

**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> , ¹	:	(Jointly Administered)
Debtors in a Foreign Proceeding.	:	Hearing Date: July 17, 2012 at 10:00 a.m. (ET)
	:	Objection Deadline: July 10, 2012 at 4:00 p.m. (ET)

NOTICE OF SALE MOTION

PLEASE TAKE NOTICE that 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 under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Court of Queen’s Bench Winnipeg Centre, has filed the attached *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* (the “Sale Motion”). A copy of the Sale Motion is annexed hereto as Exhibit 1.

PLEASE TAKE FURTHER NOTICE that a hearing (the “Hearing”) to consider the Sale Motion will be held on July 17, 2012 at 10:00 a.m. (ET) before the Honorable Kevin Gross at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801.

¹ 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.



PLEASE TAKE FURTHER NOTICE that any objections to the Sale Motion must be filed on or before July 10, 2012 at 4:00 p.m. (ET) (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection so as to be actually received by the following parties on or before the Objection Deadline: (i) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Marc Abrams, Mary K. Warren, and Alex W. Cannon); (ii) Osler, Hoskin & Harcourt LLP, 100 King Street West, Suite 6100, Toronto, Ontario, Canada M5X 1B8 (Attn: Marc Wasserman and Jeremy Dacks); (iii) Young Conway Stargatt & Taylor LLP, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Robert S. Brady and Matthew P. Lunn); (iv) Jones Day, 2727 North Harwood Street, Chicago, Illinois 60601-1692 (Attn: Gregory M. Gordon and Daniel P. Winikka); (v) McCarthy Tétrault LLP, 66 Wellington Street West, Suite 5300, Toronto, Ontario, Canada M5K 1E6 (Attn: Kevin P. McElcheran); (vi) Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036-8704 (Attn: Mark Bane and Darren Azman); (vii) Stikeman Elliott LLP, 5300 Commerce Court West, 199 Bay Street, Toronto, Ontario, Canada M5L 1B9 (Attn: Elizabeth Pillon).

PLEASE TAKE FURTHER NOTICE that you need not appear at the Hearing if you do not object to the relief request in the Sale Motion.

PLEASE TAKE FURTHER NOTICE that the Hearing may be continued or adjourned from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing or at a later hearing.

PLEASE TAKE FURTHER NOTICE THAT, IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE SALE MOTION WITHOUT FURTHER NOTICE OR A HEARING.

PLEASE TAKE FURTHER NOTICE that additional copies of the Sale Motion are available: (a) by accessing the Bankruptcy Court's Electronic Case Filing System, which can be accessed from the Bankruptcy Court's website at <https://ecf.deb.uscourts.gov> (a PACER login and a password are required to retrieve a document); (b) from the Monitor's website <http://www.alvarezandmarsal.com/arcticglacier> or <http://www.kcellc.net/ArcticGlacier> (without cost); or (c) upon written request to the Monitor's counsel (by email or facsimile) addressed to: Young Conaway Stargatt & Taylor LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, (Attn.: Melissa Romano, e-mail: mromano@ycst.com or Facsimile 302-576-3450) (without cost).

Remainder of Page Intentionally Left Blank

Dated: June 26, 2012
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Matthew B. Lunn

Robert S. Brady (No. 2847)
Matthew B. Lunn (No. 4119)
Ryan M. Bartley (No. 4985)
Ian J. Bambrick (No. 5455)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

- and -

WILLKIE FARR & GALLAGHER LLP

Marc Abrams
Mary K. Warren
Alex W. Cannon
787 Seventh Avenue
New York, New York 10019-6099
Telephone: (212) 728-8000
Facsimile: (212) 728-8111

*Co-Counsel to the Monitor and
Foreign Representative*

EXHIBIT 1

Sale Motion

**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> , ¹	:	(Jointly Administered)
Debtors in a Foreign Proceeding.	:	Hearing Date: July 17, 2012 at 10:00 a.m. Objection Deadline: July 10, 2012 at 4:00 p.m.

**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**

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 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"), hereby moves this Court for the entry of an order, substantially in the form attached hereto as Exhibit C

¹ 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.

(the “U.S. Sale Order”), 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 *Sale Approval and Vesting Order* (the “CCAA Vesting Order”), a copy of which is annexed hereto as Exhibit A, entered by the Canadian Court on June 21, 2012 in the Canadian Proceeding, 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 Claims and Encumbrances (as defined in the CCAA Vesting Order), except as set forth in that certain Asset Purchase Agreement (the “Purchase Agreement”), by and between the Debtors² and H.I.G. Zamboni, LLC (the “Purchaser”), dated June 7, 2012, a redacted copy³ of which is attached hereto 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 the Purchaser, free and clear of all Interests (as defined in the U.S. Sale Order), 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

² As described more fully in the Reynolds Declaration, Glacier Valley Ice Company, L.P. (“Glacier L.P.”), an affiliate of the Debtors, is not an applicant in the Canadian Proceeding because partnerships are ineligible to be applicants under the CCAA. However, pursuant to this Court’s Provisional Relief Order (as defined below), the stay provided for in section 362 applies to Glacier L.P. Furthermore, pursuant to the Purchase Agreement, substantially all of the assets of Glacier L.P. are being sold to the Purchaser. For convenience sake, all references to “Debtors” herein and in the U.S. Sale Order shall include Glacier L.P., even though such entity is not a Debtor in these Chapter 15 Cases (as defined below).

³ A copy of the Purchase Agreement (with commercially sensitive redactions) is attached hereto as Exhibit B. Concurrently with the filing of this Motion, the Monitor has filed a motion for authority to file an unredacted copy of the Purchase Agreement under seal. See Docket No. 107 (the “Sealing Motion”).

certain related relief, including payment of the Lender Claims (as defined in the Sale and Investor Solicitation Process (the “SISP”)).⁴ In support of this Motion, the Monitor (a) has filed a copy of the *Affidavit of Keith McMahon*, sworn June 13, 2012 (the “McMahon Affidavit”), and the *Fourth Report of the Monitor* [Docket No. 106] (the “Monitor’s Fourth Report”) and the Confidential Appendix⁵ thereto; and (b) respectfully states as follows:

JURISDICTION AND VENUE

This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(N) and (P). Venue is proper in this Court and in this District pursuant to 28 U.S.C. § 1410. The statutory predicates for the relief requested herein are sections 105(a), 363(b), (f), (m) and (n), 1501, 1520, and 1521 of the Bankruptcy Code, as supplemented by Rules 2002, 6004, and 9014 of the Bankruptcy Rules and Rule 6004-1 of the Local Rules.

PRELIMINARY STATEMENT

The Sale represents the very favorable culmination of an extensive Canadian Court supervised sale process that succeeded in sparking significant bidder interest in the Debtors’ assets. The Monitor believes that the Sale of the Purchased Assets in accordance with the terms and conditions of the Purchase Agreement and the CCAA Vesting Order represents a very positive realization of value for the Debtors’ creditors and other stakeholders. The Purchaser not only submitted the highest and best offer under the SISP (and with the fewest conditions to closing of all bids received under the SISP), but, as described more fully in the

⁴ A copy of the SISP is annexed as Schedule C to the Initial Order, which is annexed as Exhibit A 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] (the “Reynolds Declaration”).

⁵ By the Sealing Motion, the Monitor has sought this Court’s authority to file the Confidential Appendix to the Fourth Report of the Monitor under seal.

McMahon Affidavit and the Fourth Monitor's Report, the consideration provided under the Purchase Agreement (a) is sufficient to satisfy all known creditor claims, and, (b) subject to the completion of a claims process and the payment of obligations arising from the completion of the Sale, may be sufficient to make a distribution to the Debtors' unitholders. This Court's recognition and enforcement of the CCAA Vesting Order, and approval of the Sale free and clear of any and all Interests, are critical to achieving those desirable outcomes. For those reasons, and the reasons described more fully herein, this Court's entry of the U.S. Sale Order is in the best interests of the Debtors, their creditors, and other stakeholders.

GENERAL BACKGROUND

1. 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, authorizing and directing the Debtors to commence, and the Monitor, the Financial Advisor (as such term is defined in the SISP), and the Chief Process Supervisor (as such term is defined in the SISP) to perform, their obligations under a process offering potential investors an opportunity to purchase or invest in the Debtors' business and operations in accordance with the SISP.

2. On February 22, 2012 (the "Petition Date"), the Monitor commenced these proceedings (these "Chapter 15 Cases") by filing verified petitions on behalf of the Debtors, pursuant to sections 1504 and 1515 of the Bankruptcy Code, seeking recognition by this Court of the Canadian Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code.

3. On February 23, 2012, this 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.

4. 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, (b) authorized the Debtors to obtain postpetition secured financing, and (c) enforced in full the Initial Order on a permanent basis in the United States.

5. As described in the Fourth Monitor’s Report, bids were solicited by the Debtors and the Financial Advisor in accordance with the SISP. The Monitor, after consultation with the Debtors, the Financial Advisor, and the Chief Process Supervisor, and after taking into account the evaluation criteria set forth in paragraph 2.7 of the SISP, recommended to the Special Committee of the Debtors’ Board of Trustees (the “Special Committee”) that the bid submitted by the Purchaser was the highest or otherwise best offer and should be selected.

6. The Special Committee accepted the Monitor’s recommendation and, on June 8, 2012, the Debtors publicly announced⁶ that they had entered into a binding agreement to sell substantially all of their assets to the Purchaser.

7. On June 13, 2012, the Debtors filed with the Canadian Court, pursuant to the CCAA, a motion for the CCAA Vesting Order seeking, among other things, the Canadian Court’s approval of the Purchase Agreement and authorization for the Debtors to sell substantially all of their assets free and clear of all Claims and Encumbrances (as each such term is defined in the CCAA Vesting Order) in a manner consistent with the Purchase Agreement.

⁶ Arctic Glacier Income Fund Announces Sale to H.I.G. Capital,
<http://www.arcticglacierinc.com/pdf/news/2012/NR20120608.pdf> (June 8, 2012).

8. On June 21, the Canadian Court entered the CCAA Vesting Order, 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.

9. Additional information about the Debtors' businesses and operations, the Canadian Proceeding, the SISP, and these Chapter 15 Cases are set forth in (a) the Reynolds Declaration, (b) the *Pre-Filing Report of the Proposed Monitor*, filed on the Petition Date as Exhibit C to the Reynolds Declaration, (c) the *First Report of the Monitor*, filed with this Court on March, 13, 2012 [Docket No. 56], (d) the *Second Report of the Monitor*, filed with this Court on April 4, 2012 [Docket No. 83], (e) the *Third Report of the Monitor*, filed with this Court on May 15, 2012 [Docket No. 101], and (f) the Fourth Monitor's Report.⁷

RELIEF REQUESTED

10. By this Motion, the Monitor respectfully requests that this Court enter the U.S. Sale Order, substantially in the form annexed hereto as Exhibit C, pursuant to sections 105(a), 363(b), (f), (m), and (n), 1501, 1520, and 1521 of the Bankruptcy Code, Rules 2002, 6004, and 9014 of the Bankruptcy Rules, and Rule 6004-1 of the Local Rules: (a) recognizing and enforcing the CCAA Vesting Order; (b) authorizing and approving the Sale of the Debtors' right, title, and interest in and to the Purchased Assets free and clear of any and all Interests; (c) authorizing and approving, to the extent provided for in the CCAA Vesting Order, the assignment of the Assigned Contracts; and (d) granting certain related relief, including the payment of Lender Claims.

11. The Monitor believes that the Sale of the Purchased Assets in accordance with the terms and conditions of the Purchase Agreement and the CCAA Vesting Order

⁷ This Motion shall refer to each of the Reports of the Monitor described in this paragraph 9(b)-(f) as the "Monitor's Reports."

represents a very positive realization of value for the Debtors' creditors and other stakeholders. The Purchaser not only submitted the highest and best offer under the SISP (and with the fewest conditions to closing of all bids received under the SISP), but, as described more fully in the McMahon Affidavit and the Fourth Monitor's Report, the consideration provided under the Purchase Agreement (a) is sufficient to satisfy all known creditor claims, and, (b) subject to the completion of a claims process and the payment of any obligations arising from the completion of the Sale, may be sufficient to make a distribution to the Debtors' unitholders. In addition, the Sale contemplates that the Purchaser will extend offers to hire all of the current employees of the Debtors in the U.S. and Canada.

12. This Court's recognition and enforcement of the CCAA Vesting Order and approval of the Sale free and clear of any and all Interests is critical to achieving those desirable outcomes. Pursuant to section 5.01 of the Purchase Agreement, entry of the U.S. Sale Order, substantially in the form annexed hereto as Exhibit C, is a condition precedent to the consummation of the Sale. This Court's recognition and approval will permit the Debtors to sell the Purchased Assets in the Canadian Proceeding without disruption and in a timely and efficient manner. Absent the relief requested herein, the Debtors and their creditors will potentially suffer significant, if not irreparable, harm due to an inability to close the Sale.

13. A summary of the material provisions of the Purchase Agreement and the material terms and conditions of the CCAA Vesting Order is provided below.

A. The Purchase Agreement

14. The following is a summary⁸ of certain material provisions of the Purchase Agreement.⁹ The Monitor believes that the inclusion of these provisions of the

⁸ Any summary of, or reference to, the terms and conditions of the Purchase Agreement or the CCAA Vesting Order herein are qualified in their entirety by the actual terms and conditions of the Purchase Agreement and

Purchase Agreement is fair and reasonable under the circumstances, is the result of good-faith, arm's-length negotiations between the Debtors and the Purchaser, and is in the best interests of the Debtors, their creditors, and other stakeholders.

a. Purchased Assets. Upon and subject to the terms of the Purchase Agreement, the Vendors¹⁰ will sell, transfer, convey, and assign to the Purchaser, and the Purchaser will purchase from the relevant Vendor, as of and with effect from the opening of businesses on the Closing Date, all of the right, title, benefit, and interest of the relevant Vendor in and to all of the relevant Vendor's undertaking, tangible and intangible assets, properties, rights and Claims of the Vendors of every kind and description and wheresoever situate and used or relating to the Purchased Businesses as and to the extent existing on the Closing Date, save and except for the Excluded Assets and, without limiting the generality of the foregoing, the Purchased Assets include land, plants, building, machinery, inventory, supplies, accounts receivable, intellectual property, and other items set forth in section 2.01 of the Purchase Agreement.

b. Excluded Assets. Notwithstanding section 2.01 or any other provisions of the Purchase Agreement to the contrary, each of the Vendors will retain their respective right, title, benefit, and interest in and to, and the Purchaser will have no rights with respect to the right, title, benefit, and interest of any of the Vendors in and to, the Excluded Assets. Excluded Assets include items such as cash, tax refunds, shares of any Vendor, claims to reimbursements and pre-paid amounts, and other items set forth in section 2.02 of the Purchase Agreement.

c. Condition of Assets. Except as otherwise expressly provided in section 3.01 of the Purchase Agreement, all of the assets purchased and liabilities assumed by the Purchaser pursuant to the Purchase Agreement will be acquired and assumed by the Purchaser on an "as is, where is"

the CCAA Vesting Order. To the extent there is any inconsistency between any such summary or reference herein and the actual terms and conditions of the Purchase Agreement and the CCAA Vesting Order, the actual terms and conditions of the Purchase Agreement and the CCAA Vesting Order shall control.

⁹ Pursuant to Local Rule 6004-1(b)(iv), a Sale Motion (as defined in the Local Rules) must highlight certain provisions contained in the proposed form of sale order and/or the underlying purchase agreement. The Monitor has highlighted below the relevant provisions of the Purchase Agreement and the CCAA Vesting Order which implicate Local Rule 6004-1(b)(iv) by providing a citation, in bold, to the relevant sections of the Purchase Agreement or paragraphs of the CCAA Vesting Order, with an accompanying parenthetical identifying the Local Rule implicated. **In addition, the Monitor highlights that, pursuant to the proposed U.S. Sale Order, it is requesting (i) the Sale to be approved under section 363(f) of the Bankruptcy Code free and clear of any Interest (as defined in the U.S. Sale Order) and (ii) a waiver of Bankruptcy Rule 6004(h).**

¹⁰ All capitalized terms used but not otherwise defined in this paragraph 14 shall have the meanings ascribed to such terms in the Purchase Agreement.

basis and “with all known and unknown faults.” The Purchaser acknowledges and agrees that, except for the representations and warranties set forth in section 3.01 of the Purchase Agreement, none of the Vendors, or any employee, officer, trustee, director, accountant, financial, legal, or other representative of any of the Vendors or the Monitor has made any representation or warranty (including any implied representation or warranty as to the condition, merchantability, suitability, or fitness for a particular purpose of any of the Purchased Assets), title to the Assets, the Employees, the Purchased Businesses, or the Assumed Liabilities. The Purchaser also acknowledges and agrees that it, in determining whether to enter into the Purchase Agreement (i) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Purchased Assets and Assumed Liabilities, and (ii) except for the representations and warranties set forth in section 3.01 of the Purchase Agreement, did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied from or by any of the Vendors, or the Monitor, or any of their partners, employees, agents, advisors, or representatives, or any employee, officer, director, accountant, financial, legal, or other representative of any of the Vendors or the Monitor, regarding the Purchased Assets or the Assumed Liabilities or the completeness of any information provided in connection therewith, except as expressly stated in the Purchase Agreement.

d. Purchase Price. The Purchase Price payable to the Vendors, after accounting for the working capital adjustment provided for in section 2.07 of the Purchase Agreement, for the Purchased Assets (i) is sufficient to satisfy all known creditor claims, and, (ii) subject to the completion of a claims process and the payment of any obligations arising from the completion of the Sale, may be sufficient to make a distribution to the Vendors’ unitholders.¹¹

e. Taxes. All property Taxes on or with respect to the Purchased Assets for the Tax year that includes the Closing Date will be prorated between the relevant Vendor and the Purchaser as of the Closing Date. For any year or other applicable Tax period in which an apportionment is required, the Purchaser will file all required tax returns incident to the Taxes assessed for the year or applicable Tax period in which the Closing Date occurs that are not paid by any of the Vendors as of the Closing Date. In addition, the Purchaser will be liable for and will pay, or will cause to be paid, 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, the “Transfer Taxes”) payable under any Applicable Law. The Purchaser will prepare

¹¹ The exact Purchase Price is commercially sensitive and is the subject of the Sealing Motion.

and file any affidavits or returns required in connection with the foregoing at its own cost and expense. To the extent that any Transfer Taxes are required to be paid or are imposed upon the Vendors, the Purchaser will reimburse, or will cause to be reimbursed, to the Vendors such taxes within five (5) Business Days of the Vendors giving the Purchaser notice that such Taxes have been paid.

