

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
COURT NO. : 500-11-022700-047

**SUPERIOR COURT**

(Sitting as Tribunal designated under the  
*Companies' Creditors Arrangement Act*)

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

**9161-5849 Québec Inc. (formerly known as  
Eaux Vives Harricana Inc.),** legal person duly  
constituted under the laws of Québec, having  
its head office at 11 Chemin des Sablières,  
Saint-Mathieu-d'Harricana, Province of Québec,  
District of Abitibi, JOY 1M0;

- and -

**41902 Delaware Inc. (formerly known as  
EVH U.S.A. Inc.),** legal person, duly constituted  
under the laws of Delaware, U.S.A., having a  
place of business at 17821 East 17<sup>th</sup> Street,  
Suite 193, Tustin, California, 92780, U.S.A.;

- and -

**9161-5286 Québec Inc. (formerly known as  
Les Sources Perigny Inc.),** legal person duly  
constituted under the laws of Québec, having  
its head office at 11 Chemin des Sablières,  
Saint-Mathieu-d'Harricana, Province of Québec,  
District of Abitibi, JOY 1M0;

**Petitioners/Debtors**

- and -

**RSM Richter Inc.,** a body politic and corporate,  
duly incorporated according to law, having a place  
of business at 2 Place Alexis-Nihon, 3500 de  
Maisonneuve Blvd. West, 22<sup>nd</sup> Floor, in the City of  
Montréal, Province of Québec, H3Z 3C2;

**Monitor**

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**REPORT OF THE MONITOR WITH REGARD TO THE  
MOTION FOR THE SANCTION OF A COMPROMISE BY A COURT  
(Section 6 of the *Companies' Creditors Arrangement Act* ("CCAA"))**

To one of the Judges of the Superior Court, sitting in Commercial Division, in and for the District of Montréal, RSM Richter Inc, in its capacity as Monitor to the compromise filed by the Debtors, respectfully submits that:

1. For the purposes of this Report, all capitalized term used but not otherwise defined herein shall have the meanings given to them in the plan of arrangement filed by Petitioners on December 14, 2005 and amended on February 2, 2006 (the "Amended Plan");

#### THE ORDERS

2. On March 19, 2004, EVH filed a Motion for the Issuance of an Initial Order (the "Initial Motion"), as more fully appears from the Court's record;
3. On March 19, 2004, the Honourable François Rolland J.S.C. (as he then was) granted the Initial Motion (the "Initial Order"), the whole as appears from the Court's record;
4. RSM Richter accepted to act as Monitor and always fulfilled such role;
5. The Initial Order was amended and extended on various occasions, as appears from the Court's record;
6. EVH was ultimately granted until February 28, 2006 to call and hold a meeting of its Creditors to approve a plan of arrangement and to seek the Court's sanction of said plan of arrangement;

#### SALE OF EVH'S ASSETS

7. As appears from the Court record, there has been several aborted transactions;
8. On July 15, 2005, EVH and Eaux Vives Water Bottling Corp., an entity affiliated with Morgan Stanley, entered into an asset purchase agreement whereby EVH agreed to sell all of its operating assets to it. The transaction, which closed on September 15, 2005, provided for a cash payment of \$18,000,000. Further details on this transaction can be found in the Monitor's report entitled *Report of the Monitor on the State of the Debtor's Financial Affairs and the Plan of Arrangement* ("Monitor's Report"), dated December 23, 2005;
9. As it appears from this Court's record, the Debtors obtained interim financing from Royal Bank Asset Based Finance, a division of Royal Bank of Canada (the "DIP Loan"). Upon closing of the sale transaction, the Monitor, as directed by this Court, reimbursed the DIP Loan in capital, interests and fees.

#### THE PLAN OF ARRANGEMENT

10. EVH filed, on December 14, 2005, a plan of arrangement to its creditors;
11. On December 23, 2005, the Monitor mailed to all the Creditors of EVH having filed a Proof of Claim in accordance with the Claim Process Order: (a) a notice of meeting with respect to the meeting of Creditors, to be held on February 2, 2006, at 10:00 a.m., in Room Viger of the Marriott Chateau Champlain; (b) a copy of the plan of arrangement; (c) the voting form and the proxy form; and (d) a copy of the Monitor's report. Copy of the documentation sent to the Creditors is attached hereto *en liasse* as **Exhibit 1**;
12. Pursuant to the Claim Process Order, only Creditors having filed a Proof of Claim in accordance with the Claim Process Order were entitled to receive the documentation attached as **Exhibit 1**;

#### THE AMENDED PLAN OF ARRANGEMENT

13. On February 2, 2006, further to discussions with various Creditors, EVH amended the plan of arrangement with the consent of its largest Creditors, Parmalat Holdings Limited and 2975483 Canada Inc. A copy of the Amended Plan is attached herewith as **Exhibit 2**. A copy of a blacklined version indicating the amendments made to the Amended Plan is attached herewith as **Exhibit 3**;

14. Pursuant to Section 6.3 of the Amended Plan:
- a) Each Unsecured Creditor (including Parmalat Holdings Limited and 2975483 Canada Inc.) having filed a Proof of Claim in accordance with the Claim Process Order shall be entitled to receive, in full and final satisfaction of its Unsecured Claim, out of the Distribution Fund:
    - (i) with respect for the first \$1,000 of their Unsecured Claim determined to be a Proven Claim, the lesser of \$1,000 and the amount of the Creditor's Unsecured Claim determined to be a Proven Claim; and
    - (ii) with respect to the portion of their Unsecured Claim determined to be a Proven Claim over \$1,000, an amount corresponding to 20% of the balance of the Unsecured Claim determined to be a Proven Claim (net of the amounts paid pursuant to subparagraph (i) above);
  - b) Parmalat Holdings Limited and 2975483 Canada Inc. have agreed to waive a portion of the dividend payable to them pursuant to the Amended Plan in order to allow the other Unsecured Creditors having a Proven Claim to receive the dividend provided for in the Amended Plan;
15. The Amended Plan offers an improvement for all Creditors other than Parmalat Holdings Limited and 2975483 Canada Inc.;

#### THE CREDITORS' MEETING

16. On 2 February 2006, the duly convened Creditors' meeting was held, the whole as more fully appears from a copy of the minutes of said meeting attached hereto as **Exhibit 4**;
17. The meeting was chaired by the undersigned in his capacity of representative of RSM Richter, acting as Monitor;
18. At the said meeting, the Amended Plan was presented to EVH's Creditors. The Monitor furthermore presented to the Creditors an update of his report. A copy of the Monitor's updated report is attached to the minutes of the Creditors' meeting (**Exhibit 4**);
19. Pursuant to the Claim Process Order, the only Creditors entitled to vote were those having filed a Proof of Claim in accordance with the Claim Process Order. All the Creditors entitled to vote who were present at the creditors' meeting or had filed a voting or proxy form prior the creditors' meeting, voted on the Amended Plan.
20. Only one vote was held, for the class of creditors referred to as "Unsecured Creditors" in the Amended Plan, the whole as appears from **Exhibit 4**. The other three classes of creditor provided for by the Amended Plan, more specifically, "Secured Creditors", "Crown's Creditors", and "Unaffected Creditors" will be paid in full pursuant to the Amended Plan and are therefore deemed to have voted in favour of the Amended Plan, the whole in accordance with Sections 6.1.1, 6.2.1 and 6.4 of the Amended Plan;
21. The Amended Plan was unanimously accepted by the 58 creditors of EVH who voted on the Amended Plan, representing \$93,959,304 in value, the whole as appears more fully on **Exhibit 4**;

#### SANCTION OF THE AMENDED PLAN OF ARRANGEMENT

22. The Debtors are now asking this Court to approve and sanction the Amended Plan;
23. The Amended Plan (**Exhibit 1**) has been unanimously accepted by the creditors of EVH;

24. The Amended Plan is fair and commercially reasonable and is in the best interest of EVH and its Creditors;
25. The Amended Plan provides for a greater financial settlement to the Creditors than if the distribution was done in a bankruptcy scenario;
26. In a bankruptcy scenario, if Parmalat Holdings Limited and 2975483 Canada Inc. were to be treated as Unsecured Creditors, the other Unsecured Creditors would receive, a dividend of no more than 14% of their Unsecured Claim accepted as Proven Claim. In comparison, the amended plan guarantees to the Unsecured Creditors the payment of the first thousand dollars (\$1,000) of their Unsecured Claim accepted as Proven Claim (or, if the Proven Claim is less than a thousand dollars (\$1,000), the amount of the Proven Claim) and a dividend of 20% of their Unsecured Claim accepted as Proven Claim which is above a thousand dollars (\$1,000);
27. Furthermore, the Amended Plan is much more advantageous for small trade Creditors of EVH than a bankruptcy scenario would be;
28. EVH has always acted in good faith to ensure the best interest of its Creditors;
29. Pursuant to Section 9.10 of the Amended Plan, certain conditions must be fulfilled for the Amended Plan to be implemented, including the rendering of the Sanction Order (as defined in the Amended Plan) and the obtaining by the Monitor of a release (to become effective upon full payment of the amount to which they are entitled pursuant to the Amended Plan) by Parmalat Holdings Limited and 2975483 Canada Inc. of any charge held by them covering the Proceeds. The Monitor proposes, upon all the conditions set out in Section 9.10 of the Amended Plan being fulfilled, to file with this Court's record a Certificate substantially in the form of **Exhibit 5**;
30. For the above reasons, as well as for the facts explained in his *Report of the Monitor on the State of the Debtor's Financial Affairs and the Plan of Arrangement* dated December 23, 2005 (**Exhibit 1**), and updated on February 2, 2006, the Monitor is of the opinion that it is in the interest of all of the creditors of the Debtors that the Amended Plan of Arrangement be sanctioned by the Court.

DATED AT MONTREAL, this 8<sup>th</sup> day of February 2006.

**RSM Richter Inc.**  
Court-Appointed Monitor

  
Yves Vincent, FCA, CIRP

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
COURT NO. : 500-11-022700-047

SUPERIOR COURT

(Sitting as Tribunal designated under the  
*Companies' Creditors Arrangement Act*)

IN THE MATTER OF THE PLAN OF ARRANGEMENT OF 9161-5849 QUÉBEC INC. (formerly known as EAUX VIVES HARRICANA INC.), 41902 DELAWARE INC. (formerly known as EVH U.S.A. INC.) AND 9161-5286 QUÉBEC INC. (formerly known as LES SOURCES PÉRIGNY INC.), collectively "EVH", legal persons duly constituted under the Laws, having their head office at 11 Chemin des Sablières, in Saint-Mathieu-d'Harricana, Province of Quebec, District of Abitibi, J0Y 1M0

Debtors

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LIST OF DOCUMENTS ANNEXED  
TO THE MAILING DATED DECEMBER 23, 2005  
(also available on [www.rsmrichter.com](http://www.rsmrichter.com))

1. Notice of Meeting
2. Plan of Arrangement
3. Report of the Designated Monitor on the State of the Petitioner's (Debtor's) Financial Affairs and the Plan of Arrangement
4. Creditors' lists:
  - 9161-5849 QUÉBEC INC. (formerly known as EAUX VIVES HARRICANA INC.)
  - 41902 DELAWARE INC. (formerly known as EVH U.S.A. INC.)
  - 9161-5286 QUÉBEC INC. (formerly known as LES SOURCES PÉRIGNY INC.)
5. Voting letter
6. Proxy
7. Notice to the creditors of the application for sanction and ratification of the Plan of Arrangement

RSM Richter Inc.

2, Place Alexis Nihon  
Montréal (Québec) H3Z 3C2  
Téléphone / Telephone : (514) 934-3497  
Télécopieur / Facsimile : (514) 934-3504  
www.rsmrichter.com

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
COURT NO. : 500-11-022700-047

SUPERIOR COURT

(Sitting as Tribunal designated under the  
*Companies' Creditors Arrangement Act*)

**IN THE MATTER OF THE PLAN OF ARRANGEMENT OF 9161-5849 QUÉBEC INC.** (formerly known as EAUX VIVES HARRICANA INC.), **41902 DELAWARE INC.** (formerly known as EVH U.S.A. INC.) **AND 9161-5286 QUÉBEC INC.** (formerly known as LES SOURCES PÉRIGNY INC.), **collectively "EVH"**, legal persons duly constituted under the Laws, having their head office at 11 Chemin des Sablières, in Saint-Mathieu-d'Harricana, Province of Quebec, District of Abitibi, JOY 1M0

Debtors

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## NOTICE OF MEETING

Notice is hereby given that pursuant to the Initial Order rendered by the Superior Court of Québec on March 19, 2004 (as renewed, amended, and extended), EVH has filed on December 14, 2005 a Plan of Arrangement under the terms of the *Companies' Creditors Arrangement Act* (R.S.C. (1985), ch. C-36).

In this regard, the meeting of creditors of EVH to consider the Plan of Arrangement will be held on:

**February 2, 2006 at 10:00 a.m.**  
**Marriott Chateau Champlain**  
**Room Viger**  
**1050 de la Gauchetière Street West**  
**Montréal, Québec**

Attendance at the meeting and right to vote will be restricted only to those creditors who had submitted their Proof of Claim to the Monitor prior to 5:00 p.m. EDST on July 30, 2004 as per Court order.

Creditors who have the right to vote during this meeting can accept the Plan of Arrangement as is or as modified at the meeting. If the Plan of Arrangement is accepted by the required majority and if it is ratified by the Court, it will be binding on affected creditors.

The **Proxy must be remitted to the Monitor** before the beginning of the meeting. To facilitate the tabulation of the votes, you may return your Proxy and, as the case may be, your Voting Letter prior to the meeting. Facsimile and e-mail transmissions will be accepted. Documents must be forwarded to:

**RSM Richter Inc.,**  
**in its capacity as Court-Appointed Monitor of EVH**  
**22<sup>nd</sup> Floor**  
**2 Place Alexis Nihon**  
**Montréal, Québec H3Z 3C2**  
**Telephone: (514) 934-3497**  
**Facsimile: (514) 934-3504**  
**E-mail: poc@rsmrichter.com**

DATED AT MONTRÉAL, this 23<sup>rd</sup> day of December 2005.

**RSM Richter Inc.**  
Court-Appointed Monitor

(français au recto)

**SUPERIOR COURT OF QUEBEC  
(COMMERCIAL DIVISION)  
DISTRICT OF MONTREAL**

**COURT FILE NO. 500-11-022700-047**

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**PLAN OF ARRANGEMENT**

**OF**

**9161-5849 QUÉBEC INC. (formerly known as EAUX VIVES HARRICANA INC.)**

**AND**

**41902 DELAWARE INC. (formerly known as EVH U.S.A. INC.)**

**AND**

**9161-5286 QUÉBEC INC. (formerly known as LES SOURCES PÉRIGNY INC.)**

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**PURSUANT TO**

***THE COMPANIES' CREDITORS ARRANGEMENT ACT***

**(R.S.C. 1985 c.C-36)**

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Each of the undersigned Applicants 9161-5849 Québec Inc. (formerly known as Eaux Vives Harricana Inc.), 41902 Delaware Inc. (formerly known as EVH U.S.A. Inc.) and 9161-5286 Québec Inc. (formerly known as Les Sources Périgny Inc.) hereby respectfully submits the following plan of arrangement pursuant to the *Companies' Creditors Arrangement Act* (Canada).

## INTRODUCTION<sup>1</sup>

The Applicants availed themselves of the relieves and remedies provided by the CCAA, which ultimately allowed the sale of their assets as an operating unit, avoided a forced liquidation scenario and as such obtained a better value for all their Creditors.

The purpose of this Plan is to effect a compromise and arrangement between the Applicants and their Creditors with respect to all the debts and obligations of the Applicants.

As explained more fully below, the proposed Plan provides, further to the liquidation of the Applicants' assets, for the creation of a fund which, once the Secured Claims, the Crown's Claims, the Unaffected Claims, the DIP Loan and various expenses relating to the CCAA process have been paid, will be distributed to the Applicants' Unsecured Creditors. As more fully explained below, Parmalat Holdings Limited and 2975483 Canada Inc. will participate to the Plan as Unsecured Creditors.

Pursuant to the Plan, the Unsecured Creditors will receive full payment of the first \$1,000 of their Claim and the balance of the Distribution Fund will be distributed between the Unsecured Creditors proportionally to their Unsecured Claim that is a Proven Claim until the Distribution Fund has been exhausted.

## SECTION 1

### INTERPRETATION

#### 1.1 DEFINITIONS

For purposes of this Plan, the following terms shall have the meanings specified or referenced below unless otherwise expressly indicated herein or unless the context requires otherwise:

**"Accepted Claim For Voting Purposes"** means the Claim of a Creditor which is accepted for voting purposes as provided for in Sections 4 and 5 hereof;

**"Administration Charge"** has the meaning ascribed to such term in the Initial Order and/or any other Order;

**"Applicants"** means EVH, EVH U.S.A. and Périgny, or any of them, as the case may be;

**"Bar Date"** means 5:00 p.m. (Eastern Time) on July 30, 2004, which date has been determined by the Claim Process Order;

**"BIA"** means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as from time to time amended;

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<sup>1</sup> This Introduction is for information purposes only and is not part of the Plan.

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

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

“**Claim**” means any right of any Person against the Applicants or any of them in connection with any indebtedness, liability or obligation of any kind, in existence at the Determination Date and any interest then accrued thereon, whether or not such indebtedness, liability or obligation is reduced to judgment, or is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by guarantee, by surety or otherwise and whether or not such a right is executory in nature, including, without limitation, the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future based in whole or in part on facts which existed prior to or at the Determination Date. Without limitation, a Claim shall include any (i) Secured Claims, (ii) Crown’s Claims, (iii) Unsecured Claims, or (iv) any other claims that would have been claims provable in bankruptcy had the Applicant become bankrupt on the Determination Date. A Claim does not include an Unaffected Claim. A Claim shall not include any interest from and after the Determination Date, or any costs, except as expressly provided for in this Plan.

“**Claim Process Order**” means the Order rendered by the Honourable François Rolland J.S.C. (as he then was) on June 8, 2004, as may be amended;

“**Class**” shall have the meaning ascribed thereto at Section 4.1 hereof;

“**Closing Date**” means September 15, 2005;

“**Court**” means the Superior Court of Quebec (Commercial Division), District of Montreal;

“**Creditor**” means any Person having a Claim or an Unaffected Claim and may, if the context requires, mean an assignee of a Claim or a trustee, receiver, receiver manager or other Person acting on behalf of such Person. A Creditor includes a Creditor of Repudiated Contract;

“**Creditor of Repudiated Contract**” means a person with a Claim which results from a Repudiated Contract but only in respect of the portion of its Claim which result from a Repudiated Contract;

“**Crown’s Claims**” means all amounts (including interests and penalties) owing to Her Majesty the Queen in right of Canada or a Province of Canada which are referred to in Subsections 18.2(1) and 18.3(2) of the *CCAA* (including amounts subject to Subsection 224(1.2) of the *Income Tax Act* (Canada) or under any substantially similar provision of provincial legislation) that were in existence on the Determination Date and remain outstanding;

“**Crown’s Creditor**” means a Creditor having a Crown’s Claim, but only in respect of the portion of its Claim which is a Crown’s Claim;

“**Deposit**” shall have the meaning ascribed thereto at Section 2 hereof;

“**Determination Date**” means March 19, 2004, being the date of the Initial Order;

“**DIP Credit Agreement**” shall have the meaning ascribed thereto at Section 2 hereof;

“**DIP Charge**” has the meaning ascribed to such term in the Order rendered by the Honourable François Rolland J.S.C. (as he then was) on June 15, 2004, the Sale Order and/or any other Order;

**“DIP Lender”** means Royal Bank Asset Based Finance, a division of Royal Bank of Canada;

**“DIP Loan”** means the loan made by virtue of the DIP Credit Agreement, together with any amount payable pursuant to the DIP Credit Agreement;

**“Directors’ Charge”** means all matters falling within the ambit of the “Directors’ Charge” pursuant to the Initial Order and/or any other Order;

**“Distribution”** means a payment made in accordance with the Plan;

**“Distribution Fund”** shall have the meaning ascribed thereto at Section 3.1 hereof;

**“Effective Date”** means the first Business Day following the date at which all the conditions that must be fulfilled for the Plan to be implemented (as described in Section 9.10 hereof) are properly fulfilled or waived in writing by its beneficiary;

**“EVH”** means 9161-5849 Québec Inc. (formerly known as Eaux Vives Harricana Inc.);

**“EVH U.S.A.”** means 41902 Delaware Inc. (formerly known as EVH U.S.A. Inc.);

**“GAAP”** shall have the meaning ascribed thereto at Section 1.2 hereof;

**“Initial Order”** means the Order rendered by the Honourable François Rolland J.S.C. (as he then was) dated March 19, 2004, pursuant to which the Applicants were provided protection under the *CCAA*, as amended and extended;

**“Interim Period”** means the period from and including the Determination Date until the Effective Date;

**“Meeting of Creditors”** means the Creditors’ meeting called for the purposes of considering and voting upon the Plan, or any subsequent such meeting;

**“Monitor”** means RSM Richter Inc. (formerly known as Richter & Associés Inc.) through Mr. Yves Vincent FCA, CIRP, and any successor thereto appointed in accordance with the Initial Order or any other Order;

**“Morgan Stanley”** shall have the meaning ascribed thereto at Section 2 hereof;

**“Order”** means any order of the Court in the present proceedings in the Court file No. 500-11-022700-047;

**“Périgny”** means 9161-5286 Québec Inc. (formerly known as Les Sources Périgny Inc.);

**“Person”** means any individual, partnership, joint venture, entity, corporation, unincorporated organization, government or agency or instrumentality thereof, or any other juridical entity howsoever designated or constituted;

**“Plan”** means the present plan of arrangement, as may be modified or amended as provided in Section 9.6 hereof;

**“Proof of Claim”** means a proof of claim form filed by a Creditor in accordance with the Claim Process Order or any Order of the Court;

**“Proceeds”** shall have the meaning ascribed thereto at Section 2 hereof;

**“Proven Claim”** means the amount and status of a Claim of a Creditor as determined in accordance with the procedure described herein;

**“Purchaser”** shall have the meaning ascribed thereto at Section 2 hereof;

**“Purchase Agreement”** shall have the meaning ascribed thereto at Section 2 hereof;

**“Remaining Assets”** means all remaining assets of the Applicants, as of the date hereof, not sold to the Purchaser pursuant to the Purchase Agreement, including without limitation, all cash and bank accounts (including any remaining portion of the Deposit), moneys and receivables of any kind and nature presently owed or which shall in the future become owing or payable to the Applicants, including, without limitation, any and all tax credit receivables, tax refunds and otherwise. The shares held by EVH in the share capital of each of Périgny and EVH U.S.A. are not part of the Remaining Assets;

**“Representatives”** shall have the meaning ascribed thereto at Section 8 hereof.

**“Repudiated Contract”** means an agreement or contract of any nature whatsoever, whether verbal or written (including but not limited to a contract of employment), to which any of the Applicants is a party and which has been terminated, repudiated, resiliated, cancelled, amended or withdrawn by any of the Applicants as per the terms of the Initial Order as amended and extended;

**“Sale Order”** means the Order rendered on July 29, 2005 by Mr. Chief Justice François Rolland approving the transaction contemplated in the Purchase Agreement and rendering various other remedies;

**“Sanction Order”** means the Order to be made pursuant to the *CCAA* sanctioning the Plan, (subject to Section 9.6 hereof), provided that such Order shall not be the Sanction Order until: (i) the expiry of the applicable appeal period without any appeal having been instituted; or (ii) in the event of an appeal or application for leave to appeal, final determination by the applicable appellate tribunal sanctioning the Plan;

**“Secured Claim”** means a Claim (including interests) which payment is guaranteed by a Security or which is based on a Security. For purposes of clarity, a Claim secured by the DIP Loan, the Administration Charge and the Directors’ Charge shall not be considered as a Secured Claim. For purposes of clarity, a Crown’s Claim shall not be considered as a Secured Claim. Moreover, should a portion of a Secured Claim be, in the opinion of the Monitor, in excess of the value at the date of this Plan of the assets charged or affected by such Secured Claim, said portion shall be considered as an Unsecured Claim and shall be governed by this Plan. Any Claim or demand that may result from the termination of any agreement entered into with any Secured Creditor shall be considered as an Unsecured Claim;

**“Secured Creditor”** means a Creditor having a Secured Claim, but only in respect of the portion of its Claim which is a Secured Claim;

**“Security”** means a valid and enforceable hypothec, mortgage, prior claim, pledge, charge, lien or other security interest on or against the property of the Applicants or any part thereof as security for a debt due or accruing due from the Applicant. For the purpose of clarity, a reservation of ownership does not constitute a Security;

**“Unaffected Claim”** means a claim resulting from an Unaffected Obligation;

**“Unaffected Creditor”** means a Creditor having an Unaffected Claim but only in respect of this Unaffected Claim and to the extent that this Plan does not otherwise affect said Claim;

**“Unaffected Obligation”** means any right of any Person against the Applicants or any of them in connection with any indebtedness, liability or obligation of any kind which came into existence during the Interim Period and any interest thereon, including any obligation of the Applicants toward Creditors who

have supplied or shall supply services, utilities, goods or materials or who have or shall have advanced funds to the Applicants during the Interim Period, but only to the extent of their claims in respect of the supply of such services, utilities, goods, materials or funds during the Interim Period and to the extent that the said claims are not otherwise affected by this Plan. An Unaffected Obligation shall, without limiting the generality of the foregoing, include a payment to an employees that has been employed by the Applicants after the Determination Date, which payment shall only include any regular pay and holiday pay to which said employee may be entitled during this period;

“Unsecured Claim” means a Claim that is not a Secured Claim or a Crown’s Claim. Without limitation, Unsecured Claims shall include:

- (i) Claims of Secured Creditors in respect of the portion of their Claims which exceeds, in the opinion of the Monitor, the value at the date of this Plan of the assets charged or affected by the Security held, as well as any Claim or demand that may result from the termination of any agreement entered into with any such Secured Creditor;
- (ii) Claims of Her Majesty the Queen in right of Canada or a Province of Canada which are not Crown's Claims;
- (iii) Claims of Creditors based on any volume, sale or purchase program, volume rebate, or any other like claims;
- (iv) any Claim for goods supplied or sold within the thirty (30) day period prior to the Determination Date, or any other Claim of a like nature;
- (v) any Claim which results from a Repudiated Contract, as per the terms of Section 5.3 hereof or otherwise;
- (vi) any Claim of a Creditor which has a reservation of ownership and which has opted not to take back the sold property; and
- (vii) the Claim of Parmalat Holdings Limited and 2975483 Canada Inc., as per Subsection 6.1.4 below (and only for the purpose of this Plan as set out in said Subsection 6.1.4).

“Unsecured Creditor” means a Creditor having an Unsecured Claim, but only in respect of the portion of its Claim which is an Unsecured Claim.

## 1.2 ACCOUNTING TERMS

All accounting terms not otherwise defined herein shall have the meanings ascribed to them, from time to time, in accordance with Canadian generally accepted accounting principles including those prescribed by the Canadian Institute of Chartered Accountants (“GAAP”).

## 1.3 CURRENCY

All references herein to currency are to Canadian dollars unless otherwise expressly stipulated herein. If, for the purposes of voting or distribution, an amount denominated in a currency other than Canadian dollars must be converted to Canadian dollars then such amount shall be regarded as having been converted at the noon spot-rate of exchange quoted by the Bank of Canada for exchanging such currency into Canadian dollars at the Determination Date (being 1.3310 for the United States dollar, 0.9951 for the Australian dollar, 1.6329 for the Euro, 0.7859 for the Singapore dollar and 0.01244 for the Japanese yen).

**1.4 INTERPRETATION NOT AFFECTED BY HEADINGS**

The division of this Plan into Sections, sections, subsections, clauses and paragraphs and the insertion of an introduction as well as of a table of contents and headings are for convenience of reference only and shall not affect the construction or interpretation of this Plan.

**1.5 DATE OF ANY ACTION**

In the event that any date on which any action is required to be taken hereunder is not a Business Day, then such action shall be required to be taken on the immediately next following Business Day.

**1.6 TIME**

All times expressed herein make reference to local time in Montreal, Québec, Canada unless otherwise stipulated.

**1.7 NUMBERS AND GENDER**

In this Plan, where the context requires, words importing the singular number shall include the plural and *vice versa* and words importing one gender shall include all genders.

**1.8 STATUTORY REFERENCES**

Reference in this Plan to any statute shall include all regulations made or adopted thereunder, all amendments to such statute or regulations in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation.

**1.9 SUCCESSORS AND ASSIGNS**

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

**SECTION 2**

**BACKGROUND**

**The Applicants**

9161-5849 Québec Inc. (formerly known as EVH) is a company duly constituted in 1997 under the laws of Québec in order to source, bottle and distribute natural spring water from a pristine source located in Northern Quebec, in Saint-Mathieu-d'Harricana. The source of the water is an "Esker", a rare geological formation that produces spring water of exceptional quality through its natural filtration process.

41902 Delaware Inc. (formerly known as EVH U.S.A.) is a legal person duly constituted under the laws of Delaware, United States. EVH U.S.A. acted solely as a marketing, sales and distributing agent for EVH and had no customers other than EVH. As such, EVH U.S.A. is dependent upon EVH and cannot be dissociated therefrom, which explains the present joint Plan.

9161-5286 Québec Inc. (formerly known as Périgny) is a legal person duly constituted under the laws of Québec. Périgny is a wholly-owned subsidiary of EVH. While Périgny is a distinct legal entity from EVH, its assets and liabilities cannot be disassociated from EVH, which explains the present joint Plan.

## History

In 2002, following extensive testing and development work, EVH proceeded to construct a bottling, warehousing and distribution facility. EVH invested almost Sixty Million dollars (\$60,000,000) in order to build a facility considered to be “state of the art” within the beverage industry. While only operating a single shift in its initial operations, EVH employed over Sixty (60) people locally. It was anticipated that as volume increased, EVH would eventually move to a “three shift” operation, employing One Hundred and Fifty (150) to Two Hundred (200) people.

EVH introduced its bottled water, “ESKER” into select markets in Canada and southwest United States late in 2002. Significant investments were made by EVH in research, marketing, advertising and trade allowances during the first year of ESKER’s launch. By late 2003, ESKER was beginning to develop a stable and growing loyal user group. EVH was revising its operating plan for 2004, incorporating test-market learning and modifying to optimize competitiveness within the bottled water category. EVH’s intention was to further expand the launch into northeast United States and to launch nationally in Canada.

## The CCAA Filing

In 2004, EVH was still anticipated to be in a development stage. It was not yet profitable, requiring ongoing investment to fund working capital as well as interest on loans. As EVH, at such time, was no longer able to meet its liability generally as they became due, EVH management and ownership began exploring financing alternatives. It was determined that the best alternative for current owners, employees, creditors and other interested parties was to seek the issuance of the Initial Order.

On March 19, 2004, the Court granted the Initial Order pursuant to the terms therein set forth, as contained in the record of the Court. On June 1<sup>st</sup>, 2004, the remedies and relieves contained in the Initial Order were extended to Périgny, with retroactive effect. The Initial Order has been amended and extended on various occasions and remains in force.

Further to the filing of the Initial Order, EVH liquidated all inventory in its possession and receivables were collected in respect of the same. Given, *inter alia*: (i) the limited revenues generated from the sale of the remaining inventory and the collection of the residual accounts receivable; and (ii) the fact that EVH had ceased to operate, additional funds became necessary.

On June 10, 2004, EVH, Périgny and the DIP Lender executed the DIP Credit Agreement providing for an advance of up to \$3,578,000. On June 15, 2004, the Honourable François Rolland J.S.C. (as he then was) rendered an Order approving the DIP Credit Agreement and creating the DIP Charge.

Between the approval of the DIP Credit Agreement on June 10, 2004 and the Sale Closing in August 2005, EVH used the DIP Financing provided by the DIP Lender to finance its funding requirements.

## Initial Marketing Process

After having explored their options, the Applicants determined that it was in the best interests of their creditors to sell their assets. The Applicants therefore commenced a sale process with the assistance of Scotia Capital (“Scotia”).

The possibility of the purchase of assets of EVH was discussed with over sixty (60) prospective parties, including North American beverage companies, bottled water companies, bottled water industry participants, financial buyers, distressed asset purchasers and liquidators.

Between April 6, 2004 and June 16, 2004 in excess of 30 parties received information packages from Scotia. During that period, 14 parties executed confidentiality agreements. Out of such 14 parties, 9 visited



the data room established for the sale process, in order to examine the books, records and other documents regarding the Applicants therein contained, and 7 such parties conducted site visits of EVH's plant.

A total of 4 formal offers were received through the process.

Further to the receipt of the offers and pursuant to the recommendation of Scotia, the Applicants entertained discussions with the offeror it felt would provide the best purchase price.

On July 30, 2004, the said offeror submitted a revised offer to EVH which was accepted by it (the "July 30 Offer").

Unexpected problems were encountered after the acceptance of the July 30 Offer. Despite a demand letter and further communications, the offeror did not comply with its obligations pursuant to the Offer, and the Applicants had no choice but to terminate the negotiations with the offeror and to pursue other options.

### **Second Marketing Process**

As a result of the failure to close the contemplated sale transaction, throughout the months of October and November 2004, Scotia and EVH re-established communications with all those parties that had been identified as potential buyers.

After having examined the alternatives available and due to the fact that interested parties had manifested their interest to acquire the Applicants' assets, the Applicants decided, in collaboration with the Monitor and Scotia, to launch a new sale process and, as such, to canvass, once again, the market in order to attempt to complete a sale transaction.

Pursuant to such new marketing process, the delay within which offers were to be filed was set to November 30, 2004.

During the months of October and November, in excess of 14 parties received an updated information package and/or were contacted by either the Applicants, Scotia or the Monitor. Moreover, representatives of Scotia, the Applicants and the Monitor had discussions with various potential bidders.

On November 30, 2004, offers and letters of interest were received from five (5) parties, but none of them contained terms and/or a purchase price that were acceptable. However, the Monitor, Scotia and EVH continued to entertain discussions with three (3) different parties.

### **Extension of the Marketing Process**

The initial intention of the Monitor, EVH and Scotia was to make a final decision regarding the offers received by December 20, 2004. However, in the interests of fairness to the parties remaining in the process and with a view of concluding a transaction, it appeared that it would be beneficial to pursue such discussions through January 2005. The interested parties were advised by a letter sent on December 22, 2004 that it was the Monitor's intention to deal with those offerors who would submit an acceptable offer in form and substance by January 21, 2005.

A total of four (4) offerors and two (2) letters of interest were submitted to the Monitor on or before January 21, 2005.

### **Quebec Water Inc.'s Offer**

Among the offers received on January 21, 2005 an Offer was received from a Delaware Corporation, Quebec Waters Inc. ("Quebec Waters").

After having reviewed the offers, the Monitor and EVH, with the assistance of Scotia, came to the conclusion that the offer presented by Quebec Waters was the best offer. Furthermore, the purchase price offered by Quebec Waters was greater than that provided for in any other offer received.

On January 21, 2005, EVH accepted the offer submitted by Quebec Waters, (as amended and improved further to its original submission, the "Quebec Waters Offer").

On February 23, 2005, the Court approved the sale of the Applicants' assets to Quebec Waters.

Pursuant to the Quebec Waters Offer, a sum of \$1,000,000 was to be deposited with the Monitor upon the satisfaction of certain conditions set forth therein (the "Deposit"). This Deposit was received on March 21, 2005.

The Applicants and the Monitor made arrangements for closing, ultimately scheduled for May 4, 2005. Closing documents and agreements were circulated and agreed upon.

On May 4, 2005, a representative of Quebec Waters arrived at the time and place scheduled for closing. He indicated that no funds were available and that closing would not occur. As a result, the Deposit was confiscated. Quebec Waters did not contest the confiscation of the Deposit.

Further to the default of Quebec Waters under its obligations in the Quebec Waters Offer and the confiscation of the deposit the Court rendered on May 27 2005 an Order which, among other things (a) acknowledged the default of Quebec Waters and its failure to complete the transaction contemplated in the its offer; (b) declared that as a result of Quebec Waters' default, the conclusions contained in the February 23, 2005 Order of the Court ordering the Applicants and the Monitor to complete the transaction contemplated in the Offer were of no effect; and (c) declared that such foregoing orders do not affect the Applicants' rights and recourses against Quebec Waters or any other person as a result of Quebec Waters' default, including with respect to the confiscation of the Deposit.

#### **Eaux Vives Water Bottling Corp.'s Offer**

Since the termination of the agreement with Quebec Waters as a result of Quebec Waters' default, the Applicants assessed their alternatives.

Following the failed attempt to close the Quebec Waters transaction, the Applicants (directly and through counsel and the Monitor) received an expression of interest from Morgan Stanley & Co. ("Morgan Stanley"), a well-known and respected financial institution in the United States and Canada.

On May 25, 2005, the Monitor received from Morgan Stanley (on its behalf or on behalf of a nominee to be selected by it) a signed expression of interest indicating they were "highly interested" in acquiring the Applicants' assets.

Further to various discussions with the Applicants and the Monitor on May 26, 2005, Morgan Stanley sent to the Monitor a revised expression of interest with certain improved terms and provisions (the "EOI").

In view of several facts such as the content of the EOI, previous canvassings, offers received in the past, the emergency to close a transaction and the existence of indebtedness owing to the DIP Lender, the Applicants and the Monitor concluded that it was not appropriate to explore further options in order to attempt to complete a transaction and that a new sale process to canvass the market once again would not provide a better outcome than the EOI.

After having reviewed the terms and provisions contained in the EOI, the Applicants and the Monitor concluded that it was advantageous and in the best interest of all of the Applicants' creditors. In addition to the purchase price and terms contained in the EOI, one of the important considerations of the Applicant and

the Monitor was based on the understanding that Morgan Stanley would be able to close the transaction within a short timeframe and that the requisite funds were available.

As a result of the foregoing considerations, the Monitor, on behalf of the Applicants, accepted the EOI on May 27, 2005, subject to the approval of the Court.

Scotia did not participate in the matters leading up to the receipt by EVH of the EOI or in any of the discussions related thereto or subsequent thereto.

On July 15, the Applicants and Eaux Vives Water Bottling Corp., an entity affiliated with Morgan Stanley and selected by Morgan Stanley as its nominee for the transactions (the "**Purchaser**"), entered into an asset purchase agreement pursuant to which the Applicants agreed to sell all of their assets (save for some excluded assets) to the Purchaser, the whole on the terms and conditions more fully therein set forth (collectively with any amendments thereto agreed to between the parties, the "**Purchase Agreement**"). The contemplated transaction provided for a cash payment of \$18,000,000 (the "**Proceeds**").

On July 29, 2005 the Court approved the transaction as contemplated in the Purchase Agreement (the "**Sale Order**").

On August 25, 2005, further to the accomplishment of all the conditions contemplated in the Purchase Agreement, the Applicants and the Purchaser completed the transactions of purchase and sale pursuant thereto. The entirety of the Proceeds was received by counsel to the Applicants to be disbursed to the Monitor upon the registration of all deeds and other instruments evidencing the said transactions. Accordingly, on September 15, 2005, the entirety of the Proceeds was transferred to the Monitor.

The Proceeds received pursuant to the execution of the Purchase Agreement are substantially higher than the realisation that would have been obtained through the forced liquidation of EVH assets on an individual basis.

Pursuant to the Sale Order, the Monitor was required to use the Proceeds to reimburse the DIP Credit Agreement upon the consummation of transactions related to the Offer. As a result thereof, on September 16, 2005, the DIP Lender was fully repaid, out of the Proceeds, in principal, interest and fees in an aggregate amount of \$2,848,716.60. Furthermore, pursuant to the Sale Order, the Monitor reimbursed the amount then covered by the Administration Charge, as well as any and all outstanding Municipal and School taxes due and unpaid for the period up to and including the Closing Date.

### SECTION 3

#### PURPOSE AND EFFECT OF THE PLAN

##### 3.1 PURPOSE

The Applicants availed themselves of the relieves and remedies provided by the CCAA, which ultimately allowed the sale of their assets as an operating unit, avoided a forced liquidation scenario and as such obtain a better value for all their Creditors.

The purpose of this Plan is to effect a compromise and arrangement between the Applicants and their Creditors with respect to all the debts and obligations of the Applicants. In accordance with the Initial Order, the Sale Order, any other Order and the terms herein set forth, a fund will be constituted from:

- a) the Proceeds; and

- b) the Remaining Assets and the proceeds resulting from the liquidation of the Remaining Assets;

less

- a) the amounts paid in virtue of Section 6.10 hereof as well as any other amounts covered by the Administration Charge and any amounts covered by the Directors' Charge;
- b) any other amount the Monitor and the Applicant deem required for the completion of the CCAA process, including (without limitation) any amount that will be required in the future to pay the expenses referred to in Section 6.10 hereof;
- c) the amount paid in reimbursement of the DIP Loan;
- d) the amount paid in reimbursement of the Secured Claims, should there be any;
- e) the amount paid in reimbursement of the Crown's Claims, should there be any;
- f) the amount paid in reimbursement of the Unaffected Claims, should there be any.

(the net result of which will constitute "**Distribution Fund**").

The Distribution Fund will be used to pay the Unsecured Creditors in accordance with the Plan.

For greater certainty, any and all payments to the Creditors shall be made exclusively in accordance with this Plan and only to the extent the Proceeds and the Remaining Assets allow it.

Payments made in accordance with the Plan will provide to the Applicants (and the other beneficiaries enumerated in Section 8 below) the releases provided for in Section 8 below.

### 3.2 PERSONS AFFECTED

On and after its acceptance by the Creditors and its sanction by the Court, and as per the CCAA, this Plan will become effective and shall be binding upon the Applicants and the Creditors.

## SECTION 4

### CLASSIFICATION OF CREDITORS, VALUATION OF CLAIMS AND PROCEDURAL MATTERS

#### 4.1 CLASSIFICATION OF CREDITORS

The Plan provides for four Classes of Creditors: Secured Creditors, Crown's Creditors, Unsecured Creditors and Unaffected Creditors.

As the Secured Creditors, the Crown's Creditors and the Unaffected Creditors will be paid in full pursuant to the Plan, their approval of the Plan is not required.

For the purposes of considering and voting upon the Plan, the Unsecured Creditors shall, to the extent herein provided, be entitled to vote upon the Plan.

#### 4.2 MEETING OF CREDITORS

A Meeting of Creditors shall be held in accordance with the terms of the present Plan, the Claim Process Order and the applicable law:

- 4.2.1 Upon filing of the Plan, the Monitor will convene the Meeting of Creditors at a date to be determined by the Monitor and at a place that the Monitor will judge appropriate. The Meeting of Creditors will be convened for the purpose of voting on the Plan, unless the Creditors decide by ordinary resolution (in accordance with the definition of said expression under the *BIA*) to postpone said Meeting;
- 4.2.2 The notice of convocation will be sent in accordance with Section 7.1.1 of the Plan to all Creditors having filed a Proof of Claim before the Bar Date;
- 4.2.3 The Meeting of Creditors shall be conducted by the Monitor and all Proofs of Claim shall be delivered in accordance with the provisions of this Plan, the *CCAA*, the Claim Process Order and any other Order which may be rendered in respect of the procedure governing the Meeting of Creditors to be held for purposes of voting on the Plan; and
- 4.2.4 A representative of the Monitor shall preside as the chair of the Meeting of Creditors and shall decide upon all matters relating to the conduct of such Meeting of Creditors and any question or dispute arising at any meeting, from which any Creditors may appeal such decision to the Court, within five (5) days of the rendering of same. The only Persons entitled to attend the Meeting of Creditors are those Persons, including the holders of proxies, entitled to vote at the Meeting of Creditors and their legal counsel as well as the officers, directors, auditors and legal counsel of the Applicants. The Secured Creditors, Crown's Creditors and Unaffected Creditors shall also be entitled to attend the Meeting of Creditors. Any other Person may be admitted on invitation of the chair of the Meeting of Creditors or with the unanimous consent of the attending Creditors at the Meeting of Creditors;
- 4.2.5 Any Creditor which does not attend and is not represented by proxy shall be entitled to vote on the Plan by filing with the Monitor before the beginning of the Meeting of Creditors a voting letter expressing his vote, failing which such Creditor shall have no right to vote.

#### 4.3 APPROVAL BY CREDITORS

In order for this Plan to be binding upon the Creditors of the Applicants and the Applicants, in accordance with the *CCAA*, it must first:

- 4.3.1 be accepted as set forth by the *CCAA*, being by a majority in number (50% + 1) of the Unsecured Creditors (including Parmalat Holdings Limited and 2975483 Canada Inc.) who actually vote upon the Plan (in person or by proxy) at the Meeting of Creditors, representing two-thirds (2/3) in value of the Accepted Claims for Voting Purposes of the Unsecured Creditors who actually vote upon the Plan (whether in person or by proxy) at the Meeting of Creditors; and
- 4.3.2 then be sanctioned by the Court in accordance with the *CCAA*.

The only Unsecured Creditors entitled to vote on the Plan are those having filed a Proof of Claim with the Monitor in accordance with the Claim Process Order.

#### 4.4 PROCEDURE FOR VALUING CLAIMS

The procedure for valuing Claims and resolving disputes shall be as set forth at Section 5 hereof and the Initial Order and the Claim Process Order. The Applicants (on their behalf and on behalf of the Monitor)

as well as the Monitor, hereby reserve their right to seek, if required, the assistance of the Court in valuing the Claim of any Creditor to ascertain the result of any vote on the Plan or the amount that is payable, or to be distributed, to such Creditor under this Plan, as the case may be.

#### **4.5 CLAIMS FOR VOTING PURPOSES**

- 4.5.1 Each Creditor having an Unsecured Claim shall be entitled to attend and to vote at the Meeting of Creditors. Each Unsecured Creditor who is entitled to vote shall be entitled to that number of votes at the Meeting of Creditors as is equal to the dollar value of its Unsecured Claim as determined by the Monitor or otherwise by the Court.
- 4.5.2 Where any Creditor appeals a Notice of Revision or Disallowance (as defined in the Claim Process Order) to the Court, but the Proven Claim has not been finally determined to the date of the Meeting of Creditors, the Monitor, in conjunction with the Applicants, will determine the amount of the Proof of Claim for the purpose of voting. The amount determined by the Monitor, in conjunction with the Applicants, shall be the amount of the Proof of Claim admitted for voting purposes;
- 4.5.3 If the holder of a Claim or any subsequent holder of the whole of a Claim who has been acknowledged by the Monitor as the Creditor in respect of such Claim transfers or assigns the whole of such Claim to another Person, neither the Monitor nor the Applicants shall be obligated to give notice to or to otherwise deal with the transferee or assignee of that Claim as if it was the Creditor in respect thereof, unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, have been received and acknowledged by the Monitor. Thereafter, such transferee or assignee shall for the purpose hereof constitute the Creditor in respect of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim prior to receipt and acknowledgement by the Monitor of satisfactory evidence of such transfer or assignment;
- 4.5.4 If the holder of a Claim (or any subsequent holder of the whole of a Claim who has been acknowledged by the Monitor as the Creditor in respect of such Claim) transfers or assigns the whole of such Claim to more than one Person or part of such Claim to another Person or Persons, such transfer or assignment shall not create a separate Claim or Claims and such Claim shall continue to constitute and be dealt with as a single Claim notwithstanding such transfer or assignment. The Monitor and the Applicants shall in each such case not be bound to recognize or acknowledge any such transfer or assignment and shall be entitled to give notices to and to otherwise deal with such Claim only as a whole and then only to and with the Person last holding such Claim in whole as the Creditor in respect of such Claim. However, such Person may, by notice in writing to the Monitor, direct that subsequent dealings in respect of such Claim (but only as a whole) shall be with a specified Person and in such event, every Creditors, transferee(s) or assignee(s) of the Claim for the whole of such Claim shall be bound by any notices given or steps taken in respect of such Claim.

#### **4.6 LOSS OF RIGHT TO PARTICIPATE IN THE PLAN**

- 4.6.1 As stipulated in the Claim Process Order, a Creditor having a Claim (whether an Secured Claim, a Crown's Claim or an Unsecured Claim) (unless dealt with differently at Section 4.6.2 below) that has not filed a Proof of Claim by the Bar Date in accordance with the Claim Process Order:
- (a) is not entitled to any further notice;
  - (b) is not entitled to participate as a Creditor in these proceedings;
  - (c) is not entitled to vote on any matter in these proceedings, including the Plan;
  - (d) is barred from receiving any Distribution in respect of such Claim; and

- (e) is barred from seeking payment of said Claim;

In any such case, the Applicants have been discharged of said Claim;

4.6.2 As stipulated in the Claim Process Order, any Creditor of Repudiated Contract which has not filed a Proof of Claim in accordance with the Claim Process Order:

- (a) shall not be entitled to any further notice; and
- (b) shall not be entitled to participate as a Creditor in these proceedings (which, by way of example, includes, but shall not be limited to, the right to vote on the Plan or the right to receive any Distribution pursuant to the Plan) until such time as such Creditor of Repudiated Contract has filed a Proof of Claim, whereupon such Creditor of Repudiated Contract shall be entitled to participate in all steps which remain outstanding in the proceedings as long as such Creditor of Repudiated Contract has filed a Proof of Claim by a date which is the earlier of:
  - (i) thirty (30) days from the date at which its contract has been repudiated; or
  - (ii) the Effective Date;

failing which the claim of such Creditor of Repudiated Contract shall be forever barred, prescribed and extinguished. In any such case, the Applicants have been/will be discharged of said Claim.

4.6.3 Further to the acceptance of the Plan by the Creditors and its sanction by the Court, other than in respect of the Applicants' obligations pursuant to this Plan and subject to the fulfilment of such obligations, the Applicants shall be released from all Claims and Unaffected Claims of all Creditors, whether or not a Proof of Claim has been filed, in accordance with the terms of Section 8 below.

## SECTION 5

### PROCEDURE FOR VALUATION OF CLAIMS

#### 5.1 DETERMINATION OF CLAIMS

As stipulated in the Claim Process Order, Proofs of Claim shall be governed by the following provisions:

- 5.1.1 The Monitor, with the assistance of the Applicants, shall review all Proofs of Claim filed on or before the Bar Date, and the Monitor, in consultation with the Applicants, shall accept, revise or disallow the amounts and/or terms set out therein for voting and distribution purposes under the Plan;
- 5.1.2 The Monitor will use reasonable discretion as to the adequacy of compliance in the manner in which a Proof of Claim is completed and executed and may, where it is satisfied a Claim has been adequately proven, waive strict compliance with the requirements of the Claim Process Order as to the form and content of a Proof of Claim;
- 5.1.3 Any Person who intends to dispute a Notice of Revision or of Disallowance shall make a Motion to the Court, on notice to the Monitor and the Applicants, returnable as soon as reasonably possible but in any event within ten (10) days from service of the Notice of Revision of Disallowance;
- 5.1.4 Where a Creditor receives a Notice of Revision or of Disallowance and fails to make a Motion to the Court within the time limit provided hereof, the value and status of such Creditor's Claim for

all purposes under the Plan shall be deemed to be as set out in the Notice of Revision or of Disallowance and such value and status, if any, shall constitute such Creditor's Proven Claim;

- 5.1.5 The Monitor, in conjunction with the Applicants, may consensually resolve and/or settle with any Creditor the amount of its Claim for voting and/or Distribution purposes;

**5.2 SET-OFF TO APPLY**

The Proven Claim of a Creditor shall be net of: (a) any amount owing by the Creditor to the Applicants (including, without limitation, on account of prompt payment, volume and financial rebates and discounts and other like allowances), the amount of which set-off will be verified in proving the Claim; and (b) damages caused to the Applicants by the Creditors, including as a result of the failure by this Creditor to release goods owned by the Applicants in violation of the Initial Order.

**5.3 REPUDIATED CONTRACTS**

In accordance with the Initial Order, the Applicants are entitled, upon the sending of a written notice to such effect, to terminate, resiliate and cancel any and all agreements it has entered into. Any Claim or alleged Claim arising from any Repudiated Contracts shall be dealt with as set forth in this Plan.

**SECTION 6**

**TREATMENT OF CREDITORS' CLAIMS AND VOTING**

**6.1 SECURED CREDITORS**

6.1.1 Voting

Secured Creditors are not entitled to vote upon the Plan as their Secured Claim will be paid (out of the Proceeds and the Remaining Assets) in full in accordance with the Plan. Accordingly, the Secured Creditors are deemed to have voted in favour of the Plan.

6.1.2 Treatment of the Secured Creditors' Claims

Each Secured Creditor having filed a Proof of Claim in accordance with the Claim Process Order shall, in full and final satisfaction of its Secured Claim, be paid (out of the Proceeds and the Remaining Assets) an amount equal to its Secured Claim owing and determined to be a Proven Claim, in principal and accrued and unpaid interest determined as at the date of the payment to be made. The Monitor shall pay or cause to be paid in full to the Secured Creditors the amounts referred to in the present Section 6.1.2 against delivery by each such Secured Creditor of a full and complete discharge of all Secured Claims and all Security held by or on behalf of such Secured Creditor.

6.1.3 Effect of Plan Implementation

Further to the payment referred to in this Section 6.1.2, the Secured Claims shall be discharged and the Applicants and any Person that might be responsible in respect of such Secured Claims shall thereupon be forever and irrevocably released from all such Secured Claims in accordance with Section 8 below.



6.1.4 Secured Claim of 2975483 Canada Inc. and Parmalat Holdings Limited

The Sale Order expressly stated that the cancellation of 2975483 Canada Inc.'s hypothecs by effect of the Sale Order did not affect the rights and status of Parmalat Holdings Limited (formerly known as Parmalat Canada Limited) and/or 2975483 Canada Inc. as creditors of EVH (or of any of the Applicants) under this Plan. The Sale Order further declared that any and all rights and security that Parmalat Holdings Limited and/or 2975483 Canada Inc. had or may have had over or in respect of the assets sold to Eaux Vives Water Bottling Corp. shall charge and apply as against the Proceeds.

The Applicants have been informed that 2975483 Canada Inc. and Parmalat Holdings Limited, which have filed a proof of claim as Secured Creditors for an amount of 87,488 942.82 \$, are agreeable to be treated as Unsecured Creditors for the purposes of the Plan, conditionally to the Plan being accepted by the Creditors and sanctioned by the Court in its present form. As a result, for the purposes of this Plan (including (without limitation) Subsections 4.2, 4.3 and 6.3), the Claim of 2975483 Canada Inc. and Parmalat Holdings Limited shall be treated as an Unsecured Claim and 2975483 Canada Inc. and Parmalat Holdings Limited shall vote, receive a Distribution and participate to the Plan as Unsecured Creditors. The payment of Parmalat Holdings Limited and 2975483 Canada Inc.'s dividend as Unsecured Creditors is conditional to the delivery by them of a release with respect to any Security held over the Proceeds by them or on their behalf.

Parmalat Holdings Limited and 2975483 Canada Inc. have however expressly reserved all their rights and recourses, including with respect to their charge over the Proceeds, should the Plan not be implemented for any reason whatsoever. The release by 2975483 Canada Inc. and Parmalat Holdings Limited of any Security they may have over the Proceeds is a condition for the implementation of the Plan.

6.2 **CROWN'S CREDITORS**

6.2.1 Voting

Crown's Creditors are not entitled to vote upon the Plan as their Crown's Claim will be paid (out of the Proceeds and the Remaining Assets) in full in accordance with the Plan. Accordingly, the Crown's Creditors are deemed to have voted in favour of the Plan.

6.2.2 Treatment of Crown's Claims

Each Crown's Creditor having filed a Proof of Claim in accordance with the Claim Process Order shall, in full and final satisfaction of their Crown's Claim, be paid (out of the Proceeds and the Remaining Assets) an amount equal to its Crown Claim determined to be a Proven Claim. The Monitor shall pay or cause to be paid to the Crown the amounts referred to in this Section.

6.2.3 Effect of Plan Implementation

Further to the payment referred to in this Section 6.2, the Crown's Claims shall be discharged and the Applicants and any Person that might be responsible in respect of such Crown's Claims will be forever and irrevocably released from all Crown's Claims in accordance with Section 8 below.

### 6.3 UNSECURED CREDITORS'

#### 6.3.1 Voting

Each Unsecured Creditor having filed a Proof of Claim in accordance with the Claim Process Order shall be entitled to vote in the Unsecured Creditors' Class to the extent of the amount which is equal to its Unsecured Creditors' Claim which is an Accepted Claim for Voting Purposes.

#### 6.3.2 Treatment of Unsecured Claims

Providing the Distribution Fund allows it, each Unsecured Creditor having filed a Proof of Claim in accordance with the Claim Process Order shall be entitled to receive, in full and final satisfaction of its Unsecured Claim, out of the Distribution Fund:

- (1) with respect for the first \$1,000 of their Unsecured Claim, the lesser of \$1,000 and the amount of the Creditor's Unsecured Claim determined to be a Proven Claim; and
- (2) with respect to the portion of their Unsecured Claim over \$1,000, an amount corresponding to their pro-rata share of the Distribution Fund (net of the amounts used for the payments provided for in subparagraph (1) above).

In calculating the dividend payable to each Unsecured Creditor pursuant to the present paragraph (2), the amounts paid pursuant to paragraph (1) above shall be deducted from the Distribution Fund and from each Unsecured Claim determined to be a Proven Claim. (For example, if a Creditor has an Unsecured Claim determined to be a Proven Claim of \$5,000, an amount of \$1,000 will be paid in full pursuant to paragraph (1) above and the amount of its Proven Claim for the calculation provided for in the present paragraph (2) will be \$4,000).

For purposes of clarity, should this Plan be implemented, 2975483 Canada Inc. and Parmalat Holding Limited's Proven Claims will be treated as Unsecured Claims pursuant to the Plan and their dividend will be calculated in accordance with the present Subsection 6.3.2. Furthermore, the amount of 2975483 Canada Inc. and Parmalat Holding Limited's Proven Claims shall be included into the aggregate amount of all Unsecured Claims of Unsecured Creditors determined to be Proven Claims.

The Monitor shall pay or cause to be paid to the Unsecured Creditors the amounts referred to in this Section.

#### 6.3.3 Effect of Plan Implementation

Further to the payments referred to in subsection 6.3.2, the Claims of all Unsecured Creditors shall be discharged and the Applicants and any Person that might be responsible in respect of such Unsecured Claims will forever and irrevocably be released from all such Unsecured Claims in accordance with Section 8 below.

### 6.4 UNAFFECTED CREDITORS

Unaffected Creditors are not entitled to vote upon the Plan as Unaffected Claims will be paid in full (out of the Proceeds and the Remaining Assets) to the Unaffected Creditors in accordance with this Plan. Accordingly, the Unaffected Creditors are deemed to have voted in favour of the Plan.

Further to the payment of the Unaffected Claims, the Applicants and any Person that might be responsible in respect of such Unaffected Obligation shall thereupon be forever and irrevocably released from all Unaffected Claims in accordance with Section 8 below.

**6.5 INTEREST**

Save as provided for by this Plan, no interest and/or penalty shall accrue or be paid on the Claims of Creditors from and after the Determination Date. Any such interest and/or penalty shall be released in accordance with the present Plan.

**6.6 LIMITS AND PRIORITIES**

Notwithstanding any provision hereof, payments shall be made as follows: (a) first, the payments provided for in Section 6.10 hereof (as well as any payment the Monitor and the Applicants deem required for the completion of the CCAA Process) shall be made; (b) then the payments provided for in Section 6.1 hereof shall be made; (c) then the payments provided for in Section 6.2 hereof shall be made; (d) then the payments provided for in Sections 6.4 hereof shall be made; (e) finally, the payments provided for in Section 6.3 shall be made until the Distribution Funds has been exhausted. In any event, no payment will be made in excess of the amount of the Proceeds and the Remaining Assets. A payment will only be made to the extent payments ranking in priority have been made in full.

**6.7 PROVISIONS WITH RESPECT TO DISPUTED CLAIMS**

In the event there is a dispute as to the validity or the amount of a Proof of Claim or an Unaffected Claim or in the event a claim covered by the Directors' Charge is brought, the Monitor shall make any provision it considers appropriate to provide for the payment of the disputed claim in accordance with the Plan.

In the event a provision is taken in accordance with this Plan and the amount of the provision is not used in full, the balance of the provision shall be released and considered as available for distribution in accordance with the Plan.

**6.8 INTERIM DIVIDEND**

After having made the appropriate provisions and reserves, the Monitor may, at its entire discretion, proceed to the payment of an interim dividend to one or several Class(es) of Creditor(s).

**6.9 DIVIDEND OF AN AMOUNT REPRESENTING LESS THAN CDN \$10.00**

In the event the Monitor pays a dividend (interim or final) in accordance with the Plan and the dividend payable to a Creditor is of less than CDN \$10.00, then no amount shall be paid to that Creditor. Any such amount shall, however, be taken into account in determining the amount of any further dividend payable to that Creditor.

**6.10 MONITOR'S FEES AND EXPENSES AND OTHERS**

Any and all fees and expenses of the Applicants and Monitor shall be paid currently, prior to any and all payment of any nature, including those referred to in Sections 6.1 to 6.4 hereof. Furthermore, any and all lawyers, consultants, advisors or any like person acting on behalf of the Applicants including those Persons whose claims are designated, pursuant to the Initial Order and/or any other Order, as constituting part of the Administration Charge, as well as any payment contemplated in paragraph 48 of the Initial Order, shall be paid in full, after the Monitor, but prior to any and all payment of any nature, including those referred to in Sections 6.1 to 6.4 hereof.

**SECTION 7**

**POWERS AND OBLIGATIONS**

**7.1 POWERS AND OBLIGATIONS OF THE MONITOR**

As per the terms of the Initial Order, the Claim Process Order, any Orders and in accordance with the Plan, the Monitor is empowered to:

- 7.1.1 send, by regular mail to all of the Creditors of the Applicants that have filed a Proof of Claim in accordance with the Claim Process Order, a copy of the Plan to be submitted to the Creditors, together with a notice of convocation, a proxy and a letter of votation for the purpose of the Meeting of Creditors which will be held with respect to the Plan to be filed, the whole at least fifteen (15) days prior to said Meeting of Creditors;
- 7.1.2 administer and adjudicate, in collaboration with the Applicants, any Proof of Claim submitted by any of the Creditors or alleged Creditors of the Applicants;
- 7.1.3 dismiss or review, in collaboration with the Applicants, any Proof of Claim filed by any Creditor or alleged Creditor of the Applicants, under reserve of the right of such Creditor to appeal to the Court to determine the same in accordance with this Plan within ten (10) days of such notice of disallowance, each Creditor having the burden of establishing its Claim;
- 7.1.4 file and present to the Court any proceeding, motion or petition, or any other demand, required or appropriate or that it may consider to be appropriate or required with respect to:
  - 7.1.4.1 the affairs of the Applicants;
  - 7.1.4.2 this Plan;
  - 7.1.4.3 the determination of any right of the Applicants or any of their respective Creditors or co-contractors;
  - 7.1.4.4 any advice or instructions it may require or to seek the help of this Court; and
  - 7.1.4.5 any other matter it feels is required or appropriate;
- 7.1.5 preside over the first Meeting of Creditors and decide any questions or disputes arising at the Meeting, from which such decision any Creditor may appeal to the Court, within five (5) days of the rendering of the same;
- 7.1.6 proceed to the payment of monies which must be paid to the Creditors of the Applicants in the manner provided for in this Plan;
- 7.1.7 hire and retain, with the consent of the Applicants, the services of any professional required or desired, including, without limiting the generality of the foregoing, any accountant, lawyer, notary, or other;
- 7.1.8 delegate, if required or necessary, to any Person duly qualified in the sole opinion of the Monitor and the consent of Applicants, the powers enumerated herein (or any part thereof);
- 7.1.9 obtain from the Applicants the information which the Monitor considers useful;
- 7.1.10 execute any deed, contract or agreement or do anything necessary or required in order to give full effect to this Plan;

- 7.1.11 assist the Applicants in discussions with any of their respective Creditors, co-contractors or any other Person;
- 7.1.12 assist the Applicants in negotiating and settling Creditors' Claims;
- 7.1.13 file or oppose any Claim or proceeding filed with respect to any of the assets of the Applicants, the whole with the consent of the Applicants;
- 7.1.14 certify as a true copy, any copy of any Order;
- 7.1.15 send notices of a stay of proceedings, as if it were a trustee in bankruptcy, with respect to any proceedings, whether judicial, administrative or otherwise;
- 7.1.16 with the authorization of the Court, do anything or enter into any agreement whatsoever with a view to protecting the Applicants, their assets, their Creditors or in the best interests of the Applicants or this Plan; and
- 7.1.17 exercise any and all powers of a trustee in bankruptcy with a view to helping and assisting the Applicants in the filing of this Plan.

## SECTION 8

### RELEASES

The acceptance of this Plan by the majorities required in accordance herewith and the sanctioning of the Plan by the Court shall automatically, unconditionally and irrevocably confer upon the Applicants and all other Persons hereinafter referred to, the following releases, discharges and waivers from each and every Creditor, immediately upon receipt by each such Creditor of the amount to which it is entitled to receive pursuant to this Plan:

- 8.1.1 a full and final release and discharge in favour of the Applicants from and by each and every Creditor with respect to every Claim and Unaffected Claim of each such Creditor, and an irrevocable and unconditional waiver by each and every Creditor to exercise any and all personal and/or real rights in respect of their respective Claims and Unaffected Claims;
- 8.1.2 a full and final release and discharge from and by each and every Creditor with respect to any claim, other than a claim listed at Section 5.1(1) of the CCAA, which they have or may have, directly or indirectly against the Representatives of the Applicants in any way resulting from or relating to any Claim or Unaffected Claim, and an irrevocable and unconditional waiver by each and every Creditor to exercise any and real and/or personal rights in respect of any of the same;
- 8.1.3 a full and final release and discharge from and by each and every Creditor with respect to any claim (other than those claims contemplated by Sections 8.1.1, 8.1.2 or 8.1.4 hereof) which they have or may have, directly or indirectly, including any claim set forth at Section 5.1(2) of the CCAA, against the Representatives of the Applicants;
- 8.1.4 a full and final release and discharge from and by each and every Creditor and/or any other Person with respect to any claim they may have, directly or indirectly, against the Applicants or the Monitor or any of their respective Representatives in connection with or in any manner related to, directly or indirectly, the Proceedings, this Plan, the preparation and/or implementation of the same, and/or any contact, instrument, release, agreement or other document or any other action taken or omitted to be taken with respect to any of the foregoing. In all respects, the Applicants and the Monitor and their respective Representatives shall have the unfettered and unqualified

right to rely upon legal advice with respect to their rights and obligations under the terms of this Plan; and

- 8.1.5 as of the Effective Date, the Applicants shall be deemed to have automatically, forever, irrevocably and unconditionally released their Representatives as well as the Monitor and its Representatives from any claim of any nature that may exist, may have existed, or may in the future exist in the context of, in connection with or in any manner related to, directly or indirectly, the Proceedings, this Plan, the preparation and/or implementation of the same, and/or any contact, instrument, release, agreement or other document or any other action taken or omitted to be taken with respect to any of the foregoing.

For the purposes of this Section 8, the term: (a) “**Representative**” of a Person includes any and all past and present directors, officers, shareholders (direct and indirect), related companies (direct and indirect), employees, advisors, lawyers, accountants, mandataries, agents and any other representatives of such Person; and (b) “**Proceedings**” means any and all matters directly or indirectly related to any matters contemplated or having arisen within the context of the CCAA proceedings of the Applicants since the date of the Initial Order until the Effective Date.

## SECTION 9

### MISCELLANEOUS

#### 9.1 SANCTION ORDER

In the event that this Plan is approved by the required majority of the Unsecured Creditors, the Applicants shall, unless otherwise provided by the Court, then seek the Sanction Order for the sanction and approval of the Plan. Subject to the Sanction Order being granted and to the conditions enumerated in Section 9.10 below being satisfied, this Plan shall be implemented by the Applicants and the Monitor and will be binding upon all the Creditors of the Applicants.

#### 9.2 PARAMOUNTCY

From and after the Sanction Order, any conflict between the Plan and the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, hypothec, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, by-laws of the Applicant, lease or other agreement or any other instrument, whether written or oral, and any and all amendments or supplements thereto existing between a Creditor and the Applicants as at the date of the Sanction Order will be deemed to be governed by the terms, conditions and provisions of the Plan and the Sanction Order, which shall take precedence and priority.

#### 9.3 WAIVER OF DEFAULTS

From and after the Sanction Order, each Creditor shall be deemed to have waived any and all defaults then existing or previously committed by the Applicants in any covenant, warranty, representation, term, provision, condition or obligation, expressed or implied, in any contract, agreement, mortgage, hypothec, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, lease or other agreement or any other instrument, whether written or oral, and any and all amendments or supplements thereto, existing between a Creditor and the Applicants and any and all notices of default and demands for payment under any instrument, including without limitation, any guarantee, shall be deemed to have been irrevocably and forever rescinded.

**9.4 COMPROMISE EFFECTIVE FOR ALL PURPOSES**

The payment, compromise or other satisfaction of any Claim under the Plan, if sanctioned and approved by the Court shall be binding upon all Creditors and their respective heirs, executors, administrators, successors and assignees, for all purposes and, to such extent, shall also be effective to relieve any third party directly or indirectly liable for such indebtedness, whether as guarantor, indemnitor, tenant, director, joint covenantor, principal or otherwise.

**9.5 PARTICIPATION IN DIFFERENT CAPACITIES**

Creditors whose Claims are affected by this Plan may be affected in more than one capacity. Each such Creditor shall be entitled to participate hereunder in each such capacity. Any action taken by a Creditor in any one capacity shall not affect the Creditor in any other capacity unless the Creditor agrees in writing or otherwise set forth herein.

**9.6 MODIFICATION OF PLAN**

The Applicants reserve the right to file any modification of or amendment to the Plan by way of a supplementary or amended plan or plans of arrangement filed with the Court at any time or from time to time prior to the Creditors considering and voting upon the Plan, in which event, any such amended or supplementary plan or plans of arrangement shall, for all purposes, be and be deemed to be, a part of, and incorporated into, the Plan. The Applicants shall give notice by publication or otherwise to all Creditors in an affected Class of the details of any such modifications or amendments prior to the vote being taken to approve the Plan. The Applicants may propose an amendment or modification to the Plan at any Meeting of Creditors. After such Meeting of Creditors, the Applicants may at any time and from time to time vary, amend, modify or supplement the Plan if the Court authorizes the same or determines on notice that such variation, amendment, modification or supplement is of a technical nature that would not be materially prejudicial to the interests of any of the Creditors under the Plan or the Sanction Order and is necessary in order to give effect to the substance of the Plan or the Sanction Order. Finally, the Applicant may, at any time after the Sanction Order, and from time to time, vary, amend, modify or supplement the Plan with a variation, amendment, modification or supplement other than of a technical nature that would not materially prejudice the interest of any of the Creditors, without a Meeting of Creditors provided that the same is sanctioned by the Court. Such approval by the Creditors and by the Court shall be under the same terms as provided for in this Plan. The Applicants may withdraw the Plan at their entire discretion at anytime before the Effective Date.

**9.7 CONSENTS, WAIVERS AND AGREEMENT**

Upon the rendering of the Sanction Order, each Creditor shall be deemed to have consented and to have agreed to all of the provisions of this Plan in its entirety. In particular but without limitation, each Creditor shall be deemed:

- 9.7.1 subject to the Applicants having fulfilled their respective obligations under the Plan, to have executed and delivered to the Applicants all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Plan in its entirety;
- 9.7.2 subject to the Applicants having fulfilled their respective obligations under the Plan, to have waived any default by the Applicants in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Creditor and the Applicants that has occurred on or prior to the Effective Date; and
- 9.7.3 to have agreed that if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Creditor and the Applicants as at the date of the Effective Date (other than those entered into by the Applicants on,

or with effect from, the Effective Date) and the provisions of this Plan, then the provisions of this Plan take precedence and priority and the provisions of such agreement or other arrangement are amended accordingly.

**9.8 AGREEMENTS AND TRANSACTION**

Any agreement or transaction entered into by the Applicants shall be deemed to have been ratified and approved by the Creditors, and any of the Claims shall be paid and settled exclusively as per the provisions of Section 6 hereof. Neither the Monitor nor any Creditor shall have any right, recourse, action, cause of action or otherwise against the Applicants, their respective assets, directors, officers or against any other Person that may have entered into an agreement with the Applicants, of any nature whatsoever.

**9.9 DEEMING PROVISIONS**

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

**9.10 CONDITIONS OF IMPLEMENTATION**

The implementation of the Plan by the Applicants shall be conditional upon the fulfilment or satisfaction of the execution and delivery, to the entire satisfaction of the Applicants of: (a) all documents and instruments contemplated by the Plan; (b) the acceptance of the Plan by the majorities required as set forth in this Plan; (c) the obtaining of the Sanction Order; and (d) within five (5) days of the obtaining of the Sanction Order, the obtaining of a release (to become effective upon full payment of the amount to which they are entitled pursuant to the Plan) by Parmalat Holdings Limited and 2975483 Canada Inc. of any charge held by them covering the Proceeds (being understood that the Monitor will be entitled, from the Effective Date, to proceed to the Distributions provided for in the Plan).

**9.11 NOTICES**

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

9.11.1 if to the Applicants:

Davies Ward Phillips & Vineberg  
1501 McGill College  
26<sup>th</sup> Floor  
Montreal, Québec H3A 3N9

Attention: Denis Ferland  
Louis-Martin O'Neill  
Tel.: (514) 841-6423  
Fax: (514) 841-6499



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9.11.2 if to the Monitor:

RSM Richter Inc.  
2 Place Alexis-Nihon  
Suite 1820  
Montreal, Quebec H3Z 3C2

Attention: Yves Vincent, FCA  
André Hébert, CA  
Tel.: (514) 934-3400  
Fax: (514) 934-3504

with a copy to:

Davies Ward Phillips & Vineberg  
1501 McGill College  
26<sup>th</sup> Floor  
Montreal, Québec H3A 3N9


Attention: Denis Ferland  
Louis-Martin O'Neill  
Tel.: (514) 841-6423  
Fax: (514) 841-6499

9.11.3 if to a Creditor :

to the address for such Creditor specified in the Proof of Claim filed by a Creditor or, if no Proof of Claim has been filed, to such other address at which the notifying party may reasonably believe that the Creditor may be contacted.

**IN THE EVENT OF ANY DISCREPANCY BETWEEN THE ENGLISH AND THE FRENCH VERSIONS OF THIS PLAN OF ARRANGEMENT, THE ENGLISH VERSION SHALL IN ALL EVENTS AND FOR ALL MATTERS PREVAIL.**

SIGNED IN ETOBICOKE ON THIS 14<sup>th</sup> DAY OF DECEMBER 2005.

per:   
MARC A. FUST

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
COURT NO. : 500-11-022700-047

## SUPERIOR COURT

(Sitting as Tribunal designated under the  
*Companies' Creditors Arrangement Act*)

### IN THE MATTER OF THE PLAN OF ARRANGEMENT OF:

**9161-5849 Québec Inc. (formerly known as Eaux Vives Harricana Inc.)**, legal person duly constituted under the laws of Québec, having its head office at 11 Chemin des Sablières, Saint-Mathieu-d'Harricana, Province of Québec, District of Abitibi, J0Y 1M0;

- and -

**41902 Delaware Inc. (formerly known as EVH U.S.A. Inc.)**, legal person, duly constituted under the laws of Delaware, U.S.A., having a place of business at 17821 East 17<sup>th</sup> Street, Suite 193, Tustin, California, 92780, U.S.A.;

- and -

**9161-5286 Québec Inc. (formerly known as Les Sources Périgny Inc.)**, legal person duly constituted under the laws of Québec, having its head office at 11 Chemin des Sablières, Saint-Mathieu-d'Harricana, Province of Québec, District of Abitibi, J0Y 1M0;

**Debtors**

- and -

**RSM Richter Inc.**, a body politic and corporate, duly incorporated according to law, having a place of business at 2 Place Alexis-Nihon, 3500 de Maisonneuve Blvd. West, 22<sup>nd</sup> Floor, in the City of Montréal, Province of Québec, H3Z 3C2;

**Monitor**

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### REPORT OF THE MONITOR ON THE STATE OF THE DEBTORS' FINANCIAL AFFAIRS AND THE PLAN OF ARRANGEMENT (Under section 11.7(3)(b)(ii) of the *Companies' Creditors Arrangement Act*)

9161-5849 Québec Inc., formerly known as Eaux Vives Harricana Inc. ("EVH Inc."), 41902 Delaware Inc., formerly known as EVH U.S.A. Inc. ("EVH USA"), and 9161-5286 Québec Inc., formerly known as Les Sources Périgny Inc. ("Périgny"), (collectively "Debtors" or "EVH") filed on December 14, 2005 with the Québec Superior Court, a joint Plan of Arrangement ("Plan") in accordance with the provisions of the *Companies' Creditors Arrangement Act* (the "CCAA").

To assist the Creditors in their assessment of the Plan, which will be voted at the Meeting of Creditors to be held on February 2, 2006, the Monitor, RMS Richter Inc. ("Richter"), hereby submits a Report on the state of the Debtors' financial affairs and the Plan.

The amounts indicated in this Report are expressed in Canadian dollars, unless indicated otherwise.

We would caution the Reader that the Monitor has not conducted an audit of the books and records of the Debtors. Accordingly, the Monitor cannot provide an opinion regarding the accuracy or completeness of the information contained in this Report. The information included in this Report has been extracted from the books and records that have been made available to us as well as from discussions with the Management of EVH.

## I. HISTORY OF THE DEBTORS

EVH Inc. is a company duly constituted in 1997 pursuant to the *Companies Act* (Québec) in order to harness, bottle and distribute natural spring water from a pristine source located in Saint-Mathieu-d'Harricana, Québec. The source of the water is an "Esker", a rare geological formation that produces spring water of exceptional quality through its natural filtration process. On December 31, 1998, the Québec Government granted EVH Inc. the necessary permit(s) pertaining to the harnessing of underground water for bottling purposes.

EVH USA is a legal person duly constituted under the laws of Delaware, United States. EVH USA acted solely as a marketing, sales and distribution agent for EVH Inc. As such, EVH USA is dependent upon EVH Inc. and cannot be dissociated therefrom, which explains the present joint Plan.

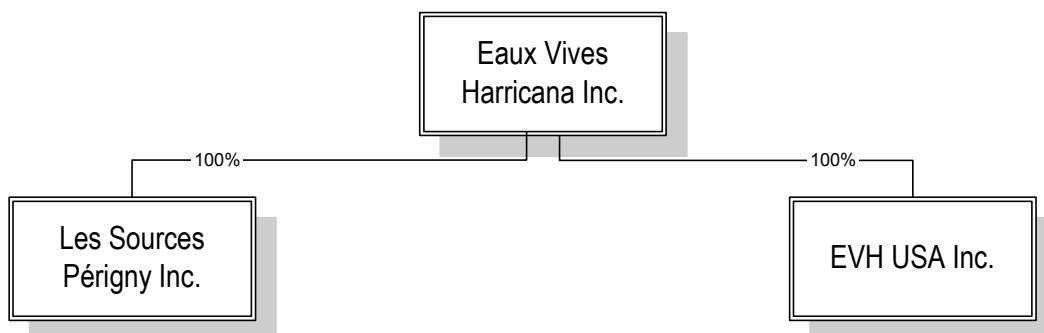
Périgny is a legal person duly constituted under the laws of Québec and a wholly-owned subsidiary of EVH. While Périgny is a distinct legal entity from EVH Inc., its assets and liabilities cannot be dissociated from EVH Inc., which explains the present joint Plan.

In August 2000, Parmalat Holding Limited (formerly known as Parmalat Canada Limited) ("Parmalat") acquired a participation in EVH Inc.'s share capital in an amount of approximately \$16.9 million (5.5 million for 600,000 Class A and \$1.4 million for one Class E). EVH Inc.'s share capital, as of today, can be described as follows:

Authorized	Issued and fully paid	
Number of:		
Unlimited Class A (voting) shares	1,000,000 shares representing an amount of	\$16,510,370
Unlimited Class B (non-voting) shares		Nil
Unlimited Class C (non-voting) shares		Nil
Unlimited Class D (non-voting) shares		Nil
One Class E (non-voting) share	1 share representing an amount of	<u>1,400,000</u>
all with nominal value.	Total value of Capital share of	<u>\$17,910,370</u>
Shareholders	% of Class A Shares	% of Class E Shares
Parmalat	60%	100%
Gestion E.V.H. Harricana Inc. (Note 1)	40%	-

**Note 1** Which is composed of a group of minority Shareholders (including certain local investors not related to Parmalat).

The corporate organization chart of the Debtors is as follows:



In early 2001, EVH Inc. announced that it was proceeding to construct an ultra modern bottling, warehousing and distributing facility (“Facility”). EVH Inc. invested some \$57,000,000 to build the Facility, considered to be “state of the art” within the industry. It was inaugurated in September 2002.

EVH introduced in late 2002 its bottled water, under the trade name of “ESKER”, into select markets in Canada and Southwest United States.

## II. FINANCIAL DIFFICULTIES

The 2002 product launch required continued financial support to fund the significant investments made by EVH in research, marketing, advertising as well as the operating deficits. In total, over a three-year period (from 2001 to 2003), Parmalat advanced to EVH Inc. \$85,191,000. These funds were used to finance the construction of the Facility as well as EVH’s working capital requirements.

In December 2003, given EVH’s disappointing performance, Parmalat decided to withdraw its financial support and informed EVH that it would not make any new loans or advances.

Without the continued financial support of Parmalat, EVH Inc. was forced to shut down the bottling plant on February 13, 2004 and to proceed with the winding-down of its affairs. Thereafter, the remaining commercial activities related mainly to the disposal of the remaining inventory and the collection of receivables.

## III. CCAA FILING

As a result of the above, EVH was no longer able to meet its obligations as they became due.

EVH’s Management and ownership determined that it was in the best interest of the various stakeholders that the Debtors seek the authorization of the Court for protection under the provisions of the CCAA. In this regard, on March 19, 2004, the Court granted the Initial Order. Since then, the Initial Order has been amended and extended on various occasions. The current extension period expires on February 28, 2006.

Richter has been acting as Monitor, as provided for in the Initial Order.

#### **IV. DIP FINANCING**

In view of the fact that EVH was no longer in operation and that the sale of the remaining inventory, as well as the collection of the residual accounts receivable would not provide sufficient funds to cover its current expenses, EVH requested a DIP financing facility with the Royal Bank of Canada (“RBC”) for up to \$3,578,000. This DIP financing was approved by the Court on June 15, 2004. This financing provided the funding for the payment of the fees for professional services rendered by the various advisors and to support the current level of activities which consisted mainly on realizing the residual assets, implementing and maintaining the protective and security measures to safeguard the Facility.

On September 16, 2005, an amount of \$2,848,717 was remitted to RBC as a full and final reimbursement of capital, interest and fees. Previous to this date, EVH had paid \$195,145 in acceptance and legal fees.

#### **V. SALE PROCESS**

After having explored its options, EVH determined that it was in the best interests of its creditors to sell the Facility as a business opportunity. EVH therefore commenced in March 2004 a sale process with the assistance of Scotia Capital (“Scotia”), who was to market the Facility.

In summary, the salient facts about the sale process are:

##### **a) Initial Process**

- On July 30, 2004, EVH accepted an offer;
- Some unexpected financing problems were encountered by the offeror;
- The offeror did not comply with its obligations pursuant to the offer, and EVH had no choice but to terminate in September 2004 the negotiations with the offeror.

##### **b) Second Process**

- Throughout the months of October 2004 to January 2005, Scotia, EVH and the Monitor re-established communications with all those parties that had been identified as potential buyers;
- A new sale process was launched and the market was once again canvassed;
- The Monitor, EVH and Scotia dealt mainly with six (6) interested parties and potential buyers;
- On January 21, 2005, EVH accepted an offer submitted by Quebec Waters Inc. (“Quebec Waters”);
- An Order was granted on February 23, 2005, by the Québec Superior Court, authorizing the sale to Quebec Waters;
- The Debtors and the Monitor made arrangements for a closing, ultimately scheduled for May 4, 2005;
- Quebec Waters failed to complete the sale transaction;
- As instructed by EVH, Richter confiscated a \$1,000,000 deposit held in trust to secure Quebec Waters’ undertakings pursuant to their offer to purchase. Quebec Water did not challenge the confiscation of its deposit.

**c) Third Process**

On May 25, 2005 and as further revised on May 26, 2005, following discussions with Morgan Stanley & Co., the Monitor received a signed expression of interest (the "EOI"), indicating that they were "highly interested" in acquiring EVH's assets.

In view of the content of the EOI, as well as taking into account previous canvassing results and terms and conditions of previous offers received, EVH and the Monitor concluded that it was not necessary to initiate a new sale process and canvass the market once again.

The following events then occurred:

- Pursuant to negotiations with Morgan Stanley & Co., on July 15, 2005, the entity selected as the nominee for the sale transaction, Eaux Vives Water Bottling Corp. (the "Purchaser"), entered into an asset purchase agreement ("APA") with EVH;
- The Monitor's report to the Court, dated July 28, 2005 concludes that the proposed transaction should be approved for the following reasons:
  - The purchase price is, under the circumstances, fair and commercially reasonable and the sale price achieved was arrived at in a commercially reasonable manner, as:
    - The assets of EVH have been widely marketed for a considerable length of time;
    - EVH has acted in good faith throughout the process;
    - The most likely purchasers of EVH have been identified and contacted. Further marketing efforts are unlikely to result in the identification of new prospective purchasers;
    - The purchase price offered exceeds the forced liquidation value of EVH's assets;
    - The proposed sale transaction is in the best interest of the creditors of EVH;
  - The Transaction allows to restart the operations at the Saint-Mathieu d'Harricana plant and preserving and creating additional jobs in the province of Québec;
  - If the transaction is not concluded in a timely manner, the Debtors will not have the financial resources to continue to maintain the safeguard of its assets and, as such, this would most likely result in the forced liquidation of its assets;
- On July 29, 2005, the Superior Court (sitting as Tribunal designated under the Companies' Creditors Arrangement Act) rendered an Order authorizing the sale transaction and the appointment of Richter as Interim Receiver to complete the sale;
- On August 25, 2005, further to the accomplishment of all conditions precedent contemplated by the APA, the various purchase and sale documents were completed;
- On September 15, 2005, upon confirmation of registration of the transaction, the purchase price of \$18,000,000 was remitted in full to the Monitor.

## VI. FINANCIAL INFORMATION

The financial information below is derived primarily from the consolidated unaudited financial statements of EVH and from our limited discussions with EVH's management. In view of the fact that EVH ceased its operations in February 2004 and then proceeded to liquidate its inventory and collect its residual accounts receivable, the Monitor has established that the reference information should be the consolidated unaudited financial statements as at February 28, 2004 for the historical financial results, and March 19, 2004 for the balance sheet items.

This information is presented solely to assist the creditors in assessing the financial situation of EVH when it ceased its operations. The Monitor makes no representation and gives no guarantee as to the accuracy or completeness of the financial information contained in this Report.

