

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF QUEBEC  
No.: 200-11-019127-102  
OFFICE No.: 908322

SUPERIOR COURT  
Commercial Chamber

**IN THE MATTER OF ARRANGEMENT AND  
REORGANIZATION OF:**

**4370422 CANADA INC., (formerly known as  
“Davie Yards Inc.”), a legal person duly  
incorporated according to law, having its head  
office at 22 George-D.-Davie Street, Lévis, Quebec  
G6V 8V5**

Debtor company

– and –

**SAMSON BÉLAIR/DELOITTE & TOUCHE INC.,**  
a legal person, duly incorporated according to law,  
having a place of business at 1 Place Ville Marie,  
Suite 3000, Montreal, Quebec H3B 4T9

Monitor

**TWENTY-FIFTH REPORT TO THE COURT ON THE STATE OF THE DEBTOR COMPANY’S  
FINANCIAL AND BUSINESS AFFAIRS AND PLAN OF ARRANGEMENT PRESENTED TO ITS  
CREDITORS**

**SUBMITTED BY SAMSON BÉLAIR/DELOITTE & TOUCHE INC.  
IN ITS CAPACITY AS MONITOR**

(Sub-section 23(1) d.1) of the *Companies’ Creditors Arrangement Act*,  
R.S.C. 1985, c. C-36, as amended)

**INTRODUCTION**

1. On February 25, 2010, the Court issued an initial order (“**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (“*CCAA*”) in respect of 4370422 Canada Inc. (“**Davie**” or the “**Company**”). Pursuant to the terms of the Initial Order, Samson Bélair/Deloitte & Touche Inc. was appointed monitor (the “**Monitor**”).
2. On March 26, 2010, the Court issued a Stay Period until May 25, 2010.

3. On May 25, 2010, the Stay Period was extended to September 15, 2010, in accordance with an order of the Court.
  4. In its judgment dated May 25, 2010, the Court ordered the Monitor to submit, on June 25, July 25, August 25 and September 15, 2010, a report on the state of Davie's financial and business affairs.
  5. On June 23, July 20, and August 24, 2010, the Monitor respectively filed its Sixth Report, Seventh Report and Eighth Report in accordance with the judgment of May 25, 2010. Copies of these three reports were sent to each of the interested parties and made available on the Monitor's website.
  6. On September 15, 2010, the Stay Period was extended to October 29, 2010, in accordance with an order of the Court.
  7. On October 29, 2010, the Stay Period was extended to January 21, 2011, in accordance with an order of the Court.
  8. On January 18, 2011, the Stay Period was extended to February 18, 2011, in accordance with an order of the Court.
  9. On February 17, 2011, the Stay Period was extended to March 10, 2011, in accordance with an order of the Court.
  10. On March 10, 2011, the Stay Period was extended to April 1, 2011, in accordance with an order of the Court.
  11. On March 17, 2011, the Court issued an order authorizing the Company to obtain an interim loan ("**Interim or DIP Loan**") from Investissement Québec ("**IQ**" or "**Secured Lender**") and granting a security interest in and charge over all of the Company's property in favour of the Secured Lender.
  12. On March 31, 2011, the Court issued an order extending the Stay Period to May 19, 2011 and authorizing the Company to sign an exclusive negotiating rights agreement with a group comprised of Fincantieri – Cantieri Navali Italiani S.p.A. and DRS Technologies Canada Ltd. ("**Selected Partner**").
  13. On April 8, 2011, the Court issued an order authorizing the Company to obtain additional interim financing ("**DIP Loan #2**") from the Secured Lender and granting a security interest in and charge over all of the Company's property in favour of the Secured Lender.
  14. On May 19, 2011, the Stay Period was extended to July 7, 2011, in accordance with an order of the Court.
  15. On June 16, 2011, the Court issued an order authorizing the Company to obtain additional interim financing ("**DIP Loan #3**") from the Secured Lender and granting a security interest in and charge over all of the Company's property in favour of the Secured Lender. The order also extended the Stay Period to July 14, 2011.
  16. On July 14, 2011, the Stay Period was extended to July 22, 2011, in accordance with an order of the Court.
-

17. On July 21, 2011, the Court issued an order approving, inter alia, a transaction to sell substantially all of the Company's assets ("**Acquired Assets**") to 7731299 Canada Inc. ("**Acquirer**") and extending the Stay Period to July 29, 2011.
  18. On July 29, 2011, the Stay Period was extended to August 5, 2011, in accordance with an order of the Court.
  19. On August 5, 2011, the Stay Period was extended to August 18, 2011, in accordance with an order of the Court.
  20. On August 18, 2011, the Stay Period was extended to August 25, 2011, in accordance with an order of the Court.
  21. On August 25, 2011, the Stay Period was extended to October 31, 2011, in accordance with an order of the Court.
  22. On September 2, 2011, the Court issued an order governing the process of determining proofs of claim and meeting of creditors ("**Procedural Order**").
  23. This report (the "**Twenty-Fifth Report**") concerns the following subjects:
    - i) The Company's operations since September 3, 2011;
    - ii) The Company's current financial position;
    - iii) The process of determining proofs of claim;
    - iv) The Company's plan of arrangement;
    - v) The meeting of creditors;
    - vi) The Monitor's conclusions and recommendations.
  24. In preparing this Twenty-Fifth Report, the Monitor has relied on unaudited financial information on the Company, the Company's accounting records, and its discussions with the management of the Company and its financial and legal advisors. While the Monitor has reviewed the information submitted, the Monitor has not performed an audit or other verification of such information. Forward-looking financial information included in this Twenty-Fifth Report is based on assumptions of the Company's management regarding future events. Actual results achieved will vary from this information and the variations may be material.
  25. Unless otherwise indicated, all monetary amounts mentioned in this Twenty-Fifth Report are expressed in Canadian dollars. Capitalized terms not defined in this Twenty-Fifth Report are defined in a prior report of the Monitor or the Initial Order.
  26. A copy of this Twenty-Fifth Report, the motion record of these CCAA proceedings and subsequent reports of the Monitor will be available on the Monitor's website at [www.deloitte.ca](http://www.deloitte.ca). On October 4, 2011, the Monitor notified the creditors that this Twenty-Fifth Report would be available on its website at least seven days prior to the meeting of creditors. The Monitor has also established a
-

toll-free hotline that is referenced on the Monitor's website so that parties may contact the Monitor if they have questions with respect to the Company's restructuring or the CCAA.

## **THE COMPANY'S OPERATIONS SINCE AUGUST 19, 2011**

### ***General***

27. The Company currently employs a single employee, i.e., its President. Three former employees of the Company are mainly responsible for managing its current operations, pursuant to an agreement between the Company and the Acquirer.

### ***Statement of changes in cash***

28. **Table A** of this Twenty-Fifth Report presents the Company's statement of cash operations for the seven-week period ended October 8, 2011. As of October 8, 2011, the Company had \$522,000 more cash than it budgeted, and the difference was largely attributable to the following:

- a) A negative temporary difference of \$108,000 due to the receipt of the last portion of DIP Loan #3. The amount is held in trust by attorneys representing the Secured Lender and will only be payable to the Company following the announcement of the two winning shipyards as part of the NSPS process;
  - b) A negative temporary difference of \$96,000 due to the receipt of the GST/QST refunds. The Company expects to receive these refunds in the coming weeks;
  - c) A positive temporary difference of \$60,000 due to the payment of administrative services rendered by the Acquirer's employees. The services were rendered, however, as of October 8, 2011, the Company had not received the related invoice;
  - d) A positive temporary difference totalling \$570,000 in respect of fees and disbursements to be paid to the Monitor, legal counsel, Rothschild and Davie Yards ASA;
  - e) A positive temporary difference of \$71,000 due to the payment of taxes (GST/QST), much of which is directly related to the two preceding items.
29. As of October 8, 2011, the Company's cash resources totalled \$5,707,000.
30. The Company has continued to pay the expenditures incurred in the normal course of business, in accordance with the Initial Order.

## **THE COMPANY'S CURRENT FINANCIAL POSITION**

31. On July 21, 2011, with leave of the Court, the Company signed a major sale transaction with a subsidiary of a member of the consortium made up of SNC, Daewoo and Upper Lakes. The sale transaction, which is set out in greater detail in the Monitor's Twentieth Report to the Court, was meant to:

- a) allow the Acquirer to submit a timely bid under the NSPS Request for Proposals;
  - b) relaunch operations at the Lévis shipyard and ensure its viable, long-term future; and
-

- c) ensure submission of a plan providing for the distribution of dividends to the Company's unsecured creditors.
32. As a result of the sale transaction, the Company's Acquired Assets, i.e., substantially all of the assets required to operate the Lévis-based shipyard, were transferred to the Acquirer.
33. At present, the Company's principal assets are:
- a) A total of \$5,707,000 in cash as of October 8, 2011;
  - b) Approximately \$520,000 in accounts receivable;
  - c) Company-estimated tax credit receivables (unassessed) of approximately \$5,081,783;
  - d) All shares (100%) of a Norwegian corporation whose purpose was to provide the Company with Norwegian employees.
34. In the Monitor's opinion, it is highly unlikely that the Company will be able to sell and raise funds from the shares it holds in its Norwegian subsidiary. The Company informed the Monitor that it has taken steps to dissolve the subsidiary.
35. The Company incurred tax losses in recent years. In the Monitor's opinion, it is highly unlikely that the Company will be able to sell and raise funds from tax benefits resulting from its past losses.
36. Furthermore, all of the property described above is secured by charges and security interests and traditional mortgages granted by the Court as part of these proceedings in favour of the secured creditor, i.e., IQ. Its security totals in excess of \$25 million, an amount that is significantly greater than the value of the Company's property.

#### **THE PROCESS OF DETERMINING PROOFS OF CLAIM**

37. The notices concerning the process of determining proofs of claim were communicated in the prescribed form and within the time provided in the Procedural Order.
38. A total of 827 proofs of claim were filed with the Monitor at or before 5 pm, September 28, 2011 ("**Claims Bar Date**").
39. The Monitor dismissed or revised 22 of the proofs of claim received prior to the Claims Bar Date. On October 4, 2011, the Monitor:
- i) sent, in the prescribed form and within the time provided in the Procedural Order, a notice to all affected creditors of its decision to dismiss or revise a proof of claim;
  - ii) notified certain creditors that their amounts outstanding after the Date of the Initial Order would be compromised under the Plan (as defined below).
40. In accordance with the Procedural Order, creditors whose proofs of claim were dismissed or revised had 10 days to appeal the Monitor's decision before the Court.
-

41. As of the date of this Twenty-Fifth Report, claims allowed by the Monitor total \$197.3 million, including:
  - a) Claims resulting from the termination by the Company of contracts entered into with Ocean Hotels I Inc. and Ocean Hotels II Inc. (collectively, “OH”): \$141.3 million (“OH Claims”);
  - b) Claims by former employees of the Company related to the severance payment resulting from the group termination of employment that occurred as part of the Company’s reorganization: \$22.9 million;
  - c) Other claims, including claims by suppliers of goods and services: \$33.1 million.
42. The Monitor received a claim from Export Development Canada (“EDC”) stating that EDC represented the rights of OH concerning the OH Claims, pursuant to the security interests issued by OH to EDC in respect of OH’s accounts receivable from the Company and a notice served to the Company revoking its authorization to collect the receivables.
43. The Monitor also received claims from Ocean Hotels I Inc. and Ocean Hotels II Inc. concerning the OH Claims. On October 4, 2011, the Monitor dismissed those claims. On October 14, 2011, Ocean Hotels I and Ocean Hotels II served notice requesting the Court review the decision.
44. The Monitor did not receive any employee priority claims from employees or former employees of the Company.
45. The Monitor did not receive any government priority claims from federal or provincial government authorities.
46. The Monitor did not receive any pension priority claims in respect of a pension plan.
47. The Monitor received and dismissed a secured claim filed by creditor Mécanarc Inc. On October 13, 2011, Mécanarc Inc. served notice requesting the Court review the decision.

#### **THE COMPANY’S PLAN OF ARRANGEMENT**

48. On October 4, 2011, the Company produced a plan of arrangement (the “Plan”) and submitted it to the Monitor for the purpose of presenting it to its creditors for their approval, in accordance with the provisions of the CCAA and Procedural Order.
  49. The Plan is in line with the restructuring process started on February 25, 2010 and the sale of assets held on July 21, 2011.
  50. The Plan presented by the Company is intended to distribute to eligible creditors, in an expeditious, orderly and cost effective manner, the net proceeds (\$1 million) generated by the sale of assets held on July 21, 2011.
  51. The Plan essentially provides the Monitor with an amount of \$1 million (“Plan Implementation Fund”) to distribute among the Company’s creditors as a final settlement of their claims. According
-

to the Monitor's estimates, the settlement amount represents approximately 0.05% (½cent/dollar) of proven claims (\$1 million/\$200 million).

52. The Plan includes provisions for the compromise of claims against the Monitor and its legal counsel and against the managers, employees, agents, legal counsel and directors of the Company. This compromise of claims is similar to compromises included in other court-approved plans of arrangement made under the CCAA in that it will release all charges and security interests granted by the Court and, consequently, ensure distribution by the Company of the Plan Implementation Fund.
53. The Plan specifically provides that the following claims are not affected:
  - a) The claims secured by charges created by the Court;
  - b) The secured claims of IQ and Mécanarc Inc., if any;
  - c) The claims that cannot be dealt with by a compromise pursuant to CCAA provisions, if any;
  - d) The priority claims of employees, governments or in respect of a pension plan, if any;
  - e) The proven post-filing claims, as defined in the Plan.
54. The Plan provides that the claimants whose unaffected claims are listed above, including IQ and Cecon, are entitled neither to vote at the meeting of creditors nor to receive distributions from the Plan Implementation Fund.
55. In accordance with the Plan, all unsecured claims have been combined into a single class.
56. The Company has informed the Monitor of its intention to dispose all of its assets in accordance with the *Bankruptcy and Insolvency Act*, in the event that the Plan is not accepted. In the opinion of the Monitor, the administrative costs of an eventual bankruptcy would significantly reduce the amount of dividends to be distributed to the Company's creditors.

## **THE MEETING OF CREDITORS**

57. In accordance with the Procedural Order, creditors will be asked to vote on the Plan of Compromise or Arrangement during a meeting to be held at 10 am, October 26, 2011, at the Hilton hotel, located at 1100 René-Lévesque Boulevard East, in Quebec City, Quebec.
  58. On October 4, 2011, a notice concerning the meeting of creditors, settlement approval motion and filing of this Twenty-Fifth Report to the Court was sent by the Monitor to all creditors who duly proved their claims pursuant to the Procedural Order. A copy of the said notice is enclosed in **Appendix A** of this Twenty-Fifth Report.
  59. In the event that the Plan is accepted by the required majority of creditors at the meeting of creditors, a motion to sanction the Plan will be presented to the Court at 10 am, on October 31, 2011.
  60. The Company has informed the Monitor of its intention to proceed with its dissolution after implementation of the Plan.
-

## THE MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

61. It is the Monitor's opinion that:

- a) the Company's creditors cannot hope to receive more from the settlement of their claims than what the Company has offered them in the Plan of Arrangement;
- b) the Plan of Arrangement is fair and reasonable under the circumstances.

62. Consequently, the Monitor recommends that the Company's creditors as well as this Court, if need be, approve the Plan of Arrangement.

The Monitor respectfully submits to the Court this, its Twenty-Fifth Report.

DATED IN MONTREAL, the 18th day of October 2011.



SAMSON BÉLAIR/DELOITTE & TOUCHE INC.  
In its capacity as Monitor of 4370422 Canada Inc.

N.B.: In the event of a conflict, discrepancy, ambiguity or difference of meaning between the original French version of this Twenty-Fifth Report and its English translation, the original French version will prevail, and the relevant passages in the English version will be deemed to be amended so as to avoid any such conflict, discrepancy, ambiguity or difference.