f. Releases by the Purchaser. The Purchaser has agreed (i) to unconditionally and irrevocably release and discharge each of the Vendors from any Claim which the Purchaser may now have 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) that the Purchaser will not make or take any Claim with respect to any matter released and discharged by section 2.03 of the Purchase Agreement which may result in any Claim against any Vendor for contribution or indemnity or other relief. **Purchase Agreement § 2.03 (Local Rule 6004-1(b)(iv)(C)).**

g. Closing Date. Means the date that is two (2) Business Days from the date on which all conditions to the purchase and sale of the Purchased Assets set out in Article 5 of the Purchase Agreement (other than those conditions that by their nature can only be satisfied on the Closing Date) have been satisfied or waived or such other date as may be agreed to in writing by each of the Vendors and the Purchaser, in each case, provided, however, in no event shall such date be earlier than July 25, 2012. **Purchase Agreement § 1.01 (Local Rule 6004-1(b)(iv)(E))**

h. Good Faith Deposit. In accordance with the SISP, the Purchaser has delivered a deposit in the amount of \$10,000,000 (the “Deposit”) to the Monitor. The portion of the Purchase Price equal to the amount of the Deposit and the actual earnings thereon will be satisfied by crediting the Vendors, at the Time of Closing, with the Purchaser’s interest in the Deposit (and the actual earnings thereon to but excluding the Closing Date) that is being held by the Monitor. **Purchase Agreement § 2.11 (Local Rule 6004-1(b)(iv)(F)).**

i. Record Retention. At the Time of Closing, the Vendors will deliver to the Purchaser all of the Books and Records. The Purchaser will preserve the documents so delivered for a period of six (6) years from the Closing Date, or for such other period as is required by Applicable Law, and will permit the Vendors and their authorized representatives reasonable access thereto in connection with the affairs of the Vendors. **Purchase Agreement § 6.04 (Local Rule 6004-1(b)(iv)(J)).**

j. Excluded Liabilities/No Successor Liability. The Purchaser is not assuming the Excluded Liabilities (as described in section 2.04 of the Purchase Agreement), and to the extent permissible under the CCAA

Vesting Order, this Court is requested to find that the Purchaser and its affiliates, members, and shareholders are not successors with respect to the Excluded Liabilities, which include, among others, certain Excluded Current Liabilities, liabilities related to active or inactive litigation, antitrust investigations and liabilities related to the Brandywine Ice Company Defined Benefit Pension Plan. Among the active and inactive litigation and antitrust investigation proceeding excluded and expressly not assumed by the Purchaser are (i) the proceedings and amounts owing pursuant to the plea agreement entered into between the United States Department of Justice and Arctic Glacier International, Inc. (one of the Debtors, "AGII") in which AGII agreed to pay \$9,000,000 over five (5) years (of which \$2,000,000 was paid prior to the Petition Date), (ii) the amounts owing pursuant to an agreement to settle the direct purchaser class actions in the United States by payment of \$12,500,000 (of which \$2,500,000 was paid prior to the Petition Date), (iii) the class action in Ontario by the retail purchasers for which an agreement was reached requiring Arctic Glacier, Inc. ("AGI") to pay C\$2,000,000 (for which no formal settlement was executed or approved by any court), and (iv) antitrust investigations by the United States Department of Justice and various State's Attorney Generals. **Purchase Agreement § 2.04 (Local Rule 6004-1(b)(iv)(L)).**

B. The CCAA Vesting Order

15. On June 21, 2012, the Canadian Court entered the CCAA Vesting Order, pursuant to which it, among other things (i) approved the Sale contemplated by the Purchase Agreement, (ii) vested in the Purchaser the Debtors' right, title, and interest in and to the Purchased Assets free and clear of any Claims and Encumbrances, (iii) directed the Monitor to pay from the net proceeds of the Sale the amount necessary to repay the Lender Claims to the Arctic Lenders in full, with the balance of the net proceeds to be held by the Monitor in accordance with the terms of the CCAA Vesting Order, (iv) authorized the assignment to the Purchaser of the Debtors' rights and obligations under the Assigned Contracts, (v) ordered that the Confidential Appendix, which, among other commercially sensitive information, included an unredacted copy of the Purchase Agreement, to the Fourth Monitor's Report be sealed, kept

confidential, and not be included in the public record¹² of the Canadian Proceeding, and (vi) requested the aid and recognition of this Court to give effect to the CCAA Vesting Order and the assistance of this Court in carrying out the terms of the CCAA Vesting Order.

BASIS FOR RELIEF REQUESTED

A. The Court Should Recognize and Enforce the CCAA Vesting Order and Authorize and Approve the Sale Pursuant to Section 363 of the Bankruptcy Code

16. As set forth more fully in the Monitor's Reports and the Reynolds Declaration, the Monitor commenced these Chapter 15 Cases to obtain recognition of the Canadian Proceeding as a "foreign main" proceeding under section 1517 of the Bankruptcy Code, and to seek certain related relief from this Court, including, if necessary, this Court's recognition and enforcement of a sale of substantially all of the Debtors' assets pursuant to the SISP. On March 16, 2012, this Court entered the Recognition Order, recognizing these Chapter 15 Cases as a foreign main proceeding, ancillary to the Canadian Proceeding.

17. Through the CCAA Vesting Order, the Canadian Court specifically requested the aid and recognition of this Court to give effect to the CCAA Vesting Order. CCAA Vesting Order ¶ 22.

18. Section 1520 of the Bankruptcy Code provides, in pertinent part, that "[u]pon recognition of a foreign proceeding that is a foreign main proceeding, [section 363 of the Bankruptcy Code applies] to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States." 11 U.S.C. § 1520(a)(2).

19. In addition, section 1521 of the Bankruptcy Code provides, in relevant part, that "[u]pon recognition of a foreign proceeding, whether main or nonmain, where

¹² The Monitor has requested similar relief from this Court in the Sealing Motion.

necessary to effectuate the purpose of [chapter 15 of the Bankruptcy Code] and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including granting any . . . relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a) [of the Bankruptcy Code].” Id. § 1521(a)(7).

20. Section 363 of the Bankruptcy Code therefore applies to the Sale in connection with Purchased Assets located within the territorial jurisdiction of the United States. Section 363(b)(1) provides, in relevant part, that a debtor “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” Id. § 363(b)(1). Section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor’s assets prior to confirmation of a plan. However, courts in this Circuit, and in other districts, have required that the decision to sell assets outside the ordinary course of business be based upon the sale proponent’s sound business judgment. See Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp., (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (D. Del. 1999); In re Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D.D.C. 1991); see also In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986); Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996).

21. The “sound business judgment” test requires a proponent of a sale to establish four elements in order to justify the sale or lease of property outside the ordinary course of business. These factors are (a) that a “sound business purpose” justifies the sale of assets outside the ordinary course of business, (b) that adequate and reasonable notice has been provided to interested persons, (c) that the trustee or debtor in possession has obtained a fair and

reasonable price, and (d) good faith. In re Exaeris Inc., 380 B.R. 741 (Bankr. D. Del. 2008); Titusville Country Club v. Pennbank (In re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); In re Sovereign Estates, Ltd., 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989).¹³

22. The Monitor submits that ample business justification exists to sell the Purchased Assets to the Purchaser. The Sale satisfies all four conditions set forth in Exaeris. First, sound business purposes justify the Sale. The Debtors, Monitor, Chief Process Supervisor, and Financial Advisor all believe that the Sale presents the best opportunity for the Debtors to maximize their value. If approved and consummated, the Sale will provide sufficient proceeds to pay in full (or otherwise ensure payment in full through the assumption of certain liabilities by the Purchaser): (a) the claims of the secured lenders;¹⁴ (b) outstanding amounts under the Canadian Court-ordered charges; (c) post-filing obligations; (d) any liabilities or obligations arising from the completion of the Sale and (e) all claims of all other known creditors. The Sale will thus preserve the Debtors' ongoing business while strengthening its capital structure.

23. Second, the Monitor believes that the Purchase Price represents a fair and reasonable price for the Purchased Assets. If the Sale is consummated, the Purchase Price coupled with the assumption of certain liabilities pursuant to the Purchase Agreement (a) is sufficient to satisfy all known creditor claims, and, (b) subject to the completion of a claims

¹³ Additionally, section 105(a) of the Bankruptcy Code provides a bankruptcy court with broad powers in the administration of a case. Section 105(a) states that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." Id. § 105(a). Provided that a bankruptcy court employs its equitable powers to achieve a result consistent with the Bankruptcy Code, the exercise of its section 105(a) power is proper. In re Fesco Plastics Corp., 996 F.2d 152, 154 (7th Cir. 1993); Pincus v. Graduate Loan Ctr. (In re Pincus), 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002).

¹⁴ The CCAA Vesting Order contemplates that upon the closing of the Sale, the purchase price will be paid to the Monitor, which will then make a distribution to the Secured Lenders in the amount of their secured claim, with the remainder to be held by the Monitor pending completion of a claims process to identify, quantify, and, if necessary, adjudicate all remaining claims. Distribution at the Time of Closing of the amount of the Lender Claims to the Secured Lenders is a requirement under the SISP. Specifically, the SISP required all Qualified Bids (as defined in the SISP) to provide that no closing shall occur unless payment of the Lender Claims is made concurrently.

process and the payment of any obligations arising from the completion of the Sale, may be sufficient to make a distribution to the Debtors' unitholders.

24. Third, fair and reasonable notice has been provided to interested parties of both the SISP and this Sale. The SISP was approved by the Monitor and implemented pursuant to the Canadian Court's Initial Order, as well as this Court's Recognition Order. Notice of the SISP was published in Canadian and United States newspapers. The Initial Order and related SISP were served on all interested parties on February 28, 2012. In addition, all known creditors, holders of Interests, and parties to Assigned Contracts were served with a copy of the Notice of Motion in Canada and, subsequently, with a copy of this Motion.

25. Fourth, as discussed more fully below, and as described in the Fourth Monitor's Report and the McMahon Affidavit, the marketing and negotiation process undertaken pursuant to the SISP satisfies the good faith requirement. The Purchase Agreement is the product of good faith solicitation efforts and arm's-length negotiations among the parties.

26. In addition, granting the requested relief is in the public interest. The purpose of chapter 15 of the Bankruptcy Code is:

[T]o incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

(1) cooperation between—

(A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and

(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

(2) greater legal certainty for trade and investment;

(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

(4) protection and maximization of the value of the debtor's assets; and

(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

11 U.S.C. § 1501(a). In addition to the benefits of the Sale that have already been described above, the Sale contemplates that the Purchaser will extend offers to hire all of the current employees of the Debtors in the U.S. and Canada. McMahon Aff. ¶ 4(a).

27. Courts in this District have granted relief similar to the relief requested in this Motion. See, e.g., In re EarthRenew IP Holdings LLC, Case No. 10-13363 (CSS) (Bankr. D. Del. February 18, 2011) (recognizing and enforcing sale order entered by Canadian court and separately authorizing and approving the sale free and clear of any and all liens, claims, encumbrances and other interests under section 363 of the Bankruptcy Code); In re Grant Forest Products, Case No. 10-11132 (PJW) (Bankr. D. Del. April 26, 2010) (same); In re Destinator Technologies Inc., Case No. 08-11003 (CSS) (Bankr. D. Del. July 8, 2008) (same).

28. This Court's recognition and enforcement of the CCAA Vesting Order is not only warranted but is critical to achieving the anticipated results of the Sale, as it will permit the Debtors to sell the Purchased Assets in the Canadian Proceeding without disruption and provide further certainty to the Sale and to the Purchaser. Pursuant to section 5.01 of the Purchase Agreement, entry of the U.S. Sale Order, substantially in the form annexed hereto as Exhibit C, is a condition precedent to the consummation of the Sale. Absent the relief requested herein, the Debtors will likely suffer substantial, if not irreparable, harm from the inability to sell the Purchased Assets without interference and in a manner that will allow the Debtors to maximize recoveries for all creditors and other stakeholders.

29. For all of the foregoing reasons, the Monitor respectfully submits that there is more than ample justification for this Court to enter the U.S. Sale Order, thereby

recognizing and enforcing the CCAA Vesting Order and authorizing and approving the Sale pursuant to section 363 of the Bankruptcy Code.

**B. The Court Should Authorize and Approve the Sale
Free and Clear of Interests and Successor Liability
Pursuant to Section 363(f) of the Bankruptcy Code**

30. The Monitor also respectfully requests that this Court authorize and approve the Sale free and clear of Interests (as defined in the U.S. Sale Order). Under section 363(f) of the Bankruptcy Code, a trustee or a debtor in possession may sell all or any part of a debtor's property free and clear of any and all liens, claims, encumbrances, and other interests in such property if (i) such a sale is permitted under applicable non-bankruptcy law, (ii) the party asserting such a lien, claim or interest consents to such sale, (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property, (iv) the interest is the subject of a bona fide dispute, or (v) the party asserting the lien, claim or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. § 363(f); In re P.K.R. Convalescent Ctrs., Inc., 189 B.R. 90, 93-94 (Bankr. E.D. Va. 1995) (“[Section] 363 covers more situations than just sales involving liens . . . Section 363(f) addresses sales free and clear of any interest . . .”); Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that section 363(f) of the Bankruptcy Code is written in the disjunctive; therefore, a court may approve a sale “free and clear” provided at least one of the subsections is met). In addition, a court may authorize the sale of a debtor's assets free and clear of any liens, claims or encumbrances under section 105 of the Bankruptcy Code. See Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.), 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of liens] is within the court's equitable powers when necessary to carry out the provisions of Title 11.”).

31. The Monitor respectfully submits that 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 for the Debtors and their creditors than the Sale will, and that the Sale free and clear of all Interests is in the best interests of the Debtors, their creditors, and other parties in interest.

32. With respect to any and all creditors that may assert an Interest in the Purchased Assets, the Monitor submits that at least one of the subsections of 363(f) applies to such creditors and, in most cases, more than one of the subsections of 363(f) is satisfied. Notably, with respect to liens, the Purchase Price set forth in the Purchase Agreement is greater than the aggregate value of all liens on the Purchased Assets. Accordingly, the Monitor submits that the sale of the Purchased Assets free and clear of all Interests, other than as provided in the Purchase Agreement, satisfies the statutory prerequisites of section 363(f) of the Bankruptcy Code.

33. Furthermore, it is well established that a bankruptcy court has the power under section 363(f) to approve the sale of a debtor's assets free and clear of successor liability claims against the debtor. In re TWA Airlines, Inc., 322 F.3d 283, 288-90 (3d Cir. 2003) (holding that successor liability claims are "interests in property" within the meaning of section 363(f) of the Bankruptcy Code); United Mine Workers of Am. Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.), 99 F.3d 573 (4th Cir. 1996) (same). Therefore, based on the applicable precedent, the Monitor requests that this Court authorize the Sale of the Purchased Assets to the Purchaser free and clear of claims based upon successor liability; subject, however, to the provision that the Canadian Court retain jurisdiction to determine the scope of the relief granted by the paragraph of the U.S. Sale Order relating to successor liability.

See U.S. Sale Order ¶ 9. In this way, the Purchaser will obtain increased certainty concerning the Excluded Liabilities as to the Purchased Assets in the United States, but only to the extent permitted by the CCAA Vesting Order and applicable Canadian law. The Monitor submits that the relief requested herein is an appropriate exercise of this Court's authority under chapter 15 of the Bankruptcy Code and does not conflict with the relief granted by the Canadian Court in the CCAA Vesting Order.

**C. This Court Should Recognize the Canadian Court's
Authorization to Assign the Assigned Contracts to the Purchaser**

34. The Purchase Agreement requires, as an integral part of the Sale, the assignment of the Assigned Contracts as effectuated pursuant to the terms of the CCAA Vesting Order. The relevant paragraphs of the CCAA Vesting Order provide the following:

- a. Paragraph 6 of the CCAA Vesting Order specifies that the Assigned Contracts be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms.
- b. Paragraph 7 of the CCAA Vesting Order provides that the assignment of the rights and obligations of the Vendors under the Assigned Contracts to 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.
- c. Paragraph 8 of the CCAA Vesting Order provides 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 the commencement or pendency of the Canadian Proceeding or the chapter 15 cases or the solvency or financial condition of the Debtors.

35. It is an appropriate exercise of business judgment for the Debtors to agree to assign the Assigned Contracts as required under the Purchase Agreement. Additionally, the Monitor submits that the notice and protections for counterparties as set forth in the CCAA

Vesting Order and implemented in the Canadian Proceeding are adequate to protect the rights of counterparties to the Assigned Contracts and are consistent with the relief typically afforded to debtors and purchasers under sections 363 and 365 of the Bankruptcy Code. Moreover, the Purchaser is able and has agreed to assume and perform the obligations of the Debtors under the Assigned Contracts in accordance with their terms, including the payment of arrears that are not required to be satisfied by the Debtors in accordance with the Purchase Agreement. As such, the Monitor respectfully submits that 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.

D. The Court Should Afford the Purchaser All Protections Under Sections 363(m) and (n) of the Bankruptcy Code as a Good Faith Purchaser

36. In addition to the relief requested above, the Monitor requests that the Purchaser receive the protections set forth in sections 363(m) and (n) of the Bankruptcy Code. Specifically, section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). While the Bankruptcy Code does not define “good faith,” courts have stated that “the phrase encompasses one who purchases in ‘good faith’ and for ‘value.’” In re Abbots Dairies of Pa., 788 F.2d at 147. Courts have held that in order to demonstrate a lack of good faith, a party would have to show “fraud or collusion between the purchaser and [seller] or an attempt to take grossly unfair advantage [of other potential purchasers.]” Id.

37. As described in the Monitor's Reports and the McMahon Affidavit, the Purchase Agreement was negotiated without collusion, in good faith and from an arm's-length bargaining position, and 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. Furthermore, 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). To the Monitor's knowledge, no party has engaged in any conduct that would cause or permit the Purchase Agreement to be set aside under section 363(n) of the Bankruptcy Code. Accordingly, the Monitor seeks a finding that the Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and has not violated section 363(n) of the Bankruptcy Code.

WAIVER OF RULE 6004(h)

38. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." The Monitor requests that the U.S. Sale Order, once entered, be effective immediately by providing that, to the extent applicable, the 14-day stay under Bankruptcy Rule 6004(h) is waived.

39. Time is of the essence with respect to the U.S. Sale Order and the CCAA Vesting Order. The Purchase Agreement provides for an outside date to close the sale of July 31, 2012. If the Sale has not closed by that date either party may terminate the Purchase Agreement. The waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is necessary to ensure the Sale can close before that deadline. Accordingly, the Monitor

respectfully submits that the Court waive the fourteen-day stay requirement contained in Bankruptcy Rules 6004(h).

NOTICE

40. Notice of this Motion has been provided to: (a) all known creditors of the Debtors or holders of Interests; (b) all parties to litigation pending in the United States in which the Debtors are a party as of the Petition Date; (c) the Office of the United States Trustee for the District of Delaware; (d) the United States Attorney's Office for the District of Delaware; (e) the Internal Revenue Service; (f) the United States Department of Justice; (g) counsel for H.I.G. Zamboni, LLC (the "Purchaser"); (h) 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; (i) all counterparties to the Assigned Contracts; (j) all persons, if any, who have filed objections to the Motion; and (k) 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]. In light of the nature of the relief requested, the Monitor submits that no other or further notice is required.

NO PRIOR REQUEST

41. No prior request for the relief sought in this Motion has been made to this or any other court.

Remainder of Page Intentionally Left Blank

CONCLUSION

WHEREFORE, the Monitor respectfully requests that the Court enter the U.S. Sale Order, substantially in the form annexed hereto as Exhibit C, granting (i) the relief requested herein, and (ii) such other and further relief as the Court may deem proper.

Dated: Wilmington, Delaware
June 26, 2012

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Matthew B. Lunn

Robert S. Brady (No. 2847)
Matthew B. Lunn (No. 4119)
Ian J. Bambrick (No. 5455)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

- and -

WILLKIE FARR & GALLAGHER LLP

Marc Abrams
Mary K. Warren
Alex W. Cannon
787 Seventh Avenue
New York, New York 10019-6099
Telephone: (212) 728-8000
Facsimile: (212) 728-8111

*Co-Counsel to the Monitor and
Foreign Representative*

EXHIBIT A

CCAA Vesting Order

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

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
Barristers and Solicitors
Suite 5300, Box 48
Toronto Dominion Bank Tower
Toronto-Dominion Centre
Toronto, ON M5K 1E6

Kevin McElcheran
Tel: (416) 601-7730
Fax: (416) 868-0673
Law Society No. 22119H

Heather L. Meredith
Tel: (416) 601-8342
Fax: (416) 868-0673
Law Society No. 48354R

File No. 10671373

**AIKINS, MacAULAY &
THORVALDSON LLP**
30th Floor – 360 Main Street
Winnipeg, MB R3C 4G1

G. Bruce Taylor
Tel: (204) 957-4669
Fax: (204) 957-4218

J.J. Burnell
Tel: (204) 957-4663
Fax: (204) 957-4285

File No.: 1103500

THE QUEEN'S BENCH
Winnipeg Centre

THE HONOURABLE MADAM)	THURSDAY, THE 21 st
)	
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

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 (the "**Purchaser**"), as purchaser, made as of June 7, 2012; vesting in the Purchaser the Vendors' right, title and interest in and to the assets described in the Asset Purchase Agreement (the "**Assets**"); 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**"), 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, including all leases of real property, shall vest, without further instrument of transfer or assignment, absolutely in 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), 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 Assets are hereby released, extinguished, expunged and discharged as against the 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 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 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.

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

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 (the “**Purchaser**”), as purchaser, and provided for the vesting in the Purchaser 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, which vesting is to be effective with respect to the Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Assets; (ii)

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

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

THE MONITOR CERTIFIES the following:

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

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

Per: _____

Name:

Title:

Schedule C – Claims to be deleted and expunged

REAL PROPERTY ENCUMBRANCES TO BE DISCHARGED

A. OWNED PROPERTY

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

(a) Title No.: 012 170 358

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

Municipality: City of Edmonton

Registered Owner: Arctic Glacier Inc.

Encumbrances:

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

(b) Title No.: 012 170 700

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

Municipality: City of Edmonton

Registered Owner: Arctic Glacier Inc.

Encumbrances:

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

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

(a) Title No.: 981 406 325

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

Municipality: City of Calgary

Registered Owner: Arctic Glacier Inc.

Encumbrances:

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

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

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

Legal Description: Parcels A to E Plan 42917 WLTO

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

Registered Owner: Arctic Glacier Inc.

Encumbrances:

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

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

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

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

Registered Owner: Arctic Glacier Inc.

Encumbrances:

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

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

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

Registered Owner: Arctic Glacier Inc.

Encumbrances:

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

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

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

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

Registered Owner: Arctic Glacier Inc.

Encumbrances:

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

5. 6 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) 186th 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:

Interest No./ Int. Register No.	Date	Instrument Type/ Description	From/By
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.

EXHIBIT B

Redacted Purchase Agreement

ASSET PURCHASE AGREEMENT
BETWEEN
ARCTIC GLACIER INCOME FUND
AND
THE OTHER ENTITIES IDENTIFIED HEREIN AS VENDORS
AND
H.I.G. ZAMBONI, LLC
MADE AS OF
JUNE 7, 2012

TABLE OF CONTENTS

ARTICLE 1 – INTERPRETATION	2
1.01 Definitions.....	2
1.02 Headings	11
1.03 Extended Meanings.....	11
1.04 Calculation of Time	11
1.05 Statutory References	11
1.06 Accounting Principles.....	12
1.07 Currency.....	12
1.08 Control	12
1.09 Schedules	12
ARTICLE 2 – SALE AND PURCHASE.....	13
2.01 Assets to be Sold and Purchased.....	13
2.02 Excluded Assets.....	14
2.03 Assumption of Liabilities.....	15
2.04 Liabilities Not Assumed	17
2.05 Purchase Price.....	17
2.06 Allocation of Purchase Price.....	17
2.07 Working Capital Adjustment	17
2.08 Elections.....	19
2.09 Property Taxes	19
2.10 Transfer Taxes	20
2.11 Payment of Purchase Price and Treatment of Deposit.....	20
2.12 Assigned Contracts	21
ARTICLE 3 – REPRESENTATIONS AND WARRANTIES	22
3.01 Vendors' Representations and Warranties.....	22
3.02 Purchaser's Representations and Warranties	24
ARTICLE 4 – COVENANTS	27
4.01 Bankruptcy Orders	27
4.02 Regulatory Matters.....	28
4.03 Operation of the Purchased Businesses	30
4.04 Examination of Records and Assets	31
4.05 Employees.....	31
4.06 Cooperation on Tax Matters	33
4.07 Bulk Sales Laws.....	33
4.08 Debt Financing Cooperation.....	33
4.09 Purchaser Financing.....	34

ARTICLE 5 – CONDITIONS AND TERMINATION	36
5.01 Conditions to Each Party's Obligation	36
5.02 Conditions for the Benefit of the Purchaser.....	36
5.03 Conditions for the Benefit of the Vendors.....	37
5.04 Waiver of Condition	38
5.05 Termination.....	38
5.06 Effect of Termination.....	39
ARTICLE 6 – CLOSING ARRANGEMENTS	39
6.01 Closing	39
6.02 Closing Deliveries.....	39
6.03 Delivery of Monitor's Certificate	40
6.04 Confidentiality	40
ARTICLE 7 – SURVIVAL	41
7.01 Survival.....	41
ARTICLE 8 – GENERAL.....	41
8.01 Designated Purchaser.....	41
8.02 Further Assurances.....	41
8.03 Time of the Essence	41
8.04 Fees and Commissions.....	41
8.05 Public Announcements	42
8.06 Monitor's Capacity	42
8.07 Benefit of the Agreement.....	42
8.08 Entire Agreement	42
8.09 Amendments and Waivers	42
8.10 Assignment	42
8.11 Notices	43
8.12 Equitable Relief	45
8.13 Governing Law	45
8.14 Attornment.....	46
8.15 Appointment of Agent for Service.....	46
8.16 Counterparts.....	46
8.17 Electronic Execution.....	46
8.18 Severability	46

ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of June 7, 2012

BETWEEN

H.I.G. Zamboni, LLC, a limited liability company formed under the laws of the State of Delaware (the "Purchaser"),

- 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, on February 22, 2012 the Vendors 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") (the proceedings thereunder hereinafter referred to as the "CCAA Proceedings");

AND WHEREAS, pursuant to the Initial Order, the Canadian Court appointed Alvarez & Marsal Canada Inc. as "Monitor" (the "Monitor") in connection with the CCAA Proceedings and directed the Monitor to act as foreign representative of the Vendors and apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the U.S. Bankruptcy Code;

AND WHEREAS, on February 23, 2012, the Monitor commenced ancillary proceedings in the U.S. Bankruptcy Court for the District of Delaware (the "U.S. Bankruptcy Court") under Chapter 15 of the U.S. Bankruptcy Code seeking recognition of the CCAA Proceedings as foreign main proceedings and to give effect to the Initial Order in the United States (the "Chapter 15 Proceedings"), and was granted certain provisional relief pursuant to an order recognizing and enforcing the Initial Order in the United States;

AND WHEREAS, on March 15, 2012, the Canadian Court granted an extension of the stay of proceedings as against the Vendors until and including April 5, 2012 and such stay of proceedings was further extended on April 3, 2012 until and including June 27, 2012;

AND WHEREAS, on March 16, 2012, the U.S. Bankruptcy Court granted, among other things, the Monitor's petitions for recognition of the CCAA Proceedings as a foreign main proceeding, the enforcement of the Initial Order in the United States on a final basis and a stay of proceedings against the assets of the Vendors effective in the United States;

AND WHEREAS 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 Vendors;

AND WHEREAS, each of the Vendors (as applicable) has agreed to transfer to the Purchaser, and the Purchaser has 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 Vendors, upon the terms and conditions set forth hereinafter;

AND WHEREAS, in accordance with the SISP, the Purchaser has delivered to the Monitor a deposit in the amount of \$10,000,000 (the "Deposit").

NOW THEREFORE, in consideration of the covenants and agreements herein contained, the parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.01 Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith;

"Accounts Payable Period" means the period from the Closing Date until the date that is thirty (30) days from the Closing Date.

"Affiliate" means, with respect to any person, any other person that Controls or is Controlled by or is under common Control with the referent person.

"Agreement" means this agreement, including its recitals and schedules, as amended from time to time.

"Applicable Law" means

- (i) any applicable domestic or foreign law including any statute, subordinate legislation or treaty, and
- (ii) any applicable guideline, directive, rule, standard, requirement, policy, order, judgment, injunction, award or decree of a Governmental Authority having the force of law.

"Arctic Credit Facilities" means, collectively, the first lien, second lien and debtor-in-possession credit facilities provided by the Arctic Lenders to the Vendors.

"Arctic Lender Claims" has the meaning set out in the definition of "Lender Claims" in the SISP.

"Arctic Lenders" means, collectively, CPPIB Credit Investments Inc., West Face Long Term Opportunities Limited Partnership, West Face Long Term Opportunities (USA) Limited Partnership, West Face Long Term Opportunities Master Fund L.P., and West Face Long Term Opportunities Global Master L.P., and each of the foregoing parties' respective assignees in respect of the Arctic Lender Claims.

"Assets" has the meaning set out in Section 2.01.

"Assigned Contracts" means all Contracts entered into by a Vendor in respect of any Assets and the Purchased Businesses, including all leases of real property, all non-disclosure agreements entered into by a Vendor in connection with the SISP or otherwise, all unfilled orders received by any of the Vendors in connection with the Purchased Businesses and all forward commitments to any of the Vendors for supplies, materials or capital equipment entered into in the usual and ordinary course of the Purchased Businesses for use in the Purchased Businesses whether or not there are any written agreements with respect thereto, excluding the Excluded Contracts.

"Assignment and Assumption Agreement" means an agreement between the Vendors and the Purchaser substantially in the form attached hereto as Schedule 1.01A.

"Assumed Accounts Payable" has the meaning set out in Section 2.03(2).

"Assumed Liabilities" has the meaning set out in Section 2.03(1).

"Bankruptcy Courts" means the Canadian Court and the U.S. Bankruptcy Court.

"Bankruptcy Laws" means the CCAA, the U.S. Bankruptcy Code and any other applicable bankruptcy, insolvency, administration or similar laws to which any of the Vendors is or becomes subject.

"Bankruptcy Orders" has the meaning set out in Section 3.01(1)(a).

"Bankruptcy Proceedings" means the CCAA Proceedings and the Chapter 15 Proceedings.

"Books and Records" means all books, books of account, research and development information, information relating to sales, marketing or maintenance and support relating to the Assets, records and documents and data bases recorded or stored by means of any device, including in electronic form, relating to the Assets and those employees who are, pursuant to the provisions of this Agreement, to be employed by the Purchaser, including, all plans and specifications relating to the plant, buildings, structures, erections, improvements, appurtenances and fixtures situate on or forming part of the Lands, including all such electrical, mechanical and structural drawings related thereto, in each case to the extent in the possession or under the control of any of the Vendors on the Closing Date (whether in printed or electronic form).

"Business Day" means a day (other than a Saturday, Sunday or statutory holiday) on which banks are generally open for business in Winnipeg, Manitoba; Toronto, Ontario; and New York, New York.

"CCAA" has the meaning set out in the recitals hereto.

"CCAA Proceedings" has the meaning set out in the recitals hereto.

"Canadian Approval and Vesting Order" has the meaning set out in Section 4.01(1).

"Canadian Court" has the meaning set out in the recitals hereto.

"Canadian Vendors" means the Fund and Arctic Glacier Inc,

"Chapter 15 Proceedings" has the meaning set out in the recitals hereto.

"Claim" means any 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 and any claim or demand resulting therefrom or any other claim or demand of whatever nature or kind.

"Closing Date" means the date that is two (2) Business Days from the date on which all conditions to the purchase and sale of the Assets set out in Article 5 (other than those conditions that by their nature can only be satisfied on the Closing Date) have been satisfied or waived or such other date as may be agreed to in writing by each of the Vendors and the Purchaser, in each case, provided, however, in no event shall such date be earlier than July 25, 2012.

"Code" means the U.S. Internal Revenue Code of 1986.

"Competition Laws" means the HSR Act.

"Consent" means any approval, authorization, consent, order, license, permission, permit, qualification, exemption, revocation or waiver by any Governmental Authority or other Third Party, but does not include any consent that is rendered unnecessary by operation of any Bankruptcy Laws or Bankruptcy Order.

"Constating Documents" means, with respect to any person, (i) if a corporation, the articles or certificate of incorporation and the by-laws; (ii) if a general partnership, the partnership agreement and any statement of partnership; (iii) if a limited partnership, the limited partnership agreement and the certificate of limited partnership; (iv) if a limited liability company, the articles of organization and operating agreement; (v) if another type of person, any other charter or similar document adopted or filed in connection with the creation, formation or organization of the person; (vi) all equityholders' agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any person or relating to the rights, duties and obligations of the equityholders of any person; and (vii) any amendment or supplement to any of the foregoing.

"Contract" means any written or oral binding contract, agreement, instrument or commitment.

"Control" has the meaning set out in Section 1.08 and "Controlled by" and "under common Control" have corresponding meanings.

"Cure Costs" means, in respect of an Assigned Contract, the amount required to be paid (A) in accordance with any Consent obtained from the relevant Third Party to the assignment of such Assigned Contract, provided that such Consent is in a form acceptable to the Fund and the Purchaser, or (B) in accordance with the applicable Bankruptcy Order and Bankruptcy Law in relation to the assignment of such Assigned Contract to the extent no Consent was obtained and such Bankruptcy Order was obtained in accordance with Section 2.12(2).

"CRA" means the Canada Revenue Agency.

"Debt Commitment Letter" has the meaning set out in Section 3.02(3)(a).

"Debt Financing" has the meaning set out in Section 3.02(3)(a).

"Deposit" has the meaning set out in the recitals hereto.

"Designated Purchaser" has the meaning set out in Section 8.01.

"Eligible Capital Expenditures" has the meaning set out in Section 4.03(1)(g).

"Employee Plans" means all the employee benefit, fringe benefit, supplemental unemployment benefit, death benefit, retirement allowance, bonus, incentive, profit sharing, termination, change of control, pension, retirement, stock option, stock purchase, stock appreciation, health, welfare, medical, dental, disability, life insurance and similar plans, programmes, arrangements or practices relating to the current or former directors, officers or employees of any Vendor maintained, sponsored or funded by any Vendor, whether written or oral, funded or unfunded, insured or self-insured, registered or unregistered under which any Vendor may have any liability, contingent or otherwise.

"Employees" means all full-time and part-time employees of any Vendor (whether or not on vacation, sick leave, maternity leave, disability or other leave of absence) and listed in Section 4.05 of the Vendors Disclosure Letter (and as the same may be updated by the Fund as of the Closing Date), but, for the avoidance of doubt, shall not include any individuals who are employed by a Third Party.

"Equity Funding Letter" has the meaning set out in Section 3.02(3)(a).

"Estimated Working Capital" means \$45,600,000, such amount representing the Vendors' estimation of the Working Capital of the Purchased Businesses at the Time of Closing.

"Excluded Assets" has the meaning set out in Section 2.02.

"Excluded Contracts" means any Contracts disclaimed or rejected by any Vendor with the consent of the Purchaser in accordance with applicable Bankruptcy Laws.

"Excluded Current Liabilities" means (i) any legal, accounting and other professional fees, costs and expenses incurred by any of the Vendors in connection with the Bankruptcy Proceedings, the SISP or the transactions contemplated by this Agreement; (ii) any Liabilities incurred by any of the Vendors in connection with any environmental matter arising from the

acquisition by any of the Vendors of real property in the State of California and that remain unpaid at the Time of Closing; (iii) any Liabilities incurred by any of the Vendors in connection with any Claim that remains unpaid at the Time of Closing; (iv) any Liabilities incurred by any of the Vendors in connection with the leasing of Reddy ISB Machines in the State of California that remain unpaid at the Time of Closing; (v) any Liabilities owing by any of the Vendors to any Employee in connection with any long-term incentive plan of any of the Vendors that remain unpaid at the Time of Closing or in connection with any payments due to any Employee pursuant to any arrangement or agreement providing for benefits or payments upon a change of control; (vi) any royalties owed by any of the Vendors in relation to the Retail Royalty Agreement between Peggy Darlene Johnson and The Arctic Group, Inc. dated January 28, 2000 that remain unpaid at the Time of Closing; (vii) any accounting fees, costs and expenses incurred by any of the Vendors in connection with the review by KPMG LLP of such Vendor's unaudited quarterly financial statements; (viii) any broker's fee or commission owed by any of the Vendors to Serge Beaudet with respect to the sale of a mining ventilation extraction unit that remains unpaid at the Time of Closing; (ix) any Liabilities incurred by any of the Vendors with respect to capital expenditures in relation to trade accounts payable in respect of capital expenditures that remain unpaid at the Time of Closing; and (x) any Liabilities incurred by any of the Vendors in relation to any inducements with respect to leases of real property located in the State of California that remain unpaid at the Time of Closing.

"Excluded Liabilities" has the meaning set out in Section 2.04.

"Excluded Redundant Properties" means those properties set forth on Schedule 2.02(1).

"Financing Sources" means the entity or entities (other than the Purchaser) that commit to provide or otherwise enter into agreements in connection with any Debt Financing proposed to be provided to or for the benefit of the Purchaser in connection with the transactions contemplated hereby, including the parties to the Debt Commitment Letter and any joinder agreements or credit agreements relating thereto, together with their party's or parties' Affiliates, officers, directors, employees and representatives involved in the Debt Financing and their respective successors and assigns.

"Governmental Authority" means any domestic or foreign legislative, executive, judicial or administrative body or person having or purporting to have jurisdiction in the relevant circumstances.

"Governmental Authorization" means any consent, license, registration or permit issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any legal requirement.

"HSR Act" means the United States *Hart-Scott Rodino Antitrust Improvements Act of 1976*, as amended.

"HSR Act Compliance" means the Purchaser and the Vendors have given the notice required under the HSR Act with respect to the transactions contemplated by this Agreement and the applicable waiting period and any extensions thereof will have expired or been earlier terminated in accordance with the HSR Act.

"Initial Order" has the meaning set out in the recitals hereto.

"Intellectual Property" means intellectual property of any nature and kind including all domestic and foreign trade-marks, business names, trade names, domain names, trading styles, patents, trade secrets, Software, industrial designs and copyrights, whether registered or unregistered, and all applications for registration thereof, and inventions, formulae, recipes, product formulations, processes and processing methods, technology and techniques and know-how.

"Inventories" means all inventories of the Purchased Businesses owned by and in the possession or control of a Vendor at the Time of Closing, including all finished goods, work in progress, raw materials, spare parts and all other materials and supplies to be used or consumed by any of the Vendors in the production, packaging or shipping of finished goods.

"Lands" means all freehold and leasehold property and interests therein described in Section 1.01A of the Vendors Disclosure Letter, including all rights of way, licences or rights of occupation, easements or other similar rights of any Vendor in connection with such freehold and leasehold property.

"Lender" has the meaning set out in Section 3.02(3)(a).

"Liabilities" means all costs, expenses, charges, debts, liabilities, commitments and obligations of any nature or kind, whether accrued or fixed, actual, absolute, contingent, latent or otherwise, matured or unmatured or determined or undeterminable, including those arising under any Applicable Law or Claim and those arising under any Contract or undertaking or otherwise, including any Tax liability or tort liability.

"Lien" means any lien (statutory or otherwise), mortgage, pledge, security interest, charge, hypothecation, encumbrance, or interest in property which, in each case, in substance, secures payment or performance of an obligation, or similar charge of any kind.

"Losses" means all damages, fines, penalties, deficiencies, losses, Liabilities, costs, fees and expenses (including interest, court costs and reasonable fees and expenses of lawyers, accountants and other experts and professionals).

"Material Adverse Effect" means any event, circumstance, development, state of facts, occurrence, change or effect that is or would reasonably be expected to be, individually or in the aggregate, material and adverse to (a) the business, Assets, Assumed Liabilities, condition (financial or otherwise), or results of operations of the Purchased Businesses, taken as a whole, or (b) the ability of the Vendors to complete the transactions contemplated by this Agreement, in each case, other than any event, circumstance, development, state of facts, occurrence, change or effect arising in connection with or related to: (i) the execution or announcement of this Agreement or the implementation of the transactions contemplated hereby, including any loss or threatened loss of, or adverse change or threatened adverse change in, the relationship of any Vendor with any of its financing sources, creditors, employees, customers, distributors, suppliers, or partners resulting from such announcement or implementation; (ii) any change in general economic or political conditions or securities, capital, credit, financial or banking markets generally, or any worsening thereof, in Canada or the United States; (iii) the loss of one

Arctic Glacier - Asset Purchase Agreement

or more customers of any Vendor (it being understood that the causes underlying such loss may be taken into account in determining whether a Material Adverse Effect has occurred); (iv) any change in currency exchange rates, interest rates, monetary policy or inflation in Canada or the United States; (v) the impact of weather in and of itself on the results of operations of the Vendors, taken as a whole; (vi) any change affecting generally the packaged ice industry in Canada or the United States; (vii) either of the Bankruptcy Proceedings; (viii) any acquisition of a competitor by the Purchaser or any of its Affiliates or any Third Party in any jurisdiction in which any Vendor operates; (ix) the failure by the Vendors to meet any earnings, projections, forecasts, or estimates, whether internal or previously publicly announced (it being understood that the causes underlying such failure may be taken into account in determining whether a Material Adverse Effect has occurred); (x) any change in applicable generally accepted accounting principles, including International Financial Reporting Standards, or interpretation thereof; (xi) any action by any Vendor that is required pursuant to this Agreement or that is otherwise expressly consented to in writing by the Purchaser; (xii) any act of terrorism or any outbreak of hostility or war or declaration of national emergency or any escalation of any such event or any natural disaster or act of God; or (xiii) any adoption or proposal of, or change in Applicable Law; provided that, in the case of an event, circumstance, development, state of facts, occurrence, change or effect referred to in clause (ii), (iv), (vi), (x), (xii), or (xiii) above, such event, circumstance, development, state of facts, occurrence, change or effect does not have a materially disproportionately adverse affect on the Purchased Businesses, taken as a whole, compared to other companies of similar size operating in the industry in which the Purchased Businesses operate.

"Material Assigned Contracts" means the Contracts listed in Section 2.12 of the Vendors Disclosure Letter.

"Monitor" has the meaning set out in the recitals hereto.

"Monitor's Certificate" means a certificate signed by the Monitor and confirming that (i) the Purchaser has paid, and the Monitor has received payment of, the Purchase Price in relation to the purchase by the Purchaser of the Assets; and (ii) the conditions to be complied with at or prior to the Time of Closing as set out in Sections 5.01, 5.02 and 5.03, respectively, have been satisfied or waived by the Vendors or the Purchaser, as applicable, pursuant to Section 5.04.

"Outside Date" has the meaning set out in Section 5.05(e).

"Owned Software" means Software owned by any of the Vendors and belonging to or used in the Purchased Businesses.

"Payment Order" has the meaning set out in Section 2.11(2).

"Permits" means all permits, consents, waivers, licences, certificates, approvals, authorizations, registrations, franchises, rights, privileges, quotas and exemptions, or any item with a similar effect, issued or granted by any person.

"Permitted Encumbrances" means the Liens set forth on Schedule 4.03(1)(e).

"Purchase Price" has the meaning set out in Section 2.05.

Arctic Glacier - Asset Purchase Agreement

"Purchased Businesses" means the business of the Vendors of (i) manufacturing and distributing packaged ice, as well as other products such as bottled water, dry ice, packaged wood and rock salt; and (ii) selling and leasing ice-making and dispensing equipment at present and heretofore carried on by each of the Vendors, including in (A) the following Provinces of Canada: Alberta, British Columbia, Manitoba, Ontario, Quebec, and Saskatchewan, and (B) the following States in the United States: Arizona, California, Iowa, Kansas, Michigan, Minnesota, Nebraska, New Jersey, New York, North Dakota, Oregon, Pennsylvania, South Dakota, Texas and Wisconsin.

"Purchaser Parties" has the meaning set out in Section 4.09(1).

"Regulatory Approvals" means the HSR Act Compliance.

"Required Employee Information" means each Employee's position, duties and responsibilities, compensation (salary or hourly rate, bonus and/or commission entitlements), vacation, work location, hours of work, car allowance, sick day entitlement, change of control or retention entitlements.

"SISP" has the meaning set out in the recitals hereto.

"Software" means all software relating to the Purchased Businesses, including the computer programs known by the names as set out in Section 1.01B of the Vendors Disclosure Letter, including all versions thereof, and all related documentation, manuals, source code and object code, program files, data files, computer related data, field and data definitions and relationships, data definition specifications, data models, program and system logic, interfaces, program modules, routines, sub-routines, algorithms, program architecture, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts, and all other material related to such software.

"Tax" means any domestic or foreign federal, state, local, provincial, territorial or municipal taxes or other impositions by or on behalf of a Tax Authority or Government Authority, including the following taxes and impositions: net income, gross income, individual income, capital, value added, goods and services, harmonized sales, gross receipts, sales, use, ad valorem, business rates, transfer, franchise, profits, business, environmental, real property, personal property.

"Tax Act" means the *Income Tax Act* (Canada), as amended.

"Tax Returns" means all returns, reports (including any amendments, elections, declarations, disclosures, claims for refunds, schedules, estimates and information returns) and other information filed or required to be filed with any Tax Authority relating to Taxes.

"Taxation Authority" means any domestic or foreign government, agency or authority that is entitled to impose Taxes or to administer any Applicable Law.

"Terminated Employee" means any Employee other than (i) an Employee who does not accept the Purchaser's offer of employment pursuant to Section 4.05(1); and (ii) a Transferring Employee.

"Time of Closing" means 11:59 p.m. (Toronto time) on the Closing Date.

"Third Party" means any person that is not the Purchaser or a Vendor.

"Transaction Documents" means, collectively, this Agreement and all ancillary agreements, documents and instruments executed and delivered by any of the parties hereto pursuant to this Agreement but excluding, for the avoidance of doubt, the Equity Funding Letter, the Debt Commitment Letter and any other agreement, document or instrument executed in connection therewith.

"Transferring Employees" means each Employee who (i) accepts the Purchaser's offer of employment made pursuant to Section 4.05(1); or (ii) whose employment transfers to the Purchaser by operation of Applicable Law.

"Transfer Taxes" has the meaning set out in Section 2.10.

"U.S. Bankruptcy Code" means the Title 11 of the United States Bankruptcy Code.

"U.S. Bankruptcy Court" has the meaning set out in the recitals hereto.

"U.S. Fully-Insured Welfare Plans" means the Arctic Glacier International Inc. Group Life Insurance and Accidental Death and Dismemberment Plan, the Arctic Glacier International Inc. Hawaii Employee Benefit Plan, and the Arctic Glacier International Inc. Flexible Benefits Plan.

"U.S. Medical Insurance Liabilities" means the aggregate net liabilities of the U.S. Vendors for employee medical self insurance incurred by any U.S. Vendor with respect to the U.S. Self-Insured Welfare Plans, in each case accruing to the Time of Closing (determined on the basis of payments received by a Vendor from such Employees less any corresponding reserve established on the Books and Records of such Vendor). For greater certainty, the U.S. Medical Insurance Liabilities shall not include any Liabilities associated with the Exec-u-Care Medical Reimbursement Benefit Plan.

"U.S. Sale Recognition Order" has the meaning set out in Section 4.01(2)(a).

"U.S. Self-Insured Welfare Plans" means the Arctic Glacier International Inc. Group Medical Plan and the Arctic Glacier International Inc. Group Dental Plan.

"U.S. Vendors" means the Vendors other than the Canadian Vendors.

"Vendor Parties" has the meaning set out in Section 4.08.

"Vendors Disclosure Letter" means the disclosure letter dated as of the date hereof and delivered by the Vendors to the Purchaser.

"Working Capital" means the consolidated current assets of the Fund included in the Assets, less the consolidated current liabilities of the Fund included in the Assumed Liabilities as determined in accordance with generally accepted accounting principles consistently applied at the Time of Closing and otherwise in a manner consistent with the indicative Working Capital

calculation set forth on Schedule 1.01B and the methodology utilized in the spreadsheet prepared by KPMG LLP entitled "Working_Capital__10.05.12[1].xlsm" attached as Appendix A to Schedule 1.01B, excluding from current liabilities the current portion of long-term debt and any debt repaid at the Time of Closing.

"Working Capital Statement" has the meaning set out in Section 2.07(2).

"Working Capital Target" means \$26,100,000.

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. 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".

1.04 Calculation of Time

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, in the computation of periods of time from a specified date to a later specified date, the word "from" means "from but excluding" and the words "to" and "until" each mean "to and including.". If the last day of any such period is not a Business Day, such period will end on the next Business Day. When calculating the period of time "within" which, "prior to" or "following" which any act or event is required or permitted to be done, notice given or steps taken, the date which is the reference date in calculating such period is excluded from the calculation. If the last day of any such period is not a Business Day, such period will end on the next Business Day.

1.05 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

1.06 Accounting Principles

Wherever in this Agreement reference is made to a calculation to be made or an action to be taken in accordance with generally accepted accounting principles, such reference will be deemed to be to the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation or action is made or taken or required to be made or taken.

1.07 Currency

All references to currency herein are to lawful money of the United States.

1.08 Control

(1) For the purposes of this Agreement,

- (a) a person controls a body corporate if securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are beneficially owned by the person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate;
- (b) a person controls an unincorporated entity, other than a limited partnership, if more than 50% of the ownership interests, however designated, into which the entity is divided are beneficially owned by that person and the person is able to direct the business and affairs of the entity; and
- (c) the general partner of a limited partnership controls the limited partnership.

(2) A person who controls an entity is deemed to control any entity that is controlled, or deemed to be controlled, by the entity.

(3) A person is deemed to control, within the meaning of Section 1.08(1)(a) or (b), an entity if the aggregate of

- (a) any securities of the entity that are beneficially owned by that person, and
- (b) any securities of the entity that are beneficially owned by any entity controlled by that person

is such that, if that person and all of the entities referred to in Section 1.08(3)(b) that beneficially own securities of the entity were one person, that person would control the entity.

1.09 Schedules

The following are the Schedules to this Agreement:

Schedule A — Subsidiaries of the Fund;

- Schedule 1.01A — Form of Assignment and Assumption Agreement;
- Schedule 1.01B — Indicative Working Capital Calculation;
- Schedule 2.02(l) — Excluded Redundant Properties;
- Schedule 2.06 — Purchase Price Allocation;
- Schedule 4.01(1) — Form of Canadian Vesting and Approval Order;
- Schedule 4.03(1)(e) — Permitted Encumbrances; and
- Schedule 5.02(f) — Form of FIRPTA Certificate.

ARTICLE 2- SALE AND PURCHASE

2.01 Assets to be Sold and Purchased

Upon and subject to the terms and conditions hereof, the relevant Vendors will sell, transfer, convey and assign to the Purchaser, and the Purchaser will purchase from the relevant Vendors, as of and with effect from the opening of business on the Closing Date, all of the right, title, benefit and interest of the relevant Vendors in and to all of the relevant Vendor's undertaking, tangible and intangible assets, properties, rights and Claims of the Vendors of every kind and description and wheresoever situate and used or relating to the Purchased Businesses as and to the extent existing on the Closing Date, save and except for the Excluded Assets (collectively, the "Assets") and, without limiting the generality of the foregoing, the Assets include:

- (a) the Lands;
- (b) all plants, buildings, structures, erections, improvements, appurtenances and fixtures situate on or forming part of the Lands, other than the fixed machinery and fixed equipment referred to in Section 2.01(c);
- (c) all fixed machinery and fixed equipment situate on or forming part of the Lands to the extent in the possession or under the control of a Vendor at the Time of Closing, other than Inventories;
- (d) all other machinery and equipment and all vehicles, tools, handling equipment, furniture, furnishings, computer hardware and peripheral equipment, spare parts, supplies and accessories of the Purchased Businesses, including the machinery and equipment listed in Section 2.01(d) of the Vendors Disclosure Letter, to the extent in the possession or under the control of a Vendor at the Time of Closing, other than Inventories;
- (e) all leases of machinery and equipment in respect of which any of the Vendors is the lessee, including the leases listed in Section 2.01(e) of the Vendors Disclosure Letter;
- (f) all Inventories;

- (g) all new and unused production, shipping and packaging supplies relating to the Purchased Businesses to the extent in the possession or under the control of a Vendor at the Time of Closing;
- (h) the Assigned Contracts, including the Contracts listed in Section 2.01(h) of the Vendors Disclosure Letter;
- (i) all accounts receivable of a Vendor;
- (j) all Permits required to carry on the Purchased Businesses in its usual and ordinary course, including the Permits listed in Section 2.01(j) of the Vendors Disclosure Letter;
- (k) all Intellectual Property owned by any of the Vendors and used in the Purchased Businesses, including all Owned Software and the Intellectual Property listed in Section 2.01(k) of the Vendors Disclosure Letter;
- (l) all Intellectual Property not owned by the Vendors but used in the Purchased Businesses, including the right to use the Intellectual Property listed in Section 2.01(l) of the Vendors Disclosure Letter;
- (m) all U.S. Self-Insured Welfare Plans, U.S. Fully-Insured Welfare Plans and the Arctic Glacier International Inc. Savings and Retirement Plan (U.S. 401(k) Plan);
- (n) all rights of any Vendor relating to pre-paid expenses and deposits, including all pre-paid deposits to any supplier, all pre-paid taxes and water rates, all pre-paid purchases of gas, oil and hydro, all pre-paid lease payments and all pre-paid employee items referred to in Section 4.05(1); and
- (o) the goodwill of the Purchased Businesses, including the exclusive right to the Purchaser to represent itself as carrying on the Purchased Businesses in continuation of and in succession to the Vendors and the right to use any words indicating that the Purchased Businesses are so carried on.

2.02 Excluded Assets

Notwithstanding Section 2.01 or any other provision in this Agreement to the contrary, each of the Vendors will retain their respective right, title, benefit and interest in and to, and the Purchaser will have no rights with respect to the right, title, benefit and interest of any of the Vendors in and to, the following assets (collectively, the "Excluded Assets"):

- (a) the respective cash and cash equivalents, short-term investments, bank account balances and petty cash of the Vendors;
- (b) all Tax refunds receivable by any Vendor and all tax attributes of such Vendor;
- (c) all rights of any of the Vendors under any Excluded Contract;

- (d) all rights of any of the Vendors under any Transaction Document;
- (e) all records prepared solely for purposes of the negotiations regarding the retention, sale or other disposition of the Assets;
- (f) shares and other interests in the capital of any Vendor, and all minute books and corporate records;
- (g) the respective Tax records of the Vendors;
- (h) any Claim of any Vendor to reimbursement made prior to the date of this Agreement under any insurance policy maintained by any Vendor;
- (i) any brand conversion Liabilities recoverable by any Vendor in connection with the acquisition of the assets of Koldkist-Beverage Ice, Inc., Pacific Cold Storage, Inc. and K, H & P Companies, Inc. by Arctic Glacier Oregon Inc. as of May 1, 2008;
- (j) any pre-paid interest rate swap payments made by any of the Vendors;
- (k) any pre-payments made by the Fund for the purchase of the trust units of the Fund under the Fund's long-term incentive plan; and
- (l) any Excluded Redundant Properties.

2.03 Assumption of Liabilities

(1) The Purchaser will assume, fulfill, perform and discharge the following Liabilities of the Vendors, which will not include any Excluded Liabilities (collectively, the "Assumed Liabilities"):

- (a) any trade accounts payable incurred by any of the Vendors, including any such trade accounts payable pursuant to any Assigned Contract, that remains unpaid at the Time of Closing and that are reflected as a Liability in the Working Capital Statement;
- (b) (i) all Liabilities for wages or other employee benefits or Claims, including vacation pay owing by a Vendor to any Transferring Employee and Liabilities in respect of the Exec-u-Care Medical Reimbursement Benefit Plan, in each case accruing to the Time of Closing, and reflected as a Liability in the Working Capital Statement; and (ii) payment of all amounts due for wages, severance pay, termination pay, notice of termination of employment or pay in lieu of such notice, damages for wrongful dismissal or other employee benefits, including vacation pay owing by a Vendor to any Terminated Employee, in each case accruing to the Time of Closing, and reflected as a Liability in the Working Capital Statement;

- (c) all U.S. Medical Insurance Liabilities (which, solely for the purposes of this Section 2.03(1)(c) include any Liabilities in respect of the Exec-u-Care Medical Reimbursement Benefit Plan accruing to the Time of Closing) and all Liabilities for the U.S. Fully-Insured Welfare Plans, in each case as reflected as a Liability in the Working Capital Statement;
 - (d) any Liability to the customers of any of the Vendors incurred by a Vendor in the ordinary course of business for orders outstanding as of the Time of Closing and reflected as a Liability in the Working Capital Statement;
 - (e) any Liability to the customers of any of the Vendors under written warranty agreements given by a Vendor to its customers in the ordinary course of business prior to the Time of Closing and reflected as a Liability in the Working Capital Statement;
 - (f) all Liabilities arising after the Time of Closing with respect to the ownership or exploitation of the Assets by or through the Purchaser, including all such Liabilities related to Claims brought against any of the Assets, or otherwise arising by or through the Purchaser, after the Time of Closing;
 - (g) all Liabilities arising from or in connection with the performance of any of the Assigned Contracts (or breach thereof) after the Time of Closing;
 - (h) all Liabilities related to or arising from any of the following: (i) the Purchaser's employment or termination of employment of Transferring Employees arising after the Time of Closing; (ii) the Purchaser's offers of employment failing to comply with Section 4.05(1) unless such failure to comply related to or arose from the Vendors' failure to provide the Required Employee Information in writing to the Purchaser prior to the date of the offer; and (iii) all Liabilities for wages, severance pay, termination pay, notice of termination of employment or pay in lieu of such notice, damages for wrongful dismissal, including vacation pay, in respect of Transferring Employees and accruing after the Time of Closing;
 - (i) all Liabilities for any Tax that the Purchaser is required to bear pursuant to Section 2.09 or Section 2.10;
 - (j) all Liabilities arising from or in connection with the Arctic Glacier International Inc. Savings and Retirement Plan (U.S. 401(k) Plan); and
 - (k) any Eligible Capital Expenditures.
- (2) The Fund will prepare, or cause to be prepared, and deliver to the Purchaser not later than three (3) Business Days prior to the Closing Date a reasonably detailed statement estimating the Assumed Liabilities described in Sections 2.03(1)(a), (b) and (c), respectively (such Assumed Liabilities being referred to herein as the "Assumed Accounts Payable").

2.04 Liabilities Not Assumed

Except as provided in Section 2.03, the Purchaser will not assume at the Time of Closing or at any time thereafter any of the Liabilities of any Vendor or related to the Purchased Businesses (collectively, the "Excluded Liabilities"), including:

- (a) all Excluded Current Liabilities;
- (b) all Liabilities for or on account of any Tax other than those that the Purchaser is required to bear under Section 2.09 or Section 2.10;
- (c) any Liabilities related to any active or inactive litigation (including any class actions or direct or indirect purchaser claims), anti-trust investigations by any Governmental Authority in each case involving any or all of the Vendors or their current or former employees (including any settlement in respect thereof); and
- (d) all Liabilities arising from or in connection with the Brandywine Ice Company Defined Benefit Pension Plan.

2.05 Purchase Price

The purchase price payable to the Vendors for the Assets (such amount being hereinafter referred to as the "Purchase Price") will be [REDACTED] plus the dollar value of (i) the price paid by the Vendors for the purchase of the land and building at 600 South 80th Avenue, Tolleson, Arizona; and (ii) the Assumed Liabilities, subject to adjustment as provided in Section 2.07

2.06 Allocation of Purchase Price

The Purchase Price will be allocated among the Assets as set out in Schedule 2.06, which schedule shall be updated to reflect the adjustments pursuant to Section 2.07.

2.07 Working Capital Adjustment

(1) For greater certainty, the Purchase Price includes an amount of \$19,500,000, representing the amount by which the Estimated Working Capital is greater than the Working Capital Target.

(2) Not later than ten (10) Business Days from the last day of the Accounts Payable Period, the Fund will prepare and deliver to the Purchaser and the Monitor an unaudited statement setting out (by separate line-item) the Working Capital for the Purchased Businesses as at the Time of Closing (the "Working Capital Statement"). Inventories will be confirmed as at the close of business on the 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 the physical stock-taking, representatives of the Monitor. For purposes of determining Working Capital and preparing the Working Capital Statement, the consolidated current liabilities of the Fund will be reduced by an amount, if any, equal to the aggregate

amount of all Assumed Accounts Payable that have not been paid by the Purchaser to the applicable payee during the Accounts Payable Period to the extent that such Assumed Accounts Payable were due and payable prior to, or during, the Accounts Payable Period, and the parties acknowledge and agree that (a) any such reduction of the consolidated current liabilities of the Fund will result in an increase in Working Capital on a dollar for dollar basis; and (b) such Assumed Accounts Payables shall no longer be Assumed Liabilities for the purpose of this Agreement. During the Accounts Payable Period, if requested by the Monitor, the Purchaser will, on the Thursday of each week (or if any such Thursday is not a Business Day, on the next following Business Day), duly execute and deliver to the Fund, on behalf of the Vendors, and the Monitor a certificate confirming any such payments. From the Closing Date, the Purchaser will, if requested by the Fund or the Monitor, forthwith make available to the Fund and its auditors and other representatives, as well as the Monitor, all books of account and accounting records and other information relating to the Purchased Businesses for the purposes of preparing the Working Capital Statement and any dispute with respect to the Working Capital Statement. If requested by the Purchaser, the Fund will permit the Purchaser and its auditors or other representatives to review the working papers and other documentation used or prepared in connection with the preparation of, or which otherwise form the basis of the Working Capital Statement. The Purchaser will not engage or retain KPMG LLP to represent the Purchaser in connection with its review of, or dispute in relation to, the Working Capital Statement. The Fund and the Purchaser will each bear fifty percent (50%) of any fees and expenses of the Fund's accountants incurred by the Fund in the preparation of the Working Capital Statement.

(3) If the Purchaser gives written notice to the Vendors and the Monitor that it disputes the Working Capital Statement within twenty (20) Business Days after the Working Capital Statement is given to the Purchaser and the parties cannot reach agreement on the Working Capital Statement within twenty (20) Business Days after such notice of dispute is given, the dispute will be referred for determination by arbitration to a senior audit partner at the Toronto office of Ernst & Young LLP chosen by the managing partner of such office. The parties will instruct the arbitrator to consider only those items and amounts as to which the parties have not resolved their disagreement and to conduct such hearings as it considers necessary to resolve the disagreement between the parties. The parties will furnish, or cause to be furnished, to such arbitrator such working papers and other documents and information related to the items and amounts in dispute as the arbitrator may request and are available to the relevant party or its agents. The determination by such arbitrator will be made within twenty (20) Business Days of such referral and will be final and binding on all parties. The costs of the arbitrator will be borne by the party (being the Vendors on the one hand and the Purchaser on the other) losing the majority of the amount at issue in the arbitration. If the Purchaser does not give such notice within such twenty (20) Business Day period, the Working Capital Statement will be final and binding on all parties.

(4) If the Working Capital as determined by the parties or the arbitrator, as the case may be, exceeds the Estimated Working Capital, the Purchaser will pay the amount of the difference 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.

(5) If the Working Capital as determined by the parties or the arbitrator, as the case may be, is less than the Estimated Working Capital, the Vendors will pay, in the aggregate, the amount of the difference to the Purchaser by wire transfer of immediately available funds to an account specified by the Purchaser within two (2) Business Days after the determination of the Working Capital and the Purchase Price will be adjusted accordingly.

2.08 Elections

(1) Each of the Canadian Vendors and the Purchaser will on or before the Time of Closing jointly execute elections, in the prescribed form and containing the prescribed information, to have subsection 167(1.1) of the *Excise Tax Act* (Canada) and section 75.1 of an *Act Respecting Quebec Sales Tax* (Québec) apply to the sale and purchase of the Assets and the Purchased Businesses owned by the Canadian Vendors hereunder so that no tax is payable in respect of such sale and purchase under those statutes. The Purchaser will file such elections with the appropriate revenue authority within the time prescribed.

(2) Each of the Canadian Vendors and the Purchaser will execute and file, on a timely basis and using the prescribed form, a joint election under section 22 of the Tax Act and any equivalent or corresponding provision under applicable provincial or territorial Tax legislation as to the sale of the accounts receivable of the Vendors to be purchased under this Agreement, and prepare their respective tax returns in a manner consistent with such joint election. For purposes of such joint election, the parties agree that the consideration paid for the accounts receivable sold by the Vendors to the Purchaser will be the amount as set forth in Schedule 2.06.

(3) Each of the Canadian Vendors and the Purchaser acknowledge that the Canadian Vendors are transferring Assets to the Purchaser with a value equal to the amount set out in Schedule 2.06 in consideration for the Purchaser assuming prepaid obligations of the Canadian Vendors to deliver goods or provide services in the future. Each of the Canadian Vendors and the Purchaser will execute and file, on a timely basis and using any prescribed form, a joint election under subsection 20(24) of the Tax Act and any equivalent or corresponding provision under applicable provincial or territorial Tax legislation as to such assumption hereunder, and prepare their respective tax returns in a manner consistent with such joint election.

2.09 Property Taxes

All property Taxes imposed on or with respect to the Assets for the Tax year that includes the Closing Date will be prorated between the relevant Vendors and the Purchaser as of the Closing Date. Each of the relevant Vendors will be liable for and pay the portion of such Taxes based on the number of days in the year or other applicable Tax period occurring on or prior to the Closing Date, and the Purchaser will be liable for the portion of such Taxes based on the number of days in the year or other applicable Tax period occurring after the Closing Date. For any year or other applicable Tax period in which an apportionment is required, the Purchaser will file all required Tax Returns incident to these Taxes assessed for the year or applicable Tax period in which the Closing Date occurs that are not paid by any of the Vendors as of the Closing Date.

2.10 Transfer Taxes

The Purchaser will be liable for and will pay, or will cause to be paid, 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 prepare and file any affidavits or returns required in connection with the foregoing at its own cost and expense. To the extent that any Transfer Taxes are required to be paid by or are imposed upon the Vendors, the Purchaser will reimburse, or will cause to be reimbursed, to the Vendors such taxes within five (5) Business Days of the Vendors giving the Purchaser notice that such Taxes have been paid.

2.11 Payment of Purchase Price and Treatment of Deposit

- (1) Subject to Section 2.11(2), the Purchase Price will be satisfied as follows:
 - (a) the portion of the Purchase Price equal to the amount of the Deposit and the actual earnings thereon will be satisfied by crediting the Vendors, at the Time of Closing, with the Purchaser's interest in the Deposit (and the actual earnings thereon to but excluding the Closing Date) that is being held by the Monitor;
 - (b) the balance of the Purchase Price, before taking into account the amount of any adjustment required by Section 2.07, will be satisfied by the payment of such amount by wire transfer of immediately available funds at the Time of Closing from the Purchaser to an account of the Monitor specified in writing by the Vendors not less than two (2) Business Days prior to the Closing Date;
 - (c) by the payment by wire transfer of immediately payable funds, by the Purchaser to the Monitor to the account of the Monitor specified in Section 2.11(1)(b) herein or by the Vendors to the Purchaser to an account of the Purchaser specified in writing by the Purchaser to the Vendors, as applicable, of any adjustment to the Purchase Price pursuant to Section 2.07; and
 - (d) as to the dollar value of the Assumed Liabilities, by the Purchaser assuming the Assumed Liabilities.

(2) In the event that, prior to the Closing Date, an order (a "Payment Order") of the Canadian Court is obtained directing the Vendors to pay to the Arctic Lenders that portion of the proceeds of the Purchase Price that is sufficient to pay the Arctic Lender Claims in full, then subject to and in accordance with the terms of the Payment Order, the Vendors will deliver to the Purchaser and the Monitor a notice and direction, signed by the Fund, on behalf of the Vendors, directing the Purchaser to pay all or the portion of the Purchase Price, as specified by such order, to the Arctic Lenders by wire transfer at the Time of Closing of immediately available funds to an account or accounts specified in such notice and direction, such amount to be applied by the Arctic Lenders on account of the amounts owing by the Vendors under the Arctic Credit Facilities.

(3) The Deposit paid to the Monitor by the Purchaser will, together with any actual earnings thereon, be:

- (a) credited to the Vendors, as applicable, at the Time of Closing in accordance with Section 2.11(1)(a), if the sale and purchase of the Assets provided for herein is completed in accordance with the terms and conditions hereof;
- (b) forfeited to the Vendors, as applicable, within five (5) Business Days after the date on which this Agreement is terminated in accordance with its terms if the sale and purchase of the Assets provided for herein is not completed in accordance with the terms and conditions hereof, unless (i) such non-completion is due to the Purchaser having terminated this Agreement pursuant to Section 5.05(b), (c) or (e); and (ii) at the date of termination the Vendors could not have terminated this Agreement pursuant to Section 5.05(b);
- (c) forfeited to the Vendors, as applicable, if all of the conditions in Sections 5.01 and 5.02 have been satisfied or waived and the Purchaser does not fulfil its obligation to consummate the sale and purchase of the Assets at the Time of Closing; and
- (d) paid to the Purchaser within five (5) Business Days after the date on which this Agreement is terminated pursuant to Section 5.05(b), (c) or (e), provided that, at the date of termination, the Vendors could not have terminated this Agreement pursuant to Section 5.05(b).

(4) To the extent that the Deposit is forfeited to the Vendors pursuant to clause (b) or clause (c) of Section 2.11(3), such Deposit, together with any actual earnings thereon, shall be the sole and exclusive remedy of the Vendors. Neither the Vendors nor any other person (including the Monitor, the Arctic Lenders or any other creditor of the Vendors) shall be entitled to exercise any other rights or remedies, whether at law or equity, in contract, in tort or otherwise, against the Purchaser or its officers, directors, investors or the Financing Sources in the event of such breach or failure. In no event shall the Vendors be entitled to seek or obtain monetary damages in excess of such Deposit and in no event shall the Vendors be entitled to seek or obtain any other damages of any kind against the Purchaser or its officers, directors, investors or the Financing Sources, including consequential, special, indirect or punitive damages for, or with respect to, this Agreement or the transactions contemplated hereby. The parties agree that the Deposit shall be forfeited by the Purchaser as liquidated damages and not as a penalty and represents a genuine and reasonable pre-estimate of the damages that the Vendors would suffer as a result of such breach or failure.

2.12 Assigned Contracts

(1) Each of the Vendors will use its commercially reasonable efforts to obtain any Consents necessary to permit the assignment to, and assumption by, the Purchaser of all the Assigned Contracts and the Assumed Liabilities in respect thereof to be assigned to and assumed by the Purchaser pursuant to this Agreement; provided, however, that such efforts will not require any Vendor to pay any amounts other than Cure Costs (unless such Cure Costs are the

responsibility of the Purchaser pursuant to Section 2.12(3)). The Purchaser will provide its reasonable cooperation to assist the Vendors to obtain such Consents.

(2) If the Vendors are unable to obtain any Consent necessary for the assignment of any Assigned Contract to the Purchaser and the assumption by the Purchaser of the Assumed Liabilities in respect thereof in accordance with Section 2.12(1), the Vendors will obtain a Bankruptcy Order prior to the Time of Closing, in form and content reasonably satisfactory to the Purchaser, authorizing the assignment of such Assigned Contract.

(3) The Purchaser will be responsible for all Cure Costs in respect of the Assigned Contracts, but only to the extent that such Cure Costs have been reflected in the Working Capital Statement as Assumed Liabilities.

(4) Nothing in this Agreement will constitute an agreement to assign or an attempted assignment of any Assigned Contract for which any requisite Consent to the assignment thereof has not been obtained. To the extent permitted by Applicable Law, if any requisite Consent or Bankruptcy Order has not been obtained on or prior to the Time of Closing, the applicable Assigned Contract will be held by the relevant Vendor in trust for the benefit of the Purchaser for a period of three (3) months from the Closing Date and, during such three (3) month period, the Purchaser will perform the obligations of the relevant Vendor thereunder and be entitled to receive all money becoming due and payable under, and other benefits derived from, the Assigned Contract immediately after receipt by the applicable Vendor.

ARTICLE 3- REPRESENTATIONS AND WARRANTIES

3.01 Vendors' Representations and Warranties

Each of the Vendors represents and warrants to the Purchaser as follows:

(1) *Organization and Corporate Power*

- (a) The Fund is an open-ended, mutual fund trust established, settled and existing under the laws of the Province of Alberta. Glacier Valley Ice Company, L.P. is a limited partnership established under the laws of the State of California and has the requisite power and capacity to carry on its business as now conducted and to own or lease its assets and to execute, deliver and perform its obligations under this Agreement. Each Vendor, other than the Fund and Glacier Valley Ice Company, L.P., is a corporation duly incorporated, organized and subsisting under the laws of the jurisdiction under which it is incorporated. Subject to entry of the Canadian Approval and Vesting Order and the U.S. Sale Recognition Order and receipt of any other orders required from the Canadian Court or the U.S. Bankruptcy Court in connection with the transactions contemplated hereby, including the assignment of any Assigned Contracts (collectively, the "Bankruptcy Orders"), each of the Vendors has the requisite power to enter into, deliver and perform its obligations under this Agreement and the other Transaction Documents to which it is a party and to own its assets and to carry on its business as it is being conducted.

(2) *Authorization*

- (a) Subject to the entry of the Bankruptcy Orders, the execution, delivery and performance by each of the Vendors of this Agreement and the other Transaction Documents to which it is a party (i) has been duly authorized by each of the Vendors and constitutes a valid and legally binding obligation of each Vendor, enforceable against each of the Vendors in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court; and (ii) do not and will not conflict with or result in, with or without the giving of notice or lapse of time or both, a breach of, or constitute a default under, (A) the Constatng Documents of any of the Vendors or any resolution adopted by the board of directors or shareholders of any of the Vendors; (B) any order of any Governmental Authority applicable to any of the Vendors or by which any of their respective properties or assets are bound; (C) subject to obtaining the Regulatory Approvals, any Applicable Law to which any of the Vendors or any of their respective properties or assets are subject; or (D) any Material Assigned Contract to which any of the Vendors is a party or by which any of the Vendors or their respective properties or assets are bound.

(3) *Canadian and other Tax Matters*

- (a) Each of the Canadian Vendors is not (i) a non-resident of Canada for purposes of the Tax Act or (ii) a partnership, other than a "Canadian partnership", as defined in the Tax Act.
- (b) At the time of Closing, none of the Assets owned by a Vendor (other than a Canadian Vendor) will be "taxable Canadian property", as defined in the Tax Act.

(4) *Brokers*

- (a) Except for fees and commissions that will be paid by the Vendors, no broker, finder or investment banker is entitled to any brokerage, finder's or similar fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Documents based upon arrangements made by or on behalf of any of the Vendors or any of their respective Affiliates.

(5) *Employees and Employee Plans*

- (a) No trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent holds bargaining rights with respect to any of the Employees by way of certification, interim certification, voluntary recognition, or succession rights and, to the best of the Vendors' knowledge, no trade union has applied to have any of the Vendors declared a related employer pursuant to the *Labour Relations Act* (Ontario) or any similar legislation in any jurisdiction in which the Vendor carries on business.

- (b) Other than the Brandywine Ice Company Defined Benefit Pension Plan, the Vendors do not and have never sponsored or participated in a "registered pension plan" as such term is defined in the Tax Act or in a plan subject to Title IV of the U.S. Employee Retirement Income Security Act of 1974, as amended.
- (6) *Investment Canada Act*
- (a) As calculated in accordance with the Investment Canada Act and the regulations thereto, the book value of the Assets is less than C\$330 million.

3.02 Purchaser's Representations and Warranties

The Purchaser hereby represents and warrants to the Vendors as follows:

- (1) *Organization and Corporate Power*
- (a) The Purchaser is a limited liability company duly formed and subsisting and in good standing under the laws of Delaware. The Purchaser has all requisite power and authority to enter into, deliver and perform its obligations under this Agreement and the other Transaction Documents to which it is a party and to own its assets and to carry on its business as it is being conducted.
- (2) *Authorization*
- (a) The execution, delivery and performance of this Agreement and the other Transaction Documents to which it is a party (i) has been duly authorized by the Purchaser and constitutes a valid and legally binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court; and (ii) does not and will not conflict with or result in a breach of, or constitute a default under (A) the Constatng Documents of the Purchaser; (B) any Contract to which the Purchaser is a party or to which any of the Purchaser's assets is subject; or (C) any Applicable Law to which the Purchaser or any of the Purchaser's assets is subject.
- (3) *Financing*
- (a) The Purchaser has delivered to the Vendors correct and complete copies of (i) executed commitment letters of even date herewith (such commitment letters collectively, the "Equity Funding Letter") pursuant to which the other parties thereto have each committed, subject solely to the terms and conditions expressly set forth therein, to make capital contributions and other payments to the Purchaser for purposes of funding the transactions contemplated herein and paying any other amount due hereunder or in respect hereof; and (ii) an executed commitment letter (the "Debt Commitment Letter") from Credit Suisse AG (acting through such of its affiliates or branches as it deems appropriate, the

"Lender") and Credit Suisse Securities (USA) LLC ("CS Securities" and, together with the Lender and their respective affiliates, "Credit Suisse"), pursuant to which the Lender has committed, subject solely to the terms and conditions expressly set forth therein, to provide financing in amounts set forth therein (such financing and any additional or alternative debt financing for the purpose of financing the transactions contemplated by this Agreement, the "Debt Financing"). Each of the Equity Funding Letter and the Debt Commitment Letter, in the form so delivered, is a valid and legally binding obligation of the Purchaser, and to the knowledge of the Purchaser, the other parties thereto and is enforceable by the Purchaser in accordance with its terms, and is in full force and effect. The Purchaser has fully paid any and all commitment fees or other fees required to be paid by the Purchaser prior to the date of this Agreement pursuant to the terms of the Equity Funding Letter or the Debt Commitment Letter. As of the date of this Agreement, no event has occurred which, with or without notice, lapse of time or both, would constitute a default on the part of the Purchaser under the Equity Funding Letter or the Debt Commitment Letter. Subject to the satisfaction of the conditions contained in Section 5.01 and Section 5.02 hereof and assuming the accuracy of the representations and warranties set forth in Section 3.01 and compliance by the Vendors with their covenants and agreements hereunder, as of the date of this Agreement, the Purchaser has no reason to believe that it will be unable to satisfy on a timely basis any term or condition of closing to be satisfied by it contained in the Equity Funding Letter or the Debt Commitment Letter. The Equity Funding Letter and the Debt Commitment Letter constitute, as of the date of this Agreement, the entire and complete agreement between the parties thereto with respect to the financing contemplated thereby (other than any fee letter executed in connection therewith), and, except as set forth, described or provided for therein, as of the date of this Agreement, (i) there are no conditions precedent to the respective obligations of the Lender to provide the financing under the Debt Commitment Letter; and (ii) there are no contractual contingencies or other provisions under any agreement (including any side letters) relating to the transactions contemplated by this Agreement to which the Purchaser or any of its Affiliates is a party that would permit the Lender to reduce the total amount of the financing contemplated under the Debt Commitment Letter below the amount required to enable the Purchaser to have sufficient funds available to pay the Purchase Price or impose any additional condition precedent to the availability of the financing under the Debt Commitment Letter.

- (b) Upon the funding of the respective commitments contemplated by the Equity Funding Letter and the Debt Financing in accordance with and subject to their terms and conditions, Purchaser will have, as of the Closing Date, sufficient funds available for purposes of paying the Purchase Price and paying any other amount due hereunder or in respect hereof. The Purchaser's obligations to consummate the transactions contemplated by this Agreement are not conditioned or contingent in any way upon the receipt of financing from any person or the availability of funds to the Purchaser (including the respective commitments contemplated by the Equity Funding Letter and the Debt Commitment Letter).

(4) *Purchaser Acknowledgments*

- (a) THE PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY PROVIDED IN SECTION 3.01, ALL ASSETS PURCHASED AND LIABILITIES ASSUMED BY THE PURCHASER PURSUANT TO THIS AGREEMENT WILL BE ACQUIRED AND ASSUMED BY THE PURCHASER ON AN "AS IS, WHERE IS" BASIS AND "WITH ALL KNOWN AND UNKNOWN FAULTS".
- (b) The Purchaser acknowledges and agrees that, except for the representations and warranties set out in Section 3.01, none of the Vendors, or any employee, officer, trustee, director, accountant, financial, legal or other representative of any of the Vendors or the Monitor has made any representation or warranty, express or implied, as to the Assets or the Assumed Liabilities (including any implied representation or warranty as to the condition, merchantability, suitability or fitness for a particular purpose of any of the Assets), title to the Assets, the Employees (including any representation and warranty that any of the Employees will accept the offer of employment referred to in Section 4.05(1) hereof), the Purchased Businesses, or the Assumed Liabilities, or as to the accuracy or completeness of any information regarding any of the foregoing that any of the Vendors, or any other person furnished or made available to the Purchaser or its representatives (including any projections, estimates, budgets, offering memoranda, management presentations or due diligence materials).
- (c) The Purchaser acknowledges and agrees that it, in determining whether to enter into this Agreement (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets to be acquired and obligations and liabilities to be assumed in entering into this Agreement; and (ii), except for the representations and warranties set out in Section 3.01, did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of Applicable Law or otherwise) from or by any of the Vendors, or the Monitor or any of their partners, employees, agents, advisors or representatives or any employee, officer, director, accountant, financial, legal or other representative of any of the Vendors or the Monitor, regarding the Assets to be acquired or the Liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated herein.
- (d) The Purchaser acknowledges and agrees that the enforceability of this Agreement against any of the Vendors is subject to entry of the Canadian Approval and Vesting Order and the U.S. Sale Recognition Order.

(5) *Brokers*

Except for fees and commissions that will be paid by the Purchaser, no broker, finder or investment banker is entitled to any brokerage, finder's or similar fee or commission in connection with the transactions contemplated by this Agreement

or any other Transaction Documents based upon arrangements made by or on behalf of the Purchaser or any of its Affiliates.

- (6) *Investment Canada Act*
- (a) The Purchaser is a "Canadian" or a "WTO Investor" within the meaning of the Investment Canada Act.

ARTICLE 4 - COVENANTS

4.01 Bankruptcy Orders

(1) *Canadian Approval and Vesting Order*

The Vendors will promptly serve on the service list in the CCAA Proceedings, as supplemented with such additional parties as the Purchaser may reasonably request, and file with the Canadian Court one or more motion records seeking an order approving the sale and purchase of the Assets pursuant to this Agreement and providing for the vesting in the Purchaser absolute title free and clear of all Liens (other than Permitted Encumbrances) to the Assets, in the form attached as Schedule 4.01(1) (with only such changes as the Purchaser and the Vendors approve in their reasonable discretion), and use commercially reasonable efforts to obtain such order of the Canadian Court (as granted, the "Canadian Approval and Vesting Order").

(2) *U.S. Sale Recognition Order*

- (a) The Vendors will request the Monitor, as the foreign representative of the Vendors, to serve on the service list in the Chapter 15 Proceedings, as supplemented with such additional parties as the Purchaser may reasonably request, and file with the U.S. Bankruptcy Court one or more motions seeking an order (i) recognizing and enforcing the Canadian Approval and Vesting Order, and (ii) approving the purchase and sale to the Purchaser of all of the Assets, wherever located, free and clear of all Liens (other than Permitted Encumbrances) on the Assets, pursuant to section 363(b) of the U.S. Bankruptcy Code, in the form mutually agreed upon by the Vendors and the Purchaser, each acting reasonably, and use commercially reasonable efforts to obtain such order of the U.S. Bankruptcy Court (as granted, the "U.S. Sale Recognition Order").

(3) *Consultation; Notification*

- (a) The Purchaser and the Vendors will cooperate in obtaining entry of the Canadian Approval and Vesting Order and the U.S. Sale Recognition Order, and the Vendors will deliver, or will request the Monitor to deliver, as applicable, to the Purchaser prior to service and filing, and as early in advance as is practicable to permit adequate and reasonable time for the Purchaser and its counsel to review and comment, copies of all proposed pleadings, motions, notices, statements,

schedules, applications, reports and other material papers to be filed by the Vendors or Monitor, as applicable, in connection with such motions and relief requested therein and any objections thereto.

- (b) The Purchaser, at its own expense, will promptly provide to the Vendors and the Monitor all such information within its possession or under its control as the Vendors or the Monitor may reasonably require to obtain the Canadian Approval and Vesting Order or the U.S. Sale Recognition Order.

4.02 Regulatory Matters

- (1) The Purchaser will be primarily responsible for obtaining all of the Regulatory Approvals.

- (2) The Purchaser will pay all requisite filing fees and applicable taxes in relation to any filing or application made in respect of the Regulatory Approvals.

- (3) Subject to Section 4.02(1), the Vendors and the Purchaser will use their reasonable best efforts to satisfy (or cause the satisfaction of) the conditions precedent to each respective party's obligations hereunder as set forth in Section 5.01(d) to the extent the same is within their control and to take, or cause to be taken, all other actions and to do, or cause to be done, all other things necessary, proper or advisable under all Applicable Laws to consummate the transactions contemplated by this Agreement, including making all required filings and using their commercially reasonable efforts to obtain all Regulatory Approvals.

- (4) As expeditiously as possible, and in any event by no later than five (5) Business Days from the date of this Agreement (or on such other subsequent day as the Vendors and the Purchaser mutually agree (or the earlier date required by Applicable Law)), the Purchaser and the Vendors will prepare and file all necessary pre-notification filings required under the HSR Act.

- (5) If the parties receive a request for information or documentary material from any Governmental Authority with respect to this Agreement or any of the transactions contemplated by this Agreement, then the parties will make, or cause to be made, as soon as reasonably practicable and after consultation with all other parties and the Monitor, an appropriate response in compliance with such request.

- (6) The parties will keep each other and the Monitor apprised of the status of matters relating to the completion of the transactions contemplated by this Agreement by arranging bi-weekly conference calls between the parties hereto and the Monitor. Subject to Section 4.02(1), the parties will work cooperatively in connection with obtaining the Regulatory Approvals, including:

- (a) cooperating with each other in connection with the filings required to obtain each Regulatory Approval and consulting with each other in relation to each step of the procedure before the relevant Governmental Authorities and as to the contents of all communications with such Governmental Authorities. In particular, to the extent permitted by Applicable Law or Governmental Authority, no party will

make any submission, filing, notification, or communication in relation to the transactions contemplated hereunder without first providing the other parties and the Monitor with a copy of such notification in draft form (subject to reasonable redactions or limiting such draft, or parts thereof, on an outside-counsel-only basis where appropriate) and giving such other party or parties a reasonable opportunity to discuss its content before it is filed with the relevant Governmental Authorities, and such first party will consider in good faith all reasonable comments timely made by the other parties in this respect;

- (b) furnishing to the other parties (on an outside-counsel-only basis where appropriate) all information within its possession that is reasonably required for obtaining the Regulatory Approvals; provided, however, that (i) no such information will be required to be provided by a party if it determines, acting reasonably, that the provision of such information would jeopardize any solicitor-client, attorney-client, work product or other legal privilege or that such information is material and competitively sensitive (it being understood, however, that the parties will cooperate in any reasonable requests that would enable an otherwise required production to occur without so jeopardizing privilege or jeopardizing the confidentiality of any such material and competitively sensitive information); and (ii) in any such case the parties will cooperate with a view to establishing a mutually satisfactory procedure for providing such information, and the relevant party required to provide such information will provide it directly to such Governmental Authority requiring or requesting such information;
- (c) promptly notifying each other and the Monitor of any communications from or with any Governmental Authority with respect to the transactions contemplated by this Agreement (including promptly providing copies of all written communications on an outside-counsel-only basis where appropriate) and ensuring, to the extent permitted by Applicable Law and by the relevant Governmental Authority, that each of the parties and the Monitor is entitled to attend any meetings (including telephonic and video meetings) with, or other appearances before, any Governmental Authority with respect to the transactions contemplated by this Agreement; and
- (d) consulting and cooperating with one another in connection with all analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto in connection with relating to the Regulatory Approvals.

(7) The obligations of the Purchaser pursuant to Section 4.02(3) will include committing to any and all undertakings, divestitures, licenses or hold separate or similar arrangements with respect to the Assets, to any and all arrangements for the conduct of any business and/or terminating any and all existing relationships and contractual rights and obligations with respect to the Assets, and any and all undertakings, divestitures, licences or hold separate or similar arrangements with respect to the business of the Purchaser or any of its Affiliates which may be required in order to obtain any and all Regulatory Approvals on or before the Outside Date, without any reduction of the Purchase Price.

4.03 Operation of the Purchased Businesses

(1) The Vendors covenant that, from and after the date hereof until the Closing Date, subject to any limitation imposed as a result of being subject to the Bankruptcy Proceedings or any order of the Bankruptcy Courts, and except as (i) the Purchaser may approve otherwise in writing; (ii) set forth in Section 4.03 of the Vendors Disclosure Letter; (iii) required by Applicable Law (including any Bankruptcy Law); (iv) otherwise expressly contemplated or permitted by this Agreement; or (v) relates solely to Excluded Assets or Excluded Liabilities, the Vendors will:

- (a) carry on the Purchased Businesses in the usual and ordinary course, consistent with past practice;
- (b) use commercially reasonable efforts to preserve intact the Purchased Businesses, organization and goodwill, to keep available the Employees as a group and to maintain satisfactory relationships with suppliers, distributors, customers, landlords and others with whom the Purchased Businesses has business relationships;
- (c) use commercially reasonable efforts to cause its current insurance policies with respect to the Assets not to be cancelled or terminated or any other coverage thereunder to lapse, unless simultaneously with such terminations, cancellation or lapse, replacement policies underwritten by insurance companies of nationally recognized standing providing coverage equal to or greater than the coverage under the cancelled, terminated or lapsed policies, and where possible, for substantially similar premiums, are in full force and effect;
- (d) other than Inventories sold in the ordinary course of business, consistent with past practice, maintain the Assets (other than the Lands) in their present working order and condition, reasonable wear and tear excepted;
- (e) not incur or commit to incur any Lien on any Assets, other than (i) Liens that will be discharged at or prior to the Time of Closing; and (ii) Permitted Encumbrances;
- (f) not disclaim or reject, or enter into any material amendment to, any Material Assigned Contract, or commit to do any of the foregoing;
- (g) not make or commit to make any expenditure or commitment that would result in a Liability to the Purchaser after the Time of Closing, other than (A) expenditures and commitments that would result in an Assumed Liability (other than Eligible Capital Expenditures), and (B) capital expenditures (excluding capital leases) that do not exceed, in the aggregate, \$250,000 (the "Eligible Capital Expenditures"), and any Eligible Capital Expenditure so made or committed will constitute a current liability for the purpose of the Working Capital calculation;
- (h) not pay or commit to pay any amount to any Employees as such by way of salary, bonus, commission or otherwise in excess of the amounts being paid to such

persons, respectively, as at the date hereof, other than salary increases made in the ordinary course of business consistent with past practice that do not, in the aggregate, exceed \$500,000 on an annualized basis, provided that nothing in this Agreement will prohibit any of the Vendors from reimbursing Employees for reasonable expenses incurred by them in the ordinary course of business, consistent with past practice, or paying bonuses in accordance with past practices or paying retention amounts to Employees, including pursuant to the Key Employee Retention Plan for Implementation of Arctic Glacier Income Fund and certain of its Subsidiaries; and

- (i) maintain the Books and Records in the usual and ordinary course, consistent with past practice, and record all transactions on a basis consistent with that practice.

4.04 Examination of Records and Assets

Subject to the terms and conditions of any Contract between the Purchaser or any of its Affiliates and any of the Vendors and to solicit client and attorney-client privilege and Applicable Law, the Vendors will, upon reasonable notice to the relevant Vendors, (i) forthwith make available to the Purchaser and its authorized representatives all data bases recorded or stored by means of any device, including in electronic form, title documents, abstracts of title, deeds, surveys, leases, certificates of trade marks and copyrights, contracts and commitments in its possession or under its control relating to any of the Assets or the Purchased Businesses; (ii) forthwith make available to the Purchaser and its authorized representatives for examination all books of account and accounting records relating to the Purchased Businesses; (iii) if reasonably requested, provide copies, at the cost of the Purchaser, of the following records maintained in connection with the Purchased Businesses: financial statements, records of past sales, customer lists, supplier lists, payroll records, inventory data, inventory master records and accounts receivable data; and (iv) give the Purchaser and its authorized representatives every reasonable opportunity to have access to and to inspect the Assets. The exercise of any rights of access or inspection by or on behalf of the Purchaser under this Section 4.04 will be made during the normal business hours of the relevant Vendors and will not affect or mitigate the covenants, representations and warranties of the Vendors in this Agreement, which will continue in full force and effect.

4.05 Employees

(1) The Purchaser will, effective the opening of business on the Closing Date, offer to employ on and after the Closing Date all of the Employees on terms and conditions that are substantially the same, in the aggregate, as the terms and conditions of employment as are in effect on the date hereof for each Employee (but specifically excluding any change of control entitlements and equity incentives). In making such offers of employment, the Purchaser will consider each Employee's position, duties and responsibilities, compensation, benefits, vacation, work locations and hours of work. The Purchaser will recognize all past service of all Employees with the Vendors for all purposes including participation in benefits and pension plans, vacation, any other service entitlements and any required notice of termination, termination or severance pay (whether contractual, statutory or at common law). Without limiting the generality of the foregoing, each such offer of employment will provide that the

relevant Employee will be deemed to have accepted such offer of employment, and to have become an employee of the Purchaser, if such Employee reports to work on the Closing Date or such Employee's next scheduled work day at the applicable place of business of the Purchased Businesses.

(2) Such offers of employment will be made to Employees no less than seven (7) days prior to the Closing Date.

(3) All items in respect of Transferring Employees that require adjustment, including premiums for unemployment insurance, Canada Pension Plan, employer health tax, applicable statutory hospitalization insurance, workers' compensation assessments, accrued wages, salaries and commissions and employee benefit plan payments will be appropriately adjusted to the close of business on the day immediately preceding the Closing Date. To the extent that any of the Vendors make any payments to the Purchaser on account of such adjustments, the Purchaser agrees to indemnify and save harmless the Vendors from and against all Losses in connection therewith.

(4) The Vendors will provide any notices to Employees that may be required under any Applicable Law, including the U.S. *Worker Adjustment Retraining Notification Act of 1988* or any similar Applicable Law, with respect to events that occur prior to or as of the Time of Closing. The Purchaser will provide any notices to Transferring Employees that may be required under any Applicable Law, including the U.S. *Worker Adjustment Retraining Notification Act of 1988* or any similar Applicable Law, with respect to events that occur after the Time of Closing. The Purchaser covenants that for ninety (90) days from the Closing Date, there will not be any mass layoff, plant closing or other action by the Purchaser or any of the Purchaser's Affiliates that might trigger obligations of the Vendors or any of their Affiliates under the U.S. *Worker Adjustment Retraining Notification Act of 1988* or any similar Applicable Law.

(5) The Vendors will provide reasonable assistance to the Purchaser in connection with the hiring and employment of the Transferring Employees.

(6) The parties agree that the provisions of this Section are solely among and for the benefit of the parties hereto and do not inure to the benefit of or confer rights upon any third party, including any Employee.

(7) Except as provided in Section 2.03(1)(c) and Section 2.03(1)(j), 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. The Transferring Employees shall, as of the Closing Date, cease to accrue further benefits under the Employee Plans. The Vendors shall retain all Liabilities for any claim incurred by a Transferring Employee prior to the Closing Date. The Purchaser shall be responsible for all Liabilities for any claim incurred by a Transferring Employee from and after the Closing Date. For purposes of the foregoing, the date on which a benefit claim is incurred will be: (i) in the case of a death claim, the date of death; (ii) in the case of a short term disability claim, long term disability claim or a life insurance premium waiver claim, the date of the first incidence of disability, illness, injury or disease that first qualifies an individual for benefits or to commence a qualifying period for benefits; (iii) in the case of extended health care benefits, including, without limitation, dental and medical

treatments, the date of treatment or the date of purchase of eligible medical or dental supplies; and (iv) in the case of a claim for drug or vision benefits, the date the prescription was filled.

4.06 Cooperation on Tax Matters

Each of the Vendors and the Purchaser will furnish or cause to be furnished to each other, each at its own expense, as promptly as practicable, such information and assistance, and provide additional information and explanations of any material provided, relating to the Assets as is reasonably necessary for the filing of any Tax Returns, for the preparation of any audit, and for the prosecution or defence of any Claim relating to any adjustment or proposed adjustment with respect to Taxes.

4.07 Bulk Sales Laws

Subject to the entry of the Canadian Approval and Vesting Order and the U.S. Sale Recognition Order, each party waives compliance by the other party with any bulk sales Applicable Law to the extent not otherwise exempted pursuant to the terms of such the Canadian Approval and Vesting Order and the U.S. Sale Recognition Order.

4.08 Debt Financing Cooperation

Each Vendor shall use its commercially reasonable efforts to provide such cooperation as the Purchaser (and use its commercially reasonable efforts to cause the independent accounting firm and other advisers retained by the Vendors to provide such cooperation as the Purchaser) may reasonably request, at the Purchaser's sole cost and expense, to obtain the Debt Financing (provided any such request is made on reasonable notice and provided such co-operation does not unreasonably interfere with the ongoing operations of any Vendor or interfere with or hinder or delay the performance by any Vendor of its other obligations), including: (a) participating in a reasonable number of meetings, drafting sessions, rating agency presentations and due diligence sessions, (b) furnishing the Purchaser with all pertinent information regarding the Vendors as is reasonably requested by the Purchaser to obtain the Debt Financing, in each case, to the extent available, (c) review of and comment upon portions of the information memorandum for the proposed syndication of the Debt Financing by the Financing Sources providing the Debt Financing, any related written presentation to ratings agencies and similar written material, (d) subject to Applicable Law and obtaining any necessary consents in connection therewith, facilitating the pledging of collateral for the Debt Financing as may be reasonably requested by the Purchaser, (e) using commercially reasonable efforts to obtain such consents, approvals, authorizations and instruments which may be reasonably requested by the Purchaser to obtain the Debt Financing, including without limitation customary payoff letters, releases of encumbrances, instruments of termination or discharge, surveys, title insurance and landlord consents, waivers and access agreements, and (f) providing such cooperation as the Purchaser may reasonably request to satisfy the conditions precedent to the Debt Financing to the extent reasonably within the control of the Vendors. Each Vendor hereby consents to the use of its logos in connection with the debt Financing, provided that such logos are used solely in a manner that is not intended to or reasonably likely to harm or disparage any Vendor or the reputation or goodwill of any Vendor. Notwithstanding the foregoing, none of the Vendors will be required to (A) pay any commitment, consent or other fee or incur any other Liability in connection with the Debt

Financing, (B) take any action or do anything that would contravene any Applicable Law, contravene any Contract of any Vendor, contravene Section 4.03 or be capable of impairing or preventing the satisfaction of any condition set forth in Article 5, (C) commit to take any action that is not contingent on the consummation of the transactions contemplated by this Agreement at the Time of Closing, or (D) disclose any information that in the reasonable judgment of the Fund would result in the disclosure of any trade secrets or similar information or violate any obligations of any Vendor or any other person with respect to confidentiality. The Purchaser agrees to indemnify each Vendor, its Affiliates and their respective trustees, officers, directors, employees and agents and their respective successors, assigns, heirs, executors, administrators and other legal representatives (collectively, the "Vendor Parties") from and against any and all Liabilities, Losses, and Claims suffered or incurred by any of them in connection with any financing or potential financing by the Purchaser or any actions or omissions by any of them in connection with any request by the Purchaser made hereunder and for any alleged misstatement or omission in any information provided hereunder at the request of the Purchaser (other than historical factual information to the extent prepared by the Fund and relating to the Vendors). The Purchaser appoints Arctic Glacier Inc. (and its successors) as the trustee for the Vendor Parties of the covenant by indemnification of the Purchaser in this Section 4.08 with respect to the Vendor Parties and Arctic Glacier Inc. accepts such appointment.

4.09 Purchaser Financing

(1) The Purchaser will use its, and will cause the Fund (as defined in the Equity Funding Letter) to use its, commercially reasonable efforts to consummate the financing contemplated by the Debt Commitment Letter and the Equity Funding Letter (collectively, the "Financings") no later than the Closing Date. The Purchaser will use commercially reasonable efforts to satisfy, on a timely basis, all covenants, terms, representations and warranties within its control applicable to the Purchaser in each of the Debt Commitment Letter (subject to any market flex provisions applicable thereto) and the Equity Funding Letter. The Purchaser will use commercially reasonable efforts to negotiate and enter into definitive credit or loan or other agreements and all other documentation with respect to the Financings as may be necessary for the Purchaser to obtain such funds, on terms and conditions no less favourable to the Purchaser than those contained in each of the Debt Commitment Letter (subject to any market flex provisions applicable thereto) and the Equity Funding Letter, as soon as reasonably practicable but in any event prior to the Outside Date. The Purchaser will deliver to the Fund correct and complete copies of such executed definitive agreements and documentation promptly when available.

(2) The Purchaser will keep the Fund reasonably informed with respect to all material activity concerning the status of the Financings and will notify the Fund promptly, and in any event within 24 hours, upon obtaining knowledge that at any time prior to the Closing Date: (a) the Debt Commitment Letter or the Equity Funding Letter will expire or is terminated for any reason; (b) any event occurs that, individually or in the aggregate, constitutes a default or breach on the part of the Purchaser under any material term or condition of the Debt Commitment Letter or the Equity Funding Letter or if the Purchaser believes in good faith that it will be unable to satisfy, on a timely basis, any term or condition of any Financing to be satisfied by it, that in each case would reasonably be expected to materially impair the ability of the Purchaser to consummate either Financing; or (c) any financing source that is a party to the Debt

Commitment Letter or the Equity Funding Letter advises the Purchaser, whether orally or in writing, that such source either no longer intends to provide or underwrite any Financing on the terms set forth in the Debt Commitment Letter or the Equity Funding Letter, as applicable, or requests amendments or waivers thereto that are materially adverse to the timely completion by the Purchaser of the transactions contemplated by this Agreement.

(3) Other than in connection with and as contemplated in this Agreement, the Purchaser will not, and will cause the Fund (as defined in the Equity Funding Letter) to not, without the prior written consent of the Fund, take any action or enter into any transaction, including any merger, acquisition, joint venture, disposition, lease, contract or debt or equity financing, that would reasonably be expected to materially impair, delay or prevent the Purchaser from obtaining any of the Financings. The Purchaser will not amend or alter, or agree to amend or alter, the Debt Commitment Letter or the Equity Funding Letter in any manner that would reasonably be expected to materially impair, delay or prevent the consummation of the transactions contemplated by this Agreement, in each case without the prior written consent of the Fund.

(4) If the Debt Commitment Letter is terminated or modified in a manner materially adverse to the Purchaser's ability to complete the transactions contemplated by this Agreement for any reason without the prior written consent of the Fund, the Purchaser will use commercially reasonable efforts to: (a) obtain, as promptly as practicable, and, once obtained, provide the Fund with a copy of, a new debt financing commitment that provides for at least the amount of financing necessary to consummate the transactions contemplated by this Agreement on a basis that is not subject to any condition precedent materially less favourable from the perspective of the Fund than the conditions precedent contained in the Debt Commitment Letter or the Equity Funding Letter, as applicable, and otherwise on terms and conditions that are, taken as a whole, not less favourable from the perspective of Purchaser than those contained in the Debt Commitment Letter or the Equity Funding Letter, as applicable (the "Alternative Financing"); (b) negotiate and enter into definitive credit, loan or other agreements and all required documentation with such third parties as may be necessary for the Purchaser to obtain the funds under such Alternative Financing on terms and conditions consistent with the commitment for such Alternative Financing, as soon as reasonably practicable but in any event prior to the Outside Date, and deliver to the Fund correct and complete copies of such executed definitive agreements and documentation promptly upon request by the Fund; (c) satisfy, on a timely basis, all covenants, terms, representations and warranties within its control and which is applicable to the Purchaser in respect of such Alternative Financing and enforce its rights under such Alternative Financing and agreements and documentation; and (d) obtain funds under the Alternative Financing to the extent necessary to consummate the transactions contemplated by this Agreement.

(5) All non-public or otherwise confidential information regarding the Fund obtained by the Purchaser or its Representatives (as defined in the Confidentiality Agreement) (including the Lender and any of their Representatives) in furtherance of its obligations under this Section 4.09 is information which is subject to the Non-Disclosure Agreement between the Fund and H.I.G. Middle Market, LLC dated March 5, 2012 (the "Confidentiality Agreement") and will be treated in accordance with the terms of the Confidentiality Agreement.

(6) The Purchaser acknowledges and agrees that its obtaining financing is not a condition to any of its obligations hereunder, regardless of the reasons why financing is not obtained or whether such reasons are within or beyond the control of the Purchaser. If any financing referred to in this Section 4.09 is not obtained, the Purchaser will continue to be obligated to consummate the Arrangement, subject to and on the terms contemplated by this Agreement.

ARTICLE 5 -- CONDITIONS AND TERMINATION

5.01 Conditions to Each Party's Obligation

The sale by the Vendors and the purchase and assumption by the Purchaser of the Assets and the Assumed Liabilities is subject to the following conditions, which are for the benefit of the Purchaser and the Vendors, respectively, and which are to be complied with at or prior to the Time of Closing:

- (a) there will be in effect no Applicable Law, or any order, injunction, decree or judgment of any court or other Governmental Authority prohibiting, preventing or making illegal the consummation of any of the transactions contemplated hereby;
- (b) the Canadian Approval and Vesting Order will have been entered in substantially the form of Schedule 4.01(1) in accordance with Section 4.01(1), and will not have been stayed, vacated or amended in a manner inconsistent with the provisions of Section 4.01(1);
- (c) the U.S. Sale Recognition Order will have been entered in accordance with Section 4.01(2), and will not have been stayed, vacated or amended in a manner inconsistent with the provisions of Section 4.01(2); and
- (d) each of the Regulatory Approvals will have been obtained (as applicable).

5.02 Conditions for the Benefit of the Purchaser

The sale by the Vendors and the purchase and assumption by the Purchaser of the Assets and the Assumed Liabilities is subject to the following conditions, which are for the exclusive benefit of the Purchaser and which are to be performed or complied with at or prior to the Time of Closing:

- (a) the representations and warranties of the Vendors set forth in Section 3.01 will be true and correct in all material respects (and for this purpose all materiality qualifications in such representations and warranties will be disregarded at the Time of Closing) with the same force and effect as if made at and as of such time;
- (b) each of the Vendors will have performed or complied in all material respects with all of the obligations and covenants of this Agreement and of all other Transaction Documents to which it is a party to be performed or complied with by such Vendor at or prior to the Time of Closing;

- (c) the Purchaser will be furnished with a certificate signed by an officer of each Vendor that the obligations and covenants contained in this Agreement or in any other Transaction Document to which it is a party to have been performed or complied with by the Vendors at or prior to the Time of Closing have been performed or complied with in all material respects and that the representations and warranties of the Vendors herein given are true and correct at the Time of Closing in all material respects;
- (d) no Material Adverse Effect will have occurred at any time from the date of this Agreement through to the Time of Closing;
- (e) the Vendors will have furnished the Purchaser with a Consent or will have obtained a Bankruptcy Order in respect of the assignment of each of the Assigned Contracts; and
- (f) the Vendors (i) in the case of any Vendor in respect of which the payments or arrangements referred to in clause (ii) of this Section 5.02(f) have not been made, will have furnished to the Purchaser a certificate of such Vendor signed by an officer thereof substantially in the form attached hereto as Schedule 5.02(f), or (ii) will have paid, or made arrangements reasonably satisfactory to the Purchaser for the payment at or prior to the Time of Closing of, any withholding tax required to be withheld by the Purchaser pursuant to the *U.S. Foreign Investment in Real Property Tax Act of 1980* in respect of the sale of any Lands by a Vendor hereunder.

5.03 Conditions for the Benefit of the Vendors

The sale by the Vendors and the purchase by the Purchaser and Assumption of the Assets and the Assumed Liabilities is subject to the following conditions, which are for the exclusive benefit of the Vendors and which are to be performed or complied with at or prior to the Time of Closing:

- (a) the representations and warranties of the Purchaser set forth in Section 3.02 will be true and correct in all material respects (and for this purpose all materiality qualifications in such representations and warranties will be disregarded at the Time of Closing) with the same force and effect as if made at and as of such time;
- (b) the Purchaser will have performed or complied in all material respects with all of the obligations and covenants of this Agreement and of all other Transaction Documents to which it is a party to be performed or complied with by the Purchaser at or prior to the Time of Closing;
- (c) the Vendors will be furnished with a certificate signed by an officer of the Purchaser certifying that the obligations and covenants contained in this Agreement or in any other Transaction Document to which it is a party to have been performed or complied with by the Purchaser at or prior to the Time of Closing have been performed or complied with in all material respects and that

the representations and warranties of the Purchaser herein given are true and correct at the Time of Closing in all material respects; and

- (d) (i) a Payment Order will have been obtained; or (ii) such other distribution order of the Canadian Court will have been obtained directing the Vendors to pay to the Arctic Lenders that portion of the net proceeds of the Purchase Price that is sufficient to pay the Arctic Lender Claims in full.

5.04 Waiver of Condition

The Purchaser, in the case of a condition set out in Section 5.01(a), Section 5.01(d) or Section 5.02, and the Vendors, in the case of a condition set out in Section 5.01(a), Section 5.01(d) or Section 5.03, will have the exclusive right to waive the performance or compliance of such condition in whole or in part and on such terms as may be agreed upon without prejudice to any of its rights in the event of non-performance of or non-compliance with any other condition in whole or in part. Any such waiver will not constitute a waiver of any other conditions in favour of the waiving party. Such waiving party will retain the right to complete the purchase and sale of the Assets herein contemplated.

5.05 Termination

This Agreement may be terminated by notice given prior to the Time of Closing as follows and in no other manner:

- (a) by written agreement of the Purchaser and the Vendors;
- (b) by the Vendors or the Purchaser if a material breach of any representation, warranty, covenant, obligation or other provision of this Agreement has been committed by the other party and such breach has not been waived or cured within ten (10) days following the date on which the non-breaching party notifies the other party of such breach (but not later than the Outside Date);
- (c) by the Purchaser if any condition in Section 5.01 or 5.02 has not been satisfied as of the Time of Closing or if satisfaction of such a condition is or becomes impossible (other than through the failure of the Purchaser to comply with its obligations under this Agreement) and the Purchaser has not waived such condition on or before the Closing Date;
- (d) by the Vendors if any condition in Section 5.01 or Section 5.03 has not been satisfied as of the Time of Closing or if satisfaction of such a condition is or becomes impossible (other than through the failure of the Vendors to comply with its obligations under this Agreement) and the Vendors have not waived such condition on or before the Closing Date; and
- (e) by the Vendors or the Purchaser if the completion of the sale and purchase and assumption of the Assets and the Assumed Liabilities herein contemplated has not occurred (other than through the failure of the party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or

before July 31, 2012 or such later date as the parties may agree upon in writing (the "Outside Date").

5.06 Effect of Termination

Each party's right of termination under Section 5.05 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies and the terminating party's right to pursue all legal remedies with respect to such breach will survive such termination unimpaired; provided that, in no event will the Purchaser or any Financing Source be entitled to seek or obtain any consequential, special, indirect or punitive damages or damages for lost profits for, or with respect to, this Agreement or the transactions contemplated hereby; and provided further, to the extent that the Deposit (together with any actual earnings thereon) is forfeited to the Vendors pursuant to clause (b) or clause (c) of Section 2.11(3), such forfeiture by the Purchaser shall constitute the sole and exclusive remedy of the Vendors as set forth in Section 2.11(4) with respect to such termination. If this Agreement is terminated pursuant to Section 5.05, all further obligations of the parties under this Agreement will terminate, except that the obligations in Sections 2.11(3), 6.04(2), 8.04, 8.05 and 8.06 will survive.

ARTICLE 6 – CLOSING ARRANGEMENTS

6.01 Closing

The sale and purchase of the Assets will be completed at the Time of Closing at the offices of McCarthy Tétrault LLP, 66 Wellington Street West, Suite 5300, Toronto, Ontario.

6.02 Closing Deliveries

At the Time of Closing:

- (a) the Purchaser will deliver, or cause to be delivered:
 - (i) the Purchase Price in accordance with Section 2.11;
 - (ii) to the Vendors the officer's certificate required to be delivered pursuant to Section 5.03(c); and
 - (iii) to the Vendors an Assignment and Assumption Agreement duly executed by the Purchaser.
- (b) the Vendors will deliver, or cause to be delivered, to the Purchaser:
 - (i) all duly executed confirmatory instruments of conveyance and assignment as the Purchaser reasonably deems necessary or appropriate to confirm that each Seller's right, title, benefit and interest in, to and under the Assets has vested in the Purchaser or its designee, as the case may be (including any assignment of Intellectual Property); provided that the costs

and expenses of preparing, filing and recording any such instrument will be borne solely by the Purchaser;

- (ii) if applicable, an updated copy of the Vendors Disclosure Letter with respect to the Employees;
- (iii) a copy of each of the Canadian Approval and Vesting Order and the U.S. Sale Recognition Order; and
- (iv) the officer's certificate required to be delivered pursuant to Section 5.02(c).

6.03 Delivery of Monitor's Certificate

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 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 Section 2.10 and Section 2.11(1). All of the foregoing amounts will then be paid by the Purchaser, 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) hereof. 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 delivery, the Time of Closing will be deemed to have occurred. The Monitor will file a copy of the Monitor's Certificate with the Canadian Court and provide evidence of such filing to the Purchaser.

6.04 Confidentiality

(1) At the Time of Closing the Vendors will deliver to the Purchaser all of the Books and Records. The Purchaser will preserve the documents so delivered for a period of six years from the Closing Date, or for such other period as is required by any Applicable Law, and will permit the Vendors and their authorized representatives reasonable access thereto in connection with the affairs of the Vendors, but the Purchaser will not be responsible or liable to the Vendors for or as a result of any loss or destruction of or damage to any such documents.

(2) Both prior to the Closing Date and, if the sale and purchase and assumption of the Assets and the Assumed Liabilities hereunder fails to occur for whatever reason, thereafter the Purchaser will not disclose to anyone or use for its own or for any purpose other than the purpose contemplated by this Agreement any confidential information concerning the Vendors or the Assets or the Purchased Businesses obtained by the Purchaser pursuant hereto, will hold all such information in the strictest confidence and, if the sale and purchase of the Assets hereunder fails to occur for whatever reason, will return or destroy all documents, records and all other information or data relating to the Vendors or to the Purchased Businesses which the Purchaser obtained pursuant to this Agreement.

(3) Subject to Section 2.07(2), from and after the Time of Closing the Vendors will not disclose to anyone or use for any purpose any confidential information concerning the Assets

purchased by the Purchaser pursuant to this Agreement and will hold all such information in the strictest confidence.

ARTICLE 7 – SURVIVAL

7.01 Survival

No covenants, representations or warranties of any party contained in this Agreement will survive the completion of the sale and purchase and assumption of the Assets and the Assumed Liabilities hereunder, except for covenants that by their terms are to be satisfied after the Time of Closing, which covenants will continue in full force and effect in accordance with their terms.

ARTICLE 8 – GENERAL

8.01 Designated Purchaser

Prior to the Closing Date, the Purchaser shall be entitled to designate one or more Affiliates to (i) acquire specified Assets (including to act as nominee to hold legal title to any Assets); (ii) assume specified Assumed Liabilities; and/or (iii) employ specified Transferring Employees from the Time of Closing (each, a “Designated Purchaser”); provided each such Designated Purchaser agrees in writing to be bound jointly and severally with the Purchaser by the terms of this Agreement.

8.02 Further Assurances

Each of the Vendors and the Purchaser will from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may, either before or after the Time of Closing, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

8.03 Time of the Essence

Time is of the essence of this Agreement.

8.04 Fees and Commissions

Except as otherwise expressly provided herein, each of the Vendors and the Purchaser will pay its respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement and any other costs and expenses whatsoever and howsoever incurred and will indemnify and save harmless the other from and against any Claim for or Loss resulting from any broker's, finder's or placement fee or commission alleged to have been incurred as a result of any action by it in connection with the transactions under this Agreement.

8.05 Public Announcements

Except as required by Applicable Law, no public announcement or press release concerning the sale and purchase and assumption of the Assets and the Assumed Liabilities may be made by any of the Vendors or the Purchaser without the prior consent and joint approval of each of the Vendors and the Purchaser.

8.06 Monitor's Capacity

The Purchaser acknowledges and agrees 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.

8.07 Benefit of the Agreement

This Agreement will enure solely to the benefit of and be binding upon the respective successors and permitted assigns of the parties hereto. Notwithstanding the foregoing sentence, the Financing Sources shall be third party beneficiaries of Sections 2.11(4), 5.06, 8.12 and 8.14(2).

8.08 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

8.09 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.

8.10 Assignment

Other than one or more assignments by the Purchaser to one or more Designated Purchasers, this Agreement may not be assigned by any of the Vendors or by the Purchaser without the consent of (i) in the case of an assignment by a Vendor, the Purchaser; and (ii) in the case of an assignment by the Purchaser, the Vendors; provided the Purchaser may make a collateral assignment of its rights under this Agreement to the Lender and any other person providing Debt Financing.

8.11 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 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

To the Purchaser:

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 Purchaser

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 Purchaser

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

Fax No.: 212-596-9090

Attention: Carl P. Marcellino

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 (5th) 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.

8.12 Equitable Relief

The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, subject to the limitations set forth in this Section 8.12, each of the parties will be entitled to equitable relief to prevent or remedy breaches of this Agreement (other than with respect to breaches of Section 4.02), without the proof of actual damages, including in the form of an injunction or injunctions or orders for specific performance in respect of such breaches; provided that, to the extent that the Deposit (together with any actual earnings thereon) is forfeited to the Vendors pursuant to clause (b) or clause (c) of Section 2.11(3), such forfeiture by the Purchaser shall constitute the sole and exclusive remedy of the Vendors as set forth in Section 2.11(4) with respect to such termination. Each party agrees, to the extent that such party is subject to any equitable remedy, to waive any requirement for the security or posting of any bond in connection with any such equitable remedy. Each party further agrees that the only permitted objection that it may raise in response to any action for equitable relief is that it contests the existence of a breach or threatened breach of the provisions of this Agreement or that equitable relief is not available pursuant to the express terms of this Section 8.12.

8.13 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.

8.14 Attornment

(1) 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 Vendors and the Purchaser each attorns to the jurisdiction of the courts of the Province of Manitoba.

(2) Notwithstanding Section 8.14(1), each of the Vendors and the Purchaser agrees that it will not bring or support any action, cause of action, claim, cross-claim or third party claim of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against the Financing Sources in any way relating to this Agreement or any of the transactions contemplated hereby (including by not limited to any dispute arising out of or relating in any way to any letter or agreement relating to any Debt Financing or the performance thereof) in any forum other than in the New York State court or Federal court of the United States of America sitting in the Borough of Manhattan, and any appellate court from any thereof and waives any right it may have to a trial by jury in any such legal proceeding against the Financing Sources, provided, however, that the foregoing will not restrict the right of any Vendor or the Purchaser to defend any Claim against it in any jurisdiction.

8.15 Appointment of Agent for Service

The 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 8.11). 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 Purchaser as sufficient service.

8.16 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.

8.17 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.

8.18 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.

IN WITNESS WHEREOF the parties have executed this Agreement.

H.I.G. ZAMBONI, LLC

By: H.I.G. BAYSIDE DEBT & LBO FUND II,
L.P.,
Its: Sole Member

By: H.I.G. BAYSIDE ADVISORS II, LLC
Its: General Partner

By: H.I.G.-GPII, INC.
Its: Manager

By: 
Name: Richard Siegel
Title: General Counsel

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

Per: 

Per: _____

ARCTIC GLACIER INC.

Per: 

Per: _____

ARCTIC GLACIER INTERNATIONAL INC.

Per: 

Per: _____

ARCTIC GLACIER TEXAS INC.

Per: 

Per: _____

ARCTIC GLACIER CALIFORNIA INC.

Per: 

Per: _____

ARCTIC GLACIER MICHIGAN INC.

Per: [Signature]

Per: _____

ARCTIC GLACIER NEBRASKA INC.

Per: [Signature]

Per: _____

ARCTIC GLACIER WISCONSIN INC.

Per: [Signature]

Per: _____

ARCTIC GLACIER MINNESOTA INC.

Per: [Signature]

Per: _____

ARCTIC GLACIER NEW YORK INC.

Per: [Signature]

Per: _____

ICE PERFECTION SYSTEMS INC.

Per: [Signature]

Per: _____

ARCTIC GLACIER NEWBURGH INC.

Per: [Signature]

Per: _____

ARCTIC GLACIER PENNSYLVANIA INC.

Per: [Signature]

Per: _____

ARCTIC GLACIER OREGON INC.

Per: [Signature]

ARCTIC GLACIER SERVICES INC.

Per: [Signature]

Per: _____

Per: _____

ARCTIC GLACIER VERNON INC.

ARCTIC GLACIER ROCHESTER INC.

Per:

Per:

Per: _____

Per: _____

DIAMOND ICE CUBE COMPANY
INC.

ARCTIC GLACIER LANSING INC.

Per:

Per:

Per: _____

Per: _____

ARCTIC GLACIER GRAYLING INC.

ARCTIC GLACIER PARTY TIME INC.

Per:

Per:

Per: _____

Per: _____

WONDERLAND ICE, INC.

R&K TRUCKING, INC.

Per:

Per:

Per: _____

Per: _____

KNOWLTON ENTERPRISES, INC.

WINKLER LUCAS ICE AND FUEL
COMPANY

Per:

Per:

Arctic Glacier - Asset Purchase Agreement

DOCS #11518468 v. 6

Per: _____

Per: _____

JACK FROST ICE SERVICE, INC.

GLACIER ICE COMPANY, INC.

Per: *KLH*

Per: *KLH*

Per: _____

Per: _____

MOUNTAIN WATER ICE COMPANY

DIAMOND NEWPORT CORPORATION

Per: *KLH*

Per: *KLH*

Per: _____

Per: _____

ICESURANCE INC.

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

Per: *KLH*

Per: *KLH*

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)

Arctic Glacier - Asset Purchase Agreement

DOCS #11518468 v. 6

- 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 1.01A

Form of Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS AGREEMENT is made as of •, 2012

BETWEEN

H.I.G. ZAMBONI, LLC, a limited liability company formed under the laws of Delaware (the "Purchaser"),¹

— 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 parties hereto have entered into an asset purchase agreement dated as of •, 2012 (the "Asset Purchase Agreement"), pursuant to which each of the Vendors have agreed to sell, assign and transfer to the Purchaser, and the Purchaser has 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 Purchaser is required to enter into and deliver this Agreement to the Vendors at the Time of Closing;

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 is hereby acknowledged, each of the Vendors and the Purchaser agree as follows:

¹ Designated Purchasers to be added prior to the Time of Closing.

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. 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 Vendors hereby sell, assign and transfer to the Purchaser all of the Vendors' right, title and interest in the Assets and all rights, benefits and advantages thereunder or in respect thereof.

2.02 Assumption by the Purchaser

Subject to the terms of the Asset Purchase Agreement, the Purchaser hereby assumes and agrees to fulfill, perform and discharge the Assumed Liabilities.

2.03 Release by the Purchaser

The Purchaser hereby (i) unconditionally and irrevocably fully releases and discharges each of the Vendors from any Claim which the Purchaser 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 the Purchaser 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 – GENERAL

3.01 Further Assurances

Each of the Vendors and the Purchaser 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.

3.02 Time of the Essence

Time is of the essence of this Agreement.

3.03 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.

3.04 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.

3.05 Assignment

Other than one or more assignments by the Purchaser to one or more Designated Purchasers, this Agreement may not be assigned by any of the Vendors or by the Purchaser without the consent of (i) in the case of an assignment by a Vendor, the Purchaser; and (ii) in the case of an assignment by the Purchaser, the Vendors.

3.06 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 Purchaser:

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 Purchaser

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 Purchaser

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

Fax No.: 212-596-9090

Attention: Carl P. Marcellino

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 (5th) 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.

3.07 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.

3.08 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 Vendors and the Purchaser each attorns to the jurisdiction of the courts of the Province of Manitoba.

3.09 Appointment of Agent for Service

The 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 3.06). 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 Purchaser as sufficient service.

3.10 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.

3.11 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.

3.12 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.

H.I.G. ZAMBONI, LLC

By: H.I.G. BAYSIDE DEBT & LBO FUND II,
L.P.
Its: Sole Member

By: H.I.G. BAYSIDE ADVISORS II, LLC
Its: General Partner

By: H.I.G.-GPII, INC.
Its: Manager

By: _____
Name: Richard Siegel
Title: General Counsel

**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: _____

ARCTIC 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.

Per: _____

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

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)

Arctic Glacier - Asset Purchase Agreement

- 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 1.01B

Indicative Working Capital Calculation

[Attached]

[REDACTED] *[The redacted schedule sets out the Indicative Working Capital Calculation.]*

SCHEDULE 2.02(I)

Excluded Redundant Properties

Location: 50 Stewart Avenue, Huntington, New York, 11743-2755

Legal Description: All that certain plot, piece or parcel of land, situate, lying and being in the Town of Huntington, County of Suffolk and State of New York, bounded and described as follows:

Beginning at a point on the easterly side of Stewart Avenue where the same is intersected by the northerly line of land now or formerly of Nass, said point of beginning being also distant 150.0 feet northerly from the corner formed by the intersection of the easterly side of Stewart Avenue with the northerly side of First Avenue;

Running thence along the easterly side of Stewart Avenue north 5 degrees 14 minutes 50 seconds east 262.49 feet;

Running thence south 57 degrees 00 minutes east 156.38 feet to land now or formerly of Prime;

Running thence along said land now or formerly of Prime the following two courses and distances;

- (1) South 11 degrees 53 minutes 50 seconds west 189.87 feet;
- (2) South 8 degrees 09 minutes 40 seconds east 1.10 feet to land now or formerly of Nass;

Running thence along said land now or formerly of Nass north 84 degrees 45 minutes 10 seconds west 116.64 feet to the easterly side of Stewart Avenue at the point or place of beginning;

District: 0400 Section: 072.00 Block: 02.00 Lot: 011.000.

Building Description: Two single-storey buildings with a combined area of 10,000 square feet, brick construction with concrete floors.

Registered and Beneficial Owner: Arctic Glacier New York Inc.

SCHEDULE 2.06

Purchase Price Allocation

[Attached]

**Schedule 2.06
Purchase Price Allocation**

APA Section #	Description in APA	U.S.	Canada	Total Allocation	Notes
		Allocation (US \$000s) (1)	Allocation (US \$000s) (1)	(US \$000s)	
2.02(a)	Cash				
2.01(b)	Accounts Receivable				
	Vehicles				
2.01(f)	Inventories				
2.01(b), 2.01(c)	Machinery, Equipment and Furniture				(2)
2.01(n)	Prepaid Expenses				
2.01(e)	Goodwill and Other Intangibles				(2)
	Subtotal				
2.03(1)(a)-(d)	Assumed Liabilities				(4)
Grand Total					

Assumptions:

- (a) Purchase price premium is allocated entirely to goodwill.
- (b) Assume that the net book value extrapolated above is representative of each asset's fair market value.
- (c) Allocation amounts are preliminary. The parties agree that the purchase price allocation shall be done in a manner that reflects that all senior lenders of Arctic companies are to be paid in full at close. Buyer believes it has done so in this schedule but to the extent necessary, the parties agree to re-visit such allocations to reflect this and to adjust for valuations.
- (d) Purchase price allocation assumes an estimated payment of \$12,500,000 in connection with the Arizona lease.

Notes:

- (1) Amounts from projected 06/30/2012 balance sheets, allocated between the U.S. and Canada based upon split of consolidated balance sheet at 12/31/2011.
- (2) Includes all fixed assets including land as further breakout is not currently available.
- (3) Includes goodwill and separately identified intangible assets. Patent information not currently available.
- (4) Need to assess if anti-trust litigation accruals will constitute contingent liabilities that will not be accounted for as fixed liabilities for tax purposes.

Schedule 4.01(1) – Form of Canadian Vesting and Approval Order

THE QUEEN'S BENCH
Winnipeg Centre

THE HONOURABLE MADAM

)

•, THE •

)

JUSTICE SPIVAK

)

DAY OF •, 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

CANADIAN VESTING AND APPROVAL ORDER

THIS MOTION, made by the Applicants for an order 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 • [(the "Cdn. Purchaser"), and • (the "US. Purchaser" and collectively with the Cdn. Purchaser,] the "Purchaser"), as purchaser, dated •, and vesting in the Purchaser the Vendors' right, title and interest in and to the assets described in the Asset Purchase Agreement (the "Assets"), 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 Motion Record of the Applicants, including the Affidavit of • sworn •, 2012 (the "Motion Record"), and the • Report of Alvarez & Marsal Canada Inc. (the "Monitor") dated • (the "• Report"), and on hearing the submissions of counsel for the

Monitor, the Applicants, the Purchaser and •, no one appearing for any other person on the service list, 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 • sworn • 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.
2. THIS COURT ORDERS that the time for service of the Motion Record, • 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.
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.

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"), 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, including all leases of real property, shall vest, without further instrument of transfer or assignment, absolutely in 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), liens, executions, levies, penalties, charges, or other financial or monetary claims, adverse claims, or rights of use, puts or forced sales provisions exercisable to the date of closing, 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 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; (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 Assets are hereby released, extinguished, expunged and discharged as against the Assets.

4. 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 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.

5. 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 Purchaser pursuant to section • of the Asset Purchase Agreement and pursuant to section 11.3 of the CCAA.

6. THIS COURT ORDERS that the assignment of the rights and obligations of the Vendors under the Assigned Contracts to the Purchaser pursuant to section • 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 Purchaser was a party to the Assigned Contracts, notwithstanding any restriction 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.

7. 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.

8. THIS COURT ORDERS that as a condition of the Closing, 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 • of the Asset Purchase Agreement.

9. 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.

10. THIS COURT ORDERS that the Monitor shall be authorized and directed to pay from the net proceeds the amount of \$•, being the amount necessary to repay the Arctic Lenders in full. The balance of the net proceeds shall be held by the Monitor in accordance with the terms hereof.

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

12. 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.

13. 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 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.

14. 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.

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 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.

Schedule 4.01(1) – Form of Canadian Vesting and Approval Order

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

THE HONOURABLE MADAM)	•DAY, THE •
)	
JUSTICE SPIVAK)	DAY OF •, 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")

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 • (the "Canadian Vesting and Approval Order"), the Court approved an asset purchase agreement made as of • (the "Asset Purchase Agreement") between the Applicants and Glacier Valley Ice Company, L.P. (California) (together, the "Vendors"), as vendors, and • (the "Purchaser"), as purchaser, and provided for the vesting in the Purchaser 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, 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 4.01(1) – Form of Canadian Vesting and Approval Order

Schedule C – Claims to be deleted and expunged

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

(unaffected by the Vesting Order)

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

CANADIAN VESTING AND APPROVAL ORDER
DATE OF HEARING: •, • 2012 AT 10 A.M.
BEFORE THE HONOURABLE MADAM JUSTICE SPIVAK

McCARTHY TÉTRAULT LLP
Barristers and Solicitors
Suite 5300, Box 48
Toronto Dominion Bank Tower
Toronto-Dominion Centre
Toronto, ON M5K 1E6

Kevin McElcheran
Tel: (416) 601-7730
Fax: (416) 868-0673
Law Society No. 22119H

Heather L. Meredith
Tel: (416) 601-8342
Fax: (416) 868-0673
Law Society No. 48354R

File No. 10671373

**AIKINS, MacAULAY &
THORVALDSON LLP**
30th Floor – 360 Main Street
Winnipeg, MB R3C 4G1

G. Bruce Taylor
Tel: (204) 957-4669
Fax: (204) 957-4218

J.J. Burnell
Tel: (204) 957-4663
Fax: (204) 957-4285

File No.: 1103500

SCHEDULE 4.03(1)(e)

Permitted Encumbrances

(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.

SCHEDULE 5.02(f)

Form of FIRPTA Certificate

[Attached]

SCHEDULE 5.02(F)

[To be completed by each Canadian Vendor]

CERTIFICATION OF NON-U.S. REAL PROPERTY INTEREST

This statement of status (this "Certificate") is made as of [●], 2012 by [●], a [description of Vendor] (the "Company").

This Certificate is made pursuant to Section 1445 of the U.S. Internal Revenue Code of 1986, as amended (the "Code") that provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. The undersigned hereby certifies in response to the request of H.I.G. Zamboni, LLC, a Delaware limited liability company, the following:

As of the date hereof, none of the assets of the Company is a U.S. real property interest (as defined in Code Section 897(c)) under U.S. Treasury regulations 1.1445-2(c)(1).

I, the undersigned corporate officer hereby declare, under penalties of perjury, that I have the authority to sign this Certificate on behalf of the Company and that I have examined this Certificate and verify that, to the best of my knowledge and belief, it is true, correct, and complete.

[Name of Vendor]

By: [●]

Title: [●]

Dated: [●], 2012

[To be completed by each US Vendor]

CERTIFICATION OF NON-FOREIGN STATUS

Reference is hereby made to the Asset Purchase Agreement, dated as of [●], by and among H.I.G. Zamboni, LLC, a Delaware limited liability company ("Buyer"), Arctic Glacier Income Fund, an unincorporated open-ended mutual fund trust established under the laws of the Province of Alberta (the "Fund"), and the subsidiaries of the Fund.

Section 1445 of the U.S. Internal Revenue Code of 1986, as amended (the "Code") provides that a transferee (buyer) of a U.S. real property interest must withhold tax if the transferor (seller) is a foreign person. For U.S. tax purposes (including section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the Buyer that withholding of tax is not required upon the disposition of a U.S. real property interest by [●], the undersigned hereby certifies the following on behalf of [●]:

1. [●] is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the U.S. Income Tax Regulations);
2. [●] is not a disregarded entity as defined in Section 1.1445-2(b)(2)(iii) of the U.S. Income Tax Regulations;
3. [●]'s U.S. employer identification number is [●]; and
4. [●]'s office address is [●].

[●] understands that this certification may be disclosed to the Internal Revenue Service by the Buyer and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of [●].

Name: [●]
Title: [●]

Date: _____

EXHIBIT C

U.S. Sale Order

**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> , ¹	:	(Jointly Administered)
Debtors in a Foreign Proceeding.	:	Ref. Docket Nos. _____

**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")² 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"),

¹ 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.

² 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 *Sale Approval and Vesting Order* (the “CCAA Vesting Order”) entered by the Canadian Court on June 21, 2012 in the Canadian Proceeding, 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 copy³ 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 the Purchaser (as defined below), 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

³ The unredacted Purchase Agreement was sealed by Order of this Court dated July [], 2012 [Docket No. []] (the “Sealing Order”).

the *Fourth Report of the Monitor* [Docket No. 106] and the Confidential Appendix⁴ thereto (the “Fourth 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 complied with the various applicable requirements of the Bankruptcy Code and the Bankruptcy

⁴ The Confidential Appendix was sealed by the Sealing Order.

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 H.I.G. Zamboni, LLC (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 closing of the Sale.

I. Based on information contained in the Monitor's Reports⁵ 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 accordance with their terms, including the payment of arrears in accordance with the Purchase

⁵ 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], and (e) the Fourth Monitor's Report.

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 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. 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.

U. 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.

V. 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, the Purchased Assets shall absolutely vest, without further instrument of transfer or assignment, in 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 (as such term is defined in the Purchase Agreement) of the Purchaser that agrees to be jointly and severally liable with the Purchaser) all rights, title, and interest of the Debtors to the Purchased Assets and shall be a legal, valid, and effective transfer of the Purchased Assets free and clear 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, 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 (all the foregoing in this paragraph 5, collectively, the "Interests"); provided, however, that nothing contained herein shall derogate from the obligations 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) to assume the Assumed Liabilities, including the Assumed Accounts Payable, and to perform its obligations under the 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, paragraph 24 hereof), pursuant to sections 105(a), 363(f), and 1521 of the Bankruptcy Code, upon the time of closing of the Sale (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 paragraph 24 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 Sale 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. 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.

26. 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.

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

28. 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 __, 2012
Wilmington, Delaware

The Honorable Kevin Gross
United States Bankruptcy Judge