N/M/25/10

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:

COURT OF QUEEN'S BENCH OF N.B. RECEIVED AND FILED JUL 17 2012 COUR DU BANC DE LA REINE DU N.-B. REÇU ET DÉPOSÉ

ATCON PLYWOOD INC.

PURSUANT TO Section 33 of the *Judicature Act,* R.S.N.B., 1973, *c.* 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:

GE CANADA EQUIPMENT FINANCING G.P. and GENERAL ELECTRIC REAL ESTATE FINANCE INC., both of which are carrying on business in the Province of New Brunswick,

APPLICANTS

- and -

ATCON PLYWOOD INC., which is carrying on business in the Province of New Brunswick.

RESPONDENT

- and -

IN THE MATTER OF THE APPLICATION OF PRICEWATERHOUSECOOPERS INC., in its capacity as Court-appointed receiver and receiver-manager of the property, assets and undertakings of the Respondent.

APPROVAL AND VESTING ORDER

THIS MOTION, made by PricewaterhouseCoopers Inc. in its capacity as Court-appointed receiver and receiver and manager of the property, assets and undertakings of the Respondent (the "**Atcon Plywood Receiver**") for an order approving the sale transactions (the "**Transactions**") pursuant to an offer from 7857861 Canada Inc. and 7013272 Canada Inc. (the "**Purchasers**") to PricewaterhouseCoopers Inc. as Receiver and Receiver Manager of Atcon Plywood Inc. and Ernst & Young Inc., as Receiver and Receiver Manager of Atcon Management Services Inc. dated the 16th day of July, 2012 attached hereto as Appendice G, and including those terms set out in paragraph 4 a letter to the court dated August 15, 2011 providing for further payment to the trustee over a period of 5 years in an amount up to $750,000.00 attached hereto as Exhibit 1, (the "**Sale Agreement**") on the terms set out therein and vesting in the respective Purchasers all of the right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**") was heard this day at 673 King George Highway,

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Miramichi, New Brunswick and, failing completion of the Transactions, authorizing the Atcon Plywood Receiver to seek other offers for the Purchased Assets for a period of 60 days, and, failing receipt of an acceptable offer, authorizing the Atcon Plywood Receiver to engage the services of an auctioneer to complete a sale of the Purchased Assets by way of public auction.

ON READING the Third Report of the Atcon Plywood Receiver dated the 24th day of January, 2012 and the Fourth Report of the Atcon Plywood Receiver dated the 9th day of July, 2012 (the "**PwC Reports**"), and on hearing the submissions of counsel for the Atcon Plywood Receiver, counsel for the Province of New Brunswick, counsel for the Bank of Nova Scotia, counsel for Ernst & Young Inc., counsel to the Purchasers, counsel to Charles Martin, counsel to General Electric companies and counsel to Aviva Surety, no one appearing for any other person on the service list, although properly served as appears from the affidavit of James C. Mosher sworn July 10, 2012 filed herein,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion 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 Transactions are hereby approved, and the execution of the Sale Agreement by the Atcon Plywood Receiver is hereby authorized and approved, and the Atcon Plywood Receiver, is hereby authorized and directed to take such additional steps and execute the Sale Agreement and such additional documents as may be necessary or desirable for the completion of the Transactions and for the conveyance of the Purchased Assets to the Purchasers.

3. **THIS COURT ORDERS** that with effect as of closing, and subject to payment of the purchase price in accordance with the terms of the Sale Agreement, all of the right, title and interest of Atcon Plywood Inc. ("**Atcon Plywood**") in and to the Purchased Assets described in the Sale Agreement (the "**Atcon Plywood Purchased Assets**") shall vest absolutely in the Purchasers as registered owners without further instrument of transfer or discharge, 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 the order of The Honourable Mr. Justice Riordon granted in these proceedings dated March 31, 2010; (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

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affecting or relating to the Atcon Plywood Purchased Assets are hereby expunged and discharged as against the Atcon Plywood Purchased Assets.

4. **THIS COURT ORDERS** that notwithstanding this court order, easements and rights of way and such other interests including prospective interests shall continue with respect to the Atcon Plywood Real Property (as defined herein).

5. **THIS COURT ORDERS** that upon the registration under the *Land Titles Act* (New Brunswick) of a transfer for the Atcon Plywood Real Property by the Atcon Plywood Receiver, the Land Registrar is hereby directed to enter the Purchaser as the owner of the real property identified as PIDs 40221566, 40221525, 40221533, 40221558, 40286700, 40221541, 40286692, 40218000, 40466021, 40374290, 40374282 and 40221384 (the "**Atcon Plywood Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Atcon Plywood Real Property all of the Claims and Encumbrances attached thereto.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Atcon Plywood Purchased Assets shall stand in the place and stead of the Atcon Plywood Purchased Assets, and that from and after the Closing all Claims and Encumbrances shall attach to the net proceeds from the sale of the Atcon Plywood Purchased Assets with the same priority as they had with respect to the Atcon Plywood Purchased Assets, as if the Atcon Plywood Purchased 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.

7. **THIS COURT ORDERS** that the Atcon Plywood Receiver is authorized to execute, in the name of Atcon Plywood, all such documents of transfer, bills of sale, assignments and other documents and instruments as may be required or desirable to carry out the sale of the Atcon Plywood Purchased Assets or any part of them by the Atcon Plywood Receiver or evidence the sale, transfer and assignment of the Atcon Plywood Purchased Assets or any part of them and the vesting of title, as ordered above, including without limitation of any documents which may be required or that the Purchaser deems desirable to be registered at any registry office where registration may be required or desirable to record, evidence or carry out the transfer of the Atcon Plywood Purchased Assets or any of them and any documents as may otherwise be required to carry out the purpose and intent of the Sale Agreement and of this order.

8. **THIS COURT ORDERS** that the Atcon Plywood Receiver and the Purchasers are at liberty to amend the Closing Date by agreement between them without the need for any further Order of the Court.

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

(a) the pendency of these proceedings;

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(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Atcon Plywood and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Atcon Plywood;

the vesting of the Atcon Plywood Purchased Assets in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Atcon Plywood and shall not be void or voidable by creditors of Atcon Plywood, nor shall it constitute nor be deemed to be a transaction at undervalue, 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, should the funds not be deposited to the trust account of the Purchasers' counsel on or before 5:00 p.m. July 20, 2012 or the above noted Transactions not be completed in accordance with the Sale Agreement, the Atcon Plywood Receiver is authorized and directed to seek other offers for the Purchased Assets for a period of 60 days, and, failing receipt of an acceptable offer, the Atcon Plywood Receiver is authorized and directed to engage the services of an auctioneer to complete a sale of the Purchased Assets by way of public auction.

11. **THIS COURT ORDERS AND DECLARES** that the Approval and Vesting Order of The Honourable Mr. Justice Riordon dated August 15, 2011 granted in these proceedings (the "**August 15 Order"**) is hereby replaced by this Order and the August 15 Order shall have no further force or effect as of the date hereof.

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

APPENDICE G

FORM OF OFFER

INVITATION FOR OFFERS TO PURCHASE

PRICEWATERHOUSECOOPERS INC.'S INTEREST IN ALL OF THE ASSETS OF

Atcon Plywood Inc.

-and-

ERNST & YOUNG INC.'S INTEREST IN CERTAIN REAL PROPERTY OF

Atcon Management Services Inc.

To: The Court of Queen's Bench
673 King George Highway
Miramichi, NB E1V 1N6

Attention: Honourable Justice Thomas Riordon

7857861 Canada Inc.
(Name of Prospective **Purchaser 1**)

33, Bernier St, Gatineau, Qc J8Z 1E7
(Address, including postal code)

819-773-7380
(Telephone)

(Facsimile)

7013272 Canada Inc.
(Name of Propective **Purchaser 2)**

143 St-Patrick ave, Miramichi, New-Brunswick, E1V 2L3
(Address, including postal code)

819-598-2352
(Telephone)

(Facsimile)

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OFFER

I. I, we, Purchaser 1, hereby submit this amended offer for the bulk purchase of the following parcels:

The offer must indicate the value attributed to each parcel.

Parcel 1 - Lands & Buildings (North Side)	$ 1,331,215.90
Parcel 2 - Production equipment on North side as specified	$ 2,280,545.10
Parcel 5 – Spare parts locate in buildings, North Side	$ 99,460.73

II. I, we, Purchaser 2, hereby submit this amended offer for the bulk purchase of the following parcels:

Parcel 3 - Other lands specified are included in this offer:	$ 17,046.76

- PID 40129941 – Atcon Management Services Inc.
- PID 40466039 - Atcon Management Services Inc.
- PID 40221426 - Atcon Management Services Inc.
- PID 40221434 - Atcon Management Services Inc.

Parcel 4 – Other lands on South Side	$ 4,261.69

- PID 40218000
- PID 40466021
- PID 40374290
- PID 40374282
- PID 40221384

TOTAL AMENDED OFFER FOR PURCHASE OF ASSETS (Section I + Section II)	**$ 3,732,530.00**

III. The sum of $320,000.00, being a portion of the funds previously provided by the Purchasers to the Receiver are forfeited and such funds are now held by the receiver as damages and the sum of $270,500.00 held by PricewaterhouseCoopers Inc., represents the deposit required for the transaction.

IV. It is acknowledged and agreed that this amended offer is subject to the Terms and Conditions issued by PricewaterhouseCoopers Inc. and contained Fourth Report of the Receiver dated July 9, 2012, specifically subparagraphs 19(c), 19(d) and 19(e) and such shall be the terms and conditions to govern the new agreement.

DATED AT Gatineau, this 16th day of July, 2012.

Per: ______________________
PURCHASER 1 SIGNATURE
P. SÉGUIN

Per: ______________________
PURCHASER 2 SIGNATURE

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EXHIBIT "1"

Maritimes Miramichi Plywood Inc.

(# 7857861 Canada Inc.)

Miramichi, August 15th 2011

Honourable Justice Thomas Riordon
Court of Queen's Bench
673 King George Highway
Miramichi, N.-B., E1V 1N6

REFERENCE: Purchase of assets Atcon Plywood Inc.

Honourable Justice Thomas Riordon,

Enclosed is the offer to purchase by two (2) purchasers, 7857861 Canada Inc. and 7013272 Canada Inc., in the amount of $ 5,255,000.00.

Also enclosed, is a cash deposit in the amount of $244,000.00 which, together with the current amount being held by PricewatherhouseCooper Inc., represents 10% of the total amount offer.

Also enclosed, is a confirmation of financing to complete the purchase, should the offer be accepted by the Court.

The purchaser 7857861 Canada Inc., if successful in its offer, will pay to the creditors of Atcon Plywood Inc., through the trusty, 10% of its net benefits after taxes up to an amount of $750,000.00 in the first five (5) years from closing of the transaction.

Finally, two (2) copies of resolutions by the purchasers, authorizing Mr. Pierre Séguin to sign the invitation for offers to purchase enclosed with the present.

Hoping that everything is to your satisfaction, we remain,

Yours truly,

Pierre Séguin

Accepted this August 15 2011 at Miramichi

Pricewaterhousecoopers

Exhibit 1

15 Aug 2011

15 Aug 2011

17 Aug 2011

Approved: Court of Queen's Bench NB 15 Aug 2011

33, Bernier Street, Gatineau (Québec), J8Z 1E7, tel.: (819) 773-7380