### Operating Results

In order to provide the creditors with a better understanding of EVH's results from operations before the interruption of its activities in February 2004, we summarize the consolidated operating results as follows:

<b>Consolidated Operating results</b>	<b>2004 February</b>	<b>2003 December</b>	<b>2002 December</b>	<b>2001 December</b>
<b>(in \$'000)</b>	<b>(Unaudited) (Two months)</b>	<b>(Unaudited)</b>	<b>(Audited)</b>	<b>(Audited)</b>
Sales (net of discounts)	859	4,761	358	-
Cost of goods sold	<u>2,248</u>	<u>12,448</u>	<u>1,038</u>	<u>-</u>
Gross margin	(1,389)	(7,687)	(680)	-
<i>Gross-margin percentage</i>	<i>(162%)</i>	<i>(161%)</i>	<i>(190%)</i>	-
Sales and administration costs	1,271	23,168	6,370	62
Financial expenses	<u>850</u>	<u>4,705</u>	<u>963</u>	<u>4</u>
Net Losses before income taxes	<u>(3,510)</u>	<u>(35,560)</u>	<u>(8,013)</u>	<u>(66)</u>
Earnings before interest, taxes, depreciation and amortization (EBITDA)	<u>(1,451)</u>	<u>(23,675)</u>	<u>(5,265)</u>	<u>(62)</u>
<b><u>Operating statistic</u></b>				
Sales Volume (in Cases)	47,931	854,474	62,934	-

• **Balance Sheet**

We are submitting hereafter the most recent unaudited consolidated balance sheet of EVH, as at March 19, 2004, being the date of the Initial Order pursuant to the CCAA filing:

<b>Preliminary Unaudited Consolidated Balance Sheet (Notes 1 and 2)</b>	
<b>as at March 19, 2004</b>	
<b>(in \$'000)</b>	
<b>ASSETS</b>	
<b>Current assets:</b>	
Cash	\$ 157
Accounts receivable	940
Inventories	2,034
Prepaid expenses	<u>279</u>
	3,410
Fixed assets (net book value)	50,902
Other assets	<u>9,426</u>
	<u><u>\$ 63,738</u></u>
<b>LIABILITIES</b>	
<b>Current liabilities:</b>	
Accounts payable and accrued charges (Note 3)	\$ 9,575
Due to Parmalat Holding Limited (Note 4)	<u>85,191</u>
	94,766
Due to Investissement Québec (Note 3)	3,000
Deferred Tax	3,517
<b>SHAREHOLDERS' DEFICIENCY</b>	
Share capital	17,910
Deficit	<u>(55,455)</u>
	<u>(37,545)</u>
	<u><u>\$ 63,738</u></u>

**Note 1** EVH USA had nominal assets which includes cash (\$53,000) and office equipment (\$22,000).

**Note 2** Périgny was the owner of an old unused bottling plant having a net book value of approximately \$587,000.

**Note 3** The value of the proof of claims filed total \$11,999,000.

**Note 4** The amount owing to Parmalat is \$85,191,000 plus \$2,298,000 of unpaid interest.

a) **Assets**

The following are our specific comments concerning EVH's assets:

i) **Cash (\$157,000)**

The cash has since been used by EVH.

ii) **Accounts receivable (\$940,000)**

The good accounts were collected by the Debtors by May 2004.



iii) **Inventories (\$2,034,000)**

The finished goods inventories, mostly located in the USA, were sold by May 2004, at discounted prices. Some packaging supplies and labels (identifying Parmalat and EVH) were destroyed or recycled. The remaining inventories of raw material were sold to Eaux Vives Water Bottling Corp. in September 2005. The book value of these inventories was:

Inventories (in \$'000)	Amount as per Books
Finished goods	\$1,867
Raw material	1,371
Work in process	<u>86</u>
	3,324
Provision	<u>(1,290)</u>
	<u>\$2,034</u>

iv) **Prepaid expenses (\$279,000)**

The prepaid expenses consisted primarily of prepaid property taxes and insurance, and had no realization value.

iv) **Fixed assets (\$50,902,000)**

The fixed assets consisted primarily of the Facility located in Saint-Mathieu d'Harricana, as well as the initial plant and equipment used by Périgny, which are detailed as follows:

Fixed Assets (in \$'000)	2004		
	Cost	Accumulated depreciation	Net book value
Land	249	-	249
Buildings	24,259	n/a	n/a
Machinery and equipment	29,413	n/a	n/a
Well	1,964	n/a	n/a
Office and computer equipment	<u>1,869</u>	<u>n/a</u>	<u>n/a</u>
	<u>57,754</u>	<u>6,852</u>	<u>50,902</u>

vii) **Other assets (\$9,426,000)**

These other assets primarily consist of the net book value of deferred start-up and marketing costs.

**b) Liabilities (\$97,766,000)**

EVH's liabilities are summarized as follows:

Liabilities (in \$'000)	Amount as per Book	Amount as per Proof of Claim
Secured creditor	\$85,191	\$87,489
Ordinary creditors	<u>12,575</u>	<u>11,999</u>
	<u>\$97,766</u>	<u>\$99,488</u>

Our comments on these liabilities are:

**i) Secured creditors (\$87,191,000)**

A claim in the amount of \$87,488,942.82 (capital \$85,191,000 and interest \$2,298,000) has been filed by Parmalat, as a Secured Creditor.

It is important to note that, if the Plan is accepted by the creditors, Parmalat has agreed to be collocated as an "unsecured creditor" and to participate in the distribution, on a *pro rata* basis, with the other creditors affected by the Plan.

**ii) Unsecured creditors (\$12,575,000)**

The unsecured creditors are those creditors that do not have any charge against the assets of the Debtors. The value of the proof of claims filed by the unsecured creditors total approximately \$11,999,000 (US\$ claims converted at 1.331).

Some of these claims are currently under review or litigation and the conclusion of said review could affect the total value of the unsecured claims.

**VII. EVENTS SUBSEQUENT TO THE INITIAL ORDER OF MARCH 19, 2004**

In accordance with the provisions of the Initial Order, the Monitor has monitored the activities of EVH since March 19, 2004. In summary the salient facts are:

- **Operations**

Pursuant to obtaining the Court's protection in March 2004, in addition to collecting accounts receivable and disposing of the residual finished goods inventory, EVH initiated a mothballing program and, as such, instituted the required measures to safeguard the Facility located in Saint-Mathieu d'Harricana, to maintain it in an operating state as well as preserving the various operating permits.

- **Sale of Assets**

As discussed in section V of this Report, the main efforts of EVH throughout the period were to identify a buyer and finalize a sale transaction.

- **Expenses**

The Statement of Receipts and Disbursements for the period between March 19, 2004, and December 16, 2005, is summarized as follows:

<b>Statement of Receipts and Disbursements from March 19, 2004 to December 16, 2005</b>			
<b>(in \$'000)</b>	<b>EVH Accounts</b>	<b>RSM "In Trust" Account</b>	<b>Total Actual</b>
<b>RECEIPTS</b> <i>(Note 1)</i>			
Sale of Assets	\$ –	\$18,000	\$18,000
Dip Financing	2,500	–	2,500
Forfeited deposit	–	1,000	1,000
Contributions to expenses	–	235	235
Collection of accounts receivable/sale of inventory	845	–	845
Sales taxes and other government receivable	372	64	436
Transfer from Richter trust account	183	(183)	–
Interest	–	117	117
<b>TOTAL RECEIPTS</b>	<b><u>3,900</u></b>	<b><u>19,233</u></b>	<b><u>23,133</u></b>
<b>DISBURSEMENTS</b>			
<b>Operating expenses</b>			
Payroll costs	1,671	–	1,671
Utilities and safeguard measures	703	(18)	685
Property taxes, permits and others	<u>202</u>	<u>283</u>	<u>485</u>
	2,576	265	2,841
<b>Professional fees</b>			
Davies Ward Phillips & Vineberg	627	543	1,170
Scotia Capital	117	273	390
Richter	394	428	822
Others	<u>148</u>	<u>–</u>	<u>148</u>
	1,286	1,244	2,530
<b>DIP Financing costs</b>			
Interest, charges and fees	195	349	544
Capital repayment	<u>–</u>	<u>2,500</u>	<u>2,500</u>
	<u>195</u>	<u>2,849</u>	<u>3,044</u>
<b>TOTAL DISBURSMENTS</b>	<b><u>4,057</u></b>	<b><u>4,358</u></b>	<b><u>8,415</u></b>
	(157)	14,875	14,718
<b>Cash at beginning</b>	<u>157</u>	<u>–</u>	<u>157</u>
<b>Cash at end</b>	<b><u>\$ –</u></b>	<b><u>\$14,875</u></b>	<b><u>\$14,875</u></b>

**Note 1** EVH has no remaining assets to be realized upon other than the recovery of GST/QST credits.

## **VIII. PLAN**

### **a) Filing of the Plan**

On December 14, 2005, EVH filed the Plan. On December 23, 2005, the creditors who had submitted their proof of claim prior to July 30, 2004 (per Claim Process authorized by the Court) were advised by the Monitor of the filing of the Plan and of the upcoming creditors' meeting, scheduled for February 2, 2006, to vote on the Plan. The creditors should refer to this official document for the legal description of the class of creditors as well as the terms of the Plan.

The proposed Plan provides for the funds on deposit with the Monitor which, once the Secured Claims, the Crown's Claims, the Unaffected Claims, the DIP Loan and various expenses relating to the CCAA process have been paid (defined as "Distribution Fund"), will be distributed to EVH's unsecured creditors. In this regard, Parmalat will participate to the Plan as unsecured creditors if and only to the extent that the Plan is accepted by the creditors and sanctioned by the Court.

Pursuant to the Plan, the unsecured creditors will receive full payment of the first \$1,000 of their claim and the balance of the Distribution Fund will be distributed between the unsecured creditors proportionally to their unsecured claim that is a Proven Claim until the Distribution Fund has been exhausted.

### **b) Validity of the Plan**

The creditors are being asked to vote on the Plan submitted by EVH. They must decide to either accept or reject the Plan.

The acceptance of the Plan by all of the creditors should permit a timely distribution to the creditors and "closure" for EVH. The rejection of the Plan by the creditors will result in a period of uncertainty which will most likely result in a bankruptcy and further delays for the distribution to the creditors.

It is important that the creditors take into account that EVH, in seeking the initial Court protection under the CCAA, was able to obtain the necessary delays (which were financed with a DIP facility) to negotiate a sale transaction at a fair market value, thus, realizing higher values than a forced liquidation scenario would have generated.

Furthermore, as provided for in the Plan, the claim in the amount of \$87,488,942.82 filed by Parmalat, as a secured creditor, will be treated as "unsecured" for the purposes of the distribution under the Plan.

However, in a bankruptcy situation, Parmalat will insist upon its secured rights and is likely to try to enforce its security. Assuming the validity of said rights as "secured creditor", Parmalat's claim would rank in priority of the unsecured creditors' claims and, as such, be entitled to demand the remittance of all of the funds on deposit with the Monitor.

c) **Estimated distribution**

Based on the funds presently held by the Monitor, the distribution under the Plan represents an estimated distribution of approximately 14¢ on the dollar:

<b>Estimated Distribution</b>				
<b>(in '000\$)</b>	<b>Plan</b>		<b>Bankruptcy</b>	
Funds on deposit	14,875	14,875	14,875	14,875
Provision for post-filing claims and professional fees	<u>(620)</u>	<u>(770)</u>	<u>(620)</u>	<u>(770)</u>
Estimated funds available for distribution	<u>14,255</u>	<u>14,105</u>	<u>14,255</u>	<u>14,105</u>
Preliminary total proven claims	99,488	99,488	99,488	99,488
Estimated realization under the Plan				
<b>Secured Creditor (\$87,489)</b>	14%	14%	16%	16%
<b>Unsecured Creditors (\$11,999)</b>	14%	14%	0%	0%

**IX. CONCLUSION**

The Monitor is of the opinion that the distribution under the Plan will be more expeditious and in the best interest of the creditors and, as such, advantageous for all the creditors versus a bankruptcy scenario. The Monitor therefore recommends to the creditors to vote in favour of the Plan.

The creditors may remit their voting letters, indicating their votes, to the Monitor prior to the meeting of creditors or, alternatively, they may attend the meeting of creditors, to be held on February 2, 2006, to obtain any additional clarification which they may deem necessary and to vote thereat.



DATED AT MONTREAL, this 23<sup>th</sup> day of December 2005.

**RSM Richter Inc.**  
Court-Appointed Monitor

Yves Vincent, FCA, CIRP



**RSM Richter Inc.**  
**DANS L'AFFAIRE DE LA PROPOSITION DE / IN THE MATTER OF THE PLAN OF ARRANGEMENT OF**  
**EAUX VIVES HARRICANA INC.**

			<u>\$ CAD</u>
95	SCHONFELD INC, TRUSTEE OF THE	220 BAY STREET SUITE 900 TORONTO ON M5J 2W1	188,093.82
96	SERRE-DE LOOZ INC	620, BOUL ST-JEAN BUREAU 201 POINTE CLAIRE QC H9R3K2	273.82
97	SERVICECRAFT LLC (1)	6565 KNOTT AVENUE BUENA PARK CA 90620	35,910.99
98	SERVICES PROMOTIONNELS G.V.B. (LES)	1380, JOLIOT-CURIE SUITE 810 BOUCHERVILLE QC J4B7L9	3,148.28
99	SMI (2)	VIA PIAZZALUNGA 30 SAN GIOVANNI BIANCO 24015 (BERGAMO) ITALY	950.37
100	SOMA AUTO INC	42, 10E AVENUE OUEST AMOS QC J9T 1W8	1,231.21
101	STAR CHAMBERS ENTERPRISE, LLC (1)	1515 SPORTS DRIVE SUITE 5 SACRAMENTO CA 95834-1905	84,942.99
102	SUN LIFE ASSURANCE	1155 METCALFE BUREAU 1410 MONTREAL QC H3C 3G5	15,166.98
103	SYSTEMES DANFREIGHT INC	1370 CHEMIN LASALLE JOLIETTE QC J6E3Z1	15,540.00
104	TECHNI-LAB	184, RUE PRINCIPALE C.P. 208 STE-GERMAINE BOULE QC J0Z1M0	5,009.06
105	TELEBEC LTEE	625, AVENUE GODEFROY BECANCOUR QC G9H 1S3	22,560.81
106	TRANSPORT & DIST. J.H. THIBODEAU INC	5862, BOUL DES ROSSIGNOLS LAVAL QC H7L4Z2	2,185.49
107	TRANSPORT GUILBAULT INT'L INC (GROUP)	435, RUE FARADAV STE-FOY QC G1N 4G6	20,796.76
108	TRANSPORT MORNEAU INC.	40, RUE PRINCIPALE ST-ARSEBE QC G0L 2K0	45,287.40
109	TRANSPORT SCAN EXPRESS	315, RUE MACDONALD SUITE 231 ST-JEAN-SUR-RICHELIEU QC J3B8J3	7,319.02
110	VIDEOJET TECHNOLOGIES CANADA LP	6500, VISCOUNT ROAD MISSISSAUGA ON L4V1H3	604.81
111	VILLE D'AMOS	182, 1RE RUE EST AMOS QC J9T2G1	611.81
112	VITRERIE POMERLEAU	111, BOUL MERCIER AMOS QC J9T2P2	1,444.76
113	WASHINGTON INTERNATIONAL INSURANCE CO	1200 ARLINGTON HTS RD SUITE 400 ITASCA IL 60143	7,769.00
114	WOLSELEY CANADA GROUP	4075, BOUL INDUSTRIEL LAVAL QC H7L6E3	823.03
115	YVON BARIL AMOS INC.	211, 1ERE AVENUE O AMOS QC J9T1V1	155.23
			<hr/>
			11,318,978.12
<b>116 Total</b>			<hr/> <b>\$ 98,807,920.94</b> <hr/>

**RSM Richter Inc.**  
**DANS L'AFFAIRE DE LA PROPOSITION DE / IN THE MATTER OF THE PLAN OF ARRANGEMENT OF**  
**EVH U.S.A. INC.**

			<b><u>\$ CAD</u></b>
<b>Créanciers non garantis / Unsecured creditors</b>			
1	BRYAN WADE BROWN	5955 REXFORD AVENUE CYPRESS CA 90630	\$ 1,548.96
2	CAROLINA MANUFACTURER'S SERVICES INC	2650 PILGRIM COURT WINSTON-SALEM NC 27106	1,443.59
3	CO-SALES COMPANY	345 E. PALM LANE PHOENIX AZ 85004	4,730.19
4	EDGE DISPLAY GROUP ENTERPRISE INC	1650 NEW HIGHWAY FARMINGDALE NY 11735	138,752.89
5	INFORMATION RESOURCES INC	150 N CLINTON STREET CHICAGO IL 60661	29,234.23
6	MARS ADVERTISING	23777 SOUTHFIELD ROAD SOUTHFIELD MI 48075	185,539.53
7	PACIFIC FOODSERVICE NORTHWEST	444 PARK AVENUE NORTH RENTON WA 98055	2,701.31
8	RESEARCH MANAGEMENT GROUP	161 BAY STREET SUITE 3830, BOX 203 TORONTO ON M5J 2S1	57,013.15
9	SELECT SALES & MARKETING INC	549 MERCURY LANE BREA CA 92821	5,331.99
10	STAR CHAMBERS ENTERPRISE, LLC (5 STARS)	1515 SPORTS DRIVE SUITE 5 SACRAMENTO CA 95834-1905	28,514.60
11	TPG SALES SERVICES INC	14111 FREEWAY DRIVE, SUITE 407 SANTA FE SPRINGS CA 90670	163,200.76
12	VORIDIAN CANADA COMPANY	P O BOX 431 KINGSPORT TN 37662	59,800.19
<b>Total</b>			<b><u>\$ 677,811.39</u></b>



**RSM Richter Inc.**  
**DANS L'AFFAIRE DE LA PROPOSITION DE / IN THE MATTER OF THE PLAN OF ARRANGEMENT OF**  
**SOURCE PERIGNY**

**\$ CAD**

**Créanciers non garantis / Unsecured creditors**

1	SAMSON BELAIR DELOITTE & TOUCHE	101, 1iere AVENUE EST BUREAU 200 AMOS QC J9T 1H4	\$	2,041.40
<b>Total</b>			<b>\$</b>	<b><u>2,041.40</u></b>

# RSM Richter Inc.

RSM Richter Inc.

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Télécopieur / Facsimile : (514) 934-3504  
www.rsmrichter.com

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
COURT NO. : 500-11-022700-047

## SUPERIOR COURT

(Sitting as Tribunal designated under the  
*Companies' Creditors Arrangement Act*)

**IN THE MATTER OF THE PLAN OF ARRANGEMENT OF 9161-5849 QUÉBEC INC.** (formerly known as EAUX VIVES HARRICANA INC.), **41902 DELAWARE INC.** (formerly known as EVH U.S.A. INC.) **AND 9161-5286 QUÉBEC INC.** (formerly known as LES SOURCES PÉRIGNY INC.), collectively "EVH", legal persons duly constituted under the Laws, having their head office at 11 Chemin des Sablières, in Saint-Mathieu-d'Harricana, Province of Quebec, District of Abitibi, J0Y 1M0

**Debtors**

### VOTING LETTER

I/We, (name of creditor) \_\_\_\_\_  
of (address) \_\_\_\_\_  
\_\_\_\_\_, creditor  
belonging to the Plan of Arrangement:

<b>VOTE</b> (Please, use one voting letter by claim)	
<b>Check one of the following boxes:</b>	<b>FOR</b> the acceptance of the Plan of Arrangement <input type="checkbox"/> <b>AGAINST</b> the acceptance of the Plan of Arrangement <input type="checkbox"/>
<b>You are a creditor of the Debtors mentioned below for the amount of:</b>	
9161-5849 QUÉBEC INC. (formerly known as EAUX VIVES HARRICANA INC.)	_____ \$
41902 DELAWARE INC. (formerly known as EVH U.S.A. INC.)	_____ \$
9161-5286 QUÉBEC INC. (formerly known as LES SOURCES PÉRIGNY INC.)	_____ \$

DATED AT \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Name of creditor

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Signature of authorized person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Title or function

- NOTES :**
- (1) A creditor may vote either in person, by Proxy or by Voting Letter.
  - (2) Attendance at the meeting and right to vote will be restricted only to those creditors who had submitted their Proof of Claim to the Monitor prior to 5:00 p.m. EDST on July 30, 2004 as per Court order.

(français au recto)

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
COURT NO. : 500-11-022700-047

SUPERIOR COURT

(Sitting as Tribunal designated under the  
Companies' Creditors Arrangement Act)

IN THE MATTER OF THE PLAN OF ARRANGEMENT OF 9161-5849 QUÉBEC INC. (formerly known as EAUX VIVES HARRICANA INC.), 41902 DELAWARE INC. (formerly known as EVH U.S.A. INC.) AND 9161-5286 QUÉBEC INC. (formerly known as LES SOURCES PÉRIGNY INC.), collectively "EVH", legal persons duly constituted under the Laws, having their head office at 11 Chemin des Sablières, in Saint-Mathieu-d'Harricana, Province of Quebec, District of Abitibi, J0Y 1M0

Debtors

---

### PROXY

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

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

\_\_\_\_\_, creditor

having a claim in the amount of \$ \_\_\_\_\_ belonging to the Plan of Arrangement, name by these present as my (our) authorized representative to the meeting of creditors that will be held on February 2, 2006 or at any adjournment that may be decided upon:

\_\_\_\_\_, authorized representative.  
(Name)

RSM Richter Inc., authorized representative.

**NOTE:** If a creditor has named RSM Richter Inc., the Court-appointed Monitor, as his/her authorized representative, it is important to note that, in the case that the creditor has not indicated his/her vote on the Voting Letter, RSM Richter Inc., as authorized representative, will vote for the acceptance of the Arrangement.

DATED AT \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Name of creditor

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Signature of authorized person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Title or function

- NOTES :**
- (1) A creditor may vote either in person, by Proxy or by Voting Letter.
  - (2) Attendance at the meeting and vote will be restricted only to those creditors who had submitted their Proof of Claim to the Monitor prior to 5:00 p.m. EDST on July 30, 2004 as per Court order.
  - (3) In order for a duly authorized person to be able to vote, she must be a creditor or an authorized representative designated by a duly signed proxy. The name of the creditor must appear on the proxy.
  - (4) Your presence will not be necessary at the meeting if you have completed and remitted this Proxy before the beginning of the meeting.
  - (5) This Proxy confers discretionary authority upon the person designated herein to vote on any amendment or variation to the Plan of Arrangement.
  - (6) EVH may not be appointed as authorized representative by Proxy to vote at any meeting of creditors.
  - (7) A creditor who gives a Proxy may revoke it by way of a document signed by him/her or his/her duly authorized Agent. The cancellation must be transmitted to the Monitor no later than the last working day prior to the meeting date.

(français au recto)

RSM Richter Inc.

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CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
COURT NO. : 500-11-022700-047

SUPERIOR COURT

(Sitting as Tribunal designated under the  
*Companies' Creditors Arrangement Act*)

IN THE MATTER OF THE PLAN OF ARRANGEMENT OF 9161-5849 QUÉBEC INC. (formerly known as EAUX VIVES HARRICANA INC.), 41902 DELAWARE INC. (formerly known as EVH U.S.A. INC.) AND 9161-5286 QUÉBEC INC. (formerly known as LES SOURCES PÉRIGNY INC.), collectively "EVH", legal persons duly constituted under the Laws, having their head office at 11 Chemin des Sablières, in Saint-Mathieu-d'Harricana, Province of Quebec, District of Abitibi, J0Y 1M0

Debtors

---

**NOTICE TO THE CREDITORS  
OF THE APPLICATION FOR SANCTION AND RATIFICATION OF THE PLAN OF ARRANGEMENT**

TAKE NOTICE that in the event the Plan of Arrangement filed by the Debtors is accepted by the required majority of their creditors, Debtors will file with the Court's record a *Motion for an Order sanctioning a Plan of Arrangement* (the "**Motion**"). The Motion will be presented on February 8, 2006, in room 16.12, at 9:15 a.m. or so soon thereafter as said Petition may be heard, at Montreal Courthouse located at 1 Notre-Dame Street East in Montreal (or at any other time, date and location to be announced at the meeting of creditors).

A copy of the Motion will be served upon any creditor who requires it in writing to the Monitor.

DATED AT MONTRÉAL, this 23<sup>rd</sup> day of December 2005.

**RSM Richter Inc.**  
Court-Appointed Monitor

SUPERIOR COURT OF QUEBEC  
(COMMERCIAL DIVISION)  
DISTRICT OF MONTREAL

COURT FILE NO. 500-11-022700-047

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AMENDED PLAN OF ARRANGEMENT

OF

9161-5849 QUÉBEC INC. (formerly known as EAUX VIVES HARRICANA INC.)

AND

41902 DELAWARE INC. (formerly known as EVH U.S.A. INC.)

AND

9161-5286 QUÉBEC INC. (formerly known as LES SOURCES PÉRIGNY INC.)

---

PURSUANT TO

*THE COMPANIES' CREDITORS ARRANGEMENT ACT*

(R.S.C. 1985 c.C-36)

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Each of the undersigned Applicants 9161-5849 Québec Inc. (formerly known as Eaux Vives Harricana Inc.), 41902 Delaware Inc. (formerly known as EVH U.S.A. Inc.) and 9161-5286 Québec Inc. (formerly known as Les Sources Périgny Inc.) hereby respectfully submits the following plan of arrangement pursuant to the *Companies' Creditors Arrangement Act* (Canada).

## INTRODUCTION<sup>1</sup>

The Applicants availed themselves of the relieves and remedies provided by the CCAA, which ultimately allowed the sale of their assets as an operating unit, avoided a forced liquidation scenario and as such obtained a better value for all their Creditors.

The purpose of this Plan is to effect a compromise and arrangement between the Applicants and their Creditors with respect to all the debts and obligations of the Applicants.

As explained more fully below, the proposed Plan provides, further to the liquidation of the Applicants' assets, for the creation of a fund which, once the Secured Claims, the Crown's Claims, the Unaffected Claims, the DIP Loan and various expenses relating to the CCAA process have been paid, will be distributed to the Applicants' Unsecured Creditors. As more fully explained below, Parmalat Holdings Limited and 2975483 Canada Inc. will participate to the Plan as Unsecured Creditors.

Pursuant to the Plan, the Unsecured Creditors will receive full payment of the first \$1,000 of their Claim and the balance of the Distribution Fund will be distributed between the Unsecured Creditors until the Distribution Fund has been exhausted, the whole in accordance with subsection 6.3.2 hereinafter.

## SECTION 1

### INTERPRETATION

#### 1.1 DEFINITIONS

For purposes of this Plan, the following terms shall have the meanings specified or referenced below unless otherwise expressly indicated herein or unless the context requires otherwise:

**"Accepted Claim For Voting Purposes"** means the Claim of a Creditor which is accepted for voting purposes as provided for in Sections 4 and 5 hereof;

**"Administration Charge"** has the meaning ascribed to such term in the Initial Order and/or any other Order;

**"Applicants"** means EVH, EVH U.S.A. and Périgny, or any of them, as the case may be;

**"Bar Date"** means 5:00 p.m. (Eastern Time) on July 30, 2004, which date has been determined by the Claim Process Order;

**"BIA"** means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as from time to time amended;

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<sup>1</sup> This Introduction is for information purposes only and is not part of the Plan.



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

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

“**Claim**” means any right of any Person against the Applicants or any of them in connection with any indebtedness, liability or obligation of any kind, in existence at the Determination Date and any interest then accrued thereon, whether or not such indebtedness, liability or obligation is reduced to judgment, or is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by guarantee, by surety or otherwise and whether or not such a right is executory in nature, including, without limitation, the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future based in whole or in part on facts which existed prior to or at the Determination Date. Without limitation, a Claim shall include any (i) Secured Claims, (ii) Crown’s Claims, (iii) Unsecured Claims, or (iv) any other claims that would have been claims provable in bankruptcy had the Applicant become bankrupt on the Determination Date. A Claim does not include an Unaffected Claim. A Claim shall not include any interest from and after the Determination Date, or any costs, except as expressly provided for in this Plan.

“**Claim Process Order**” means the Order rendered by the Honourable François Rolland J.S.C. (as he then was) on June 8, 2004, as may be amended;

“**Class**” shall have the meaning ascribed thereto at Section 4.1 hereof;

“**Closing Date**” means September 15, 2005;

“**Court**” means the Superior Court of Quebec (Commercial Division), District of Montreal;

“**Creditor**” means any Person having a Claim or an Unaffected Claim and may, if the context requires, mean an assignee of a Claim or a trustee, receiver, receiver manager or other Person acting on behalf of such Person. A Creditor includes a Creditor of Repudiated Contract;

“**Creditor of Repudiated Contract**” means a person with a Claim which results from a Repudiated Contract but only in respect of the portion of its Claim which result from a Repudiated Contract;

“**Crown’s Claims**” means all amounts (including interests and penalties) owing to Her Majesty the Queen in right of Canada or a Province of Canada which are referred to in Subsections 18.2(1) and 18.3(2) of the *CCAA* (including amounts subject to Subsection 224(1.2) of the *Income Tax Act* (Canada) or under any substantially similar provision of provincial legislation) that were in existence on the Determination Date and remain outstanding;

“**Crown’s Creditor**” means a Creditor having a Crown’s Claim, but only in respect of the portion of its Claim which is a Crown’s Claim;

“**Deposit**” shall have the meaning ascribed thereto at Section 2 hereof;

“**Determination Date**” means March 19, 2004, being the date of the Initial Order;

“**DIP Credit Agreement**” shall have the meaning ascribed thereto at Section 2 hereof;

“**DIP Charge**” has the meaning ascribed to such term in the Order rendered by the Honourable François Rolland J.S.C. (as he then was) on June 15, 2004, the Sale Order and/or any other Order;

“**DIP Lender**” means Royal Bank Asset Based Finance, a division of Royal Bank of Canada;

“**DIP Loan**” means the loan made by virtue of the DIP Credit Agreement, together with any amount payable pursuant to the DIP Credit Agreement;

“**Directors’ Charge**” means all matters falling within the ambit of the “Directors’ Charge” pursuant to the Initial Order and/or any other Order;

“**Distribution**” means a payment made in accordance with the Plan;

“**Distribution Fund**” shall have the meaning ascribed thereto at Section 3.1 hereof;

“**Effective Date**” means the first Business Day following the date at which all the conditions that must be fulfilled for the Plan to be implemented (as described in Section 9.10 hereof) are properly fulfilled or waived in writing by its beneficiary;

“**EVH**” means 9161-5849 Québec Inc. (formerly known as Eaux Vives Harricana Inc.);

“**EVH U.S.A.**” means 41902 Delaware Inc. (formerly known as EVH U.S.A. Inc.);

“**GAAP**” shall have the meaning ascribed thereto at Section 1.2 hereof;

“**Initial Order**” means the Order rendered by the Honourable François Rolland J.S.C. (as he then was) dated March 19, 2004, pursuant to which the Applicants were provided protection under the *CCAA*, as amended and extended;

“**Interim Period**” means the period from and including the Determination Date until the Effective Date;

“**Meeting of Creditors**” means the Creditors’ meeting called for the purposes of considering and voting upon the Plan, or any subsequent such meeting;

“**Monitor**” means RSM Richter Inc. (formerly known as Richter & Associés Inc.) through Mr. Yves Vincent FCA, CIRP, and any successor thereto appointed in accordance with the Initial Order or any other Order;

“**Morgan Stanley**” shall have the meaning ascribed thereto at Section 2 hereof;

“**Order**” means any order of the Court in the present proceedings in the Court file No. 500-11-022700-047;

“**Périgny**” means 9161-5286 Québec Inc. (formerly known as Les Sources Périgny Inc.);

“**Person**” means any individual, partnership, joint venture, entity, corporation, unincorporated organization, government or agency or instrumentality thereof, or any other juridical entity howsoever designated or constituted;

“**Plan**” means the present plan of arrangement, as may be modified or amended as provided in Section 9.6 hereof;

“**Proof of Claim**” means a proof of claim form filed by a Creditor in accordance with the Claim Process Order or any Order of the Court;

“**Proceeds**” shall have the meaning ascribed thereto at Section 2 hereof;

**“Proven Claim”** means the amount and status of a Claim of a Creditor as determined in accordance with the procedure described herein;

**“Purchaser”** shall have the meaning ascribed thereto at Section 2 hereof;

**“Purchase Agreement”** shall have the meaning ascribed thereto at Section 2 hereof;

**“Remaining Assets”** means all remaining assets of the Applicants, as of the date hereof, not sold to the Purchaser pursuant to the Purchase Agreement, including without limitation, all cash and bank accounts (including any remaining portion of the Deposit), moneys and receivables of any kind and nature presently owed or which shall in the future become owing or payable to the Applicants, including, without limitation, any and all tax credit receivables, tax refunds and otherwise. The shares held by EVH in the share capital of each of Périgny and EVH U.S.A. are not part of the Remaining Assets;

**“Representatives”** shall have the meaning ascribed thereto at Section 8 hereof.

**“Repudiated Contract”** means an agreement or contract of any nature whatsoever, whether verbal or written (including but not limited to a contract of employment), to which any of the Applicants is a party and which has been terminated, repudiated, resiliated, cancelled, amended or withdrawn by any of the Applicants as per the terms of the Initial Order as amended and extended;

**“Sale Order”** means the Order rendered on July 29, 2005 by Mr. Chief Justice François Rolland approving the transaction contemplated in the Purchase Agreement and rendering various other remedies;

**“Sanction Order”** means the Order to be made pursuant to the *CCAA* sanctioning the Plan, (subject to Section 9.6 hereof), provided that such Order shall not be the Sanction Order until: (i) the expiry of the applicable appeal period without any appeal having been instituted; or (ii) in the event of an appeal or application for leave to appeal, final determination by the applicable appellate tribunal sanctioning the Plan;

**“Secured Claim”** means a Claim (including interests) which payment is guaranteed by a Security or which is based on a Security. For purposes of clarity, a Claim secured by the DIP Loan, the Administration Charge and the Directors’ Charge shall not be considered as a Secured Claim. For purposes of clarity, a Crown’s Claim shall not be considered as a Secured Claim. Moreover, should a portion of a Secured Claim be, in the opinion of the Monitor, in excess of the value at the date of this Plan of the assets charged or affected by such Secured Claim, said portion shall be considered as an Unsecured Claim and shall be governed by this Plan. Any Claim or demand that may result from the termination of any agreement entered into with any Secured Creditor shall be considered as an Unsecured Claim;

**“Secured Creditor”** means a Creditor having a Secured Claim, but only in respect of the portion of its Claim which is a Secured Claim;

**“Security”** means a valid and enforceable hypothec, mortgage, prior claim, pledge, charge, lien or other security interest on or against the property of the Applicants or any part thereof as security for a debt due or accruing due from the Applicant. For the purpose of clarity, a reservation of ownership does not constitute a Security;

**“Unaffected Claim”** means a claim resulting from an Unaffected Obligation;

**“Unaffected Creditor”** means a Creditor having an Unaffected Claim but only in respect of this Unaffected Claim and to the extent that this Plan does not otherwise affect said Claim;

**“Unaffected Obligation”** means any right of any Person against the Applicants or any of them in connection with any indebtedness, liability or obligation of any kind which came into existence during the Interim Period and any interest thereon, including any obligation of the Applicants toward Creditors who

have supplied or shall supply services, utilities, goods or materials or who have or shall have advanced funds to the Applicants during the Interim Period, but only to the extent of their claims in respect of the supply of such services, utilities, goods, materials or funds during the Interim Period and to the extent that the said claims are not otherwise affected by this Plan. An Unaffected Obligation shall, without limiting the generality of the foregoing, include a payment to an employees that has been employed by the Applicants after the Determination Date, which payment shall only include any regular pay and holiday pay to which said employee may be entitled during this period;

“**Unsecured Claim**” means a Claim that is not a Secured Claim or a Crown’s Claim. Without limitation, Unsecured Claims shall include:

- (i) Claims of Secured Creditors in respect of the portion of their Claims which exceeds, in the opinion of the Monitor, the value at the date of this Plan of the assets charged or affected by the Security held, as well as any Claim or demand that may result from the termination of any agreement entered into with any such Secured Creditor;
- (ii) Claims of Her Majesty the Queen in right of Canada or a Province of Canada which are not Crown's Claims;
- (iii) Claims of Creditors based on any volume, sale or purchase program, volume rebate, or any other like claims;
- (iv) any Claim for goods supplied or sold within the thirty (30) day period prior to the Determination Date, or any other Claim of a like nature;
- (v) any Claim which results from a Repudiated Contract, as per the terms of Section 5.3 hereof or otherwise;
- (vi) any Claim of a Creditor which has a reservation of ownership and which has opted not to take back the sold property; and
- (vii) the Claim of Parmalat Holdings Limited and 2975483 Canada Inc., as per Subsection 6.1.4 below (and only for the purpose of this Plan as set out in said Subsection 6.1.4).

“**Unsecured Creditor**” means a Creditor having an Unsecured Claim, but only in respect of the portion of its Claim which is an Unsecured Claim.

## 1.2 ACCOUNTING TERMS

All accounting terms not otherwise defined herein shall have the meanings ascribed to them, from time to time, in accordance with Canadian generally accepted accounting principles including those prescribed by the Canadian Institute of Chartered Accountants (“*GAAP*”).

## 1.3 CURRENCY

All references herein to currency are to Canadian dollars unless otherwise expressly stipulated herein. If, for the purposes of voting or distribution, an amount denominated in a currency other than Canadian dollars must be converted to Canadian dollars then such amount shall be regarded as having been converted at the noon spot-rate of exchange quoted by the Bank of Canada for exchanging such currency into Canadian dollars at the Determination Date (being 1.3310 for the United States dollar, 0.9951 for the Australian dollar, 1.6329 for the Euro, 0.7859 for the Singapore dollar and 0.01244 for the Japanese yen).

**1.4 INTERPRETATION NOT AFFECTED BY HEADINGS**

The division of this Plan into Sections, sections, subsections, clauses and paragraphs and the insertion of an introduction as well as of a table of contents and headings are for convenience of reference only and shall not affect the construction or interpretation of this Plan.

**1.5 DATE OF ANY ACTION**

In the event that any date on which any action is required to be taken hereunder is not a Business Day, then such action shall be required to be taken on the immediately next following Business Day.

**1.6 TIME**

All times expressed herein make reference to local time in Montreal, Québec, Canada unless otherwise stipulated.

**1.7 NUMBERS AND GENDER**

In this Plan, where the context requires, words importing the singular number shall include the plural and *vice versa* and words importing one gender shall include all genders.

**1.8 STATUTORY REFERENCES**

Reference in this Plan to any statute shall include all regulations made or adopted thereunder, all amendments to such statute or regulations in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation.

**1.9 SUCCESSORS AND ASSIGNS**

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

**SECTION 2**

**BACKGROUND**

**The Applicants**

9161-5849 Québec Inc. (formerly known as EVH) is a company duly constituted in 1997 under the laws of Québec in order to source, bottle and distribute natural spring water from a pristine source located in Northern Quebec, in Saint-Mathieu-d'Harricana. The source of the water is an "Esker", a rare geological formation that produces spring water of exceptional quality through its natural filtration process.

41902 Delaware Inc. (formerly known as EVH U.S.A.) is a legal person duly constituted under the laws of Delaware, United States. EVH U.S.A. acted solely as a marketing, sales and distributing agent for EVH and had no customers other than EVH. As such, EVH U.S.A. is dependent upon EVH and cannot be dissociated therefrom, which explains the present joint Plan.

9161-5286 Québec Inc. (formerly known as Périgny) is a legal person duly constituted under the laws of Québec. Périgny is a wholly-owned subsidiary of EVH. While Périgny is a distinct legal entity from EVH, its assets and liabilities cannot be disassociated from EVH, which explains the present joint Plan.

## History

In 2002, following extensive testing and development work, EVH proceeded to construct a bottling, warehousing and distribution facility. EVH invested almost Sixty Million dollars (\$60,000,000) in order to build a facility considered to be "state of the art" within the beverage industry. While only operating a single shift in its initial operations, EVH employed over Sixty (60) people locally. It was anticipated that as volume increased, EVH would eventually move to a "three shift" operation, employing One Hundred and Fifty (150) to Two Hundred (200) people.

EVH introduced its bottled water, "ESKER" into select markets in Canada and southwest United States late in 2002. Significant investments were made by EVH in research, marketing, advertising and trade allowances during the first year of ESKER's launch. By late 2003, ESKER was beginning to develop a stable and growing loyal user group. EVH was revising its operating plan for 2004, incorporating test-market learning and modifying to optimize competitiveness within the bottled water category. EVH's intention was to further expand the launch into northeast United States and to launch nationally in Canada.

## The CCAA Filing

In 2004, EVH was still anticipated to be in a development stage. It was not yet profitable, requiring ongoing investment to fund working capital as well as interest on loans. As EVH, at such time, was no longer able to meet its liability generally as they became due, EVH management and ownership began exploring financing alternatives. It was determined that the best alternative for current owners, employees, creditors and other interested parties was to seek the issuance of the Initial Order.

On March 19, 2004, the Court granted the Initial Order pursuant to the terms therein set forth, as contained in the record of the Court. On June 1<sup>st</sup>, 2004, the remedies and reliefs contained in the Initial Order were extended to Périgny, with retroactive effect. The Initial Order has been amended and extended on various occasions and remains in force.

Further to the filing of the Initial Order, EVH liquidated all inventory in its possession and receivables were collected in respect of the same. Given, *inter alia*: (i) the limited revenues generated from the sale of the remaining inventory and the collection of the residual accounts receivable; and (ii) the fact that EVH had ceased to operate, additional funds became necessary.

On June 10, 2004, EVH, Périgny and the DIP Lender executed the DIP Credit Agreement providing for an advance of up to \$3,578,000. On June 15, 2004, the Honourable François Rolland J.S.C. (as he then was) rendered an Order approving the DIP Credit Agreement and creating the DIP Charge.

Between the approval of the DIP Credit Agreement on June 10, 2004 and the Sale Closing in August 2005, EVH used the DIP Financing provided by the DIP Lender to finance its funding requirements.

## Initial Marketing Process

After having explored their options, the Applicants determined that it was in the best interests of their creditors to sell their assets. The Applicants therefore commenced a sale process with the assistance of Scotia Capital ("Scotia").

The possibility of the purchase of assets of EVH was discussed with over sixty (60) prospective parties, including North American beverage companies, bottled water companies, bottled water industry participants, financial buyers, distressed asset purchasers and liquidators.

Between April 6, 2004 and June 16, 2004 in excess of 30 parties received information packages from Scotia. During that period, 14 parties executed confidentiality agreements. Out of such 14 parties, 9 visited

the data room established for the sale process, in order to examine the books, records and other documents regarding the Applicants therein contained, and 7 such parties conducted site visits of EVH's plant.

A total of 4 formal offers were received through the process.

Further to the receipt of the offers and pursuant to the recommendation of Scotia, the Applicants entertained discussions with the offeror it felt would provide the best purchase price.

On July 30, 2004, the said offeror submitted a revised offer to EVH which was accepted by it (the "**July 30 Offer**").

Unexpected problems were encountered after the acceptance of the July 30 Offer. Despite a demand letter and further communications, the offeror did not comply with its obligations pursuant to the Offer, and the Applicants had no choice but to terminate the negotiations with the offeror and to pursue other options.

### **Second Marketing Process**

As a result of the failure to close the contemplated sale transaction, throughout the months of October and November 2004, Scotia and EVH re-established communications with all those parties that had been identified as potential buyers.

After having examined the alternatives available and due to the fact that interested parties had manifested their interest to acquire the Applicants' assets, the Applicants decided, in collaboration with the Monitor and Scotia, to launch a new sale process and, as such, to canvass, once again, the market in order to attempt to complete a sale transaction.

Pursuant to such new marketing process, the delay within which offers were to be filed was set to November 30, 2004.

During the months of October and November, in excess of 14 parties received an updated information package and/or were contacted by either the Applicants, Scotia or the Monitor. Moreover, representatives of Scotia, the Applicants and the Monitor had discussions with various potential bidders.

On November 30, 2004, offers and letters of interest were received from five (5) parties, but none of them contained terms and/or a purchase price that were acceptable. However, the Monitor, Scotia and EVH continued to entertain discussions with three (3) different parties.

### **Extension of the Marketing Process**

The initial intention of the Monitor, EVH and Scotia was to make a final decision regarding the offers received by December 20, 2004. However, in the interests of fairness to the parties remaining in the process and with a view of concluding a transaction, it appeared that it would be beneficial to pursue such discussions through January 2005. The interested parties were advised by a letter sent on December 22, 2004 that it was the Monitor's intention to deal with those offerors who would submit an acceptable offer in form and substance by January 21, 2005.

A total of four (4) offerors and two (2) letters of interest were submitted to the Monitor on or before January 21, 2005.

### **Quebec Water Inc.'s Offer**

Among the offers received on January 21, 2005 an Offer was received from a Delaware Corporation, Quebec Waters Inc. ("**Quebec Waters**").

After having reviewed the offers, the Monitor and EVH, with the assistance of Scotia, came to the conclusion that the offer presented by Quebec Waters was the best offer. Furthermore, the purchase price offered by Quebec Waters was greater than that provided for in any other offer received.

On January 21, 2005, EVH accepted the offer submitted by Quebec Waters, (as amended and improved further to its original submission, the "**Quebec Waters Offer**").

On February 23, 2005, the Court approved the sale of the Applicants' assets to Quebec Waters.

Pursuant to the Quebec Waters Offer, a sum of \$1,000,000 was to be deposited with the Monitor upon the satisfaction of certain conditions set forth therein (the "**Deposit**"). This Deposit was received on March 21, 2005.

The Applicants and the Monitor made arrangements for closing, ultimately scheduled for May 4, 2005. Closing documents and agreements were circulated and agreed upon.

On May 4, 2005, a representative of Quebec Waters arrived at the time and place scheduled for closing. He indicated that no funds were available and that closing would not occur. As a result, the Deposit was confiscated. Quebec Waters did not contest the confiscation of the Deposit.

Further to the default of Quebec Waters under its obligations in the Quebec Waters Offer and the confiscation of the deposit the Court rendered on May 27 2005 an Order which, among other things (a) acknowledged the default of Quebec Waters and its failure to complete the transaction contemplated in the its offer; (b) declared that as a result of Quebec Waters' default, the conclusions contained in the February 23, 2005 Order of the Court ordering the Applicants and the Monitor to complete the transaction contemplated in the Offer were of no effect; and (c) declared that such foregoing orders do not affect the Applicants' rights and recourses against Quebec Waters or any other person as a result of Quebec Waters' default, including with respect to the confiscation of the Deposit.

#### **Eaux Vives Water Bottling Corp.'s Offer**

Since the termination of the agreement with Quebec Waters as a result of Quebec Waters' default, the Applicants assessed their alternatives.

