Court File No. N/M/17/10

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

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

COURT OF QUEEN'S BENCH OF N.B. RECEIVED AND FILED
MAY 10 2011
COUR DU BANC DE LA REINE DU N.-B. REÇU ET DÉPOSÉ

- 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

<u>APPROVAL AND VESTING ORDER</u>

JEHR
10 May 2011

THIS MOTION, made by Ernst & Young Inc. in its capacity as Court-appointed receiver and receiver manager of the property, assets and undertakings of the Respondents (the "**Receiver**") for an order, *inter alia*, authorizing the Receiver to sell the Walsh Street Property (as defined below), authorizing and approving the execution of the APS (as defined below) by the Receiver; authorizing and directing the Receiver to take such steps and execute such additional documents as may be necessary or desirable for the completion of the Walsh Street Property sale transaction; vesting the Walsh Street Property in and to the Purchaser (as defined below) free and clear of any liens or encumbrances, and authorizing and empowering the Receiver to utilize the net sale proceeds of the Walsh Street Property for the purpose of making payments (including interim payments) required or permitted by the Receivership Order, was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Receiver's Notice of Motion dated May 5, 2011, the Seventeenth Report of the Receiver dated May 5, 2011 and the appendices attached thereto (the "**Seventeenth Report**") and the Supplement to the Seventeenth Report of the Received dated May 5, 2011 (the "**Supplemental Report**"), and on hearing the submissions of counsel for the Receiver and such other counsel in attendance,

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion, the Seventeenth 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 sale of the real property and commercial building municipally known as 170 Walsh Street, Miramichi, New Brunswick, PID 40206989 (the "**Walsh Street Property**") pursuant to the agreement of purchase and sale between the Receiver and Sunny Corner Enterprises Inc. (the "**Purchaser**") dated March 22, 2011 (the "**APS**") is hereby approved.

3. **THIS COURT ORDERS AND DECLARES** that the execution of the APS by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the conveyance of the Walsh Street Property to the Purchaser.

JMR
10 May 2011

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of Atcon Property Holdings Inc.'s ("**APHI**") right, title and interest in and to the Walsh Street Property shall vest absolutely in the 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 Order of The Honourable Mr. Justice Riordon granted in these proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (New Brunswick), the *Land Titles Act* (New Brunswick), or any other 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 Walsh Street Property are hereby expunged and discharged as against the Walsh Street Property.

5. **THIS COURT ORDERS** that notwithstanding this Court Order and despite paragraph 4 of this Order, easements and rights of way and such other interests including prescriptive interests shall continue with respect to the Walsh Street Property.

6. **THIS COURT ORDERS** that upon the registration under the *Land Titles Act* (New Brunswick) of a transfer for the Walsh Street Property by the Receiver, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Walsh Street Property in fee simple, and is hereby directed to delete and expunge from title to the Walsh Street Property all of the Claims and Encumbrances registered with the Land Registrar.

7. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims and Encumbrances, the net proceeds from the sale of the Walsh Street Property shall stand in the place and stead of the Walsh Street Property, and 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 Walsh Street Property with the same priority as they had with respect to Walsh Street

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10 May 2011

Property, as if the Walsh Street Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

8. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

9. **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 APHI and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of APHI;

the vesting of the Walsh Street Property in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy appointed in respect of APHI and shall not be void or voidable by creditors of APHI, 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.

10. **THIS COURT ORDERS** that the Receiver is authorized and empowered, upon receipt of the net sale proceeds under the APS (the "**Net Sale Proceeds**"), to utilize the Net Sale Proceeds for the purpose of making payments (including interim payments) required or permitted by the Receivership Order dated March 2, 2010 granted in these proceedings as amended by the Order dated March 30, 2010 granted in these proceedings.

11. **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.

10 May 2011

Dated at Miramichi, New Brunswick, this 10th day of May, 2011.

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

Schedule A – Form of Receiver's Certificate

N/M/17/10

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
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BETWEEN:

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RESPONDENTS

RECEIVER'S CERTIFICATE

10 May 2011

RECITALS

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

B. Pursuant to an Order of the Court dated May 10, 2011 (the "**Approval and Vesting Order**"), the Court approved the agreement for purchase and sale made as of March 22, 2011 (the "**APS**") between the Receiver and Sunny Corner Enterprises Inc. (the "**Purchaser**"), and provided for the vesting in the Purchaser of the right, title and interest of Atcon Property Holdings Inc. in and to the Walsh Street Property (as defined in the Approval and Vesting Order), which vesting is to be effective with respect to the Walsh Street Property 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 Walsh Street Property; (ii) that the conditions to closing as set out in the APS have been satisfied or waived by the appropriate party; and (iii) the transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the APS or the Approval and Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Walsh Street Property payable on the closing date pursuant to the APS;

2. The conditions to closing as set out in the APS have been satisfied or waived by the Receiver or the appropriate party; and

3. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at ________ [TIME] on _______ [DATE].

10 May 2011

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

By: ______________________________

Name: Paul D. Hickey

Title: Senior Vice President

10 May 2011