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

FIRST REPORT OF THE RECEIVER

April 21, 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 and manager (the "**Receiver**") of the property, assets and undertakings of:

   (a) Atcon Group Inc., Atcon Holdings Inc., Atcon Property Holdings Inc. ("**Atcon Property Holdings**"), Atcon Veneer Products Inc. and Atcon Logistics Inc. pursuant to the Receivership Order dated March 2, 2010 granted in these proceedings (the "**March 2 Order**")[1], a copy of which is attached hereto and marked as **Appendix "A"**; and

   (b) Atcon Construction Inc. ("**Atcon Construction**"), Atcon Management Services Inc., Atcon Civil Inc., Dycon Construction Inc., Atcon Structures Inc. and Envirem Technologies Inc. (collectively, the "**CCAA Debtor Companies**") pursuant to an Order dated March 30, 2010 granted in these proceedings (the "**March 30 Order**"), a copy of which is attached hereto and marked as **Appendix "B"**.[2]

2. The March 2 Order, as amended by the March 30 Order and the Order dated April 1, 2010 granted in these proceedings (the "**April 1 Order**", and together with the March 2 Order and the March 30 Order, the "**Receivership Order**"), a copy of which is attached hereto and marked as **Appendix "C"**, authorized the Receiver to, among other things:

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[1] Pursuant to paragraph 39 of the Receivership Order dated March 2, 2010, the Order and all of its provisions were effective as of 12:01 a.m. Atlantic Standard Time on March 1, 2010.

[2] Pursuant to paragraph 4 of the March 30 Order, the appointment of the Receiver in relation to Envirem shall be 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 this Court.

(a) take possession and control of the Property and any 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;

(d) initiate proceedings with respect to any of the Property and to settle or compromise any such proceedings;

(e) borrow by way of revolving credit or otherwise such monies from time to time as it may consider necessary or desirable for the purpose of making payments required or permitted by the Receivership Order, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize); and

(f) pay, in the name of and on behalf of the CCAA Debtor Companies, the fees and disbursements of the Monitor and its counsel, employee wages, per diem amounts owing by the CCAA Debtor Companies to equipment lessors and other expenses and obligations incurred by the CCAA Debtor Companies during the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") proceedings.

3. The purpose of this First Report is to report to this Honourable Court on the status of:

(a) accounts receivable owing to Atcon Construction under the Agreement for Earth Moving, Construction and Related Services dated November 1, 2008 between Albian Sands Energy Inc., an affiliate of Shell Canada Limited ("**Shell Canada**") and Atcon Construction (the "**Albian Contract**"), and recommend that this Honourable Court grant an Order authorizing Shell Canada to pay to the Receiver the amounts owing and payable to Atcon Construction under the Albian Contract on certain terms and conditions that will protect the interests of the stakeholders of Atcon Construction in respect of those payments;

(b) the obligations that this Honourable Court authorized and empowered the Receiver to pay, for and on behalf of the CCAA Debtor Companies and Atcon Industrial Services Inc. ("**Atcon Industrial**"), pursuant to the March 30 Order and the April 1 Order, and recommend that this Honourable Court grant an Order authorizing the Bank to pay to the Receiver an amount equal to a portion of the accounts receivable of Atcon Construction received by Atcon Construction between March 1, 2010 and March 30, 2010 and deposited into an account in the name of Atcon Construction at the Bank, in the sum of $2.23 million, for payment by the Receiver of the obligations that this Honourable Court has authorized and empowered the Receiver to pay pursuant to the March 30 Order and the April 1 Order (the "**Outstanding CCAA Payments**"); and

(c) the funding necessary for the Receiver to make payments required or permitted under the Receivership Order and recommend that this Honourable Court grant an Order increasing the maximum principal amount that the Receiver may borrow under the terms of the Receivership Order from $500,000 to $1.2 million.

TERMS OF REFERENCE

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

6. Capitalized terms not defined in this First 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).

ACTIVITIES OF THE RECEIVER

8. As noted above, EYI was appointed as Receiver of the CCAA Debtor Companies, including Atcon Construction, on March 30, 2010, and its appointment as Receiver of the Property of Envirem has yet to become effective. The Receiver is still in the process of identifying, taking possession of and securing the Property of the Respondents, certain of which is located in provinces across Canada.

9. The First Report does not contain a comprehensive summary of the activities of the Receiver to date with respect to the Respondents given the Receiver's recent appointment by this Honourable Court with respect to the CCAA Debtor Companies. Once the Receiver has had the opportunity to fully assess the nature and extent of the Property subject to the Receivership Order and under its control, and to consider the best methods of maximizing the realizable value of the Property for benefit of the Respondents' stakeholders, the Receiver will provide a comprehensive report to the Court detailing its activities to date.

PAYMENT OF ALBIAN CONTRACT ACCOUNTS RECEIVABLE

Albian Contract Accounts Receivable

10. Prior to the commencement of these receivership proceedings and the CCAA Proceedings commenced pursuant to the Initial Order of Justice Riordon dated March 2, 2010 (the "**Initial Order**"), Court File No. N/M/16/10 (the "**CCAA Proceedings**"), Atcon Construction had two significant ongoing contracts with affiliates of Shell Canada. One of these contracts was the Albian Contact to provide construction and earth-moving

services in the province of Alberta. As has been previously reported to this Honourable Court, work under the second phase of the Albian Contract was completed by Atcon Construction on or about March 22, 2010.

11. In letters dated April 9, 2010 and April 14, 2010, the Receiver requested payment from Shell Canada of all indebtedness owed to Atcon Construction under the Albian Contract pursuant to the powers granted to it by this Honourable Court under the Receivership Order. Based on the books and records of Atcon Construction, as of April 13, 2010, Atcon Construction was owed the amount of $10,236,322.97 in connection with services provided by Atcon Construction under the Albian Contract (collectively, the "**Shell A/R**"). Copies of the letters requesting payment together with a letter from counsel to the Receiver to Shell Canada are attached hereto and marked as **Appendix "D"**.

12. The Receiver understands that Shell Canada may be prepared to pay to the Receiver the balance of the Shell A/R, subject to certain conditions and protections.

Canada Revenue Agency – Requirement to Pay Notice

13. On March 29, 2010, the Canada Revenue Agency ("**CRA**") issued a Requirement to Pay to Shell Canada (the "**Shell Requirement to Pay**") pursuant to section 227(4) of the *Income Tax Act* (Canada) (the "**ITA**"). The Shell Requirement to Pay was issued by the CRA at a time when Atcon Construction was subject to the provisions of the Initial Order. A copy of the Shell Requirement to Pay is attached hereto and marked as **Appendix "E"**.

14. The Shell Requirement to Pay directed Shell Canada to deliver to the CRA any monies owed to Atcon Construction in connection with the alleged liability of Atcon Construction under subsection 227(10.1) of the ITA, in the maximum amount of $4,750,074.57 (the "**Shell Requirement to Pay Amount**").

15. The Receiver understands that the Shell Requirement to Pay is with respect to unremitted employee income tax, CPP and EI source deductions, along with certain penalties, that were originally assessed to be liabilities of Ledwell Construction Labour Limited ("**Ledwell**"), a third-party that provided services to Atcon Construction.

16. The CRA has informed the Receiver of its position that payment of the unremitted Ledwell employee source deductions (the "**Ledwell Obligations**") is an obligation of Atcon Construction, and on April 7, 2010, the CRA requested payment from the Receiver of $4,772,749.85 with respect thereto.

