

**IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL DISTRICT OF MIRAMICHI**

IN THE MATTER OF THE RECEIVERSHIP OF:

**ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC.,
ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON
CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD.,
DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM
TECHNOLOGIES INC.**

**PURSUANT TO Section 33 of The *Judicature Act*, R.S.N.B. 1973, Ch. J-2, Rule 41, Rules of
Court, New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.
B-3**

BETWEEN:

**THE BANK OF NOVA SCOTIA, a Canadian chartered bank
with a registered office in the City of Saint John, Province of
New Brunswick**

APPLICANT

- and -

**ATCON GROUP INC., ATCON HOLDINGS INC., ATCON
PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS
INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION
INC., ATCON MANAGEMENT SERVICES INC., ATCON
CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON
STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC.,
all of which are carrying on business in the Province of New
Brunswick**

RESPONDENTS

RECORD ON MOTION

**ON BEHALF OF THE MOVING PARTY,
ERNST & YOUNG INC., for the motion returnable
Wednesday June 30, 2010 at 9:30 a.m. AST**

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JUDICIAL DISTRICT OF MIRAMICHI**

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RESPONDENTS

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TAB 1

COURT FILE NO.: N/M/17/10

IN THE COURT OF QUEEN'S BENCH
OF NEW BRUNSWICK

IN BANKRUPTCY AND INSOLVENCY

JUDICIAL DISTRICT OF MIRAMICHI

COUR DU BANC DE LA REINE
DU NOUVEAU-BRUNSWICK

DIVISION DE PREMIERE
INSTANCE

CIRCONSCRIPTION
JUDICIAIRE DE MIRAMICHI

**IN THE MATTER OF THE
RECEIVERSHIP OF:**

**ATCON GROUP INC., ATCON
HOLDINGS INC., ATCON PROPERTY
HOLDINGS INC., ATCON VENEER
PRODUCTS INC., ATCON LOGISTICS
INC., ATCON CONSTRUCTION INC.,
ATCON MANAGEMENT SERVICES
INC., ATCON CIVIL LTD., DYCON
CONSTRUCTION LTD., ATCON
STRUCTURES INC. AND ENVIREM
TECHNOLOGIES INC.**

**PURSUANT TO Section 33 of The
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Rule 41, Rules of Court, New Brunswick
and Section 243 of the *Bankruptcy and
Insolvency Act*, R.S.C. 1985, c. B-3**

BETWEEN:

**THE BANK OF NOVA SCOTIA, a Canadian
chartered bank with a registered office in the
City of Saint John, Province of New
Brunswick**

(Applicant)

ENTRE:

-and-

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC. all of which are carrying on business in the Province of New Brunswick

(Respondents)

- and -

IN THE MATTER OF THE APPLICATION OF ERNST & YOUNG INC. in its capacity as Court-appointed receiver and receiver and manager of the property, assets and undertakings of the Respondents.

NOTICE OF MOTION
(FORM 37A)

AVIS DE MOTION
(FORMULE 37A)

TO:

DESTINAIRE:

The Persons on the Service List attached hereto as **Schedule "A"** to this Notice of Motion

Ernst & Young Inc. in its capacity as receiver and receiver and manager of the property, assets and undertakings of the Respondents (the "**Receiver**") will apply to the Court of Queen's Bench, at 673 King George Highway, Miramichi, New Brunswick, at 9:30 a.m. on Wednesday June 30, 2010 for the following relief:

Le demandera à la Cour à

le , à :

(a) an Order, *inter alia*:

- i) abridging and validating the timing and method of service of the Notice of Motion, the Receiver's Fourth Report to the Court dated June 25, 2010 (the "**Fourth Report**") and the Record on Motion, if necessary, so that this Motion is properly returnable and further service is dispensed with;
- ii) approving the Pennecon Settlement Agreement (as defined herein) and the execution of the Pennecon Settlement Agreement by the Receiver;
- iii) authorizing and empowering the Receiver to:
 - a. pay a portion of the Pennecon Amount (as defined herein), in the amount of \$268,223.77, to Canada Revenue Agency ("**CRA**") in connection with the HST Requirement to Pay (as defined herein); and;
 - b. utilize the balance of the Pennecon Amount, in the amount of \$2,954,161.23, for the purpose of making payments (including interim payments) required or permitted by the Receivership Order

(b) such further and other relief as may be just.

The grounds upon which the Receiver relies are as follows:

1. The relief sought by the Receiver is appropriate in the circumstances and is in accordance with the provisions of the Receivership Order, the jurisdiction of the Court under the *Bankruptcy and Insolvency Act* and the inherent jurisdiction of the Court;
2. The Receiver has confirmed that, as of May 1, 2010, the aggregate amount of \$3,558,810.55 was owing to Atcon Construction by Pennecon Heavy Civil Ltd. ("**PHCL**") with respect to equipment rentals and management services provided to April 30, 2010 under an agreement dated June 1, 2009 (the "**Pennecon Receivable**");
3. The Receiver has entered into a settlement agreement dated May 27, 2010 with PHCL, Pennecon Atcon Limited Partnership and Penney Construction Ltd. (the "**Pennecon Settlement Agreement**"), which provides for payment of \$3,222,385 to the Receiver (the "**Pennecon Amount**") and establishes a mechanism to resolve disputes concerning the balance of the Pennecon Receivable;
4. The Receiver is of the view that the Pennecon Settlement Agreement represents a fair and reasonable settlement of the matters relating to the Pennecon Receivable, since if the Pennecon Settlement Agreement was not entered into, time consuming and costly litigation for the Receiver would likely have been

necessary to attempt to recover any amount of the Pennecon Receivable;

5. The Receiver proposes that, in the event that the Pennecon Settlement Agreement is approved by this Honourable Court, a portion of the Pennecon Amount received by the Receiver, in the amount of \$268,223.77, be paid to CRA, in connection with a Requirement to Pay dated February 26, 2010 issued by CRA to PHCL pursuant to the section 317(3) of the *Excise Tax Act* (Canada) for unremitted HST (the “**HST Requirement to Pay**”);
6. The Receiver also proposes that, in the event that the Pennecon Settlement Agreement is approved by this Honourable Court, the balance of the Pennecon Amount, in the amount of \$2,954,161.23, be made available to the Receiver for the purpose of making payments (including interim payments) required or permitted by the Receivership Order, as it is the Receiver’s view that the Pennecon Amount, less the amount paid to CRA, is the Property of Atcon Construction that is subject to this receivership proceeding;
7. The Receiver relies on:
 - a) the *Rules of Court* , as amended, including but not limited to Rules 1.03, 2.01, 2.02 and 3.02;
 - b) the *Judicature Act*, R.S.N.B. 1973, c. J-2, as amended, and
8. Such further and other grounds as counsel for the Receiver may advise and this Honourable Court may permit.

UPON the hearing of the motion the following affidavit or other documentary evidence will be presented:

A l'audition de la motion, les affidavits ou les autres preuves littérales suivantes seront présentées:

- (1) The Fourth Report; and
- (2) Such further and other affidavits or documentary evidence as counsel for the Applicant may advise and this Honourable Court may permit.

You are advised that:

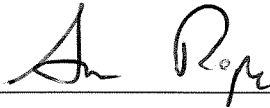
Sachez que:

- (a) you are entitled to issue documents and present evidence at the hearing in English or French or both;

- (a) vous avez le droit d'émettre des documents et de présenter votre preuve à l'audience en français, en anglais ou dans les deux langues;

- | | |
|--|--|
| (b) the applicant intends to proceed in the English language; and | (b) le demandeur à l'intention d'utiliser la langue anglais; et |
| (c) if you intend to proceed in the other official language, an interpreter may be required and you must so advise the Clerk at least 5 days before the hearing. | (c) si vous avez l'intention d'utiliser l'autre langue officielle, les services d'un interprète pourront être requis et vous devrez un aviser le greffier au moins 5 jours avant l'audience. |

DATED at Toronto, Ontario, this 25th day of June, 2010



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of the Respondents**

SCHEDULE “A”

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF MIRAMICHI

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

- and -

**IN THE MATTER OF ATCON CONSTRUCTION INC.,
ATCON INDUSTRIAL SERVICES INC., ATCON
MANAGEMENT SERVICES INC., ATCON CIVIL LTD.,
DYCON CONSTRUCTION LTD., ATCON STRUCTURES
INC., ENVIREM TECHNOLOGIES INC. all of which are
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Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985,
c. B-3**

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Oilsands Limited Partnership**

TAB 2

**IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL DISTRICT OF MIRAMICHI**

IN THE MATTER OF THE RECEIVERSHIP OF:

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC.

PURSUANT TO Section 33 of The *Judicature Act*, R.S.N.B. 1973, Ch. J-2, Rule 41, Rules of Court, New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

BETWEEN:

**THE BANK OF NOVA SCOTIA, a Canadian chartered bank
with a registered office in the City of Saint John, Province of
New Brunswick**

APPLICANT

- and -

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC., all of which are carrying on business in the Province of New Brunswick

RESPONDENTS

**FOURTH REPORT OF THE RECEIVER
June 25, 2010**

INTRODUCTION AND PURPOSE

1. In connection with the applications of The Bank of Nova Scotia (the “**Bank**”) pursuant to section 33 of the *Judicature Act* (New Brunswick), Rule 41 of the Rules of Court of New Brunswick, and section 243 of the *Bankruptcy and Insolvency Act* (Canada) that were heard by The Honourable Mr. Justice Riordon of the Court of Queen’s Bench of New Brunswick on March 1, 2010 and March 30, 2010, Ernst & Young Inc. (“**EYI**”) was respectively appointed as receiver and receiver manager (the “**Receiver**”) of the property, assets and undertakings of:
 - (a) Atcon Group Inc., Atcon Holdings Inc., Atcon Property Holdings Inc., Atcon Veneer Products Inc. and Atcon Logistics Inc. pursuant to the Receivership Order dated March 2, 2010 (the “**March 2 Order**”); and
 - (b) Atcon Construction Inc. (“**Atcon Construction**”), Atcon Management Services Inc., Atcon Civil Inc., Dycon Construction Inc., Atcon Structures Inc. and Envirem Technologies Inc.¹ pursuant to an Order dated March 30, 2010 (the “**March 30 Order**”, and together with the March 2 Order, the “**Receivership Order**”).
2. The Receivership Order authorizes the Receiver to, among other things:
 - (a) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) receive, preserve and protect the Property, or any parts thereof;
 - (c) receive and collect all monies and accounts now owed or thereafter owing to the Respondents and exercise all remedies of the Respondents in collecting such monies;

¹ Pursuant to paragraph 4 of the March 30 Order, the appointment of the Receiver in relation to Envirem was of no force or effect until the issuance by the Monitor of the Monitor’s Certificate in accordance with the Order of the Court dated March 22, 2010 in order to complete the Transaction, as such term is defined therein, or until further order of the Court. The Monitor issued the Monitor’s Certificate on April 28, 2010. Additionally, Envirem Technologies Inc. changed its name to 0585456 N.B. Inc. effective April 28, 2010.

- (d) settle, extend or compromise any indebtedness owing to the Respondents;
 - (e) sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, subject to Court approval in the event certain monetary thresholds are exceeded; and
 - (f) apply to the Court for advice and directions in the discharge of its powers and duties under the Receivership Order.
3. The purpose of this Fourth Report is to report to this Honourable Court on the status of the Pennecon Receivable (as defined herein) and recommend that this Honourable Court grant an Order:
- (a) approving the Pennecon Settlement Agreement (as defined herein) and the execution of the Pennecon Settlement Agreement by the Receiver; and
 - (b) authorizing and empowering the Receiver to:
 - (i) pay a portion of the Pennecon Amount (as defined herein), in the amount of \$268,223.77, to Canada Revenue Agency (“CRA”) in connection with the HST Requirement to Pay (as defined herein); and
 - (ii) utilize the balance of the Pennecon Amount, in the amount of \$2,954,161.23, for the purpose of making payments (including interim payments) required or permitted by the Receivership Order.

TERMS OF REFERENCE

4. In preparing this Fourth Report, the Receiver has been provided with, and has relied upon unaudited historical financial statements, other unaudited financial information and projections prepared by the Respondents, the books and records of the Respondents, discussions with the management and employees of the Respondents, and other information from various sources. The Receiver has assumed that the information it has been provided is accurate and complete. The Receiver did not audit, review or otherwise attempt to verify the accuracy or completeness of the information. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to the information presented in this Fourth Report or relied upon by the Receiver in preparing this Fourth

Report. Further, the nature of the Receiver's work completed in these proceedings will not necessarily disclose errors, misstatements, irregularities or illegal acts, if such exist, on the part of the Respondents, or its officers or employees or in the information.

5. All references to monetary amounts in this Fourth Report are in Canadian dollars unless otherwise noted.
6. Capitalized terms not defined in this Fourth Report are as defined in the Receivership Order.
7. Copies of Court materials in these proceedings may be obtained from the Receiver's website established in connection with the Respondents (www.ey.com/ca/atcon).

PENNECON

Vale Inco Project and the Pennecon-Atcon LP

8. As has previously been reported to this Honourable Court, Atcon Construction provided equipment rental and management services in connection with the construction of the Vale Inco Long Harbour Nickel Processing Plant located in Long Harbour, Newfoundland and Labrador (the "**Vale Inco Project**"). The background regarding the relationship between Atcon Construction and the Vale Inco Project is set out below.
9. In December 2008, a joint venture of Penney Construction Ltd. ("**Penney**") and Atcon Construction was awarded the contract to supply all labour, material, tools and equipment required to complete all civil earthworks for plant site development of the Long Harbour Nickel Processing Plant Site. The Receiver understands that the Penney Group is a business consortium comprised of companies involved in, among other things, heavy civil services and infrastructure developments.
10. In the winter of 2008 and throughout 2009, Penney and Atcon Construction engaged in discussions and negotiations regarding the terms of their joint venture with respect to the Vale Inco Project. The terms of a limited partnership agreement were negotiated, whereby Pennecon Atcon Limited Partnership, a limited partnership governed by the laws of Newfoundland & Labrador (the "**Pennecon-Atcon LP**"), would be formed for

the purpose of completing all work for Contract CC-0001-Earthworks-Plant Site Development for the Vale Inco Project (the “**Vale Inco Contract**”) and Contract CC-0006 Route 202 Upgrade. Attached hereto as **Appendix “A”** is a copy of a Certificate from the Department of Government Services of Newfoundland & Labrador confirming that the Pennecon-Atcon LP was registered under *The Limited Partnership Act* (Newfoundland & Labrador) as of May 27, 2009 (the “**Certificate**”).

11. The Receiver understands, based on its discussions with former Atcon Construction management and employees and representatives of the Pennecon-Atcon LP that a limited partnership agreement was never executed by Atcon Construction or Penney, and that the undated limited partnership agreement attached hereto as **Appendix “B”** represents the final version of the agreement that was negotiated by Atcon Construction and Penney (the “**LP Agreement**”).
12. Pursuant to the terms of the LP Agreement, and confirmed by the information stated in the Certificate, Atcon Construction and Penney are limited partners in the Pennecon-Atcon LP, and Pennecon Atcon JV General Partner Inc. (the “**Pennecon GP**”) is the general partner in the Pennecon-Atcon LP. Attached hereto as **Appendix “C”** is a copy of Newfoundland & Labrador Department of Government Services report for the Pennecon GP dated June 24, 2010.
13. Additionally, the LP Agreement provides the following:
 - (a) the term of the joint venture was to commence on May 29, 2009 and continue until terminated/dissolved in accordance with the LP Agreement;
 - (b) the initial capital contribution to the Pennecon-Atcon LP was approximately fifty-five per cent (55%) by Penney and forty-five per cent (45%) by Atcon Construction, resulting in Penney and Atcon Construction holding approximately 55% and 45% of the units of the Pennecon-Atcon LP respectively; and
 - (c) profit and loss were to be allocated to each of Penney and Atcon Construction at the end of each fiscal year on a *pro rata* basis according to their capital contributions.

14. The Receiver understands that, in accordance with its initial capital contributions to the Pennecon-Atcon LP, Penney and Atcon Construction hold approximately 55% and 45% of the issued shares of the Pennecon GP.

Pennecon Services Agreement

15. In connection with the Vale Inco Project, the Pennecon-Atcon LP subcontracted the work to be performed under the Vale Inco Contract to Pennecon Heavy Civil Ltd. (“**PHCL**”). To complete the services under the Vale Inco Contract, the Receiver understands that PHCL required Atcon Construction to provide certain management services and rent equipment to PHCL. As a result, PHCL, the Pennecon-Atcon LP and Atcon Construction negotiated the terms of an agreement whereby:
 - (a) PHCL would have the right to use certain specified equipment from June 1, 2009 to April 30, 2010, and Atcon Construction would receive rental payments from PHCL for the use of such equipment; and
 - (b) Atcon Construction would provide personnel that would provide management services, as required by PHCL, in connection with the Vale Inco Contract.
16. The Receiver understands, based on its discussions with former Atcon Construction management and employees and representatives of PHCL, that an agreement setting out the terms of the equipment rental and management services was never executed by Atcon Construction, PHCL or the Pennecon-Atcon LP. However, the Receiver also understands that the agreement dated June 1, 2009 attached hereto as **Appendix “D”** represents the agreement that was negotiated by Atcon Construction, PHCL and the Pennecon-Atcon LP (the “**Pennecon Services Agreement**”).

Pennecon Receivable and CRA

17. The Receiver has confirmed that, as of May 1, 2010, the aggregate amount of \$3,558,810.55 was owed to Atcon Construction by PHCL with respect to equipment rentals and management services provided to April 30, 2010 under the Pennecon Services Agreement (the “**Pennecon Receivable**”).

18. As has been previously reported to this Honourable Court, on March 26 and March 29, 2010, Canada Revenue Agency (“**CRA**”) issued Requirements to Pay to PHCL pursuant to section 227(4) of the *Income Tax Act* (Canada) with respect to employee income tax, CPP and EI source deductions that were originally assessed against Ledwell. Additionally, CRA issued Requirements to Pay dated June 11, 2010 to the Pennecon-Atcon LP and the Pennecon GP pursuant to section 227(4) of the *Income Tax Act* (Canada) with respect to employee income tax, CPP and EI source deductions that were originally assessed against Ledwell. CRA also issued a Requirement to Pay dated February 26, 2010 to PHCL pursuant to the section 317(3) of the *Excise Tax Act* (Canada) for unremitted HST (the “**HST Requirement to Pay**”, and collectively, the “**Pennecon Requirements to Pay**”). A copy of the HST Requirement to Pay is attached as **Appendix “E”**.
19. In addition to the Pennecon Requirements to Pay, Notices of Assessment dated May 28, 2010 were issued by CRA to PHCL, whereby CRA directly assessed PHCL as being liable to CRA to the extent of the Pennecon Receivable as a result of the failure of PHCL to make payment to CRA in connection with the Pennecon Requirements to Pay.
20. On June 18, 2010, this Honourable Court granted an Order with respect to the funds held by Shell Canada with respect to services performed by Atcon Construction in the Albian Oil Sands in the Province of Alberta (the “**June 18 Order**”). Attached hereto as **Appendix “F”** is a copy of the June 18 Order.
21. Pursuant to paragraph 15 of the June 18 Order, on the consent of the Receiver, the Bank, the Province of New Brunswick, Caterpillar Financial Services Limited (“**Caterpillar**”) and Emeco Canada Ltd., the CRA Non-Deemed Trust Holdback (as defined in the June 18 Order), is also treated as a substitute for and deemed to be a portion of the Pennecon Receivable, so that CRA is entitled to assert its claims under the Pennecon Requirements to Pay (excluding the HST Requirement to Pay) against the CRA Non-Deemed Trust Holdback for payment of accrued penalties and interest on the unremitted employee income tax, CPP and EI source deductions, and for payment of unpaid employer contributions.

Pennecon Settlement Agreement

22. In May 2010, the Receiver entered into discussions with PHCL and the Pennecon-Atcon LP with respect to payment of the outstanding Pennecon Receivable.
23. PHCL and the Pennecon-Atcon LP informed the Receiver that a portion of the Pennecon Receivable, in the amount of \$336,425 (the “**Disputed Amount**”), was disputed by PHCL and the Pennecon-Atcon LP, and PHCL and the Pennecon-Atcon LP were of the view that the Pennecon Receivable should be reduced by the amount of the Disputed Amount. The Receiver understands that the Disputed Amount represents amounts relating to alleged overcharges and repairs to Atcon Construction equipment that were paid for by PHCL and/or the Pennecon-Atcon LP.
24. Additionally, the Pennecon GP informed the Receiver of its position that Atcon Construction was indebted to the Pennecon-Atcon LP for interest, management fees and other administrative expenses under the LP Agreement totalling approximately \$815,000 (the “**LP Fees**”), and that the Pennecon Receivable should be reduced by the amount of the LP Fees.
25. The negotiations among the Receiver, PHCL and the LP culminated in the execution of a settlement agreement dated May 27, 2010 (the “**Pennecon Settlement Agreement**”), a copy of which is attached as **Appendix “G”**. The Pennecon Settlement Agreement provides, among other things, as follows:
 - (a) payment to the Receiver by the Pennecon-Atcon LP of the amount of \$3,222,385 (the “**Pennecon Amount**”) upon the granting of a Court-order approving the Pennecon Settlement Agreement and the Receiver obtaining a letter from CRA confirming that payment of the Pennecon Amount to the Receiver pursuant to the Court-order will not be considered to be in violation of the Pennecon Requirements to Pay and that the Notices of Assessment will be vacated;
 - (b) the parties will negotiate in good faith with respect to the Disputed Amount, and in the event that a consensual resolution cannot be reached, the dispute will be subject to arbitration;

- (c) the Pennecon GP waives, releases and discharges Atcon Construction of the LP Fees; and
 - (d) the Receiver will take steps to transfer or assign Atcon Construction's units in the Pennecon-Atcon LP and shares in the Pennecon GP to Penney or its nominee.
26. Additionally, the Pennecon Settlement Agreement provides that the Receiver will negotiate exclusively up to June 25, 2010 with Penney, Pennecon GP and the Pennecon-Atcon LP with respect to the potential sale of certain Atcon Construction equipment. Based on the terms of the Pennecon Settlement Agreement, the exclusivity period expires as of the date of this Report, and no agreement for the disposition of the equipment has been finalized among the parties. The Receiver expects that, notwithstanding the expiry of the exclusivity period, the parties will continue to discuss the possibility of a sale transaction with respect to the equipment in the near future.
27. The Receiver is of the view that the Pennecon Settlement Agreement represents a fair and reasonable settlement of the matters relating to the Pennecon Receivable. In the event that the Pennecon Settlement Agreement was not entered into, it is likely that PHCL and the Pennecon GP would have attempted to set off the Disputed Amount and the LP Fees against the Pennecon Receivable. The exercise of such set-offs would have potentially resulted in no funds being available to the Atcon Construction receivership estate in a timely manner and the necessity of time consuming and costly litigation for the Receiver to attempt to recover any amount of the Pennecon Receivable.
28. Additionally, it is the Receiver's view that there is no realizable value in Atcon Construction's interest in the units of the Pennecon-Atcon LP and the shares of the Pennecon GP for the benefit of the Atcon Construction receivership estate. As has been previously disclosed to the Honourable Court, the profit earned by the Pennecon-Atcon LP for work performed through February 2010 had been entirely eroded by extensive losses incurred during the December 2009 to February 2010 period. As a result, the Pennecon-Atcon LP operated in a net deficit position for an amount equal to approximately \$1.8 million as at February 18, 2010, and Atcon Construction's prorated share of this deficit was approximately \$815,000, being the LP Fees.

29. The Receiver has been advised by PHCL that PHCL does not intend to bid or perform additional work through Pennecon-Atcon LP after the current Vale Inco Contract work is completed. The Receiver understands that Atcon Construction's share of the estimated profit from the remaining Vale Inco Contract work is not expected to exceed the amount of the LP Fees owed by Atcon Construction. Consequently, Atcon Construction's share of the Pennecon-Atcon LP final profit would be nil or negative at the conclusion of the Vale Inco Contract.
30. As a result, the Receiver believes that it is appropriate for the Receiver, in order to secure the payment of the Pennecon Amount, to release Atcon Construction's interest in the units of the Pennecon-Atcon LP and the shares of the Pennecon GP as part of the Pennecon Settlement Agreement, as there is no value in such assets for the Atcon Construction receivership estate.

Distribution of Pennecon Amount

CRA

31. As noted above, the HST Requirement to Pay issued to PHCL is dated February 26, 2010, which pre-dates the bankruptcy of Atcon Construction, which occurred on April 26, 2010. The Receiver understands that, upon the receipt of the HST Requirement to Pay, a portion of the Pennecon Receivable, in the amount listed on the HST Requirement to Pay, became property of the Crown.
32. As a result, the Receiver proposes that, in the event that the Pennecon Settlement Agreement is approved by this Honourable Court, a portion of the Pennecon Amount received by the Receiver, in the amount of \$268,223.77, be paid to CRA.

Balance of Pennecon Amount and Mechanics Lien Matters

33. On Saturday, June 19, 2010, counsel to the Receiver was advised, pursuant to an e-mail message from counsel for Caterpillar, that Caterpillar was considering filing a mechanics lien against the property upon which the Vale Inco Project is being constructed (the "**Vale Inco Property**") in connection with unpaid rental amounts that Caterpillar claims are owing to it by Atcon Construction for equipment allegedly used on the Vale Inco

Project. The Receiver understands that the alleged Caterpillar unpaid rental amounts total \$928,786.13.

34. Counsel to Caterpillar requested that the Receiver's motion materials with respect to the Pennecon Amount be served late in the week of June 21, 2010, so that, in the event a mechanics lien was filed by Caterpillar against the Vale Inco Property, the Caterpillar mechanics lien could be addressed in the Receiver's motion materials.
35. During the afternoon of June 25, 2010, counsel to Caterpillar sent to the Receiver the correspondence and Caterpillar claim for lien documents attached hereto as **Appendix "H"**. The Receiver understands, based on advice it has received from its legal counsel, that, as of June 25, 2010, no person was in a position to file claims for mechanics lien under the *Mechanics Lien Act* (Newfoundland & Labrador) with respect to the Pennecon Amount.
36. As a result, it is the Receiver's view that the Pennecon Amount, less the amount of \$268,223.77 to be paid to CRA, is the Property of Atcon Construction. The Receiver has been authorized and empowered by the Receivership Order to take control of the Property and collect all monies owing to Atcon Construction. As a result, the Receiver is seeking a Court-Order authorizing and empowering the Receiver, upon receipt of the Pennecon Amount, to use the balance of the Pennecon Amount, in the amount of \$2,954,161.23, for the purpose of making payments (including interim payments) required or permitted by the Receivership Order.

RELIEF SOUGHT BY THE RECEIVER

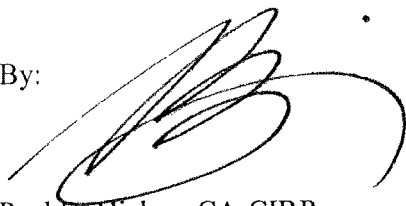
37. The Receiver respectfully requests that this Honourable Court grant an Order in the form submitted by the Receiver:
 - (a) approving the Pennecon Settlement Agreement and the execution of the Pennecon Settlement Agreement by the Receiver; and
 - (b) authorizing and empowering the Receiver to:

- (i) pay a portion of the Pennecon Amount, in the amount of \$268,223.77, to CRA in connection with the HST Requirement to Pay; and
- (ii) utilize the balance of the Pennecon Amount, in the amount of \$2,954,161.23, for the purpose of making payments (including interim payments) required or permitted by the Receivership Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of June 2010

ERNST & YOUNG INC.
in its capacity as the Court-appointed
Receiver of the Respondents and not in its
personal or corporate capacity

By:

A handwritten signature in black ink, appearing to be 'P. Hickey', with a large, sweeping flourish extending from the bottom right.

Paul D. Hickey, CA•CIRP
Senior Vice President

Appendix A

Reg. No. 87-NFiled May 27, 2009Paper No. 2369Fee Paid 230.00 Rec. No. 3265328

CERTIFICATE

Province of Newfoundland and Labrador

IN THE MATTER OF the *Limited Partnership Act* RSNL 1990, c. L-17 (the "Act")
 section 4, and Pennecon Atcon Limited Partnership.

The Parties hereto, by subscribing to and filing this Certificate, hereby form a limited partnership (the "Limited Partnership") in accordance with the Act and provide the following information pursuant to the paragraphs of subsection 4(3) of the Act referred to below:

1. With respect to paragraph 4(3)(a) of the Act, the firm name of the Limited Partnership is:

Pennecon Atcon Limited Partnership

2. With respect to paragraph 4(3)(b) of the Act, the character of the business of the Limited Partnership is:

To complete all work for Contract CC-0001 – Earthworks – Plant Site Development for Vale Inco Long Harbour Processing Plant, Long Harbour, NL and all activities ancillary and incidental thereto.

3. With respect to paragraph 4(3)(c) of the Act, the name and place of residence of each Partner is:

General Partner: **Pennecon Atcon JV General Partner Inc.**
 1309 Topsail Road, PO Box 8274, Stn. A
 St. John's, NL

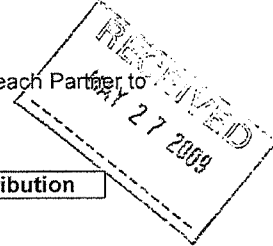
Limited Partner: **Penney Construction Limited**
 1309 Topsail Road, PO Box 8274, Stn. A
 St. John's, NL

Limited Partner: **Atcon Construction Inc.**
 626 Newcastle Blvd.
 Miramichi, NB E1V 2L3

4. With respect to paragraph 4(3)(d) of the Act, the term for which the Limited Partnership is to exist is from the date of filing this Certificate, until dissolved in accordance with the terms and conditions of the Limited Partnership Agreement and the Act, or the Limited Partnership is dissolved by operation of law or by judicial decree.

5. With respect to paragraph 4(3)(e) of the Act, the contributions of each Partner to the Limited Partnership are as follows:

Name of Partner	Contribution
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Pennecon Atcon JV General Partner Inc.	\$0.20
Penney Construction Limited	\$549.89
Atcon Construction Inc.	\$449.91

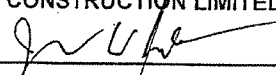
6. No other property has been contributed by the Partners as of the date of this Certificate to the Limited Partnership
7. With respect to paragraph 4(3)(f) of the Act, additional contributions shall be made upon the unanimous agreement of the Partners in proportion to the partnership interest of each of them for the day to day functioning of the Limited Partnership.
8. With respect to paragraph 4(3)(g) of the Act, the General Partner will have sole discretion to determine all terms upon which the Capital Contribution is returned to the Limited Partners.
9. With respect to paragraph 4(3)(h) of the Act, the General Partner will make distributions out of the Limited Partnership to the Limited Partners from such sources as it may, in its sole discretion, from time to time determine.
10. With respect to paragraph 4(3)(i) of the Act, the interest of a Partner in the Limited Partnership may not be assigned without the prior written consent of the other Partners.
11. With respect to paragraph 4(3)(j) of the Act, additional limited partners may be admitted only upon prior written consent of all the Partners.
12. With respect to paragraphs 4(3)(k), 4(3)(l), and 4(3)(m) of the Act, no such rights are given.

IN WITNESS WHEREOF the parties have duly executed this Certificate effective the 27 day of May, 2009.

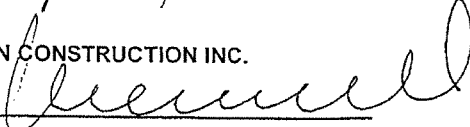
PENNECON ATCON JV GENERAL PARTNER INC.

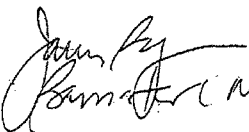
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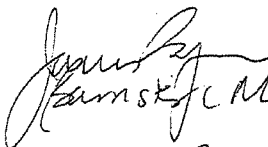
PENNEY CONSTRUCTION LIMITED

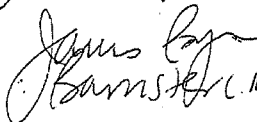
By: 

ATCON CONSTRUCTION INC.

By: 


(Barnster (M))


(Barnster (M))


(Barnster (M))

Appendix B

**PENNECON ATCON
LIMITED PARTNERSHIP
LIMITED PARTNERSHIP AGREEMENT**

BETWEEN:

PENNECON ATCON JV GENERAL PARTNER INC.

- and -

PENNEY CONSTRUCTION LTD.

- and -

ATCON CONSTRUCTION INC.

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THIS AGREEMENT made the _____ day of _____, 2009.

BETWEEN:

PENNECON ATCON JV GENERAL PARTNER INC., a
corporation incorporated under the laws of the Province of
Newfoundland and Labrador, (hereinafter called the "General
Partner"),

OF THE FIRST PART

- and -

PENNEY CONSTRUCTION LTD.,
(hereinafter called "PENNEY"),

OF THE SECOND PART

- and -

ATCON CONSTRUCTION INC.,
(hereinafter called "ATCON"),

OF THE THIRD PART

THIS AGREEMENT WITNESSETH that, in consideration of the mutual
covenants hereinafter contained, the parties hereto covenant and agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 "Act" means the *Limited Partnership Act* of Newfoundland and Labrador, RSNL 1990, c.
L-17, as the same may be amended from time to time and, if the Limited Partnership is registered
in any other jurisdiction, the relevant partnership legislation in force from time to time in such
other jurisdiction or jurisdictions.

1.2 "Affiliate" means

- (a) any partner or officer of the General Partner;
- (b) any corporation, partnership, trust or other entity controlling, controlled by or
under common control with the General Partner or of any partner or officer of the
General Partner; and

- (c) any officer, director, trustee, general partner or employee of any corporation, partnership, trust or other entity controlling, controlled by or under common control of any corporation, partnership, trust or other entity controlling, controlled by or under common control with the General Partner or of any partner or officer of the General Partner.

1.3 "Agreement" means this agreement, as amended, modified or supplemented from time to time.

1.4 "Business" means the business of the Limited Partnership as described in Section 2.2 of this Agreement.

1.5 "Capital Contribution" means any amount of cash or the agreed value of property contributed to the capital of the Limited Partnership by a Limited Partner in connection with its subscription for Units.

1.6 "Cash Available for Distribution" means for any Fiscal Period, an amount equal to the Profit or Loss in excess of \$4,000,000 CDN (Four million dollars), calculated in accordance with GAAP, plus non-cash charges, such as depreciation and amortization, less an amount equal to the sum of unfunded capital expenditures and principal payments on outstanding indebtedness, plus or minus:

- (a) changes in working capital;
- (b) amounts set aside for deferred liabilities and contingent liabilities; and
- (c) amounts set aside for other matters reasonably deemed necessary or desirable by the General Partner.

1.7 "Declaration" means the form of certificate filed under the Act and includes any amendments thereto.

1.8 "Fiscal Period" means the fiscal period described under Section 2.6 of this Agreement.

1.9 "Form of Transfer" means the instrument of transfer, the form of which is set forth in Schedule 1 to this Agreement.

1.10 "GAAP" means accounting principles generally accepted in Canada as promulgated from time to time by the Canadian Institute of Chartered Accountants or, if it should cease to exist, the entity which is a successor thereto, applied on a consistent basis.

1.11 "Limited Partners" means Penney, or Atcon and any party admitted as a limited partner pursuant to the provisions of this Agreement and the Act.

1.12 "Limited Partnership" means the limited partnership formed under the Act and pursuant to the terms of this Agreement.

1.13 "New Declaration" means a revised certificate filed under the Act.

1.14 "Ordinary Resolution" means:

- (a) any resolution passed by the Limited Partners at a meeting of the Limited Partnership by the affirmative vote of 60% of the votes cast and (except in the case of a resolution under Section 9.4), by the consent in writing of the General Partner, or
- (b) any written resolution signed in one or more counterparts by the General Partner (except in respect of a resolution under Section 9.4) and holders of a 60% of the Units.

1.15 "Partners" means the General Partner and all Limited Partners.

1.16 "Partnership Expenses" means all expenses that are incurred or paid by the Limited Partnership or by the General Partner on behalf of, or in connection with the management or operation of the Business of the Partnership as determined in accordance with GAAP, including, without limitation:

- (a) all operating expenses of the Limited Partnership including, without limitation:

- (i) all amounts including, but not limited to, wages, benefits and management fees payable to consultants, developers, contractors, managers, employees and other persons engaged to perform services or provide goods for the Limited Partnership or the General Partner;
 - (ii) taxes and assessments applicable to the Limited Partnership or the Partnership Assets;
 - (iii) advertising and promotional expenses;
 - (iv) insurance premiums,
 - (v) rental expenses, including equipment rental expenses; and
 - (vi) legal fees and expenses;
- (b) costs incurred in connection with any litigation in which the Limited Partnership (or the General Partner with respect to the Limited Partnership) is involved or for which it is responsible, as well as any examination, investigation or other proceeding conducted by any regulatory agency, including related legal and accounting fees; and
- (c) expenses of changing the form of, revising, amending, restating, converting, modifying, dissolving or terminating the Limited Partnership or the terms of this Agreement.

1.17 "Profit" or "Loss" means the profits or losses, as the case may be, of the Limited Partnership for any Fiscal Period and shall be equal to Revenue, together with extraordinary income and capital gains or losses from any revenues or income from any source whatsoever, less all Partnership Expenses, all determined in accordance with GAAP, and shall, without limiting the generality of the foregoing, take into account any expenses incurred or revenue earned for or on behalf of the Limited Partnership, as well as any financing charges or professional fees incurred in connection with loans obtained by the General Partner for the benefit of the Limited Partnership.

1.18 "Revenue" means for any Fiscal Period an amount equal to the price of the products and services sold and rendered by the Limited Partnership in accordance with GAAP.

1.19 "Special Resolution" means

- (a) a resolution passed by the limited partners representing at least Seventy-Five (75%) per cent of the issued Units at a meeting of the Limited Partnership and consented to in writing by the General Partner, or
- (b) any written resolution signed, in one or more counterparts, by the General Partner and those limited partners representing Seventy-Five (75%) per cent of all of the issued Units.

1.20 "Tax Act" means the *Income Tax Act* (Canada) and the regulations thereunder, as amended from time to time.

1.21 "Unit" means the interest in the capital of the Limited Partnership representing a Capital Contribution equivalent to \$1.00 in cash.

1.22 Unless otherwise expressly stated, all references to dollar amounts shall mean Canadian dollars.

ARTICLE 2 - THE LIMITED PARTNERSHIP

2.1 **Formation:** The parties hereto hereby form a limited partnership under the provisions of the Act which limited partnership shall be formed upon filing of the Declaration. The rights and liabilities of the Partners shall be as provided in the Act except as herein otherwise expressly provided.

2.2 **Business:** The business and purposes of the Limited Partnership shall be to complete all work for Contract CC-0001 – Earthworks – Plant Site Development for Vale Inco Long Harbour Processing Plant, Long Harbour, NL and all activities ancillary and incidental thereto (the "Project").

2.3 **Principal Office and Registered Office:** The principal office of the Limited Partnership shall at all times be the principal office of the General Partner in St. John's, Newfoundland and Labrador and may be changed from time to time by the General Partner giving notice of such change to all Limited Partners. The business of the Limited Partnership may be conducted at

such other place or places as may from time to time be selected or approved by the General Partner.

2.4 Names and Addresses of Partners: The address of the principal office of the General Partner is 1309 Topsail Road, St. John's, Newfoundland and Labrador, A1B 3N4. The name and address of each Limited Partner is as set forth in its Unit Certificate until changed in accordance with this Agreement.

2.5 Term: The term of the Limited Partnership shall commence upon the 29 day of May, 2009 and shall continue until terminated by the provisions of Article 10. All provisions of this Agreement relative to dissolution, winding up and termination shall be cumulative, such that, the exercise or use of one of the provisions of this Agreement shall not preclude the exercise or use of any other provision.

2.6 Fiscal Year: The fiscal year end of the Limited Partnership shall be May 31 of each year or such other date determined by the General Partner.

ARTICLE 3 - CAPITAL AND CAPITAL CONTRIBUTIONS

3.1 Capital: The capital of the Limited Partnership shall be the aggregate amount of the Capital Contributions of the Partners.

3.2 Acquisition of Units: The Limited Partners and General Partner shall make a contribution to the capital of the Limited Partnership by the purchase of the one thousand (1000) Initial Units for the sum of \$1.00 for each Unit in accordance with the following distribution of Units:

Penney	549.89
Atcon	449.91
Pennecon Atcon JV General Partner Inc.	0.20

3.3 Restoration of Capital Contributions: If the Limited Partnership has made any distribution to the Partners under Article 8 and Section 10.3 in reduction of the amount of their respective Capital Contributions and the General Partner thereafter determines that the Limited Partnership requires added capital in connection with the business and affairs of the Limited

Partnership, the Partners who have received such distribution shall contribute pro rata to the capital of the Limited Partnership, upon the request of the General Partner from time to time, such additional sums (but not to exceed amounts that would restore their respective aggregate Capital Contributions to the sums specified in this Article 3) as may be required for such purposes.

3.4 **Borrowing from Outside Sources:** After contributed sums have been accounted for and the General Partner determines that the Limited Partnership requires added capital to finance its business, the General Partner shall exercise its best efforts to borrow from outside sources, from time to time, all sums of money required for such purposes.

3.5 **Additional Capital:** In the event the General Partner determines that the Limited Partnership requires added capital and to the extent the General Partner is unable to borrow from outside sources pursuant to Section 3.4 hereof each Limited Partner will forthwith contribute (*pro rata* to their Capital Contributions) to the capital of the Partnership, and the Capital Account of each Limited Partner will be credited accordingly. **If any Limited Partner advances funds to the Partnership in excess of the funds advanced by any other Limited Partner and exceeding its *pro rata* contribution requirement, then, notwithstanding anything else in this Agreement, such excess amount will be deemed to be a loan to the Partnership bearing interest at Prime + 10%, such excess amount and interest to be repayable in priority to any other payment by the Partnership to the Limited Partners.**

3.6 **Capital Account:** There shall be established on the books of the Limited Partnership a capital account equal to the amount of capital contributed to the Limited Partnership by each of the Limited Partners. The capital account shall not be credited or charged with the net income or loss of the Limited Partnership, nor with distributions made to Partners except distributions to the Limited Partners in final liquidation of the Limited Partnership. The General Partner shall not have any rights or interest in or to the capital account. No Partner shall be entitled to withdraw any part of its capital account or receive any distribution thereof except as provided in this Agreement and not inconsistent with the Act.

3.7 **Private Accounts:** There shall be established for each Limited Partner and for the General Partner on the books of the Limited Partnership a private account to which their

respective shares of the net Profit or Loss of the Limited Partnership shall be credited or charged in accordance with Article 8 and which shall be charged with distributions made to them in accordance with Article 8.

3.8 **No Right to Withdraw Amounts:** Neither the General Partner nor any Limited Partner shall have the right to withdraw any amount or receive any distribution from the Limited Partnership, except as expressly provided in this Agreement.

3.9 **No Interest Payable on Accounts:** No interest shall be paid to any Limited Partner on any amount in the capital account or its private account, nor to the General Partner on any amount in its private account. Neither the General Partner nor any Limited Partner shall be liable for interest on any authorized negative or debit balance in its private account.

ARTICLE 4 - THE LIMITED PARTNERS

4.1 **Management and Control:** The Limited Partners shall not take part in the management and control of the Limited Partnership's business nor shall they transact any business for the Limited Partnership, nor shall they have the power to act for or bind the Limited Partnership, said powers being vested solely and exclusively in the General Partner.

4.2 A Limited Partnership shall not be obligated to refer investments to the Limited Partnership nor be restricted in any investments that it may make nor be precluded from carrying on a business competitive with that of the Limited Partnership.

4.3 **Limited Liability:** Subject to the Act and any specified assumption of liability, the liability of each Limited Partner for the debts of the Limited Partnership is limited to the amount of its Capital Contribution to the Limited Partnership plus its pro rata share of the undistributed income of the Limited Partnership and a Limited Partner shall have no further personal liability for such debts and, after making the full amount of its Capital Contribution to the Limited Partnership, shall not be subject to, nor be liable for, any further calls or assessments or further contribution to the Limited Partnership.

4.4 **Death and Incapacity:** The death or legal incapacity of a Limited Partner or the principal shareholders or beneficiaries of a Limited Partner shall not cause a dissolution of the

Limited Partnership, but the rights of such Limited Partner to share in the profits and losses of the Limited Partnership, to receive distributions of Limited Partnership funds and to assign a Unit pursuant to this Article 4 shall, on the happening of such an event, devolve on his personal representative, or his heirs or in the event of the death of a Limited Partner whose Unit is held in joint tenancy, shall pass to the surviving joint tenant, subject to the terms and conditions of this Agreement, and the Limited Partnership shall continue as a limited partnership. The estate of the deceased Limited Partner or such surviving joint tenant, as the case may be, shall be liable for all the obligations of the deceased Limited Partner; however, in no event shall such personal representative, heirs or surviving joint tenant become a substituted Limited Partner, except in accordance with this Article 4.

4.5 Assignment of Units: Once approved in accordance with this subsection 4.5.1 and 4.5.3, a Limited Partner may assign its Units provided that no transfer of Units shall be effective unless and until:

- (a) a Form of Transfer, properly executed by both the assignor and the assignee, has been delivered to the General Partner;
- (b) the certificate in respect of the Units to be transferred has been properly endorsed and delivered to the General Partner;
- (c) the General Partner shall have recorded the assignment of Units and the name and address of the assignee in the Register of Limited Partners to be kept at the registered office and the principal office of the General Partner; and
- (d) if the General Partner so elects, a New Declaration has been filed indicating such assignment.

4.5.1 Restrictions on Transfer: Except as otherwise expressly permitted by this Agreement, no Limited Partner will sell, transfer, assign or otherwise dispose of or offer to sell, transfer, assign or otherwise dispose of its Limited Partner's Interest unless such Limited Partner first offers to sell such Limited Partner's

Interest to the other Limited Partner. Disposition of a portion of a Limited Partner's Interest is not permitted at any time.

4.5.2 **Interest Not to be Charged:** Except as specifically provided herein, no Limited Partner will mortgage, pledge, charge, hypothecate or otherwise encumber its Limited Partner's Interest or any part thereof without the prior written consent thereto of the other Limited Partner, which consent may be arbitrarily withheld.

4.5.3 **Transfer Only with Consent:** Notwithstanding any other provision of this Agreement, no Limited Partner will be entitled to sell, transfer or otherwise dispose of any of its Limited Partner's Interest or any part thereof without first obtaining:

- (i) the unanimous consent of the other Partners;
- (ii) the consent of any other party, if such is required by any agreement entered into by the Partnership; and
- (iii) if the proposed transferee is not a Limited Partner, an acknowledgment in writing from the proposed transferee that the proposed transferee will be bound by the terms of this Agreement and will assume the obligations of a Limited Partner in respect of the Units proposed to be transferred.

4.6 **Filing Requirements:** Subject to the provisions of Section 4.5, the General Partner shall promptly execute, file and record with the appropriate governmental agencies such documents (including amendments to this Agreement and a New Declaration) as are required to effect the registration of the assignee as a Limited Partner if any, and the General Partner shall promptly record the transfer or assignment in the Register of Limited Partners kept at the registered office of the General Partner. In no event shall the consent of any Limited Partner (other than the assignor) be required to effect such registration. The Limited Partnership shall treat the assignee as a Limited Partner from the date such assignment is effective under Section 4.5. The assignment of a Unit shall not cause a dissolution of the Limited Partnership.

4.7 **Binding Effect of Agreement:** Any person admitted to the Limited Partnership as a Limited Partner shall be subject to and bound by all the provisions of this Agreement as if originally a party to this Agreement.

4.8 **Non-Admission of Additional Partners:** No additional general partner or limited partner may be admitted to the Limited Partnership, except with the written approval of, and upon terms approved in writing by, all the Partners and upon compliance with the Act.

4.9 **Registrar and Transfer Agent:** The General Partner, or such other person as may be appointed from time to time by the General Partner, shall act as registrar and transfer agent for the Limited Partnership and shall maintain such books as are necessary and appropriate to record the names and addresses of the Partners, the numbers of Units held by each Limited Partner and particulars of transfer of Units as required by the Act. The General Partner shall perform all other duties usually performed by transfer agents and registrars. Although certificates will be issued to the Limited Partners, they will be retained by the General Partner and a non-transferable deposit receipt evidencing the issue of the Unit or Units will be delivered to each Limited Partner.

4.10 **Inspection of Register:** The General Partner shall permit any Limited Partner or its agent duly appointed in writing, at the expense of the Limited Partner, to inspect the register of Partners at any reasonable time during normal business hours.

4.11 **Indemnity:** The General Partner will indemnify and hold harmless each Limited Partner for all costs, expenses, damages or liabilities suffered or incurred by the Limited Partner if the limited liability of such Limited Partner is lost for or by reason of the negligence or wilful misconduct of the General Partner in performing its duties and obligations hereunder.

4.12 **Notice of Judgment:** Each Limited Partner will notify the General Partner forthwith upon the occurrence of any event or the making of any order, decree or judgment of any court, agency, tribunal or other competent authority which affects or may affect the Limited Partner's title to its Units or entitlement to distributions in respect of such Units including, without limitation, any order, decree or judgment vesting in any other Person any interest in such Units, and the Limited Partner will indemnify and hold the General Partner and the Partnership

harmless from and against any claim, damage, loss, cost or expense that either or both may suffer or incur by reason of having, in good faith and without actual notice of such event, paid any amount to the Limited Partner to which any other Person was then entitled by virtue thereof.

ARTICLE 5 - MEETINGS OF THE LIMITED PARTNERSHIP

5.1 **Calling of Meetings:** Meetings of the Limited Partnership may be called at any time by the General Partner and shall be called by the General Partner upon written request of Limited Partners holding in the aggregate not less than 20% of the outstanding Units, such request specifying the purpose or purposes for which such meeting is to be called. Any such meeting shall be held in St. John's, NL, or such other place within or outside Newfoundland and Labrador as the General Partner shall designate. If the General Partner fails to convene a meeting upon such request of Limited Partners within a period of 21 days after the giving of such request, the requesting Limited Partners may convene such meeting and the notice calling such meeting shall be signed by such requesting Limited Partners or by any person as the requesting Limited Partners may specify in writing. Any meeting called by such requesting Limited Partners shall be conducted in accordance with the provisions of this Agreement.

5.2 **Quorum:** Subject as hereinafter provided, at any meeting of the Limited Partnership a quorum, shall consist of the General Partner and two or more persons present in person holding or representing by proxy not less than 20% of the Units. If such quorum is not present on the date for which the meeting is called within one-half hour after the time fixed for the holding of such meeting, the person or persons present may elect, by a majority of the votes cast, a chairman for the purpose of adjourning the meeting and, in such event, the meeting shall be adjourned to be held at a place and upon a date (being not less than 14 days from the date of such meeting) and, at a time to be fixed by the chairman of the meeting. The General Partner shall give not less than 10 days notice of the date, time and location of the adjourned meeting and at such adjourned meeting a quorum shall consist of the Limited Partners then and there present in person or represented by proxy and voting. At any such adjourned meeting any business may be transacted which might have been transacted at the meeting as originally called.

5.3 **Notice:** Notice of all meetings of the Limited Partnership, stating the time, place and purpose of the meeting, shall be given by the Partner or Partners calling the meeting to each

Partner at its registered address, and to the auditors of the Limited Partnership, mailed at least 21 days and not more than 60 days before the meeting. No other business not stated in the notice of meeting shall be considered at such meeting. The provisions of Section 5.2 shall apply with respect to the notice for adjourned meetings.

5.4 **Voting:** Every question submitted to a meeting, except for those matters which require a vote by Special Resolution, shall be decided by Ordinary Resolution on a show of hands unless a poll is demanded, in which case a poll shall be taken. In the case of an equality of votes, the chairman of the meeting shall not have a casting vote. A poll shall be taken on every Special Resolution at a meeting and, when requested by the General Partner or by one or more Limited Partners, on any Ordinary Resolution. For any poll taken at a meeting, each Limited Partner shall have one vote for each Unit in respect of which he is the registered owner. Votes may be given in person or by proxy and a person appointed by proxy need not be a Partner. No person other than the holder of a Unit or a person appointed by proxy is entitled to vote at a meeting of the Limited Partnership. At any meeting of the Limited Partnership on a matter voted upon for which no poll is required or requested, a declaration made by the chairman of the meeting as to, the voting on any particular resolution shall be conclusive evidence thereof.

5.5 **Powers Exercisable by Vote:** Voting at any meeting of the Partners will be confined to the following subject-matters, which will require to be passed by the following resolutions of Unit holders entitled to vote in person or by proxy according to this Agreement:

- (a) Dissolution of Partnership – Special Resolution plus approval of General Partner;
- (b) Selecting new General Partner where the General Partner has resigned or is deemed to have resigned – Special Resolution;
- (c) Waiving any default by the General Partner on such terms as they may determine and releasing it from any claims in respect thereof – Special Resolution;
- (d) Continuing the Limited Partnership if the Limited Partnership is terminated by operation of law or time – Special Resolution;

- (e) Agree to any compromise or arrangement by the Limited Partnership with any creditor or creditors or class or classes of creditors – Special Resolution; or
- (f) Any other matters submitted to a meeting for a vote by the General Partner – Ordinary Resolution.

5.6 **Proxies:** At any meeting of the Limited Partnership, any Limited Partner who is entitled to vote thereat may vote by proxy, provided that no proxy shall be voted at any meeting unless it shall have been placed on file with the General Partner for verification prior to the time at which such vote, shall be taken. When any Unit is held jointly by several persons, any one of them may vote at any meeting in person or by proxy in respect of such Unit, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote shall not be received in respect of such Unit. A proxy purporting to be executed by or on behalf of a Limited Partner shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger.

5.7 **Record Dates:** For the purpose of determining the Limited Partners who are entitled to vote or act at any meeting or any adjournment thereof, or who are entitled to participate in any distribution, or for the purpose of any other action, the General Partner may from time to time cause the transfer books to be closed for such period, not exceeding 30 days, as the General Partner may determine; or without causing the transfer books to be closed the General Partner may fix a date not more than 60 days prior to the date of any meeting of the Limited Partnership, distribution or other action as a record date for the determination of Limited Partners entitled to vote at such meeting or any adjournment thereof or to receive such distribution or to be treated as Limited Partners of record for purposes of such other action, and any Limited Partner who was a Limited Partner at the time so fixed shall be entitled to vote at such meeting or any adjournment thereof or to receive such distribution, even though he has since that date ceased to be a Limited Partner, and no Limited Partner becoming such after that date shall be a Limited Partner of record for purposes of such other action.

5.8 **Chairman:** The first item of business at any meeting of the Limited Partnership shall be the election of a chairman of the meeting.

5.9 **Death or Transfer:** A vote cast in accordance with the terms of a proxy shall be valid notwithstanding the previous death or incapacity of the Limited Partner granting such proxy or revocation of the proxy or transfer of the Unit in respect of which the proxy was given, provided that no notice in writing of such death, incapacity, revocation or transfer has been received by the General Partner prior to the time fixed for the holding of the meeting.

5.10 **Form of Proxy:** Every proxy shall, as nearly as circumstances permit, be in the form or to the effect as follows:

"I, _____, of _____ in the _____ of _____, being a Limited Partner of Pennecon Atcon Limited Partnership hereby appoint _____ of _____, as my proxy to vote for me and on my behalf at the meeting of the Limited Partnership to be held on the _____ day of _____, _____, and every adjournment thereof and every poll that may take place in consequence thereof.

As witness my hand this _____ day of _____, _____."

5.11 **Additional Rules and Procedures:** To the extent that the rules and procedures for the conduct of a meeting of the Limited Partnership are not prescribed in this Agreement, such rules and procedures shall be determined by the meeting.

5.12 **Authorized Attendance:** The General Partner shall have the right to authorize the presence of any person at any meeting of the Limited Partnership regardless of whether such person is a Limited Partner. With the approval of the General Partner, such person shall be entitled to address the meeting.

ARTICLE 6- THE GENERAL PARTNER

6.1 **Management of the Limited Partnership:** The General Partner shall have exclusive authority to direct, manage, control, administer and operate the business and affairs of the Limited Partnership and, subject to Section 6.8, to make all decisions regarding the business of the Limited Partnership. Pursuant to the foregoing, the General Partner shall have all of the rights and powers of a general partner as provided in the Act and as otherwise provided by law, and any action taken by the General Partner shall constitute the act of and serve to bind the Limited Partnership. In dealing with the General Partner acting on behalf of the Limited

Partnership, no person shall be required to inquire into the authority of the General Partner to bind the Limited Partnership. Persons dealing with the Limited Partnership are entitled to rely conclusively on the power and authority of the General Partner as set forth in this Agreement. The General Partner may delegate to a duly appointed agent such of the management and administrative functions required to be performed by the General Partner pursuant to this Article 6 as the General Partner may in its sole discretion determine.

6.2 Authority of General Partner: The General Partner is hereby granted the right, power and authority to do or to cause to be done on behalf of the Limited Partnership all things which, in its sole judgment, are necessary, proper or desirable to carry on the business and purposes of the Limited Partnership referred to in Section 2.2, including but not limited to:

- (a) borrow money from time to time against the assets of the Limited Partnership in the name of the Limited Partnership for the purposes of financing the Business and operations of the Limited Partnership and for no other purpose;
- (b) enter into leases in its name;
- (c) to manage the Limited Partnership on a day-to-day basis;
- (d) to make all decisions and to execute and carry out all agreements on behalf of the Limited Partnership involving matters or transactions in furtherance of, in connection with or ancillary to the activities of the Limited Partnership;
- (e) to temporarily invest funds held by the Partnership not immediately required for the Business in short term securities of, or guaranteed by, the Government of Canada or any province or territory of Canada, certificates of deposit, short-term debt obligations of interest-bearing accounts of Canadian chartered banks, trust companies, or credit unions;
- (f) take in and account for revenues of the Limited Partnership and pay all expenses, capital expenditures, taxes, fees and other expenses relating to the orderly maintenance and management of the Business;

- (g) to bring, defend, settle and dispose of proceedings, claims, actions or other disputes or matters of a similar nature relating to or in respect of the Limited Partnership or its assets or Business;
- (h) determine the amount and type, and obtain and maintain insurance coverage in order to protect the Business, the Limited Partnership, Limited Partnership property, the General Partner, and employees of the Limited Partnership from all perils of the type covered in insurance on operations comparable to the Business and in order to comply with the requirements of any lenders of funds to the Limited Partnership;
- (i) carrying out all financial accounting and cash management for the Business;
- (j) incur all reasonable expenditures, subject to this Agreement;
- (k) employ and dismiss from employment any and all employees, agents, independent contractors, brokers, solicitors and accountants;
- (l) provide management and administrative personnel to oilsands companies from time to time as the General Partner sees fit and in connection therewith to negotiate, settle and execute all agreements and contracts with such companies and any other person whatsoever;
- (m) create, by grant or otherwise, easements and servitudes;
- (n) open bank accounts for the Limited Partnership, to designate and from time to time change the signatories to such accounts and to execute loan and credit arrangements on behalf of the Limited Partnership;
- (o) do all things and take all steps in connection with the assets of the Limited Partnership which would be customarily carried out by a reasonable owner and developer of commercial real property in Canada;
- (p) attend to all matters relating to the distribution of Units;

- (q) obtain and maintain such insurance as may be determined by the General Partner;
- (r) delegate to or to retain others to perform certain of its functions herein;
- (s) execute, acknowledge and deliver any and all deeds, documents and instruments to effectuate any and all of the foregoing and to carry out the intent and purpose of this Agreement; and
- (t) cause the Partnership to enter into subcontracts, rental, or services agreements with Atcon Construction Inc. or its nominee, Premier Construction Limited, and Pennecon Heavy Civil Ltd. to facilitate the completion of the Project in accordance with the terms of the main contract with Vale Inco.

6.3 **Duty of Care:** The General Partner shall manage and operate the Limited Partnership and the assets and undertaking thereof in a manner which would be considered reasonable and prudent in the management of like undertakings in Canada.

6.4 **Confidentiality of Information:** The General Partner shall at all times maintain the confidentiality of financial and other information and data which it may obtain through or on behalf of the Limited Partnership, the disclosure of which may adversely affect the interests of the Limited Partnership, except to the extent that disclosure of all or any part thereof is required by law or is expedient and in the best interests of the Limited Partnership and the General Partner shall utilize such information and data only for the Business of the Limited Partnership.

6.5 **Transactions Involving Affiliates:** The validity of any transaction, agreement or payment involving the Limited Partnership and any Affiliate otherwise permitted by the terms of this Agreement shall not be affected by reason of the relationship between the General Partner and such Affiliate or the approval of the said transaction, agreement or payment by directors of the General Partner all or some of whom are officers or directors of or are otherwise interested in or related to such Affiliate.

6.6 **Safekeeping of Assets:** The General Partner shall have a fiduciary responsibility for the safekeeping and use of all funds and assets of the Limited Partnership, whether or not in its immediate possession or control, and the General Partner shall not employ or permit another to

employ such funds or assets in any manner except for the exclusive benefit of the Limited Partnership.

6.7 Limitation of Liability: Neither the General Partner nor any of its officers, directors or employees shall be liable, responsible or accountable in damages or otherwise to the Limited Partnership or any Limited Partner for any action taken or failure to act on behalf of the Limited Partnership within the scope of the authority conferred on the General Partner by this Agreement or by law unless such action or omission was performed or omitted fraudulently or in bad faith or constituted wanton and wilful misconduct or negligence.

6.8 Restrictions on the General Partner: The General Partner shall not:

- (a) cause the Limited Partnership to sell or otherwise dispose of the assets of the Limited Partnership in its entirety without the approval of the Limited Partners expressed by a Special Resolution;
- (b) be paid for providing to the Limited Partnership any services in addition to those required of it under the terms of this Agreement unless the charges of the General Partner to the Limited Partnership for such additional services are less than or equal to the best available competitive rates for services of a comparable quality for such services from persons who are in the business of providing such services;
- (c) cause the Limited Partnership to guarantee the obligations or liabilities of or make any loans to the General Partner or any Affiliate or any other entity without written consent of each of the Limited Partners;
- (d) do any act which is prohibited or restricted by the Act, save in accordance with the provisions of the Act;

6.9 Expenses: The Partnership will reimburse the General Partner for all costs incurred by the General Partner for and on behalf of the Partnership in connection with the Business of the Partnership, including, without limitation, rental or lease expenses for equipment, salaries, wages and employee benefits, and may also reimburse the General Partner for a reasonable share of costs incurred by the General Partner in connection with the formation and organization of the

Partnership and the distribution of Units, brokerage fees, commissions and other fees and disbursements relating to the purchase and sale of investments, taxes, the cost of, and making, investments and interest, if any, on borrowing and all other direct costs of the Partnership and such administrative costs of the General Partner as are fairly allocable to the services rendered by the General Partner under this Agreement, excluding expenses of any action, suit or other proceeding in which or in relation to which the General Partner is adjudged to be in breach of any duty or responsibility imposed on it hereunder.

6.10 Employment of Affiliates: Affiliate(s) may be employed by or retained by the Limited Partnership to provide goods or services to the Limited Partnership.

6.11 Representations and Warranties of the General Partner: The General Partner represents and warrants to and covenants with each Limited Partner that the General Partner

- (a) is and will continue to be a corporation existing under the laws of the Province of Newfoundland and Labrador;
- (b) has and will continue to have the appropriate capacity to act as the General Partner and to perform its obligations under this Agreement and that such obligations do not and will not conflict with or constitute a default under its articles of incorporation, or of any agreement to which it is bound;
- (c) will act with the utmost fairness and good faith toward the other Partners in the Business;
- (d) will act in the best interests of the Limited Partnership from time to time in the carrying on of the Business and the affairs of the Limited Partnership; and
- (e) will do all things and take all actions in its power as are necessary to ensure the limited liability of the Limited Partners.

6.12 Project Subcontracts. The General Partner will cause the Partnership to enter into a subcontract with Pennecon Heavy Civil Ltd., and with other subcontractors as required to facilitate the completion of the Project.

ARTICLE 7- RECORDS, REPORTS AND REPORTING

7.1 **Records and Books of Account:** Proper and complete records and books of account shall be kept by the General Partner in which shall be entered fully and accurately all transactions and other matters relative to the Limited Partnership's business as are usually entered into records and books of account maintained by persons engaged in business of a like character. The Limited Partnership books and records shall be prepared in accordance with generally accepted accounting principles, consistently applied, and may be kept on a cash or accrual basis as the General Partner may determine. The books and records shall at all times be maintained at the principal office designated by the General Partner and shall be open to the reasonable inspection and examination of the Limited Partners or their duly authorized representatives during reasonable business hours.

7.2 **Financial Information:** Not later than 90 days after the end of each fiscal year of the Limited Partnership, the General Partner shall furnish to each Limited Partner an annual report of the business and operations of the Limited Partnership during such year which report shall constitute the accounting of the General Partner for such year. Such report shall contain a copy of the annual financial statements of the Limited Partnership showing the Limited Partnership's gross receipts and expenses and the Limited Partnership's profit or loss for the year and the allocation thereof to each Unit; and shall otherwise be in such form and have such content as the General Partner deems proper. The statement shall also contain a complete statement of amounts paid during the year by the Limited Partnership to the General Partner and its affiliates. The General Partner shall, not less than quarterly, provide internally prepared financial statements to the Limited Partners.

7.3 **Income Tax Information:** The General Partner will use reasonable efforts to send or cause to be sent to each Person who is a Limited Partner during the previous Fiscal Year, or at the date of dissolution of the Partnership, within 90 days after the end of each Fiscal Year or within 60 days of dissolution, as the case may be, or within such other shorter period of time as may be required by applicable law, all information, in suitable form, relating to the Limited Partnership necessary for such Person to prepare their Canadian federal and provincial income

tax returns. The General Partner shall file, on behalf of itself and the Limited Partners, annual Partnership information returns and any other information returns required to be filed under the Tax Act and any other applicable tax legislation in respect of the Limited Partnership.

7.4 Auditors and Audit: An auditor, to be appointed at the discretion of the General Partner, shall be appointed and audited statements shall be required. Audits will be performed at the cost of the Limited Partnership.

7.5 Interim Monthly Financial Statements: The General Partner will forward, within thirty (30) days after the end of each month during each Fiscal Period, to each person who was shown on the register as a Partner at the end of such period. Weekly operations reports, due Monday of the following week, shall be sent by the General Partner to each Partner.

7.6 Reports on Material Changes: The General Partner shall from time to time send to each person who is a Limited Partner a report describing any material change in the Business, operations, financial position, capital or prospects of the Business that would reasonably be expected to have a significant effect on the value of the applicable Business. Such report shall be sent as soon as practicable, but in any case within 10 Business Days, following the time that the General Partner becomes aware of such a material change.

7.7 Further Information: The General Partner shall use commercially reasonable efforts to provide to a Limited Partner such other information as is reasonably requested by such Limited Partner for any purpose reasonably related to such Limited Partner's interest as a limited partner in the Limited Partnership to the extent that any such efforts shall not impose any undue cost or burden on the General Partner or the Limited Partnership.

ARTICLE 8- DISTRIBUTIONS

8.1 Allocation of Profits and Losses:

- (a) The Profit or Loss for accounting purposes for a given Fiscal Year of the Limited Partnership will be allocated to each Limited Partner in the same proportion as net

income or loss is allocated for tax purposes to each Limited Partner as provided in Section 8.2.

- (b) All income allocated to a Limited Partner will be added to the capital account maintained for the Limited Partner and any losses allocated to the Limited Partner or any amounts distributed to the Limited Partner will be deducted from such capital account.

8.2 Allocation of Net Profit and Losses for Tax Purposes. The Profit or Loss, as the case may be, for tax purposes of the Limited Partnership for any given Fiscal Year will be allocated to each Limited Partner at the end of each Fiscal Year on a pro rata basis according to their Capital Contributions.

8.3 Distributable Cash In respect of the quarters ending August, November, February and May in each year (each a "calendar quarter"), the General Partner may, in its sole discretion, choose to make distributions of the Cash Available for Distribution in respect of that quarter to the Limited Partners on a pro rata basis according to their Capital Contributions. The payment date for Cash Available for Distribution to be distributed in respect of a calendar quarter shall be determined by the General Partner provided that such payment date shall not be later than 60 days after the end of such calendar quarter. ~~Notwithstanding the foregoing, no distributions of the Cash Available for Distribution shall be made during the first fiscal year.~~

8.4 Notwithstanding any other provision of this Agreement, in no year shall a loss for tax purposes allocated to a Limited Partner be an amount in excess of its amount "at risk" under the *Tax Act* as determined from time to time by Canada Revenue Agency. Any such loss in excess of the amount "at risk" under the *Tax Act* (the "excess loss") will be allocated for tax purposes to the General Partner. All management fees payable to the General Partner, if any, shall be treated as an expense for purposes of computing net income or net loss of the Limited Partnership. Net income and net loss shall be determined in accordance with GAAP consistently applied.

8.5 Capital Cost Allowance: In connection with the determination of the Profit of the Limited Partnership for each fiscal period, the General Partner shall deduct the maximum

allowable capital cost allowance and other deductions as may be available to the Limited Partnership for that year under applicable income tax legislation.

**ARTICLE 9-
POWER OF ATTORNEY AND CHANGE OF GENERAL PARTNER**

9.1 **Creation:** The Limited Partners, by their execution hereof, jointly and severally hereby irrevocably constitute and appoint the General Partner, with full power of substitution, their true and lawful attorney and agent, in their name, place and stead, and for their use and benefit, to make, execute, swear to, acknowledge, deliver, record and file, on behalf of them and on behalf of the Limited Partnership, the following:

- (a) amendments to this Agreement;
- (b) a Declaration, a New Declaration and any other certificates or instruments which may be required to be filed by the Limited Partnership or the Partners under the laws of the Province of Newfoundland and Labrador and any other jurisdiction whose laws may be applicable;
- (c) a New Declaration evidencing the termination of the Limited Partnership and such other instruments or documents as may be deemed necessary or desirable by the General Partner upon the termination of the Limited Partnership business;
- (d) any and all amendments of the instruments described in (a), (b) and (c) above, provided such amendments are either required by law to be filed, or are consistent with this Agreement, or have been authorized by the particular Limited Partner or Limited Partners; and
- (e) any and all such other instruments as may be deemed necessary or desirable by the General Partner to carry out fully the provisions of this Agreement in accordance with its terms.

9.2 **Irrevocability:** The grant of authority contained in Section 9.1:

- (a) is irrevocable and shall survive the death or incapacity of the Limited Partner granting the power;
- (b) may be exercised by the General Partner on behalf of each Limited Partner by a facsimile signature or by listing all of the Limited Partners executing any instrument with a single signature as attorney and agent for all of them;
- (c) shall survive the delivery of an assignment by a Limited Partner of the whole or any portion of its Units; and
- (d) will extend to and be binding upon the heirs, executors, administrators, legal personal representatives, trustees, successors and assigns of the Limited Partners.

9.3 **Transfer of Responsibilities:** The General Partner shall not transfer or assign its responsibilities as the General Partner in the Limited Partnership except with the approval of the Limited Partnership expressed by a Special Resolution.

9.4 **Bankruptcy:** The General Partner may be removed as a General Partner of the Limited Partnership and a new general partner appointed by the Limited Partnership by an Ordinary Resolution in the event of the bankruptcy, dissolution or winding-up of the General Partner or the appointment of a trustee or permanent receiver of the affairs of the General Partner. Upon the appointment of a new general partner and the filing of a New Declaration evidencing such fact, the General Partner shall cease to be the General Partner of the Limited Partnership.

9.5 **Transfer of Management:** Upon any change to a new general partner, the General Partner shall do all things and shall take all steps to immediately and effectively transfer the management and operation, assets, books, records and accounts of the Limited Partnership to the new general partner including the execution of all deeds, certificates, declarations and other documents whatsoever which may be necessary to effect such change and to convey all the assets of the Limited Partnership to the new general partner of the Limited Partnership. All costs of such transfer shall be for the account of the Limited Partnership.

9.6 **Release:** Upon the removal of the General Partner, the Limited Partnership and the Limited Partners shall release and hold harmless the General Partner from all actions, claims,

costs, demands, losses, damages and expenses with respect to events which occur in relation to the Limited Partnership after the effective time of such removal.

9.7 **Successor:** In the event of a change of general partner of the Limited Partnership, the new general partner of the Limited Partnership shall execute this Agreement and shall from that time forward, for all purposes and in all ways assume the powers, duties and obligations of the General Partner under this Agreement and shall be subject to the terms of this Agreement.

ARTICLE 10- DISSOLUTION OF THE LIMITED PARTNERSHIP

10.1 **Events Giving Rise to Dissolution:** The Limited Partnership shall be dissolved under any of the following circumstances:

- (a) upon the bankruptcy, dissolution or winding-up of the General Partner, unless the General Partner is replaced, pursuant to Section 9.4, within 120 days of such bankruptcy, dissolution or winding-up; or
- (b) upon the passage of a Special Resolution approving the dissolution and winding-up of the Limited Partnership; or
- (c) upon the expiry of the term of this Agreement.

10.2 **Liquidation of Limited Partnership Assets:** In the event of the dissolution of the Limited Partnership for any reason, the General Partner (or in the event that the General Partner has become bankrupt, a receiver selected by an Ordinary Resolution) shall commence to wind up the affairs of the Limited Partnership and to liquidate its assets. The Limited Partners shall continue to share profits and losses during the period of liquidation in the same proportion as before the dissolution. The General Partner (or such receiver) shall have full right and unlimited discretion to determine the time, manner and terms of any sale or sales of Limited Partnership assets pursuant to such liquidation having due regard to the activity and condition of the relevant market and general financial and economic conditions.

10.3 **Distributions:** Following the payment of all debts and liabilities of the Limited Partnership and all expenses of liquidation, and subject to the right of the General Partner (or receiver) to set up such cash reserves as it may deem reasonably necessary for any contingent or

unforeseen liabilities or obligations of the Limited Partnership, the proceeds of the liquidation and any other funds of the Limited Partnership shall be distributed to the Limited Partners in accordance with the provisions of the Act governing priorities on dissolution, and if compliance with those priorities provisions of the Act is not required, then distribution shall be in accordance with Section 8.1.

10.4 Statements: Within a reasonable time following the completion of the liquidation of the Limited Partnership's assets, the General Partner shall supply to each of the Limited Partners a statement which shall set forth the assets and the liabilities of the Limited Partnership as of the date of complete liquidation, and each Limited Partner's pro rata portion of distributions pursuant to Article 8 or Section 10.3.

10.5 Cash Distributions: No Partner shall have any right to demand or receive property other than cash upon dissolution and termination of the Limited Partnership or to demand the return of its Capital Contribution to the Limited Partnership.

10.6 Termination: Upon the completion of the term of this Agreement or upon the completion of the liquidation of the Limited Partnership and the distribution of all Limited Partnership funds, the Limited Partnership shall terminate and the General Partner shall have the authority to execute and record a New Declaration as well as any and all other documents required to effectuate the dissolution and termination of the Limited Partnership.

ARTICLE 11- NOTICE

11.1 General Partner: Any notice, direction or request required or permitted to be given to the General Partner hereunder shall be in writing and shall be given by personal service, by facsimile or by mailing by first class mail, with postage thereon fully prepaid, in a sealed envelope, to be addressed to the General Partner at P.O. Box 8274, Stn. A, St. John's, NL A1B 3N4, attention: Mr. Larry Puddister, P.Eng.

11.2 Limited Partner: Any notice, direction or request required or permitted to be given to a Limited Partner hereunder shall be in writing and shall be given by personal service, by facsimile or by mailing by first class mail, with postage thereon fully prepaid, in a sealed envelope, to be

addressed to such Limited Partner at its address on the register of Limited Partners maintained by the General Partner.

11.3 Receipt and Delivery: Any notice, direction or request delivered personally or by facsimile in accordance with Section 11.1 or 11.2 shall be deemed to have been received by and given to the addressee on the day of delivery. Any notice, direction or request mailed as aforesaid shall be deemed to have been received by and given to the addressee on the third business day following the date of mailing, provided that for such purposes no day during which there shall be a strike or other occurrence which shall interfere with normal mail service shall be considered a business day.

11.4 Change of Address: The General Partner may from time to time change its address for the purpose of this Agreement by notice to that effect given to the Limited Partners. A Limited Partner may from time to time change its address for the purpose of this Agreement by notice to that effect given to the General Partner.

ARTICLE 12- MISCELLANEOUS

12.1 Amendments:

- (a) This Agreement may be amended subject to compliance with provisions of the Act, by the General Partner without prior notice to or consent of any Limited Partner:
 - (i) in order to reflect the admission of substituted Limited Partners; or
 - (ii) for the purpose of adding to the Agreement any further covenants, restrictions, deletions or provisions which, in the written opinion of counsel to the Limited Partnership, are for the protection of the Limited Partners; or
 - (iii) to cure any ambiguity or to correct or supplement any provisions contained herein which, in the written opinion of counsel to the Limited Partnership, may be defective or inconsistent with any other provisions contained herein, provided, in the written opinion of such counsel, the

cure, correction or supplemental provision does not and will not adversely affect the interests of any Limited Partner; or

- (iv) to make such other provisions in regard to matters or questions arising under this Agreement which in the written opinion of counsel to the Limited Partnership, do not and will not adversely affect the interests of any Limited Partner.
- (b) This Agreement may otherwise be amended by the General Partner with the authorization and consent of the Limited Partners given by a Special Resolution.
- (c) The Limited Partners shall be notified of full details of any amendment to this Agreement under paragraphs 12.1 (a) (ii), 12.1 (a) (iii), 12.1 (a) (iv) and 12.1 (b) within 30 days of the effective date of the amendment.

12.2 Limited Partner not a General Partner: In the event any provision of this Agreement should have the effect of imposing upon any Limited Partner any of the obligations of the General Partner (other than upon Pennecon Atcon JV General Partner Inc. in its capacity as General Partner), such provisions shall be of no force and effect and shall not be considered a part of this Agreement, but the remainder of this Agreement shall continue in effect.

12.3 Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the Province of Newfoundland and Labrador.

12.4 Headings: The index and headings preceding the text, articles and sections hereof have been inserted for convenience and reference only and shall not be construed to affect the meaning, construction or effect of this Agreement.

12.5 Further Assurances: The parties hereto agree to sign such further and other papers, cause such meetings to be held and resolutions passed, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

12.6 Counterparts: This Agreement may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together

shall constitute one and the same instrument, which shall be sufficiently evidenced by any such original or facsimile copy of the counterpart.

12.7 **Gender:** Whenever the context of this Agreement so requires, the masculine gender includes the feminine or neuter, and any singular number includes the plural.

12.8 **Severability:** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality shall not affect the validity of the remainder of this Agreement.

12.9 **Assignment:** Subject to the restrictions on assignment herein provided for, this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the parties have executed this Agreement, under seal by the hands of the proper signing officers duly authorized in that behalf as of the date first above written.

**PENNECON ATCON JV GENERAL
PARTNER INC.**

Per: _____
LARRY PUDDISTER

Per: _____
ROBERT W. TOZER

PENNEY CONSTRUCTION LTD.

Per: _____
LARRY PUDDISTER, President

ATCON CONSTRUCTION INC.

Per: _____
ROBERT W. TOZER, President

SCHEDULE 1

FORM OF TRANSFER

I, the undersigned, a Limited Partner of Pennecon Atcon Limited Partnership (the "Limited Partnership") hereby transfer, assign and sell to:

(Name of Transferee)

my right, title and interest as a Limited Partner in and to Units in the Limited Partnership. I agree to execute and deliver to the General Partner any documents required to effect a valid transfer of the said Units to the aforesaid transferee or which are necessary or advisable, in the opinion of the General Partner, to preserve the status of the Limited Partnership as a limited partnership and to comply with relevant securities legislation. I agree that the power of attorney previously granted by me to the General Partner will continue until all certificates, amendments or other instruments necessary to give effect to this transfer have been executed, filed and recorded as required.

DATED this _____ day of _____, _____.

Witness

Signature of Limited Partner

Name of Limited Partner (Please print)

Residence Address (Please print)

City, Province, Postal Code (Please print)

The above named transferee accepts this transfer and agrees to be bound, as a party to and as a Limited Partner in the Limited Partnership, by the terms of the Limited Partnership Agreement, as from time to time amended and in effect.

The above named transferee represents that such transferee is an individual, has attained the age of majority.

The above named transferee hereby irrevocably constitutes and appoints the General Partner of the Limited Partnership as from time to time has control over the management of the Limited Partnership, with full power of substitution, as such transferee's true and lawful attorney and agent, with full power and authority in such transferee's name, place and stead, and for such transferee's use and benefit, to execute, swear to, acknowledge, deliver, record and file on such transferee's behalf the following:

- (a) The Limited Partnership Agreement;

- (b) a declaration, a new declaration and any other certificates or instruments which may be required to be filed by the Limited Partnership, or the partners thereof, or the above named transferee under the laws of the Province of Newfoundland and Labrador and any other jurisdiction whose laws may be applicable;
- (c) a cancellation of the Declaration, evidencing the termination of the Limited Partnership and such other instruments or documents as may be deemed necessary or desirable by the General Partner upon the termination of the Limited Partnership business;
- (d) any and all amendments of the instruments described in (a), (b) and (c) above provided such amendments are required by law to be filed, or are consistent with the Limited Partnership Agreement, or have been authorized by the particular Limited Partner or Limited Partners; and
- (e) any and all such other instruments as may be deemed necessary or desirable by the General Partner to carry out fully the provisions of the Limited Partnership Agreement in accordance with its terms.

The power of attorney hereby granted is coupled with an interest, is irrevocable, shall survive the death or incapacity of the undersigned, may be exercised by the General Partner on behalf of the undersigned by a facsimile signature or by listing all of the Limited Partners executing any instrument with a single signature as attorney and agent for all of them, shall survive the delivery of an assignment of the whole or any portion of the Units of the undersigned and will extend to and be binding upon the heirs, executors, administrators, legal personal representatives, successors and assigns of the undersigned.

DATED this _____ day of _____, _____.

Witness

Signature of Transferee

Name of Transferee (Please print)

Residence Address (Please print)

City, Province, Postal Code (Please print)

Appendix C



Department of Government Services

[Main](#) | [Companies](#) | [Deeds](#) | [Mechanics Liens](#) | [Lobbyists](#)

June 24, 2010

Detailed Company Information

Company Name: PENNECON ATCON JV GENERAL PARTNER INC.

Not in Good Standing

Company Number: 60243**Status:** Active**Last Annual Return:****Incorporation Jurisdiction:** NL**Incorporation Date:** 2009-05-22**Corporation Type:****Category:****Business Type:****Filing Type:****Min/Max Directors:**

Company

Local

With Share Capital

Incorporation With Share Capital

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Additional Information:*(Latest addresses on file)***Registered Office:**

Janis Byrne Law Office
P.O. BOX 8724, Stn."A"
1309 Topsail Rd.
Paradise
NL Canada
A1B 3N4

Mailing Address:

Same as Registered Office

[Return](#)[\[Previous Company Names\]](#)[\[Amalgamated Companies\]](#)[\[Current Directors\]](#)[\[Historical Remarks\]](#)

Current Directors

Records Found: 3

Viewing Records: 1-3

Director Name

Edward Murphy

Larry Puddister

Robert W. Tozer

[▲ Return to top](#)[Disclaimer/Privacy](#) [Home](#)

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Appendix D

AGREEMENT

THIS AGREEMENT made effective the 1st day of June, 2009.

BETWEEN: **PENNECON ATCON LIMITED PARTNERSHIP**, by its General Partner, Pennecon Atcon JV General Partner Inc., a limited partnership registered under the laws of Newfoundland & Labrador,

(hereinafter the "Partnership")

AND: **PENNECON HEAVY CIVIL LTD.**, a body corporate, duly organized and existing under the laws of Canada, with registered head office located at 1309 Topsail Road, St. John's, in the Province of Newfoundland and Labrador,

(hereinafter called "PHCL")

AND: **ATCON CONSTRUCTION INC.**, a body corporate, extra-provincially registered in the Province of Newfoundland and Labrador, with registered head office at Miramichi, in the Province of New Brunswick,

(hereinafter called "ACI")

WHEREAS Vale Inco has stated its intent to award to the Partnership the Contract CC-0001 – Earthworks – Plant Site Development for Vale Inco Long Harbour Processing Plant, Long Harbour, NL (the "Contract");

AND WHEREAS the Partnership has entered into a Subcontract with PHCL to perform work under the Contract;

AND WHEREAS PHCL desires to rent certain equipment from Atcon;

AND WHEREAS Atcon will be providing certain management services to PHCL relating to the Contract;

NOW THEREFORE THIS AGREEMENT WITNESSED THAT for and in consideration of the payment of Ten Dollars (\$10.00) paid by each party to the other, the parties agree that:

PART I

I. RENTAL TERMS

For purposes of Part I of this Agreement Atcon shall be referred to as the Lessor and PHCL shall be referred to as the Lessee.

1. Lessor hereby leases to Lessee the equipment described in Schedule "A" attached to this Contract (the "Equipment"), commencing June 1, 2009 and terminating on April 30, 2010 (the "Term") which Term may be extended by the Lessee if required for the performance of the Contract. Title to the Equipment shall remain in Lessor at all times. The only right to the Equipment granted to the Lessee is the right to retain and use the Equipment during the Term upon and subject to the terms of this Contract. Lessee shall return the Equipment to Lessor upon expiry of the Term, subject to other provisions of this Contract.
2. In the event the Lessee retains possession of the Equipment after expiration of the Term AND with the express written consent of the Lessor, the Lessee shall be deemed to be renting the Equipment on a month to month basis at the same monthly rental rate as set out in Schedule "A" hereto.
3. The rent payable for the Term by Lessee and other terms and conditions under this Contract are set out in Schedule A.
4. The Lessor shall be responsible for transportation of the Equipment to and from the Lessor's property in Miramichi, New Brunswick.
5. Lessee will use and operate the Equipment in a prudent and careful manner and in accordance with all instructions supplied with the Equipment by Lessor or printed on the Equipment. Lessee will not alter the Equipment in any fashion and will take reasonable care to safeguard it from damage, theft, unreasonable wear and tear and other loss. Lessee shall be responsible for all repairs and maintenance during the Term of the Lease. Lessee shall return the Equipment in the same condition as it was in at the execution of this Contract, with the exception of normal wear and tear and depreciation.
6. Lessee shall maintain property insurance on the Equipment to protect against loss or damage from all perils and to protect against loss or damage for mechanical failure. The limit for such insurance shall be Two Million Dollars (\$2,000,000).
7. Lessee uses the Equipment at its own risk. Lessee shall indemnify and save Lessor harmless from and against any and all claims, demands, liabilities, losses, costs, damages and expenses which may be suffered or incurred by Lessor arising from any damage to or loss of property, or injury to or death of any person, arising from the use, operation or storage by the Lessee of the Equipment at any time after the execution of this Contract and prior to acceptance of its return by the Lessor.

8. This Agreement may not and shall not be assigned by Lessee without prior written consent of Lessor.
9. This Agreement shall be governed by the laws of the Province of Newfoundland and Labrador.

PART II

II. MANAGEMENT SERVICES

For purposes of Part II of this Agreement the parties shall be referred to as PHCL and Atcon.

1. Atcon shall provide management services of personnel (the "Management Team") as required by PHCL during the term of the Contract. The Management Team is comprised of the personnel listed in Schedule "B" attached hereto.

The parties acknowledge that the Management Team consists of key personnel. Should Atcon wish to replace any of these individuals it may do so with the prior consent of PHCL.

2. The Management Team shall be primarily located at Long Harbour, NL. The hours of work will vary depending on the schedule maintained on site.
3. **Compensation** - PHCL agrees to pay Atcon the amounts outlined in Schedule "B" attached hereto in consideration for provision of the management services. Atcon will invoice PHCL on the last day of each month at the agreed day rate.
4. **Insurances and Taxes** – During the term of this Agreement PHCL shall not be responsible for any source contributions, deductions or withholdings in respect to Income Tax, Canada Pension Plan, Employment Insurance, Employer Health Tax, it being expressly understood and agreed that Atcon shall be solely responsible for remitting any payments or contributions in respect of the foregoing as required by statute. PHCL will not be liable for failure of Atcon to make these payments. Atcon agrees to hold harmless and indemnify PHCL from any claim, interest or penalty related to the foregoing.
5. **Indemnification**
 - (a) Atcon shall be responsible for and shall save, indemnify, defend and hold harmless PHCL, from and against all liability for injury to or death of Atcon personnel and for loss of or damage to Atcon property or that of Atcon's personnel, except as otherwise provided in either Part of this Agreement, and from all claims, demands, proceedings,

damages, costs (including legal costs), losses, liabilities and expenses howsoever arising resulting therefrom or in consequence of the performance of this Contract, regardless of the negligence or breach of duty (whether statutory or otherwise) of PHCL; and

(b) PHCL shall be responsible for and shall save, indemnify, defend and hold harmless Atcon, from and against all 'liability for injury to or death of PHCL personnel and for loss of or damage to PHCL property or that of PHCL's personnel, except as otherwise provided in either Part of this Agreement, and from all claims, demands, proceedings, damages, costs (including legal costs), losses, liabilities and expenses howsoever arising resulting therefrom or in consequence of the performance of this Contract, regardless of the negligence or breach of duty (whether statutory or otherwise) of Atcon.

6. **Misconduct** – PHCL shall not be responsible and Atcon shall hold PHCL harmless and indemnify PHCL from any costs, expenses and liabilities of any kind or character arising from the misconduct, either civil or criminal of the Management Team provided by Atcon.
7. **Independent Contractor** – It is expressly understood that Atcon is an independent contractor and that neither it nor its subcontractors, employees, where applicable are agents of PHCL.
8. This Agreement may not be assigned by Atcon without prior written consent of PHCL.
9. This Agreement shall be governed by the laws of the Province of Newfoundland and Labrador.
10. This Agreement may be executed by facsimile signature and each counterpart shall be considered as part of the original Agreement.

**PENNECON ATCON LIMITED
PARTNERSHIP**

WITNESS

**by its General Partner, Pennecon
Atcon JV General Partner Inc.
Per:
Title:**



PENNECON HEAVY CIVIL LTD.

WITNESS

By: _____
Name: _____
Title: _____

WITNESS

ATCON CONSTRUCTION INC.

By: _____
Name: _____
Title: _____

Appendix E



Canada Revenue Agency
Agence du revenu du Canada

**REQUIREMENT TO PAY
DEMANDE FORMELLE DE PAIEMENT**

IMPORTANT - SEE REVERSE IMPORTANT - VOIR AU VERSO

Atcon Construction Inc.
626 Newcastle Blvd
Miramichi
NB E1V 2L3

Date FEB 26 2010		RC254 TSO BSF
Saint John Tax Services Office		1205
Contact - Personne-ressource H. Smith	Tel. - Tél (506) 636-4050	Ext. - Poste
Reference number - Numéro de référence 926576	Toll Free - Sans frais 1 800-222-9629	

Pennecon Heavy Civil Ltd.
Accounts Payable
PO Box 8274 STN A
St. John's
NL A1B 3N4

Account number Numéro de compte	100314434RT0001
------------------------------------	-----------------

Pursuant to subsection 317(3) of the Excise Tax Act,
you are hereby required to pay to the Receiver General
on account of the above-named debtor's liability:

(1) **forthwith**, the moneys otherwise and immediately payable to
the debtor, or a secured creditor who has a right to receive the
money that, but for a security interest in favour of the secured
creditor, would be payable to the debtor;

(2) all other moneys otherwise payable to the debtor or a secured
creditor described in (1) which you will be,

**within 365 days, liable to pay, as and when the moneys
become payable;**

**but do not pay hereunder more than \$268,223.77 (the
maximum payable).**

En vertu de paragraphe 317(3) de la Loi sur la taxe
d'accise, il est exigé par les présentes que vous
versiez au receveur général au titre de l'obligation
du débiteur susmentionné:

(1) **immédiatement**, les sommes autrement et alors payables au
débiteur ou à un créancier garanti ayant le droit de recevoir les
sommes qui, à l'exception d'une garantie en faveur du créancier
garanti seraient payables au débiteur;

(2) toutes les autres sommes autrement payables au débiteur ou
au créancier garanti décrit au point (1) que vous devrez payer
dans les,

**365 jours, au fur et à mesure que les sommes
deviendront payables:**

**mais vous n'avez pas à verser plus que 268,223.77\$ (le
maximum payable).**

Please make cheques or money orders payable to the Receiver
General and remit them with one of the enclosed Remittance
Vouchers or with the debtor's name, address, account and
reference number as well as the remitter's name in the enclosed
addressed envelopes.

Failure to pay the Receiver General the amounts required above
renders you personally liable to pay those amounts to Her Majesty.

Veuillez libeller les chèques ou mandats à l'ordre du receveur
général et les faire parvenir dans les enveloppes-réponses
ci-jointes avec une des pièces de versement fournies, ou avec
les nom, adresse et numéro de compte et de référence du
débiteur y compris le nom du payeur.

À défaut de verser au receveur général les sommes exigées
ci-dessus vous serez personnellement redevable du paiement de
ces sommes à Sa Majesté.

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Director, Tax Services Office

Directeur, Bureau des services fiscaux

(DEBTOR / DÉBITEUR)

Appendix F

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL DISTRICT OF MIRAMICHI



IN THE MATTER OF THE RECEIVERSHIP OF:

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC.

PURSUANT TO Section 33 of The *Judicature Act*, R.S.N.B. 1973, Ch. J-2, Rule 41, Rules of Court, New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

BETWEEN:

THE BANK OF NOVA SCOTIA, a Canadian chartered bank
with a registered office in the City of Saint John, Province of
New Brunswick

APPLICANT

- and -

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC., all of which are carrying on business in the Province of New Brunswick

RESPONDENTS

Jeffer
18 June 2010

ORDER

THIS MOTION, made by Shell Canada Limited ("**Shell Canada**") was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING Shell Canada's Notice of Motion dated May 19, 2010 (the "**Notice of Motion**"), the Affidavit of Tracey Vincent sworn May 19, 2010 and the appendices attached thereto (the "**Vincent Affidavit**"), including the requirement to pay dated March 29, 2010 (the "**March 29 Requirement to Pay**") delivered by Canada Revenue Agency ("**CRA**") to Shell Canada in the amount of \$4,750,074.57 with respect to Atcon Construction Inc. ("**Atcon Construction**"), the Affidavit of Colleen Lambert sworn June 11, 2010 and the appendices attached thereto (the "**Lambert Affidavit**"), including the requirements to pay dated June 11, 2010 (together with the March 29 Requirement to Pay, the "**Shell Requirements to Pay**") delivered by CRA to Shell Canada Energy ("**Shell Energy**") and Albion Sands Energy Inc., each in the amount of \$4,780,601.38 with respect to Atcon Construction, the Third Report of Ernst & Young Inc. in its capacity as Court-appointed receiver and receiver-manager of the property, assets and undertakings of Atcon Construction (the "**Receiver**") dated May 19, 2010 and the appendices attached thereto (the "**Third Report**"), including the letter dated April 7, 2010 from CRA to the Receiver demanding, *inter alia*, payment of \$3,784,276.68 in connection with CRA's deemed trust claim against the Property with respect to unremitted employee source deduction amounts pursuant to the provisions of the *Income Tax Act* (Canada), the Canada Pension Plan and the *Employment Insurance Act* (Canada) under notices of assessment dated February 26, 2010 (the "**CRA Deemed Trust Claim**"), the Statement of Lien upon Interest in Crown Materials dated April 15, 2010 and filed by Emeco Canada Limited ("**Emeco**") with the Alberta Department of Energy upon the interest of Shell Canada in respect of minerals in Alberta Crown Oil Sands Lease No. 7277080T13 (the "**Emeco Lien**"), the Statement of Lien upon Interest in Crown Materials dated April 29, 2010 and filed by Caterpillar Financial Services Limited ("**Caterpillar**") with the Alberta Department of Energy upon the interest of Shell Canada in respect of minerals in Alberta Crown Oil Sands Lease No. 7277080T13 (the "**April Caterpillar Lien**"), the Statement of Lien upon Interest in Crown Materials dated May 4, 2010 and filed by the Receiver with the Alberta Department of Energy upon the interest of Shell Canada in respect of minerals in Alberta Crown Oil Sands Lease No. 7277080T13 (the "**Receiver Lien**"), and two

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Statements of Lien upon Interest in Crown Materials dated May 6, 2010 and filed by Caterpillar with the Alberta Department of Energy upon the interest of Shell Canada in respect of minerals in Alberta Crown Oil Sands Lease No. 7288080T90 and Alberta Crown Oil Sands Lease No. 728009BT30 (together, the "**May Caterpillar Liens**"), and the Supplement to the Third Report of the Receiver dated June 11, 2010 and the appendices attached thereto (the "**Supplemental Report**"), and on hearing the submissions of counsel for Shell Canada, the Receiver, CRA, The Bank of Nova Scotia ("**BNS**"), the Province of New Brunswick (the "**Province**"), Emeco, Caterpillar and such other counsel in attendance, and on hearing that Shell Canada, the Receiver, CRA, BNS, the Province, Emeco and Caterpillar have consented to and will not oppose or seek variations to the Lien Discharge Order (as defined herein) and on reading the Affidavits of Service of Carole J. Hunter respectively sworn on May 20, 2010 and on June 15, 2010, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Vincent Affidavit, the Lambert Affidavit, the Third Report, the Supplemental Report and the Record of Motion be and is hereby abridged so that Shell Canada's motion is properly returnable today and that any requirement for further service of the Notice of Motion, the Vincent Affidavit, the Lambert Affidavit, the Third Report and the Supplemental Report and the Record of Motion be and is hereby dispensed with.

LIFTING OF THE STAY

2. **THIS COURT ORDERS** that the stay of proceedings provided for in paragraph 8 of the Receivership Order granted by this Honourable Court dated March 2, 2010 as amended by the Order granted by this Honourable Court dated March 30, 2010 (the "**Stay**") be and is hereby lifted solely to permit Shell Canada, Shell Energy, Albion Sands Energy Inc. or any Canadian affiliate of those entities (hereinafter collectively, "**Shell**") to proceed with an application, which Shell is authorized and directed to bring, to the Court of Queen's Bench of Alberta (the "**Alberta Court**") on notice to the parties named in the service list in this proceeding, which Shell shall file by June 25, 2010 (the "**Lien Discharge Application**"), for the Lien Discharge Order, which, *inter alia*:

- (a) orders Shell to pay, pursuant to the provisions of the *Builders' Lien Act* (Alberta)

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(the "**BLA**"), the amount owing and payable under the Agreement for Earth Moving, Construction and Related Services dated November 1, 2008 between Shell Energy (as successor to Albion Sands Energy Inc.) and Atcon Construction, (the "**Albian Agreement**") in the amount of \$8,432,503.30 (the "**Lien Fund**") to the Receiver to be held by the Receiver in accordance with this Order;

- (b) orders that a portion of the Lien Fund shall stand in the place and stead of the Alberta Crown Oil Sands Lease No. 7277080T13, Alberta Crown Oil Sands Lease No. 7288080T90 and Alberta Crown Oil Sands Lease No. 728009BT30 (collectively, the "**Lands**"); and
- (c) discharges the Emeco Lien, the April Caterpillar Lien, the Receiver Lien and the May Caterpillar Liens (collectively, the "**Builders' Liens**") from the Lands.

3. **THIS COURT ORDERS** that the order substantially in the form attached hereto as Schedule "A" which Shell is seeking in the Lien Discharge Application (the "**Lien Discharge Order**") be and is hereby approved.

LIEN FUND

4. **THIS COURT ORDERS** that, upon receipt of the Lien Fund:

- (a) the Receiver shall hold a portion of the Lien Fund, in the amount of \$4,008,291.63 (the "**Builders' Lien Holdback**"), in a separate interest bearing trust account and shall not pay the Builders' Lien Holdback or any portion thereof except upon further Order of this Court made on notice to the parties named on the service list in this proceeding;
- (b) the Receiver shall hold a portion of the Lien Fund, in the amount of \$996,345.70 (the "**CRA Non-Deemed Trust Holdback**"), in a separate interest bearing trust account in accordance with paragraphs 14 and 15 of this Order; and
- (c) the Receiver shall hold the balance of the Lien Fund, in the amount of \$3,427,865.97, in accordance with paragraphs 11 and 12 of this Order.

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18 June 2010*

5. **THIS COURT ORDERS** that the Builders' Lien Holdback and the CRA Non-Deemed Trust Holdback (collectively, the "**Subject Amounts**") shall stand in the place and the stead of the Lands.

6. **THIS COURT ORDERS AND DECLARES** that the Emeco Lien is a valid and enforceable Claim (as defined below) against the Subject Amounts in the amount of \$228,900.22, and stands in priority to the Claim of the Receiver against any of the Subject Amounts in connection with the Receiver Lien to the extent of the amount of \$228,900.22.

7. **THIS COURT ORDERS AND DECLARES** that, to the extent that the April Caterpillar Lien is finally determined (inclusive of any appeals) to be a valid and enforceable Claim against any of the Subject Amounts, such Claim shall stand in priority to the Claim of the Receiver against any of the Subject Amounts in connection with the Receiver Lien, to the extent of the amount of the April Caterpillar Lien as finally determined.

SHARKBITE AMOUNT

8. **THIS COURT ORDERS** that:

- (a) Shell shall pay to the Receiver the amounts owing and payable to Atcon Construction under the Engineering Services Agreement dated September 25, 2009 between Shell Energy and Atcon Construction and the Engineering Procurement and Construction Agreement dated December 21, 2009 between Shell Energy and Atcon Construction (together, the "**Sharkbite Contracts**"), namely, the amount of \$34,351.42, (the "**Sharkbite Accounts Receivable**" and the "**Sharkbite Amount**" respectively) to the Receiver; and
- (b) the Sharkbite Amount in the hands of the Receiver shall stand in the place and stead of the Sharkbite Accounts Receivable in respect of any claims or encumbrances of any nature or kind whatsoever (collectively, "**Claims**") against to or upon the Sharkbite Receivable.

9. **THIS COURT ORDERS** that the Receiver is authorized and empowered to utilize the Sharkbite Amount for the purpose of making payments (including interim payments) required or permitted by the Receivership Order dated March 2, 2010 granted in these proceedings, as

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amended by the Order dated March 30, 2010 granted in this proceeding.

SATISFACTION OF THE OBLIGATIONS OF SHELL

10. **THIS COURT ORDERS** that payment by Shell of the Lien Fund in accordance with paragraph 2 of this Order and the Sharkbite Receivable in accordance with paragraph 8 of this Order shall satisfy and be deemed to have fully and finally satisfied the obligations of Shell to Atcon Construction under the Albion Agreement and the Sharkbite Contracts.

CRA DEEMED TRUST HOLDBACK AND GARNISHMENT FUNDS

11. **THIS COURT ORDERS** that the aggregate amount of \$3,784,276.68 (the "**CRA Deemed Trust Holdback**") shall be maintained by the Receiver in a separate interest bearing trust account until such time as the liability of Atcon Construction in connection with the CRA Deemed Trust Claim has been finally determined (inclusive of all objections and appeals) in accordance with the applicable provisions of the *Income Tax Act* (Canada), the Canada Pension Plan and the *Employment Insurance Act* (Canada). The CRA Deemed Trust Holdback is comprised of the amount of \$3,427,865.97 of the Lien Fund referred to in subparagraph 4(c) of this Order, together with \$356,410.71 of the \$1,246,374.23 that was previously held by the Alberta Court pursuant to a Garnishee Summons issued on December 1, 2009, Q.B. Action Number 0903 12033 and subsequently paid to the Receiver (the "**Garnishment Funds**").

12. **THIS COURT ORDERS** that, upon a final determination being reached as to the liability of Atcon Construction for the CRA Deemed Trust Claim, the Receiver shall pay to CRA from the CRA Deemed Trust Holdback an amount equal to the amount determined owing by Atcon Construction on account of the CRA Deemed Trust Claim, to the maximum amount of \$3,784,276.68 (together with a *pro rata* share of the net interest actually accrued upon the CRA Deemed Trust Holdback), in priority to any Claims against the CRA Deemed Trust Holdback. Any balance of the CRA Deemed Trust Holdback shall be retained by the Receiver pending further Order of this Court.

13. **THIS COURT ORDERS** that the Receiver is authorized and empowered to utilize the balance of the Garnishment Funds, in the amount of \$889,963.52, and any interest that has accrued on the Garnishment Funds to date, for the purpose of making payments (including

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18 June 2010

interim payments) required or permitted by the Receivership Order dated March 2, 2010 granted in these proceedings, as amended by the Order dated March 30, 2010 granted in this proceeding.

CRA PENALTY AND INTEREST HOLDBACK

14. **THIS COURT ORDERS** that the CRA Non-Deemed Trust Holdback shall be held by the Receiver in a separate interest bearing trust account in connection with the Claims of all persons to the Lien Fund, including the Claim of CRA under the Shell Requirements to Pay for payment of the amount of \$996,345.70 in connection with accrued penalties and interest (accrued to but not after the date of bankruptcy of Atcon Construction) on the CRA Deemed Trust Claim and unpaid employer amounts pursuant to the provisions of the *Income Tax Act* (Canada), the Canada Pension Plan and the *Employment Insurance Act* (Canada) (the “**CRA Shell Non-Deemed Trust Claim**”).

15. **THIS COURT ORDERS** that, on the consent of the Receiver, BNS, Caterpillar, Emeco and the Province, the CRA Non-Deemed Trust Holdback shall also be treated as a substitute for, and be deemed to be, a portion of the indebtedness owing and payable to Atcon Construction with respect to equipment, goods, materials and services supplied by Atcon Construction to Pennecon Heavy Civil Ltd., Pennecon Atcon Limited Partnership (the “**LP**”) and/or Pennecon Atcon JV General Partner Inc. in connection with Contract CC-0001 Earthworks-Plant Site Development for Vale Inco Long Harbour Processing Plant between the LP and Vale Inco (the “**Pennecon Receivable**”), such that, the CRA Non-Deemed Trust Holdback shall be treated as a substitute for and be deemed to be a portion of the Pennecon Receivable and CRA shall be entitled to assert its Claims under the requirement to pay dated March 29, 2010 delivered by CRA to Pennecon Heavy Civil Ltd. in the amount of \$4,750,074.57 with respect to amounts owing and payable to Atcon Construction and the requirements to pay each dated June 11, 2010 and delivered by CRA to Pennecon Atcon Limited Partnership and Pennecon Atcon JV General Partner Inc. each in the amount of \$4,780,601.38 with respect to amounts owing and payable to Atcon Construction (collectively, the “**Pennecon Requirements to Pay**”) for payment of the amount of \$996,345.70 in connection with accrued penalties and interest (accrued to but not after the date of bankruptcy of Atcon Construction) on the CRA Deemed Trust Claim and on unpaid employer amounts pursuant to the provisions of the *Income Tax Act* (Canada), the Canada Pension Plan and the *Employment Insurance Act* (Canada) (together with the CRA Shell Non-

June 18 June 2010

Deemed Trust Claim, the "**CRA Non-Deemed Trust Claim**") against the CRA Non-Deemed Trust Holdback.

16. **THIS COURT ORDERS** that, upon a final determination being reached as to the liability of Atcon Construction for the CRA Deemed Trust Claim, the Receiver shall bring a motion to this Court, on notice to the parties listed on the service list in this proceeding, regarding payment to CRA of the CRA Non-Deemed Trust Holdback to a maximum amount of \$996,345.70 (together with a *pro rata* share of the net interest actually accrued upon the CRA Non-Deemed Trust Holdback), on account of the CRA Non-Deemed Trust Claim. On any such motion, any Builders' Lien Claimant (as defined herein) and any Secured Creditor (as defined herein) shall be at liberty to challenge the priority of the CRA Non-Deemed Trust Claim to the CRA Non-Deemed Trust Holdback (or any portion thereof). Any balance of the CRA Non-Deemed Trust Holdback shall be retained by the Receiver pending further Order of this Court.

REPLACEMENT CHARGE

17. **THIS COURT ORDERS** that to the extent any amount of the CRA Non-Deemed Trust Claim or any amount of the CRA Deemed Trust Claim is paid from the Builder's Lien Holdback, the CRA Non-Deemed Trust Holdback or the CRA Deemed Trust Holdback (collectively, the "**Holdbacks**"): (a) any builders' lien claimant with a valid and perfected builders' lien Claim against the Lien Fund under the BLA ("**Builders' Lien Claimant**"), without consideration of any CRA Claims (as defined herein), that did not recover payment in full of its finally determined Claim for lien and costs from the Subject Amounts; and (b) any person holding valid and perfected security upon the Lien Fund (being all of the amounts owing and payable under the Alban Agreement), without consideration of any CRA Claims, or other property, assets and undertakings of Atcon Construction that was paid into either or all of the Holdbacks ("**Secured Creditor**") and ultimately to CRA (each, an "**Impaired Creditor**") shall have the benefit of a charge (the "**Replacement Charge**") against the property, assets and undertakings of Atcon Construction (other than the Holdbacks) that were subject to the CRA Deemed Trust Claim, the CRA Non-Deemed Trust Claim, the Shell Requirements to Pay or the Pennecon Requirements to Pay (collectively, the "**CRA Claims**"). Each Impaired Creditor's Claim under the Replacement Charge shall be equal to the amount that such Impaired Creditor's builders' lien or security was

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reduced in value from the payment of the CRA Claims. In the event that more than one Impaired Creditor is secured by the Replacement Charge, such Impaired Creditors' Claims shall rank as between such Impaired Creditors against the other property, assets and undertakings of Atcon Construction in accordance with and the extent to which each of their Claims was reduced in value by the CRA Claims and, among Impaired Creditors, shall have the same priority as their Claims had against the Lien Fund and/or the Garnishment Funds from which the Holdbacks were created. The allocation of the burden of the CRA Claims (for the benefit of the Impaired Creditors) amongst the property, assets and undertakings of Atcon Construction and the creditors shall be determined by subsequent application to this Court, if necessary.

18. **THIS COURT ORDERS** that, subject to paragraph 19 of this Order, the Replacement Charge shall have the same priority over the property, assets and undertakings of Atcon Construction as the CRA Claims had as of the date that each such Claim arose, and for greater certainty, that to the extent that a CRA Claim has priority over the Claims or security of any creditor of Atcon Construction over any property, assets and undertakings of Atcon Construction, the Replacement Charge shall have the same priority over such property and assets.

19. **THIS COURT ORDERS** that the Replacement Charge over the property, assets and undertakings of Atcon Construction shall be subordinate to the following Claims against the property, assets and undertakings of Atcon Construction:

- (a) the Administrative Charge and the Receiver's Indemnity Charge granted in this proceeding pursuant to the Receivership Order dated March 2, 2010 as amended by the Order dated March 30, 2010;
- (b) the Administration Charge granted in the *Companies' Creditors Arrangement Act* proceeding bearing Court File No. N/M/16/10; and
- (c) sections 14.06(7), 81.4(4) and 81.6(2) of the *Bankruptcy and Insolvency Act*.

JMK.
18 June 2010

WITHOUT PREJUDICE

20. **THIS COURT ORDERS** that, except as expressly provided for in this Order, this Order and any person's consent or non-opposition thereto is without prejudice to all arguments, rights and Claims, including without limitation:

- (a) the right to argue that any Claim (including any Builders' Lien) is invalid or does not charge any of the Subject Amounts;
- (b) any argument relating to quantum of and priority of any Claim to any of the Subject Amounts, or any part thereof;
- (c) any argument based on marshalling or otherwise concerning the allocation of Claims among the Subject Amounts; and
- (d) any Claims or rights of any kind related to the Pennecon Receivable or the Pennecon project, including any lien rights.

Except as expressly provided for in this Order, for greater certainty, nothing in this Order shall be deemed to have determined the validity, quantum or priority of any Claim or the right of any party to the Subject Amounts or any part thereof.

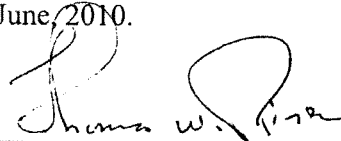
GENERAL MATTERS

21. **THIS COURT ORDERS** that the Receiver is authorized and directed to consult with CRA, BNS, the Province, Caterpillar, Emeco and such other interested persons as the Receiver deems appropriate concerning the possible resolution of the Claims of such persons with respect to the Subject Amounts, and the Receiver shall, by no later than July 30, 2010, report to this Court on the result of such consultations and, failing resolution of this matter, propose, following consultation with the previously referenced persons, a method of adjudication regarding the Claims against the Subject Amounts.

*Sub.
18 June 2010*

22. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including without limitation the Court of Queen's Bench of Alberta, for the recognition of this Order and for assistance in carrying out the terms of this Order.

Dated at Miramichi, New Brunswick, this 18th day of June, 2010.

A handwritten signature in black ink, appearing to read 'Thomas W. Riordon', written over a horizontal line.

Thomas W. Riordon
Judge of the Court of Queen's Bench of
New Brunswick

SCHEDULE "A"

Action No. _____

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY**

**IN THE MATTER OF the *Builders' Lien Act*, R.S.A. 2000, c. B-7,
and amendments thereto and regulations thereunder**

BETWEEN:

SHELL CANADA LIMITED

Applicant

- and -

**EMECO CANADA LIMITED, CATERPILLAR FINANCIAL
SERVICES LIMITED AND ERNST & YOUNG INC., IN ITS CAPACITY
AS COURT-APPOINTED RECEIVER AND RECEIVER MANAGER OF
ATCON CONSTRUCTION INC.**

Respondents

BEFORE THE HONOURABLE	)	Granted at the Court House, in the City
	)	Calgary, in the Province of Alberta on
JUSTICE	)	_____ the ____ day of June, 2010
	)	

CONSENT ORDER

UPON THE APPLICATION of the Applicant by Originating Notice filed June ●, 2010;
AND UPON HAVING READ the Affidavit of Tracey Dawn Vincent sworn June ●, 2010, filed,
AND UPON noting that the Court of Queen's Bench of New Brunswick (the "**New Brunswick Court**") granted a Receivership Order dated March 2, 2010 as amended by the Order dated March 30, 2010 in respect of, *inter alia*, Atcon Construction Inc. ("**Atcon Construction**"), in which Ernst & Young Inc. was appointed as receiver and receiver-manager (the "**Receiver**") of Atcon Construction (the "**Receivership Proceeding**"); AND WHEREAS the New Brunswick Court in the Receivership Proceeding has, by Order granted June 18, 2010 (the "**New Brunswick**

Order”), lifted the stay of proceedings in the Receivership Proceeding, directed that this application be brought by the Applicant and approved this form of Order; AND UPON noting the representations made by the Applicant and each of the Respondents; IT IS HEREBY ORDERED THAT:

1. Service of the Originating Notice and the supporting materials be and is hereby abridged so that the Applicant’s motion is properly returnable today and that any requirement for further service of the Originating Notice be and is hereby dispensed with;
2. The amount of the “lien fund”, as defined in the *Builders’ Lien Act* (Alberta) (the “**BLA**”) shall be \$8,432,503.30 (the “**Lien Fund**”);
3. Pursuant to sections 27(3) and 48(1) and (2) of the BLA, the Lien Fund shall be paid by the Applicant to the Receiver and held by the Receiver subject to and in accordance with the New Brunswick Order, and portions of the Lien Fund in the amount of \$4,008,291.63 and \$996,345.70 (the “**Holdbacks**”) shall be held by the Receiver as security for the following builders’ liens which have been registered by the following parties and such other builders liens as may be registered (collectively, the “**Liens**”):
 - (a) Emeco Canada Limited with Instrument No. 1001748 in respect of the minerals on the lands identified as Alberta Crown Oil Sands Lease No. 072 7277080T13 (“**Lease 13**”);
 - (b) Caterpillar Financial Services Limited (“**Caterpillar**”) with Instrument No. 1001884 in respect of the minerals on the lands identified as Lease 13;
 - (c) the Receiver with Instrument Number 1001942 in respect of the minerals on the lands identified as Lease 13;
 - (d) Caterpillar with Instrument No. 1001986 in respect of the minerals on the lands identified as Alberta Crown Oil Sands Lease No. 072 7288080T90 (“**Lease 90**”); and
 - (e) Caterpillar with Instrument No. 1001987 in respect of the minerals on the lands identified as Alberta Crown Oil Sands Lease No. 072 728009BT30 (“**Lease 30**”),

Lease 13, Lease 30 and Lease 90, are collectively referred to herein as the "Lands".

4. Notwithstanding section 191(1) of the *Land Titles Act* (Alberta), upon being presented with a certified copy of this Order and a Certificate of the Receiver confirming receipt of the Lien Fund which the Receiver shall forthwith upon receipt of the Lien Fund provide to Shell Canada's counsel, the Alberta Department of Energy shall immediately discharge from the Lands the Liens and any certificate of Lis Pendens related to the Liens;
5. In accordance with the New Brunswick Order, the Receiver shall hold the Holdbacks separately and in an interest bearing trust accounts and shall not pay the Holdbacks or any portion thereof except upon Order of the New Brunswick Court in the Receivership Proceeding made on notice to the parties listed on the service list in the Receivership Proceeding;
6. The Holdbacks paid to the Receiver in accordance with this Order:
 - (a) stands in the place of the Lands and as security for the legal costs of the Lien claimants with respect to the Liens and are subject to the Liens to the same extent as if the Liens continued to be registered against the Lands;
 - (b) discharges the Applicant from any liability in respect of the Liens; and
 - (c) shall be subject to the protections in favour of claimants and persons contained in the New Brunswick Order.

J.C.Q.B.A.

ENTERED this ____ day of June, 2010

CLERK OF THE COURT

CONSENTED AS TO FORM AND CONTENT:

THIS ____ DAY OF JUNE, 2010

OSLER, HOSKIN & HARCOURT LLP

Per: _____
Christa Nicholson / Carole J. Hunter
Counsel for the Applicant

THIS ____ DAY OF JUNE, 2010

BORDEN LADNER GERVAIS LLP

Per: _____
Michael MacNaughton / Sam Rappos
Counsel for the Respondent, Ernst & Young
Inc., in its capacity as receiver and receiver-
manager of Atcon Construction Inc.

THIS ____ DAY OF JUNE, 2010

**BLAKE, CASSELS & GRAYDON LLP /
LAWSON CREAMER LAWYERS**

Per: _____
Susan Grundy / Bob Creamer
Counsel for the Respondent, Caterpillar Financial
Services Limited

THIS ____ DAY OF JUNE, 2010

OGILVIE LLP

Per: _____
Rod Wasylyshyn
Counsel for the Respondent, Emeco Canada
Limited

THIS ____ DAY OF JUNE, 2010

COX & PALMER

Per: _____
Josh McElman
Counsel for Bank of Nova Scotia

THIS ____ DAY OF JUNE, 2010

DEPARTMENT OF JUSTICE

Per: _____
Greg MacIntosh
Counsel for the Canada Revenue Agency

THIS ____ DAY OF JUNE, 2010

OFFICE OF THE ATTORNEY GENERAL

Per: _____
John Logan
Counsel for the Province of New Brunswick

Appendix G

THIS SETTLEMENT AGREEMENT made at the City of St. John's, in the Province of Newfoundland and Labrador, as of the 27th day of May, 2010,

BETWEEN:

PENNECON ATCON JV GENERAL PARTNER INC., a body corporate duly incorporated and existing under the laws of the Province of Newfoundland and Labrador,

(referred to herein as the "**General Partner**")

AND:

PENNEY CONSTRUCTION LTD., a body corporate duly incorporated and existing under the laws of the Province of Newfoundland and Labrador,

(referred to herein as "**Penney**")

AND:

ATCON CONSTRUCTION INC., a body corporate under the laws of the Province of New Brunswick and duly registered to carry on business under the laws of the Province of Newfoundland and Labrador,

(referred to herein as "**Atcon**")

WHEREAS the General Partner, Penney and Atcon entered into an undated written limited partnership agreement (the "**LP Agreement**") pursuant to which the Pennecon Atcon Limited Partnership (the "**Limited Partnership**") was created;

AND WHEREAS the General Partner is the general partner for purposes of the LP Agreement, and Penney and Atcon are limited partners under the LP Agreement;

AND WHEREAS the LP Agreement was entered into by the parties thereto for the purpose of completing Contract CC-0001-Earthworks-Plant Site Development for Vale Inco Long Harbour Processing Plant, Long Harbour, Newfoundland and Labrador (the "**Project Site**") between the Limited Partnership and Vale Inco (the "**Project Contract**");

AND WHEREAS Atcon, in its capacity as a contracting party and not as a limited partner, has supplied equipment, goods, materials, and services to the Limited Partnership in connection with the Project Contract;

AND WHEREAS Atcon is the owner of certain equipment, goods and materials currently located at the Project Site (collectively, the "**Atcon Equipment**");

AND WHEREAS the General Partner and Penney have each advised that the maximum current contract value with respect to Project Contract is approximately \$86 million;

AND WHEREAS Ernst & Young Inc. ("**EYI**") was appointed as Monitor of Atcon on March 1, 2010 with respect to the proceedings commenced by Atcon under the *Companies' Creditors Arrangement*

Act (Canada) pursuant to the Initial Order of the Court of Queen's Bench of New Brunswick dated March 2, 2010;

AND WHEREAS pursuant to an Order of the Court of Queen's Bench of New Brunswick dated March 30, 2010 amending the Receivership Order of the Court of Queen's Bench of New Brunswick dated March 2, 2010, Atcon was placed into receivership and EYI was appointed as receiver and receiver manager (the "**Receiver**") of the property, assets and undertakings of Atcon (collectively the "**Receivership Order**");

AND WHEREAS pursuant to the provisions of the Receivership Order, the Receiver was authorized by the Court to: (i) receive and collect all monies and accounts owed to Atcon; (ii) settle, extend or compromise any indebtedness owing to Atcon; (iii) sell, convey, transfer, lease or assign the property of Atcon outside the ordinary course of business, subject to Court approval; and (iv) execute, assign, issue and endorse documents of whatsoever nature in respect of the property of Atcon, whether in the Receiver's name or in the name of and on behalf of Atcon, for any purpose pursuant to the Receivership Order;

AND WHEREAS Atcon's books and records reflect that the Limited Partnership is indebted to Atcon in its capacity as a contracting party, and not as a limited partner, for the aggregate amount of \$3,558,810 calculated to May 1, 2010 (the "**Atcon Debt**"), which amount is comprised of: (i) \$2,150,415.00 for services and equipment supplied on or before February 18, 2010; (ii) \$627,345.00 for services and equipment supplied during the period commencing on February 19, 2010 and ending on March 31, 2010; and (iii) \$781,050.00 for services and equipment supplied during the month of April, 2010 (\$691,195+\$89,855 HST);

AND WHEREAS the Limited Partnership has alleged that the Atcon Debt is to be reduced by the amount of \$336,425.00 for equipment repairs to Atcon's equipment and for overcharges (the "**Atcon Disputed Debt**");

AND WHEREAS the General Partner, on behalf of the Limited Partnership, claims that Atcon is indebted to the Limited Partnership for interest, management fees, and other administrative expenses under the LP Agreement (referred to herein as the "**Alleged LP Fees**");

AND WHEREAS the parties have agreed to the terms upon which the amount of \$3,222,385.00 (the Atcon Debt less the Atcon Disputed Debt) will be paid by the General Partner to the Receiver, and the parties wish to record the terms in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that for and in consideration of the sum of One dollar (\$1.00) and other good and valuable consideration paid by each of the parties hereto to the others (the receipt and sufficiency of which is hereby acknowledged by each party hereto), the parties hereto do, subject to the terms and conditions of this Agreement, acknowledge, confirm, covenant, and agree as follows:

Payment

1. Upon execution of this Agreement, the Receiver shall:

- a) bring a motion before the Court of Queen's Bench of New Brunswick seeking a Court Order authorizing the Receiver's execution of this Agreement and approving the terms of the Agreement, among other things (the "**Approval Order**"); and
 - b) use commercially reasonable efforts to obtain from Canada Revenue Agency ("**CRA**") a letter (the "**CRA Letter**") confirming that, upon payment of the sum of \$3,222,385.00 by the General Partner to the Receiver in accordance with paragraph 2 of this Agreement, the CRA will forthwith issue a letter to Penney confirming that the payment of the amount by the General Partner to the Receiver will not be regarded by the Minister of National Revenue as non-compliance with the following Requirements to Pay delivered by CRA to Pennecon Heavy Civil Ltd. in connection with Atcon (collectively, the "**RTPs**") and that the CRA withdraws the RTPs:
 - i) Requirement to Pay dated February 26, 2010 in the maximum amount of \$268,223.77;
 - ii) Requirement to Pay dated March 26, 2010 in the maximum amount of \$979,981.89; and
 - iii) Requirement to Pay dated March 29, 2010 in the maximum amount of \$4,750,074.57.
2. Upon the issuance of the Approval Order and receipt of the CRA Letter, the General Partner shall pay to the Receiver forthwith the sum of \$3,222,385.00, which amount shall be paid to the Receiver by way of certified cheque or bank draft payable to "Ernst & Young Inc., in trust" and delivered to the Receiver by no later than one (1) business day following the issuance of the Approval Order and receipt of the CRA Letter, whichever occurs later.
 3. The parties hereto agree to continue to act in good faith to negotiate the calculation and payment of the Atcon Disputed Debt, and in the absence of any agreement, agree to refer any dispute respecting such calculation and payment to arbitration pursuant to the *Arbitration Act* (Newfoundland and Labrador).
 4. The Limited Partnership agrees to make timely payment to the Receiver for any amounts owing or that become owing to Atcon for equipment, goods, services or materials supplied by Atcon to the Limited Partnership on or after May 1, 2010.

Waiver and Release

5. The General Partner, on behalf of the Limited Partnership, hereby irrecoverably waives, releases and discharges Atcon from all Alleged LP Fees.
6. Atcon hereby agrees that, effective upon the issuance of the Approval Order and receipt of the amount of \$3,222,385.00 in accordance with paragraph 2 of this Agreement, it shall either:
 - a) execute the form of transfer set forth in Schedule 1 to the LP Agreement to such replacement limited partner as the General Partner and Penney shall so direct; or,

- b) agree to a dissolution of the Limited Partnership in accordance with the terms of the Limited Partnership Agreement and the *Limited Partnership Act* (Newfoundland and Labrador).
7. Atcon hereby agrees that, effective upon the issuance of the Approval Order and receipt of the amount of \$3,222,385.00 in accordance with paragraph 2 of this Agreement, Atcon shall execute such further and other documents and take such further and other steps as may reasonably be required for Atcon to sell, assign, transfer and convey to Penney or its nominee all of the shares of the General Partner owned by Atcon.
8. Effective upon receipt of the amount of \$3,222,385.00 in accordance with paragraph 2 of this Agreement, Atcon releases and discharges the General Partner, Penney, and the Limited Partnership from all actions, suits, causes of action, debts, dues, accounts, bonds, covenants, contracts, costs, claims and demands whatsoever, past or future, foreseen or unforeseen, and all demands and claims of any kind or nature whatsoever arising out of any entitlement which it may have (i) pursuant to the LP Agreement, and (ii) in connection with or relating to any payment that is owing to it for equipment, goods, services and materials supplied by it to the Limited Partnership, other than (a) the Atcon Disputed Debt, which amount shall be subject to negotiation and arbitration in the manner set forth in this Agreement, and (b) amounts that are owing or become owing to Atcon for equipment, goods, services, or materials supplied by Atcon to the Limited Partnership on or after May 1, 2010.
9. The General Partner and Penney each hereby release and discharge Atcon and the Receiver from all actions, suits, causes of action, debts, dues, accounts, bonds, covenants, contracts, costs, claims and demands whatsoever, past or future, foreseen or unforeseen, respecting all equipment, goods, services and materials supplied by Atcon, or the Receiver for and on behalf of Atcon, to the Limited Partnership and respecting any and all claims that each party may have against Atcon in connection with or relating to the LP Agreement, other than any claims of the General Partner and Penney against Atcon arising from any demands of CRA against the General Partner, Penney, or any affiliates of Penney, with respect to any taxes that may be outstanding by Atcon.
10. The General Partner and Penney each hereby agree to indemnify and save harmless Atcon and the Receiver from any and all actions, suits, causes of action, debts, dues, accounts, bonds, covenants, contracts, claims and demands whatsoever that may arise as a result of the dissolution of the Limited Partnership.

Atcon Equipment

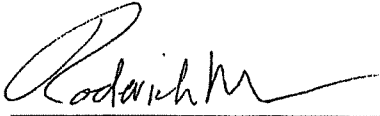
11. Atcon agrees that, up to and including June 25, 2010, it will deal exclusively with the General Partner, the Limited Partnership and Penney in connection with negotiating a possible transaction involving the sale, conveyance, transfer or disposition of the Atcon Equipment or any part or parts thereof to the Limited Partnership, the General Partner, Penney or any nominee of such parties (a "**Transaction**").
12. The parties agree that any written offer by the Limited Partnership, the General Partner, Penney or any nominee of such parties to purchase the Atcon Equipment or any part or parts thereof (an "**Offer**") must:

- a) be received by the Receiver on or before June 15, 2010; and
 - b) provide that the Receiver shall have seven (7) days following receipt of the Offer to provide a written response to the Offer to the Limited Partnership, the General Partner, Penney or any nominee of such parties.
13. The parties agree that, in the event that a written agreement in respect of a Transaction has not been executed and delivered on or before June 25, 2010, the General Partner, the Limited Partnership and Penney will provide access to the Project Site to the Receiver or its agents during business hours for a period commencing on June 30, 2010 and ending on July 14, 2010 to permit the Receiver and/or its agents to dismantle and remove the Atcon Equipment from the Project Site.
14. The parties acknowledge that the terms of this Agreement do not obligate any of the parties to proceed with a Transaction and that no such obligations will arise unless and until a written agreement among the parties in respect of a Transaction has been executed and delivered.

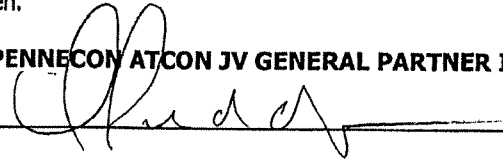
General

15. The parties acknowledge, confirm and agree that the recitals to the Agreement are true and correct and form an integral part of this Agreement.
16. This Agreement is subject to the Approval Order being granted by the Court of Queen's Bench of New Brunswick and the CRA Letter being obtained by the Receiver. In the event that the Approval Order is not granted or the CRA Letter is not obtained, this Agreement, other than paragraphs 11-14 of this Agreement, shall be of no force or effect and shall not be binding upon the parties hereto. In the event the Approval Order is granted and the CRA Letter received, this Agreement shall be binding upon the parties hereto and their respective successors and assigns.
17. The parties agree to execute such further and other documents and to take such further and other steps as may reasonably be required to give effect to the terms of this Agreement.
18. This Agreement may be executed in counterparts and delivered by fax transmission or by transmission in PDF or similar electronic document or format, each of which will be deemed an original, but all of which, when taken together, shall be deemed to be one and the same.
19. If any provision of this Agreement is held illegal, invalid or unenforceable by any competent authority in any jurisdiction, such illegality, invalidity and unenforceability shall not in any manner affect or render illegal, invalid or unenforceable that provision in any other jurisdiction or any other provision of this Agreement. This Agreement embodies the understanding of the parties hereto and supersedes any prior oral or written communications between the parties.
20. This Agreement shall be interpreted in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable therein and the parties hereby irrevocably attorn to the jurisdiction of the Court of Queen's Bench of New Brunswick in respect of the matters set out in this Agreement.

THIS AGREEMENT has been duly and properly authorized and executed by each of the parties hereto as of the day and year first before written.

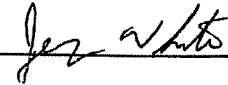


Witness

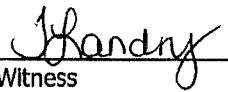
PENNECON ATCON JV GENERAL PARTNER INC.




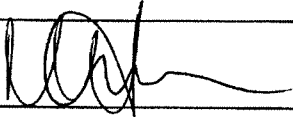
Witness

PENNEY CONSTRUCTION LTD.


ATCON CONSTRUCTION INC., by its Court-appointed receiver and receiver manager Ernst & Young Inc., acting solely in its capacity as Court-appointed receiver and receiver manager of Atcon Construction Inc. and not in its personal capacity



Witness



Per:

THIS SETTLEMENT AGREEMENT made at the City of St. John's, in the Province of Newfoundland and Labrador, as of the 27th day of May, 2010,

BETWEEN:

PENNECON ATCON JV GENERAL PARTNER INC., a body corporate duly incorporated and existing under the laws of the Province of Newfoundland and Labrador,

(referred to herein as the "**General Partner**")

AND:

PENNEY CONSTRUCTION LTD., a body corporate duly incorporated and existing under the laws of the Province of Newfoundland and Labrador,

(referred to herein as "**Penney**")

AND:

ATCON CONSTRUCTION INC., a body corporate under the laws of the Province of New Brunswick and duly registered to carry on business under the laws of the Province of Newfoundland and Labrador,

(referred to herein as "**Atcon**")

WHEREAS the General Partner, Penney and Atcon entered into an undated written limited partnership agreement (the "**LP Agreement**") pursuant to which the Pennecon Atcon Limited Partnership (the "**Limited Partnership**") was created;

AND WHEREAS the General Partner is the general partner for purposes of the LP Agreement, and Penney and Atcon are limited partners under the LP Agreement;

AND WHEREAS the LP Agreement was entered into by the parties thereto for the purpose of completing Contract CC-0001-Earthworks-Plant Site Development for Vale Inco Long Harbour Processing Plant, Long Harbour, Newfoundland and Labrador (the "**Project Site**") between the Limited Partnership and Vale Inco (the "**Project Contract**");

AND WHEREAS Atcon, in its capacity as a contracting party and not as a limited partner, has supplied equipment, goods, materials, and services to the Limited Partnership in connection with the Project Contract;

AND WHEREAS Atcon is the owner of certain equipment, goods and materials currently located at the Project Site (collectively, the "**Atcon Equipment**");

AND WHEREAS the General Partner and Penney have each advised that the maximum current contract value with respect to Project Contract is approximately \$86 million;

AND WHEREAS Ernst & Young Inc. ("**EYI**") was appointed as Monitor of Atcon on March 1, 2010 with respect to the proceedings commenced by Atcon under the *Companies' Creditors Arrangement*

Act (Canada) pursuant to the Initial Order of the Court of Queen's Bench of New Brunswick dated March 2, 2010;

AND WHEREAS pursuant to an Order of the Court of Queen's Bench of New Brunswick dated March 30, 2010 amending the Receivership Order of the Court of Queen's Bench of New Brunswick dated March 2, 2010, Atcon was placed into receivership and EYI was appointed as receiver and receiver manager (the "**Receiver**") of the property, assets and undertakings of Atcon (collectively the "**Receivership Order**");

AND WHEREAS pursuant to the provisions of the Receivership Order, the Receiver was authorized by the Court to: (i) receive and collect all monies and accounts owed to Atcon; (ii) settle, extend or compromise any indebtedness owing to Atcon; (iii) sell, convey, transfer, lease or assign the property of Atcon outside the ordinary course of business, subject to Court approval; and (iv) execute, assign, issue and endorse documents of whatsoever nature in respect of the property of Atcon, whether in the Receiver's name or in the name of and on behalf of Atcon, for any purpose pursuant to the Receivership Order;

AND WHEREAS Atcon's books and records reflect that the Limited Partnership is indebted to Atcon in its capacity as a contracting party, and not as a limited partner, for the aggregate amount of \$3,558,810 calculated to May 1, 2010 (the "**Atcon Debt**"), which amount is comprised of: (i) \$2,150,415.00 for services and equipment supplied on or before February 18, 2010; (ii) \$627,345.00 for services and equipment supplied during the period commencing on February 19, 2010 and ending on March 31, 2010; and (iii) \$781,050.00 for services and equipment supplied during the month of April, 2010 (\$691,195+\$89,855 HST);

AND WHEREAS the Limited Partnership has alleged that the Atcon Debt is to be reduced by the amount of \$336,425.00 for equipment repairs to Atcon's equipment and for overcharges (the "**Atcon Disputed Debt**");

AND WHEREAS the General Partner, on behalf of the Limited Partnership, claims that Atcon is indebted to the Limited Partnership for interest, management fees, and other administrative expenses under the LP Agreement (referred to herein as the "**Alleged LP Fees**");

AND WHEREAS the parties have agreed to the terms upon which the amount of \$3,222,385.00 (the Atcon Debt less the Atcon Disputed Debt) will be paid by the General Partner to the Receiver, and the parties wish to record the terms in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that for and in consideration of the sum of One dollar (\$1.00) and other good and valuable consideration paid by each of the parties hereto to the others (the receipt and sufficiency of which is hereby acknowledged by each party hereto), the parties hereto do, subject to the terms and conditions of this Agreement, acknowledge, confirm, covenant, and agree as follows:

Payment

1. Upon execution of this Agreement, the Receiver shall:

- a) bring a motion before the Court of Queen's Bench of New Brunswick seeking a Court Order authorizing the Receiver's execution of this Agreement and approving the terms of the Agreement, among other things (the "**Approval Order**"); and
 - b) use commercially reasonable efforts to obtain from Canada Revenue Agency ("**CRA**") a letter (the "**CRA Letter**") confirming that, upon payment of the sum of \$3,222,385.00 by the General Partner to the Receiver in accordance with paragraph 2 of this Agreement, the CRA will forthwith issue a letter to Penney confirming that the payment of the amount by the General Partner to the Receiver will not be regarded by the Minister of National Revenue as non-compliance with the following Requirements to Pay delivered by CRA to Pennecon Heavy Civil Ltd. in connection with Atcon (collectively, the "**RTPs**") and that the CRA withdraws the RTPs:
 - i) Requirement to Pay dated February 26, 2010 in the maximum amount of \$268,223.77;
 - ii) Requirement to Pay dated March 26, 2010 in the maximum amount of \$979,981.89; and
 - iii) Requirement to Pay dated March 29, 2010 in the maximum amount of \$4,750,074.57.
2. Upon the issuance of the Approval Order and receipt of the CRA Letter, the General Partner shall pay to the Receiver forthwith the sum of \$3,222,385.00, which amount shall be paid to the Receiver by way of certified cheque or bank draft payable to "Ernst & Young Inc., in trust" and delivered to the Receiver by no later than one (1) business day following the issuance of the Approval Order and receipt of the CRA Letter, whichever occurs later.
 3. The parties hereto agree to continue to act in good faith to negotiate the calculation and payment of the Atcon Disputed Debt, and in the absence of any agreement, agree to refer any dispute respecting such calculation and payment to arbitration pursuant to the *Arbitration Act* (Newfoundland and Labrador).
 4. The Limited Partnership agrees to make timely payment to the Receiver for any amounts owing or that become owing to Atcon for equipment, goods, services or materials supplied by Atcon to the Limited Partnership on or after May 1, 2010.

Waiver and Release

5. The General Partner, on behalf of the Limited Partnership, hereby irrecoverably waives, releases and discharges Atcon from all Alleged LP Fees.
6. Atcon hereby agrees that, effective upon the issuance of the Approval Order and receipt of the amount of \$3,222,385.00 in accordance with paragraph 2 of this Agreement, it shall either:
 - a) execute the form of transfer set forth in Schedule 1 to the LP Agreement to such replacement limited partner as the General Partner and Penney shall so direct; or,

- b) agree to a dissolution of the Limited Partnership in accordance with the terms of the Limited Partnership Agreement and the *Limited Partnership Act* (Newfoundland and Labrador).
7. Atcon hereby agrees that, effective upon the issuance of the Approval Order and receipt of the amount of \$3,222,385.00 in accordance with paragraph 2 of this Agreement, Atcon shall execute such further and other documents and take such further and other steps as may reasonably be required for Atcon to sell, assign, transfer and convey to Penney or its nominee all of the shares of the General Partner owned by Atcon.
8. Effective upon receipt of the amount of \$3,222,385.00 in accordance with paragraph 2 of this Agreement, Atcon releases and discharges the General Partner, Penney, and the Limited Partnership from all actions, suits, causes of action, debts, dues, accounts, bonds, covenants, contracts, costs, claims and demands whatsoever, past or future, foreseen or unforeseen, and all demands and claims of any kind or nature whatsoever arising out of any entitlement which it may have (i) pursuant to the LP Agreement, and (ii) in connection with or relating to any payment that is owing to it for equipment, goods, services and materials supplied by it to the Limited Partnership, other than (a) the Atcon Disputed Debt, which amount shall be subject to negotiation and arbitration in the manner set forth in this Agreement, and (b) amounts that are owing or become owing to Atcon for equipment, goods, services, or materials supplied by Atcon to the Limited Partnership on or after May 1, 2010.
9. The General Partner and Penney each hereby release and discharge Atcon and the Receiver from all actions, suits, causes of action, debts, dues, accounts, bonds, covenants, contracts, costs, claims and demands whatsoever, past or future, foreseen or unforeseen, respecting all equipment, goods, services and materials supplied by Atcon, or the Receiver for and on behalf of Atcon, to the Limited Partnership and respecting any and all claims that each party may have against Atcon in connection with or relating to the LP Agreement, other than any claims of the General Partner and Penney against Atcon arising from any demands of CRA against the General Partner, Penney, or any affiliates of Penney, with respect to any taxes that may be outstanding by Atcon.
10. The General Partner and Penney each hereby agree to indemnify and save harmless Atcon and the Receiver from any and all actions, suits, causes of action, debts, dues, accounts, bonds, covenants, contracts, claims and demands whatsoever that may arise as a result of the dissolution of the Limited Partnership.

Atcon Equipment

11. Atcon agrees that, up to and including June 25, 2010, it will deal exclusively with the General Partner, the Limited Partnership and Penney in connection with negotiating a possible transaction involving the sale, conveyance, transfer or disposition of the Atcon Equipment or any part or parts thereof to the Limited Partnership, the General Partner, Penney or any nominee of such parties (a "**Transaction**").
12. The parties agree that any written offer by the Limited Partnership, the General Partner, Penney or any nominee of such parties to purchase the Atcon Equipment or any part or parts thereof (an "**Offer**") must:

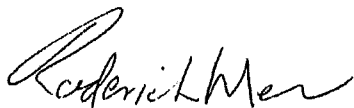
- a) be received by the Receiver on or before June 15, 2010; and
 - b) provide that the Receiver shall have seven (7) days following receipt of the Offer to provide a written response to the Offer to the Limited Partnership, the General Partner, Penney or any nominee of such parties.
13. The parties agree that, in the event that a written agreement in respect of a Transaction has not been executed and delivered on or before June 25, 2010, the General Partner, the Limited Partnership and Penney will provide access to the Project Site to the Receiver or its agents during business hours for a period commencing on June 30, 2010 and ending on July 14, 2010 to permit the Receiver and/or its agents to dismantle and remove the Atcon Equipment from the Project Site.
14. The parties acknowledge that the terms of this Agreement do not obligate any of the parties to proceed with a Transaction and that no such obligations will arise unless and until a written agreement among the parties in respect of a Transaction has been executed and delivered.

General

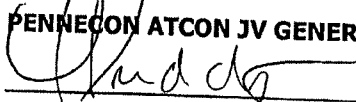
15. The parties acknowledge, confirm and agree that the recitals to the Agreement are true and correct and form an integral part of this Agreement.
16. This Agreement is subject to the Approval Order being granted by the Court of Queen's Bench of New Brunswick and the CRA Letter being obtained by the Receiver. In the event that the Approval Order is not granted or the CRA Letter is not obtained, this Agreement, other than paragraphs 11-14 of this Agreement, shall be of no force or effect and shall not be binding upon the parties hereto. In the event the Approval Order is granted and the CRA Letter received, this Agreement shall be binding upon the parties hereto and their respective successors and assigns.
17. The parties agree to execute such further and other documents and to take such further and other steps as may reasonably be required to give effect to the terms of this Agreement.
18. This Agreement may be executed in counterparts and delivered by fax transmission or by transmission in PDF or similar electronic document or format, each of which will be deemed an original, but all of which, when taken together, shall be deemed to be one and the same.
19. If any provision of this Agreement is held illegal, invalid or unenforceable by any competent authority in any jurisdiction, such illegality, invalidity and unenforceability shall not in any manner affect or render illegal, invalid or unenforceable that provision in any other jurisdiction or any other provision of this Agreement. This Agreement embodies the understanding of the parties hereto and supersedes any prior oral or written communications between the parties.
20. This Agreement shall be interpreted in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable therein and the parties hereby irrevocably attorn to the jurisdiction of the Court of Queen's Bench of New Brunswick in respect of the matters set out in this Agreement.

THIS AGREEMENT has been duly and properly authorized and executed by each of the parties hereto as of the day and year first before written.

PENNECON ATCON JV GENERAL PARTNER INC.



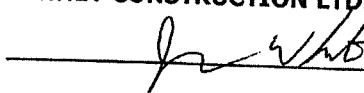
Witness



PENNEY CONSTRUCTION LTD.



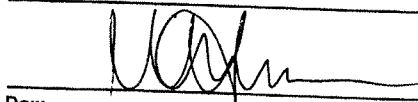
Witness



ATCON CONSTRUCTION INC., by its Court-appointed receiver and receiver manager Ernst & Young Inc., acting solely in its capacity as Court-appointed receiver and receiver manager of Atcon Construction Inc. and not in its personal capacity



Witness



Per:

Appendix H

CURTIS, DAWE
Barristers, Solicitors & Notaries

P.O. Box 337

St. John's, NL

Canada A1C 5J9

Fortis Building, 11th Floor

139 Water Street

Telephone: (709) 722-5181

Facsimile: (709) 722-7541

TELECOPIER COVER SHEET

DATE: June 25, 2010

TO: Ernst & Young

FR: Gregory M. Smith

No. of pages
Including cover:

MESSAGE:

We are transmitting automatically on a Sharp FO-5400T Terminal. Our telecopier number is (709) 722-7541.

If you experience problems in receiving, please call Audrey at (709) 722-5181.

Disposition of Original: Mail _____ Courier _____ Retained _____

This telecopy is SOLICITOR-CLIENT PRIVILEGED and contains confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this telecopy in error, please notify us immediately by telephone and return the original transmission to us by mail without making a copy.

CURTIS, DAWE

June 25, 2010

✓ **Atcon Construction Inc.**
c/o Ernst & Young Inc.
1959 Upper Water Street
13th Floor
Halifax, NS B3J 3N2
Canada

Penny Construction Ltd.
Janis Byrne Law Office
P.O. Box 8724, Stn. "A"
1309 Topsail Rd.
Paradise, NL
Canada

Pennecon Heavy Civil Ltd.
Janis Byrne Law Office
P.O. Box 8724, Stn. "A"
1309 Topsail Rd.
Paradise, NL
Canada

Pennecon Atcon JV General Partnership Inc
Janis Byrne Law Office
P.O. Box 8724, Stn. "A"
1309 Topsail Rd.
Paradise, NL
Canada

Vale Inco Newfoundland and Labrador Limited
Suite 700, Baine Johnston Centre
10 Ft. Wm. Place
St. John's, NL A1C 1K4
Canada

Dear Sir/Madam:

RE:	Claim for Lien:	
	Lien Claimant:	Caterpillar Financial Services Limited
	Contract Site:	Long Harbour Nickel Processing Plant Site Development
		In Long Harbour, Placentia Bay, NL
	Property Owner:	Vale Inco Newfoundland and Labrador Limited

We act as solicitors for Caterpillar Financial Services Limited ("CFSL"), the lien claimant in the above referenced Claim for Lien.

We enclose, for service upon you, a copy of the above referenced Claim for Lien. You

CURTIS, DAWE

may contact the undersigned to discuss this matter with a view to an early resolution of the claim by CFSL should that be your desired course of action.

Yours very truly,

CURTIS, DAWE

A handwritten signature in black ink, appearing to read "Gregory M. Smith". The signature is written in a cursive, flowing style.

Gregory M. Smith

GMS/alg
Enclosure

COPY

IN THE MATTER OF the *Mechanic's Lien Act*,
R.S.N., 1990 c. M-3;

AND IN THE MATTER OF a claim for lien by
Caterpillar Financial Services Limited;

AND IN THE MATTER OF claims against Atoon
Construction Inc., Penney Construction Ltd.,
Pennecon Heavy Civil Ltd.,
Pennecon Atoon JV General Partnership Inc. and
Vale Inco Newfoundland and Labrador Limited;

AND IN THE MATTER OF a claim against land
situated at Long Harbour, in the Province of
Newfoundland and Labrador

MECHANICS LIEN
No. 16020
Registered 25 day of June
20 10 at 1:56 O'Clock Pm
Fees Paid \$ 12 Receipt No. 9
Registrar of Deeds

CLAIM FOR LIEN

FOR REGISTRATION IN THE REGISTRY OF DEEDS FOR THE PROVINCE OF
NEWFOUNDLAND AND LABRADOR

The claim for lien by Caterpillar Financial Services Limited, the lien claimant herein, says:

1. The name and address for service of the lien claimant is:

Caterpillar Financial Services Limited
c/o Curtis, Dawe
Barristers and Solicitors
Suite 1101
The Fortis Building
139 Water Street
P.O. Box 337
St. John's, NL A1C 5J9
Canada

2. The name and address for service of the owner or the person whom the lien claimant
believes to be the owner of the land is:

Vale Inco Newfoundland and Labrador Limited
Suite 700, Baine Johnston Centre
10 Ft. Wm. Place
St. John's, NL A1C 1K4
Canada

3. The names and addresses for service of the persons for whom the work was done is:

- (a) Atcon Construction Inc.
c/o Ernst & Young Inc.
1959 Upper Water Street
13th Floor
Halifax, NS B3J 3N2
Canada
- (b) Penney Construction Ltd.
Janis Byrne Law Office
P.O. Box 8724, Stn. "A"
1309 Topsail Rd.
Paradise, NL
Canada
- (c) Pennecon Heavy Civil Ltd
Janis Byrne Law Office
P.O. Box 8724, Stn. "A"
1309 Topsail Rd.
Paradise, NL
Canada
- (d) Pennecon Atcon JV General Partnership Inc
Janis Byrne Law Office
P.O. Box 8724, Stn. "A"
1309 Topsail Rd.
Paradise, NL
Canada
- (e) Vale Inco Newfoundland and Labrador Limited
Suite 700, Baine Johnston Centre
10 Ft. Wm. Place
St. John's
NL, Canada
A1C 1K4

4. The time within which the work was or was to be done is:

Ongoing from on or about November 1, 2009.

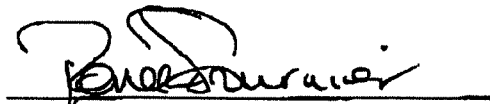
5. The following is a short description of the work done by the lien claimant:

Caterpillar Financial Services Limited ("CFSL") did work in respect of the making, constructing, altering, improving or repairing of land for an owner, contractor or subcontractor. Specifically, CFSL rented heavy equipment to Atcon Construction Inc. The rented equipment was used by Atcon Construction Inc.,

Penney Construction Ltd., Pennecon Heavy Civil Ltd., Pennecon Heavy Civil Ltd./Ateon Construction Inc., JV Limited Liability Partnership, and Pennecon Atcon JVC General Partnership Inc. on a contract site to complete all the civil works for the Long Harbour Nickel Processing Plant Site development in Long Harbour, Placentia Bay, NL. The contract site is land and land covered by water situate and being at Long Harbour, Placentia Bay, in the Province of Newfoundland and Labrador. The land and land covered by water is owned by Vale Inco Newfoundland and Labrador Limited.

6. The sum claimed as due in relation to the rental of the equipment for use on the contract site is \$929,786.00.
7. The land and land covered by water situate and being at Long Harbour, Placentia Bay, in the Province of Newfoundland and Labrador is more particularly described and delineated in Schedule "A", Schedule "B", Schedule "C", Schedule "D" and Schedule "E" attached hereto (which Schedules form part and parcel of these presents).

DATED at Burlington, in the Province of Ontario, this 26th day of June, 2010.


RENEE FOURNIER
Customer Service Support Manager

IN THE MATTER OF the *Mechanic's Lien Act*,
R.S.N., 1990 c. M-3;

AND IN THE MATTER OF a claim for lien by
Caterpillar Financial Services Limited;

AND IN THE MATTER OF claims against Atcon
Construction Inc., Penney Construction Ltd.,
Pennecon Heavy Civil Ltd.,
Pennecon Atcon JV General Partnership Inc. and
Vale Inco Newfoundland and Labrador Limited;

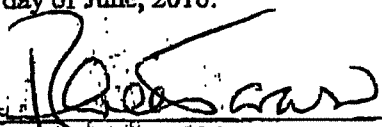
AND IN THE MATTER OF a claim against land
situated at Long Harbour, in the Province of
Newfoundland and Labrador

AFFIDAVIT

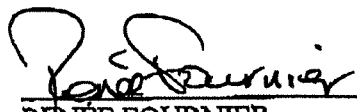
I, Renée Fournier, Customer Service Support Manager of Caterpillar Financial Services Limited, of
Burlington, in the Province of Ontario, make oath and say as follows:

1. I am a Customer Service Support Manager of Caterpillar Financial Services Limited.
2. I have read and I understand the foregoing Claim for Lien by Caterpillar Financial Services Limited.
3. I have personal knowledge of the matters set out in the foregoing Claim for Lien and I verify that those matters are true to the best of my knowledge, information and belief.

SWORN TO at Burlington, in the
Province of Ontario, this
day of June, 2010.


Marie Rita Renée Tarasc,
Notary Public, Regional Municipality of Halton,
limited to the attestation of instruments

**CATERPILLAR FINANCIAL
SERVICES LIMITED**


RENEE FOURNIER
Customer Service Support Manager

Schedule "A"

Rhodia Canada Inc. (Parcel "J")
Long Harbour, Placentia Bay, NF

ALL THAT piece or parcel of land and land covered by water situate and being in the Town of Long Harbour, in the Province of Newfoundland, Canada, bounded and abutted as follows: that is to say beginning at a point, said point having M.T.M. Grid Co-ordinates (C.M. 53") (NAD 83) of N 5 253 660.849 and E 243 333.677;

THENCE RUNNING North forty nine degrees fifty minutes twenty seconds West ($N49^{\circ}50'20''W$), a distance of 309.555 meters by The Waters of Long Harbour to a point;

THENCE turning and running North forty degrees nine minutes forty seconds East ($N40^{\circ}09'40''E$), a distance of 122.175 meters by Long Harbour Development Corporation (Water Lot) to a point;

THENCE turning and running continuous with the original shore line of The Waters of Long Harbour and having a chord of South forty nine degrees fifty three minutes nineteen seconds East ($S49^{\circ}53'19''E$), a distance of 68.159 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running South eighty three degrees forty two minutes thirteen seconds East ($S83^{\circ}42'13''E$), a distance of 148.754 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running North forty six degrees forty minutes forty one seconds West ($N46^{\circ}40'41''W$), a distance of 29.101 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running North forty nine degrees twelve minutes thirty seconds West ($N49^{\circ}12'30''W$), a distance of 57.168 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running South seventy degrees seven minutes forty four seconds West ($S70^{\circ}07'44''W$), a distance of 46.632 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running North five degrees four minutes four seconds West ($N05^{\circ}04'04''W$), a distance of 43.510 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running North fourteen degrees fifty minutes fourteen seconds West ($N14^{\circ}50'14''W$), a distance of 45.740 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running North twenty one degrees fifty six minutes twenty one seconds West ($N21^{\circ}56'21''W$), a distance of 26.602 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running North seventy degrees fifty two minutes fourteen seconds East ($N70^{\circ}52'14''E$), a distance of 53.140 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running North sixty degrees thirty four minutes three seconds East ($N60^{\circ}34'03''E$), a distance of 72.294 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running South thirty degrees two minutes thirty eight seconds East (S30°02'38"E), a distance of 280.174 meters by land of Rhodia Canada Inc. and by land of Newfoundland Hydro (Long Harbour Substation) to a point;

THENCE turning and running South thirty nine degrees twenty seven minutes forty seconds West (S39°27'40"W), a distance of 253.305 meters by Crown Land to the PLACE OF BEGINNING and containing in all an area of 8.2093 hectares as more particularly described and delineated on plan T5398B-R, 12 Jan 06 hereto annexed.

ALL bearings are referred to Grid North.

TOGETHER WITH

Rhodia Canada Inc. (Parcel "2")
Long Harbour, Pictou Bay, N.S.

ALL THAT piece or parcel of land and land covered by water situate and being in the Town of Long Harbour, in the Province of Newfoundland, Canada, bounded and abutted as follows: that is to say beginning at a point, said point having M.T.M. Grid Co-ordinates (C.M. 53°) (NAD 83) of N 5 254 197.533 and E 242 886.714;

THENCE RUNNING North thirty eight degrees forty three minutes thirty two seconds East (N38°43'32"E), a distance of 270.410 meters by land of Rhodia Canada Inc. (Water Lot) to a point;

THENCE turning and running South twenty six degrees forty one minutes twenty five seconds West (S26°41'25"W), a distance of 136.159 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running South forty nine degrees thirty nine minutes sixteen seconds West (S49°39'16"W), a distance of 114.910 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running South thirty three degrees fifty six minutes seven seconds East (S33°36'07"E), a distance of 91.840 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running South fifty degrees fifty five minutes thirty nine seconds East (S50°55'39"E), a distance of 58.130 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running South fifty seven degrees eighteen minutes fifty three seconds East (S57°18'53"E), a distance of 151.941 meters by land of Long Harbour Development Corporation to a point;

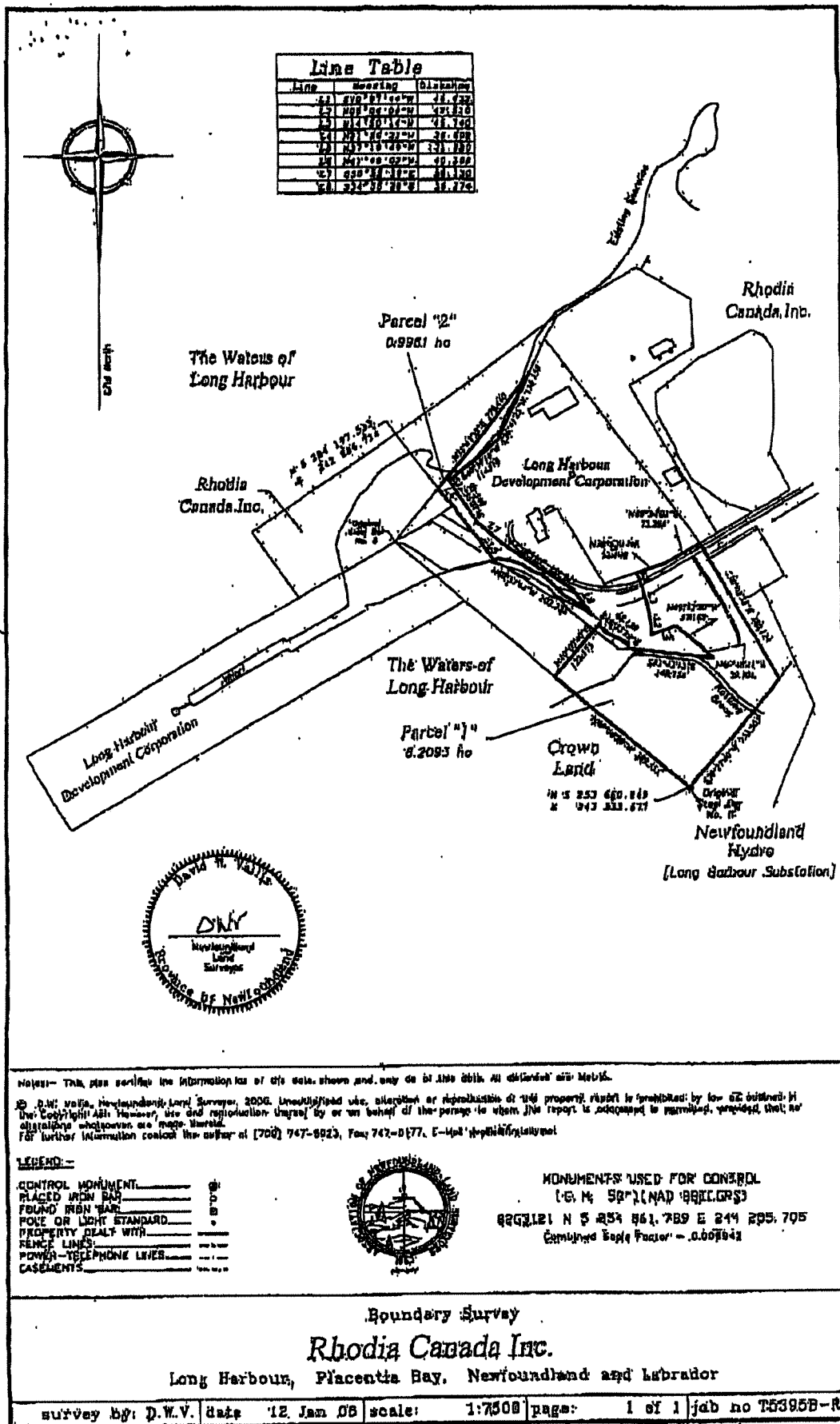
THENCE turning and running South thirty four degrees fifty five minutes twenty eight seconds East (S34°55'28"E), a distance of 36.274 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running continuous with the original shore line of The Waters of Long Harbour having a chord of North sixty degrees thirty seven minutes forty four seconds West (N60°37'44"W), a distance of 202.228 meters by land of Long Harbour Development Corporation (Water Lot) to a point;

THENCE turning and running North thirty seven degrees eighteen minutes forty nine seconds West (N37°18'49"W), a distance of 121.920 meters by land of Long Harbour Development Corporation (Water Lot) to a point;

THENCE turning and running North forty one degrees forty eight minutes two seconds West (N41°48'02"W), a distance of 40.188 meters by land of Long Harbour Development Corporation (Water Lot) to the PLACE OF BEGINNING and containing in all an area of 0.996 hectares more particularly described and delineated on plan T23825-B, 12 Jan 06 hereto annexed.

ALL bearings are referred to Grid North.



Schedule "B"

Rhodia Canada Inc. (Water Lot)
Long Harbour, Pleasant Bay, NB

ALL THAT piece or parcel of land covered by water situate and being in the Town of Long Harbour, in the Province of Newfoundland, Canada, bounded and abutted as follows: that is to say beginning at a point, said point having M.T.M. Grid Co-ordinates (C.M. 53°) [NAD 83] of N 5 254 507.308 and E 243 105.558;

THENCE RUNNING South twenty six degrees forty one minutes twenty five seconds West ($S26^{\circ}41'25''W$), a distance of 110.599 meters by land of Long Harbour Development Corporation and by land of Vale Inco to a point;

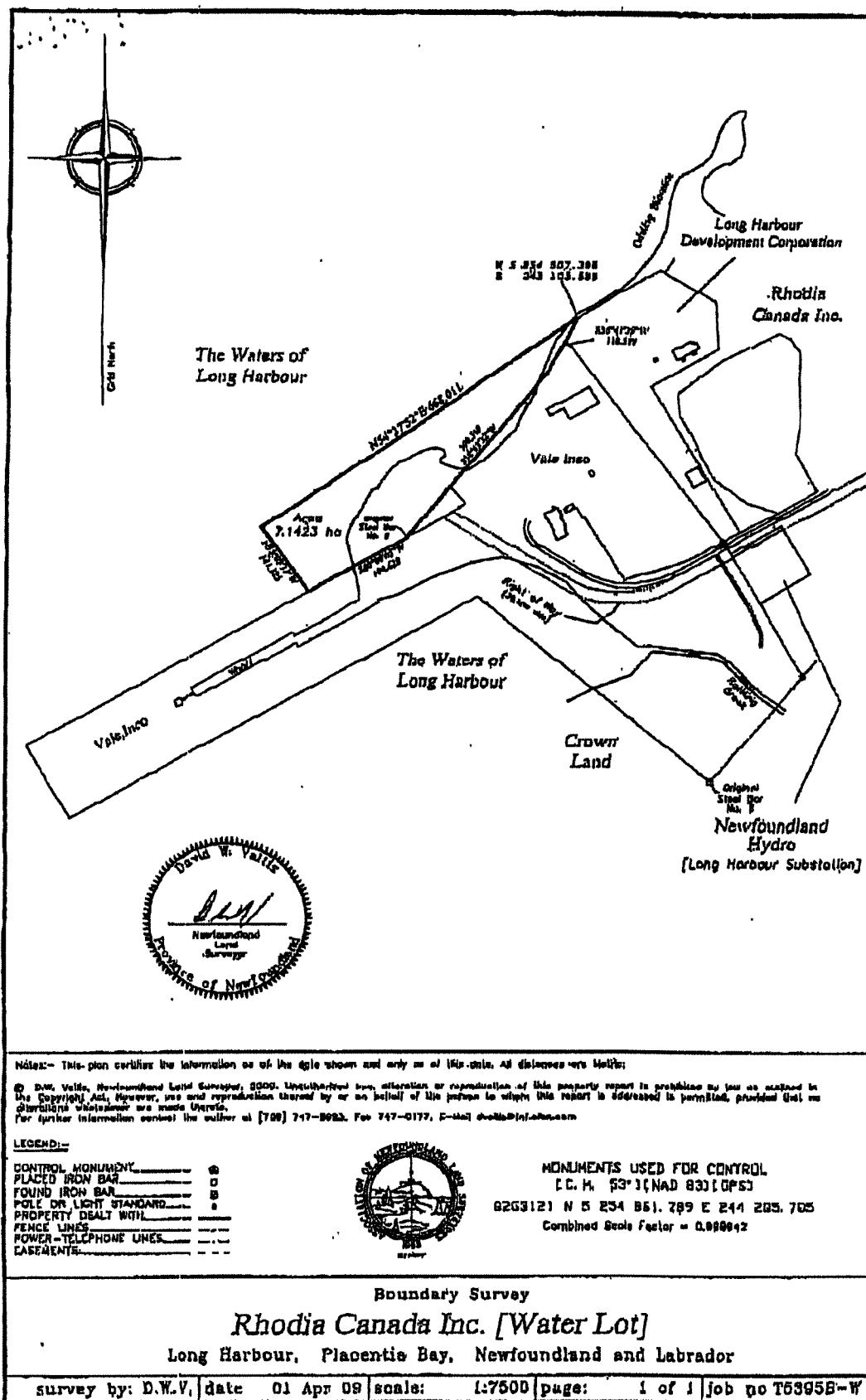
THENCE turning and running South thirty eight degrees forty three minutes thirty two seconds West ($S38^{\circ}43'32''W$), a distance of 392.319 meters by land of Vale Inco to a point;

THENCE turning and running South sixty degrees zero minutes five seconds West ($S60^{\circ}00'05''W$), a distance of 194.620 meters by land of Vale Inco to a point;

THENCE turning and running North thirty five degrees three minutes thirty seven seconds West ($N35^{\circ}03'37''W$), a distance of 141.125 meters by The Waters of Long Harbour to a point;

THENCE turning and running North fifty four degrees thirty seven minutes fifty two seconds East ($N54^{\circ}37'52''E$), a distance of 668.011 meters by The Waters of Long Harbour to the PLACE OF BEGINNING and containing in all an area of 7.1423 hectares as more particularly described and delineated on plan T5395B-W, April 1, 09 hereto annexed.

ALL bearings are referred to Grid North.



Schedule "C"

Vale Inc. Parcel A
Long Harbour, NL

ALL THAT piece or parcel of land situate and being Long Harbour, in the Town of Long Harbour, in the Province of Newfoundland, Canada, bounded and abutted as follows: that is to say beginning at a point, said point having M.T.M. Grid Co-ordinates (C.M. 53°) [NAD 83] of N 5 254 721.336 and E 244 235.373;

THENCE running South fifty one degrees twenty seven minutes fifty two seconds West (S51°27'52"W), a distance of 106.710 meters by Crown Land to a point;

THENCE turning and running South thirty nine degrees twenty seven minutes fifty two seconds West (S39°27'52"W), a distance of 1034.116 meters by Crown Land to a point;

THENCE turning and running North thirty degrees two minutes thirty eight seconds West (N30°02'38"W), a distance of 153.170 meters by land of Rhodia Canada Inc. to a point;

THENCE turning and running North fifty nine degrees forty nine minutes forty five seconds East (N59°49'45"E), a distance of 102.565 meters by land of Hydro to a point;

THENCE turning and running North twenty nine degrees fifty three minutes thirty two seconds West (N29°53'32"W), a distance of 37.238 meters by land of Hydro to a point;

THENCE turning and running North forty eight degrees thirty five minutes fifty six seconds East (N48°35'56"E), a distance of 22.661 meters by land of Hydro to a point;

THENCE turning and running North twenty seven degrees thirty minutes thirty four seconds East (N27°30'34"E), a distance of 35.048 meters by land of Hydro to a point;

THENCE turning and running North seven degrees forty four minutes forty eight seconds East (N07°44'46"E), a distance of 52.528 meters by land of Hydro to a point;

THENCE turning and running South fifty nine degrees forty four minutes six seconds West (S59°44'06"W), a distance of 12.693 meters by land of Hydro to a point;

THENCE turning and running South seven degrees forty four minutes forty eight seconds West (S07°44'48"W), a distance of 42.968 meters by land of Hydro to a point;

THENCE turning and running South twenty seven degrees thirty minutes thirty four seconds West (S27°30'34"W), a distance of 31.446 meters by land of Hydro to a point;

THENCE turning and running South forty eight degrees thirty five minutes fifty six seconds West (S48°35'56"W), a distance of 18.763 meters by land of Hydro to a point;

THENCE turning and running North twenty nine degrees fifty three minutes thirty two seconds West (N29°53'32"W), a distance of 54.247 meters by land of Hydro to a point;

THENCE turning and running South fifty nine degrees fifty three minutes zero seconds West (S59°53'00"W), a distance of 102.834 meters by land of Hydro to a point;

THENCE turning and running North thirty degrees two minutes thirty eight seconds West (N30°02'38"W), a distance of 25.121 meters by land of Hydro to a point;

THENCE turning and running North fifty nine degrees fifty eight minutes eight seconds East (N59°58'08"E), a distance of 393.494 meters by land of Long Harbour Development Corporation and by land of Rhodia Canada Inc. to a point;

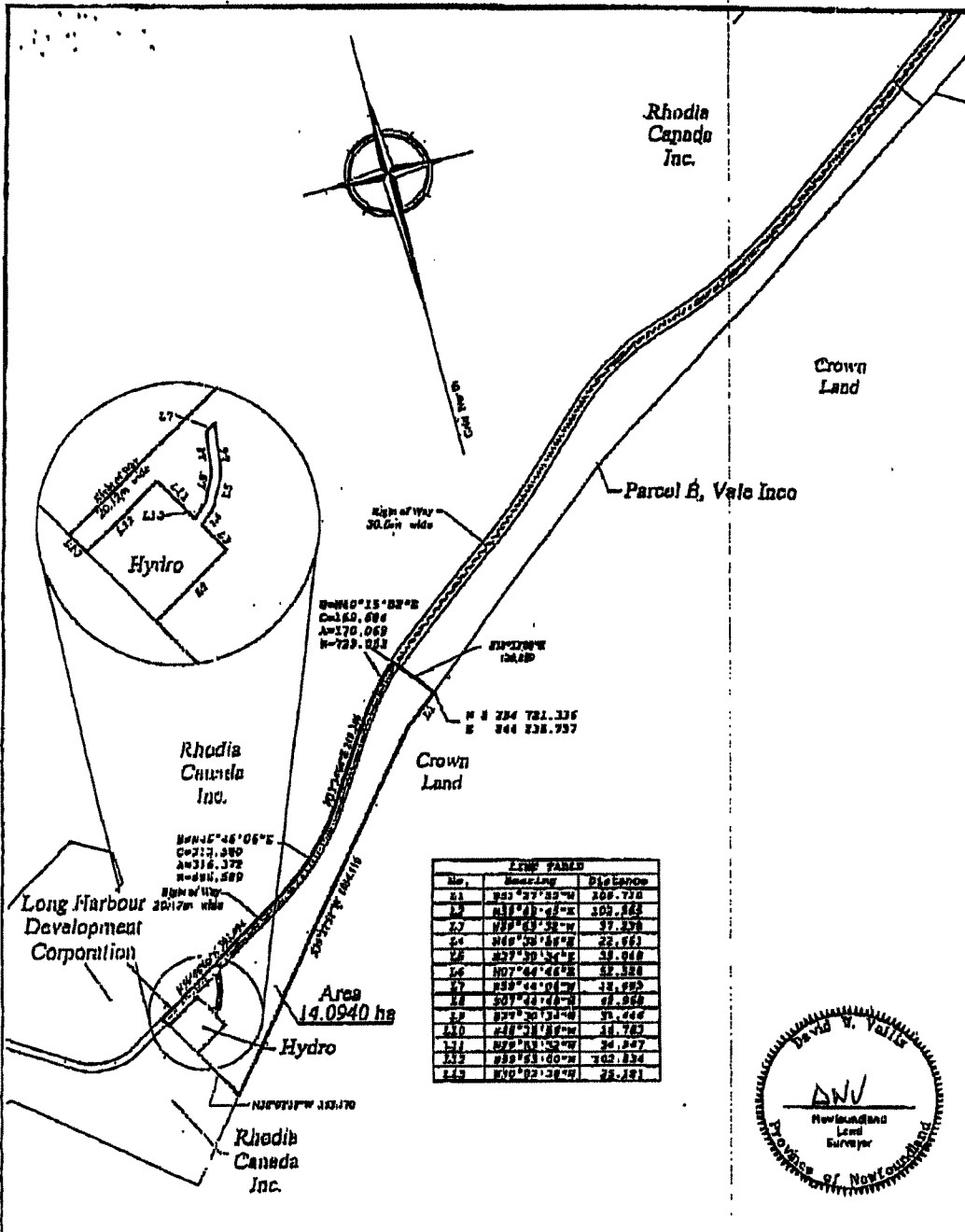
THENCE turning and running along a curve to the left having a radius of 686.589 meters an arc of 316.372 meters and a chord of North forty six degrees forty six minutes six seconds East (N46°46'06"E) a distance of 313.580 meters by land of Rhodia Canada Inc. to a point;

THENCE turning and running North thirty three degrees thirty four minutes four seconds East (N33°34'04"E), a distance of 219.346 meters by land of Rhodia Canada Inc. to a point;

THENCE turning and running along a curve to the right having a radius of 729.053 meters an arc of 170.069 meters and a chord of North forty degrees fifteen minutes two seconds East (N40°15'02"E) a distance of 169.684 meters by land of to a point;

THENCE turning and running South thirty eight degrees thirty two minutes eight seconds East (S38°32'08"E), a distance of 129.889 meters by land of Vale Inco, Parcel B to the PLACE OF BEGINNING and containing in all an area of 14.094 hectares as more particularly described and delineated on plan T7365-1, 01 Apr 08 hereto annexed.

ALL bearings are referred to Grid North.



Notes:- This plan certifies the information as of the date shown and only as of this date. All distances are Metric.

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LEGEND:-

CONTROL MONUMENT _____
 PLACED IRON BAR _____
 FOUND IRON BAR _____
 POLE OR LIGHT STANDINGS _____
 PROPERTY DEALT WITH _____
 FENCE LINES _____
 POWER-TELEPHONE LINES _____
 EASEMENTS _____



MONUMENTS USED FOR CONTROL
 [C.M. 53] (NAD 83) (GPS)
 8263121 N 5 254 861.789 E 244 285.785
 Combined Scale Factor = 0.999942

Boundary Survey Vale Inco, Parcel A Long Harbour, Newfoundland

Survey by: D.W.V. date: 01 Apr 08 scale: 1:12500 page: 1 of 1 job no.: T7365-1

Schedule "D"

ALL THAT piece or parcel of land situate and being, in the Town of Long Harbour, in the Province of Newfoundland, Canada, bounded and situated as follows: (that is to say beginning at a point, said point having M.T.M. Grid Co-ordinates (C.M. 53°, Zone 1) (NAD 83) of N 5 254 116.210 and E 243 384.270;

THENCE RUNNING North twenty nine degrees forty one minutes forty seconds West ($N29^{\circ}41'41''W$), a distance of 308.975 meters by land of L.H.D.C. to a point;

THENCE turning and running North fifty eight degrees thirty six minutes six seconds East ($N58^{\circ}36'06''E$), a distance of 132.660 meters by land of L.H.D.C. to a point;

THENCE turning and running North three degrees four minutes thirty nine seconds West ($N03^{\circ}04'39''W$), a distance of 85.240 meters by land of L.H.D.C. to a point;

THENCE turning and running North fifty nine degrees zero minutes fifty seconds West ($N59^{\circ}00'50''W$), a distance of 110.742 meters by land of L.H.D.C. to a point;

THENCE turning and running South fifty seven degrees thirty three minutes twenty seven seconds West ($S57^{\circ}33'27''W$), a distance of 25.681 meters by land of L.H.D.C. to a point;

THENCE turning and running coincident with the Waters of Long Harbour and having a chord of North seventy two degrees seven minutes fifty seven seconds East ($N72^{\circ}07'57''E$), a distance of 939.199 meters to a point;

THENCE turning and running South thirty eight degrees fifty seven minutes thirty eight seconds East ($S38^{\circ}57'38''E$), a distance of 56.155 meters by Parcel D-08-2 to a point;

THENCE turning and running South thirty eight degrees thirty two minutes eight seconds East ($S38^{\circ}32'08''E$), a distance of 5.198 meters by the southwestern limits of a 30.0m wide Right of Way to a point;

THENCE turning and running along a curve to the left having a radius of 729.053 meters, an arc of 470.069 meters and a chord of South forty degrees fifteen minutes one seconds West ($S40^{\circ}15'02''W$) a distance of 169.684 meters by the northwestern limits of a 20.0m wide Right of Way to a point;

THENCE turning and running South thirty three degrees thirty four minutes four seconds West ($S33^{\circ}34'04''W$), a distance of 219.346 meters by the northwestern limits of a 20.0m wide Right of Way to a point;

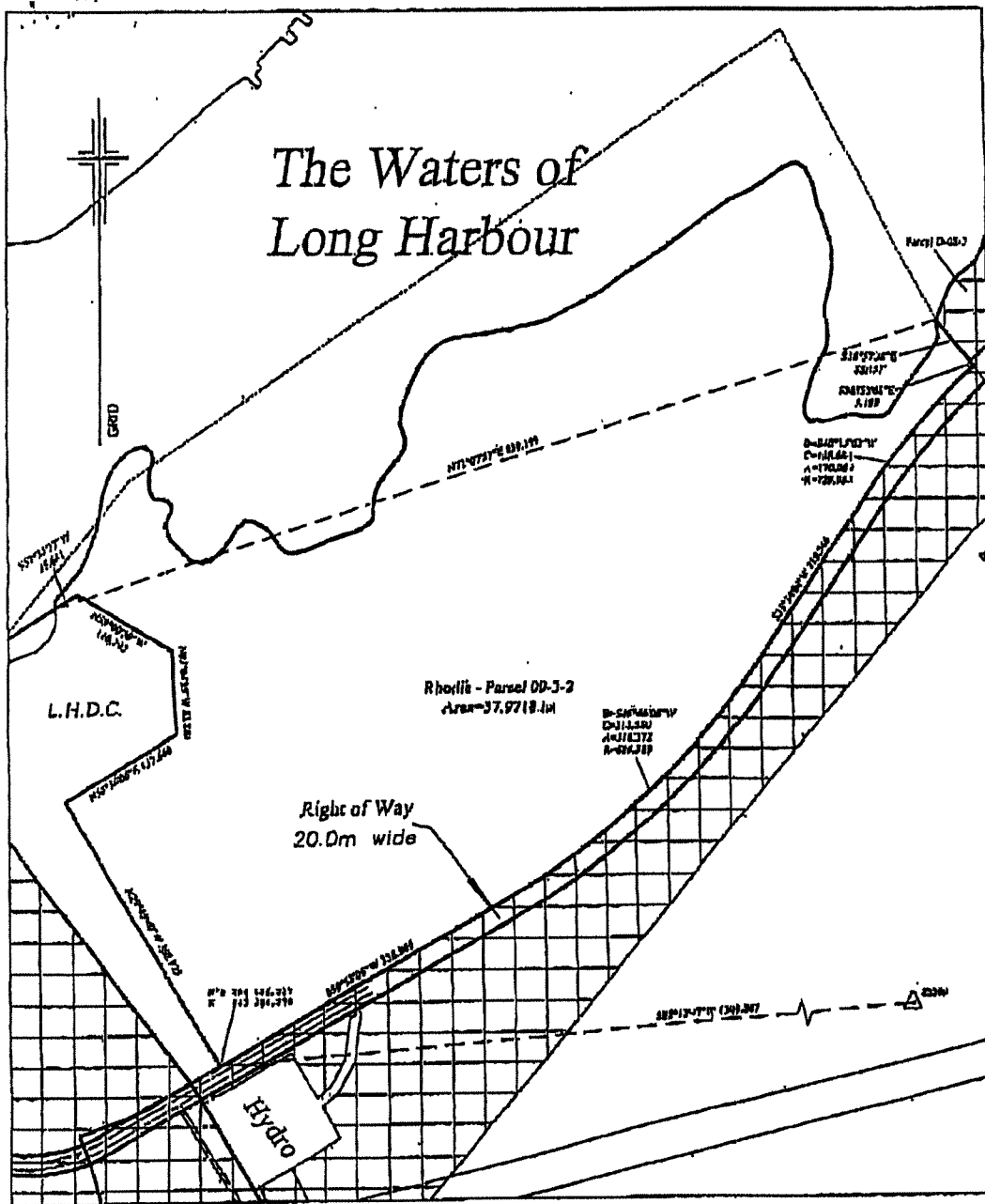
THENCE turning and running along a curve to the right having a radius of 686.589 meters, an arc of 316.372 meters and a chord of South forty six degrees forty six minutes six seconds West ($S46^{\circ}46'06''W$) a distance of 213.580 meters by the northwestern limits of a 20.0m wide Right of Way to a point;

THENCE turning and running South fifty nine degrees fifty eight minutes eight seconds West ($S59^{\circ}58'08''W$), a distance of 358.985 meters by the northwestern limits of a 20.0m wide Right of Way to the PLACE OF BEGINNING and containing in all an area of 37,9718 hectares as more particularly described and delineated on the attached plan dated, March, 2009 hereto annexed.

ALL bearings are referred to Grid North.

Application No.
March, 2009





MONUMENTS USED FOR CONTROL

I.C.M. 58° 36' NAD 83

82290 N 5 254 232.339 E 244 693.280 elev. 223.494

Combined Scale Factor = 0.999800

All Distances Horizontal Ground

Central Meridian 53°

- placed iron bar
- found iron bar
- capped iron bar
- △ control



G.P.S. Control for all points were obtained using a Magellan Pro Mark 500 (Dual Frequency) (Reflected).

App. No.

Scale = 1:5000

March, 2009

Schedule "E"

Long Harbour Development Corporation
Long Harbour, Placentia Bay, NF

ALL THAT piece or parcel of land and land covered by water situate and being in the Town of Long Harbour, in the Province of Newfoundland, Canada, bounded and abuted as follows: that is to say beginning at a point, said point having M.T.M. Grid Co-ordinates (C.M. 33°) [NAD 83] of N 5 253 860.494 and E 243 097.105;

THENCE RUNNING North forty nine degrees fifty minutes twenty seconds West (N49°50'20"W), a distance of 213.046 meters by The Waters of Long Harbour to a point;

THENCE turning and running South sixty degrees zero minutes sixteen seconds West (S60°00'16"W), a distance of 811.713 meters by The Waters of Long Harbour to a point;

THENCE turning and running North twenty nine degrees fifty nine minutes forty four seconds West (N29°59'44"W), a distance of 152.400 meters by The Waters of Long Harbour to a point;

THENCE turning and running North sixty degrees zero minutes five seconds East (N60°00'05"E), a distance of 756.718 meters by The Waters of Long Harbour and by Rhodia Canada Inc. (Water Lot) to a point;

THENCE turning and running North thirty eight degrees forty three minutes thirty six seconds East (N38°43'36"E), a distance of 121.909 meters by land of Rhodia Canada Inc. (Water Lot) to a point;

THENCE turning and running South forty one degrees forty eight minutes two seconds East (S41°48'02"E), a distance of 40.188 meters by land of Rhodia Canada Inc. (Water Lot) to a point;

THENCE turning and running South thirty seven degrees eighteen minutes forty nine seconds East (S37°18'49"E), a distance of 121.920 meters by land of Rhodia Canada Inc. to a point;

THENCE turning and running conterminous with the original shore line of The Waters of Long Harbour having a bearing of North sixty degrees thirty seven minutes forty four seconds West (S60°37'44"E), a chord distance of 202.228 meters by land of Rhodia Canada Inc. to a point;

THENCE turning and running North thirty four degrees fifty five minutes twenty eight seconds West (N34°55'28"W), a distance of 56.274 meters by land of Rhodia Canada Inc. to a point;

THENCE turning and running North fifty seven degrees eighteen minutes fifty three seconds West (N57°18'53"W), a distance of 151.941 meters by land of Rhodia Canada Inc. to a point;

THENCE turning and running North fifty degrees fifty five minutes thirty nine seconds West (N50°55'39"W), a distance of 58.130 meters by land of Rhodia Canada Inc. to a point;

THENCE turning and running North thirty three degrees fifty six minutes four seconds West (N33°56'04"W), a distance of 91.840 meters by land of Rhodia Canada Inc. and by land of Rhodia Canada Inc. (Water Lot) to a point;

THENCE turning and running North forty nine degrees thirty nine minutes sixteen seconds East (N49°39'16"E), a distance of 114.910 meters by land of Rhodia Canada Inc. (Water Lot) to a point;

THENCE turning and running North twenty six degrees forty one minutes twenty five seconds East (N26°41'25"E), a distance of 201.637 meters by land of Rhodia Canada Inc. (Water Lot) to a point;

THENCE turning and running South thirty six degrees ten minutes twenty two seconds East (S36°10'22"E), a distance of 455.933 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running South sixty degrees thirty four minutes three seconds West ($S60^{\circ}34'03''W$), a distance of 72.203 meters by land of Rhodia Canada Inc. to a point;

THENCE turning and running South seventy degrees fifty two minutes fourteen seconds West ($S70^{\circ}52'14''W$), a distance of 52.140 meters by land of Rhodia Canada Inc. to a point;

THENCE turning and running South twenty one degrees fifty six minutes twenty one seconds East ($S21^{\circ}56'1''E$), a distance of 28.602 meters by land of Rhodia Canada Inc. to a point;

THENCE turning and running South fourteen degrees fifty minutes fourteen seconds East ($S14^{\circ}50'14''E$), a distance of 45.740 meters by land of Rhodia Canada Inc. to a point;

THENCE turning and running South five degrees four minutes four seconds East ($S05^{\circ}04'04''E$), a distance of 42.510 meters by land of Rhodia Canada Inc. to a point;

THENCE turning and running North seventy degrees seven minutes forty four seconds East ($N70^{\circ}07'44''E$), a distance of 46.633 meters by land of Rhodia Canada Inc. to a point;

THENCE turning and running South forty nine degrees twelve minutes thirty seconds East ($S49^{\circ}12'30''E$), a distance of 57.168 meters by land of Rhodia Canada Inc. to a point;

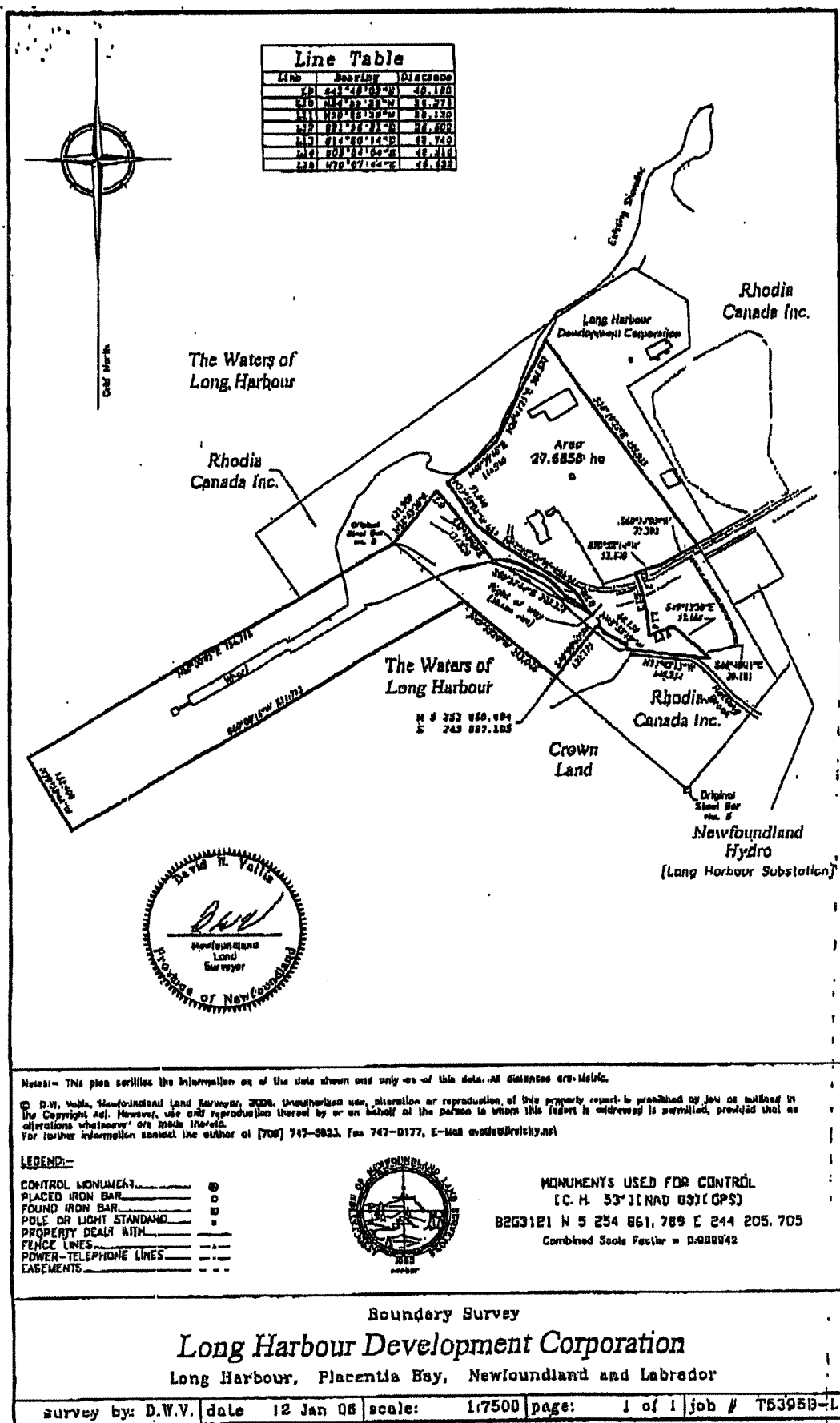
THENCE turning and running South forty six degrees fifty minutes forty one seconds East ($S46^{\circ}50'41''E$), a distance of 29.001 meters by land of Rhodia Canada Inc. to a point;

THENCE turning and running North eighty three degrees forty two minutes thirteen seconds West ($N83^{\circ}42'13''W$), a distance of 148.764 meters by land of Rhodia Canada Inc. and by the Right Bank of Rattling Brook to a point;

THENCE turning and running continuous with the original shore line of The Waters of Long Harbour having a bearing of North forty nine degrees fifty three minutes nineteen seconds West ($N49^{\circ}53'19''W$), a shore distance of 68.150 meters by land of Rhodia Canada Inc. (Water Lot) to a point;

THENCE turning and running South forty degrees nine minutes forty seconds West ($S40^{\circ}09'40''W$), a distance of 122.175 meters by land of Rhodia Canada Inc. (Water Lot) to the PLACE OF BEGINNING and containing in all an area of 27.6858 hectares as more particularly described and delineated on plan T5395B-L, 12 Jan 06 hereto annexed.

ALL bearings are referred to Grid North.



Schedule "E"

Rhodia Canada Inc. (Parcel "J")
Long Harbour, Placentia Bay, NF

ALL THAT piece or parcel of land and land covered by water situate and being in the Town of Long Harbour, in the Province of Newfoundland, Canada, bounded and abutted as follows: that is to say beginning at a point, said point having M.T.M. Grid Co-ordinates (C.M. 53°) [NAD 83] of N 5 253 660.849 and E 243 333.677;

THENCE RUNNING North forty nine degrees fifty minutes twenty seconds West (N49°50'20"W), a distance of 309.535 meters by The Waters of Long Harbour to a point;

THENCE turning and running North forty degrees nine minutes forty seconds East (N40°09'40"E), a distance of 122.175 meters by Long Harbour Development Corporation (Water Lot) to a point;

THENCE turning and running continuous with the original shore line of The Waters of Long Harbour and having a chord of South forty nine degrees fifty three minutes nineteen seconds East (S49°53'19"E), a distance of 68.159 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running South eighty three degrees forty two minutes thirteen seconds East (S83°42'13"E), a distance of 148.754 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running North forty six degrees forty minutes forty one seconds West (N46°40'41"W), a distance of 29.101 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running North forty nine degrees twelve minutes thirty seconds West (N49°12'30"W), a distance of 57.168 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running South seventy degrees seven minutes forty four seconds West (S70°07'44"W), a distance of 46.632 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running North five degrees four minutes four seconds West (N05°04'04"W), a distance of 42.510 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running North fourteen degrees fifty minutes fourteen seconds West (N14°50'14"W), a distance of 45.740 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running North twenty one degrees fifty six minutes twenty one seconds West (N21°56'31"W), a distance of 26.602 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running North seventy degrees fifty two minutes fourteen seconds East (N70°52'14"E), a distance of 52.140 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running North sixty degrees thirty four minutes three seconds East (N60°34'03"E), a distance of 72.294 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running South thirty degrees two minutes thirty eight seconds East ($S30^{\circ}02'38''E$), a distance of 280.174 meters by land of Rhodia Canada Inc. and by land of Newfoundland Hydro [Long Harbour Substation] to a point;

THENCE turning and running South thirty nine degrees twenty seven minutes forty seconds West ($S39^{\circ}27'40''W$), a distance of 293.395 meters by Crown Land to the PLACE OF BEGINNING and containing in all an area of 8,209.3 hectares as more particularly described and delineated on plan T5395B-R, 12 Jan 06 hereto annexed.

All bearings are referred to Grid North.

TOGETHER WITH

Rhodia Canada Inc. (Parcel "2")
Long Harbour, Placentia Bay, NF

ALL THAT piece or parcel of land and land covered by water situate and being in the Town of Long Harbour, in the Province of Newfoundland, Canada, bounded and situated as follows: that is to say beginning at a point, said point having M.T.M. Grid Co-ordinates (O.M. 53") (NAD 83) of N 3 254 197.333 and E 242-886.714;

THENCE RUNNING North thirty eight degrees forty three minutes thirty two seconds East ($N38^{\circ}43'32''E$), a distance of 270.410 meters by land of Rhodia Canada Inc. (Water Lot) to a point;

THENCE turning and running South twenty six degrees forty one minutes twenty five seconds West ($S26^{\circ}41'23''W$), a distance of 136.159 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running South forty nine degrees thirty nine minutes sixteen seconds West ($S49^{\circ}39'16''W$), a distance of 149.910 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running South thirty three degrees fifty six minutes seven seconds East ($S33^{\circ}56'07''E$), a distance of 91.840 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running South fifty degrees fifty five minutes thirty nine seconds East ($S50^{\circ}53'39''E$), a distance of 58.138 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running South fifty seven degrees eighteen minutes fifty three seconds East ($S57^{\circ}18'53''E$), a distance of 151.941 meters by land of Long Harbour Development Corporation to a point;

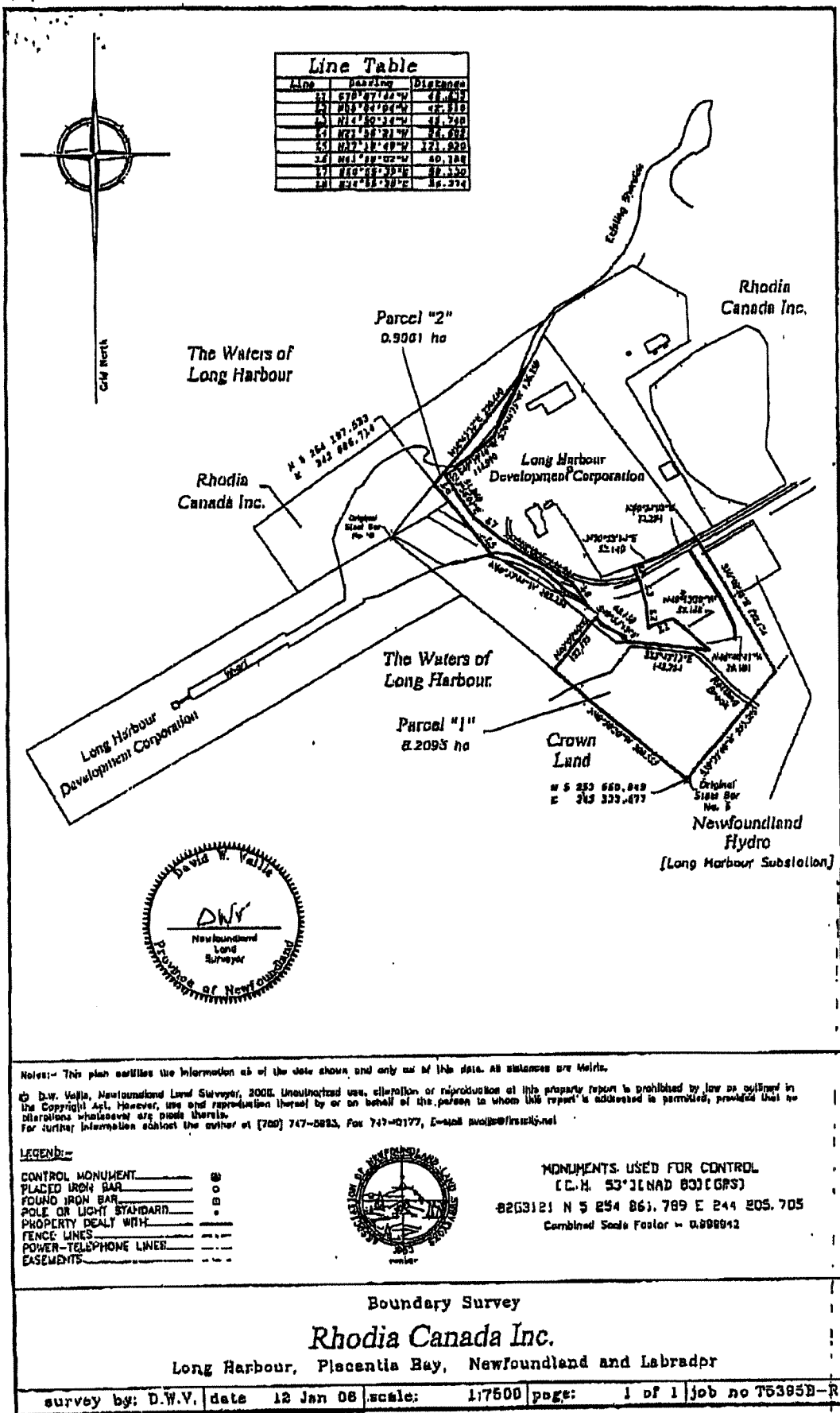
THENCE turning and running South thirty four degrees fifty five minutes twenty eight seconds East ($S34^{\circ}55'28''E$), a distance of 56.274 meters by land of Long Harbour Development Corporation to a point;

THENCE turning and running continuous with the original shore line of The Waters of Long Harbour having a chord of North sixty degrees thirty seven minutes forty four seconds West ($N60^{\circ}37'44''W$), a distance of 202.228 meters by land of Long Harbour Development Corporation (Water Lot) to a point;

THENCE turning and running North thirty seven degrees eighteen minutes forty nine seconds West ($N37^{\circ}18'49''W$), a distance of 121.920 meters by land of Long Harbour Development Corporation (Water Lot) to a point;

THENCE turning and running North forty one degrees forty eight minutes two seconds West ($N41^{\circ}48'02''W$), a distance of 40.188 meters by land of Long Harbour Development Corporation (Water Lot) to the PLACE OF BEGINNING and containing in all an area of 0.9961 hectares as more particularly described and delineated on plan T5393B-R, 12 Jan 06 hereto annexed.

ALL bearings are referred to Grid North.



Schedule "B"

Rhodin Canada Inc. (Water Lot)
Long Harbour, Placentia Bay, NF

ALL THAT piece or parcel of land covered by water situate and being in the Town of Long Harbour, in the Province of Newfoundland, Canada, bounded and abutted as follows: that is to say beginning at a point, said point having M.T.M. Grid Co-ordinates (G.M. 53") [NAD 83] of N 5 254 507.308 and E 243 105.558;

THENCE RUNNING South twenty six degrees forty one minutes twenty five seconds West ($S26^{\circ}41'25''W$), a distance of 110.599 meters by land of Long Harbour Development Corporation and by land of Vale Inco to a point;

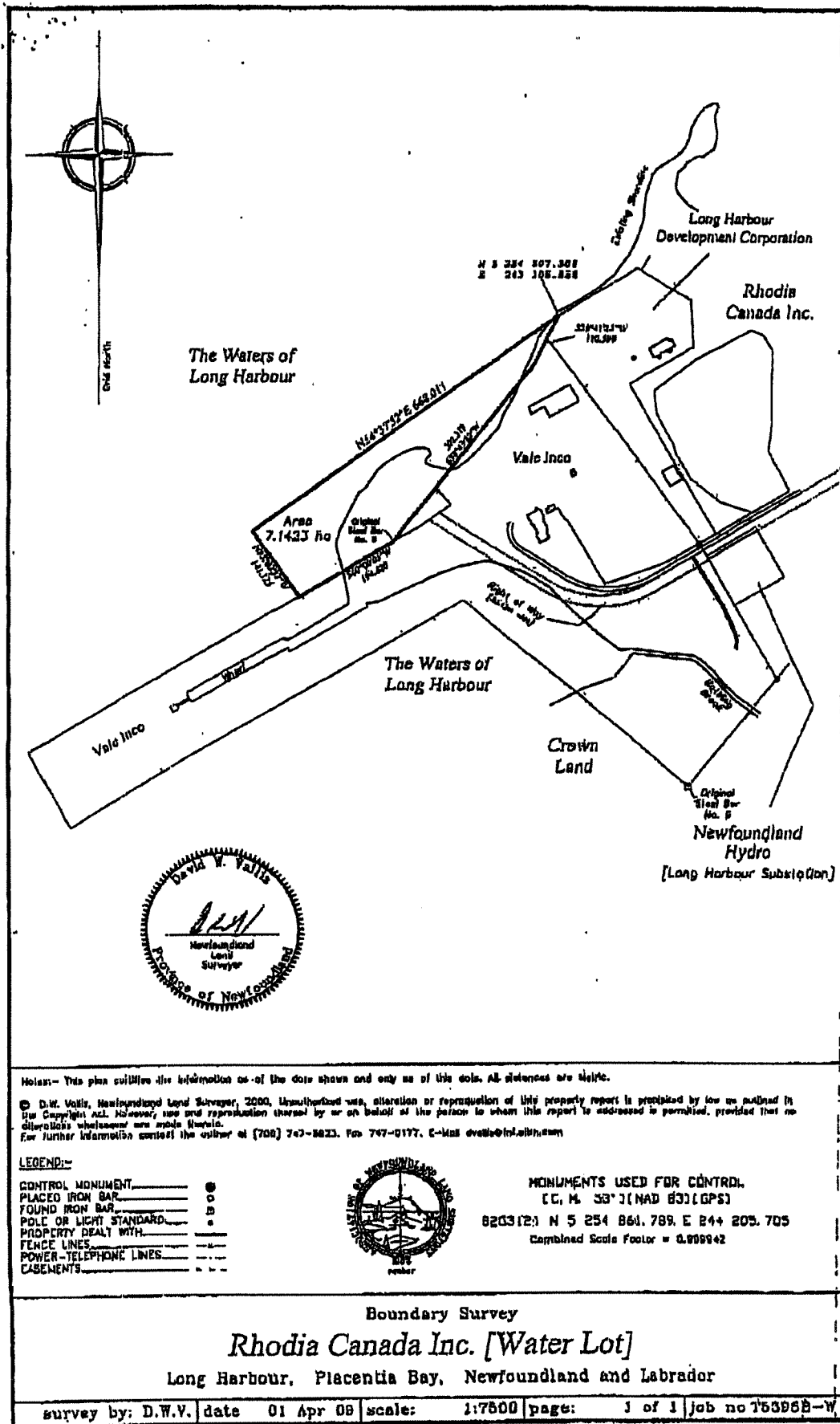
THENCE turning and running South thirty eight degrees forty three minutes thirty two seconds West ($S38^{\circ}43'32''W$), a distance of 392.319 meters by land of Vale Inco to a point;

THENCE turning and running South sixty degrees zero minutes five seconds West ($S60^{\circ}00'05''W$), a distance of 194.620 meters by land of Vale Inco to a point;

THENCE turning and running North thirty five degrees three minutes thirty seven seconds West ($N35^{\circ}03'37''W$), a distance of 141.125 meters by The Waters of Long Harbour to a point;

THENCE turning and running North fifty four degrees thirty seven minutes fifty two seconds East ($N54^{\circ}37'52''E$), a distance of 668.011 meters by The Waters of Long Harbour to the PLACE OF BEGINNING and containing in all an area of 7.1423 hectares as more particularly described and delineated on plan T5395B-W, April 1, 09 hereto annexed.

ALL bearings are referred to Grid North.



Schedule "B"

Kale Inco, Parcel A
Long Harbour, NF

ALL THAT piece or parcel of land situate and being Long Harbour, in the Town of Long Harbour, in the Province of Newfoundland, Canada, bounded and situated as follows: that is to say beginning at a point, said point having M.T.M. Grid Co-ordinates (C.M. 53°) (NAD 83) of N 5 254 721.336 and E 244 235.373;

THENCE running South fifty one degrees twenty seven minutes fifty two seconds West ($851^{\circ}27'52''W$), a distance of 106.710 meters by Crown Land to a point;

THENCE turning and running South thirty nine degrees twenty seven minutes fifty two seconds West ($839^{\circ}27'52''W$), a distance of 1034.116 meters by Crown Land to a point;

THENCE turning and running North thirty degrees two minutes thirty eight seconds West ($N30^{\circ}02'38''W$), a distance of 153.170 meters by land of Rhodia Canada Inc. to a point;

THENCE turning and running North fifty nine degrees forty nine minutes forty five seconds East ($N59^{\circ}49'45''E$), a distance of 102.565 meters by land of Hydro to a point;

THENCE turning and running North twenty nine degrees fifty three minutes thirty two seconds West ($N29^{\circ}53'32''W$), a distance of 37.238 meters by land of Hydro to a point;

THENCE turning and running North forty eight degrees thirty five minutes fifty six seconds East ($N48^{\circ}35'56''E$), a distance of 22.661 meters by land of Hydro to a point;

THENCE turning and running North twenty seven degrees thirty minutes thirty four seconds East ($N27^{\circ}30'34''E$), a distance of 95.048 meters by land of Hydro to a point;

THENCE turning and running North seven degrees forty four minutes forty eight seconds East ($N07^{\circ}44'46''E$), a distance of 52.528 meters by land of Hydro to a point;

THENCE turning and running South fifty nine degrees forty four minutes six seconds West ($S59^{\circ}44'06''W$), a distance of 12.693 meters by land of Hydro to a point;

THENCE turning and running South seven degrees forty four minutes fifty eight seconds West ($S07^{\circ}44'48''W$), a distance of 42.968 meters by land of Hydro to a point;

THENCE turning and running South twenty seven degrees thirty minutes thirty four seconds West ($S27^{\circ}30'34''W$), a distance of 31.446 meters by land of Hydro to a point;

THENCE turning and running South forty eight degrees thirty five minutes fifty six seconds West ($S48^{\circ}35'56''W$), a distance of 18.763 meters by land of Hydro to a point;

THENCE turning and running North twenty nine degrees fifty three minutes thirty two seconds West ($N29^{\circ}53'32''W$), a distance of 54.247 meters by land of Hydro to a point;

THENCE turning and running South fifty nine degrees fifty three minutes zero seconds West ($S59^{\circ}53'00''W$), a distance of 102.834 meters by land of Hydro to a point;

THENCE turning and running North thirty degrees two minutes thirty eight seconds West ($N30^{\circ}02'38''W$), a distance of 25.121 meters by land of Hydro to a point;

THENCE turning and running North fifty nine degrees fifty eight minutes eight seconds East ($N59^{\circ}58'08''E$), a distance of 393.494 meters by land of Long Harbour Development Corporation and by land of Rhodia Canada Inc. to a point;

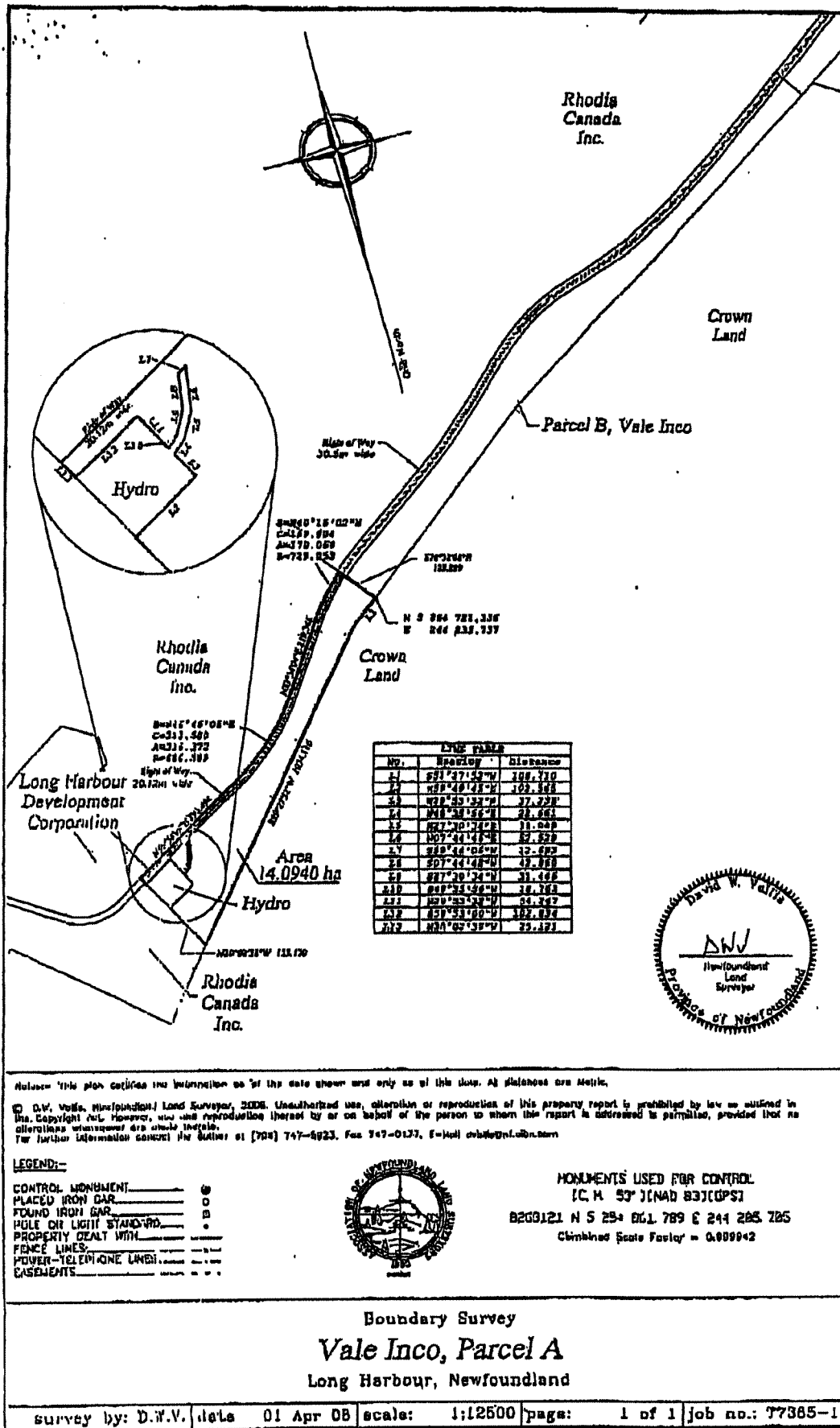
THENCE turning and running along a curve to the left having a radius of 686.589 meters an arc of 316.372 meters and a chord of North forty six degrees forty six minutes six seconds East (N46°46'06"E) a distance of 313.580 meters by land of Rhodia Canada Inc. to a point;

THENCE turning and running North thirty three degrees thirty four minutes four seconds East (N33°34'04"E), a distance of 219.346 meters by land of Rhodia Canada Inc. to a point;

THENCE turning and running along a curve to the right having a radius of 729.053 meters an arc of 170.869 meters and a chord of North forty degrees fifteen minutes two seconds East (N40°15'02"E) a distance of 169.684 meters by land of to a point;

THENCE turning and running South thirty eight degrees thirty two minutes eight seconds East (S38°32'08"E), a distance of 129.889 meters by land of Vale, Inc., Parcel B to the **PLACE OF BEGINNING** and containing in all an area of 14.894 hectares as more particularly described and delineated on plan T7365-1, 01 Apr 08 hereto annexed.

ALL bearings are referred to Grid North.



Schedule "E"

ALL THAT piece or parcel of land situate and being partly in the Town of Long Harbour, in the Province of Newfoundland, Canada, bounded and abutted as follows: that is to say beginning at a point, said point having M.T.M. Grid Co-ordinates (C.M. 53°, Zone 1) [NAD 83] of N 5 255 884.684 and E 245 877.335;

THENCE RUNNING South fifty nine degrees two minutes thirty seconds East (S59°02'30"E), a distance of 1070.666 meters by Crown Land to a point;

THENCE turning and running South twenty four degrees four minutes fifteen seconds East (S24°04'15"E), a distance of 368.648 meters by Crown Land to a point;

THENCE turning and running conterminous with a 15m reservation by a pond and having a chord of South seventy two degrees eight minutes nineteen seconds East (S72°08'19"E), a distance of 598.383 meters to a point;

THENCE turning and running South eleven degrees fifty seven minutes fifty four seconds East (S11°57'54"E), a distance of 397.970 meters by Crown Land to a point;

THENCE turning and running South nineteen degrees thirty one minutes twelve seconds East (S19°31'12"E), a distance of 505.003 meters by Crown Land to a point;

THENCE turning and running South eighteen degrees three minutes forty six seconds West (S18°03'46"W), a distance of 380.361 meters by Crown Land to a point;

THENCE turning and running South fifty four degrees thirty three minutes zero seconds West (S54°33'00"W), a distance of 1642.590 meters by Crown Land to a point;

THENCE turning and running North seventy seven degrees fifty seven minutes fifty two seconds West (N77°57'52"W), a distance of 842.020 meters by Crown Land to a point;

THENCE turning and running conterminous with a 15m reservation by a pond and having a chord of South fifty degrees twenty two minutes forty six seconds West (S50°22'46"W), a distance of 629.834 meters to a point;

THENCE turning and running South nineteen degrees nineteen minutes seven seconds West (S19°19'07"W), a distance of 27.593 meters by Crown Land to a point;

THENCE turning and running conterminous with a 15m reservation by a pond and having a chord of South twenty six degrees twenty seven minutes thirty nine seconds West (S26°27'39"W), a distance of 722.904 meters to a point;

THENCE turning and running across the river South fifty two degrees fifty two minutes fifty eight seconds West (S52°52'58"W), a distance of 57.736 meters to a point on the 15m reservation;

THENCE turning and running South sixty five degrees eight minutes thirty seven seconds West (S65°08'37"W), a distance of 278.805 meters by Crown Land to a point;

THENCE turning and running across the river North thirty five degrees eight minutes fifty five seconds West (N35°08'55"W), a distance of 48.751 meters to a point on the 15m reservation;

THENCE turning and running North forty three degrees thirty seven minutes fifty one seconds West (N43°37'51"W), a distance of 420.719 meters by Crown Land to a point;

THENCE turning and running conterminous with a 15m reservation along a river and having a chord of South five degrees forty six minutes twenty eight seconds East (S05°46'28"E), a distance of 145.627 meters to a point;

THENCE turning and running across the river North eighty eight degrees twenty two minutes forty eight seconds West ($N88^{\circ}22'48''W$), a distance of 38.692 meters to a point on the 15m reservation;

THENCE turning and running continuous with a 15m reservation by a pond and having a chord of South fifty seven degrees five minutes fifty four seconds West ($S57^{\circ}05'54''W$), a distance of 63.290 meters to a point;

THENCE turning and running South sixty eight degrees thirty nine minutes fifty six seconds West ($S68^{\circ}39'56''W$), a distance of 1701.422 meters by Crown Land to a point;

THENCE turning and running North fifty degrees thirty nine minutes thirty four seconds West ($N50^{\circ}39'34''W$), a distance of 466.372 meters by Crown Land to a point;

THENCE turning and running North five degrees thirty one minutes seven seconds East ($N05^{\circ}31'07''E$), a distance of 1006.815 meters by Crown Land to a point;

THENCE turning and running North thirty degrees seventeen minutes twenty seven seconds West ($N30^{\circ}17'27''W$), a distance of 648.749 meters by Crown Land to a point;

THENCE turning and running continuous with the high water mark by the Waters of Long Harbour and having a chord of North fifty eight degrees twenty one minutes forty three seconds East ($N58^{\circ}21'43''E$), a distance of 1582.325 meters to a point;

THENCE turning and running South forty nine degrees fifty minutes twenty seconds East ($S49^{\circ}50'20''E$), a distance of 243.766 meters by land of Vale Inco to a point;

THENCE turning and running North thirty nine degrees twenty seven minutes forty seconds East ($N39^{\circ}27'40''E$), a distance of 164.570 meters by land of Vale Inco to a point;

THENCE turning and running continuous with the Waters of Rattling Brook and having a chord of North sixty three degrees thirty nine minutes thirty seven seconds West ($N63^{\circ}39'37''W$), a distance of 239.696 meters to a point;

THENCE turning and running continuous with the high water mark by the Waters of Long Harbour and having a chord of North eleven degrees fifty six minutes thirty one seconds West ($N11^{\circ}56'31''W$), a distance of 10.000 meters to a point;

THENCE turning and running continuous with the Waters of Rattling Brook and having a chord of South sixty five degrees two minutes thirty one seconds East ($S65^{\circ}02'31''E$), a distance of 239.134 meters to a point;

THENCE turning and running North thirty nine degrees twenty seven minutes forty seconds East ($N39^{\circ}27'40''E$), a distance of 74.753 meters by land of Vale Inco to a point;

THENCE turning and running North thirty nine degrees twenty seven minutes fifty two seconds East ($N39^{\circ}27'52''E$), a distance of 1034.116 meters by land of Vale Inco to a point;

THENCE turning and running North fifty one degrees twenty seven minutes fifty two seconds East ($N51^{\circ}27'52''E$), a distance of 106.710 meters by land of Vale Inco to a point;

THENCE turning and running North thirty eight degrees thirty two minutes eight seconds West ($N38^{\circ}32'08''W$), a distance of 135.087 meters by land of Vale Inco and by land of Rhodia to a point;

THENCE turning and running North thirty eight degrees fifty seven minutes thirty eight seconds West ($N38^{\circ}57'38''W$), a distance of 55.155 meters by land of Rhodia to a point;

THENCE turning and running continuous with the high water mark by the Waters of Long Harbour and having a chord of North forty three degrees seven minutes ten seconds East ($N43^{\circ}07'10''E$), a distance of 886.560 meters to a point;

THENCE turning and running North seventy five degrees fourteen minutes fifty six seconds East ($N75^{\circ}14'56''E$), a distance of 35.248 meters by Crown Land to a point;

THENCE turning and running North sixty three degrees fifty minutes fifty eight seconds East ($N63^{\circ}50'58''E$), a distance of 77.212 meters by Crown Land to a point;

THENCE turning and running North fifty four degrees thirty one minutes twenty two seconds East ($N54^{\circ}31'32''E$), a distance of 79.945 meters by Crown Land to a point;

THENCE turning and running North four degrees thirty six minutes twenty five seconds East ($N04^{\circ}36'25''E$), a distance of 44.274 meters by Crown Land to a point;

THENCE turning and running North twenty eight degrees twenty one minutes thirty one seconds West ($N28^{\circ}21'31''W$), a distance of 17.622 meters by Crown Land to a point;

THENCE turning and running, continuous with the high water mark by the Waters of Long Harbour and having a chord of North fifty four degrees twenty three minutes forty six seconds East ($N54^{\circ}23'46''E$), a distance of 247.312 meters to a point;

THENCE turning and running South twenty four degrees five minutes thirty eight seconds East ($S24^{\circ}05'38''E$), a distance of 276.116 meters by land of Long Harbour Development Corporation [LHDC] to a point;

THENCE turning and running along a curve to the left having a radius of 185.214 meters, an arc of 241.742 meters and a chord of North sixty degrees thirteen minutes thirty seconds East ($N60^{\circ}13'30''E$) a distance of 241.324 meters by land of LHDC to a point;

THENCE turning and running North fifty four degrees twenty two minutes fifty five seconds East ($N54^{\circ}22'55''E$), a distance of 421.827 meters by land of LHDC to a point;

THENCE turning and running across the Long Harbour Access Road South thirty five degrees thirty seven minutes five seconds East ($S35^{\circ}37'05''E$), a distance of 30.483 meters to a point;

THENCE turning and running North fifty four degrees twenty two minutes fifty five seconds East ($N54^{\circ}22'55''E$), a distance of 609.867 meters by the southern limits of Long Harbour Access Road to a point;

THENCE turning and running along a curve to the right having a radius of 1397.144 meters, an arc of 116.696 meters and a chord of North fifty six degrees forty six minutes thirty seconds East ($N56^{\circ}46'30''E$) a distance of 116.662 meters by the southern limits of Long Harbour Access Road to a point;

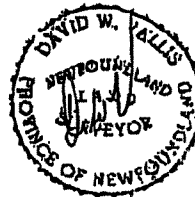
THENCE turning and running South thirty three degrees twenty two minutes thirty four seconds East ($S33^{\circ}22'34''E$), a distance of 94.232 meters by land of Rhodia to a point;

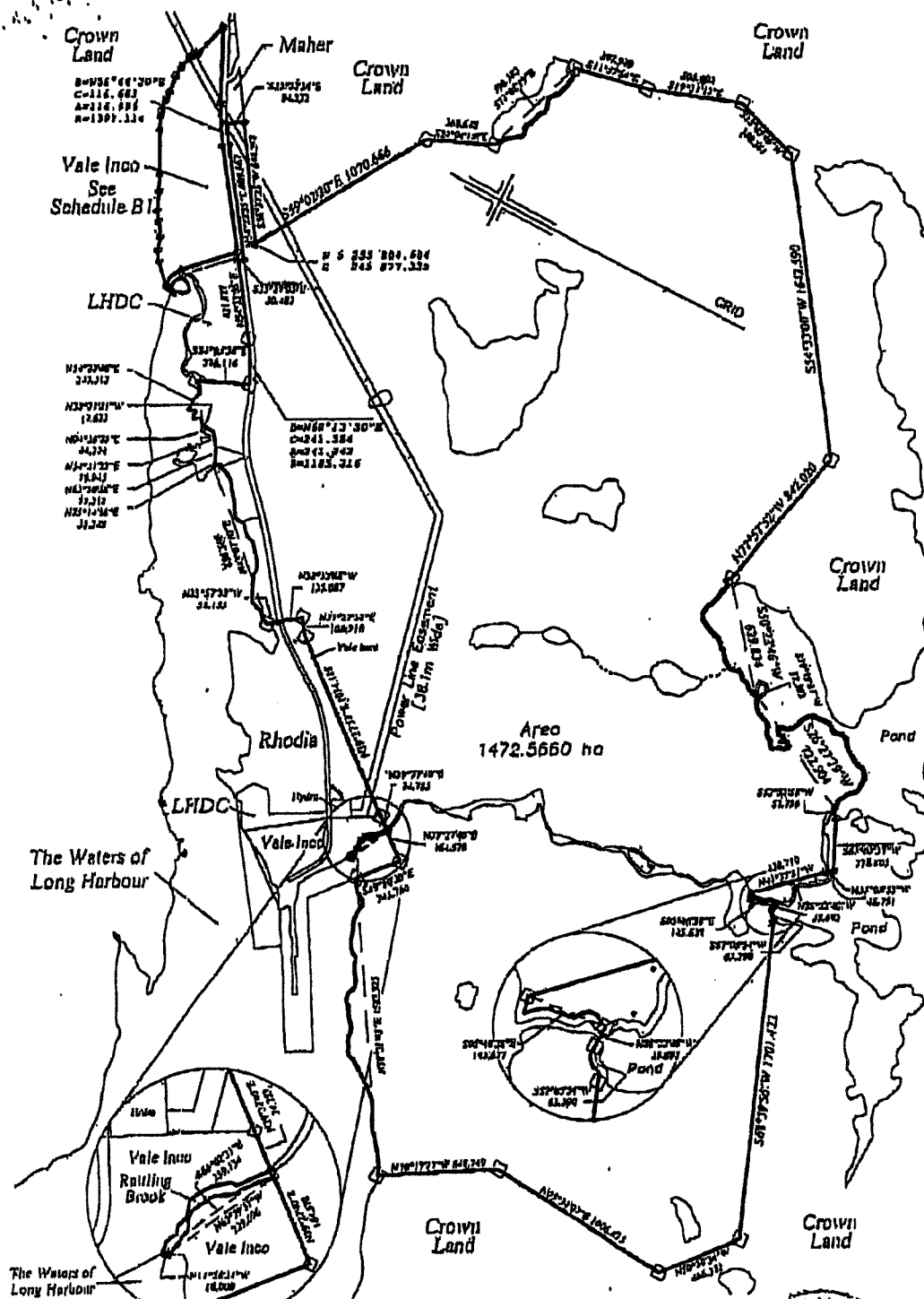
THENCE turning and running South fifty six degrees thirty seven minutes twenty five seconds West ($S56^{\circ}37'25''W$), a distance of 644.248 by Crown Land to the PLACE OF BEGINNING and containing in all an area of 1472.5660 hectares as more particularly described and delineated on the attached plan dated April 1, 2009 hereto annexed.

SUBJECT TO a Power Line Easement [38.1m Wide] extending through the parcel as shown.

ALL bearings are referred to Grid North.

Application No. 193308
April 1, 2009





MONUMENTS USED FOR CONTROL
 (C.M. 53°) (NAD 83)
 82293 N S 255 554.118 E 247 144.272 elev. 154.153
 Combined Scale Factor = 0.999917

☐ sapped iron bar All Distances Horizontal Ground
 Central Meridian 53°

U.S. Control for all points were obtained using a Spectral Pro Mark 500 (Dual Frequency) (Real-time).

App. No. 133308

Scale = 1:25,000

April 3, 2009

Schedule "E"

ALL THAT piece or parcel of land situate and being Northwest of Long Harbour Access Road, in the Town of Long Harbour, in the Province of Newfoundland, Canada, bounded and abutted as follows: that is to say beginning at a point, said point having M.T.M. Grid Co-ordinates (C.M. 53°, Zone 1) (NAD 83) of N 5 255 952.076 and E 245 792.288;

THENCE RUNNING North forty seven degrees seven minutes fifty seconds West (N47°07'50"W), a distance of 305.721 meters by the northeastern limits of the Long Harbour Access Road (30.48m wide) to a point;

THENCE turning and running along a curve to the left having a radius of 153.639 meters, an arc of 124.286 meters and a chord of North seventy degrees eighteen minutes eighteen seconds West (N70°18'18"W) a distance of 120.925 meters by the northern limits of Long Harbour Access Road to a point;

THENCE turning and running North forty five degrees forty six minutes twenty three seconds East (N45°46'23"E), a distance of 133.758 meters by the southeastern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running along a curve to the right having a radius of 149.379 meters, an arc of 60.696 meters and a chord of North fifty seven degrees twenty four minutes forty eight seconds East (N57°24'48"E) a distance of 60.279 meters by the southeastern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running North sixty nine degrees three minutes twelve seconds East (N69°03'12"E), a distance of 66.724 meters by the southeastern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running along a curve to the left having a radius of 199.487 meters, an arc of 80.574 meters and a chord of North fifty seven degrees twenty eight minutes fifty seven seconds East (N57°28'57"E) a distance of 80.027 meters by the southeastern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running along a curve to the right having a radius of 176.307 meters, an arc of 59.789 meters and a chord of North fifty five degrees thirty seven minutes thirty five seconds East (N55°37'35"E) a distance of 59.503 meters by the southeastern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running North sixty seven degrees twenty minutes thirty three seconds East (N67°20'33"E), a distance of 100.638 meters by the southeastern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running along a curve to the left having a radius of 975.800 meters, an arc of 89.656 meters and a chord of North sixty four degrees forty two minutes thirty seven seconds East (N64°42'37"E) a distance of 89.624 meters by the southeastern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running North sixty two degrees four minutes forty one seconds East (N62°04'41"E), a distance of 235.782 meters by the southeastern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running along a curve to the right having a radius of 485.412 meters, an arc of 77.083 meters and a chord of North sixty six degrees thirty seven minutes thirty eight seconds East (N66°37'39"E) a distance of 77.002 meters by the southeastern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running North seventy one degrees ten minutes thirty six seconds East (N71°10'36"E), a distance of 31.878 meters by the southeastern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running along a curve to the right having a radius of 159.254 meters, an arc of 68.751 meters and a chord of North eighty three degrees thirty two minutes thirty nine

seconds East (N83°32'39"E) a distance of 68.218 meters by the southern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running along a curve to the left having a radius of 175.263 meters, an arc of 40.907 meters and a chord of North eighty nine degrees thirteen minutes thirty seconds East (N89°13'30"E) a distance of 40.815 meters by the southern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running North eighty two degrees thirty two minutes eighteen seconds East (N82°32'18"E), a distance of 95.135 meters by the southern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running along a curve to the right having a radius of 115.195 meters, an arc of 34.108 meters and a chord of South eighty four degrees zero minutes twenty seconds East (S84°00'20"E) a distance of 53.612 meters by the southern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running along a curve to the left having a radius of 222.619 meters, an arc of 66.607 meters and a chord of South seventy nine degrees two minutes thirty six seconds East (S79°02'36"E) a distance of 66.766 meters by the southern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running along a curve to the right having a radius of 33.833 meters, an arc of 27.803 meters and a chord of South sixty three degrees fifty nine minutes forty three seconds East (S63°59'43"E) a distance of 27.027 meters by the southwestern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running South forty degrees twenty seven minutes twelve seconds East (S40°27'12"E), a distance of 27.290 meters by the southwestern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running South seventy four degrees forty four minutes twenty eight seconds East (S74°44'28"E), a distance of 189.875 meters by the southwestern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running South sixty three degrees fifty four minutes twenty nine seconds West (S63°54'29"W), a distance of 397.896 meters by the northwestern limits Long Harbour Access Road (30.48m wide) to a point;

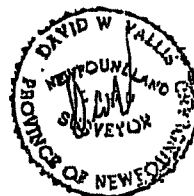
THENCE turning and running along a curve to the left having a radius of 1427.478 meters, an arc of 237.337 meters and a chord of South fifty nine degrees eight minutes forty two seconds West (S59°08'42"W) a distance of 237.064 meters by the northwestern limits Long Harbour Access Road (30.48m wide) to a point;

THENCE turning and running South fifty four degrees twenty two minutes fifty five seconds West (S54°22'55"W), a distance of 560.769 meters by the northwestern limits Long Harbour Access Road (30.48m wide) to the **PLACE OF BEGINNING** and containing in all an area of 38.7335 hectares as more particularly described and delineated on the attached plan dated, April, 2009 hereto annexed.

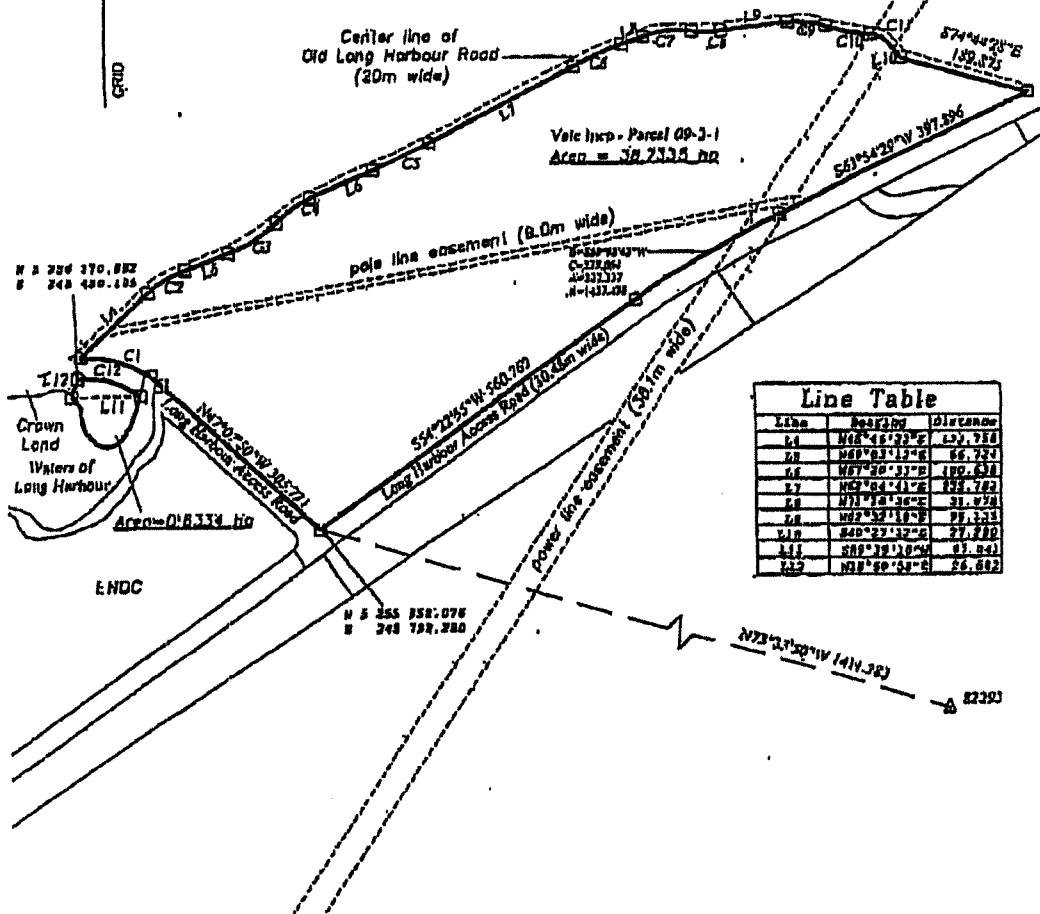
SUBJECT TO a power line easement being 38.1m wide and a pole line easement being 9.0m wide extending through the boundary as shown on the plan hereto annexed.

ALL bearings are referred to Grid North.

Application No. 133308
April, 2009



Curve	Bearing	Chord	Area	Radius
C1	N79°48'38"W	120.824	124.284	143.628
C2	N81°24'48"E	60.779	60.884	149.373
C3	N87°29'49"W	86.021	80.374	189.607
C4	N88°37'18"E	83.501	49.789	174.307
C5	N84°48'37"E	81.824	88.804	278.800
C6	N68°27'50"E	77.002	77.281	486.417
C7	N63°28'38"E	68.248	68.751	187.287
C8	N61°13'20"E	49.818	49.867	178.263
C9	N84°50'30"W	83.612	14.189	111.308
C10	N78°07'18"E	46.544	46.007	133.630
C11	N63°02'43"E	27.021	27.863	33.622
C12	N74°24'38"E	85.780	84.862	132.269



MONUMENTS USED FOR CONTROL

[C. N. 63°31'NAD 89]

82293 N 3 255 554.118 E 247 144.278 elev. 154.153

Combined Scale Factor = 0.999817

□ capped iron bar
 ▲ control

All Distances Horizontal Ground
 Control Meridian 53'



G.P.S. Control for all points were obtained using a Magellan Pro Mark 500 (Dual Frequency)(Real time).

April, 2008

App. No. 135508

Scale: 1:7500

Schedule "E"

ALL THAT piece or parcel of land situate and being Southwest of Long Harbour Access Road, in the Town of Long Harbour, in the Province of Newfoundland, Canada, bounded and abutted as follows: that is to say beginning at a point, said point having M.T.M. Grid Co-ordinates (C.M. 53°, Zone 1) [NAD 83] of N 52°56'17.882 and E 245'450.195;

THENCE RUNNING along a curve to the right having a radius of 123.159 meters, an arc of 94.064 meters and a chord of South seventy four degrees twenty four minutes fifty two seconds East (S74°24'52"E) a distance of 91.794 meters by the southwestern limits of Old Long Harbour Road (20.0m wide) to a point;

THENCE turning and running conterminous with the Waters of Long Harbour and having a chord of South eighty nine degrees thirty nine minutes ten seconds West (S89°39'10"E), a distance of 97.041 meters to a point;

THENCE turning and running North eighteen degrees fifty minutes fifty eight seconds East (N18°50'58"E), a distance of 26.682 meters by Crown Land to the PLACE OF BEGINNING and containing in all an area of 0.6334 hectares as more particularly described and delineated on the attached plan dated, April, 2009 hereto annexed.

ALL bearings are referred to Grid North.

Application No. 133308
April, 2009



Curve	Feathering	12th. Spd	Ave	Red. Spd
1	100°-110°-115°	120.000	124.000	122.000
2	105°-110°-115°	120.333	124.666	122.333
3	110°-115°-120°	120.667	125.333	122.667
4	115°-120°-125°	121.000	126.000	123.000
5	120°-125°-130°	121.333	126.667	123.333
6	125°-130°-135°	121.667	127.333	123.667
7	130°-135°-140°	122.000	128.000	124.000
8	135°-140°-145°	122.333	128.667	124.333
9	140°-145°-150°	122.667	129.333	124.667
10	145°-150°-155°	123.000	130.000	125.000
11	150°-155°-160°	123.333	130.667	125.333
12	155°-160°-165°	123.667	131.333	125.667
13	160°-165°-170°	124.000	132.000	126.000
14	165°-170°-175°	124.333	132.667	126.333
15	170°-175°-180°	124.667	133.333	126.667
16	175°-180°-185°	125.000	134.000	127.000
17	180°-185°-190°	125.333	134.667	127.333
18	185°-190°-195°	125.667	135.333	127.667
19	190°-195°-200°	126.000	136.000	128.000
20	195°-200°-205°	126.333	136.667	128.333
21	200°-205°-210°	126.667	137.333	128.667
22	205°-210°-215°	127.000	138.000	129.000
23	210°-215°-220°	127.333	138.667	129.333
24	215°-220°-225°	127.667	139.333	129.667
25	220°-225°-230°	128.000	140.000	130.000
26	225°-230°-235°	128.333	140.667	130.333
27	230°-235°-240°	128.667	141.333	130.667
28	235°-240°-245°	129.000	142.000	131.000
29	240°-245°-250°	129.333	142.667	131.333
30	245°-250°-255°	129.667	143.333	131.667
31	250°-255°-260°	130.000	144.000	132.000
32	255°-260°-265°	130.333	144.667	132.333
33	260°-265°-270°	130.667	145.333	132.667
34	265°-270°-275°	131.000	146.000	133.000
35	270°-275°-280°	131.333	146.667	133.333
36	275°-280°-285°	131.667	147.333	133.667
37	280°-285°-290°	132.000	148.000	134.000
38	285°-290°-295°	132.333	148.667	134.333
39	290°-295°-300°	132.667	149.333	134.667
40	295°-300°-305°	133.000	150.000	135.000
41	300°-305°-310°	133.333	150.667	135.333
42	305°-310°-315°	133.667	151.333	135.667
43	310°-315°-320°	134.000	152.000	136.000
44	315°-320°-325°	134.333	152.667	136.333
45	320°-325°-330°	134.667	153.333	136.667
46	325°-330°-335°	135.000	154.000	137.000
47	330°-335°-340°	135.333	154.667	137.333
48	335°-340°-345°	135.667	155.333	137.667
49	340°-345°-350°	136.000	156.000	138.000
50	345°-350°-355°	136.333	156.667	138.333
51	350°-355°-360°	136.667	157.333	138.667
52	355°-360°-365°	137.000	158.000	139.000
53	360°-365°-370°	137.333	158.667	139.333
54	365°-370°-375°	137.667	159.333	139.667
55	370°-375°-380°			

Line	Reading	Distance
10	N45°46'23"E	133.78
11	N48°03'13"E	66.73
16	N67°30'33"E	188.67
27	N67°04'43"E	235.79
28	N71°10'13"E	91.67
32	N48°27'10"W	86.13
33U	S40°48'13"E	21.88
411	N87°39'10"W	27.08
432	N18°40'58"E	26.61

MONUMENTS USED FOR CONTROL

[C. H. 53: 1 (NAD 83)]

42293 N 3 255 354. 110 E 247 144. 272 elev. 154. 153

Combined Scale Factor = 0.000017

All Distances Horizontal Ground

Central Meridian 83°

 copper iron bar
 control

U. R. 3. Control For all pains were obtained using a Magellan pro max 500 (low frequency) (Pain relief).

April 2009

App. No. 13330E

- 644 11,7500

TAB 3

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL DISTRICT OF MIRAMICHI

IN THE MATTER OF THE RECEIVERSHIP OF:

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC.

PURSUANT TO Section 33 of The *Judicature Act*, R.S.N.B. 1973, Ch. J-2, Rule 41, Rules of Court, New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

BETWEEN:

**chartered bank
Province of**

**THE BANK OF NOVA SCOTIA, a Canadian
with a registered office in the City of Saint John,
New Brunswick**

APPLICANT

- and -

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC., all of which are carrying on business in the Province of New Brunswick

RESPONDENTS

ORDER

THIS MOTION, made by Ernst & Young Inc. in its capacity as Court-appointed receiver and receiver manager of the property, assets and undertakings of the Respondents (the "**Receiver**") for an order, *inter alia*, approving the settlement agreement dated May 27, 2010 between the Receiver, Pennecon Atcon JV General Partner Inc. and Penney Construction Ltd. (the "**Pennecon Settlement Agreement**") appended to the Fourth Report of the Receiver dated June 25, 2010 (the "**Fourth Report**"), and authorizing and directing the Receiver to take certain steps with respect to the Pennecon Amount (as defined herein), was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Fourth Report and all the appendices attached thereto, including the Pennecon Settlement Agreement and the Requirement to Pay dated February 26, 2010 issued by Canada Revenue Agency ("**CRA**") to Pennecon Heavy Civil Ltd. pursuant to the section 317(3) of the *Excise Tax Act* (Canada) in the amount of \$268,223.77 in connection with Atcon Construction Inc. (the "**HST Requirement to Pay**"), and on hearing the submissions of counsel for the Receiver and such other counsel in attendance,

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion, the Fourth Report and the Record on Motion shall be and is hereby abridged and validated so that the motion is properly returnable today, and that any further service thereof is hereby dispensed with.
2. **THIS COURT ORDERS AND DECLARES** that the Pennecon Settlement Agreement is hereby approved, and the execution of the Pennecon Settlement Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the terms of the settlement contained in the Pennecon Settlement Agreement.

3. **THIS COURT ORDERS** that, with respect to the amount of \$3,222,385 to be paid to the Receiver pursuant to the terms of the Pennecon Settlement Agreement (the “**Pennecon Amount**”), the Receiver is authorized and directed, upon receipt of the Pennecon Amount, to:

- (a) pay a portion of the Pennecon Amount, in the amount of \$268,223.77, to CRA in connection with the HST Requirement to Pay; and
- (b) utilize the balance of the Pennecon Amount, in the amount of \$2,954,161.23, for the purpose of making payments (including interim payments) required or permitted by the Receivership Order dated March 2, 2010 granted in these proceedings as amended by the Order dated March 30, 2010 granted in these proceedings.

Dated at Miramichi, New Brunswick, this 30th day of June, 2010.

Thomas W. Riordon
Judge of the Court of Queen's Bench
of New Brunswick