

**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

**VESTING ORDER
(115 Whalen Street)**



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*, vesting the lands municipally known as 115 Whalen Street, Miramichi, New Brunswick and bearing Parcel Identifier Numbers 40277774 and 40179152 (the “**Whalen Lands**”) in and to Hitchman Construction Inc. (the “**Purchaser**”) free and clear of any liens or encumbrances, was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Twenty-First Report of the Receiver dated August 26, 2011 (the “**Twenty-First Report**”), and the appendices attached thereto, 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 dated September 1, 2011, the Twenty-First Report, and the Record on Motion dated September 1, 2011 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 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 Construction Inc.’s right, title and interest in and to the Whalen Lands 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 or in the *Companies’ Creditors Arrangement Act* proceedings of Atcon Construction Inc., bearing Court File No. N/M/16/10; (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**”, which term shall not include the permitted encumbrances and easements

listed on **Schedule "B"** hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Whalen Lands are hereby expunged and discharged as against the Whalen Lands.

3. **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 Whalen Lands shall stand in the place and stead of the Whalen Lands, 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 Whalen Lands with the same priority as they had with respect to the Whalen Lands, as if the Whalen Lands had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

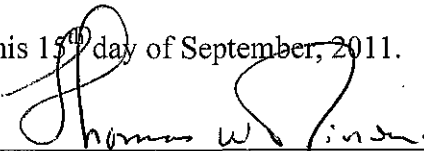
4. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

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 Atcon Construction Inc. and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Atcon Construction Inc.;

the vesting of the Whalen Lands in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy appointed in respect of Atcon Construction Inc. and shall not be void or voidable by creditors of Atcon Construction Inc., 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.

Dated at Miramichi, New Brunswick, this 15th day of September, 2011.

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

N/M/17/10

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APPLICANT

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RESPONDENTS

**RECEIVER’S CERTIFICATE
(115 Whalen Street)**

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 September 15, 2011 (the "**Vesting Order**"), the Court provided for the vesting in Hitchman Construction Inc. (the "**Purchaser**") of the right, title and interest of Atcon Construction Inc. in and to the Lands municipally known as 115 Whalen Street, Miramichi, New Brunswick and bearing Parcel Identifier Numbers 40277774 and 40179152 (the "**Whalen Lands**"), which vesting is to be effective with respect to the Whalen Lands 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 Whalen Lands; (ii) that the conditions to closing as set out in the agreement of purchase and sale dated August 2, 2011 (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 Whalen Lands 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].

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

By: _____

Name:

Title:

Schedule B – Permitted Encumbrances and Easements

Parcel ID: 40179152

1. Aliant Telecom Inc.
1 Brunswick SQ
PO Box 1430
Saint John, NB
E2L 4K2
Easement Holder | Titulaire de la servitude
Agreement | Convention
Northumberland 1975-12-15 296-215 64

2. New Brunswick Power Corporation
515 King St.
PO Box 2000
Fredericton, NB
E3B 4X1
Easement Holder | Titulaire de la servitude
Agreement | Convention
Northumberland 1975-12-15 296-215 64

Parcel ID : 40277774

None.