17. As of the date of this First Report, the Receiver continues to review the options available, pursuant to the powers granted to the Receiver by this Honourable Court under the Receivership Order, to respond to the CRA's assessment against Atcon Construction with respect to the Ledwell Obligations. In addition, the Receiver continues to review the timing of the delivery of the Shell Requirement to Pay.

18. The Receiver directly, and through counsel, has had discussions with counsel to Shell Canada, the CRA, the Bank and the Province of New Brunswick, being two secured creditors with economic interests in the Shell A/R, in an effort to reach a consensual resolution as to the payment of the Shell A/R and the potential terms and conditions attached to any such payment of the Shell A/R by Shell Canada.

Builders Lien Issues

19. The Receiver understands that Atcon Construction entered into an arrangement with Emeco Canada Limited ("**Emeco**") for the use of certain heavy equipment to remove muskeg in connection with the Albian Contract. The Receiver further understands that Atcon Construction may be indebted to Emeco in an amount of approximately $272,000 for unpaid rental payments for the use of the equipment prior to March 1, 2010. The Receiver has been informed by former management of Atcon Construction that Atcon Construction did not dispute the quantum of the indebtedness owed by Atcon Construction to Emeco.

20. On April 15, 2010, Emeco filed a statement of lien upon interest in Crown materials (the "**Emeco Builders Lien**") with the Government of Alberta pursuant to sections 34 and 36 of the *Builders Lien Act* (Alberta) (the "**Builders Lien Act**") in the amount of $272,895.22 (the "**Builders Lien Amount**"). The Emeco Builders Lien was filed by Emeco in respect of the interest of Shell Canada in minerals in the Shell Albian Sands site in Alberta.

21. Pursuant to subsection 18(2) of the Builders Lien Act, Shell Canada is required to retain, during the time the Emeco Builders Lien is registered, any amount payable under the Albian Contract in excess of the statutorily required holdback.

22. Counsel to the Receiver has discussed with counsel to Emeco and Shell Canada the possibility that the matter be resolved by having a portion of the Shell A/R, in the sum of the Builders Lien Amount, paid by Shell Canada directly to the Court of Queen's Bench of Alberta (the "**Alberta Court**").

<u>Payment of Shell A/R</u>

23. Following discussions with representatives and counsel to Shell Canada, CRA, the Bank, the Province and Emeco, the Receiver recommends that this Honourable Court grant an Order authorizing and directing Shell Canada to pay, from the Shell A/R:

(a) to the Receiver an amount equal to the Shell Requirement to Pay Amount, to be held by the Receiver:

(i) separate and apart from the Property in an interest-bearing trust account;

(ii) without prejudice to the rights of the Receiver, CRA, the Bank, the Monitor, the Province or any other person with respect to such amount;

(iii) pending further Order of this Honourable Court, and any distribution of the amount by the Receiver will be made on notice to all of the parties on the service list, including the CRA; and

(iv) subject to all claims and encumbrances that attached with respect to the Shell A/R, as if the funds had not been paid to the Receiver and remained in the possession or control of Shell Canada;

(b) to the Alberta Court an amount equal to the Builders Lien Amount plus costs; and

(c) to the Receiver the balance of the Shell A/R, less the Shell Requirement to Pay Amount, the Builders Lien Amount, the amount of $1,245,905.15 paid by Shell Canada to the Alberta Court in connection with a Garnishee Summons issued on

December 1, 2009, Q.B. Action Number #0903 12033 (the "**Garnishment Funds**"),[3] and certain other amounts to be confirmed by Shell Canada.

24. At the same time, it is proposed that the obligations of Shell Canada and Albian Sands Energy to Atcon Construction, the CRA, the Bank, Emeco, the Province and any other person shall be deemed to have been satisfied by the payment to the Receiver and the Alberta Court of the Shell A/R, to the extent of the amount paid.

25. The Receiver is of the view that the payment mechanism proposed by the Receiver with respect to the Shell A/R detailed above protects the interest of all stakeholders of Atcon Construction that may have an interest in the Shell A/R, including the Receiver, the Monitor, the CRA, the Bank, the Province and Emeco.

PAYMENT OF CCAA OBLIGATIONS

CCAA Obligations

26. Pursuant to the provisions of the March 30 Order, as amended by the April 1 Order, the Receiver was:

(a) authorized and directed by the Court to pay, in the name of and on behalf of the CCAA Debtor Companies and Atcon Industrial (collectively, the "**CCAA Obligations**"):

(i) the fees and disbursements of the Monitor and its counsel with respect to the CCAA Proceedings;

(ii) wages of employees of the CCAA Debtor Companies and Atcon Industrial that were incurred during the period commencing on March 1, 2010 and ending on March 30, 2010; and

[3] On April 1, 2010, the Receiver notified the Accounting Section of the Court of Queen's Bench of Alberta in Edmonton of the Receivership Order and its view that any distribution of the Garnishment Funds by the Alberta Court to judgment creditors of Atcon Construction would be in violation of the provisions of the Receivership Order. The Receiver intends to bring a motion, on notice to all parties that have an interest in the Garnishment Funds, to obtain a Court Order authorizing payment of the Garnishment Funds to the Receiver.

(b) authorized and empowered by the Court to pay, on behalf of the CCAA Debtor Companies and Atcon Industrial:

(i) the per diem amounts owing by the CCAA Debtor Companies and Atcon Industrial to equipment lessors; and

(ii) other expenses and obligations incurred by the CCAA Debtor Companies during the period commencing on March 1, 2010 and ending on March 30, 2010.

27. The original estimate of the unpaid and outstanding CCAA Obligations as at March 30, 2010 was approximately $3.1 million. The Receiver has subsequently refined its calculations and has reduced its estimate to $2.8 million.

Payment of CCAA Obligations to Date

28. As is discussed in greater detail below, since its appointment, the Receiver has not had sufficient funds to pay the total amount of the CCAA Obligations.

CCAA Obligations Paid to Date

29. Since March 30, 2010, approximately $890,000 of the $2.8 million of CCAA Obligations have been paid by the Receiver. Of the $890,000 amount:

(a) approximately $790,000 represents gross wages paid to the employees of the CCAA Debtor Companies and Atcon Industrial in accordance with the March 30 Order and the April 1 Order; and

(b) approximately $100,000 represents CCAA Obligations that had to be paid expeditiously, as payment of such obligations, such as insurance premiums, were critical to the continued operation of the receivership proceedings.

30. Of the $890,000 of CCAA Obligations that have already been paid, approximately $570,000 was paid to employees and insurers through the debiting of the Atcon Construction Bank Account. As the Receiver did not have access to sufficient funds to pay the remaining $320,000 of the $890,000 of CCAA Obligations, the Receiver has had

to use an aggregate amount of approximately $320,000 of the funds advanced to the Receiver pursuant to the borrowing provisions of the Receivership Order (as discussed in greater detail below) to pay these CCAA Obligations.

Outstanding CCAA Payments – Per Diem Amounts

31. As noted above, a portion of the CCAA Obligations that the Receiver has been authorized and empowered by this Honourable Court to pay, for and on behalf of the CCAA Debtor Companies and Atcon Industrial, represents *per diem* amounts regarding certain equipment.

32. Pursuant to the Order of Justice Riordon dated March 22, 2010 granted in the CCAA Proceedings (the "**March 22 Order**"), a copy of which is attached hereto and marked as **Appendix "F"**, *per diem* amounts (the "**Per Diem Amounts**") are due to the lessors of equipment (individually, an "**Equipment Lessor**") for each day that equipment subject to an agreement with an Equipment Lessor was actually being used by the CCAA Debtor Companies and Atcon Industrial. The Receiver has calculated the Per Diem Amounts to be approximately $1.9 million, for the period March 1, 2010 to April 16, 2010, of which approximately $700,000 remains outstanding and payable, as $1.2 million was paid to Caterpillar Financial Services Limited by Atcon Construction on March 25, 2010.

33. To date, the Receiver has been unable to pay the unpaid Per Diem Amounts, in accordance with this Honourable Court's authorization, as the Receiver has not had sufficient funds available to make such payments.

Request for Funds in Atcon Construction Bank Account for Payment of CCAA Obligations

34. During the course of the CCAA Proceedings, accounts receivable that were collected by the CCAA Debtor Companies and Atcon Industrial were deposited in an account in the name of Atcon Construction at the Bank (the "**Atcon Construction Bank Account**"). In addition, funds advanced pursuant to the DIP Facility that was authorized by the Initial Order in favour of the CCAA Debtor Companies and Atcon Industrial were also deposited into the Atcon Construction Bank Account. As a result of the deposits of accounts receivable, borrowings under the DIP Facility have been repaid in full, and as of

March 30, 2010, being the date the Bank's application for the appointment of EYI as Receiver of the CCAA Debtor Companies was heard by this Honourable Court, there was a credit balance in the Atcon Construction Bank Account of approximately $6.0 million.

35. The Receiver understands that the Bank takes the position that it is entitled to rights of set-off or consolidation of accounts with respect to the funds in the Atcon Construction Bank Account and the indebtedness owed by Atcon Construction to the Bank, which, the Receiver understands, was in excess of $49 million as of March 25, 2010. The funds held in the Atcon Construction Bank Account represent almost entirely accounts receivable of Atcon Construction collected during the course of the CCAA Proceedings. Nonetheless, consistent with the March 22 Order, and the other orders made in this and the CCAA Proceedings, the Bank has agreed to pay to the Receiver the sum of $2.23 million for payment of the Outstanding CCAA Payments by the Receiver.

Need for Additional Receiver's Borrowings

36. The Receivership Order authorized the Receiver to borrow, by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $500,000 (or such greater amount as this Court may by further Order authorize).

37. As at March 30, 2010, the Receiver had borrowed $350,000 by way of a Receiver's Certificate issued under the Receivership Order. On April 12, 2010, the Receiver issued a second Receiver's Certificate and borrowed an additional $150,000, bringing its total borrowings to date to $500,000 (collectively, the "**Receiver's Borrowings**"), the maximum amount currently authorized under the Receivership Order.

38. As noted above, the Receiver funded payment of $320,000 of CCAA Obligations from funds sourced from Receivership Borrowings. In addition, the Receiver has funded payment of approximately $115,000 of other specific receivership obligations to date from Receivership Borrowings and miscellaneous receipts. As a result, the Receiver's account contained approximately $80,000 of cash reserves as at April 16, 2010.

39. Upon receipt from the Bank the sum of $2.23 million, the Receiver will receive approximately $320,000 as repayment of the funds sourced from Receiver's Borrowings and used to pay the Outstanding CCAA Payments discussed above. Thereafter, the Receiver will have approximately $400,000 available to it to be used to help fund the ongoing receivership proceedings and will owe the Bank $500,000 of outstanding Receiver's Borrowings.

40. The Receiver has reviewed and revised its funding requirement estimates to reflect its current operations and activities, including the ongoing operating costs of Atcon Construction and the other CCAA Debtor Companies that became Respondents in these receivership proceedings on March 30, 2010. The Receiver estimates that approximately $1.2 million is required for payment of payroll, equipment lease charges, professional fees and other amounts that have accrued up to the date of this First Report but remain unpaid because the Receiver has not had the necessary funds to pay these amounts. In addition, a portion of these funds are necessary to continue the operation of these receivership proceedings until the week ending May 7, 2010.

41. At this time, the Receiver is not expecting to collect any other meaningful amounts of accounts receivable that could be used to fund the ongoing receivership proceedings until the week of May 7, 2010 at the earliest.

42. As a result, the Receiver estimates that it will require additional borrowings of at least $700,000 (in addition to the initial $500,000 of Receivership Borrowings that has previously been drawn) to sustain the receivership proceedings on a go forward basis pending the anticipated receipt of certain accounts receivable in May 2010. Accordingly, the Receiver is seeking the approval of this Honourable Court for an increase of the maximum amount that the Receiver may borrow through the issuance of Receiver's Certificate from $500,000 to $1.2 million.

RELIEF SOUGHT BY THE MONITOR

43. The Receiver respectfully requests that this Court approve Orders:

(a) authorizing Shell Canada to pay to the Receiver the balance of all amounts owing and payable to Atcon Construction, subject to certain terms proposed by the Receiver;

(b) authorizing the Bank to transfer to the Receiver the amount of approximately $2.23 million to allow the Receiver to make payment of the Outstanding CCAA Payments and repay the funds sourced from Receiver's Borrowings and used to date to pay certain CCAA Obligations; and

(c) increasing the maximum principal amount that the Receiver may borrow under the terms of the Receivership Order from $500,000 to $1.2 million.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of April 2010

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

By:

Paul D. Hickey, CA•CIRP
Senior Vice President

APPENDIX “A”

I certify that this document, each page of which has been initialed by me, is a true copy of the original on file in the office of the Court for the Judicial District of Miramichi, issued under the seal of the Court

this 2 day of March 20 10

Monique Robichaud
Under written authorization of the Registrar dated the 8th day of January, 2010

COURT OF QUEEN'S BENCH NEW BRUNSWICK COUR DU BANC DE LA REINE NOUVEAU-BRUNSWICK

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, and ATCON LOGISTICS INC.

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

BETWEEN:

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

APPLICANT

- and –

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

RESPONDENTS

RECEIVERSHIP ORDER

THIS APPLICATION, made by the Applicant for an Order pursuant to Section 33 of the *Judicature Act*, R.S. N.B. 1973, Ch. J-2, (the "**Judicature Act**"), Rule 41 of the Rules of Court of New Brunswick (the "Rules") and Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing Ernst & Young

Inc. ("**EYI**") as receiver and receiver manager (in such capacities, the "**Receiver**") without security, of each of the Respondents' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, including, without limitation, the shares in any subsidiaries of any of the Respondents (the "**Property**") in relation to the business carried on by the Respondents was heard on **March 1st, 2010** at 673 King George Highway, Miramichi, New Brunswick.

ON READING the affidavit of Rocco Fabiano sworn February 25, 2010 and the exhibits thereto, the affidavit of Jane MacEachern sworn February 25, 2010 and the exhibits thereto, the various affidavits of service, on hearing the submissions of counsel for the Applicant and no one appearing on behalf of the Respondent although duly served and on reading the consent of the Receiver to act as the Receiver; and on being informed that the Respondents do not oppose this Application.

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

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

(b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate, and carry on the business of the Respondents, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Respondents;

(d) to make such payments or disbursements as determined are necessary by the Receiver, and in accordance with the previous practice of the applicable Respondent, to return any employee to the jurisdiction in which they reside;

(e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Respondents, or any of them, or any part or parts thereof;

(g) to receive and collect all monies and accounts now owed or hereafter owing to the Respondents and to exercise all remedies of the Respondents in collecting such monies, including, without limitation, to enforce any security held by the Respondents;

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

(i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of any of the Respondents, for any purpose pursuant to this Order;

(j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Respondents;

(k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to any of the Property and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(l) to make payment of any and all costs, expenses and other amounts that the Receiver determines, in its sole discretion, are necessary or advisable to preserve, protect or maintain the Property, including, without limitation taxes, municipal taxes, insurance premiums, repair and maintenance costs, costs or charges related to security, management fees, and any costs and disbursements incurred by any manager appointed by the Receiver;

(m) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(n) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding \$100,000.00, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000.00; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 59 of the Personal Property Security Act (New Brunswick) shall not be required.

(o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of any of the Respondents;

(s) to enter into agreements with any trustee in bankruptcy appointed in respect of any of the Respondents including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by any of the Respondents;

(t) to exercise any shareholder, partnership, joint venture or other rights which any of the Respondents may have including, without limitation, causing any subsidiary of any Respondent to file an assignment in bankruptcy and the replacement, termination or appointment of directors;

(u) to make an assignment in bankruptcy in relation to any or all of the Respondents if, in the opinion of the Receiver, an assignment in bankruptcy in relation to any one Respondent, or all of them, will assist in the Receiver carrying out its duties;

(v) to obtain such policy or policies of insurance as the Receiver determines appropriate for any Person acting as a director or officer of any Respondent; and

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that each of (i) the Respondents, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of any of the Respondents, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE RESPONDENTS OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of any of the Respondents or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Respondents or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Respondents, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on, (ii) exempt the Receiver or the Respondents from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. Without limiting any other provision of this Order, no customer of the Respondents may terminate, amend or otherwise alter any agreement with any of the Respondents except with the written consent of the Receiver or leave of this Court.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with any of the Respondents or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to any of the Respondents are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of any of the Respondents' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the applicable Respondent or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

12. THIS COURT ORDERS that the Receiver, in its sole discretion, may (but shall not be obligated to) establish account(s) in its name on behalf of any of the Respondents for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Respondents, or any of them, if the Receiver determines that the opening of such accounts is appropriate.

13. THIS COURT ORDERS THAT no creditor of the Respondent shall be under any obligation as a result this Order to advance or re-advance any monies or otherwise extend any credit to any of the Respondents.

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

15. THIS COURT ORDERS that all employees of the Respondents shall remain the employees of the applicable Respondent until such time as the Receiver, on the applicable Respondent's behalf, may terminate the employment of such employees. Nothing herein however shall prevent any employee from resigning or otherwise terminating their employment with one or any of the Respondents. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) and 81.6(3) of the BIA, such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

16. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the applicable Respondent, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. THIS COURT ORDERS that nothing herein contained shall require or obligate the Receiver to occupy or to take control, care, charge, occupation, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might, or any part thereof, which may be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other legislation, statute, regulation or rule of law or equity respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, *Canadian Environmental Protection Act, 1999*, the *Clean Water Act*, the *Clean Environment Act*, the *Clean Air Act*, and *Unsightly Premises Act* (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by

applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON LIABILITY

18. THIS COURT ORDERS that EYI and any party acting at its direction or on its behalf including, without limitation, any director, officer or other party appointed by the Receiver in relation to any subsidiary of any of the Respondents, shall incur no liability or obligation as a result of its appointment as the Receiver or the carrying out the provisions of this Order, or in the case of any party acting at the direction or on behalf of the Receiver so long as acting in such capacity, save and except for any gross negligence or wilful misconduct on the part of such party, or in respect of the Receiver's obligations under sections 81.4(5) and 81.6(3) of the BIA, or the Wage Earners' Protection Act, ch.W-1, S.N.B. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Administrative Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Administrative Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. THIS COURT ORDERS the Receiver and its legal counsel shall pass its accounts

from time to time and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Court of Queen's Bench in New Brunswick in accordance with the Rules.

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

22. RECEIVER'S **INDEMNITY** CHARGE

23. THIS COURT ORDERS that the Receiver shall be entitled to and is hereby granted a charge (the "**Receiver's Indemnity Charge**") upon all of the Property as security for all of the obligations incurred by the Receiver including obligations arising from or incident to the performance of its duties and functions under this Order (including the management, operation and carrying on of all or part of the business of any of the Respondents), the *Bankruptcy and Insolvency Act* or otherwise, saving only liability arising from the gross negligence or wilful misconduct of the Receiver.

24. THIS COURT ORDERS that the Receiver's Indemnity Charge shall form a second charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA and subordinate in priority to the Administrative Charge.

25. THIS COURT ORDERS that the costs, fees, expenses and liability of the Receiver giving rise to the Administrative Charge, the Receiver's Indemnity Charge and the Receiver's Borrowings Charge (as defined below) shall be paid in the following manner unless otherwise ordered by this Court:

(a) Firstly, applying the costs incurred in the receivership proceedings specifically attributable to an individual asset or group of assets against the realizations from such asset or group of assets;

(b) Secondly, applying the costs *pro rata* against all of the assets based on the net realization from such asset or group of assets; and

(c) Thirdly, applying non-specific costs incurred in the receivership proceedings *pro rata* against the assets based on the net realization from such asset or group of assets.

FUNDING OF THE RECEIVERSHIP

26. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of making payments (including interim payments) required or permitted to be made by this Order (including, without limitation, payments of amounts secured by the Administrative Charge and the Receiver's Indemnity Charge). The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Indemnity Charge, the Administrative Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

27. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court on seven days notice to the Receiver and the Applicant.

28. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

29. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

30. THIS COURT ORDERS that, notwithstanding anything else contained in this Order, within 48 hours of the date hereof, the Receiver shall review the list of equipment forming part of Exhibit "B" to the affidavit of Jarrod Roy sworn March 1, 2010 and advise Caterpillar Financial Services Limited as to any substantive objection to their security. In the event there is no such objection to the security, the equipment is to be released forthwith to Caterpillar Financial Services Limited.

GENERAL

31. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

32. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondents, or any of them.

33. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada , the United States or Sweden is hereby respectfully requested to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby

respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

34. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

35. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Respondents' estate with such priority and at such time as this Court may determine.

36. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver, the Applicant and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

37. THIS COURT ORDERS that in addition to the reports to be filed by the Receiver under the BIA or *New Brunswick Business Corporations Act*, on the application to the Court of any secured creditor, the Receiver shall file a report of its activities with the Court.

38. THIS COURT ORDERS that the Receiver shall not be discharged without notice to such secured creditors and other parties as the Court directs.

39. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Atlantic Standard Time on the 1st day of March 2010.

Dated at Miramichi, New Brunswick, this **2nd day of March, 2010** and as per oral reasons given on the **1st day of March, 2010**.

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

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. ______________

AMOUNT $____________________

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "**Receiver**") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Court of Queens Bench of New Brunswick (the "**Court**") dated the ___ day of ______, 20__ (the "**Order**") made in an action having Court file number _______, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of $__________, being part of the total principal sum of $__________ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _______ day of each month] after the date hereof at a notional rate per annum equal to the rate of ______ per cent above the prime commercial lending rate of Bank of _________ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at _________, ________.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of ______________, 20__.

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

Per: ________________________________

Name:

Title:

APPENDIX “B”

N/M/17/10

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK **COPY**

IN BANKRUPTCY AND INSOLVENCY

JUDICIAL DISTRICT OF MIRAMICHI

IN THE MATTER OF THE RECEIVERSHIP OF:

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC, and ATCON LOGISTICS INC.

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

BETWEEN:

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

APPLICANT

- and –

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

RESPONDENTS

ORDER

THIS MOTION, made by the Applicant in these proceedings (the "**Receivership Proceedings**") and in the proceedings having Court File No. N/M/16/10 (the "**CCAA Proceedings**"), under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the "**CCAA**"), in relation to:

a. Atcon Construction Inc. ("**Construction**"),

Jell 30 March 2010

b. Atcon Management Services Inc. ("**Management**"),
c. Atcon Civil Inc. ("**Civil**"),
d. Dycon Construction Inc. ("**Dycon**"),
e. Atcon Structures Inc. ("**Structures**"), and
f. Envirem Technologies Inc. ("**Envirem**")

(collectively, the "**Companies**"), for an Order pursuant to Section 33 of the *Judicature Act*, R.S. N.B. 1973, Ch. J-2, (the "**Judicature Act**"), Rule 41 of the Rules of Court of New Brunswick (the "**Rules**") and Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing Ernst & Young Inc. ("**EYI**") as receiver and receiver manager (in such capacities, the "**Receiver**") without security, of each of the Companies' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, including, without limitation, the shares in any subsidiaries of any of the Companies (the "**Property**") in relation to the business carried on by the Companies was heard this 30th day of March, 2010 at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Affidavit of Rocco Fabiano sworn to on March 26, 2010 and on hearing the submissions of counsel for the Respondents, the Companies, the Applicant, the Monitor in the CCAA Proceedings, the Province of New Brunswick, Caterpillar Financial Services Limited, GE Canada Equipment Financing C.P., General Electric Canada Equipment Financing G.P., GE Canada Leasing Services Company, GE VFS Canada Limited Partnership, the Royal Bank of Canada and Key Equipment Finance:

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 33 of the Judicature Act, Rule 41 of the Rules and section 243(1) of the BIA, the Receiver is appointed receiver and receiver manager, without security, of the Property on the terms set out herein.

[illegible] 30 March 2010

INCORPORATION OF ORIGINAL RECEIVERSHIP ORDER

3. **THIS COURT ORDERS** that:

(a) the order of this Court dated March 2, 2010 in the Receivership Proceedings (the "**Receivership Order**") is hereby amended so that the term Respondents, as defined in the Receivership Order, hereby includes each of the Companies;

(b) the Administrative Charge, the Receiver's Indemnity Charge and the Receiver's Borrowings Charge created and granted by the Receivership Order hereby form a charge on the Property of each of the Companies in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person in accordance with the terms and priority set out in the Receivership Order but each such charge in relation to the Property of the Companies shall be and are hereby subordinate to the charges created and granted by the initial Order of this Court dated March 2, 2010 in the CCAA Proceedings (the "**Initial Order**"), as such charges were modified by the Order of this Court dated March 22, 2010;

(c) the Receiver is hereby granted all powers, duties and obligations in relation to each of the Companies and their respective Property as provided in Receivership Order as amended by this Order;

(d) the style and cause in the Receivership Proceedings is hereby amended so as to include each of the Companies as Respondents, and shall be in the form attached hereto as Schedule"A"; and

(e) The Receiverhip Order applies to each of the Companies and their Property in accordance with its terms as modified and provided for herein.

JCR
30 March 2010

ENVIREM

4. **THIS COURT ORDERS** that notwithstanding any other provision of this Order the appointment of the Receiver in relation to Envirem shall be 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 this Court.

EMPLOYEE PAYMENTS

5. **THIS COURT ORDERS** that the Receiver is authorized and directed to cause the payroll for employees of the Companies and Atcon Industrial Services Inc. ("Industrial") to be paid or funded in accordance with usual or ordinary payment practices in respect of work performed for the Companies and Industrial since March 1, 2010.

6. **THIS COURT ORDERS** that all property of Indusrial shall be subject to a charge ("Employee Payment Charge") in favour of the Receiver in an amount equal to the amount paid pursuant to paragraph 5 of this Order to or for the benefit of persons employed in the Industrial business and the Employee Payment Charge shall rank in priority to all other charges and interests in Industrial's assets.

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

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

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 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

COURT OF QUEEN'S BENCH OF N.B. RECEIVED AND FILED APR 01 2010 REÇU ET DÉPOSÉ COUR DU BANC DE LA REINE DU N.-B.

- 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

JMR
1 April 2010

ORDER

THIS MOTION, made by Ernst & Young Inc. in its capacity as receiver and receiver and manager (the "**Receiver**") of the property, assets and undertakings (collectively, the "**Property**") of: (i) Atcon Group Inc., Atcon Holdings Inc. ("**Atcon Holdings**"), Atcon Property Holdings Inc., Atcon Veneer Products Inc, and Atcon Logistics Inc. pursuant to the Receivership Order of this Court granted in these proceedings dated March 2, 2010; and (ii) Atcon Construction Inc. ("**Atcon Construction**"), Atcon Management Services Inc., Atcon Civil Ltd., Dycon Construction Ltd., Atcon Structures Inc. and Envirem Technologies Inc. ("**Envirem**") (collectively, the "**Companies**") pursuant to the Order of this Court granted in these proceedings dated March 30, 2010 (the "**March 30 Order**"), was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Affidavit of Rocco Fabiano sworn to on March 26, 2010 and the exhibits thereto, the Fourth Report of Ernst & Young Inc. in its capacity as the Monitor in the CCAA Proceeding (as defined herein) dated March 29, 2010, the Supplement to the Fourth Report of the Monitor dated March 31, 2010 and the amendment letter agreement dated March 29, 2010 appended thereto (the "**Amendment**") amending the letter of intent dated March 10, 2010 ("**LOI**") previously approved by this Court in the Approval and Vesting Order dated March 22, 2010 granted in these proceeding and in the Approval and Vesting Order dated March 22, 2010 (the "**CCAA Approval and Vesting Order**") granted in the proceedings under the *Companies' Creditors Arrangement Act* with respect to the Companies having Court File No. N/M/16/10 (the "**CCAA Proceeding**"), and on hearing the submissions of counsel for the Applicant, the Receiver, the Monitor and such other counsel in attendance,

AMENDMENTS

1. **THIS COURT ORDERS AND DECLARES** that the Amendment is hereby approved and the execution of the Amendment by the Receiver, in the name of and on behalf of Atcon Holdings, Atcon Construction and 604985 N.B. Inc. ("**604**"), is hereby authorized and approved.

2. **THIS COURT ORDERS AND DECLARES** that the Receiver is hereby authorized and empowered, in the name of and on behalf of Atcon Holdings, Atcon Construction and 604, to

JeR
1 April 2010

negotiate, enter into and execute a further agreement with the Purchaser under the LOI to amend the LOI (the "**Second Amendment**") on terms satisfactory to the Purchaser and the Receiver, provided that the Second Amendment shall provide that the amounts to be advanced to the Monitor by the Purchaser under the terms of the LOI and the Amendment to fund the operations of Envirem in full on an unsecured basis for the period April 3, 2010 to the closing of the transaction shall be held in escrow by the Monitor pending the issuance of the Monitor's Certificate under the CCAA Approval and Vesting Order.

EMPLOYEE PAYMENTS

3. **THIS COURT ORDERS** that paragraph 5 of the March 30 Order is hereby deleted in its entirety and replaced with the following:

> **THIS COURT ORDERS** that the Receiver is authorized and directed to cause the gross payroll for employees of the Companies and Atcon Industrial Services Inc. ("**Industrial**") to be paid or funded in accordance with usual or ordinary payment practices in respect of work performed for the Companies and Industrial for the period commencing on March 1, 2010 and concluding on March 30, 2010.

MONITOR'S FEES AND DISBURSEMENTS

4. **THIS COURTS ORDERS** that the Receiver is hereby authorized and directed to pay, in the name of and on behalf of the Companies and in accordance with paragraph 35 of the Initial Order dated March 2, 2010 the "**Initial Order**") granted in the CCAA Proceeding, the accounts of Ernst & Young Inc., the Court-appointed Monitor of the Companies pursuant to the Initial Order (the "**Monitor**") and counsel to the Monitor. Any accounts of the Monitor and counsel to the Monitor paid for by the Receiver in the name of and on behalf of the Companies in accordance with this Order shall be subject to taxation pursuant to paragraph 36 of the Initial Order.

PER DIEM PAYMENTS TO EQUIPMENT LESSORS

5. **THIS COURT ORDERS** that the Receiver is hereby authorized and empowered to pay, in the name of and on behalf of the Companies and Atcon Industrial Services Inc. ("**Atcon Industrial**"), any unpaid *per diem* amounts owing by the Companies to lessors of equipment pursuant to the Order of this Court dated March 22, 2010 granted in the CCAA Proceeding.

Jur 1 April 2010

OTHER PAYMENTS

6. **THIS COURT ORDERS** that, in addition to paragraphs 3, 4 and 5 of this Order, the Receiver is hereby authorized and empowered to pay, in the name of and on behalf of the Companies and Atcon Industrial, expenses and obligations incurred by the Companies and Atcon Industrial in the ordinary course of business during the period commencing on March 1, 2010 and concluding on March 30, 2010.

Dated at Miramichi, New Brunswick, this 1st day of April, 2010.

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

APPENDIX “D”

Borden Ladner Gervais LLP
Lawyers • Patent & Trade-mark Agents
Scotia Plaza, 40 King Street West
Toronto, Ontario, Canada M5H 3Y4
tel.: (416) 367-6000 fax: (416) 367-6749
www.blgcanada.com

Sam P. Rappos
direct tel.: (416) 367-6033
direct fax: (416) 361-7306
e-mail: srappos@blgcanada.com

BORDEN
LADNER
GERVAIS

April 14, 2010

DELIVERED BY E-MAIL

John Courtright
Managing Counsel
Shell Canada Limited
Law Department
PO Box 100, Stn. M
Calgary, AB T2P 2H5

Dear Mr. Courtright,

Re: Atcon Construction Inc. ("Atcon Construction")

We write to you further to our discussions of April 14, 2010. As you know, we are counsel to Ernst & Young Inc. ("**EYI**"), the Court-appointed receiver and receiver and manager of the property, assets and undertakings of Atcon Construction (the "**Receiver**"). EYI was appointed Receiver of Atcon Construction by the Court of Queen's Bench of New Brunswick pursuant to the Order of Justice Riordon dated March 2, 2010, as amended by the Order of Justice Riordon dated March 30, 2010 (collectively, the "**Receivership Order**"). Copies of the Receivership Order were previously sent to you by e-mail on April 14, 2010, and can be found at www.ey.com/ca/atcon.

Pursuant to paragraph 4 of the Receivership Order, the Court has ordered all firms, corporations or other entities having notice of the Receivership Order to deliver all of Atcon Construction's property in that person's possession to the Receiver upon the Receiver's request. In two (2) letters dated April 9, 2010, the Receiver notified Shell Canada of the Receivership Order and requested that Shell Canada pay to the Receiver the amounts of $6,547,403.08 and $508,011.30 on account of indebtedness owed by Shell Canada Energy Inc. to Atcon Construction. Additionally, in a letter dated April 14, 2010, the Receiver requested that Shell Canada Energy Inc. pay to the Receiver the amount of $10,236,322.97. Copies of the letters are attached hereto.

Further to the requests contained in the letters, we hereby request, on behalf of the Receiver and in accordance with paragraph 4 of the Receivership Order, that Shell Canada deliver forthwith to the Receiver all monies and accounts now owed or hereafter owing by any Shell Canada entity or affiliate to Atcon Construction.

Calgary • Montréal • Ottawa • Toronto • Vancouver • Waterloo Region

BORDEN
LADNER
GERVAIS

You advised us during our 1:00 pm EDT conference call that Shell Canada proposes to pay the amount specified in a Requirement to Pay dated March 29, 2010, being $4,750,074.57, to Canada Revenue Agency ("**CRA**") on April 19, 2010. We understand that a Shell Canada entity is obliged to pay to Atcon Construction an invoice due on April 23, 2010. You asked whether, if Shell Canada paid such amount to CRA, the Receiver would commence proceedings against Shell Canada or otherwise challenge the payment. The Receiver is to obliged carry out the duties and responsibilities placed upon it by the Receivership Order. In that regard, the Receiver does not waive any of its rights in respect of any amounts owing by any Shell Canada entity or affiliate to Atcon Construction (or any other Atcon entity).

During the course of our call we, on behalf of the Receiver, had suggested that it would be preferable to deal with this matter on a consensual or Court-ordered basis so that entitlements to the amounts payable to Atcon Construction by Shell Canada entities or affiliates can be determined on notice to all persons with an interest in the matter. We have taken the liberty of copying counsel to CRA, The Bank of Nova Scotia and the Province of New Brunswick. The Receiver hopes that this matter can be resolved along these lines. In light of the information that you have provided, the Receiver is considering moving before the New Brunswick Court of Queen's Bench, on notice to you and all parties copied on this letter, in respect of this matter.

Yours truly,

Sam P. Rappos
Encl.

Cc: Brian M. Denega, Paul D. Hickey and George C. Kinsman, *Ernst & Young Inc.*
Gregory A. MacIntosh, *Department of Justice Canada* (counsel to CRA)
John B.D. Logan, *Legal Services Branch of the Province of New Brunswick*
Josh J.B. McElman, *Cox & Palmer* (counsel to The Bank of Nova Scotia)

::ODMA\PCDOCS\TOR01\4336411\1

Ernst & Young Inc.
1959 Upper Water Street
13th Floor
Halifax, Nova Scotia B3J 3N2
Tel: 902 420 1080
Fax: 902 420 0503
ey.com/ca

PRIVATE AND CONFIDENTIAL

09 April 2010

Shell Canada Energy Inc.
P.O. Box 5670
Fort McMurray, Alberta
E9H 4W1

NOTICE OF ASSIGNMENT

Dear Sir / Madam :

Re: In the Matter of the Receivership of Atcon Construction Inc.

TAKE NOTICE THAT The Bank of Nova Scotia holds a General Security Agreement on the assets of Atcon Construction Inc., and that pursuant to a court order issued on March 30, 2010 Ernst & Young Inc., has been appointed Receiver and Receiver Manager and have taken possession of the said assets. Copies of the Order can be found on the Receiver's website at www.ey.com/ca/atcon.

The books and records of Atcon Construction Inc. indicate that at this date Shell Canada Energy Inc. is indebted to the company in the amount of $6,547,403.08. If you disagree with the amount shown, please advise immediately. We will require supporting documentation to substantiate the nature of your disagreement.

WE HEREBY REQUEST AND DIRECT that you pay your account to Ernst & Young Inc. at the address shown above, together with all other monies which may now or in the future become due and owing by you to Atcon Construction Inc. A receipt and discharge for the amount you owe can only be given by us, and we have to advise you that you will be responsible for any money paid to anyone except us after the receipt of this notice.

To avoid further action, please make payment on this account immediately. Cheques may be made payable to "Ernst & Young Inc. Receiver and Receiver Manager of Atcon Construction Inc.".

Yours very truly,

ERNST & YOUNG INC.
Receiver and Receiver Manager of
Atcon Construction Inc.

Per:

Christopher Mediratta, CA,CIRP
Vice President

Ernst & Young Inc.
1959 Upper Water Street
13th Floor
Halifax, Nova Scotia B3J 3N2
Tel: 902 420 1080
Fax: 902 420 0503
ey.com/ca

PRIVATE AND CONFIDENTIAL

09 April 2010

Shell Canada Energy Inc.
P.O. Box 100
Station M, 400
4th Ave. SW
Calgary, Alberta
T2P 2H5

NOTICE OF ASSIGNMENT

Dear Sir / Madam :

Re: In the Matter of the Receivership of Atcon Construction Inc.

TAKE NOTICE THAT The Bank of Nova Scotia holds a General Security Agreement on the assets of Atcon Construction Inc., and that pursuant to a court order issued on March 30, 2010 Ernst & Young Inc., has been appointed Receiver and Receiver Manager and have taken possession of the said assets. Copies of the Order can be found on the Receiver's website at www.ey.com/ca/atcon.

The books and records of Atcon Construction Inc. indicate that at this date Shell Canada Energy Inc. is indebted to the company in the amount of $508,011.30. If you disagree with the amount shown, please advise immediately. We will require supporting documentation to substantiate the nature of your disagreement.

WE HEREBY REQUEST AND DIRECT that you pay your account to Ernst & Young Inc. at the address shown above, together with all other monies which may now or in the future become due and owing by you to Atcon Construction Inc. A receipt and discharge for the amount you owe can only be given by us, and we have to advise you that you will be responsible for any money paid to anyone except us after the receipt of this notice.

To avoid further action, please make payment on this account immediately. Cheques may be made payable to "Ernst & Young Inc. Receiver and Receiver Manager of Atcon Construction Inc.".

Yours very truly,

ERNST & YOUNG INC.
Receiver and Receiver Manager of
Atcon Construction Inc.

Per:

Christopher Mediratta, CA,CIRP
Vice President

Ernst & Young Inc.
1959 Upper Water Street
13th Floor
Halifax, Nova Scotia B3J 3N2
Tel: 902 420 1080
Fax: 902 420 0503
ey.com/ca

PRIVATE AND CONFIDENTIAL

13 April 2010

Shell Canada Energy Inc.
P.O. Box 5670
Fort McMurray, Alberta
E9H 4W1

NOTICE OF ASSIGNMENT

Dear Sir / Madam :

Re: In the Matter of the Receivership of Atcon Construction Inc.

TAKE NOTICE THAT The Bank of Nova Scotia holds a General Security Agreement on the assets of Atcon Construction Inc., and that pursuant to a court order issued on March 30, 2010 Ernst & Young Inc., has been appointed Receiver and Receiver Manager and have taken possession of the said assets. Copies of the Order can be found on the Receiver's website at www.ey.com/ca/atcon.

The books and records of Atcon Construction Inc. indicate that at this date Shell Canada Energy Inc. is indebted to the company in the amount of $10,236,322.97. If you disagree with the amount shown, please advise immediately. We will require supporting documentation to substantiate the nature of your disagreement.

WE HEREBY REQUEST AND DIRECT that you pay your account to Ernst & Young Inc. at the address shown above, together with all other monies which may now or in the future become due and owing by you to Atcon Construction Inc. A receipt and discharge for the amount you owe can only be given by us, and we have to advise you that you will be responsible for any money paid to anyone except us after the receipt of this notice.

To avoid further action, please make payment on this account immediately. Cheques may be made payable to "Ernst & Young Inc. Receiver and Receiver Manager of Atcon Construction Inc.".

Yours very truly,

ERNST & YOUNG INC.
Receiver and Receiver Manager of
Atcon Construction Inc.

Per:

Paul D. Hickey, CA•CIRP
Senior Vice President

APPENDIX “E”

RC255

Canada Revenue Agency | Agence du revenu du Canada

REQUIREMENT TO PAY
DEMANDE FORMELLE DE PAIEMENT

IMPORTANT - SEE REVERSE IMPORTANT - VOIR AU VERSO

Date	MAR 2 9 2010		TSO BSF
Atlantic Regional Collection/Compliance Centre			9889
Contact - Personne-ressource: K. Jensen	Tel. - Tél: (800) 618-4726		Ext. - Poste: 3269
Reference number - Numéro de référence: 970176	Toll Free - Sans frais: 1 800-618-4726		

Shell Canada Limited
Att: Accounts Payable
PO Box 100, Station M
Calgary
AB T2P 2H5

Atcon Construction Inc.
626 Newcastle Blvd
Miramichi
NB E1V 2L3

Account number / Numéro de compte	100314434RP0001

You are hereby required to pay to the Receiver General on account of the above-named tax debtor's liability under subsection 227(10.1) of the *Income Tax Act* or similar provision*, or under corresponding provisions of the Canada Pension Plan, the *Unemployment Insurance Act*, or the *Employment Insurance Act*.

(1) **forthwith**, the moneys otherwise and immediately payable to the tax debtor, his legal representative, or a secured creditor* who has a right to receive the moneys that, but for a security interest* in favour of the secured creditor, would be payable to the tax debtor or his legal representative;

(2) all other moneys otherwise payable to the tax debtor, his legal representative, or a secured creditor described in (1) which you will be, within one year, liable to pay, as and when the moneys become payable;

but do not pay hereunder more than $4,750,074.57 (the maximum payable).

Please make cheques or money orders payable to the Receiver General and remit them with one of the enclosed Remittance Vouchers or with the tax debtor's name, address, account and reference number as well as the remitter's name in the enclosed addressed envelopes.

Failure to pay the Receiver General the amounts required above renders you personally liable to pay those amounts to Her Majesty.

This requirement has been executed under one or more of the *Income Tax Act*, the Canada Pension Plan, the *Unemployment Insurance Act*, the *Employment Insurance Act*.

Team Leader, Revenue Collections

* The words "similar provisions," "secured creditor," and "security interest" have the meaning assigned to them in subsection 224(1.3) of the *Income Tax Act*.

La présente exige que vous versiez au receveur général, au titre de l'obligation du débiteur fiscal mentionné ci-dessus, en vertu du paragraphe 227(10.1) de la *Loi de l'impôt sur le revenu* ou d'une disposition semblable* ou des dispositions correspondantes du Régime de pensions du Canada ou de la *Loi sur l'assurance-chômage ou de la Loi sur l'assurance-emploi*:

(1) **immédiatement**, les sommes autrement et alors payables au débiteur fiscal, à son représentant juridique ou à un créancier garanti* ayant le droit de recevoir les sommes qui, à l'exception d'une garantie en faveur du créancier garanti*, seraient payables au débiteur fiscal ou à son représentant juridique;

(2) toutes les autres sommes autrement payables au débiteur fiscal ou au créancier garanti décrit au point (1) que vous devrez de payer dans un an, au fur et à mesure que les sommes deviendront payables;

mais vous n'avez pas à verser plus que 4,750,074.57$ (le maximum payable).

Veuillez libeller les chèques ou mandats à l'ordre du receveur général et les faire parvenir dans les enveloppes-réponses ci-jointes avec une des pièces de versement fournies, ou avec les nom, adresse et numéro de compte et de référence du débiteur fiscal y compris le nom du payeur.

À défaut de verser au receveur général les sommes exigées ci-dessus vous serez personnellement redevable du paiement de ces sommes à Sa Majesté.

La présente demande formelle a été établie en vertu d'une ou de plusieurs des lois suivantes : la *Loi de l'impôt sur le revenu*, le Régime de pensions du Canada, la *Loi sur l'assurance-chômage* et la *Loi sur l'assurance-emploi*.

Chef d'équipe, Recouvrement des recettes

*Les expressions « disposition semblable », « créancier garanti » et « garantie » sont prises au sens qui leur est donné au paragraphe 224(1.3) de la *Loi de l'impôt sur le revenu*.

(THIRD PARTY / TIERS)

APPENDIX “F”

N/M/16/10

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

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 CONSTRUCTION INC., ATCON INDUSTRIAL SERVICES INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONTSTRUCTION LTD., ATCON STRUCTURES INC. and ENVIREM TECHNOLOGIES INC., all of which are carrying on business in the Province of New Brunswick

RESPONDENTS

ORDER

THIS MOTION, made by Ernst & Young Inc. in its capacity as Court-appointed monitor in these proceedings (the "**Monitor**") was heard the 15th and 22nd days of March 2010 at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Monitor's First Report to the Court dated March 12 2010, the Monitor's Confidential Supplement to the First Report dated March 12, 2010, the Monitor's Second Supplement to the First Report dated March 14, 2010, and on hearing the submissions of counsel for the Respondents, the Applicant, the Monitor, the Province of New Brunswick, Caterpillar Financial Services Limited, GE Canada Equipment Financing C.P., General Electric Canada Equipment Financing G.P., GE Canada Leasing Services Company, GE VFS Canada Limited Partnership, the Royal Bank of Canada and Key Equipment Finance:

INTERPRETATION

1. **THIS COURT ORDERS** that capitalized words used in this Order that are not otherwised defined in this Order have the meanings ascribed to them in the initial order dated March 2, 2010 in this proceeding (the "**Initial Order**").

PER DIEM PAYMENTS TO EQUIPMENT LESSORS

2. **THIS COURT ORDERS** that the Companies are hereby authorized and directed to pay *per diem* amounts to lessors of equipment ("**Equipment Lessors**", and individually an "**Equipment Lessor**") for each day that equipment subject to an agreement with an Equipment Lessor ("**Equipment Agreement**") was actually being used by the Companies ("**In Use Equipment**") prior to that equipment being released in accordance with Paragraph 5 of this Order . For the purposes of this paragraph "*per diem* amount" in respect of an item of In Use Equipment means the monthly amount payable as of March 2, 2010 by a Company (such calculation of monthly amounts payable to exclude consideration for skip payments) for that item of In Use Equipment divided by 31 and multiplied by the number of days such item of In Use Equipment was actually used. Such *per diem* payments shall be made by the Companies weekly in arrears. The payment obligations of the Companies under this paragraph are without prejudice to any other rights of any Equipment Lessor under the applicable Equipment Agreement or under any applicable law.

3. **THIS COURT ORDERS** that In the event that an Equipment Agreement between a Company and an Equipment Lessor does not allocate an amount payable in respect of each item of In Use Equipment, the relevant Company shall pay a daily amount that is equal to a proportion of the daily amount, calculated in the manner provided in paragraph 2 of this Order, otherwise payable under such an agreement. For the purposes of this paragraph, the proportion of the daily amount payable shall be the amount that the original cost of the relevant In Use Equipment bears to the original cost of all equipment subject to such agreement.

RELEASE OF EQUIPMENT

4. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, administrator, interim receiver, receiver-manager or agent of any Person with respect to the Property, including without limitation any Returned Equipment (as defined herein). The Monitor shall not take possession of the Property and shall not, by fulfilling its obligations hereunder, the Initial Order and the CCAA, be deemed to have taken or maintained possession, care, charge, management or control of the Property.

5. **THIS COURT ORDERS** that notwithstanding any other provision of this Order or the Initial Order (other than paragraph 4 of this Order):

a. All equipment that is no longer actually being used by such Company to carry on its Business shall be released as soon as possible and without delay.

b. Upon making a determination that equipment employed by a Company is no longer actually being used by such Company to carry on its Business, the Monitor shall issue a certificate to an Equipment Lessor substantially in the form attached as **Schedule "A"** hereto (the "**Equipment Certificate**") confirming that the Equipment Lessor may proceed to take possession, control and management of such equipment listed in the appendix thereto subject to the terms contained therein and this Order (the "**Returned Equipment**").

c. An Equipment Certificate shall be issued forthwith to the applicable Equipment Lessor with respect to all equipment employed by Construction in performing its obligations under the Shell Contract and/or the Albian Contract which is subject to an Equipment Agreement.

d. The Monitor shall, as soon as possible, co-ordinate and assist the Equipment Lessors to facilitate the Equipment Lessor obtaining possession and control of Returned Equipment. The Monitor shall establish a schedule to faciliate the orderly return of Returned Equipment in consultation with each applicable Company and Equipment Lessor and assist in that process.

e. An Equipment Lessor with an Equipment Certificate shall be entitled to retrieve the Returned Equipment from the possession of any Person on the terms and conditions established by the Monitor, solely at their own cost and expense, but without prejudice to any rights under the applicable Equipment Agreement, and the stays provided in the Initial Order shall no longer apply to such Returned Equipment.

f. All Persons shall not interfere with an Equipment Lessor with an Equipment Certificate exercising its rights to recover the Returned Equipment listed in the applicable Equipment Certificate.

g. This Order, or the consent of any party thereto, and any Equipment Certificate, or the Monitor's issuance thereof, shall not be a bar to any argument, or any defence to any argument, advanced by any party to this proceeding and, without limiting the foregoing, the release of any equipment shall be on a non-recourse basis without prejudice to any existing rights or obligations of the applicable Company or any other party claiming an interest in the Returned Equipment. The Monitor has made no assessment of any such claims and shall not be obligated to prior to the issuance of an Equipment Certificate.

RELEASE OF CHARGES

6. **THIS COURT ORDERS** that notwithstanding any other provision of this Order or the Initial Order and on being satisfied that the Monitor, the Applicant and their counsel have consented to the following, the Directors Charge, the Administration Charge and the DIP Lenders Charge created by the Initial Order shall not apply to the equipment provided to the Companies by virtue of a lease or financing agreement, of Caterpillar Financial Services Limited, GE Canada Equipment Financing C.P., General Electric Canada Equipment Financing G.P., GE Canada Leasing Services Company, GE VFS Canada Limited Partnership, the Royal Bank of Canada, or Key Equipment Finance.

Dated at Miramichi, New Brunswick, this 22nd day of March, 2010.

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

Schedule A – Form of Certificate

N/M/16/10

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

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 –

IN THE MATTER OF ATCON CONSTRUCTION INC., ATCON INDUSTRIAL SERVICES INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONTSTRUCTION LTD., ATCON STRUCTURES INC. and ENVIREM TECHNOLOGIES INC., all of which are carrying on business in the Province of New Brunswick

RESPONDENTS

EQUIPMENT CERTIFICATE

RECITALS

A. Pursuant to an Order of The Honourable Mr. Justice Riordon of The Court of Queen's Bench of New Brunswick (the "**Court**") dated March 2, 2010, Ernst & Young Inc. was appointed as monitor (the "**Monitor**") in respect of ____________________ (the "**Debtor**").

B. Pursuant to an Order of the Court dated March 22, 2010 (the "**Equipment Order**"), the Court approved the return of equipment employed by the Debtor and subject to an Equipment Agreement that, as determined by the Monitor in consultation with the Debtor, is no longer required by the Debtor to carry on its Business.

C. This Equipment Certificate is without prejudice to any existing rights or obligations of the Debtor or any other party claiming an interest in the Released Equipment. The Monitor has made no assessment of any such claims.

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

THE MONITOR CERTIFIES the following:

1. The Debtor no longer requires the equipment listed in Appendix A hereto to carry on its Business, and possession, control and management such equipment may be taken by __________________________________, an Equipment Lessor.

2. This Certificate was delivered by the Monitor at ________ [TIME] on _______ [DATE].

ERNST & YOUNG INC. in its capacity as Monitor in respect of, and in the name and on behalf of, ____________________, and not in its personal or corporate capacity

By: ______________________________

Name:

Title: