

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

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28 OCT 2010

THIS MOTION, made by Ernst & Young Inc., in its capacity as the Court-appointed receiver and receiver manager (the "**Receiver**") of the property, assets and undertakings of Atcon Construction Inc. (the "**Debtor**") for an order vesting in Premier Construction Ltd. (the "**Purchaser**") the Debtor's and the Receiver's right, title and interest, if any, in and to the assets described in an Asset Purchase Agreement (the "**Agreement**") between the Receiver and the Purchaser made as of October 21, 2010 and appended to the Tenth Report of the Receiver dated October 22, 2010 (the "**Tenth Report**"), was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Notice of Motion of the Receiver dated October 22, 2010, the Tenth Report and all appendices thereto, and the Supplement to the Tenth Report of the Receiver dated October 27, 2010 (the "**Supplemental Report**"), and on hearing the submissions of counsel for the Receiver, the Purchaser, 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, no one appearing for any other person on the service list, although properly served,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Tenth Report, the Supplemental Report and the Record on Motion shall be and is hereby abridged and validated so that the motion is properly returnable today, and that any further service thereof is hereby dispensed with.
2. **THIS COURT ORDERS AND DECLARES** that the Agreement be and the same is hereby approved.
3. **THIS COURT ORDERS AND DECLARES** that upon the Purchase Price (as defined in the Agreement) having been paid in accordance with the Agreement, all conditions to Closing with respect to the sale of the Purchased Assets (as such terms are defined in the Agreement) having been satisfied or waived, and the delivery by the Receiver of a Receiver's certificate substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), confirming that the sale of the Purchased Assets has been completed, all of the Debtor's and the Receiver's right, title and interest in and to the Purchased Assets described in the Agreement and listed on Schedule B hereto, if any, shall be vested absolutely in the Purchaser, free and clear of and from any and all ownership claims, title retention claims, security interests (whether

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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, known or unknown, 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 the Order of the Honourable Justice Riordon dated March 2, 2010, as amended by the Order of the Honourable Justice Riordon dated March 30, 2010 (the "**Receivership Order**"); (ii) any encumbrances or charges created by the Initial Order in the CCAA proceedings bearing Court File No. N/M/16/10 dated March 2, 2010; (iii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (New Brunswick), the *Personal Property Security Act* (Newfoundland and Labrador), the *Registration of Deeds Act* (Newfoundland and Labrador), the *Mechanics' Lien Act* (Newfoundland and Labrador), the *Judgment Enforcement Act* (Newfoundland and Labrador) or any other personal property registry system and or real property registry system (all of which are collectively referred to as the "**Encumbrances**"), for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets.

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

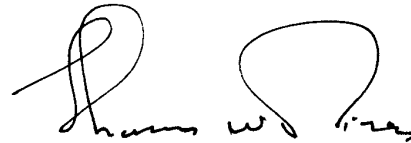
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made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

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the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance 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 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 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 28th day of October, 2010.

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

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

Schedule A – Form of Receiver's Certificate

Court File No. N/M/17/10

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY
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RESPONDENTS

RECEIVER'S CERTIFICATE

Jeff
28 Oct 2010

RECITALS

A. Pursuant to an Order of the Honourable Justice Riordon of the Court of Queen's Bench of New Brunswick (the "**Court**") dated March 2, 2010, as amended by the Order dated March 30, 2010, Ernst & Young Inc. was appointed as the receiver and receiver manager (the "**Receiver**") of the property, assets and undertakings of Atcon Construction Inc. (the "**Debtor**").

B. Pursuant to an Order of the Court dated October 28, 2010, the Court approved the Asset Purchase Agreement made as of October 21, 2010 (the "**Agreement**") between the Receiver and Premier Construction Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's and the Receiver's right, title and interest, if any, in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction has been completed.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Agreement;
2. The conditions to Closing as set out in the Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The transaction has been completed.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

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28 Oct 2010

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**ERNST & YOUNG INC., in its capacity as
receiver and receiver manager of the
property, assets and undertakings of Atcon
Construction Inc., and not in its personal or
corporate capacity**

Per: _____

Name:

Title:

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Schedule B

Description of Purchased Assets

Quantity	Description	Serial Number	Unit #	Equipment #
1	Telsmith Screen, 8/24	6166	SC-4	100046
1	Trac Feeder	AISBF-20172-01-2006	FE-4	100621
1	Trac Feeder	AISBF-20172-02-2006	FE-5	100622
1	2000 Stoughton Van Trailer, AVW 53'	1DW1A5326YS379303	VT-17	100323
1	Stoughton Office Van Trailer, AVW 53'	1DW1A5325XS230458	VT-25	100417
1	Compressor Inger Rand, CFM dual Model 185	4FVCBBAA06U370654	CO-7	100441
1	Shop Made Conveyor 42" x 81ft	n/a	CV- 2	100148
1	2005 Chevrolet 3/4 ton 2wd truck	1GCHC24U35E333662	00117	00117
1	2005 Chevrolet 3/4 ton 2wd truck	1GCHC24U75E329081	00105	00105

Jeff
28 Oct, 2010.