

**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

**SECOND REPORT OF THE RECEIVER
May 10, 2010**

INTRODUCTION AND PURPOSE

1. In connection with the applications of The Bank of Nova Scotia (the “**Bank**”) pursuant to section 33 of the *Judicature Act* (New Brunswick), Rule 41 of the Rules of Court of New Brunswick, and section 243 of the *Bankruptcy and Insolvency Act* (Canada) that were heard by The Honourable Mr. Justice Riordon of the Court of Queen’s Bench of New Brunswick on March 1, 2010 and March 30, 2010, Ernst & Young Inc. (“**EYI**”) was respectively appointed as receiver and receiver manager (the “**Receiver**”) of the property, assets and undertakings of:
 - (a) Atcon Group Inc., Atcon Holdings Inc., Atcon Property Holdings Inc. (“**Atcon Property Holdings**”), Atcon Veneer Products Inc. and Atcon Logistics Inc. pursuant to the Receivership Order dated March 2, 2010 (the “**March 2 Order**”);¹ and
 - (b) Atcon Construction Inc., Atcon Management Services Inc., Atcon Civil Inc., Dycon Construction Inc., Atcon Structures Inc. and Envirem Technologies Inc. pursuant to an Order dated March 30, 2010 granted in these proceedings (the “**March 30 Order**”, and together with the March 2 Order, the “**Receivership Order**”).²
2. The Receivership Order authorized the Receiver to, among other things:
 - (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) to engage consultants, appraisers, agents and experts, among other persons, to assist with the exercise of the Receiver’s powers and duties;

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.

- (d) 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;
 - (e) 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, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; 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
 - (f) 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.
3. The purpose of this Second Report is to report to this Honourable Court on the status of the Beechwood Property (as defined herein) and recommend that this Honourable Court grant an Order authorizing the Receiver to sell the Beechwood Property, approving the agreement of purchase and sale dated April 16, 2010 with respect to the Beechwood Property and vesting the Beechwood Property in and to the purchasers listed on the APS (as defined herein) (the “**Purchasers**”) free and clear of any liens or encumbrances.

TERMS OF REFERENCE

4. In preparing this Second 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 Second Report or relied upon by the Receiver in preparing this Second 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 Second Report are in Canadian dollars unless otherwise noted.
6. Capitalized terms not defined in this Second 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).

BEECHWOOD PROPERTY

8. EYI was appointed as Receiver of the Property of Atcon Property Holdings pursuant to the March 2 Order. Following its appointment, and in accordance with the provisions of the Receivership Order, the Receiver performed a review of the books, records and asset listings of Atcon Property Holdings. The Property of Atcon Property Holdings includes a residential property municipally known as 284 Beechwood Drive, Miramichi, New Brunswick (the "**Beechwood Property**"). Attached hereto and marked as **Appendix "A"** is a copy of a Certificate of Registered Ownership with respect to the Beechwood Property dated April 21, 2010 (the "**Certificate of Registered Ownership**").
9. As set out in the Certificate of Registered Ownership, Atcon Property Holdings became the owner of the Beechwood Property on November 14, 2006, and the only party with an encumbrance or charge registered against the Beechwood Property with the New Brunswick Land Titles Office is The Bank of Nova Scotia (the "**Bank**").
10. At the time of the Receiver's appointment on March 1, 2010, the Beechwood Property was being occupied by an individual on a rent-free basis. The Receiver understands that

Mr. Robbie Tozer, the principal of Atcon Property Holdings, had agreed to permit the individual to reside at the Beechwood Property for a period of time due to the fact that individual's former residence had burned down and the individual required a temporary residence while a new residence was being built. The Receiver also understands that such arrangement was not reduced to a written agreement.

11. Following its appointment, the Receiver discussed with the individual his occupancy of the Beechwood Property and his future intentions with respect to the Beechwood Property. The individual confirmed that he was prepared to vacate the premises by April 4, 2010. The Receiver confirms that the individual vacated the Beechwood Property on April 4, 2010.
12. On April 6, 2010, the Receiver, pursuant to the powers contained in paragraphs 3(e) and (m) of the Receivership Order, entered into a listing agreement with a licensed real estate agent, RE/MAX 3000 Ltd./Ltee ("**Re/Max**"), for the marketing and sale of the Beechwood Property. Attached hereto and marked as **Appendix "B"** is a copy of the Listing Agreement (Authority to Sell) dated April 6, 2010.
13. The Receiver has been informed by Re/Max that Atcon Property Holdings previously listed the Beechwood Property for sale in 2009 with a listing price of \$205,000, but was unable to find a purchaser for the Beechwood Property.
14. Re/Max discussed with the Receiver the value of residential properties similar to the Beechwood Property in Miramichi, New Brunswick, and informed the Receiver that, in its opinion, an appropriate listing price for the Beechwood Property at that time was \$194,500. Accordingly, based on the failed attempt by Atcon Property Holdings to sell the Beechwood Property for \$205,000 in 2009, and the advice received from Re/Max, the Receiver agreed to have the Beechwood Property listed at \$194,500 on the Multiple Listing Service ("**MLS**") on April 6, 2010.
15. Following the listing of the Beechwood Property on MLS, Re/Max received an offer to purchase the Beechwood Property for \$175,000 on April 7, 2010. The Receiver sent a

counter-offer to the offeror in the amount of \$185,000, which received no response from the offeror.

16. On April 10, 2010, Re/Max received a second offer to purchase the Beechwood Property from the Purchasers for \$175,000. At the time the second offer was received, another party expressed interest in the Beechwood Property, and as a result, prior to the Receiver making a formal counter-offer, the Purchasers increased their initial offer to \$185,000. The Receiver discussed the increased offer with the Bank, and on April 13, 2010 the increased offer was accepted by the Receiver, subject to the approval of this Honourable Court. Attached hereto and marked as **Appendix "C"** is a copy of the agreement of purchase and sale dated April 13, 2010 (the "APS").
17. The APS provides that the Beechwood Property is being sold on an "as is, where is" basis. However, as detailed in section 12 of the APS, the Purchasers were entitled to an inspection of the Beechwood Property and had the ability to terminate the APS by April 20, 2010 if the results of the inspection were not satisfactory to the Purchasers. The Receiver has been informed by Re/Max that the Purchasers completed an inspection of the Beechwood Property on April 15, 2010 and confirmed in writing that the Beechwood Property was in acceptable condition. As a result, the Purchasers have waived all conditions under the APS, and the Receiver understands that, in the event that this Honourable Court approves the APS and the sale transaction, the Purchasers expect to be in a position to close the Beechwood Property sale transaction on or about May 13, 2010.
18. After reviewing the APS and obtaining the view of Re/Max as to the reasonableness of the purchase price, the Receiver believes that the APS is the superior offer received for the Beechwood Property and should be approved by this Honourable Court. The only reasonable alternative to a sale of the Beechwood Property under the APS would be the continued listing of the Beechwood Property on MLS, which does not guarantee a sale will be successfully completed at the same or higher price as contained in the APS, which is approximately 95% of the listing price. Also, and as noted above, the Receiver has discussed the APS with the Bank and the Bank, as the holder of the only encumbrances

or charges registered against the Beechwood Property, has confirmed its consent to the sale of the Beechwood Property under the APS.

19. Accordingly, the Receiver believes it has conducted an appropriate market test for the Beechwood Property and recommends that this Honourable Court authorize the Receiver to enter into the APS and approve the sale of the Beechwood Property pursuant to the APS.

RELIEF SOUGHT BY THE RECEIVER

20. The Receiver respectfully requests that this Court grant an order authorizing the Receiver to sell the Beechwood Property, approving the APS and vesting the Beechwood Property in and to the Purchasers free and clear of any encumbrances and liens.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of May 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