

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)
(sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, R.S.C.
1985, c. C-36, as amended)

No.: 500-11-041305-117

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

**1810040 ALBERTA LTD. (formerly known as
HOMBURG INVEST INC. and HOMBURG
SHARECO INC.) et al.**

Debtors

-and-

1808005 NOVA SCOTIA LIMITED, with its
registered address at 1682 Hollis Street, Halifax,
Nova Scotia, B3J 2R7;

Respondent

-and-

DELOITTE RESTRUCTURING INC.

Monitor/Petitioner

-and-

THE HALIFAX CLUB, with a place of business
located at 1682 Hollis Street, Halifax, Nova Scotia,
B3J 2P8;

Mis-en-Cause

**MOTION FOR THE PAYMENT TO THE MONITOR OF CERTAIN SUMS OWED TO 1810040
ALBERTA LTD. IN RESPECT OF DEBENTURES ISSUED BY THE HALIFAX CLUB**
(Section 11 of the *Companies' Creditors Arrangement Act*)

**TO THE HONOURABLE JUSTICE LOUIS J. GOUIN OF THE SUPERIOR COURT, SITTING
IN COMMERCIAL DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE
PETITIONER RESPECTFULLY SUBMIT AS FOLLOWS:**

I. PROCEDURAL BACKGROUND

1. On September 9, 2011, 1810040 Alberta Ltd. (formerly known as Homburg Invest Inc. and Homburg Shareco Inc.) ("**HII**"), along with certain related parties, filed and obtained protection from their respective creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to an order rendered by the Superior Court of Quebec (the "**CCAA Court**") (as amended from time to time, the "**Initial Order**");
2. Pursuant to the Initial Order, Deloitte Restructuring Inc. (formerly known as Samson Bélair/Deloitte & Touche Inc.) (the "**Monitor**") was appointed as court-appointed monitor in the CCAA proceedings.;

3. On February 5, 2013, HII filed a plan of compromise and reorganization under the CCAA, which plan has since been amended from time to time (as amended from time to time and as it may be further amended, the "**Plan**");
4. On May 30, 2013, the required majority of creditors of HII voted in favour of the Plan and, on June 5, 2013, the CCAA Court rendered an order approving and sanctioning the Plan (the "**Sanction Order**");
5. Between March 24 and March 27, 2014, in accordance with the Plan and the Sanction Order, the implementation of the Plan took place (the "**Plan Implementation Date**");
6. The Plan provides *inter alia* for the creation of an "Asset Realization Cash Pool" in which the "Non-Core Business Asset Net Proceeds" are deposited, for the ultimate benefit of HII's creditors under the Plan;
7. The Sanction Order (paragraph 85 in particular) *inter alia* grants the Monitor exclusive authority and power to deal with the "Non-Core Business Assets", including to execute, assign, issue and endorse documents of whatever nature in respect of any of the Non-Core Business Assets, whether in the Monitor's name or in the name and on behalf of HII;
8. The Monitor respectfully asks the CCAA Court to issue an order for the payments of sums owed to HII in respect of such "Non-Core Business Assets", namely in respect of certain debentures issued by the The Halifax Club in 2007;

II. PAYMENT TO THE MONITOR OF SUMS OWED TO HII IN RESPECT OF DEBENTURES ISSUED BY THE HALIFAX CLUB

9. The Monitor has been informed that, in November or December 2007, 50 secured subordinated debentures numbered D82 to and including D131 due December 31, 2014, each for the principal amount of \$5000 (and for a total amount of \$250,000) and bearing interest at a rate of 6% per annum, were issued to HII by The Halifax Club (respectively, the "**Club**" and the "**Halifax Club Debentures**");
10. Under the terms of a Deed of Trust made between Club and 1808005 Nova Scotia Limited, the latter acts as trustee to the Halifax Club Debentures (the "**Trustee**");
11. A copy of the the 50 Halifax Club Debentures held by HII could not be retrieved, but the Monitor is informed by the Trustee that such debentures are part of series of debentures issued by the Club that are in form and substance similar to the one numbered D69 filed herewith as Exhibit **M-1**;
12. In May 2015, Mr. Matthew Harris, a representative of Deloitte in Halifax, was contacted by the Trustee in respect of the refinancing of the Halifax Club Debentures;
13. The Trustee confirmed to the Monitor that HII is still the registered holder of the 50 Halifax Club Debentures and HII, through Mr. Jamie Miles, confirmed to the Monitor that, to the best of his knowledge, such debentures had not been transferred or assigned;
14. While there is no dispute that HII is the holder of the Halifax Club Debentures, the original certificates could not be found by HII;

15. On or about July 29, 2015, the real property owned by the Club was sold and the amount required to pay out the amounts secured by the Deed of Trust up to and including July 29, 2015 was paid to the Trustee for disbursement to the debenture holders, including HII;
16. As a condition for the disbursement to the debenture holders, the Trustee has requested that the debenture holders remit the original debentures for surrender and cancellation together with a letter releasing the Trustee and the Club on payment of the amount due;
17. The sum owed to HII in connection with the Halifax Club Debentures, in principal and accrued interests up to July 29, 2015, amounts to \$273,630.14;
18. Considering the loss of the original certificates, the Trustee has agreed to disburse to the Monitor the sum of \$273,630.14 following the issuance of an Order by the CCAA Court discharging the Trustee and the Club from any and all further liability in respect of the 50 Halifax Club Debentures registered under the name of HII, on payment of said amount to the Monitor, as appears from a copy of an email sent by the Trustee's attorney on August 24 2015, communicated herewith as Exhibit **M-2**;

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT:

GRANT the present *Motion for the Payment to the Monitor of Certain Sums Owed to 1810040 Alberta Ltd. in Respect of Debentures Issued by The Halifax Club*;

ORDER 1808005 Nova Scotia Limited to pay the amount of \$273,630.14 to the Monitor and **DECLARE** that, upon such payment, 1808005 Nova Scotia Limited and The Halifax Club will be discharged from any and all further liability to 1810040 Alberta Ltd. in respect of the debentures numbered D82 to and including D131;

THE WHOLE WITHOUT COSTS, save in the event of contestation.

MONTREAL, August 27, 2015


MCCARTHY TETRAULT LLP
Attorneys for the Monitor

AFFIDAVIT

I the undersigned, Jean-François Nadon, President of Deloitte Restructuring Inc., domiciled and residing for the purpose hereof at 1190 Avenue des Canadiens-de-Montréal, Suite 500, Montréal, QC H3B 0M7, solemnly declare the following:

1. I am a duly authorized representative of Deloitte Restructuring Inc. in its capacity of Monitor to Homburg Invest Inc. et als.;
2. All the facts alleged in the *Motion for the Payment to the Monitor of Certain Sums Owed to 1810040 Alberta Ltd. in Respect of Debentures Issued by The Halifax Club* are true.

AND I HAVE SIGNED



Jean-François Nadon

SWORN BEFORE ME AT THE CITY OF
TORONTO ON THE 27th DAY OF AUGUST 2015



COMMISSIONER FOR TAKING AFFIDAVITS

Anna Koroneos, a Commissioner, etc.,
Province of Ontario
for Deloitte Restructuring Inc.,
Trustee in Bankruptcy,
Expires July 10, 2016.

NOTICE OF PRESENTATION

TO : **SERVICE LIST**

Carl Holm, Q.C.
WICKWIRE HOLM, Barristers & Solicitors
2100-1801 Hollis Street
PO Box 1054
Halifax, Nova Scotia, B3J 2X6

Attorneys for 1808005 Nova Scotia Limited

Joanne Bouchard
THE HALIFAX CLUB
1682 Hollis Street
Halifax, Nova Scotia, B3J 2P8

President, The Halifax Club

TAKE NOTICE that the *Motion for the Payment to the Monitor of Certain Sums Owed to 1810040 Alberta Ltd. in Respect of Debentures Issued by The Halifax Club* will be presented for hearing and allowance in the Superior Court, Commercial Division, at the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on **August 31, 2015, at a time to be determined in room 16.12.**

PLEASE ACT ACCORDINGLY.

