

1 **GUTTILLA MURPHY ANDERSON**

2 **Ryan W. Anderson** (Ariz. No. 020974)

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8 Attorneys for the Receiver

9 FOR THE SUPERIOR COURT OF THE STATE OF ARIZONA

10 IN AND FOR THE COUNTY OF MARICOPA

11 Lynne H. Anthony Revocable Trust dated
12 11/30/2001, Lynne H. Anthony as Trustee;
13 Robert Sonnenschein, as an individual;
14 Gerald R. Hale, as an individual; C. Scott
15 Anthony, as an individual; Janie B. Hale,
16 individually and as Trustee of Janie B. Hale
17 Revocable Trust dated 11/4/1994; Carolyn
18 Sue McMillon, as an individual; Larry
19 McMillon, as an individual; James Stanley
Powers, as an individual; and Patricia Ann
Powers Trust, Patricia Ann Powers as
Trustee,

Plaintiffs,

v.

20 Palo Verde Capital, L.L.C., an Arizona
21 limited liability company; PVPE, L.L.C., an
Arizona limited liability company; Palo
Verde Fund, L.P., a Delaware limited
partnership; Palo Verde Private Equity Fund,
L.P., a Delaware limited partnership; and
Anthony R. Stacy, a married man,

Defendants.

Cause No. CV2013-012420

RECEIVER'S MOTION TO APPROVE OF
SALE OF PALO VERDE'S MEMBERSHIP
UNITS OF ICE NOW, LLC

(Assigned to the Honorable Daniel Kiley)

20 Peter S. Davis, as the Court's Receiver of Palo Verde Fund LP, Palo Verde Private Equity
21 Fund, LP and PVPE, LLC (the "Receiver"), seeks an order approving a the sale of the Palo Verde

1 Fund LP's membership units of Ice Now, LLC to Ice Capital Holdings, LLC for \$20,000.00. For the
2 reasons set forth below, the Receiver recommends that the Court approve the sale of Palo Verde Fund
3 LP's membership units of Ice Now, LLC and approve the Purchase Agreement between the Receiver
4 and Ice Capital Holdings, LLC.

5 I. BACKGROUND

6 1. On October 8, 2013, the Court entered its *Stipulated Order Appointing Receiver*
7 ("Receivership Order") which appointed Peter S. Davis as Receiver for the Palo Verde Fund, LP and
8 the Palo Verde Private Equity Fund, LP and PVPE, LLC, *fka* Palo Verde Capital, LLC, *fka* Paragon
9 Capital Advisors, LLC. (collectively "Palo Verde") in an action entitled, *Lynne H. Anthony*
10 *Revocable Trust dated 11/30/2011 et al. v. Palo Verde Capital, L.L.C et al*, Maricopa County
11 Superior Court Cause No. CV 2013-012420 ("Receivership Action").

12 2. Pursuant to the provisions of the Receivership Order, the Receiver has investigated
13 and reported on the assets of Palo Verde including Palo Verde's investment into Ice Now, LLC.

14 3. Ice Now, LLC ("Ice Now") is an ice distributor based in Mesa, Arizona focused on
15 providing bulk bagged ice to restaurants, bars, hotels, golf courses, special events and commercial
16 companies. Palo Verde funded a convertible loan with Ice Now in the amount \$200,000 on July 8,
17 2009. The loan was secured by membership interest pledge agreements executed by the principals of
18 Ice Now and Palo Verde. On July 8, 2009, the Fund executed an amended and restated convertible
19 loan agreement which added an additional \$100,000 to the loan balance, aggregating to \$300,000.
20 The Ice Now loan had an interest rate of 10% per annum and a three-year term. Interest was to be
21 paid quarterly and a balloon payment of principal and unpaid interest was due on July 10, 2012. The
loan also included a conversion option allowing Palo Verde to convert its loan balance to 104 Class A
membership units of Ice Now resulting in an 11% minority interest.

