

**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 September 29, 2010 at 9:30 a.m. AST**

**IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK  
IN BANKRUPTCY AND INSOLVENCY  
JUDICIAL DISTRICT OF MIRAMICHI**

**IN THE MATTER OF THE RECEIVERSHIP OF:**

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ATCON VENEER PRODUCTS INC, ATCON LOGISTICS INC., ATCON  
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Court, New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.  
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**APPLICANT**

**- and -**

**ATCON GROUP INC., ATCON HOLDINGS INC., ATCON  
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INC, ATCON LOGISTICS INC., ATCON CONSTRUCTION  
INC., ATCON MANAGEMENT SERVICES INC., ATCON  
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STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC.,  
all of which are carrying on business in the Province of New  
Brunswick**

**RESPONDENTS**

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**TAB****DOCUMENT**

1. Notice of Motion returnable September 29, 2010  
Schedule "A" Service List
2. Seventh Report of the Receiver dated September 24, 2010  
Appendix "A" Fifth Report of the Receiver dated July 23, 2010 (without appendices)  
Appendix "B" Order of Riordon J. dated July 28, 2010  
Appendix "C" Detailed Parcel Listing as of July 2010

# **TAB 1**

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 MIRAMICHI

**IN THE MATTER OF THE  
RECEIVERSHIP OF:**

**ATCON GROUP INC., ATCON  
HOLDINGS INC., ATCON PROPERTY  
HOLDINGS INC., ATCON VENEER  
PRODUCTS INC., ATCON LOGISTICS  
INC., ATCON CONSTRUCTION INC.,  
ATCON MANAGEMENT SERVICES  
INC., ATCON CIVIL LTD., DYCON  
CONSTRUCTION LTD., ATCON  
STRUCTURES INC. AND ENVIREM  
TECHNOLOGIES INC.**

**PURSUANT TO Section 33 of The  
*Judicature Act*, R.S.N.B. 1973, Ch. J-2,  
Rule 41, Rules of Court, New Brunswick  
and Section 243 of the *Bankruptcy and  
Insolvency Act*, R.S.C. 1985, c. B-3**

**B E T W E E N:**

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

**(Applicant)**

**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. by way of teleconference on Wednesday September 29, 2010 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 this Notice of Motion, the Receiver's Seventh Report to the Court dated September 24, 2010 (the "**Fourth Report**"), the Supplement to the Receiver's Seventh Report to the Court dated September 24, 2010 (the "**Supplemental Report**"), and the Record on Motion, if necessary, so that this Motion is properly returnable and further service is dispensed with;
  - ii) authorizing and empowering the Receiver to sell certain assets to parties that submitted tenders in the Tender Process (as defined below) that were accepted by the Receiver and to enter into an auction agreement with an auctioneer that submitted a bid in the Tender Process that has been accepted by the Receiver; 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;
2. Pursuant to the Order of Justice Riordon of the Court of Queen's Bench of New Brunswick dated July 28, 2010 (the "**July 28 Order**"), this Honourable Court authorized the Receiver to conduct and carry out a tender process with respect to the Property of the Respondents located in the Province of New Brunswick (the "**Tender Process**") pursuant to the terms and conditions set out in the Tender Process and the Tender Information Package (as defined in the July 28 Order), and approved the Tender Process and Tender Information Package;
3. In accordance with the terms of the Tender Process, the Receiver advertised and marketed the Property of the Respondents subject to the Tender Process (the "**Atcon Eastern Assets**"). As of August 31, 2010, being the tender submission deadline, the Receiver received 56 tender packages with respect to the Atcon Eastern Assets, including 7 tenders from auctioneer firms offering minimum guaranteed bids for differing assets;
4. The Receiver has reviewed each of the tenders that were submitted for portions of the Atcon Eastern Assets. The Receiver discussed its tender acceptance recommendations with representatives from parties with the primary interests in the results of the tender process by virtue of their respective security over the Atcon Eastern Assets. The Receiver notes that no objections to the proposed tender acceptance recommendations were raised by these parties;

5. The details with regard to the tenders submitted to the Receiver for the Atcon Eastern Assets in the Tender Process and the accepted tenders will be set out in further detail the Supplemental Report. The Receiver will be seeking a sealing order from this Honourable Court with respect to the Supplemental Report, on the basis that the Supplemental Report contains sensitive commercial information, the dissemination of which could be prejudicial to the best interests of the Respondents' stakeholders and to the successful completion of any future sales transactions in the event that any of the accepted tenders do not close;
6. The tenders that have been conditionally accepted by the Receiver represent tenders that provide the highest net recovery to the Respondents' receivership estates in comparison to the other tenders submitted in the Tender Process. Additionally, the Receiver reports that the aggregate amount of the accepted tenders and the net minimum guaranteed amount in the accepted auction tender exceeds the aggregate appraised value of the Atcon Eastern Assets subject to such tenders;
7. The Receiver believes it has conducted an appropriate market test for the Atcon Eastern Assets in accordance with the Tender Process previously approved by this Honourable Court and that the accepted tenders represent an acceptable recovery to the Respondents' receivership estates.
8. ;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
9. 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:

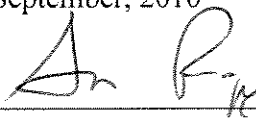
- (1) The Seventh Report;
- (2) The Supplemental Report; and
- (3) Such further and other affidavits or documentary evidence as counsel for the Applicant may advise and this Honourable Court may permit.

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;                                                        | (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) the applicant intends to proceed in the English language; and                                                                                                | (b) le demandeur à l'intention d'utiliser la langue anglais; et                                                                                                                              |
| (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. | (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 24<sup>th</sup> day of September, 2010



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of the Respondents**

# **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  
carrying on business in the Province of New Brunswick**

**- AND -**

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**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**

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(as of September 24, 2010)**

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**Counsel to Ernst & Young Inc., the Court-  
Appointed Monitor and Receiver**

## **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**

**SEVENTH REPORT OF THE RECEIVER  
September 24, 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 (collectively, the “**Property**”) 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 Ltd., Dycon Construction Ltd., Atcon Structures Inc., Atcon Construction Inc. 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 requirements that 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; and

- (f) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.
- 3. The purpose of this Seventh Report is to report to this Honourable Court on the results of the Tender Process (as defined below) conducted by the Receiver with respect to the Atcon Eastern Assets (as defined below) and request that this Honourable Court grant an Order authorizing and empowering the Receiver to sell certain assets to the parties that submitted tenders in the Tender Process that were accepted by the Receiver and to enter into an auction agreement with Asset Sales (as defined below), being the auctioneer that submitted a bid in the Tender Process that has been accepted by the Receiver.

#### **TERMS OF REFERENCE**

- 4. In preparing this Seventh 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 certain 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 Seventh Report or relied upon by the Receiver in preparing this Seventh 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 Seventh Report are in Canadian dollars unless otherwise noted.
- 6. Capitalized terms not defined in this Seventh 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](http://www.ey.com/ca/atcon)) (the "Website").

## **TENDER PROCESS**

### **Approval of Tender Process**

8. As is set out in greater detail in the Receiver's Fifth Report to the Court dated July 23, 2010 (the "**Fifth Report**"), the Receiver brought a motion returnable July 28, 2010 seeking, among other things, the approval of this Honourable Court to conduct a tender process with respect to the Property of the Respondents located in the Province of New Brunswick (the "**Tender Process**"). Attached hereto as **Appendix "A"** is a copy of the Fifth Report (without appendices). The Property subject to the Tender Process (the "**Atcon Eastern Assets**") and the Tender Process to be conducted by the Receiver are respectively described in paragraphs 13-14 and 16-21 of the Fifth Report.
9. Pursuant to the Order of Justice Riordon of the Court of Queen's Bench of New Brunswick dated July 28, 2010 (the "**July 28 Order**"), this Honourable Court approved the Tender Process and the Tender Information Package (as defined in the July 28 Order) and authorized and empowered the Receiver to carry out and conduct the Tender Process in accordance with the terms and conditions outlined in the Tender Information Package and the Tender Process (as described in the Fifth Report). Attached hereto as **Appendix "B"** is a copy of the July 28 Order.

### **Marketing of Tender Process/Site Viewings**

10. In accordance with the Tender Process approved by this Honourable Court in the July 28 Order, the Receiver took the following steps to market the Atcon Eastern Assets:
  - (a) Regional Advertising: an advertisement was published in the following regional newspapers on July 31, 2010 and August 7, 14, and 21, 2010:
    - (i) Telegraph Journal (Saint John);
    - (ii) Times & Transcript (Moncton);

- (iii) Fredericton Gleaner (Fredericton); and
    - (iv) L'Acadie Nouvelle (NB Francophone);
  - (b) National Advertising: an advertisement was published in the Globe & Mail (National Edition) on August 4, 11, 18, and 25, 2010;
  - (c) Direct E-mail/Fax Advertising:
    - (i) the Receiver engaged CNW Group (Canada Newswire) to fax the tender advertisement to approximately 820 construction and construction related companies throughout Canada and the North-eastern region of the United States of America;
    - (ii) the Receiver sent the tender advertisement, along with instructions on how to access the Tender Information Package on the Website by e-mail to approximately 720 construction and construction related companies, which is comprised of companies operating in the Atlantic Canada region, prospective buyers outside Atlantic Canada who had previously contacted the Receiver to indicate their interest in the Atcon Eastern Assets, and other industry participants known to the Receiver;
  - (d) Construction & Road Building Associations: the Receiver requested, and was granted permission, to post a link to the Tender Information Package on the Website on the websites of the construction and road building associations listed below. Additionally, each of the associations issued an e-mail notification to its members advising them of the tender opportunity and the link on their respective websites:
    - (i) Nova Scotia Road Builders Association;
    - (ii) New Brunswick Road Builders Association; and
    - (iii) Newfoundland Construction Association.
11. During the period commencing on July 30, 2010 and ending on the tender closing date of August 31, 2010:
- (a) interested parties were able to review the Tender Information Package on the Website and/or download a copy of the Tender Information Package. The

Receiver is unable to confirm the number of interested parties having viewed or downloaded the Tender Information Package during this time frame;

- (b) 95 companies contacted the Receiver directly requesting additional information on the Tender Information Package and the Atcon Eastern Assets available for tender; and
- (c) 26 companies contacted the Receiver and scheduled and completed a site visit / tour to view and inspect the Atcon Eastern Assets available for tender.

### **Submissions of Tenders**

- 12. As set out in the Tender Information Package and the Fifth Report, sealed tenders were to be received by the Receiver 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. The Tender Information Package separated the Atcon Eastern Assets into 5 parcels. Attached hereto as **Appendix “C”** is a copy of the Detailed Parcel Listing as of July 2010 that was attached as Appendix “A” to the Tender Information Package.
- 13. As of August 31, 2010, the Receiver received 52 tender packages with respect to the Atcon Eastern Assets, including 7 tenders from auctioneer firms offering minimum guaranteed bids for differing assets. In addition, the Receiver received 4 tender packages following the August 31, 2010 deadline on September 1, 2010.

### **Approval Process re Tenders**

- 14. As set out in the Tender Information Package and the Fifth Report, the Receiver was required to communicate the acceptance of tenders on or before September 10, 2010, subject to, where applicable, the Receiver obtaining Court approval.
- 15. Following receipt of tenders on August 31, 2010, the Receiver reviewed each of the tenders that were submitted for portions of the Atcon Eastern Assets.
- 16. The details with regard to the tenders submitted to the Receiver for the Atcon Eastern Assets in the Tender Process and the Accepted Tenders (as defined below) will be set out

in a Supplement to the Seventh Report dated September 24, 2010 (the “**Supplemental Report**”), which will be made available to this Honourable Court prior to the hearing of the motion in respect of this Seventh Report.

17. The Receiver will be seeking a sealing order from this Honourable Court with respect to the Supplemental Report, on the basis that the Supplemental Report contains sensitive commercial information, the dissemination of which could be prejudicial to the best interests of the Respondents’ stakeholders and to the successful completion of any future sales transactions in the event that any of the Accepted Tenders do not close.
18. The Receiver identified the combination of tenders that maximized the net recovery from the Atcon Eastern Assets for the receivership estates of the Respondents.

#### Individual Tenders

19. Based on its review of the tenders, the Receiver determined that it had achieved acceptable individual tenders for the majority of the Parcel 1 assets (the Quarry Assets), the majority of the Parcel 5 assets (the Real Estate Assets) and sub parcel 2.1B (the Kobelco Crane). The tenders of the parties listed below (the “**Individual Tenderers**”) have been accepted by the Receiver (the “**Accepted Individual Tenders**”), subject to obtaining the approval of this Honourable Court:

| <b>TENDER PARTY</b>       | <b>PARCEL</b> | <b>ASSETS</b>                                                                                |
|---------------------------|---------------|----------------------------------------------------------------------------------------------|
| Atlantic Minerals Limited | 1.1A          | Nine conveyors                                                                               |
| C.M. Dickison & Sons Ltd. | 5.1A          | Building and land at 626 Newcastle Blvd (PID 40489437)                                       |
|                           | 5.1B          | Office furnishings located at 626 Newcastle Blvd                                             |
|                           | 5.8           | Land located on 626 Newcastle Blvd (PID’s 40127862, 40177131, 40277873, 40175622, 40277881)  |
| Caldwell & Ross Limited   | 2.1B          | 1996 Kobelco BM700 75-ton crawler crane and sleeve                                           |
|                           | 5.18          | Land and chattels located on Cross Roads (PID 40276263)                                      |
| Concreate USL Ltd.        | 5.4           | Building, contents and land located at 3 Chapel Road (PID’s 40204778, 40304487 and 40304529) |
| Falls Construction Ltd.   | 1.1D          | Crushed rock inventory                                                                       |

|                                      |                 |                                                                                                                                             |
|--------------------------------------|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------|
|                                      | 1.1 E           | Quarry leases, licenses, permits                                                                                                            |
| Five Islands Forest Development Ltd. | 5.21 A, B and C | Land located at Island View Drive (PID 40473068), land located at Donaldy Road (PID 40473076), and land located at Route 126 (PID 40095887) |
| Gary Leroux                          | 5.17            | Hubbard Street, Miramichi, New Brunswick (PID 40219933)                                                                                     |
|                                      | 5.19            | Exmoor, Miramichi, New Brunswick (PID 40335184)                                                                                             |
|                                      | 5.20            | Raiche Street, Miramichi, New Brunswick (PID40374266)                                                                                       |
|                                      | 5.23            | Nelson Street, Miramichi, New Brunswick (PID 40221459)                                                                                      |
| Goodfellows Trucking Ltd.            | 5.70            | Crosby Road, Newcastle Blvd, Miramichi, New Brunswick (PIDs 40052912, 40052995, 40328734, 40328742)                                         |
|                                      | 5.90            | Napan Road, Centre Napan, New Brunswick (PID 40053001)                                                                                      |
|                                      | 5.12            | King George Highway, Miramichi, New Brunswick (PID 40165656)                                                                                |
| HBH Paving Ltd.                      | 1.3A            | Quarry leases – Wayerton                                                                                                                    |
| Northern Construction & Supplies Ltd | 1.2A            | Luff Conveyor                                                                                                                               |
|                                      | 1.2C            | Ricc & Lake Scale                                                                                                                           |
|                                      | 1.2D            | Tank & Diesel Fuel                                                                                                                          |
|                                      | 1.2E            | Crushed Rock Inventory                                                                                                                      |
|                                      | 1.2F            | Quarry Land PID 10208858                                                                                                                    |
|                                      | 1.2G            | Quarry leases, licenses, permits                                                                                                            |
| Terrance Kelly                       | 5.60            | Nelson Street, Miramichi, New Brunswick (PIDs 40221426, 40219941, 4021434)                                                                  |
|                                      | 5. 14           | 149 St. Patrick's Drive, Miramichi, New Brunswick (PID 40217994)                                                                            |
|                                      | 5.15            | St. Patrick's Drive, Miramichi, New Brunswick (PID 40466039)                                                                                |
|                                      | 5.22            | Nelson Street, Miramichi, New Brunswick (PID 40286668)                                                                                      |

20. Copies of the Accepted Individual Tenders, which have been accepted by the Receiver, subject to approval of this Honourable Court will be attached as an appendix to the Supplemental Report.

Auctioneer Tenders

21. Based on its review of the tenders, the Receiver concluded that the net minimum guaranteed bids offered by the auctioneer firms would likely exceed the cumulative highest individual tenders submitted for the Parcel 2, 3 and 4 assets (excluding sub parcel 2.1B). However, the auctioneer tenders in their original submission format could not be directly compared, as they were based upon differing asset combinations.
22. As a result, on September 3, 2010, the Receiver wrote to each of the 7 auctioneer firms who submitted tenders and asked that they submit an amended tender proposal to the Receiver by no later than 5:00 pm AST on Wednesday September 8, 2010 to conduct an auction for the following assets:
- (a) Parcel 2 (all assets except sub-parcel 2.1B – 1996 Kobelco Crane);
  - (b) Parcel 3 (all assets);
  - (c) Parcel 4 (all assets);
  - (d) Nordberg 7' x 20' screener with triple deck (VIN TRAC 13113-10-04-03); and
  - (e) 2000 Midland Tandem Quarter Frame - Dump trailer (VIN 2MFB2R6C5YR000676).
23. The latter two items listed above were not included in the Tender Information Package, as the Receiver had not confirmed their existence prior to the Tender Information Package being finalized and approved by this Honourable Court pursuant to the July 28 Order.
24. Each of the 7 auctioneer firms did provide the Receiver with a new tender prior to the September 8, 2010 deadline. The Receiver was then able to determine that the amended auction tender submitted by Asset Sales (Canada) Inc. (“**Asset Sales**”) offered the highest guaranteed net minimum return for the Respondents’ receivership estates compared to the other auctioneer tenders and exceeded the cumulative highest individual tenders received

from all other tenders for the purchase of these specific assets. A copy of the Asset Sales tender (the “**Accepted Auction Tender**”) will be attached as an appendix to the Supplemental Report.

25. As discussed further below, the Receiver sent a letter to Asset Sales on September 10, 2010 confirming that the Receiver was conditionally accepting its Accepted Auction Tender. On September 21, 2010, the Receiver was contacted by Asset Sales following Asset Sales’ on site visit. The Receiver was informed that Asset Sales had concerns regarding the status and condition of a number of assets that formed part of the Accepted Auction Tender.
26. On September 21 and 22, 2010, the Receiver had discussions with Asset Sales in an effort to address Asset Sales’ concerns over certain of the assets subject to the Accepted Auction Tender. Following such discussions, the Receiver and Asset Sales agreed to an adjustment to the Accepted Auction Tender to remove certain assets from the calculation of the guarantee amount and to account for refurbishment costs to be incurred by Asset Sales with respect to certain assets. The parties also agreed to have Asset Sales sell certain of the assets removed from the calculation of the net minimum guarantee amount for a sales commission. A copy of the correspondence between the Receiver and Asset Sales detailing the adjustments to Accepted Auction Tender will be attached as an appendix to the Supplemental Report.
27. Notwithstanding the adjustments made to the Accepted Auction Tender, such tender still represents the highest guaranteed net minimum return for the Respondents’ receivership estates compared to the other auctioneer tenders and exceeds the cumulative highest individual tenders received from all other tenders for the purchase of these specific assets.

#### **Acceptance of Tenders**

28. The Receiver discussed its tender acceptance recommendations with representatives from the Province of New Brunswick, the Bank and Aviva Surety prior to the delivery of tender acceptances. The Receiver understands that such parties have the primary interest in the results of the tender process by virtue of their respective security over the Atcon Eastern Assets. The Receiver notes that no objections to the proposed tender acceptance recommendations were raised by these parties.

29. On September 10, 2010, the Receiver notified each of the parties that had submitted tenders, including auction tenders, for the Atcon Eastern Assets and confirmed that their tenders had either been rejected by the Receiver and their deposit cheques were being returned to them, or that their tenders were being accepted, subject to the approval of this Honourable Court. The deposits that accompanied the Accepted Individual Tenders and the Accepted Auction Tender, as required under the Tender Process, have been deposited into the Receiver's trust account.
30. As noted above, the Receiver is in a position to report that the Accepted Individual Tenders and the Accepted Auction Tender represent tenders that provide the highest net recovery to the Respondents' receivership estates in comparison to the other tenders submitted in the Tender Process. Additionally, the Receiver reports that the aggregate amount of the Accepted Individual Tenders and the net minimum guaranteed amount in the Accepted Auction Tender exceeds the aggregate appraised value of the Atcon Eastern Assets subject to the Accepted Individual Tenders and the Accepted Auction Tender.
31. The Receiver believes it has conducted an appropriate market test for the Atcon Eastern Assets in accordance with the Tender Process previously approved by this Honourable Court and that the Accepted Individual Tenders and the Accepted Auction Tenders represent an acceptable recovery to the Respondents' receivership estates. The Receiver recommends that this Honourable Court approve the sale of the Atcon Eastern Assets that are the subject of the Accepted Individual Tenders to the respective Individual Tenderers, approve the acceptance of the Accepted Auction Tender, and approve the ultimate sale of the assets by the successful auctioneer, Asset Sales, to the successful bidders at the auction to be conducted by Asset Sales.

#### **RELIEF SOUGHT BY THE RECEIVER**

32. The Receiver respectfully requests that this Honourable Court grant an Order in the form submitted by the Receiver authorizing and empowering the Receiver to sell the Atcon Eastern Assets that are the subject of the Accepted Individual Tenders to the respective Individual Tenderers, approve the acceptance of the Accepted Auction Tender, and approve the ultimate sale of the assets by the successful auctioneer, Asset Sales to the successful bidders at the auction to be conducted by Asset Sales.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of September 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”**

**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](http://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 23<sup>rd</sup> 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” – Listing of Atcon Eastern Assets**

**can be found at [www.ey.com/ca/atcon](http://www.ey.com/ca/atcon)**

## **Appendix “B” – Listing of Atcon Western Assets**

**can be found at [www.ey.com/ca/atcon](http://www.ey.com/ca/atcon)**

## **Appendix “C” – Tender Information Package**

**can be found at [www.ey.com/ca/atcon](http://www.ey.com/ca/atcon)**

## **Appendix “D” – Redacted Auction Agreement**

**can be found at [www.ey.com/ca/atcon](http://www.ey.com/ca/atcon)**

# **APPENDIX “B”**

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

*Just*  
28 July 2010

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 confidential Supplement to the Fifth Report of the Receiver dated 27 July 2010 (the "**Supplemental Report**"), and upon hearing the submissions of counsel to the Receiver and other counsel present,

### **SERVICE**

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.

### **TENDER PROCESS**

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, upon receipt by the Receiver of the purchase price from a purchaser of any of the Atcon Eastern Assets as a result of the Tender Process conducted by the Receiver, all of the right, title and interest of the Respondents in and to the Atcon Eastern 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

*Just  
28 July 2010*

granted in these proceedings against the Respondents' 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 Eastern Assets sold by the Receiver to any purchaser in accordance with the terms and conditions of the Tender Process, the Tender Information Package and this Order are hereby expunged and discharged as against the Atcon Eastern Assets.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the adjusted net proceeds from the sale of the Atcon Eastern Assets by Receiver in accordance with the terms and conditions of the Tender Process, the Tender Information Package and this Order (the "**Tender Proceeds**") shall stand in the place and stead of such Atcon Eastern Assets, and all Claims and Encumbrances shall attach to the Tender Proceeds with the same priority as they had with respect to such Atcon Eastern Assets as if the Atcon Eastern 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. The Tender Proceeds shall not be distributed to satisfy any Claim or Encumbrance attached thereto without further order of this Court.

#### **AUCTION PROCESS**

5. **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.

6. **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

*Jul 28 2010*

instrument of transfer or discharge, free and clear of and from any and all Claims and 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.

7. **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 “**Auction Proceeds**”) shall stand in the place and stead of such Atcon Western Assets, and all Claims and Encumbrances shall attach to the Auction 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.

#### **TENDER AND AUCTION PROCEEDS**

8. **THIS COURT ORDERS** that the Receiver is authorized and directed, upon receipt of the Tender Proceeds and/or the Auction Proceeds, to utilize the Tender Proceeds and/or the Auction 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.

#### **SEALING**

9. **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.

*jud*  
*28 July 2010*

**VARIATION OF JUNE 18 ORDER**

10. **THIS COURT ORDERS** that the reference to "July 30, 2010" in paragraph 21 of the Order of this Court dated June 18, 2010 granted in these proceedings be and is hereby deleted and replaced with "August 31, 2010".

Dated at Miramichi, New Brunswick, this 28<sup>th</sup> day of July, 2010.

A handwritten signature in black ink, appearing to read 'Thomas W. Riordon', written over a horizontal line.

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

::ODMA\PCDOCS\TOR01\4411430\6

# **APPENDIX “C”**

## **APPENDIX A**

### **Detailed parcel listing July 2010**

#### **Section 1.0 Quarry Assets - New Brunswick**

##### **Parcel 1.1 Quarry Assets - Belledune, New Brunswick**

- Parcel 1.1A Nine (9) conveyors
- Parcel 1.1B Caterpillar 988F loader
- Parcel 1.1C [Intentionally deleted]
- Parcel 1.1D Crushed rock inventory
- Parcel 1.1E Quarry lease, licenses, permits

##### **Parcel 1.2 Quarry Assets - Woodstock, New Brunswick**

- Parcel 1.2A Luff Conveyer Belt, approx 60'
- Parcel 1.2B [Intentionally deleted]
- Parcel 1.2C RICC & LAKE 2008 Mastron Scale, Class 3HD, 60', 53,000 kg and scale office
- Parcel 1.2D Tank and diesel fuel
- Parcel 1.2E Crushed rock inventory
- Parcel 1.2F Land parcel located on Dugan Road, PID 10208858
- Parcel 1.2G Quarry licenses, permits

##### **Parcel 1.3 Quarry Assets - Wayerton, New Brunswick**

- Parcel 1.3A Quarry lease

#### **Section 2.0 Construction Machinery**

- Parcel 2.1A 1996 Sumitomo 70-ton crawler crane
- Parcel 2.1B 1996 Kobelco BM700 75-ton crawler crane and sleeve
- Parcel 2.2A Telsmith 57G-M cone crusher
- Parcel 2.2B [Intentionally deleted]
- Parcel 2.3 CAT 320 BL excavator, harvester head
- Parcel 2.4 CAT telehandler
- Parcel 2.5 CAT GP30 forklift
- Parcel 2.6 Miscellaneous attachments for loaders and excavators

### Section 3.0 Construction Equipment and Materials

|               |                                                                  |
|---------------|------------------------------------------------------------------|
| Parcel 3.1A   | Thermolok board inventory                                        |
| Parcel 3.1B   | MDF board inventory                                              |
| Parcel 3.2A   | Trailer with 1998 CUMMINS 600kva Genset and CUMMINS 35kva Genset |
| Parcel 3.2B   | [Intentionally deleted]                                          |
| Parcel 3.2C   | CAT 3306 Genset                                                  |
| Parcel 3.3    | Can Car chip & saw                                               |
| Parcel 3.4    | JS-500 Scooptram with 1985 CAT 3306,                             |
| Parcel 3.5    | Teledyne hydraulic plate compactor                               |
| Parcel 3.6    | Shoulder spreader                                                |
| Parcel 3.7    | ICE 812 vibro driver                                             |
| Parcel 3.8A   | EFCO concrete forms                                              |
| Parcel 3.8B   | EFCO pier-column forms                                           |
| Parcel 3.8C   | Guard rail / barrier forms                                       |
| Parcel 3.9    | THERMWOOD Model 53 CNC router                                    |
| Parcel 3.10A  | METTLER TOLEDO 275-ton scales                                    |
| Parcel 3.10A2 | METTLER TOLEDO scales                                            |
| Parcel 3.10B  | CANADIAN 60-ton scales                                           |
| Parcel 3.10C  | MFG 60-ton active scales                                         |
| Parcel 3.10D  | Scale houses                                                     |
| Parcel 3.11A  | 40' conveyor                                                     |
| Parcel 3.11B  | [Intentionally deleted]                                          |
| Parcel 3.11C  | ALMAC conveyor, 10' sections                                     |
| Parcel 3.11D  | TRAC 45' x 60" conveyor with gravel hopper                       |
| Parcel 3.11E  | Uniscreen conveyor/feeder                                        |
| Parcel 3.12A  | ATLAS copco compressor                                           |
| Parcel 3.12B  | LEROI 9005D1 compressor                                          |
| Parcel 3.13A  | John Bertram & Sons heavy engine lathe                           |
| Parcel 3.13B  | Zancheri & Boschetti multi-bore 29 spindle                       |
| Parcel 3.14   | Innova Edge glue press                                           |
| Parcel 3.15   | Ingersol Rand & Almida light towers                              |
| Parcel 3.16A  | Kent 16' x 72' pre-fab crew quarters                             |
| Parcel 3.16B  | Kent 16' x 72' office trailer                                    |
| Parcel 3.16C  | Kent 16' x 72' office trailer                                    |
| Parcel 3.16D  | Kent 16' x 40' pre-fab crew quarters                             |
| Parcel 3.16E  | Kent 12' x 40' pre-fab crew quarters                             |
| Parcel 3.16F  | Kent 12' x 40' pre-fab crew quarters                             |
| Parcel 3.16G  | Kent 12' x 40' pre-fab crew quarters                             |
| Parcel 3.16H  | Kent 12' x 40' pre-fab crew quarters                             |
| Parcel 3.17A  | 16' x 72' kitchen unit                                           |
| Parcel 3.17B  | 12' x 48' kitchen unit                                           |
| Parcel 3.18   | Miscellaneous survey equipment                                   |
| Parcel 3.19   | Miscellaneous construction equipment & materials                 |

## Section 4.0 Vehicles and Trailers

### Parcel 4.1 Vehicles

|             |                                                      |
|-------------|------------------------------------------------------|
| Parcel 4.1A | 1986 International Boom Truck                        |
| Parcel 4.1B | 2005 Chevrolet TRLT 3500, 1-ton, 4x4, V8, supercrew  |
| Parcel 4.1C | 2005 Chevrolet TR 3500, 1-ton                        |
| Parcel 4.1D | 2003 Chevrolet 4x4, 1-ton, V8, automatic, w/cap      |
| Parcel 4.1E | 2003 Chevrolet ½ ton, 4x4, V8, automatic             |
| Parcel 4.1F | 2003 Ford 4x4, V8, automatic, short box              |
| Parcel 4.1G | 2004 Ford 4x4, V8, automatic                         |
| Parcel 4.1H | Ford 9000 with salt spreader                         |
| Parcel 4.1I | 2005 Chevrolet ¾ ton, 2wd, V8, automatic, gas, w/cap |
| Parcel 4.1J | 2005 Chevrolet ¾ ton, 2wd, V8, automatic             |
| Parcel 4.1K | 2005 Chevrolet ¾ ton, 2wd, V8, automatic             |
| Parcel 4.1L | 2005 Chevrolet ¾ ton, 2wd, V8, automatic             |
| Parcel 4.1M | 2005 Chevrolet ¾ ton, 2wd, V8, automatic             |
| Parcel 4.1N | 2005 Chevrolet ¾ ton, 2wd, V8, automatic             |
| Parcel 4.1O | 1989 Western Star                                    |
| Parcel 4.1P | 1987 International w/ pulp loader                    |
| Parcel 4.1Q | 2005 Ford F350                                       |
| Parcel 4.1R | 2003 Ford Windstar                                   |
| Parcel 4.1S | 2004 Ford F150                                       |
| Parcel 4.1T | 2005 Chevrolet ¾ ton, 2WD                            |
| Parcel 4.1U | 1997 Chevrolet Van                                   |

### Parcel 4.2 Trailers

|             |                                     |
|-------------|-------------------------------------|
| Parcel 4.2A | Trail King Float, 50-ton            |
| Parcel 4.2B | JANCO low bed mini home trailer     |
| Parcel 4.2C | Tag Trailer, tri-axle, 20'          |
| Parcel 4.2D | 1999 BWS Trailer, 48'               |
| Parcel 4.2E | Tridem Belly Dump, 40'              |
| Parcel 4.2F | 1998 Trac Tridem Belly Dump         |
| Parcel 4.2G | 2000 Midland Tandem Quarter Frame   |
| Parcel 4.2H | [Intentionally deleted]             |
| Parcel 4.2I | 1998 Wilson Flatbed                 |
| Parcel 4.2J | Vehicle Trailer and Contents        |
| Parcel 4.2K | Stoughton Office Trailer, 53'       |
| Parcel 4.2L | Miscellaneous trailers and contents |

**Section 5.0 Real Estate**

|             |                                                                                                                   |
|-------------|-------------------------------------------------------------------------------------------------------------------|
| Parcel 5.1A | Building and land at 626 Newcastle Blvd., Miramichi, New Brunswick, PID 40489437                                  |
| Parcel 5.1B | Office furnishings located at 626 Newcastle Blvd., Miramichi, New Brunswick                                       |
| Parcel 5.1C | Computer hardware and software located at 626 Newcastle Blvd., Miramichi, New Brunswick                           |
| Parcel 5.2A | Building and land located at 114 Whalen Street, Miramichi, New Brunswick, PID 40179798                            |
| Parcel 5.2B | Office furnishings located at 114 Whalen Street, Miramichi, New Brunswick                                         |
| Parcel 5.3  | Building and land located at 115 Whalen Street, Miramichi, New Brunswick, PIDs 40179152, 40277774                 |
| Parcel 5.4  | Building, contents and land located at 3 Chapel Road, Miramichi, New Brunswick, PIDs 40204778, 40304487, 40304529 |
| Parcel 5.5  | Building and land located at 48 Torbay Street, Miramichi, New Brunswick, PID 40441917                             |
| Parcel 5.6  | Land located on Nelson Street, Miramichi, New Brunswick, PIDs 40221426, 40219941, 4021434                         |
| Parcel 5.7  | Land located on Crosby Road, Miramichi, New Brunswick, PIDs 40052912, 40052995, 40328734, 40328742                |
| Parcel 5.8  | Land located on Newcastle Blvd., Miramichi, New Brunswick, PIDs 40127862, 40177131, 40277873, 40175622, 40277881  |
| Parcel 5.9  | Land located on Old Napan Road, Centre Napan, New Brunswick, PID 40053001                                         |
| Parcel 5.10 | Land located on Mullin Stream Road, Curventon, New Brunswick, PID 40125825                                        |
| Parcel 5.11 | Land located on Old Napan Road, Miramichi, New Brunswick, PID 40131660                                            |

- Parcel 5.12 Land located on 209 King George Highway, Miramichi, New Brunswick, PID 40165656
- Parcel 5.13 Land located on 1 Whalen Street, Miramichi, New Brunswick. PID 40179715
- Parcel 5.14 Land located on 149 St. Patrick's Drive, Miramichi, New Brunswick, PID 40217994
- Parcel 5.15 Land located on St. Patrick's Drive, Miramichi, New Brunswick, PID 40466039
- Parcel 5.16 Land located on CNR Rail Siding, Miramichi, New Brunswick, PID 40218687
- Parcel 5.17 Land located on Hubbard Street, Miramichi, New Brunswick, PID 40219933
- Parcel 5.18 Land located on Cross Roads, Miramichi, New Brunswick, PID 40276263
- Parcel 5.19 Land located at Exmoor, New Brunswick, PID 40335184
- Parcel 5.20 Land located on Raiche Street, Miramichi, New Brunswick, PID 40371266
- Parcel 5.21 Land located on: Parcel 5.21A - Island View Drive, Miramichi, New Brunswick, PID 40473068; Parcel 5.21 B - Donalby Road, Miramichi, New Brunswick, PID 40473076; Parcel 5.21 C - Route 126, Barnaby/Miramichi, New Brunswick, PID 40095887
- PLEASE NOTE:** Tenderers wishing to submit a tender for Parcel 5.21 are required to submit an en bloc tender for Parcels 5.21A through 5.21C, inclusive. Further, tenderers are required to provide an allocation of their tender offer for each sub-parcel.
- Parcel 5.22 Land located on Nelson Street, Miramichi, New Brunswick, PID 40286668
- Parcel 5.23 Land located on Nelson Street, Miramichi, New Brunswick, PID 40221459

**Section 6.0 Parcel 6.0 Parcels 1 through 5 inclusive**

*The above information is provided for informational purposes only and should not be relied upon by tenderers submitting tenders.*