MONTRÉAL, August 27, 2015



MCCARTHY TÉTRAULT LLP
Attorneys for the Monitor

CANADA
PROVINCE OF QUÉBEC
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B3J 2P8

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LIST OF EXHIBITS

(MOTION FOR THE PAYMENT TO THE MONITOR OF CERTAIN SUMS OWED TO 1810040 ALBERTA LTD. IN RESPECT OF
DEBENTURES ISSUED BY THE HALIFAX CLUB)

Exhibit M-1: Copy of debenture D69 (sample);
Exhibit M-2: Copy of an email from the Trustee's attorneys dated August 24, 2015;

MONTREAL, August 27, 2015


MCCARTHY TETRAULT LLP
Attorneys for the Monitor

EXHIBIT M-1

THE HALIFAX CLUB

COPY

(Incorporated pursuant to Chapter 79 of Acts of Nova Scotia of 1862)

6% SECURED SUBORDINATED DEBENTURE DUE DECEMBER 31, 2014

Cdn. \$5,000

No. D-69

1. Promise to Pay

The Halifax Club (the "Club") for value received promises to pay to or to the order of [REDACTED] (the "Holder") at 1568 Hollis Street, Suite 100, Halifax, Nova Scotia or as otherwise directed in writing by the Holder, the principal amount of \$5,000 in the manner provided below, together with interest thereon as is hereinafter provided and all other moneys which may from time to time be owing hereunder. All payments to be made by the Club hereunder shall be made in Canadian dollars. All such payments shall be made in immediately available funds and received by the Holder not later than 2:00 p.m. (Halifax time) on the due date for such payment. Whenever any payment hereunder is due on a day which is not a business day in Halifax, Nova Scotia, the due date thereof shall be extended to the next succeeding business day.

2. Principal Payments

Subject to the provisions of this Debenture, the principal amount of this Debenture, together with interest thereon and all other moneys owing thereunder, shall become due and payable on December 31, 2014.

3. Interest

Interest shall accrue from the date hereof on the balance from time to time outstanding of the principal amount of this Debenture, and on any accrued but unpaid interest thereon and on any other moneys due and payable hereunder, both before and after maturity, default or judgment, at the rate of 6% per annum, calculated and payable annually, in arrears, on the last day of December in each year commencing with December 31, 2008.

4. Prepayment

The Club may, at any time when not in default hereunder, on thirty days' notice in writing to the Holder, prepay all or any portion of the principal amount outstanding hereunder without penalty or bonus, provided that such prepayment shall not result in any breach by the Club or any default by the Club under the terms and conditions of this Debenture. Any portion of the principal amount outstanding hereunder designated by such notice for prepayment shall become due and payable, together with all accrued and unpaid interest on such portion of principal, on the date specified for prepayment in such notice.

5. Subordination

The indebtedness evidenced by this Debenture is a direct obligation of the Club, issued or issuable pursuant to and secured by a deed of trust and mortgage dated November 9th, 2007 in the aggregate principal amount of \$750,000.00 (the "Deed of Trust") in favour of 1808005 Nova Scotia Limited as trustee (the "Trustee"), ranks pari passu with and is secured equally and rateably with all other Debentures now or hereinafter certified and issued pursuant to the Deed of Trust and is subordinated in right of payment to (i) all indebtedness of the Club to the holders of outstanding bonds issued upon deeds of trust and mortgage (the Prior Charge) in favour of the Eastern Trust Company registered on August 10, 1926 at the Registry of Deeds at Halifax in Book 614 at pages 82 and 153 respectively upon which the financial statements of the Club disclose indebtedness of \$2,950.00 as of September 30, 2006; and (ii) the prior payment of all indebtedness of the Club to any Canadian chartered bank, whether outstanding at the date of this Debenture or thereafter created, incurred, assumed or guaranteed and by its acceptance hereof the Holder acknowledges and agrees that the indebtedness evidenced by this Debenture is so subordinated.

6. Covenants

The Club covenants and agrees with the Holder that from and after the date of this Debenture until all amounts due and payable under this Debenture are paid in full, the Club shall:

- (i) do or cause to be done all things necessary to keep in full force and effect its corporate existence and all rights, franchises, licenses and qualifications to carry on its business or to own property in each jurisdiction in which it carries on a material part of its business or owns material property;
- (ii) maintain insurance of such type, in such amounts and against such risks as is customary in the case of companies engaged in a similar business and similarly situated as the Club, with reputable insurers;
- (iii) duly and punctually pay or cause to be paid all principal, interest and other amounts payable by the Club under this Debenture on the dates, at the places and in the moneys and manner set forth herein;
- (iv) promptly advise the Holder of the occurrence of any Event of Default or any event which, with the giving of notice or the passage of time or both, would constitute an Event of Default; and
- (v) furnish to the Holder within one hundred and twenty days of the end of each fiscal year of the Club a copy of financial statements of the operations of the Club.

7 Events of Default

The whole of the principal balance remaining unpaid together with interest and all other moneys evidenced by this Debenture shall, at the option of the Holder, become immediately due and payable in each of the following events (each event being herein called an "Event of Default"):

- (a) if the Club defaults in payment of the principal or interest on this Debenture when the same becomes due and payable and such default shall continue for a period of 365 days after notice of such default is given by the Holder to the Club;
- (b) if the Club defaults in the performance or observance of any covenant or condition contained in the Deed of Trust and such default has not been waived by the Trustee upon the requisite consent of the holders of 66% of all outstanding Debentures secured by the Deed of Trust in accordance with the provisions thereof;
- (c) if an order is made or a resolution passed for the winding-up of the Club or notice of intention to make a proposal is filed or a proposal is made by the Club to its creditors under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, or a petition is filed by or against the Club or an authorized assignment is made by the Club under the *Bankruptcy and Insolvency Act*, or a receiver or agent is appointed in respect of the Club under any bankruptcy or insolvency legislation or by or on behalf of a secured creditor of the Club or an application is made under the *Companies' Creditors' Arrangement Act*, R.S.C. 1985, c. C-36, or any successor or similar legislation;
- (d) if an order is made or the Club takes any corporate proceedings for its dissolution or liquidation or if the corporate existence of the Club shall be terminated or dissolved by expiration, forfeiture or otherwise.

8. Enforcement

Upon the occurrence and during the continuance of any Event of Default, the Holder may proceed to enforce its rights by any action, suit, remedy or proceedings authorized or permitted by law or by equity, may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have its claims lodged in any bankruptcy, winding-up or other judicial proceeding relative to the Club, and may enforce its rights and remedies under the Deed of Trust then held by the Trustee for the benefit of the Holder for the obligations hereunder. Such rights of the Holder shall be in addition to any other rights, powers and remedies which otherwise may be available to it at law or in equity.

9. Discharge and Satisfaction

Upon payment by the Club to the Holder of all moneys due and payable hereunder, this Debenture shall cease and become null and void and the Holder shall upon the request and at the expense of the Club, execute and deliver to the Club a full release and discharge. By its acceptance hereof the Holder acknowledges and agrees that the Trustee may without the further consent of the Holder, upon the request of the Club from time to time, grant partial releases of specific assets of the Club in accordance with the terms of the Deed of Trust from the charges and security interests created by the Deed of Trust upon receipt of evidence satisfactory to the Trustee that the appraised value of assets of the Club remaining after such partial release is a minimum of two times the amount then outstanding upon all the Debentures secured by the Deed of Trust.

10. Notice

Any notice required or permitted to be given hereunder shall be in writing and shall be effectively given if:

- (a) delivered personally;
- (b) sent by prepaid courier service or registered mail; or
- (c) sent prepaid by telecopier, telex or other similar means of electronic communication (confirmed on the same or following day by registered mail),

in the case of the Club to: 1682 Hollis Street
 Halifax, Nova Scotia
 Attention: President

in the case of the Holder to: P.O. Box 367
 Halifax NS B3J 2P8

and in all cases so delivered personally or by courier or so sent by means of electronic communication (so confirmed). Any notice so given shall be deemed conclusively to have been given and received when so personally delivered or sent by telecopier or other electronic communication or on the fifth day following the sending thereof by registered mail, provided, however, that in the event delivery by mail is likely to be delayed by strike or slow down of postal workers, notice shall be given by one of the other means. Either the Club or the Holder may change any particulars of its address for notice by notice to the others in the manner aforesaid.

11. No Merger or Novation

No judgment obtained in respect of this Debenture shall operate to extinguish the liability of the Club to pay the moneys due and payable hereunder nor shall the same operate as a merger of any covenant herein contained or affect the right of the Holder to interest hereunder, nor shall the acceptance of any payment constitute or create any novation.

12. Extensions and Amendments

Any agreement for the extension of the time of payment of the moneys due and payable hereunder or any part thereof made at, before or after maturity, and prior to the execution of a discharge or release of this Debenture, or any agreement for altering the term, rate of interest (whether increased or decreased), the amount of the principal payments hereunder or any other covenant or condition hereof, need not be registered in any office of public record but shall be effectual and binding upon the Club when executed by the Club and delivered to the Holder.

13. No Partnership

Each of the Holder and the Club disclaims any intention to create a partnership and each asserts that the relationship between them is that of a creditor and debtor, respectively.

14. Mutilation, Loss, etc.

If this Debenture shall become mutilated or be lost, destroyed or stolen, the Club shall, upon the written request of the Holder, issue a new Debenture of like date and tenor upon surrender and cancellation of the mutilated Debenture or, in the case of a lost, destroyed or stolen Debenture, in lieu of and in substitution for the same. In the case of loss or destruction or theft, the Holder shall furnish to the Club such evidence of such loss or destruction or theft as shall be satisfactory to the Club in its discretion and shall also furnish an indemnity in form satisfactory to the Club.

15. Transferability

Neither this Debenture or any right of the Holder hereunder may be transferred to any person other than the spouse of the Holder or to a corporation of which a majority of the voting securities are beneficially owned by the Holder or, upon receipt of the prior consent in writing of the Board of the Club, to a member of the Club other than the Holder. Any transfer of this Debenture must comply with the conditions prescribed in the Deed of Trust.

16. Governing Law

This Debenture shall be governed by and construed in accordance with the laws of the Province of Nova Scotia.

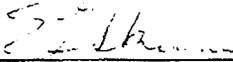
17. Binding Effect

This Debenture shall enure to the benefit of the Holder and its successors and permitted assigns. This Debenture is binding upon the Club and its successors and assigns.

IN WITNESS WHEREOF the Club has executed this Debenture on the 3rd day of December, 2007.

THE HALIFAX CLUB

Per: 
Name: W.N. Hardman
Title: President

Per: 
Name: E. G. Ward Skinner
Title: Treasurer

The Holder by execution hereof acknowledges and agrees to the above terms and agrees to the subordination of the indebtedness evidenced by this Debenture in accordance with paragraph 5 hereof and agrees to execute such confirmations of subordination as may be required from time to time by the lawful holder of the Prior Charge and/or the Canadian chartered bank to whom the Club is indebted.



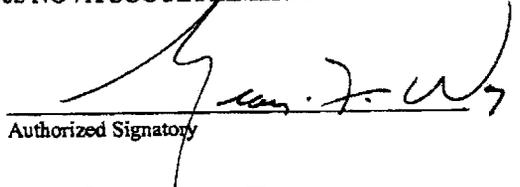
Name: 
Title: President

TRUSTEE'S CERTIFICATE

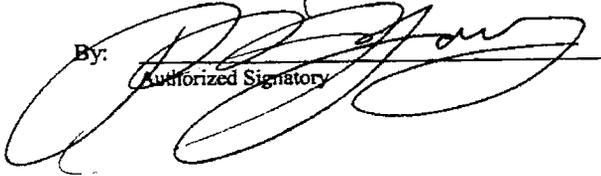
This Debenture is one of the Debentures referred to in the within-described Deed of Trust.

1808005 NOVA SCOTIA LIMITED

By:


Authorized Signatory

By:


Authorized Signatory

No. D-69

THE HALIFAX CLUB

ISSUED TO:



SUBORDINATED DEBENTURE

Brian MacLellan
WICKWIRE HOLM
2100-1801 Hollis Street
PO Box 1054
Halifax NS B3J 2X6

EXHIBIT M-2

Petit, Linda

De: Perreault, Jocelyn
Envoyé: Monday, August 24, 2015 4:57 PM
À: Deslandres, Nicolas
Objet: FW: The Halifax Club and Debentures issued to Hombur Invest Inc

From: Carl Holm [<mailto:cholm@wickwireholm.com>]
Sent: Monday, August 24, 2015 16:49
To: Nadon, Jean-Francois (CA - Montreal) (jnadon@deloitte.ca); Perreault, Jocelyn
Cc: Carl Holm
Subject: The Halifax Club and Debentures issued to Hombur Invest Inc

Dear Jean-Francois and Jocelyn;

This is to confirm our t/c of a few moments ago.

I am solicitor for 1808005 Nova Scotia Limited , the Trustee under a Deed of Trust made between The Halifax Club (the "Club") and 1808005 Nova Scotia Limited as Trustee (the "Trustee") to secure Debentures issued by the Club by providing a charge against the Club's real property on Hollis Street in Halifax.

The real property owned by the Club was sold on July 29, 2015. The amount required to pay out amounts secured by the Deed of Trust to and including July 29,2015 was paid to the Trustee for disbursal to debenture holders. I have been asked by the Trustee to arrange for disbursal of the proceeds to the debenture holders.

Debentures were issued by the Club each for the principal amount of \$5000. The Debenture Register maintained by the Club indicates that Debentures numbered D82 to and including D131 in the total principal amount of \$250,000 were issued in November of 2007 to Homburg Invest Inc. I am advised by Mr. Ross Landers , C.A. CAIP of the Halifax accounting and insolvency firm Green Landers , who has been assisting the Trustee, that the amount due on account of the debentures issued to Homburg Invest Inc. is \$273,630.14 comprised of principal of \$250,000, 2014 accrued but unpaid interest of \$15,000. And interest from January 1, 2015 to and including July 29,2015.

Homburg Invest Inc. is currently in CCAA proceedings, Deloitte is the Monitor.

After making inquiry of Homburg Invest Inc. you advise that the original debentures cannot be found.

As discussed in my opinion an Order issued by the CCAA Court directing the Trustee and the Club to pay the sum of \$273,630.14 to such person(s) as the court may direct and discharging the Trustee and the Club from any and all further liability in respect of the Debentures issued to Homburg Invest Inc. or pursuant to the Deed of Trust on payment of the \$273,630.14 as directed by the court would permit me to disburse the funds due to Homburg Invest Inc.

If there is any additional information you require to support an application for such an order please advise.

With Best Regards

Carl

Carl A. Holm, Q.C.

2100 - 1801 Hollis Street
PO Box 1054
Halifax NS B3J 2X6
Direct 902.482.7001
Tel 902.429.4111 ext. 329 | Fax 902.429.8215
cholm@wickwireholm.com | wickwireholm.com


wickwire holm
BARRISTERS SOLICITORS



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N° : 500-11-041305-117

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MIS-EN-CAUSE

-AND-

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MONITOR/PETITIONER

-AND-

THE HALIFAX CLUB

MIS-EN-CAUSE

**MOTION FOR THE PAYMENT TO THE MONITOR
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ALBERTA LTD. IN RESPECT OF DEBENTURES
ISSUED BY THE HALIFAX CLUB**

ORIGINAL

**Mtre Mason Poplaw / Mtre Jocelyn Perreault
(514-397-4155 / 514-397-7092)
Our file : 783416-437027**

BC0847

McCarthy Tétrault S.E.N.C.R.L., s.r.l.

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Barristers & S**

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Montréal (Québec) H3B 0A2

Tél. : 514 397-4100 / Téléc. : 514 875-6246