---



## **Table A**

**4370422 CANADA INC.**  
**Statement of Cash Operations**  
**Unaudited - compiled from statements made by management of 4370422 Canada Inc.**  
**(in thousands of Canadian dollars)**

	Seven-week period ended October 8, 2011		
	Actual	Projected (Note 2)	Variance
<b>Cash inflows</b>			
DIP financing #3	-	108	(108)
Receipt of tax credits	-	-	-
Reimbursement - Osler and Deloitte deposits	-	-	-
Reimbursement - Hydro-Québec deposit	209	185	24
Reimbursement - other deposits	3	-	3
Other	10	10	-
GST/QST	58	154	(96)
<b>Total cash inflows</b>	<b>280</b>	<b>457</b>	<b>(177)</b>
<b>Cash outflows</b>			
<i>Ships C-717 to C-722</i>			
Wages	-	-	-
Material costs	2	-	2
Insurance premium	-	-	-
Contingency	-	-	-
	2	-	2
<i>Administration</i>			
Administrative wages	-	-	-
Service agreement with "Newco"	-	60	(60)
NSPS	-	-	-
Due diligence review and closing costs	-	-	-
Heating (Ultramar)	-	-	-
Electricity	-	-	-
Communications (telephone, etc.)	3	2	1
Municipal taxes	-	-	-
Insurance premium	-	-	-
CSST	-	-	-
Group insurance	-	-	-
Professional fees (pre-transaction)	136	375	(239)
Professional fees (post-transaction)	167	226	(59)
Financial advisor	-	150	(150)
Davie Yards ASA	1	123	(122)
Maintenance	5	-	5
GST/QST paid to suppliers	43	114	(71)
Interest on DIP financing	-	-	-
Contingency	8	14	(6)
	363	1 064	(701)
<b>Total cash outflows</b>	<b>365</b>	<b>1 064</b>	<b>(699)</b>
<b>Cash at beginning</b>	<b>5 792</b>	<b>5 792</b>	<b>-</b>
Cash inflows	280	457	(177)
Cash outflows	(365)	(1 064)	699
<b>Cash at end</b>	<b>5 707</b>	<b>5 185</b>	<b>522</b>

**Note 1: Conditions and restrictions**

In preparing this document, the Monitor has relied on the unaudited financial information of 4370422 Canada Inc. ("Davie"), Davie's accounting records, and discussions with Davie's management. While the Monitor has reviewed the information submitted, it has not performed a certification of such information.

**Note 2: Projections**

The projections refer to figures contained in the weekly statement of projected cash flow prepared by Davie's management and filed with the Superior Court of Quebec (200-11-019127-102) on August 24, 2011.

**Note 3: Professional fees**

Professional fees include the fees of the Company's legal counsel, the fees of the Monitor and its legal counsel and attendance fees for members of Davie's board of directors and reorganization committee.

## **Appendix A**



**Samson Bélair/Deloitte & Touche Inc.**  
1 Place Ville Marie  
Suite 3000  
Montreal QC H3B 4T9  
Canada  
  
Tel.: 514-393-5344  
Toll free: 1-877-866-1422  
Fax: 514-390-4103  
www.deloitte.ca

**CANADA**  
**PROVINCE OF QUEBEC**  
**DISTRICT OF MONTREAL**

**S U P E R I O R C O U R T**  
(Commercial Division)  
(Sitting as a court designated pursuant to the  
*Companies' Creditors Arrangement Act*,  
R.S.C. 1985, c. C-36)

No.: 200-11-019127-102

**IN THE MATTER OF THE PLAN OF  
COMPROMISE AND ARRANGEMENT OF:**

**4370422 CANADA INC., formerly known as  
DAVIE YARDS INC./CHANTIERS DAVIE INC.**

**NOTICE TO CREDITORS OF 4370422 CANADA INC., formerly known as  
DAVIE YARDS INC./CHANTIERS DAVIE INC.  
(the "Petitioner")  
OF  
NOTICE OF MEETING OF CREDITORS, SANCTION HEARING OF A PLAN OF  
ARRANGEMENT AND FILING OF A MONITOR'S REPORT TO THE COURT**

**TAKE NOTICE THAT** 4370422 Canada Inc., formerly known as Davie Yards Inc./Chantiers Davie Inc. ("**Davie**"), has filed a plan of compromise and arrangement pursuant to the *Companies' Creditors Arrangement Act* and, as the case may be, the *Canada Business Corporations Act* (the "**Plan**") with Samson Bélair/Deloitte Touche Inc., the Monitor. A copy of the Plan is enclosed.

Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Plan.

A copy of the Claims and Meeting Procedure Order dated September 2, 2011 is available directly from the Monitor's website at: <http://www.deloitte.com/ca/davieyards>.

A GENERAL MEETING OF THE CREDITORS OF DAVIE FOR THE PURPOSE OF CONSIDERING AND APPROVING THE PLAN WILL BE HELD AT THE HILTON HOTEL, LOCATED AT 1100, RENÉ-LÉVESQUE EAST BOULEVARD, ROOMS BEAUMONT, BÉLAIR AND BEAUPORT, QUÉBEC CITY, QUÉBEC AT 10: 00 A.M., ON THE 26<sup>TH</sup> DAY OF OCTOBER, 2011.

The creditors qualified to vote at the Meeting of Creditors may accept the Plan as proposed or as altered or modified at or prior to this meeting by Davie. If so accepted by a majority in number representing two-thirds in value of the creditors, present and voting either in person or by proxy at the Meeting of Creditors and approved by the Quebec Superior Court (Commercial Division) ("**Court**"), the Plan will be binding on all Affected Creditors.

Affected Creditors that wish to vote at the Meeting of Creditors and are not individuals or are individuals who will not be attending the Meeting of Creditors in person, are requested to complete the enclosed

Proxy and provide it to the Monitor by courier, fax or e-mail so that it is received by the Monitor before the beginning of the Meeting of Creditors. You are required to provide your Proxy to the Monitor before the beginning of the Meeting of Creditors, or any adjournment thereof, if you wish to appoint a proxy to cast your vote at the Meeting of Creditors.

AN APPLICATION WILL BE BROUGHT BEFORE THE COURT TO SANCTION THE PLAN ON OCTOBER 31, 2011, AT 10:00 A.M., AT 300, JEAN-LESAGE BOULEVARD, QUÉBEC CITY, QUÉBEC.

Any person who wishes to appear or to be represented and to present evidence or arguments at the Court hearing seeking the sanction of the Plan must serve upon the legal counsels for Davie and for the Monitor and upon all other parties who have filed a notice of appearance, no later than 28<sup>th</sup> day of October, 2011, a notice setting out the basis for such opposition and a copy of all materials to be used to oppose the petition for approval of the Plan.

Samson Bélair/Deloitte Touche Inc.  
1 Place Ville-Marie  
Suite 3000  
Montreal QC H3B 4T9

Attention: Patrick Fillion  
Phone: 514-393-5344  
Fax: 514-390-4103  
E-mail: [davieclaims@deloitte.ca](mailto:davieclaims@deloitte.ca)

The Monitor will file a report with the Court on the state of Davie's business and financial affairs at least seven days before the Meeting of Creditors. Creditors could obtain a copy of this report directly on the Monitor's website at the following address: <http://www.deloitte.com/ca/davieyards> or by written request at the following email address: [davieclaims@deloitte.ca](mailto:davieclaims@deloitte.ca).

## FORM OF PROXY

CANADA

PROVINCE OF QUEBEC

DISTRICT OF QUEBEC

**SUPERIOR COURT**  
**(Commercial Division)**

(Sitting as a court designated pursuant to the  
*Companies' Creditors Arrangement Act*,  
R.S.C. 1985, c. C-36)

No.: 200-11-019127-102

**IN THE MATTER OF THE PLAN OF  
COMPROMISE OR ARRANGEMENT OF:**

**4370422 CANADA INC., formerly known as  
DAVIE YARDS INC./CHANTIERS DAVIE INC.**

I/We \_\_\_\_\_  
(name of creditor)

of \_\_\_\_\_  
(address)

creditor(s), hereby appoint as my (our) proxy for the Meeting of Creditors to be held on October 26, 2011,  
or at any adjournment thereof, the following person:

\_\_\_\_\_  
(name of proxy)

or, if no name is inserted above, the Monitor.

I/we hereby instruct our proxy to vote as follows on the resolution to approve the plan of compromise or arrangement of 4370422 Canada Inc., formerly known as Davie Yards Inc./Chantiers Davie Inc., pursuant to the *Companies' Creditors Arrangement Act* and, as the case may be, the *Canada Business Corporations Act*, as tabled at such meeting of creditors (the "**Plan**"), or at any adjournment thereof:

- IN FAVOUR of approving the Plan.
- NOT IN FAVOUR of approving the Plan.

**Note: Unless a Creditor has indicated above that it wishes to vote against approval of the Plan, the Monitor will vote all proxies which it holds in favour of approving the Plan.**

DATED at \_\_\_\_\_, this \_\_\_\_\_, 2011.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature of creditor or  
authorized person

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF QUÉBEC**

**S U P E R I O R C O U R T**  
(Commercial Division)  
(Sitting as a court designated pursuant to the  
*Companies' Creditors Arrangement Act*, R.S.C.  
1985, c. C-36)

---

No.: 200-11-019127-102

**IN THE MATTER OF THE PLAN OF  
COMPROMISE OR ARRANGEMENT OF:**

**4370422 CANADA INC. (formerly DAVIE  
YARDS INC. / CHANTIERS DAVIE INC.)**

**Petitioner**

- and -

**SAMSON BÉLAIR / DELOITTE & TOUCHE  
INC.**

**Monitor**

---

**PLAN OF COMPROMISE OR ARRANGEMENT**

**October 4 , 2011**



# PLAN OF COMPROMISE OR ARRANGEMENT

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

In this Plan, unless otherwise stated or the context otherwise requires:

“**437**” means 4370422 Canada Inc., formerly Davie Yards Inc. / Chantiers Davie Inc.;

“**Affected Claim**” means any Claim except for an Unaffected Claim;

“**Affected Creditor**” means any Creditor with an Affected Claim, but only with respect to and to the extent of such Affected Claim;

“**Affected Creditors Class**” means the class of Affected Creditors entitled to vote on this Plan at the Meeting of Creditors and to receive distributions hereunder in respect of their proven Affected Claims;

“**Business**” means 437’s fully integrated shipyard with large capacity specializing in building large and complex vessels for commercial and governmental use, and all activities incidental thereto;

“**Business Day**” means a day other than a Saturday, a Sunday or statutory holiday on which banks are generally open for business in Québec City, Québec;

“**CCAA**” means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

“**CCAA Charges**” means the Directors’ Charge and the Administration Charge as each is defined in the Initial Order;

“**CCAA Proceedings**” means the proceedings under the CCAA in respect of 437 commenced pursuant to the Initial Order;

“**Cecon**” means, collectively, Cecon ASA, Cecon Shipping 1 AS, Cecon Shipping 2 AS and Cecon Shipping 3 AS, together with any successors or assignees thereof;

“**Cecon Claim**” means any and all Claims of Cecon against 437;

“**Claim**” means (i) any right or claim of any Person against 437 whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of 437, whether reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, unknown, by guarantee, by surety, by warranty or otherwise, and whether or not such right is executory or anticipatory in nature, including without limitation, any claim arising from or caused by the termination, disclaimer,

resiliation, assignment or repudiation by 437 of any contract, lease or other agreement, whether written or oral, the commission of a tort (intentional or unintentional), any breach of duty (including without limitation, any legal, statutory, equitable or fiduciary duty), any right of ownership of or title to property, employment, contract, a trust or deemed trust, howsoever created or any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any grievance, matter, action, cause or chose in action, whether existing at present or commenced in the future, based in whole or in part on facts which existed on the Filing Date, together with any other claims of any kind that, if unsecured, would constitute a debt provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3; and (ii) any Restructuring Claim; provided that “Claim” shall not include any Unaffected Claim;

“**Claims Bar Date**” means 5:00 p.m. (Eastern Daylight Time) on September 28, 2011 or such other date as may be ordered by the Court;

“**Claims Procedure**” means, collectively, the claims procedure set out in the Claims and Meeting Procedure Order;

“**Claims and Meeting Procedure Order**” means the Order dated September 2, 2011, together with the schedules and appendices thereto, setting out the Claims Procedure and authorizing 437 to call the Meeting of Creditors to consider and vote on this Plan;

“**Confirmation Date**” means the date that the Sanction Order is made by the Court;

“**Court**” means the Superior Court of Québec (Commercial Division);

“**Creditor**” means any Person asserting a Claim and may, where the context requires, include the assignee of a Claim or a trustee, interim receiver, receiver, receiver and manager, liquidator or other Person acting on behalf of such Person;

“**DIP Financing**” means the interim financing provided by the Secured Lender to 437 approved by certain Orders and pursuant to (i) a DIP Loan Offer #1 made by the Secured Lender and accepted by 437 on March 17, 2011 providing for a loan by the Secured Lender to 437 in the principal amount of CDN\$1,800,000, (ii) a DIP Loan Offer #2 made by the Secured Lender and accepted by 437 on April 7, 2011 providing for a loan by the Secured Lender to 437 in the principal amount of CDN\$2,800,000 and (iii) a DIP Loan Offer #3 made by the Secured Lender and accepted by 437 on June 15, 2011 providing for a loan by the Secured Lender to 437 in the principal amount of CDN\$1,700,000;

“**Disputed Claim**” of a Creditor means the amount of the Claim of such Creditor which has not been finally determined as a Proven Distribution Claim at or before the Meeting of Creditors in accordance with the Claims Procedure or by the time distributions take place in accordance with this Plan, but that has not been extinguished or barred pursuant to the Claims Procedure;

“**Employee Priority Claims**” means the following Claims of Employees and former or inactive employees of 437:

- (a) Claims equal to the amounts that any Employees would have been qualified to receive under paragraph 136(1)(d) of the *Bankruptcy and Insolvency Act* (Canada) if 437 had become bankrupt on the Filing Date; and
- (b) Claims for wages, salaries, commissions or compensation for services rendered by them after the Filing Date and on or before the Plan Implementation Date together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the Business during the same period;

“**Employees**” means any and all present or former employees of 437 including, without limitation, any inactive employees;

“**Equity Claim**” means any and all Claims arising from or in connection with a Person’s interest in the issued and outstanding equity in the capital of 437, including with respect to any issued and outstanding common or preferred shares of 437 of every class and series, and any and all warrants, options and agreements to purchase any of the foregoing;

“**Filing Date**” means February 25, 2010, being the date that the Initial Order was issued by the Court pursuant to the CCAA;

“**Government Priority Claims**” means all Claims of Governmental Authorities in respect of amounts that are outstanding and that are of a kind that could be subject to a demand on or before the Plan Implementation Date under:

- (a) subsections 224(1.2) and 224(1.3) of the ITA;
- (b) any provision of the *Canada Pension Plan* or the *Employment Insurance Act* (Canada) that refers to subsection 224(1.2) of the ITA and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or employee’s premium or employer’s premium as defined in the *Employment Insurance Act* (Canada), or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or
- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the ITA, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:
  - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the ITA; or
  - (ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a “province providing a comprehensive pension plan” as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a “provincial pension plan” as defined in that subsection;

“**Governmental Authority**” means any domestic or foreign government, including any federal, provincial, state, territorial or municipal government, and any government department, body, ministry, agency, tribunal, commission, board, court, bureau or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government;

“**Initial Order**” means the initial order of this Court in the CCAA Proceedings dated February 25, 2010, as extended on March 26, 2010, May 25, 2010, September 15, 2010, October 29, 2010, January 18, 2011, February 17, 2011, March 10, 2011, March 31, 2011, May 19, 2011, June 16, 2011, July 14, 2011, July 21, 2011, July 29, 2011, August 5, 2011, August 18, 2011 and on August 25, 2011, and as may be further amended, extended or varied from time to time;

“**ITA**” means the *Income Tax Act* (Canada), as amended;

“**Mécanarc**” means Mécanarc Inc.;

“**Mécanarc Hypothec**” means the legal hypothec in favour of Mécanarc resulting from a notice executed under private writing on March 4, 2010 and registered at the Land Registry Office for the Registration Division of Lévis on March 3, 2010 under number 16 987 815, with a prior notice pertaining to the exercise of a hypothecary right executed under private writing on August 5, 2010 and registered in said Land Registry Office on August 5, 2010 under number 17 445 328;

“**Mécanarc Claim**” means the Claim of Mécanarc under the Mécanarc Hypothec;

“**Meeting of Creditors**” means the meeting of the Affected Creditors called for the purpose of considering and voting in respect of this Plan pursuant to the CCAA, as the same may be adjourned or rescheduled, as the case may be;

“**Monitor**” means Samson Bélair/Deloitte & Touche Inc., in its capacity as Court-appointed Monitor of 437, and any successor thereto appointed by any further Order;

“**Monitor’s Certificate of Plan Completion**” means the certificate of the Monitor to be filed with the Court declaring that all of its duties in respect of 437 pursuant to the CCAA Proceedings and this Plan have been completed;

“**Order**” means any order of the Court made in connection with the CCAA Proceedings or this Plan;

“**Pension Priority Claims**” means all Claims for the payment of any of the following amounts that, in respect of the period up to the Plan Implementation Date are due and remain unpaid to the funds established in respect of CCAA prescribed pension plans of 437:

- (a) an amount equal to the sum of all amounts that were deducted from the employees’ remuneration for payment to such funds;

- (b) if any of the CCAA prescribed pension plans is regulated by an Act of Parliament:
  - (i) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund; and
  - (ii) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*; and
- (c) in the case of any other CCAA prescribed pension plan:
  - (i) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament; and
  - (ii) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament;

**“Person”** means any individual, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, government or any agency, officer or instrumentality thereof or any other entity, wherever situate or domiciled;

**“Plan”** means this plan of compromise or arrangement pursuant to the CCAA filed by 437, as such Plan may be amended or replaced from time to time in accordance with its terms;

**“Plan Implementation Date”** means the Business Day on which this Plan becomes effective, which shall be the Business Day on which the Monitor has filed with the Court a certificate pursuant to Section 7.2 confirming that all conditions to implementation of this Plan as set forth in Section 7.1 have been satisfied;

**“Plan Implementation Fund”** means the cash pool, in the amount of One Million (\$1,000,000.00) dollars, from which, after deduction of any amounts required to pay the Unaffected Priority Claims, distributions are to be made to Affected Creditors with Proven Distribution Claims pursuant to this Plan, as more particularly described in Article 5 hereof;

**“Post-Filing Claim”** means amounts as at the Plan Implementation Date claimed as owing to a Creditor in respect of goods or services provided to 437 for the period from and after the Filing Date to the Plan Implementation Date;

**“Post-Filing Creditor”** means a Creditor with a Post-Filing Claim;

**“Proof of Claim”** means a proof of claim substantially in the form attached as Schedule “B” to the Claims and Meeting Procedure Order;

**“Proven Distribution Claim”** of a Creditor means the amount of the Affected Claim of an Affected Creditor as finally determined and accepted for distribution purposes in accordance with the Claims Procedure;

**“Proven Mécanarc Claim”** means the Mécanarc Claim if finally determined to be a valid Secured Claim;

**“Proven Post-Filing Claim”** means a Post-Filing Claim of a Post-Filing Creditor in the amount as finally determined and accepted by 437 and the Monitor;

**“Proven Voting Claim”** means the Claim of a Creditor which is accepted for voting purposes in accordance with the Claims Procedure;

**“Released Party”** has the meaning ascribed to it in Section 6.1;

**“Required Majorities”** means a majority in number of Affected Creditors with Voting Claims representing two-thirds in value of such Affected Creditors' Voting Claims with respect to the Affected Creditors Class, in each case present and voting in person or by proxy at the Meeting of Creditors;

**“Restructuring Claim”** means any claim or right of any Person against 437 in connection with any liability or obligation of any kind owed to such Person including any loss or damage incurred or arising out as a result of or in connection with the repudiation, termination or restructuring by 437 of any contract, lease or other agreement, including any employment agreement, after the Filing Date; provided that **“Restructuring Claim”** shall not include an Unaffected Claim;

**“Sale”** means the sale by 437 of substantially all of 437's assets to and the assumption of certain liabilities by 7731299 Canada Inc. pursuant to an Asset Purchase Agreement dated July 21, 2011 and Vesting Order dated July 21, 2011 issued by the Court.

**“Sanction Order”** means the Order of the Court sanctioning and approving this Plan;

**“Secured Claim”** means (i) any Claim or portion thereof which is secured by a validly attached and existing security interest in, mortgage or charge over, lien against or similar interest in the property of 437 which was duly and properly perfected at the Filing Date, including the Claim of the Secured Lender, and (ii) the DIP Financing, but in each case to the extent of the realizable value of the property subject to such security, excluding any unsecured claim in respect of any deficiency, and for greater certainty does not include any Employee Priority Claims, Government Priority Claims or Pension Priority Claims;

**“Secured Lender”** means Investissement Québec;

“**Tax**” or “**Taxes**” shall mean any and all federal, provincial, municipal, local and foreign taxes, assessments, reassessments and other governmental charges, duties, impositions and liabilities including for greater certainty taxes based upon or measured by reference to gross receipts, income, profits, sales, capital, use and occupation, goods and services, and value added, *ad valorem*, transfer, franchise, withholding, custom duties, payroll, recapture, employment, excise and property taxes, together with all interest, penalties, fines and additions with respect to such amounts;

“**Unaffected Claim**” means only the following Claims designated in this Plan (or any amendments thereto) as not being affected by this Plan and which are listed in the books and records of 437 or of which 437 and the Monitor have received actual notice:

- (i) any Claim secured by the CCAA Charges;
- (ii) any Secured Claim;
- (iii) any Claim which cannot be compromised under the terms of the CCAA;
- (iv) any Claim ordered by the Court to be treated as an Excluded Claim (as defined in the Claims and Meeting Procedure Order) under the Claims Procedure;
- (v) the Unaffected Priority Claims; and
- (vi) any Proven Post-Filing Claim.

“**Unaffected Priority Claims**” means collectively the Employee Priority Claims, the Government Priority Claims, the Pension Priority Claims and the Proven Mécanarc Claim; and

“**Unaffected Creditor**” means a Creditor who has an Unaffected Claim, but only in respect of and to the extent of such Unaffected Claim.

## 1.2 **Interpretation, etc.**

For purposes of this Plan:

- (a) all accounting terms not otherwise defined herein shall have the meanings ascribed to them, from time to time, in accordance with Canadian generally accepted accounting principles, including those prescribed by the Canadian Institute of Chartered Accountants;
- (b) all references to currency are to Canadian Dollars, except as otherwise indicated;
- (c) any reference to a contract, instrument, release, indenture, or other agreement or document as being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

- (d) any reference to an Order or to an existing document or exhibit filed or to be filed means such Order, document or exhibit as it may have been or may be amended, modified or supplemented from time to time;
- (e) any reference to a statute includes all regulations made thereunder and all amendments to such statute or regulations in force from time to time;
- (f) the division of this Plan into Articles and Sections and the use of headings are for convenience of reference only and do not affect the construction or interpretation of this Plan;
- (g) the words “hereunder”, “hereof”, “hereto” and similar expressions refer to this Plan and not to any particular Article or Section and references to “Articles” or “Sections” are to Articles and Sections of this Plan;
- (h) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan;
- (i) where the context requires, a word or words importing the singular shall include the plural and vice versa; and a word or words importing the masculine gender shall include the feminine and neuter genders and vice versa;
- (j) the words “includes” and “including” are not limiting and shall be read as “including, without limitation”;
- (k) the phrase “may not” is prohibitive and not permissive; and
- (l) the word “or” is not exclusive.

### **1.3 Date for any Action**

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends.

In the event that any date on which any action is required to be taken under this Plan by any of the parties is not a Business Day, that action shall be required to be taken by 5:00 p.m. on the next succeeding day which is a Business Day.

### **1.4 Time**

All times expressed in this Plan are local time in Québec City, Québec, unless otherwise stipulated.



## **ARTICLE 2 PURPOSE**

### **2.1 Purpose**

The purpose of this Plan is:

- (a) to provide for a compromise, settlement and orderly distribution of the net cash proceeds of the Sale;
- (b) to achieve, outside of a bankruptcy or litigation, an overall comprehensive resolution and settlement of all outstanding matters in an orderly, cost efficient and fair manner;
- (c) to avoid lengthy and costly litigation which would likely lead to a material diminishment of the assets available for distribution to the Creditors; and
- (d) to achieve a fair, reasonable and timely distribution of the assets and undertaking of 437 and to simplify the resolution of the Claims and the administration of the estate of 437.

The Plan is presented to the Creditors in the expectation that all Persons with an interest in 437 will derive a greater benefit from the implementation of the Plan than would result from a bankruptcy of 437. This Plan is designed to offer Affected Creditors the opportunity to receive an early distribution on account of their Claims with certainty in order to avoid the risk, cost and delays associated with bankruptcy and litigation and the risk that, at the end of a litigation process, there would not be recoveries on account of their Claims.

### **2.2 Affected Claims**

This Plan will be implemented under the CCAA and will become effective and binding on and after the Plan Implementation Date, and shall be binding upon 437 and all relevant Persons referred to herein, and their respective heirs, administrators, executors, legal personal representatives, successors, and assigns.

### **2.3 Unaffected Claims**

This Plan does not affect Unaffected Creditors with respect to and to the extent of their Unaffected Claims. Nothing in this Plan shall affect anyone's rights and defenses, both legal and equitable, with respect to any Unaffected Claims, including, but not limited to, all rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims.

### **ARTICLE 3 CREDITORS AND CLAIMS**

#### **3.1 Classification of Creditors**

For the purposes of voting on and receiving distributions or other treatment under the Plan, there shall be one class of Affected Creditors, being the Affected Creditors Class.

#### **3.2 Different Capacities**

Persons who are affected by this Plan may be affected in more than one capacity. Unless expressly provided herein to the contrary, a Person will be entitled to participate hereunder in each such capacity. Any action taken by a Person in one capacity will not affect such Person in any other capacity, unless expressly agreed by the Person in writing or unless its Claims overlap or are otherwise duplicative.

#### **3.3 Meeting of Creditors**

The Meeting of Creditors shall be held in accordance with the Claims and Meeting Procedure Order and this Plan.

#### **3.4 Approval by Creditors**

At the Meeting of Creditors 437 will seek approval of this Plan by the affirmative vote of the Required Majorities of Creditors in the Affected Creditors Class, in order that, subject to the sanctioning of this Plan by the Court pursuant to the CCAA and the terms hereof, this Plan becomes binding on 437 and all Persons affected by this Plan.

#### **3.5 Unaffected Claims and Cecon Claim**

Any Unaffected Creditor with an Unaffected Claim, the Secured Lender and Cecon in respect of the Cecon Claim, shall not be entitled to vote at the Meeting of Creditors or to receive any distributions under and/or in connection with this Plan in respect of such Unaffected Claim or Cecon Claim respectively.

#### **3.6 Arrangements with Secured Lender**

The arrangements between 437 and the Secured Lender in respect of its Secured Claims do not form part of, and are not affected by this Plan.

#### **3.7 Holders of Equity Claims**

Any Persons holding an Equity Claim shall not be entitled to receive any payment, compensation or distribution hereunder with respect to their Equity Claims, and any Claims that any such Persons may have that are directly or indirectly related to or are derived from such Equity Claims shall be deemed to be released in full. Any Person holding an Equity Claim shall also not be entitled to vote in respect of such Equity Claim on the Plan at a Meeting of Creditors.

## **ARTICLE 4 DISTRIBUTIONS AND PAYMENTS**

### **4.1 Distributions to Affected Creditors**

All Affected Creditors shall constitute a single class under the Plan for all purposes. Subject to Section 7.1 of the Plan, each Affected Creditor who, on the Plan Implementation Date, holds a Proven Distribution Claim will receive, in full and final satisfaction of its Proven Distribution Claim payment of an amount equal to its *pro rata* share of the Plan Implementation Fund (after satisfaction or payment of the Unaffected Priority Claims) in respect of its Proven Distribution Claim in accordance with Article 5 hereof, and such Person's Affected Claims shall be discharged and extinguished on the Plan Implementation Date, and thereafter, the only obligation of 437 in respect of the Affected Claims of such Person shall be to make the distribution on account of the Person's Proven Distribution Claim.

### **4.2 Value of Claims for Distribution Purposes**

The value of a Proven Distribution Claim shall be determined in accordance with the provisions of the Claims Procedure.

### **4.3 Interest**

Interest shall not accrue or be paid on any Affected Claim from and after the Filing Date.

### **4.4 Guarantees and Similar Covenants**

No Person who has a Claim under any guarantee, surety, indemnity or similar covenant in respect of any Claim which is compromised under this Plan or who has any right to claim over in respect of or to be subrogated to the rights of any Person in respect of a Claim which is compromised under this Plan shall be entitled to any greater rights as against 437 than the Person whose Claim is compromised under this Plan.

### **4.5 Loss of Right to Receive Distributions**

Any Creditor who has not submitted a Proof of Claim in respect of an Affected Claim prior to the Claims Bar Date shall not be entitled to vote at the Meeting of Creditors or to receive any distributions under this Plan in respect of such unsubmitted Affected Claim and on the Plan Implementation Date, such Affected Claims of such Creditor shall be released and discharged pursuant to the terms of this Plan and the Claims Procedure, and any such Creditor shall have no recourse thereafter in respect thereof. Nothing in this Plan extends or shall be interpreted as extending or amending the Claims Bar Date, or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Procedure.

#### **4.6 Distributions on Behalf of 437**

The Monitor on behalf of 437 and in satisfaction of 437's obligations under the Plan, shall distribute the amounts in the Plan Implementation Fund in accordance with this Plan and the Sanction Order in the following order and priority:

- (a) first, in satisfaction in full of the Unaffected Priority Claims; and
- (b) second, the balance of the Plan Implementation Fund on a *pro rata* basis, to the Affected Creditors in respect of their Proven Distribution Claims.

#### **4.7 Delivery of Distributions**

Distributions to holders of Proven Distribution Claims who are entitled to receive distributions pursuant to this Plan shall be made by cheque sent by prepaid ordinary mail by or on behalf of 437: (i) to the address set forth on the Proof of Claim filed by such Affected Creditors with Proven Distribution Claims, or (ii) to the addresses set forth in any written notices of address change delivered to 437 and the Monitor after the date of any related Proof of Claim. If any Affected Creditor's distribution is returned as undeliverable, no further distributions to such Affected Creditor shall be made unless and until 437 and the Monitor are notified of such Affected Creditor's then current address, at which time all missed distributions shall be made to such Affected Creditor without interest. All claims for undeliverable distributions in respect of Proven Distribution Claims must be made on or before the expiration of six (6) months following the Plan Implementation Date, after which date the Proven Distribution Claim of any Affected Creditor or successor of such Affected Creditor with respect to such unclaimed distributions shall be discharged and forever barred, notwithstanding any federal or provincial laws to the contrary, and any such undeliverable distributions shall be returned to the Monitor (without personal liability on the part of the Monitor) for distribution to the Secured Lender in respect of its Secured Claims. Nothing contained in this Plan shall require 437 or the Monitor to attempt to locate any holder of a Proven Distribution Claim.

Where a Creditor transfers or assigns ownership of any Proven Distribution Claim or part thereof after the Meeting of Creditors, neither 437 nor the Monitor shall not be obliged to pay monies to any such transferee or otherwise deal with such transferee in respect thereof unless and until actual notice of the transfer or assignment, together with satisfactory evidence of such transfer or assignment, have been received by 437 and the Monitor by 5:00 p.m. on the day that is five Business Days immediately prior to the day on which the first distribution to Affected Creditors with Proven Distribution Claims is made. Thereafter, such transferee or assignee shall, for all purposes in accordance with the Claims Procedure constitute a Creditor with a Proven Distribution Claim in respect of such Claim as a whole, and shall be bound by notices given and steps in respect of such Proven Distribution Claim.

#### **4.8 Withholding and Reporting Requirements**

In connection with this Plan and all distributions hereunder, the Monitor on behalf of 437 shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal or provincial taxing authority, with respect to distributions hereunder, if any. The Monitor on behalf of 437 shall be authorized to take any and all actions that may be

necessary or appropriate to comply with such withholding and reporting requirements. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the relevant Affected Creditor in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority. Notwithstanding any other provision of this Plan: (i) each holder of a Proven Distribution Claim that is to receive a distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed by any governmental authority, including income, withholding and other Tax obligations, on account of such distribution, and (ii) no distribution shall be made to or on behalf of such holder pursuant to this Plan unless and until such holder has made, arrangements satisfactory to the Monitor on behalf of 437 for the payment and satisfaction of such Tax obligations. Any distributions to be distributed pursuant to this Plan shall, pending the implementation of such arrangements, be treated as an undeliverable distribution pursuant to Section 4.7. It is 437's intent that distributions under this Plan to holders of Proven Distribution Claims are in respect of, and to be applied to, principal first and then interest.

## **ARTICLE 5**

### **PLAN IMPLEMENTATION FUND**

#### **5.1 Plan Implementation Fund**

Subject to Section 7.1, on or prior to the Plan Implementation Date, 437 shall deliver to the Monitor and the Monitor shall receive cash in the amount of the Plan Implementation Fund for distribution to holders of Unaffected Priority Claims and Proven Distribution Claims, in accordance with this Plan.

#### **5.2 Reserves for Disputed Claims**

In the case of any Disputed Claim that has not become a Proven Distribution Claim on the Plan Implementation Date, the Monitor will reserve sufficient cash from the Plan Implementation Fund to distribute to an Affected Creditor with a Disputed Claim its *pro-rata* share in respect of such Disputed Claim in the event that such Disputed Claim becomes a Proven Distribution Claim. If the Disputed Claim becomes a Proven Distribution Claim in whole or in part in accordance with the Claims Procedure after the Plan Implementation Date, the cash reserved in respect of such Disputed Claim (or an appropriate portion thereof) will be distributed to such Affected Creditor on account of such Proven Distribution Claim in accordance with this Plan. If the Disputed Claim is ultimately disallowed in whole or in part in accordance with the Claims Procedure after such distribution date, any cash reserved in respect of such Disputed Claim (or the appropriate portion thereof) will be distributed by the Monitor to the Affected Creditors in respect of their Affected Claims.

**ARTICLE 6**  
**RELEASES AND EXTINGUISHMENT OF CLAIMS**

**6.1 Plan Releases**

Upon the implementation of this Plan on the Plan Implementation Date, (i) 437; (ii) the Monitor and its legal counsel in the CCAA Proceedings; and (iii) all present and former directors, officers and employees, legal counsel and agents of 437 in such capacities (being herein referred to individually as a “**Released Party**”) shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, liens and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person, including the Secured Lender (in respect of each Released Party, except 437 and solely in respect of its Secured Claim) and Cecon, may be entitled to assert, including any and all Claims in respect of statutory liabilities of present and former directors, officers and employees of 437 and any alleged fiduciary or other duty, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the **[Plan Implementation Date]** in any way relating to, arising out of or in connection with Claims, the Business and affairs of 437, this Plan and the CCAA Proceedings, and all claims arising out of such actions or omissions shall be forever waived and released (other than the right to enforce 437's obligations under the Plan or any related document), all to the full extent permitted by law, provided that nothing herein:

- (a) shall release or discharge a Released Party from an Unaffected Claim or shall release or discharge 437 from or in respect of its obligations under this Plan;
- (b) shall affect the right of any Person:
  - (i) to recover indemnity from any insurance coverage under which that Person is an insured, or
  - (ii) to obtain recovery on a claim or liability against a Released Party from any insurance coverage pursuant to which that Released Party is an insured, but, for certainty, any claim or liability to which an insurer is or would otherwise be subrogated as against 437 is released hereunder and the recovery to which such Person shall be entitled under such insurance coverage shall be limited to the proceeds of insurance actually paid by the insurer with respect to the such claim or liability; or
- (c) shall release or discharge present or former directors of 437 with respect to matters set out in Section 5.1(2) of the CCAA;

and provided further, however, that, notwithstanding the foregoing releases under the Plan, any Claim shall remain subject to any right of set-off that otherwise would be available to the Person against whom such Claim is asserted.

## **6.2 Extinguishment of Claims**

As and from the Plan Implementation Date, the treatment of Affected Claims under this Plan shall be final and binding on all Persons affected by this Plan (and their respective heirs, executors, administrators, legal personal representatives, successors and assigns), and, upon implementation of this Plan on the Plan Implementation Date, all Affected Claims shall be forever discharged and released, excepting only the obligations to make distributions in respect of such Affected Claims in the manner and to the extent provided for in this Plan.

## **ARTICLE 7 PLAN PRECONDITIONS AND STEPS**

### **7.1 Conditions Precedent to Implementation of Plan**

The implementation of this Plan is subject to the following conditions precedent:

- (a) approval of this Plan by the Required Majorities of Affected Creditors;
- (b) all applicable governmental, regulatory and judicial consents, orders and any and all filings with all Governmental Authorities and other regulatory authorities having jurisdiction, in each case to the effect deemed necessary or desirable by 437 for the completion of the transactions contemplated by this Plan or any aspect thereof, shall have been obtained or received;
- (c) issuance by the Court of the Sanction Order in a form and substance satisfactory to 437, acting reasonably, providing for, *inter alia*, the following, or such other terms as may be agreed to by 437:
  - (i) a declaration and order that (i) the Plan has been approved by the Required Majorities of Affected Creditors in conformity with the CCAA; (ii) 437 has complied with the provisions of the CCAA and the Orders of the Court made in these proceedings in all respects; (iii) the Court is satisfied that 437 has not done or purported to do anything that is not authorized by the CCAA; and (iv) the Plan and the transactions contemplated thereby are fair and reasonable;
  - (ii) a declaration and order declaring that the compromises and releases set out in the Plan are approved and shall be binding and effective as of the Plan Implementation Date;
  - (iii) a declaration and order that the Plan Implementation Fund shall be held by the Monitor and distributed by the Monitor on behalf of 437 in accordance with Articles 4 and 5 of this Plan, having regard only to valid Claims that have been properly asserted by the Claims Bar Date in accordance with the applicable Claims Procedure;

- (iv) a declaration and order compromising, discharging and releasing 437 from any and all Affected Claims of any nature in accordance with the Plan, and declaring that the ability of any Person to proceed against 437 in respect of or relating to any Affected Claims shall be forever discharged and restrained, and all proceedings with respect to, in connection with or relating to such Affected Claims be permanently stayed, subject only to the right of Affected Creditors to receive distributions pursuant to the Plan in respect of their Affected Claims;
- (v) a declaration and an order declaring that any Claims for which a Proof of Claim has not been filed by the Claims Bar Date shall be forever barred and extinguished;
- (vi) an order terminating and discharging the CCAA Charges solely against the Plan Implementation Fund;
- (vii) an order staying the commencing, taking, applying for or issuing or continuing any and all steps or proceedings, including without limitation, administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceed with against any Released Party in respect of all Claims and any matter which is released pursuant to Section 6.1 herein;
- (viii) an order authorizing the Monitor to perform its functions and fulfil its obligations under the Plan to facilitate the implementation of the Plan;
- (ix) a declaration and order declaring that all distributions and payments by or at the direction of the Monitor, in each case on behalf of 437, under the Plan are for the account of 437 and the fulfillment of its obligations under the Plan;
- (x) a declaration and order declaring that upon completion by the Monitor of its duties in respect of 437 pursuant to the CCAA Proceedings, including, without limitation, the Monitor's duties in respect of the Claims and Meeting Procedure Order and distributions made by or at the direction of the Monitor in accordance with the Plan, the Monitor shall file with the Court the Monitor's Certificate of Plan Completion stating that all of its duties in respect of 437 pursuant to the CCAA Proceedings have been completed and thereupon, Samson Bélair/Deloitte & Touche Inc. shall be deemed to be discharged from its duties as Monitor of 437 and the Administration Charge shall be released; and
- (xi) a declaration and an order declaring that 437 and the Monitor may apply to the Court for advice and direction in respect of any matters arising from or under the Plan;



- (d) unless waived by 437, acting reasonably, execution and delivery of all such agreements, resolutions, documents and other instruments which are necessary to be executed and delivered by 437 to implement this Plan and perform 437's obligations hereunder;
- (e) unless waived by 437, acting reasonably, all documents, agreements, approvals, consents and releases necessary to give effect to all material provisions of this Plan shall have been executed and delivered by all relevant Persons in form and with content satisfactory to 437; and
- (f) 437, the Monitor and the Secured Lender will have agreed on the payment of any Proven Post-Filing Claim.

## **7.2 Monitor's Certificate**

Upon the satisfaction or, where permissible, waiver of the conditions set out in Section 7.1 the Monitor shall file with the Court a certificate which states that all conditions precedent set out in Section 7.1 of this Plan have been satisfied or, where permissible, waived, and that the Plan Implementation Date has occurred. In so certifying that the conditions precedent set out in Section 7.1 of this Plan have been satisfied or, where permissible waived, the Monitor shall be entitled to rely upon representations and confirmations from 437.

## **7.3 Plan Implementation Date Transactions**

Upon implementation of the Plan on the Plan Implementation Date, the following steps and transactions shall occur or be deemed to occur in the following sequence:

- (a) The Monitor shall receive the funds comprising the Plan Implementation Fund;
- (b) 437 shall pay any amounts in respect of fees or disbursements owing to the Monitor and its legal counsel and to Osler, Hoskin & Harcourt LLP, in its capacity as counsel to 437; and
- (c) the releases referred to in Section 6.1 herein shall become effective in accordance with this Plan.

# **ARTICLE 8 MISCELLANEOUS**

## **8.1 Confirmation of Plan**

Subject only to the satisfaction of those conditions precedent to the implementation of this Plan described in Section 7.1, this Plan will be implemented by 437 and will be binding upon 437 in respect of all Affected Claims.

## **8.2 Responsibilities of the Monitor**

The Monitor is acting in its capacity as Monitor in the CCAA Proceedings with respect to 437 and not in its personal or corporate capacity and will not be responsible or liable for any responsibilities or obligations of 437 under this Plan or otherwise, including with respect to the making of distributions or the receipt of any distribution of any Affected Creditor or any other Person pursuant to this Plan. The Monitor will have the powers and protections granted to it by this Plan, the CCAA, the Initial Order, the Claims and Meeting Procedure Order, the Sanction Order and any other Orders.

## **8.3 Paramourcy**

- (a) Except with respect to Unaffected Claims, from and after the Plan Implementation Date, any conflict between this Plan and the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement, loan agreement, by-laws of 437, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between one or more of the Creditors and 437 as at the Plan Implementation Date will be deemed to be governed by the terms, conditions and provisions of this Plan and the Sanction Order, which shall take precedence and priority. All Affected Creditors shall be deemed irrevocably for all purposes to consent to all transactions and steps contemplated in this Plan.
- (b) In the event of any conflict, inconsistency, ambiguity or difference between the English version of this Plan and the French translation thereof, the English version shall govern and be paramount, and the applicable provision in the French translation thereof shall be deemed to be amended to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference.

## **8.4 Compromise Effective for all Purposes**

The payment, compromise or other satisfaction of any Affected Claim under this Plan, if sanctioned and approved by the Court, shall be final and binding upon Affected Creditors, their heirs, executors, administrators, legal personal representatives, successors and assigns and, upon the Plan Implementation Date, this Plan shall result in:

- (i) a full, final and absolute settlement of all rights of the Affected Creditors; and
- (ii) an absolute release and discharge of all indebtedness, liabilities and obligations of 437 in respect of all Affected Claims.

## **8.5 Modification of Plan**

437 reserves the right, at any time and from time to time, but subject to the consent of the Monitor, to amend, modify and/or supplement this Plan, provided that any such amendment, modification or supplement must be contained in a written document which is filed with the Court and (i) if made prior to the Meeting of Creditors, communicated to the Affected Creditors

at the Meeting of Creditors or as otherwise required by the Court (if so required); and (ii) if made following the Meeting of Creditors, approved by the Court.

Any amendment, modification, or supplement may be made following the Confirmation Date by 437 with the consent of the Monitor, provided that if it concerns a matter which, in the opinion of 437 and the Monitor, acting reasonably, is of an administrative nature required to better give effect to the implementation of this Plan and the Sanction Order and is not adverse to the financial or economic interests of the Creditors; provided, however, that any such amendment, modification, or supplement must be filed with the Court within ten days after its implementation.

Any supplementary plan or plans of compromise or arrangement filed with the Court and, if required by this Section 8.5, approved by the Court, shall, for all purposes, be and be deemed to be a part of and incorporated in this Plan.

## **8.6 Consents, Waivers and Agreements**

As at 12:01 a.m. on the Plan Implementation Date, each Affected Creditor shall be deemed to have consented and to have agreed to all of the provisions of this Plan as an entirety. In particular, each such Creditor shall be deemed:

- (a) to have executed and delivered to 437 all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Plan as an entirety;
- (b) to have waived any and all defaults then existing or previously committed by 437 in any covenant, warranty, representation, term, provision, condition or obligation, expressed or implied, in any contract, agreement, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral and any and all amendments or supplements thereto, existing between any such Creditor and 437 and any and all notices of default and demands for payment under any instrument, including, without limitation any guarantee, shall be deemed to have been rescinded; and
- (c) to have agreed that, if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Creditor and 437 as at such time (other than those entered into by 437 on, or with effect from, such time) and the provisions of this Plan, then the provisions of this Plan take precedence and priority and the provisions of such agreement or other arrangement are amended accordingly.

In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

## 8.7 Notices

Any notices or communications to be made or given hereunder shall be in writing and shall refer to this Plan and may, subject as hereinafter provided, be made or given by personal delivery, by courier, by prepaid ordinary mail or by telecopier addressed to the respective parties as follows:

- (a) Osler, Hoskin & Harcourt LLP, in its capacity as counsel to 4370422 Canada Inc.

1000 De La Gauchetière Street West  
Suite 2100  
Montréal, Québec  
H3B 4W5  
Attention: Sandra Abitan and Martin Desrosiers  
Facsimile: (514) 904-8101

- (b) if to a Creditor:

- (i) to the address for such Creditor specified in the Proof of Claim filed by a Creditor or,  
(ii) at the address set forth in any written notice of address changes delivered to the Monitor after the date of delivery of any related Proof of Claim.

- (c) if to the Monitor:

Samson Bélair/Deloitte & Touche Inc.  
In its capacity as Court-appointed Monitor of 4370422 Canada Inc., formerly known as Davie Yards Inc./Chantiers Davie Inc.

1 Place Ville Marie, Suite 3000  
Montreal, QC  
H3B4T9  
Attention: Pierre Laporte  
Facsimile: (514) 393-5344

with a copy to:

McCarthy Tetrault  
1000 De La Gauchetière Street West  
Suite 2500  
Montreal, QC  
H3B 0A2  
Attention: Mason Poplaw  
Facsimile: (514) 875-6246

or to such other address as any party may from time to time notify the others in accordance with this Section 8.7. In the event of any strike, lock-out or other event which interrupts postal service in any part of Canada, all notices and communications during such interruption may only be given or made by personal delivery or by telecopier and any notice or other communication given or made by prepaid mail within the five (5) Business Day period immediately preceding the commencement of such interruption, unless actually received, shall be deemed not to have been given or made. All such notices and communications shall be deemed to have been received, in the case of notice by telecopier or by delivery prior to 5:00 p.m. (local time) on a Business Day, at the time of delivery or, if delivered after 5:00 p.m. (local time) on a Business Day or at any time on a non-Business Day, on the next following Business Day and, in the case of notice mailed as aforesaid, on the fourth Business Day following the date on which such notice or other communication is mailed. The unintentional failure by 437 to give notice contemplated hereunder to any particular Creditor shall not invalidate this Plan or any action taken by any Person pursuant to this Plan.

### **8.8 Severability of Plan Provisions**

If, prior to the Confirmation Date, any term or provision of this Plan is held by the Court to be invalid, void or unenforceable, the Court, at the request of 437, shall have the power to either (i) sever such term or provision from the balance of this Plan and provide 437 with the option to proceed with the implementation of the balance of this Plan as of and with effect from the Plan Implementation Date, or (ii) alter or interpret such term or provision to make it valid and enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such severing, holding, alteration or interpretation, and provided 437 proceeds with the implementation of this Plan, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such severing, holding, alteration or interpretation.

### **8.9 Revocation, Withdrawal, or Non-Consummation**

437 reserves the right to revoke or withdraw this Plan at any time prior to the Confirmation Date or to file subsequent or amended plans of compromise or arrangement. If 437 revokes or withdraws this Plan, or if the Sanction Order is not issued, (i) this Plan shall be null and void in all respects, (ii) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain any Claim or Claims), or any assumption, termination or repudiation of executory contracts or leases effected by this Plan, and any document or agreement executed pursuant to this Plan shall be deemed null and void, and (iii) nothing contained in this Plan, and no acts taken in preparation for consummation of this Plan, shall (a) constitute or be deemed to constitute a waiver or release of any Claims by or against 437 or any other Person; (b) prejudice in any manner the rights of 437 or any other Person in any further proceedings involving 437; or (c) constitute an admission of any sort 437 or any other Person.

### **8.10 Further Assurances**

Notwithstanding that the transactions and events set out in this Plan shall occur and be deemed to occur in the order set out herein without any additional act or formality, each of the

Persons affected hereby shall make, do and execute, or cause to be made, done and executed at the cost of the requesting party, all such further acts, deeds, agreements, transfers, assurances, instruments or, documents as may reasonably be required by 437 in order to better implement this Plan.

**8.11 Successors and Assigns**

This Plan shall be binding upon and shall enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in, or subject to, this Plan.

**8.12 Governing Law**

This Plan shall be governed by and construed in accordance with the laws of the Province of Québec and the federal laws of Canada applicable therein. Any questions as to the interpretation or application of this Plan and all proceedings taken in connection with this Plan and its provisions shall be subject to the exclusive jurisdiction of the Court.

**DATED** as of the 4th day of October , 2011.