Following the failed attempt to close the Quebec Waters transaction, the Applicants (directly and through counsel and the Monitor) received an expression of interest from Morgan Stanley & Co. ("**Morgan Stanley**"), a well-known and respected financial institution in the United States and Canada.

On May 25, 2005, the Monitor received from Morgan Stanley (on its behalf or on behalf of a nominee to be selected by it) a signed expression of interest indicating they were "highly interested" in acquiring the Applicants' assets.

Further to various discussions with the Applicants and the Monitor on May 26, 2005, Morgan Stanley sent to the Monitor a revised expression of interest with certain improved terms and provisions (the "**EOI**").

In view of several facts such as the content of the EOI, previous canvassings, offers received in the past, the emergency to close a transaction and the existence of indebtedness owing to the DIP Lender, the Applicants and the Monitor concluded that it was not appropriate to explore further options in order to attempt to complete a transaction and that a new sale process to canvass the market once again would not provide a better outcome than the EOI.

After having reviewed the terms and provisions contained in the EOI, the Applicants and the Monitor concluded that it was advantageous and in the best interest of all of the Applicants' creditors. In addition to the purchase price and terms contained in the EOI, one of the important considerations of the Applicant and



the Monitor was based on the understanding that Morgan Stanley would be able to close the transaction within a short timeframe and that the requisite funds were available.

As a result of the foregoing considerations, the Monitor, on behalf of the Applicants, accepted the EOI on May 27, 2005, subject to the approval of the Court.

Scotia did not participate in the matters leading up to the receipt by EVH of the EOI or in any of the discussions related thereto or subsequent thereto.

On July 15, the Applicants and Eaux Vives Water Bottling Corp., an entity affiliated with Morgan Stanley and selected by Morgan Stanley as its nominee for the transactions (the "**Purchaser**"), entered into an asset purchase agreement pursuant to which the Applicants agreed to sell all of their assets (save for some excluded assets) to the Purchaser, the whole on the terms and conditions more fully therein set forth (collectively with any amendments thereto agreed to between the parties, the "**Purchase Agreement**"). The contemplated transaction provided for a cash payment of \$18,000,000 (the "**Proceeds**").

On July 29, 2005 the Court approved the transaction as contemplated in the Purchase Agreement (the "**Sale Order**").

On August 25, 2005, further to the accomplishment of all the conditions contemplated in the Purchase Agreement, the Applicants and the Purchaser completed the transactions of purchase and sale pursuant thereto. The entirety of the Proceeds was received by counsel to the Applicants to be disbursed to the Monitor upon the registration of all deeds and other instruments evidencing the said transactions. Accordingly, on September 15, 2005, the entirety of the Proceeds was transferred to the Monitor.

The Proceeds received pursuant to the execution of the Purchase Agreement are substantially higher than the realisation that would have been obtained through the forced liquidation of EVH assets on an individual basis.

Pursuant to the Sale Order, the Monitor was required to use the Proceeds to reimburse the DIP Credit Agreement upon the consummation of transactions related to the Offer. As a result thereof, on September 16, 2005, the DIP Lender was fully repaid, out of the Proceeds, in principal, interest and fees in an aggregate amount of \$2,848,716.60. Furthermore, pursuant to the Sale Order, the Monitor reimbursed the amount then covered by the Administration Charge, as well as any and all outstanding Municipal and School taxes due and unpaid for the period up to and including the Closing Date.

### SECTION 3

#### PURPOSE AND EFFECT OF THE PLAN

##### 3.1 PURPOSE

The Applicants availed themselves of the relieves and remedies provided by the CCAA, which ultimately allowed the sale of their assets as an operating unit, avoided a forced liquidation scenario and as such obtain a better value for all their Creditors.

The purpose of this Plan is to effect a compromise and arrangement between the Applicants and their Creditors with respect to all the debts and obligations of the Applicants. In accordance with the Initial Order, the Sale Order, any other Order and the terms herein set forth, a fund will be constituted from:

- a) the Proceeds; and

- b) the Remaining Assets and the proceeds resulting from the liquidation of the Remaining Assets;

less

- a) the amounts paid in virtue of Section 6.10 hereof as well as any other amounts covered by the Administration Charge and any amounts covered by the Directors' Charge;
- b) any other amount the Monitor and the Applicant deem required for the completion of the CCAA process, including (without limitation) any amount that will be required in the future to pay the expenses referred to in Section 6.10 hereof;
- c) the amount paid in reimbursement of the DIP Loan;
- d) the amount paid in reimbursement of the Secured Claims, should there be any;
- e) the amount paid in reimbursement of the Crown's Claims, should there be any;
- f) the amount paid in reimbursement of the Unaffected Claims, should there be any.

(the net result of which will constitute "Distribution Fund").

The Distribution Fund will be used to pay the Unsecured Creditors in accordance with the Plan.

For greater certainty, any and all payments to the Creditors shall be made exclusively in accordance with this Plan and only to the extent the Proceeds and the Remaining Assets allow it.

Payments made in accordance with the Plan will provide to the Applicants (and the other beneficiaries enumerated in Section 8 below) the releases provided for in Section 8 below.

### 3.2 PERSONS AFFECTED

On and after its acceptance by the Creditors and its sanction by the Court, and as per the CCAA, this Plan will become effective and shall be binding upon the Applicants and the Creditors.

## SECTION 4

### CLASSIFICATION OF CREDITORS, VALUATION OF CLAIMS AND PROCEDURAL MATTERS

#### 4.1 CLASSIFICATION OF CREDITORS

The Plan provides for four Classes of Creditors: Secured Creditors, Crown's Creditors, Unsecured Creditors and Unaffected Creditors.

As the Secured Creditors, the Crown's Creditors and the Unaffected Creditors will be paid in full pursuant to the Plan, their approval of the Plan is not required.

For the purposes of considering and voting upon the Plan, the Unsecured Creditors shall, to the extent herein provided, be entitled to vote upon the Plan.

#### 4.2 MEETING OF CREDITORS

A Meeting of Creditors shall be held in accordance with the terms of the present Plan, the Claim Process Order and the applicable law:

- 4.2.1 Upon filing of the Plan, the Monitor will convene the Meeting of Creditors at a date to be determined by the Monitor and at a place that the Monitor will judge appropriate. The Meeting of Creditors will be convened for the purpose of voting on the Plan, unless the Creditors decide by ordinary resolution (in accordance with the definition of said expression under the *BIA*) to postpone said Meeting;
- 4.2.2 The notice of convocation will be sent in accordance with Section 7.1.1 of the Plan to all Creditors having filed a Proof of Claim before the Bar Date;
- 4.2.3 The Meeting of Creditors shall be conducted by the Monitor and all Proofs of Claim shall be delivered in accordance with the provisions of this Plan, the *CCAA*, the Claim Process Order and any other Order which may be rendered in respect of the procedure governing the Meeting of Creditors to be held for purposes of voting on the Plan; and
- 4.2.4 A representative of the Monitor shall preside as the chair of the Meeting of Creditors and shall decide upon all matters relating to the conduct of such Meeting of Creditors and any question or dispute arising at any meeting, from which any Creditors may appeal such decision to the Court, within five (5) days of the rendering of same. The only Persons entitled to attend the Meeting of Creditors are those Persons, including the holders of proxies, entitled to vote at the Meeting of Creditors and their legal counsel as well as the officers, directors, auditors and legal counsel of the Applicants. The Secured Creditors, Crown's Creditors and Unaffected Creditors shall also be entitled to attend the Meeting of Creditors. Any other Person may be admitted on invitation of the chair of the Meeting of Creditors or with the unanimous consent of the attending Creditors at the Meeting of Creditors;
- 4.2.5 Any Creditor which does not attend and is not represented by proxy shall be entitled to vote on the Plan by filing with the Monitor before the beginning of the Meeting of Creditors a voting letter expressing his vote, failing which such Creditor shall have no right to vote.

#### 4.3 APPROVAL BY CREDITORS

In order for this Plan to be binding upon the Creditors of the Applicants and the Applicants, in accordance with the *CCAA*, it must first:

- 4.3.1 be accepted as set forth by the *CCAA*, being by a majority in number (50% + 1) of the Unsecured Creditors (including Parmalat Holdings Limited and 2975483 Canada Inc.) who actually vote upon the Plan (in person or by proxy) at the Meeting of Creditors, representing two-thirds (2/3) in value of the Accepted Claims for Voting Purposes of the Unsecured Creditors who actually vote upon the Plan (whether in person or by proxy) at the Meeting of Creditors; and
- 4.3.2 then be sanctioned by the Court in accordance with the *CCAA*.

The only Unsecured Creditors entitled to vote on the Plan are those having filed a Proof of Claim with the Monitor in accordance with the Claim Process Order.

#### 4.4 PROCEDURE FOR VALUING CLAIMS

The procedure for valuing Claims and resolving disputes shall be as set forth at Section 5 hereof and the Initial Order and the Claim Process Order. The Applicants (on their behalf and on behalf of the Monitor)

as well as the Monitor, hereby reserve their right to seek, if required, the assistance of the Court in valuing the Claim of any Creditor to ascertain the result of any vote on the Plan or the amount that is payable, or to be distributed, to such Creditor under this Plan, as the case may be.

#### 4.5 CLAIMS FOR VOTING PURPOSES

- 4.5.1 Each Creditor having an Unsecured Claim shall be entitled to attend and to vote at the Meeting of Creditors. Each Unsecured Creditor who is entitled to vote shall be entitled to that number of votes at the Meeting of Creditors as is equal to the dollar value of its Unsecured Claim as determined by the Monitor or otherwise by the Court.
- 4.5.2 Where any Creditor appeals a Notice of Revision or Disallowance (as defined in the Claim Process Order) to the Court, but the Proven Claim has not been finally determined to the date of the Meeting of Creditors, the Monitor, in conjunction with the Applicants, will determine the amount of the Proof of Claim for the purpose of voting. The amount determined by the Monitor, in conjunction with the Applicants, shall be the amount of the Proof of Claim admitted for voting purposes;
- 4.5.3 If the holder of a Claim or any subsequent holder of the whole of a Claim who has been acknowledged by the Monitor as the Creditor in respect of such Claim transfers or assigns the whole of such Claim to another Person, neither the Monitor nor the Applicants shall be obligated to give notice to or to otherwise deal with the transferee or assignee of that Claim as if it was the Creditor in respect thereof, unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, have been received and acknowledged by the Monitor. Thereafter, such transferee or assignee shall for the purpose hereof constitute the Creditor in respect of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim prior to receipt and acknowledgement by the Monitor of satisfactory evidence of such transfer or assignment;
- 4.5.4 If the holder of a Claim (or any subsequent holder of the whole of a Claim who has been acknowledged by the Monitor as the Creditor in respect of such Claim) transfers or assigns the whole of such Claim to more than one Person or part of such Claim to another Person or Persons, such transfer or assignment shall not create a separate Claim or Claims and such Claim shall continue to constitute and be dealt with as a single Claim notwithstanding such transfer or assignment. The Monitor and the Applicants shall in each such case not be bound to recognize or acknowledge any such transfer or assignment and shall be entitled to give notices to and to otherwise deal with such Claim only as a whole and then only to and with the Person last Holdings such Claim in whole as the Creditor in respect of such Claim. However, such Person may, by notice in writing to the Monitor, direct that subsequent dealings in respect of such Claim (but only as a whole) shall be with a specified Person and in such event, every Creditors, transferee(s) or assignee(s) of the Claim for the whole of such Claim shall be bound by any notices given or steps taken in respect of such Claim.

#### 4.6 LOSS OF RIGHT TO PARTICIPATE IN THE PLAN

- 4.6.1 As stipulated in the Claim Process Order, a Creditor having a Claim (whether an Secured Claim, a Crown's Claim or an Unsecured Claim) (unless dealt with differently at Section 4.6.2 below) that has not filed a Proof of Claim by the Bar Date in accordance with the Claim Process Order:
- (a) is not entitled to any further notice;
  - (b) is not entitled to participate as a Creditor in these proceedings;
  - (c) is not entitled to vote on any matter in these proceedings, including the Plan;
  - (d) is barred from receiving any Distribution in respect of such Claim; and

(e) is barred from seeking payment of said Claim;

In any such case, the Applicants have been discharged of said Claim;

4.6.2 As stipulated in the Claim Process Order, any Creditor of Repudiated Contract which has not filed a Proof of Claim in accordance with the Claim Process Order:

(a) shall not be entitled to any further notice; and

(b) shall not be entitled to participate as a Creditor in these proceedings (which, by way of example, includes, but shall not be limited to, the right to vote on the Plan or the right to receive any Distribution pursuant to the Plan) until such time as such Creditor of Repudiated Contract has filed a Proof of Claim, whereupon such Creditor of Repudiated Contract shall be entitled to participate in all steps which remain outstanding in the proceedings as long as such Creditor of Repudiated Contract has filed a Proof of Claim by a date which is the earlier of:

(i) thirty (30) days from the date at which its contract has been repudiated; or

(ii) the Effective Date;

failing which the claim of such Creditor of Repudiated Contract shall be forever barred, prescribed and extinguished. In any such case, the Applicants have been/will be discharged of said Claim.

4.6.3 Further to the acceptance of the Plan by the Creditors and its sanction by the Court, other than in respect of the Applicants' obligations pursuant to this Plan and subject to the fulfilment of such obligations, the Applicants shall be released from all Claims and Unaffected Claims of all Creditors, whether or not a Proof of Claim has been filed, in accordance with the terms of Section 8 below.

## SECTION 5

### PROCEDURE FOR VALUATION OF CLAIMS

#### 5.1 DETERMINATION OF CLAIMS

As stipulated in the Claim Process Order, Proofs of Claim shall be governed by the following provisions:

5.1.1 The Monitor, with the assistance of the Applicants, shall review all Proofs of Claim filed on or before the Bar Date, and the Monitor, in consultation with the Applicants, shall accept, revise or disallow the amounts and/or terms set out therein for voting and distribution purposes under the Plan;

5.1.2 The Monitor will use reasonable discretion as to the adequacy of compliance in the manner in which a Proof of Claim is completed and executed and may, where it is satisfied a Claim has been adequately proven, waive strict compliance with the requirements of the Claim Process Order as to the form and content of a Proof of Claim;

5.1.3 Any Person who intends to dispute a Notice of Revision or of Disallowance shall make a Motion to the Court, on notice to the Monitor and the Applicants, returnable as soon as reasonably possible but in any event within ten (10) days from service of the Notice of Revision or Disallowance;

5.1.4 Where a Creditor receives a Notice of Revision or of Disallowance and fails to make a Motion to the Court within the time limit provided hereof, the value and status of such Creditor's Claim for

all purposes under the Plan shall be deemed to be as set out in the Notice of Revision or of Disallowance and such value and status, if any, shall constitute such Creditor's Proven Claim;

5.1.5 The Monitor, in conjunction with the Applicants, may consensually resolve and/or settle with any Creditor the amount of its Claim for voting and/or Distribution purposes;

## 5.2 SET-OFF TO APPLY

The Proven Claim of a Creditor shall be net of: (a) any amount owing by the Creditor to the Applicants (including, without limitation, on account of prompt payment, volume and financial rebates and discounts and other like allowances), the amount of which set-off will be verified in proving the Claim; and (b) damages caused to the Applicants by the Creditors, including as a result of the failure by this Creditor to release goods owned by the Applicants in violation of the Initial Order.

## 5.3 REPUDIATED CONTRACTS

In accordance with the Initial Order, the Applicants are entitled, upon the sending of a written notice to such effect, to terminate, resiliate and cancel any and all agreements it has entered into. Any Claim or alleged Claim arising from any Repudiated Contracts shall be dealt with as set forth in this Plan.

# SECTION 6

## TREATMENT OF CREDITORS' CLAIMS AND VOTING

### 6.1 SECURED CREDITORS

#### 6.1.1 Voting

Secured Creditors are not entitled to vote upon the Plan as their Secured Claim will be paid (out of the Proceeds and the Remaining Assets) in full in accordance with the Plan. Accordingly, the Secured Creditors are deemed to have voted in favour of the Plan.

#### 6.1.2 Treatment of the Secured Creditors' Claims

Each Secured Creditor having filed a Proof of Claim in accordance with the Claim Process Order shall, in full and final satisfaction of its Secured Claim, be paid (out of the Proceeds and the Remaining Assets) an amount equal to its Secured Claim owing and determined to be a Proven Claim, in principal and accrued and unpaid interest determined as at the date of the payment to be made. The Monitor shall pay or cause to be paid in full to the Secured Creditors the amounts referred to in the present Section 6.1.2 against delivery by each such Secured Creditor of a full and complete discharge of all Secured Claims and all Security held by or on behalf of such Secured Creditor.

#### 6.1.3 Effect of Plan Implementation

Further to the payment referred to in this Section 6.1.2, the Secured Claims shall be discharged and the Applicants and any Person that might be responsible in respect of such Secured Claims shall thereupon be forever and irrevocably released from all such Secured Claims in accordance with Section 8 below.

6.1.4 Secured Claim of 2975483 Canada Inc. and Parmalat Holdings Limited

The Sale Order expressly stated that the cancellation of 2975483 Canada Inc.'s hypothecs by effect of the Sale Order did not affect the rights and status of Parmalat Holdings Limited (formerly known as Parmalat Canada Limited) and/or 2975483 Canada Inc. as creditors of EVH (or of any of the Applicants) under this Plan. The Sale Order further declared that any and all rights and security that Parmalat Holdings Limited and/or 2975483 Canada Inc. had or may have had over or in respect of the assets sold to Eaux Vives Water Bottling Corp. shall charge and apply as against the Proceeds.

The Applicants have been informed that 2975483 Canada Inc. and Parmalat Holdings Limited, which have filed a proof of claim as Secured Creditors for an amount of 87,488 942.82 \$, are agreeable to be treated as Unsecured Creditors for the purposes of the Plan, conditionally to the Plan being accepted by the Creditors and sanctioned by the Court in its present form. As a result, for the purposes of this Plan (including (without limitation) Subsections 4.2, 4.3 and 6.3), the Claim of 2975483 Canada Inc. and Parmalat Holdings Limited shall be treated as an Unsecured Claim and 2975483 Canada Inc. and Parmalat Holdings Limited shall vote, receive a Distribution and participate to the Plan as Unsecured Creditors. The payment of Parmalat Holdings Limited and 2975483 Canada Inc.'s dividend as Unsecured Creditors is conditional to the delivery by them of a release with respect to any Security held over the Proceeds by them or on their behalf.

Parmalat Holdings Limited and 2975483 Canada Inc. have however expressly reserved all their rights and recourses, including with respect to their charge over the Proceeds, should the Plan not be implemented for any reason whatsoever. The release by 2975483 Canada Inc. and Parmalat Holdings Limited of any Security they may have over the Proceeds is a condition for the implementation of the Plan.

**6.2 CROWN'S CREDITORS**

6.2.1 Voting

Crown's Creditors are not entitled to vote upon the Plan as their Crown's Claim will be paid (out of the Proceeds and the Remaining Assets) in full in accordance with the Plan. Accordingly, the Crown's Creditors are deemed to have voted in favour of the Plan.

6.2.2 Treatment of Crown's Claims

Each Crown's Creditor having filed a Proof of Claim in accordance with the Claim Process Order shall, in full and final satisfaction of their Crown's Claim, be paid (out of the Proceeds and the Remaining Assets) an amount equal to its Crown Claim determined to be a Proven Claim. The Monitor shall pay or cause to be paid to the Crown the amounts referred to in this Section.

6.2.3 Effect of Plan Implementation

Further to the payment referred to in this Section 6.2, the Crown's Claims shall be discharged and the Applicants and any Person that might be responsible in respect of such Crown's Claims will be forever and irrevocably released from all Crown's Claims in accordance with Section 8 below.

## 6.3 UNSECURED CREDITORS'

### 6.3.1 Voting

Each Unsecured Creditor having filed a Proof of Claim in accordance with the Claim Process Order shall be entitled to vote in the Unsecured Creditors' Class to the extent of the amount which is equal to its Unsecured Creditors' Claim which is an Accepted Claim for Voting Purposes.

### 6.3.2 Treatment of Unsecured Claims

Each Unsecured Creditor having filed a Proof of Claim in accordance with the Claim Process Order shall be entitled to receive, in full and final satisfaction of its Unsecured Claim, out of the Distribution Fund:

- (1) with respect for the first \$1,000 of their Unsecured Claim determined to be a Proven Claim, the lesser of \$1,000 and the amount of the Creditor's Unsecured Claim determined to be a Proven Claim; and
- (2) with respect to the portion of their Unsecured Claim determined to be a Proven Claim over \$1,000, an amount corresponding to 20% of the balance of the Unsecured Claim determined to be a Proven Claim (net of the amounts paid pursuant to subparagraph (1) above).

In calculating the dividend payable to each Unsecured Creditor pursuant to the present paragraph (2), the amounts paid pursuant to paragraph (1) above shall be deducted from each Unsecured Claim determined to be a Proven Claim. (For example, if a Creditor has an Unsecured Claim determined to be a Proven Claim of \$5,000, an amount of \$1,000 will be paid in full pursuant to paragraph (1) above and the amount of its Proven Claim for the calculation provided for in the present paragraph (2) will be \$4,000).

For purposes of clarity, should this Plan be implemented, 2975483 Canada Inc. and Parmalat Holdings Limited's Proven Claims will be treated as Unsecured Claims pursuant to the Plan and their dividend will be calculated in accordance with the present Subsection 6.3.2. Furthermore, the amount of 2975483 Canada Inc. and Parmalat Holdings Limited's Proven Claims shall be included into the aggregate amount of all Unsecured Claims of Unsecured Creditors determined to be Proven Claims. However, 2975483 Canada Inc. and Parmalat Holdings Limited have agreed to waive a portion of the dividend payable to them pursuant to the Plan in order to allow the other Unsecured Creditors having a Proven Claim to receive the dividend provided for in this subsection 6.3.2.

The Monitor shall pay or cause to be paid to the Unsecured Creditors the amounts referred to in this Section.



**6.3.3 Effect of Plan Implementation**

Further to the payments referred to in subsection 6.3.2, the Claims of all Unsecured Creditors shall be discharged and the Applicants and any Person that might be responsible in respect of such Unsecured Claims will forever and irrevocably be released from all such Unsecured Claims in accordance with Section 8 below.

**6.4 UNAFFECTED CREDITORS**

Unaffected Creditors are not entitled to vote upon the Plan as Unaffected Claims will be paid in full (out of the Proceeds and the Remaining Assets) to the Unaffected Creditors in accordance with this Plan. Accordingly, the Unaffected Creditors are deemed to have voted in favour of the Plan.

Further to the payment of the Unaffected Claims, the Applicants and any Person that might be responsible in respect of such Unaffected Obligation shall thereupon be forever and irrevocably released from all Unaffected Claims in accordance with Section 8 below.

**6.5 INTEREST**

Save as provided for by this Plan, no interest and/or penalty shall accrue or be paid on the Claims of Creditors from and after the Determination Date. Any such interest and/or penalty shall be released in accordance with the present Plan.

**6.6 LIMITS AND PRIORITIES**

Notwithstanding any provision hereof, payments shall be made as follows: (a) first, the payments provided for in Section 6.10 hereof (as well as any payment the Monitor and the Applicants deem required for the completion of the CCAA Process) shall be made; (b) then the payments provided for in Section 6.1 hereof shall be made; (c) then the payments provided for in Section 6.2 hereof shall be made; (d) then the payments provided for in Sections 6.4 hereof shall be made; (e) finally, the payments provided for in Section 6.3 shall be made until the Distribution Funds has been exhausted. In any event, no payment will be made in excess of the amount of the Proceeds and the Remaining Assets. A payment will only be made to the extent payments ranking in priority have been made in full.

**6.7 PROVISIONS WITH RESPECT TO DISPUTED CLAIMS**

In the event there is a dispute as to the validity or the amount of a Proof of Claim or an Unaffected Claim or in the event a claim covered by the Directors' Charge is brought, the Monitor shall make any provision it considers appropriate to provide for the payment of the disputed claim in accordance with the Plan.

In the event a provision is taken in accordance with this Plan and the amount of the provision is not used in full, the balance of the provision shall be released and considered as available for distribution in accordance with the Plan.

**6.8 INTERIM DIVIDEND**

After having made the appropriate provisions and reserves, the Monitor may, at its entire discretion, proceed to the payment of an interim dividend to one or several Class(es) of Creditor(s).

**6.9 DIVIDEND OF AN AMOUNT REPRESENTING LESS THAN CDN \$10.00**

In the event the Monitor pays a dividend (interim or final) in accordance with the Plan and the dividend payable to a Creditor is of less than CDN \$10.00, then no amount shall be paid to that Creditor. Any such

amount shall, however, be taken into account in determining the amount of any further dividend payable to that Creditor.

#### **6.10 MONITOR'S FEES AND EXPENSES AND OTHERS**

Any and all fees and expenses of the Applicants and Monitor shall be paid currently, prior to any and all payment of any nature, including those referred to in Sections 6.1 to 6.4 hereof. Furthermore, any and all lawyers, consultants, advisors or any like person acting on behalf of the Applicants including those Persons whose claims are designated, pursuant to the Initial Order and/or any other Order, as constituting part of the Administration Charge, as well as any payment contemplated in paragraph 48 of the Initial Order, shall be paid in full, after the Monitor, but prior to any and all payment of any nature, including those referred to in Sections 6.1 to 6.4 hereof.

### **SECTION 7**

#### **POWERS AND OBLIGATIONS**

#### **7.1 POWERS AND OBLIGATIONS OF THE MONITOR**

As per the terms of the Initial Order, the Claim Process Order, any Orders and in accordance with the Plan, the Monitor is empowered to:

- 7.1.1 send, by regular mail to all of the Creditors of the Applicants that have filed a Proof of Claim in accordance with the Claim Process Order, a copy of the Plan to be submitted to the Creditors, together with a notice of convocation, a proxy and a letter of votation for the purpose of the Meeting of Creditors which will be held with respect to the Plan to be filed, the whole at least fifteen (15) days prior to said Meeting of Creditors;
- 7.1.2 administer and adjudicate, in collaboration with the Applicants, any Proof of Claim submitted by any of the Creditors or alleged Creditors of the Applicants;
- 7.1.3 dismiss or review, in collaboration with the Applicants, any Proof of Claim filed by any Creditor or alleged Creditor of the Applicants, under reserve of the right of such Creditor to appeal to the Court to determine the same in accordance with this Plan within ten (10) days of such notice of disallowance, each Creditor having the burden of establishing its Claim;
- 7.1.4 file and present to the Court any proceeding, motion or petition, or any other demand, required or appropriate or that it may consider to be appropriate or required with respect to:
  - 7.1.4.1 the affairs of the Applicants;
  - 7.1.4.2 this Plan;
  - 7.1.4.3 the determination of any right of the Applicants or any of their respective Creditors or co-contractors;
  - 7.1.4.4 any advice or instructions it may require or to seek the help of this Court; and
  - 7.1.4.5 any other matter it feels is required or appropriate;
- 7.1.5 preside over the first Meeting of Creditors and decide any questions or disputes arising at the Meeting, from which such decision any Creditor may appeal to the Court, within five (5) days of the rendering of the same;
- 7.1.6 proceed to the payment of monies which must be paid to the Creditors of the Applicants in the manner provided for in this Plan;

- 7.1.7 hire and retain, with the consent of the Applicants, the services of any professional required or desired, including, without limiting the generality of the foregoing, any accountant, lawyer, notary, or other;
- 7.1.8 delegate, if required or necessary, to any Person duly qualified in the sole opinion of the Monitor and the consent of Applicants, the powers enumerated herein (or any part thereof);
- 7.1.9 obtain from the Applicants the information which the Monitor considers useful;
- 7.1.10 execute any deed, contract or agreement or do anything necessary or required in order to give full effect to this Plan;
- 7.1.11 assist the Applicants in discussions with any of their respective Creditors, co-contractors or any other Person;
- 7.1.12 assist the Applicants in negotiating and settling Creditors' Claims;
- 7.1.13 file or oppose any Claim or proceeding filed with respect to any of the assets of the Applicants, the whole with the consent of the Applicants;
- 7.1.14 certify as a true copy, any copy of any Order;
- 7.1.15 send notices of a stay of proceedings, as if it were a trustee in bankruptcy, with respect to any proceedings, whether judicial, administrative or otherwise;
- 7.1.16 with the authorization of the Court, do anything or enter into any agreement whatsoever with a view to protecting the Applicants, their assets, their Creditors or in the best interests of the Applicants or this Plan; and
- 7.1.17 exercise any and all powers of a trustee in bankruptcy with a view to helping and assisting the Applicants in the filing of this Plan.

## **SECTION 8**

### **RELEASES**

The acceptance of this Plan by the majorities required in accordance herewith and the sanctioning of the Plan by the Court shall automatically, unconditionally and irrevocably confer upon the Applicants and all other Persons hereinafter referred to, the following releases, discharges and waivers from each and every Creditor, immediately upon receipt by each such Creditor of the amount to which it is entitled to receive pursuant to this Plan:

- 8.1.1 a full and final release and discharge in favour of the Applicants from and by each and every Creditor with respect to every Claim and Unaffected Claim of each such Creditor, and an irrevocable and unconditional waiver by each and every Creditor to exercise any and all personal and/or real rights in respect of their respective Claims and Unaffected Claims;
- 8.1.2 a full and final release and discharge from and by each and every Creditor with respect to any claim, other than a claim listed at Section 5.1(1) of the CCAA, which they have or may have, directly or indirectly against the Representatives of the Applicants in any way resulting from or relating to any Claim or Unaffected Claim, and an irrevocable and unconditional waiver by each and every Creditor to exercise any and real and/or personal rights in respect of any of the same;

- 8.1.3 a full and final release and discharge from and by each and every Creditor with respect to any claim (other than those claims contemplated by Sections 8.1.1, 8.1.2 or 8.1.4 hereof) which they have or may have, directly or indirectly, including any claim set forth at Section 5.1(2) of the CCAA, against the Representatives of the Applicants;
- 8.1.4 a full and final release and discharge from and by each and every Creditor and/or any other Person with respect to any claim they may have, directly or indirectly, against the Applicants or the Monitor or any of their respective Representatives in connection with or in any manner related to, directly or indirectly, the Proceedings, this Plan, the preparation and/or implementation of the same, and/or any contact, instrument, release, agreement or other document or any other action taken or omitted to be taken with respect to any of the foregoing. In all respects, the Applicants and the Monitor and their respective Representatives shall have the unfettered and unqualified right to rely upon legal advice with respect to their rights and obligations under the terms of this Plan; and
- 8.1.5 as of the Effective Date, the Applicants shall be deemed to have automatically, forever, irrevocably and unconditionally released their Representatives as well as the Monitor and its Representatives from any claim of any nature that may exist, may have existed, or may in the future exist in the context of, in connection with or in any manner related to, directly or indirectly, the Proceedings, this Plan, the preparation and/or implementation of the same, and/or any contact, instrument, release, agreement or other document or any other action taken or omitted to be taken with respect to any of the foregoing.

For the purposes of this Section 8, the term: (a) “**Representative**” of a Person includes any and all past and present directors, officers, shareholders (direct and indirect), related companies (direct and indirect), employees, advisors, lawyers, accountants, mandataries, agents and any other representatives of such Person; and (b) “**Proceedings**” means any and all matters directly or indirectly related to any matters contemplated or having arisen within the context of the CCAA proceedings of the Applicants since the date of the Initial Order until the Effective Date.

## SECTION 9

### MISCELLANEOUS

#### 9.1 SANCTION ORDER

In the event that this Plan is approved by the required majority of the Unsecured Creditors, the Applicants shall, unless otherwise provided by the Court, then seek the Sanction Order for the sanction and approval of the Plan. Subject to the Sanction Order being granted and to the conditions enumerated in Section 9.10 below being satisfied, this Plan shall be implemented by the Applicants and the Monitor and will be binding upon all the Creditors of the Applicants.

#### 9.2 PARAMOUNTCY

From and after the Sanction Order, any conflict between the Plan and the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, hypothec, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, by-laws of the Applicant, lease or other agreement or any other instrument, whether written or oral, and any and all amendments or supplements thereto existing between a Creditor and the Applicants as at the date of the Sanction Order will be deemed to be governed by the terms, conditions and provisions of the Plan and the Sanction Order, which shall take precedence and priority.

**9.3 WAIVER OF DEFAULTS**

From and after the Sanction Order, each Creditor shall be deemed to have waived any and all defaults then existing or previously committed by the Applicants in any covenant, warranty, representation, term, provision, condition or obligation, expressed or implied, in any contract, agreement, mortgage, hypothec, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, lease or other agreement or any other instrument, whether written or oral, and any and all amendments or supplements thereto, existing between a Creditor and the Applicants and any and all notices of default and demands for payment under any instrument, including without limitation, any guarantee, shall be deemed to have been irrevocably and forever rescinded.

**9.4 COMPROMISE EFFECTIVE FOR ALL PURPOSES**

The payment, compromise or other satisfaction of any Claim under the Plan, if sanctioned and approved by the Court shall be binding upon all Creditors and their respective heirs, executors, administrators, successors and assignees, for all purposes and, to such extent, shall also be effective to relieve any third party directly or indirectly liable for such indebtedness, whether as guarantor, indemnitor, tenant, director, joint covenantor, principal or otherwise.

**9.5 PARTICIPATION IN DIFFERENT CAPACITIES**

Creditors whose Claims are affected by this Plan may be affected in more than one capacity. Each such Creditor shall be entitled to participate hereunder in each such capacity. Any action taken by a Creditor in any one capacity shall not affect the Creditor in any other capacity unless the Creditor agrees in writing or otherwise set forth herein.

**9.6 MODIFICATION OF PLAN**

The Applicants reserve the right to file any modification of or amendment to the Plan by way of a supplementary or amended plan or plans of arrangement filed with the Court at any time or from time to time prior to the Creditors considering and voting upon the Plan, in which event, any such amended or supplementary plan or plans of arrangement shall, for all purposes, be and be deemed to be, a part of, and incorporated into, the Plan. The Applicants shall give notice by publication or otherwise to all Creditors in an affected Class of the details of any such modifications or amendments prior to the vote being taken to approve the Plan. The Applicants may propose an amendment or modification to the Plan at any Meeting of Creditors. After such Meeting of Creditors, the Applicants may at any time and from time to time vary, amend, modify or supplement the Plan if the Court authorizes the same or determines on notice that such variation, amendment, modification or supplement is of a technical nature that would not be materially prejudicial to the interests of any of the Creditors under the Plan or the Sanction Order and is necessary in order to give effect to the substance of the Plan or the Sanction Order. Finally, the Applicant may, at any time after the Sanction Order, and from time to time, vary, amend, modify or supplement the Plan with a variation, amendment, modification or supplement other than of a technical nature that would not materially prejudice the interest of any of the Creditors, without a Meeting of Creditors provided that the same is sanctioned by the Court. Such approval by the Creditors and by the Court shall be under the same terms as provided for in this Plan. The Applicants may withdraw the Plan at their entire discretion at anytime before the Effective Date.

**9.7 CONSENTS, WAIVERS AND AGREEMENT**

Upon the rendering of the Sanction Order, each Creditor shall be deemed to have consented and to have agreed to all of the provisions of this Plan in its entirety. In particular but without limitation, each Creditor shall be deemed:

- 9.7.1 subject to the Applicants having fulfilled their respective obligations under the Plan, to have executed and delivered to the Applicants all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Plan in its entirety;
- 9.7.2 subject to the Applicants having fulfilled their respective obligations under the Plan, to have waived any default by the Applicants in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Creditor and the Applicants that has occurred on or prior to the Effective Date; and
- 9.7.3 to have agreed that if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Creditor and the Applicants as at the date of the Effective Date (other than those entered into by the Applicants on, or with effect from, the Effective Date) and the provisions of this Plan, then the provisions of this Plan take precedence and priority and the provisions of such agreement or other arrangement are amended accordingly.

## **9.8 AGREEMENTS AND TRANSACTION**

Any agreement or transaction entered into by the Applicants shall be deemed to have been ratified and approved by the Creditors, and any of the Claims shall be paid and settled exclusively as per the provisions of Section 6 hereof. Neither the Monitor nor any Creditor shall have any right, recourse, action, cause of action or otherwise against the Applicants, their respective assets, directors, officers or against any other Person that may have entered into an agreement with the Applicants, of any nature whatsoever.

## **9.9 DEEMING PROVISIONS**

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

## **9.10 CONDITIONS OF IMPLEMENTATION**

The implementation of the Plan by the Applicants shall be conditional upon the fulfilment or satisfaction of the execution and delivery, to the entire satisfaction of the Applicants of: (a) all documents and instruments contemplated by the Plan; (b) the acceptance of the Plan by the majorities required as set forth in this Plan; (c) the obtaining of the Sanction Order; and (d) within five (5) days of the obtaining of the Sanction Order, the obtaining of a release (to become effective upon full payment of the amount to which they are entitled pursuant to the Plan) by Parmalat Holdings Limited and 2975483 Canada Inc. of any charge held by them covering the Proceeds (being understood that the Monitor will be entitled, from the Effective Date, to proceed to the Distributions provided for in the Plan).

## **9.11 NOTICES**

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

### **9.11.1 if to the Applicants:**

Davies Ward Phillips & Vineberg  
1501 McGill College  
26<sup>th</sup> Floor  
Montreal, Québec H3A 3N9

Attention: Denis Ferland  
Louis-Martin O'Neill

Tel.: (514) 841-6423  
Fax: (514) 841-6499

9.11.2 if to the Monitor:

RSM Richter Inc.  
2 Place Alexis-Nihon  
Suite 1820  
Montreal, Quebec H3Z 3C2

Attention: Yves Vincent, FCA  
André Hébert, CA  
Tel.: (514) 934-3400  
Fax: (514) 934-3504

with a copy to:

Davies Ward Phillips & Vineberg  
1501 McGill College  
26<sup>th</sup> Floor  
Montreal, Québec H3A 3N9

Attention: Denis Ferland  
Louis-Martin O'Neill  
Tel.: (514) 841-6423  
Fax: (514) 841-6499

9.11.3 if to a Creditor :

to the address for such Creditor specified in the Proof of Claim filed by a Creditor or, if no Proof of Claim has been filed, to such other address at which the notifying party may reasonably believe that the Creditor may be contacted.

**IN THE EVENT OF ANY DISCREPANCY BETWEEN THE ENGLISH AND THE FRENCH VERSIONS OF THIS PLAN OF ARRANGEMENT, THE ENGLISH VERSION SHALL IN ALL EVENTS AND FOR ALL MATTERS PREVAIL.**

**SIGNED IN MONTRÉAL ON THIS 2ND DAY OF FEBRUARY 2006.**

per: (S) Tony Cugliari  
Tony Cugliari  
Duly authorized representative of:  
9161-5849 Québec Inc.  
41902 Delaware Inc.  
9161-5286 Québec Inc.

SUPERIOR COURT OF QUEBEC  
(COMMERCIAL DIVISION)  
DISTRICT OF MONTREAL

COURT FILE NO. 500-11-022700-047

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AMENDED PLAN OF ARRANGEMENT

OF

9161-5849 QUÉBEC INC. (formerly known as EAUX VIVES HARRICANA INC.)

AND

41902 DELAWARE INC. (formerly known as EVH U.S.A. INC.)

AND

9161-5286 QUÉBEC INC. (formerly known as LES SOURCES PÉRIGNY INC.)

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PURSUANT TO

*THE COMPANIES' CREDITORS ARRANGEMENT ACT*

(R.S.C. 1985 c.C-36)



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Each of the undersigned Applicants 9161-5849 Québec Inc. (formerly known as Eaux Vives Harricana Inc.), 41902 Delaware Inc. (formerly known as EVH U.S.A. Inc.) and 9161-5286 Québec Inc. (formerly known as Les Sources Périgny Inc.) hereby respectfully submits the following plan of arrangement pursuant to the *Companies' Creditors Arrangement Act* (Canada).

## INTRODUCTION<sup>1</sup>

The Applicants availed themselves of the relieves and remedies provided by the CCAA, which ultimately allowed the sale of their assets as an operating unit, avoided a forced liquidation scenario and as such obtained a better value for all their Creditors.

The purpose of this Plan is to effect a compromise and arrangement between the Applicants and their Creditors with respect to all the debts and obligations of the Applicants.

As explained more fully below, the proposed Plan provides, further to the liquidation of the Applicants' assets, for the creation of a fund which, once the Secured Claims, the Crown's Claims, the Unaffected Claims, the DIP Loan and various expenses relating to the CCAA process have been paid, will be distributed to the Applicants' Unsecured Creditors. As more fully explained below, Parmalat Holdings Limited and 2975483 Canada Inc. will participate to the Plan as Unsecured Creditors.

Pursuant to the Plan, the Unsecured Creditors will receive full payment of the first \$1,000 of their Claim and the balance of the Distribution Fund will be distributed between the Unsecured Creditors ~~<proportionally to their Unsecured Claim that is a Proven Claim>~~ until the Distribution Fund has been exhausted, the whole in accordance with subsection 6.3.2 hereinafter.

## SECTION 1

### INTERPRETATION

#### 1.1 DEFINITIONS

For purposes of this Plan, the following terms shall have the meanings specified or referenced below unless otherwise expressly indicated herein or unless the context requires otherwise:

**"Accepted Claim For Voting Purposes"** means the Claim of a Creditor which is accepted for voting purposes as provided for in Sections 4 and 5 hereof;

**"Administration Charge"** has the meaning ascribed to such term in the Initial Order and/or any other Order;

**"Applicants"** means EVH, EVH U.S.A. and Périgny, or any of them, as the case may be;

**"Bar Date"** means 5:00 p.m. (Eastern Time) on July 30, 2004, which date has been determined by the Claim Process Order;

**"BIA"** means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as from time to time amended;

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<sup>1</sup> This Introduction is for information purposes only and is not part of the Plan.

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

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

“**Claim**” means any right of any Person against the Applicants or any of them in connection with any indebtedness, liability or obligation of any kind, in existence at the Determination Date and any interest then accrued thereon, whether or not such indebtedness, liability or obligation is reduced to judgment, or is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by guarantee, by surety or otherwise and whether or not such a right is executory in nature, including, without limitation, the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future based in whole or in part on facts which existed prior to or at the Determination Date. Without limitation, a Claim shall include any (i) Secured Claims, (ii) Crown’s Claims, (iii) Unsecured Claims, or (iv) any other claims that would have been claims provable in bankruptcy had the Applicant become bankrupt on the Determination Date. A Claim does not include an Unaffected Claim. A Claim shall not include any interest from and after the Determination Date, or any costs, except as expressly provided for in this Plan.

