

**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

RECORD ON MOTION

**ON BEHALF OF THE MOVING PARTY,
ERNST & YOUNG INC., for the motion returnable
Wednesday July 28, 2010 at 9:30 a.m. AST**

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RESPONDENTS

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COURT FILE NO.: N/M/17/10

IN THE COURT OF QUEEN'S BENCH
OF NEW BRUNSWICK

IN BANKRUPTCY AND INSOLVENCY

JUDICIAL DISTRICT OF MIRAMICHI

COUR DU BANC DE LA REINE
DU NOUVEAU-BRUNSWICK

DIVISION DE PREMIERE
INSTANCE

CIRCONSCRIPTION
JUDICIAIRE DE MIRAMICH

**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
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**PURSUANT TO Section 33 of The
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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)

E N T R E:

-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)

- and -

IN THE MATTER OF THE APPLICATION OF ERNST & YOUNG INC. in its capacity as Court-appointed receiver and receiver and manager of the property, assets and undertakings of the Respondents.

NOTICE OF MOTION
(FORM 37A)

AVIS DE MOTION
(FORMULE 37A)

TO:

DESTINAIRE:

The Persons on the Service List attached hereto as **Schedule "A"** to this Notice of Motion

Ernst & Young Inc. in its capacity as receiver and receiver and manager of the property, assets and undertakings of the Respondents (the "**Receiver**") will apply to the Court of Queen's Bench, at 673 King George Highway, Miramichi, New Brunswick, at 9:30 a.m. on Wednesday July 28, 2010, by way of teleconference hearing, for the following relief:

Le demandera à la Cour à

le , à :

- (a) an Order, *inter alia*:
 - i) abridging and validating the timing and method of service of the Notice of Motion, the Receiver's Fifth Report to the Court dated July 23, 2010 (the "**Fifth Report**"), the Receiver's Sixth Report to the Court dated July 23, 2010, and the Record on Motion, if necessary, so that this Motion is properly returnable and further service is dispensed with;
 - ii) authorizing and approving the Receiver conducting a tender process with respect to the sale of the Atcon Eastern Assets (as defined herein) pursuant to the terms and conditions set out in the Fifth Report;
 - iii) authorizing and approving the Receiver executing the auction agreement with respect to the sale of the Atcon Western Assets (as defined herein) and providing that any of the Atcon Western Assets sold by Century (as defined herein) to a purchaser shall vest in the purchaser free and clear of any liens or encumbrances;
 - iv) vesting the General Manson Way Property (as defined herein) in and to the purchaser free and clear of any liens or encumbrances and granting access to the General Manson Way Property to the Receiver as set out in the Sixth Report; and
- (b) such further and other relief as may be just.

The grounds upon which the Receiver relies are as follows:

1. The relief sought by the Receiver is appropriate in the circumstances and is in accordance with the provisions of the Receivership Order, the jurisdiction of the Court under the *Bankruptcy and Insolvency Act* and the inherent jurisdiction of the Court;

Atcon Eastern Assets and Tender Process

2. Since its appointment, and based on its review of the books and records of the Respondents and discussions with former employees of the Respondents, the Receiver believes it has recovered all of the property and assets of the Respondents located in New Brunswick.
3. The Receiver has identified the assets and property set out in Appendix "A" attached to the Fifth Report (collectively, the "**Atcon Eastern Assets**") as being construction and quarry related property of Atcon Construction suitable to forming the basis of a tender sale process and a potential *en bloc* sale.
4. Based on the discussions with appraisers, liquidators and auctioneers, and the Receiver's experience in conducting sales of similar assets in insolvency

proceedings in New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland & Labrador, the Receiver has determined that the best method to solicit offers for the Atcon Eastern Assets is to conduct a tender process.

5. The Receiver is of the view that Atcon Eastern Assets lend themselves to potential *en bloc* bids, as the property is composed of tangible assets and real property related to construction and quarry operations in New Brunswick that may be purchased for use in construction and quarry operations and may create employment for New Brunswickers.
6. As a result, the Receiver believes a greater price can be achieved for the Atcon Eastern Assets through a tender process, as opposed to an auction/liquidation sale.

Atcon Western Assets

7. The property of the Respondents located in Alberta and The Northwest Territories that has been recovered by the Receiver includes the assets set out in Appendix "B" to the Fifth Report (collectively, the "**Atcon Western Assets**").
8. The Receiver is of the view that, as the Atcon Western Assets comprise small construction pieces that are remotely situated on leased lands in Fort McKay, Alberta, it is likely that a competitive auction process conducted on site will generate the maximum return for the Atcon Construction receivership estate.
9. The Receiver reviewed and analyzed the 2 proposals it received from auctioneers and liquidators. Century Services Inc. ("**Century**") had previously been engaged by the Receiver to perform an independent appraisal of the Atcon Western Assets. As such they had an enhanced understanding of the specific assets available for sale. Century offered a net minimum guarantee to the Receiver as part of its auction proposal, thereby providing the Atcon Construction receivership estate with a minimum realization guarantee from the Atcon Western Assets, for their appraised value less standard commission and selling expenses, regardless of the ultimate success of the auction process. As a result of the net minimum guarantee, Century's familiarity with the Atcon Western Assets and their competitive commission structure, the Receiver believed it to be in the best interest of the Atcon Construction estate to pursue the Century proposal.
10. The auction agreement provides that the Atcon Western Assets are to be free and clear of all liens and encumbrances. As a result, the Receiver is requesting that this Honourable Court grant an Order that provides that, upon payment of the purchase price by the purchaser and a bill of sale being issued by Century to a purchaser of any of the Atcon Western Assets at the public auction, title to the property sold by Century will vest in the purchaser free and clear of any claims, liens and encumbrances against any of the Atcon Western Assets being purchased.

General Manson Way

11. Atcon Construction is the registered owner of the real property and commercial office building municipally known as 67-69 General Manson Way, Miramichi, New Brunswick (the “**General Manson Way Property**”).
12. The Receiver understands that PricewaterhouseCoopers Inc., the Court-appointed receiver of Atcon Industrial (“**PwC**”), in an effort to achieve an *en bloc* sale of the assets of Atcon Industrial, solicited offers for and negotiated the sale of the Atcon Industrial property located at the General Manson Way Property and adjacent interconnected real properties, along with the sale of the land and buildings situated at General Manson Way Property.
13. The Receiver understands that the proposed purchaser (the “**Purchaser**”) has allocated \$870,000 to its proposed purchase of the General Manson Way Property. The Receiver has discussed the proposed sale of the General Manson Way Property with PwC, and has reviewed the appraisal PwC obtained with respect to the General Manson Way Property. The Receiver is of the view that the price to be paid by the Purchaser for the General Manson Way Property is supported by the appraised value of the General Manson Way Property.
14. The Receiver has discussed the terms of the sale transaction with the parties that have an interest in debentures and collateral mortgages registered against the General Manson Way Property. Based on these discussions, the Receiver understands that the parties all either support, or do not oppose, the proposed sale of the General Manson Way Property for \$870,000 to the Purchaser.
15. To the extent that this Honourable Court approves the sale of the General Manson Way Property to the Purchaser provided for therein, the Receiver respectfully requests that this Honourable Court grant an Order in these proceedings vesting the General Manson Way Property to the Purchaser free and clear of all claims and encumbrances against the General Manson Way Property.
16. The Receiver requires continued access to the General Manson Way Property to complete the tender process and any resultant sale or sales of the Atcon Eastern Assets, and complete any public auction or private sales of any of the Atcon Eastern Assets that remain unsold after completion of the tender process.
17. The Receiver understands, based on its discussions with PwC, that the Purchaser is prepared, notwithstanding its purchase of the General Manson Way Property, to permit the Receiver and its agents, on a cost-free basis to have unfettered and exclusive access to and possession and control over the portion or portions of the General Manson Way Property where the Atcon Eastern Assets are located until the later of (i) the date the Receiver determines, in its sole discretion that it has completed all of the sale or sales of the Atcon Eastern Assets by or on behalf of the Receiver by tender, public auction or otherwise and that all of the Atcon

Eastern Assets have been removed from the General Manson Way Property by purchasers or the Receiver; and (ii) November 30 2010.

18. The Receiver relies on:

- a) the *Rules of Court* , as amended, including but not limited to Rules 1.03, 2.01, 2.02 and 3.02;
- b) the *Judicature Act*, R.S.N.B. 1973, c. J-2, as amended, and

19. Such further and other grounds as counsel for the Receiver may advise and this Honourable Court may permit.

UPON the hearing of the motion the following affidavit or other documentary evidence will be presented:

A l'audition de la motion, les affidavits ou les autres preuves littérales suivantes seront présentées:

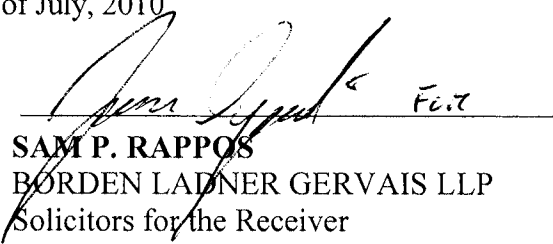
- (1) The Fifth Report;
- (2) The Sixth Report; and
- (3) Such further and other affidavits or documentary evidence as counsel for the Applicant may advise and this Honourable Court may permit.

Sachez que:

You are advised that:

- (a) you are entitled to issue documents and present evidence at the hearing in English or French or both;
 - (b) the applicant intends to proceed in the English language; and
 - (c) if you intend to proceed in the other official language, an interpreter may be required and you must so advise the Clerk at least 5 days before the hearing.
- (a) vous avez le droit d'émettre des documents et de présenter votre preuve à l'audience en français, en anglais ou dans les deux langues;
 - (b) le demandeur à l'intention d'utiliser la langue anglais; et
 - (c) si vous avez l'intention d'utiliser l'autre langue officielle, les services d'un interprète pourront être requis et vous devrez un aviser le greffier au moins 5 jours avant l'audience.

DATED at Toronto, Ontario, this 23rd day of July, 2010.



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of the Respondents**

Schedule “A”

SCHEDULE "A"

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF MIRAMICHI

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

- and -

**IN THE MATTER OF ATCON CONSTRUCTION INC.,
ATCON INDUSTRIAL SERVICES INC., ATCON
MANAGEMENT SERVICES INC., ATCON CIVIL LTD.,
DYCON CONSTRUCTION LTD., ATCON STRUCTURES
INC., ENVIREM TECHNOLOGIES INC. all of which are
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c. B-3**

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(as of July 14, 2010)**

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**Court-appointed Receiver of Atcon Industrial
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OTTENHEIMER BAKER

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Tab 2

**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

**FIFTH REPORT OF THE RECEIVER
July 23, 2010**

INTRODUCTION AND PURPOSE

1. In connection with the applications of The Bank of Nova Scotia (the “**Bank**”) pursuant to section 33 of the *Judicature Act* (New Brunswick), Rule 41 of the Rules of Court of New Brunswick, and section 243 of the *Bankruptcy and Insolvency Act* (Canada) that were heard by The Honourable Mr. Justice Riordon of the Court of Queen’s Bench of New Brunswick on March 1, 2010 and March 30, 2010, Ernst & Young Inc. was respectively appointed as receiver and receiver manager (the “**Receiver**”) of the property, assets and undertakings of:
 - (a) Atcon Group Inc., Atcon Holdings Inc., Atcon Property Holdings Inc., Atcon Veneer Products Inc. and Atcon Logistics Inc. (collectively, the “**Atcon Holding Companies**”) pursuant to the Receivership Order dated March 2, 2010 (the “**March 2 Order**”); and
 - (b) Atcon Management Services Inc., Atcon Civil Inc., Dycon Construction Ltd., Atcon Structures Inc. (collectively, the “**Atcon Payroll Companies**”), Atcon Construction Inc. (“**Atcon Construction**”) and Envirem Technologies Inc. pursuant to an Order dated March 30, 2010 (the “**March 30 Order**”, and together with the March 2 Order, the “**Receivership Order**”).
2. The Receivership Order, among other things, authorizes and empowers the Receiver to:
 - (a) take possession and control of the Property;
 - (b) receive, preserve and protect the Property, or any parts thereof;
 - (c) 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;
 - (d) sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court in respect of any transaction in which the purchase price exceeds \$100,000 or the aggregate purchase price for all such transactions exceeds \$1,000,000;

- (e) 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;
 - (f) engage consultants, appraisers, agents, experts 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 the Receivership Order; and
 - (g) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.
3. The purpose of this Fifth Report is to report to this Honourable Court on matters relating to the activities of the Receiver relating to certain Property of the Respondents and request that this Honourable Court grant an Order, *inter alia*:
- (a) authorizing and approving the Receiver conducting a tender process with respect to the sale of the Atcon Eastern Assets (as defined herein) pursuant to the terms and conditions of the Tender Information Package (as defined herein) and the Tender Process (as defined herein); and
 - (b) authorizing and approving the Receiver executing the Auction Agreement (as defined herein) with respect to the sale of the Atcon Western Assets (as defined herein) and providing that any of the Atcon Western Assets sold by Century (as defined herein) to a purchaser shall vest in the purchaser free and clear of any liens or encumbrances.

TERMS OF REFERENCE

4. In preparing this Fifth Report, the Receiver has been provided with, and has relied upon unaudited historical financial statements, other unaudited financial information and projections prepared by the Respondents, the books and records of the Respondents, discussions with the management and employees of the Respondents, and other information from various sources. The Receiver has assumed that the information it has been provided is accurate and complete. The Receiver did not audit, review or otherwise

attempt to verify the accuracy or completeness of the information. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to the information presented in this Fifth Report or relied upon by the Receiver in preparing this Fifth Report. Further, the nature of the Receiver's work completed in these proceedings will not necessarily disclose errors, misstatements, irregularities or illegal acts, if such exist, on the part of the Respondents, or its officers or employees or in the information.

5. All references to monetary amounts in this Fifth Report are in Canadian dollars unless otherwise noted.
6. Capitalized terms not defined in this Fifth Report are as defined in the Receivership Order.
7. Copies of Court materials in these proceedings may be obtained from the Receiver's website established in connection with the Respondents (www.ey.com/ca/atcon).

RECEIVERSHIP OF THE RESPONDENTS

Commencement of Receivership Proceedings

8. As set out above, EYI was appointed as Receiver of the Property of: (a) the Atcon Holding Companies pursuant to the March 2 Order; and (b) the Atcon Payroll Companies, Atcon Construction and Envirem Technologies Inc. pursuant to the March 30 Order. The appointment of EYI as Receiver of the Atcon Holding Companies was effective as of 12:01 am AST on March 1, 2010, pursuant to paragraph 39 of the March 2 Order. The appointment of EYI as Receiver of the Atcon Payroll Companies and Atcon Construction was effective as of March 30, 2010, pursuant to the March 30 Order.
9. With respect to Envirem Technologies Inc., pursuant to paragraph 4 of the March 30 Order, the appointment of EYI as Receiver was of no force or effect until the issuance by EYI, in its capacity as the Court-appointed CCAA monitor of Envirem Technologies Inc. (the "**Monitor**"), of the Monitor's Certificate in accordance with the Order of the Court dated March 22, 2010 granted in the CCAA proceedings bearing Court File No. N/M/16/10 (the "**CCAA Proceedings**") in order to complete an asset sale transaction, or until further Order of the Court. Envirem Technologies Inc. changed its name to 058545

N.B. Inc. effective April 28, 2010 and is hereinafter referred to as “058545”. The Monitor issued the Monitor’s Certificate on April 28, 2010, and as a result, the appointment of EYI as Receiver of 058545 became effective as of April 28, 2010.

Recovery of Property of the Respondents

10. Since its appointment, the Receiver has taken steps, in accordance with the provisions of the Receivership Order, to take possession and control of the respective Property of the Atcon Holding Companies and Atcon Construction and the Atcon Payroll Companies located at 626 Newcastle Boulevard, Miramichi, New Brunswick and various other owned properties in the Miramichi and surrounding areas.
11. Additionally, as has been previously disclosed to this Honourable Court, Atcon Construction carried on business as a provider of construction services in New Brunswick, Newfoundland and Labrador, Alberta, and the Northwest Territories. As a result, upon its appointment, the Receiver took steps to take possession and control of the leased and owned Property of Atcon Construction located on current or former construction job sites, construction storage areas or quarries in Newfoundland and Labrador, Alberta, the Northwest Territories and New Brunswick.

ASSETS OF THE RESPONDENTS

12. The Receiver, with the assistance of former employees of the Respondents engaged by the Receiver on a term-and-task basis, undertook a physical inventory of the tangible Property of the Respondents.

Atcon Eastern Assets

13. Since its appointment, and based on its review of the books and records of the Respondents and discussions with former employees of the Respondents, the Receiver believes it has recovered all of the Property of the Respondents located in New Brunswick. As discussed in greater detail below, the Receiver has identified the assets and property set out in **Appendix “A”** attached hereto (collectively, the “**Atcon Eastern Assets**”) as being Property of Atcon Construction suitable to forming the basis of a tender

sale process and potential *en bloc* sale of construction and quarry related assets. As a brief summary, the Atcon Eastern Assets include:

- (a) leased and owned quarry real property and related inventory, construction equipment, conveyors, permits and licenses, and other assets used in connection with mining of basalt and gabbro aggregates at quarries located in Belledune, Miramichi and Woodstock, New Brunswick;
 - (b) real property, commercial office buildings, and office furnishings located at various locations in Miramichi, Pointe-Verte, Wayerton, Centre Napan, Barnaby, Curventon, and Exmoor, New Brunswick; and
 - (c) various construction machinery (such as cranes, crushers, and excavators), construction equipment (such as forklifts, loaders, and generators) inventory and raw materials, and vehicles and trailers.
14. As a result, the Atcon Eastern Assets do not include all of the Property of the Respondents that has been recovered by the Receiver in New Brunswick or Newfoundland & Labrador, such as cash, accounts receivable, investments, books and records, certain intangible property owned by the Respondents and certain equipment in Newfoundland & Labrador. The Atcon Eastern Assets also do not include real property owned by certain of the Respondents municipally known as 67-69 General Manson Way, Miramichi, New Brunswick (the “**General Manson Way Property**”) and 170 Walsh Avenue, Miramichi, New Brunswick (the “**Walsh Property**”). Such real properties were previously occupied by Atcon Industrial Services Inc. (“**Atcon Industrial**”), and a number of assets owned by Atcon Industrial continue to be situated on the real properties. The Receiver is currently in discussions with the Court-appointed receiver of Atcon Industrial regarding potential *en bloc* sale transactions for the Atcon Industrial assets and the General Manson Way Property and the Walsh Property, and thus has decided not to include such real properties in the listing of the Atcon Eastern Assets that is to be subject to the proposed Tender Process (as defined and discussed herein).

Atcon Western Assets

15. The Property of the Respondents located in Alberta and The Northwest Territories that has been recovered by the Receiver includes the assets set out in **Appendix “B”** attached hereto (collectively, the “**Atcon Western Assets**”). The Receiver believes it has recovered all of the Property of the Respondents located in Alberta and The Northwest Territories. As a brief summary, the Atcon Western Assets include various construction machinery and equipment (such as excavators, generators, solar powered signs and other construction items), vehicles and trailers.

TENDER AND AUCTION SALES PROCESSES

16. Pursuant to subparagraph 3(m) of the Receivership Order, the Receiver has been authorized and empowered by this Honourable Court 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. Additionally, pursuant to subparagraph 3(e) of the Receivership Order, the Receiver has been authorized and empowered by this Honourable Court to engage consultants, appraisers, agents, experts 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 the Receivership Order.
17. In accordance with the provisions of the Receivership Order, upon taking possession and control of the Property, the Receiver contacted a number of auctioneers, liquidators and appraisers in an attempt to determine the most fair and effective method to solicit offers for the Property that would result in the Receiver obtaining the best price for the Property for the benefit of the stakeholders of the Respondents.

Atcon Eastern Assets

18. With respect to the Atcon Eastern Assets, based on the discussions with appraisers, liquidators and auctioneers, and the Receiver’s experience in conducting sales of similar assets in insolvency proceedings in New Brunswick, Nova Scotia, Prince Edward Island

and Newfoundland & Labrador, the Receiver has determined that the best method to solicit offers for the Atcon Eastern Assets is to conduct a tender process.

19. The Receiver is of the view that the Atcon Eastern Assets lend themselves to potential *en bloc* bids, as the Property is composed of tangible assets and real property related to construction and quarry operations in New Brunswick that may be purchased for use in construction and quarry operations. As a result, the Receiver believes a greater price can be achieved for the Atcon Eastern Assets through a tender process, and there is a greater opportunity that an *en bloc* transaction might have a greater potential to create an operating business which would create employment for New Brunswickers, as opposed to an auction/liquidation sale. The tender process does not foreclose the ability of the Receiver to:
 - (a) entertain an *en bloc* tender offer in the tender process from an auctioneer or liquidator in the event that such an offer was in the best interests of the stakeholders of the Respondents with an interest in the Atcon Eastern Assets;
 - (b) accept tender bids for an individual parcel or a few parcels of assets thereby making the tender process attractive to prospective purchasers who are not interested in a significant *en bloc* purchase but are interested only in one or more individual parcels of assets; or
 - (c) conduct a public auction or private sale of all or any portion of the Atcon Eastern Assets after completion of the tender process, should the tender process not produce offers that are determined by the Receiver to be acceptable.
20. Attached hereto as **Appendix “C”** is a copy of the Receiver’s proposed tender information package for the Atcon Eastern Assets (the “**Tender Information Package**”). The marketing process and timelines associated with the Tender Information Package (the “**Tender Process**”) are summarized below:
 - (a) advertising of the Tender Process for the Atcon Eastern Assets for a 4-week period commencing on July 31, 2010 in the Telegraph Journal, Times & Transcript, Fredericton Gleaner, and l'Acadie Nouvelle, and in the National

Edition of the Globe & Mail commencing August 4, 2010 and in four (4) weekly periodicals;

- (b) the Receiver has maintained a listing of prospective buyers who have previously contacted the Receiver to indicate their interest in the Atcon Eastern Assets and the Receiver will notify these parties of the tender sale for the Atcon Eastern Assets;
 - (c) the Receiver has developed a listing of industry participants and construction associations across Canada who will be directly notified of the Tender Process by the Receiver in order to generate wide visibility for the tender sale of the Atcon Eastern Assets;
 - (d) the Receiver will facilitate site viewings by potential purchasers of the Atcon Eastern Assets, the majority of which are located at the General Manson Way Property, prior to the tender close date;
 - (e) sealed tenders to be received on or before August 31, 2010 for the purchase, on an "as is, where is" basis, of all or part of the Atcon Eastern Assets, subject to terms and conditions of sale commonly used in receivership asset sales, including the provision of a 15% deposit;
 - (f) the date for the Receiver communicating the acceptance of tenders, subject to, where applicable, the Receiver obtaining Court approval, is on or before September 10, 2010; and
 - (g) the Atcon Eastern Assets subject to a successful sale transactions are to be removed from the General Manson Way Property within 30 days of the date Court approval was obtained with respect to the applicable sale transaction.
21. The Receiver is of the view that the Tender Process is a fair and effective method to solicit offers for the Atcon Eastern Assets and recommends that this Honourable Court authorize and approve the Receiver to conduct a sale or sales of the Atcon Eastern Assets pursuant to the terms and conditions of the Tender Process.

Atcon Western Assets

22. With respect to the Atcon Western Assets, the Receiver is of the view that, as the Atcon Western Assets comprise small construction pieces that are remotely situated on leased lands in Fort McKay, Alberta, it is likely that a competitive auction process conducted on site will generate the maximum return for the Atcon Construction receivership estate. The Receiver is of the view that a tender process for the Atcon Western Assets could potentially result in certain assets remaining unsold, which would necessitate a secondary auction sale or private sale process with the estate of the Respondents incurring additional costs and expenses to conduct the secondary process. As a result, the Receiver is of the view that the best method to maximize realizations for the Atcon Western Assets is for a public auction of the Atcon Western Assets to be conducted.
23. The Receiver contacted two (2) auctioneers/liquidators and requested proposals for the sale of the Atcon Western Assets to be conducted by the auctioneer/liquidator at a public auction to be held in Fort McKay, Alberta. The auctioneers/liquidators were given the opportunity to provide auction services with a net minimum guaranteed return to the receivership estates and a percentage sharing arrangement between the auctioneer and the Receiver in the event that the net minimum guarantee amount is exceeded.
24. The Receiver reviewed and analyzed the 2 proposals it received. The details with regard to the proposals submitted to the Receiver for the Atcon Western Assets will be set out in a supplement to the Fifth Report, which will be made available to this Honourable Court prior to the hearing of the motion in respect of this Fifth Report and will be subject to a request for a sealing order.
25. Century Services Inc. (“Century”) had previously been engaged by the Receiver to perform an independent appraisal of the Atcon Western Assets. As such they had an enhanced understanding of the specific assets available for sale. Century offered a net minimum guarantee to the Receiver as part of its auction proposal, thereby providing the Atcon Construction receivership estate with a minimum realization guarantee from the Atcon Western Assets, for their appraised value less standard commission and selling expenses, regardless of the ultimate success of the auction process. As a result of the net

minimum guarantee, Century's familiarity with the Atcon Western Assets and their competitive commission structure, the Receiver believed it to be in the best interest of the Atcon Construction estate to pursue the Century proposal.

26. The Receiver and Century entered into an auction agreement dated July 15, 2010 (the "**Auction Agreement**"). A redacted version of the Auction Agreement is attached hereto as **Appendix "D"**. An unredacted version of the Auction Agreement will be included as an appendix to the supplement to the Fifth Report, which will be made available to the Court prior the hearing of the motion in respect of the Fifth Report and will be subject to a request for a sealing order.
27. The Auction Agreement provides that the Atcon Western Assets are to be free and clear of all liens and encumbrances. As a result, the Receiver is requesting that this Honourable Court grant an Order that provides that, upon payment of the purchase price by the purchaser and a bill of sale being issued by Century to a purchaser of any of the Atcon Western Assets at the public auction, title to the property sold by Century will vest in the purchaser free and clear of any claims, liens and encumbrances against any of the Atcon Western Assets being purchased.
28. The Receiver believes Century is the auctioneer that has provided the auction proposal that will provide the greatest benefit for the receivership estate and recommends that this Honourable Court approve the Auction Agreement entered into with Century.

RELIEF SOUGHT BY THE RECEIVER

29. The Receiver respectfully requests that this Honourable Court grant an Order in the form submitted by the Receiver:
 - (a) authorizing and approving the Receiver conducting a tender process with respect to the sale of the Atcon Eastern Assets pursuant to the terms and conditions of the Atcon Tender Package and the marketing process and timelines comprising the Tender Process; and
 - (b) authorizing and approving the Receiver entering into the Auction Agreement with Century with respect to the sale of the Atcon Western Assets and providing that

any of the Atcon Western Assets sold by Century to a purchaser shall vest in the purchaser free and clear of any liens or encumbrances.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of July 2010

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



By:

Paul D. Hickey, CA•CIRP
Senior Vice President

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E&Y_Atcon_Fifth_Report_of_the_Receiver_dated_July_23__2010_(re_Tender_and_Auction).DOC

Appendix “A” – Listing of Atcon Eastern Assets

can be found at www.ey.com/ca/atcon

Appendix “B” – Listing of Atcon Western Assets

can be found at www.ey.com/ca/atcon

Appendix “C” – Tender Information Package

can be found at www.ey.com/ca/atcon

Appendix “D” – Redacted Auction Agreement

can be found at www.ey.com/ca/atcon

Tab 3

**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

**SIXTH REPORT OF THE RECEIVER
July 23, 2010**

INTRODUCTION AND PURPOSE

1. In connection with the applications of The Bank of Nova Scotia (the “**Bank**”) pursuant to section 33 of the *Judicature Act* (New Brunswick), Rule 41 of the Rules of Court of New Brunswick, and section 243 of the *Bankruptcy and Insolvency Act* (Canada) that were heard by The Honourable Mr. Justice Riordon of the Court of Queen’s Bench of New Brunswick on March 1, 2010 and March 30, 2010, Ernst & Young Inc. was respectively appointed as receiver and receiver manager (the “**Receiver**”) of the property, assets and undertakings of:
 - (a) Atcon Group Inc., Atcon Holdings Inc., Atcon Property Holdings Inc., Atcon Veneer Products Inc. and Atcon Logistics Inc. pursuant to the Receivership Order dated March 2, 2010 (the “**March 2 Order**”); and
 - (b) Atcon Management Services Inc., Atcon Civil Inc., Dycon Construction Ltd., Atcon Structures Inc., Atcon Construction Inc. (“**Atcon Construction**”) and Envirem Technologies Inc. pursuant to an Order dated March 30, 2010 (the “**March 30 Order**”, and together with the March 2 Order, the “**Receivership Order**”).
2. The Receivership Order, among other things, authorizes and empowers the Receiver to:
 - (a) take possession and control of the Property;
 - (b) receive, preserve and protect the Property, or any parts thereof;
 - (c) 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;
 - (d) sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court in respect of any transaction in which the purchase price exceeds \$100,000 or the aggregate purchase price of such transactions exceeds \$1,000,000;

- (e) 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;
 - (f) engage consultants, appraisers, agents, experts 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 the Receivership Order; and
 - (g) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.
3. The purpose of this Sixth Report is to report to this Honourable Court on matters relating to the activities of the Receiver relating to the General Manson Way Property (as defined herein) and request that this Honourable Court grant an Order vesting the General Manson Way Property in and to the Purchaser (as defined herein) free and clear of any liens or encumbrances.

TERMS OF REFERENCE

4. In preparing this Sixth Report, the Receiver has been provided with, and has relied upon unaudited historical financial statements, other unaudited financial information and projections prepared by the Respondents and PwC (as defined herein), the books and records of the Respondents, discussions with the management and employees of the Respondents and PwC, and other information from various sources. The Receiver has assumed that the information it has been provided is accurate and complete. The Receiver did not audit, review or otherwise attempt to verify the accuracy or completeness of the information. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to the information presented in this Sixth Report or relied upon by the Receiver in preparing this Sixth Report. Further, the nature of the Receiver's work completed in these proceedings will not necessarily disclose errors, misstatements, irregularities or illegal acts, if such exist, on the part of the Respondents, or its officers or employees or in the information.

5. All references to monetary amounts in this Sixth Report are in Canadian dollars unless otherwise noted.
6. Capitalized terms not defined in this Sixth Report are as defined in the Receivership Order.
7. Copies of Court materials in these proceedings may be obtained from the Receiver's website established in connection with the Respondents (www.ey.com/ca/atcon).

GENERAL MANSON WAY PROPERTY

Proposed Sale of General Manson Way Property

8. Atcon Construction is the registered owner of the real property and commercial office building municipally known as 67-69 General Manson Way, Miramichi, New Brunswick (the "**General Manson Way Property**"). Attached hereto as **Appendix "A"** are copies of the Certificates of Registered Ownership for the General Manson Way Property, PIDs 40489577 and 40450785 dated July 12, 2010.
9. The General Manson Way Property was leased by Atcon Construction to an affiliated company, Atcon Industrial Services Inc. ("**Atcon Industrial**"), which previously conducted business at the General Manson Way Property. On March 30, 2010, PricewaterhouseCoopers Inc. was appointed by this Honourable Court as receiver and receiver manager of the property, assets and undertakings of Atcon Industrial ("**PwC**").
10. The Receiver understands that Atcon Industrial operated its business in New Brunswick from the General Manson Way Property and adjacent and interconnected real properties owned by Atcon Industrial. As a result, the Receiver understands that there are significant amounts of Atcon Industrial owned and leased equipment, inventory, work-in-progress and supplies in the possession and control of PwC and located at the General Manson Way Property and the adjacent interconnected real properties.
11. The Receiver has reviewed a copy of the Second Report of PwC dated as of July 6, 2010 in the Atcon Industrial receivership proceeding bearing Court File No. N/M/26/10 (the "**PwC Report**"). Based on its review of the PwC Report, the Receiver understands that PwC, in an effort to achieve an *en bloc* sale of the assets of Atcon Industrial, solicited

offers for and negotiated the sale of the Atcon Industrial property located at the General Manson Way Property and adjacent interconnected real properties, along with the sale of the land and buildings situated at General Manson Way Property (the “**PwC Sales Process**”). The Receiver understands that PwC solicited offers for the General Manson Way Property in its capacity as agent for General Electric Canada Real Estate Finance Inc. (“**GE**”), which holds collateral mortgages registered against the General Manson Way Property.

12. The Receiver has reviewed the Offer with Terms and Conditions dated June 25, 2010 of M.J. Investments Inc. (the “**Purchaser**”) with respect to the proposed sale of, among other things, the General Manson Way Property (the “**Sale Documents**”). The Receiver understands that the Sale Documents have been included as Appendix H to the PwC Report, which the Receiver understands will be before this Honourable Court at the hearing of the Receiver’s motion with respect to the Sixth Report scheduled for July 28, 2010.
13. Based on the Receiver’s review of the Sale Documents, the Receiver understands that the Purchaser has allocated \$870,000 to its proposed purchase of the General Manson Way Property. The Receiver has discussed the proposed sale of the General Manson Way Property with PwC, and has reviewed the appraisal PwC obtained with respect to the General Manson Way Property. The Receiver is of the view that the price to be paid by the Purchaser for the General Manson Way Property is supported by the appraised value of the General Manson Way Property.
14. Additionally, the Receiver has discussed the terms of the Sale Documents with the Bank, GE and the Province of New Brunswick (the “**Province**”), which are parties that have an interest in debentures and collateral mortgages registered against the General Manson Way Property. Based on these discussions, the Receiver understands that GE, the Bank and the Province all either support, or do not oppose, the proposed sale of the General Manson Way Property for \$870,000 to the Purchaser.
15. The Receiver understands that PwC will be seeking the approval of the Sale Documents by this Honourable Court at a motion scheduled on July 28, 2010. To the extent that this Honourable Court approves the Sale Documents and the sale of the General Manson Way

Property to the Purchaser provided for therein, the Receiver respectfully requests that this Honourable Court grant an Order in these proceedings vesting the General Manson Way Property to the Purchaser free and clear of all claims and encumbrances against the General Manson Way Property.

16. As discussed in the Fifth Report of the Receiver dated July 23, 2010 (the “**Fifth Report**”), the majority of the Atcon Eastern Assets (as defined in the Fifth Report) that are the subject of the Tender Process (as defined in the Fifth Report) are located at the General Manson Way Property and cannot be easily stored in an alternate site, due to the size of certain of the assets and the costs that would be incurred by the Atcon Construction estate to move and store such assets elsewhere. As a result, the Receiver requires continued access to the General Manson Way Property to:
 - (a) complete the Tender Process and any resultant sale or sales of the Atcon Eastern Assets; and
 - (b) complete any public auction or private sales of any of the Atcon Eastern Assets that remain unsold after completion of the Tender Process.
17. The Receiver has discussed this issue with PwC. The Receiver understands, based on its discussions with PwC, that the Purchaser is prepared, notwithstanding its purchase of the General Manson Way Property, to permit the Receiver and its agents, on a cost-free basis to have unfettered and exclusive access to and possession and control over the portion or portions of the General Manson Way Property where the Atcon Eastern Assets are located until the later of (i) the date the Receiver determines, in its sole discretion, that it has completed all of the sale or sales of the Atcon Eastern Assets by or on behalf of the Receiver by tender, public auction or otherwise and that all of the Atcon Eastern Assets have been removed from the General Manson Way Property by purchasers or the Receiver; and (ii) November 30 2010.

Proceeds of Sale

18. As discussed above, the Purchaser has allocated \$870,000 to its proposed purchase of the General Manson Way Property. In the event that the proposed sale of the General Manson Way Property is completed, the \$870,000 represents the proceeds of sale of the

General Manson Way Property and constitutes Property of Atcon Construction that is subject to the terms of the Receivership Order (the “**Sale Proceeds**”).

19. In connection with the PwC Sales Process, and as set out in PwC’s pro forma statement of receipts and disbursements attached as Appendix “K” to the PwC Report, the Receiver understands that PwC has determined that approximately \$134,510 of its fees and disbursements (the “**PwC Fees and Disbursements**”) are properly allocated to the sale of the General Manson Way Property. PwC has informed the Receiver of its view that only the net proceeds from the sale of the General Manson Way Property, being \$870,000 less \$134,510 for the fees and expenses of PwC and the Tax Arrears (as defined below), should be paid to the Receiver.
20. The Receiver has discussed this matter with the Bank, the Province and GE. Based on these discussions, the Receiver understands that GE, the Bank and the Province are supportive of, or do not oppose payment to PwC of the PwC Fees and Disbursements from the Sale Proceeds.
21. The Receiver understands that, as of July 14, 2010, there were tax arrears of \$135,485.32 owed to the New Brunswick Department of Finance under the *Real Property Tax Act (New Brunswick)* with respect to the General Manson Way Property. Attached hereto as Appendix “B” is a copy of a Real Property Tax Certificate with respect to the General Manson Way Property dated July 14, 2010 (the “**Tax Certificate**”).
22. The Receiver understands, based on advice received from its legal counsel, that the amount of \$72,726.91 set out on the Tax Certificate (the “**Tax Arrears**”) constitutes a first charge against the Sale Proceeds under the *Real Property Tax Act (New Brunswick)*, and that such charge has priority over every claim, lien, privilege or encumbrance of any person against the General Manson Way Property.
23. As a result of the foregoing, the Receiver has informed PwC that it is prepared to request that this Honourable Court grant an Order that provides that, upon receipt by the Receiver of the amount of \$662,763.09 (being the Sale Proceeds less the PwC Fees and Disbursements and the Tax Arrears), the General Manson Way Property will vest in the Purchaser free and clear of all liens and encumbrances.

RELIEF SOUGHT BY THE RECEIVER

24. The Receiver respectfully requests that this Honourable Court grant an Order in the form submitted by the Receiver vesting the General Manson Way Property in and to the Purchaser free and clear of any liens or encumbrances and authorizing the Receiver to have unfettered and exclusive access to and possession and control over the portion or portions of the General Manson Way Property where the Atcon Eastern Assets are located, as set out in paragraph 17 hereof.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of July 2010

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



By:

Paul D. Hickey, CA•CIRP
Senior Vice President

Appendix “A”

**Form 47
Formule 47**

**CERTIFICATE OF REGISTERED OWNERSHIP
CERTIFICAT DE PROPRIÉTÉ ENREGISTRÉE**

**Land Titles Act, S.N.B. 1981, c. L-1.1, s.63
Loi sur l'enregistrement foncier, L.N.-B. de 1981, chap. L-11, art. 63**

Parcel Identifier | Numéro d'identification de parcelle :

40489577

Owner | Propriétaire :

ATCON CONSTRUCTION INC.
626 Newcastle BLVD
Miramichi NB
E1V 2L2
Lease | Bail
Northumberland 2007-04-04

23650709

Manner of Tenure | Mode de tenure :

Not Applicable | Sans objet

Encumbrances | Charges :

City of Miramichi
141 Henry ST
Miramichi NB
E1V 2N5
Easement Holder | Titulaire de la servitude
Subdivision & Amalgamations | Lotissement et fusions
Northumberland 1998-07-14 -

201423

Bank of Nova Scotia
Business Service Centre
5251 Duke ST Floor 7th Floor
Halifax NS
B3J 1P3
Debenture Holder | Titulaire de la débenture
Debenture or Other Voluntary Charge | Débenture ou autre charge facultative
Northumberland 2006-04-04 -

21917670

Bank of Nova Scotia
Business Service Centre
5251 Duke ST Floor 7th Floor
Halifax NS
B3J 1P3
Debenture Holder | Titulaire de la débenture
Debenture or Other Voluntary Charge | Débenture ou autre charge facultative
Northumberland 2006-04-04 -

21918041

General Electric Canada Real Estate Finance Inc.
 c/o Paul W. Smith
 44 Chipman HILL SUITE 1000
 PO BOX 7289 Stn. A
 Saint John NB
 E2L 4S6
 Lessee | Locataire
 Lease, Notice of Lease or Sub-Lease | Bail, avis de bail ou sous-bail
 Northumberland 2007-04-04 - 23650725

General Electric Canada Real Estate Finance Inc.
 1250 Rene-Levesque ST W SUITE 1100
 Montreal QC
 H3B 4W8
 Mortgagee | Créancier hypothécaire
 Collateral Mortgage | Hypothèque subsidiaire
 Northumberland 2007-07-31 - 24254592

General Electric Canada Real Estate Finance Inc.
 c/o Paul W. Smith
 44 Chipman HILL SUITE 1000
 PO BOX 7289 Stn. A
 Saint John NB
 E2L 4S6
 Mortgagee | Créancier hypothécaire
 Collateral Mortgage | Hypothèque subsidiaire
 Northumberland 2007-07-31 - 24254626

General Electric Canada Real Estate Finance Inc.
 c/o Paul W. Smith
 44 Chipman HILL SUITE 1000
 PO BOX 7289 Stn. A
 Saint John NB
 E2L 4S6
 Lessee | Locataire
 Assignment of Lease | Cession de bail
 Northumberland 2007-07-31 - 24254667

Bank of Nova Scotia
 Business Service Centre
 5251 Duke ST Floor 7th
 Halifax NS
 B3J 1P3
 Mortgagee | Créancier hypothécaire
 Collateral Mortgage | Hypothèque subsidiaire
 Northumberland 2009-06-30 - 27365890

Bank of Nova Scotia Business Service Centre 5251 Duke ST Floor 7th Halifax NS B3J 1P3 Mortgagee Créancier hypothécaire Collateral Mortgage Hypothèque subsidiaire Northumberland 2009-06-30	-	27365965
Bank of Nova Scotia Business Service Centre 5251 Duke ST Floor 7th Floor Halifax NS B3J 1P3 Debenture Holder Titulaire de la débenture Assignment of Mortgage or Charge Cession d'hypothèque ou de charge Northumberland 2009-07-07	-	27394726
Bank of Nova Scotia Business Service Centre 5251 Duke ST Floor 7th Floor Halifax NS B3J 1P3 Debenture Holder Titulaire de la débenture Assignment of Mortgage or Charge Cession d'hypothèque ou de charge Northumberland 2009-07-07	-	27394759
Cansel Survey Equipoment Inc./Equipments d'Arpentage Cansel Inc. c/o 69 Waterloo ST Moncton NB E1C 0E1 Judgment Creditor Créancier sur jugement Judgment Jugement Northumberland 2010-01-08	-	28242528
General Electric Canada Real Estate Finance Inc. 239 Brownlow AVE SUITE 204 Dartmouth NS B3B 2B2 Mortgagee Créancier hypothécaire Postponement Agreement Convention de subordination Northumberland 2010-02-10	-	28358753
CML Norton Blower Inc. c/o Robert B. Goodwin 388 Kingston CRES Winnipeg MA R2M 0T8 Judgment Creditor Créancier sur jugement Judgment Jugement Northumberland 2010-02-23	-	28407527

Place-Crete Systems Inc.
15 Chisholm AVE
St. Albert AB
T8N 5A7
Judgment Creditor | Créancier sur jugement
Judgment | Jugement
Northumberland 2010-03-01 -

28429174

Instruments in the Registration Process | Instruments dans le processus d'enregistrement :

NONE | AUCUN

THIS IS TO CERTIFY THAT the specified owner is the registered owner and holds title in fee simple, by virtue of the specified instrument(s) and in the specified manner of tenure, to the specified parcel, described in Schedule "A" attached hereto. The title to the land is subject to the overriding incidents specified in subsection 17(4) of the Act and also to the specified encumbrances.

LE PRÉSENT CERTIFICAT ATTESTE QUE le propriétaire spécifié est le propriétaire enregistré et est titulaire du titre en fief simple, en vertu de(s) l'instrument(s) spécifié(s), selon le mode spécifié de tenure de la parcelle spécifiée, décrite à l'Annexe <<A>> ci-jointe. Le titre du bien-fonds est soumis aux réserves dérogatoires précisées au paragraphe 17(4) de la Loi et également aux charges spécifiées.

THE TITLE TO THE LAND may be subject to the specified instruments, which have been entered in the instrument record and may be entered on the title register when the registration process is completed.
LE TITRE DU BIEN-FONDS peut être soumis aux instruments spécifiés qui ont été portés au registre des instruments et qui peuvent être portés au registre des titres lorsque la procédure d'enregistrement est achevée.

THIS CERTIFICATE is evidence of the particulars contained herein as of the date and time of its issue. The description is not conclusive as to the boundaries or extent of the land.

LE PRÉSENT CERTIFICAT constitue la preuve des renseignements qu'il contient à la date et à l'heure de sa délivrance. La description n'est pas probante en ce qui concerne les limites ou l'étendue du bien-fonds.

Date & Time | Date et heure : 2010-07-12 14:23:13

Registrar of Land Titles for the District of New Brunswick

Le registrateur des titres de biens-fonds de la Circonscription du Nouveau-Brunswick

Report ID | Rapport ID : 3129166

Schedule A | Annexe A

PID | NID : 40489577

Apparent Parcel Access | Accès apparent à la parcelle : Private Access | Accès privé

Status | État de la demande : Current | Courant

Effective Date/Time | Date et heure de prise d'effet : 2007-04-05 16:07:25

Legal Description | Description officielle :

Place Name: Miramichi

Parish/County: Chatham/Northumberland

Designation of Parcel on Plan: Parcel 06-A

Title of Plan: Atcon Construction Inc.

Registration County: Northumberland

Registration Number of Plan: 23650709

Registration Date of Plan: 2007-04-04 14:02:39

Together with the benefit of the right of ways and utility easement as conveyed in lease # 23650725 registered in Northumberland County office of Land Titles for the district of New Brunswick on April 4, 2007.

**Form 47
Formule 47**

**CERTIFICATE OF REGISTERED OWNERSHIP
CERTIFICAT DE PROPRIÉTÉ ENREGISTRÉE**

**Land Titles Act, S.N.B. 1981, c. L-1.1, s.63
Loi sur l'enregistrement foncier, L.N.-B. de 1981, chap. L-11, art. 63**

Parcel Identifier | Numéro d'identification de parcelle :

40450785

Owner | Propriétaire :

ATCON CONSTRUCTION INC.

626 Newcastle BLVD

Miramichi NB

E1V 2L2

Deed/Transfer | Acte de transfert/Transfert

Northumberland 2004-02-11

-

17891905

ATCON CONSTRUCTION INC.

626 Newcastle BLVD

Miramichi NB

E1V 2L3

Corporate Affairs Change of Name | Changement de nom des Affaires corporatives

Northumberland 2006-09-13

-

22747761

Manner of Tenure | Mode de tenure :

Not Applicable | Sans objet

Encumbrances | Charges :

Aliant Telecom Inc.

1 Brunswick SQ

PO BOX 1430

Saint John NB

E2L 4K2

Easement Holder | Titulaire de la servitude

Subdivision & Amalgamations | Lotissement et fusions

Northumberland 1998-07-14

-

201423

City of Miramichi

141 Henry ST

Miramichi NB

E1V 2N5

Easement Holder | Titulaire de la servitude

Subdivision & Amalgamations | Lotissement et fusions

Northumberland 1998-07-14

-

201423

New Brunswick Power Corporation

515 King ST

PO BOX 2000

Fredericton NB

E3B 4X1

Easement Holder | Titulaire de la servitude

Subdivision & Amalgamations | Lotissement et fusions

Northumberland 1998-07-14 - 201423

PID 40445207

Miramichi NB

Easement Holder | Titulaire de la servitude

Easement | Servitude

Northumberland 2004-02-11 - 17892028

Bank of Nova Scotia

Business Service Centre

5251 Duke ST Floor 7th Floor

Halifax NS

B3J 1P3

Debenture Holder | Titulaire de la débenture

Debenture or Other Voluntary Charge | Débenture ou autre charge facultative

Northumberland 2006-04-04 - 21917670

Bank of Nova Scotia

Business Service Centre

5251 Duke ST Floor 7th Floor

Halifax NS

B3J 1P3

Debenture Holder | Titulaire de la débenture

Debenture or Other Voluntary Charge | Débenture ou autre charge facultative

Northumberland 2006-04-04 - 21918041

PID 40489577

Miramichi NB

Easement Holder | Titulaire de la servitude

Lease, Notice of Lease or Sub-Lease | Bail, avis de bail ou sous-bail

Northumberland 2007-04-04 - 23650725

General Electric Canada Real Estate Finance Inc.

1250 Rene-Levesque ST W SUITE 1100

Montreal QC

H3B 4W8

Mortgagee | Créancier hypothécaire

Collateral Mortgage | Hypothèque subsidiaire

Northumberland 2007-07-31 - 24254592

Bank of Nova Scotia
 Business Service Centre
 5251 Duke ST Floor 7th
 Halifax NS
 B3J 1P3
 Mortgagee | Créancier hypothécaire
 Collateral Mortgage | Hypothèque subsidiaire
 Northumberland 2009-06-30 - 27365965

Bank of Nova Scotia
 Business Service Centre
 5251 Duke ST Floor 7th Floor
 Halifax NS
 B3J 1P3
 Debenture Holder | Titulaire de la débenture
 Assignment of Mortgage or Charge | Cession d'hypothèque ou de charge
 Northumberland 2009-07-07 - 27394726

Bank of Nova Scotia
 Business Service Centre
 5251 Duke ST Floor 7th Floor
 Halifax NS
 B3J 1P3
 Debenture Holder | Titulaire de la débenture
 Assignment of Mortgage or Charge | Cession d'hypothèque ou de charge
 Northumberland 2009-07-07 - 27394759

Cansel Survey Equipoment Inc./Equipments d'Arpentage Cansel Inc.
 c/o
 69 Waterloo ST
 Moncton NB
 E1C 0E1
 Judgment Creditor | Créancier sur jugement
 Judgment | Jugement
 Northumberland 2010-01-08 - 28242528

General Electric Canada Real Estate Finance Inc.
 239 Brownlow AVE SUITE 204
 Dartmouth NS
 B3B 2B2
 Mortgagee | Créancier hypothécaire
 Postponement Agreement | Convention de subordination
 Northumberland 2010-02-10 - 28358753

CML Norton Blower Inc.
 c/o Robert B. Goodwin
 388 Kingston CRES
 Winnipeg MA
 R2M 0T8
 Judgment Creditor | Créancier sur jugement
 Judgment | Jugement
 Northumberland 2010-02-23 - 28407527

Place-Crete Systems Inc.

15 Chisholm AVE

St. Albert AB

T8N 5A7

Judgment Creditor | Créancier sur jugement

Judgment | Jugement

Northumberland 2010-03-01

-

28429174

Instruments in the Registration Process | Instruments dans le processus d'enregistrement :

NONE | AUCUN

THIS IS TO CERTIFY THAT the specified owner is the registered owner and holds title in fee simple, by virtue of the specified instrument(s) and in the specified manner of tenure, to the specified parcel, described in Schedule "A" attached hereto. The title to the land is subject to the overriding incidents specified in subsection 17(4) of the Act and also to the specified encumbrances.

LE PRÉSENT CERTIFICAT ATTESTE QUE le propriétaire spécifié est le propriétaire enregistré et est titulaire du titre en fief simple, en vertu de(s) l'instrument(s) spécifié(s), selon le mode spécifié de tenure de la parcelle spécifiée, décrite à l'Annexe <<A>> ci-jointe. Le titre du bien-fonds est soumis aux réserves dérogatoires précisées au paragraphe 17(4) de la Loi et également aux charges spécifiées.

THE TITLE TO THE LAND may be subject to the specified instruments, which have been entered in the instrument record and may be entered on the title register when the registration process is completed.

LE TITRE DU BIEN-FONDS peut être soumis aux instruments spécifiés qui ont été portés au registre des instruments et qui peuvent être portés au registre des titres lorsque la procédure d'enregistrement est achevée.

THIS CERTIFICATE is evidence of the particulars contained herein as of the date and time of its issue. The description is not conclusive as to the boundaries or extent of the land.

LE PRÉSENT CERTIFICAT constitue la preuve des renseignements qu'il contient à la date et à l'heure de sa délivrance. La description n'est pas probante en ce qui concerne les limites ou l'étendue du bien-fonds.

Date & Time | Date et heure : 2010-07-12 14:23:41

Registrar of Land Titles for the District of New Brunswick

Le registrateur des titres de biens-fonds de la Circonscription du Nouveau-Brunswick

Report ID | Rapport ID : 3129168

Schedule A | Annexe A

PID | NID : 40450785

Apparent Parcel Access | Accès apparent à la parcelle : Public Access | Accès public

Status | État de la demande : Current | Courant

Effective Date/Time | Date et heure de prise d'effet : 2007-04-05 16:07:25

Legal Description | Description officielle :

That parcel of land and premises being in:

Place Name: Miramichi

Parish/County: Chatham/Northumberland

Label of Parcel on Plan: Lot No. 99-26

Title of Plan: Amending Subdivision Plan Sky Park
Miramichi Subdivision (Plan 4 of 4) 3rd Amendment

Registration County: Northumberland

Registration Number of Plan: 10714740

Registration Date of Plan: December 16, 1999

Save & Except:

Designation of Parcel on Plan: Parcel 06-A

Registration County: Northumberland

Registration Number of Plan: 23650709

Registration Date of Plan: 2007-04-04 14:02:39

Appendix “B”



**TAX CERTIFICATE
REAL PROPERTY TAXES**

**CERTIFICAT D'IMPÔT
IMPÔTS SUR BIENS IMMOBILIERS**

To:
A:

McInnes Cooper

REF: 122V0621

LW-151

The taxes and penalties owing to the Province upon the real property of :

(1) Les impôts et pénalités dus à la province sur la propriété foncière de:

Name ATCON CONSTRUCTION INC
Nom

Address 626 NEWCASTLE BLVD
Adresse MIRAMICHI NB E1V 2L3

being located at 67 GENERAL MANSON WAY
étant située à

and described as BUILDINGS & LOT 99-26
et décrit comme

having Property Account Number 05798200
portant le numéro de compte des biens

under the Real Property Tax Act are (2010 LEVY \$ 132,658.07) \$72,726.91
conformément à la Loi sur l'impôt foncier sont

A sale of the property

(2) La propriété

☐ has a ☒ has not a

been held for taxes under the provisions of the Real Property Tax Act within 30 days prior to the date of this Certificate.

été vendue pour impôts en application des dispositions de la Loi sur l'impôt foncier dans les 30 jours précédant la date du présent certificat.

The facts herein are as they existed according to the records kept under the Real Property Tax Act; however the facts may change, subsequent to the issuance of this Certificate, as a result of a change in the assessment of the subject property pursuant to the provisions of the Assessment Act or the Residential Property Tax Relief Act, or as a result of a payment being charged back as non-negotiable.

(3) Les faits ici déclarés sont inchangés d'après les dossiers maintenus en application de la Loi sur l'impôt foncier mais peuvent changer après l'émission du présent certificat advenant une modification à l'évaluation de la propriété en question conformément aux dispositions de la Loi sur l'évaluation ou de la Loi sur le dégrèvement d'impôts applicables aux résidences, ou à la suite d'un paiement débité comme étant non négociable.

This Certificate is issued in accordance with the provisions of the Real Property Tax Act.

Le présent certificat est émis en vertu des dispositions de la Loi sur l'impôt foncier.

Dated at Fredericton, in the County of York, in the Province of New Brunswick, this

Fait à Fredericton, dans le comté de York et province du Nouveau-Brunswick, ce

Y	A	M	M	D	J
2010	07	14			

DEPARTMENT OF FINANCE
MINISTÈRE DES FINANCES

REVENUE & TAXATION DIVISION
DIVISION DU REVENU ET DE L'IMPÔT

Per
Par

This is a manually created Tax Certificate showing a secured balance owing of \$72,726.91 which consists of 2010 taxes. The Accounts Receivable Ledger of the Department of Finance currently lists an amount owing of \$ 135,485.32, which includes an unsecured claim against the bankruptcy of Atcon Construction Inc. The unsecured does not form a lien against Property Account 05798200.

Certificat d'impôt foncier produit manuellement sur lequel figure un solde dû de 72 726,91 \$ comprenant l'année d'imposition 2010. Le grand livre des comptes clients du ministère des Finances comprend actuellement une somme due de 135 485,32 \$, dont une créance ordinaire relative à la faillite de Atcon Construction Inc. Cette somme due ne donne aucun privilège sur le compte d'impôt foncier 05798200.

Per
Par

Tab 4

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

ORDER

THIS MOTION, made by Ernst & Young Inc. in its capacity as Court-appointed receiver and receiver manager (the “**Receiver**”) of the property, assets and undertakings of the Respondents,

was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Receiver's notice of motion dated 23 July 2010, the Fifth Report of the Receiver dated 23 July 2010 (the "**Fifth Report**") and the appendices attached thereto, the Supplement to the Fifth Report of the Receiver dated •• July 2010 (the "**Supplemental Report**"), and upon hearing the submissions of counsel to the Receiver and other counsel present,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Fifth Report, the Supplemental Report 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** that the Receiver is hereby authorized and directed to carry out and conduct a tender sale in respect of the Atcon Eastern Assets (as defined in the Fifth Report) in accordance with the terms and conditions outlined in the Receiver's Tender Information Package attached as Appendix "C" to the Fifth Report (the "**Tender Information Package**") and the Tender Process described in the Fifth Report, and the Tender Information Package and the Tender Process are hereby approved.
3. **THIS COURT ORDERS** that the Receiver is hereby authorized to execute the Century Services Inc. ("**Century**") auction proposal dated July 15, 2010 attached as Appendix "D" to the Fifth Report, for the sale of the Atcon Western Assets (as defined in the Fifth Report) (the "**Auction Agreement**"), and the Auction Agreement is hereby approved.
4. **THIS COURT ORDERS** that, upon receipt by Century of the purchase price from a purchaser of any of the Atcon Western Assets at any public auction conducted by Century in connection with the Auction Agreement, and upon a bill of sale being issued by Century to any such purchaser, all of Atcon Construction's right, title and interest in and to the Atcon Western Assets purchased by such purchaser shall vest absolutely in the purchaser 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 any Court orders granted in these proceedings against the Atcon Construction Property; (ii) any encumbrances or charges created by any Court Orders granted in the *Companies’ Creditors Arrangement Act* (Canada) proceedings having Court File No. N/M/16/10; (iii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security 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 Atcon Western Assets sold by Century to any purchaser in accordance with the terms and conditions of the Auction Agreement and this Order are hereby expunged and discharged as against the Atcon Western Assets.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Atcon Western Assets by Century in accordance with the terms and conditions of the Auction Agreement and this Order (the “**Proceeds**”) shall stand in the place and stead of such Atcon Western Assets, and all Claims and Encumbrances shall attach to the Proceeds with the same priority as they had with respect to such Atcon Western Assets as if the Atcon Western 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.

6. **THIS COURT ORDERS** that the Receiver is authorized and directed, upon receipt of the Proceeds, to utilize the 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.

7. **THIS COURT ORDERS** that the Supplemental Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope and shall only be opened upon further Order of the Court.

Dated at Miramichi, New Brunswick, this 28th day of July, 2010.

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

Tab 5

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

ORDER

THIS MOTION, made by Ernst & Young Inc. in its capacity as Court-appointed receiver and receiver manager (the “**Atcon Construction Receiver**”) of the property, assets and

undertakings (the “**Property**”) of Atcon Construction Inc. (“**Atcon Construction**”), in connection with the purchase and sale agreement (the “**Sale Agreement**”) between PricewaterhouseCoopers Inc. in its capacity as Court-appointed receiver (the “**Atcon Industrial Receiver**”) of the property, assets and undertaking of Atcon Industrial Services Inc. (“**Atcon Industrial**”) as Vendor and the Purchaser set out therein made as of the 25th day of June, 2010 and the proposed vesting of the property, assets and undertaking of Atcon Construction and Atcon Industrial listed in the Sale Agreement, was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Atcon Construction Receiver’s notice of motion dated 23 July 2010, the Second Report of the Atcon Industrial Receiver dated 6 July 2010 (the “**PwC Report**”) and the appendices attached thereto, the Fifth Report of the Receiver dated 23 July 2010 (the “**Fifth Report**”) and the appendices attached thereto, the Sixth Report of the Atcon Construction Receiver dated 23 July 2010 (the “**Sixth Report**”) and the appendices attached thereto, and upon hearing the submissions of counsel to the Atcon Construction Receiver, the Atcon Industrial Receiver and other counsel present,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Sixth Report 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 sale of the real property municipally known as 67-69 General Manson Way, Miramichi, New Brunswick, PIDs 40489577 and 40450785 (the “**Atcon Construction Property**”) to the Purchasers pursuant to the Sale Agreements is hereby approved.
3. **THIS COURT ORDERS** that with effect as of closing, and subject to the receipt of the net sum of \$ 662,763.09 by the Atcon Construction Receiver from Atcon Industrial Receiver, all of Atcon Construction’s right, title and interest in and to the Atcon Construction Property shall vest absolutely in the Purchaser as registered owner 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 any Court orders granted in these proceedings against the Atcon Construction Property; (ii) any encumbrances or charges created by any Court Orders granted in the *Companies’ Creditors Arrangement Act* (Canada) having Court File No. N/M/16/10; (iii) 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 affecting or relating to the Atcon Construction Property are hereby expunged and discharged as against the Atcon Construction Property.

4. **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 prospective interests shall continue with respect to the Atcon Construction Property.

5. **THIS COURT ORDERS** that upon the registration under the *Land Titles Act* (New Brunswick) of a transfer for the Atcon Construction Property by the Atcon Construction Receiver, the Land Registrar is hereby directed to enter the Purchaser as the owner of the real property municipally known as 67 General Manson Way, Miramichi, New Brunswick (PIDs 40450785 and 40489577) (being the Atcon Construction Property) in fee simple, and is hereby directed to delete and expunge from title to the Atcon Construction Property all of the Claims listed in Schedule B hereto.

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 Construction Property received by the Atcon Construction Receiver (the “**Proceeds**”) shall stand in the place and stead of the Atcon Construction Property, and that from and after the Closing all Claims and Encumbrances shall attach to the Proceeds with the same priority as they had with respect to the Atcon Construction Property, as if the Atcon Construction 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.

7. **THIS COURT ORDERS** that the Atcon Construction Receiver is authorized to execute, in its own name or in the name of Atcon Construction, 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 Construction Property or any part of them by the Atcon Construction Receiver or evidence the sale, transfer and assignment of the Atcon Construction Property 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 Construction Property or any of them and any documents as may otherwise be required to carry out the purpose and intent of the Sale Agreement (insofar as it concerns the Atcon Construction Property) and of this Order.

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

the vesting of the Atcon Construction Property in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Atcon Construction and shall not be void or voidable by creditors of Atcon Construction, nor shall it constitute nor be deemed to be a transfer 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.

9. **THIS COURT ORDERS** that the Atcon Construction Receiver shall hold the Proceeds pending further order of the Court.

10. **THIS COURT ORDERS** that notwithstanding the vesting of the Atcon Construction Property in the Purchaser, the Atcon Construction Receiver shall have, on a rent-free and no-cost basis, unfettered and exclusive access to and possession and control over the portion or portions of the Atcon Construction Property on or around where the personal property of Atcon Construction (including, without limitation the property described on Appendix “A” to the Fifth Report) (the “**Atcon Construction Personalty**”) is located, including all lands and premises the Atcon Construction Receiver, its respective agents and or potential purchasers and actual purchasers of the Atcon Construction Personalty require to view and/or access the Atcon Construction Personalty and to move and/or organize the Atcon Construction Personalty for sale, to sell the Atcon Construction Personalty, and to remove the Atcon Construction Personalty once sold, until the earlier of (i) the date the Receiver determines, in its sole discretion, that it has completed all of the sale or sales of the Atcon Construction Personalty by or on behalf of the Atcon Construction Receiver whether such sale or sales are by tender, auction, private sale or otherwise and that all of the Atcon Construction Personalty has been removed from the Atcon Construction Property by purchasers or the Atcon Construction Receiver, and (ii) 30 November 2010.

Dated at Miramichi, New Brunswick, this 28th day of July, 2010.

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