFECTION SYSTEMS INC., ICESURANCE INC., JACK FROST ICE SERVICE, INC., KNOWLTON ENTERPRISES, INC., MOUNTAIN WATER ICE COMPANY, R&K TRUCKING, INC., WINKLER LUCAS ICE AND FUEL COMPANY, WONDERLAND ICE, INC. AND GLACIER VALLEY ICE COMPANY, L.P. (CALIFORNIA) (COLLECTIVELY, THE "ARCTIC GLACIER PARTIES") PURSUANT TO THE COMPANIES' CREDITORS ARRANGEMENT ACT (the "CCAA")**

PLEASE TAKE NOTICE that on September 5, 2012, The Court of Queen's Bench (Winnipeg Centre) issued an order (the "Claims Procedure Order") in the CCAA proceedings of the Arctic Glacier Parties, requiring that all Persons who assert a Claim or Class Claim (capitalized terms used in this notice and not otherwise defined have the meaning given to them in the Claims Procedure Order) against the Arctic Glacier Parties, whether unliquidated, contingent or otherwise, and all Persons who assert a claim against Directors, Officers or Trustees of the Arctic Glacier Parties (as defined in the Claims Procedure Order, a "DO&T Claim"), must file a Proof of Claim (with respect to Claims or Class Claims against the Arctic Glacier Parties) or DO&T Proof of Claim (with respect to DO&T Claims) with Alvarez and Marsal Canada Inc. (the "Monitor") on or before 5:00 p.m. (Winnipeg time) on October 31, 2012 (the "Claims Bar Date"), by sending the Proof of Claim or DO&T Proof of Claim to the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:

**Alvarez & Marsal Canada Inc., Arctic Glacier Monitor**  
**Address:** Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900, P.O. Box 22  
Toronto, ON Canada M5J 2J1  
**Fax No.:** 416-847-5201  
**Email:** mmackenzie@alvarezandmarsal.com,  
jnevsky@alvarezandmarsal.com  
**Attention:** Melanie MacKenzie and Joshua Nevsky

Pursuant to the Claims Procedure Order, Proof of Claim Document Packages, including the form of Proof of Claim and DO&T Proof of Claim will be sent to all known Claimants by mail, on or before September 14, 2012. Claimants may also obtain the Claims Procedure Order and a Proof of Claim Document Package from the website of Alvarez and Marsal Canada Inc. (the "Monitor") at [www.alvarezandmarsal.com/arcticglacier](http://www.alvarezandmarsal.com/arcticglacier), or by contacting the Monitor by telephone (1-866-688-0510).

Only Proofs of Claim and DO&T Proofs of Claim actually received by the Monitor on or before 5:00 p.m. (Winnipeg time) on October 31, 2012 will be considered filed by the Claims Bar Date. It is your responsibility to ensure that the Monitor receives your Proof of Claim or DO&T Proof of Claim by the Claims Bar Date.

**CLAIMS AND DO&T CLAIMS WHICH ARE NOT RECEIVED BY THE APPLICABLE CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.**

Certain Claimants are exempted from the requirement to file a Proof of Claim. Among those Claimants who do not need to file a Proof of Claim are persons whose Claims form the subject matter of the Indirect Purchaser Litigation, the Canadian Retail Litigation or the Direct Purchaser Litigation. Please consult the Claims Procedure Order for additional details.

**DATED** this • day of •, 2012.

**SCHEDULE "C"**

**PROOF OF CLAIM FORM FOR CLAIMS AGAINST  
THE ARCTIC GLACIER PARTIES<sup>1</sup>**

**1. Name of Arctic Glacier Party or Parties (the "Debtor"):**

**Debtor:** \_\_\_\_\_

**2a. Original Claimant (the "Claimant")**

Legal Name of  
Claimant \_\_\_\_\_

Address \_\_\_\_\_

Name of  
Contact \_\_\_\_\_

Title \_\_\_\_\_

Phone  
# \_\_\_\_\_

Fax # \_\_\_\_\_

City \_\_\_\_\_ Prov  
/State \_\_\_\_\_

email \_\_\_\_\_

Postal/Zip  
Code \_\_\_\_\_

**2b. Assignee, if claim has been assigned**

Legal Name of  
Assignee \_\_\_\_\_

Address \_\_\_\_\_

Name of  
Contact \_\_\_\_\_

Phone  
# \_\_\_\_\_

Fax # \_\_\_\_\_

City \_\_\_\_\_ Prov  
/State \_\_\_\_\_

email: \_\_\_\_\_

Postal/Zip  
Code \_\_\_\_\_

<sup>1</sup> Arctic Glacier Income Fund, Arctic Glacier Inc., Arctic Glacier International Inc., Arctic Glacier California Inc., Arctic Glacier Grayling Inc., Arctic Glacier Lansing Inc., Arctic Glacier Michigan Inc., Arctic Glacier Minnesota Inc., Arctic Glacier Nebraska Inc., Arctic Glacier Newburgh Inc., Arctic Glacier New York Inc., Arctic Glacier Oregon Inc., Arctic Glacier Party Time Inc., Arctic Glacier Pennsylvania Inc., Arctic Glacier Rochester Inc., Arctic Glacier Services Inc., Arctic Glacier Texas Inc., Arctic Glacier Vernon Inc., Arctic Glacier Wisconsin Inc., Diamond Ice Cube Company Inc., Diamond Newport Corporation, Glacier Ice Company, Inc., Ice Perfection Systems Inc., Icesurance Inc., Jack Frost Ice Service, Inc., Knowlton Enterprises, Inc., Mountain Water Ice Company, R&K Trucking, Inc., Winkler Lucas Ice And Fuel Company, Wonderland Ice, Inc. and Glacier Valley Ice Company, L.P. (California) (collectively, the "Arctic Glacier Parties").

### 3 Amount of Claim

The Debtor was and still is indebted to the Claimant as follows:

Currency	Amount of Claim (including interest to October 31, 2012)	Unsecured Claim	Secured Claim
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>

### 4. Documentation

Provide all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the affected Debtor to the Claimant and estimated value of such security.

### 5. Certification

I hereby certify that:

1. I am the Claimant or authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant asserts this Claim against the Debtor as set out above.
4. Complete documentation in support of this claim is attached.

Signature: _____	Witness: _____
Name: _____	(signature) _____
Title: _____	(print) _____
Dated at _____ this _____ day of _____, 2012	

### 6. Filing of Claim

This Proof of Claim must be received by the Monitor by 5:00 p.m. (Winnipeg time) on October 31, 2012 by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:

**Alvarez & Marsal Canada Inc., Arctic Glacier Monitor**

**Address:** Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900, P.O. Box 22  
Toronto, ON Canada M5J 2J1

**Attention:** Melanie MacKenzie and Joshua Nevsky

**Email:** mmackenzie@alvarezandmarsal.com, jnevsky@alvarezandmarsal.com

**Fax No.:** 416-847-5201

For more information see [www.alvarezandmarsal.com/arcticglacier](http://www.alvarezandmarsal.com/arcticglacier), or contact the Monitor by telephone (1-866-688-0510)



## **SCHEDULE "C-2"**

### **CLAIMANT'S GUIDE TO COMPLETING THE PROOF OF CLAIM FORM FOR CLAIMS AGAINST THE ARCTIC GLACIER PARTIES<sup>2</sup>**

This Guide has been prepared to assist Claimants in filling out the Proof of Claim form for Claims against the Arctic Glacier Parties. If you have any additional questions regarding completion of the Proof of Claim, please consult the Monitor's website at [www.alvarezandmarsal.com/arcticglacier](http://www.alvarezandmarsal.com/arcticglacier) or contact the Monitor, whose contact information is shown below.

Additional copies of the Proof of Claim may be found at the Monitor's website address noted above.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on September 5, 2012 (the "Claims Procedure Order"), the terms of the Claims Procedure Order will govern.

#### **SECTION 1 – DEBTOR**

1. The full name of the Arctic Glacier Party or Parties against which the Claim is asserted must be listed (see footnote 1 for complete list of Arctic Glacier Parties).

#### **SECTION 2(a) – ORIGINAL CLAIMANT**

2. A separate Proof of Claim must be filed by each legal entity or person asserting a claim against the Debtor.
3. The Claimant shall include any and all Claims it asserts against the Debtor in a single Proof of Claim.
4. The full legal name of the Claimant must be provided.
5. If the Claimant operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
6. If the Claim has been assigned or transferred to another party, Section 2(b) must also be completed.
7. Unless the Claim is assigned or transferred, all future correspondence, notices, etc. regarding the Claim will be directed to the address and contact indicated in this section.
8. Certain Claimants are exempted from the requirement to file a Proof of Claim. Among those Claimants who do not need to file a Proof of Claim are persons whose Claims

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<sup>2</sup> Arctic Glacier Income Fund, Arctic Glacier Inc., Arctic Glacier International Inc., Arctic Glacier California Inc., Arctic Glacier Grayling Inc., Arctic Glacier Lansing Inc., Arctic Glacier Michigan Inc., Arctic Glacier Minnesota Inc., Arctic Glacier Nebraska Inc., Arctic Glacier Newburgh Inc., Arctic Glacier New York Inc., Arctic Glacier Oregon Inc., Arctic Glacier Party Time Inc., Arctic Glacier Pennsylvania Inc., Arctic Glacier Rochester Inc., Arctic Glacier Services Inc., Arctic Glacier Texas Inc., Arctic Glacier Vernon Inc., Arctic Glacier Wisconsin Inc., Diamond Ice Cube Company Inc., Diamond Newport Corporation, Glacier Ice Company, Inc., Ice Perfection Systems Inc., Icesurance Inc., Jack Frost Ice Service, Inc., Knowlton Enterprises, Inc., Mountain Water Ice Company, R&K Trucking, Inc., Winkler Lucas Ice And Fuel Company, Wonderland Ice, Inc. and Glacier Valley Ice Company, L.P. (California) (collectively, the "Arctic Glacier Parties").

form the subject matter of the Indirect Purchaser Litigation, the Canadian Retail Litigation or the Direct Purchaser Litigation. Please consult the Claims Procedure Order for details with respect to these and other exemptions.

#### **SECTION 2(b) – ASSIGNEE**

9. If the Claimant has assigned or otherwise transferred its Claim, then Section 2(b) must be completed.
10. The full legal name of the Assignee must be provided.
11. If the Assignee operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
12. If the Monitor in consultation with the Debtor is satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc. regarding the Claim will be directed to the Assignee at the address and contact indicated in this section.

#### **SECTION 3 - AMOUNT OF CLAIM OF CLAIMANT AGAINST DEBTOR**

13. Indicate the amount the Debtor was and still is indebted to the Claimant in the Amount of Claim column, including interest to October 31, 2012.

##### **Currency**

14. The amount of the Claim must be provided in the currency in which it arose.
15. Indicate the appropriate currency in the Currency column.
16. If the Claim is denominated in multiple currencies, use a separate line to indicate the Claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.
17. If necessary, currency will be converted in accordance with the Claims Procedure Order.

##### **Unsecured Claim**

18. Check this box ONLY if the Claim recorded on that line is an unsecured claim.

##### **Secured Claim**

19. Check this box ONLY if the Claim recorded on that line is a secured claim.

#### **SECTION 4 - DOCUMENTATION**

20. Attach to the Proof of Claim form all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the affected Debtor to the Claimant and estimated value of such security.

## **SECTION 5 - CERTIFICATION**

21. The person signing the Proof of Claim should:
- (a) be the Claimant or authorized representative of the Claimant.
  - (b) have knowledge of all the circumstances connected with this Claim.
  - (c) assert the Claim against the Debtor as set out in the Proof of Claim and certify all supporting documentation is attached.
  - (d) have a witness to its certification.
22. By signing and submitting the Proof of Claim, the Claimant is asserting the claim against the Debtor.

## **SECTION 6 - FILING OF CLAIM**

23. The Proof of Claim must be received by the Monitor by 5:00 p.m. (Winnipeg time) on October 31, 2012 (the "Claims Bar Date") by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:

**Alvarez & Marsal Canada Inc., Arctic Glacier Monitor**  
**Address:** Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900, P.O. Box 22  
Toronto, ON Canada M5J 2J1  
**Attention:** Melanie MacKenzie and Joshua Nevsky  
**Email:** mmackenzie@alvarezandmarsal.com, jnevsky@alvarezandmarsal.com  
**Fax No.:** 416-847-5201

**Failure to file your Proof of Claim so that it is actually received by the Monitor by 5:00 p.m., on the Claims Bar Date will result in your claim being barred and you will be prevented from making or enforcing a Claim against the Arctic Glacier Parties. In addition, you shall not be entitled to further notice in and shall not be entitled to participate as a creditor in the Arctic Glacier CCAA proceedings.**

## SCHEDULE "D"

### PROOF OF CLAIM FORM FOR CLAIMS AGAINST DIRECTORS, OFFICERS OR TRUSTEES OF THE ARCTIC GLACIER PARTIES<sup>3</sup> (the "DO&T Proof of Claim")

This form is to be used only by Claimants asserting a claim against any Directors, Officers and/or Trustees of the Arctic Glacier Parties and NOT for claims against the Arctic Glacier Parties themselves. For claims against the Arctic Glacier Parties, please use the form titled "Proof Of Claim Form For Claims Against the Arctic Glacier Parties", which is available on the Monitor's website at [www.alvarezandmarsal.com/arcticglacier](http://www.alvarezandmarsal.com/arcticglacier).

**1. Name of Arctic Glacier Officer(s), Director(s) and/or Trustee(s) (the "Debtor(s)):**  
**Debtor(s):** \_\_\_\_\_

**2a. Original Claimant (the "Claimant")**

Legal Name of Claimant	_____	Name of Contact	_____
Address	_____	Title	_____
_____	_____	Phone #	_____
_____	_____	Fax #	_____
City	_____	Prov /State	_____
Postal/Zip Code	_____	email	_____

**2b. Assignee, if claim has been assigned**

Legal Name of Assignee	_____	Name of Contact	_____
Address	_____	Phone #	_____
_____	_____	Fax #	_____
City	_____	Prov /State	_____
Postal/Zip Code	_____	email:	_____

<sup>3</sup> Arctic Glacier Income Fund, Arctic Glacier Inc., Arctic Glacier International Inc., Arctic Glacier California Inc., Arctic Glacier Grayling Inc., Arctic Glacier Lansing Inc., Arctic Glacier Michigan Inc., Arctic Glacier Minnesota Inc., Arctic Glacier Nebraska Inc., Arctic Glacier Newburgh Inc., Arctic Glacier New York Inc., Arctic Glacier Oregon Inc., Arctic Glacier Party Time Inc., Arctic Glacier Pennsylvania Inc., Arctic Glacier Rochester Inc., Arctic Glacier Services Inc., Arctic Glacier Texas Inc., Arctic Glacier Vernon Inc., Arctic Glacier Wisconsin Inc., Diamond Ice Cube Company Inc., Diamond Newport Corporation, Glacier Ice Company, Inc., Ice Perfection Systems Inc., Icesurance Inc., Jack Frost Ice Service, Inc., Knowlton Enterprises, Inc., Mountain Water Ice Company, R&K Trucking, Inc., Winkler Lucas Ice And Fuel Company, Wonderland Ice, Inc. And Glacier Valley Ice Company, L.P. (California) (collectively, the "Arctic Glacier Parties").

### 3 Amount of Claim

The Debtor(s) was/were and still is/are indebted to the Claimant as follows:

Name(s) of Director(s), Officers and/or Trustee(s)	Currency	Amount of Claim (including interest to October 31, 2012)	

### 4. Documentation

Provide all particulars of the claim and supporting documentation, including amount and description of transaction(s) or agreement(s) or legal breach(es) giving rise to the Claim.

### 5. Certification

I hereby certify that:

1. I am the Claimant or authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant asserts this Claim against the Debtor(s) as set out above.
4. Complete documentation in support of this claim is attached.

Signature: _____	Witness: _____
Name: _____	(signature) _____
Title: _____	(print) _____
Dated at _____ this _____ day of _____, 2012	

### 6. Filing of Claim

This DO&T Proof of Claim must be received by the Monitor by 5:00 p.m. (Winnipeg time) on October 31, 2012 by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:

**Alvarez & Marsal Canada Inc., Arctic Glacier Monitor**

**Address:** Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900, P.O. Box 22  
Toronto, ON Canada M5J 2J1

**Attention:** Melanie MacKenzie and Joshua Nevksy

**Email:** mmackenzie@alvarezandmarsal.com, jnevsky@alvarezandmarsal.com

**Fax No.:** 416-847-5201

For more information see [www.alvarezandmarsal.com/arcticglacier](http://www.alvarezandmarsal.com/arcticglacier), or contact the Monitor  
by telephone (1-866-688-0510)

## **SCHEDULE "D-2"**

### **CLAIMANT'S GUIDE TO COMPLETING THE DO&T PROOF OF CLAIM FORM FOR CLAIMS AGAINST DIRECTORS, OFFICERS OR TRUSTEES OF THE ARCTIC GLACIER PARTIES<sup>4</sup>**

This Guide has been prepared to assist Claimants in filling out the DO&T Proof of Claim form for claims against the Directors, Officers or Trustees of the Arctic Glacier Parties. If you have any additional questions regarding completion of the DO&T Proof of Claim, please consult the Monitor's website at [www.alvarezandmarsal.com/arcticglacier](http://www.alvarezandmarsal.com/arcticglacier) or contact the Monitor, whose contact information is shown below.

The DO&T Proof of Claim form is for Claimants asserting a claim against any Directors, Officers and/or Trustees of the Arctic Glacier Parties, and NOT for claims against the Arctic Glacier Parties themselves. For claims against the Arctic Glacier Parties, please use the form titled "Proof Of Claim Form For Claims Against The Arctic Glacier Parties", which is available on the Monitor's website at [www.alvarezandmarsal.com/arcticglacier](http://www.alvarezandmarsal.com/arcticglacier).

Additional copies of the DO&T Proof of Claim may be found at the Monitor's website address noted above.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on September 5, 2012 (the "Claims Procedure Order"), the terms of the Claims Procedure Order will govern.

#### **SECTION 1 – DEBTOR**

1. The full name of all the Arctic Glacier Party Directors, Officers or Trustees against whom the Claim is asserted must be listed.

#### **SECTION 2(a) – ORIGINAL CLAIMANT**

2. A separate DO&T Proof of Claim must be filed by each legal entity or person asserting a claim against the Arctic Glacier Party Directors, Officers or Trustees.
3. The Claimant shall include any and all DO&T Claims it asserts against the Arctic Glacier Party Directors, Officers or Trustees in a single DO&T Proof of Claim.
4. The full legal name of the Claimant must be provided.
5. If the Claimant operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.

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<sup>4</sup> Arctic Glacier Income Fund, Arctic Glacier Inc., Arctic Glacier International Inc., Arctic Glacier California Inc., Arctic Glacier Grayling Inc., Arctic Glacier Lansing Inc., Arctic Glacier Michigan Inc., Arctic Glacier Minnesota Inc., Arctic Glacier Nebraska Inc., Arctic Glacier Newburgh Inc., Arctic Glacier New York Inc., Arctic Glacier Oregon Inc., Arctic Glacier Party Time Inc., Arctic Glacier Pennsylvania Inc., Arctic Glacier Rochester Inc., Arctic Glacier Services Inc., Arctic Glacier Texas Inc., Arctic Glacier Vernon Inc., Arctic Glacier Wisconsin Inc., Diamond Ice Cube Company Inc., Diamond Newport Corporation, Glacier Ice Company, Inc., Ice Perfection Systems Inc., Icesurance Inc., Jack Frost Ice Service, Inc., Knowlton Enterprises, Inc., Mountain Water Ice Company, R&K Trucking, Inc., Winkler Lucas Ice And Fuel Company, Wonderland Ice, Inc. And Glacier Valley Ice Company, L.P. (California) (collectively, the "Arctic Glacier Parties").

6. If the claim has been assigned or transferred to another party, Section 2(b) must also be completed.
7. Unless the claim is assigned or transferred, all future correspondence, notices, etc. regarding the claim will be directed to the address and contact indicated in this section.

#### **SECTION 2(b) – ASSIGNEE**

8. If the Claimant has assigned or otherwise transferred its claim, then Section 2(b) must be completed.
9. The full legal name of the Assignee must be provided.
10. If the Assignee operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
11. If the Monitor in consultation with the Debtor(s) is satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc. regarding the claim will be directed to the Assignee at the address and contact indicated in this section.

#### **SECTION 3 - AMOUNT OF CLAIM OF CLAIMANT AGAINST DEBTOR**

12. Indicate the amount the Director(s), Officer(s) and/or Trustee(s) was/were and still is/are indebted to the Claimant in the Amount of Claim column, including interest to October 31, 2012.

#### **Currency**

13. The amount of the claim must be provided in the currency in which it arose.
14. Indicate the appropriate currency in the Currency column.
15. If the claim is denominated in multiple currencies, use a separate line to indicate the claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.
16. If necessary, currency will be converted in accordance with the Claims Procedure Order.

#### **SECTION 4 - DOCUMENTATION**

17. Attach to the DO&T Proof of Claim form all particulars of the claim and supporting documentation, including amount and description of transaction(s) or agreement(s) or legal breach(es) giving rise to the claim.

#### **SECTION 5 - CERTIFICATION**

18. The person signing the DO&T Proof of Claim should:
  - (a) be the Claimant or authorized representative of the Claimant.
  - (b) have knowledge of all the circumstances connected with this claim.

- (c) assert the claim against the Debtor(s) as set out in the DO&T Proof of Claim and certify all supporting documentation is attached.
  - (d) have a witness to its certification.
19. By signing and submitting the DO&T Proof of Claim, the Claimant is asserting the claim against the Debtor(s).

#### **SECTION 6 - FILING OF CLAIM**

20. The DO&T Proof of Claim must be received by the Monitor by 5:00 p.m. (Winnipeg time) on October 31, 2012 (the "Claims Bar Date") by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:

**Alvarez & Marsal Canada Inc., Arctic Glacier Monitor**  
**Address:** Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900, P.O. Box 22  
Toronto, ON Canada M5J 2J1  
**Attention:** Melanie MacKenzie and Joshua Nevksy  
**Email:** mmackenzie@alvarezandmarsal.com, jnevsky@alvarezandmarsal.com  
**Fax No.:** 416-847-5201

**Failure to file your DO&T Proof of Claim so that it is actually received by the Monitor by 5:00 p.m., on the Claims Bar Date will result in your claim being barred and you will be prevented from making or enforcing a claim against the Directors, Officers and Trustees of the Arctic Glacier Parties. In addition, you shall not be entitled to further notice in and shall not be entitled to participate as a creditor in the Arctic Glacier CCAA proceedings.**



## SCHEDULE "E"

### PROOF OF CLAIM FORM FOR INDEMNITY CLAIMS BY DIRECTORS, OFFICERS OR TRUSTEES OF THE ARCTIC GLACIER PARTIES<sup>5</sup> (the "DO&T Indemnity Proof of Claim")

This form is to be used only by Directors, Officers and Trustees of an Arctic Glacier Party who are asserting an indemnity claim against the Arctic Glacier Parties in relation to a DO&T Claim against them and NOT for claims against the Arctic Glacier Parties themselves or for claims against Arctic Glacier Directors, Officers and Trustees. For claims against the Arctic Glacier Parties, please use the form titled "Proof Of Claim Form For Claims Against the Arctic Glacier Parties". For claims against Arctic Glacier Directors, Officers and Trustees, please use the form titled "Proof of Claim Form for Claims Against Directors, Officers or Trustees of the Arctic Glacier Parties". Both forms are available on the Monitor's website at [www.alvarezandmarsal.com/arcticglacier](http://www.alvarezandmarsal.com/arcticglacier).

#### 1. Director/Officer/Trustee Particulars (the "Indemnitee")

Legal Name of  
Indemnitee \_\_\_\_\_

Address \_\_\_\_\_

Phone # \_\_\_\_\_

Fax # \_\_\_\_\_

City \_\_\_\_\_ Prov  
/State \_\_\_\_\_

email \_\_\_\_\_

Postal/Zip  
Code \_\_\_\_\_

#### 2. Indemnification Claim

Position(s)  
Held \_\_\_\_\_

Dates Position(s)

Held: From \_\_\_\_\_ to \_\_\_\_\_

Reference Number of Proof of Claim with respect to which this DO&T  
Indemnity Claim is made \_\_\_\_\_

Particulars of and basis for DO&T  
Indemnity Claim \_\_\_\_\_

<sup>5</sup> Arctic Glacier Income Fund, Arctic Glacier Inc., Arctic Glacier International Inc., Arctic Glacier California Inc., Arctic Glacier Grayling Inc., Arctic Glacier Lansing Inc., Arctic Glacier Michigan Inc., Arctic Glacier Minnesota Inc., Arctic Glacier Nebraska Inc., Arctic Glacier Newburgh Inc., Arctic Glacier New York Inc., Arctic Glacier Oregon Inc., Arctic Glacier Party Time Inc., Arctic Glacier Pennsylvania Inc., Arctic Glacier Rochester Inc., Arctic Glacier Services Inc., Arctic Glacier Texas Inc., Arctic Glacier Vernon Inc., Arctic Glacier Wisconsin Inc., Diamond Ice Cube Company Inc., Diamond Newport Corporation, Glacier Ice Company, Inc., Ice Perfection Systems Inc., Icesurance Inc., Jack Frost Ice Service, Inc., Knowlton Enterprises, Inc., Mountain Water Ice Company, R&K Trucking, Inc., Winkler Lucas Ice And Fuel Company, Wonderland Ice, Inc. And Glacier Valley Ice Company, L.P. (California) (collectively, the "Arctic Glacier Parties").

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**3. Documentation**

Provide all particulars of the DO&T Indemnity Claim and supporting documentation giving rise to the Claim.

**4. Filing of Claim**

This DO&T Indemnity Proof of Claim and supporting documentation must be received by the Monitor within fifteen (15) Business Days of the date of deemed receipt by the Director, Officer or Trustee of the DO&T Proof of Claim form by **ordinary prepaid mail, registered mail, courier, personal delivery or electronic transmission** at the following address:

**Alvarez & Marsal Canada Inc., Arctic Glacier Monitor**

**Address:** Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900, P.O. Box 22  
Toronto, ON Canada M5J 2J1

**Attention:** Melanie MacKenzie and Joshua Nevksy

**Email:** [mmackenzie@alvarezandmarsal.com](mailto:mmackenzie@alvarezandmarsal.com), [jnevsky@alvarezandmarsal.com](mailto:jnevsky@alvarezandmarsal.com)

**Fax No.:** 416-847-5201

**Failure to file your DO&T Indemnity Proof of Claim in accordance with the Claims Procedure Order dated September 5, 2012 will result in your DO&T Indemnity Claim being barred and forever extinguished and you will be prohibited from making or enforcing such DO&T Indemnity Claim against the Arctic Glacier Parties.**

DATED at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2012

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

Name

Signature:

(Former Director, Officer and/or Trustee)

For more information see [www.alvarezandmarsal.com/arcticglacier](http://www.alvarezandmarsal.com/arcticglacier), or contact the Monitor by telephone (1-866-688-0510)

## SCHEDULE "F"

### NOTICE OF REVISION OR DISALLOWANCE

**For Persons that have asserted Claims against the Arctic Glacier Parties<sup>6</sup>,  
DO&T Claims against the Directors, Officers and/or Trustees of the Arctic Glacier Parties  
or DO&T Indemnity Claims against the Arctic Glacier Parties**

Claims Reference Number: \_\_\_\_\_

TO: \_\_\_\_\_

(the "Claimant")

Defined terms not defined in this Notice of Revision or Disallowance have the meaning ascribed in the Order of the Court of Queen's Bench (Winnipeg Centre) in the CCAA proceedings of the Arctic Glacier Parties dated September 5, 2012 (the "Claims Procedure Order").

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that it has reviewed your Proof of Claim, DO&T Proof of Claim or DO&T Indemnity Proof of Claim and has revised or disallowed all or part of your purported Claim, DO&T Claim or DO&T Indemnity Claim, as the case may be. Subject to further dispute by you in accordance with the Claims Procedure Order, your Proven Claim will be as follows:

	Amount as submitted		Amount allowed by Monitor
	Currency		
A. Unsecured Claim		\$	\$
B. Secured Claim		\$	\$
C. DO&T Claim		\$	\$
D. DO&T Indemnity Claim		\$	\$
E. Total Claim		\$	\$

<sup>6</sup> Arctic Glacier Income Fund, Arctic Glacier Inc., Arctic Glacier International Inc., Arctic Glacier California Inc., Arctic Glacier Grayling Inc., Arctic Glacier Lansing Inc., Arctic Glacier Michigan Inc., Arctic Glacier Minnesota Inc., Arctic Glacier Nebraska Inc., Arctic Glacier Newburgh Inc., Arctic Glacier New York Inc., Arctic Glacier Oregon Inc., Arctic Glacier Party Time Inc., Arctic Glacier Pennsylvania Inc., Arctic Glacier Rochester Inc., Arctic Glacier Services Inc., Arctic Glacier Texas Inc., Arctic Glacier Vernon Inc., Arctic Glacier Wisconsin Inc., Diamond Ice Cube Company Inc., Diamond Newport Corporation, Glacier Ice Company, Inc., Ice Perfection Systems Inc., Icesurance Inc., Jack Frost Ice Service, Inc., Knowlton Enterprises, Inc., Mountain Water Ice Company, R&K Trucking, Inc., Winkler Lucas Ice And Fuel Company, Wonderland Ice, Inc. and Glacier Valley Ice Company, L.P. (California) (collectively, the "Arctic Glacier Parties").

**Reasons for Revision or Disallowance:**

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**SERVICE OF DISPUTE NOTICES**

If you intend to dispute this Notice of Revision or Disallowance, you must, no later than 5:00 p.m. (prevailing time in Winnipeg) on the day that is twenty-one (21) Calendar Days after this Notice of Revision or Disallowance is deemed to have been received by you (in accordance with paragraph 51 of the Claims Procedure Order), deliver a Dispute Notice to the Monitor by ordinary prepaid mail, registered mail, courier, personal delivery or electronic transmission to the address below.

Alvarez & Marsal Canada Inc., Arctic Glacier Monitor

Address: Royal Bank Plaza, South Tower  
200 Bay Street  
Suite 2900  
P.O. Box 22  
Toronto, Ontario Canada  
M5J 2J1  
Fax No.: 416-847-5201  
Email: [mmackenzie@alvarezandmarsal.com](mailto:mmackenzie@alvarezandmarsal.com),  
[jnevsky@alvarezandmarsal.com](mailto:jnevsky@alvarezandmarsal.com)  
Attention: Melanie MacKenzie and Joshua Nevksy

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Dispute Notice is enclosed and can also be accessed on the Monitor's website at [www.alvarezandmarsal.com/arcticglacier](http://www.alvarezandmarsal.com/arcticglacier).

**IF YOU FAIL TO FILE A DISPUTE NOTICE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.**

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Alvarez & Marsal Canada Inc., solely in its capacity as Court-appointed Monitor of the Arctic Glacier Parties, and not in its personal or corporate capacity

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

For more information see [www.alvarezandmarsal.com/arcticglacier](http://www.alvarezandmarsal.com/arcticglacier), or contact the Monitor by telephone (1-866-688-0510)

**APPENDIX "1" to SCHEDULE "F"**

**NOTICE OF DISPUTE OF NOTICE OF REVISION OR DISALLOWANCE**

**With respect to the Arctic Glacier Parties<sup>7</sup>**

Claims Reference Number: \_\_\_\_\_

**1. Particulars of Claimant:**

Full Legal Name of Claimant (include trade name, if different)

\_\_\_\_\_  
\_\_\_\_\_  
(the "Claimant")

Full Mailing Address of the Claimant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other Contact Information of the Claimant:

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Attention (Contact Person): \_\_\_\_\_

<sup>7</sup> Arctic Glacier Income Fund, Arctic Glacier Inc., Arctic Glacier International Inc., Arctic Glacier California Inc., Arctic Glacier Grayling Inc., Arctic Glacier Lansing Inc., Arctic Glacier Michigan Inc., Arctic Glacier Minnesota Inc., Arctic Glacier Nebraska Inc., Arctic Glacier Newburgh Inc., Arctic Glacier New York Inc., Arctic Glacier Oregon Inc., Arctic Glacier Party Time Inc., Arctic Glacier Pennsylvania Inc., Arctic Glacier Rochester Inc., Arctic Glacier Services Inc., Arctic Glacier Texas Inc., Arctic Glacier Vernon Inc., Arctic Glacier Wisconsin Inc., Diamond Ice Cube Company Inc., Diamond Newport Corporation, Glacier Ice Company, Inc., Ice Perfection Systems Inc., Icesurance Inc., Jack Frost Ice Service, Inc., Knowlton Enterprises, Inc., Mountain Water Ice Company, R&K Trucking, Inc., Winkler Lucas Ice And Fuel Company, Wonderland Ice, Inc. And Glacier Valley Ice Company, L.P. (California) (collectively, the "Arctic Glacier Parties").

2. **Particulars of original Claimant from whom you acquired the Claim, DO&T Claim or DO&T Indemnity Claim, if applicable**

Have you acquired this purported Claim, DO&T Claim or DO&T Indemnity Claim by assignment?

Yes: ☐

No: ☐

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Claimant(s): \_\_\_\_\_

3. **Dispute of Revision or Disallowance of Claim, DO&T Claim or DO&T Indemnity Claim, as the case may be:**

The Claimant hereby disagrees with the value of its Claim, DO&T Claim or DO&T Indemnity Claim, as the case may be, as set out in the Notice of Revision or Disallowance and asserts a Claim, DO&T Claim or DO&T Indemnity Claim, as the case may be, as follows:

	Currency	Amount allowed by Monitor: (Notice of Revision or Disallowance)	Amount claimed by Claimant: <sup>8</sup>
A. Unsecured Claim		\$	\$
B. Secured Claim		\$	\$
C. DO&T Claim		\$	\$
D. DO&T Indemnity		\$	\$
E. Total Claim		\$	\$

<sup>8</sup> If necessary, currency will be converted in accordance with the Claims Procedure Order.

**REASON(S) FOR THE DISPUTE:**

*(Please attach all supporting documentation hereto).*

**SERVICE OF DISPUTE NOTICES**

If you intend to dispute a Notice of Revision or Disallowance, you must, no later than 5 p.m. Winnipeg time on the day that is twenty-one (21) Calendar Days after the Notice of Revision or Disallowance is deemed to have been received by you (in accordance with paragraph 51 of the Claims Procedure Order), deliver this Dispute Notice to the Monitor by ordinary prepaid mail, registered mail, courier, personal delivery or electronic transmission to the address below.

Alvarez & Marsal Canada Inc., Arctic Glacier Monitor

Address: Royal Bank Plaza, South Tower  
200 Bay Street  
Suite 2900  
P.O. Box 22  
Toronto, Ontario Canada  
M5J 2J1

Fax No.: 416-847-5201

Email: [mmackenzie@alvarezandmarsal.com](mailto:mmackenzie@alvarezandmarsal.com), [jnevsky@alvarezandmarsal.com](mailto:jnevsky@alvarezandmarsal.com)

Attention: Melanie MacKenzie and Joshua Nevksy

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

**IF YOU FAIL TO FILE THIS NOTICE OF DISPUTE OF NOTICE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THE NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.**

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012

Name of Claimant: \_\_\_\_\_

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
(please print)

### **SCHEDULE "G" – Canadian Retail Litigation**

The following class actions, commenced in Canada, constitute the "Canadian Retail Litigation":

- Court File Nos. 0907-09552 and 1001-03548, Court of Queen's Bench of Alberta, Judicial Centre of Calgary,
- Ontario Court File No. 10-CV-14457, filed at the Ontario Superior Court of Justice, Windsor, Ontario, and
- Ontario Court File No. 62112CP filed at the Ontario Superior Court of Justice, London, Ontario.



### **SCHEDULE "H" – Indirect Purchaser Litigation**

The following class actions, commenced in the United States, constitute the "Indirect Purchaser Litigation":

<b>No.</b>	<b>Description</b>
1	<b>Consolidated Class Action Complaint</b> filed on May 25, 2011, in the <b>US District Court for the Eastern District of Michigan, Southern Division</b> , in Civil Action No. 2:08-MD-1952-PDB
2	<b>Class Action Complaint</b> filed on March 4, 2012, in the <b>Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Civil Department</b> , in Case No. 11CV0877 (transferred to the Consolidated Class Action Complaint by Conditional Transfer Order No. 5, Case No. MDL-1952)
3	<b>Class Action Complaint</b> filed on January 12, 2012, in the <b>United States District Court, District of Massachusetts</b> , in Civil Action No. 1:12-cv-10072-M (transferred to the Consolidated Class Action Complaint by Conditional Transfer
4	<b>Class Action Complaint</b> filed on January 5, 2012, in the <b>United States District Court, District of Minnesota</b> , in Civil Action No. 12-CV-29 (transferred to the Consolidated Class Action Complaint by Conditional Transfer Order No. 7, Case No.
5	<b>Class Action Complaint</b> filed on January 5, 2012, in the <b>United States District Court, Northern District of Mississippi</b> , in Case No. 3:11-CV-092-M-A (transferred to the Consolidated Class Action Complaint by Conditional Transfer Order No. 7, Case No. MDL-1952)
6	<b>Class Action Complaint</b> filed on January 6, 2012, in the <b>United States District Court, District of Nebraska</b> , in Civil Action No. 8:12-cv-0007-FG3 (transferred to the Consolidated Class Action Complaint by Conditional Transfer Order No. 7, Case No. MDL-1952)
7	<b>Class Action Complaint</b> filed on February 2, 2012, in the <b>United States District Court, District of New Mexico</b> , in Civil Action No. 1:12-cv-00111 (transferred to the Consolidated Class Action Complaint by Conditional Transfer Order No. 8, Case No. MDL-1952)
8	<b>Class Action Complaint</b> filed on December 29, 2011, in the <b>United States District Court for the Middle District of North Carolina</b> , in Civil Action No. 1:11-cv-01152 (transferred to the Consolidated Class Action Complaint by Conditional Transfer Order No. 7, Case No. MDL-1952)

9	<b>Class Action Complaint</b> filed on January 17, 2012, in the <b>United States District Court for the District of Arizona</b> , in Civil Action No. 2:12-cv-00104-JAT (transferred to the Consolidated Class Action Complaint by Conditional Transfer Order No. 7, Case No. MDL-1952)
10	<b>Class Action Complaint</b> filed on January 4, 2012, in the <b>United States District Court, Northern District of Iowa—Western Division</b> , in Civil Action No. 5:12-cv-04004- MWB (transferred to the Consolidated Class Action Complaint by Conditional Transfer Order No. 7, Case No. MDL-1952)
11	<b>Class Action Complaint</b> filed on February 14, 2012, in the <b>United States District Court for the Northern District Mississippi</b> , in Civil Action No. 3:12-cv-00015-DAS (transferred to the Consolidated Class Action Complaint by Conditional Transfer Order No. 9, Case No. MDL-1952)
12	<b>Class Action Complaint</b> filed on January 31, 2012, in the <b>United States District Court for the Western District of Tennessee</b> , in Civil Action No. 2:11-cv-02345-STA (transferred to the Consolidated Class Action Complaint by Conditional Transfer Order No. 6, Case No. MDL-1952, listed in such Order as 2-11-02325)
13	<b>Class Action Complaint</b> filed on January 31, 2012, in the <b>United States District Court for the Eastern District of Arkansas</b> , in Civil Action No. 4:11-cv-0372-JLH (transferred to the Consolidated Class Action Complaint by Conditional Transfer Order No. 6, Case No. MDL-1952)

**SCHEDULE "I" –Direct Purchaser Litigation**

The following class actions constitute the "Direct Purchaser Litigation":

In re Packaged Ice Antitrust Litigation Direct Purchaser Class, as certified by the Eastern District of Michigan on December 13, 2011 (Dkt. No. 406, 08-md-1952 E.D. Mich.)

# Appendix “D”

## Dacks, Jeremy

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**From:** Fredrickson, Lucy [lfredrickson@FillmoreRiley.com]  
**Sent:** Thursday, February 21, 2013 10:30 AM  
**To:** Wasserman, Marc; Dacks, Jeremy  
**Cc:** "rjnagy.icelink@gmail.com" (rjnagy.icelink@gmail.com); "Elizabeth Pillon" (LPillon@stikeman.com); "McElcheran, Kevin" (kmcclcheran@mccarthy.ca)  
**Subject:** RE: Desert Mountain Ice - Arctic Glacier [FR-DOCS.FID503873]

TO: M. Wasserman  
J. Dacks

Attached is our email of February 19, 2013, with the last sentence corrected, as intended.

Yours truly,

D. Wayne Leslie  
Cc: R. Nagy  
L. Pillon  
K. McElcheran

Lucy Fredrickson  
Legal Assistant to D. Wayne Leslie and Annika M. Friesen

Fillmore Riley LLP | Barristers, Solicitors and Trademark Agents  
1700 - 360 Main Street | Winnipeg, Manitoba | Canada R3C 3Z3  
TEL 204 956 2970 Ext. 221 | FAX 204 957 0516  
[lfredrickson@fillmoreriley.com](mailto:lfredrickson@fillmoreriley.com) [www.fillmoreriley.com](http://www.fillmoreriley.com)

**From:** Fredrickson, Lucy [<mailto:lfredrickson@FillmoreRiley.com>]  
**Sent:** Tuesday, February 19, 2013 2:55 PM  
**To:** 'Wasserman, Marc' ([MWasserman@osler.com](mailto:MWasserman@osler.com)); 'Dacks, Jeremy' ([JDacks@osler.com](mailto:JDacks@osler.com))  
**Cc:** 'rjnagy.icelink@gmail.com' ([rjnagy.icelink@gmail.com](mailto:rjnagy.icelink@gmail.com)); 'Elizabeth Pillon' ([LPillon@stikeman.com](mailto:LPillon@stikeman.com)); 'McElcheran, Kevin' ([kmcclcheran@mccarthy.ca](mailto:kmcclcheran@mccarthy.ca))  
**Subject:** Desert Mountain Ice - Arctic Glacier [FR-DOCS.FID503873]

TO: M. Wasserman  
J. Dacks

During the course of cross-examination, there appeared to be a number of suggestions that the Arizona Facility was the millstone dragging down Arctic. That was countered by a number of disclosed reports in 2011 which pointed out a multiplicity of issues beyond the Arizona Facility, when Arctic attempted to do a transaction with Reddy Ice in 2011.

It has come to our attention the existence of an inter-office Confidential Memorandum from Keith McMahon of August 15, 2011, copy attached, which particularly points out in respect to various ongoing financial negative issues:

"These factors were partly offset by our expansion into Arizona last year, where we continue to exceed our expectations and which has made a positive contribution this year."

This document was not disclosed in the disclosure by Arctic, but it is obviously relevant to counter any suggestion that the Arizona Facility was the millstone at that time.

Yours truly,

D. Wayne Leslie

Cc: R. Nagy  
L. Pillon  
K. McElcheran

Lucy Fredrickson

**Legal Assistant to D. Wayne Leslie and Annika M. Friesen**

**Fillmore Riley LLP | Barristers, Solicitors and Trademark Agents**

1700 - 360 Main Street | Winnipeg, Manitoba | Canada R3C 3Z3

TEL 204 956 2970 Ext. 221 | FAX 204 957 0516

[lfredrickson@fillmoreriley.com](mailto:lfredrickson@fillmoreriley.com) [www.fillmoreriley.com](http://www.fillmoreriley.com)



## Interoffice Memo

**Date:** August 15, 2011  
**To:** All Arctic Glacier Employees  
**From:** Keith McMahon, President & Chief Executive Officer  
**Re:** Update to Employees – Second Quarter Results

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On Friday, Arctic Glacier issued results for the second quarter ended June 30, 2011. The results and associated documentation have led to inquiries from some employees about the future of Arctic Glacier. This is understandable and I am distributing this update to employees to provide additional explanation.

First of all the second quarter results are consistent with what I reported to you on June 30 as we approached the maturity of our convertible debentures and on July 14 when it became clear we were not going to comply with requirements of our loan agreements.

Poor spring weather combined with increased competitive activity in California and Oregon to drive our sales down 6% or \$4 million from the same quarter last year. Poor weather in the spring can be especially challenging because sales decrease at the same time as costs are increasing as we ramp up our staff and truck counts to be ready for our peak season. Fuel has also been a factor, with prices up almost 30% compared to last year. These factors were partly offset by our expansion into Arizona last year, where we continue to exceed our expectations and which has made a positive contribution this year.

The challenges with our lenders have been caused by three key issues:

- 1) Reduced EBITDA – poor weather in summer 2010 and spring 2011 and competitive challenges have reduced EBITDA for the last 12 months by 14% to \$43 million, which is below the \$45 million we are allowed;
- 2) Cost of Antitrust Issues – the illegal activities of three former managers from 2005 to 2007 have cost Arctic Glacier a staggering \$40 million to date in fines, settlements and legal fees, which have had to be paid for with debt; and,
- 3) Cost of Refinancing – the need to refinance Arctic Glacier's debt last year before we had been able to resolve our antitrust legal issues left only one viable option. The resulting term loan cost more than \$20 million to put in place, and has burdened Arctic Glacier with high interest payments and very little cash left over to reduce debt.

These factors have led to a breach of certain financial covenants of our loan agreements at the end of the second quarter. This would be a default under the agreements, but on July 29 our lenders waived compliance with the covenants until September 1. This means Arctic Glacier is not in default under our loan agreements. In fact, we are currently in active discussions with the lenders to secure longer-term covenant relief beyond September 1.

Arctic Glacier's Second Quarter report to unitholders notes that the company's "ability to continue as a going concern is dependent upon successfully negotiating covenant relief". It is important to

understand that this is required disclosure under accounting rules when a company could be in default on its loan agreements. It is meant as a signal to unitholders that there is elevated risk that, in some circumstances, their investment could be reduced substantially if the company had to restructure. It does not mean that our company might shut down. In any scenario, the value of Arctic Glacier comes from operating our business - using our plants to manufacture our product and our trucks to supply our customers. Our employees are absolutely critical to this and nobody, including our lenders, would risk impairing their investment by shutting our company down.

We continue to work on options to move the company forward.

First, we are in active discussion with our lenders to obtain longer-term covenant relief. We are encouraged by favorable weather for packaged ice sales in July in many markets. As a result, we expect sales and EBITDA to exceed targets, although there is no guarantee it will continue through the entire summer. This is expected to be helpful in discussions with our lenders.

Second, we are focusing on a number of key strategies that are well underway to strengthen our business:

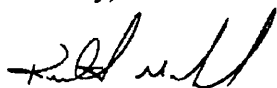
- Adding profitable sales in both retail and non-retail channels in our current markets;
- Working with customers to expand product categories and improve product selection to increase sales and profitability;
- Pursuing initiatives in manufacturing and distribution to improve efficiencies and reduce costs;
- Implemented an overall price increase on our products to most customers during the second quarter to address higher fuel and input costs; and,
- Initiated a staff reduction and restructuring program during the second quarter to streamline operations, reducing staff levels by just under 20 employees.

Third, we continue to focus on carefully managing the Fund's cash position, operating costs and capital expenditures to ensure we have enough cash to support ongoing operations.

Finally, the Special Committee of the Board of Trustees continues to evaluate alternatives as part of the strategic and financing review that began late last year. Eliminating the need to finance \$90 million of convertible debentures by converting them to units of Arctic Glacier Income Fund on July 31 makes it more likely that a solution can be found in the near future.

We are determined to resolve our current challenges and implement solutions. As we do this, it is clear that the most critical task is to continue providing our customers with superior product quality and industry leading service every day. The efforts of each employee are fundamental to Arctic Glacier's success as we seek to strengthen the company's foundation for the future.

Sincerely,

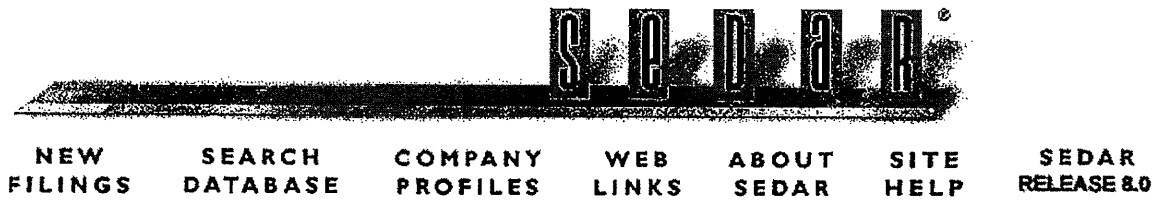


Keith W. McMahon  
President and Chief Executive Officer

KWM/pg



# Appendix “E”



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#### XBRL Voluntary Filing Program

Visit the [CSA's XBRL website](#) for information about XBRL and the voluntary program.  
[Click here](#) for information about XBRL software and viewing XBRL financial statements.

Company Name	Date of Filing	Document Type	File Format	File Size
<u>Arctic Glacier Income Fund</u>				
	Nov 30 2012	<a href="#">News release - English</a>	PDF	22 K
	Nov 29 2012	<a href="#">News release - English</a>	PDF	194 K
	Nov 29 2012	<a href="#">News release - English</a>	PDF	194 K
	Nov 29 2012	<a href="#">News release - English</a>	PDF	194 K
	Nov 29 2012	<a href="#">News release - English</a>	PDF	194 K
	Nov 8 2012	<a href="#">Alternative monthly report</a>	PDF	75 K
	Oct 10 2012	<a href="#">Alternative monthly report</a>	PDF	11 K
	Sep 13 2012	<a href="#">News release - English</a>	PDF	194 K
	Aug 15 2012	<a href="#">News release - English</a>	PDF	628 K
	Jul 30 2012	<a href="#">Material change report - English</a>	PDF	12 K
	Jul 30 2012	<a href="#">Material document - English</a>	PDF	63 K
	Jul 27 2012	<a href="#">News release - English</a>	PDF	31 K
	Jul 18 2012	<a href="#">News release - English</a>	PDF	29 K
	Jun 29 2012	<a href="#">News release - English</a>	PDF	46 K
	Jun 22 2012	<a href="#">News release - English</a>	PDF	29 K
	Jun 20 2012	<a href="#">Material document - English</a>	PDF	2961 K
	Jun 18 2012	<a href="#">Material change report - English</a>	PDF	41 K
	Jun 8 2012	<a href="#">News release - English</a>	PDF	32 K
	Jun 6 2012	<a href="#">Other</a>	PDF	370 K
	Jun 6 2012	<a href="#">News release - English</a>	PDF	24 K
	Jun 5 2012	<a href="#">News release - English</a>	PDF	29 K
	May 30 2012	<a href="#">MD&amp;A - English</a>	PDF	2049 K
	May 30 2012	<a href="#">52-109F2 - Certification of interim filings - CEO (E)</a>	PDF	179 K
	May 30 2012	<a href="#">52-109F2 - Certification of interim filings - CFO (E)</a>	PDF	178 K
	May 30 2012	<a href="#">Interim financial statements/report - English</a>	PDF	1331 K
	May 30 2012	<a href="#">News release - English</a>	PDF	60 K
	Apr 12 2012	<a href="#">News release - English</a>	PDF	28 K

