

Appendix “H”

SCHEDULE "C"

PROOF OF CLAIM FORM FOR CLAIMS AGAINST THE ARCTIC GLACIER PARTIES¹

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

Debtor: The Arctic Glacier Parties, including Arctic Glacier California Inc. (collectively "Arctic" or the "Debtor")

2a. Original Claimant (the "Claimant")

Legal Name of Claimant: DESERT MOUNTAIN ICE, LLC
Address: c/o Fillmore Riley LLP, 1700 - 360 Main Street, Winnipeg, MB, R3C 3Z3
Name of Contact: Fillmore Riley LLP, Attn: D. Wayne Leslie
Title: Solicitor & Agent for Desert Mountain Ice, LLC
Phone #: 204 - 957-8321
Fax #: 204 - 954-0321
email: dwleslie@fillmoreriley.com

2b. Assignee, if claim has been assigned

Legal Name of Assignee: NOT APPLICABLE
Address:
City:
Prov /State:
Postal/Zip Code:
Name of Contact:
Phone #:
Fax #:
email:

¹ 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
U.S. \$	\$12,500,000 payable June 21/12,	<input type="checkbox"/>	X
	with interest at 6.46 % per annum,	<input type="checkbox"/>	<input type="checkbox"/>
	together with all additional financing	<input type="checkbox"/>	<input type="checkbox"/>
	interest, charges and costs and legal	<input type="checkbox"/>	<input type="checkbox"/>
	costs on a solicitor and client basis	<input type="checkbox"/>	<input type="checkbox"/>

4 Documentation

SEE ATTACHED SCHEDULE "A"

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,

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.

Desert Mountain Ice, LLC		Witness
Signature: <i>per</i>	<i>[Signature]</i>	<i>[Signature]</i>
Name: ROBERT NAGY, CEO		(signature)
Title: <i>Chief Executive Officer</i>		D. WAYNE LESLIE
		(print)
Dated at <u>Winnipeg</u> this <u>29</u> day of <u>October</u> , 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, 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 PARTIES²

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 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

² 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 "A"

SECTION 4 – DOCUMENTATION

4 Documentation

1. Lease and Option Agreement dated May 25, 2006, as amended (the "Lease");
2. Sale Approval Order of the Manitoba Court of Queen's Bench dated June 21, 2012 and July 12, 2012 (the "Sale Approval Order"), including:
 - a) Asset Purchase Agreement dated June 7, 2012;
 - b) Assignment, Assumption and Amending Agreement dated July 26, 2012;
3. Notice of Motion, Queen's Bench File No. CI 12-01-76323, filed October 15, 2012;
4. Affidavit of Robert Nagy, Queen's Bench File No. CI 12-01-76323, sworn October 9, 2012, filed October 15, 2012.

THE CLAIM:

5. On May 26, 2006, for good and valuable consideration, Desert Mountain Ice, LLC ("Desert Mountain") entered into the Lease with Arctic Glacier California Inc. (the "Tenant").
6. The Lease provided for an initial term of 3 years and 2 options to extend the original term for 2 periods of 3 years each, provided that the Tenant gave notice to Desert Mountain of its election to exercise the option no less than 6 months prior to the expiration date of the then existing term.
7. The Tenant exercised both options to extend, including by notice dated July 26, 2010, extending the term of the Lease to May 24, 2015 (the "Second Option Term").
8. Section 24 of the Lease provided for a Purchase Option with a Purchase Price of \$12,500,000 U.S., if the Purchase Option was exercised during the Second Option Term, plus all charges, interest and costs incurred by Desert Mountain (the "Purchase Option Amount").
9. Section 24.3 of the Lease provided expressly that:

"The Purchase Option will be deemed to be automatically exercised by Tenant upon the occurrence of any one or more of the following events:

 - b) the Disability of Robert Nagy. For the purposes of this section, "Disability" shall mean the inability of Robert Nagy to participate in the business of Arctic Glacier Inc. on a full time basis for more than six (6) months out of any nine (9) consecutive month period;

c) a change in control of Arctic Glacier Inc. For the purposes of this section, a change of control ("**Change of Control**") with respect to Arctic Glacier Inc. means any of the following events: . . .

v) Arctic Glacier Inc. sells greater than 50% of its worldwide operations on a consolidated basis within any continuous six (6) month period.

(emphasis added)

10. On or about August 20, 2011, Robert Nagy resigned from the Board of Directors and Board of Trustees of Arctic, whereby thereafter he was unable to participate in the business of Arctic on a full time basis for more than 6 months out of any 9 month consecutive period, or at all, thereby triggering the Purchase Option and obligation of Arctic to pay the Purchase Option Amount.

11. On or about February 22, 2012, Arctic applied to the Manitoba Court of Queen's Bench seeking protection under the *Companies' Creditors Arrangement Act* (the "CCAA proceedings") whereupon an Initial Order was granted, including, *inter alia*, a stay of proceedings, staying all actions against Arctic.

12. During the course of the CCAA proceedings, Arctic developed a Sales Investor Solicitation Process ("SISP") for the sale of greater than 50% of its worldwide operations.

13. On May 16, 2012, Arctic, by its legal counsel, Hugh Adams, issued a Memorandum to Desert Mountain wherein specific reference was made to the Lease and the deemed obligation to pay the Purchase Option Amount in consequence of a sale of all or substantially all assets of Arctic and in particular: "As a consequence of the SISP and closing of the transaction contemplated, it is inevitable that a change of control as defined in the Lease will occur. Without amendment, the company (Arctic) will incur an obligation (post May 25, 2012) to purchase the Property for the sum of U.S. \$12.5 M."

14. On or about June 7, 2012, Arctic entered into an Asset Purchase Agreement (the "APA") for the sale of all or substantially all of its assets in its worldwide operations, and, in any event, greater than 50% of its worldwide operations on a consolidated basis, to the purchaser, Arctic Glacier, LLC, formerly H.I.G. Zamboni, LLC, Arctic Glacier U.S.A., Inc. and Arctic Glacier Canada Inc. (collectively the "Purchaser").

15. On or about June 21, 2012, the APA was approved by the Manitoba Court of Queen's Bench (the "Sale Approval Order"), binding upon Arctic and the Purchaser, subject only to minor amendments, thereby crystallizing the obligation of Arctic to pay to Desert Mountain the Purchase Option Amount, to the extent not otherwise liable to Desert Mountain for said amount pursuant to the Disability.

16. The APA expressly included specific sections, including Sections 2.05 and 2.06 and Schedule 2.06, whereby the Purchaser agreed to purchase the property leased to the Tenant under the Lease, particularly 600 South 80th Avenue, Tolleson, Arizona, (the "Arizona Facility"), for the Purchase Option Amount, with Arctic concurrently purchasing the property from Desert Mountain, i.e. Desert Mountain would be paid the full amount of \$12,500,000 U.S. together with such interest, charges and costs as required pursuant to Section 24 of the Lease, all pursuant to the Purchase Option.

17. The Arizona Facility was critical to the operations of Arctic and it was critical to the Purchaser that it receive the Arizona Facility as a condition of it completing the APA, i.e. closing the entire sale transaction.

18. In consequence of the aforementioned, pursuant to Section 24 and Exhibit "C" of the Lease, the Purchase Option Amount became immediately due and payable to Desert Mountain, payable on June 21, 2012, on said Sale Approval Order, and in any event prior to or at the latest on the Closing of the APA on July 27, 2012.

19. Said Section 2.05 of the APA subsequently was amended but restated without material change on July 26, 2012 pursuant to an Assignment, Assumption and Amending Agreement for the purchase by Arctic of the Arizona Facility and the concurrent purchase by the Purchaser from Arctic of the Arizona Facility, by payment to Desert Mountain of the Purchase Option Amount.

20. At no time was the Lease ever amended in respect to the Purchase Option.

21. The Sale Approval Order expressly provided that all monetary default under any Assigned Contract, which by definition included the Lease, shall be paid in full on or before the Closing of the APA. The failure to pay the Purchase Option Amount constituted a monetary default,

22. Notwithstanding the Purchase Option and the requirements thereunder, and in breach of the Lease, Arctic failed to pay the Purchase Option Amount or any amount to Desert Mountain.

23. In addition, the Purchaser refused to pay the Purchase Option Amount or, in the alternative, withdrew its agreement to purchase the Arizona Facility from Arctic for said amount, without any amendment to the APA or to the Sale Approval Order or to the Lease, and notwithstanding that there was no agreement of or notice to Desert Mountain that the Purchaser intended to assume the Lease without compliance with the Purchase Option.

24. In breach of the obligations under the APA, including the requirement therein to pay all monetary default under any Assigned Contract, including the Lease, Arctic and the Purchaser failed to pay said Purchase Option Amount on or before the Closing Date of July 27, 2012 and continue in default of said monetary obligation.

25. In addition, Arctic and the Purchaser breached paragraph 9 of the Sale Approval Order with its mandatory requirement therein that all monetary default under any Assigned Contract, which, by definition includes the Lease, shall be paid on or before the Closing of the APA, being July 27, 2012.

26. On or about July 27, 2012, in breach of the Lease, without the consent of Desert Mountain, or payment of the Purchase Option Amount, Arctic delivered possession of the Arizona Facility to the Purchaser, and the Purchaser took possession of the Arizona Facility, whereby Arctic and the Purchaser became jointly and severally liable for the Purchase Option Amount, otherwise due and payable.

27. In seeking the Sale Approval Order, Arctic and the Purchaser, represented to the Court and Desert Mountain that:

- (a) all owned real property and all leased property, without exception, were essential to the business being purchased as a going concern and would be purchased by the Purchaser;
- (b) the Purchaser was responsible for all Assumed Liabilities, including all Assigned Contracts and the rights and obligations thereunder, including all leases of real property, or breach thereof;
- (c) pursuant to s. 11.3(4) of the CCAA, all monetary default under any Assigned Contract must be paid and would be paid, without exception, as a term of and on or before Closing, either by the Purchaser or by the Applicants;
- (d) there was no known prejudice or adverse effect to any counter-party to the Assigned Contracts if the court ordered an assignment of the Assigned Contracts to the Purchaser;
- (e) the Court had jurisdiction to vest title to all Assets free and clear of all Claims as defined in the proposed Sale Approval Order, but such vesting of title would be without any monetary prejudice to any counter-party;
- (f) there were no claims under Excluded Liabilities or otherwise known, not to be paid, that would effect anyone's rights, if the order as requested was granted, including any rights of counter-parties under Assigned Contracts;
- (g) there were no issues, including any lack of jurisdiction, in granting the order sought and that any changes to the proposed Sale Approval Order appended to the Notice of Motion were merely "more words" and did not represent any material change to the substance of said order or constitute prejudice to any counter-parties.

28. Desert Mountain relied on all said representations made to the extent that the Sale Approval Order appended to the Notice of Motion would protect the interests of Desert Mountain.

29. At all material times, Arctic and the Directors and Officers and Trustees of Arctic, and the Purchaser, knew or ought to have known of the Lease and the Purchase Option therein, and that Desert Mountain was relying on same if there was a Change of Control, as provided for in the Lease.

30. At all material times, Arctic, and its Directors, Officers and Trustees, knew or ought to have known that in or about 2006 Desert Mountain and its CEO, Robert Nagy, facilitated the inclusion, by the Lease, of the Arizona Facility in the operations of Arctic on the concurrent purchase by Arctic of 6 entities comprising the leading packaged ice manufacturer and distributor in California, U.S., whereby Desert Mountain and Robert Nagy assumed all risk in respect to the Arizona Property through the purchase, directly or indirectly, of an interest in the Arizona Facility and the financing of the Arizona Facility through Roynat Capital and Arctic derived all benefit therefrom without any risk, beyond their obligation for ongoing compliance with all terms of the Lease. In respect to said financing, Desert Mountain has a direct obligation to Roynat Capital in the amount of approximately \$8,500,000 U.S., currently over due, and Robert Nagy has personally guaranteed said amount to the extent of \$500,000 U.S., plus interest and costs in each instance.

31. At all material times, Arctic and its Directors, Officers and Trustees knew or ought to have known that the Change of Control and Purchase Option, as provided for in the Lease, was designed to fully protect Desert Mountain and Robert Nagy, in consideration for said acquisition of the interest in the Arizona Facility and the Lease to Arctic, for the direct benefit of Arctic.

32. At all material times, Arctic, the Directors, Officers and Trustees of Arctic and the Purchaser knew or ought to have known that Desert Mountain would not give any possession of the Arizona Facility to the Purchaser until the Purchase Option Amount was paid in full.

33. In consequence, Arctic, the Directors, Officers and Trustees of Arctic and the Purchaser owed a duty of care, including a fiduciary duty, to Desert Mountain to insure payment of the Purchase Option Amount to Desert Mountain before closing the APA and before delivery of possession of the Arizona Facility to the Purchaser, which duty of care was breached by the failure of Arctic and/or the Purchaser to pay the Purchase Option Amount and by the delivery of possession of the Arizona Facility to the Purchaser without such payment.

34. Desert Mountain says that with full knowledge of the Lease and, in particular, the Purchase Option and Purchase Option Amount, and the fact that such Purchase Option and Purchase Option Amount were deemed to be exercised given the known Disability of Robert Nagy and given the sale by Arctic of greater than 50% of its worldwide operations on a consolidated basis, Arctic, the Purchaser, and the Directors, Officers and Trustees of Arctic, including Keith McMahon and Hugh Adams:

- (a) Conspired to breach the Lease by failure to pay the Purchase Option Amount to Desert Mountain;
- (b) Conspired to induce a breach of the Lease and in particular the Purchase Option by failure to pay the Purchase Option Amount to Desert Mountain;
- (c) Conspired to breach the Lease by delivery of possession of the Arizona Facility to the Purchaser without payment of the Purchase Option Amount;
- (d) With intention to cause economic harm to Desert Mountain, unlawfully interfered with the contractual and economic relations of Desert Mountain, by participating in the breach of the Lease and the breach of the Sale Approval Order and participating in the failure to pay the Purchase Option Amount to Desert Mountain and in delivering possession of the Arizona Facility to the Purchaser without payment of the Purchase Option Amount.

35. Desert Mountain has filed a Notice of Motion and Affidavit of Robert Nagy in the CCAA proceedings, seeking full payment of the Purchase Option Amount and relies upon the Notice of Motion and Affidavit and all allegations and material facts therein in support of its claim herein, to the extent not otherwise paid in full through its Motion.

36. By reason of the aforementioned and to the extent Desert Mountain is not paid in full pursuant to its Notice of Motion aforesaid, Arctic, the Purchaser, Keith McMahon and Hugh Adams and the remaining Directors, Officers and Trustees of Arctic, are jointly and severally liable to Desert Mountain for:

- (a) \$12,500,000 U.S., payable on or before June 21, 2012;

- (b) All interest, charges and costs incurred by Desert Mountain in respect to said failure to pay the Purchase Option Amount, including all interest, costs and charges payable by Desert Mountain to Roynat Capital, the mortgagee of the Arizona Facility, said mortgage currently bearing interest at 6.46% per annum;
- (c) All legal costs incurred by Desert Mountain on a solicitor and his own client basis;
- (d) Interest at the rate of the financing (currently 6.46%) of Desert Mountain with Roynat Capital from June 21, 2012 to date of payment;
- (e) Such further and other relief, including punitive damages, by reason of the outlandish, highhanded, arbitrary and willful conduct of Arctic, the Purchaser and the Directors, Officers and Trustees of Arctic involved therein, including Keith McMahon as an officer and director of Arctic and Hugh Adams as corporate secretary of Arctic and legal counsel to Arctic.

37. Desert Mountain therefore claims entitlement to payment in full, as provided in paragraph 36 hereof, and in paragraph 3 as to the amount of its claim, but reserves all its rights to recover payment in full of all monetary relief claimed herein, in the CCAA proceedings, by its motion aforesaid.

38. By reason of the aforementioned, Desert Mountain has suffered a loss in that it has not been paid the Purchase Option Amount, the value of the Arizona Property has deteriorated appreciably in value, including the specialized equipment therein and there is a material risk that Desert Mountain will be unable to recover the Purchase Option Amount by any separate sale, or, in the alternative, it will be subject to default under its mortgage financing, jeopardizing its entire investment. By reason of the aforementioned, Robert Nagy has a contingent liability, based on his guarantee, aforesaid.

39. Desert Mountain claims equitable security or, in the alternative, a trust claim, equal to the Purchase Option Amount, claimed by reason of the Lease and the Purchase Option Amount therein and the delivery of possession by Arctic to the Purchaser of the Arizona Facility, without the consent of Desert Mountain, and without payment to Desert Mountain of the Purchase Option Amount, whereby Desert Mountain has a secured claim and trust claim against sufficient of the purchase monies received or to be received by Arctic from the Purchaser to satisfy in full the Purchase Option Amount.

40. Given that the Arizona Facility was critical to the operations of Arctic and critical to be included in the acquisition of all assets of Arctic by the Purchaser, said security and trust claim, and the claim otherwise of Desert Mountain, applies to all purchase monies received by Arctic.

41. This claim is being filed by Desert Mountain against the Arctic Glacier Parties and separately against the Directors, Officers and Trustees of Arctic.

SCHEDULE "D"

**PROOF OF CLAIM FORM FOR CLAIMS AGAINST
DIRECTORS, OFFICERS OR TRUSTEES OF THE ARCTIC GLACIER PARTIES³
(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.

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

Debtor(s): The Directors, Officers and Trustees of The Arctic Glacier Parties for the period February 12, 2012 forward, jointly and severally liable with the Arctic Glacier Parties, including: James E. Clark, Gary A. Filmon, David R. Swaine, Richard L. Johnson, Keith W. McMahon, Douglas Bailey and Hugh Adams

2a. Original Claimant (the "Claimant")

Legal Name of Claimant	<u>Desert Mountain Ice, LLC</u>	Name of Contact	<u>Fillmore Riley LLP Attn: D. Wayne Leslie</u>
Address		Title	<u>Solicitor & Agent for Desert Mountain, LLC</u>
<u>c/o Fillmore Riley LLP</u>		Phone #	<u>(204) 957-8321</u>
<u>1700 – 360 Main Street</u>		Fax#	<u>(204) 954-0321</u>
City <u>Winnipeg</u>	Prov /State <u>MB</u>	email	<u>dwleslie@fillmoreriley.com</u>
Postal/Zip Code <u>R3C 3Z3</u>			

2b. Assignee, if claim has been assigned

Legal Name of Assignee	<u>NOT APPLICABLE</u>	Name of Contact	<u></u>
Address		Phone #	<u></u>
		Fax#	<u></u>
City <u></u>	Prov /State <u></u>	email:	<u></u>
Postal/Zip Code <u></u>			

³ 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 SEE SCHEDULE "A"

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 SEE SCHEDULE "B"

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: _____ Per: _____ Name: Robert Nagy Title: Chief Executive Officer / <u>PRESIDENT</u>	Witness: _____ (signature) D. Wayne Leslie (print)
Dated at <u>Winnipeg</u> this <u>29</u> day of <u>October</u> , 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, 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 PARTIES⁴

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 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.

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.

⁴ 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 "A"

SECTION 3 – AMOUNT OF CLAIM

3. Amount of Claim

The Debtors were and still 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)
The Directors, Officers and Trustees of The Arctic Glacier Parties for the period February 12, 2012 forward, jointly and severally liable with the Arctic Glacier Parties, including: James E. Clark Gary A. Filmon David R. Swaine Richard L. Johnson Keith W. McMahon Douglas Bailey Hugh Adams	U.S. \$	\$12,500,000.00 payable June 21, 2012, with interest thereon at 6.46% per annum together with all additional financing interest, charges, costs, and legal costs on a solicitor and client basis.

SCHEDULE "B"

SECTION 4 – DOCUMENTATION

4 Documentation

1. Lease and Option Agreement dated May 25, 2006, as amended (the "Lease");
2. Sale Approval Order of the Manitoba Court of Queen's Bench dated June 21, 2012 and July 12, 2012 (the "Sale Approval Order"), including:
 - a) Asset Purchase Agreement dated June 7, 2012;
 - b) Assignment, Assumption and Amending Agreement dated July 26, 2012;
3. Notice of Motion, Queen's Bench File No. CI 12-01-76323, filed October 15, 2012;
4. Affidavit of Robert Nagy, Queen's Bench File No. CI 12-01-76323, sworn October 9, 2012, filed October 15, 2012.

THE CLAIM:

5. On May 26, 2006, for good and valuable consideration, Desert Mountain Ice, LLC ("Desert Mountain") entered into the Lease with Arctic Glacier California Inc. (the "Tenant").
6. The Lease provided for an initial term of 3 years and 2 options to extend the original term for 2 periods of 3 years each, provided that the Tenant gave notice to Desert Mountain of its election to exercise the option no less than 6 months prior to the expiration date of the then existing term.
7. The Tenant exercised both options to extend, including by notice dated July 26, 2010, extending the term of the Lease to May 24, 2015 (the "Second Option Term").
8. Section 24 of the Lease provided for a Purchase Option with a Purchase Price of \$12,500,000 U.S., if the Purchase Option was exercised during the Second Option Term, plus all charges, interest and costs incurred by Desert Mountain (the "Purchase Option Amount").
9. Section 24.3 of the Lease provided expressly that:

"The Purchase Option will be deemed to be automatically exercised by Tenant upon the occurrence of any one or more of the following events:

. . .

b) the Disability of Robert Nagy. For the purposes of this section, "**Disability**" shall mean the inability of Robert Nagy to participate in the business of Arctic Glacier Inc. on a full time basis for more than six (6) months out of any nine (9) consecutive month period;

c) a change in control of Arctic Glacier Inc. For the purposes of this section, a change of control ("**Change of Control**") with respect to Arctic Glacier Inc. means any of the following events: . . .

v) Arctic Glacier Inc. sells greater than 50% of its worldwide operations on a consolidated basis within any continuous six (6) month period.

(emphasis added)

10. On or about August 20, 2011, Robert Nagy resigned from the Board of Directors and Board of Trustees of Arctic, whereby thereafter he was unable to participate in the business of Arctic on a full time basis for more than 6 months out of any 9 month consecutive period, or at all, thereby triggering the Purchase Option and obligation of Arctic to pay the Purchase Option Amount.

11. On or about February 22, 2012, Arctic applied to the Manitoba Court of Queen's Bench seeking protection under the *Companies' Creditors Arrangement Act* (the "CCAA proceedings") whereupon an Initial Order was granted, including, *inter alia*, a stay of proceedings, staying all actions against Arctic.

12. During the course of the CCAA proceedings, Arctic developed a Sales Investor Solicitation Process ("SISP") for the sale of greater than 50% of its worldwide operations.

13. On May 16, 2012, Arctic, by its legal counsel, Hugh Adams, issued a Memorandum to Desert Mountain wherein specific reference was made to the Lease and the deemed obligation to pay the Purchase Option Amount in consequence of a sale of all or substantially all assets of Arctic and in particular: "As a consequence of the SISP and closing of the transaction contemplated, it is inevitable that a change of control as defined in the Lease will occur. Without amendment, the company (Arctic) will incur an obligation (post May 25, 2012) to purchase the Property for the sum of U.S. \$12.5 M."

14. On or about June 7, 2012, Arctic entered into an Asset Purchase Agreement (the "APA") for the sale of all or substantially all of its assets in its worldwide operations, and, in any event, greater than 50% of its worldwide operations on a consolidated basis, to the purchaser, Arctic Glacier, LLC, formerly H.I.G. Zamboni, LLC, Arctic Glacier U.S.A., Inc. and Arctic Glacier Canada Inc. (collectively the "Purchaser").

15. On or about June 21, 2012, the APA was approved by the Manitoba Court of Queen's Bench (the "Sale Approval Order"), binding upon Arctic and the Purchaser, subject only to minor amendments, thereby crystallizing the obligation of Arctic to pay to Desert Mountain the Purchase Option Amount, to the extent not otherwise liable to Desert Mountain for said amount pursuant to the Disability.

16. The APA expressly included specific sections, including Sections 2.05 and 2.06 and Schedule 2.06, whereby the Purchaser agreed to purchase the property leased to the Tenant under the Lease, particularly 600 South 80th Avenue, Tolleson, Arizona, (the "Arizona Facility"), for the Purchase Option Amount, with Arctic concurrently purchasing the property from Desert Mountain, i.e. Desert Mountain would be paid the full amount of \$12,500,000 U.S. together with such interest, charges and costs as required pursuant to Section 24 of the Lease, all pursuant to the Purchase Option.

17. The Arizona Facility was critical to the operations of Arctic and it was critical to the Purchaser that it receive the Arizona Facility as a condition of it completing the APA, i.e. closing the entire sale transaction.

18. In consequence of the aforementioned, pursuant to Section 24 and Exhibit "C" of the Lease, the Purchase Option Amount became immediately due and payable to Desert Mountain, payable on June 21, 2012, on said Sale Approval Order, and in any event prior to or at the latest on the Closing of the APA on July 27, 2012.

19. Said Section 2.05 of the APA subsequently was amended but restated without material change on July 26, 2012 pursuant to an Assignment, Assumption and Amending Agreement for the purchase by Arctic of the Arizona Facility and the concurrent purchase by the Purchaser from Arctic of the Arizona Facility, by payment to Desert Mountain of the Purchase Option Amount.

20. At no time was the Lease ever amended in respect to the Purchase Option.

21. The Sale Approval Order expressly provided that all monetary default under any Assigned Contract, which by definition included the Lease, shall be paid in full on or before the Closing of the APA. The failure to pay the Purchase Option Amount constituted a monetary default,

22. Notwithstanding the Purchase Option and the requirements thereunder, and in breach of the Lease, Arctic failed to pay the Purchase Option Amount or any amount to Desert Mountain.

23. In addition, the Purchaser refused to pay the Purchase Option Amount or, in the alternative, withdrew its agreement to purchase the Arizona Facility from Arctic for said amount, without any amendment to the APA or to the Sale Approval Order or to the Lease, and notwithstanding that there was no agreement of or notice to Desert Mountain that the Purchaser intended to assume the Lease without compliance with the Purchase Option.

24. In breach of the obligations under the APA, including the requirement therein to pay all monetary default under any Assigned Contract, including the Lease, Arctic and the Purchaser failed to pay said Purchase Option Amount on or before the Closing Date of July 27, 2012 and continue in default of said monetary obligation.

25. In addition, Arctic and the Purchaser breached paragraph 9 of the Sale Approval Order with its mandatory requirement therein that all monetary default under any Assigned Contract, which, by definition includes the Lease, shall be paid on or before the Closing of the APA, being July 27, 2012.

26. On or about July 27, 2012, in breach of the Lease, without the consent of Desert Mountain, or payment of the Purchase Option Amount, Arctic delivered possession of the Arizona Facility to the Purchaser, and the Purchaser took possession of the Arizona Facility, whereby Arctic and the Purchaser became jointly and severally liable for the Purchase Option Amount, otherwise due and payable.

27. In seeking the Sale Approval Order, Arctic and the Purchaser, represented to the Court and Desert Mountain that:

- (a) all owned real property and all leased property, without exception, were essential to the business being purchased as a going concern and would be purchased by the Purchaser;
- (b) the Purchaser was responsible for all Assumed Liabilities, including all Assigned Contracts and the rights and obligations thereunder, including all leases of real property, or breach thereof;
- (c) pursuant to s. 11.3(4) of the CCAA, all monetary default under any Assigned Contract must be paid and would be paid, without exception, as a term of and on or before Closing, either by the Purchaser or by the Applicants;
- (d) there was no known prejudice or adverse effect to any counter-party to the Assigned Contracts if the court ordered an assignment of the Assigned Contracts to the Purchaser;
- (e) the Court had jurisdiction to vest title to all Assets free and clear of all Claims as defined in the proposed Sale Approval Order, but such vesting of title would be without any monetary prejudice to any counter-party;
- (f) there were no claims under Excluded Liabilities or otherwise known, not to be paid, that would effect anyone's rights, if the order as requested was granted, including any rights of counter-parties under Assigned Contracts;
- (g) there were no issues, including any lack of jurisdiction, in granting the order sought and that any changes to the proposed Sale Approval Order appended to the Notice of Motion were merely "more words" and did not represent any material change to the substance of said order or constitute prejudice to any counter-parties.

28. Desert Mountain relied on all said representations made to the extent that the Sale Approval Order appended to the Notice of Motion would protect the interests of Desert Mountain.

29. At all material times, Arctic and the Directors and Officers and Trustees of Arctic, and the Purchaser, knew or ought to have known of the Lease and the Purchase Option therein, and that Desert Mountain was relying on same if there was a Change of Control, as provided for in the Lease.

30. At all material times, Arctic, and its Directors, Officers and Trustees, knew or ought to have known that in or about 2006 Desert Mountain and its CEO, Robert Nagy, facilitated the inclusion, by the Lease, of the Arizona Facility in the operations of Arctic on the concurrent purchase by Arctic of 6 entities comprising the leading packaged ice manufacturer and distributor in California, U.S., whereby Desert Mountain and Robert Nagy assumed all risk in respect to the Arizona Property through the purchase, directly or indirectly, of an interest in the Arizona Facility and the financing of the Arizona Facility through Roynat Capital and Arctic derived all benefit therefrom without any risk, beyond their obligation for ongoing compliance with all terms of the Lease. In respect to said financing, Desert Mountain has a direct obligation to Roynat Capital in the amount of approximately \$8,500,000 U.S., currently over due, and Robert Nagy has personally guaranteed said amount to the extent of \$500,000 U.S., plus interest and costs in each instance.

31. At all material times, Arctic and its Directors, Officers and Trustees knew or ought to have known that the Change of Control and Purchase Option, as provided for in the Lease, was designed to fully protect Desert Mountain and Robert Nagy, in consideration for said acquisition of the interest in the Arizona Facility and the Lease to Arctic, for the direct benefit of Arctic.

32. At all material times, Arctic, the Directors, Officers and Trustees of Arctic and the Purchaser knew or ought to have known that Desert Mountain would not give any possession of the Arizona Facility to the Purchaser until the Purchase Option Amount was paid in full.

33. In consequence, Arctic, the Directors, Officers and Trustees of Arctic and the Purchaser owed a duty of care, including a fiduciary duty, to Desert Mountain to insure payment of the Purchase Option Amount to Desert Mountain before closing the APA and before delivery of possession of the Arizona Facility to the Purchaser, which duty of care was breached by the failure of Arctic and/or the Purchaser to pay the Purchase Option Amount and by the delivery of possession of the Arizona Facility to the Purchaser without such payment.

34. Desert Mountain says that with full knowledge of the Lease and, in particular, the Purchase Option and Purchase Option Amount, and the fact that such Purchase Option and Purchase Option Amount were deemed to be exercised given the known Disability of Robert Nagy and given the sale by Arctic of greater than 50% of its worldwide operations on a consolidated basis, Arctic, the Purchaser, and the Directors, Officers and Trustees of Arctic, including Keith McMahon and Hugh Adams:

- (a) Conspired to breach the Lease by failure to pay the Purchase Option Amount to Desert Mountain;
- (b) Conspired to induce a breach of the Lease and in particular the Purchase Option by failure to pay the Purchase Option Amount to Desert Mountain;
- (c) Conspired to breach the Lease by delivery of possession of the Arizona Facility to the Purchaser without payment of the Purchase Option Amount;
- (d) With intention to cause economic harm to Desert Mountain, unlawfully interfered with the contractual and economic relations of Desert Mountain, by participating in the breach of the Lease and the breach of the Sale Approval Order and participating in the failure to pay the Purchase Option Amount to Desert Mountain and in delivering possession of the Arizona Facility to the Purchaser without payment of the Purchase Option Amount.

35. Desert Mountain has filed a Notice of Motion and Affidavit of Robert Nagy in the CCAA proceedings, seeking full payment of the Purchase Option Amount and relies upon the Notice of Motion and Affidavit and all allegations and material facts therein in support of its claim herein, to the extent not otherwise paid in full through its Motion.

36. By reason of the aforementioned and to the extent Desert Mountain is not paid in full pursuant to its Notice of Motion aforesaid, Arctic, the Purchaser, Keith McMahon and Hugh Adams and the remaining Directors, Officers and Trustees of Arctic, are jointly and severally liable to Desert Mountain for:

- (a) \$12,500,000 U.S., payable on or before June 21, 2012;

- (b) All interest, charges and costs incurred by Desert Mountain in respect to said failure to pay the Purchase Option Amount, including all interest, costs and charges payable by Desert Mountain to Roynat Capital, the mortgagee of the Arizona Facility, said mortgage currently bearing interest at 6.46% per annum;
- (c) All legal costs incurred by Desert Mountain on a solicitor and his own client basis;
- (d) Interest at the rate of the financing (currently 6.46%) of Desert Mountain with Roynat Capital from June 21, 2012 to date of payment;
- (e) Such further and other relief, including punitive damages, by reason of the outlandish, highhanded, arbitrary and willful conduct of Arctic, the Purchaser and the Directors, Officers and Trustees of Arctic involved therein, including Keith McMahon as an officer and director of Arctic and Hugh Adams as corporate secretary of Arctic and legal counsel to Arctic.

37. Desert Mountain therefore claims entitlement to payment in full, as provided in paragraph 36 hereof, and in paragraph 3 as to the amount of its claim, but reserves all its rights to recover payment in full of all monetary relief claimed herein, in the CCAA proceedings, by its motion aforesaid.

38. By reason of the aforementioned, Desert Mountain has suffered a loss in that it has not been paid the Purchase Option Amount, the value of the Arizona Property has deteriorated appreciably in value, including the specialized equipment therein and there is a material risk that Desert Mountain will be unable to recover the Purchase Option Amount by any separate sale, or, in the alternative, it will be subject to default under its mortgage financing, jeopardizing its entire investment. By reason of the aforementioned, Robert Nagy has a contingent liability, based on his guarantee, aforesaid.

39. Desert Mountain claims equitable security or, in the alternative, a trust claim, equal to the Purchase Option Amount, claimed by reason of the Lease and the Purchase Option Amount therein and the delivery of possession by Arctic to the Purchaser of the Arizona Facility, without the consent of Desert Mountain, and without payment to Desert Mountain of the Purchase Option Amount, whereby Desert Mountain has a secured claim and trust claim against sufficient of the purchase monies received or to be received by Arctic from the Purchaser to satisfy in full the Purchase Option Amount.

40. Given that the Arizona Facility was critical to the operations of Arctic and critical to be included in the acquisition of all assets of Arctic by the Purchaser, said security and trust claim, and the claim otherwise of Desert Mountain, applies to all purchase monies received by Arctic.

41. This claim is being filed by Desert Mountain against the Arctic Glacier Parties and separately against the Directors, Officers and Trustees of Arctic.

Appendix “I”

**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")**

**EIGHTH REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.
NOVEMBER 23, 2012**

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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. 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 seven reports with this Honourable Court. Capitalized terms not otherwise defined in this report (the “**Eighth 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 (the “**Original Purchaser**”), and the Applicants, excluding AGIF (the “**Vendors**”) entered into an asset purchase agreement (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, on an “as is, where is” basis (the “**Sale Transaction**”).
- 1.4 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**”).

- 1.5 The Sale Transaction contemplated by the APA, as amended, closed effective 12:01 a.m. on July 27, 2012. On July 27, 2012, the Monitor delivered the Monitor’s Certificate to the Purchaser and subsequently filed same with the Court.
- 1.6 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 Applicants sought and obtained the Transition Order dated July 12, 2012. Among other things, the Transition Order provides that, on and after the Closing of the Sale Transaction, 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”**.
- 1.7 As a result of the Closing of the Sale Transaction, 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**”).
- 1.8 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”**.

- 1.9 The Monitor’s Seventh Report to Court (the “**Seventh Report**”) was provided in support of the Monitor’s motion seeking approval of the sale transaction contemplated by the purchase and sale agreement, as amended, dated July 6, 2012 (the “**Huntington Transaction**”), between the Applicant, Arctic Glacier New York Inc. (“**AGNY**”) and Peter J. Pastorelli, Sr., as assigned to 50 Ice House LLC (the “**Buyer**”) (the “**Huntington PSA**”).
- 1.10 On October 22, 2012, this Honourable Court issued an order (the “**Huntington Sale Order**”) approving the Huntington Transaction. The Huntington Sale Order also authorized and directed the Monitor, on behalf of AGNY, to take such additional steps and to execute such additional documents as necessary or desirable for the completion of the Huntington Transaction. On November 14, 2012, the U.S. Court issued an Order recognizing the Huntington Sale Order and providing certain related relief.
- 1.11 The stay of proceedings set out in the Initial Order (the “**Stay Period**”), as extended by subsequent orders, expires on November 30, 2012.
- 1.12 This Eighth Report is filed in support of the Monitor’s motion seeking an order:
 - a) Extending the Stay Period to March 15, 2013;
 - b) Unsealing the Confidential Appendix to the Monitor’s Fourth Report to Court dated June 15, 2012 (the “**Fourth Report**”) (other than Schedule 1.01(B) to the APA) which was sealed pursuant to an Order of the Court dated June 21, 2012;

- c) Unsealing the Confidential Supplement to the Monitor's Seventh Report to Court dated October 16, 2012 which was sealed pursuant to an Order of the Court dated October 22, 2012; and
- d) Approving this Eighth Report and the Monitor's activities described herein.

1.13 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 Eighth 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**") who 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 Eighth Report, or otherwise used to prepare this Eighth Report.
- 2.2 Certain of the information referred to in this Eighth 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. Future-oriented financial information referred to in this Eighth 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 Eighth 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 Eighth Report are expressed in United States dollars, which is the Applicants' common reporting currency.

3.0 THE CLAIMS PROCESS

3.1 In this section, all capitalized terms not defined elsewhere have the meaning ascribed to them in the Claims Procedure Order.

Notice of the Claims Process

3.2 As reported in the Seventh Report and in accordance with the provisions of the Claims Procedure Order, the Monitor took the following steps:

- On September 7, 2012, posted a copy of the Proof of Claim Document Package on the Monitor's website; and
- On September 11, 2012, caused the Notice to Claimants to be published in (i) the Globe and Mail newspaper (National Edition), (ii) the Wall Street Journal (National Edition), and (iii) the Winnipeg Free Press. Copies of these Notices were appended to the Seventh Report.

3.3 Within seven Business Days following the making of the Claims Procedure Order, the Monitor also sent the Proof of Claim Form, the DO&T Proof of Claim Form, the Claimants' Guide to Completing the Proof of Claim Form and the Claimants' Guide to

Completing the DO&T Proof of Claim Form to approximately 1,000 parties who were identified as potential Creditors.

- 3.4 Subsequent to that initial mailing, the Monitor sent 13 additional Proof of Claim Document Packages to (i) parties who requested such documentation and (ii) additional potential Creditors that came to the Monitor's attention during its continuing review of the Applicants' books and records and communications with the Applicants' insurance providers.

Insurance Issues

- 3.5 The Claims Procedure Order provides that Claims covered by the Applicants' insurance policies or for which payment is made through the Applicants' insurance policies shall not be recoverable against the Applicants or the Directors, Officers and Trustees in the Claims Process. The Claims Procedure Order also provides that nothing therein shall bar or prevent any Creditor from seeking recourse against or payment from any applicable insurance proceeds. In order for Claimants to recover any portion of a Claim that may not be covered by insurance from the Applicants' estates as part of the Claims Process, such Claimants were obliged to file a Proof of Claim in the Claims Process.
- 3.6 The Monitor has had numerous discussions with the Applicants' insurance broker and certain of the Applicants' insurers to obtain the contact information of parties with open claims that may be covered by the Applicants' insurance policies. The Monitor has also been in regular contact with former Senior Management to obtain details about the Applicants' insurance programs and about specific insurance claims that have come to the Monitor's attention.

- 3.7 Out of an abundance of caution and to ensure that all potential Claimants have received a Proof of Claim Document Package, the Monitor included among the parties to whom Proof of Claim Document Packages were sent, the Applicants' insurers and insurance broker, as well as all known parties who the insurance broker and insurers advised the Monitor had open claims against the Applicants' liability and workers' compensation insurance policies.
- 3.8 The Applicants had three automobile insurers who provided coverage over different geographic regions. The Monitor was advised by two of the three insurers that they did not have any open claims against their automobile insurance policies and thus Proof of Claim Document Packages were not required to be sent in respect of those insurers. The Monitor was advised by the Applicants' third automobile insurer that there were open claims, but that the insurer required additional time to obtain and provide the contact information for those claimants and/or their respective legal counsel. On November 19, 2012, the Monitor sent 22 Proof of Claim Document Packages to parties and/or their legal counsel who the insurer advised had open claims against the Applicants' automobile insurance policies with that insurer. In accordance with paragraph 5 of the Claims Procedure Order, the Monitor included a letter with the Proof of Claim Document Packages, notifying those parties that they must submit any Claim against the Applicants by December 21, 2012.
- 3.9 The Monitor continues to be advised by the Applicants' insurers, insurance broker and former Senior Management of new claims relating to the period prior to the Closing of the Sale Transaction. Upon receiving notification of these claims, the Monitor has taken steps to confirm that these claims are covered by the Applicants' insurance policies. For

the reasons set out above and out of an abundance of caution, the Monitor intends to continue to send any new potential Claimants a Proof of Claim Document Package and provide 30 days for each potential Claimant to submit a Proof of Claim in the Claims Process, should they choose to do so. The Monitor intends to seek the direction of the Court at the next stay extension hearing with respect to providing further Proof of Claim Document Packages.

- 3.10 The Claims Bar Date under the Claims Procedure Order was established as October 31, 2012 (5:00 p.m. Central Time).

Summary of Claims Received

- 3.11 As of October 31, 2012, the Monitor had received 56 Proofs of Claim asserting Claims against the Applicants and 4 DO&T Proofs of Claim asserting Claims against the Applicants' Directors, Officers and Trustees. The Monitor has also received 5 Proofs of Claim in the collective amount of approximately \$150,000 asserting Claims against the Applicants that were received after the Claims Bar Date. The Monitor is in the process of investigating the circumstances surrounding the receipt of such late Claims and will report further on these Claims in a subsequent report.
- 3.12 In addition to the Claims filed with the Monitor, the Claims Procedure Order provided for the following two Deemed Proven Claims which are deemed to be accepted as Proven Claims without any further action on behalf of the Claimant:
- a) Claim of the United States as provided for in the DOJ Stipulation entered by the U.S. Court on July 17, 2012 (the "**DOJ Claim**"). The DOJ Claim is deemed accepted as against AGII in the amount of \$7,032,046.96 as of July 9, 2012, plus

interest compounding annually at 0.34% until the date of payment of such Claim. The DOJ Claim 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. All other United States government agencies were required to otherwise comply with the provisions of the Claims Procedure Order; and

- b) Claim of the Direct Purchaser Claimants deemed accepted against AGIF, AGI and AGII in the principal amount of \$10 million, plus applicable interest. This Claim represents the amount remaining to be paid under a settlement agreement with the Direct Purchaser Claimants that was previously approved by court order.

3.13 All of the Claims filed with the Monitor and the Deemed Proven Claims are summarized, by category, in the table below.

THE ARCTIC GLACIER PARTIES - PROOF OF CLAIM SUMMARY						
Name	Claims Against The Arctic Glacier Parties			Claims Against Directors, Officers or Trustees		
	Claim Amount			Claim Amount		
	USD (\$000's)	CDN (\$000's)	No. of Claims	USD (\$000's)	CDN (\$000's)	No. of Claims
Claims from current and former Board members and management (primarily in respect of claimed Change of Control Bonuses)	1,062	12,976	15	-	683	1
Claims from litigation claimants potentially covered by insurance	6,997	-	13	-	-	1
Claims from litigation claimants not covered by insurance	477,512	2,000	4	-	-	-
Claims from government agencies (excluding CRA and IRS)	2,405	8	18	-	-	-
Canada Revenue Agency marker claim	-	-	1	-	-	-
Internal Revenue Service marker claim	-	-	1	-	-	-
Indemnity claims - antitrust litigation	-	-	3	-	-	1
DOJ Deemed Proven Claim	7,032	-	1	-	-	-
Direct Purchasers' Deemed Proven Claim	10,000	-	1	-	-	-
Other Claims	12,858	12,464	6	12,500	-	1
Grand Total	517,866	27,448	63	12,500	683	4

3.14 Certain of the Proofs of Claim submitted, including several of the Proofs of Claim filed by U.S. government authorities, were filed as secured or preferred Claims. Further, many of the Proofs of Claim filed did not specify the Applicant(s) against whom the Claim is asserted, did not assert a specific dollar value and/or stated that the Claim is an estimate and is subject to revision. The Monitor, in conjunction with its Canadian and U.S. counsel, intends to investigate these issues further as part of its overall review and potential settlement of the Claims. The Monitor will also be considering issues related to the payment of interest on the Claims and whether interest has been claimed. As such, the amounts of the Proofs of Claim received set out in the table above are subject to further refinement and revision.

Significant Claims

- 3.15 The Claims Procedure Order provided that, for certain known Class Claims (Canadian Retail Litigation and Indirect Purchaser Litigation), the applicable Class Representative was entitled to file a Class Claim on behalf of their respective Claimants such that the individual Canadian Retail Litigation Claimants and the individual Indirect Purchaser Claimants were not required to file individual Proofs of Claim in respect of the Class Claims.
- 3.16 Among the more significant Claims received by the Monitor was a Class Claim filed on behalf of the Canadian Retail Litigation Claimants (the “**Canadian Direct Purchaser Claim**”) in the amount of CDN\$2 million, as well as a Class Claim filed on behalf of the Indirect Purchaser Claimants (the “**Indirect Purchaser Claim**”) for at least \$463.58 million.

The Canadian Direct Purchaser Claim

- 3.17 On May 4, 2011, AGIF issued a press release announcing the settlement of the Canadian Retail Litigation for an amount totalling CDN\$2 million. This settlement was described in paragraph 108 of the Initial McMahon Affidavit (sworn on February 21, 2012) which stated that an agreement was to be placed before the Ontario Superior Court for approval of a settlement requiring a payment by AGI of CDN\$2 million in settlement of the Canadian Retail Litigation. However, this settlement has not yet been executed or approved by the court with jurisdiction over the class action.
- 3.18 The Monitor has had discussions with counsel for the Applicants concerning the Canadian Direct Purchaser Claim. The Claims Procedure Order provides that the

Monitor may, with the consent of the Applicants (through the CPS) and any Person whose liability may be affected and, in respect of a Class Claim, subject to approval of the court of competent jurisdiction over the Class Claim, resolve or settle the Class Claim. The Monitor understands that the parties to the Canadian Retail Litigation are in the process of negotiating definitive settlement documents with respect to this matter. The Monitor has been informed by the Applicants that the settlement is expected to resolve the Canadian Direct Purchaser Claim for CDN\$2 million (the amount of the Proof of Claim filed) subject to the approval of the court with jurisdiction over the class action. The Monitor will report further once the definitive settlement documents have been finalized.

Indirect Purchaser Claim

- 3.19 The Class Representative for the Indirect Purchaser Claimants filed the Indirect Purchaser Claim in the amount of at least \$463.58 million. This Class Claim states that it is filed on behalf of a class of U.S. retail purchasers of packaged ice who are located in 16 different states. It is based on an alleged conspiracy between certain of the Applicants, Reddy Ice Corporation (“**Reddy Ice**”) and Home City Ice Company (“**Home City**”) with respect to the market allocation of the sale of packaged ice.
- 3.20 The Indirect Purchaser Claim specifically notes that, with limited exceptions, the Claimants only have publicly available data with which to estimate their damages at this time. As such, the amount claimed is stated to be an “estimate” in certain respects and is stated to be “at least \$463,577,602.”
- 3.21 The Monitor has had ongoing discussions concerning the litigation commenced by the Class Representative for the Indirect Purchaser Claimants with the Applicants’ Canadian

and U.S. counsel since the early stages of the CCAA Proceedings. The Monitor has also reviewed certain of the pleadings, court decisions and related court materials filed in the Indirect Purchaser Litigation in the United States. The Monitor notes that the Indirect Purchaser Litigation sought damages against certain of the Applicants, Reddy Ice and Home City on a joint and several basis. The Monitor has been informed that Reddy Ice settled its potential liability under the Indirect Purchaser Litigation for \$700,000 and that Home City provisionally settled its potential liability under the Indirect Purchaser Litigation for \$2.7 million. The Monitor notes that both of these settlements are (i) well below the amount claimed in the Indirect Purchaser Claim, and (ii) are less than the corresponding amounts paid in settlements that Reddy Ice and Home City made in the direct purchaser litigation. The Arctic Glacier Parties settled their litigation with the Direct Purchaser Claimants for a total of \$12.5 million of which \$10 million remains outstanding. The Monitor intends to dispute the Indirect Purchaser Claim pursuant to the terms of the Claims Procedure Order.

- 3.22 On November 21, 2012, the Monitor's U.S. counsel was provided with a copy of a motion filed on November 20, 2012 on behalf of the Indirect Purchaser Claimants in the United States District Court Eastern District of Michigan Southern Division. The motion seeks certain relief against the United States government including preventing the government from receiving any of the funds being held by the Monitor in respect of the DOJ Claim. The Monitor notes that the DOJ Stipulation expressly provides as follows with respect to the DOJ Claim:

The Monitor and the Debtors agree to recommend to the Canadian Court that the DOJ Claim be paid in full as soon as is practicable after the Canadian Court issues an order authorizing the Monitor to distribute proceeds from the Sale to the Debtors' creditors (including the United States) (the "Distribution Order") and after this Court issues an order recognizing and enforcing the Distribution Order.

- 3.23 As required by the Amended and Restated Approval and Vesting Order issued July 12, 2012 (the "**Sale Approval Order**") and the DOJ Stipulation, the Monitor is currently holding the proceeds from the Sale Transaction subject to further Order of the Court. Any motion dealing with the distribution of such funds will be on appropriate and/or prescribed notice on the Service List maintained in these CCAA Proceedings and the Chapter 15 Proceedings. A copy of the Indirect Purchaser Claimants' motion is attached as **Appendix "D"**.

Claims Filed by the CRA and the IRS

- 3.24 The Canada Revenue Agency ("**CRA**") and the Internal Revenue Service ("**IRS**") have filed "marker claims" in the Claims Process for an amount yet to be determined. As the current taxation year is not yet complete, the Applicants' tax obligations for the current year (which would include any taxes payable in connection with the Sale Transaction for which the Vendors would be liable) have not yet been quantified, nor have their tax returns been filed. The Applicants have retained KPMG LLP to assist in the preparation and filing of the tax returns. Both the CRA and the IRS have filed their Proofs of Claim with a specific reservation of certain jurisdictional arguments and have indicated that their respective Proofs of Claim are limited to the Applicants' tax obligations in respect of the current taxation year and any taxes payable in respect of the Sale Transaction.

There is insufficient information available at this time for the Monitor to be in a position to estimate the Applicants' potential tax liability.

Desert Mountain LLC

- 3.25 As described in the Seventh Report, Desert Mountain LLC (the “**Arizona Landlord**”) is the Applicants' former landlord for the facility located in Tolleson, Arizona. The Arizona Landlord's lease agreement (the “**Arizona Lease**”) with the Applicants contained, among other things, a “purchase option” (the “**Purchase Option**”) whereby the Tenant was permitted to purchase the lands subject to the Arizona Lease (the “**Arizona Lands**”) for a purchase price of \$12.5 million. The Arizona Lease provides that, in certain events, including a change of control of AGI, the Purchase Option would be deemed to be automatically exercised by the “Tenant”. The Sale Approval Order provides that the assets purchased by the Purchaser, including Assigned Contracts, are vested in the Purchaser free and clear of and from any and all “rights of use, puts or forced sales provisions exercisable as a consequence of or arising from closing of the Transaction”.
- 3.26 On July 23, 2012, U.S. counsel for the Arizona Landlord demanded payment of \$12.5 million on or before Closing of the Sale Transaction. No amount was paid to the Arizona Landlord in conjunction with the Closing.
- 3.27 After the Closing of the Sale Transaction, counsel for the Arizona Landlord contacted the Monitor's counsel regarding the fact that the Arizona Lands had not been purchased pursuant to the Purchase Option.

- 3.28 On October 15, 2012, the Arizona Landlord served a Notice of Motion and supporting affidavit on the Applicants, the Purchaser and the Monitor seeking payment by the Applicants or the Purchaser of \$12.5 million together with applicable interest, charges and costs. The Arizona Landlord is also seeking alternative relief relating to an amendment or variation of the Sale Approval Order that would result in the exercise of the Purchase Option under the Arizona Lease. In addition, the Arizona Landlord alleges that the non-payment of the Purchase Option price was a monetary default (as that term is used in section 11.3 of the CCAA) and is seeking advice and directions in that respect. The Monitor has been advised that the Applicants and the Purchaser dispute the allegations contained in the Arizona Landlord's court materials and oppose the relief sought.
- 3.29 After receiving the Arizona Landlord's motion, the Monitor developed a timeline for the conduct of the litigation that was agreed to by the Arizona Landlord, the Applicants and the Purchaser. Given the potential for lengthy, distracting and costly litigation related to the Arizona Lease, in an attempt to facilitate a commercial resolution to the dispute among the parties, the Monitor has initiated and participated in numerous discussions, both separately and collectively, with the Purchaser, the Applicants and the Arizona Landlord. The Monitor's counsel has also convened several conference calls between the parties to discuss procedural issues related to the motion. Despite these efforts of the Monitor, no commercial resolution of the dispute has been reached.
- 3.30 In accordance with the agreed-upon timeline, the Applicants and the Purchaser delivered responding affidavits to the motion. Cross-examinations were originally scheduled for the week commencing November 12, 2012, however, the parties agreed to a two-week

deferral of such examinations to allow for commercial settlement discussions to continue. As of the date of this Eighth Report, the parties are discussing the scheduling of cross-examinations which are now expected to take place on December 18-19, 2012 in Winnipeg. As contemplated by the timeline, the Monitor intends to file a comprehensive Monitor's Report prior to the hearing of the motion. The timing of the filing of this Report will depend on the timing of the completion of the remaining steps in the timeline.

- 3.31 In addition to the relief sought in the motion described above, the Arizona Landlord has submitted a Proof of Claim, as well as a DO&T Proof of Claim, in the Claims Process, in the amount of \$12.5 million seeking payment in respect of the Purchase Option. The Proof of Claim relies on, *inter alia*, the Notice of Motion and Affidavit described above. The Proof of Claim was filed on a secured basis on the basis of "equitable security or, in the alternative, a trust claim."

Claim Filed by Peggy Johnson

- 3.32 Peggy Johnson submitted a Proof of Claim in the Claims Process relating to, among other things, royalties allegedly owing in respect of sales by the Applicants of certain products sold under the trade name "Arctic Glacier". Ms. Johnson is claiming retail royalties for the years 2000 up to and including 2012, a termination payment in the amount of approximately CDN\$10.5 million, and CDN\$500,000 pursuant to the extinguishment of a license. Ms. Johnson estimates that the retail royalty payment due for 2010 alone was approximately CDN\$1.75 million and the Proof of Claim states it is subject to the full disclosure of information of all sales of Arctic Glacier for the relevant period. As such, the actual claim filed by Ms. Johnson appears to be significantly greater than the face amount set out on the Proof of Claim. The Monitor received correspondence from Ms.

Johnson prior to the commencement of the Claims Process, discussed issues related to Ms. Johnson's royalty claim with Senior Management and is in the process of requesting further information from the Applicants and former Senior Management with respect to this Claim. Based on the information currently in its possession and subject to the receipt of further documents concerning the Claim, the Monitor expects to dispute Ms. Johnson's Claim pursuant to the terms of the Claims Procedure Order.

Claim Filed by Martin McNulty

- 3.33 The Monitor has received a Proof of Claim from Martin McNulty, a former employee of the Applicants, in the amount of \$13.61 million which is stated to be comprised of \$4.17 million in lost lifetime earnings and benefits, subject to mandatory statutory trebling, plus statutory attorneys' fees and expenses. The Proof of Claim relates to outstanding litigation against the Applicants, Reddy Ice, Home City and certain former employees of the Applicants pending in the United States District Court for the Eastern District of Michigan. Mr. McNulty has included a copy of an Amended Complaint dated December 2, 2008 in support of his Proof of Claim.
- 3.34 The Monitor has conducted a preliminary review of Mr. McNulty's Proof of Claim and discussed it with U.S. counsel for the Applicants who have been defending the litigation. The Monitor has requested certain documents from U.S. counsel for the Applicants. Once the Monitor has had an opportunity to review this documentation, it intends to respond to the Proof of Claim filed by Mr. McNulty pursuant to the terms of the Claims Procedure Order.

Claims Filed for Change of Control Bonuses

3.35 Current and certain former members of the Board of Trustees and certain former Senior Management of the Applicants are each party to an agreement with the Applicants which provides that, in the event of a change of control of the Applicants' business, those parties are entitled to a payment based on a calculation specified in their respective agreement with the Applicants (the "**Change of Control Bonuses**"). Fourteen Claims have been filed with the Monitor that include approximately \$12.9 million in respect of the Change of Control Bonuses and, in some cases, for certain other amounts. The Monitor has commenced its review of these Claims. Pursuant to Paragraph 33 of the Claims Procedure Order, the Monitor has requested certain additional supporting documentation from the corporate secretary of the Applicants that is required by the Monitor to evaluate the Claims for Change of Control Bonuses. Once this information is received, the Monitor will proceed to complete its review of these Proofs of Claim and will respond to the Claimants in accordance with the terms of the Claims Procedure Order.

Litigation Claims Potentially Covered by Insurance

3.36 As set out in the table above, 13 Proofs of Claim totalling approximately \$7 million were filed by Claimants who were sent Proof of Claim Document Packages based on information provided to the Monitor by the Applicants' insurance broker or insurers. Based on the Monitor's initial review of these Proofs of Claim, all of these Claims appear to be covered by insurance and would therefore be excluded from the Claims Process pursuant to the terms of the Claims Procedure Order and resolved in the ordinary course by the insurance companies. The Monitor will be seeking confirmation from the

Applicants' insurance providers that these Proofs of Claim are covered by insurance and will then respond to the Claimants pursuant to the terms of the Claims Procedure Order.

- 3.37 As part of its discussions with the insurance broker, the Monitor has indicated that it will continue the Applicants' practice of satisfying insurance deductibles payable with respect to certain of the claims covered under the Applicants' insurance policies. The Monitor intends to continue this practice to ensure that the Applicants' insurance estate continues to respond to past and future claims covered by insurance to the benefit of the Applicants' stakeholders. The Monitor also intends to establish an insurance deductible reserve in conjunction with the Applicants' insurance broker to ensure that the run-off of the litigation covered by insurance does not impede the timing of distributions from the estate.

DO&T Claims and DO&T Indemnity Claims

- 3.38 In accordance with the Claims Procedure Order, the Monitor sent copies of the DO&T Proofs of Claim received to the Directors, Officers and Trustees named in such Claims.
- 3.39 The Claims Procedure Order provides 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 no later than fifteen (15) Business Days after the date of deemed receipt of the DO&T Proof of Claim (the "**DO&T Indemnity Claims Bar Date**").
- 3.40 The Monitor has received DO&T Indemnity Proofs of Claim from all Directors, Officers and Trustees against whom DO&T Claims have been asserted in advance of the applicable DO&T Indemnity Claims Bar Date. Certain of the Directors, Officers and

Trustees who were named in DO&T Claims filed their DO&T Indemnity Proofs of Claim on an omnibus basis covering all of the DO&T Claims filed against them.

3.41 Claimants who filed DO&T Claims also filed Proofs of Claim against the Applicants in the same amount arising out of substantially similar factual allegations.

4.0 THE HUNTINGTON PROPERTY

4.1 The APA provided that a property consisting of two one-story industrial buildings located at 50 Stewart Avenue in Huntington, New York (the “**Huntington Property**”) was an Excluded Asset for the purposes of the Sale Transaction and therefore was not acquired by the Purchaser. Accordingly, pursuant to the provisions of the Transition Order, the Monitor, on behalf of the Applicants, continued overseeing the marketing and sale process for the Huntington Property that had been commenced by the Applicants prior to the Closing of the Sale Transaction and, more specifically, continued the efforts to close the sale contemplated by the Huntington PSA.

4.2 The Monitor filed the Seventh Report in support of its motion seeking this Honourable Court’s approval of the Huntington Transaction contemplated by the Huntington PSA.

4.3 As the Huntington Property constitutes real property located in the United States, the Huntington Sale Order, an order granted by the Canadian Court, only approved the Huntington Transaction, and authorized and directed the Monitor, on behalf of AGNY, to take the necessary steps to complete the Huntington Transaction. The Huntington Sale Order did not address vesting the Huntington Property in the Buyer.

4.4 On November 14, 2012, with no objections to the Huntington Transaction having been filed by the deadline for objections, the U.S. Court issued an order that recognized the

Huntington Sale Order and authorized and approved pursuant to section 363 of the U.S. Bankruptcy Code, the sale of AGNY's right, title and interest in and to the Huntington Property to the Buyer, free, clear, and unencumbered.

- 4.5 The Huntington Transaction closed on November 20, 2012 and on Closing, the Monitor, on behalf of the Applicants, received net proceeds of approximately \$950,000 (the purchase price of \$1 million, less Broker's commission of \$50,000 and other minor adjustments). These funds are included in the receipts described in Section 6 of this Eighth Report.

5.0 OTHER ESTATE MATTERS

Banking Matters

- 5.1 Pursuant to the APA, cash and short-term investments of the Vendors (other than the petty cash of the Vendors at the time of Closing) are Excluded Assets and therefore were not transferred to the Purchaser pursuant to the Sale Transaction.
- 5.2 As discussed in the Sixth Report, in order to ensure an orderly transition of the business to the Purchaser, and at the Purchaser's request, the Monitor agreed that the majority of the Applicants' bank accounts could remain open for a limited period of time post-Closing to allow certain disbursements to clear the applicable bank accounts.
- 5.3 Pursuant to the provisions of the TSA, certain of the Purchaser's employees previously employed by the Vendors assisted in the reconciliation of each of the Applicants' bank accounts post-Closing. In order for the Monitor to be satisfied that all funds were properly accounted for, the Purchaser agreed to provide the Monitor with bank reconciliations, including supporting documentation, for each of the Applicants' bank accounts.

- 5.4 As at November 21, 2012, approximately \$6.2 million had been transferred from the Applicants' bank accounts to the Monitor's estate accounts and all of the Applicants' 137 bank accounts had been reconciled and closed.

The Reconciliation

- 5.5 As is common in a sale of an enterprise of this magnitude with numerous bank accounts in Canada and the United States, in addition to the reconciliation of the Applicants' bank accounts, there have been a number of other post-Closing items that have given rise to balances that are owed as between the Purchaser and the Vendors. In order to address all of these matters in a comprehensive manner, and to ensure that both the Purchaser and the Vendors were treated equitably, the Monitor prepared a detailed schedule of the various outstanding items (the "**Reconciliation**") which included the following:

- Amounts owing to the Applicants' estates in respect of property tax refunds or adjustments;
- Amounts owing to the Purchaser for invoices related to obligations of the Applicants that were paid by the Purchaser;
- Certain deposits received by the Purchaser that were considered by the Monitor to be for the benefit of the Applicants' estates;
- Certain collected accounts receivable that were paid to the Applicants' estates, but which are property of the Purchaser pursuant to the APA;
- Certain legal fees that needed to be reconciled between the Applicants' estates and the Purchaser; and

- Management Incentive Payments (“MIP”) owing by the estates to the respective recipients who had requested that their MIP entitlements be directed to their retirement plan, and the corresponding “company match” amount that these respective former employees claimed under their employment arrangements with the Vendors.

5.6 Also included in the Reconciliation were two term deposits totaling approximately \$255,000 (CDN\$126,000 and US\$129,000) that were Excluded Assets under the APA. The Monitor has liaised with Toronto Dominion Bank (“TD”), where the term deposits have been held, and with TD’s legal counsel, to arrange for the collapsing of these term deposits and the remittance of the net proceeds for the benefit of the Applicants’ estates. The Monitor expects that there will be net funds available to the estates of approximately \$180,000, after the payment of fees due to TD’s legal counsel incurred in respect of the CCAA Proceedings, because the term deposits remained outstanding during the proceedings at the request of the Applicants.

5.7 Section 6.04 of the APA, as amended, provides that the Vendors shall pay \$3.65 million to the Purchaser in respect of Transfer Taxes on or following the Closing of the Sale Transaction and that, within 90 days from Closing, the Purchaser shall provide the Vendors with a statement setting out the aggregate amount of Transfer Taxes for which the Vendors are liable (the “**Final Transfer Tax Amount**”). If the Final Transfer Tax Amount is less than \$3.65 million, the Purchaser shall pay the Vendors the amount by which the Final Transfer Tax Amount is less than \$3.65 million. If the Final Transfer Tax Amount is greater than \$3.65 million, the Vendors shall pay the Purchaser the amount by which the Final Transfer Tax Amount exceeds \$3.65 million.

- 5.8 The Reconciliation also includes an estimate of the Final Transfer Tax Amount which can only be finalized once the transfer tax amount in respect of the State of California has been confirmed.
- 5.9 The Monitor has had extensive ongoing communications with the Purchaser and its legal counsel in order to obtain supporting documentation in respect of, and to discuss and resolve the various matters included in the Reconciliation. While certain minor items are yet to be finalized, the vast majority of the issues have recently been consensually resolved and it is the Monitor's expectation that the completion of the Reconciliation will likely result in (i) a small payment to the Purchaser, and (ii) the receipt by the Monitor on behalf of the Applicants of the net proceeds of the term deposits described above and approximately CDN\$100,000 in respect of an overpayment by the Applicants to a service provider.
- 5.10 Separate and apart from the Reconciliation, the Monitor was advised by the Applicants' insurance broker that certain refunds in the amount of approximately \$450,000 had arisen from the cancellation of certain of the Applicants insurance policies. The Monitor discussed this issue with its counsel and the Applicants' counsel and concluded that these refunds were property of the Purchaser pursuant to the terms of the APA.

Working Capital Statement

- 5.11 In this section, all capitalized terms not defined elsewhere have the meaning ascribed to them in the APA.
- 5.12 As previously described in the Sixth Report, KPMG LLP was engaged by AGIF to prepare the Working Capital Statement described in the APA. On September 13, 2012,

the CPS, on behalf of AGIF, delivered the Working Capital Statement to the Purchaser and the Monitor.

5.13 On October 3, 2012, the Purchaser advised the Monitor and the CPS that it accepted the Working Capital Statement and agreed that it shall be final and binding on all parties in accordance with the APA.

5.14 The APA, as amended, provides for a potential adjustment to the Purchase Price. To the extent that the Closing Working Capital exceeds the Estimated Working Capital by more than \$5 million, the Purchaser is to pay the amount of the difference to the Vendors. Conversely, if the Closing Working Capital is less than the Estimated Working Capital, the Vendors are to pay the difference to the Purchaser.

5.15 The Closing Working Capital as set out in the Working Capital Statement, while greater than the Estimated Working Capital, did not exceed the Estimated Working Capital by more than \$5 million. Accordingly, no adjustment to the Purchase Price was required on account of the Working Capital Statement.

Governance Matters

5.16 As discussed in the Sixth Report, the Trustees of AGIF remain in place and continue to fulfill their roles and have meetings as required. Since the date of the Sixth Report, two meetings of the Board of Trustees have been held (September 24, 2012 and November 7, 2012). The Monitor and its legal counsel were invited to attend certain portions of these meetings. The Monitor continues to fund, from the estate bank accounts and on behalf of the Applicants, the fees payable to the Trustees to attend such meetings and other expenses incidental to the continuation of AGIF. As previously reported, depending on

the final results of the Claims Process and after the payment of all taxes and other matters associated with the Sale Transaction, there may be sufficient funds to permit a distribution to AGIF's unit holders. Accordingly, the Monitor supports the continuation of the arrangements described regarding the Board of Trustees.

Post-Closing Public Company Disclosure

- 5.17 In a press release made on August 15, 2012 and as reported in the Sixth Report, AGIF announced, among other things, that it intends to satisfy the provisions of the alternative information guidelines set out in National Policy 12-203 *Cease Trade Orders for Continuous Disclosure Defaults* (the “**Alternative Guidelines**”) and intends to file the information it or its subsidiaries provide to their creditors with the applicable securities regulatory authorities.
- 5.18 The Monitor is advised by the corporate secretary of AGIF that, since the date of the Sixth Report, AGIF has followed the Alternative Guidelines and is current with the monthly reports and filings required to be made thereunder.

Name Changes

- 5.19 The TSA provides that, as soon as practicable, but no later than 30 Business Days following the Closing of the Sale Transaction, each of the Applicants that is a corporation and that uses the words “Arctic Glacier” (or a variation of such words) in its legal name will change its legal name to a name that does not include such words or variation. In an order issued on September 5, 2012, this Honourable Court, among other things, authorized the CPS to execute such documents as are required to change the names of the Applicants that are corporations.

- 5.20 The Monitor understands that the Applicants have reserved the name “AGI CCAA Inc.” in all Canadian jurisdictions except Quebec and the Monitor expects that, in the near term, the name changes in those jurisdictions will be completed. Once the name change in Alberta, which is the original jurisdiction of incorporation of AGI, has been completed, the Monitor understands that the Applicants will register extra-provincially with a French business name to complete the Canadian name changes.
- 5.21 In the United States, the Monitor understands that it is the Applicants’ intention to effect the name changes such that, wherever a name of an Applicant currently includes “Arctic Glacier”, the words “Arctic Glacier” will be replaced with “AGI CCAA”. The Applicants have been advised by the corporate secretary of AGIF that the registrations required in order to effect these name changes will be filed in the near term.

Unsealing of the Confidential Appendix and the Confidential Supplement

- 5.22 Along with the Fourth Report, filed in support of the Applicants’ motion seeking approval of the APA, the Monitor filed a confidential appendix (the “**Confidential Appendix**”) which contained a copy of the unredacted APA, the Purchaser’s equity commitment letter and debt commitment letter with associated fee letter, a summary of the bids received during the Sale Process and additional information concerning the SISP which the Applicants, with the support of the Monitor, believed to be commercially sensitive.
- 5.23 In their motion seeking this Honourable Court’s approval of the Sale Transaction, the Applicants also sought a sealing order for the Confidential Appendix.

- 5.24 It was the Monitor's view that disclosure before the Closing of the Sale Transaction, of the commercially sensitive information and/or the identities of the other bidders and the terms of their bids contained in the Confidential Appendix could have negatively affected any future transaction with respect to the Applicants if the Sale Transaction did not close. Accordingly, the Monitor supported the Applicants' request for an order sealing the Confidential Appendix.
- 5.25 On June 21, 2012, this Honourable Court issued the Sale Approval Order which, among other things, ordered that the Confidential Appendix be sealed until further order of the Court.
- 5.26 The Monitor also filed a confidential supplement to the Seventh Report (the "**Confidential Supplement**") which contained a copy of an appraisal of the Huntington Property dated March 4, 2010 and disclosed the other bids received for the Huntington Property.
- 5.27 It was the Monitor's view that, should the transaction contemplated by the Huntington PSA fail to close, it would be detrimental for any future marketing process if the information contained in the Huntington Appraisal and the other bids received for the Huntington Property were publicly disclosed prior to the closing of the Huntington Transaction. Accordingly, the Monitor sought a sealing order in respect of the Confidential Supplement as part of the relief sought by the Monitor in the motion for the approval of the Huntington Transaction.
- 5.28 On October 22, 2012, this Honourable Court issued the Huntington Sale Order in respect of the Huntington Transaction which, among other things, ordered that the Confidential Supplement be sealed pending further order of the Court.

5.29 As both the Sale Transaction and the Huntington Transaction have now closed, the Monitor's concerns related to the disclosure of the information contained in the Confidential Appendix and the Confidential Supplement are no longer relevant and the Monitor therefore believes that it is appropriate for the Confidential Appendix (with the exception of Schedule 1.01(B) to the APA which was separately sealed pursuant to an Order of the Court dated June 27, 2012 and which the Monitor has been advised contains information that is commercially sensitive to the ongoing business) and the Confidential Supplement to be unsealed.

6.0 POST-CLOSING RECEIPTS AND DISBURSEMENTS

6.1 The receipts and disbursements of the Applicants during the post-Closing period (including the net Sale Proceeds) from July 27 to November 21, 2012, are summarized below:

Arctic Glacier	
Statement of Consolidated Receipts and Disbursements	
For the Period July 27 to November 21, 2012	
	Amount¹ (\$000's)
Receipts	
Proceeds from the sale of assets, net	131,144
Cash transferred from the Applicants' bank accounts, net	6,162
Other receipts	595
Total Receipts	137,901
Disbursements	
Professional fees and expenses ²	4,250
MIP payments	1,203
Other disbursements	684
Total Disbursements	6,137
Excess of Receipts Over Disbursements	131,764
Note 1 - Amounts shown herein are combined US\$ and CDN\$ (blended currency) and assume a US\$/CDN\$ exchange rate at par.	
Note 2 - This includes fees and expenses incurred during the period prior to the Closing of the Sale Transaction, which were invoiced and paid subsequent to Closing, and fees and expenses incurred and paid after the Closing.	

6.2 Receipts of approximately \$138 million during the post-Closing period to November 21, 2012 include the proceeds from the sale of the Applicants' assets, including the net proceeds from the Sale Transaction (which reflect payment of the Lender Claims and the Financial Advisor's fees), and the net sale proceeds from the Huntington Transaction (as described in Section 4 of this Eighth Report). Receipts also include cash transferred to the Monitor's estate accounts from the Applicants' bank accounts as described above, interest, and sales tax and other miscellaneous refunds.

- 6.3 Disbursements during the post-Closing period to November 21, 2012 total approximately \$6.1 million. These disbursements are primarily comprised of professional fees and expenses incurred during the period prior to the Closing of the Sale Transaction which were invoiced and paid subsequent to Closing, professional fees and expenses incurred and paid after Closing, and payments under the MIP. The fees and expenses have been incurred by the Monitor, its legal counsel, the CPS, the Applicants' legal counsel and other professionals retained by the Applicants to assist with the proceedings. Of the professional fees and expenses referred to in the table above, approximately 50% of such fees and expenses relate to the period prior to Closing.
- 6.4 Professional fees paid during the post-Closing period up to November 21, 2012 also include CDN\$288,750 paid to Marsh Canada Limited ("**Marsh**") in respect of an agreement dated October 1, 2010 between Marsh and the Applicants (the "**Marsh Agreement**"). The Marsh Agreement is described further in the Sixth Report wherein the Monitor disclosed its intention to make this payment no sooner than 14 days after the hearing of the motion supported by the Sixth Report pursuant to the authority granted in the Initial Order. The Monitor did not receive any notice of objection from any of the Applicants' creditors or stakeholders during the 14-day period and accordingly, made the payment.
- 6.5 The Monitor is currently holding, on behalf of the Applicants, approximately \$131.7 million, all of which is held in interest bearing bank accounts in the name of the Monitor, on behalf of the Applicants. Included in the funds held is US\$7.05 million held in escrow, in a U.S. domiciled bank account pursuant to the DOJ Stipulation.

7.0 ACTIVITIES OF THE MONITOR

7.1 The activities of the Monitor from the date of the Sixth Report (August 29, 2012) have included the following:

- Participating in weekly update conference calls between the Monitor, the Monitor's legal counsel, the Applicants' legal counsel, and the CPS to discuss the status of various outstanding matters and where required, the resolution of the post-Closing matters;
- Providing for non-confidential materials filed with this Honourable Court and with the U.S. Court to be publically available on the Monitor's website in respect of the CCAA Proceedings and Chapter 15 Proceedings;
- Acting as foreign representative in the Chapter 15 Proceedings, and, in those proceedings, attending the hearing for the U.S. Claims Procedure Motion;
- Communicating with the Applicants' insurance broker and certain insurers to arrange for continued insurance coverage, to obtain information required in order to send Proof of Claim Document Packages to insurance claimants with open claims and to communicate in respect of new insurance claims filed and the proposed settlement of certain open claims;
- Undertaking the Monitor's responsibilities pursuant to the Claims Procedure Order, including arranging for the publication of notices in the newspapers specified in the Claims Procedure Order, mailing Proof of Claim Document Packages to all known potential Claimants in the Claims Process, commencing a preliminary review of Claims received, and disseminating DO&T Proofs of Claim

received to the parties against whom those Claims were asserted, all in accordance with the provisions of the Claims Procedure Order;

- Communicating with the Arizona Landlord and his legal counsel, as well as with the Purchaser and its legal counsel, in order to pursue a commercial resolution of the dispute between the parties regarding the treatment of the Arizona Lease, and attending to other matters with respect to the litigation commenced by the Arizona Landlord;
- Attending the Court hearing in Winnipeg for the Claims Procedure Motion;
- Reviewing the Working Capital Statement prepared by KPMG in accordance with the provisions of the APA and discussing same with the CPS;
- Maintaining estate bank accounts, overseeing and accounting for the Applicants' receipts and making disbursements for and on behalf of the Applicants pursuant to the Transition Order;
- Continuing to respond to numerous enquiries from unit holders and other stakeholders regarding the CCAA Proceedings, the Sale Transaction, and in particular, the status of the Claims Process;
- Pursuant to the TSA, making arrangements with the Purchaser for access to certain employees and seeking their assistance in respect of investigating and resolving certain post-Closing matters;
- Reviewing the bank reconciliations and supporting documents in respect of funds transferred to the Monitor from the Applicants' bank accounts, and participating

in related discussions with certain employees of the Purchaser on an ongoing basis to facilitate their completion of the reconciliations and the transfer of funds;

- Arranging for the filing of certain sales tax returns related to the period prior to the Closing of the Sale Transaction, and related communications with KPMG and certain employees of the Purchaser;
- Attending segments of meetings of the Board of Trustees held on September 24, 2012 and November 7, 2012 in respect of matters relating to the ongoing governance of AGIF and the CCAA Proceedings generally;
- Dealing with issues concerning the Huntington PSA and completing the sale of the Huntington Property; and
- Responding to enquiries from various stakeholders, including addressing questions or concerns of parties who contacted the Monitor on the toll-free hotline number established by the Monitor.

8.0 THE MONITOR'S COMMENTS AND RECOMMENDATIONS

8.1 The Monitor is requesting an extension of the Stay Period to March 15, 2013. The Monitor believes that the Applicants have acted and continue to act in good faith and with due diligence. Given that the Sale Transaction has now closed and the Applicants are no longer operating, the Applicants and the Monitor have not prepared an extended cash flow forecast through the expiry of the requested extension to the Stay Period. On behalf of the Applicants, the Monitor intends to satisfy any amounts properly incurred in respect of the ongoing administration of the estate, including those with respect to administering the Claims Process, from the funds being held by the Monitor in the estate

bank accounts. The Monitor anticipates that such amounts will be primarily limited to professional fees and expenses, Trustees' fees and expenses, insurance related expenses and other incidental fees and costs. The funds which the Monitor is holding in its estate bank accounts will be sufficient to satisfy such amounts.

- 8.2 The Monitor believes that an extension of the Stay Period until March 15, 2013 is appropriate, as it should allow sufficient time for the Monitor, in consultation with the Applicants, to complete a detailed review of the Proofs of Claim filed, make enquiries and request any additional required information in respect of certain of those Claims, deal with outstanding litigation issues, attempt to negotiate the resolution of certain Claims and to contact the insurers in respect of those Claims which may be covered by the Applicants' insurance policies and resolve any issues related thereto. The proposed extension of the Stay Period to March 15, 2013 will provide the Monitor with sufficient time to be in a position to update the Court specifically in respect of the Claims Process, and seek further directions from the Court with respect to the resolution of any outstanding Claims. The proposed extension should also allow the Monitor additional time to deal with post-Closing issues, including providing assistance to the Applicants in making arrangements for the preparation and filing of their tax returns and dealing with other matters related to the administration of the Applicants' estates.
- 8.3 For the reasons set out in this Eighth Report, the Monitor hereby respectfully recommends that this Honourable Court grant the relief being requested by the Monitor in its Notice of Motion.

All of which is respectfully submitted to this Honourable Court this 23rd day of November, 2012.

**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".**



Per: Richard A. Morawetz
Senior Vice President

Appendix “J”

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 15
	:	
ARCTIC GLACIER INTERNATIONAL,	:	Case No. 12-10605 (KG)
INC., <i>et al.</i> ,	:	
	:	
Debtors.	:	
-----	:	
DESERT MOUNTAIN ICE, LLC,	:	
	:	
Appellant,	:	
v.	:	Civil No. 12-1046-SLR
	:	
ARCTIC GLACIER INTERNATIONAL,	:	
INC., <i>et al.</i> ,	:	
	:	
Appellees.	:	

ORDER

AND NOW, this 20th day of February, 2013,
upon consideration of the Response of Desert Mountain Ice, LLC ("Desert Mountain") to the
Order to Show Cause entered in this action on January 16, 2013 [Docket No. 4], it is hereby:

ORDERED, that Desert Mountain has shown cause why the above-captioned
appeal should not be dismissed. *Desert Mountain shall inform the Court on or
before March 30, 2013 as to whether mediation was successful or the merits of
the appeal should be resolved.*

Jan L. Roberson
United States District Judge

Appendix “K”

ARCTIC GLACIER INCOME FUND

CODE OF BUSINESS CONDUCT AND ETHICS

This Code of Business Conduct and Ethics (the "Code") sets forth legal and ethical standards of conduct for trustees, directors and officers of Arctic Glacier Income Fund and its direct and indirect subsidiary corporations (collectively the "Company"). This Code is intended to deter wrongdoing and to promote the conduct of all Company business in accordance with high standards of integrity and in compliance with all applicable laws and regulations. This Code applies to the Company and all of its subsidiaries and other business entities controlled by it worldwide.

Questions regarding this Code or its application in any situation, should be directed to the Chair of the Company's Corporate Governance Committee, General Legal Counsel or the Corporate Secretary.

Compliance with Laws, Rules and Regulations

The Company requires that trustees, directors and officers comply with all laws, rules and regulations applicable to the Company wherever it does business. You are expected to use good judgment and common sense in seeking to comply with all applicable laws, rules and regulations and to ask for advice when you are uncertain about them.

If you become aware of the violation of any law, rule or regulation by the Company, whether by its officers, employees, directors, or any third party doing business on behalf of the Company, it is your responsibility to promptly report the matter to the Chair of the Corporate Governance Committee, General Legal Counsel or the Corporate Secretary. While it is the Company's desire to address matters internally, nothing in this Code should discourage you from reporting any illegal activity, including any violation of the securities laws, antitrust laws, environmental laws or any other federal, state or foreign law, rule or regulation, to the appropriate regulatory authority. This Code should not be construed to prohibit you from testifying, participating or otherwise assisting in any provincial, state or federal administrative, judicial or legislative proceeding or investigation.

Conflicts of Interest

Trustees, officers and directors must act in the best interests of the Company. You must refrain from engaging in any activity or having a personal interest that presents a "conflict of interest". A conflict of interest occurs when your personal interest interferes, or appears to interfere, with the interests of the Company. A conflict of interest can arise whenever you, as a trustee, director or officer, take action or have an

interest that prevents you from performing your Company duties and responsibilities honestly, objectively and effectively.

Officers

Officers must not:

- perform services as a consultant, employee, officer, director, advisor or in any other capacity, or permit any close relative to perform services as an officer or director, for a significant customer, significant supplier or competitor of the Company, other than at the request of the Company;
- have, or permit any close relative to have, a financial interest in a significant supplier or significant customer of the Company, other than an investment representing less than one percent (1%) of the outstanding shares of a publicly-held company or less than five percent (5%) of the outstanding shares of a privately-held company;
- have, or permit any close relative to have, a financial interest in a competitor of the Company, other than an investment representing less than one percent (1%) of the outstanding shares of a publicly-held company;
- supervise, review or influence the job evaluation or compensation of a member of his or her immediate family; or
- engage in any other activity or have any other interest that the Board of Trustees of the Company determines to constitute a conflict of interest.

Trustees and Directors

Trustees and Directors must not:

- perform services as a consultant, employee, officer, director, advisor or in any other capacity, or permit any close relative to perform services as an officer or director, for a competitor of the Company;
- have, or permit any close relative to have, a financial interest in a competitor of the Company, other than an investment representing less than one percent (1%) of the outstanding shares of a publicly-held company;
- use his or her position with the Company to influence any decision of the Company relating to a contract or transaction with a significant supplier or significant customer of the Company if the trustee or director or a close relative of the trustee or director:

- performs services as a consultant, employee, officer, director, advisor or in any other capacity, for such significant supplier or significant customer, or;
- has a financial interest in such significant supplier or significant customer, other than an investment representing less than one percent (1%) of the outstanding shares of a publicly-held company.
- supervise, review or influence the job evaluation or compensation of a member of his or her immediate family; or
- engage in any other activity or have any other interest that the Board of Trustees of the Company determines to constitute a conflict of interest.

A “close relative” means a spouse, dependent child or any other person living in the same home with the employee, officer, trustee or director. “Immediate family” means a close relative and a parent, sibling, child, mother or father-in-law, son or daughter-in-law or brother or sister-in-law. A “significant customer” is a customer that has made during the Company’s last full fiscal year, or proposes to make during the Company’s current fiscal year, payments to the Company for property or services in excess of one percent (1%) of (i) the Company’s consolidated gross revenues for its last full fiscal year or (ii) the customer’s consolidated gross revenues for its last full fiscal year (if applicable). A “significant supplier” is a supplier to which the Company’s current fiscal year, payments for property or services in excess of one percent (1%) of (i) the Company’s consolidated gross revenues for its last full fiscal year or (ii) the customer’s consolidated gross revenues for its last full fiscal year.

It is your responsibility to disclose any material transaction or relationship that reasonably could be expected to give rise to a conflict of interest to the Board of Trustees, who shall be responsible for determining whether such transaction or relationship constitutes a conflict to interest.

Insider Trading

Trustees, directors and officers who have material non-public information about the Company or other companies, including our suppliers and customers, as a result of their relationship with the Company are prohibited by law and Company policy from trading in securities of the Company or such other companies, as well as from communicating such information to others who might trade on the basis of that information. To help ensure that you do not engage in prohibited insider trading and avoid even the appearance of an improper transaction, the Company has adopted an Insider Trading Policy, which is available at www.sedar.com. If you are uncertain about the constraints on your purchase or sale of any Company securities or the securities of any other company that you are familiar with by virtue of your relationship with the Company, you should consult with the Corporate Secretary before making any such purchase or sale.

Confidentiality

Trustees, directors and officers must maintain the confidentiality of confidential or classified information entrusted to them by the Company or other companies, including our suppliers and customers, except when disclosure is specifically authorized or legally mandated. Unauthorized disclosure of any confidential or classified information is prohibited. Appropriate precautions must be taken to ensure that confidential or sensitive business information, whether it is proprietary to the Company or another company, is not communicated within the Company except to those who have a need to know such information to perform their responsibilities for the Company.

Third parties may ask you for information concerning the Company. Trustees, directors and officers (other than the Company's authorized spokespersons) must not discuss internal Company matters with, or disseminate internal Company information to, anyone outside the Company, except as required in the performance of their Company duties and after an appropriate confidentiality agreement is in place. This prohibition applies particularly to inquiries concerning the Company from the media, market professionals (such as securities analysts, institutional investors, investment advisors, brokers and dealers) and unitholders. All responses to inquiries on behalf of the Company must be made only by the Company's authorized spokespersons.

Honest and Ethical Conduct and Fair Dealing

Trustees, directors and officers should endeavor to deal honestly, ethically and fairly with the Company's suppliers, customers, competitors and employees. Statements regarding the Company's products and services must not be untrue, misleading, deceptive or fraudulent. You must not take unfair advantage of anyone through manipulation, concealment, abuse or privileged information, misrepresentation of material facts or any other unfair-dealing practices.

Relations with Suppliers. A supplier is any business or individual which furnishes goods or services of the Company. It is the policy of the Company to select suppliers in a totally impartial manner based upon price, quality and services offered. Each trustee, director or officer is expected to avoid any action which would imply selection of a supplier on any basis other than in the best interest of the Company or that would give one supplier an unfair advantage over another. Trustees, directors or officers who deal with suppliers have an obligation to avoid even the appearance of beneficial relationship with suppliers. Because of their position and fiduciary responsibility, their actions must conform to the highest standards of ethical conduct.

Relations with Customers. The Company will prosper to the degree, and only to the degree, that we continue to serve our customers well. It has always been the Company's policy to provide the best possible products and services to our customers. We must sell on the merits of our own products and services, not by disparaging competitors or their products or services. Our competitive appeal must be based on this concept of quality and service and the competence and honesty of our sales presentations. No payments or other inducements should be made to any person, public official or political party, either

domestic or foreign for the purpose of influencing that person or party to assist the Company in obtaining or retaining business.

Relations with the Public and Host Communities. As a growing multinational company with facilities throughout North America, we have responsibilities to the countries in which we do business. Those responsibilities involve knowing the different laws and understanding their customs and abiding by them. We recognize that we must become part of the host community. We must behave as citizens rather than as foreigners and realize that we will be welcome only so long as we make a responsible contribution to the societies in which we operate. The Company conducts its business according to accepted principles of free and open competition and trade.

Respect for Others. During the typical workday, we inevitably come in contact with employees, job applicants, suppliers, customers and others. The men and women we meet may have educational backgrounds, racial characteristics, religious beliefs, political affiliations and other points of view that different from our own. We have worked very hard at creating an environment where such differences are welcomed and are part of our corporate culture. The Company will not tolerate any situation within a Company setting or while representing the Company outside of the Company, where an individual treats others in a discriminatory or hostile manner based upon race, religious belief, gender, sexual preference, age, physical appearance or other differences. Incidents of such discrimination, sexual or other forms or harassment must be reported as soon as discovered. These actions may be illegal and patently unethical. Such matters will be aggressively investigated and will be dealt with accordingly.

Protection and Proper Use of Corporate Assets

Trustees, directors and officers should seek to protect the Company's assets. Theft, carelessness and waste have a direct impact on the Company's financial performance. Use of the Company's assets and services must be solely for legitimate business purposes of the Company and not for any personal benefit or the personal benefit of anyone else.

Trustees, directors and officers must advance the Company's legitimate interests when the opportunity to do so arises. You must not take for yourself personal opportunities that are discovered through your position with the Company or the use of property or information of the Company.

This policy is not intended to prohibit incidental use of such items as the Company fax machines or the telephone system for activities which are permitted pursuant to this Code of Conduct and Ethics. However, extensive personal use of any Company property is prohibited.

Gifts and Gratuities

The use of Company funds or assets as gifts, gratuities or other favours to employees or governmental officials is prohibited, except to the extent such gifts are in compliance with applicable law, nominal in amount and not given in consideration or expectation of any action by the recipient.

Trustees, directors and officers must not accept, or permit any member of his or her immediate family to accept, any gifts, gratuities or other favours from any customer, supplier or other person doing or seeking to do business with the Company, other than items of nominal value. Any gifts that are not of nominal value should be returned immediately and reported. If immediate return is not practical, they should be given to the Company for charitable disposition or such other disposition as the Company believes appropriate in its sole discretion.

Common sense and moderation should prevail in business entertainment engaged in on behalf of the Company. Trustees, directors and officers should provide, or accept, business entertainment to or from anyone doing business with the Company only if the entertainment is infrequent, modest and intended to serve legitimate business goals.

Bribes and kickbacks are criminal acts, strictly prohibited by law. You must not offer, give, solicit or receive any form of bribe or kickback anywhere in the world.

Accuracy of Books and Records and Public Reports

Trustees, directors and officers must honestly and accurately report all business transactions. You are responsible for the accuracy of your records and reports. Accurate information is essential to the Company's ability to meet legal and regulatory obligations.

All Company books, records and accounts shall be maintained in accordance with all applicable regulations and standards and accurately reflect the true nature of the transactions they record. The financial statements of the Company shall conform to generally accepted accounting rules and the Company's accounting policies. No undisclosed or unrecorded account or fund shall be established for any purpose. No false or misleading entries shall be made in the Company's books or records for any reason, and no disbursement of corporate funds or other corporate property shall be made without adequate supporting documentation.

It is the policy of the Company to provide full, fair, accurate, timely and understandable disclosure in reports and documents filed with, or submitted to all regulatory authorities and in other public communications.

Concerns Regarding Accounting or Auditing Matters

Concerns regarding questionable accounting or auditing matters or complaints regarding accounting, internal accounting controls or auditing matters may confidentially, and anonymously be submitted in writing to the Company's Corporate Governance

Committee. All such concerns and complaints will be forwarded to the Board of Trustees and the Corporate Secretary.

The Corporate Governance Committee and Corporate Secretary will evaluate the merits of any concerns or complaints received by it and authorize such follow-up actions, if any, as it deems necessary or appropriate to address the substance of the concern or complaint.

Waivers of this Code of Business Conduct and Ethics

Any executive officer, trustee or director who seeks an exception to any of these policies should contact the Chair of the Corporate Governance Committee. Any waiver of this Code for executive officers, trustees or directors or any change to this Code that applies to executive officers, trustees or directors may be made only by the Board of Trustees of the Company and will be disclosed as required by law or stock market regulation.

Reporting and Compliance Procedures

Every trustee, director and officer has the responsibility to ask questions, seek guidance, report suspected violations and express concerns regarding compliance with this Code. Any trustee, director or officer who knows or believes that any employee or representative of the Company has engaged or is engaging in Company-related conduct that violates applicable law or this Code should report such information to the Chair of the Corporate Governance Committee, as described below.

If the Chair of Corporate Governance Committee receives information regarding an alleged violation of this Code, he or she shall, as appropriate, (a) evaluate such information, (b) if the alleged violation involves an officer, trustee or a director, inform the Chief Executive Officer and Board of Trustees of the alleged violation, (c) determine whether it is necessary to conduct an informal inquiry or a formal investigation and, if so, initiate such inquiry or investigation, together with a recommendation as to disposition of the matter, to the Board of Trustees or a committee thereof. Trustees, directors and officers are expected to cooperate fully with any inquiry or investigation by the Company regarding an alleged violation of this Code. Failure to cooperate with any such inquiry or investigation by the Company regarding an alleged violation of this Code may result in disciplinary action, up to and including discharge.

The Company shall determine whether violations of this Code have occurred and, if so, shall determine the disciplinary measures to be taken against any violators of this Code. In the event of an alleged violation involving an officer, trustee, or a director, the Chief Executive Officer and the Board of Directors, respectively, shall determine whether a violation of this Code has occurred and, if so, shall determine the disciplinary measures to be taken against such individual.

Dissemination and Amendment

This Code shall be distributed to each trustee, director or officer of the Company upon commencement of his or her relationship with the Company and shall also be distributed annually to each trustee, director or officer of the Company, and each such trustee, director or officer shall certify that he or she has received, read and understood the Code and has complied with its terms.

The Company reserves the right to amend, alter or terminate this Code at any time for any reason.

This document is not an employment contract between the Company and any of its trustees, directors or officers.

CERTIFICATION

I, _____ do hereby certify that:
(Print Name Above)

1. I have received and carefully read the Code of Business Conduct and Ethics of Arctic Glacier Income Fund.
2. I understand the Code of Business Conduct and Ethics.
3. I have complied and will continue to comply with the terms of the Code of Business Conduct and Ethics.

Date: _____
(Signature)

EACH TRUSTEE, DIRECTOR AND OFFICER IS REQUIRED TO SIGN, DATE AND RETURN THIS CERTIFICATION TO THE CORPORATE SECRETARY WITHIN FOURTEEN (14) DAYS OF ISSUANCE.

Appendix “L”

ARCTIC GLACIER INCOME FUND

SECOND AMENDED AND RESTATED DECLARATION OF TRUST

Made as of December 6, 2004

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ARCTIC GLACIER INCOME FUND

THIS SECOND AMENDED AND RESTATED DECLARATION OF TRUST made as of December 6, 2004.

AMONG:

ROBERT NAGY, JAMES E. CLARK, PETER HYNDMAN, DAVID SWAINE AND GARY FILMON, (the "Trustees") being, as of the date hereof, all of the trustees of the Trust constituted by this Declaration of Trust, and each individual who after the date hereof becomes a trustee of the Trust as herein provided (each of the foregoing named or unnamed individuals, while a trustee of the trust as herein provided, being hereinafter called a "Trustee" and collectively called the "Trustees")

OF THE FIRST PART

AND:

LAXUS HOLDINGS INC., a corporation incorporated under the *Business Corporations Act* (Alberta), resident in the Province of Alberta (hereinafter called the "Settlor")

OF THE SECOND PART

AND:

The Unitholders (as hereinafter defined)

OF THE THIRD PART

WHEREAS by Declaration of Trust made as of January 22, 2002 ("Initial Trust Declaration") as amended and restated as of March 11, 2002 the Settlor established an irrevocable trust for the principal purpose of providing persons who may become Unitholders with an opportunity to participate in the acquisition of a packaged ice business;

AND WHEREAS, in consideration of these premises and the agreement of the Trustees to act as Trustees and to accept the Trust and the transfer of the Initial Contribution as the initial Trust Property, the Settlor herein established the terms and conditions of this Trust;

AND WHEREAS for the purpose of establishing the trust created hereunder (the "Trust"), the Settlor pursuant to the terms of the Initial Trust Declaration transferred to the Trustees an amount of \$10.00 in lawful money of Canada (the "Initial Contribution") and the Trust issued one Unit to the Settlor;

AND WHEREAS the Trustees have agreed to hold the Initial Contribution and all amounts and assets subsequently received or transferred to the Trustees, pursuant to this Amended and

Restated Declaration of Trust as now amended and restated in accordance with the provisions hereinafter set forth;

AND WHEREAS the Settlor and the Trustees desire that the beneficiaries of the Trust shall be the holders of Trust Units evidenced by certificates therefor as hereinafter provided, each of which shall rank equally in all respects with every other Trust Unit;

AND WHEREAS the Trustees have agreed to hold all amounts and assets received under the Initial Declaration of Trust and this Declaration of Trust or in respect of the investment of the assets of the Trust in accordance with the provisions hereinafter set forth;

AND WHEREAS the Trustees desire that the Trust shall continue to qualify as a "unit trust" and as a "mutual fund trust" pursuant to paragraph 108(2)(a) and subsection 132(6) of the *Income Tax Act* (Canada);

AND WHEREAS the Trustees desire to set out the agreements, terms and conditions which shall govern the rights, powers and obligations with respect to the settlement and administration of the Trust;

AND WHEREAS the parties are entering into this Amended and Restated Declaration of Trust to provide for amended terms upon which persons may qualify as a Trustee of the Trust;

AND WHEREAS by extraordinary resolution of the Trust Unitholders dated May 27, 2004 the amended terms of the Trust as contained herein were ratified confirmed and approved;

NOW THEREFORE THIS DECLARATION WITNESSETH THAT in consideration of the premises and the mutual and respective covenants and agreements contained herein, the Trustees declare, covenant and agree with the Trust Unitholders, and the Trust Unitholders covenant and agree with the Trustees that the Initial Trust Declaration as amended and restated as of March 11, 2002 be hereby further amended and restated so that as amended and restated, it reads as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Declaration of Trust including the Recitals, unless the context otherwise requires, the following terms shall have the following meanings:

- (a) "Affiliate" or "Affiliates" means as to any person, any other person which directly or indirectly controls, or is under common control with, or is controlled by, such Person and, if such Person is an individual, any member of the immediate family (including parents, spouse, children and grandchildren) of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any person who is controlled by any such member or trust. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of the management or policies (whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise);

- (b) "Arctic Glacier" means Arctic Glacier Inc.;
- (c) "Auditors" means the firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with the provisions hereof and, initially, means KPMG LLP;
- (d) "Business Day" means a day which is not a Saturday, Sunday or holiday in the City of Calgary, in the Province of Alberta;
- (e) "Cash Flow of the Trust" has the meaning ascribed thereto in Section 5.1(a);
- (f) "CDS" means The Canadian Depository for Securities Limited and its successors;
- (g) "CDS Participant" means a broker, dealer, bank other financial institution or other person who, directly or indirectly, from time to time, effects book-based transfers with CDS and pledges of securities deposited with CDS;
- (h) "Common Shares" means the common shares in the capital of the Company, Arctic Glacier, or any successor corporation to either of them;
- (i) "Company" means The Arctic Group Inc. or any successor corporation incorporated pursuant to the laws of Alberta;
- (j) "Counsel" means a barrister or solicitor or firm of barristers and solicitors or other lawyers in an appropriate jurisdiction retained by the Trust;
- (k) "Depository" has the meaning specified in subsection 13.1(a);
- (l) "Distributable Cash Flow" has the meaning ascribed thereto in Section 5.1(b);
- (m) "Distribution Payment Dates" means on or about the 15th day of the month immediately following the end of each Distribution Period or, if such day is not a Business Day, the next following Business Day or such other date or dates as may be selected or determined by the Trustees from time to time;
- (n) "Distribution Period" means each month in each calendar year or such other period as may be selected or determined by the Trustees from time to time;
- (o) "Distribution Record Date" means the last day of each Distribution Period;
- (p) "DRIP" means the Distribution Reinvestment Plan in such form as may be approved by the Trustees of the Trust from time to time;
- (q) "Exchange Arrangement" means the arrangement for the exchange by the holder of Notes of Arctic Glacier for Trust Units pursuant to a plan of arrangement under Section 193 of the ABCA involving, among other things, the exchange of Common Shares for Notes, the exchange of such Notes for Trust Units and the amalgamation of the Company and Arctic Glacier;
- (r) "Global Trust Unit Certificate" has the meaning specified in subsection 13.1(a);

- (s) "Income of the Trust" has the meaning ascribed thereto in Section 5.2(a);
- (t) "Material Contracts" means an arrangement agreement among the Trust, Arctic Glacier and the Company implementing the Exchange Arrangement and the Note Indenture;
- (u) "Net Income of the Trust" shall have the meaning attributed thereto in Section 5.1;
- (v) "Net Realized Capital Gains" has the meaning ascribed thereto in Section 5.2(b);
- (w) "Note Indenture" means the trust indenture between Arctic Glacier and the Note Trustee, as Trustee;
- (x) "Note Trustee" means Computershare Trust Company of Canada; or its successor, as Trustee under the Note Indenture;
- (y) "Notes" means such unsecured, subordinated promissory notes as may be issued pursuant to the Note Indenture by Arctic Glacier from time to time evidencing the indebtedness of Arctic Glacier;
- (z) "Preferred Shares" means preferred shares in the capital of the Company;
- (aa) "Redemption Price" has the meaning ascribed thereto in Section 6.3(a);
- (bb) "Special Resolution" shall have the meaning attributed thereto in Section 12.6;
- (cc) "Subsidiary" or "Subsidiaries" means, with respect to a specified corporation, any corporation of which more than fifty per cent (50%) of the outstanding shares ordinarily entitled to elect a majority of the board of directors thereof (whether or not shares of any other class or classes shall or might be entitled to vote upon the happening of any event or contingency) are at the time owned directly or indirectly by such specified corporation, and shall include any corporation in like relation to a Subsidiary;
- (dd) "Tax Act" means the *Income Tax Act* R.S.C. 1985 (5th Supp) c.1, as amended and the regulations thereunder;
- (ee) "this Amended and Restated Declaration of Trust", "this Declaration of Trust", "this Declaration", "hereto", "herein", "hereof", "hereby", "hereunder" and similar expressions refer to this instrument and not to any particular Article, section or portion hereof, and include any and every instrument supplemental or ancillary hereto;
- (ff) "Transfer Agent" means such company as may from time to time be appointed by the Trust to act as registrar and transfer agent of the Trust Units, together with any sub-transfer agent duly appointed by the Transfer Agent;
- (gg) "Trust" means the trust constituted pursuant to the terms of this Declaration of Trust as Arctic Glacier Income Fund;
- (hh) "Trust Assets", at any time, means such of the following monies, properties and other assets as are at such time held by the Trust or by the Trustees on behalf of the Trust:

- (i) the Initial Contribution;
 - (ii) all funds or property derived from the issuance or sale of Trust Units or other cash received by the Trust;
 - (iii) the Common Shares and Notes;
 - (iv) any proceeds of disposition of any of the foregoing property but not Trust Units in the case of a redemption thereof to which Section 6.5 applies;
 - (v) all income, interest, profit, return of capital, gains and accretions and additional substituted assets, rights and benefits of any kind or nature whatsoever arising directly or indirectly from or in connection with or accruing to such foregoing property or such proceeds of disposition; and
 - (vi) such other property and assets as may properly be held by the Trust from time to time;
- (ii) **"Trust Liabilities"** has the meaning ascribed thereto in Section 2.7(a);
- (jj) **"Trust Option Plan"** means the trust unit option plan approved by the Trustees pursuant to which up to 10% of the then issued and outstanding Trust Units, may be issued to provide long-term incentives to develop the interests of (i) the independent Trustees and employees and advisors of the Trust, any Subsidiary of the Trust; and (ii) personal holding companies or family trusts of any persons referred to in (i), all as selected by the Trustees (collectively referred to as "Eligible Persons"). Pursuant to the Trust Option Plan, the Trustees may grant options to purchase Trust Units ("New Options") to Eligible Persons in respect of authorized and unissued Trust Units. The number of New Options and the exercise price of the Trust Units issuable upon exercise thereof is set by the Trustees at the time of the grant, provided that the exercise price shall not be less than the closing market price of the Trust Units on the day immediately preceding the date of the grant of the New Options. New Options granted under the Trust Option Plan may be exercised during a period not exceeding ten years, subject to earlier termination upon an optionee ceasing to be an Eligible Person or upon an optionee retiring, becoming permanently disabled or dying. The New Options will be non-transferable and non-assignable;
-
- (kk) **"Trust Unit Certificate"** means a certificate, in the form approved by the Trustees, evidencing one or more Trust Units, issued and certified in accordance with the provisions hereof;
- (ll) **"Trust Unit holders"** means at any time the holders at that time of one or more Trust Units, as shown on the register of such holders maintained by the Transfer Agent or by the Trustees on behalf of the Trust;
- (mm) **"Trust Units"** means the trust units of the Trust authorized and issued hereunder as such and for the time being outstanding and entitled to the benefits hereof; and

- (nn) "Trustee", at any time, means a person who is, in accordance with the provisions hereof, a trustee of the Trust at that time; and "Trustees" means, at any time, all of the persons each of whom is at that time a Trustee.

1.2 References to Acts Performed by the Trust

For greater certainty, where any reference is made in this Declaration of Trust to an act to be performed by the Trust, such reference shall be construed and applied for all purposes as if referred to an act to be performed by the Trustees on behalf of the Trust or by some other person duly authorized to do so by the Trustees or pursuant to the provisions hereof.

1.3 Tax Act

In this Declaration of Trust, any reference to the *Tax Act* shall refer to the *Tax Act* as amended from time to time applicable with respect thereto. Any reference herein to a particular provision of the *Tax Act* shall include a reference to that provision as it may be renumbered or amended from time to time. Where there are proposals for amendments to the *Tax Act* which have not been enacted into law or proclaimed into force on or before the date on which such proposals are to become effective, the Trustees may take such proposals into consideration and apply the provisions hereof as if such proposals had been enacted into law and proclaimed into force.

1.4 Gender

In this Declaration of Trust, unless herein otherwise expressly provided or unless the context otherwise requires, words importing the singular number include the plural, and vice versa; words importing a gender shall include the feminine, masculine and neuter genders; and words importing persons include an individual, partnership, association, body corporate, trustee, executor, administrator or legal representative.

1.5 Headings for Reference Only

The division of this Declaration of Trust into Articles and sections, the provision of a Table of Contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Declaration of Trust.

1.6 Day Not a Business Day

In the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day. This section is not applicable to Sections 5.1, 5.2, 5.3 and 5.4.

1.7 Time of the Essence

Time shall be of the essence in this Declaration of Trust.

1.8 Governing Law

This Declaration of Trust and the Trust Unit Certificates shall be construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and shall be treated in

all respects as Alberta contracts. The parties hereto hereby irrevocably submit and attorn to the jurisdiction of the courts of the Province of Alberta.

ARTICLE 2 DECLARATION OF TRUST

2.1 Initial Contribution, Acceptance and Trust Property

It is acknowledged and agreed that, pursuant to the terms of the Initial Declaration of Trust, the Settlor did irrevocably transfer, concurrent with the execution of Initial Declaration of Trust, the Initial Contribution to the Trustees for the purpose of establishing the Trust. Receipt of the Initial Contribution is hereby acknowledged by the Trustees and in consideration thereof the Settlor was issued one initial Unit in the Trust. The Settlor hereby fully and finally, unconditionally and irrevocably, divests itself of the Initial Contribution and of any other property which is to be comprised within the Trust Assets and does further fully and finally, unconditionally and irrevocably, divest itself of all rights of ownership, possession, enjoyment or administration of the Trust Assets and the Trustees hereby accept the Initial Contribution and all other property or assets which may become the Trust Assets on behalf of and for the benefit of the Unitholders, subject to the terms and provisions hereof (including any discretionary rights and powers granted the Trustees) such acceptance to include not merely the receipt or future receipt of the Trust Assets but also the acceptance for the benefit of the Unitholders pursuant to the terms hereof, of all rights of ownership, possession, use, enjoyment and administration of the said Trust Assets as referred to in the definition of Trust Assets herein.

2.2 Establishment of Trust

The Trustees hereby accept the Trust hereby constituted and agree to hold the Trust Assets transferred to them in trust from time to time for the use and benefit of the Unitholders, their permitted assigns and personal representatives upon the trust and subject to the terms and conditions hereinafter set forth, such trust to constitute the Trust hereunder. The Trustees acknowledge that the Trust results from this Declaration of Trust, the transfer by the Settlor hereby made of the Initial Contribution from its patrimony to the patrimony of the Trust hereby constituted by the Settlor which the Settlor has appropriated to the particular purposes set forth herein, and each of the Trustees hereby undertakes and accepts to hold and administer such trust patrimony in accordance with the provisions hereof. Each of the Settlor and the Trustees confirms that the patrimony of the Trust has been hereby transferred in trust and constitutes a patrimony by appropriation, autonomous and distinct from that of the Settlor, the Trustees or any Unitholder. The Settlor hereby appoints the Initial Trustees as Trustees and provides that the mode of appointment and replacement of the is set forth in Article 7. Subject to the provisions hereof, each of the Trustees elected or appointed pursuant to this Declaration of Trust shall have all of the powers set forth herein. To the extent required by applicable law, the Settlor hereby appoints the Unitholders as the sole beneficiaries of the Trust. The Units shall be issued upon the terms and subject to the conditions of the Declaration of Trust, and this Declaration of Trust shall be binding upon all Unitholders and by acceptance of the certificate representing any such Unit, the Unitholder thereof shall be deemed to agree to be bound by this Declaration of Trust.

2.3 Name of Trust

- (a) Effective January 22, 2002, the Trust shall be known and designated as "ARCTIC GLACIER INCOME FUND" and, whenever practicable, lawful and convenient, the property of the Trust shall be held and the affairs of the Trust shall be conducted and transacted under that name.

- (b) If the Trustees determine that the use of such name is not practicable, legal or convenient, the Trust may use such other designation or may adopt such other name as the Trustees deem appropriate, and the Trust may hold property and conduct and transact its affairs under such other designation or name.

2.4 Head Office

The head office of the Trust hereby created shall be located 625 Henry Avenue, Winnipeg, Manitoba, R3A 0V1 or such other place or places in Canada as the Trustees may from time to time designate.

2.5 Nature of the Trust

The Trust is an unincorporated open-end mutual fund trust, established for the purpose specified in Section 4.1. The Trust is not, is not intended to be, shall not be deemed to be and shall not be treated as, a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustees or any individual Trustee or the Trust Unitholders or any of them or any person be, or be deemed to be, treated in any way whatsoever as liable or responsible hereunder as partners or joint venturers. The Trustees are not and shall not be, or be deemed to be, agents of the Trust Unitholders. The relationship of the Trust Unitholders to the Trustees shall be solely that of beneficiaries of the Trust and their rights shall be limited to those conferred upon them by this Declaration of Trust.

2.6 Rights of Trust Unitholders

- (a) The rights of each Trust Unitholder to call for a distribution or division of assets, monies, funds, income and capital gains held, received or realized by the Trustees are limited to those contained herein and, except as provided herein, no Trust Unitholder shall be entitled to call for any partition or division of the Trust Assets or for a distribution of any particular asset forming part of the Trust Assets or of any particular monies or funds received by the Trustees. The legal ownership of the assets of the Trust and the right to conduct the activities of the Trust are vested exclusively in the Trustees, and no Trust Unitholder has or is deemed to have any right of ownership in any of the assets of the Trust, except as specifically provided herein. The Trust Units, shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth in this Declaration of Trust.
- (b) Except as specifically provided herein, no Trust Unitholder shall be entitled to interfere with or give any direction to the Trustees with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Trustees under this Declaration of Trust.

2.7 Liability of Trust Unitholders

- (a) No Trust Unitholder or annuitant under a plan of which a Unitholder acts as trustee or carrier, in its capacity as such, shall incur or be subject to any liability, direct or indirect, absolute or contingent, in contract or in tort or of any other kind to any person in connection with (i) the Trust Assets or the ownership, use, operation, acquisition or disposition thereof or exercise or enjoyment of the rights, privileges, conditions or

benefits attached thereto, associated therewith or derived therefrom; (ii) the obligations or the activities or affairs of the Trust; (iii) any actual or alleged act or omission of the Trustees or any of them or by any other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust) (iv) any act or omission of the Trustees or any of them or any other person in the performance or exercise, or purported or attempted performance or exercise, of any obligation, power, discretion or authority conferred upon the Trustees or any of them or such other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (v) any transaction entered into by the Trustees or any of them or by any other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); or (vi) any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof payable by the Trust or by the Trustees or any of them or by any other person on behalf of or in connection with the activities or affairs of the Trust (collectively, "Trust Liabilities").

- (b) No Trust Unitholder in its capacity as such shall be liable to indemnify the Trustees or any of them or any other person with respect to any Trust Liabilities.
- (c) To the extent that, notwithstanding the provisions of this Section 2.7, any Trust Unitholder, in its capacity as such, may be determined by a judgement of a court of competent jurisdiction to be subject to or liable in respect of any Trust Liabilities, such judgement and any writ of execution or similar process in respect thereof, shall be enforceable only against, and shall be satisfied only out of, the Trust Unitholder's share of the Trust Assets represented by its Trust Unit Certificates.

2.8 Indemnity

The Trust agrees to indemnify and hold harmless each Trust Unitholder from any cost, damages, liabilities, expenses, charges and losses suffered by a Trust Unitholder in its capacity as such in connection with the Trust Liabilities.

ARTICLE 3 ISSUE AND SALE OF TRUST UNITS

3.1 Nature of Trust Units

- (a) The beneficial interests in the Trust shall be divided into interests of one class, described and designated as "Trust Units", which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein, and the interest of each Trust Unitholder shall be determined by the number of Trust Units registered in the name of the Trust Unitholder.
- (b) Each Trust Unit represents an equal undivided interest in the Trust. All Trust Units outstanding from time to time shall be entitled to participate pro rata in any distributions by the Trust and, in the event of termination or winding-up of the Trust, in the net assets of the Trust. All Trust Units shall rank among themselves equally and rateably without discrimination, preference or priority.

3.2 Authorized Number of Trust Units

The aggregate number of Trust Units which is authorized and may be issued hereunder is unlimited.

3.3 Issue of Trust Units

- (a) Trust Units may be issued by the Trust at the times, to the persons, for the consideration and on the terms and conditions that the Trustees determine, including without limitation, pursuant to the DRIP (if any) and the Trust Option Plan and, without limiting the generality of the foregoing, the Trustees may authorize the Trust to pay a reasonable commission to any person in consideration of such person purchasing or agreeing to purchase Trust Units from the Trust or from any other person or procuring or agreeing to procure purchasers for Trust Units.
- (b) Trust Units are only to be issued as fully paid in money, property, including an obligation to pay consideration in instalments, or past services that are not less in value than the fair equivalent of the money that the Trust would have received if the Units had been issued for money, and are not to be subject to future calls or assessment, except that Trust Units to be issued under an offering may be issued for a consideration payable in instalments and the Trust may take a security interest over such Trust Units for unpaid instalments.
- (c) Trust Units may not be issued by the Trust or the Trustees other than:
 - (i) pursuant to subsection 3.3(a);
 - (ii) pursuant to the Exchange Arrangement; or
 - (iii) pursuant to Section 5.8.

3.4 No Fractional Trust Units

Fractions of Trust Units shall not be issued, except pursuant to distributions of additional Trust Units to all Trust Unitholders pursuant to Section 5.8.

3.5 Consolidation of Trust Units

Immediately after any pro rata distribution of additional Trust Units to all Trust Unitholders pursuant to Section 5.8, the number of the outstanding Trust Units will be consolidated such that each Trust Unitholder will hold after the consolidation the same number of Trust Units as the Trust Unitholder held before the distribution of additional Trust Units, except where tax is required to be withheld. In this case, each Trust Unit Certificate representing a number of Trust Units prior to the distribution of additional Trust Units is deemed to represent the same number of Trust Units after the distribution of additional Trust Units and the consolidation.

3.6 No Pre-Emptive Rights

No person shall be entitled, as a matter of right, to subscribe for or purchase any Trust Unit.

ARTICLE 4
INVESTMENTS OF TRUST

4.1 Purpose of the Trust

The Trust is a limited purpose trust and its operations and activities shall be restricted to the following activities, provided that such activities do not result in (i) the Trust not being considered either a "unit trust" or a "mutual fund trust" for the purposes of the *Tax Act*; or (ii) the Units being considered "foreign property" (or the Trust becoming obligated to pay a tax in respect of its holdings of "foreign property") for the purposes of the *Tax Act*:

- (a) investing in such securities as may be approved from time to time by the Trustees, including the Common Shares, Notes, and additional common shares, securities or debt obligations of Arctic Glacier and otherwise lending funds to Arctic Glacier and its Affiliates and borrowing funds for any such purposes;
- (b) issuing guarantees of the obligation and indebtedness of any of its Subsidiaries or Affiliates and charging, pledging, hypothecating or granting any security interest, mortgage or encumbrance over or with respect to any or all of the Trust Assets in connection with any such guarantees;
- (c) disposing of any part of the assets of the Trust;
- (d) temporarily holding cash and short term investments in accordance with a policy from time to time determined by the Trustees or, if no such policy is in place, in accordance with Section 4.2, and other investments (including investments in Arctic Glacier) for the purposes of paying expenses and Trust Liabilities, paying amounts payable by the Trust in connection with the redemption of any Trust Units, and making distributions to Trust Unitholders; and
- (e) undertaking such other activities as shall be approved by the Trustees from time to time.

4.2 Other Investments

To the extent that any monies or other property received by the Trust or the Trustees are not to be immediately used by the Trustees for the purpose of making distributions under Article 5 hereof, the Trustees are hereby authorized and, where prudent to do so, shall invest such monies in: (i) debt obligations of or guaranteed by the Government of Canada or a province of Canada, (ii) short term commercial paper obligations of a corporation whose short term commercial paper is rated R-I (or higher) by Dominion Bond Rating Service or A-1 (or higher) by Canadian Bond Rating Service or (iii) interest-bearing accounts and certificates of deposit issued or guaranteed by one of the six largest (in terms of total assets) Canadian chartered banks; provided that under no circumstances shall the Trustees purchase or authorize the purchase of any investment which is defined as "foreign property" under subsection 206(1) of the *Tax Act*, if such purchase would result in the Trust exceeding the "foreign property" limitation for "mutual fund trusts" under the *Tax Act*, nor shall the Trust purchase or authorize the purchase of any investment that would not be allowed for a "mutual fund trust" under subsection 132(6) of the *Tax Act* or to engage in activities contrary to that provision. For the purpose hereof, "short term" shall mean having a date to maturity or call for payment of not more than 60 days from the date on which the investment is made or at any time thereafter.

**ARTICLE 5
DISTRIBUTIONS**

5.1 Computation of Distributable Cash Flow of the Trust

- (a) The Cash Flow of the Trust, for any Distribution Period, shall be determined pursuant to the following provisions:
- (i) all amounts which are received by the Trust in the Distribution Period, including, without limitation, interest, dividends, redemption proceeds, purchase for cancellation proceeds, returns of capital and repayments of indebtedness, shall be included in the calculation;
 - (ii) the following amounts shall be deducted in the calculation:
 - (A) all costs and expenses of the Trust which, in the opinion of the Trustees, may reasonably be considered to have accrued and become owing in respect of, or which relate to, such Distribution Period or a prior Distribution Period if not accrued in such prior period; and
 - (B) all amounts which relate to the redemption of Trust Units and which have become payable in cash by the Trust in such Distribution Period.
 - (iii) the proceeds and issuance costs from the sale of any Trust Units by the Trust shall not be included in the Cash Flow of the Trust.
- (b) The Distributable Cash Flow for, or in respect of, a Distribution Period shall be the Cash Flow of the Trust for such Distribution Period less any amount which the Trustees may reasonably consider to be necessary to provide for the payment of any costs which have been or will be incurred in the activities and operations of the Trust and to provide for the payments of any income tax liability of the Trust.

5.2 Computation of Income of the Trust and Net Realized Capital Gains for the purposes of the Tax Act

- (a) The Income of the Trust for any year shall be the net income determined pursuant to the provisions of the *Tax Act* having regard to the provisions thereof which relate to the calculation of income of a trust, and taking into account such adjustments thereto as are determined by the Trustees in respect of dividends received from taxable Canadian corporations, amounts paid or payable by the Trust to Trust Unitholders and such other amounts as may be determined in the discretion of the Trustees; provided, however, that capital gains and capital losses shall be excluded.
- (b) The Net Realized Capital Gains of the Trust for any year shall be determined as the amount, if any, by which the aggregate of the capital gains of the Trust in the year exceeds the aggregate of the capital losses of the Trust in the year, excluding any capital gains or losses which are realized by the Trust as a result of any redemption of Trust Units pursuant to Article 6, and the amount determined by the Trustees in respect of any net capital losses for prior years which the Trust is permitted by the Act to deduct in computing the taxable income of the Trust for the year.

5.3 Distributions of Distributable Cash Flow

The Trustees shall, on or before each Distribution Record Date, declare payable to the Trust Unitholders on such Distribution Record Date, all or any part of the Distributable Cash Flow for the Distribution Period which includes such Distribution Record Date. The proportionate share of each Trust Unit of the amount of such Distributable Cash Flow shall be determined by dividing such amount by the number of issued and outstanding Trust Units on such Distribution Record Date. Each Trust Unitholder's share of such Distributable Cash Flow shall be an amount equal to the proportionate share of each Trust Unit of such Distributable Cash Flow multiplied by the number of Trust Units owned of record by each such Trust Unitholder on such Distribution Record Date. Subject to Section 5.8, Distributable Cash Flow which has been declared to be payable to Trust Unitholders in respect of a Distribution Period shall be paid in cash on the Distribution Payment Date which immediately follows such Distribution Record Date.

5.4 Other Distributions

- (a) In addition to the distributions which are made payable to Trust Unitholders pursuant to Section 5.3, the Trustees may declare to be payable and make distributions, from time to time, out of the Income of the Trust, Net Realized Capital Gains, the capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates as the Trustees may determine:
- (b) Having regard to the present intention of the Trustees to allocate, distribute and make payable to Trust Unitholders all of the Income of the Trust, Net Realized Capital Gains and any other applicable amounts so that the Trust will not have any liability for tax under the *Tax Act* in any year, the following amounts shall, without any further actions on the part of the Trustees, be due and payable to Trust Unitholders of record on December 31st in each year:
 - (i) an amount equal to the amount, if any, by which the Income of the Trust for such year exceeds the aggregate of the portions, if any, of each distribution made by the Trust pursuant to Section 5.3 or Section 5.4(a) which have been determined by the Trustees, pursuant to Section 5.5, to have been payable by the Trust out of Income of the Trust for such year; and
 - (ii) an amount equal to the amount, if any, by which the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of the portions, if any, of each distribution made by the Trust pursuant to Section 5.3 or Section 5.4(a) which have been determined by the Trustees, pursuant to Section 5.5, to have been payable by the Trust out of Net Realized Capital Gains for such year.
- (c) Subject to Section 6.5, the proportionate share of each issued and outstanding Trust Unit of the amount of any distribution made pursuant to either or both of Sections 5.4(a) and (b) shall be determined by dividing such amount by the number of issued and outstanding Trust Units on the applicable Distribution Record Date in respect of a distribution pursuant to Section 5.4(a) and on December 31 in respect of a distribution pursuant to Section 5.4(b). Each Trust Unitholder's share of the amount of any such distribution shall be an amount equal to the proportionate share of each Trust Unit of such amount multiplied by the number of Trust Units owned of record by each such Trust Unitholder on such applicable record date or December 31 in the year of such distribution, as the

case may be. Subject to Section 5.8, amounts which have been declared to be payable to Trust Unitholders pursuant to either Section 5.4(a) or (b) shall be paid in cash on the Distribution Payment Date which immediately follows the applicable record date in respect of a distribution pursuant to Section 5.4(a) or December 31 in the applicable year in respect of a distribution pursuant to Section 5.4(b).

5.5 Character of Distributions

Distributions payable to Trust Unitholders pursuant to this Article 5 shall be deemed to be distributions of Income of the Trust, Net Realized Capital Gains, trust capital or other items in such amounts as the Trustees shall, in their absolute discretion, determine. For greater certainty, it is hereby declared that any distribution of Net Realized Capital Gains shall include the non-taxable portion of the capital gains of the Trust which are encompassed in such distribution.

5.6 Enforceability of Right to Receive Distributions

For greater certainty, it is hereby declared that each Trust Unitholder shall have the legal right to enforce payment of any amount which is due and payable to such Trust Unitholder as a result of any distribution which is payable to such Trust Unitholder pursuant to this Article.

5.7 Designation of Taxable Dividends, Taxable Capital Gains and Foreign Source Income

In accordance with and to the extent permitted by the *Tax Act*, the Trustees in each year shall make designations in respect of the amounts payable to Trust Unitholders for such amounts that the Trustees consider to be reasonable in all of the circumstances, including, without limitation, designations relating to taxable dividends received by the Trust in the year on shares of taxable Canadian corporations, net taxable capital gains realized by the Trust in the year and foreign source income of the Trust for the year.

5.8 Method of Payment of Distributions

- (a) Distributions shall be made by cheque payable to or to the order of the Unitholder or by such other manner of payment as approved by the Trustees from time to time.
- (b) Where the Trustees determine that the Trust does not have cash in an amount sufficient to make payment of the full amount of any distribution which has been declared to be payable pursuant to this Article on the due date for such payment, the payment may, at the option of the Trustees, include the issuance of additional Trust Units, or fractions of Trust Units, if necessary, having a value equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustees to be available for the payment of such distribution.
- (c) The value of each Trust Unit which is issued pursuant to Section 5.8(b) shall be the market price (as defined in Section 6.3) of the Trust Units on the applicable Distribution Record Date in respect of a distribution pursuant to Section 5.3, on the applicable Distribution Record Date in respect of a distribution under Section 5.4(a) or December 31 in respect of a distribution under Section 5.4(b), provided that if the particular date is not a Business Day then the market price (as defined in Section 6.3) shall be determined on the last Business Day which precedes such particular date.

5.9 Withholding Taxes

The Trustees shall deduct or withhold from distributions payable to any Trust Unitholder all amounts required by law to be withheld from such distribution.

5.10 Definitions

Unless otherwise specified or the context otherwise requires, any term in this Article which is defined in the *Tax Act* shall have for the purposes of this Article the meaning that it has in the *Tax Act*.

**ARTICLE 6
REDEMPTION OF TRUST UNITS**

6.1 Right of Redemption

Each Trust Unitholder shall be entitled to require the Trust to redeem at any time or from time to time at the demand of the Unitholder all or any part of the Trust Units registered in the name of the Trust Unitholder at the prices determined and payable in accordance with the conditions hereinafter provided.

6.2 Exercise of Redemption Right

(a) To exercise a Trust Unitholder's right to require redemption under this Article 6, a duly completed and properly executed notice requiring the Trust to redeem Trust Units, in a form approved by the Trustees, shall be sent to the Trust at the head office of the Trust. No form or manner of completion or execution shall be sufficient unless the same is in all respects satisfactory to the Trustees and is accompanied by any further evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the person giving such notice.

(b) Upon receipt by the Trust of the notice to redeem Trust Units, the Unitholder shall thereafter cease to have any rights with respect to the Trust Units tendered for redemption (other than to receive the redemption payment therefor) including the right to receive any distributions thereon which are declared payable to the Trust Unitholders of record on a date which is subsequent to the day of receipt by the Trust of such notice. Trust Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Trustees, received the notice and other required documents or evidence as aforesaid.

6.3 Cash Redemption

(a) Upon receipt by the Trust of the notice to redeem Trust Units in accordance with Section 6.2, the holder of the Trust Units tendered for redemption shall be entitled to receive a price per Trust Unit (hereinafter called the "Redemption Price") equal to the lesser of:

(i) 90% of the "market price" of the Trust Units on the principal market on which the Trust Units are quoted for trading during the 10 trading day period

commencing immediately after the date on which the Trust Units were surrendered to the Trust for redemption; and

- (ii) 100% of the "closing market price" on the principal market on which the Trust Units are quoted for trading on the date on which the Trust Units were surrendered to the Trust for redemption.

For the purposes hereof, "market price" shall be an amount equal to the weighted average of the closing price of the Trust Units for each of the trading days on which there was a closing price; provided that if the applicable exchange or market does not provide a closing price but only provides the highest and lowest prices of the Trust Units traded on a particular day, the "market price" shall be an amount equal to the weighted average of the average of the highest and lowest prices for each of the trading days on which there was a trade; and provided further that if there was trading on the applicable exchange or market for fewer than five of the 10 trading days, the "market price" shall be the weighted average of the following prices established for each of the 10 trading days: the average of the last bid and last ask prices for each day on which there was no trading; the closing price of the Trust Units for each day that there was trading if the exchange or market provides a closing price; and the weighted average of the highest and lowest prices of the Trust Units for each day that there was trading, if the market provides only the highest and lowest prices of Trust Units traded on a particular day. For the purposes of Section 6.3(a)(iii), the "closing market price" shall be: an amount equal to the closing price of the Trust Units if there was a trade on the date and the exchange or market provides a closing price; an amount equal to the weighted average of the highest and lowest prices of Trust Units if there was trading and the exchange or other market provides only the highest and lowest trading prices of Trust Units traded on a particular day; and the weighted average of the last bid and last ask prices if there was no trading on the date. During the period of time, if any, after the date on which the Trust Units were surrendered to the Trust for redemption, that the Trust Units issued are subject to payment of an instalment of the issue price and are represented by instalment receipts, unless a market for trading in the Trust Units (other than those so represented by instalment receipts) develops which the Trustees consider fairly reflects the market value of the Trust Units, the "market price" for purposes of Section 6.3(a)(i) and the "closing market price" for purposes of Section 6.3(a)(ii) shall equal the aggregate of the "market price" or "closing market price" for such instalment receipts (calculated as aforesaid as if the instalment receipts were Trust Units) plus the amount of the unpaid instalment of the issue price per Trust Unit.

- (b) Subject to Sections 6.4 and 6.5, the Redemption Price payable in respect of the Trust Units tendered for redemption during any month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company in lawful money of Canada, payable at par to or to the order of the Trust Unitholder who exercised the right of redemption on or before the last day of the calendar month following the month in which the Trust Units were tendered for redemption. Payments made by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former Unitholder and/or any party having a security interest unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of Trust Units redeemed.

6.4 No Cash Redemption in Certain Circumstances

Section 6.3(b) shall not be applicable to Trust Units tendered for redemption by a Trust Unitholder, if:

- (a) the total amount payable by the Trust pursuant to Section 6.3 in respect of such Trust Units and all other Trust Units tendered for redemption prior thereto in the same calendar month exceeds \$50,000 ("Monthly Limit"); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Trust Units tendered for redemption in any calendar month. In the absence of such a waiver, Trust Units tendered for redemption in any calendar month in which the total amount payable by the Trust pursuant to Section 6.3(b) exceeds the Monthly Limit will be redeemed for cash pursuant to Section 6.3(b) and, subject to any applicable regulatory approvals, by a distribution in specie of securities of Arctic Glacier under Section 6.5 on a pro rata basis;
- (b) at the time the Trust Units are tendered for redemption, the outstanding Trust Units (or, as applicable, instalment receipts) are not listed for trading or quoted on any stock exchange or market which the Trustees consider, in their sole discretion, provides representative fair market value prices for the Trust Units (or, as applicable, instalment receipts); or
- (c) the normal trading of the outstanding Trust Units (or, as applicable, instalment receipts) is suspended or halted on any stock exchange on which the Trust Units (or, as applicable, instalment receipts) are listed for trading or, if not so listed, on any market on which the Trust Units (or, as applicable, instalment receipts) are quoted for trading, on the date that such Trust Units tendered for redemption were tendered to the Trust for redemption or for more than five trading days during the 10 trading day period commencing immediately after the date on which such Trust Units tendered for redemption were tendered to the Trust for redemption.

6.5 In Specie Redemption

If, pursuant to Section 6.4, Section 6.3(b) is not applicable to Trust Units tendered for redemption by a Unitholder, the Redemption Price per Trust Unit specified in Section 6.3 to which the Unitholder would otherwise be entitled shall, subject to receipt of all necessary regulatory approvals, be paid and satisfied by way of a distribution in specie to such Unitholder of a pro rata number of Common Shares and Notes (each in the principal amount of \$100), on the basis, for such Trust Units tendered for redemption, equal to the product of (i) number of Trust Units tendered for redemption divided by the total number of Trust Units outstanding on the date on which the Trust Units were tendered for redemption multiplied by (ii) the number of Common Shares and Notes (each in the principal amount of \$100) held by the Trust on the date the Trust Units were tendered for redemption. The Redemption Price payable pursuant to this Section 6.5 in respect of Trust Units tendered for redemption during any month shall, subject to receipt of all necessary regulatory approvals, be paid by the transfer, to or to the order of the Unitholder who exercised the right of redemption, on the last day (the "Transfer Date") of the calendar month following the month in which the Trust Units were tendered for redemption, of the number of Common Shares and Notes (each in the principal amount of \$100) determined as aforesaid. The Trust shall be entitled to all interest paid or accrued and unpaid on the Notes being transferred and distributions paid on the Common Shares being transferred to and including the Transfer Date. Payments by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of the securities of the Company by registered mail in a postage prepaid envelope addressed to the former Trust Unitholder. Upon such payment, the Trust shall be discharged from all liability to the former Trust Unitholder in

respect of the Trust Units so redeemed. No fractional Common Shares or Notes in a principal amount less than \$100 will be distributed and where the number of securities of the Company to be received by the former Trust Unitholder includes a fraction or a principal amount less than a multiple of \$100, such number shall be rounded to the next lowest number or multiple of \$100, as the case may be. Where the Trust makes a distribution in specie of a pro rata number of securities of the Company on a redemption of Trust Units as a result of the operation of Section 6.4(b) or (c) the Trustees shall determine the fair market value of the redeemed Trust Units. Where the Trust makes a distribution in specie of a pro rata number of securities of the Company on a redemption of Trust Units pursuant to this subsection, the Trustees may, in their sole discretion, designate to the redeeming Trust Unitholders any capital gain realized by the Trust as a result of the distribution of such securities to the Trust Unitholder.

6.6 Cancellation of all Redeemed Trust Units

All Trust Units which are redeemed under this Article 6 shall be cancelled and such Trust Units shall no longer be outstanding and shall not be reissued.

6.7 Subordination

Following any in specie redemption pursuant to the operation of Section 6.5, holders of Notes will be required to acknowledge that they are subject to any applicable subordination agreements as may be determined by the Trustees prior to delivery of such Notes to the Trust Unitholder.

**ARTICLE 7
TRUSTEES**

7.1 Number of Trustees

The Trustees shall consist of not more than nine nor less than three Trustees, with the number of Trustees from time to time within such range being fixed by resolution of the Trustees, provided that until otherwise so determined by resolution, the number of Trustees shall be three.

7.2 Calling and Notice of Meetings

Meetings of the Trustees shall be called and held at such time and at such place as the Trustees, the chairman of the Trustees or any two Trustees may determine, and any one Trustee or officer of the Trust may give notice of meetings when directed or authorized by such persons. Notice of each meeting of the Trustees shall be given to each Trustee not less than 48 hours before the time when the meeting is to be held, provided that if a quorum of Trustees is present, the Trustees may without notice hold a meeting immediately following an annual meeting of Trust Unitholders. Notice of a meeting of the Trustees may be given verbally, in writing or by telephone, fax or other means of communication. A notice of a meeting of Trustees need not specify the purpose of or the business to be transacted at the meeting. Notwithstanding the foregoing, the Trustees may by resolution from time to time fix a day or days in any month or months for regular meetings of the Trustees at a place and hour to be named, in which case, provided that a copy of such resolution is sent to each Trustee forthwith after being passed and forthwith after each Trustee's appointment, no other notice shall be required for any such regular meeting. Notice of a meeting may be waived by the Trustees at or after a meeting which is held and the meeting shall be deemed to have been duly held in such event. A Trustee who attends a meeting of Trustees is deemed to have waived notice of the meeting except when such Trustee attends for the express purpose of objecting to the transaction of any business on the grounds that proper notice of the meeting was not given.

7.3 Place of Meetings

Meetings of the Trustees shall be held in Winnipeg, Manitoba or such other place in Canada as the Trustees shall designate. A Trustee who attends a meeting of Trustees, in person or by telephone, is deemed to have consented to the location of the meeting except when he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

7.4 Meetings by Telephone

With the consent of the chairman of the meeting or a majority of the other Trustees present at the meeting, a Trustee may participate in a meeting of the Trustees or of a committee of the Trustees by means of telephone or other communication facilities that permit all persons participating in the meeting to hear each other. A Trustee participating in such a meeting in such manner shall be considered present at the meeting and at the place of the meeting.

7.5 Quorum

The quorum for the transaction of business at any meeting of the Trustees shall consist of the greater of two Trustees or a majority of the number of Trustees then holding office, and, notwithstanding any vacancy among the number of Trustees, a quorum of Trustees may exercise all of the powers of the Trustees.

7.6 Chairman

The chairman of any meeting of the Trustees shall be the Trustee present at the meeting who holds the office of Chairman of the Trustees or if such person is not present, the Trustees present shall choose one of their number to be chairman.

7.7 Action by the Trustees

At all meetings of the Trustees every question shall be decided by a majority of the votes cast on the question. In the case of equality of votes, the chairman of the meeting shall not be entitled to a second or casting vote. The powers of the Trustees may be exercised by resolution passed at a meeting at which a quorum is present or by resolution in writing signed by all Trustees who would be entitled to vote on that resolution at a meeting of the Trustees. Resolutions in writing may be signed in counterparts each of which shall be deemed to be an original and all originals together shall be deemed to be one and the same instrument.

7.8 Adjourned Meeting

Any meeting of Trustees may be adjourned from time to time by the chairman of the meeting with the consent of the meeting to a fixed time and place. Further notice of the adjourned meeting need not be given. The adjourned meeting shall be duly constituted if a quorum is present and if it is held in accordance with the terms of the adjournment. If there is not a quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated upon its adjournment.

7.9 Remuneration and Expenses

The Trustees shall be paid such remuneration for their services as may from time to time be determined by the Trustees, acting reasonably. The Trustees shall also be entitled to be reimbursed for reasonable travelling and other expenses properly incurred by them in attending meetings of the Trustees or any committee thereof or in connection with their services as Trustees. A Trustee shall not be precluded from serving the Trust in any other capacity and receiving remuneration therefor. Trustees who are not employees of the Company shall be entitled to participate in any Trust Option Plan adopted by the Trustees.

7.10 Officers

The Trustees from time to time may appoint one or more officers of the Trust, including without limitation a Chairman of the Trustees, and, without prejudice to rights under any employment contract, may remove any officer of the Trust. The powers and duties of each officer of the Trust shall be those determined from time to time by the Trustees and, in the absence of such determination, shall be those usually applicable to the office held.

ARTICLE 8 APPOINTMENT, RESIGNATION AND REMOVAL OF TRUSTEES

8.1 Qualification of Trustees

The following persons are disqualified from being a Trustee of the Trust:

- (a) anyone who is less than eighteen years of age;
- (b) anyone who is of unsound mind and has been so found by a Court in Canada or elsewhere;
- (c) a person who is not an individual;
- (d) a person who is a non-resident of Canada as defined in the *Tax Act* if, at any time, a majority of the Trustees of the Trust would have otherwise been non-residents of Canada as defined in the *Tax Act*; and
- (e) a person who has the status of bankrupt.

8.2 Appointment of Trustees

Except as otherwise provided herein, Trustees shall be appointed (including the reappointment of incumbent Trustees) at each annual meeting of Trust, and may be appointed at a special meeting of Trust Unitholders, in each case to hold office, subject to Section 8.5, for a term expiring at the close of the next annual meeting of Trust Unitholders following such an appointment. Any such appointment shall be made either by a resolution approved by a majority of the votes cast at a meeting of Trust Unitholders or shall be made by resolution in writing in the manner set out in Section 12.10. Notwithstanding the foregoing:

- (a) if no Trustees are appointed at the annual meeting of Trust held immediately before the term of office of such Trustees expires, such Trustees shall continue to hold the office of Trustee under this Declaration of Trust until successors have been appointed; and
- (b) the Trustees may, between annual meetings of the Trust appoint one or more additional Trustees for a term to expire (subject to further appointment) at the close of the next annual meeting of Trust Unitholders but the number of additional Trustees so appointed shall not at any time exceed one-third of the number of Trustees who held office immediately after the expiration of the immediately preceding annual meeting of Trust Unitholders.

8.3 Consent to Act

- (a) A person who is appointed a trustee hereunder shall not become a Trustee until such Trustee has, either before or after such appointment, executed and delivered to the Trust and the Trustees a consent substantially as follows:

"To: ARCTIC GLACIER INCOME FUND (the "Trust")
And to: The Trustees thereof

The undersigned hereby consents to act as a Trustee of the Trust and hereby agrees, upon the later of the date of this consent and the date of the undersigned's appointment as a Trustee of the Trust, to thereby become a party, as a Trustee, to the Declaration of Trust dated as of January 22, 2002, as amended or amended and restated from time to time, constituting the Trust.

Dated:

[Signature]

[Print Name]"

- (b) Upon the later of a person being appointed a trustee hereunder and executing and delivering to the Trust and the Trustees, a consent substantially as set forth in subsection 8.3(a), such person shall become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Declaration of Trust, as amended or amended and restated from time to time.

8.4 Failure to Elect Minimum Number of Trustees

If a meeting of Trust Unitholders fails to elect the minimum number of Trustees required by this Declaration of Trust by reason of the disqualification or death of any nominee, the Trustees elected at the meeting may exercise all of the powers of the Trustees if the number of Trustees so elected constitutes a quorum.

8.5 Ceasing to Hold Office

A Trustee ceases to hold office when:

- (a) he or she dies or resigns;
- (b) he or she is removed in accordance with Section 8.6; or
- (c) he or she is disqualified from being a Trustee as provided under Section 8.1.

A resignation of a Trustee becomes effective at the time a written resignation is sent to the Trust and the other Trustees or at the time specified in the resignation, whichever is later, provided that if, upon the resignation becoming effective, the number of remaining Trustees would be less than the number necessary to constitute a quorum for a meeting of Trustees, the resignation is not effective until the resigning Trustee's successor is duly appointed as a Trustee.

Upon a Trustee ceasing to hold office as such hereunder, such Trustee shall cease to be a party, as a Trustee, to this Declaration of Trust; provided, however, that such Trustee shall continue to be entitled to be paid any amounts owing by the Trust to the Trustee and to the benefits of the indemnity provided in Section 9.9.

8.6 Removal of Trustee

The Trust Unitholders may remove any Trustee or Trustees from office by resolution approved by a majority of the votes cast at a meeting of Trust Unitholders called for that purpose. A vacancy created by the removal of a Trustee may be filled at the meeting of Trust Unitholders at which the Trustee is removed or, if not so filled, may be filled as set forth in Section 8.7.

8.7 Filling Vacancies

Subject to Section 8.2, a quorum of Trustees may fill a vacancy among the Trustees, except a vacancy resulting from an increase in the number of Trustees or from a failure to elect the minimum number of Trustees fixed by or pursuant to this Declaration of Trust. If there is not a quorum of Trustees, or if there has been a failure to elect the minimum number of Trustees required by or pursuant to this Declaration of Trust, the Trustees then in office shall forthwith call a special meeting of Trust Unitholders to fill the vacancy and, if they fail to call a meeting or if there are no Trustees then in office, the meeting may be called by any Trust Unitholder. A Trustee appointed to fill a vacancy holds office, subject to Section 8.5, until the close of the next annual meeting of the Trust Unitholders.

8.8 Validity of Acts

All acts of a Trustee are valid notwithstanding any irregularity in the appointment of the Trustee or any defect in the qualifications of the Trustee.

**ARTICLE 9
CONCERNING THE TRUSTEES**

9.1 Powers of the Trustees

Subject to the terms and conditions of this Declaration of Trust, the Trustees may exercise from time to time in respect of the Trust Assets and the investments and affairs of the Trust full, absolute and exclusive power control and authority over the Trust Assets and appears to the same extent as if the Trustees were the legal and beneficial owners thereof

9.2 Specific Powers and Authorities

Subject only to the express limitations contained in this Declaration of Trust and in addition to any other powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees without any action or consent by the Trust Unitholders, shall have and may exercise at any time and from time to time the following powers and authorities which may or may not be exercised by the Trustees in their sole judgement and discretion and in such manner and upon such terms and conditions as they may from time to time determine proper including the following powers and authorities:

- (a) to supervise the activities and manage the investments and affairs of the Trust;
- (b) to maintain records and provide reports to Trust Unitholders;
- (c) to collect, sue for and receive all sums of money coming due to the Trust;
- (d) to effect payment of distributions to the Trust Unitholders as provided in Article 5;
- (e) to invest funds of the Trust as provided in Article 4;
- (f) subject to the Note Indenture to the extent it is in force and binding upon the Trust, to possess and exercise all the rights, powers and privileges pertaining to the ownership of shares of Arctic Glacier and the Notes to the same extent that an individual might, unless otherwise limited herein, and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or actions generally or for any particular meeting or action and may include the exercise of discretionary power;
- (g) to vote in favour of the Trust's nominees to serve as directors of Arctic Glacier;
- (h) where reasonably required, to engage or employ on behalf of the Trust any persons as agents, representatives, employees or independent contractors (including, without limitation, investment advisors, registrars, underwriters, accountants, lawyers, appraisers, brokers or otherwise) in one or more capacities;
- (i) except as prohibited by law, to delegate any of the powers and duties of the Trustees to any one or more agents, representatives, officers, employees, independent contractors or other persons without liability to the Trustees except as provided in this Declaration of Trust;

- (j) to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, disputes, claims, demands or other litigation or proceedings, regulatory or judicial, relating to the Trust, the assets of the Trust or the Trustee's affairs, to enter into agreements therefor, whether or not any suit or proceeding is commenced or claim asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof;
- (k) to arrange for insurance contracts and policies insuring the Trust, its assets, the business of Arctic Glacier and/or any or all of the Trustees or the Trust Unitholders, including against any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees or Trust Unitholders or otherwise;
- (l) to cause legal title to any of the assets of the Trust to be held by and/or in the name of a Trustee, or except as prohibited by law, by and/or in the name of the Trust or any other custodian or person, on such terms, in such manner, with such powers in such person as the Trustees may determine and with or without disclosure that the Trust or a Trustee is interested therein; provided, however, that should legal title to any of the Trust Assets be held by and/or in the name of any person or persons other than a Trustee or the Trust, the Trustees shall require such person or persons to execute a trust agreement acknowledging that legal title to such assets is held in trust for the benefit of the Trust;
- (m) ensuring that the restrictions on Non-Resident ownership referred to herein are met;
- (n) to issue Trust Units for such consideration as the Trustees may advise the Trustees, such issuance to be subject to the terms and conditions of the Declaration of Trust;
- (o) to enter into and perform the obligations of the Trust under the Note Indenture, the DRIP (if any) and the Trust Option Plan;
- (p) to use their best efforts to ensure that the Trust qualifies at all times as a "unit trust" pursuant to paragraph 108(2)(a) of the *Tax Act* and a "mutual fund trust" pursuant to subsection 132(6) of the *Tax Act* and that the Trust Units do not constitute "foreign property" for purposes of the *Tax Act*;
- (q) to issue convertible unsecured subordinated debentures, or securities exchangeable to or into convertible unsecured subordinated debentures notwithstanding Section 9.4 hereof;
- (r) to guarantee the obligations of any of its Subsidiaries or Affiliates and to charge, pledge, hypothecate or grant any security interest, mortgage or encumbrance over or with respect to any or all of the Trust Assets in connection with any such guarantee existing as at the date hereof or incurred hereafter; and
- (s) to do all such other acts and things as are incidental to the foregoing, and to exercise all powers which are necessary or useful to carry on the purpose and activities of the Trust, to promote any of the purposes for which the Trust is formed and to carry out the provisions of this Declaration of Trust.

9.3 Voting of Shares and Notes Held by the Trust

The Common Shares and the Notes held from time to time by the Trustees as part of the Trust Assets may be voted by the Trustees at any and all meetings of shareholders of Arctic Glacier or any and all meetings of shareholders of Arctic Glacier at which the holders of such Common Shares or Notes are entitled to vote.

9.4 Restrictions on Trustee's Powers

(a) Notwithstanding Section 9.3, the Trustees may not under any circumstances whatsoever vote the Common Shares or, where applicable, the Notes to authorize:

- (i) any sale, lease or other disposition of, or any interest in, all or substantially all of the assets of Arctic Glacier, except in conjunction with an internal reorganization of the direct or indirect assets of Arctic Glacier as a result of which Arctic Glacier has the same interest, whether direct or indirect, in the assets as the interest, whether direct or indirect, that it had prior to the reorganization;
- (ii) any amalgamation, arrangement or other merger of Arctic Glacier with any other corporation, except in connection with an internal reorganization as referred to in paragraph (i) above;
- (iii) any material amendment to the Note Indenture, other than in contemplation of an issuance of further Trust Units;
- (iv) any material amendment to the articles of Arctic Glacier to change the authorized share capital in a manner that may be prejudicial to the Trust; and
- (v) any issue of shares in the capital of Arctic Glacier other than to the Trust;

without the approval of the Trust Unitholders by Special Resolution at a meeting of Trust Unitholders called for that purpose.

(b) Subject to sections 9.2(q) and (r) hereof, the Trustees shall have no power to borrow, incur any indebtedness or give any guarantee on behalf of the Trust or any other person or to charge, pledge, hypothecate or grant any security interest, mortgage or encumbrance over or with respect to any or all of the Trust Assets; provided that the Trust may from time to time incur indebtedness, which may be reborrowed after repayment, in whole or in part, for the sole purpose of paying the amounts required for the redemption of Trust Units pursuant to Article 6, provided that such indebtedness is repaid in full from income received by the Trust prior to making any distribution on or before the next following Distribution Record Date.

(c) The Trustees shall have no power to sell or otherwise dispose of any Common Shares or Notes (except pursuant to an in specie redemption under Section 6.5), or to sell all or substantially all of the Trust Assets or cause Arctic Glacier to sell all or substantially all of its assets, except with the approval of the Trust Unitholders by Special Resolution at a meeting of Trust Unitholders called for that purpose or except as part of an internal reorganization of the direct or indirect assets of the Trust as a result of which the Trust

has the same interest, whether direct or indirect, in the assets as the interest, whether direct or indirect, that it had prior to the reorganization.

- (d) The Trustees shall only vote the Common Shares of Arctic Glacier and exercise the rights under the Notes in the manner provided for herein, as the case may be, on the conditions contained therein.

9.5 Banking

The banking activities of the Trust, or any part thereof, including, but without restricting the generality of the foregoing, the operation of the Trust's accounts; the making, signing, drawing, accepting, endorsing, negotiation, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money; the giving of receipts for orders relating to any property of the Trust; the execution of any agreement relating to any property of the Trust; the execution of any agreement relating to any such banking activities and defining the rights and powers of the parties thereto; and the authorizing of any officer of such banker to do any act or thing on the Trust's behalf to facilitate such banking activities, shall be transacted with such bank, trust company, or other firm or corporation carrying on a banking business as the Trustees may designate, appoint or authorize from time to time and shall be transacted on the Trust's behalf by one or more officers of the Trust or Trustees as the Trustees may designate, appoint or authorize from time to time.

9.6 Standard of Care and Duties

The Trustees shall act honestly and in good faith with a view to the best interests of the Trust and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. A Trustee shall not be liable in carrying out his or her duties under this Declaration of Trust except in cases where a Trustee fails to act honestly and in good faith with a view to the best interests of the Trust or to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duties and standard of care of the Trustees provided as aforesaid are intended to be similar to, and not to be any greater than, those imposed on a director of a corporation governed by the *Business Corporations Act* (Alberta). Unless otherwise required by law, a Trustee shall not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No Trustee, in his or her capacity as trustee, shall be required to devote his or her entire time to the investments or business or affairs of the Trust.

9.7 Fees and Expenses

As part of the expenses of the Trust, the Trustees may pay or cause to be paid reasonable fees, costs and expenses incurred in connection with the administration and management of the Trust, including (without limitation) fees of auditors, accountants, lawyers, appraisers and other agents, consultants and professional advisors employed by or on behalf of the Trust and the cost of reporting or giving notices to Trust Unitholders. All costs, charges and expenses properly incurred by the Trustees on behalf of the Trust shall be payable out of the Trust Assets.

9.8 Limitations on Liability of Trustees

None of the Trustees or the officers or agents of the Trust shall be liable to any Trust Unitholder for any action taken in good faith in reliance on any documents that are, *prima facie* properly executed; for any depreciation of, or loss to, the Trust incurred by reason of the sale of any security; for

the loss or disposition of monies or securities; or for any other action or failure to act including, without limitation, the failure to compel in any way any former trustee to redress any breach of trust or any failure by the Company to perform obligations or pay monies owed to the Trust, except for a breach of the standard of care, diligence and skill as set out in Section 9.6 or a breach of Section 9.4. If the Trustees have retained an appropriate expert or advisor with respect to any matter connected with their duties under this Declaration of Trust, the Trustees may act or refuse to act based on the advice of such expert or advisor and, notwithstanding any provision of this Declaration of Trust, including, without limitation, the standard of care, diligence and skill set out in Section 9.6 hereof, the Trustees shall not be liable for any action or refusal to act based on the advice of any such expert or advisor which it is reasonable to conclude is within the expertise of such expert or advisor to give.

9.9 Indemnification of Trustees

Each Trustee, each former Trustee, each officer of the Trust and each former officer of the Trust shall be entitled to be and shall be indemnified and reimbursed out of the Trust Assets in respect of any and all taxes, penalties or interest in respect of unpaid taxes or other governmental charges imposed upon the Trustee or officer in consequence of his or her performance of his or her duties hereunder and in respect of any and all costs, charges and expenses, including amounts paid to settle an action or satisfy a judgement, reasonably incurred in respect of any civil, criminal or administrative action or proceeding to which the Trustee, former Trustee, officer or former officer is made a party by reason of being or having been a Trustee or officer of the Trust or, at the request of the Trust, a director or officer of Arctic Glacier or any Subsidiary thereof, provided that a Trustee, former Trustee, officer or former officer shall not be indemnified out of the Trust Assets in respect of unpaid taxes or other governmental charges or in respect of such costs, charges and expenses that arise out of or as a result or in the course of his or her failure to act honestly and in good faith with a view to the best interests of the Trust Unitholders. A Trustee, former Trustee, officer or former officer shall not be entitled to satisfy any right of indemnity or reimbursement granted herein, or otherwise existing under law, except out of the Trust Assets, and no Trust Unitholder or other Trustee or officer shall be personally liable to any person with respect to any claim for such indemnity or reimbursement as aforesaid.

9.10 Contractual Obligations of Trust

In respect of any obligations or liabilities being incurred by the Trust or the Trustees on behalf of the Trust, the Trustees and the Trust shall make all reasonable efforts to include as a specific term of such obligations or liabilities a contractual provision to the effect that none of the Trust Unitholders or the Trustees have any personal liability or obligations in respect thereof.

9.11 Conflicts of Interest

A Trustee or an officer of the Trust who is a party to, or is a director or officer of, or has a material interest in any person who is a party to a material contract or proposed material contract with the Trust shall disclose in writing to the Trust or request to have entered in the minutes of meetings of the Trustees the nature and extent of such interest, and shall not vote on any resolutions to approve the contract, unless the contract is one relating primarily to his or her remuneration as a Trustee or officer; one for indemnity or insurance in respect of him or her, or one with Arctic Glacier and, for greater certainty, a Trustee complying with this Section 9.11, shall not be subject to any liability to the Trust or the Trust Unitholders with respect to such contract or proposed material contract as aforesaid.

**ARTICLE 10
COMMITTEES OF TRUSTEES**

10.1 Delegation

Except as prohibited by law, the Trustees may appoint from their number a committee of Trustees and may delegate to the committee of Trustees such authority as the Trustees may in their sole discretion deem necessary or desirable to effect the administration of the duties of the Trustees under this Declaration of Trust, without regard to whether such authority is normally granted or delegated by trustees.

10.2 Procedure

Unless otherwise determined by the Trustees, a quorum for meetings of any committee shall be a majority of its members, each committee shall have the power to appoint its chairman and the rules for calling, holding, conducting and adjourning meetings of the committee shall be the same as those governing the Trustees. Each member of a committee shall serve during the pleasure of the Trustees and, in any event, only so long as he or she shall be a Trustee. The Trustees may fill vacancies in a committee by appointment from among their members. Provided that a quorum is maintained, the committee may continue to exercise its powers notwithstanding any vacancy among its members.

10.3 Governance

In lieu of a committee, the Trustees will be directly responsible for developing the Trust's approach to governance issues, filling vacancies among the Trustees and periodically reviewing the composition and effectiveness of the Trustees and the contribution of individual Trustees.

The Trustees will also be responsible for adopting and periodically reviewing and updating the Trust's written disclosure policy. This policy will, among other things:

- (a) Articulate the legal obligations of the Trust, its affiliates and their respective Trustees, directors, officers and employees with respect to confidential corporate information;
- (b) Identify spokespersons of the Trust who are authorized to communicate with third parties such as analysts, the media and investors;
- (c) Provide guidelines on the disclosure of forward-looking information;
- (d) Require advance review by senior representatives of any disclosure of financial information to seek to ensure that the information is not material, and to seek to ensure that selective disclosure of material information does not occur, and that if it does occur, a news release is issued promptly; and
- (e) Establish "black-out" periods immediately prior to and following the disclosure of quarterly and annual financial results and immediately prior to the disclosure of certain material changes during which the Trust, its affiliates, and their respective trustees, directors, officers and certain other persons may not purchase or sell Trust Units.

10.4 Audit Review

In lieu of an audit committee, the Trustees will directly fulfill their responsibilities of oversight and supervision of:

- (a) The accounting for and financial reporting practices and procedures of the Trust;
- (b) The adequacy of internal accounting controls and procedures of the Trust; and
- (c) The quality and integrity of financial statements of the Fund.

In addition, the Trustees will be responsible for directing the auditors' examination into specific areas.

**ARTICLE 11
AMENDMENT**

11.1 Amendment

The provisions of this Declaration of Trust, except where specifically provided otherwise, may only be amended by Special Resolution; provided that the provisions of this Declaration of Trust may be amended by the Trustees without the consent, approval or ratification of the Trust Unitholders or any other person at any time for the purpose of:

- (a) ensuring continuing compliance with applicable laws, regulations, requirements or policies of any governmental or other authority having jurisdiction over the Trustees or the Trust;
- (b) making all changes deemed necessary or advisable to ensure that the Trust has not been established nor maintained primarily for the benefit of non-residents of Canada as defined in the Tax Act;
- (c) providing, in the opinion of the Trustees, additional protection for or of benefit to the Trust Unitholders;
- (d) removing any conflicts or inconsistencies in this Declaration of Trust or making corrections, including the correction or rectification of any ambiguities, defective provisions, errors, mistakes or omissions which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Trust Unitholders; or
- (e) making amendments which, in the opinion of the Trustees, are necessary or desirable as a result of changes in taxation laws;
- (f) correcting errors or inconsistencies between this Declaration of Trust and the Material Contracts which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Trust Unitholders;

but notwithstanding the foregoing, no such amendment shall modify the right to one vote per Trust Unit or reduce the fractional undivided interest in the Trust Assets represented by any Trust Unit without the consent of the holder of such Trust Unit.

11.2 Notification of Amendment

As soon as shall be practicable after the making of any amendment pursuant to this Article 11, the Trustees shall furnish written notification of the substance of such amendment to each Trust Unitholder.

**ARTICLE 12
MEETINGS OF TRUST UNITHOLDERS****12.1 Annual and Special Meetings of Trust Unitholders**

Annual meetings of the Trust Unitholders shall be called on a day on or before June 30 in each year, at a time and at a place in Canada set by the Trustees. The business transacted at such meetings shall include the presentation of the audited financial statements of the Trust for the prior fiscal year, the election of nominees of the Trust to serve as directors of Arctic Glacier (except to fill casual vacancies which shall be done by the other directors of Arctic Glacier), the appointment of Trustees for the ensuing year in accordance with Article 8, the appointment of Auditors and the transaction of such other business as Trust Unitholders may be entitled to vote upon as hereinafter provided in this Article 12 or as the Trustees may determine. Special meetings of the Trust Unitholders may be called at any time by the Trustees and shall be called by the Trustees upon a written request of Trust Unitholders holding in the aggregate Trust Units to which are attached not less than 10% of the votes attached to all Trust Units then outstanding, such request specifying the purpose or purposes for which such meeting is to be called. The chairman of any annual or special meeting shall be the Chairman of the Trustees or any other Trustee specified by resolution of the Trustees or, in the absence of any Trustee, any person appointed as chairman of the meeting by the Trust Unitholders present. The Trustees, the officers of the Trust, the Auditors and any other person approved by the Trustees, the chairman of the meeting or by resolution passed by a majority of the votes cast by Trust Unitholders represented at the meeting may attend meetings of the Trust Unitholders.

12.2 Notice of Meetings

Notice of all meetings of Trust Unitholders shall be given by unregistered mail, postage prepaid, addressed to each Trust Unitholder at his or her last address on the books of the Trust, mailed at least 21 days and not more than 50 days before the meeting. Such notice shall specify the time when, and the place where, such meeting is to be held and shall specify the nature of the business to be transacted at such meeting in sufficient detail to permit a Trust Unitholder to form a reasonable judgement thereon, together with the text of any Special Resolution, at the time of mailing of the notice, proposed to be passed. Any adjourned meeting, other than a meeting adjourned for lack of a quorum under Section 12.6(b), may be held as adjourned without further notice. The accidental omission to give notice or the non-receipt of such notice by a Trust Unitholder shall not invalidate any resolution passed at any such meeting. Notwithstanding the foregoing, a meeting of Trust Unitholders may be held at any time without notice if all the Trust Unitholders are present or represented thereat or those not so present or represented have waived notice. Any Trust Unitholder (or a duly appointed proxy of a Trust Unitholder) may waive any notice required to be given under the provisions of this section, and such waiver, whether given before or after the meeting, shall cure any default in the giving of such notice.

12.3 Quorum

At any meeting of the Trust Unitholders, subject as hereinafter provided, a quorum shall consist of two or more individuals present in person either holding personally or representing as proxies Trust Units to which are attached not less in aggregate than 5% of the votes attached to all outstanding Trust Units. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting, if called by request of Trust Unitholders, shall be terminated and, if otherwise called, shall stand adjourned to such day being not less than 14 days later and to such place and time as may be appointed by the chairman of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Trust Unitholders present either personally or by proxy shall form a quorum, and any business may be brought before or dealt with at such an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

12.4 Voting Rights of Trust Unitholders

Only Trust Unitholders of record shall be entitled to vote. Each Trust Unit shall entitle the holder or holders of that Trust Unit to one vote on a poll vote at any meeting of Trust Unitholders. Every question submitted to a meeting, other than a Special Resolution, shall, unless a poll vote is demanded, be decided by a show of hands vote, on which every person present and entitled to vote shall be entitled to one vote. At any meeting of Trust Unitholders, any holder of Trust Units entitled to vote thereat may vote by proxy and a proxy need not be a Trust Unitholder, provided that no proxy shall be voted at any meeting unless it shall have been received by the Transfer Agent for verification at least 24 hours prior to the commencement of such meeting. When any Trust Unit is held jointly by several persons, any one of them may vote at any meeting in person or by proxy in respect of such Trust Unit, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners of their proxies so present disagree as to any vote to be cast, such vote purporting to be executed by or on behalf of a Trust Unitholder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger.

12.5 Resolutions Binding the Trustees

Trust Unitholders shall be entitled to pass resolutions that will bind the Trustees or the Trust only with respect to the following matters:

- (a) the appointment or removal of a Trustee as provided in Article 8;
- (b) the appointment or removal of Auditors as provided in Article 17;
- (c) the appointment of an Inspector as provided in Section 12.9;
- (d) amendments of this Declaration of Trust as provided in Section 11.1;
- (e) the termination of the Trust as provided in Section 14.2;
- (f) the sale of the Trust Assets as an entirety or substantially as an entirety; and
- (g) the appointment or removal of nominees of the Trust to serve as directors of Arctic Glacier as provided in and subject to Article 12.

Except with respect to the above matters set out in this Section 12.5, no action taken by the Trust Unitholders or any resolution of the Trust Unitholders at any meeting shall in any way bind the Trustees other than with respect to matters brought before the Trust Unitholders by the Trustees. Any action taken or resolution passed in respect of any matter at a meeting of Trust Unitholders shall be by Special Resolution, unless the contrary is otherwise expressly provided under any specific provision of this Declaration of Trust and except for the matters set out in Sections 12.5(a), 12.5(b) and 12.5(g) above which matters may be dealt with by a resolution passed by a majority of the votes cast by Trust Unitholders represented at the meeting.

12.6 Meaning of "Special Resolution"

- (a) The expression "Special Resolution" when used in this Declaration of Trust means, subject to Article 11, a resolution proposed to be passed as a special resolution at a meeting of Trust Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions of this Article at which two or more individuals present in person either holding personally or representing as proxies not less in aggregate than 25% of the number of Trust Units then outstanding and passed by the affirmative votes of the holders of Trust Units to which are attached more than 66 2/3% of the votes attached to all Trust Units represented at the meeting and cast on a poll upon such resolution.
- (b) Notwithstanding Section 12.3, if at any meeting at which a Special Resolution is proposed to be passed the holders of Trust Units to which are attached 25% of the aggregate number of votes attached to all Trust Units outstanding are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Trust Unitholders, shall be dissolved; but in any other case it shall stand adjourned to such date, being not less than 21 nor more than 60 days later and to such place and time as may be appointed by the chairman. Not less than ten days prior notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 12.2. Such notice shall state that at the adjourned meeting the Trust Unitholders present in person or by proxy shall form a quorum but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Trust Unitholders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in subsection 12.6(a) shall be a Special Resolution within the meaning of this Declaration of Trust, notwithstanding that the holders of Trust Units to which are attached less than 25% of the aggregate number of votes attached to all Trust Units then outstanding are present in person or by proxy at such adjourned meeting.
- (c) Votes on a Special Resolution shall always be given on a poll and no demand for a poll on a Special Resolution shall be necessary.

12.7 Meaning of "Outstanding"

Every Trust Unit issued, certified and delivered hereunder shall be deemed to be outstanding until it shall be cancelled or delivered to the Trustees or Transfer Agent for cancellation provided that:

- (a) when a new certificate has been issued in substitution for a Trust Unit Certificate which has been lost, stolen, mutilated or destroyed, only one of such Trust Unit Certificates shall be counted for the purposes of determining the number of Trust Units outstanding;
- (b) for the purpose of any provision of this Declaration of Trust entitling holders of outstanding Trust Units to vote, sign consents, requisitions or other instruments or take any action under this Declaration of Trust, Trust Units owned directly or indirectly, legally or equitably, by the Trust, the Company or any affiliate thereof shall be disregarded, except that:
 - (i) for the purpose of determining whether the Trustees shall be protected in relying on any such vote, consent, requisition or other instrument or action only the Trust Units which the Trustees know are so owned shall be so disregarded; and
 - (ii) Trust Units so owned which have been pledged in good faith other than to the Trust, Arctic Glacier or an Affiliate thereof shall not be so disregarded if the pledgee shall establish to the satisfaction of the Trustees the pledgee's right to vote such Trust Units in his or her discretion free from the control of the Trust, Arctic Glacier or any Affiliate thereof.

12.8 Record Date for Voting

For the purpose of determining the Trust Unitholders who are entitled to vote or act at any meeting or any adjournment thereof, the Trustees may fix a date not more than 60 days and not less than 28 days prior to the date of any meeting of Trust Unitholders as a record date for the determination of Trust Unitholders entitled to vote at such meeting or any adjournment thereof, and any Trust Unitholder who was a Trust Unitholder at the time so fixed shall be entitled to vote at such meeting or any adjournment thereof even though the Trust Unitholder has since that time disposed of his or her Trust Units, and no Trust Unitholder becoming such after that time shall be so entitled to vote at such meeting or any adjournment thereof. In the event that the Trustees do not fix a record date for any meeting of Trust Unitholders, the record date for such meeting shall be the date upon which notice of the meeting is given as provided under Section 12.2.

12.9 Appointment of Inspector

The Trustees shall call a meeting of Trust Unitholders upon the written request of Trust Unitholders holding Trust Units to which are attached in the aggregate not less than 25% of the votes attached to all Trust Units then outstanding for the purpose of considering the appointment of an Inspector to investigate the performance by the Trustees of their responsibilities and duties in respect of the Trust. An Inspector may be appointed for such purpose, at the expense of the Trust, at such meeting by a resolution approved by a majority of the votes cast at the meeting.

12.10 Resolutions in Writing

Notwithstanding any other provision of this Declaration of Trust, a resolution in writing executed by Trust Unitholders holding Trust Units to which are attached more than 66 2/3% of the votes attached to all outstanding Trust Units at any time shall be as valid and binding for all purposes of this Declaration of Trust as if such Trust Unitholders had exercised at that time all of the voting rights to which they were then entitled under Section 12.5 or 12.6 in favour of such resolution at a meeting of Trust Unitholders duly called for the purpose.

ARTICLE 13
CERTIFICATES, REGISTRATION AND TRANSFER OF TRUST UNITS

13.1 Nature of Trust Units

- (a) The provisions of this Article 13 shall not in any way alter the nature of Trust Units or the relationships of a Trust Unitholder to the Trustees and of one Trust Unitholder to another but are intended only to facilitate the issuance of certificates evidencing the ownership of Trust Units if desirable to issue them to Trust Unitholders and the recording of all transactions in respect of Trust Units and Trust Unit Certificates whether by the Trust, securities dealers, stock exchanges, transfer agents, registrars or other persons. The Trust Units may be issued in the form of one global Trust Unit Certificate (the "Global Trust Unit Certificate"). The Global Trust Unit Certificate will be issued in the name of and deposited by the Transfer Agent with, or on behalf of, CDS or a successor (collectively, the "Depository"), as custodian of the Global Trust Unit Certificate and registered by the Transfer Agent in the name of the Depository or its nominee. No purchaser of Trust Units represented by the Global Trust Unit Certificate will be entitled to a certificate or other instrument from the Trust or the Depository evidencing that purchaser's ownership thereof except in the circumstances where the Depository resigns or is removed from its responsibilities as depository and the Trustees are unable or do not wish to locate a qualified successor. Beneficial interests in the Global Trust Unit Certificate will be represented only through the Book-Based System. Transfers of Trust Units between CDS Participants shall occur in accordance with the Depository's rules and procedures.
- (b) All references herein to actions by, notices given or payments made to Trust Unitholders shall, where such Trust Units are held through the Depository, refer to actions taken by, or notices given or payments made to, the Depository upon instruction from the CDS Participants in accordance with the Depository's rules and procedures. For the purposes of any provision hereof requiring or permitting actions with the consent of or at the direction of Trust evidencing a specified percentage of the aggregate votes attached to the Trust Units outstanding, such direction or consent may, with respect to the Trust Units, be given by Trust Unitholders acting through the Depository and the CDS Participants owning Trust Units evidencing the relevant portion of the requisite percentage of the Trust Units. The rights of a Trust Unitholder shall be exercised only through the Depository and the CDS Participants and shall be limited to those established by law and agreements between such Trust Unitholders and the Depository and/or the CDS Participants or upon instruction from the CDS Participants. Each of the Transfer Agent and the Trustees may deal with the Depository for all purposes (including the making of payments) as the authorized representative of the respective Trust Unitholders and such dealing with the Depository shall constitute satisfaction or performance, as applicable, towards their respective obligations hereunder.
- (c) For so long as the Trust Units are held through the Depository, if any notice or other communication is required to be given to Trust Unitholders, the Trustees and the Transfer Agent will give all such notices and communications to the Depository.
- (d) If the Depository resigns or is removed from its responsibilities as depository and the Trustees are unable or do not wish to locate a qualified successor, the Depository shall surrender the Global Trust Unit Certificate to the Transfer Agent with instructions from

the Depository for registration of Trust Units in the name and in the amounts specified by the Depository and the Trust shall issue and the Trustees and Transfer Agent shall execute and deliver the aggregate number of Trust Units then outstanding in the form of definitive Trust Unit Certificates representing such Trust Units.

13.2 Trust Unit Certificates

- (a) Trust Unit Certificates shall, subject to the provisions hereof, be in such form as is authorized from time to time by the Trustees.
- (b) If issued, Trust Unit Certificates are issuable only in fully registered form.
- (c) The definitive form of the Trust Unit Certificates shall:
 - (i) be in the English language;
 - (ii) be dated as of the date of issue thereof; and
 - (iii) contain such distinguishing letters and numbers as the Trustees shall prescribe.
- (d) In the event that the Trust Unit Certificate is translated in the French language, any provision of the Trust Unit Certificates in the French language shall be susceptible of an interpretation different from the equivalent provision in the English language, the interpretation of such provision in the English language shall be determinative.
- (e) Each Trust Unit Certificate shall be signed on behalf of the Trustees and the Transfer Agent of such Trust Units. Signatures of the Trustees required to appear on such certificate may be printed, lithographed or otherwise mechanically reproduced thereon and, in such event, certificates so signed are as valid as if they had been signed manually.

13.3 Contents of Trust Unit Certificates

- (a) Until otherwise determined by the Trustees, each Trust Unit Certificate shall legibly set forth on the face thereof, inter alia, the following:
 - (i) the name of the Trust and the words "A trust created under the laws of the Province of Alberta by a Declaration of Trust dated as January 22, 2002" or words of like effect;
 - (ii) the name of the person to whom the Trust Unit Certificate is issued as Trust Unitholder;
 - (iii) the number of Trust Units represented thereby and whether or not the Trust Units represented thereby are fully paid;
 - (iv) that the Trust Units represented thereby are transferable;
 - (v) "The Trust Units represented by this certificate are issued upon the terms and subject to the conditions of the Declaration of Trust, which Declaration of Trust is binding upon all holders of Trust Units and, by acceptance of this certificate,

- the holder assents to the terms and conditions of the Declaration of Trust. A copy of the Declaration of Trust pursuant to which this certificate and the Trust Units represented thereby are issued may be obtained by a Trust Unitholder on demand and without fee from the head office of the Trust" or words of like effect; and
- (vi) "For information as to personal liability of a Trust Unitholder, see the reverse side of this certificate" or words of like effect.
- (b) Until otherwise determined by the Trustees, each such certificate shall legibly set forth on the face or the reverse side thereof, inter alia, the following:
- (i) "The Declaration of Trust provides that no Trust Unitholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the assets of the Trust or the obligations or the affairs of the Trust and all such persons shall look solely to the assets of the Trust for satisfaction of claims of any nature arising out of or in connection therewith and the assets of the Trust only shall be subject to levy or execution", or words of like effect; and
 - (ii) appropriate forms of notice of exercise of the right of redemption and of powers of attorney for transferring Trust Units.

The Trust Unit Certificates may be engraved, printed or lithographed, or partly in one form and partly in another, as the Trustees may determine.

13.4 Register of Trust Unitholders

A register may be kept at the principal corporate trust office in Winnipeg, Manitoba of the Transfer Agent, which, if maintained, register shall contain the names and addresses of the Trust Unitholders, the respective numbers of Trust Units held by them, the certificate numbers of certificates representing such Trust Units and a record of all transfers and redemptions thereof. Branch transfer registers shall be maintained at such other offices of the Transfer Agent as the Trustees may from time to time designate. Only Trust Unitholders whose certificates are so recorded shall be entitled to receive distributions or to exercise or enjoy the rights of Trust Unitholders hereunder. The Trustees shall have the right to treat the person registered as a Trust Unitholder on the register of the Trust as the owner of such Trust Units for all purposes, including, without limitation, payment of any distribution, giving notice to Trust Unitholders and determining the right to attend and vote at meeting of Trust Unitholders.

13.5 Limitation of Non-Resident Ownership

At no time may non-residents of Canada ("Non-residents") within the meaning of the *Tax Act* be the beneficial owners of that number of either or both of the Trust entitling them to more than 49% of the votes attached to all outstanding units. The Trustees shall inform the Administrator of this restriction. The Trustees or the Administrator may require declarations as to the jurisdictions in which beneficial owners of Trust Units are resident. If the Trustees or the Administrator become aware that the beneficial owners of either or both of the Trust Units entitling the holders to 45% of the votes attached to all outstanding units or may be non-resident or that such a situation is imminent, the Trustee or the Administrator may make a public announcement thereof and shall not accept a subscription for Trust Units from or issue or register a transfer of Trust Units to a person unless the person provides a

declaration in form and content satisfactory to the Trustees that the person is not a Non-resident. If notwithstanding the foregoing, the Trustees or the Administrator determine that a majority of the Trust Units are held by Non-residents, the Trustees or the Administrator may send a notice to Non-resident holders of Trust Units, chosen in inverse order to the order of acquisition or registration or in such other manner as the Trustees or the Administrator may consider equitable and practicable, requiring them to sell their Trust Units or a portion thereof within a specified period of not less than 60 days. If the Trust Unitholders receiving such notice have not sold the specified number of Trust Units or provided the Trustees or the Administrator with satisfactory evidence that they are not Non-residents within such period, the Trustees or the Administrator, may on behalf of such Trust Unitholders, sell such Trust Units and, in the interim, shall suspend the voting and distribution rights attached to such Trust Units. Upon such sale the affected holders shall cease to be holders of the Trust Units so sold and their rights shall be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Trust.

13.6 Transfer of Trust Units

- (a) Subject to the provisions of this Article 13, the Trust Units shall be fully transferable without charge as between persons, but no transfer of Trust Units shall be effective as against the Trustees or shall be in any way binding upon the Trustees until the transfer has been record on the register or one of the branch transfer registers maintained by the Trustees, the Trust or the Transfer Agent. No transfer of a Trust Unit shall be recognised unless such transfer is of a whole Trust Unit.
- (b) Subject to the provisions of this Article 13, Trust Units shall be transferable on the register or one of the branch transfer registers only by the Trust Unitholders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and only upon delivery to the Trust or to the Transfer Agent of the certificate therefor, properly endorsed or accompanied by a duly executed instrument of transfer or power of attorney and accompanied by all necessary transfer or other taxes imposed by law, together with such evidence of the genuineness of such endorsement, execution and authorisation and other matters that may reasonably be required by the Trustees or the Transfer Agent. Upon such delivery the transfer shall be recorded on the register or branch transfer registers and a new certificate for the Trust Units shall be issued to the transferee and a new certificate for the balance of Trust Units not transferred shall be issued to the transferor.
- (c) Any person becoming entitled to any Trust Units as a consequence of the death, bankruptcy or mental incompetence of any Trust Unitholder, or otherwise by operation of law, shall be recorded as the holder of such Trust Units and shall receive a new certificate therefor only upon production of evidence satisfactory to the Trustees or the Transfer Agent and delivery of the existing certificate to the Trustees or the Transfer Agent, but until such record is made the Trust Unitholder of record shall continue to be and be deemed to be the holder of such Trust Units for all purposes whether or not the Trustees or the Transfer Agent shall have actual or other notice of such death or other event.
- (d) Trust Unit Certificates representing any number of Trust Units may be exchanged without charge for Trust Unit Certificates representing an equivalent number of Trust Units in the aggregate. Any exchange of Trust Unit Certificates may be made at the offices of the Trust or the Transfer Agent where registers are maintained for Trust Unit Certificates pursuant to the provisions of this Article 13. Any Trust Unit Certificates

tendered for exchange shall be surrendered to the Trustees or appropriate and then shall be cancelled.

13.7 Trust Units Held Jointly or in a Fiduciary Capacity

Except as herein provided, the Trustees may treat two or more persons holding any Trust Units as joint owners of the entire interest therein unless their ownership is expressly otherwise recorded on the register of the Trust, but no entry shall be made in the register or on any certificate that any person is in any other manner entitled to any future, limited or contingent interest in any Trust Units; provided, however, that any person recorded as a Trust Unitholder may, subject to the provisions hereinafter contained, be described in the register or on any certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship.

13.8 Performance of Trust

The Trustees and the Transfer Agent shall not be bound to be responsible for or otherwise inquire into or ensure the performance of any trust, express, implied or constructive, or of any pledge or equity to which any of the Trust Units or any interest therein are or may be subject, or to ascertain or enquire whether any transfer of any such Trust or interests therein by any such Trust Unitholder or by his or her personal representatives is authorized by such trust, pledge, or equity, or to recognize any person as having any interest therein except for the person recorded as Trust Unitholder.

13.9 Lost Certificates

In the event that any certificate for Trust Units is lost, stolen, destroyed or mutilated, the Trustees may authorize the issuance of a new certificate for the same number of Trust Units in lieu thereof. The Trustees may in their or its discretion, before the issuance of such new certificate, require the owner of the lost, stolen, destroyed or mutilated certificate, or the legal representative of the owner, to make an affidavit or statutory declaration setting forth such facts as to the loss, theft, destruction or mutilation as the Trustees may deem necessary, to surrender any mutilated certificate and may require the applicant to supply to the Trust a "lost certificate bond" or a similar bond in such reasonable sum as the Trustees or the Transfer Agent may direct indemnifying the Trust for so doing.

13.10 Death of a Trust Unitholder

The death of a Trust Unitholder during the continuance of the Trust shall not terminate the Trust or any of the mutual or respective rights and obligations created by or arising under this Declaration of Trust nor give such Trust Unitholder's personal representatives a right to an accounting or take any action in court or otherwise against other Trust Unitholders or the Trustees or the Trust Assets, but shall merely entitle the personal representatives of the deceased Trust Unitholder to demand and receive, pursuant to the provisions hereof, a new certificate for Trust Units in place of the certificate held by the deceased Trust, if any, and upon the acceptance thereof such personal representatives shall succeed to all rights of the deceased Trust Unitholder under this Declaration of Trust.

13.11 Unclaimed Interest or Distribution

In the event that the Trustees shall hold any amount of interest or other distributable amount which is unclaimed or which cannot be paid for any reason, the Trustees shall be under no obligation to invest or reinvest the same but shall only be obliged to hold the same in a current interest bearing account pending payment to the person or persons entitled thereto. The Trustees shall, as and

when required by law, and may at any time prior to such required time. pay all or part of such interest or other distributable amount so held to the Public Guardian and Trustee (or other appropriate government official or agency) whose receipt shall be a good discharge and release of the Trustees.

13.12 Offer for Trust Units

(a) In this Section 13.12:

- (i) "Affiliate" and "Associate" shall have the respective meanings given to such terms (without initial capital letters) in the *Securities Act* (Alberta), as constituted on the date hereof;
- (ii) "Dissenting Unitholder" means a Trust Unitholder who does not accept an Offer referred to in subsection 13.12(b) and includes any assignee of the Trust Unit of a Trust Unitholder to whom such an Offer is made, whether or not such assignee is recognized under this Declaration of Trust;
- (iii) "Offer" means an offer to acquire outstanding Trust Units where, as of the date of the offer to acquire, the Trust Units that are subject to the offer to acquire, together with the Offeror's Trust Units, constitute in the aggregate 20% or more of all outstanding Trust Units;
- (iv) "offer to acquire" includes an acceptance of an offer to sell;
- (v) "Offeror" means a person, or two or more persons acting jointly or in concert, who make an Offer;
- (vi) "Offeror's Notice" means the notice described in subsection 13.12(c); and
- (vii) "Offeror's Trust Units" means Trust Units beneficially owned, or over which control or direction is exercised, on the date of an Offer by the Offeror; any Affiliate or Associate of the Offeror or any person or company acting jointly or in concert with the Offeror.

(b) If an Offer for all of the outstanding Trust Units (other than Trust Units held by or on behalf of the Offeror or an Affiliate or Associate of the Offeror) is made and, by such Offer, the Offeror agrees to be bound by the provisions of this Article 13; and:

- (i) within the time provided in the Offer for its acceptance or within 45 days after the date the Offer is made, whichever period is the shorter, the Offer is accepted by Trust Unitholders representing at least 90% of the outstanding Trust Units at the expiry of the Offer, other than the Offeror's Trust Units;
- (ii) the Offeror is bound to take up and pay for, or has taken up and paid for the Trust Units of the Trust Unitholders who accepted the Offer; and
- (iii) the Offeror complies with subsections 13.12(c) and 13.12(e);

the Offeror is entitled to acquire, and the Dissenting Unitholders are required to sell to the Offeror, the Trust Units held by the Dissenting Unitholders for the same consideration per Trust Unit payable or paid, as the case may be, under the Offer.

- (c) Where an Offeror is entitled to acquire Trust Units held by Dissenting Unitholder Pursuant to subsection 13(12)(b), and the Offeror wishes to exercise such right, the Offeror shall send by registered mail within 30 days after the date of termination of the Offer a notice (the "Offeror's Notice") to each Dissenting Unitholder stating that:
- (i) Trust Unitholders holding at least 90% of the Trust Units of all Trust Unitholders, other than Offeror's Trust Units, have accepted the Offer;
 - (ii) the Offeror is bound to take up and pay for, or has taken up and paid for, the Trust Units of the Trust Unitholders who accepted the Offer;
 - (iii) Dissenting Unitholders must transfer their respective Trust Units to the Offeror on the terms on which the Offeror acquired the Trust Units of the Trust Unitholders who accepted the Offer within 21 days after the date of the sending of the Offeror's Notice; and
 - (iv) Dissenting Unitholders must send their respective Trust Unit Certificate(s) to the Trust within 21 days after the date of the sending of the Offeror's Notice.
- (d) A Dissenting Unitholder to whom an Offeror's Notice is sent pursuant to subsection 13.4, shall, within 21 days after the sending of the Offeror's Notice, send his or her Trust Unit Certificate(s) to the Trust, duly endorsed for transfer, if a Certificate has been provided.
- (e) Within 21 days after the Offeror sends an Offeror's Notice pursuant to subsection 13.12(c) the Offeror shall pay or transfer to the Trustees, or to such other person as the Trustees may direct, the cash or other consideration that is payable to Dissenting Unitholders pursuant to subsection 13.12(b).
- (f) The Trustees, or the person directed by the Trustees, shall hold in trust for the Dissenting Unitholders the cash or other consideration they or it receives under subsection 13.12(e) but such cash or other consideration shall not form any part of the Trust Assets. The Trustees, or such persons, shall deposit such cash in a separate account in a Canadian chartered bank, and shall place such other consideration in the custody of a Canadian chartered bank or similar institution for safekeeping.
- (g) Within 30 days after the date of the sending of an Offeror's Notice pursuant to subsection 13.12(c), the Trustees, if the Offeror has complied with subsection 13.12(e), shall:
- (i) do all acts and things and execute and cause to be executed all instruments as in the Trustees' opinion may be necessary or desirable to cause the transfer of the Trust Units of the Dissenting Unitholders to the Offeror;
 - (ii) send to each Dissenting Unitholder who has complied with subsection 13.12(d) the consideration to which such Dissenting Unitholder is entitled under this Section 13.12; and

- (iii) send to each Dissenting Unitholder who has not complied with subsection 13.12(d) a notice stating that:
- (A) his or her Trust Units have been transferred to the Offeror;
 - (B) the Trustees or some other person designated in such notice are holding in trust the consideration for such Trust Units; and
 - (C) the Trustees, or such other person, will send the consideration to such Dissenting Unitholder as soon as practicable after receiving such Dissenting Unitholders' Certificate(s) or such other documents as the Trustees or such other person may require in lieu thereof;

and the Trustees are hereby appointed the agent and attorney of the Dissenting Unitholders for the purposes of giving effect to the foregoing provisions.

- (h) Subject to applicable law, an Offeror cannot make an Offer for Trust Units unless, concurrent with the communication of the Offer to any Trust Unitholder, a copy of the Offer is provided to the Trust.

13.13 Power of Attorney

Each Trust Unitholder hereby grants to the Trustees and each of them, their successors and assigns, a power of attorney constituting the Trustees, and each of them and such successors and assigns, with full power of substitution, as his or her true and lawful attorney to act on his or her behalf, with full power and authority in his or her name, place and stead, and to execute, under seal or otherwise, swear to, acknowledge, deliver, make or file or record when, as and where required:

- (a) this Declaration of Trust, any amendment to this Declaration of Trust and any other instrument required or desirable to qualify, continue and keep in good standing the Trust as a mutual fund trust;
- (b) any instrument, deed, agreement or document in connection with carrying on the activities and affairs of the Trust as authorized in this Declaration of Trust;
- (c) all conveyances and other documents required in connection with the dissolution or liquidation of the Trust in accordance with the terms of this Declaration of Trust; and
- (d) any and all elections, determinations or designations whether jointly with third parties or otherwise; under the *Tax Act* or any other taxation or other legislation or similar laws of Canada or of any other jurisdiction in respect of the affairs of the Trust or of a Trust Unitholder's interest in the Trust.

The Power of Attorney granted herein is irrevocable and will survive the bankruptcy of the Trust Unitholder or the assignment by the Trust Unitholder of all or part of his or her interest in the Trust and will extend to and bind the successors and assigns of the Trust Unitholder.

**ARTICLE 14
TERMINATION****14.1 Term of Trust**

Subject to the other provisions of this Declaration of Trust, the Trust shall continue for a term ending 21 years after the date of death of the last surviving issue of Her Majesty, Queen Elizabeth II, alive on January 22, 2002. For the purpose of terminating the Trust by such date, the Trustees shall commence to wind-up the affairs of the Trust on such date as may be determined by the Trustees, being not more than two years prior to the end of the term of the Trust.

14.2 Termination with the Approval of Trust Unitholders

The Trust Unitholders may vote by Special Resolution to terminate the Trust at any meeting of Unitholders duly called by the Trustees for the purpose of considering termination of the Trust, following which the Trustees shall commence to wind-up the affairs of the Trust. Such Special Resolution may contain such directions to the Trustees as the Trust Unitholders determine, including a direction to distribute the Common Shares, Notes, or any combination of the foregoing, in specie.

14.3 Automatic Termination

If the Trust ceases to hold any shares of Arctic Glacier which comprise part of the Trust Assets including as a result of the redemption or purchase thereof by Arctic Glacier, and all Notes comprising part of the Trust Assets have been distributed to Trust Unitholders or have been repaid or otherwise cease to exist, the Trust shall automatically terminate and, subject to obtaining all necessary regulatory approvals, the Trustees will distribute to the Trust Unitholders on a pro rata basis the remaining property of the Trust.

14.4 Procedure Upon Termination

Forthwith upon being required to commence to wind-up the affairs of the Trust, the Trustees shall give notice thereof to the Trust Unitholders, which notice shall designate the time or times at which Trust Unitholders may surrender their Trust Units for cancellation and the date at which the registers of Trust Units of the Trust shall be closed.

14.5 Powers of the Trustees Upon Termination

After the date on which the Trustees are required to commence to wind-up the affairs of the Trust, the Trustees shall carry on no activities except for the purpose of winding-up the affairs of the Trust as hereinafter provided and, for this purpose, the Trustees shall continue to be vested with and may exercise all or any of the powers conferred upon the Trustees under this Declaration of Trust.

14.6 Sale of Investments

After the date referred to in Section 14.4, the Trustees shall proceed to wind-up the affairs of the Trust as soon as may be reasonably practicable and for such purpose shall, subject to any direction to the contrary in respect of a termination authorized under Section 14.2, sell and convert into money the Common Shares, Preferred Shares and Notes and all other assets comprising the Trust in one transaction or in a series of transactions at public or private sales and do all other acts appropriate to liquidate the Trust, and shall in all respects act in accordance with the directions, if any, of the Trust

Unitholders (in respect of a termination authorized under Section 14.2). If the Trustees are unable to sell all or any of the shares of the Company, the Notes or other assets which comprise part of the Trust by the date set for termination, the Trustees may, subject to obtaining all necessary regulatory approvals, distribute the remaining shares of the Company, Notes or other assets directly to the Trust Unitholders in accordance with their pro rata shares.

14.7 Distribution of Proceeds

After paying, retiring or discharging or making provision for the payment, retirement or discharge of all known liabilities and obligations of the Trust and providing for indemnity against any other outstanding liabilities and obligations, the Trustees shall, subject to obtaining all necessary regulatory approvals, distribute the remaining part of the proceeds of the sale of the shares of the Company, the Notes and other assets together with any cash forming part of the Trust Assets among the Trust Unitholders in accordance with their pro rata shares.

14.8 Further Notice to Trust Unitholders

In the event that less than all of the Trust Unitholders have surrendered their Trust Units for cancellation within six (6) months after the time specified in the notice referred to in Section 14.4, the Trustee shall give further notice to the remaining Trust Unitholders to surrender their Trust Units for cancellation and if, within one (1) year after the further notice, all the Trust Units shall not have been surrendered for cancellation, such remaining Trust Units shall be deemed to be cancelled without prejudice to the rights of the holders of such Trust Units to receive their pro rata share of the remaining Trust Assets, and the Trustees may either take appropriate steps, or appoint an agent to take appropriate steps, to contact such Trust Unitholders (deducting all expenses thereby incurred from the amounts to which such Trust Unitholders are entitled as aforesaid) or, in the discretion of the Trustees, may pay such amounts into court.

14.9 Responsibility of the Trustees after Sale and Conversion

The Trustees shall be under no obligation to invest the proceeds of any sale of investments or other assets or cash forming part of the Trust Assets after the date referred to in Section 14.4 and, after such sale, the sole obligation of the Trustees under this Declaration of Trust shall be to hold such proceeds in trust for distribution under Section 14.7.

ARTICLE 15 SUPPLEMENTAL INDENTURES

15.1 Provision for Supplemental Indentures for Certain Purposes

The Trustees may, without approval of the Trust Unitholders and subject to the provisions hereof, and they shall, when so directed in accordance with the provisions hereof, execute and deliver indentures or instruments supplemental hereto, which thereafter shall form part hereof, for any one or more or all of the following purposes:

- (a) modifying or amending any provisions of this Declaration of Trust in the circumstances set forth in Section 11.1 where the Trustees may do so without the consent, approval or ratification of the Trust or any other person; and

- (b) modifying or amending any provisions of this Declaration of Trust where the modification or amendment has been approved by Special Resolution or, if required, with the consent of the holders of all of the Trust Units.

**ARTICLE 16
GENERAL**

16.1

Notices

- (a) Any notice or other document required to be given or sent to Trust Unitholders under this Declaration of Trust shall be given or sent through ordinary post addressed to each registered holder at his or her last address appearing on the register; provided that if there is a general discontinuance of postal service due to strike, lockout or otherwise, such notice may be given by publication twice in the Report on Business section of the National Edition of The Globe and Mail or similar section of any other newspaper having national circulation in Canada; provided further that if there is no newspaper having national circulation, then by publishing twice in the business section of a newspaper in each city where the register or a branch register is maintained. Any notice so given shall be deemed to have been given on the day following that on which the letter or circular was posted or, in the case of notice being given by publication, after publishing such notice twice in the designated newspaper or newspapers. In proving notice was posted, it shall be sufficient to prove that such letter or circular was properly addressed, stamped and posted.
- (b) Any written notice or written communication given to the Trustees shall be addressed to the Trustees at the head office of the Trust and shall be deemed to have been given on the date of delivery or, if mailed, five days from the date of mailing. If any such notice or communication shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such notice or communication shall be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service, provide that during the period that regular mail service shall be interrupted any notice or other communication shall be given by personal delivery or by cable, telegram, telex or other means of prepaid, transmitted or recorded communication.

16.2

Failure to Give Notice

The failure by the Trustees, by accident or omission or otherwise unintentionally, to give any Trust Unitholder any notice provided for herein shall not affect the validity, effect or taking effect of any action referred to in such notice, and the Trustees shall not be liable to any Trust Unitholder for any such failure.

16.3

Joint Holders

Service of a notice or document on any one of several joint holders of Trust Units shall be deemed effective service on the other joint holders.

16.4

Service of Notice

Any notice or document sent by post to or left at the address of a Trust Unitholder pursuant to this Article shall, notwithstanding the death or bankruptcy of such Trust Unitholder, and

whether or not the Trustees have notice of such death or bankruptcy, be deemed to have been fully served and such service shall be deemed sufficient service on all persons having an interest in the Trust Units concerned.

16.5 Information Available to Trust Unitholders

Each Trust Unitholder shall have the right to obtain, on demand and without fee, from the head office of the Trust a copy of this Declaration of Trust and any amendments thereto relating to Trust Units held by that Trust Unitholder and shall be entitled to inspect and, on payment of a reasonable fee therefor, obtain a list of the Trust Unitholders for purposes connected with the Trust.

16.6 Income Tax: Obligations of the Trustees

The Trustees shall satisfy, perform and discharge all obligations and responsibilities of the Trustees under the *Tax Act* (including any obligations of the Trust under Part XIII of the *Tax Act*) and neither the Trust nor the Trustees shall be accountable or liable to any Trust Unitholder by reason of any act or acts of the Trustees consistent with any such obligations or responsibilities.

16.7 Income Tax: Election

In respect of the first taxation year of the Trust, the Trust shall elect pursuant to subsection 132(6.1) of the *Tax Act* that the Trust be deemed to be a mutual fund trust for the entire year.

16.8 Income Tax: Deductions

The Trustees shall claim the maximum deductions available to the Trust for the purposes of computing its income pursuant to the provisions of the *Tax Act* to the extent required to reduce the taxable income of the Trust to nil or such lesser amounts as the Trustees may determine to be in the best interests of the Trust Unitholders.

16.9 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

16.10 Financial Disclosure

The Trust will send to Trust Unitholders:

- (a) at least 21 days prior to the date of each annual meeting of Trust Unitholders, the annual financial statements of the Trust for the fiscal year ended immediately prior to such annual meeting, together with comparative financial statements for the preceding fiscal year, if any, and the report of the Auditors thereon referred to in Section 17.4; and
- (b) within 60 days after the end of each fiscal quarter of the Trust (other than the fourth quarter of each year), unaudited quarterly financial statements of the Trust for such fiscal quarter, together with comparative financial statements for the same fiscal quarter in the preceding fiscal year, if any.

Such financial statements shall be prepared in accordance with generally accepted accounting principles in Canada as recommended from time to time in the Handbook of the Canadian

Institute of Chartered Accountants; provided that such statements may vary from such principles to the extent required to comply with applicable securities laws or securities regulatory requirements or to the extent permitted by applicable securities regulatory authorities.

16.11 Trust Unitholder Meeting Information

Prior to each meeting of Trust Unitholders, the Trustees will provide to each Trust Unitholder, together with the notice of the meeting:

- (a) a form of proxy which can be used by a Trust Unitholder to appoint a proxy, who need not be a Trust Unitholder, to attend and act at the meeting on behalf of the Trust Unitholder, in the manner and to the extent authorized by the proxy; and
- (b) all information required by applicable law.

16.12 Taxation Information

On or before February 28 in each year, the Trust will provide to Trust Unitholders who received distributions from the Trust in the prior calendar year, such information and forms as may be needed by such Trust Unitholders in order to complete their tax returns in respect of the prior calendar year under the *Tax Act* and equivalent provincial legislation in Canada.

**ARTICLE 17
AUDITORS**

17.1 Qualification of Auditors

The Auditors shall be an independent recognized firm of chartered accountants which has an office in Canada.

17.2 Appointment of Auditors

The Auditors will be selected at each succeeding annual meeting of Trust Unitholders. The Auditors will receive such remuneration as may be approved by the Trustees.

17.3 Change of Auditors

The Auditors may at any time be removed by the Trustees with the approval of a majority of the votes cast by Trust Unitholders at a meeting of Trust Unitholders duly called for the purpose and, upon the resignation or the removal of Auditors as aforesaid, new auditors may be appointed by a majority of votes cast by Trust Unitholders at a meeting duly called for the purpose or, in the absence of such meeting, by the Trustees.

17.4 Report of Auditors

The Auditors shall audit the accounts of the Trust at least once in each year and a report of the Auditors with respect to the annual financial statements of the Trust shall be provided to each Trust Unitholder with the annual financial statements referred to in Section 16.10.

ARTICLE 18
MISCELLANEOUS

18.1 Successors and Assigns

The provisions of this Declaration of Trust shall enure to the benefit of, and be binding upon, the parties and their heirs, executors, administrators, personal representatives, successors and assigns.

18.2 Counterparts

This Declaration of Trust may be simultaneously executed in several counterparts, each of which when executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterparts.

18.3 Severability

If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

IN WITNESS WHEREOF each of the parties has caused these presents to be executed as of the date first above mentioned.

Witness

ROBERT NAGY

Witness

JAMES E. CLARK

Witness

PETER HYNDMAN

Witness

DAVID SWAINE

Witness

GARY FILMON

LAXUS HOLDINGS INC.

Per: _____