“**Claim Process Order**” means the Order rendered by the Honourable François Rolland J.S.C. (as he then was) on June 8, 2004, as may be amended;

“**Class**” shall have the meaning ascribed thereto at Section 4.1 hereof;

“**Closing Date**” means September 15, 2005;

“**Court**” means the Superior Court of Quebec (Commercial Division), District of Montreal;

“**Creditor**” means any Person having a Claim or an Unaffected Claim and may, if the context requires, mean an assignee of a Claim or a trustee, receiver, receiver manager or other Person acting on behalf of such Person. A Creditor includes a Creditor of Repudiated Contract;

“**Creditor of Repudiated Contract**” means a person with a Claim which results from a Repudiated Contract but only in respect of the portion of its Claim which result from a Repudiated Contract;

“**Crown’s Claims**” means all amounts (including interests and penalties) owing to Her Majesty the Queen in right of Canada or a Province of Canada which are referred to in Subsections 18.2(1) and 18.3(2) of the *CCAA* (including amounts subject to Subsection 224(1.2) of the *Income Tax Act* (Canada) or under any substantially similar provision of provincial legislation) that were in existence on the Determination Date and remain outstanding;

“**Crown’s Creditor**” means a Creditor having a Crown’s Claim, but only in respect of the portion of its Claim which is a Crown’s Claim;

“**Deposit**” shall have the meaning ascribed thereto at Section 2 hereof;

“**Determination Date**” means March 19, 2004, being the date of the Initial Order;

“**DIP Credit Agreement**” shall have the meaning ascribed thereto at Section 2 hereof;

“**DIP Charge**” has the meaning ascribed to such term in the Order rendered by the Honourable François Rolland J.S.C. (as he then was) on June 15, 2004, the Sale Order and/or any other Order;

“**DIP Lender**” means Royal Bank Asset Based Finance, a division of Royal Bank of Canada;

“**DIP Loan**” means the loan made by virtue of the DIP Credit Agreement, together with any amount payable pursuant to the DIP Credit Agreement;

“**Directors’ Charge**” means all matters falling within the ambit of the “Directors’ Charge” pursuant to the Initial Order and/or any other Order;

“**Distribution**” means a payment made in accordance with the Plan;

“**Distribution Fund**” shall have the meaning ascribed thereto at Section 3.1 hereof;

“**Effective Date**” means the first Business Day following the date at which all the conditions that must be fulfilled for the Plan to be implemented (as described in Section 9.10 hereof) are properly fulfilled or waived in writing by its beneficiary;

“**EVH**” means 9161-5849 Québec Inc. (formerly known as Eaux Vives Harricana Inc.);

“**EVH U.S.A.**” means 41902 Delaware Inc. (formerly known as EVH U.S.A. Inc.);

“**GAAP**” shall have the meaning ascribed thereto at Section 1.2 hereof;

“**Initial Order**” means the Order rendered by the Honourable François Rolland J.S.C. (as he then was) dated March 19, 2004, pursuant to which the Applicants were provided protection under the *CCAA*, as amended and extended;

“**Interim Period**” means the period from and including the Determination Date until the Effective Date;

“**Meeting of Creditors**” means the Creditors’ meeting called for the purposes of considering and voting upon the Plan, or any subsequent such meeting;

“**Monitor**” means RSM Richter Inc. (formerly known as Richter & Associés Inc.) through Mr. Yves Vincent FCA, CIRP, and any successor thereto appointed in accordance with the Initial Order or any other Order;

“**Morgan Stanley**” shall have the meaning ascribed thereto at Section 2 hereof;

“**Order**” means any order of the Court in the present proceedings in the Court file No. 500-11-022700-047;

“**Périgny**” means 9161-5286 Québec Inc. (formerly known as Les Sources Périgny Inc.);

“**Person**” means any individual, partnership, joint venture, entity, corporation, unincorporated organization, government or agency or instrumentality thereof, or any other juridical entity howsoever designated or constituted;

“**Plan**” means the present plan of arrangement, as may be modified or amended as provided in Section 9.6 hereof;

“**Proof of Claim**” means a proof of claim form filed by a Creditor in accordance with the Claim Process Order or any Order of the Court;

“**Proceeds**” shall have the meaning ascribed thereto at Section 2 hereof;

**“Proven Claim”** means the amount and status of a Claim of a Creditor as determined in accordance with the procedure described herein;

**“Purchaser”** shall have the meaning ascribed thereto at Section 2 hereof;

**“Purchase Agreement”** shall have the meaning ascribed thereto at Section 2 hereof;

**“Remaining Assets”** means all remaining assets of the Applicants, as of the date hereof, not sold to the Purchaser pursuant to the Purchase Agreement, including without limitation, all cash and bank accounts (including any remaining portion of the Deposit), moneys and receivables of any kind and nature presently owed or which shall in the future become owing or payable to the Applicants, including, without limitation, any and all tax credit receivables, tax refunds and otherwise. The shares held by EVH in the share capital of each of Périgny and EVH U.S.A. are not part of the Remaining Assets;

**“Representatives”** shall have the meaning ascribed thereto at Section 8 hereof.

**“Repudiated Contract”** means an agreement or contract of any nature whatsoever, whether verbal or written (including but not limited to a contract of employment), to which any of the Applicants is a party and which has been terminated, repudiated, resiliated, cancelled, amended or withdrawn by any of the Applicants as per the terms of the Initial Order as amended and extended;

**“Sale Order”** means the Order rendered on July 29, 2005 by Mr. Chief Justice François Rolland approving the transaction contemplated in the Purchase Agreement and rendering various other remedies;

**“Sanction Order”** means the Order to be made pursuant to the *CCAA* sanctioning the Plan, (subject to Section 9.6 hereof), provided that such Order shall not be the Sanction Order until: (i) the expiry of the applicable appeal period without any appeal having been instituted; or (ii) in the event of an appeal or application for leave to appeal, final determination by the applicable appellate tribunal sanctioning the Plan;

**“Secured Claim”** means a Claim (including interests) which payment is guaranteed by a Security or which is based on a Security. For purposes of clarity, a Claim secured by the DIP Loan, the Administration Charge and the Directors’ Charge shall not be considered as a Secured Claim. For purposes of clarity, a Crown’s Claim shall not be considered as a Secured Claim. Moreover, should a portion of a Secured Claim be, in the opinion of the Monitor, in excess of the value at the date of this Plan of the assets charged or affected by such Secured Claim, said portion shall be considered as an Unsecured Claim and shall be governed by this Plan. Any Claim or demand that may result from the termination of any agreement entered into with any Secured Creditor shall be considered as an Unsecured Claim;

**“Secured Creditor”** means a Creditor having a Secured Claim, but only in respect of the portion of its Claim which is a Secured Claim;

**“Security”** means a valid and enforceable hypothec, mortgage, prior claim, pledge, charge, lien or other security interest on or against the property of the Applicants or any part thereof as security for a debt due or accruing due from the Applicant. For the purpose of clarity, a reservation of ownership does not constitute a Security;

**“Unaffected Claim”** means a claim resulting from an Unaffected Obligation;

**“Unaffected Creditor”** means a Creditor having an Unaffected Claim but only in respect of this Unaffected Claim and to the extent that this Plan does not otherwise affect said Claim;

**“Unaffected Obligation”** means any right of any Person against the Applicants or any of them in connection with any indebtedness, liability or obligation of any kind which came into existence during the Interim Period and any interest thereon, including any obligation of the Applicants toward Creditors who

have supplied or shall supply services, utilities, goods or materials or who have or shall have advanced funds to the Applicants during the Interim Period, but only to the extent of their claims in respect of the supply of such services, utilities, goods, materials or funds during the Interim Period and to the extent that the said claims are not otherwise affected by this Plan. An Unaffected Obligation shall, without limiting the generality of the foregoing, include a payment to an employees that has been employed by the Applicants after the Determination Date, which payment shall only include any regular pay and holiday pay to which said employee may be entitled during this period;

**“Unsecured Claim”** means a Claim that is not a Secured Claim or a Crown’s Claim. Without limitation, Unsecured Claims shall include:

- (i) Claims of Secured Creditors in respect of the portion of their Claims which exceeds, in the opinion of the Monitor, the value at the date of this Plan of the assets charged or affected by the Security held, as well as any Claim or demand that may result from the termination of any agreement entered into with any such Secured Creditor;
- (ii) Claims of Her Majesty the Queen in right of Canada or a Province of Canada which are not Crown's Claims;
- (iii) Claims of Creditors based on any volume, sale or purchase program, volume rebate, or any other like claims;
- (iv) any Claim for goods supplied or sold within the thirty (30) day period prior to the Determination Date, or any other Claim of a like nature;
- (v) any Claim which results from a Repudiated Contract, as per the terms of Section 5.3 hereof or otherwise;
- (vi) any Claim of a Creditor which has a reservation of ownership and which has opted not to take back the sold property; and
- (vii) the Claim of Parmalat Holdings Limited and 2975483 Canada Inc., as per Subsection 6.1.4 below (and only for the purpose of this Plan as set out in said Subsection 6.1.4).

**“Unsecured Creditor”** means a Creditor having an Unsecured Claim, but only in respect of the portion of its Claim which is an Unsecured Claim.

## **1.2 ACCOUNTING TERMS**

All accounting terms not otherwise defined herein shall have the meanings ascribed to them, from time to time, in accordance with Canadian generally accepted accounting principles including those prescribed by the Canadian Institute of Chartered Accountants (“*GAAP*”).

## **1.3 CURRENCY**

All references herein to currency are to Canadian dollars unless otherwise expressly stipulated herein. If, for the purposes of voting or distribution, an amount denominated in a currency other than Canadian dollars must be converted to Canadian dollars then such amount shall be regarded as having been converted at the noon spot-rate of exchange quoted by the Bank of Canada for exchanging such currency into Canadian dollars at the Determination Date (being 1.3310 for the United States dollar, 0.9951 for the Australian dollar, 1.6329 for the Euro, 0.7859 for the Singapore dollar and 0.01244 for the Japanese yen).

**1.4 INTERPRETATION NOT AFFECTED BY HEADINGS**

The division of this Plan into Sections, sections, subsections, clauses and paragraphs and the insertion of an introduction as well as of a table of contents and headings are for convenience of reference only and shall not affect the construction or interpretation of this Plan.

**1.5 DATE OF ANY ACTION**

In the event that any date on which any action is required to be taken hereunder is not a Business Day, then such action shall be required to be taken on the immediately next following Business Day.

**1.6 TIME**

All times expressed herein make reference to local time in Montreal, Québec, Canada unless otherwise stipulated.

**1.7 NUMBERS AND GENDER**

In this Plan, where the context requires, words importing the singular number shall include the plural and *vice versa* and words importing one gender shall include all genders.

**1.8 STATUTORY REFERENCES**

Reference in this Plan to any statute shall include all regulations made or adopted thereunder, all amendments to such statute or regulations in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation.

**1.9 SUCCESSORS AND ASSIGNS**

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

**SECTION 2**

**BACKGROUND**

**The Applicants**

9161-5849 Québec Inc. (formerly known as EVH) is a company duly constituted in 1997 under the laws of Québec in order to source, bottle and distribute natural spring water from a pristine source located in Northern Quebec, in Saint-Mathieu-d'Harricana. The source of the water is an "Esker", a rare geological formation that produces spring water of exceptional quality through its natural filtration process.

41902 Delaware Inc. (formerly known as EVH U.S.A.) is a legal person duly constituted under the laws of Delaware, United States. EVH U.S.A. acted solely as a marketing, sales and distributing agent for EVH and had no customers other than EVH. As such, EVH U.S.A. is dependent upon EVH and cannot be dissociated therefrom, which explains the present joint Plan.

9161-5286 Québec Inc. (formerly known as Périgny) is a legal person duly constituted under the laws of Québec. Périgny is a wholly-owned subsidiary of EVH. While Périgny is a distinct legal entity from EVH, its assets and liabilities cannot be disassociated from EVH, which explains the present joint Plan.



## History

In 2002, following extensive testing and development work, EVH proceeded to construct a bottling, warehousing and distribution facility. EVH invested almost Sixty Million dollars (\$60,000,000) in order to build a facility considered to be “state of the art” within the beverage industry. While only operating a single shift in its initial operations, EVH employed over Sixty (60) people locally. It was anticipated that as volume increased, EVH would eventually move to a “three shift” operation, employing One Hundred and Fifty (150) to Two Hundred (200) people.

EVH introduced its bottled water, “ESKER” into select markets in Canada and southwest United States late in 2002. Significant investments were made by EVH in research, marketing, advertising and trade allowances during the first year of ESKER’s launch. By late 2003, ESKER was beginning to develop a stable and growing loyal user group. EVH was revising its operating plan for 2004, incorporating test-market learning and modifying to optimize competitiveness within the bottled water category. EVH’s intention was to further expand the launch into northeast United States and to launch nationally in Canada.

## The CCAA Filing

In 2004, EVH was still anticipated to be in a development stage. It was not yet profitable, requiring ongoing investment to fund working capital as well as interest on loans. As EVH, at such time, was no longer able to meet its liability generally as they became due, EVH management and ownership began exploring financing alternatives. It was determined that the best alternative for current owners, employees, creditors and other interested parties was to seek the issuance of the Initial Order.

On March 19, 2004, the Court granted the Initial Order pursuant to the terms therein set forth, as contained in the record of the Court. On June 1<sup>st</sup>, 2004, the remedies and relieves contained in the Initial Order were extended to Périgny, with retroactive effect. The Initial Order has been amended and extended on various occasions and remains in force.

Further to the filing of the Initial Order, EVH liquidated all inventory in its possession and receivables were collected in respect of the same. Given, *inter alia*: (i) the limited revenues generated from the sale of the remaining inventory and the collection of the residual accounts receivable; and (ii) the fact that EVH had ceased to operate, additional funds became necessary.

On June 10, 2004, EVH, Périgny and the DIP Lender executed the DIP Credit Agreement providing for an advance of up to \$3,578,000. On June 15, 2004, the Honourable François Rolland J.S.C. (as he then was) rendered an Order approving the DIP Credit Agreement and creating the DIP Charge.

Between the approval of the DIP Credit Agreement on June 10, 2004 and the Sale Closing in August 2005, EVH used the DIP Financing provided by the DIP Lender to finance its funding requirements.

## Initial Marketing Process

After having explored their options, the Applicants determined that it was in the best interests of their creditors to sell their assets. The Applicants therefore commenced a sale process with the assistance of Scotia Capital (“Scotia”).

The possibility of the purchase of assets of EVH was discussed with over sixty (60) prospective parties, including North American beverage companies, bottled water companies, bottled water industry participants, financial buyers, distressed asset purchasers and liquidators.

Between April 6, 2004 and June 16, 2004 in excess of 30 parties received information packages from Scotia. During that period, 14 parties executed confidentiality agreements. Out of such 14 parties, 9 visited

the data room established for the sale process, in order to examine the books, records and other documents regarding the Applicants therein contained, and 7 such parties conducted site visits of EVH's plant.

A total of 4 formal offers were received through the process.

Further to the receipt of the offers and pursuant to the recommendation of Scotia, the Applicants entertained discussions with the offeror it felt would provide the best purchase price.

On July 30, 2004, the said offeror submitted a revised offer to EVH which was accepted by it (the "**July 30 Offer**").

Unexpected problems were encountered after the acceptance of the July 30 Offer. Despite a demand letter and further communications, the offeror did not comply with its obligations pursuant to the Offer, and the Applicants had no choice but to terminate the negotiations with the offeror and to pursue other options.

### **Second Marketing Process**

As a result of the failure to close the contemplated sale transaction, throughout the months of October and November 2004, Scotia and EVH re-established communications with all those parties that had been identified as potential buyers.

After having examined the alternatives available and due to the fact that interested parties had manifested their interest to acquire the Applicants' assets, the Applicants decided, in collaboration with the Monitor and Scotia, to launch a new sale process and, as such, to canvass, once again, the market in order to attempt to complete a sale transaction.

Pursuant to such new marketing process, the delay within which offers were to be filed was set to November 30, 2004.

During the months of October and November, in excess of 14 parties received an updated information package and/or were contacted by either the Applicants, Scotia or the Monitor. Moreover, representatives of Scotia, the Applicants and the Monitor had discussions with various potential bidders.

On November 30, 2004, offers and letters of interest were received from five (5) parties, but none of them contained terms and/or a purchase price that were acceptable. However, the Monitor, Scotia and EVH continued to entertain discussions with three (3) different parties.

### **Extension of the Marketing Process**

The initial intention of the Monitor, EVH and Scotia was to make a final decision regarding the offers received by December 20, 2004. However, in the interests of fairness to the parties remaining in the process and with a view of concluding a transaction, it appeared that it would be beneficial to pursue such discussions through January 2005. The interested parties were advised by a letter sent on December 22, 2004 that it was the Monitor's intention to deal with those offerors who would submit an acceptable offer in form and substance by January 21, 2005.

A total of four (4) offerors and two (2) letters of interest were submitted to the Monitor on or before January 21, 2005.

### **Quebec Water Inc.'s Offer**

Among the offers received on January 21, 2005 an Offer was received from a Delaware Corporation, Quebec Waters Inc. ("**Quebec Waters**").

After having reviewed the offers, the Monitor and EVH, with the assistance of Scotia, came to the conclusion that the offer presented by Quebec Waters was the best offer. Furthermore, the purchase price offered by Quebec Waters was greater than that provided for in any other offer received.

On January 21, 2005, EVH accepted the offer submitted by Quebec Waters, (as amended and improved further to its original submission, the “**Quebec Waters Offer**”).

On February 23, 2005, the Court approved the sale of the Applicants’ assets to Quebec Waters.

Pursuant to the Quebec Waters Offer, a sum of \$1,000,000 was to be deposited with the Monitor upon the satisfaction of certain conditions set forth therein (the “**Deposit**”). This Deposit was received on March 21, 2005.

The Applicants and the Monitor made arrangements for closing, ultimately scheduled for May 4, 2005. Closing documents and agreements were circulated and agreed upon.

On May 4, 2005, a representative of Quebec Waters arrived at the time and place scheduled for closing. He indicated that no funds were available and that closing would not occur. As a result, the Deposit was confiscated. Quebec Waters did not contest the confiscation of the Deposit.

Further to the default of Quebec Waters under its obligations in the Quebec Waters Offer and the confiscation of the deposit the Court rendered on May 27 2005 an Order which, among other things (a) acknowledged the default of Quebec Waters and its failure to complete the transaction contemplated in the its offer; (b) declared that as a result of Quebec Waters’ default, the conclusions contained in the February 23, 2005 Order of the Court ordering the Applicants and the Monitor to complete the transaction contemplated in the Offer were of no effect; and (c) declared that such foregoing orders do not affect the Applicants’ rights and recourses against Quebec Waters or any other person as a result of Quebec Waters’ default, including with respect to the confiscation of the Deposit.

#### **Eaux Vives Water Bottling Corp.’s Offer**

Since the termination of the agreement with Quebec Waters as a result of Quebec Waters’ default, the Applicants assessed their alternatives.

Following the failed attempt to close the Quebec Waters transaction, the Applicants (directly and through counsel and the Monitor) received an expression of interest from Morgan Stanley & Co. (“**Morgan Stanley**”), a well-known and respected financial institution in the United States and Canada.

On May 25, 2005, the Monitor received from Morgan Stanley (on its behalf or on behalf of a nominee to be selected by it) a signed expression of interest indicating they were “highly interested” in acquiring the Applicants’ assets.

Further to various discussions with the Applicants and the Monitor on May 26, 2005, Morgan Stanley sent to the Monitor a revised expression of interest with certain improved terms and provisions (the “**EOI**”).

In view of several facts such as the content of the EOI, previous canvassings, offers received in the past, the emergency to close a transaction and the existence of indebtedness owing to the DIP Lender, the Applicants and the Monitor concluded that it was not appropriate to explore further options in order to attempt to complete a transaction and that a new sale process to canvass the market once again would not provide a better outcome than the EOI.

After having reviewed the terms and provisions contained in the EOI, the Applicants and the Monitor concluded that it was advantageous and in the best interest of all of the Applicants’ creditors. In addition to the purchase price and terms contained in the EOI, one of the important considerations of the Applicant and

the Monitor was based on the understanding that Morgan Stanley would be able to close the transaction within a short timeframe and that the requisite funds were available.

As a result of the foregoing considerations, the Monitor, on behalf of the Applicants, accepted the EOI on May 27, 2005, subject to the approval of the Court.

Scotia did not participate in the matters leading up to the receipt by EVH of the EOI or in any of the discussions related thereto or subsequent thereto.

On July 15, the Applicants and Eaux Vives Water Bottling Corp., an entity affiliated with Morgan Stanley and selected by Morgan Stanley as its nominee for the transactions (the “**Purchaser**”), entered into an asset purchase agreement pursuant to which the Applicants agreed to sell all of their assets (save for some excluded assets) to the Purchaser, the whole on the terms and conditions more fully therein set forth (collectively with any amendments thereto agreed to between the parties, the “**Purchase Agreement**”). The contemplated transaction provided for a cash payment of \$18,000,000 (the “**Proceeds**”).

On July 29, 2005 the Court approved the transaction as contemplated in the Purchase Agreement (the “**Sale Order**”).

On August 25, 2005, further to the accomplishment of all the conditions contemplated in the Purchase Agreement, the Applicants and the Purchaser completed the transactions of purchase and sale pursuant thereto. The entirety of the Proceeds was received by counsel to the Applicants to be disbursed to the Monitor upon the registration of all deeds and other instruments evidencing the said transactions. Accordingly, on September 15, 2005, the entirety of the Proceeds was transferred to the Monitor.

The Proceeds received pursuant to the execution of the Purchase Agreement are substantially higher than the realisation that would have been obtained through the forced liquidation of EVH assets on an individual basis.

Pursuant to the Sale Order, the Monitor was required to use the Proceeds to reimburse the DIP Credit Agreement upon the consummation of transactions related to the Offer. As a result thereof, on September 16, 2005, the DIP Lender was fully repaid, out of the Proceeds, in principal, interest and fees in an aggregate amount of \$2,848,716.60. Furthermore, pursuant to the Sale Order, the Monitor reimbursed the amount then covered by the Administration Charge, as well as any and all outstanding Municipal and School taxes due and unpaid for the period up to and including the Closing Date.

### SECTION 3

#### PURPOSE AND EFFECT OF THE PLAN

##### 3.1 PURPOSE

The Applicants availed themselves of the relieves and remedies provided by the CCAA, which ultimately allowed the sale of their assets as an operating unit, avoided a forced liquidation scenario and as such obtain a better value for all their Creditors.

The purpose of this Plan is to effect a compromise and arrangement between the Applicants and their Creditors with respect to all the debts and obligations of the Applicants. In accordance with the Initial Order, the Sale Order, any other Order and the terms herein set forth, a fund will be constituted from:

- a) the Proceeds; and

- b) the Remaining Assets and the proceeds resulting from the liquidation of the Remaining Assets;

less

- a) the amounts paid in virtue of Section 6.10 hereof as well as any other amounts covered by the Administration Charge and any amounts covered by the Directors' Charge;
- b) any other amount the Monitor and the Applicant deem required for the completion of the CCAA process, including (without limitation) any amount that will be required in the future to pay the expenses referred to in Section 6.10 hereof;
- c) the amount paid in reimbursement of the DIP Loan;
- d) the amount paid in reimbursement of the Secured Claims, should there be any;
- e) the amount paid in reimbursement of the Crown's Claims, should there be any;
- f) the amount paid in reimbursement of the Unaffected Claims, should there be any.

(the net result of which will constitute "**Distribution Fund**").

The Distribution Fund will be used to pay the Unsecured Creditors in accordance with the Plan.

For greater certainty, any and all payments to the Creditors shall be made exclusively in accordance with this Plan and only to the extent the Proceeds and the Remaining Assets allow it.

Payments made in accordance with the Plan will provide to the Applicants (and the other beneficiaries enumerated in Section 8 below) the releases provided for in Section 8 below.

### **3.2 PERSONS AFFECTED**

On and after its acceptance by the Creditors and its sanction by the Court, and as per the *CCAA*, this Plan will become effective and shall be binding upon the Applicants and the Creditors.

## **SECTION 4**

### **CLASSIFICATION OF CREDITORS, VALUATION OF CLAIMS AND PROCEDURAL MATTERS**

#### **4.1 CLASSIFICATION OF CREDITORS**

The Plan provides for four Classes of Creditors: Secured Creditors, Crown's Creditors, Unsecured Creditors and Unaffected Creditors.

As the Secured Creditors, the Crown's Creditors and the Unaffected Creditors will be paid in full pursuant to the Plan, their approval of the Plan is not required.

For the purposes of considering and voting upon the Plan, the Unsecured Creditors shall, to the extent herein provided, be entitled to vote upon the Plan.

## 4.2 MEETING OF CREDITORS

A Meeting of Creditors shall be held in accordance with the terms of the present Plan, the Claim Process Order and the applicable law:

- 4.2.1 Upon filing of the Plan, the Monitor will convene the Meeting of Creditors at a date to be determined by the Monitor and at a place that the Monitor will judge appropriate. The Meeting of Creditors will be convened for the purpose of voting on the Plan, unless the Creditors decide by ordinary resolution (in accordance with the definition of said expression under the *BIA*) to postpone said Meeting;
- 4.2.2 The notice of convocation will be sent in accordance with Section 7.1.1 of the Plan to all Creditors having filed a Proof of Claim before the Bar Date;
- 4.2.3 The Meeting of Creditors shall be conducted by the Monitor and all Proofs of Claim shall be delivered in accordance with the provisions of this Plan, the *CCAA*, the Claim Process Order and any other Order which may be rendered in respect of the procedure governing the Meeting of Creditors to be held for purposes of voting on the Plan; and
- 4.2.4 A representative of the Monitor shall preside as the chair of the Meeting of Creditors and shall decide upon all matters relating to the conduct of such Meeting of Creditors and any question or dispute arising at any meeting, from which any Creditors may appeal such decision to the Court, within five (5) days of the rendering of same. The only Persons entitled to attend the Meeting of Creditors are those Persons, including the holders of proxies, entitled to vote at the Meeting of Creditors and their legal counsel as well as the officers, directors, auditors and legal counsel of the Applicants. The Secured Creditors, Crown's Creditors and Unaffected Creditors shall also be entitled to attend the Meeting of Creditors. Any other Person may be admitted on invitation of the chair of the Meeting of Creditors or with the unanimous consent of the attending Creditors at the Meeting of Creditors;
- 4.2.5 Any Creditor which does not attend and is not represented by proxy shall be entitled to vote on the Plan by filing with the Monitor before the beginning of the Meeting of Creditors a voting letter expressing his vote, failing which such Creditor shall have no right to vote.

## 4.3 APPROVAL BY CREDITORS

In order for this Plan to be binding upon the Creditors of the Applicants and the Applicants, in accordance with the *CCAA*, it must first:

- 4.3.1 be accepted as set forth by the *CCAA*, being by a majority in number (50% + 1) of the Unsecured Creditors (including Parmalat Holdings Limited and 2975483 Canada Inc.) who actually vote upon the Plan (in person or by proxy) at the Meeting of Creditors, representing two-thirds (2/3) in value of the Accepted Claims for Voting Purposes of the Unsecured Creditors who actually vote upon the Plan (whether in person or by proxy) at the Meeting of Creditors; and
- 4.3.2 then be sanctioned by the Court in accordance with the *CCAA*.

The only Unsecured Creditors entitled to vote on the Plan are those having filed a Proof of Claim with the Monitor in accordance with the Claim Process Order.

## 4.4 PROCEDURE FOR VALUING CLAIMS

The procedure for valuing Claims and resolving disputes shall be as set forth at Section 5 hereof and the Initial Order and the Claim Process Order. The Applicants (on their behalf and on behalf of the Monitor)

as well as the Monitor, hereby reserve their right to seek, if required, the assistance of the Court in valuing the Claim of any Creditor to ascertain the result of any vote on the Plan or the amount that is payable, or to be distributed, to such Creditor under this Plan, as the case may be.

#### **4.5 CLAIMS FOR VOTING PURPOSES**

- 4.5.1 Each Creditor having an Unsecured Claim shall be entitled to attend and to vote at the Meeting of Creditors. Each Unsecured Creditor who is entitled to vote shall be entitled to that number of votes at the Meeting of Creditors as is equal to the dollar value of its Unsecured Claim as determined by the Monitor or otherwise by the Court.
- 4.5.2 Where any Creditor appeals a Notice of Revision or Disallowance (as defined in the Claim Process Order) to the Court, but the Proven Claim has not been finally determined to the date of the Meeting of Creditors, the Monitor, in conjunction with the Applicants, will determine the amount of the Proof of Claim for the purpose of voting. The amount determined by the Monitor, in conjunction with the Applicants, shall be the amount of the Proof of Claim admitted for voting purposes;
- 4.5.3 If the holder of a Claim or any subsequent holder of the whole of a Claim who has been acknowledged by the Monitor as the Creditor in respect of such Claim transfers or assigns the whole of such Claim to another Person, neither the Monitor nor the Applicants shall be obligated to give notice to or to otherwise deal with the transferee or assignee of that Claim as if it was the Creditor in respect thereof, unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, have been received and acknowledged by the Monitor. Thereafter, such transferee or assignee shall for the purpose hereof constitute the Creditor in respect of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim prior to receipt and acknowledgement by the Monitor of satisfactory evidence of such transfer or assignment;
- 4.5.4 If the holder of a Claim (or any subsequent holder of the whole of a Claim who has been acknowledged by the Monitor as the Creditor in respect of such Claim) transfers or assigns the whole of such Claim to more than one Person or part of such Claim to another Person or Persons, such transfer or assignment shall not create a separate Claim or Claims and such Claim shall continue to constitute and be dealt with as a single Claim notwithstanding such transfer or assignment. The Monitor and the Applicants shall in each such case not be bound to recognize or acknowledge any such transfer or assignment and shall be entitled to give notices to and to otherwise deal with such Claim only as a whole and then only to and with the Person last <del>H</del>Holdings such Claim in whole as the Creditor in respect of such Claim. However, such Person may, by notice in writing to the Monitor, direct that subsequent dealings in respect of such Claim (but only as a whole) shall be with a specified Person and in such event, every Creditors, transferee(s) or assignee(s) of the Claim for the whole of such Claim shall be bound by any notices given or steps taken in respect of such Claim.

#### **4.6 LOSS OF RIGHT TO PARTICIPATE IN THE PLAN**

- 4.6.1 As stipulated in the Claim Process Order, a Creditor having a Claim (whether an Secured Claim, a Crown's Claim or an Unsecured Claim) (unless dealt with differently at Section 4.6.2 below) that has not filed a Proof of Claim by the Bar Date in accordance with the Claim Process Order:
- (a) is not entitled to any further notice;
  - (b) is not entitled to participate as a Creditor in these proceedings;
  - (c) is not entitled to vote on any matter in these proceedings, including the Plan;
  - (d) is barred from receiving any Distribution in respect of such Claim; and

- (e) is barred from seeking payment of said Claim;

In any such case, the Applicants have been discharged of said Claim;

4.6.2 As stipulated in the Claim Process Order, any Creditor of Repudiated Contract which has not filed a Proof of Claim in accordance with the Claim Process Order:

- (a) shall not be entitled to any further notice; and
- (b) shall not be entitled to participate as a Creditor in these proceedings (which, by way of example, includes, but shall not be limited to, the right to vote on the Plan or the right to receive any Distribution pursuant to the Plan) until such time as such Creditor of Repudiated Contract has filed a Proof of Claim, whereupon such Creditor of Repudiated Contract shall be entitled to participate in all steps which remain outstanding in the proceedings as long as such Creditor of Repudiated Contract has filed a Proof of Claim by a date which is the earlier of:
  - (i) thirty (30) days from the date at which its contract has been repudiated; or
  - (ii) the Effective Date;

failing which the claim of such Creditor of Repudiated Contract shall be forever barred, prescribed and extinguished. In any such case, the Applicants have been/will be discharged of said Claim.

4.6.3 Further to the acceptance of the Plan by the Creditors and its sanction by the Court, other than in respect of the Applicants' obligations pursuant to this Plan and subject to the fulfilment of such obligations, the Applicants shall be released from all Claims and Unaffected Claims of all Creditors, whether or not a Proof of Claim has been filed, in accordance with the terms of Section 8 below.

## SECTION 5

### PROCEDURE FOR VALUATION OF CLAIMS

#### 5.1 DETERMINATION OF CLAIMS

As stipulated in the Claim Process Order, Proofs of Claim shall be governed by the following provisions:

- 5.1.1 The Monitor, with the assistance of the Applicants, shall review all Proofs of Claim filed on or before the Bar Date, and the Monitor, in consultation with the Applicants, shall accept, revise or disallow the amounts and/or terms set out therein for voting and distribution purposes under the Plan;
- 5.1.2 The Monitor will use reasonable discretion as to the adequacy of compliance in the manner in which a Proof of Claim is completed and executed and may, where it is satisfied a Claim has been adequately proven, waive strict compliance with the requirements of the Claim Process Order as to the form and content of a Proof of Claim;
- 5.1.3 Any Person who intends to dispute a Notice of Revision or of Disallowance shall make a Motion to the Court, on notice to the Monitor and the Applicants, returnable as soon as reasonably possible but in any event within ten (10) days from service of the Notice of Revision or of Disallowance;
- 5.1.4 Where a Creditor receives a Notice of Revision or of Disallowance and fails to make a Motion to the Court within the time limit provided hereof, the value and status of such Creditor's Claim for



all purposes under the Plan shall be deemed to be as set out in the Notice of Revision or of Disallowance and such value and status, if any, shall constitute such Creditor's Proven Claim;

5.1.5 The Monitor, in conjunction with the Applicants, may consensually resolve and/or settle with any Creditor the amount of its Claim for voting and/or Distribution purposes;

## **5.2 SET-OFF TO APPLY**

The Proven Claim of a Creditor shall be net of: (a) any amount owing by the Creditor to the Applicants (including, without limitation, on account of prompt payment, volume and financial rebates and discounts and other like allowances), the amount of which set-off will be verified in proving the Claim; and (b) damages caused to the Applicants by the Creditors, including as a result of the failure by this Creditor to release goods owned by the Applicants in violation of the Initial Order.

## **5.3 REPUDIATED CONTRACTS**

In accordance with the Initial Order, the Applicants are entitled, upon the sending of a written notice to such effect, to terminate, resiliate and cancel any and all agreements it has entered into. Any Claim or alleged Claim arising from any Repudiated Contracts shall be dealt with as set forth in this Plan.

# **SECTION 6**

## **TREATMENT OF CREDITORS' CLAIMS AND VOTING**

### **6.1 SECURED CREDITORS**

#### **6.1.1 Voting**

Secured Creditors are not entitled to vote upon the Plan as their Secured Claim will be paid (out of the Proceeds and the Remaining Assets) in full in accordance with the Plan. Accordingly, the Secured Creditors are deemed to have voted in favour of the Plan.

#### **6.1.2 Treatment of the Secured Creditors' Claims**

Each Secured Creditor having filed a Proof of Claim in accordance with the Claim Process Order shall, in full and final satisfaction of its Secured Claim, be paid (out of the Proceeds and the Remaining Assets) an amount equal to its Secured Claim owing and determined to be a Proven Claim, in principal and accrued and unpaid interest determined as at the date of the payment to be made. The Monitor shall pay or cause to be paid in full to the Secured Creditors the amounts referred to in the present Section 6.1.2 against delivery by each such Secured Creditor of a full and complete discharge of all Secured Claims and all Security held by or on behalf of such Secured Creditor.

#### **6.1.3 Effect of Plan Implementation**

Further to the payment referred to in this Section 6.1.2, the Secured Claims shall be discharged and the Applicants and any Person that might be responsible in respect of such Secured Claims shall thereupon be forever and irrevocably released from all such Secured Claims in accordance with Section 8 below.

6.1.4 Secured Claim of 2975483 Canada Inc. and Parmalat Holdings Limited

The Sale Order expressly stated that the cancellation of 2975483 Canada Inc.'s hypothecs by effect of the Sale Order did not affect the rights and status of Parmalat Holdings Limited (formerly known as Parmalat Canada Limited) and/or 2975483 Canada Inc. as creditors of EVH (or of any of the Applicants) under this Plan. The Sale Order further declared that any and all rights and security that Parmalat Holdings Limited and/or 2975483 Canada Inc. had or may have had over or in respect of the assets sold to Eaux Vives Water Bottling Corp. shall charge and apply as against the Proceeds.

The Applicants have been informed that 2975483 Canada Inc. and Parmalat Holdings Limited, which have filed a proof of claim as Secured Creditors for an amount of 87,488 942.82 \$, are agreeable to be treated as Unsecured Creditors for the purposes of the Plan, conditionally to the Plan being accepted by the Creditors and sanctioned by the Court in its present form. As a result, for the purposes of this Plan (including (without limitation) Subsections 4.2, 4.3 and 6.3), the Claim of 2975483 Canada Inc. and Parmalat Holdings Limited shall be treated as an Unsecured Claim and 2975483 Canada Inc. and Parmalat Holdings Limited shall vote, receive a Distribution and participate to the Plan as Unsecured Creditors. The payment of Parmalat Holdings Limited and 2975483 Canada Inc.'s dividend as Unsecured Creditors is conditional to the delivery by them of a release with respect to any Security held over the Proceeds by them or on their behalf.

Parmalat Holdings Limited and 2975483 Canada Inc. have however expressly reserved all their rights and recourses, including with respect to their charge over the Proceeds, should the Plan not be implemented for any reason whatsoever. The release by 2975483 Canada Inc. and Parmalat Holdings Limited of any Security they may have over the Proceeds is a condition for the implementation of the Plan.

**6.2 CROWN'S CREDITORS**

6.2.1 Voting

Crown's Creditors are not entitled to vote upon the Plan as their Crown's Claim will be paid (out of the Proceeds and the Remaining Assets) in full in accordance with the Plan. Accordingly, the Crown's Creditors are deemed to have voted in favour of the Plan.

6.2.2 Treatment of Crown's Claims

Each Crown's Creditor having filed a Proof of Claim in accordance with the Claim Process Order shall, in full and final satisfaction of their Crown's Claim, be paid (out of the Proceeds and the Remaining Assets) an amount equal to its Crown Claim determined to be a Proven Claim. The Monitor shall pay or cause to be paid to the Crown the amounts referred to in this Section.

6.2.3 Effect of Plan Implementation

Further to the payment referred to in this Section 6.2, the Crown's Claims shall be discharged and the Applicants and any Person that might be responsible in respect of such Crown's Claims will be forever and irrevocably released from all Crown's Claims in accordance with Section 8 below.

6.3 UNSECURED CREDITORS'

6.3.1 Voting

Each Unsecured Creditor having filed a Proof of Claim in accordance with the Claim Process Order shall be entitled to vote in the Unsecured Creditors' Class to the extent of the amount which is equal to its Unsecured Creditors' Claim which is an Accepted Claim for Voting Purposes.

6.3.2 Treatment of Unsecured Claims

~~<Providing the Distribution Fund allows it, each>~~ **Each** Unsecured Creditor having filed a Proof of Claim in accordance with the Claim Process Order shall be entitled to receive, in full and final satisfaction of its Unsecured Claim, out of the Distribution Fund:

- (1) with respect for the first \$1,000 of their Unsecured Claim determined to be a Proven Claim, the lesser of \$1,000 and the amount of the Creditor's Unsecured Claim determined to be a ~~Prove~~n Claim; and
- (2) with respect to the portion of their Unsecured Claim determined to be a Proven Claim over \$1,000, an amount corresponding to ~~<their pro-rata share of the Distribution Fund>~~ 20% of the balance of the Unsecured Claim determined to be a Proven Claim (net of the amounts ~~<used for the payments provided for in>~~ paid pursuant to subparagraph (1) above).

In calculating the dividend payable to each Unsecured Creditor pursuant to the present paragraph (2), the amounts paid pursuant to paragraph (1) above shall be deducted~~<from the Distribution Fund and>~~ from each Unsecured Claim determined to be a Proven Claim. (For example, if a Creditor has an Unsecured Claim determined to be a Proven Claim of \$5,000, an amount of \$1,000 will be paid in full pursuant to paragraph (1) above and the amount of its Proven Claim for the calculation provided for in the present paragraph (2) will be \$4,000).

For purposes of clarity, should this Plan be implemented, 2975483 Canada Inc. and Parmalat Holdings Limited's Proven Claims will be treated as Unsecured Claims pursuant to the Plan and their dividend will be calculated in accordance with the present Subsection 6.3.2. Furthermore, the amount of 2975483 Canada Inc. and Parmalat Holdings Limited's Proven Claims shall be included into the aggregate amount of all Unsecured Claims of Unsecured Creditors determined to be Proven Claims. However, 2975483 Canada Inc. and Parmalat Holdings Limited have agreed to waive a portion of the dividend payable to them pursuant to the Plan in order to allow the other Unsecured Creditors having a Proven Claim to receive the dividend provided for in this subsection 6.3.2.

The Monitor shall pay or cause to be paid to the Unsecured Creditors the amounts referred to in this Section.¶

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**6.3.3 Effect of Plan Implementation**

Further to the payments referred to in subsection 6.3.2, the Claims of all Unsecured Creditors shall be discharged and the Applicants and any Person that might be responsible in respect of such Unsecured Claims will forever and irrevocably be released from all such Unsecured Claims in accordance with Section 8 below.

**6.4 UNAFFECTED CREDITORS**

Unaffected Creditors are not entitled to vote upon the Plan as Unaffected Claims will be paid in full (out of the Proceeds and the Remaining Assets) to the Unaffected Creditors in accordance with this Plan. Accordingly, the Unaffected Creditors are deemed to have voted in favour of the Plan.

Further to the payment of the Unaffected Claims, the Applicants and any Person that might be responsible in respect of such Unaffected Obligation shall thereupon be forever and irrevocably released from all Unaffected Claims in accordance with Section 8 below.

**6.5 INTEREST**

Save as provided for by this Plan, no interest and/or penalty shall accrue or be paid on the Claims of Creditors from and after the Determination Date. Any such interest and/or penalty shall be released in accordance with the present Plan.

**6.6 LIMITS AND PRIORITIES**

Notwithstanding any provision hereof, payments shall be made as follows: (a) first, the payments provided for in Section 6.10 hereof (as well as any payment the Monitor and the Applicants deem required for the completion of the CCAA Process) shall be made; (b) then the payments provided for in Section 6.1 hereof shall be made; (c) then the payments provided for in Section 6.2 hereof shall be made; (d) then the payments provided for in Sections 6.4 hereof shall be made; (e) finally, the payments provided for in Section 6.3 shall be made until the Distribution Funds has been exhausted. In any event, no payment will be made in excess of the amount of the Proceeds and the Remaining Assets. A payment will only be made to the extent payments ranking in priority have been made in full.

**6.7 PROVISIONS WITH RESPECT TO DISPUTED CLAIMS**

In the event there is a dispute as to the validity or the amount of a Proof of Claim or an Unaffected Claim or in the event a claim covered by the Directors' Charge is brought, the Monitor shall make any provision it considers appropriate to provide for the payment of the disputed claim in accordance with the Plan.

In the event a provision is taken in accordance with this Plan and the amount of the provision is not used in full, the balance of the provision shall be released and considered as available for distribution in accordance with the Plan.

**6.8 INTERIM DIVIDEND**

After having made the appropriate provisions and reserves, the Monitor may, at its entire discretion, proceed to the payment of an interim dividend to one or several Class(es) of Creditor(s).

**6.9 DIVIDEND OF AN AMOUNT REPRESENTING LESS THAN CDN \$10.00**

In the event the Monitor pays a dividend (interim or final) in accordance with the Plan and the dividend payable to a Creditor is of less than CDN \$10.00, then no amount shall be paid to that Creditor. Any such amount shall, however, be taken into account in determining the amount of any further dividend payable to that Creditor.

**6.10 MONITOR'S FEES AND EXPENSES AND OTHERS**

Any and all fees and expenses of the Applicants and Monitor shall be paid currently, prior to any and all payment of any nature, including those referred to in Sections 6.1 to 6.4 hereof. Furthermore, any and all lawyers, consultants, advisors or any like person acting on behalf of the Applicants including those Persons whose claims are designated, pursuant to the Initial Order and/or any other Order, as constituting part of the Administration Charge, as well as any payment contemplated in paragraph 48 of the Initial Order, shall be paid in full, after the Monitor, but prior to any and all payment of any nature, including those referred to in Sections 6.1 to 6.4 hereof.

**SECTION 7**

**POWERS AND OBLIGATIONS**

**7.1 POWERS AND OBLIGATIONS OF THE MONITOR**

As per the terms of the Initial Order, the Claim Process Order, any Orders and in accordance with the Plan, the Monitor is empowered to:

- 7.1.1 send, by regular mail to all of the Creditors of the Applicants that have filed a Proof of Claim in accordance with the Claim Process Order, a copy of the Plan to be submitted to the Creditors, together with a notice of convocation, a proxy and a letter of votation for the purpose of the Meeting of Creditors which will be held with respect to the Plan to be filed, the whole at least fifteen (15) days prior to said Meeting of Creditors;
- 7.1.2 administer and adjudicate, in collaboration with the Applicants, any Proof of Claim submitted by any of the Creditors or alleged Creditors of the Applicants;
- 7.1.3 dismiss or review, in collaboration with the Applicants, any Proof of Claim filed by any Creditor or alleged Creditor of the Applicants, under reserve of the right of such Creditor to appeal to the Court to determine the same in accordance with this Plan within ten (10) days of such notice of disallowance, each Creditor having the burden of establishing its Claim;
- 7.1.4 file and present to the Court any proceeding, motion or petition, or any other demand, required or appropriate or that it may consider to be appropriate or required with respect to:
  - 7.1.4.1 the affairs of the Applicants;
  - 7.1.4.2 this Plan;
  - 7.1.4.3 the determination of any right of the Applicants or any of their respective Creditors or co-contractors;
  - 7.1.4.4 any advice or instructions it may require or to seek the help of this Court; and
  - 7.1.4.5 any other matter it feels is required or appropriate;

- 7.1.5 preside over the first Meeting of Creditors and decide any questions or disputes arising at the Meeting, from which such decision any Creditor may appeal to the Court, within five (5) days of the rendering of the same;
- 7.1.6 proceed to the payment of monies which must be paid to the Creditors of the Applicants in the manner provided for in this Plan;
- 7.1.7 hire and retain, with the consent of the Applicants, the services of any professional required or desired, including, without limiting the generality of the foregoing, any accountant, lawyer, notary, or other;
- 7.1.8 delegate, if required or necessary, to any Person duly qualified in the sole opinion of the Monitor and the consent of Applicants, the powers enumerated herein (or any part thereof);
- 7.1.9 obtain from the Applicants the information which the Monitor considers useful;
- 7.1.10 execute any deed, contract or agreement or do anything necessary or required in order to give full effect to this Plan;
- 7.1.11 assist the Applicants in discussions with any of their respective Creditors, co-contractors or any other Person;
- 7.1.12 assist the Applicants in negotiating and settling Creditors' Claims;
- 7.1.13 file or oppose any Claim or proceeding filed with respect to any of the assets of the Applicants, the whole with the consent of the Applicants;
- 7.1.14 certify as a true copy, any copy of any Order;
- 7.1.15 send notices of a stay of proceedings, as if it were a trustee in bankruptcy, with respect to any proceedings, whether judicial, administrative or otherwise;
- 7.1.16 with the authorization of the Court, do anything or enter into any agreement whatsoever with a view to protecting the Applicants, their assets, their Creditors or in the best interests of the Applicants or this Plan; and
- 7.1.17 exercise any and all powers of a trustee in bankruptcy with a view to helping and assisting the Applicants in the filing of this Plan.

