

**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
(1 Whalen Street)**

Self
18 July 2012

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 1 Whalen Street, Miramichi, New Brunswick and bearing Parcel Identifier Number 40179715 (**"1 Whalen Street"**) 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-Second Report of the Receiver dated July 13, 2012 (the **"Twenty-Second 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 July 13, 2012, the Twenty-Second Report, and the Record on Motion dated July 13, 2012, 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 1 Whalen Street 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"**) and, for greater certainty, this Court orders that all of the Encumbrances

Self
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affecting or relating to 1 Whalen Street are hereby expunged and discharged as against 1 Whalen Street.

3. **THIS COURT ORDERS** that notwithstanding this Court Order and despite paragraph 3 of this Order, easements and rights of way and such other interests including prescriptive interests shall continue with respect to 1 Whalen Street.

4. **THIS COURT ORDERS** that upon the registration under the *Land Titles Act* (New Brunswick) or the *Registry Act* (New Brunswick) of a transfer for 1 Whalen Street by the Receiver, the Land Registrar is hereby directed to enter the Purchaser as the owner of 1 Whalen Street in fee simple, and is hereby directed to delete and expunge from title to 1 Whalen Street all of the Claims and Encumbrances registered with the Land Registrar.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims and Encumbrances, the net proceeds from the sale of 1 Whalen Street shall stand in the place and stead of 1 Whalen Street, 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 1 Whalen Street with the same priority as they had with respect to 1 Whalen Street, as if 1 Whalen Street had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

7. **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.;

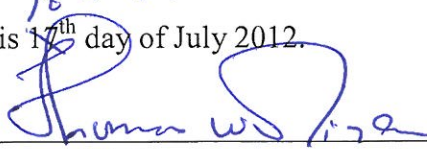
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18 July 2012

the vesting of 1 Whalen Street 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.

8. **THIS COURT ORDERS** that the Receiver is authorized and empowered, upon receipt of the net sale proceeds in connection with the sale of 1 Whalen Street (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.

Heard & ~~decided~~ decided on 17 July 2012. J.R.

18th. J.R.
Dated at Miramichi, New Brunswick, this 17th day of July 2012.



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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RESPONDENTS

**RECEIVER'S CERTIFICATE
(1 Whalen Street)**

*Sept
18 July 2012*

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 July 17, 2012 (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 1 Whalen Street, Miramichi, New Brunswick and bearing Parcel Identifier Number 40179715 ("**1 Whalen Street**"), which vesting is to be effective with respect to 1 Whalen Street upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the purchase price for 1 Whalen Street; (ii) that the conditions to closing as set out in the agreement of purchase and sale dated February 29, 2012 (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 Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for 1 Whalen Street 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].

Jeff
18 July 2012

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

By: _____

Name:

Title:

Jeff
18 July 2012