

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

IN THE MATTER OF THE RECEIVERSHIP OF:

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

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

BETWEEN:

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

APPLICANT

- and -



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

RESPONDENTS

**APPROVAL AND VESTING ORDER
(re Asset Sales (Canada) Inc.)**

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THIS MOTION, made by Ernst & Young Inc. in its capacity as Court-appointed receiver and receiver manager of the property, assets and undertakings of the Respondents (the "**Receiver**") for an order: (a) authorizing and empowering the Receiver to enter into an auction services agreement for the sale by Asset Sales (Canada) Inc. ("**Asset Sales**") of the assets identified as Nordberg 7' x 20' screener with triple deck (VIN TRAC 13113-10-04-03), 2000 Midland Tandem Quarter Frame - Dump trailer (VIN 2MFB2R6C5YR000676) and Parcel 2 (except Parcel 2.1B), Parcel 3 and Parcel 4 in the Tender Process and Tender Information Package approved by the Order of The Honourable Mr. Justice Riordon granted in these proceeding dated July 28, 2010 (collectively, the "**Auction Assets**"), the sale of which by Asset Sales is contemplated by the net minimum guarantee auction tender submitted by Asset Sales (the "**Asset Sales Tender**"), which is appended to the Supplement to the Seventh Report dated September 24, 2010 (the "**Supplemental Report**"); and (b) vesting in the ultimate purchaser(s) of the Auction Assets the right, title and interest of the Respondents in and to the Auction Assets, was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Seventh Report of the Receiver dated September 24, 2010 and the appendices attached thereto (the "**Seventh Report**"), the Supplemental Report and the appendices attached thereto, and the Receiver's Record on Motion, and on hearing the submissions of counsel for the Receiver, The Bank of Nova Scotia, the Province of New Brunswick, Aviva Surety, Caterpillar Financial Services Limited and General Electric Canada Equipment Financing G.P. and related entities,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Seventh Report, the Supplemental Report and the Motion Record shall be and is hereby abridged and validated so that the motion is properly returnable today, and that any further service thereof is hereby dispensed with.

2. **THIS COURT ORDERS AND DECLARES** that the Asset Sales Tender is hereby approved and the acceptance of the Asset Sales Tender by the Receiver is hereby authorized and approved. The Receiver is hereby authorized and empowered to negotiate and enter into an auction services agreement with Asset Sales based on the terms and conditions of the Asset Sales Tender for the sale of the Auction Assets by Asset Sales at a public auction (the "**Auction**

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Agreement") and to take such additional steps and execute such additional documents as may be necessary or desirable with respect to the Asset Sales Tender and the Auction Agreement.

3. **THIS COURT ORDERS** that, upon receipt by Asset Sales of the purchase price from a purchaser of any of the Auction Assets at any public auction conducted by Asset Sales in connection with the Auction Agreement, and upon a bill of sale being issued by Asset Sales to any such purchaser, all of the Respondents' right, title and interest in and to the Auction Assets shall vest absolutely in the respective purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by Orders of The Honourable Mr. Justice Riordon granted in these proceedings; (ii) any encumbrances or charges created by Orders of The Honourable Mr. Justice Riordon granted in proceedings bearing Court File No. N/M/16/10, (iii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (New Brunswick), the *Land Titles Act* (New Brunswick), the *Registry Act* (New Brunswick) or any other personal property or real property registry system (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Auction Assets are hereby expunged and discharged as against the Auction Assets.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Auction Assets by Asset Sales in accordance with the terms and conditions of the Asset Sales Tender, the Auction Agreement and this Order (the "**Auction Proceeds**") shall stand in the place and stead of such Auction Assets, and all Claims and Encumbrances shall attach to the Auction Proceeds with the same priority as they had with respect to the Auction Assets as if the Auction Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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5. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Respondents and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Respondents;

the vesting of the Auction Assets in the respective purchasers pursuant to this Order shall be binding on any trustee in bankruptcy appointed in respect of the Respondents and shall not be void or voidable by creditors of the Respondents, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

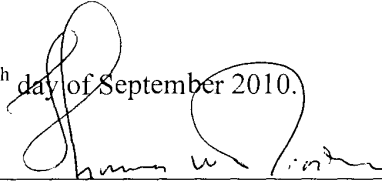
7. **THIS COURT ORDERS** that any party that has received notice of the Seventh Report and the Receiver's Record on Motion may apply to this Court to vary or amend this Order by serving a notice of motion requesting such relief on the parties recorded on the service list maintained by the Receiver in these proceedings by no later than 5:00 pm AST on Friday October 8, 2010.

8. **THIS COURT ORDERS** that the Supplemental Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all

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other contents of the Court file, in a sealed envelope and shall only be opened upon further Order of the Court.

Dated at Miramichi, New Brunswick, this 29th day of September 2010.

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

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