

**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")**

**SIXTH REPORT OF THE MONITOR  
ALVAREZ & MARSAL CANADA INC.  
AUGUST 29, 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 five reports with this Honourable Court. Summaries of the Monitor’s first through third reports are provided in the Monitor’s Fourth Report to Court dated June 15, 2012 filed in connection with the proposed Sale Transaction (the “**Fourth Report**”), which is attached without appendices as **Appendix “B”**.
- 1.3 At the hearing before the Court on June 21, 2012, held to consider the Applicants’ motion to approve the sale of the Assets to the Purchaser, this Honourable Court issued an order (the “**Approval and Vesting Order**”), approving the Sale Transaction and extending the Stay Period until September 14, 2012.
- 1.4 The Monitor’s Fifth Report to Court (the “**Fifth Report**”) dated July 10, 2012, attached without appendices as **Appendix “C”**, was filed in support of the Applicants’ motion seeking an order (the “**Transition Order**”), approving, among other things:

- a) The Transition Services Agreement (the “**TSA**”) between Arctic Glacier, LLC, Arctic Glacier U.S.A., Inc., Arctic Glacier Canada, Inc. (collectively, the

“**Purchaser**”), the Applicants and the Monitor which provides a framework to facilitate the continued administration of the Applicants’ restructuring process;

- b) The granting of additional powers to the Monitor to provide for the continuing administration of the CCAA Proceedings and authorizing the CPS to take such additional actions as the Applicants or the Monitor consider necessary to assist (i) the Applicants in connection with the administration of the CCAA Proceedings and (ii) the Monitor in fulfilling the Monitor’s functions and obligations; and
- c) An order amending the Approval and Vesting Order in order to designate the Purchaser who would take title to the Assets in accordance with the terms of the APA (the “**Amended AVO**”).

1.5 On July 12, 2012, this Honourable Court issued the Transition Order and the Amended AVO which are attached as **Appendix “D”** and **Appendix “E”**, respectively.

1.6 This Sixth Report is filed in support of the Monitor’s motion seeking Orders:

- a) Approving the proposed claims process to identify and determine claims of creditors of the Applicants as outlined further in this Sixth Report (the “**Claims Process**”) and, among other things, authorizing, directing and empowering the Monitor to take such actions as are contemplated by the Claims Process (the “**Claims Procedure Order**”);
- b) Releasing and discharging the DIP Lenders’ Charge, the Financial Advisor Charge and the KERP Charge (all as defined in the Initial Order) and rendering them to be of no further force or effect;
- c) Extending the Stay Period to November 30, 2012;

- d) Granting the authority to the CPS to execute such documents as are required to change the names of the Applicants that are corporations;
  - e) Approving amounts payable under the Applicants' Management Incentive Plan ("MIP") that relate to the period prior to the Closing (as defined below) and authorizing and directing the Monitor on behalf of the Applicants to pay such amounts pursuant to the MIP; and
  - f) Approving this Sixth Report and the Monitor's activities described herein.
- 1.7 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 Sixth 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 Sixth Report, or otherwise used to prepare this Sixth Report.
- 2.2 Certain of the information referred to in this Sixth 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 Sixth 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 Sixth Report is not intended to be relied upon by any prospective purchaser or investor in any transaction with the Applicants.
- 2.4 Capitalized terms not otherwise defined in this Sixth Report are as defined in the Initial Order or in the reports previously filed with this Honourable Court by the Monitor.
- 2.5 Unless otherwise stated, all monetary amounts contained in this Sixth Report are expressed in United States dollars, which is the Applicants' common reporting currency.

### **3.0 THE SALE TRANSACTION**

- 3.1 Defined terms used in this section and not otherwise defined have the meaning ascribed to them in the APA (defined below).

#### **The Asset Purchase Agreement**

- 3.2 As outlined in the Fourth 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**”).

- 3.3 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. (defined above as the Purchaser) and the Vendors.

**Amendments to the APA**

- 3.4 In the course of finalizing the arrangements for the Closing of the Sale Transaction, the Purchaser requested that the APA be modified in a manner that would provide the Purchaser with greater liquidity on Closing to operate the business. Certain factors, including the final terms of the Purchaser’s debt financing arrangements, influenced this request. After considering the request and the alternatives facing the Vendors, and in order to ensure the completion of the Sale Transaction, and after consultation with the Monitor, the Vendors agreed to the following minor amendments to the APA:
- a) The Vendors agreed to pay the Transfer Taxes exigible with respect to the Sale Transaction, estimated to be approximately \$3.65 million. The APA originally provided that the Transfer Taxes were to be paid by the Purchaser;
  - b) The Vendors agreed to reimburse the Purchaser \$5 million for expenses incurred in respect of the Sale Transaction; and
  - c) To the extent that the Closing Working Capital exceeds the Estimated Working Capital, the Purchaser is to receive the benefit of such excess up to \$5 million.

The Vendors are then to be paid by the Purchaser for any amount in excess of the first \$5 million. The APA otherwise provided that the Vendors be compensated on a dollar for dollar basis for any excess net working capital above the Estimated Working Capital.

- 3.5 The estimated effect of these modifications is a reduction in the proceeds of sale of between approximately \$9 million and \$14 million, depending on the quantum of the Closing Working Capital. After these modifications, the purchase price received under the APA, as amended, was still the highest purchase price received under the SISP by a significant amount. The modifications are set out in the Assignment, Assumption and Amending Agreement (the “AAA”) dated July 26, 2012 and attached as **Appendix “F”**.

#### **Closing of the Sale Transaction**

- 3.6 The Sale Transaction contemplated by the APA, as amended, closed effective as of 12:01 a.m. on July 27, 2012 (“**Closing**”). On July 27, 2012, the Monitor delivered the Monitor’s Certificate to the Purchaser and subsequently filed same with the Court. A copy of the press release issued by the Applicants on July 27, 2012 in respect of the Closing is attached as **Appendix “G”**.
- 3.7 The proceeds of the Sale Transaction totaled approximately \$413.35 million (the “**Sale Proceeds**”).
- 3.8 At Closing, the Lender Claims totaling approximately \$280.3 million and the fees due to the Financial Advisor relating to the Sale Transaction totaling approximately CDN\$2.9 million were paid in full from the Sale Proceeds. The remaining Sale Proceeds of

approximately \$130.2 million (which includes the \$7.05 million being held in respect of the DOJ Stipulation as further described below) are being held by the

Monitor in trust pending further direction from this Honourable Court in respect of distribution.

3.9 As the fees owing to the Financial Advisor pursuant to its engagement letter have now been paid in full, the Monitor is seeking an Order that the Financial Advisor Charge provided for in Paragraph 54 of the Initial Order be released and discharged.

3.10 Pursuant to a payout letter dated July 26, 2012 between the Lenders and the Vendors, the Lender Claims were paid in full from the Sale Proceeds. As such, all amounts outstanding under the DIP Facility have been paid in full and the Applicants have no further obligations thereunder. Accordingly, the Monitor is seeking an order that the DIP Lenders' Charge provided for in Paragraph 23 of the Initial Order be released and discharged.

#### **The Working Capital Statement**

3.11 Pursuant to the terms of the APA, AGIF is required to prepare and deliver to the Purchaser and the Monitor the Working Capital Statement by September 11, 2012.

3.12 The APA, as amended, provides that, 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 Monitor and the amount in excess of \$5 million is to be credited to the Vendors on account of the Purchase Price and the Purchase Price is to be adjusted accordingly. If the Closing Working Capital is less than the Estimated

Working Capital, the Vendors are to pay the amount of the difference to the Purchaser and the Purchase Price is to be adjusted accordingly.

- 3.13 KPMG LLP has been engaged by AGIF and is currently working to prepare the Working Capital Statement and the Monitor will report further on the Working Capital Statement in subsequent reports.

#### **Banking Arrangements with the Purchaser**

- 3.14 Pursuant to the APA, cash and short-term investments are Excluded Assets. Accordingly, transition arrangements were necessary to ensure an orderly transition of the business to the Purchaser with minimal disruption to the continuing operations acquired by the Purchaser, while ensuring that the Applicants' estates obtained the benefit of these Excluded Assets.
- 3.15 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 disbursements, including payroll and pre-authorized payments authorized in advance of Closing, to clear the applicable financial institution. This mechanism gave the Purchaser the flexibility to make arrangements for the opening of new bank accounts in an orderly manner and ensured a seamless transition of the business for thousands of suppliers, customers and employees.
- 3.16 Pursuant to the provisions of the TSA, the Purchaser agreed that certain of its employees previously employed by the Vendors would reconcile each of the Applicants' bank accounts post-Closing. As part of the Closing arrangements, it was agreed that funds in the Applicants' bank accounts relating to the post-Closing period would be transferred to

the Purchaser. Furthermore, all remaining funds, net of outstanding payables, would be transferred to the Monitor to be held in bank accounts established for the benefit of the Applicants' estates. The Applicants' bank accounts will be closed once all funds are transferred out and all cheques and pre-authorized payments that were issued or authorized prior to Closing have cleared.

- 3.17 In order for the Monitor to be satisfied that all funds are properly accounted for as a result of the Purchaser's request that the majority the Applicants' bank accounts remain open, the Purchaser agreed to provide the Monitor with, among other things, bank reconciliations, including supporting documentation, for each of the Applicants' bank accounts. The details of these arrangements were subsequently finalized with Senior Management.
- 3.18 As at August 23, 2012, approximately \$6.2 million had been transferred from the Applicants' bank accounts to the Monitor's estate accounts and 101 of the Applicants' 137 bank accounts had been reconciled and closed.
- 3.19 The Applicants also have two term deposits totaling approximately \$255,000 (CDN\$126,000 and US\$129,000) that are Excluded Assets under the APA. The Purchaser has advised the Monitor that, pursuant to the TSA, it is in the process of collapsing the term deposits and the proceeds thereof will be transferred to the Monitor's bank accounts for the benefit of the Applicants.

#### **4.0 UPDATE ON THE CHAPTER 15 PROCEEDINGS**

- 4.1 As set out in the Fifth Report, on June 26, 2012, the Monitor filed a motion (the “**U.S. Sale Motion**”) with the U.S. Court for entry of an Order recognizing and enforcing the Approval and Vesting Order in the United States.
- 4.2 Subsequent to the filing of the U.S. Sale Motion, the United States Attorney General’s Office for the District of Delaware (the “**Delaware AG**”) contacted the Monitor regarding the liability of AGII to the U.S. Government on account of its guilty plea and related judgment entered on March 3, 2010 by a U.S. federal district court concerning one charge of market allocation in the U.S.
- 4.3 Pursuant to the judgment, AGII was obligated to pay to the U.S. Government a criminal fine of \$9 million in installments over five (5) years. The fine was evidenced by a notice of lien against AGII’s assets filed by the U.S. Department of Justice Antitrust Division (the “**DOJ**”) in Dakota County, State of Minnesota, on August 9, 2010. As of the commencement of the Chapter 15 Proceedings, AGII still owed \$7 million of the fine amount.
- 4.4 Prior to the hearing to consider the U.S. Sale Motion (the “**U.S. Sale Hearing**”), the Monitor, the Applicants, the Delaware AG and other U.S. Government attorneys engaged in negotiations to resolve the U.S. Government’s concerns about the relief requested in the U.S. Sale Motion. The matter had not been fully resolved prior to the U.S. Sale Hearing. Accordingly, the Delaware AG filed the *Limited Objection by the United States to the Monitor’s U.S. Sale Motion* (the “**Objection**”) on the morning of the scheduled hearing, July 17, 2012. No other objections to the relief requested in the U.S. Sale Motion were filed with the U.S. Court.

- 4.5 On July 17, 2012, the U.S. Sale Hearing proceeded before the Honorable Judge Gross, during which, the Honorable Judge Gross considered the U.S. Sale Motion and the Objection. After a brief adjournment of the U.S. Sale Hearing, the Monitor, the Applicants, and the U.S. Government attorneys reached an agreement, allowing the DOJ to retract its Objection.
- 4.6 Pursuant to the Stipulation and Order among the Monitor, the Applicants, and the United States Attorney's Office for the Southern District of Ohio regarding the March, 2010 criminal judgment against AGII (the "**DOJ Stipulation**"), the Monitor, the Applicants, and the U.S. Government attorneys agreed, and the U.S. Court ordered, that, in full and final settlement of any and all claims and causes of action that the DOJ may have against AGII, any of the Applicants, or any of their directors, officers, employees, or successors or assigns thereof arising from the plea agreement or the judgment, the Monitor would:
- (a) deposit funds from the Sale Proceeds<sup>1</sup> in the amount of the DOJ Claim in an escrow account domiciled in the United States (the "**Escrow Account**");
  - (b) propose and support the entry of a claims procedure order in the Canadian Court allowing for the filing and assertion of the DOJ Claim; and
  - (c) as soon as reasonably practicable after an order of the Canadian Court or the U.S. Court directing the Monitor to pay the DOJ Claim, distribute the funds from the Escrow Account necessary to satisfy the DOJ Claim in full.

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<sup>1</sup> All capitalized terms used in this paragraph but not otherwise defined herein shall have the meanings ascribed to such terms in the DOJ Stipulation.

- 4.7 On August 2, 2012, the Monitor deposited \$7.05 million of the Sale Proceeds into the Monitor’s account with TD Bank domiciled in New York City, New York. A copy of the DOJ Stipulation is attached as **Appendix “H”**.
- 4.8 After the Honorable Judge Gross approved the Stipulation, the U.S. Court entered an order recognizing and enforcing the Approval and Vesting Order (the “**U.S. Sale Recognition Order**”) which also provided for:
- i. The authorization and approval of the sale of substantially all of the Applicants’ assets free and clear of any and all Liens, Claims, Encumbrances, and Other Interests;
  - ii. The authorization of the assignment of certain executory contracts and unexpired leases; and
  - iii. The granting of related relief.
- 4.9 A copy of the U.S. Sale Recognition Order is attached as **Appendix “I”**.
- 4.10 On July 31, 2012, Desert Mountain Ice LLC (“**Desert Mountain**”), the Applicants’ U.S. landlord for the Arizona facility, filed a notice of appeal (the “**Notice of Appeal**”) from the U.S. Sale Order.
- 4.11 On August 14, 2012, Desert Mountain filed a statement of issues on appeal (the “**Statement of Issues**”). The Statement of Issues identifies the following issues on appeal:
- a) whether the U.S. Court erred with respect to recognizing and enforcing the Amended AVO; and



- b) whether the U.S. Court erred in authorizing and approving, to the extent provided for in the Amended AVO, the assignment of the Assigned Contracts.
- 4.12 Based upon the Monitor’s review of the Notice of Appeal and the Statement of Issues, and the findings made by the Honourable Judge Gross at the U.S. Sale Hearing, the Monitor, in consultation with its counsel, considers the appeal to be without merit and intends to respond to the appeal accordingly.
- 4.13 A copy of the Notice of Appeal and the Statement of Issues are collectively attached as **Appendix “J”**.
- 4.14 As described in the Second Report and the Fourth Report, on March 23, 2012, the indirect purchaser plaintiffs in the pending class action litigation styled *In re Packaged Ice Antitrust Litigation*, Case No. 08-MD-01952 (E.D. Mich.) (the “**IP Plaintiffs**”) filed an appeal from the U.S. Court’s *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief*. On July 31, 2012, the Monitor, the Applicants, and the IP Plaintiffs, following court-ordered mediation, entered into the *Stipulation of Dismissal of Appeal with Prejudice* (the “**IP Stipulation**”). Pursuant to the IP Stipulation, the Monitor, the Applicants, and the IP Plaintiffs agreed, in order to resolve and compromise the issues raised in the Appeal,<sup>2</sup> that the Monitor and the Applicants would support the entry of a claims procedure order:

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<sup>2</sup> All capitalized terms used in this paragraph but not otherwise defined herein shall have the meanings ascribed to such terms in the IP Stipulation.

- a) allowing for the filing by the IP Plaintiffs of a representative or class claim, without conceding the validity or amount of the claim or its qualification to be a class claim; and
  - b) providing that the representative or class claim filed by the IP Plaintiffs shall be decided by a Special Claims Officer meeting certain qualifications.
- 4.15 On August 1, 2012, the Honourable Judge Robinson of the United States District Court for the District of Delaware approved the IP Stipulation and dismissed the appeal.
- 4.16 The IP Stipulation is attached as **Appendix “K”**.

## **5.0 THE PROPOSED CLAIMS PROCESS**

### **General**

- 5.1 In this section, all capitalized terms not defined elsewhere have the meaning ascribed to them in the draft Claims Procedure Order.
- 5.2 The Applicants did not commence a claims process prior to the completion of the SISP, as the expenses associated with such a process would not have been necessary had the Lender Claims not been paid in full. As a result of the Closing of the Sale Transaction, there are significant funds remaining for distribution. Accordingly, the Monitor now recommends establishing a procedure for the identification and determination of all Creditor Claims, except Excluded Claims, against the Applicants in the form of the draft Claims Procedure Order attached to the Monitor’s Notice of Motion.

### **Claims Bar Date**

- 5.3 The Monitor proposes that any Creditor asserting a Claim or DO&T Claim (Director, Officer or Trustee Claim) be required to file the applicable Proof of Claim form with the

Monitor by 5:00 pm Winnipeg Time on October 31, 2012 (the “**Claims Bar Date**”). The Monitor believes that a Claims Bar Date of October 31, 2012 is reasonable in that it provides sufficient time from the date of this motion for potential Claimants to evaluate and submit any Claim they may have against the Applicants or their Directors, Officers or Trustees.

- 5.4 The Monitor proposes that if any Director, Officer or Trustee seeks to assert a DO&T Indemnity Claim, in response to a DO&T Proof of Claim, such Director, Officer or Trustee be required to file a DO&T Indemnity Proof of Claim with the Monitor within fifteen Business Days after the date of receipt of the applicable DO&T Proof of Claim by such Director, Officer or Trustee. The Monitor believes that the period of fifteen Business Days is a reasonable period for Directors, Officers or Trustees to evaluate and submit any DO&T Indemnity Claim they may have against the Applicants.

#### **Affected Claims**

- 5.5 As the Applicants are no longer operating, it is not necessary to distinguish between Claims that existed prior to or subsequent to the filing. As such, it is the Monitor’s view that a single Claims Bar Date approximately three months subsequent to the Closing of the Sale Transaction is appropriate in the circumstances and will provide Creditors with sufficient time to prove their Claims.
- 5.6 As set out in greater detail in the draft Claims Procedure Order, the Monitor, on behalf of the Applicants, is soliciting the following claims:
- a) *Claims*, other than Excluded Claims, that may be asserted against an Arctic Glacier Party, that (i) are based in whole or in part on facts prior to the Claims Bar

Date, (ii) relate to a time period prior to the Claims Bar Date, (iii) are a right or claim of any kind that would be a claim provable in bankruptcy within the meaning of the BIA had the Arctic Glacier Party become bankrupt on or before the Claims Bar Date, or (iv) an Equity Claim as defined in the CCAA.

- b) *Class Claims*, which are class action Claims that may be made by a Class Representative, who represents the Direct Purchaser Claimants, the Canadian Retail Litigation Claimants, or the Indirect Purchaser Claimants.
- c) *Deemed Proven Claims*, which are (i) Claims in favour of the Direct Purchaser Claimants against AGIF, AGI and AGII; and (ii) a Claim in favour of the DOJ against AGII.
- d) *DO&T Claims*, which are (i) Claims that may be asserted against one or more Directors, Officers or Trustees that relate to a Claim for which such Directors, Officers or Trustees are by law liable to pay in their capacity as Directors, Officer or Trustees; or (ii) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors, Officers or Trustees, in that capacity, (A) based in whole or in part on facts prior to the Claims Bar Date, or (B) related to a time period prior to the Claims Bar Date.
- e) *DO&T Indemnity Claims*, which are any existing or future rights of any Director, Officer or Trustee against an Arctic Glacier Party, which arose or arises as a result of any Person filing a DO&T Proof of Claim in respect of such Director, Officer or Trustee for which such Director, Officer or Trustee is entitled to be indemnified by such Arctic Glacier Party.

- 5.7 Certain of the Claims are Deemed Proven Claims (those of the Direct Purchaser Claimants and the DOJ). As set out in the draft Claims Procedure Order, the Direct Purchaser Claimants have \$10 million remaining to be paid with respect to the settlement of their Claims which was approved by court order. In addition, the DOJ Claim set out in the DOJ Stipulation in the amount of \$7,032,046.96 plus interest is proposed to be a Deemed Proven Claim. The Claimants with Deemed Proven Claims are not required to file a Proof of Claim in the Claims Process as the Applicants have previously agreed to the amounts owing and obtained court approval in respect of such Claims. Further, the treatment of these Claims as Deemed Proven Claims will result in a more efficient Claims Process.
- 5.8 For certain other known Class Claims (Canadian Retail Litigation, Indirect Purchaser Litigation), it is proposed that the applicable Class Representative will be entitled to file a Claim on behalf of their respective groups such that individual Canadian Retail Litigation Claimants and Indirect Purchaser Claimants are not required to file individual Proofs of Claim in respect of Class Claims. However, any Canadian Retail Litigation Claimant or Indirect Purchaser Claimant may file a Proof of Claim to assert their claim individually and, in such event, such Canadian Retail Litigation Claimant or Indirect Purchaser Claimant shall be deemed to have elected not to authorize the Class Representative to include their Claim.
- 5.9 The Monitor is of the view that allowing for the filing of Class Claims in the streamlined manner provided for in the Claims Procedure Order through Class Representatives will provide significant efficiencies in the administration of the Claims Process.

### **Excluded Claims**

- 5.10 The Claims Procedure Order does not apply to the following Excluded Claims:
- a) Any Claim entitled to the benefit of the Administration Charge, the Inter-Company Balances Charge or the Direct Purchasers' Advisors' Charge;
  - b) Any Claim of an Arctic Glacier Party against another Arctic Glacier Party; and
  - c) Any Claim in respect of Assumed Liabilities.

### **Claims Covered by Insurance**

- 5.11 The Applicants are involved in numerous lawsuits that are covered by liability insurance and are being defended by the insurer. The draft Claims Procedure Order provides that Claims for which payment is made through insurance or which are covered by insurance shall not be recoverable against the Applicants in the Claims Process. Claims against insurance proceeds are not intended to be barred by the Claims Process. Accordingly, the draft Claims Procedure Order also provides that nothing therein shall bar or prevent any Creditor from seeking recourse against or payment from any applicable insurance. However, in order for Claimants to recover from the Applicants' estates any portion of their Claim that may not be covered by insurance, such Claimants must file a Proof of Claim by the Claims Bar Date. To the extent such a Claim is filed in the Claims Process, the Monitor, in consultation with the appropriate insurer, will inform the Claimant whether any further steps in the Claims Process are required.

### **Notice**

- 5.12 The Draft Claims Procedure Order provides for the following notifications of the Claims Process:

- a) The Monitor shall, no later than two Business Days following the making of the Claims Procedure Order, post a copy of the Proof of Claim Document Package on the Monitor's website;
- b) The Monitor shall, no later than five Business Days following the making of the Claims Procedure Order, cause the Notice to Claimants to be published once in:
  - (i) The Globe and Mail newspaper (National Edition), (ii) the Wall Street Journal (National Edition), and (iii) the Winnipeg Free Press; and
- c) The Monitor shall, within seven Business Days following the making of the Claims Procedure Order, send a Claims Package to all known Creditors based on the books and records of the Applicants.

#### **Adjudicating Claims**

- 5.13 The draft Claims Procedure Order does not provide a specific method of adjudicating Claims that cannot be resolved on a consensual basis. To the extent that Dispute Notices are received from Creditors that cannot be resolved, the Monitor will seek further advice and direction of the Court.
- 5.14 In light of the fact that Senior Management of the Applicants are now employed by the Purchaser, the draft Claims Procedure Order contains a provision that any requirement of the Monitor to consult with or obtain the consent of the Applicants shall be satisfied by consulting with or obtaining the consent of the CPS.

### **Role of the Monitor**

5.15 In summary, the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA and under the Initial Order, shall administer the Claims Process, including, without limitation, by:

- a) Publishing notice of the Claims Process;
- b) Sending Proof of Claim Document Packages to known Creditors and to Persons requesting Proof of Claim Document Packages;
- c) Reviewing Proofs of Claim and DO&T Proofs of Claim, in consultation with the Applicants;
- d) Sending DO&T Proofs of Claim received to the affected Directors, Officers and Trustees;
- e) Reviewing DO&T Indemnity Proofs of Claim;
- f) Sending Notices of Revision or Disallowance, if necessary;
- g) Attempting to (i) resolve and settle Claims and DO&T Claims with the consent of the Applicants and any Person whose liability is affected by the Claim and (ii) resolve and settle DO&T Indemnity Claims; and
- h) Seeking further direction of the Court with respect to unresolved Claims.

## **6.0 OTHER MATTERS**

### **The Huntington Property**

6.1 The Applicants own a redundant property located in Huntington, New York (the “**Huntington Property**”) that is classified as an Excluded Asset in the APA.



- 6.2 As at Closing, the Huntington Property was subject to an agreement of purchase and sale, that is subject to Court approval (the “**Huntington PSA**”), which provides for, among other things, an environmental due diligence period that originally was set to expire on September 4, 2012.
- 6.3 The Monitor has been in regular communication with the broker who was engaged by the Applicants to list the Huntington Property for sale and with the purchaser under the Huntington PSA (the “**Huntington Purchaser**”) to oversee the progress under the Huntington PSA.
- 6.4 The Huntington Purchaser is currently conducting its environmental due diligence and, on August 23, 2012, requested an extension until September 28, 2012 to complete such diligence.
- 6.5 The Monitor has agreed to the extension request on the basis that the Purchaser confirm that all conditions of closing have been satisfied other than the condition related to the environmental due diligence period. The attorney for the Huntington Purchaser has advised the Monitor that the Huntington Purchaser has agreed in principle to the conditions proposed by the Monitor for granting such an extension. The Monitor anticipates executing an amending agreement to the Huntington PSA shortly.

### **Governance Matters**

- 6.6 Subsequent to the Closing, substantially all of the former employees of the Applicants are now employed by the Purchaser. The former CEO and CFO of AGI resigned from those positions and all of their other director and officer positions that they held with the Applicants effective August 14, 2012. The Trustees of AGIF still remain in place and

continue to fulfill their roles and have meetings as necessary or required. Accordingly, the Monitor intends to fund, from the estate bank accounts and on behalf of the Applicants, the fees and expenses payable to the Trustees to attend such meetings and other expenses incidental to the continuation of AGIF. As previously reported to the Court, depending on the 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 unitholders. As such, the Monitor supports the continuation of the arrangements described above with respect to the Board of Trustees.

#### **Post-Closing Public Company Disclosure**

- 6.7 On August 15, 2012, AGIF announced that it would not be able to file an interim financial report and interim management's discussion and analysis for the period ended June 30, 2012, together with the related certification of filings under National Instrument 52-109 (collectively, the "**Continuous Disclosure Documents**") before the August 29, 2012 filing deadline prescribed by applicable securities legislation. AGIF stated that it could not meet the deadline because it had not had the time or resources to do so due to the Sale Transaction. AGIF indicated that it intends to file the Continuous Disclosure Documents as soon as it is commercially reasonable, or as required by the Court. AGIF also noted that it anticipated the Monitor would continue to file reports with the Court and post them on its website, including providing updated financial information concerning the Applicants. AGIF also indicated 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* and intends to file the information it or its subsidiaries provide to their creditors with the applicable securities regulatory authorities.

A copy of the press release issued by the Applicants on August 15, 2012 is attached as **Appendix “L”**.

#### **Discharge of the KERP Charge**

- 6.8 Paragraph 18 of the Initial Order created a KERP Charge in the amount of \$2.6 million to secure amounts owing to certain key employees pursuant to the KERP.
- 6.9 Consistent with the provisions of the respective KERP agreements, the KERP was paid in three installments. The first installment of 25% of the total was paid on the Phase One Bid Deadline, the second installment of 25% was paid on the Phase Two Bid Deadline, and the final installment of 50% was paid on Closing.
- 6.10 One of the key employees resigned from the Applicants prior to Closing and the payment of the final KERP installment. In accordance with the KERP provisions, such employee was not eligible to receive the final installment payment. All of the other KERP recipients have been paid their respective KERP entitlements in full, thereby discharging the Applicants’ obligations under the KERP Charge. Accordingly, the Monitor is seeking an order to release and discharge the KERP Charge.

#### **Management Incentive Plan**

- 6.11 The Applicants have historically administered a management incentive plan (the “**MIP**”) which provided bonuses to a number of employees who were beneficiaries of the MIP. Bonuses under the MIP were calculated annually based on the Applicants’ financial results and the employees’ individual performance rating and were distributed during the second quarter of the following year.

- 6.12 The total MIP calculated and accrued up to Closing was approximately CDN\$1.16 million. The Board of Trustees approved payment of the amounts owing to the employees covered by the MIP for the period prior to Closing, subject to the review of KPMG LLP, and understood that the payments would be subject to approval of the Court. Both the APA and the AAA provide that payment of the MIP amount calculated and accrued up to Closing are obligations of the Vendors.
- 6.13 Pursuant to the terms of the AAA, within two business days after receiving approval of the Court, the Vendors agreed to pay all eligible participants all amounts accrued to Closing under the MIP.
- 6.14 Historically as part of the annual year-end audit, the Applicants' auditors conducted a review of the MIP calculation. Accordingly, the Board of Trustees recently engaged KPMG LLP to undertake a review of the MIP calculated and accrued to Closing, and to provide a Report on Specified Audit Procedures in respect of the MIP to the Board of Trustees and the Monitor in respect of its findings.
- 6.15 As the Sale Transaction closed in mid-fiscal year and the APA provides for an allocation of the fiscal year's MIP between the Vendors and the Purchaser, it was determined as part of the Closing arrangements to calculate and pay the MIP accruing up to Closing instead of calculating the MIP as of year-end and paying same during the subsequent fiscal year. Accordingly, subject to receipt of the applicable report and findings from KPMG LLP confirming the eligibility of the participants in the MIP and concluding that the MIP has been calculated appropriately and on a basis consistent with past practice, the Monitor respectfully requests that this Honourable Court approve the amounts due under the MIP

for the period prior to Closing and authorize and direct the Monitor, on behalf of the Applicants to pay such amounts.

### **Name Change**

- 6.16 The TSA provides that, as soon as practicable, but no later than 30 Business Days following Closing, 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. As Senior Management are no longer employed by the Applicants, and in order to comply with the TSA, it is proposed that the CPS be authorized to execute such documents as are required to effect such name changes. The Monitor notes that the TSA permits the Vendors and the Monitor the right to use the words “Arctic Glacier” with the qualifier “formerly known as” in certain circumstances, including in association with the Claims Procedure Order. A copy of the TSA is attached as **Appendix “M”**.

### **Marsh Invoice**

- 6.17 In October, 2008, a securities class action lawsuit was commenced against AGIF, its trustees, AGI and its directors and certain officers (the “**Ontario Securities Class Action**”). Prior to the commencement of the CCAA Proceedings, an agreement was reached to settle the Ontario Securities Class Action at a total cost of CDN\$13.75 million, which settlement was fully funded by the insurers of AGI’s officers and directors named as defendants.
- 6.18 On April 24, 2012, on motion by the Applicants, the Court granted an Order lifting the stay created by the Initial Order to continue the Ontario Securities Class Action for the

sole purpose of completing the settlement. In support of such Order, the Applicants filed a Notice of Motion that stated, among other things that “Since the settlement funds will be provided in full by the insurers of AGI’s officers and directors named in the action, it will not prejudice the Applicants or creditors of the Applicants. The Settlement will also eliminate a potential liability of the Applicants at no cost to the Applicants’ estate”. On the understanding that there would be no cost to the Applicants’ estate, the Monitor supported the relief sought in the lift stay motion.

- 6.19 On August 21, 2012, an employee of the Purchaser (and former employee of the Applicants) provided the Monitor with an invoice from Marsh Canada Limited (“**Marsh**”) in the total amount of CDN \$288,750 dated April 25, 2012 with respect to “claims consulting services”. Upon receipt of such invoice, the Monitor made inquiries of the Applicants with respect to the nature of the claims consulting services rendered that gave rise to the invoice and asked for a copy of any engagement letter with Marsh. The Monitor was informed that the invoice related to services provided by Marsh in respect of the settlement of the Ontario Securities Class Action.
- 6.20 The Monitor was subsequently provided with a copy of an agreement with Marsh dated October 1, 2010 which was accepted by the President and CEO of AGI on February 13, 2012 (the “**Marsh Agreement**”). Pursuant to the Marsh Agreement, the Applicants were to pay Marsh a fee equal to 2% of the settlement proceeds with respect to the Ontario Securities Class Action which equals \$275,000 (the “**Fee**”). The Monitor was also provided with correspondence from individual trustees of the Board of Trustees dated prior to the Filing Date with respect to the approval of the Marsh Agreement and the Fee.

The Monitor has not been provided with any formal board resolution in respect of the Marsh Agreement.

- 6.21 In light of the Notice of Motion previously filed in respect of the lift stay motion and the apparent agreement by the Applicants to pay the Fee, the Monitor is disclosing its intention to pay the Fee on behalf of the Applicants, no sooner than 14 days after the hearing of the within motion, pursuant to the authority granted in paragraph 7(b) of the Initial Order for the Applicants to make “payment for goods or services actually supplied to an Arctic Glacier Party prior to the date of this Order with the consent of the Monitor”.

## **7.0 CASH FLOW TO CLOSING**

- 7.1 The consolidated receipts and disbursements of the Applicants for the period February 18 to July 26, 2012 (the day prior to Closing) compared to the CCAA Cash Flow Forecast are summarized in the table below. Also summarized in the table are the actual receipts and disbursements for the period June 2 to July 26, 2012 (the period since last reported).

<b>Arctic Glacier</b> <b>Schedule of Consolidated Receipts and Disbursements</b> <b>Unaudited, (US\$000's)</b>				
	For the Period February 18 to July 26, 2012			Actual June 2 to July 26, 2012
	Actual	Forecast	Variance	
<b>Forecast Cash Inflow</b>				
Customer collections	97,228	87,182	10,046	57,687
<b>Forecast Total Receipts</b>	97,228	87,182	10,046	57,687
<b>Forecast Cash Outflow</b>				
Supplier payments, vehicle, occupancy, selling and general	56,119	64,043	7,924	27,549
Payroll and benefits	36,310	36,031	(279)	17,095
Insurance	3,236	3,836	600	-
Capital expenditures	4,889	9,805	4,916	1,518
Interest and financing fees	3,238	4,181	943	820
Professional fees	14,017	18,455	4,438	4,869
<b>Total Forecast Outflow</b>	117,809	136,351	18,542	51,851
<b>Net Cash Flow, prior to DIP Financing</b>	(20,581)	(49,169)	28,588	5,836
DIP financing - advances (net of repayments)	17,014	48,000	(30,986)	(6,052)
<b>Net Cash Flow</b>	(3,567)	(1,169)	(2,398)	(216)
<b>Cash, beginning of period</b>	8,629	6,525	2,104	5,278
<b>Cash, end of period</b>	5,062	5,356	(294)	5,062
<b>Permitted DIP Financing Cumulative Draw</b>	42,000	50,000	8,000	
DIP financing cumulative draw	17,014	48,000	(30,986)	
<b>Net DIP Financing Availability</b>	24,986	2,000	22,986	
<b>Note 1</b> Readers are cautioned to read the Terms of Reference as set out previously in this report for information regarding the preparation of the Cash Flow Forecast.				

- 7.2 During the twenty three-week period ended July 26, 2012 (the “**Reporting Period**”), the Applicants’ actual receipts were approximately \$10.0 million greater than forecast in the CCAA Cash Flow Forecast. This variance is attributable primarily to a combination of greater than budgeted sales during the Reporting Period, and certain assumptions related to forecast collections that did not materialize during the Reporting Period.
- 7.3 The Applicants’ total disbursements for the Reporting Period were approximately \$18.5 million less than those anticipated in the CCAA Cash Flow Forecast. Of this variance, approximately \$4.4 million relates to professional fees, which to some degree were



incurred and will be payable during the post-Closing period. The Monitor has received professional fee invoices totaling \$1.7 million during the post-Closing period to August 23, 2012 relating to the period prior to Closing. The remaining variance in disbursements of approximately \$14.1 million relates to underlying cash flow assumptions regarding operating costs, capital disbursements and deposits which did not materialize during the Reporting Period.

- 7.4 The closing cash balance of the Applicants as at July 26, 2012 was approximately \$5.1 million (approximately \$1.2 million in Canada and \$3.9 million in the U.S.). These funds comprise part of the \$6.2 million cash transferred to the Monitor's estate bank accounts post-Closing. Draws on the DIP Facility, net of repayments to July 26, 2012 were \$17.0 million (approximately CDN\$13.5 million and US\$3.5 million) and were repaid in full from the Sale Proceeds.
- 7.5 In summary, during the Reporting Period, the Applicants experienced a positive net cash flow variance of approximately \$28.6 million, relative to the CCAA Cash Flow Forecast.
- 7.6 During the period from June 2, 2012 to Closing (since the Applicants' receipts and disbursements were last reported in the Fourth Report), the Applicants' actual cash receipts and disbursements were \$57.7 million and \$51.9 million respectively, resulting in a positive net cash flow of \$5.8 million for that period.

## **8.0 POST-CLOSING RECEIPTS AND DISBURSEMENTS**

- 8.1 The receipts and disbursements of the Applicants during the post-Closing period (including the net Sale Proceeds) from July 27 to August 23, 2012, are summarized below:

<b>Arctic Glacier</b> <b>Schedule of Consolidated Receipts and Disbursements</b> <b>For the Period July 27 to August 23, 2012</b>	
	<b>Amount<sup>1</sup></b> <b>(\$000's)</b>
<b>Receipts</b>	
Sale Proceeds, net	130,194
Cash transferred from the Applicants'	
bank accounts, net	6,162
Other receipts	76
<b>Total Receipts</b>	<b>136,432</b>
<b>Disbursements</b>	
Professional fees	1,678
Other disbursements	80
<b>Total Disbursements</b>	<b>1,758</b>
<b>Excess of Receipts Over Disbursements</b>	<b>134,674</b>
Note 1 - Amounts shown herein are combined US\$ and CDN\$ and assumes a US\$/CDN\$ exchange rate at par.	

- 8.2 Receipts during the post-Closing period up to August 23, 2012 total \$136.43 million, and are comprised of the net Sale Proceeds, which reflect payment of the Lender Claims and the Financial Advisor's fees, cash transferred to the Monitor from the Applicants' bank accounts and other amounts, including interest and a sales tax refund.
- 8.3 Disbursements during the post-Closing period to August 23, 2012 total approximately \$1.8 million and are primarily comprised of professional fees incurred during the period prior to Closing by the Monitor, its legal counsel, the Applicants' legal counsel and other professionals hired by the Applicants to assist with the proceedings.
- 8.4 During the post-Closing period to August 23, 2012, the Applicants have realized an excess of receipts over disbursements of \$134.7 million, \$832,000 of which is held in

Canadian funds, with the remainder held in U.S. dollar bank accounts, all of which accounts are in the name of the Monitor. Included in the U.S. dollar balance is \$7,050,000 held by the Monitor, in escrow, in a U.S. domiciled bank account in respect of the DOJ Stipulation.

## **9.0 ACTIVITIES OF THE MONITOR**

9.1 The activities of the Monitor from the date of the Fifth Report have included the following for the period up to Closing:

- Continuing to attend the Applicants' premises on a regular basis;
- Continuing to monitor the receipts, disbursements, purchase commitments of the Applicants, including tracking on a weekly basis the outstanding balances and major commitments due to critical suppliers identified in the Initial Order;
- Continuing to assist the Applicants in their weekly financial reporting requirements to the DIP Lenders and assisting in meeting their other reporting obligations under the DIP Facility;
- Organizing bi-weekly update calls with the Lenders to discuss the weekly cash flow report and provide an update on the Applicants' operations;
- Assisting the Applicants in respect of their obligations under the APA and, in conjunction with the Applicants, their legal counsel, the Financial Advisor and the CPS, attending to matters necessary to plan for the Closing and the post-Closing period;
- Chairing daily conference calls with the Applicants, the Purchaser, the Monitor and their respective advisors, the CPS and the Financial Advisor during the period leading

up to Closing to review outstanding matters and to ensure that appropriate steps were being taken on a timely basis to ensure all matters requisite to Closing were attended to;

- Participating in direct discussions with the Purchaser, the Applicants, the CPS and the Financial Advisor concerning closing mechanics, the flow of funds on Closing, transitional banking arrangements and the AAA;
- Participating in regular update calls with the Financial Advisor and the Purchaser regarding the status of outstanding issues and the resolution of concerns related to the Sale Transaction and Closing;
- Reviewing, providing comments on and assisting the Applicants and their legal counsel in their negotiations of the Huntington PSA;
- 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;
- Acting as foreign representative in the Chapter 15 Proceedings, and, in those proceedings, attending the hearing for the U.S. Sale Motion, and negotiating (along with legal counsel) with the DOJ in respect of its limited objection and the DOJ Stipulation; and
- Attending the physical inventory count at certain of the Applicants' locations during the company-wide inventory count conducted on July 25, 2012 in accordance with the provisions of the APA.

9.2 The activities of the Monitor from Closing to the date of this Sixth Report have included the following:

- Attending the Applicants' former premises on an as-needed basis in accordance with the TSA to, among other things, follow-up on the transfer of funds and banking related matters;
- Maintaining estate bank accounts, overseeing and accounting for the Applicants' receipts and paying expenses for and on behalf of the Applicants pursuant to the Transition Order;
- Responding to numerous enquiries from unit holders and other stakeholders regarding the CCAA Proceedings and the Sale Transaction;
- Together with its counsel and the Applicants' legal counsel, developing the proposed Claims Process;
- Pursuant to the TSA, making arrangements with the Purchaser for access to certain employees and seeking their assistance in respect of certain post-Closing matters;
- Reviewing the bank reconciliations and supporting documents in respect of funds transferred to the Monitor from the Applicants' bank accounts described above and participating in related discussions and meetings with certain employees of the Purchaser on an on-going basis as such employees work to complete the reconciliations and transfer of funds;
- Arranging for the filing of certain sales tax returns as due;

- Discussions with KPMG LLP concerning the preparation of the Working Capital Statement required to be prepared pursuant to the APA;
- Discussions with KPMG LLP concerning the MIP;
- Attending segments of meetings of the Board of Trustees in respect of matters relating to the ongoing governance of AGIF and the CCAA Proceedings generally;
- Dealing with issues concerning the Huntington PSA;
- Participating in discussions with the Applicants and their legal counsel concerning ongoing public company reporting obligations of AGIF post-Closing; and
- Responding to enquiries from various other stakeholders, including addressing questions or concerns of parties who contacted the Monitor on the toll-free hotline number established by the Monitor.

## **10.0 THE MONITOR'S COMMENTS AND RECOMMENDATIONS**

10.1 For the reasons set out in this Sixth Report, the Monitor hereby respectfully recommends that this Honourable Court grant the relief being requested by the Monitor in its Notice of Motion.

10.2 The Monitor has worked with the Applicants to develop a proposed Claims Process that is intended to provide sufficient time for Creditors to prove any Claims they may have against the Applicants. It is proposed that notice of the Claims Process be published in The Winnipeg Free Press and in national newspapers in Canada and the U.S. and posted on the Monitor's Website. The Claims Process provides for an overall supervisory role of the Monitor, along with the CPS on behalf of the Applicants. The establishment of a Claims Process and identifying Claims against the Applicants is an important next step in

distributing the Sale Proceeds and the Monitor supports the establishment of a Claims Process in the form of the Draft Claims Procedure Order at this time.

10.3 The Monitor is requesting an extension of the Stay Period to November 30, 2012. 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 closed and the Applicants are no longer operating, the Applicants 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 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, and any other incidental fees and costs. The funds the Monitor is holding in its estate bank accounts will be sufficient to satisfy such amounts.

10.4 The Monitor believes that an extension of the Stay Period until November 30, 2012 is appropriate, as it is subsequent to the proposed Claims Bar Date under the draft Claims Procedure Order and should allow sufficient time for the Monitor, in consultation with the Applicants, to review the claims received in order to be in a position to update the Court and potentially seek further directions from the Court with respect to the resolution of Claims as necessary. The proposed extension will also allow the Monitor additional time to deal with post-Closing issues including bank account reconciliations, the Working Capital Statement and other matters related to the administration of the Applicants'

estates. Accordingly, the Monitor recommends that this Honourable Court grant the requested extension of the Stay Period.

\*\*\*\*\*

All of which is respectfully submitted to this Honourable Court this 29<sup>th</sup> day of August, 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".**



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Per: Richard A. Morawetz  
Senior Vice President



## **APPENDIX “A”**

**List of Applicants**

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

## **APPENDIX “B”**

**THE QUEEN'S BENCH  
WINNIPEG CENTRE**

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

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

**FOURTH REPORT OF THE MONITOR  
ALVAREZ & MARSAL CANADA INC.  
JUNE 15, 2012**

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## 1.0 INTRODUCTION

### Canadian Proceedings

- 1.1 Pursuant to an order of The Court of Queen's Bench (Winnipeg Centre) (the "**Court**") dated February 22, 2012 (the "**Initial Order**"), Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as Monitor (the "**Monitor**") in respect of an application filed by Arctic Glacier Income Fund ("**AGIF**"), Arctic Glacier Inc. ("**AGI**"), Arctic Glacier International Inc. ("**AGII**") and those entities listed on **Appendix "A"** (the "**Additional Applicants**"), (collectively, 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 In connection with the Applicants' application for protection under the CCAA, A&M provided this Honourable Court with a pre-filing report (the "**Pre-Filing Report**") dated February 21, 2012 in its capacity as the proposed monitor.
- 1.3 The Initial Order, a copy of which is attached as **Appendix "B"** and which includes a copy of the SISP (as defined below), among other things:
- a) Granted a stay of proceedings (the "**Stay**") until March 23, 2012 as against the Applicants as well as against Glacier Valley Ice Company, L.P. ("**Arctic LP**"), a U.S. based limited partnership whose general partner is the Additional Applicant Mountain Water Ice Company. Arctic LP and the Applicants are collectively referred to herein as "**Arctic Glacier**", or the "**Company**";
  - b) Authorized and directed the Company to immediately commence a Sale and Investor Solicitation Process (the "**SISP**") for the purpose of providing potential

investors with the opportunity to purchase or invest in the business and operations of Arctic Glacier as a going concern, or to sponsor a plan of compromise or arrangement. A summary of the SISP was included in the Pre-Filing Report;

- c) Approved the engagement of the Financial Advisor and the appointment of the Chief Process Supervisor (“CPS”);
- d) Entitled the Company (subject to the terms of and availability under the Commitment Letter and Definitive Documents) to pay reasonable expenses, including paying for goods or services supplied to the Company prior to the date of the Initial Order, with the consent of the Monitor, and goods or services supplied to the Company following the date of the Initial Order;
- e) Authorized and directed the Company to enter into and borrow under the DIP Facility provided by the DIP Lenders, provided that borrowings under the DIP Facility shall not exceed a combined total of CDN\$26 million and US\$24 million unless permitted by further order of this Honourable Court; and
- f) Directed the Monitor, as a foreign representative of the Applicants, to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 (“**Chapter 15**”) of the United States Bankruptcy Code, 11 U.S.C. Sec. 101-1330, as amended (the “**Bankruptcy Code**”).

### **Chapter 15 Proceedings**

- 1.4 On February 22, 2012, pursuant to the Initial Order, the Monitor filed (a) petitions for relief for all of the Applicants under Chapter 15 and (b) the *Verified Petition of Alvarez & Marsal Canada Inc. as Foreign Representative of Arctic Glacier Inc. and Certain of its*



*Affiliates for (i) Recognition of the CCAA Proceedings as a Foreign Main Proceeding, and (ii) Certain Related Relief* (collectively, the “**Chapter 15 Petitions**”). The Chapter 15 Petitions were filed with the United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”). The proceedings initiated under the Chapter 15 Petitions are referred to herein as the “**Chapter 15 Proceedings**”.

- 1.5 On February 23, 2012, the U.S. Court entered the *Order Granting Provisional Relief* (the “**Provisional Relief Order**”) in the Chapter 15 Proceedings. The Provisional Relief Order, among other things, provided that the Initial Order shall be given full force and effect in the United States on a provisional basis and operated as a provisional stay of any execution against the assets of Arctic Glacier located in the United States. The relief granted in the Provisional Relief Order remained in effect pending the Recognition Hearing (as defined below).
- 1.6 On March 16, 2012, a hearing was held before the Honorable Judge Gross to consider approval of the Chapter 15 Petitions and whether to grant the relief requested therein on a final basis (the “**Recognition Hearing**”). At the Recognition Hearing, the Honorable Judge Gross considered the Objection to recognition and the Motion to rescind the DIP Facility filed by the IP Plaintiffs and described in the First Report. The U.S. Court overruled the Objection based on both lack of standing and lack of merit.
- 1.7 Following the Recognition Hearing, the U.S. Court issued an order (the “**Recognition Order**”) that provided, among other things that: (i) Canada is the center of main interests of each of the Applicants; (ii) the Monitor is the duly appointed “foreign representative” of the Applicants; (iii) the CCAA Proceedings are recognized as a foreign main proceeding; (iv) the Initial Order, including any extensions, amendments or modifications

thereto, is enforced on a final basis and given full force and effect in the United States; (iv) that the DIP Lenders be granted certain protections under the Bankruptcy Code and the borrowings under the DIP Facility be authorized on a final basis, and (iv) a stay of proceedings against the assets of the Company in the United States be granted on a final basis.

- 1.8 On March 23, 2012, the IP Plaintiffs filed a Notice of Appeal from the Recognition Order to the United States District Court for the District of Delaware. As noted in the Second Report (as defined below), the IP Plaintiffs did not specify any grounds for appeal in the Notice of Appeal and the Monitor considers the Notice of Appeal to be without merit. There is a mediation pending that has yet to be scheduled with respect to the appeal.

#### **The Monitor's Reports and Other Orders Granted in these Proceedings**

- 1.9 The Monitor filed its First Report to Court dated March 12, 2012 (the “**First Report**”) in support of the Applicants’ motion (the “**First Stay Extension Motion**”) for an Order:
- a) Extending the Stay until April 5, 2012; and
  - b) Approving the Pre-Filing Report and the First Report and the Monitor’s activities described in those reports.
- 1.10 On March 15, 2012, this Honourable Court issued the Order sought in the First Stay Extension Motion.
- 1.11 The Monitor filed its Second Report to Court dated March 30, 2012 (the “**Second Report**”) in support of the Applicants’ motion for an Order:
- a) Extending the Stay until June 15, 2012; and

- b) Approving the Second Report and the Monitor's Activities described in the Second Report.

1.12 On April 3, 2012, this Honourable Court issued the Order sought in the Second Stay Extension Motion; however extended the Stay until June 27, 2012.

1.13 The Monitor filed its Third Report to Court dated May 14, 2012 (the "**Third Report**") in support of a Consent Order in respect of a motion made by the US Direct Purchaser Antitrust Settlement Class (the "**Direct Purchaser Plaintiffs**"). The Consent Order implemented the provisions of a settlement agreement executed by the Applicants and the Direct Purchaser Plaintiffs on May 14, 2012 (the "**Settlement Agreement**"). A copy of the Third Report is attached as **Appendix "C"**. The Consent Order, a copy of which is attached as **Appendix "D"**, was issued by this Honourable Court on May 15, 2012 (the "**Consent Order**").

1.14 The Applicants have brought a motion returnable June 21, 2012 seeking an Order (the "**Approval and Vesting Order**"):

- a) Approving the sale transaction contemplated by the Asset Purchase Agreement dated June 7, 2012 (the "**APA**") between the Company and H.I.G. Zamboni, LLC (the "**Purchaser**"), a redacted copy of which is attached as "A" to the Affidavit of Keith McMahon dated June 13, 2012 (the "**June McMahon Affidavit**");
- b) Vesting in the Purchaser all of the Company's right, title and interest in and to the Assets (as defined in the APA) free and clear of any claims and encumbrances other than certain permitted encumbrances as set out in the draft Approval and Vesting Order;

- c) Assigning the rights and obligations of the Company under the Assigned Contracts (as defined in the APA);
- d) Directing the Monitor to pay from the proceeds of the Transaction an amount sufficient to pay the Lenders in full and in cash in respect of the Lender Claims in concurrently with, and as a condition precedent to, the closing of the Transaction, with the balance of the proceeds to be held by the Monitor in accordance with the terms of the draft Approval and Vesting Order;
- e) Extending the Stay from June 27, 2012 to August 31, 2012;
- f) Providing that the contents of the Confidential Appendix be sealed, kept confidential and not form part of the public record until further Order of this Honourable Court; and
- g) Approving the Third Report and this report (the “**Fourth Report**”) and the activities of the Monitor in these reports.

1.15 The purpose of this Fourth Report is to provide information to this Honourable Court concerning:

- a) the SISP and the proposed sale transaction contemplated by the APA (the “**Transaction**”);
- b) the activities of the Monitor from the date of the Second Report to the date of this Fourth Report;
- c) the actual receipts and disbursements of Arctic Glacier for the fifteen-week period ended June 1, 2012 as compared to the Cash Flow Forecast previously filed as part of the Second Report (the “**Updated Cash Flow Forecast**”);

d) an extended cash flow forecast for the thirteen-week period ending August 31, 2012 (the “**Extended Cash Flow Forecast**”); and

e) The Monitor’s comments and recommendations in respect of the Applicants’ motion for the Approval and Vesting Order.

1.16 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 Fourth Report, A&M has necessarily relied upon unaudited financial and other information supplied, and representations made, by certain senior management of Arctic Glacier (“**Senior Management**”). 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 Fourth Report, or otherwise used to prepare this Fourth Report.

2.2 Certain of the information referred to in this Fourth 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 Fourth 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 Fourth Report is not intended to be relied upon by any prospective purchaser or investor in any transaction with the Applicants.
- 2.4 Capitalized terms not otherwise defined in this Fourth Report are as defined in the Initial Order, the Pre-Filing Report, the First Report, the Second Report and/or the Third Report.
- 2.5 Unless otherwise stated, all monetary amounts contained in this Fourth Report are expressed in United States dollars, which is the Applicants' common reporting currency.

### **3.0 BACKGROUND**

- 3.1 As described in the affidavit of Keith McMahon sworn February 21, 2012 (the “**Pre-Filing McMahon Affidavit**”) and the Pre-Filing Report, the Applicants are part of a consolidated North American business which manufactures and distributes premium quality packaged ice products in Canada and the United States from 39 production plants and 47 distribution facilities across 6 provinces in Canada and 23 states in the United States (collectively, the “**Business**”).
- 3.2 Further background information regarding the Business and affairs of the Applicants, including the causes of their financial difficulties and insolvency, the Strategic Review Process conducted in 2011, litigation and other matters, are set out in the Pre-Filing McMahon Affidavit and the Pre-Filing Report.

### **4.0 THE RESULTS OF THE SALE AND INVESTOR SOLICITATION PROCESS**

- 4.1 Defined terms used in this section and not otherwise defined herein have the meaning ascribed to them in the SISP.

- 4.2 The SISP was developed as a result of extensive negotiations among the Applicants, the Financial Advisor and the Lenders, with input from the Monitor, and was approved in the Initial Order and recognized by the U.S. Court in the Recognition Order. All participants in the negotiations were cognizant of the liquidity issues facing the Applicants in determining the timelines for the SISP. The SISP and its timelines were developed to take into account the balance between the time necessary to administer the phases of a commercially reasonable sale/investment process and the available financial resources and operations of the Applicants.
- 4.3 Under the supervision of the Monitor, the Applicants implemented the SISP in accordance with the Initial Order. The Financial Advisor managed the day-to-day activities in connection with the SISP. The Monitor supervised the Financial Advisor's performance pursuant to its engagement by the Applicants. The CPS provided significant input with respect to the SISP, led twice weekly conference calls with the Company, the Monitor and their respective advisors and reported to the Special Committee.
- 4.4 The SISP provides that in order to be a Qualified Bid a bid must contain, among others, the following requirements (which requirements could not be waived by the Monitor):
- a) the purchase price contained in the bid must be in an amount sufficient to pay the Lender Claims in full and in cash on Closing; and
  - b) the Monitor had to determine that, in its reasonable business judgment, it is likely that the Qualified Bidder would be able to consummate the proposed transaction on or before the Outside Date (July 31, 2012) in a manner that complied with the SISP.

### **Phase 1 of the SISP**

4.5 The following activities were undertaken by the Financial Advisor, the Applicants, the CPS and/or the Monitor during Phase 1 of the SISP:

- A list of 165 prospective parties to contact and invite to participate in the SISP was prepared;
- The Financial Advisor contacted parties and provided a “teaser”/investment overview letter and a form of Non-Disclosure Agreement (“**NDA**”) to the extent that such potential bidder indicated they were interested in receiving same;
- The Monitor caused the notices required pursuant to the Initial Order and the SISP to be published in the newspapers specified in the Initial Order and the SISP;
- The Monitor ensured that notice of the SISP and a copy of the SISP was continuously posted on the Monitor’s website established for these Proceedings;
- A Confidential Information Memorandum (“**CIM**”) was prepared for prospective bidders who executed NDAs. The CIM included detailed information about the Business and the Applicants’ financial results; and
- An electronic data room was established (the “**Phase 1 Data Room**”) which was made available to prospective bidders who executed an NDA. The Phase 1 Data Room contained information regarding the Applicants’ financial, operational, human resources, legal, customer and supplier information to assist Phase 1 Participants in analyzing the Business and their interest in submitting an LOI.

4.6 During Phase 1 of the SISP there were extensive negotiations among prospective bidders and the Applicants, in consultation with the Monitor, regarding the execution of NDAs.



42 prospective bidders executed an NDA, received a copy of the CIM and were provided access to the Phase 1 Data Room.

4.7 The Financial Advisor, often in conjunction with the Monitor, conducted extensive discussions with many of the Phase 1 Participants, typically addressing questions arising from their review of the CIM and/or the information contained in the Phase 1 Data Room. The key topics addressed included litigation issues, the Applicants' operations, financial performance and future prospects, the impact of the CCAA Proceedings on the Business, and the quantum of the Applicants' secured and unsecured liabilities as well as the projected DIP Facility balance at Closing.

4.8 The Phase 1 Bid Deadline was 5:00 p.m. CT on March 28, 2012. Nineteen prospective bidders submitted an LOI in Phase 1. Sixteen of the LOIs were sale proposals, two were investment proposals and one was a partial sale proposal.

4.9 Throughout Phase I of the SISP, the Monitor was actively involved with the Financial Advisor, the CPS and the Company in respect of all matters related to the SISP, including:

- Commenting on the draft form of NDA to be provided to prospective bidders and engaging in discussions with the Company, its advisors and the Lenders' advisors with respect to the NDAs;
- Assisting in the negotiation of the actual NDAs executed by prospective bidders;
- Assisting in the preparation of the Phase 1 Data Room;
- Assisting in the preparation of the prospective bidder list, "teaser"/investment overview letter and CIM;

- Participating in numerous conference calls with prospective bidders and the Financial Advisor; and
- Attending the twice weekly calls organized by the CPS.

4.10 In accordance with the terms of the SISP, the Monitor, within 5 Business Days following the Phase 1 Bid Deadline, in consultation with the Financial Advisor, the CPS and the Applicants, assessed the Qualified LOIs received to determine whether there was a reasonable prospect of obtaining a Qualified Bid. The Monitor, in consultation with the Financial Advisor, CPS and Company, determined that there was a reasonable prospect of obtaining a Qualified Bid. Therefore, the Monitor recommended to the Special Committee that the SISP should continue for a further 45 days. The Special Committee accepted the Monitor's recommendation and the SISP entered Phase 2.

#### **Phase 2 of the SISP**

- 4.11 On April 5, 2012, Phase 2 of the SISP commenced. On April 12, 2012, AGIF issued a press release announcing that the Special Committee had authorized the commencement of Phase 2 of the SISP. A copy of the April 12, 2012 press release is attached as **Appendix "E"**. Nine of the nineteen parties submitted a Qualified LOI during Phase 1 and were invited to participate in Phase 2 of the SISP (the "**Phase 2 Participants**").
- 4.12 As provided for in the SISP, following the commencement of Phase 2, and after notifying the Lenders, the Monitor, in consultation with the Financial Advisor, the CPS and the Applicants determined that the Phase 2 Bid Deadline should be extended by 15 days.
- 4.13 On April 24, 2012, the Financial Advisor informed the Phase 2 Participants that the Phase 2 Bid Deadline was extended to 6:00 p.m. EST (5:00 p.m. CST) on June 4, 2012.

4.14 The following activities were undertaken by the Financial Advisor, the Applicants, the CPS and/or the Monitor during Phase 2 of the SISP:

- A more extensive electronic data room was established to provide further confidential information concerning the Company to the Phase 2 Participants (the “**Phase 2 Data Room**”). Senior Management authorized the information included in the Phase 2 Data Room in consultation with the Financial Advisor and the Monitor;
- A management presentation was developed and delivered by Senior Management to all of the Phase 2 Participants as well as certain of those participants’ advisors and potential financing sources;
- Plant tours were given to the vast majority of the Phase 2 Participants;
- A letter detailing the process to be followed in submitting a bid in Phase 2 was developed and distributed;
- A draft form of Asset Purchase Agreement was developed and distributed to the Phase 2 Participants that remained interested in the acquisition opportunity;
- Detailed diligence requests were received from certain of the Phase 2 Participants and their respective advisors and consultants and were responded to by the Financial Advisor and the Applicants, with the assistance of the Monitor; and
- Numerous conference calls and/or meetings were conducted with the Phase 2 Participants and their advisors.

4.15 Reddy Ice Holdings, Inc. (“**Reddy Ice**”), a significant competitor of the Applicants, was one of the Phase 2 Participants. Reddy Ice’s participation in Phase 2 was publicly disclosed by Reddy Ice in conjunction with its United States chapter 11 proceeding. In

order to comply with antitrust requirements in the United States, the Applicants developed a separate protocol for dealing with Reddy Ice and its advisors, which was governed by a Clean Team Agreement executed by Reddy Ice. In accordance with that agreement, the Applicants provided Reddy Ice, its advisors and its sources of capital with access to separate electronic data rooms providing varying levels of confidential information depending on which party was accessing the particular data room. In addition, the Applicants developed and delivered a CIM and management presentation for Reddy Ice and its advisors, principals and sources of capital. The information in the CIM and the management presentation provided to Reddy Ice was redacted in order to protect competitively sensitive information. The Applicants' United States antitrust counsel, Jones Day, was significantly involved in all aspects of Reddy Ice's diligence efforts.

- 4.16 After the initial management presentations, certain of the Phase 2 Participants conducted detailed due diligence, which took the form of additional data room information requests, further management meetings and a review of more detailed financial information. Certain of the Phase 2 Participants also engaged specialized advisors such as environmental, operational and financial advisors to help them in assessing the acquisition opportunity. All of the Phase 2 Participants except Reddy Ice (who was subject to the Clean Team Agreement) received a tour of the Mississauga facility. In addition, at their request, certain Phase 2 Participants and their advisors received tours of other Company facilities.
- 4.17 The Financial Advisor provided a process letter and a draft form of Asset Purchase Agreement to the Phase 2 Participants who remained interested in the acquisition

opportunity. The process letter requested that interested bidders provide a mark-up of the draft Asset Purchase Agreement on May 25, 2012, nine days prior to the Phase 2 Bid Deadline. Marked-up versions of the Asset Purchase Agreement were received from three bidders on May 25, 2012.

4.18 Subsequent to the receipt of the marked-up Asset Purchase Agreements, the Financial Advisor, the Company and the Monitor had discussions with the three remaining bidders in order to clarify certain aspects of their bids and to deal with remaining due diligence issues. In particular, counsel for the Company, the Financial Advisor and the Monitor and its counsel attended meetings and/or conference calls with each remaining bidder on May 30, 2012. The purpose of the meetings was to deal with high level business and legal issues in respect of the marked-up Asset Purchase Agreements in an effort to achieve the most favourable bids possible at the Phase 2 Bid Deadline.

4.19 The three remaining Phase 2 Participants submitted Final Bids prior to the Phase 2 Bid Deadline on June 4, 2012. Two of these Phase 2 Participants who submitted a bid also provided a Deposit; the third agreed to provide a deposit upon execution of an agreement.

4.20 Throughout Phase 2 of the SISP, the Monitor was actively involved with the Financial Advisor, the CPS and the Company in respect of all matters related to the SISP, including:

- Attending all of the management presentations made to the Phase 2 Participants;
- Attending certain facility tours provided to some of the Phase 2 Participants;

- Participating in numerous follow-up conference calls and meetings with the Phase 2 Participants and/or their advisors, and in particular with the three Phase 2 Participants that submitted bids;
- Assisting in the preparation of the draft form of Asset Purchase Agreement and reviewing comments thereon;
- Assisting in the preparation of the Phase 2 Data Room;
- Assisting the Financial Advisor and the Company in connection with fulfilling due diligence requests;
- Assisting the Company and its advisors in their preparation of the estimated working capital statement; and
- Attending the twice weekly calls organized by the CPS.

4.21 In accordance with the Consent Order, counsel for the Company, the Monitor and its counsel had a conference call on June 6, 2012 with the Lenders and their counsel to update the Lenders on the progress of the SISP and the Final Bids received. Further, in accordance with the Settlement with the Direct Purchaser Plaintiffs detailed in the Third Report, and prior to the Special Committee's consideration of the Final Bids received, counsel for the Company, the Monitor and its counsel had a conference call on June 7, 2012 with counsel for the Direct Purchaser Plaintiffs to discuss the key terms of the Final Bids. There were no additional conference calls or meetings with the Lenders or counsel to the Direct Purchaser Plaintiffs in respect of the matters addressed in the Settlement or the Consent Order.

- 4.22 As detailed in this Fourth Report, the Monitor had extensive involvement in the SISP. The Monitor is satisfied that the SISP was managed in accordance with its terms and in a fair and transparent manner. The Monitor is satisfied that the Company, the Financial Advisor and the CPS all discharged their responsibilities under the SISP in good faith and with due diligence. It is the Monitor's view that all interested parties had a reasonable opportunity to participate in the SISP and to submit a Final Bid.

#### **Evaluation of the Final Bids Received**

- 4.23 The Applicants received three Final Bids as a result of the SISP. These Final Bids are discussed in general terms below and are described in detail in the **Confidential Appendix**, for which a sealing order is being sought.
- 4.24 Following the Phase 2 Bid Deadline, the Financial Advisor, the Applicants, the Monitor and the CPS communicated with the three remaining bidders to clarify and discuss certain aspects about their respective Final Bids prior to the selection of the Successful Bid from the Purchaser.
- 4.25 On June 7, 2012, the Monitor advised the Special Committee that one or more Qualified Bids had been received in accordance with the SISP. The Monitor confirmed that the terms of the court-approved SISP had been followed. The Monitor, after consulting with the Financial Advisor, the CPS and the Company, and after taking into account the evaluation criteria set out in paragraph 27 of the SISP, recommended to the Special Committee that the Qualified Bid submitted by an affiliate of H.I.G. Capital (the "**Purchaser**") was the most favorable bid and should be selected. The Purchaser's bid was the highest offer received with the fewest conditions to closing. The Financial Advisor and the CPS concurred with the Monitor's recommendation. The Special

Committee accepted the Monitor's recommendation and authorized the Company to enter into the APA.

- 4.26 On June 8, 2012, the Company issued a press release announcing the transaction and identifying the Purchaser. A copy of the press release is attached to the June McMahon Affidavit.

## **5.0 THE PROPOSED APA**

### **Outline of the APA and the Transaction**

- 5.1 Defined terms used in this section and not otherwise defined have the meaning ascribed to them in the APA.
- 5.2 Pursuant to the APA, the Purchaser, a newly formed Delaware limited liability company and affiliate of H.I.G. Capital ("**HIG**"), a private equity firm headquartered in Miami, Florida, will purchase all of the Company's assets except the Excluded Assets (the "**Assets**") and will assume all of the Company's liabilities except the Excluded Liabilities (the "**Assumed Liabilities**") of the Applicants on an "as is, where is" basis.
- 5.3 HIG has indicated that it is committed to preserving the Business as a standalone enterprise based in Winnipeg, intends to invest significant growth capital into the Business, and has plans to invest in new technology, infrastructure and systems.
- 5.4 The Excluded Assets are comprised of cash and cash equivalents; tax refunds; rights under any contracts which may be disclaimed by the Applicants with the consent of the Purchaser; certain tax records; claims to reimbursement made before the date of the APA; certain pre-payments; and an excluded redundant property.



- 5.5 The Excluded Liabilities include certain current liabilities, certain tax liabilities, certain litigation liabilities, and liabilities arising in connection with the Brandywine Ice Company Defined Benefit Pension Plan.
- 5.6 As a result of the highly seasonal nature of the Applicants' business, the form of APA provided to the Phase 2 Participants by the Applicants included a mechanism to adjust the purchase price to reflect changes in working capital. The Applicants, with the assistance of the Financial Advisor, the Applicants' accountants, KPMG LLP, and the Monitor, provided Phase 2 Participants with a working capital analysis illustrating changes in the Company's working capital. The form of APA contained a provision whereby the purchase price would be adjusted off of a specified amount which was set as the historical normalized annual average level of working capital. The adjustment mechanic is necessary given the fact that a successful bidder would be acquiring the Business during its peak sales season, during which the Company's current assets are projected to significantly exceed its current liabilities. HIG accepted the Applicants' proposed mechanism for addressing this working capital surplus, which is reflected in the Purchase Price. The APA also provides a mechanism to determine the actual working capital at Closing and to adjust the Purchase Price accordingly.
- 5.7 The APA provides that the Purchaser will offer to employ all of the Company's employees (both full-time and part-time and including the executive team, whether or not such employees are on vacation or leave) on terms and conditions substantially similar in the aggregate to the current terms of such employees' employment (excluding change of control entitlements or equity incentives).

- 5.8 The purchase price for the Assets contained in the APA (the “**Purchase Price**”) includes a \$10 million deposit that is currently being held by the Monitor. The balance of the Purchase Price is to be wired to an account of the Monitor on Closing. As required by the SISP, the Purchase Price is sufficient to pay the Lender Claims in full in cash on Closing.
- 5.9 The key conditions to Closing in the APA include Canadian and U.S. Court approval, regulatory approval, and that no Material Adverse Effect has occurred. The Purchaser or the Company may terminate the APA if the conditions for the benefit of the other party are not met or waived, there is a breach by the other party that is not cured within 10 days, or the transaction has not closed by the Outside Date.
- 5.10 As part of the meetings and discussions with the three Phase 2 Participants that submitted marked-up Asset Purchase Agreements on May 25, 2012, it became apparent that each of the remaining prospective purchasers would require some protection by being able to elect not to close the transaction if a material adverse event relating to the Business should occur between execution of any agreement and closing. There was a consistent message received from each of these potential bidders that such protection would also be required by any prospective debt financier. Thus, the Company developed a Material Adverse Effect clause and provided a copy of same to each of the 3 remaining bidders.
- 5.11 The Material Adverse Effect definition contained in the APA is substantially similar to the language proposed by the Company. The Material Adverse Effect definition is limited to an event that is or is reasonably expected to be material and adverse to (i) the Business, the Assets, the Assumed Liabilities, condition (financial or otherwise), or results of operations of the Purchased Business, taken as a whole, or (ii) the ability of the Company to complete the transaction contemplated by the APA. In addition, there are a

number of exclusions to the Material Adverse Effect definition, which, if they should occur, would not be a Material Adverse Effect. Some of the key exclusions include, but are not limited to: (i) any change in general economic or political conditions or the securities, capital, credit, financial or banking markets generally, or any worsening thereof, in Canada or the United States; (ii) the loss of one or more customers of the Company; (iii) the impact of weather in and of itself on the results of operations of the Applicants, taken as a whole; or (iv) any change generally affecting the packaged ice industry in Canada or the United States.

5.12 The APA provides for the assignment of the Assigned Contracts by Court order in the event that consents are not obtained from the counterparties. The draft Approval and Vesting Order contains a provision ordering the assignment of the Assigned Contracts pursuant to Section 11.3 of the CCAA. The Monitor approves of the proposed assignments of the Assigned Contracts. It is the Monitor's view that the Purchaser will be able to perform the obligations under the Assigned Contracts and in light of the fact that the Purchaser is acquiring the Business it is appropriate for an order to be made assigning the Assigned Contracts.

5.13 The Purchaser's debt financing commitment from Credit Suisse Securities (USA) LLC and Credit Suisse AG, Cayman Islands Branch ("**Credit Suisse**") contains conditions precedent, representations and warranties and the Material Adverse Effect provisions set out in the APA. This ensures that the proposed debt financing commitment cannot be terminated due to changes in the Business for reasons beyond those contained in the APA. A copy of the debt financing commitment letter is included in the Confidential Appendix.

- 5.14 The Purchase Price is to be partially satisfied by an equity investment from an HIG private equity fund related to the Purchaser. A commitment letter from such equity fund was provided to the Purchaser and delivered as part of the Purchaser's bid package. The Monitor has reviewed the commitment letter and is satisfied with its terms and that HIG has the financial wherewithal to complete the Transaction.
- 5.15 The remainder of the Purchase Price is to be satisfied by debt financing. A commitment letter from Credit Suisse was also delivered as part of the Purchaser's bid package. Amendments were made to the debt financing commitment letter to be consistent with the amendments that were made to the APA based on discussions between the Company, the Monitor, the Financial Advisor and the Purchaser subsequent to the Phase 2 Bid Deadline. The Monitor notes that the debt financing commitment terminates on July 31, 2012, consistent with the Outside Date in the SISP and the APA.
- 5.16 The debt financing commitment contains the ability for Credit Suisse to syndicate the loan. It is a condition of Closing to the debt financing commitment that Credit Suisse be provided a period of no less than 28 consecutive business days following the execution of the APA to syndicate the loan, provided that the period between June 30 and July 8, 2012 will be excluded for the purposes of calculating the syndication period. Based on a timeline provided by the Purchaser, and the Financial Advisor and Monitor's calculation of the syndication period, the Monitor notes that the syndication period will end before the Outside Date. The Monitor notes that, notwithstanding the outcome of Credit Suisse's efforts to syndicate the loan, Credit Suisse is committed to providing the full amount of the debt commitment. The Monitor has reviewed the debt commitment letter and is satisfied with its terms and that it should be able to close before the Outside Date.

5.17 It is contemplated that the Transaction will close between July 25 and 31, 2012.

### **Secured Debt Facilities**

5.18 As at July 31, 2012, the anticipated closing date of the Transaction (the “**Closing**”), the Lender Claims and the TD Letter of Credit Obligations are projected to be as follows:

<b>Arctic Glacier</b>			
<b>Projected Balances as at July 31, 2012 (in \$ millions)</b>			
	<b>Facility</b>	<b>Amount Outstanding (CDN\$)</b>	<b>Amount Outstanding (US\$)</b>
<b>(1) First Lien Debt</b>			
	Canadian Revolving Facility (US\$)	15.0	7.1
	Canadian Swing Line Facility (US\$)	5.0	-
	U.S. Revolving Facility (US\$)	45.0	n/a
	U.S. Swing Line Facility (US\$)	5.0	n/a
	<b>70.0</b>	<b>7.1</b>	<b>23.2</b>
<b>(2) Second Lien Debt</b>			
	Second Lien Canadian Term Loan (CDN\$)	50.0	62.0
	Second Lien U.S. Term Loan (US\$)	138.9	n/a
	<b>188.9</b>	<b>62.0</b>	<b>171.5</b>
<b>(3) TD Letter of Credit Obligations (US\$)</b>			
	<b>0.1</b>	<b>n/a</b>	<b>0.1</b>
<b>DIP Facility</b>			
	DIP Facility (CDN\$)	26.0	15.5
	DIP Facility (US\$)	24.0	-
	<b>50.0</b>	<b>15.5</b>	<b>13.5</b>
<b>TOTAL</b>	<b>309.0</b>	<b>84.6</b>	<b>208.3</b>
<b>Notes:</b>			
1. First Lien Debt balances include accrued interest and accrued commitment fees. Assumes no change in Canadian and United States prime interest rates.			
2. Second Lien Debt balances include PIK and non-PIK interest as well as prepayment premiums.			
3. Amounts above exclude unreimbursed expenses payable to the Lenders.			

5.19 As noted above, the Lender Claims consist of the following:

- a) First Lien Debt – Approximately CDN\$7.1 million and US\$23.2 million owing under the First Lien Credit Agreement. AGI and AGII are borrowers and the remaining Applicants have granted secured guarantees of the First Lien Debt.

- b) Second Lien Debt – Approximately CDN\$62.0 million and US\$171.5 million owing pursuant to the Second Lien Credit Agreement. AGI and AGII are borrowers and the remaining Applicants have granted secured guarantees of the Second Lien Debt.
- c) TD Letter of Credit Obligations – A small credit facility totaling \$125,000 maintained by the Toronto-Dominion Bank to secure payment under a letter of credit previously issued under the First Lien Credit Agreement.
- d) DIP Facility – Based on the Company’s forecast, approximately CDN\$15.5 million and US\$13.5 million owing under the Canadian and US dollar available DIP Facility. AGI and AGII are borrowers and the remaining Applicants have granted secured guarantees of the DIP Facility. The CDN\$15.5 million and US\$13.5 million does not account for anticipated cash on hand at Closing of CDN\$3 million and US\$4.7 million. As the APA treats cash on hand as an Excluded Asset, it is anticipated that any cash on hand at Closing will be used in connection with the Closing of the Transaction or transferred to an account to be established by the Monitor to deal with post-Closing estate issues.

5.20 Based on the Extended Cash Flow Forecast, as at July 31, 2012, the projected Lender Claim amounts are CDN\$84.6 million and US\$208.3 million not including unreimbursed expenses. These amounts include a pre-payment premium in the amount of CDN\$3.6 million and US\$10 million and accrued default interest in the amount of CDN\$1.1 million and US\$3.1 million, in each case, with respect to the Second Lien Debt.

### **Independent Security Opinion**

- 5.21 As discussed in the First Report, the Monitor's independent legal counsel, Osler, conducted and co-ordinated a security review and provided an opinion on the validity and enforceability of the loan, guarantee and security documentation in connection with the First Lien Credit Agreement, the Second Lien Credit Agreement and the TD Letter of Credit Obligations.
- 5.22 In connection with the above, Osler rendered to the Monitor a security review opinion in the Provinces of Ontario and Alberta, which contains as appendices, security review opinions from legal counsel in: (a) the Provinces of Quebec, British Columbia, Saskatchewan and Manitoba; and (b) the States of New York, Delaware, California, Oregon, Texas, Michigan, Wisconsin, Iowa and Minnesota (collectively with the security review opinion of Osler in the Provinces of Ontario and Alberta, the "**Opinions**").
- 5.23 The Opinions provide that, subject to the customary assumptions, qualifications and limitations contained therein:
- a) the loan, guarantee and security documentation in connection with the First Lien Credit Agreement, the Second Lien Credit Agreement and the TD Letter of Credit Obligations constitute legal, valid and binding obligations of the parties thereto, enforceable against such parties in accordance with their respective terms; and
  - b) the Computershare Security, the Agent Security, the TD Security, the Canadian Master Collateral Agent Security and the US Security create valid security interests and/or charges (as applicable) in favour of the applicable secured parties in the collateral described therein and such security interests, to the extent capable

of perfection by registration, have been validly perfected by registrations made in the relevant jurisdictions in order to perfect or evidence such security.

5.24 As noted in the Pre-Filing Report, the First Lien Credit Agreement and the Second Lien Credit Agreement contain an obligation to pay default interest in certain circumstances. The cash flow forecasts filed throughout the CCAA Proceeding provide for the payment of default interest on the First Lien Debt and the definition of the Lender Claims in the SISP included default interest, as does the projected amount of the Lender Claims to be paid on Closing. As further described in the Pre-Filing Report, section 8 of the *Interest Act (Canada)* purports to limit the circumstances where default interest can be charged if a principal amount owing under a loan is secured by a mortgage over real property. The security granted to the Lenders and their agent(s) is comprehensive security on all of the assets of the Applicants which includes mortgages on real property in Canada and the United States. The real property in Canada comprises a relatively small portion of the Company's real property holdings and an even smaller portion of its overall assets. The APA does not allocate any value to the Company's owned real property. The Monitor understands that the distribution order being sought by the Applicants includes payment of the Lender Claims in full, including default interest. The Monitor also notes that the Purchase Price provided for in the APA is sufficient to pay all known creditor claims in full and may be sufficient to make a distribution to unitholders depending on the outcome of a claims process. The Monitor notes that the Lenders have been supportive of the Company and provided the funding necessary to implement the SISP and achieve a going concern solution for the Company's stakeholders and that such support was premised on the Lenders being paid the Lender Claims, including default interest.



## **6.0 ACTIVITIES OF THE MONITOR**

6.1 In addition to the Monitor's ongoing supervision of and involvement with the SISP, the activities of the Monitor from the date of the Second Report have included the following:

- Attending the Company's premises on a regular basis;
- Monitoring the receipts, disbursements, purchase commitments and arrangements for deposits with certain suppliers of the Applicants, including tracking on a weekly basis, the outstanding balances and major commitments due to critical suppliers identified in the Initial Order;
- Assisting Senior Management in the Company's weekly financial reporting requirements to the DIP Lenders and assisting the Company in meeting its other obligations under the DIP Facility;
- Organizing weekly update calls with the Lenders to discuss the weekly cash flow report and provide an update on the Company's operations;
- Assisting and discussing with the Company its operations and customer relations as requested by the Company;
- Reviewing the Company's weekly analysis of its DIP draw requirements and reviewing requests regarding same when required;
- Attending the Applicants' negotiations with the Direct Purchaser Plaintiffs resulting in the Settlement;
- Continuing a review of transactions entered into by the Company prior to the CCAA Proceedings, as required by the CCAA;

- Assisting Senior Management with communications with customers, suppliers, employees and other parties;
- Responding to various inquiries from unitholders regarding the CCAA Proceedings, the SISP and its outcome;
- Acting as foreign representative in the Chapter 15 Proceedings, and, in those proceedings, dealing with the mediation of the appeal of the Recognition Order filed by the IP Plaintiffs;
- Making non-confidential materials filed with this Honourable Court and with the U.S. Court publically available on the website established by the Monitor for the CCAA Proceedings; and
- Responding to enquiries from various other stakeholders, including addressing questions or concerns of parties who contacted the Monitor on the toll-free number established by the Monitor.

## **7.0 RECEIPTS AND DISBURSEMENTS FOR THE FIFTEEN-WEEK PERIOD ENDED JUNE 1, 2012**

- 7.1 The consolidated receipts and disbursements of Arctic Glacier for the period February 18 to June 1, 2012 as compared to the Updated Cash Flow Forecast are summarized below:

<b>Arctic Glacier</b> <b>Schedule of Consolidated Receipts and Disbursements as Compared to the CCAA Cash Flow Forecast</b> <b>For the Period February 18, 2012 to June 1, 2012</b> <b>Unaudited, (US\$000's)</b>			
	<b>Actual</b>	<b>Forecast</b>	<b>Variance</b>
<b>Forecast Cash Inflow</b>			
Customer collections	39,540	33,181	6,359
<b>Forecast Total Receipts</b>	<b>39,540</b>	<b>33,181</b>	<b>6,359</b>
<b>Forecast Cash Outflow</b>			
Supplier payments, vehicle, occupancy, selling and general	28,569	38,964	10,395
Payroll and benefits	19,215	19,084	(131)
Insurance	3,236	3,837	601
Capital expenditures	3,371	7,065	3,694
Interest and financing fees	2,418	2,962	544
Professional fees	9,148	12,715	3,567
<b>Total Forecast Outflow</b>	<b>65,957</b>	<b>84,627</b>	<b>18,670</b>
<b>Net Cash Flow, prior to DIP Financing</b>	<b>(26,417)</b>	<b>(51,446)</b>	<b>25,029</b>
DIP financing - advances	23,066	47,000	(23,934)
<b>Net Cash Flow</b>	<b>(3,351)</b>	<b>(4,446)</b>	<b>1,095</b>
<b>Cash, beginning of period (February 18, 2012)</b>	<b>8,629</b>	<b>6,525</b>	<b>2,104</b>
<b>Cash, end of period (June 1, 2012)</b>	<b>5,278</b>	<b>2,079</b>	<b>3,199</b>
<b>Permitted DIP Financing Cumulative Draw</b>	<b>50,000</b>	<b>50,000</b>	<b>-</b>
DIP financing cumulative draw	23,066	47,000	(23,934)
<b>Net DIP Financing Availability</b>	<b>26,934</b>	<b>3,000</b>	<b>23,934</b>
<b>Note 1</b> Readers are cautioned to read the Terms of Reference as set out previously in this report for information regarding the preparation of the Cash Flow Forecast.			

7.2 During the fifteen-week period ended June 1, 2012 (the “**Reporting Period**”), the Company’s actual receipts were approximately \$6.4 million greater than forecast in the Updated Cash Flow Forecast. Management attributes this variance primarily to a combination of greater than budgeted sales during the Reporting Period, and certain assumptions related to forecast collections that did not materialize during the Reporting Period.

7.3 The Company’s total disbursements for the Reporting Period were approximately \$18.7 million less than those anticipated in the CCAA Cash Flow Forecast. Of this variance, approximately \$8.8 million relates to underlying cash flow assumptions regarding

operating costs which did not materialize, and approximately \$3.4 million relates to professional fees, which to a large degree, is considered to be a timing variance. The remaining variance of approximately \$6.5 million is considered to be permanent.

7.4 The closing cash balance of Arctic Glacier as at June 1, 2012 was approximately \$5.3 million (approximately \$2.6 million in Canada and \$2.7 million in the U.S.). Draws on the DIP Facility to June 1, 2012 were \$23.1 million (approximately CDN\$11.5 million and US\$11.6 million).

7.5 Overall, during the Reporting Period, Arctic Glacier experienced a positive net cash flow variance of approximately \$25.0 million, relative to the Updated Cash Flow Forecast. Arctic Glacier's availability under the DIP Facility as at June 1, 2012 was approximately \$26.9 million, which is approximately \$23.9 million more than forecast.

7.6 Paragraph 5 of the Initial Order authorized the Applicants to continue to utilize their existing cash management practices or similar practices as may be required to facilitate the terms of the DIP Facility. Senior Management has advised the Monitor that Arctic Glacier's cash management system continues to operate in the same manner as it had prior to the commencement of these proceedings.

#### **8.0 UPDATED CASH FLOW FORECAST FOR THE THIRTEEN-WEEK PERIOD ENDING AUGUST 31, 2012**

8.1 The Applicants, with the assistance of the Monitor, have prepared the Extended Cash Flow Forecast for the thirteen-week period June 2 to August 31, 2012 (the "**Extended Cash Flow Period**").

8.2 A copy of the Extended Cash Flow Forecast is attached to this report as **Appendix "F"**. For reference purposes, the Extended Cash Flow Forecast also includes the Canadian and

U.S. regional cash flow forecasts which form the consolidated Extended Cash Flow Forecast.

8.3 A summary of the Extended Cash Flow Forecast is set out in the table below.

<b>Arctic Glacier</b> <b>Unaudited Summary of Extended Cash Flow Forecast (Notes 1 and 2)</b> <b>For the 13-Week Period Ending August 31, 2012</b> <b>(US\$000's)</b>			
	<b>AG Companies (Consolidated)</b>	<b>Canadian Applicants</b>	<b>U.S. Applicants</b>
<b>Forecast Cash Inflow</b>			
Customer collections	96,946	23,031	73,915
<b>Forecast Total Receipts</b>	96,946	23,031	73,915
<b>Forecast Cash Outflow</b>			
Supplier payments, vehicle, occupancy, selling and general	46,565	10,756	35,809
Payroll and benefits, including KERP	25,144	7,152	17,992
Insurance	-	-	-
Capital expenditures	6,353	-	6,353
Interest and financing fees	1,313	585	728
Professional fees	11,786	10,486	1,300
<b>Total Forecast Outflow</b>	91,161	28,979	62,182
<b>Net Cash Flow, prior to DIP Financing</b>	5,785	(5,948)	11,733
DIP financing - advances	6,000	4,000	2,000
<b>Net Cash Flow</b>	11,785	(1,948)	13,733
<b>Cash, beginning of period (June 2, 2012)</b>	5,278	2,612	2,666
<b>Cash, end of period (August 31, 2012)</b>	17,063	664	16,399
<b>Note 1</b> Readers are cautioned to read the Terms of Reference as set out previously in this report for information regarding the preparation of the Cash Flow Forecast.			
<b>Note 2</b> The Extended Cash Flow Forecast has been prepared to August 31, 2012 to coincide with the proposed extension to the Stay.			

8.4 The Monitor notes the following with respect to the Extended Cash Flow Forecast:

- a) The Applicants have consolidated cash resources of approximately \$5.3 million at the commencement of the Extended Cash Flow Period, June 2, 2012. As previously reported, Senior Management has advised that the Company generally requires minimum cash reserves of \$2 million to \$3 million in order to manage the payment cycle of the Business, including timing differences that can occur in

customer receipts, and the funding of major disbursement items such as payroll, occupancy and other costs.

- b) Over the course of the Extended Cash Flow Period, the Applicants forecast a net cash inflow, prior to any DIP financing of approximately \$5.8 million, comprised of the following by geographic region:

Canada (net cash outflow) – (\$5.9) million

U.S. (net cash inflow) – \$11.7 million

- c) The Monitor notes that the second payment due under the KERP, being 25% of the total KERP obligation, was paid when due on the Phase 2 Bid Deadline (June 4, 2012) and is reflected in the Extended Cash Flow Forecast.
- d) The Extended Cash Flow Forecast reflects additional advances under the DIP Facility of \$6.0 million during the Extended Cash Flow Period, of which \$4.0 million is expected to be drawn by the Canadian Applicants, and \$2.0 million by the U.S. Applicants.
- e) Total advances under the DIP Facility by the end of the Extended Cash Flow Period are forecast to be \$29.0 million, \$15.5 million of which is forecast to be drawn by the Canadian Applicants and \$13.5 million of which is forecast to be drawn by the U.S. Applicants.
- f) The Extended Cash Flow Forecast includes the continued payment of debt service costs on the debt owing under the First Lien Credit Agreement, including default interest.
- g) Senior Management expects to fund the cash flow requirements of the Business with forecast cash resources and drawdowns under the DIP Facility.

h) The Monitor notes that the DIP Facility expires on August 8, 2012 and that the Extended Cash Flow Forecast does not take into account receipt of the proceeds of the Transaction which is anticipated to close on or before July 31, 2012. The receipt of such proceeds are not taken into account as the Purchase Price, and other financial terms of the APA, have been filed on a confidential basis and are subject to a request for a sealing order. It is the Monitor's intention to file an updated cash flow forecast subsequent to the closing of the Transaction. The Monitor notes that the proceeds of the Transaction will provide the estate with sufficient funds through the period of the requested Stay, and that expenses of the estate during this period will be largely limited to professional fees associated with post-closing matters.

## **9.0 THE MONITOR'S COMMENTS AND RECOMMENDATIONS**

### **The APA and the Sale Transaction**

9.1 The Monitor is of the view that the transaction contemplated by the APA with the Purchaser meets the factors set out in section 36(3) of the CCAA. The APA provides for a going concern sale of the Business that maintains operations. It provides for continued employment of the Applicants' existing employees, a continued customer for the Applicants' many suppliers and a continued source of supply for the Applicants' customers. The APA is subject to minimal conditions and reflects the fact that the Purchaser's financing is fully committed. The APA reflects the Applicants' efforts to obtain the best possible price for their assets through an extensive, court-approved, marketing process. The Monitor supervised the SISP and supervised the Financial Advisor's performance under its engagement with the Applicants and is satisfied that the

SISP was managed in accordance with its terms and that prospective purchasers and investors were provided a reasonable opportunity to participate in the process. In the Monitor's view, the SISP was carried out in a fair and transparent manner.

- 9.2 The APA contained the highest price received in the SISP for the Assets and had the fewest conditions to close. Accordingly, the Monitor recommended to the Special Committee that the APA was the most favourable bid received under the SISP and that it should be selected. The Financial Advisor and the CPS concurred with the Monitor's recommendations and the Special Committee accepted the recommendation.
- 9.3 It is the Monitor's view that the Purchase Price is fair and reasonable in light of the fact it resulted from a wide canvassing of the market pursuant to the court-approved SISP. It is also the Monitor's view that the Transaction, which provides for a going concern sale of the Business, is more beneficial to the Company's creditors and other stakeholders than a sale or disposition under a bankruptcy.
- 9.4 The Purchase Price is sufficient to satisfy the Lender Claims in full, any amounts that may be owing under any Court-ordered charges and the Company's known unsecured creditors in full, including any payments that may be required under section 36(7) of the CCAA. There may also be sufficient funds to permit a distribution to its unitholders after all creditor claims have been proven through a claims process.

#### **The Confidential Appendix**

- 9.5 The Applicants are seeking a sealing order for the Confidential Appendix, which contains a copy of the unredacted APA, the commitment letter, a summary of the bids and additional commercially sensitive information concerning the SISP. Disclosure of this



commercially sensitive information and/or the identities of the other bidders and the terms of their bids before Closing could negatively affect any future transaction with respect to the Applicants. As such, the Monitor supports the Applicants' request for an order sealing Confidential Appendix.

### **Extension of the Stay**

- 9.6 The Applicants have requested an extension of the Stay to August 31, 2012. The Monitor agrees that an extension until that date is appropriate, as it is subsequent to the anticipated closing of the Transaction. The Extended Cash Flow Forecast filed by the Applicants demonstrates that the Applicants are projected to have sufficient liquidity to continue operations during the proposed extension of the requested Stay period. The Applicants continue to work with due diligence and in good faith. Accordingly, the Monitor recommends that this Honourable Court grant the Stay extension requested by the Applicants.

### **Post-Closing Matters**

- 9.7 As it is contemplated by the APA that the Purchaser will offer employment to all of the Applicants' employees, there will be no employees or management remaining with the Applicants following the Closing the Transaction.
- 9.8 Given that the amount of the Purchase Price exceeds the Lender Claims, a claims process will be required to determine the existence and amounts of any unsecured claims. It is anticipated that a motion for such a claims process will be brought before this Honourable Court shortly after the Closing of the Transaction. Accordingly, it will be necessary for the Monitor to have access to the former employees, Senior Management

and the Company's books and records following the Closing of the Transaction to assist the Monitor in resolving claims filed in the claims process. It may also be necessary to have access to such individuals and information to assist in dealing with the Excluded Assets. The Monitor has discussed this issue with the Purchaser and understands that the Purchaser intends to work with the Monitor and the Applicants to put in place an arrangement to address these matters which arrangement will be brought before this Honourable Court for approval before the Closing of the Transaction.

9.9 For the foregoing reasons, the Monitor hereby respectfully recommends that this Honourable Court approve the APA and grant the relief sought by the Applicants.

\*\*\*\*\*

All of which is respectfully submitted to this Honourable Court this 15<sup>th</sup> day of June, 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".**

A handwritten signature in blue ink, appearing to read 'R. Morawetz', is written over a light blue circular stamp.

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Per: Richard A. Morawetz  
Senior Vice President

## **APPENDIX “C”**

**THE QUEEN'S BENCH  
WINNIPEG CENTRE**

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

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

**FIFTH REPORT OF THE MONITOR  
ALVAREZ & MARSAL CANADA INC.  
JULY 10, 2012**

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## **INDEX TO APPENDICES**

**Appendix A – List of the Applicants**

**Appendix B – Monitor's Fourth Report to Court, dated June 15, 2012 (excluding appendices)**

**Appendix C – Approval and Vesting Order dated June 21, 2012**

**Appendix D – Order dated June 27, 2012**

**Appendix E – Order dated June 28, 2012**

**Appendix F – Press Release dated June 28, 2012**

## 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., Arctic Glacier International Inc. and those entities listed on **Appendix "A"**, (collectively, 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 four reports with this Honourable Court. Summaries of the Monitor's first through third reports are provided in the Monitor's Fourth Report to Court dated June 15, 2012 (the "**Fourth Report**") which is attached without appendices as **Appendix "B"**.
- 1.3 The Applicants' motion to approve the sale of the Assets to the Purchaser (the "**Sale Motion**"), supported by the Fourth Report and the confidential appendix that accompanied the Fourth Report, sought an order from this Honourable Court approving the sale transaction with the Purchaser (the "**Approval and Vesting Order**").
- 1.4 At the Sale Motion heard on June 21, 2012, this Honourable Court issued the Approval and Vesting Order sought and extended the Stay until September 14, 2012. A copy of the Approval and Vesting Order is attached as **Appendix "C"**.

## **2.0 EVENTS SUBSEQUENT TO THE SALE MOTION**

- 2.1 After the hearing of the Sale Motion and the granting of the Approval and Vesting Order, the Applicants noticed that a schedule to the APA (the “**Confidential Schedule**”), which was included in the version of the APA in the public record, contained confidential and sensitive information that ought to have been redacted. According to the Applicants, if the Confidential Schedule remained in the public court record, it would be prejudicial to the Applicants since the competitively sensitive information contained therein could be accessed by the public. As such, the Applicants sought and obtained an Order from the Court on June 27, 2012 that the Confidential Schedule be sealed, kept confidential and not form part of the public record. A copy of the June 27, 2012 Court Order is attached as **Appendix “D”**.
- 2.2 Also after the hearing of the Sale Motion, it came to the Applicants’ attention that there was an increase in trading of units of AGIF. As such, the Applicants sought and obtained an Order from the Court on June 28, 2012 permitting the public disclosure of the Purchase Price. A copy of the June 28, 2012 Court Order is attached as **Appendix “E”**. A copy of AGIF’s press release disclosing the Purchase Price dated June 28, 2012 is attached as **Appendix “F”**.
- 2.3 On June 26, 2012, the Monitor filed a motion (the “**US Sale Motion**”) with the U.S. Court for entry of an Order recognizing and enforcing the Approval and Vesting Order in the United States. The hearing to consider the US Sale Motion is to be held on July 17, 2012 and any objections are required to be filed on or before July 11, 2012.
- 2.4 The Applicants have brought a motion returnable July 12, 2012 seeking an Order (the “**Transition Services Order**”):



- a) Approving the Transition Services Agreement between Arctic Glacier, LLC, Arctic Glacier U.S.A., Inc., Arctic Glacier Canada, Inc. (collectively, the “**Purchaser Group**”), the Applicants and the Monitor which provides a framework to facilitate the continued administration of the Applicants’ restructuring process, including distributions from the Applicants’ estates (the “**TSA**”);
- b) Granting additional powers to the Monitor to facilitate the continuing administration of the CCAA Proceedings as set out in the draft Transition Services Order;
- c) Authorizing the CPS, on and after Closing, to take such additional actions as the Applicants or the Monitor consider necessary to assist (i) the Applicants in connection with the administration of the CCAA Proceedings and (ii) the Monitor in fulfilling the Monitor’s functions and obligations;
- d) An order amending the Approval and Vesting Order in order to designate the affiliates of the Purchaser who will take title to the Assets in accordance with the terms of the APA (the “**Amended and Restated AVO**”); and
- e) Approving this Fifth Report and the Monitor’s activities described herein.

2.5 The purpose of this Fifth Report is to provide information to this Honourable Court concerning the TSA, the proposed Transition Services Order and the Amended and Restated AVO, and to provide the Monitor’s comments and recommendation regarding the relief sought by the Applicants.

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

### **3.0 TERMS OF REFERENCE**

- 3.1 In preparing this Fifth Report, A&M has necessarily relied upon unaudited financial and other information supplied, and representations made, by certain senior management of Arctic Glacier (“**Senior Management**”). 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 Fifth Report, or otherwise used to prepare this Fifth Report.
- 3.2 The information contained in this Fifth Report is not intended to be relied upon by any prospective purchaser or investor in any transaction with the Applicants.
- 3.3 Capitalized terms not otherwise defined in this Fifth Report are as defined in the Initial Order, the Monitor’s reports previously filed with this Honourable Court, and/or the APA.
- 3.4 Unless otherwise stated, all monetary amounts contained in this Fifth Report are expressed in United States dollars, which is the Applicants’ common reporting currency.

### **4.0 THE TRANSITION SERVICES AGREEMENT**

- 4.1 The TSA provides a framework to facilitate the administration of the Applicants’ restructuring process, including distributions from the Applicants’ estates, and expressly contemplates the assistance the Monitor will require to implement any claims process that

may be ordered by this Honourable Court. The execution of the TSA is necessary in order to ensure that the CCAA Proceedings are properly administered after the Closing of the Transaction and is subject to the approval of this Honourable Court.

4.2 The TSA provides that, during the six year period from Closing, or such other period as required by any applicable law (the “**Post-Closing Period**”), the Purchaser Group shall provide or cause to be provided to the Monitor and its authorized representatives, as reasonably requested and on the terms and subject to the conditions set forth in the TSA, certain “**Transition Services**” referred to in the TSA as follows:

- a) Retention of and access to all of the Books, Records, Tax Returns and all other information related to the Applicants and the Business that may reasonably be required in order to meet legal, regulatory, accounting, tax and auditing requirements in order to allow the Monitor to properly discharge its responsibilities pursuant to any orders issued by the Court or the U.S. Court;
- b) At no cost to the Monitor or the Applicants’ estates, for a period of 18 months following the date that a claims procedure is ordered by the Court or September 5, 2012, services from up to 5 Transferring Employees for the first 12 months and up to 3 Transferring Employees for the next 6 months, as reasonably necessary to assist the Monitor in the performance of its duties and exercising any authority given to the Monitor. Such Transferring Employees are to be agreed upon by the Monitor and the Purchaser Group and the identity of such Transferring Employees may change from time to time depending on the needs of the Monitor and as agreed by the Purchaser. After the initial 18 month period, the Purchaser Group and the Monitor are to agree on reasonable compensation for any

additional services of the Transferring Employees that may be required by the Monitor; and

c) Use of certain Assets, including:

- i. office premises and facilities of the Purchaser Group of such nature and scale as appropriate for facilitating the performance of the duties and obligations as described in the Transition Services Agreement; and
- ii. certain business names (with the qualifier “formerly known as” preceding such usages) and trademarks as identified in Schedule B to the TSA as are reasonably necessary for the Monitor to perform its duties and obligations, including conducting a claims process, provided that no other business shall be carried on under such names and trademarks.

4.3 The TSA also provides that:

- a) As soon as practicable, but no later than 30 days following Closing, 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;
- b) The Purchaser Group will be reimbursed for reasonable out-of-pocket expenses incurred as a result of the provision of the Transition Services; and
- c) The TSA shall terminate automatically upon the expiry of the Post-Closing Period.

4.4 The draft Transition Services Order, in addition to approving the TSA, provides the Monitor with additional authority to deal with matters on behalf of the Applicants such as

completing tax returns and forms and required remittances. The draft Order also grants the Monitor the authority to execute documents, in the name of and on behalf of the Applicants, as the Monitor considers necessary or desirable to perform its functions and obligations.

- 4.5 The TSA, which provides additional details regarding the Transition Services as well as other terms and conditions, is attached as an Exhibit to the Affidavit of Keith McMahon dated July 10, 2012 sworn in support of the Applicants' motion (the "**July McMahon Affidavit**").

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

- 5.1 Section 8.01 of the APA provides that the Purchaser is entitled to designate one or more Affiliates to acquire specified assets. Pursuant to a Designated Purchaser Agreement between the Purchaser Group and the Applicants (which is attached as an Exhibit to the July McMahon Affidavit), the Purchaser has designated certain subsidiaries to acquire the Assets being purchased pursuant to the APA. The Purchaser has designated a United States incorporated company to take title to the United States Assets and assume the Assumed Liabilities related to such United States Assets and a Canadian incorporated company to take title to the Canadian Assets and assume the Assumed Liabilities related to such Canadian Assets. As such, the Purchaser has requested that the Applicants seek the Amended and Restated AVO that provides for the vesting of the Assets in the specific designated purchasers. It is the Monitor's view that the Designated Purchaser Agreement implements the arrangements contemplated by the APA with respect to the corporate structure of the purchased entities going forward, is consistent with that which the Purchaser advised the Monitor at the time of the granting of the Approval and Vesting

Order, and does not materially prejudice the Applicants' stakeholders. Thus, the Monitor supports the Applicants' request for the Amended and Restated AVO.

## **6.0 ACTIVITIES OF THE MONITOR**

6.1 In addition to the Monitor's involvement in developing the TSA, the activities of the Monitor from the date of the Fourth Report have included the following:

- Continuing to attend the Company's premises on a regular basis;
- Continuing to monitor the receipts, disbursements, purchase commitments and arrangements for deposits with certain suppliers of the Applicants, including tracking on a weekly basis, the outstanding balances and major commitments due to critical suppliers identified in the Initial Order;
- Continuing to assist Senior Management in the Company's weekly financial reporting requirements to the DIP Lenders and assisting the Company in meeting its other obligations under the DIP Facility;
- Organizing bi-weekly update calls with the Lenders to discuss the weekly cash flow report and provide an update on the Company's operations;
- Reviewing the Company's weekly analysis of its DIP draw requirements or repayment under the DIP and reviewing requests regarding same when required;
- Assisting the Company in respect of its obligations under the APA and, in conjunction with the Company, its legal counsel, the Financial Advisor and the CPS, attending to matters necessary to plan for the Closing and the post-Closing period;

- Reviewing, providing comments on and assisting the Company in its negotiations of a draft sale agreement in respect of one of the Company's redundant properties;
- Responding to numerous enquiries from unit holders regarding the CCAA Proceedings, the SISP and its expected outcome;
- Acting as foreign representative in the Chapter 15 Proceedings, and, in those proceedings, filing the US Sale Motion and dealing with the mediation of the appeal of the Recognition Order filed by the IP Plaintiffs;
- Making non-confidential materials filed with this Honourable Court and with the U.S. Court publically available on the website established by the Monitor for the CCAA Proceedings; and
- Responding to enquiries from various other stakeholders, including addressing questions or concerns of parties who contacted the Monitor on the toll-free hotline number established by the Monitor.

## **7.0 THE MONITOR'S COMMENTS AND RECOMMENDATIONS**

7.1 The APA contemplates that the Purchaser will offer employment to all of the Applicants' employees. Accordingly, it is anticipated there will be no employees or management remaining with the Applicants following Closing. As a result, in order to ensure the continued efficient administration of these CCAA Proceedings, the approval of the TSA and the granting of the Transition Services Order are being sought.

7.2 Given that the Purchase Price contemplated in the APA exceeds the Lender Claims, a claims process will be required to establish and validate the amounts of any other claims. It is anticipated that a motion seeking the establishment of a claims process will be

brought before this Honourable Court on or about September 5, 2012. Accordingly, the TSA contemplates that the Monitor will have access to the Company's former employees, Senior Management and the Company's books and records following Closing in order to resolve and adjudicate claims filed in the claims process. It may also be necessary for the Monitor to have access to such individuals and information to assist in dealing with the Excluded Assets, the Excluded Liabilities and other matters associated with facilitating the administration of the Applicants' estates. Accordingly, it is the Monitor's view that the Transition Services Agreement and the additional powers for the Monitor and CPS sought in the draft Transition Services Order are appropriate and necessary in the circumstances.

- 7.3 For the foregoing reasons, the Monitor hereby respectfully recommends that this Honourable Court grant the relief sought by the Applicants in the Transition Services Order and the Amended and Restated AVO attached thereto.

\*\*\*\*\*

All of which is respectfully submitted to this Honourable Court this 10<sup>th</sup> day of July, 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".**



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Per: Richard A. Morawetz  
Senior Vice President



## **APPENDIX “D”**

**THE QUEEN'S BENCH**  
Winnipeg Centre

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

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

(collectively, the "Applicants")

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

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**CERTIFIED COPY**

**TRANSITION ORDER**

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

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File No.: 1103500

File No. 10671373

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

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

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

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

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

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

CERTIFIED COPY

of  
**TRANSITION ORDER**

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

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

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

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

#### **SERVICE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **ADDITIONAL PROVISIONS**

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

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

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

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

July 12, 2012

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

Spivak, J.

CERTIFIED A TRUE COPY

  
DEPUTY REGISTRAR

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

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



**THE QUEEN'S BENCH**  
Winnipeg Centre

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

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

(collectively, the "Applicants")

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

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

---

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File No.: 1103500

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

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

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

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

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

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

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

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

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

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

#### **SERVICE**

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

#### **SALE TRANSACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. THIS COURT ORDERS that, notwithstanding:

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

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

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

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

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

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

#### **STAY EXTENSION**

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

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

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



## SEALING

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

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

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

June 21, 2012

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J

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

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

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

**THE QUEEN’S BENCH  
Winnipeg Centre**

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

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

(collectively, the “**Applicants**”)

**MONITOR’S CERTIFICATE**

**RECITALS**

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

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

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

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

THE MONITOR CERTIFIES the following:

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

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

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

Name:

Title:

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

**REAL PROPERTY ENCUMBRANCES TO BE DISCHARGED**

**A. OWNED PROPERTY**

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

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

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

**Municipality:** City of Edmonton

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

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

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

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

**Municipality:** City of Edmonton

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

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

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

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

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

**Municipality:** City of Calgary

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

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

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

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

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

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

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

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

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

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

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

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

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

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

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

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

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

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

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

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

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

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

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

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

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

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

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

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

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

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

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

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

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

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

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

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



### **Hypothecs and Encumbrances:**

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

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

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

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

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

### **Hypothecs and Encumbrances:**

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

## B. LEASED PROPERTY

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

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

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

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

**Encumbrances:**

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

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

(a) Title No.: 139229321

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

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

**Encumbrances:**

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

(b) Title No.: 139229376

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

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

**Encumbrances:**

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

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

**(unaffected by the Vesting Order)**

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

## **APPENDIX “E”**

**THE QUEEN'S BENCH**  
Winnipeg Centre

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

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

(collectively, the "Applicants")

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

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**CERTIFIED COPY**

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

DATE OF HEARING: THURSDAY, JUNE 21, 2012 AT 10 A.M.

BEFORE THE HONOURABLE MADAM JUSTICE SPIVAK

---

**McCARTHY TÉTRAULT LLP**

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

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

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

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

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

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

CERTIFIED COPY

of

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

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

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

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

#### **SERVICE**

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

#### **SALE TRANSACTION**

3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Asset Purchase Agreement by the Vendors is hereby authorized and approved, with such minor amendments as the Vendors may deem necessary. The Vendors are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Assets to the Purchaser or such other person(s) as the Purchaser may direct and the Monitor may agree.
4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule "B" hereto (the "**Monitor's Certificate**"):

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



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

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

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

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

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

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

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

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

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

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

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

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

15. THIS COURT ORDERS that, notwithstanding:

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

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

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

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

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

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

#### **STAY EXTENSION**

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

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

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

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

*[Signature]*  
J. B. Bivale  
CERTIFIED

B Mitchell  
DEPUTY REGISTRAR

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

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

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

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

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

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

(collectively, the “**Applicants**”)

**MONITOR’S CERTIFICATE**

**RECITALS**

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

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

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

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

THE MONITOR CERTIFIES the following:

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

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

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

Name:

Title:



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

**REAL PROPERTY ENCUMBRANCES TO BE DISCHARGED**

**A. OWNED PROPERTY**

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

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

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

**Municipality:** City of Edmonton

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

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

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

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

**Municipality:** City of Edmonton

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

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

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

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

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

**Municipality:** City of Calgary

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

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

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

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

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

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

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

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

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

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

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

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

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

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

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

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

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

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

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

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

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

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

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

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

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

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

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

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

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

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

**Registered Owner:** Arctic Glacier Inc.

**Encumbrances:**

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

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

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

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

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

### **Hypothecs and Encumbrances:**

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

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

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

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

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

### **Hypothecs and Encumbrances:**

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

## B. LEASED PROPERTY

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

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

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

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

**Encumbrances:**

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

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

(a) Title No.: 139229321

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

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

**Encumbrances:**

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

(b) Title No.: 139229376

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

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

**Encumbrances:**

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

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

**(unaffected by the Vesting Order)**

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

## **APPENDIX “F”**



**ASSIGNMENT, ASSUMPTION AND AMENDING AGREEMENT**

THIS AGREEMENT is entered into on July 26, 2012 with effect at the Time of Closing  
BETWEEN

**ARCTIC GLACIER, LLC** (formerly known as H.I.G. Zamboni, LLC), a limited liability company formed under the laws of Delaware (the “**Original Purchaser**”),

– and –

**ARCTIC GLACIER U.S.A., INC.**, a corporation incorporated under the laws of Delaware (“**Arctic U.S.A.**”),

– and –

**ARCTIC GLACIER CANADA INC.**, a corporation incorporated under the laws of British Columbia (“**Arctic Canada**”, and together with Arctic U.S.A., the “**Designated Purchasers**”),

– and –

**ARCTIC GLACIER INCOME FUND**, an unincorporated open-ended mutual fund trust established under the laws of the Province of Alberta (the “**Fund**”),

– and –

Each of the subsidiaries of the Fund listed in Schedule A hereto (together with the Fund, the “**Vendors**” and each a “**Vendor**”).

WHEREAS the Original Purchaser and the Vendors entered into an asset purchase agreement dated as of June 7, 2012 (the “**Asset Purchase Agreement**”), pursuant to which each of the Vendors agreed to sell, assign and transfer to the Original Purchaser, and the Original Purchaser agreed to purchase and assume, the Assets and the Assumed Liabilities from each of the Vendors, upon the terms and conditions set forth therein;

AND WHEREAS pursuant to Section 6.02(a)(iii) of the Asset Purchase Agreement, the Original Purchaser is required to enter into and deliver this Agreement to the Vendors at the Time of Closing;

AND WHEREAS, the Original Purchaser, Arctic U.S.A., Arctic Canada and the Vendors entered into a designated purchaser agreement dated as of July 10, 2012, pursuant to which, as permitted by Section 8.01 of the Asset Purchase Agreement, the Designated Purchasers (i) were designated by the Original Purchaser to acquire the Assets, assume, fulfil and discharge the Assumed Liabilities and make offers of employment to the Employees upon the terms and conditions set forth

therein, and (ii) agreed to be jointly and severally bound with the Original Purchaser under the Asset Purchase Agreement as if they were parties thereto;

AND WHEREAS, the parties to the Asset Purchase Agreement wish to amend certain provisions thereof, all as more particularly set forth herein;

NOW THEREFORE in conjunction with and in consideration of the completion of the transactions to be effected at the Time of Closing as contemplated by the Asset Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Vendors, the Original Purchaser and the Designated Purchasers agrees as follows:

## **ARTICLE 1 - INTERPRETATION**

### **1.01**            **Definitions**

Unless otherwise defined herein or the context otherwise requires, capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Asset Purchase Agreement.

### **1.02**            **Headings**

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. Except where the context otherwise requires, references herein to “this Agreement” mean and refer to this assignment, assumption and amending agreement, and the terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles and Sections of, and Schedules to, this Agreement.

### **1.03**            **Extended Meanings**

In this Agreement words importing the singular number include the plural and vice versa, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and Governmental Authorities. The term “including” means “including without limiting the generality of the foregoing”.

## **ARTICLE 2 – ASSIGNMENT AND ASSUMPTION**

### **2.01**            **Assignment by the Vendors**

Subject to the terms of the Asset Purchase Agreement, the relevant Vendors hereby sell, assign and transfer to:

- (i) Arctic U.S.A., all of the Vendors' right, title, benefit and interest in and to the Assets other than any Assets that are owned by Arctic Glacier Inc.; and
- (ii) Arctic Canada, all of Arctic Glacier Inc.'s right, title, benefit and interest in and to the Assets.

## **2.02 Assumption by Designated Purchasers**

Subject to the terms of the Asset Purchase Agreement:

- (i) Arctic U.S.A. hereby assumes and agrees to fulfil, perform and discharge all Assumed Liabilities other than the Assumed Liabilities to be assumed by Arctic Canada in Section 2.02(ii) hereof; and
- (ii) Arctic Canada hereby assumes and agrees to fulfil, perform and discharge all Assumed Liabilities that are Liabilities of Arctic Glacier Inc.

The Original Purchaser hereby agrees to be jointly and severally bound with each of Arctic U.S.A. and Arctic Canada for the fulfilment, performance and discharge of the Assumed Liabilities.

## **2.03 Release by the Original Purchaser and the Designated Purchasers**

Each of the Original Purchaser, Arctic U.S.A. and Arctic Canada hereby (i) unconditionally and irrevocably fully releases and discharges each of the Vendors from any Claim which it may now or hereafter have against any of the Vendors by reason of any matter or thing arising out of, or resulting from, any of the Assumed Liabilities; and (ii) agrees that it will not make or take any Claim with respect to any matter released and discharged in this Section 2.03 which may result in any Claim against any Vendor for contribution or indemnity or other relief.

## **ARTICLE 3– AMENDMENTS**

### **3.01 Amendments to the Asset Purchase Agreement**

The parties hereto agree that:

- (i) the following definition is hereby added to Section 1.01 of the Asset Purchase Agreement:

““**Excluded Retainers**” has the meaning set out in Section 2.02(m).”

- (ii) the following definition is hereby added to Section 1.01 of the Asset Purchase Agreement:

““**Petty Cash**” means the petty cash of the Vendors.”

- (iii) the definition “**Time of Closing**” in Section 1.01 of the Asset Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“**Time of Closing**” means 12:01 a.m. (Toronto time) on the Closing Date.”

- (iv) the following two sentences are hereby added after the first sentence in the definition of “**Working Capital**” in Section 1.01 of the Asset Purchase Agreement:

“Notwithstanding anything else to the contrary herein, including any payment made by the Vendors pursuant to Section 6.06, any amounts accruing to the Closing Date on account of any management incentive plan of any of the Vendors that are calculated and payable annually shall be treated as current liabilities in the calculation of Working Capital. In addition, for the avoidance of doubt, the Excluded Retainers shall not be treated as current assets in the calculation of Working Capital.”

- (v) Section 2.01(f) of the Asset Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“(f) all Inventories and the Petty Cash;”

- (vi) Section 2.02(a) of the Asset Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“(a) the respective cash and cash equivalents, short-term investments and bank account balances, other than the Petty Cash;”

- (vii) the word “and” is hereby deleted from Section 2.02(k) of the Asset Purchase Agreement;

- (viii) the word “and” is hereby added immediately after the words “any Excluded Redundant Properties;” in Section 2.02(l) of the Asset Purchase Agreement;

- (ix) the following new Section 2.02(m) is hereby added to the Asset Purchase Agreement:

“(m) any retainers for professional fees paid by any Vendor in relation to the CCAA Proceedings (the “**Excluded Retainers**”).”

- (x) the words “or Section 2.10” are hereby deleted from each of Section 2.03(i) and Section 2.04(b);

- (xi) the word “and” is hereby deleted from Section 2.03(j) of the Asset Purchase Agreement;
- (xii) the word “and” is hereby added immediately after the words “any Eligible Capital Expenditures;” in Section 2.03(k) of the Asset Purchase Agreement;
- (xiii) the following new Section 2.03(l) is hereby added to the Asset Purchase Agreement:

“(l) the Industrial Alliance Deferred Profit Sharing Plan (Contract No.40239-001), the Industrial Alliance Registered Retirement Savings Plan (Contract No.40240-001), the Industrial Alliance Non-Registered Group Savings Plan (Contract No. 41192-001) and the Manulife Financial Group Benefits Policy No. G0099035 amended to terminate coverage for Class “G” (Executive Early Retirees) participants.”

- (xiv) Section 2.05 of the Asset Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“The purchase price payable to the Vendors for the Assets (such amount being hereinafter referred to as the “**Purchase Price**”) will be \$422,000,000 plus the dollar value of (i) the price paid by the Vendors for the purchase of the land and building at 600 South 80<sup>th</sup> Avenue, Tolleson, Arizona; (ii) the Petty Cash; and (iii) the Assumed Liabilities, subject to adjustment as provided in Section 2.07.”

- (xv) the second sentence in Section 2.07(2) of the Asset Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“Inventories will be confirmed as at the close of business on the second to last Business Day before the Closing Date by a physical stock-taking supervised jointly by representatives of the Fund, on behalf of the Vendors, representatives of the Purchaser and, if the Monitor determines it is necessary or desirable to be present during the completion of such physical stock-taking, representatives of the Monitor. Subject to the next sentence, the Petty Cash will be confirmed as at the close of business on the last Business Day before the Closing Date by a physical counting, supervised jointly by representatives of the Fund, on behalf of the Vendors, representatives of the Purchaser and, if the Monitor determines it is necessary or desirable to be present during the completion of such counting, representatives of the Monitor. In the event that the amount of Petty Cash has not been confirmed by 12:00 p.m. (Toronto time) on the Business Day prior to the Closing Date, the parties agree that the Petty Cash shall be deemed to be \$20,000.”

- (xvi) Section 2.07(4) of the Asset Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“If the Working Capital as determined by the parties or the arbitrator, as the case may be, exceeds the Estimated Working Capital by more than \$5,000,000, the Purchaser will pay the amount by which the Working Capital exceeds the sum of the Estimated Working Capital and \$5,000,000 to the Monitor, by wire transfer of immediately available funds to an account specified by the Monitor within two (2) Business Days after the determination of the Working Capital, and such amount will be credited to the Vendors on account of the Purchase Price and the Purchase Price will be adjusted accordingly.”

- (xvii) Section 2.10 of the Asset Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“The Vendors will be liable for and will pay, or will cause to be paid pursuant to Section 6.04, all transfer, land transfer, value added, *ad-valorem*, excise, sales, use, consumption, goods or services, harmonized sales, retail sales, social services, or other similar taxes or duties (collectively, “**Transfer Taxes**”) payable under any Applicable Law on the sale and purchase of the Assets under this Agreement. The Purchaser will, without undue delay, prepare and file any affidavits or returns required in connection with the foregoing at its own cost and expense and will use commercially reasonable efforts to minimize the amount of Transfer Taxes payable, including by seeking, and causing each of the Designated Purchasers, to avail itself of all available exemptions from otherwise applicable Transfer Taxes that were contemplated in any Transfer Taxes estimate provided by the Purchaser to the Vendors.”

- (xviii) the first sentence of Section 4.05(7) of the Asset Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“Except as provided in Section 2.03(1)(c), Section 2.03(1)(j) and Section 2.03(1)(l), the Purchaser shall not assume any of the Employee Plans or Liabilities for accrued benefits or any other Liabilities under or in respect of any of the Employee Plans.”

- (xix) Section 6.03 is hereby deleted in its entirety and replaced with the following:

“When each party has advised the others that it is satisfied with the documents delivered to it at or before the Time of Closing, the Purchaser and the Vendors will each deliver to the Monitor written confirmation that the conditions set out in Sections 5.01, 5.02 and

5.03, as applicable, have been satisfied or waived following which the Monitor will deliver an executed copy of the Monitor's Certificate to the Purchaser's counsel in escrow upon the sole condition of receipt by the Monitor of the amounts referred to in Sections 2.11(1)(a) and (b). In accordance with Section 2.11(1), all of the foregoing amounts will then be, as applicable, credited to the Vendors or paid by the Purchaser to the Monitor (or as the Monitor may direct) by wire transfer of immediately available funds to an account designated in writing by the Monitor for this purpose pursuant to Section 2.11(1)(b). Following written confirmation of receipt by the Monitor of such funds, the Monitor's Certificate will be released from escrow to the Purchaser. Upon such release, the Monitor's Certificate shall be deemed to have been delivered at the Time of Closing. The Monitor will file a copy of the Monitor's Certificate with the Canadian Court and provide evidence of such filing to the Purchaser."

- (xx) the following new Section 6.04 is hereby added to the Asset Purchase Agreement:

**"6.04 Purchaser's Allowances**

At the Time of Closing, the Vendors shall pay the following amounts to the Purchaser:

- (a) The sum of \$5,000,000 on account of reimbursement of expenses incurred by or on behalf of the Purchaser. Within ten (10) Business Days following the Closing Date, the Purchaser shall provide documentary evidence to the Vendors and the Monitor of the incurrence of expenses in relation to the transactions contemplated by this Agreement of at least \$5,000,000; and
- (b) The sum of \$3,650,000 on account of Transfer Taxes payable on or following the Closing Date. Within **[ninety (90)]** days from the Closing Date, the Purchaser will provide the Vendors with a statement ("**Final Transfer Tax Statement**") setting out the aggregate amount of Transfer Taxes for which the Vendors are liable pursuant to Section 2.10 (the "**Final Transfer Tax Amount**"):
  - (i) If the Final Transfer Tax Amount is less than \$3,650,000, the Purchaser shall pay to the Vendors the amount by which the Final Transfer Tax Amount is less than \$3,650,000. Such amount shall be paid by the Purchaser within five (5) Business Days of the Final Transfer Tax

Statement by bank draft, certified cheque or wire transfer of immediately available funds; and

- (ii) If the Final Transfer Tax Amount is greater \$3,650,000, the Vendors shall pay to the Purchaser the amount by which the Final Transfer Tax Amount exceeds \$3,650,000. Such amount shall be paid by the Vendors within five (5) Business Days of the Final Transfer Tax Statement by bank draft, certified cheque or wire transfer of immediately available funds.”
- (xxi) the former Section 6.04 is hereby renumbered as Section 6.05, and the reference to Section 6.04(2) contained in the last sentence of Section 5.06 of the Asset Purchase Agreement is hereby amended to refer to Section 6.05(2) of the Asset Purchase Agreement; and
- (xxii) the phrase “Subject to Section 6.04,” is hereby added at the beginning of Section 8.04 and the first letter of the following word shall be in lower case.
- (xxiii) the following new Section 6.06 is hereby added to the Asset Purchase Agreement:

**“6.06 Payment of Management Incentive Plan Amounts**

“Within two (2) Business Days after receiving approval of the Canadian Court therefor, the Vendors agree to pay to all eligible participants, all amounts accruing to the Closing Date under the management incentive plans of the Vendors, notwithstanding the fact that such amounts are typically calculated and payable annually pursuant to such plans.”

- (xxiv) the following new Section 6.07 is hereby added to the Asset Purchase Agreement:

**“6.07 Return of Cash**

“The Purchaser shall, within three (3) Business Days from the Closing Date, pay or cause to be paid to the Vendors, an amount corresponding to the amount of all cash and cash equivalents, short term investments and bank account balances in all Designated Purchaser bank accounts immediately prior to the Time of Closing in excess of \$18,000 in the aggregate for all such accounts, excluding for greater certainty any amounts in such bank accounts that were received by a Designated Purchaser in connection with matters other than the operation of the Purchased Businesses, including any debt or equity financing.”



### **3.02 Acknowledgment Regarding Subsection 20(24) Tax Act Election**

Notwithstanding Section 2.08(3) of the Asset Purchase Agreement, the Original Purchaser, Arctic U.S.A., Arctic Canada and the Vendors hereby acknowledge and agree that no election is required under subsection 20(24) of the Tax Act or any equivalent or corresponding provision under applicable provincial or territorial Tax legislation.

### **3.03 Asset Purchase Agreement to Remain in Full Effect**

Except as specifically amended by this Agreement, the Asset Purchase Agreement remains in full force and effect, without amendment, and is hereby in all respects ratified and confirmed. The Asset Purchase Agreement shall henceforth be read and construed in conjunction with this Agreement and references to the “Agreement” in the Asset Purchase Agreement or in any other agreement, document, certificate or instrument (other than this Agreement) delivered in connection with, or pursuant to, the Asset Purchase Agreement, shall mean the Asset Purchase Agreement, as amended hereby. This Agreement will terminate without any further action of any of the parties hereto upon the termination of the Asset Purchase Agreement in accordance with its terms.

## **ARTICLE 4– GENERAL**

### **4.01 Liability of the Trustees and Unitholders**

The parties hereto acknowledge that where Arctic Glacier Inc. is signing on behalf of the Fund, it is entering into this Agreement solely on behalf of the Fund and the obligations of the Fund hereunder shall not be personally binding upon any trustee of the Fund or any registered or beneficial holder of units of the Fund or any annuitant under a plan of which the holder of units of the Fund acts as a trustee or carrier, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, any of the foregoing or the private property of any of the foregoing in respect of any indebtedness, obligation or liability of the Fund arising hereunder or arising in connection with or from the matters to which this Agreement relates, and recourse shall be limited to, and satisfied only out of, the assets of the Fund.

### **4.02 Further Assurances**

Each of the Vendors, the Original Purchaser, Arctic U.S.A. and Arctic Canada will from time to time execute and deliver all such further documents and instruments and do all acts and things as any of the other parties may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

### **4.03 Time of the Essence**

Time is of the essence of this Agreement.

#### **4.04**            **Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

#### **4.05**            **Assignment**

This Agreement may not be assigned by any of the Vendors, on the one hand, or by the Original Purchaser, Arctic U.S.A. or Arctic Canada, on the other hand, without the consent of (i) in the case of an assignment by any Vendor, the Original Purchaser and the Designated Purchasers; and (ii) in the case of an assignment by the Original Purchaser, Arctic U.S.A. or Arctic Canada, the Vendors.

#### **4.06**            **Amendments and Waivers**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by each of the parties. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

#### **4.07**            **Notices**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by personal delivery, by registered mail or by electronic means of communication addressed to the recipient as follows:

To the Vendors:

c/o Arctic Glacier Income Fund

Address:        625 Henry Avenue, Winnipeg, Manitoba R3A 0V1

Fax No.:        204-783-9857

Attention:     Keith McMahon, President and Chief Executive Officer

With copies to (which will not constitute notice)

Aikins, MacAulay & Thorvaldson LLP  
Barristers & Solicitors

Address: 30th Floor Commodity Exchange Tower  
360 Main Street, Winnipeg, Manitoba, Canada  
R3C 4G1

Fax No.: 204-957-4437

Attention: Hugh A. Adams and Dale R. Melanson

McCarthy Tétrault LLP

Address: 66 Wellington Street West  
Suite 5300  
Toronto, Ontario Canada  
M5K 1E6

Fax No.: 416-868-0673

Attention: Kevin McElcheran and Jonathan Grant

To the Original Purchaser, Arctic U.S.A. and Arctic Canada:

Address: 1450 Brickell Avenue  
31st Floor  
Miami, FL 33131

Fax No.: 305-379-2013

Attention: Bret Wiener and Brian McMullen

With copies to (which will not constitute notice):

Stikeman Elliott LLP, Canadian counsel to the Original Purchaser and the  
Designated Purchasers

Address: 5300 Commerce Court West  
199 Bay Street  
Toronto, Ontario  
M5L 1B9

Fax No.: 416-947-0866

Attention: Jeffrey Singer and Martin Langlois

- and to -

Ropes & Gray LLP, U.S. counsel to the Original Purchaser and the Designated Purchasers

Address: 1211 Avenue of the Americas  
New York, NY  
10036-8704

Fax No.: 212-596-9090

Attention: Carl P. Marcellino

To the Monitor:

Alvarez & Marsal Canada Inc.

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

Fax No.: 416-847-5201

Attention: Richard Morawetz and Adam Zalev

With copies to (which will not constitute notice):

Osler, Hoskin & Harcourt LLP

Address: Box 50, 1 First Canadian Place  
Toronto, Ontario  
M5X 1B8

Fax No.: 416-862-6666

Attention: Marc S. Wasserman and Michael De Lellis

or to such other street address, individual or electronic communication number or address as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the fifth (5<sup>th</sup>) Business Day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if

given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system that might affect the delivery of mail, any such demand, notice or other communication may not be mailed but must be given by personal delivery or by electronic communication.

#### **4.08**                **Governing Law**

This Agreement is governed by and will be construed in accordance with the laws of the Province of Manitoba and the laws of Canada applicable therein.

#### **4.09**                **Attornment**

For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Manitoba and the courts of the Province of Manitoba will have jurisdiction to entertain any action arising under this Agreement. Each of the parties hereto attorns to the jurisdiction of the courts of the Province of Manitoba.

#### **4.10**                **Appointment of Agent for Service**

The Original Purchaser nominates, constitutes and appoints Pitblado LLP, Barristers and Solicitors, of the City of Winnipeg its true and lawful agent to accept service of process and to receive all lawful notices in respect of any action arising under this Agreement (other than any notice that is to be given by one party to another pursuant to Section 4.07). Until due and lawful notice of the appointment of another and subsequent agent in the Province of Manitoba has been given to and accepted by the Vendors, service of process or of papers and such notices upon will be accepted by the Original Purchaser as sufficient service.

#### **4.11**                **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

#### **4.12**                **Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

#### **4.13**                **Severability**

If any provision of this Agreement is determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect so long as the economic or legal substance of the

transactions contemplated hereby is not affected in any manner materially adverse to any of the parties.

*[The balance of this page has been intentionally left blank]*

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

**ARCTIC GLACIER, LLC**

By: Arctic Glacier Group Holdings, Inc.

Its: Sole Member

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

Bret Wiener, President and Treasurer

**ARCTIC GLACIER U.S.A., INC.**

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

**ARCTIC GLACIER CANADA INC.**

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

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


**ARCTIC GLACIER, LLC**

By: Arctic Glacier Group Holdings, Inc.

Its: Sole Member

By: \_\_\_\_\_  
Bret Wiener, President and Treasurer

**ARCTIC GLACIER U.S.A., INC.**

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


**ARCTIC GLACIER CANADA INC.**

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




**ARCTIC GLACIER INCOME FUND, by its  
attorney, ARCTIC GLACIER INC.**

Per: 

**ARCTIC GLACIER INC.**

Per: 

**ARCTIC GLACIER INTERNATIONAL INC.**

Per: 

**ARCTIC GLACIER TEXAS INC.**

Per: 

**ARCTIC GLACIER CALIFORNIA INC.**

Per: 

**ARCTIC GLACIER MICHIGAN INC.**

Per: 


**ARTIC GLACIER NEBRASKA INC.**

Per: 

**ARCTIC GLACIER WISCONSIN INC.**

Per: 

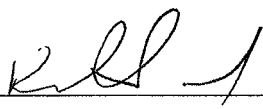
**ARCTIC GLACIER MINNESOTA INC.**

Per: 

**ARCTIC GLACIER NEW YORK INC.**

Per: 

**ICE PERFECTION SYSTEMS INC.**

Per: 

**ARCTIC GLACIER NEWBURGH INC.**

Per: 


**ARCTIC GLACIER PENNSYLVANIA INC.**

Per: 


**ARCTIC GLACIER OREGON INC.**

Per: 


**ARCTIC GLACIER SERVICES INC.**

Per: 

**ARCTIC GLACIER VERNON INC.**

Per: 

**ARCTIC GLACIER ROCHESTER INC.**

Per: 

**DIAMOND ICE CUBE COMPANY  
INC.**

Per: 

**ARCTIC GLACIER LANSING INC.**

Per: 

**ARCTIC GLACIER GRAYLING INC.**

Per: 

**ARCTIC GLACIER PARTY TIME INC.**

Per: 

**WONDERLAND ICE, INC.**

Per: 

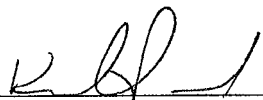
**R&K TRUCKING, INC.**

Per: 

**KNOWLTON ENTERPRISES, INC.**

Per: 

**WINKLER LUCAS ICE AND FUEL  
COMPANY**

Per: 

**JACK FROST ICE SERVICE, INC.**

Per: 


**GLACIER ICE COMPANY, INC.**

Per: 

**MOUNTAIN WATER ICE COMPANY**

Per: 

**DIAMOND NEWPORT CORPORATION**

Per: 

**ICESURANCE INC.**

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

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



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



## **SCHEDULE A**

### **Subsidiaries of the Fund**

1. Arctic Glacier Inc. (Alberta)
2. Arctic Glacier International Inc. (Delaware)
3. Arctic Glacier Texas Inc. (Texas)
4. Arctic Glacier California Inc. (California)
5. Arctic Glacier Michigan Inc. (Michigan)
6. Arctic Glacier Nebraska Inc. (Iowa)
7. Arctic Glacier Wisconsin Inc. (Wisconsin)
8. Arctic Glacier Minnesota Inc. (Minnesota)
9. Arctic Glacier New York Inc. (New York)
10. Ice Perfection Systems Inc. (Delaware)
11. Arctic Glacier Newburgh Inc. (New York)
12. Arctic Glacier Pennsylvania Inc. (Delaware)
13. Arctic Glacier Oregon Inc. (Oregon)
14. Arctic Glacier Services Inc. (Delaware)
15. Arctic Glacier Vernon Inc. (California)
16. Arctic Glacier Rochester Inc. (New York)
17. Diamond Ice Cube Company Inc. (New York)
18. Arctic Glacier Lansing Inc. (Michigan)
19. Arctic Glacier Grayling Inc. (Michigan)
20. Arctic Glacier Party Time Inc. (Michigan)
21. Wonderland Ice, Inc. (Michigan)
22. R&K Trucking, Inc. (Michigan)

23. Knowlton Enterprises, Inc. (Michigan)
24. Winkler Lucas Ice and Fuel Company (Michigan)
25. Jack Frost Ice Service, Inc. (California)
26. Glacier Ice Company, Inc. (California)
27. Mountain Water Ice Company (California)
28. Diamond Newport Corporation (California)
29. Glacier Valley Ice Company, L.P. (California)
30. ICEsurance Inc. (Delaware)

## **APPENDIX “G”**

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# ARCTIC GLACIER INCOME FUND

## **Arctic Glacier Income Fund Completes Sale of its Business to H.I.G. Capital**

**WINNIPEG – July 27, 2012 – Arctic Glacier Income Fund** (CNSX: AG) (“Arctic Glacier”) announced today it has completed the previously announced sale of substantially all of its business and assets (the “Transaction”) to affiliates of H.I.G. Capital (the “Purchaser”). The Transaction was effected pursuant to the Companies’ Creditors Arrangement Act (Canada) (“CCAA”) and the U.S. Bankruptcy Code.

The business continues to be carried on under the Arctic Glacier name and substantially all employees, including senior management, have accepted employment with the Purchaser. “This transaction makes Arctic Glacier financially stronger and better positioned to compete and grow” said Keith McMahon, President and CEO of the new company, Arctic Glacier Holdings, Inc. “We look forward to carrying on our proud tradition of product quality and service excellence. We wish to thank our customers, suppliers and employees for their support throughout this process”.

Prior to closing of the Transaction, Arctic Glacier agreed to certain amendments to the asset purchase agreement between Arctic Glacier and the Purchaser. As a result of the amendments and because Arctic Glacier did not purchase the land and buildings of its Arizona facility, the cash proceeds available on closing were \$413.35 million subject to certain post-closing working capital and other adjustments under the asset purchase agreement. A copy of the agreement setting out the amendments will be filed on SEDAR and may be viewed at [www.sedar.com](http://www.sedar.com).

A portion of the cash proceeds received by Arctic Glacier on closing of the Transaction was used to satisfy all amounts owing to Arctic Glacier’s existing secured lenders. The remainder of those proceeds is being held by Alvarez & Marsal Canada Inc., the CCAA Court-appointed monitor (the “Monitor”). Arctic Glacier expects that those remaining proceeds of sale will be sufficient to pay all of its known unsecured creditors and may be sufficient to permit a distribution to its unitholders after all unsecured creditor claims have been proven and satisfied. Prior to any distribution of the balance of funds held by the Monitor to the unsecured creditors of Arctic Glacier and its subsidiaries, a court-approved claims process will be undertaken to identify creditor claims against Arctic Glacier and its subsidiaries and adjudicate or resolve claims filed.

Following the completion of that claims process, the trustees of Arctic Glacier expect to determine whether sufficient funds exist to make a further distribution to unitholders. The timing and amount of any distributions to be paid to unsecured creditors and unitholders cannot be determined at this time.



## Forward-Looking Statements

Certain statements included herein constitute “forward-looking statements”. All statements, other than statements of historical fact, included in this release that address future activities, events, developments or financial performance are forward-looking statements. These forward-looking statements can be identified by the use of forward-looking words such as “may”, “should”, “will”, “could”, “expect”, “intend”, “plan”, “estimate”, “anticipate”, “believe”, “future” or “continue” or the negative thereof or similar variations. In particular, statements about the expected timetable for determination and payment of creditor claims, the ability of Arctic Glacier to pay all of its known unsecured creditors and any distribution to unitholders after all unsecured creditor claims have been proven and satisfied, are or involve forward-looking information. These forward-looking statements are based on certain assumptions and analyses made by Arctic Glacier and its management, in light of their experiences and their perception of historical trends, current conditions and expected future developments, as well as other factors they believe are appropriate in the circumstances. Investors are cautioned not to put undue reliance on such forward-looking statements, which are not a guarantee of performance and are subject to a number of uncertainties, assumptions and other factors, many of which are outside the control of Arctic Glacier, which could cause actual results to differ materially from those expressed or implied by such forward-looking statements. Important factors that could cause actual results to differ materially from those expressed or implied by such forward-looking statements include, among other things, the ability of Arctic Glacier to complete the unsecured creditors claims process and distribute any amounts in connection with that process and the availability of funds sufficient to make further distributions to its unitholders following completion of the claims process. Readers are cautioned that the foregoing list is not exhaustive. Such forward-looking statements should, therefore, be construed in light of such factors. If any of these risks or uncertainties were to materialize, or if the factors and assumptions underlying the forward-looking information were to prove incorrect, actual results could vary materially from those that are expressed or implied by the forward-looking information contained herein. All forward-looking statements attributable to Arctic Glacier, or persons acting on its behalf, are expressly qualified in their entirety by the cautionary statements set forth above. Readers are cautioned not to place undue reliance on forward-looking statements contained herein, which reflect the analysis of the management of Arctic Glacier, as appropriate, only as of the date of this release. For more information regarding these and other risks, readers should consult Arctic Glacier’s reports on file with applicable securities regulatory authorities accessible online by going to SEDAR at [www.sedar.com](http://www.sedar.com) or by going to the Arctic Glacier website at [www.arcticglacier.com](http://www.arcticglacier.com). Arctic Glacier is under no obligation, and Arctic Glacier expressly disclaims any intention or obligation, to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by applicable law.

## About Arctic Glacier

*Arctic Glacier Income Fund trust units are listed on the Canadian National Stock Exchange under the trading symbol AG.UN. There are 350.3 million trust units outstanding.*

## Contact Information

Keith McMahon, President & CEO

Doug Bailey, Chief Financial Officer

Toll free investor relations phone: 888-573-9237

**[www.arcticglacier.com](http://www.arcticglacier.com)**

## **APPENDIX “H”**

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re	:	Chapter 15
	:	
ARCTIC GLACIER INTERNATIONAL INC.,	:	Case No. 12-10605 (KG)
<i>et al.</i> , <sup>1</sup>	:	
	:	
	:	(Jointly Administered)
Debtors in a Foreign Proceeding.	:	<i>Re DKT #124</i>
	:	

**STIPULATION AND ORDER AMONG THE MONITOR,  
DEBTORS, AND THE UNITED STATES ATTORNEY'S OFFICE FOR  
THE SOUTHERN DISTRICT OF OHIO REGARDING  
MARCH 2010 CRIMINAL JUDGMENT OF  
ARCTIC GLACIER INTERNATIONAL, INC.**

**THIS STIPULATION AND ORDER** (the “Stipulation”) by and between

Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized foreign representative (the “Monitor”) for the above-captioned debtors (collectively, the “Debtors”) in a proceeding (the “Canadian Proceeding”) commenced under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”) and pending before the Court of Queen’s Bench Winnipeg Centre (the “Canadian Court”), the Debtors, and the United States Attorney’s Office for the Southern District of Ohio (the “DOJ,”

The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, follow in parentheses: (i) Arctic Glacier California Inc. (7645); (ii) Arctic Glacier Grayling Inc. (0976); (iii) Arctic Glacier Inc. (4125); (iv) Arctic Glacier Income Fund (4736); (v) Arctic Glacier International Inc. (9353); (vi) Arctic Glacier Lansing Inc. (1769); (vii) Arctic Glacier Michigan Inc. (0975); (viii) Arctic Glacier Minnesota Inc. (2310); (ix) Arctic Glacier Nebraska Inc. (7790); (x) Arctic Glacier New York Inc. (2468); (xi) Arctic Glacier Newburgh Inc. (7431); (xii) Arctic Glacier Oregon, Inc. (4484); (xiii) Arctic Glacier Party Time Inc. (0977); (xiv) Arctic Glacier Pennsylvania Inc. (9475); (xv) Arctic Glacier Rochester Inc. (6989); (xvi) Arctic Glacier Services Inc. (6657); (xvii) Arctic Glacier Texas Inc. (3251); (xviii) Arctic Glacier Vernon Inc. (3211); (xix) Arctic Glacier Wisconsin Inc. (5835); (xx) Diamond Ice Cube Company Inc. (7146); (xxi) Diamond Newport Corporation (4811); (xxii) Glacier Ice Company, Inc. (4320); (xxiii) Ice Perfection Systems Inc. (7093); (xxiv) ICEsure Inc. (0849); (xxv) Jack Frost Ice Service, Inc. (7210); (xxvi) Knowlton Enterprises Inc. (8701); (xxvii) Mountain Water Ice Company (2777); (xxviii) R&K Trucking, Inc. (6931); (xxix) Winkler Lucas Ice and Fuel Company (0049); (xxx) Wonderland Ice, Inc. (8662). The Debtors' executive headquarters is located at 625 Henry Avenue, Winnipeg, Manitoba, R3A 0V1, Canada.



and together with the Monitor and the Debtors, the “Parties”) is executed as of the date set forth below.

### **RECITALS**

**WHEREAS**, on February 22, 2012, the Debtors commenced the Canadian Proceeding, and the Canadian Court entered an initial order (including any extensions, amendments, or modifications thereto, the “Initial Order”), pursuant to the CCAA, providing various forms of relief thereunder, including, but not limited to a stay of all proceedings against or concerning property of the Debtors;

**WHEREAS**, on February 22, 2012 (the “Petition Date”), the Monitor commenced these proceedings by filing verified petitions on behalf of the Debtors, pursuant to sections 1504 and 1515 of title 11 of the United States Code (the “Bankruptcy Code”), seeking recognition by this Court of the Canadian Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code;

**WHEREAS**, on February 23, 2012, this Court entered the *Order Granting Provisional Relief* [Docket No. 28], providing for, among other things, a stay of all proceedings against or concerning property of the Debtors located within the territorial jurisdiction of the United States;

**WHEREAS**, on March 16, 2012, this Court entered the *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief* [Docket No. 70] (the “Recognition Order”). Pursuant to the Recognition Order, this Court (a) granted recognition of the Canadian Proceeding as a foreign main proceeding under section 1517 of the Bankruptcy Code, and (b) enforced in full the Initial Order on a permanent basis in the United States;

**WHEREAS**, on June 21, the Canadian Court entered the CCAA Vesting Order,<sup>2</sup> pursuant to which the Canadian Court authorized and approved the Sale free and clear of all Claims and Encumbrances, except as otherwise set forth in the Purchase Agreement;

**WHEREAS**, on June 26, 2012, the Monitor filed the U.S. Sale Motion, requesting that this Court (a) recognize and enforce the CCAA Vesting Order; (b) authorize and approve pursuant to section 363(f) of the Bankruptcy Code, the sale of the Debtors' right, title, and interest in and to the Purchased Assets to the Purchaser, free and clear of all Interests, except as otherwise provided in the Purchase Agreement; (c) authorize and approve, to the extent provided for in the CCAA Vesting Order, the assignment of the Assigned Contracts (as defined in the Purchase Agreement); and (d) grant certain related relief, including payment of the Lender Claims;

**WHEREAS**, in March of 2008, the Debtors became aware of an investigation by the Antitrust Division of the United States Department of Justice ("Antitrust Division") into possible antitrust violations in the United States packaged ice industry;

**WHEREAS**, on October 13, 2009, Arctic Glacier International, Inc. ("AGII"), one of the Debtors, and the Antitrust Division entered into an agreement by which AGII pleaded guilty to one charge of market allocation in southeast Michigan and the Detroit, Michigan metropolitan area, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1, and agreed to pay a \$9,000,000 fine in installments over five (5) years, thereby settling all charges (the "Plea Agreement");

---

<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in Monitor's Motion, Pursuant to Sections 105(a), 363, 1501, 1520, and 1521 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, and 9014, for Entry of an Order (I) Recognizing and Enforcing the CCAA Vesting Order, (II) Authorizing and Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of Any and All Liens, Claims, Encumbrances, and Other Interests, (III) Authorizing Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief [Docket No. 108] (the "U.S. Sale Motion").

**WHEREAS**, the Plea Agreement was accepted by the United States District Court for the Southern District of Ohio on February 11, 2010, and its terms have been reflected in a judgment dated March 3, 2010 in case no. CR-1-09-149 (the “Judgment”);

**WHEREAS**, as a result of the Judgment, pursuant to 18 U.S.C. Section 3613, the United States obtained a lien against all of the assets of AGII; and the DOJ filed a notice of lien concerning the Judgment in Dakota County, State of Minnesota, on August 9, 2010 (the “Notice of Lien”);

**WHEREAS**, as of the Petition Date, AGII had not paid \$7,000,000 of the fine amount set forth in the Judgment (the “Unpaid Fine”);

**WHEREAS**, the Parties are entering into this Stipulation in contemplation of and to facilitate the closing of the Sale as contemplated by the Purchase Agreement, whereby the Purchaser has agreed to acquire, in accordance with the terms and conditions of the Purchase Agreement, the CCAA Vesting Order, and the U.S. Sale Order, substantially all of the assets of the Debtors; and

**WHEREAS**, the Parties desire, and by this Stipulation intend, to facilitate payment in full of the Unpaid Fine plus accrued interest to the extent permissible and the satisfaction of any and all continuing liability of any kind whatsoever to the DOJ or the Antitrust Division arising from or related to the Plea Agreement and the Judgment.

#### **AGREEMENT**

**NOW, THEREFORE**, the Parties hereby stipulate and agree, in full and final settlement of any and all claims and causes of action, whether civil or criminal, and whether arising at law or at equity, that the DOJ has or may have against AGII or any of the Debtors, or any of their current or former directors, officers, employees, or any successors or assigns thereof,

including the Purchaser and its Affiliates, arising from or related to the Plea Agreement and the Judgment as follows:

1. The Monitor and the Debtors recognize and agree that pursuant to the Judgment and applicable U.S. statutes regarding criminal fines, the United States holds a claim against AGII in the amount of \$7,032,046.96, as of July 9, 2012, plus interest compounding annually until the date of payment of such claim at the federal post-judgment interest rate of 0.34% (the “DOJ Claim”), and that the DOJ Claim is a valid secured claim under applicable U.S. law. The DOJ agrees that it will not seek to impose U.S. statutory penalties for late payment on the DOJ Claim provided that payment is made during the pendency of these Chapter 15 cases.

2. The Deposit

- (a) Upon the closing of the Sale or as soon as reasonably practicable thereafter, the Monitor shall deposit Sale Proceeds in the amount of the DOJ Claim (the “Deposit”) into an escrow account located in the United States in respect of the DOJ Claim and the Debtors’ obligations under the Judgment (the “Escrow Account”); provided, further, that this Court shall maintain jurisdiction over the Escrow Account.
- (b) The Escrow Account shall be created as a segregated, interest-bearing account, with interest to accrue on such account at a rate of not less than 0.34%, held in the Monitor’s name or in a trust account of the Monitor’s U.S. counsel.
- (c) The Monitor agrees that it shall not transfer or attempt to transfer the Deposit, any portion thereof, or its interest therein, without further order of the Canadian Court and this Court; provided, however, that the foregoing shall not restrict the Monitor from disbursing the Deposit in accordance with this Stipulation.
- (d) The Deposit shall not be subject to any lien, attachment, counterclaim, offset, trustee process, or other judicial process of any person or entity, except as may be provided by any order of the Canadian Court or this Court. Costs of the Escrow Account shall not be deducted from the amount of the DOJ Claim.

3. CCAA Claims Process

- (a) The Monitor and the Debtors agree to propose, consent to, and support the entry of a claims procedure order by the Canadian Court allowing for the filing and assertion of the DOJ Claim in accordance with the terms of this Stipulation and U.S. law. Further, the claims procedure order proposed by the Monitor and the Debtors will state that, as part of the claims procedure, the Monitor will provide the DOJ with a Proof of Claim form setting out that the DOJ has a claim against AGII in the amount of the DOJ Claim and that the DOJ does not need to take any further action to prove the DOJ Claim in the claims procedure unless it wishes to do so.
- (b) 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.
- (c) Should the Canadian Court deny the DOJ Claim or not authorize payment of the DOJ Claim, in whole or in part, under applicable Canadian law, the DOJ shall have recourse to this Court for a determination pursuant to, without limitation, sections 362(b)(4) and/or 1506 of the Bankruptcy Code, 18 U.S.C. Section 3613, and/or any other applicable U.S. law, and the Monitor and the Debtors shall not oppose any such application by the DOJ to the extent that the relief sought by the DOJ concerns only the DOJ Claim.

4. Distribution of the Deposit

- (a) As soon as is reasonably practicable after the issuance of the Distribution Order and recognition of the Distribution Order by this Court, or after an order of this Court pursuant to section 3(c) above directing the Monitor to pay the DOJ Claim, as applicable, the Monitor shall distribute to the United States the amount of cash from the Escrow Account necessary to satisfy the DOJ Claim in full (the "Settlement Payment").
- (b) Payment of the Settlement Payment shall be made by check or wire transfer according to instructions to be provided by the DOJ to the Monitor.
- (c) Any amounts remaining in the Escrow Account after distribution of the Settlement Payment shall remain in the control and custody of the Monitor and shall be used and/or held in accordance with the terms and conditions of applicable Canadian law.



5. The DOJ hereby agrees that, upon distribution of the Settlement Payment to the United States, (a) the DOJ shall take all steps necessary to notify all relevant judicial and legal authorities that AGII has satisfied fully the terms of the payment of the DOJ Claim in accordance with the terms of the Plea Agreement and the Judgment; and (b) the DOJ shall not assert in any judicial case or proceeding that any of AGII, the Monitor, the other Debtors, their current or former directors, officers, employees, or any successors or assigns thereof, including the Purchaser and its Affiliates, have any further obligations or liability whatsoever to the DOJ or the Antitrust Division with respect to the Plea Agreement and Judgment; and (c) given that, after closing of the Sale, AGII will no longer have operations or employees, the DOJ and the Antitrust Division will not object to the Monitor's or the Debtors' seeking the termination of AGII's probation.

6. This Stipulation is subject to approval by this Court. In the event that this Court does not approve this Stipulation: (a) nothing contained herein shall have any probative value or be used or referred to in any subsequent case, litigation or proceeding; (b) nothing contained herein shall be deemed to be a waiver of any claims or an admission of liability by any Party hereto; and (c) this Stipulation shall be null and void, and all rights of the Parties under U.S. and Canadian law prior to this Stipulation shall be preserved.

7. Except as set forth herein, this Stipulation shall not in any way affect the rights and obligations of the Parties under any other agreements, stipulations or orders of this Court.

8. This Stipulation sets forth the entire agreement between the Parties and supersedes any and all prior agreements and understandings, written or oral, between the Parties pertaining to the subject matter hereof. The Parties acknowledge and agree that no statements, promises, or representations have been made by any Party to another Party, or are relied on by

any Party, other than those specifically identified in this Stipulation. No conditions precedent to the effectiveness of this Stipulation exist other than those which may be expressly provided herein. This Stipulation may not be altered, amended, modified or waived in any respect whatsoever, except by order of this Court.

9. This Stipulation addresses only the rights of the United States Attorney's Office for the Southern District of Ohio and the Antitrust Division as those rights relate to the collection of the Unpaid Fine and accrued interest and not the rights of any other component of the Department of Justice or other federal agency for any other purpose.

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

11. In addition to the other provisions of this Stipulation, this Court shall retain jurisdiction to enforce this Stipulation and to resolve any dispute concerning the interpretation, validity, construction, or other issue relating to or arising from this Stipulation, including, but not limited to the recognition and enforcement of any Distribution Order of the Canadian Court or other order of the Canadian Court pertaining to the DOJ Claim and the ability of the Monitor to make the Settlement Payment to the United States .

Dated: July 17, 2012  
Wilmington, Delaware

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*Attorneys for United States*

Dated: July 17, 2012  
Wilmington, Delaware

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*Co-Counsel to the Monitor and  
Foreign Representative*

Dated: July 17, 2012  
Wilmington, Delaware

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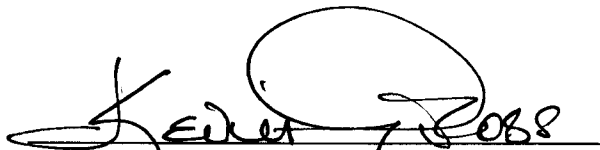
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*Attorneys for Debtors*

SO ORDERED this 17<sup>th</sup> day  
of July 2012.

A handwritten signature in black ink, appearing to read "Kevin Gross", is written over a horizontal line.

THE HONORABLE KEVIN GROSS  
CHIEF UNITED STATES BANKRUPTCY JUDGE

## **APPENDIX “I”**

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re	:	Chapter 15
	:	
ARCTIC GLACIER INTERNATIONAL INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 12-10605 (KG)
	:	
Debtors in a Foreign Proceeding.	:	(Jointly Administered)
	:	
	:	Ref. Docket Nos. <u>123</u>

**ORDER PURSUANT TO SECTIONS 105(A), 363, 1501, 1520, AND 1521  
OF THE BANKRUPTCY CODE, AND BANKRUPTCY RULES 2002, 6004, AND  
9014 (I) RECOGNIZING AND ENFORCING THE CCAA VESTING ORDER,  
(II) AUTHORIZING AND APPROVING THE SALE OF SUBSTANTIALLY  
ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ANY AND ALL  
LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS,  
(III) AUTHORIZING ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the Motion (the "Motion")<sup>2</sup> of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized foreign representative (the "Monitor") for the above-captioned debtors (collectively, the "Debtors") in a proceeding (the "Canadian Proceeding") commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and pending before the Court of Queen's Bench Winnipeg Centre (the "Canadian Court"), for entry of an order (the "U.S. Sale Order"),

<sup>1</sup> The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, follow in parentheses: (i) Arctic Glacier California Inc. (7645); (ii) Arctic Glacier Grayling Inc. (0976); (iii) Arctic Glacier Inc. (4125); (iv) Arctic Glacier Income Fund (4736); (v) Arctic Glacier International Inc. (9353); (vi) Arctic Glacier Lansing Inc. (1769); (vii) Arctic Glacier Michigan Inc. (0975); (viii) Arctic Glacier Minnesota Inc. (2310); (ix) Arctic Glacier Nebraska Inc. (7790); (x) Arctic Glacier New York Inc. (2468); (xi) Arctic Glacier Newburgh Inc. (7431); (xii) Arctic Glacier Oregon, Inc. (4484); (xiii) Arctic Glacier Party Time Inc. (0977); (xiv) Arctic Glacier Pennsylvania Inc. (9475); (xv) Arctic Glacier Rochester Inc. (6989); (xvi) Arctic Glacier Services Inc. (6657); (xvii) Arctic Glacier Texas Inc. (3251); (xviii) Arctic Glacier Vernon Inc. (3211); (xix) Arctic Glacier Wisconsin Inc. (5835); (xx) Diamond Ice Cube Company Inc. (7146); (xxi) Diamond Newport Corporation (4811); (xxii) Glacier Ice Company, Inc. (4320); (xxiii) Ice Perfection Systems Inc. (7093); (xxiv) ICEsurance Inc. (0849); (xxv) Jack Frost Ice Service, Inc. (7210); (xxvi) Knowlton Enterprises Inc. (8701); (xxvii) Mountain Water Ice Company (2777); (xxviii) R&K Trucking, Inc. (6931); (xxix) Winkler Lucas Ice and Fuel Company (0049); (xxx) Wonderland Ice, Inc. (8662). The Debtors' executive headquarters is located at 625 Henry Avenue, Winnipeg, Manitoba, R3A 0V1, Canada.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.



pursuant to sections 105(a), 363(b), (f), (m), and (n), 1501, 1520, and 1521 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware: (a) recognizing and enforcing that certain *Amended and Restated Canadian Vesting and Approval Order* [Docket No. 120] that was entered by the Canadian Court on July 12, 2012 in the Canadian Proceeding (the “CCAA Vesting Order”), pursuant to which the Canadian Court authorized and approved the sale (the “Sale”) of the Debtors’ right, title, and interest in and to substantially all of the Debtors’ assets (collectively, the “Purchased Assets”) to the successful bidder, free and clear of all Interests (as defined below), except as set forth in that certain Asset Purchase Agreement, by and between the Debtors and H.I.G. Zamboni, LLC, dated June 7, 2012 (the “Purchase Agreement”), a redacted copy<sup>3</sup> of which is annexed to the Motion as Exhibit B; (b) authorizing and approving, pursuant to section 363(f) of the Bankruptcy Code, the sale of the Debtors’ right, title, and interest in and to the Purchased Assets to Arctic Glacier Canada Inc. and Arctic Glacier U.S.A., Inc. (collectively, the “Purchaser”), free and clear of all Interests, except as otherwise provided in the Purchase Agreement; (c) authorizing and approving, to the extent provided for in the CCAA Vesting Order, the assignment of the Assigned Contracts (as defined in the Purchase Agreement); and (d) granting certain related relief, including payment of Lender Claims (as defined in the Sales and Investor Solicitation Process (the “SISP”)); and this Court having previously entered the *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief* [Docket No. 70] (the “Recognition Order”); and upon the *Affidavit of Keith McMahon*, dated June 13, 2012 [Docket No. 105] (the “McMahon Affidavit”); and upon

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<sup>3</sup> The unredacted Purchase Agreement was sealed by Order of this Court dated July 17, 2012 (the “Sealing Order”).



the *Affidavit of Keith McMahon*, dated July 10, 2012 [Docket No. 118]; and upon the *Fourth Report of the Monitor* [Docket No. 106] and the Confidential Appendix<sup>4</sup> thereto (the “Fourth Monitor’s Report”); and upon the *Fifth Report of the Monitor* [Docket No. 119] (the “Fifth Monitor’s Report”); and upon the *Notice Regarding Status of Sale and Investor Solicitation Process and Intent to Invoke 11 U.S.C. Section 363 if Applicable* [Docket No. 99]; and the Canadian Court having entered the CCAA Vesting Order; and this Court having reviewed and considered the Motion, and the arguments of counsel made, and the evidence adduced, at a hearing before this Court (the “Sale Hearing”); and upon the record of the Sale Hearing and these chapter 15 cases, and after due deliberation thereon, and good cause appearing therefor, and in accordance with Rule 7052 of the Bankruptcy Rules, it is hereby

**FOUND AND DETERMINED THAT:**

A. The Canadian Court has duly entered the CCAA Vesting Order:

(i) approving and authorizing the Debtors’ execution of the Purchase Agreement and consummation of the sale of the Purchased Assets and the assignment of the Assigned Contracts free and clear of all Interests; and (ii) requesting aid and recognition from this Court to give effect to the CCAA Vesting Order.

B. This Court has jurisdiction and authority to hear and determine the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b). Venue of these chapter 15 cases and the Motion in this Court and this District is proper under 28 U.S.C. § 1410.

C. Based on the affidavits of service filed with, and representations made to, this Court: (i) notice of the Motion, the Sale Hearing, and the Sale was proper, timely, adequate, and sufficient under the circumstances of these chapter 15 cases and these proceedings and

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<sup>4</sup> The Confidential Appendix was sealed by the Sealing Order.

complied with the various applicable requirements of the Bankruptcy Code and the Bankruptcy Rules; and (ii) no other or further notice of the Motion, the Sale Hearing, the Sale, or the entry of the U.S. Sale Order is necessary or shall be required.

D. The Debtors and the Monitor provided a reasonable opportunity to object and be heard with respect to the Sale, the Motion, and the relief requested therein to the necessary parties in interest, including the following: (i) all known creditors of the Debtors or holders of Interests; (ii) all parties to litigation pending in the United States in which the Debtors are a party as of the Petition Date; (iii) the Office of the United States Trustee for the District of Delaware; (iv) the United States Attorney's Office for the District of Delaware; (v) the Internal Revenue Service; (vi) the United States Department of Justice; (vii) counsel for the Purchaser; (viii) all persons with claims listed on Schedule C of the CCAA Vesting Order, including, without limitation, all persons or entities having liens on the Purchased Assets; (ix) all counterparties to the Assigned Contracts; (x) all persons, if any, who have filed objections to the Motion; and (xi) all other persons to whom notice is required pursuant to this Court's *Order Scheduling Hearing and Specifying Form and Manner of Service of Notice* [Docket No. 30].

E. The U.S. Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

F. The relief granted herein is necessary and appropriate, is in the interest of the public, promotes international comity, is consistent with the public policy of the United States, is warranted pursuant to sections 105(a), 363(b), (f), (m), and (n), 1501, 1520, and 1521 of the Bankruptcy Code, and will not cause any hardship to any parties in interest that is not outweighed by the benefits of the relief granted.

G. The CCAA Vesting Order provides for the assignment of the Assigned Contracts, as permitted under CCAA section 11.3, and this section of the CCAA is consistent with Bankruptcy Code section 365(f). As such, enforcement in the United States of the assignment of the Assigned Contracts to the Purchaser does not present any public policy conflict or any issue concerning protection of the interests of the parties to the Assigned Contracts that would prevent this Court from entering the U.S. Sale Order.

H. The CCAA Vesting Order provides for the payment in full of the Lender Claims in cash at or before the time of the closing of the Sale (the “Time of Closing”).

I. Based on information contained in the Monitor’s Reports<sup>5</sup> and the McMahon Affidavit, the Debtors, the Financial Advisor, and the Chief Process Supervisor, and their respective professionals, extensively marketed the Purchased Assets and conducted the marketing and sale process in accordance with the SISP, as supervised and reported on by the Monitor, and as approved by the Canadian Court in its Initial Order (including any extensions, amendments, or modifications thereto, the “Initial Order”) and recognized by this Court in the Recognition Order. As described in the Monitor’s Reports and the McMahon Affidavit, potential buyers were afforded a reasonable opportunity to participate in the SISP.

J. The Monitor has recommended the Sale in accordance with the Purchase Agreement, including the assignment of the Assigned Contracts; the Purchaser is able and has agreed to assume and perform the obligations of the Debtors under the Assigned Contracts in

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<sup>5</sup> The term “Monitor’s Reports” includes (a) the *Pre-Filing Report of the Proposed Monitor*, filed on the Petition Date as Exhibit C to the *Declaration of Philip J. Reynolds in Support of Verified Petition of Alvarez & Marsal Canada Inc., as Foreign Representative of Arctic Glacier Inc. and Certain of its Affiliates, for: (I) Recognition of Foreign Main Proceeding; and (II) Certain Related Relief* [Docket No. 2], (b) the *First Report of the Monitor*, filed with this Court on March, 13, 2012 [Docket No. 56], (c) the *Second Report of the Monitor*, filed with this Court on April 4, 2012 [Docket No. 83], (d) the *Third Report of the Monitor*, filed with this Court on May 15, 2012 [Docket No. 101], (e) the Fourth Monitor’s Report, and (f) the Fifth Monitor’s Report.

accordance with their terms, including the payment of arrears in accordance with the Purchase Agreement; and it is appropriate that the Purchased Assets, including the Assigned Contracts, be transferred, assigned, and vested in the Purchaser.

K. The consideration provided by the Purchaser for the Purchased Assets is the highest or otherwise best offer received under the SISP.

L. The Purchase Price constitutes fair consideration and reasonably equivalent value for the Purchased Assets under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and the laws of the United States, any state, territory, possession thereof, or the District of Columbia.

M. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale.

N. Time is of the essence in consummating the Sale. To maximize the value of the Purchased Assets, it is essential that the Sale occur promptly and within the time constraints set forth in the Purchase Agreement and the SISP. Accordingly, there is cause to waive the stay that would otherwise be applicable under Bankruptcy Rules 6004 and 6006.

O. The Purchase Agreement and the CCAA Vesting Order provide for the payment of the entire balance of the Arctic Lender Claims to the Arctic Lenders from the sale proceeds, the Purchaser has agreed to assume certain current liabilities of the Debtors, and the proceeds of the Sale are sufficient to satisfy all known creditor claims.

P. Based upon information contained in the Monitor's Reports filed with this Court and the McMahon Affidavit, the SISP was conducted fairly, in good faith, without collusion, and in accordance with the Initial Order, and thus the Purchaser has acted in good faith within the meaning of section 363(m) of the Bankruptcy Code, and neither the Debtors nor the

Purchaser engaged in any conduct that would cause or permit the Purchase Agreement or the consummation of the Sale to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

Q. Neither the Purchaser nor any of its affiliates or their respective representatives is an “insider” of any of the Debtors, as that term is defined in Bankruptcy Code section 101(31).

R. The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding present or future creditors of the Debtors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia.

S. The Debtors may sell the Purchased Assets free and clear of all Interests, to the extent provided in the Purchase Agreement, the CCAA Vesting Order, and the U.S. Sale Order, because, with respect to each creditor asserting an Interest, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Interests who did not object or who withdrew their objections to the Sale or the Motion are deemed to have consented to the Motion and Sale pursuant to Bankruptcy Code section 363(f)(2). All holders of Interests in the Purchased Assets are adequately protected by having their Interests attach to the sale proceeds attributable to the Purchased Assets in respect of which such Interests are asserted.

T. Notwithstanding any other provision in the U.S. Sale Order or the Purchase Agreement, all claims of the United States (the DOJ, as defined in the Stipulation and Order Among the Monitor, Debtors, and the United States Attorney’s Office for the Southern District of Ohio (“Stipulation”)) against the Debtors arising from the Plea Agreement and

Judgment will be determined pursuant to the Stipulation approved and ordered by this Court on July 17, 2012, and such Stipulation and Order resolved the objections of the DOJ to the sale.

U. The Purchaser would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtors, their creditors, and other parties in interest if either: (i) the sale of the Purchased Assets to the Purchaser was not free and clear of all Interests, except as otherwise provided in the Purchase Agreement; or (ii) the Purchaser would, or in the future could, be liable for any of such Interests or any claims against the Debtors based upon successor or vicarious liability or otherwise, except as otherwise may be provided in paragraph 9 hereof.

V. A sale of the Purchased Assets other than one free and clear of all Interests, except as otherwise provided in the Purchase Agreement, would yield substantially less value than the Sale; thus, the Sale free and clear of all Interests, in addition to all of the relief provided herein, is in the best interests of the Debtors, their creditors, and other parties in interest.

W. All findings of fact and conclusions of law announced by this Court at the Sale Hearing are incorporated herein.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is granted.
2. The CCAA Vesting Order, a copy of which is annexed to the Motion as Exhibit A, approving the Sale and assigning the Assigned Contracts to the Purchaser, is recognized in full and given full force and effect in the United States.

3. All objections to the entry of the U.S. Sale Order that have not been withdrawn, waived, or settled, or otherwise resolved pursuant to the terms hereof, are denied and overruled on the merits, with prejudice.

4. Pursuant to sections 105, 363, and 1521 of the Bankruptcy Code, and to the extent permitted by the CCAA Vesting Order, each of the Debtors, the Purchaser, and the Monitor are authorized to take any and all actions necessary or appropriate to: (a) consummate the Sale of the Purchased Assets to the Purchaser in accordance with the Purchase Agreement, the CCAA Vesting Order, and the U.S. Sale Order; and (b) perform, consummate, implement, and close fully the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Sale.

#### **Transfer of the Purchased Assets**

5. Pursuant to sections 105(a), 363(f), and 1521 of the Bankruptcy Code, and as provided for in the CCAA Vesting Order, upon delivery of the Monitor's Certificate to the Purchaser in accordance with the CCAA Vesting Order:

- (a) Without further instrument of transfer or assignment, all of the Debtors' rights, title, and interests in and to the U.S. Assets (as defined in the CCAA Vesting Order) shall absolutely vest in Arctic Glacier U.S.A., Inc. (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate (as such term is defined in the Purchase Agreement) of the Purchaser that agrees to be jointly and severally liable with the Purchaser), and the Sale shall be a legal, valid, and effective transfer of the U.S. Assets free and clear of any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, pledges, options, warrants, trusts or deemed trusts (whether contractual, statutory, or otherwise), encumbrances, obligations, liabilities, demands, guarantees, restrictions, contractual commitments, rights, including without limitation, rights of first refusal and rights of set-off, liens, executions, levies, penalties, charges, or other financial or monetary claims, adverse claims, or rights of use, puts or forced sales provisions exercisable as a consequence of or arising from the closing of the Sale, whether arising prior to or subsequent to the commencement of the Canadian Proceeding and these chapter 15 cases, whether or not they have

attached or been perfected, registered or filed and whether secured, unsecured, legal, equitable, possessory or otherwise, actual or threatened civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, complaint, suit, investigation, dispute, petition or proceeding by or before any governmental authority or person at law or in equity whether imposed by agreement, understanding, law, equity or otherwise, and any claim or demand resulting therefrom including but not limited to antitrust proceedings commenced by the United States Department of Justice and various State's Attorney Generals (all the foregoing, collectively, the "Interests"), including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by the Initial Order and/or any subsequent charges created by the Canadian Court; (b) all charges, security interests, or claims evidenced by any personal property registry system in the United States; (c) Excluded Liabilities (as defined in the Purchase Agreement); and (d) those claims listed on Schedule C of the CCAA Vesting Order; provided, however, that nothing contained herein shall derogate from the obligations of Arctic Glacier U.S.A., Inc. (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) to assume all Assumed Liabilities relating to the U.S. Assets, including the Assumed Accounts Payable relating to the U.S. Assets, and to perform its obligations under the applicable Assigned Contracts, as set forth in the Purchase Agreement.

- (b) Without further instrument of transfer or assignment, all of the Debtors' rights, title, and interests in and to the Canadian Assets (as defined in the CCAA Vesting Order) shall absolutely vest in Arctic Glacier Canada Inc. (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate (as such term is defined in the Purchase Agreement) of the Purchaser that agrees to be jointly and severally liable with the Purchaser), and the Sale shall be a legal, valid, and effective transfer of the Canadian Assets free and clear of any and all Interests; provided, however, that nothing contained herein shall derogate from the obligations of Arctic Glacier Canada Inc. (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) to assume all Assumed Liabilities relating to the Canadian Assets, including the Assumed Accounts Payable relating to the Canadian Assets, and to perform its obligations under the applicable Assigned Contracts, as set forth in the Purchase Agreement.

6. Except as expressly provided in the Purchase Agreement, the CCAA

Vesting Order, and/or the U.S. Sale Order (including, but not limited to, paragraphs 24 and 25

hereof), pursuant to sections 105(a), 363(f), and 1521 of the Bankruptcy Code, upon the Time of

Closing: (a) the Purchased Assets shall be sold, transferred, or otherwise conveyed to Purchaser



(or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) free and clear of all Interests, with all such Interests to attach to the proceeds of Sale of the Purchased Assets in the order of their priority, and with the same validity, priority, force, and effect which they now have as against the Purchased Assets, subject to the rights, claims, defenses, and objections, if any, of the Debtors and all parties in interest with respect to such Interests; (b) no holder of an Interest against the Debtors shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets based on or related to such Interests; and (c) the Purchase Agreement, the Sale, and any instruments contemplated thereby shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors or any successor thereof. All persons or entities holding Interests in, to or against the Purchased Assets are forever barred from asserting such Interests against the Purchaser, its affiliates, successors and assigns, and current affiliates, officers, directors, employees, managers, partners, members, financial advisors, attorneys, agents, and representatives (the "Purchaser Releasees") or such Purchased Assets after the Time of Closing.

7. None of the Purchaser Releasees shall have or incur any liability to, or be subject to any action by any Debtor, or any of the Debtors' predecessors, successors, or assigns, arising out of the negotiation, investigation, preparation, execution, or delivery of the Purchase Agreement, or the entry into and consummation of the Sale, except as expressly provided in the Purchase Agreement, the CCAA Vesting Order, and/or the U.S. Sale Order.

8. Except as otherwise provided in the Purchase Agreement, any and all Purchased Assets and in the possession or control of any person or entity, including, without

limitation, any vendor, supplier, or employee of the Debtors shall be transferred to the Purchaser (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) free and clear of all Interests, and, upon reasonable request of the Purchaser, all such persons or entities are directed to surrender possession of the Purchased Assets to the Purchaser (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) at the Time of Closing.

9. To the extent permissible under the CCAA Vesting Order, the Purchaser, or its affiliates, members, and shareholders, shall not be deemed, as a result of any action taken in connection with the Sale or the Purchaser's post-closing use or operation of the Purchased Assets, to: (a) be a successor to the Debtors; (b) have, de facto or otherwise, merged or consolidated with or into the Debtors; or (c) be a continuation or substantial continuation of the Debtors or any enterprise of the Debtors. Except for the Assumed Liabilities, the transfer of the Purchased Assets to the Purchaser under the Purchase Agreement, the CCAA Vesting Order, and the U.S. Sale Order shall not result in the Purchaser Releasees having any liability or responsibility whatsoever: (y) for any Interest against the Debtors or against an insider of the Debtors; or (z) to the Debtors, except as is expressly set forth in the Purchase Agreement, the CCAA Vesting Order, the U.S. Sale Order, and/or any other order of the Canadian Court. Without limiting the generality of the foregoing, except as otherwise provided in the Purchase Agreement, the CCAA Vesting Order, or any other order of the Canadian Court, the conveyance of the Debtors' rights, title, and interest in the Purchased Assets to Purchaser under the Purchase

Agreement shall not result in any Purchaser Releasee having any liability or responsibility whatsoever for any: (a) Interest, whether at law or in equity, whether by payment, setoff, or otherwise, directly or indirectly; (b) obligation under any of the Debtors' labor or employment agreements; (c) of the Debtors' mortgages, deeds of trust, and security interests; (d) intercompany loans and receivables between the Debtors and any non-debtor subsidiary; (e) of the Debtors' pension, welfare, compensation or other employee benefit plans, agreements, practices and programs (f) any of the Debtors' other employee, worker's compensation, occupational disease, unemployment, or temporary disability related claim, including without limitation, claims that might arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Act of 1988, (vii) the Age Discrimination and Employee Act of 1976 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) state discrimination laws, (xi) state unemployment compensation laws or any other similar state laws, (xii) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors; or (g) successor or vicarious liabilities of any kind or character, including, but not limited to, federal, state or other tax liabilities, U.S. or foreign pension liabilities, or liabilities based on any theory of antitrust, environmental (except as provided in paragraphs 24 and 25 hereof), labor law, alter ego, veil piercing, continuity of enterprise, mere continuation, product line, de facto merger or substantial continuity, whether known or unknown, whether legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted,

whether arising prior to or subsequent to the commencement of these chapter 15 cases, whether imposed by agreement, understanding, law, equity or otherwise with respect to any of the Debtors or any obligations of the Debtors, including, but not limited to, in the case of liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the Time of Closing or any taxes in connection with, or in any way relating to the cancellation of debt of the Debtors or their affiliates. The Canadian Court shall have jurisdiction to resolve any dispute concerning the scope of this paragraph 9, including, but not limited to, determining whether the relief granted by this paragraph 9 is permissible under the CCAA Vesting Order and Canadian law.

10. The entry of the U.S. Sale Order: (a) is and shall be effective as a determination that, upon the Time of Closing, except as expressly provided in the Purchase Agreement, the CCAA Vesting Order, and/or the U.S. Sale Order, all Interests existing as to the Purchased Assets prior to the Time of Closing, have been released, extinguished, expunged, and discharged as against the Purchased Assets; and (b) shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, recorders of fees, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities, who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments that reflect that the Purchaser (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) is the assignee of the Purchased Assets free and clear of all Interests, except as

expressly provided in the Purchase Agreement, the CCAA Vesting Order, and/or the U.S. Sale Order.

11. Each and every federal, state, and local governmental agency or department is authorized and directed to accept any and all documents and instruments necessary and appropriate to consummate the transaction contemplated by the Purchase Agreement.

12. Except with respect to enforcing the terms of the Purchase Agreement, the CCAA Vesting Order, or the U.S. Sale Order, absent a stay pending appeal, no person shall take any action to prevent or enjoin or otherwise interfere with consummation of the transaction contemplated in or by the Purchase Agreement.

13. Effective as of the Time of Closing, the CCAA Vesting Order and the U.S. Sale Order shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Debtors' interests in the Purchased Assets.

#### **Treatment of Executory Contracts and Unexpired Leases**

14. As provided in the Purchase Agreement and the CCAA Vesting Order, upon delivery of the Monitor's Certificate, the Assigned Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) in accordance with their respective terms. The transfer and assignment of the Assigned Contracts shall be valid notwithstanding any restriction, condition, or prohibition contained in any such Assigned Contract relating to the assignment thereof, (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer or requires the consent of any party to such assignment or transfer.

15. As provided in paragraph 7 of the CCAA Vesting Order, the assignment of the rights and obligations of the Debtors under the Assigned Contracts to the Purchaser (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser), pursuant to section 2.12 of the Purchase Agreement, is valid and binding upon all of the counterparties to the Assigned Contracts, without further documentation, as if the Purchaser was a party to the Assigned Contracts, notwithstanding any restriction or prohibition contained in any such Assigned Contract relating to the assignment thereof, including any provision requiring the consent of any party to an Assigned Contract.

16. As provided in paragraph 8 of the CCAA Vesting Order, each counterparty to the Assigned Contracts is prohibited from exercising any right or remedy under the Assigned Contracts by reason of any defaults thereunder arising from the commencement or pendency of the Canadian Proceeding or these chapter 15 cases or the solvency or financial condition of the Debtors.

17. To the extent there may be any dispute arising from the U.S. Sale Order's treatment of any Assigned Contract, including, but not limited to, disputes related to an attempted post-Sale modification or termination of any Assigned Contract subject to this Court's jurisdiction, regardless of whether such modification or termination is based upon restrictions or prohibitions contained in any Assigned Contract relating to the assignment thereof, this Court shall retain jurisdiction to enforce any and all terms and provisions of the Purchase Agreement, the CCAA Vesting Order, and/or U.S. Sale Order with respect to any such Assigned Contract.

### **Additional Provisions**

18. In accordance with paragraph 12 of the CCAA Vesting Order, the Monitor is authorized and directed to pay the Arctic Lenders (as defined in the Purchase Agreement) from the net proceeds of the Sale of the Purchased Assets an amount sufficient to pay the Lender Claims in full and in cash, as specified in a pay-out letter to be provided by the Arctic Lenders at or before the Time of Closing. As provided in the CCAA Vesting Order, such payment shall be made concurrently with, and as a condition precedent to, the closing of the Sale.

19. The Purchaser, as a purchaser in good faith within the meaning of section 363(m) of the Bankruptcy Code, shall be entitled to all of the protections of section 363(m) of the Bankruptcy Code. The reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale unless, prior to the Time of Closing, such authorization is duly stayed pending appeal.

20. The terms and provisions of the Purchase Agreement and the U.S. Sale Order shall be binding on and inure to the benefit of the Debtors, the Purchaser, the Debtors' creditors, and all other parties in interest, and any successors of the Debtors, the Purchaser and the Debtors' creditors, including any trustee(s), examiner(s), or receiver(s) appointed in these cases or under any chapter of the Bankruptcy Code or any other law, and all such terms and provisions shall likewise be binding on such trustee(s), examiner(s), or receiver(s) and shall not be subject to rejection or avoidance by the Debtors, the Debtors, their creditors, or any trustee(s), examiner(s), or receiver(s).

21. Subject to the terms and conditions of the CCAA Vesting Order and the Purchase Agreement, provisions of the Purchase Agreement and any related agreements may be waived, modified, amended, or supplemented by agreement among the Debtors and the

Purchaser in a writing signed by the Debtors and the Purchaser without further action or order of this Court.

22. The failure to include any particular provision of the CCAA Vesting Order, the Purchase Agreement, or any related agreements in the U.S. Sale Order shall not diminish or impair the effectiveness of that provision, it being the intent of this Court that the CCAA Vesting Order, the Purchase Agreement, and any related agreements, with such amendments thereto as may be made by the parties in accordance with the CCAA Vesting Order, and the Purchase Agreement be approved and authorized in their entirety.

23. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the contrary: (a) the terms of the U.S. Sale Order shall be immediately effective and enforceable upon its entry; (b) the Debtors, the Purchaser, and the Monitor are not subject to any stay in the implementation, enforcement or realization of the relief granted in the U.S. Sale Order; and (c) the Debtors, the Purchaser, and the Monitor may, in their discretion and without further delay, take any action and perform any act authorized under the CCAA Vesting Order and/or the U.S. Sale Order.

24. Nothing in the U.S. Sale Order or the Purchase Agreement discharges, releases, or precludes any environmental liability under United States law (or any law enforceable by the United States) to the United States or any department, agency, or instrumentality thereof (each, a "U.S. Governmental Unit") of any entity based on its ownership or operation after the Time of Closing of real property. Nor shall anything in this Order enjoin or otherwise bar a U.S. Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence.



25. The Debtors' actions to transfer to the Purchaser any licenses, permits, registrations, or other governmental authorizations pursuant to the Purchase Agreement are authorized under the U.S. Sale Order, provided that nothing in the U.S. Sale Order or the Purchase Agreement relieves the purchaser from compliance with all applicable legal requirements governing such transfers under United States environmental laws, including, without limitation, the Resource Conservation and Recovery Act, the Clean Air Act, and the Clean Water Act.

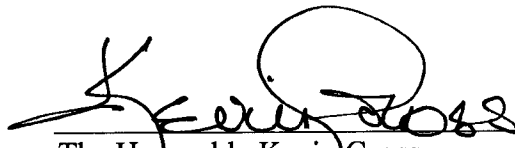
26. To the extent permitted by Bankruptcy Code section 525, no governmental unit may revoke or suspend any permit or license relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these chapter 15 cases or the consummation of the Sale.

27. Nothing in the U.S. Sale Order shall be deemed to waive, release, extinguish or estop the Debtors from asserting, or otherwise impair or diminish, any right (including, without limitation, any right of recoupment), claim, cause of action, defense, offset or counterclaim in respect of any asset that is not a Purchased Asset.

28. The provisions of the U.S. Sale Order are nonseverable and mutually dependent.

29. Other than as explicitly set forth herein, this Court shall retain jurisdiction with respect to any and all matters, claims, rights, or disputes arising from or related to the implementation or interpretation of the U.S. Sale Order.

Dated: July 17, 2012  
Wilmington, Delaware

  
The Honorable Kevin Gross  
United States Bankruptcy Judge

## **APPENDIX “J”**

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re

ARCTIC GLACIER INTERNATIONAL INC.,  
*et al.*,<sup>1</sup>

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 12-10605 (KG)

(Jointly Administered)

**NOTICE OF APPEAL OF ORDER PURSUANT TO SECTIONS 105(A), 363, 1501,  
1520, AND 1521 OF THE BANKRUPTCY CODE, AND BANKRUPTCY RULES  
2002, 6004, AND 9014 (I) RECOGNIZING AND ENFORCING THE CCAA  
VESTING ORDER, (II) AUTHORIZING AND APPROVING THE SALE OF  
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF  
ANY AND ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS,  
(III) AUTHORIZING ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

**TO THE HONORABLE KEVIN GROSS AND ALL PARTIES IN INTEREST:**

**PLEASE TAKE NOTICE THAT** pursuant to Federal Rule of Bankruptcy Procedure  
8001, Desert Mountain Ice LLC ("Appellant"), hereby appeals the order attached hereto as  
Exhibit A.

The parties to this Appeal are as follows:

Appellant, Desert Mountain Ice LLC:

Eric J. Fromme  
Caroline R. Djang  
Rutan & Tucker, LLP  
611 Anton Blvd.  
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Costa Mesa, CA 92626  
Telephone: (714) 641-5100  
Facsimile: (714) 546-9035

<sup>1</sup>

The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, follow in parentheses: (i) Arctic Glacier California Inc. (7645); (ii) Arctic Glacier Grayling Inc. (0976); (iii) Arctic Glacier Inc. (4125); (iv) Arctic Glacier Income Fund (4736); (v) Arctic Glacier International Inc. (9353); (vi) Arctic Glacier Lansing Inc. (1769); (vii) Arctic Glacier Michigan Inc. (0975); (viii) Arctic Glacier Minnesota Inc. (2310); (ix) Arctic Glacier Nebraska Inc. (7790); (x) Arctic Glacier New York Inc. (2468); (xi) Arctic Glacier Newburgh Inc. (7431); (xii) Arctic Glacier Oregon, Inc. (4484); (xiii) Arctic Glacier Party Time Inc. (0977); (xiv) Arctic Glacier Pennsylvania Inc. (9475); (xv) Arctic Glacier Rochester Inc. (6989); (xvi) Arctic Glacier Services Inc. (6657); (xvii) Arctic Glacier Texas Inc. (3251); (xviii) Arctic Glacier Vernon Inc. (3211); (xix) Arctic Glacier Wisconsin Inc. (5835); (xx) Diamond Ice Cube Company Inc. (7146); (xxi) Diamond Newport Corporation (4811); (xxii) Glacier Ice Company, Inc. (4320); (xxiii) Ice Perfection Systems Inc. (7093); (xxiv) ICEsure Inc. (0849); (xxv) Jack Frost Ice Service, Inc. (7210); (xxvi) Knowlton Enterprises Inc. (8701); (xxvii) Mountain Water Ice Company (2777); (xxviii) R&K Trucking, Inc. (6931); (xxix) Winkler Lucas Ice and Fuel Company (0049); (xxx) Wonderland Ice, Inc. (8662). The Debtors' executive headquarters is located at 625 Henry Avenue, Winnipeg, Manitoba, R3A 0V1, Canada.



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Dated: July 31, 2012

Respectfully submitted,

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# EXHIBIT A

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

Chapter 15

ARCTIC GLACIER INTERNATIONAL INC.,  
*et al.*,<sup>1</sup>

Case No. 12-10605 (KG)

Debtors in a Foreign Proceeding.

(Jointly Administered)

Ref. Docket Nos. 123

**ORDER PURSUANT TO SECTIONS 105(A), 363, 1501, 1520, AND 1521  
OF THE BANKRUPTCY CODE, AND BANKRUPTCY RULES 2002, 6004, AND  
9014 (I) RECOGNIZING AND ENFORCING THE CCAA VESTING ORDER,  
(II) AUTHORIZING AND APPROVING THE SALE OF SUBSTANTIALLY  
ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ANY AND ALL  
LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS,  
(III) AUTHORIZING ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the Motion (the "Motion")<sup>2</sup> of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized foreign representative (the "Monitor") for the above-captioned debtors (collectively, the "Debtors") in a proceeding (the "Canadian Proceeding") commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and pending before the Court of Queen's Bench Winnipeg Centre (the "Canadian Court"), for entry of an order (the "U.S. Sale Order"),

<sup>1</sup> The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, follow in parentheses: (i) Arctic Glacier California Inc. (7645); (ii) Arctic Glacier Grayling Inc. (0976); (iii) Arctic Glacier Inc. (4125); (iv) Arctic Glacier Income Fund (4736); (v) Arctic Glacier International Inc. (9353); (vi) Arctic Glacier Lansing Inc. (1769); (vii) Arctic Glacier Michigan Inc. (0975); (viii) Arctic Glacier Minnesota Inc. (2310); (ix) Arctic Glacier Nebraska Inc. (7790); (x) Arctic Glacier New York Inc. (2468); (xi) Arctic Glacier Newburgh Inc. (7431); (xii) Arctic Glacier Oregon, Inc. (4484); (xiii) Arctic Glacier Party Time Inc. (0977); (xiv) Arctic Glacier Pennsylvania Inc. (9475); (xv) Arctic Glacier Rochester Inc. (6989); (xvi) Arctic Glacier Services Inc. (6657); (xvii) Arctic Glacier Texas Inc. (3251); (xviii) Arctic Glacier Vernon Inc. (3211); (xix) Arctic Glacier Wisconsin Inc. (5835); (xx) Diamond Ice Cube Company Inc. (7146); (xxi) Diamond Newport Corporation (4811); (xxii) Glacier Ice Company, Inc. (4320); (xxiii) Ice Perfection Systems Inc. (7093); (xxiv) ICEsurance Inc. (0849); (xxv) Jack Frost Ice Service, Inc. (7210); (xxvi) Knowlton Enterprises Inc. (8701); (xxvii) Mountain Water Ice Company (2777); (xxviii) R&K Trucking, Inc. (6931); (xxix) Winkler Lucas Ice and Fuel Company (0049); (xxx) Wonderland Ice, Inc. (8662). The Debtors' executive headquarters is located at 625 Henry Avenue, Winnipeg, Manitoba, R3A 0V1, Canada.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.



pursuant to sections 105(a), 363(b), (f), (m), and (n), 1501, 1520, and 1521 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware: (a) recognizing and enforcing that certain *Amended and Restated Canadian Vesting and Approval Order* [Docket No. 120] that was entered by the Canadian Court on July 12, 2012 in the Canadian Proceeding (the “CCAA Vesting Order”), pursuant to which the Canadian Court authorized and approved the sale (the “Sale”) of the Debtors’ right, title, and interest in and to substantially all of the Debtors’ assets (collectively, the “Purchased Assets”) to the successful bidder, free and clear of all Interests (as defined below), except as set forth in that certain Asset Purchase Agreement, by and between the Debtors and H.I.G. Zamboni, LLC, dated June 7, 2012 (the “Purchase Agreement”), a redacted copy<sup>3</sup> of which is annexed to the Motion as Exhibit B; (b) authorizing and approving, pursuant to section 363(f) of the Bankruptcy Code, the sale of the Debtors’ right, title, and interest in and to the Purchased Assets to Arctic Glacier Canada Inc. and Arctic Glacier U.S.A., Inc. (collectively, the “Purchaser”), free and clear of all Interests, except as otherwise provided in the Purchase Agreement; (c) authorizing and approving, to the extent provided for in the CCAA Vesting Order, the assignment of the Assigned Contracts (as defined in the Purchase Agreement); and (d) granting certain related relief, including payment of Lender Claims (as defined in the Sales and Investor Solicitation Process (the “SISP”)); and this Court having previously entered the *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief* [Docket No. 70] (the “Recognition Order”); and upon the *Affidavit of Keith McMahon*, dated June 13, 2012 [Docket No. 105] (the “McMahon Affidavit”); and upon

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<sup>3</sup> The unredacted Purchase Agreement was sealed by Order of this Court dated July 17, 2012 (the “Sealing Order”).

the *Affidavit of Keith McMahon*, dated July 10, 2012 [Docket No. 118]; and upon the *Fourth Report of the Monitor* [Docket No. 106] and the Confidential Appendix<sup>4</sup> thereto (the “Fourth Monitor’s Report”); and upon the *Fifth Report of the Monitor* [Docket No. 119] (the “Fifth Monitor’s Report”); and upon the *Notice Regarding Status of Sale and Investor Solicitation Process and Intent to Invoke 11 U.S.C. Section 363 if Applicable* [Docket No. 99]; and the Canadian Court having entered the CCAA Vesting Order; and this Court having reviewed and considered the Motion, and the arguments of counsel made, and the evidence adduced, at a hearing before this Court (the “Sale Hearing”); and upon the record of the Sale Hearing and these chapter 15 cases, and after due deliberation thereon, and good cause appearing therefor, and in accordance with Rule 7052 of the Bankruptcy Rules, it is hereby

**FOUND AND DETERMINED THAT:**

- A. The Canadian Court has duly entered the CCAA Vesting Order:
- (i) approving and authorizing the Debtors’ execution of the Purchase Agreement and consummation of the sale of the Purchased Assets and the assignment of the Assigned Contracts free and clear of all Interests; and (ii) requesting aid and recognition from this Court to give effect to the CCAA Vesting Order.
- B. This Court has jurisdiction and authority to hear and determine the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b). Venue of these chapter 15 cases and the Motion in this Court and this District is proper under 28 U.S.C. § 1410.
- C. Based on the affidavits of service filed with, and representations made to, this Court: (i) notice of the Motion, the Sale Hearing, and the Sale was proper, timely, adequate, and sufficient under the circumstances of these chapter 15 cases and these proceedings and

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<sup>4</sup> The Confidential Appendix was sealed by the Sealing Order.



complied with the various applicable requirements of the Bankruptcy Code and the Bankruptcy Rules; and (ii) no other or further notice of the Motion, the Sale Hearing, the Sale, or the entry of the U.S. Sale Order is necessary or shall be required.

D. The Debtors and the Monitor provided a reasonable opportunity to object and be heard with respect to the Sale, the Motion, and the relief requested therein to the necessary parties in interest, including the following: (i) all known creditors of the Debtors or holders of Interests; (ii) all parties to litigation pending in the United States in which the Debtors are a party as of the Petition Date; (iii) the Office of the United States Trustee for the District of Delaware; (iv) the United States Attorney's Office for the District of Delaware; (v) the Internal Revenue Service; (vi) the United States Department of Justice; (vii) counsel for the Purchaser; (viii) all persons with claims listed on Schedule C of the CCAA Vesting Order, including, without limitation, all persons or entities having liens on the Purchased Assets; (ix) all counterparties to the Assigned Contracts; (x) all persons, if any, who have filed objections to the Motion; and (xi) all other persons to whom notice is required pursuant to this Court's *Order Scheduling Hearing and Specifying Form and Manner of Service of Notice* [Docket No. 30].

E. The U.S. Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

F. The relief granted herein is necessary and appropriate, is in the interest of the public, promotes international comity, is consistent with the public policy of the United States, is warranted pursuant to sections 105(a), 363(b), (f), (m), and (n), 1501, 1520, and 1521 of the Bankruptcy Code, and will not cause any hardship to any parties in interest that is not outweighed by the benefits of the relief granted.

G. The CCAA Vesting Order provides for the assignment of the Assigned Contracts, as permitted under CCAA section 11.3, and this section of the CCAA is consistent with Bankruptcy Code section 365(f). As such, enforcement in the United States of the assignment of the Assigned Contracts to the Purchaser does not present any public policy conflict or any issue concerning protection of the interests of the parties to the Assigned Contracts that would prevent this Court from entering the U.S. Sale Order.

H. The CCAA Vesting Order provides for the payment in full of the Lender Claims in cash at or before the time of the closing of the Sale (the “Time of Closing”).

I. Based on information contained in the Monitor’s Reports<sup>5</sup> and the McMahon Affidavit, the Debtors, the Financial Advisor, and the Chief Process Supervisor, and their respective professionals, extensively marketed the Purchased Assets and conducted the marketing and sale process in accordance with the SISP, as supervised and reported on by the Monitor, and as approved by the Canadian Court in its Initial Order (including any extensions, amendments, or modifications thereto, the “Initial Order”) and recognized by this Court in the Recognition Order. As described in the Monitor’s Reports and the McMahon Affidavit, potential buyers were afforded a reasonable opportunity to participate in the SISP.

J. The Monitor has recommended the Sale in accordance with the Purchase Agreement, including the assignment of the Assigned Contracts; the Purchaser is able and has agreed to assume and perform the obligations of the Debtors under the Assigned Contracts in

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<sup>5</sup> The term “Monitor’s Reports” includes (a) the *Pre-Filing Report of the Proposed Monitor*, filed on the Petition Date as Exhibit C to the Declaration of Philip J. Reynolds in Support of Verified Petition of Alvarez & Marsal Canada Inc., as Foreign Representative of Arctic Glacier Inc. and Certain of its Affiliates, for: (I) Recognition of Foreign Main Proceeding; and (II) Certain Related Relief [Docket No. 2], (b) the *First Report of the Monitor*, filed with this Court on March, 13, 2012 [Docket No. 56], (c) the *Second Report of the Monitor*, filed with this Court on April 4, 2012 [Docket No. 83], (d) the *Third Report of the Monitor*, filed with this Court on May 15, 2012 [Docket No. 101], (e) the Fourth Monitor’s Report, and (f) the Fifth Monitor’s Report.

accordance with their terms, including the payment of arrears in accordance with the Purchase Agreement; and it is appropriate that the Purchased Assets, including the Assigned Contracts, be transferred, assigned, and vested in the Purchaser.

K. The consideration provided by the Purchaser for the Purchased Assets is the highest or otherwise best offer received under the SISP.

L. The Purchase Price constitutes fair consideration and reasonably equivalent value for the Purchased Assets under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and the laws of the United States, any state, territory, possession thereof, or the District of Columbia.

M. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale.

N. Time is of the essence in consummating the Sale. To maximize the value of the Purchased Assets, it is essential that the Sale occur promptly and within the time constraints set forth in the Purchase Agreement and the SISP. Accordingly, there is cause to waive the stay that would otherwise be applicable under Bankruptcy Rules 6004 and 6006.

O. The Purchase Agreement and the CCAA Vesting Order provide for the payment of the entire balance of the Arctic Lender Claims to the Arctic Lenders from the sale proceeds, the Purchaser has agreed to assume certain current liabilities of the Debtors, and the proceeds of the Sale are sufficient to satisfy all known creditor claims.

P. Based upon information contained in the Monitor's Reports filed with this Court and the McMahon Affidavit, the SISP was conducted fairly, in good faith, without collusion, and in accordance with the Initial Order, and thus the Purchaser has acted in good faith within the meaning of section 363(m) of the Bankruptcy Code, and neither the Debtors nor the

Purchaser engaged in any conduct that would cause or permit the Purchase Agreement or the consummation of the Sale to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

Q. Neither the Purchaser nor any of its affiliates or their respective representatives is an “insider” of any of the Debtors, as that term is defined in Bankruptcy Code section 101(31).

R. The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding present or future creditors of the Debtors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia.

S. The Debtors may sell the Purchased Assets free and clear of all Interests, to the extent provided in the Purchase Agreement, the CCAA Vesting Order, and the U.S. Sale Order, because, with respect to each creditor asserting an Interest, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Interests who did not object or who withdrew their objections to the Sale or the Motion are deemed to have consented to the Motion and Sale pursuant to Bankruptcy Code section 363(f)(2). All holders of Interests in the Purchased Assets are adequately protected by having their Interests attach to the sale proceeds attributable to the Purchased Assets in respect of which such Interests are asserted.

T. Notwithstanding any other provision in the U.S. Sale Order or the Purchase Agreement, all claims of the United States (the DOJ, as defined in the Stipulation and Order Among the Monitor, Debtors, and the United States Attorney’s Office for the Southern District of Ohio (“Stipulation”)) against the Debtors arising from the Plea Agreement and

Judgment will be determined pursuant to the Stipulation approved and ordered by this Court on July 17, 2012, and such Stipulation and Order resolved the objections of the DOJ to the sale.

U. The Purchaser would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtors, their creditors, and other parties in interest if either: (i) the sale of the Purchased Assets to the Purchaser was not free and clear of all Interests, except as otherwise provided in the Purchase Agreement; or (ii) the Purchaser would, or in the future could, be liable for any of such Interests or any claims against the Debtors based upon successor or vicarious liability or otherwise, except as otherwise may be provided in paragraph 9 hereof.

V. A sale of the Purchased Assets other than one free and clear of all Interests, except as otherwise provided in the Purchase Agreement, would yield substantially less value than the Sale; thus, the Sale free and clear of all Interests, in addition to all of the relief provided herein, is in the best interests of the Debtors, their creditors, and other parties in interest.

W. All findings of fact and conclusions of law announced by this Court at the Sale Hearing are incorporated herein.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is granted.
2. The CCAA Vesting Order, a copy of which is annexed to the Motion as Exhibit A, approving the Sale and assigning the Assigned Contracts to the Purchaser, is recognized in full and given full force and effect in the United States.

3. All objections to the entry of the U.S. Sale Order that have not been withdrawn, waived, or settled, or otherwise resolved pursuant to the terms hereof, are denied and overruled on the merits, with prejudice.

4. Pursuant to sections 105, 363, and 1521 of the Bankruptcy Code, and to the extent permitted by the CCAA Vesting Order, each of the Debtors, the Purchaser, and the Monitor are authorized to take any and all actions necessary or appropriate to: (a) consummate the Sale of the Purchased Assets to the Purchaser in accordance with the Purchase Agreement, the CCAA Vesting Order, and the U.S. Sale Order; and (b) perform, consummate, implement, and close fully the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Sale.

#### **Transfer of the Purchased Assets**

5. Pursuant to sections 105(a), 363(f), and 1521 of the Bankruptcy Code, and as provided for in the CCAA Vesting Order, upon delivery of the Monitor's Certificate to the Purchaser in accordance with the CCAA Vesting Order:

- (a) Without further instrument of transfer or assignment, all of the Debtors' rights, title, and interests in and to the U.S. Assets (as defined in the CCAA Vesting Order) shall absolutely vest in Arctic Glacier U.S.A., Inc. (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate (as such term is defined in the Purchase Agreement) of the Purchaser that agrees to be jointly and severally liable with the Purchaser), and the Sale shall be a legal, valid, and effective transfer of the U.S. Assets free and clear of any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, pledges, options, warrants, trusts or deemed trusts (whether contractual, statutory, or otherwise), encumbrances, obligations, liabilities, demands, guarantees, restrictions, contractual commitments, rights, including without limitation, rights of first refusal and rights of set-off, liens, executions, levies, penalties, charges, or other financial or monetary claims, adverse claims, or rights of use, puts or forced sales provisions exercisable as a consequence of or arising from the closing of the Sale, whether arising prior to or subsequent to the commencement of the Canadian Proceeding and these chapter 15 cases, whether or not they have

attached or been perfected, registered or filed and whether secured, unsecured, legal, equitable, possessory or otherwise, actual or threatened civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, complaint, suit, investigation, dispute, petition or proceeding by or before any governmental authority or person at law or in equity whether imposed by agreement, understanding, law, equity or otherwise, and any claim or demand resulting therefrom including but not limited to antitrust proceedings commenced by the United States Department of Justice and various State's Attorney Generals (all the foregoing, collectively, the "Interests"), including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by the Initial Order and/or any subsequent charges created by the Canadian Court; (b) all charges, security interests, or claims evidenced by any personal property registry system in the United States; (c) Excluded Liabilities (as defined in the Purchase Agreement); and (d) those claims listed on Schedule C of the CCAA Vesting Order; provided, however, that nothing contained herein shall derogate from the obligations of Arctic Glacier U.S.A., Inc. (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) to assume all Assumed Liabilities relating to the U.S. Assets, including the Assumed Accounts Payable relating to the U.S. Assets, and to perform its obligations under the applicable Assigned Contracts, as set forth in the Purchase Agreement.

- (b) Without further instrument of transfer or assignment, all of the Debtors' rights, title, and interests in and to the Canadian Assets (as defined in the CCAA Vesting Order) shall absolutely vest in Arctic Glacier Canada Inc. (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate (as such term is defined in the Purchase Agreement) of the Purchaser that agrees to be jointly and severally liable with the Purchaser), and the Sale shall be a legal, valid, and effective transfer of the Canadian Assets free and clear of any and all Interests; provided, however, that nothing contained herein shall derogate from the obligations of Arctic Glacier Canada Inc. (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) to assume all Assumed Liabilities relating to the Canadian Assets, including the Assumed Accounts Payable relating to the Canadian Assets, and to perform its obligations under the applicable Assigned Contracts, as set forth in the Purchase Agreement.

6. Except as expressly provided in the Purchase Agreement, the CCAA

Vesting Order, and/or the U.S. Sale Order (including, but not limited to, paragraphs 24 and 25

hereof), pursuant to sections 105(a), 363(f), and 1521 of the Bankruptcy Code, upon the Time of

Closing: (a) the Purchased Assets shall be sold, transferred, or otherwise conveyed to Purchaser

(or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) free and clear of all Interests, with all such Interests to attach to the proceeds of Sale of the Purchased Assets in the order of their priority, and with the same validity, priority, force, and effect which they now have as against the Purchased Assets, subject to the rights, claims, defenses, and objections, if any, of the Debtors and all parties in interest with respect to such Interests; (b) no holder of an Interest against the Debtors shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets based on or related to such Interests; and (c) the Purchase Agreement, the Sale, and any instruments contemplated thereby shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors or any successor thereof. All persons or entities holding Interests in, to or against the Purchased Assets are forever barred from asserting such Interests against the Purchaser, its affiliates, successors and assigns, and current affiliates, officers, directors, employees, managers, partners, members, financial advisors, attorneys, agents, and representatives (the "Purchaser Releasees") or such Purchased Assets after the Time of Closing.

7. None of the Purchaser Releasees shall have or incur any liability to, or be subject to any action by any Debtor, or any of the Debtors' predecessors, successors, or assigns, arising out of the negotiation, investigation, preparation, execution, or delivery of the Purchase Agreement, or the entry into and consummation of the Sale, except as expressly provided in the Purchase Agreement, the CCAA Vesting Order, and/or the U.S. Sale Order.

8. Except as otherwise provided in the Purchase Agreement, any and all Purchased Assets and in the possession or control of any person or entity, including, without



limitation, any vendor, supplier, or employee of the Debtors shall be transferred to the Purchaser (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) free and clear of all Interests, and, upon reasonable request of the Purchaser, all such persons or entities are directed to surrender possession of the Purchased Assets to the Purchaser (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) at the Time of Closing.

9. To the extent permissible under the CCAA Vesting Order, the Purchaser, or its affiliates, members, and shareholders, shall not be deemed, as a result of any action taken in connection with the Sale or the Purchaser's post-closing use or operation of the Purchased Assets, to: (a) be a successor to the Debtors; (b) have, de facto or otherwise, merged or consolidated with or into the Debtors; or (c) be a continuation or substantial continuation of the Debtors or any enterprise of the Debtors. Except for the Assumed Liabilities, the transfer of the Purchased Assets to the Purchaser under the Purchase Agreement, the CCAA Vesting Order, and the U.S. Sale Order shall not result in the Purchaser Releasees having any liability or responsibility whatsoever: (y) for any Interest against the Debtors or against an insider of the Debtors; or (z) to the Debtors, except as is expressly set forth in the Purchase Agreement, the CCAA Vesting Order, the U.S. Sale Order, and/or any other order of the Canadian Court. Without limiting the generality of the foregoing, except as otherwise provided in the Purchase Agreement, the CCAA Vesting Order, or any other order of the Canadian Court, the conveyance of the Debtors' rights, title, and interest in the Purchased Assets to Purchaser under the Purchase

Agreement shall not result in any Purchaser Releasee having any liability or responsibility whatsoever for any: (a) Interest, whether at law or in equity, whether by payment, setoff, or otherwise, directly or indirectly; (b) obligation under any of the Debtors' labor or employment agreements; (c) of the Debtors' mortgages, deeds of trust, and security interests; (d) intercompany loans and receivables between the Debtors and any non-debtor subsidiary; (e) of the Debtors' pension, welfare, compensation or other employee benefit plans, agreements, practices and programs (f) any of the Debtors' other employee, worker's compensation, occupational disease, unemployment, or temporary disability related claim, including without limitation, claims that might arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Act of 1988, (vii) the Age Discrimination and Employee Act of 1976 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) state discrimination laws, (xi) state unemployment compensation laws or any other similar state laws, (xii) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors; or (g) successor or vicarious liabilities of any kind or character, including, but not limited to, federal, state or other tax liabilities, U.S. or foreign pension liabilities, or liabilities based on any theory of antitrust, environmental (except as provided in paragraphs 24 and 25 hereof), labor law, alter ego, veil piercing, continuity of enterprise, mere continuation, product line, de facto merger or substantial continuity, whether known or unknown, whether legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted,

whether arising prior to or subsequent to the commencement of these chapter 15 cases, whether imposed by agreement, understanding, law, equity or otherwise with respect to any of the Debtors or any obligations of the Debtors, including, but not limited to, in the case of liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the Time of Closing or any taxes in connection with, or in any way relating to the cancellation of debt of the Debtors or their affiliates. The Canadian Court shall have jurisdiction to resolve any dispute concerning the scope of this paragraph 9, including, but not limited to, determining whether the relief granted by this paragraph 9 is permissible under the CCAA Vesting Order and Canadian law.

10. The entry of the U.S. Sale Order: (a) is and shall be effective as a determination that, upon the Time of Closing, except as expressly provided in the Purchase Agreement, the CCAA Vesting Order, and/or the U.S. Sale Order, all Interests existing as to the Purchased Assets prior to the Time of Closing, have been released, extinguished, expunged, and discharged as against the Purchased Assets; and (b) shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, recorders of fees, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities, who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments that reflect that the Purchaser (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) is the assignee of the Purchased Assets free and clear of all Interests, except as

expressly provided in the Purchase Agreement, the CCAA Vesting Order, and/or the U.S. Sale Order.

11. Each and every federal, state, and local governmental agency or department is authorized and directed to accept any and all documents and instruments necessary and appropriate to consummate the transaction contemplated by the Purchase Agreement.

12. Except with respect to enforcing the terms of the Purchase Agreement, the CCAA Vesting Order, or the U.S. Sale Order, absent a stay pending appeal, no person shall take any action to prevent or enjoin or otherwise interfere with consummation of the transaction contemplated in or by the Purchase Agreement.

13. Effective as of the Time of Closing, the CCAA Vesting Order and the U.S. Sale Order shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Debtors' interests in the Purchased Assets.

#### **Treatment of Executory Contracts and Unexpired Leases**

14. As provided in the Purchase Agreement and the CCAA Vesting Order, upon delivery of the Monitor's Certificate, the Assigned Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) in accordance with their respective terms. The transfer and assignment of the Assigned Contracts shall be valid notwithstanding any restriction, condition, or prohibition contained in any such Assigned Contract relating to the assignment thereof, (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer or requires the consent of any party to such assignment or transfer.

15. As provided in paragraph 7 of the CCAA Vesting Order, the assignment of the rights and obligations of the Debtors under the Assigned Contracts to the Purchaser (or such other person(s) as the Purchaser may direct and the Monitor may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser), pursuant to section 2.12 of the Purchase Agreement, is valid and binding upon all of the counterparties to the Assigned Contracts, without further documentation, as if the Purchaser was a party to the Assigned Contracts, notwithstanding any restriction or prohibition contained in any such Assigned Contract relating to the assignment thereof, including any provision requiring the consent of any party to an Assigned Contract.

16. As provided in paragraph 8 of the CCAA Vesting Order, each counterparty to the Assigned Contracts is prohibited from exercising any right or remedy under the Assigned Contracts by reason of any defaults thereunder arising from the commencement or pendency of the Canadian Proceeding or these chapter 15 cases or the solvency or financial condition of the Debtors.

17. To the extent there may be any dispute arising from the U.S. Sale Order's treatment of any Assigned Contract, including, but not limited to, disputes related to an attempted post-Sale modification or termination of any Assigned Contract subject to this Court's jurisdiction, regardless of whether such modification or termination is based upon restrictions or prohibitions contained in any Assigned Contract relating to the assignment thereof, this Court shall retain jurisdiction to enforce any and all terms and provisions of the Purchase Agreement, the CCAA Vesting Order, and/or U.S. Sale Order with respect to any such Assigned Contract.

### **Additional Provisions**

18. In accordance with paragraph 12 of the CCAA Vesting Order, the Monitor is authorized and directed to pay the Arctic Lenders (as defined in the Purchase Agreement) from the net proceeds of the Sale of the Purchased Assets an amount sufficient to pay the Lender Claims in full and in cash, as specified in a pay-out letter to be provided by the Arctic Lenders at or before the Time of Closing. As provided in the CCAA Vesting Order, such payment shall be made concurrently with, and as a condition precedent to, the closing of the Sale.

19. The Purchaser, as a purchaser in good faith within the meaning of section 363(m) of the Bankruptcy Code, shall be entitled to all of the protections of section 363(m) of the Bankruptcy Code. The reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale unless, prior to the Time of Closing, such authorization is duly stayed pending appeal.

20. The terms and provisions of the Purchase Agreement and the U.S. Sale Order shall be binding on and inure to the benefit of the Debtors, the Purchaser, the Debtors' creditors, and all other parties in interest, and any successors of the Debtors, the Purchaser and the Debtors' creditors, including any trustee(s), examiner(s), or receiver(s) appointed in these cases or under any chapter of the Bankruptcy Code or any other law, and all such terms and provisions shall likewise be binding on such trustee(s), examiner(s), or receiver(s) and shall not be subject to rejection or avoidance by the Debtors, the Debtors, their creditors, or any trustee(s), examiner(s), or receiver(s).

21. Subject to the terms and conditions of the CCAA Vesting Order and the Purchase Agreement, provisions of the Purchase Agreement and any related agreements may be waived, modified, amended, or supplemented by agreement among the Debtors and the

Purchaser in a writing signed by the Debtors and the Purchaser without further action or order of this Court.

22. The failure to include any particular provision of the CCAA Vesting Order, the Purchase Agreement, or any related agreements in the U.S. Sale Order shall not diminish or impair the effectiveness of that provision, it being the intent of this Court that the CCAA Vesting Order, the Purchase Agreement, and any related agreements, with such amendments thereto as may be made by the parties in accordance with the CCAA Vesting Order, and the Purchase Agreement be approved and authorized in their entirety.

23. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the contrary: (a) the terms of the U.S. Sale Order shall be immediately effective and enforceable upon its entry; (b) the Debtors, the Purchaser, and the Monitor are not subject to any stay in the implementation, enforcement or realization of the relief granted in the U.S. Sale Order; and (c) the Debtors, the Purchaser, and the Monitor may, in their discretion and without further delay, take any action and perform any act authorized under the CCAA Vesting Order and/or the U.S. Sale Order.

24. Nothing in the U.S. Sale Order or the Purchase Agreement discharges, releases, or precludes any environmental liability under United States law (or any law enforceable by the United States) to the United States or any department, agency, or instrumentality thereof (each, a "U.S. Governmental Unit") of any entity based on its ownership or operation after the Time of Closing of real property. Nor shall anything in this Order enjoin or otherwise bar a U.S. Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence.

25. The Debtors' actions to transfer to the Purchaser any licenses, permits, registrations, or other governmental authorizations pursuant to the Purchase Agreement are authorized under the U.S. Sale Order, provided that nothing in the U.S. Sale Order or the Purchase Agreement relieves the purchaser from compliance with all applicable legal requirements governing such transfers under United States environmental laws, including, without limitation, the Resource Conservation and Recovery Act, the Clean Air Act, and the Clean Water Act.

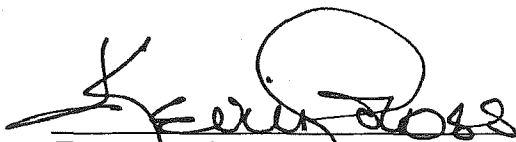
26. To the extent permitted by Bankruptcy Code section 525, no governmental unit may revoke or suspend any permit or license relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these chapter 15 cases or the consummation of the Sale.

27. Nothing in the U.S. Sale Order shall be deemed to waive, release, extinguish or estop the Debtors from asserting, or otherwise impair or diminish, any right (including, without limitation, any right of recoupment), claim, cause of action, defense, offset or counterclaim in respect of any asset that is not a Purchased Asset.

28. The provisions of the U.S. Sale Order are nonseverable and mutually dependent.

29. Other than as explicitly set forth herein, this Court shall retain jurisdiction with respect to any and all matters, claims, rights, or disputes arising from or related to the implementation or interpretation of the U.S. Sale Order.

Dated: July 17, 2012  
Wilmington, Delaware

  
The Honorable Kevin Gross  
United States Bankruptcy Judge



### **CERTIFICATE OF SERVICE**

I, Caroline R. Djang, hereby certify that on this 31<sup>st</sup> day of July, 2012, I caused a copy of the foregoing **Notice of Appeal of Order Pursuant to Sections 104(A), 363, 1501, 1520, and 1521 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, and 9014 (I) Recognizing and Enforcing the CCAA Vesting Order, (II) Authorizing and Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of Any and All Liens, Claims, Encumbrances, and Other Interests, (III) Authorizing Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief** to be served electronically via the Court's CM/ECF system upon the parties registered to receive notice thereby and via First Class United States Mail upon the following individuals listed below:

#### **VIA CM/ECF**

Justin R. Alberto    jalberto@bayardlaw.com, bankserve@bayardlaw.com;  
sbreckenridge@bayardlaw.com; lmorton@bayardlaw.com; cdavis@bayardlaw.com  
Ian J Bambrick    bankfilings@ycst.com  
Ryan M. Bartley    bankfilings@ycst.com  
Robert S. Brady    bankfilings@ycst.com  
Howard A. Cohen    howard.cohen@dbr.com  
David L. Finger    dfinger@delawgroup.com  
L. Katherine Good    good@rlf.com, rbgroup@rlf.com  
David G Holmes    dholmes@crosslaw.com  
Albert Kass    ECFpleadings@kccllc.com, ecfpleadings@kccllc.com  
Kurtzman Carson Consultants LLC    akass@kccllc.com  
Matthew Barry Lunn    bankfilings@ycst.com  
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Ellen W. Slights    usade.ecfbankruptcy@usdoj.gov  
United States Trustee    USTPREGION03.WL.ECF@USDOJ.GOV

#### **VIA FIRST CLASS MAIL**

Robert S. Brady Matthew B. Lunn YOUNG CONAWAY STARGATT & TAYLOR, LLP Rodney Square 1000 North King Street Wilmington, DE 19801	Marc Abrams Mary K. Warren Alex W. Cannon WILKIE FARR & GALLAGHER LLP 787 Seventh Avenue New York, NY 10019-6099
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By: /s/ Caroline R. Djang  
Caroline R. Djang

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

ARCTIC GLACIER INTERNATIONAL INC.,  
*et al.*,<sup>1</sup>

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 12-10605 (KG)

(Jointly Administered)

**APPELLANT DESERT MOUNTAIN ICE LLC'S  
STATEMENT OF ISSUES ON APPEAL**

Pursuant to Federal Rule of Bankruptcy Procedure 8006 and Appellate Procedure 6, Appellant Desert Mountain Ice LLC, hereby sets forth the issues to be decided by this appeal of the *Order Pursuant to Sections 105(a), 363, 1501, 1520, and 1521 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, and 9014 (I) Recognizing and Enforcing the CCAA Vesting Order, (II) Authorizing and Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of Any and All Liens, Claims, Encumbrances, and Other Interests, (III) Authorizing Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief:*

1. Whether the Bankruptcy Court erred with respect to recognizing and enforcing that certain Amended and Restated Canadian Vesting and Approval Order [Docket No. 120] that was entered by the Canadian Court on July 12, 2012 in the Canadian Proceeding.

2. Whether the Bankruptcy Court erred in authorizing and approving, to the extent

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<sup>1</sup>

The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, follow in parentheses: (i) Arctic Glacier California Inc. (7645); (ii) Arctic Glacier Grayling Inc. (0976); (iii) Arctic Glacier Inc. (4125); (iv) Arctic Glacier Income Fund (4736); (v) Arctic Glacier International Inc. (9353); (vi) Arctic Glacier Lansing Inc. (1769); (vii) Arctic Glacier Michigan Inc. (0975); (viii) Arctic Glacier Minnesota Inc. (2310); (ix) Arctic Glacier Nebraska Inc. (7790); (x) Arctic Glacier New York Inc. (2468); (xi) Arctic Glacier Newburgh Inc. (7431); (xii) Arctic Glacier Oregon, Inc. (4484); (xiii) Arctic Glacier Party Time Inc. (0977); (xiv) Arctic Glacier Pennsylvania Inc. (9475); (xv) Arctic Glacier Rochester Inc. (6989); (xvi) Arctic Glacier Services Inc. (6657); (xvii) Arctic Glacier Texas Inc. (3251); (xviii) Arctic Glacier Vernon Inc. (3211); (xix) Arctic Glacier Wisconsin Inc. (5835); (xx) Diamond Ice Cube Company Inc. (7146); (xxi) Diamond Newport Corporation (4811); (xxii) Glacier Ice Company, Inc. (4320); (xxiii) Ice Perfection Systems Inc. (7093); (xxiv) ICSurance Inc. (0849); (xxv) Jack Frost Ice Service, Inc. (7210); (xxvi) Knowlton Enterprises Inc. (8701); (xxvii) Mountain Water Ice Company (2777); (xxviii) R&K Trucking, Inc. (6931); (xxix) Winkler Lucas Ice and Fuel Company (0049); (xxx) Wonderland Ice, Inc. (8662). The Debtors' executive headquarters is located at 625 Henry Avenue, Winnipeg, Manitoba, R3A 0V1, Canada.



provided for in the CCAA Vesting Order, the assignment of the Assigned Contracts (as defined in the Purchase Agreement).

Dated: August 14, 2012

Respectfully submitted,

RUTAN & TUCKER, LLP

By: /s/ Caroline R. Djang

Eric J. Fromme

Caroline R. Djang

Counsel for Desert Mountain Ice, LLC

Rutan & Tucker, LLP

611 Anton Blvd.

Suite 1400

Costa Mesa, CA 92626

Telephone: (714) 641-5100

Facsimile: (714) 546-9035

## **APPENDIX “K”**

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

IN RE: Arctic Glacier International. et al

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Lawrence J. Acker, et al.,

Appellants

v.

Alvarez & Marsal Canada Inc.,

Appellee

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Civil Action No. 12-504-SLR

Bankruptcy Case No. 12-10605  
BAP 12-22

**STIPULATION OF DISMISSAL OF APPEAL WITH PREJUDICE**

WHEREAS, on February 22, 2012, Alvarez & Marsal Canada Inc., the appellee in the above-captioned appeal, in its capacity as the court-appointed monitor and authorized foreign representative (the “Monitor”) for the debtors in the above-captioned main chapter 15 bankruptcy case (collectively, the “Debtors”) in the proceeding (the “Canadian Proceeding”) commenced under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) and pending before the Court of Queen’s Bench Winnipeg Centre (the “Canadian Court”), filed verified petitions on behalf of the Debtors, pursuant to sections 1504 and 1515 of title 11 of the United States Code (the “Bankruptcy Code”), seeking recognition by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) of the Canadian Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code.

WHEREAS, on February 23, 2012, the Bankruptcy Court entered the *Order Granting Provisional Relief* [Docket No. 28] (the “Provisional Relief Order”), providing for,



among other things, a stay of all proceedings against or concerning property of the Debtors located within the territorial jurisdiction of the United States.

WHEREAS, on March 16, 2012, the Bankruptcy Court entered the *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief* [Docket No. 70] (the “Recognition Order”). Pursuant to the Recognition Order, the Bankruptcy Court (a) granted recognition of the Canadian Proceeding as a foreign main proceeding under section 1517 of the Bankruptcy Code, (b) authorized the Debtors to obtain postpetition secured financing, and (c) enforced in full the Provisional Relief Order on a permanent basis in the United States.

WHEREAS, on March 23, 2012, the indirect purchaser plaintiffs in the pending class action litigation titled *In re Packaged Ice Antitrust Litig.*, Case No. 08-MD-01952 (E.D. Mich.) (the “Indirect Purchaser Plaintiffs”) appealed the entry of the Recognition Order, which appeal (the “Appeal”) has been docketed by this Court (the “District Court”) as Case No. 12-504-SLR.

WHEREAS, on June 26, 2012, the Monitor filed the *Monitor’s Motion, Pursuant to Sections 105(A), 363, 1501, 1520, and 1521 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 9014, for Entry of an Order (I) Recognizing and Enforcing the CCAA Vesting Order, (II) Authorizing and Approving the Sale of Substantially all of the Debtors’ Assets Free and Clear of Any and All Liens, Claims, Encumbrances, and Other Interests, (III) Authorizing Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [Docket No. 108] (the “Sale Motion”), by which the Monitor sought the Bankruptcy Court’s recognition of an order of the Canadian Court selling substantially all of the Debtors’ assets. A hearing on the Sale Motion before the Bankruptcy Court was held on July 17, 2012.

WHEREAS, the Debtors, the Monitor, and the Indirect Purchaser Plaintiffs have agreed to resolve and compromise the issues raised in the Appeal and seek dismissal of the Appeal, and the Indirect Purchaser Plaintiffs have agreed not to assert potential objections that they may have to the Sale Motion, upon the parties' agreement to the following:

1. Subject to paragraph 2, the Debtors and the Monitor agree to propose, consent to, and support the entry of a claims procedure order by the Court of Queen's Bench of Manitoba within the CCAA proceedings commenced by the Debtors in the Court of Queen's Bench of Manitoba (the "CCAA Proceeding") (obtained by the Debtors on notice to the Service List) allowing for the filing by the Indirect Purchaser of representative or class claims (the "Claims Procedure Order"); provided, however, that nothing contained in the Claims Procedure Order shall prejudice the Debtors' or the Monitor's rights to object to or otherwise oppose, on any and all bases, the validity and/or amount of any representative or class claim that may be filed by the Indirect Purchasers in the CCAA Proceeding, including on the basis that the class cannot be certified under applicable law or the claim is not otherwise qualified as a class claim in the claims procedure.

2. The Claims Procedure Order to be proposed to the Court of Queen's Bench of Manitoba shall provide that the representative or class claims filed by the Indirect Purchasers shall be decided in the CCAA Proceeding by a Special Claims Officer appointed by that Court:

(a) who is a lawyer resident and licensed to practice in the United States of America; and

(b) who has substantial experience as counsel in U.S. antitrust class actions; and

(c) who is agreeable to each of the Debtors, the Monitor and the Indirect Purchasers, provided that, should the parties fail to agree on a Special Claims Officer within a reasonable time, the Court of Queen's Bench of Manitoba shall decide on motion of the Monitor which candidate will be appointed as Special Claims Officer.

3. The following definitions shall apply:

(a) the phrase “Extant Class Action Complaints” shall mean (collectively) the various U.S. class action complaints by indirect purchasers filed in various United States jurisdictions, as the same are more particularly described in the attached Schedule “A” hereto; and

(b) the phrase “Indirect Purchasers” shall mean (collectively) the Plaintiffs in the Extant Class Action Complaints (and/or any other persons added or substituted in their place and stead as representative Plaintiffs to advance the same claims identified in such Extant Class Action Complaints).

(the “Settlement Stipulation”). Execution by counsel to the Debtors, the Monitor, and Indirect Purchaser Plaintiffs of this Stipulation of Dismissal shall be an acknowledgement of their acceptance of the Settlement Stipulation.

WHEREAS, the parties to the instant Appeal have agreed to stipulate to the dismissal of this Appeal in exchange for the consideration to be provided to each other in the Settlement Stipulation.

NOW THEREFORE, the parties hereby stipulate, by and through their undersigned counsel, that, subject to approval of the Court, the Appeal in Case No 12-504-SLR shall be dismissed with prejudice, with each party to bear its own costs and attorney’s fees.

[Signature Pages Follow]



Dated July 31, 2012

<p>YOUNG CONWAY STARGATT &amp; TAYLOR, LLP</p> <p><u>/s/ Matthew B. Lunn</u></p> <p>Robert S. Brady (No. 2847)  Matthew B. Lunn (No. 4119)  Ryan M. Bartley (No. 4985)  Rodney Square  1000 North King Street  Wilmington, Delaware 19801  Tel: (302) 571-6600</p> <p>- and -</p> <p>WILLKIE FARR &amp; GALLAGHER LLP  Marc Abrams  Mary K. Warren  Alex W. Cannon  787 Seventh Avenue  New York, NY, 10019-6099  Tel: (212) 728-8000</p> <p><i>Co-Counsel to the Monitor and Foreign Representative</i></p>	<p>FINGER &amp; SLANINA, LLC</p> <p><u>/s/ David L. Finger</u></p> <p>David L. Finger (DE Bar ID #2556)  One Commerce Center  1201 N. Orange Street, 7<sup>th</sup> Floor  Wilmington DE 19801-1186  Tel: (302) 573-2525</p> <p>- and -</p> <p>WILD LAW GROUP PLLC  Matthew S. Wild  121 Reynolda Village, Suite M  Winston-Salem, NC 27106  Telephone (914) 630-7500</p> <p>WILD LAW GROUP PLLC  Max Wild  98 Distillery Road  Warwick, NY 10990  Telephone (914) 630-7500</p> <p>WILD LAW GROUP PLLC  John M. Perrin  27735 Jefferson Avenue  Saint Clair Shores, MI 48081  Tel. (914) 630-7500</p> <p><i>Co-Counsel for the Appellants</i></p>
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<p>RICHARDS, LAYTON &amp; FINGER, P.A.</p> <p><u>/s/ Paul N. Heath</u></p> <p>Daniel J. DeFranceschi (DE 2732) Paul N. Heath (DE 3704) L. Katherine Good (DE 5101) One Rodney Square 920 North King Street Wilmington, Delaware 19801 Tel: (302) 651-7700</p> <p>- and -</p> <p>JONES DAY Gregory M. Gordon (TX 08435300) Daniel P. Winikka (TX 00794873) Paul M. Green (TX 24059854) 2727 N. Harwood Street Dallas, Texas 75201 Tel: (214) 220-3939</p> <p><i>Co-Counsel for the Debtors</i></p>	
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IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Honorable Sue L. Robinson  
United States District Judge

## **APPENDIX “L”**

## **ARCTIC GLACIER ISSUES DEFAULT ANNOUNCEMENT PURSUANT TO NATIONAL POLICY 12-203**

**WINNIPEG – August 15, 2012 – Arctic Glacier Income Fund** (CNSX: AG.UN) (the “Fund”) announced today that it will not be able to file an interim financial report and interim management's discussion and analysis for the period ended June 30, 2012, together with the related certification of filings under National Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings* (collectively, the “Continuous Disclosure Documents”) by August 29, 2012, the deadline prescribed by securities legislation (the “Specified Requirement”).

As previously disclosed, on February 22, 2012, the Fund and its subsidiaries (collectively, “Arctic Glacier”) commenced proceedings in the Manitoba Court of Queen’s Bench (the “Court”) under the *Companies’ Creditors Arrangement Act* (the “CCAA”). In the CCAA proceedings, Arctic Glacier continued its business under the protection of a stay of creditor claims and Arctic Glacier conducted a court supervised recapitalization of its business through the initiation of a sale and investment solicitation process. The CCAA proceedings were recognized in the United States Bankruptcy Court for the District of Delaware (the “US Court”). Under the CCAA, Alvarez & Marsal Canada Inc. was appointed by the Court as Monitor. Since the CCAA proceedings commenced, in compliance with the CCAA and the orders of the Court in the CCAA proceedings, Arctic Glacier has provided the Monitor with full access to its accounting records. The Monitor has filed with the Court periodic reports which have included Arctic Glacier’s cash flow projections and other financial information concerning Arctic Glacier. Arctic Glacier anticipates that the Monitor will continue to file reports with the Court (and post them on its website) updating relevant financial information concerning Arctic Glacier. The Monitor’s reports and Court records are available on line on its website at [www.alvarezandmarsal.com/arcticglacier](http://www.alvarezandmarsal.com/arcticglacier).

As previously disclosed, with the approval of the Court and the US Court, on July 27, 2012, Arctic Glacier sold substantially all of its business and assets (the “Sale”) to affiliates of H.I.G. Capital (the “Purchaser”) for cash consideration and the assumption of certain current liabilities. On closing the Sale, the Purchaser hired substantially all of Arctic Glacier’s employees and is continuing the business formerly carried on by Arctic Glacier. The remaining cash proceeds of the Sale are being held by the Monitor pending further order of the Court, the satisfaction of tax liabilities, if any, the determination and payment of creditor claims, including outstanding litigation claims, and such other matters considered relevant by the Trustees of the Fund.

As a consequence of the Sale, Arctic Glacier has not had the requisite time or resources to prepare and file the Continuous Disclosure Documents reflecting its financial position as of June 30, 2012. Arctic Glacier intends to file the Continuous Disclosure Documents as soon as is commercially reasonable, or as required by the Court.

Arctic Glacier intends to satisfy the provisions of the alternative information guidelines set out in National Policy 12-203 *Cease Trade Orders for Continuous Disclosure Defaults* so long as it remains in default of the Specified Requirement. It also intends to file with the applicable securities regulatory authorities throughout the period in which it is in default of the Specified Requirement, the same information it or its subsidiaries provide to their creditors when the

information is provided to their creditors and in the same manner as it would file a material change report under part 7 of National Instrument 51-102 *Continuous Disclosure Requirements*.

### **Forward-Looking Statements**

Certain statements included herein constitute "forward-looking statements". All statements, other than statements of historical fact, included in this release that address future activities, events, developments or financial performance are forward-looking statements. These forward-looking statements can be identified by the use of forward-looking words such as "may", "should", "will", "could", "expect", "intend", "plan", "estimate", "anticipate", "believe", "future" or "continue" or the negative thereof or similar variations. In particular, statements about Arctic Glacier's intentions to satisfy the provisions of the alternative information guidelines and file information with the applicable securities regulatory authorities, as well as the expected timetable for satisfying the Specified Requirement, are or involve forward-looking information. These forward-looking statements are based on certain assumptions and analyses made by Arctic Glacier and its management, in light of their experiences and their perception of historical trends, current conditions and expected future developments, as well as other factors they believe are appropriate in the circumstances. Investors are cautioned not to put undue reliance on such forward-looking statements, which are not a guarantee of performance and are subject to a number of uncertainties, assumptions and other factors, many of which are outside the control of Arctic Glacier, which could cause actual results to differ materially from those expressed or implied by such forward-looking statements. Important factors that could cause actual results to differ materially from those expressed or implied by such forward-looking statements include, among other things, the CCAA Process and Arctic Glacier's ability to secure sufficient resources to prepare the Continuous Disclosure Documents. Readers are cautioned that the foregoing list is not exhaustive. Such forward-looking statements should, therefore, be construed in light of such factors. If any of these risks or uncertainties were to materialize, or if the factors and assumptions underlying the forward-looking information were to prove incorrect, actual results could vary materially from those that are expressed or implied by the forward-looking information contained herein. All forward-looking statements attributable to Arctic Glacier, or persons acting on its behalf, are expressly qualified in their entirety by the cautionary statements set forth above. Readers are cautioned not to place undue reliance on forward-looking statements contained herein, which reflect the analysis of the management of Arctic Glacier, as appropriate, only as of the date of this release. For more information regarding these and other risks, readers should consult Arctic Glacier's reports on file with applicable securities regulatory authorities accessible online by going to SEDAR at [www.sedar.com](http://www.sedar.com) or by going to the Arctic Glacier website at [www.arcticglacier.com](http://www.arcticglacier.com). Arctic Glacier is under no obligation, and Arctic Glacier expressly disclaims any intention or obligation, to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by applicable law.

### **About Arctic Glacier**

*Arctic Glacier Income Fund trust units are listed on the Canadian National Stock Exchange under the trading symbol AG.UN. There are 350.3 million trust units outstanding.*

**Contact Information**

Hugh A. Adams, Corporate Secretary

Toll free investor relations phone: 888-573-9237

**[www.arcticglacier.com](http://www.arcticglacier.com)**

## **APPENDIX “M”**

**ARCTIC GLACIER, LLC**

**- and -**

**ARCTIC GLACIER U.S.A., INC.**

**- and -**

**ARCTIC GLACIER CANADA INC.**

**- and -**

**ARCTIC GLACIER INCOME FUND**

**- and -**

**THE DIRECT AND INDIRECT SUBSIDIARIES OF  
ARCTIC GLACIER INCOME FUND  
Listed in Schedule A Hereto**

**- and -**

**ALVAREZ & MARSAL CANADA INC.,  
as Court-Appointed Monitor**

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**TRANSITION SERVICES AGREEMENT**

**July 27, 2012**

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**THIS TRANSITION SERVICES AGREEMENT** is made as of July 27, 2012

**BETWEEN:**

**ARCTIC GLACIER, LLC**, a limited liability company formed under the laws of the State of Delaware,

(the “**Original Purchaser**”)

- and -

**ARCTIC GLACIER U.S.A, INC.**, a corporation formed under the laws of the State of Delaware,

(“**Designated Purchaser 1**”)

- and -

**ARCTIC GLACIER CANADA INC.**, a corporation formed under the laws of the Province of British Columbia,

(“**Designated Purchaser 2**” and, together with the Original Purchaser and Designated Purchaser 1, the “**Purchaser Group**”)

- and -

**ARCTIC GLACIER INCOME FUND**, an unincorporated open ended mutual fund trust established under the laws of the Province of Alberta,

(the “**Fund**”)

- and -

**Each of the direct and indirect subsidiaries of the Fund listed in Schedule A hereto,**

(together with the Fund, the “**Applicants**”)

- and -

**ALVAREZ & MARSAL CANADA INC.**, in its capacity as court-appointed monitor of the Applicants and not in its corporate or other personal capacity,

(the “**Monitor**”).

**RECITALS:**

- A. On February 22, 2012, the Applicants obtained protection from their creditors and certain other relief pursuant to an initial order (the “**Initial Order**”) made by the Manitoba Court of Queen’s Bench (the “**Canadian Court**”) pursuant to the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**” and the proceedings thereunder, the “**CCAA Proceedings**”).
- B. Pursuant to the Initial Order, the Canadian Court appointed the Monitor as the monitor in connection with the CCAA Proceedings and directed the Monitor to act as foreign representative of the Applicants and apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the U.S. Bankruptcy Code. Among other things, the Initial Order directed and empowered the Monitor to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA and as set forth in the Initial Order, including the right to have full and complete access to the Applicants’ property (including the premises, books, records, data and other financial documents of the Applicants), to the extent necessary to assess the business and financial affairs of the Applicants or to perform the Monitor’s duties arising under the Initial Order.
- C. On March 15, 2012, the Canadian Court granted an extension of the stay of proceedings as against the Applicants until and including April 5, 2012 and such stay of proceedings was subsequently further extended until September 14, 2012 (inclusive).
- D. Pursuant to the Initial Order, the Canadian Court approved, among other things, a Sale and Investor Solicitation Process (the “**SISP**”), the purpose of which was to seek sale proposals and investment proposals from qualified bidders and to implement one or a combination of such proposals in respect of the Assets, the Purchased Businesses and/or the Applicants.
- E. Following completion of the SISP, the Applicants and the Original Purchaser (under its former name H.I.G. Zamboni, LLC) entered into an Asset Purchase Agreement dated as of June 7, 2012 (the “**Purchase Agreement**”), pursuant to which each of the Applicants (as applicable) agreed to transfer to the Original Purchaser, and the Original Purchaser agreed to purchase and assume, including, to the extent applicable, pursuant to the Canadian Approval and Vesting Order and the U.S. Sale Recognition Order, the Assets and the Assumed Liabilities from each of the Applicants.
- F. As contemplated by the Purchase Agreement, the Original Purchaser has designated each of Designated Purchaser 1 and Designated Purchaser 2 as a “Designated Purchaser”, in accordance with Section 8.01 thereof.
- G. In order to facilitate the transition of the Purchased Businesses and the completion of the Applicants’ restructuring process, including any claims process to be ordered by the Canadian Court and any potential distribution to unitholders of the Fund, the parties hereto (each, a “**Party**”, and together, the “**Parties**”) have agreed that during the Post-Closing Period (as defined below) the Purchaser Group shall provide or cause to be provided to the Applicants and the Monitor as reasonably requested: (i) access to information related to the Applicants and the Purchased Businesses; (ii) services of

certain Transferring Employees; and (iii) use of certain of its assets (all of the foregoing collectively and as more particularly described in Article 2 hereof, the “**Transition Services**”), on the terms and subject to the conditions set forth in this transition services agreement (the “**Agreement**”).

**IN CONSIDERATION** of the covenants contained herein and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed by each Party), the Parties agree as follows:

## **ARTICLE 1 RECITALS, DEFINITIONS AND GENERAL MATTERS**

### **1.1 Recitals**

The Recitals shall form part of this Agreement.

### **1.2 Definitions**

Any capitalized term used, but not defined, in this Agreement shall have the meaning ascribed thereto in the Purchase Agreement. As used in this Agreement, the terms “**Vendors**” means, collectively, the Fund together with all of the trustees of the Fund and the other Applicants together with all of their respective directors.

### **1.3 Court Approval**

Notwithstanding that the Parties have executed this Agreement, this Agreement shall become effective and legally binding, without any further act or formality on behalf of the Parties, immediately upon the completion of the sale and purchase of the Assets and the assumption of the Assumed Liabilities in accordance with the terms of the Purchase Agreement, but subject to the issuance by the Canadian Court of an order, in form and substance satisfactory to the Parties (each acting reasonably), approving this Agreement.

### **1.4 Purchaser Group Bound**

Each member of the Purchaser Group acknowledges and confirms that it is bound jointly and severally with the Original Purchaser for the performance of the Original Purchaser’s obligations under this Agreement.

### **1.5 Reporting**

Following the Closing Date, the Monitor shall periodically (and at least once every quarter) update the Purchaser Group on the status of the Monitor’s activities pursuant to this Agreement until the discharge of the Monitor.

## **ARTICLE 2 TRANSITION SERVICES**

### **2.1 Retention of Information and Access to Records**

The Purchaser Group shall preserve and keep all Books and Records, Tax Returns and all other information relating to the accounting, Tax, business and financial matters that relate to the Purchased Businesses for the same period following the Closing Date for which the Original Purchaser agreed to keep the documents delivered to it by the Vendors under Section 6.04(1) of the Purchase Agreement (such Period, the “**Post-Closing Period**”), and the Purchaser Group hereby grants to the Monitor and its authorized representatives the same rights of access to such Books and Records, Tax Returns and the other information as have been granted to the Vendors under Section 6.04(1) of the Purchase Agreement for the purposes of performing the Monitor’s duties and responsibilities pursuant to, and exercising any authority given to the Monitor under, the Initial Order, the Canadian Approval and Vesting Order, the U.S. Sale Recognition Order, any order issued by the Canadian Court with respect to this Agreement, any claims process order issued by the Canadian Court and any other order of the Canadian Court or the U.S. Bankruptcy Court, but the Purchaser Group will not be responsible or liable to the Monitor for or as a result of any inadvertent loss or destruction of, or inadvertent damage to, any such documents.

### **2.2 Employee Services**

Subject to Section 2.5, the Purchaser Group shall, until the earlier of (i) the discharge of the Monitor or (ii) the expiry of the Post-Closing Period, make available to the Monitor during regular business hours at the Purchaser Group’s head office in Winnipeg, Manitoba (or at such other location as the Purchaser Group and the Monitor may agree) up to a maximum of five (5) Transferring Employees at a time, to be agreed upon between the Purchaser Group and the Monitor in a side letter (recognizing that the identities of the Transferring Employees with such group may change from time to time depending on the needs of the Monitor and that the side letter may be amended, supplemented, replaced or otherwise modified by the parties thereto to reflect such changing needs), as are reasonably necessary to assist the Monitor from time to time in the performance of their respective duties and responsibilities pursuant to, and in the exercise of any authority given to them under, Applicable Law, the Purchase Agreement, the Initial Order, the Canadian Approval and Vesting Order, the U.S. Sale Recognition Order, any claims process order issued by the Canadian Court, any order issued by the Canadian Court with respect to this Agreement, and any other order of the Canadian Court or the U.S. Bankruptcy Court, or in connection with transitional banking arrangements involving the Vendors, their bank accounts and authorized banking signatories.

### **2.3 Use of Facilities**

The Purchaser Group shall, for the duration of the Post-Closing Period, make available during regular business hours for use by the Vendors or the Monitor, together with their respective authorized representatives, office premises and facilities of the Purchaser Group (including, without limitation, those forming part of the Assets) of such nature and scale as are reasonably necessary for facilitating the performance by the Vendors and the Monitor of their respective duties, obligations and authority as described in this Agreement and, in any event, at least comparable to those facilities provided to the Monitor during the course of the CCAA Proceedings prior to the date of this Agreement.

## **2.4 Use of Trademarks**

- (a) Subject to Section 2.4(b), as soon as practicable following the Closing Date (but in any event within thirty (30) Business Days following the Closing Date), each of the Vendors that is a corporation and that uses the words “Arctic Glacier” (or variation of such words) in its legal name will change such legal name to a name that does not use such words (or variation). To the extent the Purchaser Group notifies the Monitor and the Vendors in writing that it wishes any other legal name, registered business name, trademark or trade name, of any of the Vendors to be changed on the basis that it causes confusion with the Purchaser Group’s use of such name(s) or mark(s), the Monitor and the relevant Vendor will, promptly upon receipt of the notification, cease the use of such name(s) or mark(s) and thereafter, the applicable Vendor shall change such name(s) or mark(s) in accordance with the requirements of Applicable Law.
- (b) Notwithstanding Section 2.4(a), the Vendors and the Monitor shall, for the duration of the Post-Closing Period, have the right to use the words “Arctic Glacier” and certain business names (both with the qualifier “formerly known as” preceding all usages) and trademarks identified in Schedule B hereto as are reasonably necessary for the Monitor to perform its duties and obligations pursuant to, and to exercise any authority given to the Monitor under, Applicable Law, the Purchase Agreement or the Initial Order, the Canadian Approval and Vesting Order, the U.S. Sale Recognition Order, any claims process order issued by the Canadian Court, any order issued by the Canadian Court with respect to this Agreement, and any other order of the Canadian Court or the U.S. Bankruptcy Court, provided that no other business shall be carried on under such names and trademarks.

## **2.5 No Undue Interference, Expenses and Compensation**

- (a) Notwithstanding any other provision of this Agreement but subject to Section 2.5(c), requests for Transition Services by any of the Vendors or the Monitor, and the delivery of Transition Services by the Purchaser Group hereunder, shall not cause undue interference to the ordinary conduct of the operations of the Purchaser Group, and the Purchaser Group shall have no obligation to provide any services under this Agreement in the event such undue interference has occurred and continues following written notice thereof from the Purchaser Group. Subject to Section 2.5(b), the Purchaser Group shall be reimbursed for reasonable out-of-pocket expenses incurred by the Purchaser Group as a result of the provision of Transition Services hereunder, provided, however, that there shall be no reimbursement attributable solely to the use of facilities and equipment by the Vendors or the Monitor.
- (b) The Purchaser Group shall not be entitled to any compensation or reimbursement attributable solely to the use of Transferring Employees by the Monitor during the period (the “**Fixed Access Period**”) of eighteen (18) months following the date on which the Canadian Court grants a claims procedure order in the CCAA Proceedings, provided that such order is granted on or before September 5, 2012, in which case the Fixed Access Period shall start on that date; and provided, further, that after the first twelve (12) months of the Fixed Access Period and until its expiry, the maximum number of Transferring Employees to be made available by the Purchaser Group pursuant to Section 2.2 will be reduced from an aggregate of five (5) at a time to an aggregate of three (3) at a time. From and after the expiry of the Fixed Access Period, the provision of any

Transition Services by the Purchaser Group to the Monitor pursuant to this Agreement will be conditional upon the Purchaser Group and the Monitor, each acting reasonably, first having agreed in a side letter to reasonable compensation for any future Transition Services to be so provided.

- (c) Notwithstanding Section 2.5(b), in the event that the provision of Transition Services to the Monitor is delayed due to the unavailability or refusal of the agreed Transferring Employees to perform such services as contemplated by Section 2.2, the Fixed Access Period will be automatically increased by the number of days equal to the number of days during which the Transferring Employees were unavailable, or refused, to perform such Transition Services. For the avoidance of doubt, the Monitor acknowledges that nothing in this Agreement limits the ability of the Purchaser Group to prioritize the operation of its business as it sees fit over the provision of Transition Services under this Agreement.

### **ARTICLE 3 RELATIONSHIPS AND LIABILITY**

#### **3.1 Independent Contractor Relationship**

In requesting or providing the Transition Services hereunder, each Party and its employees, agents and other representatives shall operate as and have the status of independent contractors. No Party's employees shall be considered employees or agents of any other Party. Nothing contained in this Agreement shall be deemed or construed to create a joint venture or partnership between any of the Parties. No Party shall have any power to control the activities or operations of any other Party.

#### **3.2 Monitor's Liability**

The Purchaser Group and the Vendors acknowledge and agree that the Monitor, acting in its capacity as the monitor of the Vendors in the CCAA Proceedings, will have no Liability in connection with this Agreement whatsoever, in its capacity as Monitor, in its personal capacity or otherwise, except for claims related to gross negligence or wilful misconduct.

#### **3.3 Vendors' Liability**

The Monitor and the Purchaser Group acknowledge and agree that the Vendors will have no Liability in connection with this Agreement whatsoever, except for claims related to gross negligence or wilful misconduct.

#### **3.4 Purchaser Group's Liability**

The Vendors and the Monitor acknowledge and agree that the Purchaser Group will have no Liability in connection with any services performed by the Purchaser Group and their respective directors, officers, employees, affiliates, shareholders and agents under this Agreement, except for claims related to gross negligence or wilful misconduct.

#### **3.5 Liability of the Trustees and Unitholders**

The Parties acknowledge that where Arctic Glacier Inc. is signing on behalf of the Fund, it is entering into this Agreement solely on behalf of the Fund and the obligations of the Fund

hereunder shall not be personally binding upon any trustee of the Fund or any registered or beneficial holder of units of the Fund or any annuitant under a plan of which the holder of units of the Fund acts as a trustee or carrier, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, any of the foregoing or the private property of any of the foregoing in respect of any indebtedness, obligation or liability of the Fund arising hereunder or arising in connection with or from the matters to which this Agreement relates, and recourse shall be limited to, and satisfied only out of, the assets of the Fund.

## **ARTICLE 4 TERMINATION**

### **4.1 Termination**

Except as otherwise provided in this Article 4, this Agreement shall terminate automatically upon the expiry of the Post-Closing Period.

### **4.2 Early Termination**

This Agreement may be terminated at any time by the mutual written consent of the Parties.

### **4.3 Survival**

For greater certainty, the provisions contained in Section 2.1 of this Agreement shall survive and continue in full force and effect until the expiry of the Post-Closing Period.

## **ARTICLE 5 MISCELLANEOUS**

### **5.1 Notices**

All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be given or made pursuant to Section 8.11 of the Purchase Agreement.

### **5.2 Entire Agreement**

Except for those matters provided for in the Purchase Agreement as otherwise expressly provided in this Agreement, this Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements and undertakings, both written and oral, between or on behalf of the Parties with respect to the subject matter of this Agreement.

### **5.3 Non-Waiver**

The failure of any of the Parties to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any Party thereafter to enforce each and every such provision. No waiver of any breach of or non-compliance with this Agreement shall be held to be a waiver of any other subsequent breach or non-compliance. No waiver of any provision of this Agreement shall be effective unless made in writing by the Party against which the waiver is to be effective.

#### **5.4 Assignment**

No Party may assign this Agreement or any of the benefits, rights or obligations under this Agreement without the prior written consent of the other Parties, which consent may be withheld in such Parties' sole discretion.

#### **5.5 Enurement**

Subject to Section 1.4 hereof, this Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns.

#### **5.6 Amendment**

No amendment, supplement, modification or waiver or termination of this Agreement shall be binding unless executed in writing by all Parties.

#### **5.7 Governing Law**

This Agreement is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Manitoba and the federal laws of Canada applicable therein.

#### **5.8 Counterparts**

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile or other electronic means of transmission (e.g., portable document format), and all such counterparts and facsimiles shall together constitute one and the same agreement.

***[Remainder of the page intentionally left blank. Signature pages follow.]***



**IN WITNESS OF WHICH** the Parties have executed this Agreement as of the date first written above.

**ARCTIC GLACIER, LLC**

**By: ARCTIC GLACIER GROUP  
HOLDINGS, INC.**

**Its: Sole Member**

**By:**



**Name: Bret Wiener**

**Title: President and Treasurer**

**ARCTIC GLACIER U.S.A., INC.**

**By:**

**Name:**

**Title:**

**ARCTIC GLACIER CANADA INC.**

**By:**

**Name:**

**Title:**

**ARCTIC GLACIER INCOME FUND, by its  
attorney, ARCTIC GLACIER INC.**

**By:**

**Name:**

**Title:**

**IN WITNESS OF WHICH** the Parties have executed this Agreement as of the date first written above.

**ARCTIC GLACIER, LLC**

By: ARCTIC GLACIER GROUP  
HOLDINGS, INC.

Its: Sole Member

By:

\_\_\_\_\_  
Name: Bret Wiener  
Title: President and Treasurer

**ARCTIC GLACIER U.S.A., INC.**

By:

\_\_\_\_\_  
Name: Keith McMahon  
Title: President

**ARCTIC GLACIER CANADA INC.**

By:

\_\_\_\_\_  
Name: Keith McMahon  
Title: President

**ARCTIC GLACIER INCOME FUND, by its  
attorney, ARCTIC GLACIER INC.**


By:

\_\_\_\_\_  
Name: Keith McMahon  
Title: President


**ARCTIC GLACIER INC.**

By:   
\_\_\_\_\_  
Name: Keith McMahon  
Title: President


**ARCTIC GLACIER INTERNATIONAL INC.**

By:   
\_\_\_\_\_  
Name: Keith McMahon  
Title: President

**ARCTIC GLACIER TEXAS INC.**

By:   
\_\_\_\_\_  
Name: Keith McMahon  
Title: President


**ARCTIC GLACIER CALIFORNIA INC.**

By:   
\_\_\_\_\_  
Name: Keith McMahon  
Title: President

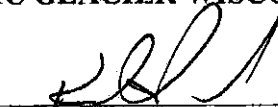
**ARCTIC GLACIER MICHIGAN INC.**

By:   
\_\_\_\_\_  
Name: Keith McMahon  
Title: President

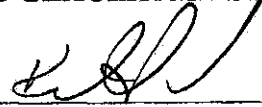
**ARCTIC GLACIER NEBRASKA INC.**

By:   
\_\_\_\_\_  
Name: Keith McMahon  
Title: President

**ARCTIC GLACIER WISCONSIN INC.**

By:   
\_\_\_\_\_  
Name: Keith McMahon  
Title: President


**ARCTIC GLACIER MINNESOTA INC.**

By:   
\_\_\_\_\_  
Name: Keith McMahon  
Title: President


**ARCTIC GLACIER NEW YORK INC.**

By:   
\_\_\_\_\_  
Name: Keith McMahon  
Title: President

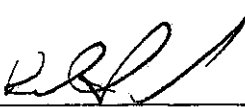
**ICE PERFECTION SYSTEMS INC.**

By:   
\_\_\_\_\_  
Name: Keith McMahon  
Title: President

**ARCTIC GLACIER NEWBURGH INC.**

By:   
\_\_\_\_\_  
Name: Keith McMahon  
Title: President

**ARCTIC GLACIER PENNSYLVANIA INC.**

By:   
\_\_\_\_\_  
Name: Keith McMahon  
Title: President

**ARCTIC GLACIER OREGON INC.**

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

Name: Keith McMahon  
Title: President

**ARCTIC GLACIER SERVICES INC.**

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

Name: Keith McMahon  
Title: President

**ARCTIC GLACIER VERNON INC.**

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

Name: Keith McMahon  
Title: President

**ARCTIC GLACIER ROCHESTER INC.**

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

Name: Keith McMahon  
Title: President

**DIAMOND ICE CUBE COMPANY  
INC.**

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

Name: Keith McMahon  
Title: President

**ARCTIC GLACIER LANSING INC.**

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

Name: Keith McMahon  
Title: President

**ARCTIC GLACIER GRAYLING INC.**

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

Name: Keith McMahon  
Title: President

**ARCTIC GLACIER PARTY TIME INC.**

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

Name: Keith McMahon  
Title: President

**WONDERLAND ICE, INC.**

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

Name: Keith McMahon  
Title: President

**R&K TRUCKING, INC.**

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

Name: Keith McMahon  
Title: President

**KNOWLTON ENTERPRISES, INC.**

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

Name: Keith McMahon  
Title: President

**WINKLER LUCAS ICE AND FUEL  
COMPANY**

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

Name: Keith McMahon  
Title: President

**JACK FROST ICE SERVICE, INC.**

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

Name: Keith McMahon  
Title: President

**GLACIER ICE COMPANY, INC.**

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

Name: Keith McMahon  
Title: President

**MOUNTAIN WATER ICE COMPANY**

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

Name: Keith McMahon  
Title: President

**DIAMOND NEWPORT CORPORATION**

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

Name: Keith McMahon  
Title: President

**ICESURANCE INC.**

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

Name: Keith McMahon  
Title: President

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

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

Name: Keith McMahon  
Title: President

**ALVAREZ & MARSAL CANADA INC.,  
in its capacity as the Monitor and not in its  
corporate or other personal capacity**

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

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

**JACK FROST ICE SERVICE, INC.**

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

Name:  
Title:

**GLACIER ICE COMPANY, INC.**

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

Name:  
Title:

**MOUNTAIN WATER ICE COMPANY**

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

Name:  
Title:

**DIAMOND NEWPORT CORPORATION**

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

Name:  
Title:

**ICESURANCE INC.**

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

Name:  
Title:

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

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

Name:  
Title:

**ALVAREZ & MARSAL CANADA INC.,  
in its capacity as the Monitor and not in its  
corporate or other personal capacity**

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

Name: *RA MORAWEIZ*  
Title: *SENIOR VICE PRES*

**SCHEDULE A**  
**SUBSIDIARIES OF THE FUND**

1. Arctic Glacier Inc. (Alberta)
2. Arctic Glacier International Inc. (Delaware)
3. Arctic Glacier Texas Inc. (Texas)
4. Arctic Glacier California Inc. (California)
5. Arctic Glacier Michigan Inc. (Michigan)
6. Arctic Glacier Nebraska Inc. (Iowa)
7. Arctic Glacier Wisconsin Inc. (Wisconsin)
8. Arctic Glacier Minnesota Inc. (Minnesota)
9. Arctic Glacier New York Inc. (New York)
10. Ice Perfection Systems Inc. (Delaware)
11. Arctic Glacier Newburgh Inc. (New York)
12. Arctic Glacier Pennsylvania Inc. (Delaware)
13. Arctic Glacier Oregon Inc. (Oregon)
14. Arctic Glacier Services Inc. (Delaware)
15. Arctic Glacier Vernon Inc. (California)
16. Arctic Glacier Rochester Inc. (New York)
17. Diamond Ice Cube Company Inc. (New York)
18. Arctic Glacier Lansing Inc. (Michigan)
19. Arctic Glacier Grayling Inc. (Michigan)
20. Arctic Glacier Party Time Inc. (Michigan)
21. Wonderland Ice, Inc. (Michigan)
22. R&K Trucking, Inc. (Michigan)
23. Knowlton Enterprises, Inc. (Michigan)
24. Winkler Lucas Ice and Fuel Company (Michigan)
25. Jack Frost Ice Service, Inc. (California)
26. Glacier Ice Company, Inc. (California)
27. Mountain Water Ice Company (California)
28. Diamond Newport Corporation (California)
29. Glacier Valley Ice Company, L.P. (California)
30. ICESurance Inc. (Delaware)

**SCHEDULE B**  
**BUSINESS NAMES AND TRADEMARKS**

1. Arctic Glacier
2. Ice Perfection Systems
3. Diamond Ice Cube
4. Wonderland Ice
5. R&K Trucking
6. Knowlton Enterprises
7. Winkler Lucas Ice and Fuel
8. Jack Frost Ice Service
9. Glacier Ice
10. Mountain Water Ice
11. Diamond Newport
12. Glacier Valley Ice
13. ICEsurance