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Since the inception of the Receivership, Ice Now has made no distributions to investors, increased total liabilities by approximately \$1,000,000 and has not had a positive cash flow, net of debt service. The Receiver does not believe that sales will increase substantially to generate a positive cash flow. There is little to no prospective market for the minority interest in Ice Now.

Based upon the inconsistent historical financial performance of Ice Now and diminished prospects for future growth, the Receiver has explored liquidating Palo Verde's minority interest in Ice Now. As a result, Ice Captain Holdings, LLC has agreed to purchase Palo Verde's minority interest for \$20,000.00 payable pursuant to the terms of the Purchase Agreement, a copy of which is attached as Exhibit 1.

Ice Captain Holdings, LLC has agreed to pay \$20,000.00 (the "Purchase Price") for the 104 class A membership units of Ice Now, LLC by paying \$16,000.00 upon the execution of the Purchase Agreement and the remaining \$4,000.00 on or before March 31, 2017. The Receiver has agreed to transfer and assign Palo Verde's interest in the "Units" to Ice Captain Holdings, LLC upon the payment of the balance of the full Purchase Price and to retain possession of the Units pursuant to a chattel security agreement until the \$4,000.00 balance of the full Purchase Price is made.

Based on the foregoing, the Receiver believes that it is in the receivership estate's best interest to approve the liquidation of Palo Verde's minority interest for \$20,000.00.

WHEREFORE, the Receiver respectfully requests that the Court enter an order:

- 1) Authorizing the Receiver to sell Palo Verde Fund, LP's 104 class A membership units of Ice Now, LLC to Ice Captain Holdings, LLC for the sum of \$20,000.00 with \$16,000.00 to be paid upon execution of the Purchase Agreement and the remaining \$4,000.00 to be paid on or before March 31, 2017;

- 1 Anthony R. Stacy
9225 E. Western Saddle Way
- 2 Scottsdale, Arizona 85255
Defendant Pro Per
- 3
- 4 Palo Verde Fund, L.P.
c/o Business Filing Incorporated
108 West 13th Street
- 5 Wilmington, Delaware 19801
Defendant
- 6 PVPE, L.L.C.
c/o Cal Purdin, Statutory Agent
- 7 15991 N. 115th Way
Scottsdale, AZ 85255
- 8 Defendant
- 9 Palo Verde Equity Fund, L.P.
c/o Easycorps, LLC
- 10 341 Raven Circle
Wyoming, Delaware 19934
- 11 Defendant
- 12 Alfred W. Ricciardi
Aiken Schenk Hawkins & Ricciardi P.C.
2390 E. Camelback Rd., Suite 400
- 13 Phoenix, AZ 85016
Attorneys for Investors Robert Eckholt, John R. Cassimus,
14 N.B.M. Corporation, SC Partners LLC – Defined Benefit Plan,
And Gloria Jane Hooker
- 15
- 16 Robert H. McKirgan
Jon Weiss
Lewis Roca Rothgerber LLP
- 17 201 E. Washington Street, Suite 1200
Phoenix, AZ 85004-2595
- 18 Attorneys for Michael J. Galloway, Cathy Galloway,
Galloway Asset Management L.L.C. and Galloway
19 Family Trust UAD Dec. 5, 2003 (Interested Creditor)
- 20 Jeffrey D. Gardner
Jennings, Strouss & Salmon, P.L.C.
One East Washington Street, Suite 1900
- 21 Phoenix, Arizona 85004-2554
Attorneys for Craig H. Jackson Under Trust

- 1 Agreement dated June 6, 1997
- 2 John S. Edwards, Jr. (Pro Hac Vice)
- 3 Ajamie, LLP
- 4 711 Louisiana, Suite 2150
- 5 Houston, Texas 77002
- 6 Attorneys for Craig H. Jackson Under Trust
- 7 Agreement dated June 6, 1997
- 8 All Investors/Partners in Palo Verde Fund LP:
- 9 Lynn Anthony
- 10 11248 S. 75th East Avenue
- 11 Bixby, OK 74008
- 12 Scott Anthony
- 13 5513 106th Place
- 14 Tulsa, OK 74137
- 15 Mike Austin
- 16 6852 Colonnade Drive
- 17 Plano, TX 75024
- 18 Keevin Barnes
- 19 11721 S. 66th East Avenue
- 20 Bixby, OK 74008
- 21 Michael Beck
- 22 225 Citrus Ridge Drive
- 23 Davenport, FL 33837
- 24 John R. Cassimus
- 25 1901 N.W. 17th Street
- 26 Oklahoma City, OK 73106
- 27 D'Lesia Chambers
- 28 P. O. Box 639
- 29 Boliar, MO 65613
- 30 Ashley Dalton
- 31 4141 E. 42nd Place
- 32 Tulsa, OK 74135

- 1 Bryan Dalton
2 7312 E. 87th Street
Tulsa, OK 74133
- 3 Robert Eckholt
4 1160 9 Pawnee Lane
Leawood, KS 66211
- 5 Mike Farley
6 P. O. Box 340
Sand Springs, OK 74063
- 7 Martin Garber
8 P. O. Box 2323
Bartlesville, OK 74005
- 9 Barbara Gilmore
10 5810 S. Indianapolis Ave.
Tulsa, OK 74135
- 11 Gerald and Janie Hale
12 3101 E. 86th Street
Tulsa, OK 74137
- 13 Keith and Susan Hall
14 8220 S. 68th East Avenue
Tulsa, OK 74133
- 15 Ronnie and Kim Herron
16 P. O. Box 303
Jenks, OK 74037
- 17 Gloria Hooker
18 8631 S. 67th E. Avenue
Tulsa, OK 74133
- 19 Craig Jackson
20 4622 E. Foothill Drive
Paradise Valley, AZ 85253
- 21

Gutilla Murphy Anderson, P.C.

5415 E. High Street, Suite 200
Phoenix, AZ 85054
(480) 304-8300

- 1 Robert and Steva Krier
2500 Thunderbird Circle
- 2 Edmond, OK 73034
- 3 Patricia Leonard
15912 San Nicholas
- 4 Edmond, OK 73013
- 5 Shane Martin
17623 N. 58th Place
- 6 Scottsdale, AZ 85254
- 7 Larry and Sue McMillon
23225 S. Dogwood Ct.
- 8 Claremore, OK 74019
- 9 N.B.M. Corporation Employee
Stock Ownership Plan
- 10 201 E. Carl Albert Parkway
McAlester, OK 74501
- 11 Tim O'Toole
- 12 P.O. Box 538
Bixby, OK 74008
- 13 Deirdre Peters
- 14 13331 Cameron Reach Dr.
Tomball, TX 77377
- 15 Stan and Pat Powers
- 16 3410 E. 59th Street
Tulsa, OK 74135
- 17 Cal and Pam Purdin
- 18 15991 N. 115th Way
Scottsdale, AZ 85255
- 19 PVC
- 20 c/o Anthony R. Stacy
19908 N. 101st Place
- 21 Scottsdale, AZ 85255

Guttilla Murphy Anderson, P.C.
5415 E. High Street, Suite 200
Phoenix, AZ 85054
(480) 304-8300

- 1 Randy Riall
2105 Newberry Rd.
- 2 Millsap, TX 76066
- 3 Todd and Jean Shildt
601 E. Union Street
- 4 Broken Arrow, OK 74011
- 5 Charles Shipp
226 7th Street NE
- 6 Washington, DC 20002
- 7 Lloyd and Jolyn Smith
18739 E. 42nd Street
- 8 Tulsa, OK 74134
- 9 Rob Sonnenschein
1733 S. Florence Ave.
- 10 Tulsa, OK 74104
- 11 James and Karla Westerman
687 Oak Tree Court
- 12 Simi Valley, CA 93065
- 13 /s/ Joanelen Campanaro
- 14
- 15 1844-001(273190)
- 16
- 17
- 18
- 19
- 20
- 21

PURCHASE AGREEMENT FOR MEMBERSHIP UNITS

This Purchase Agreement for Membership Units ("Agreement") is made and entered into as of December 31, 2016, by and between Peter S. Davis in his representative capacity as Receiver of the Palo Verde Fund, LP ("Seller"), and Ice Captain Holdings, LLC ("Purchaser").

WHEREAS, Seller is the owner of 11% membership interest consisting of 104 class A membership units of Ice Now, LLC (the "Units");

WHEREAS, Seller wishes to sell, and Purchaser wishes to Purchase, on the terms and conditions set forth herein, all of Seller's Units in Ice Now, LLC;

WHEREAS, Purchaser is wholly owned by Nolan de Graaff;

WHEREAS, Nolan de Graaff is the Manager of the Ice Now LLC and owns 74% of the membership interests in Ice Now LLC; and

WHEREAS, Ice Now LLC has consented to the transfer of its Membership Units to Ice Captain Holdings, LLC.

NOW THEREFORE, for valuable consideration, the recipient and sufficiency of which are acknowledged, the parties to this agreement mutually agree as follows:

- Purchase and Sale of Units. Subject to the terms and conditions of this agreement, Seller hereby agrees to sell and the Purchaser agrees to Purchase 104 Class A Membership Units of Ice Now LLC for twenty thousand U.S. dollars (\$20,000.00) (the "Purchase Price"). The Purchase price shall be paid as follows: Purchaser shall pay Seller \$16,000.00 upon execution of this Agreement and pay \$4,000.00 on or before March 31, 2017.
- Security Agreement. The Purchase of 104 Class A Membership Units of Ice Now LLC for twenty thousand U.S. dollars (\$20,000.00) shall be evidenced and secured by a Promissory Note and Chattel Security Agreement. Upon payment of the Full Purchase Price, Seller agrees to deliver an Assignment of Membership Interest (the "Assignment") in the form set forth in Exhibit A attached hereto.
- Representations and Warranties of Purchaser. The Purchaser hereby represents and warrants to seller that (i) Purchaser's manager and member is familiar with the finances and operations of Ice Now, LLC; (ii) Purchaser has the business and financial experience necessary to protect his own interest in connection with the purchase of the Interests; (iii) Purchaser is acquiring and will hold the Interests for investment for his account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act of 1933 (the "Securities Act"); and (iv) Purchaser has had access to such information as it considers necessary or appropriate for deciding whether to make the purchase contemplated herein.

4. Representations and Warranties of Seller. The Seller hereby represents and warrants to Purchaser that Seller is the Owner of the Units which it purports to hold, and has not sold, encumbered or otherwise hypothecated such Units prior hereto, Seller acknowledges that the Units may increase in value in the future and, by selling the Units to Purchaser, voluntarily waives and relinquishes any and claims to appreciation in value.

5. Court Approval. This Agreement is subject to approval by the Receivership Court in *Lynne H. Anthony Revocable Trust dated 11/30/2001, Lynne H. Anthony as Trustee; Robert Sonnenschein, as an individual; Gerald R. Hale, as an individual; C. Scott Anthony, as an individual; Jamie B. Hale, individually and as Trustee of Jamie B. Hale Revocable Trust dated 11/4/1994; Carolyn Sue McMillon, as an individual; Larry McMillon, as an individual; James Stanley Powers, as an individual; and Patricia Ann Powers Trust, Patricia Ann Powers as Trustee v. Palo Verde Capital, L.L.C., an Arizona limited liability company; PVPE, L.L.C., an Arizona limited liability company; Palo Verde Fund, L.P., a Delaware limited partnership; Palo Verde Private Equity Fund, L.P., a Delaware limited partnership; and Anthony R. Stacy, a married man,* pending in the Superior Court of Arizona Maricopa County Case Number 2013-012420. Upon execution of the Agreement and the payment of the \$16,000.00, the Receiver shall prepare and file the appropriate pleadings to seek approval of the Agreement.

6. Additional Acts and Documentation. Each party hereto agrees to do all such things and take all such actions; and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this agreement.

7. Authority. Each of the parties hereto represents and warrants to each other party hereto that this Agreement has been duly authorized by all such necessary action and that this Agreement constitutes and will constitute a binding obligation of each such party.

8. Attorney Fees. In the event suit is brought or an attorney is retained by any party to this Agreement to enforce the terms of this Agreement or to collect any money due hereunder, or to collect money damages for breach hereof, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorney fees, court costs, costs of investigation and other related expenses incurred in connection therewith.

9. Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original hereof.

10. Time. Time is of the essence of this Agreement and each and every provision hereof. Any extension of time granted for the performance of any duty under this Agreement shall not be considered an extension of time for the performance of any other duty under this Agreement.

11. Integration Clause; Oral Modification. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof, and all agreements entered into prior hereto are revoked and superseded by this Agreement, and no representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements. This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

12. Captions. Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant in construing this Agreement.

13. Governing Law. This Agreement shall be deemed to be made under, and shall be construed in accordance with and shall be governed by, the laws of the State of Arizona, and suit to enforce any provision of this Agreement or to obtain any remedy with respect hereto may only be brought in the Palo Verde Fund LP Receivership in Superior Court, Maricopa County, Arizona in cause #CV 2013-012420 and for this purpose each party hereby expressly and irrevocably consents to the jurisdiction of said court.

14. Indemnity. Each party to this Agreement agrees to indemnify each other party, and hold it harmless, from and against all claims, damages, costs and expenses (including attorney fees) attributable, directly or indirectly, to the breach by such indemnifying party of any obligation hereunder or the inaccuracy of any representation or warranty made by such indemnifying party herein or in any such instrument delivered pursuant hereto or in connection with the transactions contemplated hereby.

15. Mutual Release. Seller hereby fully and forever releases and discharges Purchaser, (and its managers, members, heirs, executors, administrators and employees) from any and all claims, demands, contracts, covenants, actions, suits, causes of action, obligations, controversies, debts, costs, expenses, damages, judgments, orders and liabilities, of whatever kind or nature, direct or indirect, in law, equity or otherwise, whether known or unknown arising through the date of this Agreement.

16. Non-Disparagement. Seller (and consultants, accountants, financial advisors, heirs, executors, administrators, or employees) agrees not to disparage Purchaser, (and Managers, Members, heirs, executors, administrators or employees) or otherwise take any action which could reasonably be expected to adversely affect Purchaser's personal or professional reputation.

17. No admission of Liability. This Agreement is not to be construed as an admission of any violation of any federal, state or local statute ordinance or regulation of any duty owed by the Purchaser. There have been no such violations, and the Purchaser specifically denies any such violations.

18. Interpretations. To the extent permitted by the context in which used, (i) words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa, and (ii) references to "persons" or "parties" in this Agreement shall be deemed to refer to natural persons, corporations, general partnerships, limited partnerships, trusts and all other entities.

19. Exhibits. Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference, with the same force and effect as if fully set forth in the body hereof.

20. Severability. If any provision of this Agreement is declared void or unenforceable, such provisions shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.

21. Successors and Assigns. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

22. Survival of Warranties and Indemnifications. The warranties, representations, covenants, and indemnifications contained in or made in this agreement shall survive the execution and delivery of this Agreement.

IN WITNESS WHEREOF, the parties have executed the agreement effective as of the date first above written.

SELLER:
PALO VERDE FUND LP

By: _____

Peter S. Davis in his capacity as
Receiver in CV 2013-012420

PURCHASER:
ICE CAPITAL HOLDINGS, LLC

By: _____

Nolan de Graaff, Manager

Exhibit A

ASSIGNMENT AND ASSUMPTION AGREEMENT

Palo Verde Fund LP, in Receivership ("Assignor") for and in consideration of the sum of twenty thousand U.S. dollars (\$20,000.00) and other good and valuable consideration paid by Ice Captain Holdings LLC, a Delaware limited liability company ("Assignee"), the receipt and sufficiency of which are hereby acknowledged, does hereby assign to Assignee, all of the Assignor's 104 Class A Membership Units in Ice Now LLC, an Arizona limited liability company (the "Units").

Assignee hereby accepts the foregoing assignments and hereby assumes the obligations, liabilities and responsibilities of Assignor with respect to the Units.

Effective upon the date hereof, each party hereby releases the other party from any and all rights and claims the releasing party may have against the party being released with respect to any matter arising from or in any manner relating to the Units from and after the date of this Assignment, except for claims based upon this Assignment.

This Assignment shall be binding on and inure to the benefit of the parties hereto, their successors and assigns.

This document may be executed in any number of counterparts, all of which taken together shall constitute a single document.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption Agreement effective Feb 7th, 2017.

ASSIGNOR:

ASSIGNEE:

Palo Verde Fund LP
In Receivership

Ice Captain Holdings, LLC

By: 

Peter S. Davis in his capacity as
Receiver and not individually

By: 

Nolan de Graaff, Manager

CHATTEL SECURITY AGREEMENT

(Equipment, Consumer Goods and Fixtures, but NOT Farm Products)

1. **CREATION OF SECURITY INTEREST.** The undersigned Debtor grants to the undersigned Secured Party a security interest in the property described in Section 3 ("Collateral") to secure all Debtor's present and future debts, obligations and liabilities of whatever nature to Secured Party ("Obligations").

2. **AMOUNT SECURED/TERMS:** The amount secured by this Chattel Security Agreement is \$20,000.00 payable in \$16,000.00 on December 31, 2016 and \$4,000.00 on March 31, 2017.

3. **DESCRIPTION OF COLLATERAL.** The Collateral securing this indebtedness is as follows:
(Check applicable blocks)

a. Equipment, Mobile Home, Vehicle, etc.

MAKE	MODEL	YEAR	SERIAL NO. OR IDENTIFICATION	OTHER REASONABLE IDENTIFICATION

b. Description of the above collateral continues on attached addendum.

c. Other Collateral: 104 Class A Units in Ice Now LLC.

4. **WARRANTIES.** Debtor Warrants:

(a) **Ownership.** Debtor is the owner of the Collateral, free of all encumbrances and security interests (except Secured Party's security interest.)

(b) **Purchase Money.** If checked here, the Collateral is being acquired by Debtor with the proceeds of a loan from Secured Party which proceeds will be used for no other purpose.

(c) **Use and Address.** The Collateral is used or bought for use primarily for the purpose checked below:

Personal, family or household purposes, or farming operations, and the address of the Debtor's residence is shown below Debtor's signature.

Business, and the address of Debtor's principal place of business in Arizona, or if none, Debtor's residence, is shown below Debtor's signature.

(d) **Mobile Equipment.** If any Collateral is equipment of a type normally used in more than one state, Debtor's chief place of business (if other than that below Debtor's signature) is: _____

(e) **Location of Collateral.** The Collateral will be kept at the address below Debtor's signature or, if not, at: Palo Verde Fund LP Receivership office at Simon Consulting, c/o Peter Davis, Receiver, The Great American Tower, 3200 North Central, Suite 2460, Phoenix, AZ 85012.

(f) **Fixtures.** If the Collateral is to be attached to real estate, the street address and legal description of such real estate is: _____

(g) **Changes of Address.** Debtor shall immediately advise Secured Party, in writing, of any changes in address.

5. **PERSONS BOUND.** Each person signing this Agreement, other than Secured Party, is a Debtor, and the obligations hereunder of all Debtors are joint and several. This Agreement benefits the Secured Party, its successors and assigns, and binds the Debtor(s) and their respective heirs, personal representatives, successors and assigns.

6. **OTHER PROVISIONS. DEBTORS CERTIFY:** I (We) have read the matter printed on the reverse side hereof and agree to it as a part of this agreement, the same as if it were printed above (my)(our) signature(s).

Dated: _____

Secured Party: Palo Verde Fund LP Receivership

Debtor: Ice Captain Holding LLC

By: Peter S. Davis as Receiver and not Personally

Debtor By: Nolan de Graaff its Manager & Member

Address: Simon Consulting, c/o Peter Davis, Receiver,
The Great American Tower, 3200 North Central,
Suite 2460, Phoenix, AZ 85012.

Address: 7500 E. Deer Valley Rd. #21
Scottsdale, AZ 85255

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ADDITIONAL SECURITY AGREEMENT PROVISIONS

Maintenance of Collateral. Debtor shall maintain the Collateral in good condition and repair and not permit its value to be impaired; keep it free from all liens, encumbrances and security interests (other than those created or expressly permitted by this Agreement); defend it against all claims and legal proceedings by persons other than Secured Party; pay and discharge when due all taxes, license fees, levies and other charges upon it; not sell, lease or otherwise dispose of it or permit it to become a fixture or an accession to other goods except as specifically authorized in this Agreement or in writing by the Secured Party; not permit it to be used in violation of any applicable law, regulation or policy of insurance. Loss of or damage to the Collateral shall not release Debtor from any of the Obligations.

Insurance. Debtor shall keep the Collateral and Secured Party's Interest in it insured under policies with such provisions, for such amounts and by such insurers as shall be satisfactory to Secured Party from time to time, and shall furnish evidence of such insurance satisfactory to Security Party. Debtor assigns (and directs any insurer to pay) to Secured Party the proceeds of all such insurance and any premium refund and authorizes Secured Party to endorse in the name of Debtor any instrument for such proceeds or refunds to any unpaid balance of the Obligations, whether or not due, and/or to restoration of the Collateral, returning any excess to Debtor. Secured Party is authorized, in the name of Debtor or otherwise, to make, adjust, settle claims under and/or cancel any insurance on the Collateral.

Inspection of Collateral. Secured Party is authorized to examine the Collateral wherever located at any reasonable time or times; and Debtor shall assist Secured Party in making any such inspection.

Maintenance of Security Interest. Debtor shall pay all expenses and, upon request, take any action reasonably deemed advisable by Secured Party to preserve the Collateral or to establish, determine priority of, perfect, continue perfected, terminate and/or enforce Secured Party's Interest in it or rights under this Agreement.

Authority of Secured Party to Perform for Debtor. If Debtor fails to act as required by this Agreement or the Obligations, Secured Party authorized, in Debtor's name or otherwise, to take any such action including, without limitation, signing Debtor's name or paying any amount so required, and the cost shall be one of the Obligations secured by this Agreement and shall be payable by Debtor upon demand with interest at the highest legal rate applicable from the date of payment by Secured Party.

Default. Upon the occurrence of one or more of the following events of default:

Nonperformance. Debtor fails to pay when due any of the obligations, or to perform, or rectify breach of, any warranty or other undertaking by Debtor in this Agreement or the Obligations;

Inability to Perform. Debtor or a surety for any of the obligations dies, ceases to exist, becomes insolvent or the subject of bankruptcy or insolvency proceedings.

Misrepresentation. Any warranty or representation made to induce Secured Party to extend credit to Debtor, under this Agreement or otherwise, is false in any material respect when made; or

Insecurity. Any other event which causes Secured Party, in good faith, to deem itself insecure; all of the Obligations shall, at the option of the Secured Party and without any notice or demand, become immediately payable; and Secured Party shall have all rights and remedies for default provided by the Arizona Uniform Commercial Code, as well as any other applicable law and the Obligations. With respect to such rights and remedies:

(A) Assembling Collateral. Secured Party may require Debtor to assemble the Collateral and to make it available to

Secured Party at any convenient place designated by Secured Party.

(B) Notice of Disposition. Written notice, when required by law, sent to any address of Debtor in this Agreement at least ten (10) calendar days (counting the day of sending) before the date of a proposed disposition of the Collateral is reasonable notice.

(C) Expenses and Application of Proceeds. Debtor shall reimburse Secured Party for any expense incurred by Secured Party in protecting or enforcing its rights under this Agreement, including, without limitation, reasonable attorney's fees and legal expenses and all expenses of taking possession, holding, preparing for disposition, and disposing of the Collateral. After deduction of such expenses, Secured Party may apply the proceeds of disposition to the Obligations in such order and amounts as it elects.

(D) Waiver. Secured Party may permit Debtor to remedy any default without waiving the default so remedied, and Secured Party may waive any default without waiving any other subsequent or prior default by Debtor.

Non-Liability of Secured Party. Secured Party has not duty to protect, insure or realize upon the Collateral. Debtor releases Secured Party from any liability for any act or omission relating to the Obligations, the Collateral, or this Agreement, except Secured Party's willful misconduct.

Waiver of Defenses Against Assignee. Debtor shall not assert against any assignee of Secured Party's rights under this Agreement or any of the Obligations, any claim or defense Debtor may have against Secured party.

Charging Debtor's Credit Balance. Debtor grants Secured Party, as further security for the Obligations, a security interest and lien in any credit balance and other money now or hereafter owed Debtor by Secured Party or any assignment of Secured Party and, in addition, agrees that Secured Party may, without prior notice or demand, charge against any such credit balance or other money any amount owing upon the Obligations, whether due or not.

Waiver of Defenses Against Assignee. Debtor shall not assert against any assignee of Secured Party's rights under this Agreement or any of the Obligations any claim or defense Debtor may have against Secured Party.

Debtor: 

Debtor: _____

Secured Party: 

PROMISSORY NOTE
(Secured)

\$4,000.00

Dated: December 31, 2016
Phoenix, Arizona

For value received, ICE CAPTAIN HOLDINGS, LLC ("MAKER"), promises to pay to PETER S. DAVIS, as RECEIVER of the PALO VERDE FUND, LP, or ORDER, at PHOENIX, ARIZONA, the principal sum of FOUR THOUSAND AND NO/100 (\$4,000.00) DOLLARS, plus interest at the rate of 4.5% per annum, on March 31, 2017.

Should a default be made in the payment under this note, the entire principal sum and accrued interest plus a late charge in the amount of \$0.10 per dollar, and a like charge for each thirty (30) days the delinquency continues, to cover the extra expense involved in handling the delinquent account.

The makers and endorsers hereof consent to the extension of time of payment of this note without notice, and should the time of payment be extended by agreement with any of the makers or endorsers of this note without the knowledge and/or consent of the others, the liability of all parties after such extension shall remain as if no extension had been made. The makers and endorsers hereof severally waive grace, demand, presentment, limitations, claim of homestead exemption or rights of exemption, notice of dishonor and protest. The undersigned promise to pay costs of collection and reasonable attorneys' fees in case this note is not paid in accordance with its terms, whether suit be brought or not.

Maker waives diligence, demand presentment for payment and protest, and consent to the extension of time of payment of this note without notice.

THIS NOTE IS SECURED BY A CHATTEL SECURITY AGREEMENT

ICE CAPTAIN HOLDINGS, LLC

BY: 

ITS: Member/Manager