# Appendix “F”

Osler, Hoskin & Harcourt LLP  
Box 50, 1 First Canadian Place  
Toronto, Ontario, Canada M5X 1B8  
416.362.2111 MAIN  
416.862.6666 FACSIMILE

OSLER

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Montréal

Calgary

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October 11, 2012

Marc S. Wasserman  
Direct Dial: 416.862.4908  
MWasserman@osler.com  
Our Matter Number: 1133853

**Sent By Electronic Mail**

Mr. D. Wayne Leslie  
Fillmore Riley LLP  
Suite 1700  
360 Main Street  
Winnipeg, MB R3C 3Z3

Dear Mr. Leslie:

**Arctic Glacier Income Fund et al; CCAA Proceedings; Lease of 600 South – 80<sup>th</sup> Avenue, Tolleson, Arizona, 85353 (the “Lease”)**

We acknowledge receipt of your correspondence dated September 26, October 1 and October 5, 2012. We understand that you have been in discussions with counsel to the Purchaser of the Arctic Glacier business concerning the Lease. As such, although we disagree with many of the assertions set out in your correspondence, we do not intend to provide a detailed response on behalf of the Monitor at this time.

However, the Monitor believes it is appropriate to provide the following views on certain procedural issues relating to the hearing that resulted in the Court's issuance of a Vesting and Approval Order dated June 21, 2012 (as subsequently Amended and Restated on July 12, 2012):

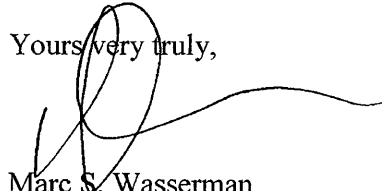
1. Your client, Desert Mountain LLC, was provided with proper notice of the hearing held before the Honourable Madam Justice Spivak on June 21, 2012;
2. Your client did not have counsel appear on its behalf at the June 21, 2012 hearing or the July 12, 2012 hearing;
3. Your client did not file materials with respect to the June 21, 2012 hearing or the July 12, 2012 hearing;
4. The Monitor is not aware of any fact or circumstance that would suggest that an amendment or variance of the Approval and Vesting Order would be appropriate. We note that the appeal period with respect to such Order has expired.

# OSLER

Page 2

The Monitor and its counsel remain available to participate in and facilitate discussions with the stakeholders with respect to the Lease. We look forward to discussing this matter with you further in an effort to achieve a consensual resolution to issues surrounding the Lease.

Yours very truly,

A handwritten signature in black ink, appearing to be 'Marc S. Wasserman', written over the closing 'Yours very truly,'.

Marc S. Wasserman

MSW:krs

c: Martin Langlois/Liz Pillon (*Stikeman Elliott*)  
Kevin McElcheran (*McCarthy Tétrault LLP*)  
Bruce Taylor (*Aikins MacAulay & Thorvaldson*)  
Richard Morawetz (*Alvarez & Marsal*)  
Jeremy Dacks (*Osler, Hoskin & Harcourt*)

# Appendix “G”

## **Dacks, Jeremy**

---

**From:** Wasserman, Marc  
**Sent:** Tuesday, July 24, 2012 4:54 PM  
**To:** 'bernice.chartrand@gov.mb.ca'  
**Cc:** 'Jackson, David'; rmorawetz@alvarezandmarsal.com; 'GBT@aikins.com'; 'kmcelcheran@mccarthy.ca' (kmcelcheran@mccarthy.ca); Dacks, Jeremy  
**Subject:** Arctic Glacier

My lady.

I am writing in my capacity as counsel for the Monitor in the Arctic Glacier CCAA Proceedings.

We are writing to provide you with an update with respect to the closing of the HIG transaction.

Arctic Glacier, with the assistance of the Monitor, has been working diligently to close the transaction prior to the outside date of July 31, 2012. The transaction is currently scheduled to close on Thursday, July 26.

In the course of finalizing the closing arrangements for the transaction, including the Purchaser's need for sufficient funds on hand at closing to operate the business, the parties have been discussing certain minor modifications to the transaction documents that Arctic Glacier and the Monitor believe are permitted pursuant to the terms of the Amended and Restated Vesting and Approval Order. Such order approved the HIG Asset Purchase Agreement "with such minor amendments as the Vendors may deem necessary".

These modifications are as follows:

- Arctic Glacier will pay the "Transfer Taxes" associated with the transaction which have been estimated to be approximately \$3.85 million. The APA originally provided that such taxes were to be paid by the Purchaser.
- Arctic Glacier will reimburse the Purchaser for \$5 million in expenses related to the transaction.
- Arctic Glacier will agree that, to the extent that the net working capital calculation described in the APA results in a net working capital balance in excess of the estimated net working capital balance, the Purchaser will receive the benefit of such excess up to \$5 million. The estate will be paid by the Purchaser for any amount in excess of the first \$5 million. This is a modification to the APA as the agreement provides that Arctic Glacier be compensated on a dollar for dollar basis for any excess net working capital above the estimated net working capital amount.

The effect of these modifications is expected to be a net reduction of the purchase price of approximately \$9 million to \$14 million. In addition, the Arizona lease will be assumed by the Purchaser on closing meaning that the \$12.5 million payment referred to in the APA will not be paid at this time as contemplated by the APA. The assumption of the Arizona lease has no economic effect on the estate as the corresponding \$12.5 million liability will not be realized prior to closing.

Arctic's press release indicated a purchase price of \$434.5 million taking account the value of the payment entitlement or the assumption of the Arizona lease. This closing proceeds are now expected to be \$408 million to \$413 million (to take into account the reductions from the modifications noted above) and the assumption of the Arizona lease.

It is the Monitor's view that these modifications to the transaction are permissible under the terms of the Amended and Restated Vesting and Approval Order, however, the Monitor felt that it was prudent in the circumstances to provide your lady with an update on the status of the closing of the transaction, including the modifications to the deal negotiated between the parties. These modifications will be considered by the board

of trustees of Arctic Glacier Income Fund later this evening and will be reflected in the company's press release announcing the closing of the transaction.

Should you wish to discuss this matter in greater detail, please do not hesitate to contact me.

Best Regards,  
Marc Wasserman

**OSLER**

**Marc Wasserman**

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