

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

B E T W E E N:

THE BANK OF NOVA SCOTIA, a Canadian chartered bank
with a registered office in the City of Saint John, Province of
New Brunswick

APPLICANT

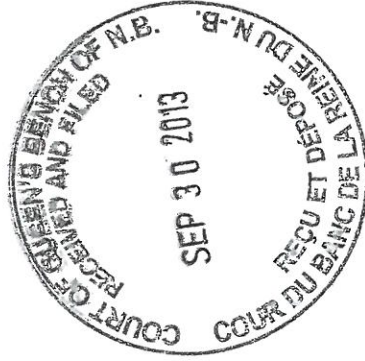
- and -

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
(re 114 Whalen Street Property)

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 114 Whalen Street Property to the Purchaser (each capitalized term as defined below), 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 sale transaction, vesting the 114 Whalen Street Property in and to the Purchaser free and clear of any liens or encumbrances upon delivery of the Receiver's Certificate to the Purchaser, and authorizing and empowering the Receiver to utilize the net sale proceeds of the 114 Whalen Street Property 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



Julie
30 Sept. 2013

proceedings (the “**Receivership Order**”), was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Receiver’s Notice of Motion dated September 24, 2013, the Twenty-Sixth Report of the Receiver dated September 18, 2013 and the appendices attached thereto (the “**Twenty-Sixth Report**”), and on hearing the submissions of counsel for the Receiver, The Bank of Nova Scotia, Caterpillar Financial Services Limited, GE Canada Equipment Financing G.P., and the Province of New Brunswick, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Mary Arzoumanidis sworn September 24, 2013, filed,

1. **THIS COURT ORDERS** that the time for service of the Receiver’s Notice of Motion, the Twenty-Sixth 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 real property located on Whalen Street in Miramichi, New Brunswick and identified as PID 40179798 (the “**114 Whalen Street Property**”) to Delway Enterprises Ltd. (the “**Purchaser**”) pursuant to the Agreement of Purchase and Sale between the Receiver and the Purchaser dated August 13, 2013 and appended to the Twenty-Sixth Report as Appendix “A”, be and is hereby approved.

3. **THIS COURT ORDERS AND DECLARES** that 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 114 Whalen Street Property to the Purchaser.

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 (“**Atcon Property**”) right, title and interest in and to the 114 Whalen 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), *Registry 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 114 Whalen Street Property are hereby expunged and discharged as against the 114 Whalen Street Property.

July 30 Sept. 2013

5. **THIS COURT ORDERS** that notwithstanding this 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 114 Whalen Street Property.

6. **THIS COURT ORDERS** that upon the registration under the *Land Titles Act* (New Brunswick) or the *Registry Act* (New Brunswick) of a transfer for the 114 Whalen Street Property by the Receiver, the Land Registrar is hereby directed to enter the Purchaser as the owner of the 114 Whalen Street Property in fee simple, and is hereby directed to delete and expunge from title to the 114 Whalen 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 114 Whalen Street Property shall stand in the place and stead of the 114 Whalen 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 114 Whalen Street Property with the same priority as they had with respect to the 114 Whalen Street Property, as if the 114 Whalen 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 Atcon Property and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Atcon Property,

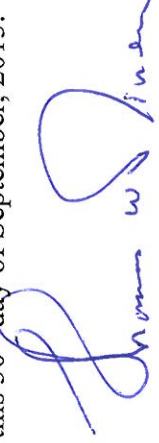
the vesting of the 114 Whalen Street Property in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy appointed in respect of Atcon Property and shall not be void or voidable by creditors of Atcon Property, nor shall it constitute nor be deemed to be a fraudulent preference, 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 in the amount of \$205,000 from the Purchaser in connection with the sale of the 114 Whalen Street Property, to utilize the net sale proceeds for the purpose of making payments (including interim payments) required or permitted by the Receivership Order.

jud. sept. 2013

11. **THIS COURT ORDERS** that the conduct, actions and activities of the Receiver in administering these receivership proceedings as set out in the Twenty-Sixth Report, be and are hereby approved.

Dated at Miramichi, New Brunswick, this 30th day of September, 2013.



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

TOR01: 5341135: v2

Schedule A – Form of Receiver’s Certificate

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:

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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
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CONSTRUCTION LTD., ATCON STRUCTURES INC. AND
ENVIREM TECHNOLOGIES INC., all of which are carrying
on business in the Province of New Brunswick

RESPONDENTS

RECEIVER’S CERTIFICATE
(re 114 Whalen Street Property)

13.02.2017
Jah 2013

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 30, 2013 (the "**Approval and Vesting Order**"), the Court provided for the vesting in and to Delway Enterprises Ltd. (the "**Purchaser**") the right, title and interest of Atcon Property Holdings Inc. in and to the 114 Whalen Street Property, which vesting is to be effective with respect to the 114 Whalen Street Property upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the receipt of payment in the amount of \$205,000 from the Purchaser, of the purchase price in connection with the Purchaser's purchase of the 114 Whalen Street Property; and (ii) 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 Approval and Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price of \$205,000 in connection with the Purchaser's purchase of the 114 Whalen Street Property; and
2. 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: George C. Kinsman

Title: Senior Vice President

Jeff
30 Sept 2013