

Cause Number: N/C/ /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,
and ATCON LOGISTICS INC.,

-and-

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,
and ATCON LOGISTICS INC., all of which
are carrying on business in the Province
of New Brunswick

No. du dossier:

COUR DU BANC DE LA REINE DU
NOVEAU-BRUNSWICK

DIVISION DE PREMIERE INSTANCE

CIRCONSCRIPTION JUDICIAIRE DE

NTRE:

REQUÉRANT

-et-

INTIMÉ

RESPONDENTS

NOTICE OF APPLICATION (FORM 16D)

TO: The Respondents

LEGAL PROCEEDINGS HAVE BEEN COMMENCED BY FILING THIS NOTICE OF APPLICATION.

The Applicant will make an application before the Court at 673 King George Highway, Miramichi, New Brunswick, on the 1st day of March, 2010 at 1:30 p.m. for an order as set out hereunder.

If you wish to oppose this application you must appear at the hearing of the application at the place, date, and time stated, either in person or by a New Brunswick lawyer acting on your behalf.

If you intend to appear on the hearing of the application and wish to present to the Court at that time affidavit or other documentary evidence to support your position, you must serve a copy of such evidence on the Applicant or his lawyer and, with proof of such service, file it in this Court Office prior to the hearing of the application.

AVIS DE REQUETE (FORMULE 16D)

DESTINAIRE:

PAR LE DÉPÔT DU PRÉSENT AVIS DE REQUÊTE, UNE POURSUITE JUDICIAIRE A ÉTÉ ENGAGÉE.

Le requérant présentera une requête à la Cour à _____, le 2007 à ____h__ en vue d'obtenir l'ordonnance décrite ci-dessous.

Si vous désirez contester cette requête, vous devrez comparatre à l'audition de la requête aux lieu, date et heure indiqués, soit en personne ou par l'intermédiaire d'un avocat du Nouveau Brunswick chargé de vous représenter.

Si vous prévoyez comparatre à l'audition de la requête et désirez présenter à la Cour un affidavit ou une autre preuve littérale en votre faveur, vous devrez signifier copie de cette preuve au requérant ou à son avocat et la déposez, avec une preuve de sa signification, au greffe de cette Cour avant l'audition de la requête.

If you fail to appear on the hearing of the application **AN ORDER WHICH MAY AFFECT YOU MAY BE MADE IN YOUR ABSENCE.**

Si vous ne comparez pas à l'audition de la requête, **UNE ORDONNANCE POUVANT VOUS CONCERNER POURRA ÊTRE RENDUE EN VOTRE ABSENCE.**

You are advised that:

Sachez que:

- (a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;
- (b) the Applicants intend to proceed in the English language; and
- (c) if you require the services of an interpreter at the hearing you must advise the clerk at least 7 days before the hearing.

- (a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;
- (b) le requérant a l'intention d'utiliser la langue ; et
- (c) si vous avez besoin des services d'un interprète à l'audience, vous devez en aviser le greffier au moins 7 jours avant l'audience.

THIS NOTICE is signed and sealed for the Court of Queen's Bench by Mathew W.J. Cripps, Clerk of the Court of Queen's Bench, 673 King George Highway, Miramichi, New Brunswick, on the 25th day of February, 2010.

CET AVIS est signé et scellé au nom de la Cour du Banc de la Reine par _____, greffier de la Cour, à _____, ce

_____, 2010.

Mathew W.J. Cripps,, Deputy Registrar in Bankruptcy

Miramichi Law Courts
673 King George Highway
Miramichi, NB
E1V 1N6

APPLICATION

On the hearing of this Application, the Applicant intends to apply for the following relief:

1. an Order, if necessary, for the abridgment of time for service of this application, excusing the lack of service of this application, or excusing the lack of service of the Applicant's record on application pursuant to Rules 1.03, 2.01, 2.02, 3.02 and 41.04 of the Rules of Court;
2. an Order, substantially in the form of the draft Order attached hereto as Schedule "A" (the "Draft Receivership Order") appointing Ernst & Young Inc. ("EYI") as receiver and receiver manager over all real and personal property of Atcon Group Inc., Atcon Holdings Inc., Atcon Property Holdings Inc., Atcon Veneer Products Inc., and Atcon Logistics Inc. (collectively the "Companies" and each a "Company"), without security, pursuant to Rule 41 of the New Brunswick Rules of Court (the "Rules"), section 33 of the *Judicature Act*, R.S.N.B. 1973, Ch. J-2 (the "Judicature Act"), and section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"), with power to do such acts and deeds set out in the Draft Receivership Order; and
3. such further and other relief as the Applicant may advise and this Honourable Court may permit.

The capacities of all persons who are parties to the proceeding are as follows:

1. the Applicant, The Bank of Nova Scotia (the "Bank"), is a Canadian chartered bank with a registered office in the City of Saint John, Province of New Brunswick; and
2. the Respondents are bodies corporate under the laws of the Province of New Brunswick, with registered offices in Miramichi in the Province of New Brunswick, carrying on business in the Province of New Brunswick, Newfoundland and Labrador, Alberta and the Northwest Territories.

The grounds to be set out are as follows:

1. The Bank extended credit to Atcon Holdings Inc. ("Atcon") pursuant to a credit agreement dated as of June 30, 2009 (the "**Credit Agreement**") through seven facilities (7) totaling \$69,275,187.00. The Credit Agreement superseded a previous agreement between Atcon and the Bank;
2. The Province of New Brunswick (the "**Province**") guaranteed Atcon's indebtedness to the Bank under four of the various credit facilities. The guarantees total \$63,362,845.00 of the advances under the Credit Agreement and a letter of credit ("**LOC**") in relation to a construction project;
3. In October 2009, the Bank extended additional credit to Atcon pursuant to a first amendment to the Credit Agreement. This credit was provided to Atcon so that it could implement a restructuring plan the Companies had developed in August 2009;
4. The Bank's advances are secured by direct security from Atcon and guarantees from each of the Companies and other corporations related to Atcon;
5. The Bank has operating advances (the "**BNS Line**") and term advances (collectively referred to as the "**BNS Term Debt**") to Atcon which are supported by the Ministerial Guarantees and cross-guarantees and security from the Companies, among others;
6. The Companies' indebtedness to the Bank totalled \$99,079,761.42 as at February 22, 2010, plus interest, fees, costs and expenses thereon;
7. The Bank demanded payment of \$99,079,761.42 and satisfaction of all other obligations on February 22, 2010. On February 23, 2010, the Bank served the demands together with notices of its intention to enforce security in accordance with section 244 of the BIA;
8. The Companies consented to the Bank's early enforcement of its security;
9. The right to seek a Court appointed receiver over the Companies is provided in the Applicant's security.

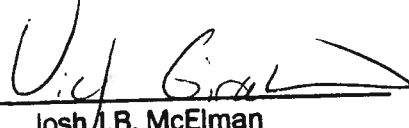
10. The Companies have failed to meet their obligations as they become due;
11. The Companies have numerous secured and unsecured creditors;
12. The appointment of a receiver is necessary and is just and convenient in the circumstances to ensure the orderly management of the Companies and/or their assets;
13. A court appointed receiver is for the benefit of all interested parties and should be granted a charge against all of the property subject to the receivership as such is just and convenient in the circumstances; and
14. The Applicant relies on the Rules including Rules 1, 2, 3, 38, 39, 41 and 41.06, the Judicature Act including section 33, and the BIA including sections 243, 244, 247 and 248.

The documentary evidence to be relied on at the hearing of the application are:

1. Affidavit of Rocco Fabiano, sworn to February 25, 2010;
2. Affidavit of Jane E. MacEachern, sworn to February 25, 2010;
3. such further and other documentary evidence as counsel may advise and this Honourable Court may permit.

DATED at Saint John, New Brunswick this 25th day of February, 2010.

COX & PALMER

Per: 

Josh J.B. McElman

Solicitors for the Applicant

Cox & Palmer
1 Germain Street
Brunswick Square, Suite 1500
P.O. Box 1324
Saint John, NB E2L 4H8

Schedule A
to Notice of Application for appointment of receiver

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, and ATCON LOGISTICS 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
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APPLICANT

- and -

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON
PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS
INC, and ATCON LOGISTICS INC. , all of which are carrying
on business in the Province of New Brunswick

RESPONDENTS

RECEIVERSHIP ORDER

THIS APPLICATION, made by the Applicant for an Order pursuant to Section 33 of the *Judicature Act*, R.S. N.B. 1973, Ch. J-2, (the "**Judicature Act**"), Rule 41 of the Rules of Court of New Brunswick (the "**Rules**") and Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing Ernst & Young Inc. ("**EYI**") as receiver and receiver manager (in such capacities, the "**Receiver**") without security, of each of the Respondents' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, including, without limitation, the shares in any subsidiaries of any of the Respondents (the "**Property**") in relation to the business carried on by the Respondents was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the affidavit of Rocco Fabiano sworn February 25, 2010 and the exhibits thereto, the affidavit of Jane MacEachern sworn February 25, 2010 and the exhibits thereto, the various affidavits of service, on hearing the submissions of counsel for the Applicant and no one appearing on behalf of the Respondent although duly served and on reading the consent of the Receiver to act as the Receiver;

IT IS ORDERED THAT:

SERVICE

1. The time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. Pursuant to section 33 of the *Judicature Act*, Rule 41 of the Rules and section 243(1) of the *BIA*, the Receiver is hereby appointed receiver and receiver manager, without security, of the Property.

RECEIVER'S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
 - (c) to manage, operate, and carry on the business of the Respondents, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Respondents;
 - (d) to make such payments or disbursements as determined are necessary by the Receiver, and in accordance with the previous practice of the applicable Respondent, to return any employee to the jurisdiction in which they reside;
 - (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist

with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Respondents, or any of them, or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Respondents and to exercise all remedies of the Respondents in collecting such monies, including, without limitation, to enforce any security held by the Respondents;
- (h) to settle, extend or compromise any indebtedness owing to the Respondents;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of any of the Respondents, for any purpose pursuant to this Order;
- (j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Respondents;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to any of the Property and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (l) to make payment of any and all costs, expenses and other amounts that the Receiver determines, in its sole discretion, are necessary or advisable to preserve, protect or maintain the Property, including,

without limitation taxes, municipal taxes, insurance premiums, repair and maintenance costs, costs or charges related to security, management fees, and any costs and disbursements incurred by any manager appointed by the Receiver;

- (m) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (n) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000.00, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,and in each such case notice under subsection 59 of the Personal Property Security Act (New Brunswick) shall not be required.
- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of any of the Respondents;
- (s) to enter into agreements with any trustee in bankruptcy appointed in respect of any of the Respondents including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by any of the Respondents;
- (t) to exercise any shareholder, partnership, joint venture or other rights which any of the Respondents may have including, without limitation, causing any subsidiary of any Respondent to file an assignment in bankruptcy and the replacement, termination or appointment of directors;
- (u) to make an assignment in bankruptcy in relation to any or all of the Respondents if, in the opinion of the Receiver, an assignment in bankruptcy in relation to any one Respondent, or all of them, will assist in the Receiver carrying out its duties;
- (v) to obtain such policy or policies of insurance as the Receiver determines appropriate for any Person acting as a director or officer of any Respondent; and

- (w) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Respondents, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. Each of (i) the Respondents, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.
5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of any of the Respondents, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the

Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE RESPONDENTS OR THE PROPERTY

8. No Proceeding against or in respect of any of the Respondents or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently

under way against or in respect of the Respondents or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. All rights and remedies against the Respondents, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on, (ii) exempt the Receiver or the Respondents from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. Without limiting any other provision of this Order, no customer of the Respondents may terminate, amend or otherwise alter any agreement with any of the Respondents except with the written consent of the Receiver or leave of this Court.
10. All rights and remedies of any Person pursuant to any arrangement or agreement to which any of the Respondents are a party for the lease or other rental of personal property of any nature or kind are hereby restrained except with consent of the Receiver in writing or leave of this Court. The Receiver is authorized to return any Property which is subject to a lease from a third party to such Person on such terms and conditions as the Receiver considers appropriate and upon the Receiver being satisfied as to the interest of such Person in the applicable Property.

NO INTERFERENCE WITH THE RECEIVER

11. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Respondents, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. All Persons having oral or written agreements with any of the Respondents or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to any of the Respondents are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of any of the Respondents' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the applicable Respondent or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.
13. The Receiver, in its sole discretion, may (but shall not be obligated to) establish account(s) in its name on behalf of any of the Respondents for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Respondents, or any of them, if the Receiver determines that the opening of such accounts is appropriate.

14. No creditor of the Respondent shall be under any obligation as a result this Order to advance or re-advance any monies or otherwise extend any credit to any of the Respondents.

RECEIVER TO HOLD FUNDS

15. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

16. All employees of the Respondents shall remain the employees of the applicable Respondent until such time as the Receiver, on the applicable Respondent's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) and 81.6(3) of the BIA, such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

17. Pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of

identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the applicable Respondent, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

18. Nothing herein contained shall require or obligate the Receiver to occupy or to take control, care, charge, occupation, possession or management (separately and/or collectively, "Possession") of any of the Property that might, or any part thereof, which may be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other legislation, statute, regulation or rule of law or equity respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, *Canadian Environmental Protection Act, 1999*, the *Clean Water Act*, the *Clean Environment Act*, the *Clean Air Act*, and the *Unsightly Premises Act* (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the

Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON LIABILITY

19. EYI and any party acting at its direction or on its behalf including, without limitation, any director, officer or other party appointed by the Receiver in relation to any subsidiary of any of the Respondents, shall incur no liability or obligation as a result of its appointment as the Receiver or the carrying out the provisions of this Order, or in the case of any party acting at the direction or on behalf of the Receiver so long as acting in such capacity, save and except for any gross negligence or wilful misconduct on the part of such party, or in respect of the Receiver's obligations under sections 81.4(5) and 81.6(3) of the BIA. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

20. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Administrative Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Administrative Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
21. The Receiver and its legal counsel shall pass its accounts from time to time and for this purpose the accounts of the Receiver and its legal counsel are

hereby referred to the Clerk of the Court of Queen's Bench in New Brunswick in accordance with the Rules.

22. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees, expenses and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

RECEIVER'S INDEMNITY CHARGE

23. The Receiver shall be entitled to and is hereby granted a charge (the "Receiver's Indemnity Charge") upon all of the Property as security for all of the obligations incurred by the Receiver including obligations arising from or incident to the performance of its duties and functions under this Order (including the management, operation and carrying on of all or part of the business of any of the Respondents), the *Bankruptcy and Insolvency Act* or otherwise, saving only liability arising from the gross negligence or wilful misconduct of the Receiver.
24. The Receiver's Indemnity Charge shall form a second charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA and subordinate in priority to the Administrative Charge.
25. The costs, fees, expenses and liability of the Receiver giving rise to the Administrative Charge, the Receiver's Indemnity Charge and the Receiver's Borrowings Charge (as defined below) shall be paid in the following manner unless otherwise ordered by this Court:

- a. Firstly, applying the costs incurred in the receivership proceedings specifically attributable to an individual asset or group of assets against the realizations from such asset or group of assets;
- b. Secondly, applying the costs *pro rata* against all of the assets based on the net realization from such asset or group of assets; and
- c. Thirdly, applying non-specific costs incurred in the receivership proceedings *pro rata* against the assets based on the net realization from such asset or group of assets.

FUNDING OF THE RECEIVERSHIP

26. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$750,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of making payments (including interim payments) required or permitted to be made by this Order (including, without limitation, payments of amounts secured by the Administrative Charge and the Receiver's Indemnity Charge). The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Indemnity Charge, the Administrative Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

27. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court on seven days notice to the Receiver and the Applicant.
28. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
29. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

GENERAL

30. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
31. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondents, or any of them.
32. Any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or Sweden is hereby respectfully requested to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

33. The Receiver is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
34. The Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Respondents' estate with such priority and at such time as this Court may determine.
35. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver, the Applicant and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
36. In addition to the reports to be filed by the Receiver under the BIA or *New Brunswick Business Corporations Act*, on the application to the Court of any secured creditor, the Receiver shall file a report of its activities with the Court.
37. The Receiver shall not be discharged without notice to such secured creditors and other parties as the Court directs.

Dated at Miramichi, New Brunswick, this _____ day of March, 2010.

Justice of the Court of Queen's Bench
of New Brunswick

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Court of Queens Bench of New Brunswick (the "Court") dated the ____ day of _____, 20__ (the "Order") made in an action having Court file number _____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at _____, _____.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____
Name:
Title: