APPENDIX “C”

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

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

FOURTH REPORT OF THE RECEIVER
June 25, 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. ("**EYI**") 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 Construction Inc. ("**Atcon Construction**"), Atcon Management Services Inc., Atcon Civil Inc., Dycon Construction Inc., Atcon Structures Inc. and Envirem Technologies Inc.[1] 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 authorizes the Receiver to, among other things:

    (a) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

    (b) receive, preserve and protect the Property, or any parts thereof;

    (c) receive and collect all monies and accounts now owed or thereafter owing to the Respondents and exercise all remedies of the Respondents in collecting such monies;

[1] Pursuant to paragraph 4 of the March 30 Order, the appointment of the Receiver in relation to Envirem was of no force or effect until the issuance by the Monitor of the Monitor's Certificate in accordance with the Order of the Court dated March 22, 2010 in order to complete the Transaction, as such term is defined therein, or until further order of the Court. The Monitor issued the Monitor's Certificate on April 28, 2010. Additionally, Envirem Technologies Inc. changed its name to 0585456 N.B. Inc. effective April 28, 2010.

(d) settle, extend or compromise any indebtedness owing to the Respondents;

(e) sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, subject to Court approval in the event certain monetary thresholds are exceeded; and

(f) apply to the Court for advice and directions in the discharge of its powers and duties under the Receivership Order.

3. The purpose of this Fourth Report is to report to this Honourable Court on the status of the Pennecon Receivable (as defined herein) and recommend that this Honourable Court grant an Order:

(a) approving the Pennecon Settlement Agreement (as defined herein) and the execution of the Pennecon Settlement Agreement by the Receiver; and

(b) authorizing and empowering the Receiver to:

(i) pay a portion of the Pennecon Amount (as defined herein), in the amount of $268,223.77, to Canada Revenue Agency ("**CRA**") in connection with the HST Requirement to Pay (as defined herein); and

(ii) utilize the balance of the Pennecon Amount, in the amount of $2,954,161.23, for the purpose of making payments (including interim payments) required or permitted by the Receivership Order.

TERMS OF REFERENCE

4. In preparing this Fourth 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 Fourth Report or relied upon by the Receiver in preparing this Fourth

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 Fourth Report are in Canadian dollars unless otherwise noted.

6. Capitalized terms not defined in this Fourth 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).

PENNECON

Vale Inco Project and the Pennecon-Atcon LP

8. As has previously been reported to this Honourable Court, Atcon Construction provided equipment rental and management services in connection with the construction of the Vale Inco Long Harbour Nickel Processing Plant located in Long Harbour, Newfoundland and Labrador (the "**Vale Inco Project**"). The background regarding the relationship between Atcon Construction and the Vale Inco Project is set out below.

9. In December 2008, a joint venture of Penney Construction Ltd. ("**Penney**") and Atcon Construction was awarded the contract to supply all labour, material, tools and equipment required to complete all civil earthworks for plant site development of the Long Harbour Nickel Processing Plant Site. The Receiver understands that the Penney Group is a business consortium compromised of companies involved in, among other things, heavy civil services and infrastructure developments.

10. In the winter of 2008 and throughout 2009, Penney and Atcon Construction engaged in discussions and negotiations regarding the terms of their joint venture with respect to the Vale Inco Project. The terms of a limited partnership agreement were negotiated, whereby Pennecon Atcon Limited Partnership, a limited partnership governed by the laws of Newfoundland & Labrador (the "**Pennecon-Atcon LP**"), would be formed for

the purpose of completing all work for Contract CC-0001-Earthworks-Plant Site Development for the Vale Inco Project (the "**Vale Inco Contract**") and Contract CC-0006 Route 202 Upgrade. Attached hereto as **Appendix "A"** is a copy of a Certificate from the Department of Government Services of Newfoundland & Labrador confirming that the Pennecon-Atcon LP was registered under *The Limited Partnership Act* (Newfoundland & Labrador) as of May 27, 2009 (the "**Certificate**").

11. The Receiver understands, based on its discussions with former Atcon Construction management and employees and representatives of the Pennecon-Atcon LP that a limited partnership agreement was never executed by Atcon Construction or Penney, and that the undated limited partnership agreement attached hereto as **Appendix "B"** represents the final version of the agreement that was negotiated by Atcon Construction and Penney (the "**LP Agreement**").

12. Pursuant to the terms of the LP Agreement, and confirmed by the information stated in the Certificate, Atcon Construction and Penney are limited partners in the Pennecon-Atcon LP, and Pennecon Atcon JV General Partner Inc. (the "**Pennecon GP**") is the general partner in the Pennecon-Atcon LP. Attached hereto as **Appendix "C"** is a copy of Newfoundland & Labrador Department of Government Services report for the Pennecon GP dated June 24, 2010.

13. Additionally, the LP Agreement provides the following:

(a) the term of the joint venture was to commence on May 29, 2009 and continue until terminated/dissolved in accordance with the LP Agreement;

(b) the initial capital contribution to the Pennecon-Atcon LP was approximately fifty-five per cent (55%) by Penney and forty-five per cent (45%) by Atcon Construction, resulting in Penney and Atcon Construction holding approximately 55% and 45% of the units of the Pennecon-Atcon LP respectively; and

(c) profit and loss were to be allocated to each of Penney and Atcon Construction at the end of each fiscal year on a *pro rata* basis according to their capital contributions.

14. The Receiver understands that, in accordance with its initial capital contributions to the Pennecon-Atcon LP, Penney and Atcon Construction hold approximately 55% and 45% of the issued shares of the Pennecon GP.

Pennecon Services Agreement

15. In connection with the Vale Inco Project, the Pennecon-Atcon LP subcontracted the work to be performed under the Vale Inco Contract to Pennecon Heavy Civil Ltd. ("**PHCL**"). To complete the services under the Vale Inco Contract, the Receiver understands that PHCL required Atcon Construction to provide certain management services and rent equipment to PHCL. As a result, PHCL, the Pennecon-Atcon LP and Atcon Construction negotiated the terms of an agreement whereby:

    (a) PHCL would have the right to use certain specified equipment from June 1, 2009 to April 30, 2010, and Atcon Construction would receive rental payments from PHCL for the use of such equipment; and

    (b) Atcon Construction would provide personnel that would provide management services, as required by PHCL, in connection with the Vale Inco Contract.

16. The Receiver understands, based on its discussions with former Atcon Construction management and employees and representatives of PHCL, that an agreement setting out the terms of the equipment rental and management services was never executed by Atcon Construction, PHCL or the Pennecon-Atcon LP. However, the Receiver also understands that the agreement dated June 1, 2009 attached hereto as **Appendix "D"** represents the agreement that was negotiated by Atcon Construction, PHCL and the Pennecon-Atcon LP (the "**Pennecon Services Agreement**").

Pennecon Receivable and CRA

17. The Receiver has confirmed that, as of May 1, 2010, the aggregate amount of $3,558,810.55 was owed to Atcon Construction by PHCL with respect to equipment rentals and management services provided to April 30, 2010 under the Pennecon Services Agreement (the "**Pennecon Receivable**").

18. As has been previously reported to this Honourable Court, on March 26 and March 29, 2010, Canada Revenue Agency ("**CRA**") issued Requirements to Pay to PHCL pursuant to section 227(4) of the *Income Tax Act* (Canada) with respect to employee income tax, CPP and EI source deductions that were originally assessed against Ledwell. Additionally, CRA issued Requirements to Pay dated June 11, 2010 to the Pennecon-Atcon LP and the Pennecon GP pursuant to section 227(4) of the *Income Tax Act* (Canada) with respect to employee income tax, CPP and EI source deductions that were originally assessed against Ledwell. CRA also issued a Requirement to Pay dated February 26, 2010 to PHCL pursuant to the section 317(3) of the *Exicse Tax Act* (Canada) for unremitted HST (the "**HST Requirement to Pay**", and collectively, the "**Pennecon Requirements to Pay**"). A copy of the HST Requirement to Pay is a attached as **Appendix "E"**.

19. In addition to the Pennecon Requirements to Pay, Notices of Assessment dated May 28, 2010 were issued by CRA to PHCL, whereby CRA directly assessed PHCL as being liable to CRA to the extent of the Pennecon Receivable as a result of the failure of PHCL to make payment to CRA in connection with the Pennecon Requirements to Pay.

20. On June 18, 2010, this Honourable Court granted an Order with respect to the funds held by Shell Canada with respect to services performed by Atcon Construction in the Albian Oil Sands in the Province of Alberta (the "**June 18 Order**"). Attached hereto as **Appendix "F"** is a copy of the June 18 Order.

21. Pursuant to paragraph 15 of the June 18 Order, on the consent of the Receiver, the Bank, the Province of New Brunswick, Caterpillar Financial Services Limited ("**Caterpillar**") and Emeco Canada Ltd., the CRA Non-Deemed Trust Holdback (as defined in the June 18 Order), is also treated as a substitute for and deemed to be a portion of the Pennecon Receivable, so that CRA is entitled to assert its claims under the Pennecon Requirements to Pay (excluding the HST Requirement to Pay) against the CRA Non-Deemed Trust Holdback for payment of accrued penalties and interest on the unremitted employee income tax, CPP and EI source deductions, and for payment of unpaid employer contributions.

<u>Pennecon Settlement Agreement</u>

22. In May 2010, the Receiver entered into discussions with PHCL and the Pennecon-Atcon LP with respect to payment of the outstanding Pennecon Receivable.

23. PHCL and the Pennecon-Atcon LP informed the Receiver that a portion of the Pennecon Receivable, in the amount of $336,425 (the "**Disputed Amount**"), was disputed by PHCL and the Pennecon-Atcon LP, and PHCL and the Pennecon-Atcon LP were of the view that the Pennecon Receivable should be reduced by the amount of the Disputed Amount. The Receiver understands that the Disputed Amount represents amounts relating to alleged overcharges and repairs to Atcon Construction equipment that were paid for by PHCL and/or the Pennecon-Atcon LP.

24. Additionally, the Pennecon GP informed the Receiver of its position that Atcon Construction was indebted to the Pennecon-Atcon LP for interest, management fees and other administrative expenses under the LP Agreement totalling approximately $815,000 (the "**LP Fees**"), and that the Pennecon Receivable should be reduced by the amount of the LP Fees.

25. The negotiations among the Receiver, PHCL and the LP culminated in the execution of a settlement agreement dated May 27, 2010 (the "**Pennecon Settlement Agreement**"), a copy of which is attached as **Appendix "G"**. The Pennecon Settlement Agreement provides, among other things, as follows:

    (a) payment to the Receiver by the Pennecon-Atcon LP of the amount of $3,222,385 (the "**Pennecon Amount**") upon the granting of a Court-order approving the Pennecon Settlement Agreement and the Receiver obtaining a letter from CRA confirming that payment of the Pennecon Amount to the Receiver pursuant to the Court-order will not be considered to be in violation of the Pennecon Requirements to Pay and that the Notices of Assessment will be vacated;

    (b) the parties will negotiate in good faith with respect to the Disputed Amount, and in the event that a consensual resolution cannot be reached, the dispute will be subject to arbitration;

(c) the Pennecon GP waives, releases and discharges Atcon Construction of the LP Fees; and

(d) the Receiver will take steps to transfer or assign Atcon Construction's units in the Pennecon-Atcon LP and shares in the Pennecon GP to Penney or its nominee.

26. Additionally, the Pennecon Settlement Agreement provides that the Receiver will negotiate exclusively up to June 25, 2010 with Penney, Pennecon GP and the Pennecon-Atcon LP with respect to the potential sale of certain Atcon Construction equipment. Based on the terms of the Pennecon Settlement Agreement, the exclusivity period expires as of the date of this Report, and no agreement for the disposition of the equipment has been finalized among the parties. The Receiver expects that, notwithstanding the expiry of the exclusivity period, the parties will continue to discuss the possibility of a sale transaction with respect to the equipment in the near future.

27. The Receiver is of the view that the Pennecon Settlement Agreement represents a fair and reasonable settlement of the matters relating to the Pennecon Receivable. In the event that the Pennecon Settlement Agreement was not entered into, it is likely that PHCL and the Pennecon GP would have attempted to set off the Disputed Amount and the LP Fees against the Pennecon Receivable. The exercise of such set-offs would have potentially resulted in no funds being available to the Atcon Construction receivership estate in a timely manner and the necessity of time consuming and costly litigation for the Receiver to attempt to recover any amount of the Pennecon Receivable.

28. Additionally, it is the Receiver's view that there is no realizable value in Atcon Construction's interest in the units of the Pennecon-Atcon LP and the shares of the Pennecon GP for the benefit of the Atcon Construction receivership estate. As has been previously disclosed to the Honourable Court, the profit earned by the Pennecon-Atcon LP for work performed through February 2010 had been entirely eroded by extensive losses incurred during the December 2009 to February 2010 period. As a result, the Pennecon-Atcon LP operated in a net deficit position for an amount equal to approximately $1.8 million as at February 18, 2010, and Atcon Construction's prorated share of this deficit was approximately $815,000, being the LP Fees.

29. The Receiver has been advised by PHCL that PHCL does not intend to bid or perform additional work through Pennecon-Atcon LP after the current Vale Inco Contract work is completed. The Receiver understands that Atcon Construction's share of the estimated profit from the remaining Vale Inco Contract work is not expected to exceed the amount of the LP Fees owed by Atcon Construction. Consequently, Atcon Construction's share of the Pennecon-Atcon LP final profit would be nil or negative at the conclusion of the Vale Inco Contract.

30. As a result, the Receiver believes that it is appropriate for the Receiver, in order to secure the payment of the Pennecon Amount, to release Atcon Construction's interest in the units of the Pennecon-Atcon LP and the shares of the Pennecon GP as part of the Pennecon Settlement Agreement, as there is no value in such assets for the Atcon Construction receivership estate.

Distribution of Pennecon Amount

CRA

31. As noted above, the HST Requirement to Pay issued to PHCL is dated February 26, 2010, which pre-dates the bankruptcy of Atcon Construction, which occurred on April 26, 2010. The Receiver understands that, upon the receipt of the HST Requirement to Pay, a portion of the Pennecon Receivable, in the amount listed on the HST Requirement to Pay, became property of the Crown.

32. As a result, the Receiver proposes that, in the event that the Pennecon Settlement Agreement is approved by this Honourable Court, a portion of the Pennecon Amount received by the Receiver, in the amount of $268,223.77, be paid to CRA.

Balance of Pennecon Amount and Mechanics Lien Matters

33. On Saturday, June 19, 2010, counsel to the Receiver was advised, pursuant to an e-mail message from counsel for Caterpillar, that Caterpillar was considering filing a mechanics lien against the property upon which the Vale Inco Project is being constructed (the "**Vale Inco Property**") in connection with unpaid rental amounts that Caterpillar claims are owing to it by Atcon Construction for equipment allegedly used on the Vale Inco

Project. The Receiver understands that the alleged Caterpillar unpaid rental amounts total $928,786.13.

34. Counsel to Caterpillar requested that the Receiver's motion materials with respect to the Pennecon Amount be served late in the week of June 21, 2010, so that, in the event a mechanics lien was filed by Caterpillar against the Vale Inco Property, the Caterpillar mechanics lien could be addressed in the Receiver's motion materials.

35. During the afternoon of June 25, 2010, counsel to Caterpillar sent to the Receiver the correspondence and Caterpillar claim for lien documents attached hereto as **Appendix "H"**. The Receiver understands, based on advice it has received from its legal counsel, that, as of June 25, 2010, no person was in a position to file claims for mechanics lien under the *Mechanics Lien Act* (Newfoundland & Labrador) with respect to the Pennecon Amount.

36. As a result, it is the Receiver's view that the Pennecon Amount, less the amount of $268,223.77 to be paid to CRA, is the Property of Atcon Construction. The Receiver has been authorized and empowered by the Receivership Order to take control of the Property and collect all monies owing to Atcon Construction. As a result, the Receiver is seeking a Court-Order authorizing and empowering the Receiver, upon receipt of the Pennecon Amount, to use the balance of the Pennecon Amount, in the amount of $2,954,161.23, for the purpose of making payments (including interim payments) required or permitted by the Receivership Order.

RELIEF SOUGHT BY THE RECEIVER

37. The Receiver respectfully requests that this Honourable Court grant an Order in the form submitted by the Receiver:

   (a) approving the Pennecon Settlement Agreement and the execution of the Pennecon Settlement Agreement by the Receiver; and

   (b) authorizing and empowering the Receiver to:

(i) pay a portion of the Pennecon Amount, in the amount of \$268,223.77, to CRA in connection with the HST Requirement to Pay; and

(ii) utilize the balance of the Pennecon Amount, in the amount of \$2,954,161.23, for the purpose of making payments (including interim payments) required or permitted by the Receivership Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of June 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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APPENDIX “D”

Court File No. N/M/17/10

COURT OF QUEEN'S BENCH OF N.B.
RECEIVED AND FILED
JUN 30 2010
COUR DU BANC DE LA REINE DU N.-B.
REÇU ET DÉPOSÉ

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 LOGISICS 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 LOGISICS 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

Jeff
30 June 2010

ORDER

THIS MOTION, made by Ernst & Young Inc. in its capacity as Court-appointed receiver and receiver manager of the property, assets and undertakings of the Respondents (the "**Receiver**") for an order, *inter alia*, approving the settlement agreement dated May 27, 2010 between the Receiver, Pennecon Atcon JV General Partner Inc. and Penney Construction Ltd. (the "**Pennecon Settlement Agreement**") appended to the Fourth Report of the Receiver dated June 25, 2010 (the "**Fourth Report**"), and authorizing and directing the Receiver to take certain steps with respect to the Pennecon Amount (as defined herein), was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Fourth Report and all the appendices attached thereto, including the Pennecon Settlement Agreement and the Requirement to Pay dated February 26, 2010 issued by Canada Revenue Agency ("**CRA**") to Pennecon Heavy Civil Ltd. pursuant to the section 317(3) of the *Excise Tax Act* (Canada) in the amount of $268,223.77 in connection with Atcon Construction Inc. (the "**HST Requirement to Pay**"), and on hearing the submissions of counsel for the Receiver and such other counsel in attendance,

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion, the Fourth Report and the Record on Motion shall be and is hereby abridged and validated so that the motion is properly returnable today, and that any further service thereof is hereby dispensed with.

2. **THIS COURT ORDERS AND DECLARES** that the Pennecon Settlement Agreement is hereby approved, and the execution of the Pennecon Settlement Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the terms of the settlement contained in the Pennecon Settlement Agreement.

30 June 2010

3. **THIS COURT ORDERS** that, with respect to the amount of $3,222,385 to be paid to the Receiver pursuant to the terms of the Pennecon Settlement Agreement (the "**Pennecon Amount**"), the Receiver is authorized and directed, upon receipt of the Pennecon Amount, to:

(a) pay a portion of the Pennecon Amount, in the amount of $268,223.77, to CRA in connection with the HST Requirement to Pay;

(b) hold a portion of the Pennecon Amount, in the amount of $929,786, in a separate interest bearing trust account pending further Order of this Court (the "**Holdback Amount**"); and

(c) utilize the balance of the Pennecon Amount, in the amount of $2,024,375.23, 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.

4. **THIS COURT ORDERS** that, with the exception of paragraph 3 of this Order, this Order and any person's consent or non-opposition thereto is without prejudice to all arguments, rights and claims or encumbrances of any nature or kind whatsoever (collectively, "**Claims**"), including without limitation:

(a) any Claims or rights of any kind related to the Holdback Amount, including the existence of any mechanic's lien rights under the *Mechanic's Lien Act* (Newfoundland & Labrador);

(b) the right to argue that any Claim or mechanic's lien under the *Mechanic's Lien Act* (Newfoundland & Labrador) is invalid or does not charge the Holdback Amount, or any part thereof; and

(c) any argument relating to quantum of and priority of any Claim to the Holdback Amount, or any part thereof.

30 June 2010

For greater certainty, nothing in this Order shall be deemed to have determined (i) the validity, quantum or priority of any Claim or the right of any party to the Holdback Amount or any part thereof, (ii) that the Holdback Amount stands in the place and stead of any real property, and (iii) that any claim for lien filed by any person under the *Mechanic's Lien Act* (Newfoundland & Labrador) applies to, attaches to or charges the Holdback Amount or any part thereof.

Dated at Miramichi, New Brunswick, this 30th day of June, 2010.

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

::ODMA\PCDOCS\TOR01\4393456\4

APPENDIX "E"

MICHAEL J. MACNAUGHTON
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Borden Ladner Gervais

14 October 2010

DELIVERED BY E-MAIL & COURIER

Robert M. Creamer
Lawson Creamer Lawyers
133 Prince William Street, Suite 801
P.O. Box 6787, Station A
Saint John, NB E2L 4S2

Josh J.B. McElman
Cox & Palmer
1 Germain Street, Suite 1500
Saint John, New Brunswick
E2L 4H8

Dear Messrs Creamer and McElman,

Re: Atcon Construction Inc.

Enclosed find the original executed copy of the Settlement Agreement dated 13 October 2010.

I confirm receipt of Mr. Creamer's confirmation that the escrow condition has been satisfied.

The Receiver will move before the Court on 28th October for approval of the settlement.

Yours truly,

Michael J. MacNaughton

Cc: Paul D. Hickey, Ernst & Young Inc. (By e-mail only)
George Kinsman, Ernst & Young Inc. (By e-mail only)
Sam Rappos

::ODMA\PCDOCS\TOR01\4472724\1

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Borden Ladner Gervais

October 13, 2010

DELIVERED BY HAND

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P.O. Box 6787, Station A
Saint John, NB E2L 4S2

Josh J.B. McElman
Cox & Palmer
1 Germain Street, Suite 1500
Saint John, New Brunswick
E2L 4H8

Dear Mr. Creamer and Mr. McElman,

Re: In the Matter of the Receivership of Atcon Construction Inc. ("Atcon Construction") *et al*, Court File No. N/M/17/10 (the "Receivership Proceeding")

Further to the settlement discussions of October 13, 2010 among Caterpillar Financial Services Limited ("**Caterpillar**"), The Bank of Nova Scotia (the "**Bank**"), Ernst & Young Inc., the Court-appointed receiver and receiver and manager of the property, assets and undertaking of Atcon Construction in the above-noted proceeding (the "**Receiver**") and their respective counsel, this letter confirms that an agreement has been reached between the Receiver, the Bank and Caterpillar on the terms set out herein with respect to the following Caterpillar claims against Atcon Construction and its property, assets and undertaking (collectively, the "**Atcon Construction Property**"):

(a) Statement of Lien upon Interest in Crown Materials dated April 29, 2010 filed by Caterpillar in the amount of $3,739,011 in respect of Shell Canada Limited in minerals in Alberta Crown Oil Sands Lease No. 072 7277080T13;

(b) Statement of Lien upon Interest in Crown Materials dated May 6, 2010 filed by Caterpillar in the amount of $3,739,011 in respect of Shell Canada Limited in minerals in Alberta Crown Oil Sands Lease No. 072 7288080T90;

(c) Statement of Lien upon Interest in Crown Materials dated May 6, 2010 filed by Caterpillar in the amount of $3,739,011 in respect of Shell Canada Limited in minerals in Alberta Crown Oil Sands Lease No. 072 728009BT30 (collectively, the "**Alberta Liens**"); and

(d) Claim for Lien dated June 23, 2010 filed by Caterpillar in the amount of $929,786 against land situated at Long Harbour, in the Province of Newfoundland & Labrador owned by Vale Inco Newfoundland and Labrador Limited (the "**Newfoundland Lien**").

The terms of the agreement that has been reached between the Receiver, the Bank and Caterpillar, subject to the Receiver obtaining approval of this agreement by the Court of Queen's Bench of New Brunswick in the Receivership Proceeding on October 28, 2010 or on such other date as the court directs, are as follows:

1. The Receiver will pay to Caterpillar the amount of $1,200,000 in the form of a certified cheque, bank draft or wire transfer drawn from the funds currently being held by the Receiver in an interest bearing trust account pursuant to paragraph 4(a) of the Order of the Court of Queen's Bench of New Brunswick dated June 18, 2010 granted in the Receivership Proceeding (the "**Alberta Liens Holdback**"), payable to "Caterpillar Financial Services Limited", in full and final satisfaction of all Claims (as defined below) other than Excluded Claims (as defined below), and such amount shall be delivered to Caterpillar by no later than three (3) days following the granting of an Order of the Court of Queen's Bench of New Brunswick approving the terms of the agreement set out herein.

2. In consideration of the payment set forth in paragraph 1 hereof, Caterpillar:

    (a) for itself and its officers, directors, affiliates, successors and assigns, forever releases, remises and discharges any and all existing or potential actions, causes of action, choses in action, suits, proceedings, debts, accounts, bonds, covenants, contracts, liabilities, damages, grievances, executions, judgments, demands or other claims of any kind whatsoever, in law and in equity, including without limitation the Alberta Liens, the Newfoundland Lien and the action commenced by Caterpillar in Newfoundland and Labrador in connection with the Newfoundland Lien bearing Court File No. 2010 01G 4289 in the Supreme Court of Newfoundland and Labrador – General Division (the "**Newfoundland Action**") (collectively, "**Claims**") that Caterpillar ever had, now has or hereinafter can, shall or may have against Atcon Construction and each company that is subject to the Receivership Proceeding (collectively with Atcon Construction, the "**Atcon Debtors**"), the Receiver, the Atcon Construction Property (which includes, without limitation, the Alberta Liens Holdback and the funds currently being held by the Receiver in an interest bearing trust account pursuant to paragraph 3(b) of the Order of the Court of Queen's Bench of New Brunswick dated June 30, 2010 granted in the Receivership Proceeding (the "**Newfoundland Holdback**")), excluding any and all Claims Caterpillar may have with respect to the following: (i) mortgage registered by Caterpillar as instrument number 20442480 against real property located in Miramichi, New Brunswick identified as PID 40450389 and previously owned by Envirem Technologies Inc.; (ii) mortgage registered by Caterpillar as instrument number 20442613 against real property located in Northumberland, New Brunswick identified as PID 40095887 and previously owned by Atcon Property Holdings Inc.; and any other mortgage or real property charge registered by Caterpillar against any real property in the name of an Atcon Debtor (collectively, the "**Excluded Claims**");

(b) shall forthwith discontinue the Newfoundland Action without costs against all defendants; and

(c) acknowledges and agrees that, as a result of the release contained in sub-paragraph 2(a) hereof, it has no further Claims against any Atcon Debtor or the Atcon Construction Property other than the Excluded Claims.

The releases provided by paragraph 2 do not affect the operation of the Order of the Court of Queen's Bench of New Brunswick in Court File No. N/M/16/10 dated March 22, 2010.

Please confirm your client's agreement to the foregoing by signing and returning a copy of this letter below to me at your earliest convenience.

Yours truly,

Michael J. MacNaughton

Cc: Paul D. Hickey, *Ernst & Young Inc.*

Caterpillar and the Bank confirm their agreement to the foregoing by their respective solicitors this 13th day of October, 2010.

Robert M. Creamer
Lawson Creamer Lawyers
Solicitor for Caterpillar Financial Services Limited

Josh J.B. McElman
Cox & Palmer
Solicitor for The Bank of Nova Scotia

::ODMA\PCDOCS\TOR01\4472460\3

APPENDIX "F"

Service New Nouveau Brunswick

Corporate Affairs Registry Database

Help

The credit card transaction was successful

- Transaction Amount: **$3.39**
- Transaction #: **2593902**
- Authorization #: **003430**
- Date of Transaction: **2010-09-29**
- HST #: **10786 3888 RT0006**

We recommend that you print this screen and retain it with your records

New Search | Previous

General Information	
Reference Number:	627407
Name:	ATCON CONSTRUCTION INC.
Registration Date:	2006-08-31
Category Code:	60
Category:	corporation – Business Corporations Act
Status Code:	A
Status:	Active
Last Status Change Date:	2006-08-31

Available Documents

Click here to view electronic documents for this record.
Click here to order paper copies of documents.
Click here to order certified copies of documents.

Annual Return Information	
Last Annual Return Filed:	2009

Registered Office	
Address:	626 Newcastle Boulevard Miramichi NB E1V 2L3

Directors	
Name:	Tozer, Robert W.
Address:	626 Newcastle Boulevard Miramichi NB E1V 2L3

Predecessor Corporations

Ref No	Name
509936	ARVIN MACHINE WORKS INC.
514650	ATCON CONSTRUCTION INC.
602225	Thermolok Inc.
616108	PLYMAC INC.

Business Names

Ref No	Status	Name
610736	A	ATCON AGGREGATES

610737	A	ATCON ASPHALT
612264	A	BRUN-WAY GROUP

TAB 1

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

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK	COUR DU BANC DE LA REINE DU NOUVEAU-BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY	DIVISION DE PREMIERE INSTANCE
JUDICIAL DISTRICT OF MIRAMICHI	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 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: E N T R E:

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)

- 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 on Thursday, October 28, 2010 for the following relief:	Le demandera à la Cour à le , à :

(a) an Order, substantially in the form attached hereto as **Schedule "B"**, *inter alia*:

i) abridging and validating the timing and method of service of the Notice of Motion, the Receiver's Tenth Report to the Court dated October 22, 2010 (the "**Tenth Report**"), and the Record on Motion, if necessary, so that this Motion is properly returnable and further service is dispensed with;

ii) authorizing the sale of the Purchased Assets (as defined below) to Premier Construction Ltd. ("**Premier**") pursuant to the terms of the agreement of purchase and sale finalized by the Receiver and Premier dated October 21, 2010 (the "**Asset Purchase Agreement**");

iii) approving the Asset Purchase Agreement;

iv) vesting the Purchased Assets in Premier free and clear of any liens or encumbrances; 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. The Receiver has identified the pieces of equipment set out in Appendix "A" to the Tenth Report as equipment owned by Atcon Construction Inc. ("**Atcon Construction**") and located Long Harbour Nickel Processing Plant Site in Long Harbour, Newfoundland and Labrador (collectively, the "**Purchased Assets**");

3. Pursuant to the provisions of the Receivership Order granted in these proceedings, the Receiver considered different methods to market the Purchased Assets for the benefit of the creditors of Atcon Construction;

4. The Receiver reports that the sale of the Purchased Assets to Premier pursuant to an Asset Purchase Agreement will likely result in a higher net realization for the benefit of the stakeholders of Atcon Construction in comparison to an auction sale;

5. The Receiver has discussed the terms of the Asset Purchase Agreement with representatives of the Province of New Brunswick and The Bank of Nova Scotia, the parties who have a primary interest in the results of the sale of the Purchased Assets, and no objections to the proposed Asset Purchase Agreement were raised

by these parties;

6. 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

7. 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:

(1) The Tenth Report; and

(2) Such further and other affidavits or documentary evidence as counsel for the Receiver may advise and this Honourable Court may permit.

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

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.

Sachez que:

(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 22nd day of October, 2010

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Solicitors for the Receiver

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Counsel to Ernst & Young Inc.,
the Court-appointed Receiver
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 –

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 INDUSTRIAL SERVICES 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

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(motions returnable October 28, 2010)

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Attention: Russell Murray

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Attention: Robert Alan Roundell, Accountant

MCAP LEASING INC.
5575 North Service Rd, Ste 300
Burlington, ON L7L 6M1

NATIONAL LEASING GROUP INC.
1558 Willson Pl
Winnipeg, MB R3T 0Y4

[1] Parties listed in this section of the service list represent parties with a PPSA registration against "Atcon Construction Inc." in the Provinces of New Brunswick, Alberta and Newfoundland & Labrador, and/or the Northwest Territories, and which are not listed in the E-Mail Service List.

NORTHSTAR LEASING CORPORATION
231 Bayview Drive, Suite L101
Barrie, ON L4N 4Y5

PACCAR FINANCIAL LTD.
6711 Mississauga Rd. N., Ste 500
Mississauga, ON L5N 4J8

PACCAR FINANCIAL SERVICES LTD.
6711 Mississauga Rd. N., Ste 500
Mississauga, ON L5N 4J8

PLACE-CRETE SYSTEM INC.
15 Chisholm Avenue
St. Albert, AB T8N 5A7

Attention: Darrell F. Bokenfohr

385367 ALBERTA LTD.
C/O 10019b Franklin Avenue
Fort McMurray, AB T9H 2K7

ALTER MONETA LIMITED/ALTER MONETA LIMITEE
5935 Airport Road, Suite 115
Mississauga, ON L4V 1W5

BIRCH MOUNTIAN ENTERPRISES LTD.
Po Box 5445
Fort McMurray, AB T9H 3G4

CITICORP VENDOR FINANCE, LTD.
123 Front Street West, 16th Floor
Toronto, ON M5J 2M2

COMBINED CONCRETE PUMPING (2007) LTD.
212 26229 TWP 531A Zone 2
Acheson, AB T7X 5A4

DAIMLER CHRYSLER FINANCIAL SERVICES
2680 Matheson Blvd E., Suite 500
Mississauga, ON L4W 0A5

COREDATA INCORPORATED
Unite 403, 501 - 18 Ave SW
Calgary, AB T2S 0C7

THE DRIVING FORCE INC.
11025 184 Street
Edmonton, AB T5S 0A6

FINNING INTERNATIONAL INC.
10910 170 Street
Edmonton, AB T5S 1H6

DCFS CANADA CORP.
2680 Matheson Blvd. E, Ste 500
Mississauga, ON L4W 0A5

FORD CREDIT CANADA LEASING, A DIV/ OF CANADIAN ROAD LEASING CO
Po Box 2400
Edmonton, AB T5J 5C7

FIDUCIE ALTER MONETA/ALTER MONETA TRUST
5925 Airport Rd., Ste. 200
Mississauga, ON L4V 1W1

FORD CREDIT CANADA LIMITED
Po Box 2400
Edmonton, AB T5J 5C7

GMAC LEASECO CORPORATION
2400 - 10155 102 Street
Edmonton, AB T5J 4G8

MCMURRAY BUSINESS MACHINES
C/O 10019b Franklin Avenue
Fort McMurray, AB T9H 2K7

NORALTA LODGE LTD.
C/O 2900 10180 101 St
Edmonton, AB T5J 3V5

PETERSEN PONTIAC BUICK GMC (ALTA) INC
10 Automall Rd
Sherwood Park, AB T8H 2N1

PLACE-CRETE SYSTEMS INC.
#600, 12220 Stony Plain Road
Edmonton, AB T5N 3Y4

SORGE'S WELDING LTD.
Po Box 5768
Fort McMurray, AB T9H 4V9

PTI PREMIUM CAMP SERVICES LTD.
C/O 29th Fl. 10180 101 St
Edmonton, AB T5J 3V5

SPRUCELAND LUMBER
C/O Box 32006 Millwoods Postal Outlet
Edmonton, AB T6K 4C2

UFA CO-OPERATIVE LIMITED
C/O Box 32006 Millwoods Postal Outlet
Edmonton, AB T6K 4C2

SPRUNG INSTANT STRUCTURES LTD.
Po Box 62 Maple Leaf Road
Aldersyde, AB TOl 0A0

VIRGIN TECHNOLOGIES INC.
C/O Box 32006 Millwoods Postal Outlet
Edmonton, AB T6K 4C2

SCHEDULE "B"

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

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by Ernst & Young Inc., in its capacity as the Court-appointed receiver and receiver manager (the "**Receiver**") of the property, assets and undertakings of Atcon Construction Inc. (the "**Debtor**") for an order vesting in Premier Construction Ltd. (the "**Purchaser**") the Debtor's and the Receiver's right, title and interest, if any, in and to the assets described in an Asset Purchase Agreement (the "**Agreement**") between the Receiver and the Purchaser made as of October 21, 2010 and appended to the Eleventh Report of the Receiver dated October 2•, 2010 (the "**Report**"), was heard this day at 673 King George Highway, Miramachi, New Brunswick.

ON READING the Notice of Motion of the Receiver dated October 22, 2010 and the Report and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served,.

1. **THIS COURT ORDERS AND DECLARES** that the Agreement be and the same is hereby approved.

2. **THIS COURT ORDERS AND DECLARES** that upon the Purchase Price (as defined in the Agreement) having been paid in accordance with the Agreement, all conditions to Closing with respect to the sale of the Purchased Assets (as such terms are defined in the Agreement) having been satisfied or waived, and the delivery by the Receiver of a Receiver's certificate substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), confirming that the sale of the Purchased Assets has been completed, all of the Debtor's and the Receiver's right, title and interest in and to the Purchased Assets described in the Agreement and listed on Schedule B hereto, if any, shall be vested absolutely in the Purchaser, free and clear of and from any and all ownership claims, title retention claims, 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, known or unknown, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Riordon dated March 2, 2010, as amended by the Order of the Honourable Justice Riordon dated March 30, 2010 (the "**Receivership Order**"); (ii)

any encumbrances or charges created by the Initial Order in the CCAA proceedings bearing Court File No. N/M/16/10 dated March 2, 2010; (iii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (New Brunswick), the *Personal Property Security Act* (Newfoundland and Labrador), the *Registration of Deeds Act* (Newfoundland and Labrador), the *Mechanics' Lien Act* (Newfoundland and Labrador), the *Judgment Enforcement Act* (Newfoundland and Labrador) or any other personal property registry system and or real property registry system (all of which are collectively referred to as the "**Encumbrances**"), for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets.

4. 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 the Debtor and any bankruptcy order issued pursuant to any such applications; and

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

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

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

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

Schedule A – Form of Receiver's Certificate

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

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

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Riordon of the Court of Queen's Bench of New Brunswick (the "**Court**") dated March 2, 2010, as amended by the Order dated March 30, 2010, Ernst & Young Inc. was appointed as the receiver and receiver manager (the "**Receiver**") of the property, assets and undertakings of Atcon Construction Inc. (the "**Debtor**").

B. Pursuant to an Order of the Court dated October 28, 2010, the Court approved the Asset Purchase Agreement made as of October 21•, 2010 (the "**Agreement**") between the Receiver and Premier Construction Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's and the Receiver's right, title and interest, if any, in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction has been completed.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Agreement;

2. The conditions to Closing as set out in the Agreement have been satisfied or waived by the Receiver and the Purchaser; and

3. The transaction has been completed.

4. This Certificate was delivered by the Receiver at ________ [TIME] on _______ [DATE].

ERNST & YOUNG INC., in its capacity as receiver and receiver manager of the property, assets and undertakings of Atcon Construction Inc., and not in its personal or corporate capacity

Per: ______________________________

Name:

Title:

::ODMA\PCDOCS\TOR01\4417299\6

Schedule B

Description of Purchased Assets

Quantity	Description	Serial Number	Unit #	Equipment #
1	Telsmith Screen, 8/24	6166	SC-4	100046
1	Trac Feeder	AISBF-20172-01-2006	FE-4	100621
1	Trac Feeder	AISBF-20172-02-2006	FE-5	100622
1	2000 Stoughton Van Trailer, AVW 53'	1DW1A5326YS379303	VT-17	100323
1	Stoughton Office Van Trailer, AVW 53'	1DW1A5325XS230458	VT-25	100417
1	Compressor Inger Rand, CFM dual Model 185	4FVCBBAA06U370654	CO-7	100441
1	Shop Made Conveyor 42" x 81ft	n/a	CV- 2	100148
1	2005 Chevrolet 3/4 ton 2wd truck	1GCHC24U35E333662	00117	00117
1	2005 Chevrolet 3/4 ton 2wd truck	1GCHC24U75E329081	00105	00105

TAB 2

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

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

TENTH REPORT OF THE RECEIVER
October 22, 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. (now known as 058545 N.B. 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) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and

(g) apply to this Honourable Court for advice and directions in the discharge of its powers and duties under the Receivership Order.

3. The purpose of this Tenth Report is to report to this Honourable Court on matters relating to the activities of the Receiver with respect to the NL Assets (as defined below) and to recommend to this Honourable Court that it grant an Order:

(a) authorizing the sale of the Purchased Assets (as defined below) to Premier (as defined below) pursuant to the terms of the Asset Purchase Agreement (as defined below);

(b) approving the Asset Purchase Agreement; and

(c) vesting the Purchased Assets in Premier free and clear of any liens or encumbrances.

TERMS OF REFERENCE

4. In preparing this Tenth 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 Tenth Report or relied upon by the Receiver in preparing this Tenth 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 Tenth Report are in Canadian dollars unless otherwise noted.

6. Capitalized terms not defined in this Tenth 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).

NL ASSETS

8. As previously reported to this Honourable Court, Pennecon Atcon Limited Partnership, a limited partnership governed by the laws of Newfoundland and Labrador (the "**Pennecon-Atcon LP**"), is a joint venture formed between Penney Construction Ltd. and Atcon Construction for the purpose of completing all work for Contract CC-0001-Earthworks-Plant Site Development (the "**Vale Inco Contract**") for plant site development of the Long Harbour Nickel Processing Plant Site in Long Harbour, Newfoundland and Labrador (the "**Long Harbour Site**").

9. The Pennecon-Atcon LP subcontracted the work to be performed under the Vale Inco Contract to Pennecon Heavy Civil Ltd. ("**PHCL**"). To complete the services under the Vale Inco Contract, the Receiver understands that PHCL arranged for Atcon Construction to provide certain management services and rent equipment to PHCL.

10. The Receiver understands, based on its discussions with certain former management and employees of Atcon Construction, that Atcon Construction was the owner of thirteen (13) pieces of equipment situated at the Long Harbour Site (collectively, the "**NL Assets**"), being the residual pieces of Atcon equipment remaining at the Long Harbour Site after the return of a significant amount of equipment to various equipment lessors.

11. The NL Assets were located on the Long Harbour Site, a third-party controlled-access construction site to which prospective tenderers would not be permitted access to view

the NL Assets prior to submitting a tender offer. Accordingly, the Receiver determined it would have to incur transportation, handling and holding costs if it moved the NL Assets to another site that was suitable for a public sale process.

12. Pursuant to the provisions of the Receivership Order, the Receiver considered different options to market the NL Assets for the benefit of the creditors of Atcon Construction.

SALE OF PURCHASED ASSETS

Sale Method for the NL Assets

13. The Receiver considered including the NL Assets in the tender process that was to be conducted by the Receiver with respect to the Property of the Respondents located in the Province of New Brunswick, which was Property that the Receiver determined was suitable to forming the basis of potential *en bloc* sales of construction and quarry related assets (the "**Tender Process**"). However, the Receiver determined that including the NL Assets in the Tender Process would not maximize the net recovery from these assets, as the anticipated transportation, handling and holding costs to move, preserve and protect the NL Assets pending the conclusion of the Tender Process, as discussed above, would reduce the net recovery thereon.

14. As a result, the Receiver determined it would be in the best interests of the stakeholders of Atcon Construction for the Receiver to conduct a separate sale process for the sale of the NL Assets, separate and apart from the Tender Process.

15. As noted above, the NL Assets are located at the Long Harbour Site, which is approximately a ninety-minute drive from St. John's. The Receiver understands, based on its discussions with PHCL, that the Long Harbour Site is a third-party owned and controlled-access construction site and the Receiver would not be permitted to conduct an auction on site.

16. As a result of the inability of the Receiver to hold an auction at the Long Harbour Site, the Receiver initially considered holding an auction of the NL Assets at a nearby site in Newfoundland and Labrador, as a location near the Long Harbour Site would reduce transportation charges.

17. However, the Receiver was concerned that the relatively low number of units, and the nature and condition of the NL Assets, would not attract a suitably sized group of qualified buyers to attend an auction on or near the Long Harbour Site.

18. As a result, the Receiver determined that the best location for the Receiver to conduct an auction of the NL Assets would be in St. John's, NL where a sufficient number of qualified buyers might be present to view the NL Assets.

19. The Receiver arranged for Fitzpatrick's Auctioneering Services Limited ("**Fitzpatrick's**"), a reputable appraiser/auctioneer based in St. John's, to prepare an appraisal of the NL Assets. A copy of the Fitzpatrick's appraisal will be provided to the Court as an appendix to a supplemental report prior to the hearing of the motion scheduled for October 28, 2010 (the "**Supplemental Report**").

20. 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 the Asset Purchase Agreement does not close.

21. With respect to a proposed auction of the NL Assets in St. John's, any auction held in St. John's would necessitate transporting the NL Assets to St. John's from the Long Harbour Site. The Receiver estimated the cost to transport the NL Assets to St. John's to be between \$15,000 to \$20,000, a significant expense given the appraised value of the NL Assets. Additionally, in the event the NL Assets were sold via auction, the net realization from the NL Assets would be reduced by the auctioneer's commission, which was estimated to be in the range of 15% plus any holding costs that might be incurred to preserve and protect the NL Assets pending their eventual sale.

22. As a result of the potential costs associated with transporting the NL Assets to St. John's for an auction and the additional realization and holding costs associated with such a process, the Receiver determined that it would be beneficial to consider whether another avenue for realization of the NL Assets existed other than an auction.

23. The Receiver understands that Pennecon-Atcon LP, PHCL and its affiliates (collectively, "**Pennecon**") is a large construction company that had previously used the NL Assets in providing services under the Vale Inco Contract. The Receiver was of the view that a sale of the NL Assets to Pennecon could reduce expenses, including professional time to arrange and supervise an auction of the NL Assets, and potentially realize a value for the NL Assets equal to or greater than the alternative options detailed above.

24. Consequently, the Receiver concluded it would be in the best interests of the Atcon Construction estate to contact Pennecon to determine whether it would be interested in buying the NL Assets.

Purchased Assets and Asset Purchase Agreement

25. Pennecon considered the Receiver's invitation to make an offer for the NL Assets and, following a period of negotiation, an agreement was reached in principle between the Receiver and Premier Construction Ltd. ("**Premier**"), a Pennecon affiliate, for the sale of the NL Assets to Premier.

26. However, subsequent to the agreement in principle being reached and the drafting of an agreement of purchase and sale, the list of the NL Assets was reviewed by Caterpillar Financial Services Limited ("**Caterpillar**") and it was determined that three (3) of the NL Assets were subject to a promissory note in favour of Caterpillar (the "**Excluded Assets**").

27. As a result, the Excluded Assets were removed from the assets to be sold to Premier, and the purchase price agreed to for the NL Assets detailed in **Appendix "A"** hereto (the "**Purchased Assets**") was reduced in an amount equal to the value that had been allocated to the Excluded Assets previously.

28. Following the resolution of the issue with respect to the Excluded Assets, an agreement of purchase of sale was finalized by the Receiver and Premier dated October 21, 2010 (the "**Asset Purchase Agreement**"). A redacted copy of the Asset Purchase Agreement is attached hereto as **Appendix "B"**. An unredacted copy of the Asset Purchase Agreement will be provided to the Court as an appendix to the Supplemental Report.

Acceptance of Asset Purchase Agreement

29. As noted above, prior to discussing the potential purchase by Pennecon of the NL Assets, the Receiver arranged for Fitzpatrick's to prepare an appraisal of the NL Assets. Fitzpatrick's appraisal provided an aggregate estimated liquidation value ("**ELV**") of the NL Assets, but did not provide an ELV for the NL Assets on an asset-by-asset basis. Fitzpatrick's did provide an estimated fair market value ("**FMV**") for the NL Assets on an asset-by-asset basis basis.

30. So that it could consider the value of the Pennecon offer for the Purchased Assets in comparison to an auction, it was necessary for the Receiver to attempt to estimate an ELV for the Purchased Assets. To reach such an estimate the Receiver used the aggregate of the individual FMVs for the NL Assets, and then determined the proportion that each of the individual FMV's of the Purchased Assets was of the aggregate FMVs of the Purchased Assets, and then used such proportion/percentage to determine an ELV for each of the NL Assets by applying that proportion/percentage to the total ELV provided by Fitzpatrick's.

31. The Receiver reports that, based on the aggregate of the individual ELVs for the Purchased Assets determined by the Receiver, and taking into consideration the estimated commission and expenses associated with the auction process, the anticipated costs to move the Purchased Assets to St. John's for an auction, the risk that an auction of the NL Assets by an auctioneer would not produce results greater than or equal to the appraised values, and the incremental professional costs of the Receiver and its counsel that would likely be incurred in arranging a second sale process in the Province of Newfoundland & Labrador, the proposed sale of the Purchased Assets to Premier under the Asset Purchase Agreement will likely result in a higher net realization for the benefit of the stakeholders of Atcon Construction in comparison to an auction sale.

32. The Receiver discussed its acceptance recommendation with representatives from the Province of New Brunswick and the Bank prior to execution of the Asset Purchase Agreement. The Receiver understands that such parties have the primary interest in the results of the sale of the Purchased Assets by virtue of their respective security over the

NL Assets. The Receiver notes that no objections to the proposed Asset Purchase Agreement were raised by these parties.

33. As a result, the Receiver recommends that this Honourable Court approve the sale of the Purchased Assets to Premier, approve the Asset Purchase Agreement and vest the Purchased Assets in Premier free and clear of any liens or encumbrances.

RELIEF SOUGHT BY THE RECEIVER

34. The Receiver respectfully requests that this Honourable Court grant an Order in the form submitted by the Receiver:

(a) authorizing the sale of the Purchased Assets to Premier pursuant to the terms of the Asset Purchase Agreement;

(b) approving the Asset Purchase Agreement; and

(c) vesting the Purchased Assets in Premier free and clear of any liens or encumbrances.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of October 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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APPENDIX "A"

APPENDIX "A"

PURCHASED ASSETS

Description	Serial Number	Unit Number	Equipment Number
Telsmith Screen, 8/24	6166	SC-4	100046
Trac Feeder	AISBF-20172-01-2006	FE-4	100621
Trac Feeder	AISBF-20172-02-2006	FE-5	100622
2000 Stoughton Van Trailer, AVW 53'	1DW1A5326YS379303	VT-17	100323
Stoughton Office Van Trailer, AVW 53'	1DW1A5325XS230458	VT-25	100417
Compressor Inger Rand, CFM dual Model 185	4FVCBBAA06U370654	CO-7	100441
Shop Made Conveyor 42" x 81ft	n/a	CV- 2	100148
2005 Chevrolet 3/4 ton 2wd Truck	1GCHC24U35E333662	00117	00117
2005 Chevrolet 3/4 ton 2wd Truck	1GCHC24U75E329081	00105	00105
Trac Feeder	AISBF-20172-01-2006	FE-4	100621
Trac Feeder	AISBF-20172-02-2006	FE-5	100622

APPENDIX “B”

ASSET PURCHASE AGREEMENT

between

PREMIER CONSTRUCTION LTD.

As Purchaser

- and -

ERNST & YOUNG INC. in its capacity as court-appointed receiver and receiver manager of Atcon Construction Inc., and not in its personal or corporate capacity

As Seller

October 21, 2010

ASSET PURCHASE AGREEMENT

THIS AGREEMENT made as of the 21st day of October, 2010,

B E T W E E N :

PREMIER CONSTRUCTION LTD.
a corporation incorporated under the laws of the Province of Newfoundland and Labrador

(the "**Purchaser**"),

– and –

ERNST & YOUNG INC., in its capacity as court-appointed receiver and receiver manager of Atcon Construction Inc., and not in its personal or corporate capacity

(the "**Seller**")

WHEREAS Ernst & Young Inc. was appointed as receiver and receiver manager of the current and future assets, undertakings and properties of every nature and kind whatsoever of Atcon Construction Inc. ("**Atcon**") pursuant to an order of the Court of Queen's Bench of New Brunswick made March 30, 2010, such order made pursuant to Section 33 of the *Judicature Act* (New Brunswick), Rule 41 of the Rules of Court of New Brunswick and Section 243(1) of the *Bankruptcy and Insolvency Act* (Canada)) (the "**Receivership Order**");

AND WHEREAS Seller desires to sell or otherwise transfer to Purchaser and Purchaser desires to purchase from Seller the Purchased Assets (as defined herein) on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Certain Defined Terms

As used in this Agreement, the following terms shall have the following meanings and grammatical variations of such terms shall have corresponding meanings:

"**Approval and Vesting Order**" means an approval and vesting order of the Court in a form substantially similar to the draft order attached hereto as EXHIBIT A or as otherwise acceptable to the parties, acting reasonably.

"Agreement" or **"this Agreement"** means this asset purchase agreement, between Seller and Purchaser, including all exhibits and schedules and all amendments or restatements, as permitted, and references to **"Article"** and **"Section"** mean the specified Article or Section of this Agreement.

"Business Day" means any day, other than a Saturday, Sunday or statutory holiday, on which banks in Saint John, New Brunswick are open for commercial banking business.

"CCAA" means the *Companies' Creditors Arrangement Act* (Canada).

"Collected Tax" has the meaning specified in Section 2.2.

"Court" means the Court of Queen's Bench of New Brunswick.

"Claims", in respect of any matter, means all losses, claims, demands, proceedings, damages, liabilities, deficiencies, costs and expenses (including all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement) arising directly or indirectly as a consequence of such matter.

"Closing" means the completion of the transactions contemplated by this Agreement and shall occur on Closing Date.

"Closing Date" means October 29, 2010 or such other date as the Seller and the Purchaser may mutually agree upon in writing.

"Closing Time" means 10:00 a.m. (AST) on the Closing Date, or such other time on the Closing Date as the Seller and the Purchaser may mutually agree upon in writing.

"Deposit" has the meaning specified in Section 2.4.

"Documents" has the meaning specified in Section 11.3.

"Governmental Authority" means any federal, provincial, municipal, state or local or any foreign government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body or any other public agency.

"Law" means any Canadian federal, provincial, state, municipal, local or foreign statute, act, law, ordinance, regulation, rule, code, order, decree, judgment, policy, other requirement or rule of law, including the common law and its principles.

"Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity.

"Purchase Price" has the meaning specified in Section 2.3.

"**Purchased Assets**" has the meaning specified in Section 2.1.

"Receiver" means Ernst & Young Inc., solely in its capacity as Court-appointed receiver and receiver manager of Atcon, and not in its personal or corporate capacity.

1.2 Certain Rules of Interpretation

In this Agreement:

Currency – Unless otherwise specified, all references to money amounts are to lawful currency of Canada.

Number and Gender – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

Time – Time is of the essence in the performance of the parties' respective obligations.

Time Periods – Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

ARTICLE 2
PURCHASE AND SALE OF ASSETS

2.1 Agreement to Purchase and Sell

Subject to the terms and conditions of this Agreement, as of the Closing Time, the Seller shall sell, transfer, assign and convey to the Purchaser (or such other Person as the Purchaser may direct), and the Purchaser shall purchase (or cause such other Person to purchase) from the Seller all of the right, title and interest of the Seller, if any, in and to all of the assets described in SCHEDULE 2.1 (the **"Purchased Assets"**).

2.2 Sales and Transfer Taxes

The Purchaser shall pay direct to the appropriate Government Authority all sales and transfer taxes, registration charges and transfer fees, other than the goods and services tax and harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada) and any similar value-added or multi-staged tax imposed under any applicable provincial or territorial legislation, in connection with the purchase and sale of the Purchased Assets under this Agreement. The Purchaser shall be liable for and shall pay to the Seller an amount equal to any goods and services tax and harmonized sales tax payable by the Purchaser and collectible by the Seller under the *Excise Tax Act* (Canada), plus an amount equal to any similar value-added or multi-staged tax imposed under an applicable provincial or territorial legislation, in connection with the purchase and sale of the Purchased Assets under this Agreement (the **"Collected Tax"**). The Seller shall remit the Collected Tax to the appropriate Government Authority as soon as reasonably possible following the Closing Date.

2.3 Purchase Price

Exclusive of all applicable sales and transfer taxes, the aggregate purchase price payable by the Purchaser to the Seller in consideration of the transfer of the Purchased Assets shall be equal to the sum of [redacted] (the "**Purchase Price**"). There shall be no adjustments to the Purchase Price.

2.4 Payment of Purchase Price

The Purchase Price payable by the Purchaser to the Seller for the Purchased Assets shall be satisfied by: (i) a deposit in the amount of fifteen percent (15%) of the Purchase Price payable to the Seller by way of certified cheque or bank draft immediately upon execution of this Agreement (the "**Deposit**"); and (ii) by the payment of the balance of the Purchase Price on the Closing Date by wire transfer to or to the order of the Seller or as the Seller may otherwise direct in writing. The Deposit shall be non-refundable if the Agreement is terminated pursuant to section 10.1(iv) hereof. The Deposit shall be released to the Seller upon Closing.

2.5 Allocation of Purchase Price

The Purchase Price shall be allocated among the Purchased Assets in the manner set out on SCHEDULE 2.5. The Purchaser and Seller shall file all information returns, income tax returns and other similar documents with appropriate taxing authorities in a manner which is consistent with the allocation set forth on SCHEDULE 2.5.

2.6 Risk of Loss

The Purchased Assets shall be at the risk of the Seller until the Closing. Until the Closing, the Seller shall maintain in force all of the policies of property damage insurance under which any of the Purchased Assets is currently insured. If before the Closing, all or substantially all of the Purchased Assets are lost, damaged or destroyed then:

(a) the Purchaser may terminate this Agreement forthwith upon written notice to the Seller to such effect and the Deposit shall be refunded to the Purchaser; or

(b) the Purchaser may require the Seller to assign to the Purchaser the proceeds of any insurance payable as a result of the occurrence of such loss, damage or destruction and to reduce the Purchase Price by the amount of such insurance proceeds.

2.7 Closing

Closing shall take place at Closing Time on the Closing Date at the offices of the Seller.

2.8 As is, Where is

The Purchaser acknowledges and agrees that it has conducted its own searches and investigations relating to the Purchased Assets and acknowledges that, unless otherwise specifically stated herein, the Purchased Assets shall be purchased on an "as is, where is" basis and without representation or warranty and with all faults. The Purchaser acknowledges that it has, or as of Closing will be deemed to have, inspected the Purchased Assets and will accept the same at Closing Time in their then present state, condition and location. Except as expressly set forth herein, the Seller makes no representation, warranty or condition, whether statutory (including under any applicable sale of goods legislation or any Law), express or implied, oral or written, legal, equitable, conventional, collateral or otherwise concerning the Purchased Assets as to title, outstanding liens, description, fitness for purpose, merchantability, quantity, condition, quality, value, suitability, durability or marketability thereof or in respect of any other matter or thing whatsoever, including the respective rights, titles and interests of Atcon or the Seller, if any, therein and wherever all or part of the Purchased Assets are situated and all of the same are expressly excluded. Except for the representations and warranties contained herein, the Purchaser shall be deemed to have relied entirely on its own inspection and investigation in proceeding with the transactions contemplated hereunder. The description of the Purchased Assets contained herein was prepared by the Purchaser and is for the purposes of identification only.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE SELLER

Seller hereby represents and warrants as follows to the Purchaser and acknowledges and agrees that the Purchaser is relying upon these representations and warranties in connection with its purchase of the Purchased Assets:

3.1 Appointment

The Receiver has been appointed by the Court pursuant to the terms of the Receivership Order.

3.2 Authorization

Subject to the issuance of the Approval and Vesting Order, the Seller has all necessary authority to execute and deliver this Agreement and all other documents and instruments contemplated herein or therein to which it is or will be party and to perform its obligations hereunder and thereunder.

3.3 No Impairment

Except as described in the Receivership Order and the Initial Order in the CCAA proceedings of Atcon, the Vendor has not done or knowingly suffered and has not been a party or privy to any act or thing whereby it is prevented from selling, assigning and conveying its interest in the Purchased Assets in the manner contemplated herein or whereby it has knowingly created any security interest in any of the Purchased Assets.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF PURCHASER

The Purchaser represents and warrants to the Seller as follows and acknowledges and agrees that the Seller is relying on such representations and warranties in connection with the sale of the Purchased Assets:

4.1 Organization

The Purchaser is duly incorporated, validly existing and in good standing under the laws of the Province of Newfoundland and Labrador.

4.2 Authorization

The Purchaser has the corporate power and authority to execute and deliver this Agreement and the other documents and instruments contemplated herein or therein to which it is or will be a party and to perform its obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and the documents contemplated hereby and the consummation of the transactions contemplated hereby and thereby have been duly authorized and approved by the Purchaser.

4.3 Enforceability

This Agreement, and each of the other documents and instruments to be executed and delivered by the Purchaser on or before Closing, have been or will be duly executed and delivered by, and constitute the valid and binding obligations of the Purchaser, enforceable against the Purchaser in accordance with their terms.

ARTICLE 5
CONDITIONS TO THE OBLIGATIONS OF BOTH PARTIES

The obligations of the parties to perform their respective obligations under this Agreement and to consummate the other transactions contemplated hereby are subject to the satisfaction, on or before the Closing Date, of the following conditions:

5.1 Court Approval

The Approval and Vesting Order shall have been duly granted on or before October 28, 2010, or such later date as the parties may agree in writing, and the operation and effect of the Approval and Vesting Order shall not have been stayed, amended, modified, reversed or dismissed at the Closing Time.

ARTICLE 6
CONDITIONS TO THE PURCHASER'S OBLIGATIONS

The obligation of the Purchaser to pay the Purchase Price on the Closing Date and to perform its obligations under this Agreement are subject to the satisfaction, on or before the

Closing Date, of the following conditions each of which may be waived by the Purchaser in its sole discretion:

6.1 Representations and Warranties

The representations and warranties of the Seller contained in Sections 3.1, 3.2 and 3.3 shall be true, correct and complete in all material respects (except such materiality limitation shall not apply to the extent that a representation or warranty is, by its express terms, already limited by a materiality standard) at the Closing Time with the same force and effect as if such representations and warranties were made at and as of such time. At the Closing, Seller shall have executed and delivered to the Purchaser a certificate signed by its one senior officers, in form and substance satisfactory to the Purchaser and its counsel, to such effect.

6.2 Performance

The Seller shall have performed and complied with all covenants and agreements contained herein required to be performed or complied with by it prior to or at the Closing Date.

6.3 Closing Documents

The Seller shall have delivered to the Purchaser the following documents in form and substance satisfactory to the parties, acting reasonably:

(a) a copy of the issued and entered Approval and Vesting Order;

(b) a certificate of the Seller in respect of its representations and warranties set out in Section 6.1; and

(c) a Bill of Sale in the form attached hereto as Schedule 6.3.

ARTICLE 7
CONDITIONS TO THE SELLER'S OBLIGATIONS

The obligation of the Seller to perform its obligations under this Agreement is subject to the satisfaction, on or before the Closing Date, of the following conditions, each of which may be waived by the Seller in its sole discretion:

7.1 Representations and Warranties

The representations and warranties contained in Sections 4.1-4.3 shall be true, complete and correct in all material respects (except such materiality limitation shall not apply to the extent that a representation or warranty is, by its express terms, already limited by a materiality standard) at the Closing Time with the same force and effect as if such representations and warranties were made at and as of such time. At the Closing, the Purchaser shall have executed and delivered to the Seller a certificate signed by one senior officer of the Purchaser, in form and substance satisfactory to the Seller and their counsel, to such effect.

7.2 Performance

The Purchaser shall have performed and complied with all covenants and agreements contained herein required to be performed or complied with by it prior to or at the Closing Date.

7.3 Closing Documents

The Purchaser shall have performed the following acts and delivered to the Seller the following documents in form and substance satisfactory to the parties, acting reasonably:

(a) Payment of the Purchase Price in full in accordance with Section 2.4; and

(b) a certificate of the Purchaser in respect of its representations and warranties set out in Section 7.1.

ARTICLE 8
ADDITIONAL AGREEMENTS

8.1 Confidentiality – Purchaser

Both prior to the Closing Date and, if the transactions contemplated hereunder fail to occur for whatever reason, thereafter the Purchaser agrees not to divulge, communicate or disclose, except as may be required by Law for the performance of this Agreement, or use to the detriment of the Seller or for the benefit of any other Person or Persons, or misuse in any way, any confidential information of the Seller or information in relation to the Purchased Assets, including the Purchase Price.

8.2 Seller's Capacity

The Purchaser acknowledges and agrees that Receiver executes this agreement solely in its capacity as Court-appointed receiver and receiver manager of the assets of Atcon and not in its personal or corporate capacity and the Receiver and its directors, officers, employees, agents, advisors and affiliates shall have no liability of any kind in connection with this transaction or Agreement whether in contract, tort or otherwise.

ARTICLE 9
SURVIVAL

9.1 Survival of Representations and Warranties

All representations and warranties in Sections 3 and 4, as given at the date hereof and restated at the Closing, shall expire 12 months following Closing. Notwithstanding the expiration date set out above, all claims asserted in writing in accordance with this Agreement prior to the applicable expiration date shall survive until finally resolved. All covenants and agreements contained herein, including the indemnity set out in Section 9.2 herein shall survive until fully performed in accordance with their terms.

9.2 Purchaser's Indemnification of the Seller

The Purchaser shall indemnify, defend and hold harmless the Seller and their officers, directors, employees, agents and shareholders, and their respective successors and assigns from and against all Claims of any kind or character, arising out of or in any manner incident, relating or attributable to any or all taxes properly payable by the Purchaser pursuant to Section 2.2 in connection with its purchase of the Purchased Assets, and the Purchaser's liability hereunder shall not include any amount for the Collected Tax.

ARTICLE 10
TERMINATION

10.1 Termination

This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing:

(i) If the Court of Queen's Bench of New Brunswick fails to approve this transaction and grant the Approval and Vesting Order;

(ii) by the Purchaser or the Seller if any court of competent jurisdiction or other Governmental Authority shall have issued an order, decree or ruling, or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated hereby, which order, decree, ruling or other action is not stayed or dismissed prior to Closing;

(iii) by the Purchaser in the event that any condition in Sections 6.1-6.3 has not been satisfied or waived;

(iv) by the Seller in the event that any condition in Sections 7.1-7.3 has not been satisfied or waived; or

(v) by the Purchaser or the Seller if the Closing shall not have occurred on or before November 5, 2010 (except in the event that Closing has not occurred because any condition in Sections 7.1-7.3 has not been satisfied or waived).

10.2 Effect of Termination

Notwithstanding the termination and abandonment of this Agreement pursuant to Section 10.1, the provisions of Section 8.1 shall survive. Nothing in this Section shall relieve any party to this Agreement of liability for breach of this Agreement. Each party's right of termination under this Article is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. Nothing in this Article limits or affects any other rights or causes of action any party may have with respect to the representations, warranties, covenants and indemnities in its favour contained in this Agreement. If a party waives compliance with any of the conditions, obligations or covenants contained in this Agreement, the waiver will be without prejudice to any of its rights of termination in the event of non-fulfilment, non-observance or non-performance of any other condition, obligation or covenant in whole or in part.

10.3 Refund of Deposit

In the event that this Agreement is terminated in accordance with Sections 10.1(i)-(iii) or 10.1(v) hereof, the Deposit shall be refunded to the Purchaser.

ARTICLE 11
MISCELLANEOUS

11.1 Notices

All notices, requests, consents and other communications hereunder shall be in writing, shall be addressed to the receiving party's address set forth below or to such other address as such party may designate by notice hereunder, and shall be (a) delivered by hand, (b) made by telecopy or facsimile transmission, (c) sent by recognized overnight courier, or (d) sent by registered or certified mail, return receipt requested, postage prepaid.

If to the Purchaser:

Premier Construction Ltd. c/o Pennecon Limited
1309 Topsail Road
P.O. Box 8274, Station A
St. John's, NL A1B 3N4

Attention: Ed Murphy, Senior Vice President, Finance
Facsimile No.: +1 709 782 0129

With a copy to:

Benson Myles PLC Inc.
Suite 900 Atlantic Place
P.O. Box 1538
St. John's, NL A1C 5N8

Attention: Geoffrey L. Spencer
Facsimile No.: (709) 579-2647

If to the Seller:

Ernst & Young Inc.
The Fortis Building
139 Water Street, 7th Floor
St. John's, NL, A1C 1B2

Attention: Paul D. Hickey, Senior Vice President
Facsimile No.: +1 709 722 1758

With a copy to:

Borden Ladner Gervais LLP
40 King Street West
Toronto, ON, M5H 3Y4

Attention: Craig Hill/Gordon Raman
Facsimile No. (416) 361-7301

All notices, requests, consents and other communications hereunder shall be deemed to have been given (i) if by hand, at the time of the delivery thereof to the receiving party at the address of such party in accordance with this Section 11.1, (ii) if made by telecopy or facsimile transmission, at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise, (iii) if sent by overnight courier, on the next Business Day following the day such notice is delivered to the courier service, or (iv) if sent by registered or certified mail, on the fifth Business Day following the day such mailing is made.

11.2 Further Assurances

At any time and from time to time after the date hereof each of the parties hereto, at the reasonable request of any other party hereto and without further consideration, will execute and deliver such other instruments of sale, transfer, conveyance, assignment, confirmation and other instruments as may be reasonably requested in order to more effectively transfer, convey and assign to the Purchaser and to confirm the Purchaser's title to the Purchased Assets and to effectuate the transactions contemplated herein.

11.3 Entire Agreement

This Agreement together with the Exhibits and Schedules hereto and the other documents executed in connection herewith (together, the "**Documents**") embody the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior oral or written agreements and understandings relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in the Documents shall affect, or be used to interpret, change or restrict, the express terms and provisions of the Documents.

11.4 Modifications and Amendments

The terms and provisions of this Agreement may be modified or amended only by written agreement executed by all parties hereto.

11.5 Waiver

No failure or delay by a party hereto in exercising any right, power or remedy under this Agreement, and no course of dealing between the parties hereto, shall operate as a waiver of any such right, power or remedy of the party.

11.6 Binding Agreement

All of the terms and provisions in this Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.

11.7 Assignment

This Agreement and the rights created hereunder may not be assigned or otherwise transferred by either party without the prior written consent of the other party.

11.8 Governing Law

This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the laws of New Brunswick and the federal laws of Canada applicable therein, without giving effect to the conflict of law principles thereof.

11.9 Jurisdiction and Service of Process

Any legal action or proceeding with respect to this Agreement shall be brought in the Court and the parties hereto irrevocably attorn to the sole and exclusive jurisdiction of the Court in connection with any matters arising hereunder.

11.10 Severability

In the event that any court of competent jurisdiction shall finally determine that any provision, or any portion thereof, contained in this Agreement shall be void or unenforceable in any respect, then such provision shall be deemed limited to the extent that such court determines it enforceable, and as so limited shall remain in full force and effect. In the event that such court shall determine any such provision, or portion thereof, wholly unenforceable, the remaining provisions of this Agreement shall nevertheless remain in full force and effect.

11.11 Headings and Captions

The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and shall in no way modify, or affect, or be considered in construing or interpreting the meaning or construction of any of the terms or provisions hereof.

11.12 Expenses

Each of the parties hereto shall pay its own fees and expenses (including the fees of any legal advisors, financial advisors, accountants, appraisers or others engaged by such party) in connection with this Agreement and the transactions contemplated hereby whether or not the transactions contemplated hereby are consummated.

11.13 Counterparts

This Agreement may be executed in one or more counterparts, and by different parties hereto on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Execution and delivery of this Agreement may be made and evidenced by facsimile or other electronic transmission.

IN WITNESS WHEREOF, the Purchaser and the Seller have executed this Agreement as of the day and year first above written.

PREMIER CONSTRUCTION LTD.

by ______________________________
Name: Ed Murphy
Title: Senior Vice President, Finance

I have authority to bind the Corporation

ERNST & YOUNG INC., in its capacity as court-appointed receiver and receiver manager of Atcon Construction Inc., and not in its personal or corporate capacity

by ______________________________
Name: Paul D. Hickey
Title: Senior Vice President

EXHIBIT A

Approval and Vesting Order

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

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by Ernst & Young Inc., in its capacity as the Court-appointed receiver and receiver manager (the "**Receiver**") of the property, assets and undertakings of Atcon Construction Inc. (the "**Debtor**") for an order vesting in Premier Construction Ltd. (the "**Purchaser**") the Debtor's and the Receiver's right, title and interest, if any, in and to the assets described in an Asset Purchase Agreement (the "**Agreement**") between the Receiver and the Purchaser made as of October 21, 2010 and appended to the Eleventh Report of the Receiver dated October 2•, 2010 (the "**Report**"), was heard this day at 673 King George Highway, Miramachi, New Brunswick.

ON READING the Notice of Motion of the Receiver dated October 22, 2010 and the Report and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served,.

1. **THIS COURT ORDERS AND DECLARES** that the Agreement be and the same is hereby approved.

2. **THIS COURT ORDERS AND DECLARES** that upon the Purchase Price (as defined in the Agreement) having been paid in accordance with the Agreement, all conditions to Closing with respect to the sale of the Purchased Assets (as such terms are defined in the Agreement) having been satisfied or waived, and the delivery by the Receiver of a Receiver's certificate substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), confirming that the sale of the Purchased Assets has been completed, all of the Debtor's and the Receiver's right, title and interest in and to the Purchased Assets described in the Agreement and listed on Schedule B hereto, if any, shall be vested absolutely in the Purchaser, free and clear of and from any and all ownership claims, title retention claims, 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, known or unknown, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Riordon dated March 2, 2010, as amended by the Order of the Honourable Justice Riordon dated March 30, 2010 (the "**Receivership Order**"); (ii)

any encumbrances or charges created by the Initial Order in the CCAA proceedings bearing Court File No. N/M/16/10 dated March 2, 2010; (iii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (New Brunswick), the *Personal Property Security Act* (Newfoundland and Labrador), the *Registration of Deeds Act* (Newfoundland and Labrador), the *Mechanics' Lien Act* (Newfoundland and Labrador), the *Judgment Enforcement Act* (Newfoundland and Labrador) or any other personal property registry system and or real property registry system (all of which are collectively referred to as the "**Encumbrances**"), for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets.

4. 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 the Debtor and any bankruptcy order issued pursuant to any such applications; and

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

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

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

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

Schedule A – Form of Receiver's Certificate

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

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

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Riordon of the Court of Queen's Bench of New Brunswick (the "**Court**") dated March 2, 2010, as amended by the Order dated March 30, 2010, Ernst & Young Inc. was appointed as the receiver and receiver manager (the "**Receiver**") of the property, assets and undertakings of Atcon Construction Inc. (the "**Debtor**").

B. Pursuant to an Order of the Court dated October 28, 2010, the Court approved the Asset Purchase Agreement made as of October 21•, 2010 (the "**Agreement**") between the Receiver and Premier Construction Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's and the Receiver's right, title and interest, if any, in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction has been completed.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Agreement;

2. The conditions to Closing as set out in the Agreement have been satisfied or waived by the Receiver and the Purchaser; and

3. The transaction has been completed.

4. This Certificate was delivered by the Receiver at ________ [TIME] on _______ [DATE].

ERNST & YOUNG INC., in its capacity as receiver and receiver manager of the property, assets and undertakings of Atcon Construction Inc., and not in its personal or corporate capacity

Per: ______________________________

Name:

Title:

Schedule B

Description of Purchased Assets

Quantity	Description	Serial Number	Unit #	Equipment #
1	Telsmith Screen, 8/24	6166	SC-4	100046
1	Trac Feeder	AISBF-20172-01-2006	FE-4	100621
1	Trac Feeder	AISBF-20172-02-2006	FE-5	100622
1	2000 Stoughton Van Trailer, AVW 53'	1DW1A5326YS379303	VT-17	100323
1	Stoughton Office Van Trailer, AVW 53'	1DW1A5325XS230458	VT-25	100417
1	Compressor Inger Rand, CFM dual Model 185	4FVCBBAA06U370654	CO-7	100441
1	Shop Made Conveyor 42" x 81ft	n/a	CV- 2	100148
1	2005 Chevrolet 3/4 ton 2wd truck	1GCHC24U35E333662	00117	00117
1	2005 Chevrolet 3/4 ton 2wd truck	1GCHC24U75E329081	00105	00105

SCHEDULE 2.1

Description of Purchased Assets

Quantity	Description	Serial Number	Unit #	Equipment #
1	Telsmith Screen, 8/24	6166	SC-4	100046
1	Trac Feeder	AISBF-20172-01-2006	FE-4	100621
1	Trac Feeder	AISBF-20172-02-2006	FE-5	100622
1	2000 Stoughton Van Trailer, AVW 53'	1DW1A5326YS379303	VT-17	100323
1	Stoughton Office Van Trailer, AVW 53'	1DW1A5325XS230458	VT-25	100417
1	Compressor Inger Rand, CFM dual Model 185	4FVCBBAA06U370654	CO-7	100441
1	Shop Made Conveyor 42" x 81ft	n/a	CV- 2	100148
1	2005 Chevrolet 3/4 ton 2wd truck	1GCHC24U35E333662	00117	00117
1	2005 Chevrolet 3/4 ton 2wd truck	1GCHC24U75E329081	00105	00105

SCHEDULE 2.5

Purchase Price Allocation

Description	Serial Number	Unit #	Equipment #	Allocation of Purchase Price
Telsmith Screen, 8/24	6166	SC-4	100046	[redacted]
Trac Feeder	AISBF-20172-01-2006	FE-4	100621	[redacted]
Trac Feeder	AISBF-20172-02-2006	FE-5	100622	[redacted]
2000 Stoughton Van Trailer, AVW 53'	1DW1A5326YS379303	VT-17	100323	[redacted]
Stoughton Office Van Trailer, AVW 53'	1DW1A5325XS230458	VT-25	100417	[redacted]
Compressor Inger Rand, CFM dual Model 185	4FVCBBAA06U370654	CO-7	100441	[redacted]
Shop Made Conveyor 42" x 81ft	n/a	CV- 2	100148	[redacted]
2005 Chevrolet 3/4 ton 2wd truck	1GCHC24U35E333662	00117	00117	[redacted]
2005 Chevrolet 3/4 ton 2wd truck	1GCHC24U75E329081	00105	00105	[redacted]

SCHEDULE 6.3

Bill of Sale

BILL OF SALE

THIS BILL OF SALE made as of the day of October, 2010.

B E T W E EN:

ERNST & YOUNG INC.,
in its capacity as Court-appointed receiver and receiver manager of Atcon Construction Inc. and not in its personal or corporate capacity

(the "**Seller**")

\- and -

PREMIER CONSTRUCTION LTD.

(the "**Purchaser**")

WHEREAS Ernst & Young Inc. was appointed as receiver and receiver manager of the assets, property and undertaking of Atcon Construction Inc. on March 30, 2010 pursuant to the Receivership Order of the Honourable Mr. Justice Riordon of the Court of Queens Bench of New Brunswick dated March 1, 2010, as amended by the Order dated March 30, 2010 (collectively, the "**Receivership Order**");

AND WHEREAS the Seller is authorized and empowered, pursuant to the terms of the Receivership Order, to market and solicit offers in respect of the property or any part or parts thereof and to negotiate such terms and conditions of sale as the Seller in its discretion deems appropriate;

AND WHEREAS the Seller is authorized and empowered, pursuant to the terms of the Receivership Order, to sell, convey, transfer, lease or assign the property or any part or parts thereof out of the ordinary course of business;

AND WHEREAS the Seller and the Purchaser have entered into an Asset Purchase Agreement dated October 21, 2010 (the "**Purchase Agreement**"), pursuant to which the Seller has agreed to sell, and the Purchaser has agreed to purchase, all of the Seller's right, title and interest, if any, in and to all of the assets described in Schedule 2.1 to the Purchaser Agreement (the "**Purchased Assets**");

AND WHEREAS Section 6.3 of the Purchase Agreement provides that the Seller is to deliver to the Purchaser, among other things, a bill of sale;

NOW THEREFORE THIS BILL OF SALE WITNESSETH that in consideration of the closing of the transactions contemplated by the Purchase Agreement, the payments and other consideration provided for therein and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged),

1. The Seller hereby sells, transfers, assigns and conveys unto the Purchaser, all of the Seller's right, title and interest, if any, in and to the Purchased Assets, and the Seller releases to the Purchaser all of the Seller's claims against the Purchased Assets.

2. The Purchaser acknowledges by its acceptance of this Bill of Sale that it has inspected the Purchased Assets and has found that the Purchased Assets are in form and substance satisfactory to the Purchaser. The Purchaser also acknowledges that the sale of the Purchased Assets, and all matters related thereto, is done on an "as is where is basis" without any representations, warranties or agreements express or implied of any kind whatsoever, except for those expressly set out in Article 3 of the Purchase Agreement.

3. This Bill of Sale shall be construed in accordance and enforced in accordance with, and the rights and obligations of the parties shall be governed by, the laws of the Province of New Brunswick and the laws of Canada applicable in New Brunswick.

4. This Bill of Sale is entered into pursuant to the terms of the Purchase Agreement and is not in derogation of any of the rights of the parties thereunder. In the event of any conflict or inconsistency between the provisions of this Bill of Sale and the provisions of the Purchase Agreement, the provisions of the Purchase Agreement shall govern.

5. This Bill of Sale shall enure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

6. This Bill of Sale may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument. The Bill of Sale may be executed and transmitted by facsimile machine or electronically, with confirmation of transmission and, on such execution and transmission, this Bill of Sale shall be binding on the parties with the same force and effect as if originally executed.

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IN WITNESS WHEREOF this Bill of Sale has been executed by the Seller and the Purchaser as of the day and year first above written.

ERNST & YOUNG INC., in its capacity as Court-appointed receiver and receiver manager of Atcon Construction Inc. and not in its personal or corporate capacity	**PREMIER CONSTRUCTION LTD.**
By: ____________________ Name: Paul D. Hickey Title: Senior Vice President	By: ____________________ Name: Title:

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