## **SECTION 8**

### **RELEASES**

The acceptance of this Plan by the majorities required in accordance herewith and the sanctioning of the Plan by the Court shall automatically, unconditionally and irrevocably confer upon the Applicants and all other Persons hereinafter referred to, the following releases, discharges and waivers from each and every Creditor, immediately upon receipt by each such Creditor of the amount to which it is entitled to receive pursuant to this Plan:

- 8.1.1 a full and final release and discharge in favour of the Applicants from and by each and every Creditor with respect to every Claim and Unaffected Claim of each such Creditor, and an irrevocable and unconditional waiver by each and every Creditor to exercise any and all personal and/or real rights in respect of their respective Claims and Unaffected Claims;

- 8.1.2 a full and final release and discharge from and by each and every Creditor with respect to any claim, other than a claim listed at Section 5.1(1) of the CCAA, which they have or may have, directly or indirectly against the Representatives of the Applicants in any way resulting from or relating to any Claim or Unaffected Claim, and an irrevocable and unconditional waiver by each and every Creditor to exercise any and real and/or personal rights in respect of any of the same;
- 8.1.3 a full and final release and discharge from and by each and every Creditor with respect to any claim (other than those claims contemplated by Sections 8.1.1, 8.1.2 or 8.1.4 hereof) which they have or may have, directly or indirectly, including any claim set forth at Section 5.1(2) of the CCAA, against the Representatives of the Applicants;
- 8.1.4 a full and final release and discharge from and by each and every Creditor and/or any other Person with respect to any claim they may have, directly or indirectly, against the Applicants or the Monitor or any of their respective Representatives in connection with or in any manner related to, directly or indirectly, the Proceedings, this Plan, the preparation and/or implementation of the same, and/or any contact, instrument, release, agreement or other document or any other action taken or omitted to be taken with respect to any of the foregoing. In all respects, the Applicants and the Monitor and their respective Representatives shall have the unfettered and unqualified right to rely upon legal advice with respect to their rights and obligations under the terms of this Plan; and
- 8.1.5 as of the Effective Date, the Applicants shall be deemed to have automatically, forever, irrevocably and unconditionally released their Representatives as well as the Monitor and its Representatives from any claim of any nature that may exist, may have existed, or may in the future exist in the context of, in connection with or in any manner related to, directly or indirectly, the Proceedings, this Plan, the preparation and/or implementation of the same, and/or any contact, instrument, release, agreement or other document or any other action taken or omitted to be taken with respect to any of the foregoing.

For the purposes of this Section 8, the term: (a) “**Representative**” of a Person includes any and all past and present directors, officers, shareholders (direct and indirect), related companies (direct and indirect), employees, advisors, lawyers, accountants, mandataries, agents and any other representatives of such Person; and (b) “**Proceedings**” means any and all matters directly or indirectly related to any matters contemplated or having arisen within the context of the CCAA proceedings of the Applicants since the date of the Initial Order until the Effective Date.

## SECTION 9

### MISCELLANEOUS

#### 9.1 SANCTION ORDER

In the event that this Plan is approved by the required majority of the Unsecured Creditors, the Applicants shall, unless otherwise provided by the Court, then seek the Sanction Order for the sanction and approval of the Plan. Subject to the Sanction Order being granted and to the conditions enumerated in Section 9.10 below being satisfied, this Plan shall be implemented by the Applicants and the Monitor and will be binding upon all the Creditors of the Applicants.

#### 9.2 PARAMOUNTCY

From and after the Sanction Order, any conflict between the Plan and the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, hypothec, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, by-laws of the Applicant, lease or other agreement or any other instrument, whether

written or oral, and any and all amendments or supplements thereto existing between a Creditor and the Applicants as at the date of the Sanction Order will be deemed to be governed by the terms, conditions and provisions of the Plan and the Sanction Order, which shall take precedence and priority.

**9.3 WAIVER OF DEFAULTS**

From and after the Sanction Order, each Creditor shall be deemed to have waived any and all defaults then existing or previously committed by the Applicants in any covenant, warranty, representation, term, provision, condition or obligation, expressed or implied, in any contract, agreement, mortgage, hypothec, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, lease or other agreement or any other instrument, whether written or oral, and any and all amendments or supplements thereto, existing between a Creditor and the Applicants and any and all notices of default and demands for payment under any instrument, including without limitation, any guarantee, shall be deemed to have been irrevocably and forever rescinded.

**9.4 COMPROMISE EFFECTIVE FOR ALL PURPOSES**

The payment, compromise or other satisfaction of any Claim under the Plan, if sanctioned and approved by the Court shall be binding upon all Creditors and their respective heirs, executors, administrators, successors and assignees, for all purposes and, to such extent, shall also be effective to relieve any third party directly or indirectly liable for such indebtedness, whether as guarantor, indemnitor, tenant, director, joint covenantor, principal or otherwise.

**9.5 PARTICIPATION IN DIFFERENT CAPACITIES**

Creditors whose Claims are affected by this Plan may be affected in more than one capacity. Each such Creditor shall be entitled to participate hereunder in each such capacity. Any action taken by a Creditor in any one capacity shall not affect the Creditor in any other capacity unless the Creditor agrees in writing or otherwise set forth herein.

**9.6 MODIFICATION OF PLAN**

The Applicants reserve the right to file any modification of or amendment to the Plan by way of a supplementary or amended plan or plans of arrangement filed with the Court at any time or from time to time prior to the Creditors considering and voting upon the Plan, in which event, any such amended or supplementary plan or plans of arrangement shall, for all purposes, be and be deemed to be, a part of, and incorporated into, the Plan. The Applicants shall give notice by publication or otherwise to all Creditors in an affected Class of the details of any such modifications or amendments prior to the vote being taken to approve the Plan. The Applicants may propose an amendment or modification to the Plan at any Meeting of Creditors. After such Meeting of Creditors, the Applicants may at any time and from time to time vary, amend, modify or supplement the Plan if the Court authorizes the same or determines on notice that such variation, amendment, modification or supplement is of a technical nature that would not be materially prejudicial to the interests of any of the Creditors under the Plan or the Sanction Order and is necessary in order to give effect to the substance of the Plan or the Sanction Order. Finally, the Applicant may, at any time after the Sanction Order, and from time to time, vary, amend, modify or supplement the Plan with a variation, amendment, modification or supplement other than of a technical nature that would not materially prejudice the interest of any of the Creditors, without a Meeting of Creditors provided that the same is sanctioned by the Court. Such approval by the Creditors and by the Court shall be under the same terms as provided for in this Plan. The Applicants may withdraw the Plan at their entire discretion at anytime before the Effective Date.



## **9.7 CONSENTS, WAIVERS AND AGREEMENT**

Upon the rendering of the Sanction Order, each Creditor shall be deemed to have consented and to have agreed to all of the provisions of this Plan in its entirety. In particular but without limitation, each Creditor shall be deemed:

- 9.7.1 subject to the Applicants having fulfilled their respective obligations under the Plan, to have executed and delivered to the Applicants all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Plan in its entirety;
- 9.7.2 subject to the Applicants having fulfilled their respective obligations under the Plan, to have waived any default by the Applicants in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Creditor and the Applicants that has occurred on or prior to the Effective Date; and
- 9.7.3 to have agreed that if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Creditor and the Applicants as at the date of the Effective Date (other than those entered into by the Applicants on, or with effect from, the Effective Date) and the provisions of this Plan, then the provisions of this Plan take precedence and priority and the provisions of such agreement or other arrangement are amended accordingly.

## **9.8 AGREEMENTS AND TRANSACTION**

Any agreement or transaction entered into by the Applicants shall be deemed to have been ratified and approved by the Creditors, and any of the Claims shall be paid and settled exclusively as per the provisions of Section 6 hereof. Neither the Monitor nor any Creditor shall have any right, recourse, action, cause of action or otherwise against the Applicants, their respective assets, directors, officers or against any other Person that may have entered into an agreement with the Applicants, of any nature whatsoever.

## **9.9 DEEMING PROVISIONS**

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

## **9.10 CONDITIONS OF IMPLEMENTATION**

The implementation of the Plan by the Applicants shall be conditional upon the fulfilment or satisfaction of the execution and delivery, to the entire satisfaction of the Applicants of: (a) all documents and instruments contemplated by the Plan; (b) the acceptance of the Plan by the majorities required as set forth in this Plan; (c) the obtaining of the Sanction Order; and (d) within five (5) days of the obtaining of the Sanction Order, the obtaining of a release (to become effective upon full payment of the amount to which they are entitled pursuant to the Plan) by Parmalat Holdings Limited and 2975483 Canada Inc. of any charge held by them covering the Proceeds (being understood that the Monitor will be entitled, from the Effective Date, to proceed to the Distributions provided for in the Plan).

## **9.11 NOTICES**

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

- 9.11.1 if to the Applicants:

Davies Ward Phillips & Vineberg

1501 McGill College  
26<sup>th</sup> Floor  
Montreal, Québec H3A 3N9

Attention: Denis Ferland  
Louis-Martin O'Neill  
Tel.: (514) 841-6423  
Fax: (514) 841-6499

9.11.2 if to the Monitor:

RSM Richter Inc.  
2 Place Alexis-Nihon  
Suite 1820  
Montreal, Quebec H3Z 3C2

Attention: Yves Vincent, FCA  
André Hébert, CA  
Tel.: (514) 934-3400  
Fax: (514) 934-3504

with a copy to:

Davies Ward Phillips & Vineberg  
1501 McGill College  
26<sup>th</sup> Floor  
Montreal, Québec H3A 3N9

Attention: Denis Ferland  
Louis-Martin O'Neill  
Tel.: (514) 841-6423  
Fax: (514) 841-6499

9.11.3 if to a Creditor :

to the address for such Creditor specified in the Proof of Claim filed by a Creditor or, if no Proof of Claim has been filed, to such other address at which the notifying party may reasonably believe that the Creditor may be contacted.

**IN THE EVENT OF ANY DISCREPANCY BETWEEN THE ENGLISH AND THE FRENCH VERSIONS OF THIS PLAN OF ARRANGEMENT, THE ENGLISH VERSION SHALL IN ALL EVENTS AND FOR ALL MATTERS PREVAIL.**

SIGNED IN <=====> MONTREAL ON THIS <====> 2ND DAY OF <===== &gt;  
2005.>FEBRUARY 2006.

per: (S) Tony Cugliari  
Tony Cugliari



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Deletions	13
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	40



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**PLAN D'ARRANGEMENT AMENDÉ**

DE

**9161-5849 QUÉBEC INC. (anciennement connue comme EAUX VIVES HARRICANA INC.)**

ET

**41902 DELAWARE INC. (anciennement connue comme EVH U.S.A. INC.)**

ET

**9161-5286 QUÉBEC INC. (anciennement connue comme LES SOURCES PÉRIGNY INC.)**

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EN VERTU DE

*La Loi sur les arrangements avec les créanciers des compagnies*

(L.R.C. 1985 ch. C-36)

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Chacune des Requérantes soussignées 9161-5849 Québec Inc. (anciennement connue comme Eaux Vives Harricana Inc.), 41902 Delaware Inc. (anciennement connue comme EVH U.S.A. Inc.) et 9161-5286 Québec Inc. (anciennement connue comme Les Sources Périgny Inc.) soumet respectueusement le plan d'arrangement suivant en vertu de la *Loi sur les arrangements avec les créanciers des compagnies*.

## INTRODUCTION<sup>1</sup>

Les Requérantes se sont prévaluées des recours et des remèdes prévus à la *LACC*, ce qui a ultimement permis la vente des actifs des Requérantes en tant qu'unité opérante, évitant ainsi un scénario de liquidation forcée et maximisant le retour aux Créanciers.

Le but du présent Plan est d'effectuer un arrangement et compromis entre les Requérantes et leurs Créanciers relativement à l'ensemble des dettes et obligations des Requérantes.

Tel qu'expliqué plus amplement ci-après, le Plan proposé prévoit, suite à la liquidation des actifs des Requérantes, la création d'un fonds qui, après que les Réclamations Garanties, les Réclamations de la Couronne, les Réclamations Non Affectées, le Prêt DIP et les diverses dépenses relatives aux procédures sous la *LACC* auront été payés, sera distribué aux Créanciers Ordinaires. Tel qu'expliqué plus amplement ci-après, Gestion Parmalat Limitée et 2975483 Canada Inc. participeront au Plan à titre de Créanciers Ordinaires.

En vertu du Plan, les Créanciers Ordinaires recevront le paiement complet du premier 1 000 \$ de leur Réclamation et le solde du Fonds de Distribution sera ensuite distribué entre les Créanciers Ordinaires ~~<proportionnellement à leur Réclamation Ordinaire qui est une Réclamation Prouvée>~~ jusqu'à l'épuisement du Fonds de Distribution, le tout selon les termes de l'article 6.3.2 ci-après.

## ARTICLE 1

### INTERPRÉTATION

#### 1.1 DÉFINITIONS

**Pour les fins du présent Plan**, les expressions suivantes ont la signification qui leur est attribuée ci-après, à moins qu'il n'en soit autrement prescrit dans le présent Plan ou que le contexte n'exige une autre signification :

« **Acheteur** » a la signification qui lui est attribuée à l'article 2 ci-après;

« **Autres Actifs** » signifie tous les actifs des Requérantes, en date des présentes, qui n'ont pas été vendus à l'Acheteur en vertu de la Convention d'Achat, incluant, mais sans s'y limiter, l'argent, les comptes bancaires (incluant tout reliquat du Dépôt), les comptes recevables de quelque nature que ce soit, dus ou qui deviendront dus ou payables aux Requérantes, incluant, mais sans s'y limiter, tous les crédits de taxes ou d'impôts, remboursements de taxes ou d'impôts et autres. Les actions que détenait EVH dans le capital-actions de EVH U.S.A. et/ou de Périgny ne font pas partie des Autres Actifs;

« **Assemblée des Créanciers** » signifie l'Assemblée des Créanciers convoquée afin de considérer et de voter sur le Plan, ou toute telle assemblée convoquée subséquemment;

---

<sup>1</sup> Cette introduction est à titre informatif uniquement et ne fait pas partie du Plan.

« **Catégorie** » a la signification qui lui est attribuée à l'article 4.1 ci-après;

« **Charge Administrative** » a la signification qui lui est attribuée dans l'Ordonnance Initiale et/ou dans tout autre Ordonnance;

« **Charge des Administrateurs** » signifie toute chose pouvant être visée par ou incluse dans la « Charge des Administrateurs » en vertu de l'Ordonnance Initiale et/ou de toute autre Ordonnance;

« **Charge DIP** » a la signification qui lui est attribuée dans l'Ordonnance rendue par l'Honorable François Rolland (tel qu'il était alors) le 15 juin 2004, dans l'Ordonnance de Vente et/ou dans toute autre Ordonnance;

« **Contrat Résilié** » signifie toute convention ou tout contrat de quelque nature que ce soit, verbal ou écrit (incluant, mais sans s'y limiter, un contrat de travail), auquel l'une ou l'autre des Requérantes est partie et qui a été terminé, rejeté, résilié, annulé, amendé ou retiré par une des Requérantes en conformité avec les termes de l'Ordonnance Initiale, telle qu'amendée et prolongée;

« **Contrôleur** » signifie RSM Richter Inc. (anciennement connue comme Richter & Associés Inc.), par l'entremise de M. Yves Vincent FCA, PIRC, et tout successeur d'icelui, nommé conformément à l'Ordonnance Initiale ou à toute autre Ordonnance;

« **Convention d'Achat** » a la signification qui lui est attribuée à l'article 2 ci-après;

« **Convention de Crédit DIP** » a la signification qui lui est attribuée à l'article 2 ci-après;

« **Créancier** » signifie toute Personne qui détient une Réclamation ou une Réclamation Non Affectée et, si le contexte le requiert, un cessionnaire d'une Réclamation, un syndic, un séquestre, un séquestre-gérant ou toute autre Personne agissant pour le compte d'une telle Personne. Un Créancier inclut un Créancier d'un Contrat Résilié;

« **Créancier d'un Contrat Résilié** » signifie une personne ayant une Réclamation résultant d'un Contrat Résilié, mais seulement en ce qui a trait à la portion de sa Réclamation résultant d'un Contrat Résilié;

« **Créancier de la Couronne** » signifie un Créancier ayant une Réclamation de la Couronne, mais seulement pour la portion de sa Réclamation qui est une Réclamation de la Couronne;

« **Créancier Garanti** » signifie un Créancier ayant une Réclamation Garantie, mais seulement en ce qui a trait à la portion de sa Réclamation qui est une Réclamation Garantie;

« **Créancier Non Affecté** » signifie un Créancier ayant une Réclamation Non Affectée, mais seulement à l'égard de cette Réclamation Non Affectée et dans la mesure où le présent Plan n'affecte pas autrement ladite Réclamation;

« **Créancier Ordinaire** » signifie un Créancier ayant une Réclamation Ordinaire, mais seulement en ce qui a trait à la portion de la Réclamation qui est une Réclamation Ordinaire;

« **Date de Détermination** » signifie le 19 Mars 2004, étant la date de l'Ordonnance Initiale;

« **Date de Clôture** » signifie le 15 septembre 2005;

« **Date Limite** » signifie 17h00 (heure normale de l'Est) le 30 juillet 2004, tel qu'ordonné dans l'Ordonnance Relative au Processus de Réclamation;

« **Date de Prise d'Effet** » signifie le premier Jour Ouvrable suivant la date à laquelle toutes les conditions devant être satisfaites pour que le Plan soit exécuté (telles que prévues à l'article 9.10 ci-après) ont été dûment satisfaites. Une condition est considérée satisfaite si son bénéficiaire a renoncé par écrit à cette dernière;

« **Dépôt** » a la signification qui lui est attribuée à l'article 2 ci-après;

« **Distribution** » signifie un paiement fait dans le cadre du Plan;

« **EVH** » signifie 9161-5849 Québec Inc. (anciennement connue comme Eaux Vives Harricana Inc.);

« **EVH U.S.A.** » signifie 41902 Delaware Inc. (anciennement connue comme EVH U.S.A. Inc.);

« **Fonds de Distribution** » a la signification qui lui est attribuée à l'article 3.1 ci-après;

« **Jour Ouvrable** » signifie un jour, autre que le samedi ou le dimanche, où les banques sont généralement ouvertes au public à Montréal, province de Québec;

« **LACC** » signifie la *Loi sur les arrangements avec les créanciers des compagnies*, L.R.C. 1985, ch. C-36, telle qu'amendée;

« **LFI** » signifie la *Loi sur la Faillite et l'Insolvabilité*, L.R.C. 1985, ch. B-3, telle qu'amendée;

« **Morgan Stanley** » a la signification qui lui est attribuée à l'article 2 ci-après;

« **Obligation Non Affectée** » signifie tout droit de toute Personne contre les Requérantes ou l'une ou l'autre d'entre elles relativement à tout endettement, responsabilité ou toute obligation de quelque nature que ce soit né durant la Période Intérimaire et tout intérêt alors encouru, incluant toute obligation des Requérantes envers les Créanciers qui ont fourni ou qui vont fournir des services, des biens et des marchandises et envers les Créanciers qui ont ou qui vont avancer des fonds aux Requérantes durant la Période Intérimaire, mais seulement pour leur réclamation relativement à la fourniture de services, biens, marchandises et fonds fournis durant la Période Intérimaire et seulement si lesdites réclamations ne sont pas affectées autrement par le Plan. Une Obligation Non Affectée inclut, sans restreindre la généralité de ce qui précède, le paiement dû à un employé qui fut employé par les Requérantes postérieurement à la Date de Détermination, lequel paiement comprend seulement le salaire ordinaire et les congés payés auxquels ledit employé pourrait avoir droit pendant cette période;

« **Ordonnance** » signifie toute ordonnance rendue par le Tribunal dans le dossier de la Cour portant le numéro 500-11-022700-047;

« **Ordonnance de Vente** » signifie l'Ordonnance rendue le 29 juillet 2005 par le Juge en Chef François Rolland autorisant la transaction proposée dans la Convention d'Achat et contenant diverses autres conclusions;

« **Ordonnance d'Homologation** » signifie l'Ordonnance à être rendue en vertu de la *LACC* homologuant le Plan (sous réserve de l'article 9.6 ci-après), une telle Ordonnance ne devenant pas l'Ordonnance d'Homologation avant; (i) l'expiration du délai d'appel applicable sans qu'un appel ait été interjeté; ou (ii) si un appel ou une requête pour permission d'appeler est interjeté, la décision finale du tribunal d'appel applicable homologuant le Plan;

« **Ordonnance Initiale** » signifie l'Ordonnance rendue par l'Honorable François Rolland (tel qu'il était alors) le 19 Mars 2004 en vertu de laquelle les Requérantes se sont vues accorder la protection de la *LACC*, telle que modifiée et prorogée;

« **Ordonnance Relative au Processus de Réclamation** » signifie l'ordonnance rendue par l'Honorable François Rolland (tel qu'il était alors) le 8 juin 2004, tel qu'elle pourra être amendée;

« **PCGR** » a la signification qui lui est attribuée à l'article 1.2 ci-après;

« **Période Intérimaire** » signifie la période débutant à (et incluant) la Date de Détermination et se terminant à la Date de Prise d'Effet;

« **Personne** » signifie tout individu, société de personnes, société, co-entreprise, entité, personne morale, compagnie, organisation non constituée en personne morale, gouvernement ou ses agences et mandataires, ou toute autre entité juridique quelle que soit sa désignation ou constitution;

« **Périgny** » signifie 9161-5286 Québec Inc. (anciennement connue comme Les Sources Périgny Inc.);

« **Plan** » signifie le présent plan d'arrangement, tel que pouvant être modifié ou amendé en vertu de l'article 9.6 ci-après;

« **Prêt DIP** » signifie le prêt fait en vertu de la Convention de Crédit DIP ainsi que tout autre montant payable en vertu de la Convention de Crédit DIP;

« **Prêteur DIP** » signifie *Royal Bank Asset Based Finance*, une division de la Banque Royale du Canada;

« **Preuve de Réclamation** » signifie un formulaire de preuve de réclamation soumis par un Créancier conformément à l'Ordonnance Relative au Processus de Réclamation ou à toute autre Ordonnance du Tribunal;

« **Produit** » a la signification qui lui est attribuée à l'article 2 ci-après;

« **Réclamation** » signifie tout droit détenu par toute Personne contre les Requérantes ou l'une d'entre elles relativement à tout endettement, responsabilité ou toute obligation de quelque nature que ce soit existant à la Date de Détermination et tout intérêt alors encouru, que cet endettement, responsabilité ou obligation soit ou non constaté par jugement, liquidé, non liquidé, déterminé, contingent, échu, non échu, contesté, non contesté, légal, en *equity*, garanti, non garanti, ordinaire, présent, futur, connu, inconnu, par caution, par sûreté ou autrement et que ce droit soit ou non de nature exécutoire, y compris, mais sans limiter la généralité de ce qui précède, le droit ou la capacité de toute Personne de présenter une réclamation pour contribution ou indemnité ou autrement, à l'égard de toute affaire, action, cause ou droit d'action, existant à ce jour ou éventuel, fondé en tout ou en partie sur des faits existant avant ou à la Date de Détermination. Sans limiter la généralité de ce qui précède, une Réclamation comprend toute (i) Réclamation Garantie (ii) Réclamation de la Couronne (iii) Réclamation Ordinaire, (iv) ou toute autre Réclamation qui constituerait une réclamation prouvable en matière de faillite si les Requérantes étaient devenue faillie à la Date de Détermination. Une Réclamation ne comprend pas une Réclamation Non Affectée. Une Réclamation n'inclut pas les intérêts à partir de, ou encouru après, la Date de Détermination, ou tout frais, à moins que le Plan ne prévoit expressément autrement;

« **Réclamation Admise pour Fins de Votation** » signifie la Réclamation d'un Créancier qui est admise pour les fins de votation, tel que prévu à l'article 4 et à l'article 5;

« **Réclamation de la Couronne** » signifie toute somme (incluant les intérêts et pénalités) due à Sa Majesté du Chef du Canada ou d'une province du Canada, à laquelle il est fait référence aux paragraphes 18.2(1) et 18.3(2) de la *LACC* (incluant les montants assujettis au paragraphe 224(1.2) de la *Loi sur l'Impôt sur le Revenu (Canada)* ou en vertu de toute autre disposition législative provinciale essentiellement similaire) qui existait à la Date de Détermination et qui demeure toujours impayée;

« **Réclamation Garantie** » signifie une Réclamation (incluant les intérêts) dont le paiement est garanti par une Sûreté ou fondée sur une Sûreté. Pour fins de clarté, une Réclamation garantie par le Prêt DIP, la Charge Administrative et la Charge des Administrateurs ne sera pas considérée être une Réclamation Garantie. Pour fins de clarté, les Réclamations de la Couronne ne seront pas considérées être des Réclamations Garanties. De plus, dans l'éventualité où une portion d'une Réclamation Garantie excède selon le Contrôleur en date du présent Plan des biens grevés ou affectés par une telle Réclamation Garantie, ladite portion sera considérée comme étant une Réclamation Ordinaire et sera régie comme telle par le Plan. Toute Réclamation ou demande résultant de la résiliation d'une entente conclue avec tout Créancier Garanti sera considérée être une Réclamation Ordinaire;

« **Réclamation Non Affectée** » signifie une réclamation résultant d'une Obligation Non Affectée;

« **Réclamation Ordinaire** » signifie une Réclamation qui n'est pas une Réclamation de la Couronne ou une Réclamation Garantie. Sans restreindre la généralité de ce qui précède, les Réclamations Ordinaires incluent :

- i) les Réclamations des Créanciers Garantis à l'égard de la portion de leur Réclamation qui, de l'avis du Contrôleur, excède en date du présent Plan la valeur des biens grevés ou visés par la Sûreté détenue, ainsi que toute Réclamation ou demande qui peut résulter de la résiliation d'une entente avec un tel Créancier Garanti;
- ii) les Réclamations de Sa Majesté la Reine du Canada ou d'une Province du Canada qui ne sont pas des Réclamations de la Couronne;
- iii) la Réclamation des Créanciers basée sur le volume de vente, de programmes d'achat, des rabais-volume ou toute autre réclamation de même nature;
- iv) toute Réclamation pour biens vendus ou livrés à l'intérieur des trente (30) jours précédant la Date de Détermination, ou toute autre Réclamation de même nature;
- v) toute Réclamation résultant d'un Contrat Résilié, conformément aux termes de l'article 5.3 ci-après ou autrement;
- vi) Toute Réclamation d'un Créancier ayant une réserve de propriété et qui a décidé de ne pas reprendre le bien vendu; et
- vii) la Réclamation de Gestion Parmalat Limitée et 2975843 Canada Inc., en conformité avec le paragraphe 6.1.4 ci-après (et uniquement pour les fins de ce Plan tel que décrit dans ledit paragraphe 6.1.4)

« **Réclamation Prouvée** » signifie le montant et l'état de la Réclamation d'un Créancier déterminée conformément aux dispositions des présentes;

« **Représentants** » à la signification qui lui est attribuée à l'article 8 ci-après;

« **Requérantes** » signifie, selon le contexte, EVH, EVH U.S.A., Périgny ou l'ensemble de ces dernières;

« **Sûreté** » signifie une hypothèque, charge, priorité, gage, nantissement, droit de rétention ou toute autre sûreté valide et opposable sur ou contre tout ou partie des biens de la Requérante à titre de garantie d'une dette d'une Requérante, due ou à échoir. Pour fins de clarté, une réserve de propriété ne constitue pas une Sûreté;

« **Tribunal** » signifie la Cour supérieure du Québec (Chambre commerciale), District de Montréal.

## **1.2 TERMES COMPTABLES**

Tous les termes comptables non autrement définis au présent texte auront le sens qui leur est attribué, de temps à autre, conformément aux principes comptables généralement reconnus au Canada, y compris ceux qui sont prescrits par l'Institut Canadien des Comptables Agréés (« **PCGR** »).

## **1.3 DEVISE**

Tout montant décrit au présent Plan est exprimé en dollars canadiens, sauf indication contraire. Si, pour les fins de votation ou de la distribution, un montant libellé en une devise autre que le dollar canadien doit être converti en dollars canadiens, une telle somme sera considérée comme ayant été convertie au taux de change indiqué par la Banque du Canada pour convertir telle devise en dollars canadiens en vigueur à midi à la Date de Détermination (soit, 1.3310 pour le dollar américains, 0.9951 pour le dollar australien, 1.6329 pour l'Euro, 0.7859 pour le dollar de Singapour et 0.01244 pour le yen japonais);

## **1.4 INTERPRÉTATION NON AFFECTÉE PAR LES EN-TÊTES**

La subdivision du présent Plan en articles, alinéas, sous-alinéas, clauses et paragraphes et l'insertion d'une introduction ainsi que d'une table des matières et d'en-têtes le sont à titre indicatif seulement et ne pourront affecter l'interprétation du présent Plan.

## **1.5 DATE D'ÉCHÉANCE**

Si la date fixée pour accomplir quelque acte en vertu du Plan n'est pas un Jour Ouvrable, tel acte devra être fait le premier Jour Ouvrable suivant.

## **1.6 HEURE**

Toute heure prévue par le présent Plan correspond à l'heure locale de Montréal, province de Québec, Canada, à moins qu'il n'en soit autrement prescrit.

## **1.7 GENRE ET NOMBRE**

Lorsque le contexte le requiert, l'utilisation du singulier dans le présent Plan comprend le pluriel et vice-versa; de la même manière, l'utilisation d'un genre comprend l'autre.

## **1.8 RÉFÉRENCES AUX LOIS**

Toute référence à une loi dans le présent Plan comprend tout règlement adopté en vertu de cette loi, toute modification apportée de temps à autre à cette loi ou aux règlements, et toute loi ou tout règlement qui complète ou remplace cette loi ou ce règlement.

## **1.9 SUCESSEURS ET AYANTS DROIT**

Le présent Plan sera opposable et bénéficiera aux héritiers, administrateurs, exécuteurs testamentaires, représentants légaux, successeurs et ayants droit de toute Personne nommée ou mentionnée dans le présent Plan.

## ARTICLE 2

### CONTEXTE

#### Les Requérantes

9161-5849 Québec Inc. (anciennement connue comme EVH) est une compagnie dûment constituée en 1997 en vertu des lois du Québec afin de puiser, embouteiller et distribuer de l'eau de source naturelle à partir d'une source limpide située dans le nord du Québec, à Saint-Mathieu-d'Harricana. La source de cette eau est un « Esker », une formation géologique rare qui produit de l'eau de source de qualité exceptionnelle en raison de son processus de filtration naturelle.

41902 Delaware Inc. (anciennement connue comme EVH U.S.A.) est une personne morale dûment constituée en vertu des lois de l'état de Delaware aux États-Unis. EVH U.S.A. a agi uniquement à titre d'agent de promotion, de ventes et de distribution pour EVH et n'a jamais eu d'autres clients que EVH. Ainsi, EVH U.S.A. dépend entièrement de EVH et ne peut pas en être dissociée, ce qui justifie ce Plan conjoint.

9161-5286 Québec Inc. (anciennement connue comme Périgny) est une personne morale dûment constituée en vertu des lois du Québec. Périgny est une filiale à 100% de EVH. Bien que Périgny soit une entité légale distincte de EVH, ses actifs et ses obligations ne peuvent pas être dissociés de EVH, ce qui explique ce Plan conjoint.

#### Historique

En 2002, suite à d'importants travaux de vérification et de développement, EVH a procédé à la construction d'un centre d'embouteillage, d'entreposage et de distribution. EVH a investi presque soixante millions de dollars (60 000 000 \$) afin de construire ces installations qui sont considérées « à la fine pointe » de l'industrie de l'eau embouteillée. Dans le cadre de ses opérations initiales, EVH n'employait qu'un seul quart de travail, ce qui résultait en plus de soixante (60) emplois localement. Il était prévu qu'avec la croissance du volume de production, EVH allait éventuellement se développer en une opération employant trois quarts de travail, ce qui aurait normalement porté le nombre de ses employés à environ cent cinquante (150) à deux cents (200).

EVH a introduit sa bouteille d'eau de source, « ESKER », dans certains marchés sélectionnés au Canada ainsi que dans le sud-ouest des États-Unis vers la fin de l'année 2002. Des investissements importants furent effectués par EVH en matière de recherche, promotion et publicité durant la première année du lancement d'ESKER. À la fin 2003, ESKER avait développé un groupe d'utilisateurs stable et en croissance. EVH était en train de revoir son plan d'opération pour 2004, afin d'incorporer les apprentissages issus de son programme de vente sur un marché-test et de le modifier afin d'optimiser sa compétitivité à l'intérieur du secteur de l'eau embouteillée. L'intention de EVH était d'accroître davantage ses activités dans le nord-est des États-Unis et de procéder à son lancement à l'échelle nationale au Canada.

#### La mise sous la protection de la LACC

En 2004, il était anticipé qu'EVH serait encore à l'état de développement. EVH n'était pas encore profitable, et nécessitait des investissements continuels afin de subventionner son fonds de roulement ainsi que les intérêts sur la dette. EVH, à cette époque, n'étant plus en mesure d'acquitter ses obligations au fur et à mesure de leur échéance, la direction de EVH et ses propriétaires commencèrent à explorer les alternatives de financement. Il fut déterminé que la meilleure alternative pour les propriétaires, employés, créanciers et autres intéressés était de demander l'émission de l'Ordonnance Initiale.

Le 19 mars 2004, le Tribunal accorda l'Ordonnance Initiale selon les termes y énoncés, tel qu'il appert du dossier de la Cour. Le 1 juin 2004, la protection et les remèdes prévus à l'Ordonnance Initiale furent

étendus à Périgny, avec effet rétroactif. L'Ordonnance Initiale a été amendée et prorogée à plusieurs reprises et elle reste en vigueur à ce jour.

Suite au dépôt de l'Ordonnance Initiale, EVH a liquidé tout l'inventaire qu'elle possédait et a collecté ses comptes recevables à cet égard. Toutefois, en raison, notamment : (i) des revenus limités que génèrent la vente de l'inventaire restant et la collection des comptes recevables résiduels; et (ii) du fait que EVH avait cessé ses opérations, des fonds additionnels furent nécessaires.

Le 10 juin 2004, EVH, Périgny et le Prêteur DIP conclurent la Convention de Crédit DIP permettant des avances allant jusqu'à 3 578 000 \$. Le 15 juin 2004, l'Honorable François Rolland J.C.S. (tel qu'il était alors) émit une Ordonnance approuvant la Convention de Crédit DIP et créant la Charge DIP.

Entre l'approbation de la Convention de Crédit DIP le 10 juin 2004 et la Clôture de la Vente en août 2005, EVH utilisa le Prêt DIP octroyé par le Prêteur DIP afin de combler ses besoins de liquidités.

### **Processus de Vente Initial**

Après avoir exploré leurs options, les Requérantes déterminèrent qu'il était dans le meilleur intérêt de leurs créanciers de vendre leurs actifs. Les Requérantes débutèrent donc un processus de vente avec l'assistance de Scotia Capital (« Scotia »).

La vente des actifs de EVH fut discutée avec plus de soixante (60) acquéreurs potentiels, incluant des compagnies nord-américaines œuvrant dans le secteur du breuvage, des entreprises d'eau embouteillée, des participants dans l'industrie de l'eau embouteillée, des acquéreurs financiers, des acquéreurs d'actifs en difficulté et des liquidateurs.

Entre le 6 avril 2004, et le 16 juin 2004, plus de 30 parties reçurent des trousseaux d'information de la part de Scotia. Durant cette période, 14 parties signèrent des ententes de confidentialité. De ces 14 parties, neuf (9) visitèrent la salle de vérification diligente constituée pour les fins du processus de vente, afin de vérifier les livres, dossiers et autres documents concernant les Requérantes, et sept (7) de ces parties visitèrent les installations de EVH.

Au total, 4 offres formelles furent reçues à l'issue du processus.

Suite à la réception des offres et à la recommandation de Scotia, les Requérantes eurent des discussions avec la partie offrante qu'elles jugeaient pouvoir offrir le meilleur prix d'achat.

Le 30 juillet 2004, cette partie offrante soumit une offre révisée à EVH, laquelle fut acceptée par cette dernière (l'« **Offre du 30 Juillet** »).

Des problèmes inattendus se manifestèrent suite à l'acceptation de l'Offre du 30 Juillet. Malgré une mise en demeure écrite et des communications additionnelles, la partie offrante ne respecta pas ses obligations aux termes de l'Offre du 30 Juillet et les Requérantes n'eurent d'autre choix que de mettre fin aux négociations avec la partie offrante et de rechercher d'autres options.

### **Deuxième Processus de Vente**

En raison de la vente qui était envisagée, durant les mois d'octobre et de novembre 2004 suivants, Scotia et EVH communiquèrent de nouveau avec toutes les parties qui avaient été identifiées initialement comme acquéreurs potentiels.

Après avoir analysé les alternatives offertes et en raison de l'intérêt manifesté par certaines parties d'acheter les actifs des Requérantes, ces dernières décidèrent, en collaboration avec le Contrôleur et Scotia, de lancer



un nouveau processus de vente et de démarcher à nouveau le marché afin d'essayer de conclure une transaction.

Dans le cadre de ce nouveau processus de vente, le délai à l'intérieur duquel les offres devaient être soumises fut fixé au 30 novembre 2004.

Durant les mois d'octobre et novembre, plus de 14 parties reçurent une trousse d'information mise à jour et/ou furent contactées par les Requérantes, par Scotia ou par le Contrôleur. De plus, les représentants de Scotia, des Requérantes et du Contrôleur eurent des discussions avec divers acquéreurs potentiels.

Le 30 novembre 2004, des offres et des lettres d'intérêts furent reçues de la part de cinq (5) parties, mais aucune ne contenait des modalités et/ou un prix d'achat acceptables. Toutefois, le Contrôleur, Scotia et EVH continuèrent d'avoir des discussions avec trois (3) parties différentes.

### **Extension du processus de vente**

L'intention initiale du Contrôleur, de EVH et de Scotia, était de prendre une décision finale concernant les offres reçues au plus tard le 20 décembre 2004. Néanmoins, par souci d'équité envers les parties restantes au processus et afin de conclure une transaction, il est apparu qu'il serait bénéfique de poursuivre ces discussions durant le mois de janvier 2005. Les parties intéressées furent avisées par voie de lettres envoyée le 22 décembre 2004 qu'il était dans l'intention du Contrôleur de traiter avec les parties offrantes qui allaient soumettre une offre acceptable sur la forme et sur le fond au plus tard le 21 janvier 2005.

Au total quatre (4) offres et deux (2) lettres d'intérêt furent soumises au Contrôleur le ou avant le 21 janvier 2005.

### **L'Offre de Quebec Waters Inc.**

Les offres reçues le 21 janvier 2005 incluait une offre provenant d'une société incorporée en vertu des lois de l'état du Delaware, Quebec Waters Inc. (« **Quebec Waters** »)

Après avoir analysé les offres, le Contrôleur et EVH, avec l'assistance de Scotia, déterminèrent que l'offre présentée par Quebec Waters était la meilleure. De plus, le prix d'achat offert par Quebec Waters était supérieur à celui de toute autre offre reçue.

Le 21 janvier 2005, EVH accepta l'offre soumise par Quebec Waters (telle que modifiée et améliorée suite à la soumission originale (l'« **Offre Quebec Waters** »)).

Le 23 février 2005, le Tribunal approuva la vente des actifs des Requérantes à Quebec Waters.

Aux termes de l'Offre Quebec Waters, une somme de 1 000 000 \$ devait être déposée auprès du Contrôleur après satisfaction de certaines conditions y énoncées (le « **Dépôt** »). Le Dépôt fut reçu le 21 mars 2005.

Les Requérantes et le Contrôleur firent des arrangements en vue de la clôture, dont la date fut éventuellement fixée au 4 mai 2005. Des documents de Clôture et des ententes (dont le contenu fut accepté par les parties) furent échangés.

Le 4 mai 2005, un représentant de Quebec Waters se présenta à l'heure et au lieu fixés pour la clôture. Il indiqua que les fonds requis n'étaient pas disponibles et que la clôture n'aurait pas lieu. Par conséquent le Dépôt fut confisqué. Quebec Waters n'a pas contesté la confiscation du Dépôt.

Suite au défaut de Quebec Waters de donner suite à ses obligations aux termes de l'Offre Quebec Waters et de la confiscation du Dépôt, le Tribunal émit le 27 mai 2005 une Ordonnance qui, entre autres choses (a) reconnut le défaut de Quebec Waters et l'inexécution de ses obligations quant à la conclusion de la

transaction envisagée dans l'Offre Quebec Waters; (b) en raison du défaut de Quebec Waters, déclara nulles et sans effet les conclusions énoncées à l'Ordonnance du Tribunal du 23 février 2005 qui ordonnait aux Requérantes et au Contrôleur de compléter la transaction envisagée dans l'Offre Quebec Waters; et (c) déclara que cette Ordonnance du Tribunal n'affectait pas les droits et recours des Requérantes à l'encontre de Quebec Waters ou de quelque autre personne en raison du défaut de Quebec Waters, notamment en rapport avec la confiscation du Dépôt.

### **L'offre de Eaux Vives Water Bottling Corp.**

Après la résiliation de l'entente avec Quebec Waters en raison du défaut de Quebec Waters, les Requérantes considérèrent leurs alternatives.

Suite à l'avortement de la clôture de la transaction avec Quebec Waters, les Requérantes (directement ainsi qu'à travers leurs procureurs et leur Contrôleur) reçurent une expression d'intérêt de la part de Morgan Stanley & Co. (« **Morgan Stanley** »), une institution financière connue et réputée aux États-Unis et au Canada.

Le 25 mai 2005, le Contrôleur reçut de la part de Morgan Stanley (en son nom ainsi qu'au nom d'une entité qu'elle pourra sélectionner) une expression d'intérêt signée indiquant qu'elle était « hautement intéressée » à acquérir les actifs des Requérantes.

Suite à diverses discussions avec les Requérantes et le Contrôleur le 26 mai 2005, Morgan Stanley envoya au Contrôleur une expression d'intérêt révisée avec certaines modalités et termes améliorés (l'« **EDI** »).

À la lumière de plusieurs faits dont le contenu de l'EDI, la sollicitation et les démarches antérieures, les offres reçues par le passé, l'urgence de conclure une transaction et l'existence de l'endettement à l'égard du Prêteur DIP, les Requérantes et le Contrôleur déterminèrent qu'il n'était approprié d'explorer d'avantage d'options afin de tenter de conclure une transaction et qu'un nouveau processus de vente et de démarchage ne procurerait probablement pas un meilleur résultat que l'EDI.

Après analyse des termes et conditions contenus dans l'EDI, les Requérantes et le Contrôleur conclurent que cette dernière était avantageuse et dans le meilleur intérêt de tous les créanciers des Requérantes. En plus du prix d'achat et des modalités contenues à l'EDI, une des considérations primordiales pour les Requérantes et le Contrôleur était leur compréhension que Morgan Stanley serait en mesure de clôturer la transaction à l'intérieur d'un court délai et que les fonds requis étaient disponibles.

À l'issue de ces considérations, le Contrôleur, pour le compte des Requérantes, accepta l'EDI le 27 mai 2005, sous réserve de l'approbation du Tribunal.

Scotia n'a pas participé aux événements ayant mené à la réception par EVH de l'EDI, ni aux discussions y afférentes, ni aux événements subséquents.

Le 15 juillet, les Requérantes et Eaux Vives Water Bottling Corp., une entité affiliée à Morgan Stanley et désignée par Morgan Stanley pour les fins des transactions (l'« **Acheteur** »), conclurent une convention d'achat d'actifs en vertu de laquelle les Requérantes vendirent tous leurs actifs (à l'exception de certains actifs exclus) à l'Acheteur, le tout selon les termes et conditions y énoncés plus amplement (collectivement, avec toutes modifications convenues par les parties, la « **Convention d'Achat** »). La transaction envisagée prévoyait une contrepartie en argent comptant de 18 000 000 \$ (le « **Produit** »).

Le 29 juillet 2005, le Tribunal approuva la transaction envisagée dans la Convention d'Achat (l'« **Ordonnance de Vente** »).

Le 25 août 2005, suite à la satisfaction de toutes les conditions envisagées par la Convention d'Achat, les Requérantes et l'Acheteur complétèrent la transaction envisagée par ladite Convention d'Achat. La totalité

du Produit fut reçue par les procureurs des Requérantes pour être déboursées au Contrôleur après la publication de tous les actes et autres instruments démontrant lesdites transactions. En conséquence, le 15 septembre 2005, la totalité du Produit fut transférée au Contrôleur.

Le Produit reçu suite à l'exécution des prestations de la Convention d'Achat est considérablement plus élevé que celui qui aurait été généré dans le cadre de la liquidation forcée des actifs d'EVH sur une base individuelle.

En vertu de l'Ordonnance de Vente, le Contrôleur devait utiliser le Produit afin de rembourser la Convention de Crédit DIP une fois la transaction envisagée par la Convention d'Achat complétée. En conséquence, le 16 septembre 2005, le Prêteur DIP fut remboursé en entier à partir du Produit en capital, intérêts et frais, pour un montant total de 2 848 716,60 \$. De plus, conformément à l'Ordonnance de Vente, le Contrôleur remboursa les montants faisant l'objet à ce moment de la Charge Administrative ainsi que toutes taxes municipales et scolaires dues et impayées pour la période allant jusqu'à la Date de Clôture (inclusivement).

### ARTICLE 3

#### OBJECTIF ET EFFET DU PLAN

##### 3.1 OBJECTIF

Les Requérantes se sont prévaluées des droits et remèdes prévus à la *LACC*, ce qui a ultimement permis la vente de leurs actifs en tant qu'unité opérante, évitant ainsi un scénario de liquidation forcée et générant une meilleure valeur pour tous les Créanciers.

Le Plan vise à effectuer un compromis et un arrangement entre les Requérantes et leurs Créanciers relativement à toutes les dettes et obligations des Requérantes. Conformément à l'Ordonnance Initiale, à l'Ordonnance de Vente et à toute autre Ordonnance et aux termes énoncés aux présentes, un fonds sera constitué à partir des sources suivantes :

- a) le Produit; et
  - b) les Autres Actifs et les recettes produites par la liquidation des Autres Actifs;
- moins
- a) les montants payés en application de l'article 6.10 du présent Plan ainsi que tout autre montant couvert par la Charge Administrative et tout montant couvert par la Charge des Administrateurs;
  - b) tout autre montant que le Contrôleur et les Requérantes considèrent nécessaires afin de compléter le processus de la *LACC*, incluant (sans limitation) tout montant qui sera nécessaire à l'avenir pour payer les coûts mentionnés à l'article 6.10 ci-après;
  - c) le montant payé à titre de remboursement du Prêt DIP;
  - d) le montant payé à titre de remboursement des Réclamations Garanties, le cas échéant;
  - e) le montant payé à titre de remboursement des Réclamations de la Couronne, le cas échéant;

- f) le montant payé à titre de remboursement des Réclamations Non Affectées, le cas échéant.

(dont le résultat net constituera le « **Fonds de Distribution** »).

Le Fonds de Distribution sera utilisé pour payer les Créanciers Ordinaires tel que prévu au Plan.

Pour fins de clarté, tous les paiements aux Créanciers seront fait exclusivement tel que prévu par le Plan et uniquement dans la mesure où le Produit et les Autres Actifs le permettent.

Les paiements effectués conformément à ce Plan procureront aux Requérantes (et aux autres bénéficiaires énumérés à l'article 8 ci-après) les quittances prévues à l'article 8 ci-après.

### 3.2 PERSONNES VISÉES

À compter de la date de l'approbation du Plan par les Créanciers et de son homologation par le Tribunal, le tout conformément à la *LACC*, le présent Plan entrera en vigueur et sera opposable aux Requérantes et aux Créanciers.

## ARTICLE 4

### CLASSIFICATION DES CRÉANCIERS, DÉTERMINATION DES RÉCLAMATIONS ET QUESTIONS DE PROCÉDURE

#### 4.1 CLASSIFICATION DES CRÉANCIERS

Le Plan prévoit quatre Catégories de Créanciers : les Créanciers Garantis, les Créanciers de la Couronne, les Créanciers Ordinaires et les Créanciers Non Affectés.

Puisque les Créanciers Garantis, les Créanciers de la Couronne et les Créanciers Non Affectés seront payés en totalité conformément au Plan, leur approbation du Plan n'est pas requise.

Pour les fins d'examen et du vote à l'égard du Plan, les Créanciers Ordinaires auront le droit de voter à l'égard du Plan selon les modalités et conditions prévues au présent Plan.

#### 4.2 ASSEMBLÉES DES CRÉANCIERS

Une Assemblée des Créanciers sera tenue conformément au présent Plan, à l'Ordonnance Relative au Processus de Réclamation ainsi qu'à la loi applicable :

- 4.2.1 Au moment du dépôt du Plan, le Contrôleur convoquera l'Assemblée des Créanciers à une date à être déterminée par le Contrôleur et à un endroit que le Contrôleur jugera approprié. L'Assemblée des Créanciers sera convoquée pour des fins de votation à l'égard du Plan, à moins que les Créanciers ne décident par résolution ordinaire (conformément à la définition de cette expression dans la *LFI*) de reporter ladite Assemblée;
- 4.2.2 L'avis de convocation sera envoyé conformément à l'article 7.1.1 du Plan à chaque Créancier ayant déposé une Preuve de Réclamation avant la Date Limite;
- 4.2.3 L'Assemblée des Créanciers sera présidée par le Contrôleur et chaque Preuve de Réclamation devra être remise conformément aux dispositions du Plan, de la *LACC*, de l'Ordonnance Relative au Processus de Réclamation et de toute autre Ordonnance qui pourra être rendue à l'égard de la

procédure applicable à l'Assemblée des Créanciers devant être tenue aux fins de votation à l'égard du Plan;

- 4.2.4 Un représentant du Contrôleur présidera l'Assemblée des Créanciers et décidera de toute affaire concernant la conduite d'une telle Assemblée des Créanciers ainsi que de toute question ou difficulté pouvant surgir lors d'une assemblée, et chaque Créancier pourra en appeler d'une telle décision auprès du Tribunal dans un délai de cinq (5) jours à partir du moment où elle a été rendue. Les seules Personnes autorisées à assister à l'Assemblée des Créanciers sont les Personnes, y compris les détenteurs de procurations, ayant droit de voter à l'Assemblée des Créanciers et leurs conseillers juridiques ainsi que les dirigeants, administrateurs, vérificateurs et les conseillers juridiques des Requérantes. Les Créanciers Garantis et les Créanciers de la Couronne et les Créanciers Non Affectés sont aussi autorisés à assister à l'Assemblée des Créanciers. Toute autre Personne peut être admise sur invitation du président de l'Assemblée ou avec l'accord unanime des Créanciers présents à l'Assemblée des Créanciers;
- 4.2.5 Tout Créancier qui ne se présente pas ou n'est pas représenté par procuration est autorisé à voter à l'égard du Plan en déposant auprès du Contrôleur, avant le début de l'Assemblée des Créanciers une lettre exprimant son vote, et, advenant son défaut de ce faire, ce Créancier n'aura aucun droit de vote.

#### 4.3 ACCEPTATION PAR LES CRÉANCIERS

**Afin que les Créanciers des Requérantes et les Requérantes soient liés par le Plan, conformément à la LACC, le Plan devra d'abord :**

- 4.3.1 être approuvé conformément à la LACC, soit par une majorité en nombre (50 % + 1) des Créanciers Ordinaires (incluant Gestion Parmalat Limitée et 2975483 Canada Inc.) ayant voté à l'égard du Plan (en personne ou par fondé de pouvoir) à l'Assemblée des Créanciers, représentant les deux tiers ( $\frac{2}{3}$ ) en valeurs des Réclamations Admises pour Fins de Votation des Créanciers Ordinaires qui auront voté à l'égard du Plan (en personne ou par fondé de pouvoir) à l'Assemblée des Créanciers; et
- 4.3.2 ensuite être homologué par le Tribunal, le tout conformément à la LACC.

Les seuls Créanciers Ordinaires autorisés à voter à l'égard du Plan sont ceux ayant déposé une Preuve de Réclamation auprès du Contrôleur conformément à l'Ordonnance Relative au Processus de Réclamation.

#### 4.4 PROCÉDURE DE DÉTERMINATION DES RÉCLAMATIONS

**La procédure de détermination des Réclamations et de résolution des différends sera celle prévue à l'article 5 du présent Plan, à l'Ordonnance Initiale ainsi qu'à l'Ordonnance Relative au Processus de Réclamation. Les Requérantes (pour leur propre compte et pour le compte du Contrôleur) ainsi que le Contrôleur se réservent le droit de recourir, si nécessaire, à l'aide du Tribunal dans le cadre de la détermination de la Réclamation de tout Créancier ainsi que pour évaluer le résultat de tout vote à l'égard du Plan ou la somme à être payée ou distribuée à un tel Créancier en vertu du Plan, le cas échéant.**

#### 4.5 RÉCLAMATIONS POUR LES FINS DE VOTATION

- 4.5.1 **Chaque Créancier ayant une Réclamation Ordinaire aura le droit d'assister et de voter lors de l'Assemblée des Créanciers. Chaque Créancier Ordinaire qui a le droit de voter aura un nombre de voix égal à la valeur en dollars de sa Réclamation Ordinaire telle que déterminée par le Contrôleur ou autrement par le Tribunal;**

- 4.5.2 Lorsqu'un Créancier se pourvoit en appel à l'encontre d'un Avis de Révision ou de Rejet (tel que défini dans l'Ordonnance Relative au Processus de Réclamation) auprès du Tribunal, mais que la Réclamation Prouvée n'a pas été déterminée de façon finale à la date de l'Assemblée des Créanciers, le Contrôleur, en collaboration avec les Requérantes, déterminera le montant de la Preuve de Réclamation aux fins du vote. Le montant déterminé par le Contrôleur, en collaboration avec les Requérantes, sera le montant de la Preuve de Réclamation admise aux fins de votation;
- 4.5.3 Si le détenteur d'une Réclamation ou tout détenteur subséquent de la totalité d'une Réclamation qui a été reconnu par le Contrôleur en tant que Créancier à l'égard d'une telle Réclamation cède ou assigne la totalité d'une telle Réclamation à une autre Personne, ni le Contrôleur ni les Requérantes ne seront obligés de donner un avis ou de traiter avec le cessionnaire de cette Réclamation comme s'il en était le Créancier, à moins qu'un avis de la cession et qu'une preuve satisfaisante d'une telle cession n'aient été reçus et reconnus par le Contrôleur. Par la suite, ce cessionnaire sera considéré, pour les fins des présentes, comme le Créancier à l'égard de la Réclamation. Tout cessionnaire d'une Réclamation sera lié par tout avis donné ou par toute démarche entreprise à l'égard d'une telle Réclamation avant la réception et la reconnaissance par le Contrôleur d'une preuve satisfaisante d'une telle cession;
- 4.5.4 Si le détenteur d'une Réclamation (ou tout détenteur subséquent de la totalité d'une Réclamation qui a été reconnu par le Contrôleur comme le Créancier à l'égard d'une telle Réclamation) cède la totalité d'une telle Réclamation à plus d'une Personne ou une partie d'une telle Réclamation à une ou plusieurs Personne(s), une telle cession ne créera pas une ou des Réclamation(s) séparée(s) et la Réclamation continuera de constituer et d'être traitée comme une seule et même Réclamation nonobstant une telle cession. Le Contrôleur et les Requérantes n'auront pas dans un tel cas l'obligation de reconnaître une telle Cession et auront le droit de donner avis et de traiter de toute autre manière que ce soit une telle Réclamation comme un tout et de considérer la dernière Personne ayant détenu une telle Réclamation en entier comme étant le Créancier à l'égard de cette Réclamation. Cependant, cette Personne pourra, par avis écrit donné au Contrôleur, exiger que les traitements ultérieurs de cette Réclamation (mais uniquement comme un tout) se fassent avec la Personne qu'il aura désignée, et dans un tel cas, le(s) Créancier(s) ou cessionnaire(s) et la totalité de la Réclamation seront liés par tout avis donné ou par toute démarche entreprise à l'égard d'une telle Réclamation.

#### **4.6 PERTE DU DROIT DE PARTICIPER AU PLAN**

- 4.6.1 **Tel que prévu** dans l'Ordonnance Relative au Processus de Réclamation, un Créancier (ayant une Réclamation qu'elle soit une Réclamation Garantie, une Réclamation de la Couronne ou une Réclamation Ordinaire) (à moins qu'il soit traité différemment à l'article 4.6.2 ci-après) n'ayant pas produit une Preuve de Réclamation avant la Date Limite conformément à l'Ordonnance Relative au Processus de Réclamation :
- a) n'a pas droit de recevoir aucun autre avis;
  - b) n'a pas droit de participer en tant que Créancier aux présentes procédures;
  - c) n'a pas droit de voter sur aucune des matières relatives aux présentes procédures, incluant le Plan;
  - d) n'a pas droit de recevoir quelque Distribution que ce soit relativement à une Réclamation; et
  - e) est forclos d'exiger le paiement d'une Réclamation;

Dans un tel cas, les Requérantes seront libérées d'une telle Réclamation;

4.6.2 Tel que prévu dans l'Ordonnance Relative au Processus de Réclamation, tout Créancier d'un Contrat Résilié qui n'a pas produit une Preuve de Réclamation conformément à l'Ordonnance Relative au Processus de Réclamation :

- a) n'aura pas droit de recevoir aucun autre avis; et
- b) n'aura pas droit de participer en tant que Créancier dans les procédures (ce qui, par exemple et de façon non limitative, inclut le droit de voter à l'égard du Plan ou le droit de recevoir une Distribution conformément du Plan) avant d'avoir produit une Preuve de Réclamation, auquel cas un tel Créancier d'un Contrat Résilié aura alors droit de participer à toutes les étapes restant à accomplir dans les procédures en autant qu'un tel Créancier d'un Contrat Résilié ait produit une Preuve de Réclamation à la première des dates suivantes :
  - i) trente (30) jours de la date où son contrat a été résilié; ou
  - ii) la Date de Prise d'Effet;

à défaut de quoi, la Réclamation d'un tel Créancier d'un Contrat Résilié sera pour toujours prescrite et éteinte. Dans un tel cas, les Requérantes ont été/seront libérées d'une telle Réclamation.

4.6.3 Suite à l'acceptation du Plan par les Créanciers et son homologation par le Tribunal, et sauf pour les obligations des Requérantes découlant du Plan et sous réserve de ce que ces obligations découlant du Plan soient exécutées, les Requérantes seront libérées de toutes les Réclamations et Réclamations Non Affectées de tous les Créanciers, qu'une preuve de Réclamation ait été ou non produite, conformément aux termes de l'article 8 ci-après.

## ARTICLE 5

### PROCÉDURE DE DÉTERMINATION DES RÉCLAMATIONS

#### 5.1 DÉTERMINATION DES RÉCLAMATIONS

Tel que stipulé dans l'Ordonnance Relative au Processus de Réclamation, les Preuves de Réclamation seront régies par les dispositions suivantes :

- 5.1.1 Le Contrôleur, avec l'assistance des Requérantes, examinera toutes les Preuves de Réclamations produites avant ou à la Date Limite, et le Contrôleur, conjointement avec les Requérantes, admettra, révisera ou rejettera les montants et/ou les termes y étant prévus aux fins de votation et de distribution dans le Plan;
- 5.1.2 Le Contrôleur utilisera sa discrétion raisonnable pour établir le degré de conformité de la façon par laquelle une Réclamation Prouvable est complétée et exécutée, et pourra, lorsqu'il sera satisfait qu'une Réclamation a été adéquatement prouvée, renoncer à l'observation stricte des exigences de l'Ordonnance Relative au Processus de Réclamation quant à la forme et au contenu d'une Preuve de Réclamation;
- 5.1.3 Toute Personne qui a l'intention de contester un Avis de Révision ou de Rejet doit présenter une Requête au Tribunal, après avoir donné avis à cet effet au Contrôleur et aux Requérantes, lequel avis devra lui être retourné le plus tôt possible dans les dix (10) jours après la signification de l'Avis de Révision ou de Rejet;

- 5.1.4 Lorsqu'un Créancier reçoit un Avis de Révision ou de Rejet et ne présente pas une Requête au Tribunal dans les délais impartis, la valeur et le statut de la Réclamation d'un tel Créancier pour les fins du Plan seront réputés être tels qu'indiqués dans l'Avis de Révision ou de Rejet et une telle valeur et un tel statut, le cas échéant, constitueront la Réclamation Prouvée d'un tel Créancier;
- 5.1.5 Le Contrôleur, conjointement avec les Requérantes, peut résoudre et/ou régler consensuellement avec tout Créancier le montant de sa Réclamation aux fins de votation et/ou de Distribution;

## 5.2 COMPENSATION APPLICABLE

La Réclamation Prouvée d'un Créancier sera nette de : (a) tout montant dû par le Créancier aux Requérantes (incluant, sans limiter la généralité de ce qui précède, des rabais remis à raison de paiements sans délai, des rabais-volume, des escomptes et tout autre type de rabais ou primes), lequel montant à être compensé sera vérifié au moment de l'analyse de la Réclamation; et (b) tous dommages causés aux Requérantes par le Créancier, y compris ceux causés par le défaut du Créancier de libérer des biens dont les Requérantes sont propriétaires en violation de l'Ordonnance Initiale.

## 5.3 CONTRAT RÉSILIÉ

Conformément à l'Ordonnance Initiale, les Requérantes ont le droit, sur envoi d'un avis écrit à cet effet, de mettre fin, de résilier et d'annuler toutes et chacune des ententes conclues par elle. Toute Réclamation ou Réclamation alléguée résultant d'un Contrat Résilié sera régie par les règles prévues au Plan.

## ARTICLE 6

### TRAITEMENT DES RÉCLAMATIONS DES CRÉANCIERS ET VOTATION

#### 6.1 LES CRÉANCIERS GARANTIS

##### 6.1.1 Votation

Les Créanciers Garantis n'ont pas le droit de vote à l'égard du Plan, puisque leur Réclamation Garantie sera payée en entier (à partir du Produit et des Autres Actifs) conformément au Plan. Par conséquent, les Créanciers Garantis sont réputés avoir voté en faveur du Plan.

##### 6.1.2 Traitement des Réclamations des Créanciers Garantis

Chaque Créancier Garanti ayant déposé une Preuve de Réclamation conformément à l'Ordonnance Relative au Processus de Réclamation, en paiement complet et final de sa Réclamation Garantie, recevra (à partir du Produit et des Autres Actifs) une somme égale à sa Réclamation Garantie due et déterminée être une Réclamation Prouvée, pour le principal et les intérêts accrus et impayés, déterminés en date où le paiement doit être fait. Le Contrôleur payera aux Créanciers Garantis ou veillera à ce que leur soient payés en entier les montants prévus à ce paragraphe 6.1.2 contre remise par chacun de ces Créanciers Garantis d'une libération entière et complète de toutes les Réclamations Garanties et de toute Sûreté détenue par un tel Créancier Garanti ou en son nom.

##### 6.1.3 Effet de l'exécution du Plan

Suite au paiement prévu au paragraphe 6.1.2, les Réclamations Garanties seront réglées et les Requérantes et toute Personne qui pourrait être responsable à l'égard de telles Réclamations Garanties seront irrévocablement et à jamais libérées de toutes ces Réclamations Garanties conformément à l'article 8 ci-après.



#### 6.1.4 Réclamation Garantie de 2975483 Canada Inc. et Gestion Parmalat Limitée

L'Ordonnance de Vente mentionnait expressément que l'annulation des hypothèques détenues par 2975483 Canada Inc. par l'effet de l'Ordonnance de Vente n'affectait pas les droits et statut de Gestion Parmalat Limitée (anciennement connue comme Parmalat Canada Limitée) et/ou ceux de 2975483 Canada Inc. en tant que créanciers de EVH (ou l'une ou l'autre des Requérantes) dans le cadre de ce Plan. L'Ordonnance de Vente déclarait de plus que tous les droits et sûretés que Gestion Parmalat Limitée et/ou 2975483 Canada Inc. détenaient ou aurait pu détenir à l'égard des actifs vendus à Eaux Vives Water Bottling Corp. affecteraient et grèveraient le Produit.

Les Requérantes ont été informées que 2975483 Canada Inc. et Gestion Parmalat Limitée, qui ont produit une Preuve de Réclamation en tant que Créanciers Garantis pour un montant de 87 488 942,82 \$, acceptent d'être traitées en tant que Créanciers Ordinaires aux fins du Plan, conditionnellement à ce que le Plan soit accepté par les Créanciers et homologué par le Tribunal dans sa forme actuelle. En conséquence, aux fins de ce Plan (incluant, sans limitation, les sous-alinéas 4.2, 4.3 et 6.3), la Réclamation de 2975483 Canada Inc. et de Gestion Parmalat Limitée sera traitée comme une Réclamation Ordinaire et 2975483 Canada Inc. et Gestion Parmalat Limitée voteront, recevront une Distribution et participeront au Plan en tant que Créanciers Ordinaires. Le paiement du dividende à Gestion Parmalat Limitée et 2975483 Canada Inc. à titre de Créanciers Ordinaires est conditionnel à la délivrance par elles d'une quittance à l'égard de toute Sûretés détenues par ou pour elles à l'égard du Produit.

Gestion Parmalat Limitée et 2975483 Canada Inc. ont toutefois expressément réservé tous leurs droits et recours, incluant relativement à toutes Sûretés qu'elles pourraient avoir sur le Produit, si le Plan n'est pas mis en oeuvre pour quelque raison que ce soit. La quittance par 2975483 Canada Inc. et Gestion Parmalat Limitée relativement à leur charge sur le Produit est une condition pour l'exécution de ce Plan.

## 6.2 CRÉANCIERS DE LA COURONNE

### 6.2.1 Votation

Les Créanciers de la Couronne n'ont pas le droit de vote à l'égard du Plan, puisque leur Réclamation de la Couronne sera payée (à partir du Produit et des Autres Actifs) en entier conformément au Plan. Par conséquent, les Créanciers de la Couronne sont réputés avoir voté en faveur du Plan.

### 6.2.2 Traitement des Réclamations de la Couronne

Chaque Créancier de la Couronne ayant déposé une Preuve de Réclamation conformément à l'Ordonnance Relative au Processus de Réclamation recevra (à partir du Produit et des Autres Actifs), en paiement final et complet de sa Réclamation de la Couronne, une somme égale à la Réclamation de la Couronne qui lui est due et déterminée être une Réclamation Prouvée. Le Contrôleur payera à la Couronne ou veillera à ce que lui soient payés les montants prévus au présent paragraphe.

### 6.2.3 Effet de l'Exécution du Plan

Suite aux paiements prévus à l'article 6.2, les Réclamations de la Couronne seront réglées et les Requérantes et toute Personne qui pourrait être responsable à l'égard de telles Réclamations de la Couronne seront irrévocablement et à jamais libérées de toutes les Réclamations de la Couronne conformément à l'article 8 ci-après.

## 6.3 CRÉANCIERS ORDINAIRES

### 6.3.1 Votation

Chaque Créancier Ordinaire ayant produit une Preuve de Réclamation conformément à l'Ordonnance Relative au Processus de Réclamation aura le droit de voter au sein de la Catégorie des Créanciers Ordinaires, jusqu'à concurrence de la somme égale à sa Réclamation Ordinaire qui est une Réclamation Admise pour Fins de Votation.

### 6.3.2 Traitement des Réclamations Ordinaires

~~<Dans la mesure où le Fonds de Distribution le permet, chaque>~~ **Chaque** Créancier Ordinaire qui a produit une Preuve de Réclamation conformément à l'Ordonnance Relative au Processus de Réclamation aura le droit de recevoir en règlement complet et définitif de sa Réclamation Ordinaire, à partir du Fonds de Distribution :

- (1) relativement au premier 1 000 \$ de sa Réclamation Ordinaire déterminée être une Réclamation Prouvée, le montant le moins élevé entre 1 000 \$ et le montant de la Réclamation Ordinaire du Créancier déterminée être une Réclamation Prouvée; et
- (2) relativement à la ~~<part>~~ **portion** de sa Réclamation Ordinaire déterminée être une Réclamation Prouvée qui excède 1 000 \$, un montant correspondant à ~~<leur portion au pro-rata de la valeur totale du Fonds de Distribution>~~ **20% du solde de sa Réclamation Ordinaire déterminée être une Réclamation Prouvée** (déduction faite des montants payés en vertu du sous-alinéa (1) ci-haut).

Afin de calculer le dividende payable à chaque Créancier Ordinaire en vertu du présent alinéa (2), les montants payés en vertu de l'alinéa (1) ci-dessus seront déduits ~~<du Fonds>~~ de Distribution et de chaque Réclamation Ordinaire déterminée être une Réclamation Prouvée. (Par exemple, si un Créancier a une Réclamation Ordinaire déterminée être une Réclamation Prouvée de 5 ~~<500>~~ **000** \$, un montant de 1 000 \$ sera payé en entier conformément à l'alinéa (1) et le montant de sa Réclamation Prouvée aux fins du présent alinéa (2) sera de 4 000 \$).

Pour fins de clarté, si ce Plan est exécuté, les Réclamations Prouvées de 2975483 Canada Inc. et Gestion Parmalat Limitée seront traitées comme des Réclamations Ordinaires conformément au Plan et leur dividende sera calculé conformément au présent article 6.3.2. De plus, le montant des Réclamations Prouvées de 2975483 Canada Inc. et de Gestion Parmalat Limitée sera inclus dans le montant total de toutes les Réclamations Ordinaires des Créanciers Ordinaires déterminées être des Réclamations Prouvées. **Cependant, 2975483 Canada Inc. et Gestion Parmalat Limitée ont accepté de renoncer à une portion de leur dividende payable en vertu du Plan afin de permettre aux autres Créanciers Ordinaires ayant une Réclamation Prouvée de recevoir le dividende prévu au présent paragraphe 6.3.2.**

Le Contrôleur payera ou veillera à ce que soient payés aux Créanciers Ordinaires les montants décrits à cet article.

### 6.3.3 Effet de l'Exécution du Plan

Suite aux paiements prévus à l'article 6.3.2, les Réclamations de tous les Créanciers Ordinaires seront réglées et les Requérantes et toute Personne qui pourrait être responsable à l'égard de telles Réclamations Ordinaires seront irrévocablement et à jamais libérées de telles Réclamations Ordinaires conformément à l'article 8 ci-après;

#### **6.4 CRÉANCIERS NON AFFECTÉS**

Les Créanciers Non Affectés n'ont pas le droit de vote à l'égard du Plan puisque les Réclamations Non Affectées seront payées (à partir du Produit et des Autres Actifs) en entier aux Créanciers Non Affectés conformément au Plan. Par conséquent, les Créanciers Non Affectés sont réputés avoir voté en faveur du Plan.

Suite au paiement des Réclamations Non Affectées, les Requérantes et toute Personne qui pourrait être responsable à l'égard de telles Obligations Non Affectées seront irrévocablement et à jamais libérées de toutes les Réclamations Non Affectées conformément à l'article 8 ci-après.

#### **6.5 INTÉRÊT**

Sous réserve des dispositions du Plan, aucun intérêt et/ou pénalité ne sera accru ou payé sur les Réclamations des Créanciers à compter de la Date de Détermination. Cet intérêt et/ou pénalité feront l'objet de quittances conformément au présent Plan.

#### **6.6 LIMITE ET RANG**

Nonobstant toute autre disposition, les paiements en vertu de ce Plan seront faits selon l'ordre suivant : a) tout d'abord, les paiements prévus à l'article 6.10 du Plan (ainsi que tout paiement que le Contrôleur et les Requérantes considèrent requis pour l'achèvement des procédures en vertu de la *LACC*) seront faits; b) ensuite, les paiements prévus à l'article 6.1 du Plan seront faits; c) ensuite, les paiements prévus à l'article 6.2 du Plan seront faits; d) ensuite, les paiements prévus à l'article 6.4 du Plan seront faits; e) enfin, les paiements prévus à l'article 6.3 seront faits jusqu'à ce que le Fonds de Distribution soit épuisé. À tout événement, et à l'égard de toute Réclamation, aucun paiement ne pourra en aucun cas être fait à un Créancier au delà du montant du Produit et des Autres Actifs. Un paiement ne pourra être fait que si les paiements colloqués prioritairement auront été acquittés en totalité.

#### **6.7 RÉSERVES À L'ÉGARD DES RÉCLAMATION DISPUTÉES**

Si un litige survient quant à la validité ou au montant d'une Preuve de Réclamation ou d'une Réclamation Non Affectée ou si une réclamation qui est couverte par la Charge des Administrateurs est présentée, le Contrôleur prendra les réserves qu'il considère appropriées afin de permettre le paiement de telles réclamations conformément au Plan.

Dans l'éventualité où une réserve est effectuée conformément à ce Plan et que le montant de cette réserve n'est pas employé en totalité, le solde de la réserve sera libéré et considéré être disponible pour distribution conformément à ce Plan.

#### **6.8 DIVIDENDE INTÉRIMAIRE**

Après avoir pris les réserves appropriées conformément au Plan, le Contrôleur pourra, à son entière discrétion, procéder au paiement d'un dividende intérimaire à une ou plusieurs Catégorie(s) de Créancier(s).

#### **6.9 DIVIDENDE D'UN MONTANT DE MOINS DE 10,00 \$ CAN**

Si le Contrôleur paie un dividende (intérimaire ou final) conformément au Plan et que le dividende payable au Créancier est de moins de 10,00 \$ CAN, alors aucun montant ne sera payé à ce Créancier. Ce montant sera, toutefois, pris en considération afin de déterminer le montant de tout dividende ultérieur payable à ce Créancier.

## **6.10 FRAIS ET DÉPENSES DU CONTRÔLEUR ET AUTRES**

Tous les frais et toutes les dépenses des Requérantes et du Contrôleur seront payés de façon courante, avant tout paiement de quelque nature que ce soit, y compris ceux prévus aux articles 6.1 et 6.4 ci-dessus. De plus, tout avocat, consultant, conseiller ou toute personne semblable, agissant pour le compte des Requérantes y compris les Personnes dont les Réclamations sont classées, conformément à l'Ordonnance Initiale et/ou à tout autre Ordonnance, comme constituant une portion de la Charge Administrative, ainsi que tout paiement visé par le paragraphe 48 de l'Ordonnance Initiale, sera payé en entier, après le Contrôleur, mais avant tout autre paiement de quelque nature que ce soit, y compris les paiements prévus aux articles 6.1 et 6.4 ci-dessus.

## **ARTICLE 7**

### **POUVOIRS ET OBLIGATIONS**

#### **7.1 POUVOIRS ET OBLIGATIONS DU CONTRÔLEUR**

Conformément aux termes de l'Ordonnance Initiale, de l'Ordonnance de Vente, de toute autre Ordonnance et du Plan, le Contrôleur est autorisé à :

- 7.1.1 expédier, par courrier ordinaire, à tous les Créanciers des Requérantes qui ont produit une Preuve de Réclamation conformément à l'Ordonnance Relative au Processus de Réclamation, une copie du Plan à être présenté aux Créanciers, avec un avis de convocation, une procuration et un formulaire prescrit de votation pour les fins de l'Assemblée des Créanciers qui sera tenue à l'égard du Plan à être déposé, le tout dans un délai d'au moins quinze (15) jours avant ladite Assemblée des Créanciers;
- 7.1.2 administrer et adjudiquer, en collaboration avec les Requérantes, toute Preuve de Réclamation produite par tout Créancier ou Créancier allégué des Requérantes;
- 7.1.3 rejeter ou réviser, en collaboration avec les Requérantes, toute Preuve de Réclamation produite par tout Créancier ou par tout prétendu Créancier des Requérantes, sous réserve du droit du Créancier d'en appeler au Tribunal afin de déterminer la validité de sa Réclamation conformément au Plan dans un délai de dix (10) jours d'un tel avis de rejet, chaque Créancier ayant le fardeau de prouver sa Réclamation;
- 7.1.4 produire et présenter auprès du Tribunal toute procédure, requête ou toute autre demande, nécessaire ou appropriée, ou qu'il considère nécessaire ou appropriée relativement :
  - 7.1.4.1 aux affaires des Requérantes;
  - 7.1.4.2 au Plan;
  - 7.1.4.3 à la détermination de tout droit des Requérantes ou de leurs Créanciers respectifs ou co-contractants;
  - 7.1.4.4 à tout avis ou directive dont il pourrait avoir besoin ou pour obtenir l'assistance du Tribunal; et
  - 7.1.4.5 à toute autre affaire qu'il considère nécessaire ou appropriée.
- 7.1.5 présider la première Assemblée des Créanciers et décider de toute question ou de tout différend survenant lors de l'Assemblée, une telle décision étant susceptible d'appel au Tribunal par tout Créancier dans les cinq (5) jours suivant cette dernière;
- 7.1.6 procéder aux paiements devant être faits aux Créanciers des Requérantes dans le cadre du Plan;

- 7.1.7 engager et retenir, avec le consentement des Requérantes, les services de tout professionnel requis ou désiré, incluant, sans limiter la généralité de ce qui précède, tout comptable, avocat, notaire ou autre;
- 7.1.8 déléguer, si requis ou nécessaire, à toute Personne dûment qualifiée du seul avis du Contrôleur et avec le consentement des Requérantes, tout ou partie des pouvoirs énumérés au présent Plan;
- 7.1.9 obtenir des Requérantes l'information que le Contrôleur considère utile;
- 7.1.10 conclure tout acte, tout contrat ou toute entente ou accomplir toute chose nécessaire ou requise afin de donner au Plan son plein effet;
- 7.1.11 assister les Requérantes dans leurs discussions avec leurs Créanciers respectifs, co-contractants ou toute autre Personne;
- 7.1.12 assister les Requérantes dans la négociation et le règlement des Réclamations des Créanciers;
- 7.1.13 produire ou contester toute Réclamation ou procédure introduite à l'égard de tout actif des Requérantes, le tout avec le consentement des Requérantes;
- 7.1.14 certifier comme étant conforme toute copie de toute Ordonnance;
- 7.1.15 expédier des avis de suspension des procédures, comme s'il était syndic à la faillite, à l'égard de toute procédure, judiciaire, administrative ou autre;
- 7.1.16 avec l'autorisation du Tribunal, faire toute chose ou conclure toute entente dans le but de protéger les Requérantes, leurs actifs, leurs Créanciers, ou dans le meilleur intérêt des Requérantes ou de ce Plan; et
- 7.1.17 exercer tous et chacun des pouvoirs d'un syndic à la faillite dans le but d'aider et d'assister les Requérantes dans le dépôt d'un Plan.

## ARTICLE 8

### QUITTANCES

L'acceptation de ce Plan par les majorités requises par celui-ci et l'homologation de ce Plan par le Tribunal auront pour effet de donner aux Requérantes ainsi qu'à toutes les Personnes ci-après désignées, de manière automatique, inconditionnelle et irrévocable, les quittances, libérations et renonciations suivantes, de la part de tous et chacun des Créanciers, immédiatement sur réception par un tel Créancier du montant qu'il est en droit de recevoir conformément à ce Plan :

- 8.1.1 une quittance et libération totale et finale en faveur des Requérantes de la part de chaque Créancier à l'égard de chaque Réclamation et Réclamation Non Affectée de tel Créancier, ainsi qu'une renonciation inconditionnelle et irrévocable pour tous et chacun des Créanciers d'exercer quelque droit personnel et/ou réel que ce soit relativement à leurs Réclamations et Réclamations Non Affectées respectives;
- 8.1.2 une quittance et libération totale et finale de la part de chaque Créancier à l'égard de toute réclamation, autres qu'une réclamation mentionnée à l'article 5.1(1) de la LACC, qu'il a ou qu'il pourrait avoir, directement ou indirectement, à l'encontre des Représentants des Requérantes résultant de quelque manière que ce soit de, ou pouvant se rattacher à, quelques Réclamations ou Réclamations Non Affectées que ce soit, ainsi qu'une renonciation irrévocable et inconditionnelle

de la part de chaque Créancier d'exercer quelque droit que ce soit, de nature personnelle et/ou réelle, relativement à ce qui précède;

- 8.1.3 une quittance et libération totale et finale de la part de chaque Créancier à l'égard de toute réclamation (autre que celles envisagées par les articles 8.1.1, 8.1.2 ou 8.1.4 du présent Plan) qu'il a ou pourrait avoir, directement ou indirectement, incluant toutes réclamations énoncées à l'article 5.1(2) de la *LACC*, à l'encontre des Représentants des Requérantes;
- 8.1.4 une quittance et libération totale et finale de la part de chaque Créancier et/ou toute autre Personne à l'égard de toutes réclamations qu'il pourrait avoir, directement ou indirectement, à l'encontre des Requérantes ou du Contrôleur ou de leurs Représentants respectifs en rapport avec ou de quelque manière que ce soit rattachée, directement ou indirectement, aux Procédures, à ce Plan, à la préparation et/ou l'exécution de ce Plan, et/ou à tout contrat, instrument, quittance, convention ou autre document ou toute autre action prise ou qu'il a été omis de prendre relativement à ce qui précède. À tous égards, les Requérantes et le Contrôleur ainsi que leurs Représentants respectifs auront le droit absolu, sans restriction ou qualification aucune, de se fier sur des conseils ou avis juridiques portant sur leurs droits et obligations en vertu de ce Plan; et
- 8.1.5 à compter de la Date de Prise d'Effet, les Requérantes seront réputées avoir automatiquement, à tout jamais, irrévocablement et inconditionnellement, donné quittance à leurs Représentants ainsi qu'au Contrôleur et ses Représentants à l'égard de toute Réclamation de toute nature qui existe, ou a déjà existé, ou qui pourrait exister à l'avenir, dans le cadre de, en rapport à ou de quelque manière que ce soit rattaché, directement ou indirectement, aux Procédures, à ce Plan, à la préparation et/ou à l'exécution de Plan, et/ou à tout contrat, instrument, quittance, convention ou autre document ou autre action prise ou qu'il a été omis de prendre à l'égard de ce qui précède.

Pour les fins de cet article 8, les expressions : a) « **Représentant** » d'une Personne comprend tous les administrateurs, dirigeants, actionnaires (directs ou indirects), compagnies affiliées (directes ou indirectes), employés, conseillers, avocats, comptables, mandataires, agents ainsi que tout autre représentant de cette Personne pour le présent ou pour le passé; et b) « **Procédures** » signifie toutes matières se rattachant de manière directe ou indirecte à toutes matières envisagées ou ayant pu survenir à l'intérieur du cadre des Procédures en vertu de la *LACC* des Requérantes depuis la date de l'Ordonnance Initiale jusqu'à la Date de Prise d'Effet.

## ARTICLE 9

### DIVERS

#### 9.1 ORDONNANCE D'HOMOLOGATION

Si le Plan est accepté par la majorité requise de Créanciers Ordinaires, les Requérantes, à moins qu'il n'en soit autrement prescrit par le Tribunal, demanderont au Tribunal d'émettre l'Ordonnance d'Homologation pour l'approbation et l'homologation du Plan. Sous réserve de l'émission par le Tribunal de l'Ordonnance d'Homologation et de la satisfaction des conditions énumérées à l'article 9.10 ci-après, ce Plan sera exécuté par les Requérantes et le Contrôleur et il liera tous les Créanciers des Requérantes.

#### 9.2 PRÉSÉANCE

À compter de l'émission de l'Ordonnance d'Homologation, tout conflit entre le Plan et les engagements, garanties, représentations, termes, conditions, dispositions ou obligations, expresses ou implicites, de tout contrat, nantissement, hypothèque, sûreté, acte, acte de fiducie, convention de crédit, lettre d'engagement, contrat de vente, règlement des Requérantes, contrat de bail ou toute autre convention ou tout autre instrument, écrit ou verbal, ainsi que tout amendement, modification ou ajout à ceux-ci, existant entre un ou plusieurs Créanciers et les Requérantes à la date de l'Ordonnance d'Homologation sera réputé être régi par

les termes, conditions et dispositions du Plan et de l'Ordonnance d'Homologation, qui seront réputés avoir préséance et priorité.

### **9.3 RENONCIATIONS AUX DÉFAUTS**

À partir de l'Ordonnance d'Homologation, chaque Créancier sera réputé avoir renoncé à tout défaut, existant alors ou commis antérieurement par les Requérantes, dans tout engagement, terme, garantie, représentation, condition, disposition, ou obligation, expresse ou implicite, de tout contrat, convention, nantissement, hypothèque, sûreté, acte, acte de fiducie, convention de crédit, lettre d'engagement, convention de vente, contrat de bail ou toute autre convention ou tout autre instrument, écrit ou verbal, et tout amendement, modification ou ajout à ceux-ci, existant entre un ou plusieurs Créanciers et les Requérantes et tout avis de défaut ou demande de paiement en vertu de tout instrument, y compris notamment mais sans s'y limiter, de tout cautionnement, sera réputé avoir été annulé irrévocablement et pour toujours.

### **9.4 COMPROMIS EXÉCUTOIRE POUR TOUTES FINS**

**Le paiement, compromis ou autre règlement** de toute Réclamation en application du Plan, si approuvé et homologué par le Tribunal, sera opposable à tous les Créanciers et leurs héritiers, exécuteurs testamentaires, administrateurs, successeurs et ayants droit, pour toutes fins et, dans cette mesure, libèrera également tout tiers directement ou indirectement responsable d'un tel endettement, que ce soit à titre de caution, administrateur, co-débiteur solidaire, mandant ou autrement.

### **9.5 PARTICIPATION EN PLUSIEURS QUALITÉS**

Les Créanciers dont les Réclamations sont affectées par le Plan peuvent être affectés en plusieurs qualités. Chacun de ces Créanciers aura droit de participer au présent Plan en chacune de ces qualités. Toute action prise par un Créancier dans l'une de ces qualités n'affectera pas ce Créancier en toute autre qualité à moins que ce Créancier n'y consente par écrit ou à moins qu'il en soit autrement prévu par ce Plan.

### **9.6 MODIFICATION DU PLAN**

Les Requérantes se réservent le droit de déposer toute modification ou tout amendement au Plan au moyen d'un plan supplémentaire ou amendé ou par des plans d'arrangement déposés au Tribunal à tout moment ou de temps à autre, préalablement à l'examen et au vote à l'égard du Plan par les Créanciers; dans un tel cas, ces plans amendés ou supplémentaires ou ces plans d'arrangement seront, à toutes fins utiles, réputés faire partie du Plan et y seront incorporés. Les Requérantes donneront avis aux Créanciers d'une Catégorie affectée les détails de toute modification ou amendement préalablement au vote pris à l'égard du Plan. Les Requérantes pourront proposer un changement ou une modification au Plan à toute Assemblée des Créanciers. Suivant une telle Assemblée des Créanciers, les Requérantes pourront à tout moment et de temps à autre changer, amender, modifier ou compléter le Plan si le Tribunal l'autorise ou décide qu'un tel changement, amendement, modification ou supplément est de nature technique et ne causerait pas de préjudice matériel aux intérêts d'un Créancier en application du Plan ou de l'Ordonnance d'Homologation en plus d'être nécessaire afin de donner plein effet à l'essence du Plan et de l'Ordonnance d'Homologation. Enfin, les Requérantes pourront, à tout moment après l'Ordonnance d'Homologation et de temps à autre, changer, amender, modifier ou compléter le Plan par changement, amendement, supplément de nature autre que technique et ne causant pas de préjudice matériel aux intérêts d'un Créancier, sans avoir à convoquer une Assemblée des Créanciers sous réserve à ce que ledit changement, amendement, supplément ou ladite modification soit autorisée par le Tribunal. Cette acceptation par les Créanciers et cette homologation par le Tribunal seront assujetties aux mêmes modalités que celles prévues par le Plan. Les Requérantes pourront retirer le Plan à leur entière discrétion à tout moment avant la Date de Prise d'Effet.

## 9.7 CONSENTEMENTS, RENONCIATIONS ET ENGAGEMENTS

Lorsque l'Ordonnance d'Homologation sera rendue, chaque Créancier sera réputé avoir consenti et avoir accepté toutes et chacune des dispositions du présent Plan dans son ensemble. En particulier, mais sans limitation, chaque Créancier sera réputé:

- 9.7.1 sous réserve de l'accomplissement par les Requérantes de leurs obligations en vertu du Plan, avoir exécuté et délivré aux Requérantes tout consentement et toute libération, cession et renonciation, légale ou autre, nécessaire pour l'exécution et la réalisation du Plan dans son ensemble;
- 9.7.2 sous réserve de l'accomplissement par les Requérantes de leurs obligations en vertu du Plan, avoir renoncé à tout défaut des Requérantes en vertu d'une disposition, expresse ou implicite, dans toute entente ou autre arrangement, écrit ou verbal, existant entre le Créancier et la Requérante et s'étant produit au moment de l'Ordonnance d'Homologation ou préalablement à cette dernière;
- 9.7.3 avoir accepté qu'en cas de conflit entre les dispositions, expresse ou implicites, d'une entente ou autre arrangement, écrit ou verbal, existant entre le Créancier et la Requérante à la Date de Prise d'Effet (à l'exclusion de ceux conclus par la Requérante à la Date de Prise d'Effet ou entrant en vigueur à cette date) et les dispositions du Plan, alors les dispositions du présent Plan auront préséance et priorité et les dispositions d'une telle entente ou de tout autre arrangement seront modifiées en conséquence.

## 9.8 CONTRATS ET TRANSACTION

**Tout contrat ou toute transaction conclu(e) par les Requérantes sera réputé avoir été ratifié et accepté par les Créanciers et les Réclamations qui seront payées le seront exclusivement selon les dispositions de l'article 6 du présent Plan. Le Contrôleur, toute Personne et les Créanciers n'auront aucun droit, recours, action, droit d'action en justice ou autre, de quelque nature que ce soit, contre les Requérantes, leurs biens, leurs administrateurs, dirigeants ou contre toute autre Personne qui a pu conclure un contrat ou transaction de quelque nature que ce soit avec les Requérantes.**

## 9.9 PRÉSUMPTIONS

Les présomptions prévues par le présent Plan sont irréfragables, concluantes et irrévocables.

## 9.10 CONDITIONS DE L'EXÉCUTION DU PLAN

L'exécution du Plan par les Requérantes sera conditionnelle à l'accomplissement ou la signature et livraison à l'entière satisfaction des Requérantes : (a) de tous documents et instruments requis par la Plan; (b) de l'approbation du Plan par les majorités requises, tel que stipulées à ce Plan; (c) de l'obtention de l'Ordonnance d'Homologation; et (d) l'obtention d'une quittance (laquelle deviendra effective sur paiement du montant auquel elles ont droit en vertu du Plan) de la part de Gestion Parmalat Limitée et 2975483 Canada Inc. de toute charge qu'elles détiennent sur le Produit dans un délai de cinq (5) jours de l'obtention de l'Ordonnance d'Homologation (étant entendu que le Contrôleur pourra, à partir de la Date de Prise d'Effet, procéder aux Distributions prévues au Plan).

## 9.11 AVIS

**Tout avis et toute communication donnés en application du Plan devront être effectués par écrit, et devront faire référence au Plan et peuvent, sous réserve de la présente Section, être faits en personne, par messenger, par courrier prépayé ou par télécopieur, adressés aux parties respectives comme suit:**



9.11.1 à la Requérante :

DAVIES WARD PHILLIPS & VINEBERG  
1501, avenue McGill College  
26<sup>e</sup> étage  
Montréal (Québec)  
H3A 3N9

Attention : Denis Ferland  
Louis-Martin O'Neill

Tél. : (514) 841-6423

Fax : (514) 841-6499

9.11.2 au Contrôleur :

RSM Richter Inc.  
2, Place Alexis-Nihon  
Suite 1820  
Montréal (Québec)  
H3Z 3C2

Attention: Yves Vincent, FCA  
André Hébert, CA

Tél. : (514) 934-3400

Fax : (514) 934-3504

Avec copie à:

DAVIES WARD PHILLIPS & VINEBERG  
1501, avenue McGill College Avenue  
26<sup>e</sup> étage  
Montréal (Québec)  
H3A 3N9

Attention: Denis Ferland  
Louis-Martin O'Neill

Tél. : (514) 841-6423

Fax : (514) 841-6499

9.11.3 à un Créancier:

à l'adresse de ce Créancier telle que spécifiée dans la Preuve de Réclamation produite par lui ou, si aucune Preuve de Réclamation n'a été produite, à toute autre adresse à laquelle la partie donnant avis peut raisonnablement croire que le Créancier peut être contacté.

**EN CAS DE DIVERGENCE ENTRE LA VERSION FRANÇAISE ET LA VERSION ANGLAISE DE CE TEXTE, LA VERSION ANGLAISE PRIMERA.**

Signé à <\_\_\_\_\_> Montréal en ce <\_\_\_\_\_> 2e jour de <\_\_\_\_\_> 2005. <\_\_\_\_\_> février  
2006.

par :

\_\_\_\_\_ Tony Cugliari

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL  
N° DE COUR : 500-11-022700-047

COUR SUPÉRIEURE

(Siégeant à titre de tribunal désigné en vertu  
de la *Loi sur les arrangements avec les  
créanciers des compagnies*)

DANS L'AFFAIRE DU PLAN D'ARRANGEMENT DE 9161-5849 QUÉBEC INC. (anciennement connue sous le nom de EAUX VIVES HARRICANA INC.), 41902 DELAWARE INC. (anciennement connue sous le nom de EVH U.S.A. INC.) ET 9161-5286 QUÉBEC INC. (anciennement connue sous le nom de LES SOURCES PÉRIGNY INC.), collectivement « EVH », personnes morales dûment constituées aux termes des lois ayant leur siège social au 11 chemin des Sablières, à Saint-Mathieu-d'Harricana, province de Québec, district d'Abitibi, JOY 1M0.

Débitrices

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### Procès-verbal d'une assemblée des créanciers tenue :

Le 2 février 2006 à 10 heures  
Au Marriott Château Champlain, Salle Viger  
1050 rue de la Gauchetière Ouest, Montréal (Québec)

Président :  
Yves Vincent, FCA, CIRP, Syndic  
Contrôleur nommé par le tribunal  
En vertu de la *Loi sur les arrangements avec les créanciers des compagnies* (« LACC »)

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#### 1. Ouverture de l'assemblée

L'assemblée est déclarée ouverte à 10 heures par M. Yves Vincent, représentant du contrôleur nommé par le tribunal et président de l'assemblée.

#### 2. Présentation des intervenants

M. Yves Vincent, après s'être présenté à l'assemblée, présente les intervenants qui expliqueront les différents aspects du dossier des Débitrices, lesquels prennent également place à la table, à savoir :

- M<sup>e</sup> Marc Duchesne, Borden Ladner Gervais S.E.N.C.R.L. s.r.l., procureur du contrôleur
- M<sup>e</sup> Denis Ferland, Davies Ward Phillips & Vineberg S.E.N.C.R.L. s.r.l., procureur des Débitrices
- M. Tony Cugliari, représentant des Débitrices

#### 3. Quorum pour la tenue de l'assemblée

M. Vincent prend note des créanciers présents à l'assemblée (voir le registre des présences ci-joint en **Annexe 1**) et indique qu'il a également reçu vingt-neuf (29) procurations en faveur de RSM Richter Inc. Le quorum constaté, l'assemblée peut être tenue.

M. Vincent informe les créanciers présents que cette assemblée a été dûment convoquée par le biais d'un envoi postal effectué le 23 décembre 2005. Cet envoi postal comportait notamment une copie du Plan d'arrangement, le rapport du contrôleur, des listes de créanciers, une lettre de votation, un formulaire de procuration ainsi qu'un Avis aux créanciers de la demande d'homologation et de ratification du Plan d'Arrangement.

#### 4. Présentation du Plan d'arrangement amendé

M<sup>e</sup> Ferland, procureur de la Débitrice, explique que le Plan d'arrangement a été amendé ce matin et qu'une copie de ce Plan d'arrangement amendé était, de manière concomitante à la tenue de l'assemblée, déposée au dossier de la Cour.

Au sujet des amendements apportés au Plan d'arrangement (voir copie ci-jointe des amendements en **Annexe 2**), il mentionne que ces derniers concernent les créanciers ordinaires et comprennent essentiellement une bonification monétaire des conditions du Plan d'arrangement déposé le 14 décembre 2005.

Aux termes de ces amendements:

- Les créanciers ordinaires ayant des Réclamations Prouvées égales ou inférieures à 1 000 \$ se verront remettre 100 % de leur Réclamation Prouvée; et
- Les créanciers ordinaires ayant des Réclamations Prouvées de 1 001 \$ et plus se verront remettre 1 000 \$ plus 20 % de l'excédent de leur Réclamation Prouvée.

M<sup>e</sup> Ferland indique à l'assemblée qu'aux fins du Plan d'arrangement tel qu'amendé, les réclamations de Parmalat Holdings Limited et 2975483 Canada Inc. (collectivement « **Parmalat** ») sont incluses dans le montant total de toutes les réclamations ordinaires. M<sup>e</sup> Ferland indique de plus à l'assemblée qu'aux termes du Plan d'arrangement tel qu'amendé, Parmalat accepte de renoncer à une portion de son dividende payable en vertu du Plan amendé afin de permettre aux autres Créanciers Ordinaires ayant une Réclamation Prouvée de recevoir le dividende prévu au paragraphe 6.3.2 du Plan d'arrangement amendé.

Par ailleurs, M. Vincent mentionne aux créanciers qu'il a reçu deux (2) lettres, soit une de 2975483 Canada Inc. et une autre de Parmalat Holdings Limited, confirmant qu'elles ont accepté de renoncer à une portion de leur dividende payable en vertu du Plan d'arrangement amendé afin de permettre aux autres créanciers ordinaires ayant une Réclamation Prouvée de recevoir le dividende mentionné ci-haut.

Une version du Plan d'arrangement amendé ainsi qu'une version comparée du Plan ont été remis aux créanciers présents à l'Assemblée des créanciers.

#### 5. Mise à jour du rapport du contrôleur

M. Vincent a effectué une mise à jour du rapport du contrôleur émis le 23 décembre 2005. Il mentionne que les fonds, provenant notamment de la vente des actifs de la Débitrice, détenus actuellement dans le compte de banque du contrôleur s'établissaient à 14 660 000 \$ au 1<sup>er</sup> février 2006.

M. Vincent fait également rapport sur l'analyse de la distribution des remises aux créanciers. Selon les calculs du contrôleur, près de 27 % des créanciers recevront la totalité de leur Réclamation Prouvée alors que près de 13 % des créanciers recevront quant à eux environ 50 % de leur Réclamation Prouvée. Au total c'est donc près de 40 % des créanciers qui recevront plus de 50 % de leur Réclamation Prouvée.

M. Vincent a également indiqué à l'assemblée que dans le cadre d'une faillite, le dividende versé aux créanciers ordinaires ayant une Réclamation Prouvée aurait été de l'ordre de 14 ¢ par dollar.

Le document intitulé « *Mise à jour du rapport du contrôleur émis le 23 décembre 2005* » daté du 2 février 2006 a été remis aux créanciers présents à l'assemblée. Une copie dudit document est jointe à l' **Annexe 3** de ce procès-verbal.

#### 6. Opinion légale quant à la créance de Parmalat et son droit d'être considérée comme créancière

Le procureur du contrôleur, M<sup>e</sup> Marc Duchesne, fait rapport aux créanciers relativement à la validité de la créance de Parmalat. Ce dernier confirme à l'assemblée qu'une somme d'environ 85 000 000 \$ en capital a été dûment avancée par Parmalat et que ces prêts ont tous été contractés par billets. Il a également mentionné que Parmalat était un créancier ayant un droit de vote, pour le plein montant de leur Réclamation Prouvée.

#### 7. Période de questions

Aucune question n'a été posée.

**8. Vote sur le Plan d'arrangement amendé**

La totalité des créanciers ordinaires, soit 58 créanciers, ayant exercé leur droit de vote, ont voté en faveur du Plan d'arrangement amendé pour une somme de 93 959 304 \$ (voir en **Annexe 4** la copie ci-jointe des listes de créanciers ayant voté).

**9. Ratification par la Cour**

M. Vincent avise les créanciers que la demande de ratification du Plan d'Arrangement amendé sera présentée à la Cour le 8 février 2006 tel que stipulé à l'Avis joint à notre envoi postal du 23 décembre 2005.

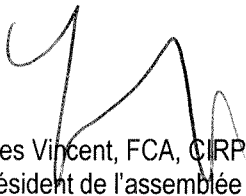
**10. Levée de l'assemblée**

M. Vincent déclare l'assemblée levée à 10 h 20.

FAIT À MONTRÉAL, ce 7<sup>e</sup> jour de février 2006.

**RSM Richter Inc.**

Contrôleur nommé par le tribunal



Yves Vincent, FCA, CIRP  
Président de l'assemblée

# **Annexe 1**



## **Annexe 2**



SUPERIOR COURT OF QUEBEC  
(COMMERCIAL DIVISION)  
DISTRICT OF MONTREAL

COURT FILE No. 500-11-022700-047

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AMENDED PLAN OF ARRANGEMENT

OF

9161-5849 QUÉBEC INC. (formerly known as EAUX VIVES HARRICANA INC.)

AND

41902 DELAWARE INC. (formerly known as EVH U.S.A. INC.)

AND

9161-5286 QUÉBEC INC. (formerly known as LES SOURCES PÉRIGNY INC.)

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PURSUANT TO

*THE COMPANIES' CREDITORS ARRANGEMENT ACT*

(R.S.C. 1985 c.C-36)

Each of the undersigned Applicants 9161-5849 Québec Inc. (formerly known as Eaux Vives Harricana Inc.), 41902 Delaware Inc. (formerly known as EVH U.S.A. Inc.) and 9161-5286 Québec Inc. (formerly known as Les Sources Périgny Inc.) hereby respectfully submits the following plan of arrangement pursuant to the *Companies' Creditors Arrangement Act* (Canada).

## INTRODUCTION<sup>1</sup>

The Applicants availed themselves of the reliefs and remedies provided by the CCAA, which ultimately allowed the sale of their assets as an operating unit, avoided a forced liquidation scenario and as such obtained a better value for all their Creditors.

The purpose of this Plan is to effect a compromise and arrangement between the Applicants and their Creditors with respect to all the debts and obligations of the Applicants.

As explained more fully below, the proposed Plan provides, further to the liquidation of the Applicants' assets, for the creation of a fund which, once the Secured Claims, the Crown's Claims, the Unaffected Claims, the DIP Loan and various expenses relating to the CCAA process have been paid, will be distributed to the Applicants' Unsecured Creditors. As more fully explained below, Parmalat Holdings Limited and 2975483 Canada Inc. will participate to the Plan as Unsecured Creditors.

Pursuant to the Plan, the Unsecured Creditors will receive full payment of the first \$1,000 of their Claim and the balance of the Distribution Fund will be distributed between the Unsecured Creditors ~~<proportionally to their Unsecured Claim that is a Proven Claim>~~ until the Distribution Fund has been exhausted, the whole in accordance with subsection 6.3.2 hereinafter.

## SECTION 1

### INTERPRETATION

#### 1.1 DEFINITIONS

For purposes of this Plan, the following terms shall have the meanings specified or referenced below unless otherwise expressly indicated herein or unless the context requires otherwise:

"**Accepted Claim For Voting Purposes**" means the Claim of a Creditor which is accepted for voting purposes as provided for in Sections 4 and 5 hereof;

"**Administration Charge**" has the meaning ascribed to such term in the Initial Order and/or any other Order;

"**Applicants**" means EVH, EVH U.S.A. and Périgny, or any of them, as the case may be;

"**Bar Date**" means 5:00 p.m. (Eastern Time) on July 30, 2004, which date has been determined by the Claim Process Order;

"**BIA**" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as from time to time amended;

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<sup>1</sup> This Introduction is for information purposes only and is not part of the Plan.

### 6.3 UNSECURED CREDITORS'

#### 6.3.1 Voting

Each Unsecured Creditor having filed a Proof of Claim in accordance with the Claim Process Order shall be entitled to vote in the Unsecured Creditors' Class to the extent of the amount which is equal to its Unsecured Creditors' Claim which is an Accepted Claim for Voting Purposes.

#### 6.3.2 Treatment of Unsecured Claims

~~<Providing the Distribution Fund allows it, each>~~ Each Unsecured Creditor having filed a Proof of Claim in accordance with the Claim Process Order shall be entitled to receive, in full and final satisfaction of its Unsecured Claim, out of the Distribution Fund:

- (1) with respect for the first \$1,000 of their Unsecured Claim determined to be a Proven Claim, the lesser of \$1,000 and the amount of the Creditor's Unsecured Claim determined to be a ~~Prove~~n Claim; and
- (2) with respect to the portion of their Unsecured Claim determined to be a Proven Claim over \$1,000, an amount corresponding to ~~<their pro-rata share of the Distribution Fund>~~ 20% of the balance of the Unsecured Claim determined to be a Proven Claim (net of the amounts ~~<used for the payments provided for in>~~ paid pursuant to subparagraph (1) above).

In calculating the dividend payable to each Unsecured Creditor pursuant to the present paragraph (2), the amounts paid pursuant to paragraph (1) above shall be deducted ~~<from the Distribution Fund and>~~ from each Unsecured Claim determined to be a Proven Claim. (For example, if a Creditor has an Unsecured Claim determined to be a Proven Claim of \$5,000, an amount of \$1,000 will be paid in full pursuant to paragraph (1) above and the amount of its Proven Claim for the calculation provided for in the present paragraph (2) will be \$4,000).

For purposes of clarity, should this Plan be implemented, 2975483 Canada Inc. and Parmalat Holdings Limited's Proven Claims will be treated as Unsecured Claims pursuant to the Plan and their dividend will be calculated in accordance with the present Subsection 6.3.2. Furthermore, the amount of 2975483 Canada Inc. and Parmalat Holdings Limited's Proven Claims shall be included into the aggregate amount of all Unsecured Claims of Unsecured Creditors determined to be Proven Claims. However, 2975483 Canada Inc. and Parmalat Holdings Limited have agreed to waive a portion of the dividend payable to them pursuant to the Plan in order to allow the other Unsecured Creditors having a Proven Claim to receive the dividend provided for in this subsection 6.3.2.

The Monitor shall pay or cause to be paid to the Unsecured Creditors the amounts referred to in this Section.¶

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**PLAN D'ARRANGEMENT AMENDÉ**

DE

**9161-5849 QUÉBEC INC. (anciennement connue comme EAUX VIVES HARRICANA INC.)**

ET

**41902 DELAWARE INC. (anciennement connue comme EVH U.S.A. INC.)**

ET

**9161-5286 QUÉBEC INC. (anciennement connue comme LES SOURCES PÉRIGNY INC.)**

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EN VERTU DE

*La Loi sur les arrangements avec les créanciers des compagnies*

(L.R.C. 1985 ch. C-36)

Chacune des Requérantes soussignées 9161-5849 Québec Inc. (anciennement connue comme Eaux Vives Harricana Inc.), 41902 Delaware Inc. (anciennement connue comme EVH U.S.A. Inc.) et 9161-5286 Québec Inc. (anciennement connue comme Les Sources Périgny Inc.) soumet respectueusement le plan d'arrangement suivant en vertu de la *Loi sur les arrangements avec les créanciers des compagnies*.

## INTRODUCTION<sup>1</sup>

Les Requérantes se sont prévaluées des recours et des remèdes prévus à la *LACC*, ce qui a ultimement permis la vente des actifs des Requérantes en tant qu'unité opérante, évitant ainsi un scénario de liquidation forcée et maximisant le retour aux Créanciers.

Le but du présent Plan est d'effectuer un arrangement et compromis entre les Requérantes et leurs Créanciers relativement à l'ensemble des dettes et obligations des Requérantes.

Tel qu'expliqué plus amplement ci-après, le Plan proposé prévoit, suite à la liquidation des actifs des Requérantes, la création d'un fonds qui, après que les Réclamations Garanties, les Réclamations de la Couronne, les Réclamations Non Affectées, le Prêt DIP et les diverses dépenses relatives aux procédures sous la *LACC* auront été payés, sera distribué aux Créanciers Ordinaires. Tel qu'expliqué plus amplement ci-après, Gestion Parmalat Limitée et 2975483 Canada Inc. participeront au Plan à titre de Créanciers Ordinaires.

En vertu du Plan, les Créanciers Ordinaires recevront le paiement complet du premier 1 000 \$ de leur Réclamation et le solde du Fonds de Distribution sera ensuite distribué entre les Créanciers Ordinaires ~~proportionnellement à leur Réclamation Ordinaire qui est une Réclamation Prouvée~~ jusqu'à l'épuisement du Fonds de Distribution, le tout selon les termes de l'article 6.3.2 ci-après.

## ARTICLE 1

### INTERPRÉTATION

#### 1.1 DÉFINITIONS

Pour les fins du présent Plan, les expressions suivantes ont la signification qui leur est attribuée ci-après, à moins qu'il n'en soit autrement prescrit dans le présent Plan ou que le contexte n'exige une autre signification :

« Acheteur » a la signification qui lui est attribuée à l'article 2 ci-après;

« Autres Actifs » signifie tous les actifs des Requérantes, en date des présentes, qui n'ont pas été vendus à l'Acheteur en vertu de la Convention d'Achat, incluant, mais sans s'y limiter, l'argent, les comptes bancaires (incluant tout reliquat du Dépôt), les comptes recevables de quelque nature que ce soit, dus ou qui deviendront dus ou payables aux Requérantes, incluant, mais sans s'y limiter, tous les crédits de taxes ou d'impôts, remboursements de taxes ou d'impôts et autres. Les actions que détenait EVH dans le capital-actions de EVH U.S.A. et/ou de Périgny ne font pas partie des Autres Actifs;

« Assemblée des Créanciers » signifie l'Assemblée des Créanciers convoquée afin de considérer et de voter sur le Plan, ou toute telle assemblée convoquée subséquemment;

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<sup>1</sup> Cette introduction est à titre informatif uniquement et ne fait pas partie du Plan.

## 6.3 CRÉANCIERS ORDINAIRES

### 6.3.1 Votation

Chaque Créancier Ordinaire ayant produit une Preuve de Réclamation conformément à l'Ordonnance Relative au Processus de Réclamation aura le droit de voter au sein de la Catégorie des Créanciers Ordinaires, jusqu'à concurrence de la somme égale à sa Réclamation Ordinaire qui est une Réclamation Admise pour Fins de Votation.

### 6.3.2 Traitement des Réclamations Ordinaires

~~<Dans la mesure où le Fonds de Distribution le permet, chaque>~~ **Chaque** Créancier Ordinaire qui a produit une Preuve de Réclamation conformément à l'Ordonnance Relative au Processus de Réclamation aura le droit de recevoir en règlement complet et définitif de sa Réclamation Ordinaire, à partir du Fonds de Distribution :

- (1) relativement au premier 1 000 \$ de sa Réclamation Ordinaire déterminée être une Réclamation Prouvée, le montant le moins élevé entre 1 000 \$ et le montant de la Réclamation Ordinaire du Créancier déterminée être une Réclamation Prouvée; et
- (2) relativement à la ~~<part>~~ **portion** de sa Réclamation Ordinaire déterminée être une Réclamation Prouvée qui excède 1 000 \$, un montant correspondant à ~~<leur portion au pro-rata de la valeur totale du Fonds de Distribution>~~ **20% du solde de sa Réclamation Ordinaire déterminée être une Réclamation Prouvée** (déduction faite des montants payés en vertu du sous-alinéa (1) ci-haut).

Afin de calculer le dividende payable à chaque Créancier Ordinaire en vertu du présent alinéa (2), les montants payés en vertu de l'alinéa (1) ci-dessus seront déduits ~~<du Fonds>~~ de Distribution et de chaque Réclamation Ordinaire déterminée être une Réclamation Prouvée. (Par exemple, si un Créancier a une Réclamation Ordinaire déterminée être une Réclamation Prouvée de 5 ~~<500>~~ **000** \$, un montant de 1 000 \$ sera payé en entier conformément à alinéa (1) et le montant de sa Réclamation Prouvée aux fins du présent alinéa (2) sera de 4 000 \$).

Pour fins de clarté, si ce Plan est exécuté, les Réclamations Prouvées de 2975483 Canada Inc. et Gestion Parmalat Limitée seront traitées comme des Réclamations Ordinaires conformément au Plan et leur dividende sera calculé conformément au présent article 6.3.2. De plus, le montant des Réclamations Prouvées de 2975483 Canada Inc. et de Gestion Parmalat Limitée sera inclus dans le montant total de toutes les Réclamations Ordinaires des Créanciers Ordinaires déterminées être des Réclamations Prouvées. Cependant, 2975483 Canada Inc. et Gestion Parmalat Limitée ont accepté de renoncer à une portion de leur dividende payable en vertu du Plan afin de permettre aux autres Créanciers Ordinaires ayant une Réclamation Prouvée de recevoir le dividende prévu au présent paragraphe 6.3.2.

Le Contrôleur payera ou veillera à ce que soient payés aux Créanciers Ordinaires les montants décrits à cet article.

### 6.3.3 Effet de l'Exécution du Plan

Suite aux paiements prévus à l'article 6.3.2, les Réclamations de tous les Créanciers Ordinaires seront réglées et les Requérantes et toute Personne qui pourrait être responsable à l'égard de telles Réclamations Ordinaires seront irrévocablement et à jamais libérées de telles Réclamations Ordinaires conformément à l'article 8 ci-après;

## **Annexe 3**

# RSM Richter Inc.

RSM Richter Inc.

2, Place Alexis Nihon  
 Montréal (Québec) H3Z 3C2  
 Téléphone / Telephone : (514) 934-3497  
 Télécopieur / Facsimile : (514) 934-3504  
 www.rsmrichter.com

CANADA  
 PROVINCE DE QUÉBEC  
 DISTRICT DE MONTRÉAL  
 N° DE COUR : 500-11-022700-047

COUR SUPÉRIEURE

(Siégeant à titre de tribunal désigné en vertu de la  
*Loi sur les arrangements avec les créanciers des  
 compagnies*)

DANS L'AFFAIRE DU PLAN D'ARRANGEMENT  
 DE

**9161-5849 QUÉBEC INC.** (anciennement connue  
 sous le nom de EAUX VIVES HARRICANA INC.),  
**41902 DELAWARE INC.** (anciennement connue  
 sous le nom de EVH U.S.A. INC.) **ET 9161-5286**  
**QUÉBEC INC.** (anciennement connue sous le nom  
 de LES SOURCES PÉRIGNY INC.),  
**collectivement « EVH »**, personnes morales  
 dûment constituées aux termes des lois ayant leur  
 siège social au 11 chemin des Sablières, à Saint-  
 Mathieu-d'Harricana, province de Québec, district  
 d'Abitibi, JOY 1M0.

**Débitrices**

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**Mise à jour du rapport du contrôleur émis le 23 décembre 2005**

Dans le cadre de l'assemblée des créanciers qui a lieu le 2 février 2006, nous vous soumettons sous pli, les documents  
 suivants :

- État de recettes et débours pour la période du 17 décembre 2005 au 1<sup>er</sup> février 2006;
- Analyse de distribution estimative.

FAIT À MONTRÉAL, ce 2<sup>e</sup> jour de février 2006.

**RSM Richter Inc.**  
 Contrôleur nommé par le tribunal



(English – over)



**RSM RICHTER INC., CONTRÔLEUR  
EAUX VIVES HARRICANA INC. ET AL**

**État de Recettes et Débours**

**Pour la Période du 17 Décembre 2005 au 1er Février 2006**

(Note 1)

<b>FONDS EN BANQUE (17 décembre 2005)</b>		<b>\$ 14,875,000</b>
<b>RECETTES</b>		
Revenus d'intérêts	(Note 2)	38,152
TPS/TVQ		<u>3,536</u>
<b>RECETTES TOTALES</b>		<b>\$ 41,688</b>
<b>DÉBOURS</b>		
Honoraires Professionnels (Taxes incluses)	(Note 3)	
Davies, Ward Phillips & Vineberg		\$ 109,755
RSM Richter Inc.		<u>146,876</u>
<b>DÉBOURS TOTAUX</b>		<b>\$ 256,631</b>
<b>FONDS EN BANQUE (1er février 2005)</b>		<b>\$ 14,660,057</b>

**Note 1:**

Cet État de recettes et débours détaille les transactions dans le compte en fidéicomis du Contrôleur suite à l'émission de l'État présenté dans le Rapport du Contrôleur daté du 23 décembre 2005.

**Note 2:**

Les revenus d'intérêts se rapportent à la période du 1er décembre 2005 au 31 décembre 2005.

**Note 3:**

Étant donné que EVH n'a présentement aucune activité commerciale ni aucun bien à protéger, les seules dépenses encourues se rapportent à la finalisation du Plan d'Arrangement.

(English -- over)

**RSM RICHTER INC., Contrôleur nommé par la Cour  
DANS L'AFFAIRE DU PLAN D'ARRANGEMENT DE EAUX VIVES HARRICANA INC. ET AL  
ANALYSE DE DISTRIBUTION ESTIMATIVE**

	Montant	PLAN (Déposé)	PLAN (Amendé)	FAILLITE
		Minimum	Minimum	Minimum
		Maximum	Maximum	Maximum
<b>Fonds en banque au 1 février 2006</b>		\$ 14,660,000	\$ 14,660,000	\$ 14,660,000
<b>Recettes</b>				
Revenus d'intérêts	(Note 1)	65,000	65,000	65,000
Recouvrement de compte client	(Note 2)	60,000	60,000	60,000
Recouvrement TPS/TVQ	(Note 3)	à déterminer	à déterminer	à déterminer
<b>Total</b>		125,000	125,000	125,000
		à déterminer	à déterminer	à déterminer
		115,000	115,000	115,000
<b>Déboursés</b>				
<b>Provision pour réclamations ultérieures</b>				
<b>Honoraires Professionnels (Taxes incluses):</b>				
Samson Bélair Deloitte & Touche		51,000	51,000	51,000
Davies Ward Phillips & Vineberg		75,000	75,000	75,000
Borden Ladner Gervais		35,000	35,000	70,000
RSM Richter Inc.		175,000	175,000	350,000
Divers		25,000	25,000	25,000
<b>Total</b>		361,000	361,000	571,000
		236,000	236,000	351,000
<b>Provisions Fiscales</b>				
Avis cotisation 2001 - Provincial		-	-	-
Avis cotisation 2002 - Provincial		-	-	-
Taxe sur le capital 2003		-	-	-
Taxe sur le capital 2004 (Estimé)		400,000	400,000	400,000
Taxe sur le capital 2005 (Estimé)		350,000	350,000	350,000
<b>Total</b>		750,000	750,000	750,000
<b>Grand total des provisions</b>		1,111,000	1,111,000	986,000
<b>Estimé des fonds disponibles aux fins de la distribution</b>		\$ 13,674,000	\$ 13,789,000	\$ 14,214,000
<b>Valeur des réclamations</b>		\$ 97,010,900	\$ 97,010,900	\$ 97,010,900
<b>Distribution estimative aux termes du Plan déposé</b>				
Créancier non garanti - Parmalat		14.00%	14.11%	14.11%
Créanciers non garantis - Autres		15.01%	15.13%	15.13%
<b>Distribution estimative aux termes du Plan amendé</b>				
Créanciers non garantis - Parmalat		13.35%	13.48%	13.48%
Créanciers non garantis - Autres		20.95%	20.95%	20.95%
<b>Ajustement de la valeur des réclamations dans un cas de faillite</b>				
Ajouter:				
Créanciers ne s'étant pas conformés au "Bar date"				59,000
Créanciers n'ayant pas produit de preuve de réclamation				3,855,000
Créance fiscale relative aux éléments "Pre-filing" (Impôt et taxe sur le Capital)				249,000
Créance fiscale relative aux éléments "Post-filing" (Taxe sur le Capital)				750,000
Total "ajusté" des réclamations				5,413,000
<b>Distribution estimative dans un cas de faillite</b>				
Créanciers non garantis (Incluant Parmalat)				14.15%
Moins: Prélèvement du Surintendant des faillites (Maximum)				-0.09%
Moins: Prélèvement du Surintendant des faillites (Minimum)				13.85%
				14.06%

Note 1: Revenu d'intérêt pour la période du 1 Janvier 2006 au 28 février 2006

Note 2: Estimé de la récupération d'un compte client s'étant prévalu de la protection du Chapitre 11 de la loi de la faillite Américaine.

Note 3: Tout montant de TPS/TVQ qui serait dû à EVH, pourrait faire l'objet de compensation des droits de compensation des autorités fiscales.

## **Annexe 4**

**RSM Richter Inc.**  
**In the Matter of the Proposal of**  
**Eaux Vives Harricana Inc.**  
**List of all Proven Creditors**

Class	Votes Cast		Dollar Value of Claims		Percent by Number of Votes		Percent by Dollar Value		Result	
	Yes	No	Yes	No	Yes	No	Yes	No	By Votes	By Value
	53	0	93,574,448.27	0.00	100.00	0.00	100.00	0.00	Acc.	Acc.

**RSM Richter Inc.**  
**In the Matter of the Proposal of**  
**Eaux Vives Harricana Inc.**  
**List of all Proven Creditors**

Class	Type	Creditor Name	Account Number	Amount Proven	Proxy	Letter	Person
	U	3766063 CANADA INC (MULTITECH ENVIRONN		711.27		Y	
	U	656712 ONTARIO LIMITED (STRATEGIES INT'L		10,937.54			
	U	9098-3156 QUEBEC INC (MULTILAB DIRECT)		1,159.45		Y	
	U	9133 5711 QUEBEC INC		95,571.19			
	U	A.R. MEDICOM		623.44			
	U	ACHILLE DE LA CHERROTIERE		9,537.21		Y	
	U	ACOSTA CANADA CORPORATION		174,274.02		Y	
	U	ALBANY BERGERON & FILS INC.		1,418.00			
	U	AMOSPHERE COMPLEXE HOTELI		4,084.73			
	U	ATLAS COPCO COMPRESSORS CANADA		4,953.78		Y	
	U	BEL ENVIRONNEMENT ENR		1,702.36		Y	
	U	BELL CONFERIA INC		961.86	Y		
	U	BOULONS ABITIBI LTEE (LES)		6,927.91		Y	
	U	BOUTIQUE DU BUREAU GYVA		12,287.35	Y		
	U	BROUILLETTE KOSIE PRINCE		4,726.00			
	U	CALIFORNIA LINE INC		12,652.29			
	U	CANADIAN NATIONAL RAILWAY COMPANY		17,593.03		Y	
	U	CASCADES ENVIROPAC		3,798.59			
	U	CASE STACK (1)		301,927.25			
	U	CENTRE INFORMATIQUE ABITI		27,591.87		Y	
	U	CHAMBRE DE COMMERCE AMOS		419.84		Y	
	U	CHEP CANADA INC.		157,356.93			
	U	CIMCO REFRIGERATION (TOROMONT INDUS		7,973.95			
	U	CIT FINANCIAL		18,122.13			
	U	CLARKE INC		74,947.85		Y	
	U	CLUB VOYAGES PLAMONDON INC		6,261.36			
	U	COMMISSION SCOLAIRE HARRICANA		9,707.52			
	U	CONSTRUCTION GASTON PROULX ET FILS I		5,636.23		Y	
	U	CONSTRUCTIONS GAGNE & FILS INC		43,619.39		Y	
	U	COPISCOPE INC		273.20			
	U	CSST		11,706.12			
	U	CTAC		35,575.98			
	U	DICOM EXPRESS INC		122.92			
	U	DISTRIBUTION NORVE INC		93.79			
	U	DOMINO PRINTING SOLUTIONS INC		322.09		Y	
	U	ECOLAB		1,266.68			
	U	EDELSTEIN DIVERSIFIED CO LTD		584.55		Y	
	U	EMBALLAGE JEAN-CARTIER INC		690.15		Y	
	U	ENTREPOTS LAFRANCE		779.80		Y	
	U	ENTREPRISES DE SERVICE THIBER LTEE		7,805.03		Y	
	U	FISHER SCIENTIFIC		1,237.58			
	U	FLOORGRAPHICS (1)		419,048.85			
	U	FONDS AU BENEFICE DES PERSONNES INC		8,440.51		Y	
	U	GAZ METROPOLITAIN		1,608.22		Y	
	U	GENPAK		150,401.22			
	U	GESTION QUADRIUIUM LTEE (RACHELLE-BE		2,300.50			
	U	GOJIT		11,998.55		Y	
	U	GOODGOLL CURTIS INC		526,175.94			
	U	GOUDREAU CARGO INTERNATIONAL INC		18,698.42			
	U	GROUPE CONSULTAUX INC		149,997.89		Y	
	U	GROUPE GOYETTE		862.69			
	U	GROUPE KWA (LE)		24,270.29			
	U	GROUPE ROBERT INC		5,819.64		Y	
	U	GROUPE STAVIBEL		19,264.79		Y	
	U	GUILLEVIN INTERNATIONAL CIE		556.87			
	U	HEENAN BLAIKIE		11,023.54		Y	
	U	HJB NETWORK		10,012.98		Y	
	U	HUGUETTE CARBONNEAU BOOK ME A TRIP		3,620.37			
	U	HUSKY INJECTION MOLDING SYSTEMS LTD(		449.40			
	U	HYDRAULIQUE C.L. INC.		360.98		Y	
	U	HYDRO-QUEBEC		20,798.18			
	U	IMPRIMERIE BIGOT INC.		2,668.65			
	U	IMPRIMERIE HARRICANA INC		668.90		Y	
	U	INSTORE FOCUS INC.		17,713.85		Y	
	U	INVESTISSEMENT QUEBEC		3,000,000.00		Y	
	U	J.Y. MOREAU ELECTRIQUE INC		169,116.17		Y	
	U	JEAN-GUY COUILLARD INC		161.04		Y	
	U	JOHN MEUNIER INC		558.23		Y	
	U	KINGSWAY TRANSPORT		21,788.65		Y	
	U	KRUGER INC		33,172.98		Y	
	U	LANOUE, MAURICE		1,850.00			
	U	LOCATION AMOS INC		199.79			
	U	MAHEU & MAHEU		808.33		Y	
	U	MANITOULIN TRANSPORT INC		16,673.78			
	U	MATCO LTEE		103.64			
	U	MATERIAUX 3 + 2 LTEE (LES)		226.77			

**RSM Richter Inc.**  
**In the Matter of the Proposal of**  
**Eaux Vives Harricana Inc.**  
**List of all Proven Creditors**

U	MEDIA DEPARTMENT INC. (THE)	153,484.78	
U	MILLAIRE & GODBOUT INC	375.71	
U	MINISTERE DU REVENU DU QUEBEC	21,878.14	
U	NALCO CANADA CO.	3,738.46	
U	NATIONAL TESTING LABORATORIES LTD (1)	994.20	
U	NSF INTERNATIONAL (1)	9,753.00	
U	PARMALAT AUSTRALIA LTD.	482,154.16	
S	PARMALAT CANADA LIMITED (2975483 CANA	87,488,942.82	Y
U	PERANI MEZZANOTTE & PARTNERS SPA (2)	780.33	
U	PLOMBERIE GERMAIN ROY INC	1,032.04	Y
U	PROCAP WILTZ SA	98,542.08	Y
U	PRODUITS CHIMIQUES AMPLEX LTEE (LES)	905.83	Y
U	PRODUITS SANITAIRES NORFIL INC	10,115.14	
U	REMI BILODEAU	97.77	
U	RESTAURANTS P&P (LES)	11,937.05	
U	ROBBIE MANUFACTURING (1)	1,750,000.00	Y
U	RODYK & DAVIDSON (4)	901.07	
U	SAMSON BELAIR DELOITTE & TOUCHE	100,876.70	Y
U	SANIMOS INC	15,205.62	Y
U	SCHONFELD INC, TRUSTEE OF THE	188,093.82	Y
U	SERRE-DE LOOZ INC	273.82	
U	SERVICECRAFT LLC (1)	35,910.99	
U	SERVICES PROMOTIONNELS G.V.B. (LES)	3,148.28	
U	SMI (2)	950.37	Y
U	SOMA AUTO INC	1,231.21	
U	STAR CHAMBERS ENTERPRISE, LLC (1)	84,942.99	
U	SUN LIFE ASSURANCE	15,166.98	
U	SYSTEMES DANFREIGHT INC	15,540.00	
U	TECHNI-LAB	5,009.06	Y
U	TELEBEC LTEE	22,560.81	
U	TRANSPORT & DIST. J.H. THIBODEAU INC	2,185.49	Y
U	TRANSPORT GUILBAULT INT'L INC (GROUP)	20,796.76	Y
U	TRANSPORT MORNEAU INC.	45,287.40	Y
U	TRANSPORT SCAN EXPRESS	7,319.02	
U	VIDEOJET TECHNOLOGIES CANADA LP	604.81	
U	VILLE D'AMOS	611.81	
U	VITRERIE POMERLEAU	1,444.76	Y
U	WOLSELEY CANADA GROUP	823.03	
U	YVON BARIL AMOS INC.	155.23	Y

Creditors Printed = 115

RSM Richter Inc.  
In the Matter of the Proposal of  
EVH U.S.A. Inc.  
List of all Proven Creditors

Class	Votes Cast		Dollar Value of Claims		Percent by Number of Votes		Percent by Dollar Value		Result	
	Yes	No	Yes	No	Yes	No	Yes	No	By Votes	By Value
	5	0	384,855.47	0.00	100.00	0.00	100.00	0.00	Acc.	Acc.

**RSM Richter Inc.**  
**In the Matter of the Proposal of**  
**EVH U.S.A. Inc.**  
**List of all Proven Creditors**

<b>Class</b>	<b>Type</b>	<b>Creditor Name</b>	<b>Account Number</b>	<b>Amount Proven</b>	<b>Proxy</b>	<b>Letter</b>	<b>Person</b>
	U	BRYAN WADE BROWN		1,548.96		Y	
	U	CAROLINA MANUFACTURER'S SERVICES INC		1,443.59			
	U	CO-SALES COMPANY		4,730.19			
	U	EDGE DISPLAY GROUP ENTERPRISE INC		138,752.89			
	U	INFORMATION RESOURCES INC		29,234.23	Y		
	U	MARS ADVERTISING		185,539.53		Y	
	U	PACIFIC FOODSERVICE NORTHWEST		2,701.31			
	U	RESEARCH MANAGEMENT GROUP		57,013.15			
	U	SELECT SALES & MARKETING INC		5,331.99	Y		
	U	STAR CHAMBERS ENTERPRISE, LLC (5 STAR		28,514.60			
	U	TPG SALES SERVICES INC		163,200.76	Y		
	U	VORIDIAN CANADA COMPANY		59,800.19			

Creditors Printed = 12



CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
No: 500-11-022700-047

**SUPERIOR COURT**

(Sitting as tribunal designated under the  
*Companies' Creditors' Arrangement Act*)

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**IN THE MATTER OF THE  
ARRANGEMENT OF:**

**9161-5849 QUÉBEC INC. (formerly  
known as EAUX VIVES HARRICANA  
INC.)**

-and-

**41902 DELAWARE INC. (formerly  
known as EVH U.S.A. INC.)**

-and-

**9161-5286 QUÉBEC INC. (formerly  
known as LES SOURCES PERIGNY  
INC.)**

Petitioners

-and-

**RSM RICHTER INC.**

Monitor

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**CERTIFICATE OF THE MONITOR ESTABLISHING THE FULFILLMENT OF THE  
CONDITIONS PERTAINING TO A PLAN OF ARRANGEMENT**

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**WHEREAS** 9161-5849 Québec Inc. (formerly known as Eaux Vives Harricana Inc.) ("EVH"), 41902 Delaware Inc. (formerly known as EVH U.S.A. Inc.) and 9161-5286 Québec Inc. (formerly known as Les Sources Périgny Inc.) (collectively, the "**Petitioners**") have sought the

protection of the *Companies' Creditors Arrangement Act* ("CCAA") and obtained an initial order on March 19, 2004, as same was renewed and extended;

**WHEREAS** RSM Richter Inc. has been appointed as Monitor to EVH;

**WHEREAS** on December 14, 2005, EVH has presented a plan of arrangement to the creditors, which plan was amended on February 2, 2006 (the "**Amended Plan**");

**WHEREAS** the Amended Plan was unanimously approved by the Creditors on February 2, 2006 and sanctioned by the Court on February 8, 2006 (the "**Sanction Order**");

**WHEREAS** the Sanction Order contemplates the issuance of a Certificate (as defined in the Sanction Order) by the Monitor;

**WHEREAS** the conditions of implementation set out in Section 9.10 have been fulfilled;

The Monitor declares that:

1. All documents and instruments contemplated by the Amended Plan have been fulfilled to the entire satisfaction of EVH;
2. The Amended Plan has been accepted by the majorities required as set forth by the Amended Plan;
3. The Sanction Order (as defined by the Amended Plan) has been obtained; and
4. The Monitor has obtained a release (to become effective upon full payment of the amount to which they are entitled pursuant to the Amended Plan) by Parmalat Holdings Limited and 2975483 Canada Inc. of any charge held by them covering the Proceeds.

MONTREAL, March ●, 2006

**RSM RICHTER INC.**

Per: \_\_\_\_\_

Name:

Title: