

**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**

**TWENTY-SIXTH REPORT OF THE RECEIVER  
(Sale of 114 Whalen Street Property)  
18 September 2013**

**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 1 March 2010 and 30 March 2010, Ernst & Young Inc. ("**EY**") was respectively appointed as receiver and receiver manager (the "**Receiver**") of the property, assets and undertakings of:

- (a) Atcon Group Inc., Atcon Holdings Inc., Atcon Property Holdings Inc., Atcon Veneer Products Inc. and Atcon Logistics Inc. pursuant to the Receivership Order dated 2 March 2010 granted in these proceedings (the “**March 2 Order**”); and
  - (b) Atcon Construction Inc., Atcon Management Services Inc., Atcon Civil Ltd., Dycon Construction Ltd., Atcon Structures Inc. and Envirem Technologies Inc. (now known as 058545 N.B. Inc.) pursuant to an Order dated 30 March 2010 granted in these proceedings (the “**March 30 Order**”, and the March 30 Order together with the March 2 Order, the “**Receivership Orders**”).
2. The Receivership Orders authorized the Receiver to, among other things:
- (a) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
  - (b) receive, preserve and protect the Property, or any parts thereof;
  - (c) engage consultants, appraisers, agents and experts, among other persons, to assist with the exercise of the Receiver's powers and duties;
  - (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 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
  - (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 Twenty-Sixth Report is to report to this Honourable Court on the proposed sale of 114 Whalen Street (as defined below) and request that this Honourable Court grant an Order:
- (a) authorizing the Receiver to sell 114 Whalen Street to the Purchaser (as defined below);
  - (b) authorizing and directing the Receiver to take such steps and execute such additional documents as may be necessary or desirable for the completion of the 114 Whalen Street sale transaction;

- (c) vesting 114 Whalen Street in and to the Purchaser free and clear of any liens or encumbrances upon delivery of the Receiver's Certificate to the Purchaser;
- (d) authorizing and empowering the Receiver to utilize the net sale proceeds of 114 Whalen Street for the purpose of making payments (including interim payments) required or permitted by the Receivership Order; and
- (e) seek the approval of this Honourable Court of the conduct, actions and activities of the Receiver set out in the Twenty-Sixth Report.

#### **TERMS OF REFERENCE**

- 4. In preparing this Twenty-Sixth Report, the Receiver has been provided with, and has relied upon unaudited historical financial statements, other unaudited financial information and projections prepared by the Respondents, 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 that 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 Twenty-Sixth Report or relied upon by the Receiver in preparing this Twenty-Sixth Report. Further, the nature of the Receiver's work completed in these proceedings will not necessarily disclose errors, misstatements, irregularities or illegal acts, if such exist, on the part of the Respondents, or its officers or employees or in the information.
- 5. All references to monetary amounts in this Twenty-Sixth Report are in Canadian dollars unless otherwise noted.
- 6. Capitalized terms not defined in this Twenty-Sixth Report are as defined in the Receivership Orders.
- 7. Copies of court materials in these proceedings may be obtained from the Receiver's website established in connection with the Respondents ([www.ey.com/ca/atcon](http://www.ey.com/ca/atcon)).

#### **SALE OF 114 WHALEN STREET**

- 8. EY was appointed as Receiver of the Property of Atcon Property Holdings Inc. ("**Atcon Property Holdings**") pursuant to the March 30 Order. Following its appointment, and in accordance with the provisions of the Receivership Orders, the Receiver performed a review of the books, records and asset listings of Atcon Property Holdings.

9. The Property of Atcon Property Holdings includes property municipally known as 114 Whalen Street, Miramichi, New Brunswick, bearing PAN 2811203 and PID 40179798 ("**114 Whalen Street**"). 114 Whalen Street consists of a building measuring approximately 17,100 square feet located on a lot of approximately 1.068 acres in the upper industrial park in Newcastle, Miramichi. The building is comprised of three bays of approximately 25 feet by 120 feet, 50 feet by 120 feet and 40 feet by 120 feet, or 13,800 square feet of industrial space located on the main floor and approximately 3,300 square feet of office space located on the second floor.
10. In July 2010, the Receiver sought the approval of this Honourable Court to conduct a tender process with respect to the assets of various of the Atcon Companies located in the Province of New Brunswick and the Province of Newfoundland & Labrador that would be suitable to form the basis of a tender sale process and potential *en bloc* sale of construction and quarry related assets (collectively, the "**Atcon Eastern Assets**"). Pursuant to the Order of Justice Riordon dated 28 July 2010 granted in these proceedings, this Honourable Court approved a tender process with respect to the Atcon Eastern Assets (the "**Tender Process**"). 114 Whalen Street was included in the Atcon Eastern Asset to be sold as part of the Tender Process.
11. Following the completion of the Tender Process and the receipt of tenders by the Receiver, the Receiver identified the combination of tenders that maximized the net recovery from the Atcon Eastern Assets for the receivership estates of the Respondents. The Receiver did not receive an offer for 114 Whalen Street during the Tender Process.
12. As 114 Whalen Street was not sold as part of the Tender Process, the Receiver, on 29 October 2010, entered into a listing arrangement with RE/MAX 3000 Ltd./Ltee ("**Re/Max**"), a qualified local real estate agent, for the marketing and sale of 114 Whalen Street. The Receiver discussed with Re/Max the estimated value of 114 Whalen Street and Re/Max informed the Receiver that, in its opinion, a listing price of \$199,000 for the property was appropriate. Accordingly, based on the advice received from Re/Max the Receiver agreed to a listing price of \$199,000.
13. On 7 December 2010, the Receiver was presented with its first offer (the "First Offer") to acquire 114 Whalen Street in the amount of \$125,000. The Receiver reviewed the First Offer and determined that the First Offer was unacceptable as it offered insufficient value compared to the property's listing price of \$199,000.
14. A second offer for \$125,000 to purchase 114 Whalen Street was received on 19 January 2011 (the "**Second Offer**") from the same party who made the First Offer. The Receiver reviewed the Second Offer and again determined that the Second Offer was unacceptable as it offered insufficient value compared to the property's listing price of \$199,000.

15. The listing agreement for 114 Whalen Street expired on 28 February 2011 and the Receiver decided not to immediately re-list 114 Whalen Street as the building provided suitable office and record storage space which was being used to house the Applicants' books and records which were being regularly accessed by the Receiver over time as the Receiver pursued various realization initiatives for the benefit of the Estates' creditors.
16. After having made significant progress on the realization initiatives, the Receiver entered into a second listing arrangement with Re/Max dated 25 July 2013 with respect to 114 Whalen Street. The Receiver discussed with Re/Max the estimated value of 114 Whalen Street given the then current economic conditions and Re/Max informed the Receiver that, in its opinion, a listing price of \$229,000 for the property was appropriate. Accordingly, based on the advice received from Re/Max the Receiver agreed to a listing price of \$229,000.
17. An offer to purchase 114 Whalen Street was made on 8 August 2013 from Delway Enterprises Ltd. (the "**Purchaser**"). The Purchaser's offer was subsequently accepted by the Receiver on 13 August 2013. The Agreement of Purchase and Sale ("**APS**") is attached as Appendix A. The APS contemplates 114 Whalen Street being sold on an "as-is, where-is" basis, subject to Court approval being granted on or before 30 September 2013, with the closing of the transaction to be completed on or before 30 October 2013.
18. The Receiver has conducted a search of 114 Whalen Street under the *Land Titles Act* (New Brunswick), which search reveals that 114 Whalen Street is subject to encumbrances in favour of:
  - (a) Aliant Telecom Inc.;
  - (b) New Brunswick Power Corporation;
  - (c) Caterpillar Financial Services Limited; and
  - (d) The Bank, a secured creditor of Atcon Property Holdings.

Attached hereto as Appendix B is a copy of the Certificate of Registered Ownership obtained by the Receiver in respect of 114 Whalen Street, with a currency date of 16 September 2013.

19. In addition to the foregoing encumbrances, 114 Whalen Street forms part of the Property charged by the Directors Charge, Administration Charge and DIP Lenders Charge created by the Initial Order dated 1 March 2010 in the *Companies' Creditors Arrangement Act* proceedings of Atcon Construction (Court File No. N/M/16/10), as well as the Administrative Charge, Receiver's Indemnity Charge and the Receiver's Borrowings Charge created by the Receivership Orders.

20. The Receiver is of the view that the price to be received by the Receiver provides for a reasonable realization on 114 Whalen Street for the stakeholders of Atcon Property Holdings, given the time that the property has been on the market and the selling price in relation to the listing price. As well, the Receiver reports that Caterpillar, being the secured creditor with the economic interest in the Property, is supportive of the sale of 114 Whalen Street to the Purchaser.
21. As a result, the Receiver respectfully requests that this Honourable Court grant an Order vesting 114 Whalen Street in and to the Purchaser, free and clear of all claims and encumbrances, upon the delivery by the Receiver of the Receiver's Certificate to the Purchaser.

**RELIEF SOUGHT BY THE RECEIVER**

22. The Receiver respectfully requests that this Court grant:
- (a) an order vesting 114 Whalen Street in and to Purchaser free and clear of any liens or encumbrances upon the delivery by the Receiver of the Receiver's Certificate to the Purchaser; and
  - (b) approving the conduct, actions and activities of the Receiver in administering these receivership proceedings as described in the Twenty-Sixth Report.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of September 2013

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

By:



George C. Kinsman, CA•CIRP  
Senior Vice President

**Twenty-Sixth Report of the Receiver**  
**18 September 2013**  
**Appendix A**



## AGREEMENT OF PURCHASE AND SALE

Approved by The New Brunswick Real Estate Association for use by members under  
An Act to Incorporate The New Brunswick Real Estate Association



The attached schedule, if applicable, forms part of this contract:

- ☐ Vacant Land      ☐ Mini/Mobile Home      ☐ Condominium      ☐ Multi-Use Residential Income Properties

The Buyer Delway Enterprises Ltd.

offers to buy from the Seller Ernst & Young Inc. in its capacity Receiver & Receiver Manager for Atcon Group Inc.et.al through  
RE/MAX 3000 Ltd/Ltée and RE/MAX 3000 Ltd/Ltée  
Seller's Agent (Company) Buyer's Agent (Company)

the Property designated as civic address: 114 WHALEN ST MIRAMICHI E1V 2L3

having PID(s): 40179798 PAN #: 2811203 (the "Property")

at a purchase price of Two Hundred Five Thousand Dollars  
(\$ 205,000.00) on the following terms and conditions.

### 1. HST

The parties agree that if this transaction is subject to HST, any such HST applicable to the transaction ☐ IS or ☒ IS NOT included in the purchase price.

|                                      |                                     |
|--------------------------------------|-------------------------------------|
| <br><small>Seller's Initials</small> | <br><small>Buyer's Initials</small> |
|--------------------------------------|-------------------------------------|

### 2. DEPOSIT

(a) The Buyer submits with this offer Five Thousand Dollars (\$ 5,000.00)  
☐ CASH / ☒ CHEQUE payable to the Listing Agent as a deposit to be held in trust, pending completion or other termination of this Agreement. The deposit shall be credited towards the purchase price on completion, and the Buyer shall pay the balance of the purchase price on closing or as otherwise stated in this Agreement.

(b) The Buyer agrees to increase deposit to \$ \_\_\_\_\_ or \_\_\_\_\_ % of the purchase price on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

### 3. FINANCING

This Agreement is subject to the Buyer delivering to the Seller or the Seller's Agent written proof of financing in the amount of approximately \$ \_\_\_\_\_ (or \_\_\_\_\_ % of purchase price) on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, failing which this Agreement becomes null and void.

### 4. CLOSING DATE

This Agreement shall be completed on or before the 30 day of October, 2013 (hereinafter called the "Closing Date"). Upon completion, vacant possession of the Property shall be given to the Buyer, unless otherwise specified. The Seller shall ensure that the Property is available for the pre-closing inspection by 8:00 A.M. on or before the 30 day of October, 2013.

### 5. INSPECTION

The Buyer ☐ DOES or ☒ DOES NOT require an inspection of the Property. The Buyer is urged to carefully inspect the Property and may, if desired, have the Property inspected at the Buyer's expense. If the results of the inspection are not satisfactory to the Buyer, the Buyer may terminate this Agreement by delivering written notice to the Seller or the Seller's Agent on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon which this Agreement becomes null and void.

Acknowledgement of completion of Page 1 - Seller's Initials a / Buyer's Initials ARM / Agreement of Purchase & Sale Page 1 of 6

Property designated as civic address: 114 WHALEN ST

MIRAMICHI

E1V 2L3

#### 6. INSURANCE

(a) The Seller or Seller's Agent ☐ WILL or ☒ WILL NOT provide confirmation of Insurance to the Buyer or Buyer's Agent on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. If the confirmation is not provided to the Buyer or the Buyer's Agent, the Buyer may terminate this Agreement by delivering written notice to the Seller or the Seller's Agent on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ upon which this Agreement becomes null and void.

(b) This offer ☐ IS or ☒ IS NOT conditional on the Buyer obtaining insurance for the Property satisfactory to the Buyer. The Buyer must deliver written notice, to the Seller or Seller's Agent no later than \_\_\_\_\_ A.M. / P.M. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, or this Agreement becomes null and void. The Seller agrees to co-operate in providing access to the Property as required for the fulfillment of this condition.

#### 7. WATER TEST

The Buyer ☐ DOES or ☒ DOES NOT require the water supply to be tested for:

☐ potability (E.coli / Coliform) ☐ any additional criteria (chemical / mineral): \_\_\_\_\_

If the results of such testing fail to meet the *Guidelines for Canadian Drinking Water Quality* or any additional criteria as specified, the Buyer may terminate this Agreement by delivering written notice to the Seller or the Seller's Agent on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ upon which this Agreement becomes null and void.

#### 8. ENVIRONMENT

The Buyer ☐ DOES or ☒ DOES NOT require an environmental assessment at the Buyer's expense. The Seller acknowledges that the Listing Agent has advised the Seller to disclose any known or suspected environmental concerns with respect to the Property. If the results of the assessment are not satisfactory to the Buyer, the Buyer may terminate this Agreement by delivering written notice to the Seller or the Seller's Agent by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ upon which this Agreement becomes null and void.

#### 9. RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

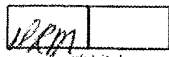
The Seller ☐ WILL or ☒ WILL NOT provide a current Residential Property Disclosure Statement to the Buyer on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. If the information contained in the Residential Property Disclosure Statement is not satisfactory to the Buyer, the Buyer may terminate this Agreement by delivering written notice to the Seller or the Seller's Agent by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ upon which this Agreement becomes null and void.

#### 10. ADDITIONAL TERMS AND CONDITIONS

This Agreement is further subject to the following terms and conditions:

1. Conditional upon vendor(s) at their expense obtaining court approval for sale on or before September 30, 2013. Failing which offer is null and void and deposit returned to purchaser(s) with no penalty.

2. Property sold "as is where is" with exception of all paperwork, computer and accessories, and network data system.

|                                                                                       |                                                                                       |
|---------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
|  |  |
| Seller's Initials                                                                     | Buyer's Initials                                                                      |

Acknowledgement of completion of Page 2 - Seller's Initials  / Buyer's Initials 

Agreement of Purchase & Sale Page 2 of 6

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Property designated as civic address: 114 WHALEN ST

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#### 11. ADJUSTMENTS

Property taxes, rentals, leases, municipal charges, fuel/heating items on the premises and assessments are to be adjusted to the Closing Date. The cost of municipal improvements, betterment charges, and capital charges for utility or municipal services completed as of the date of this Agreement, whether billed or not, are to be paid by the Seller on or before the Closing Date unless otherwise stated.

#### 12. RISK

The Property being purchased shall be and remain at the risk of the Seller, pending completion of the sale. The Seller shall hold all insurance policies and the proceeds thereof, in trust for the parties as their interests may appear. In the event of damage, the Buyer may, at the Buyer's option, agree to complete the purchase with the proceeds of the Seller's unit policy. Alternatively, the Buyer may, at the Buyer's option, declare this Agreement null and void.

#### 13. FIXTURES / CHATTELS / LEASED EQUIPMENT

(a) All fixtures, and equipment attached to the Property, as viewed on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

are to remain and shall be included in the purchase price:

Property sold "as is where is" as viewed August 8, 2013.

(b) The following chattels owned by the Seller and presently located at the Property shall remain with the Property, to be included in the purchase price, and shall be conveyed to the Buyer in good working order, free and clear of encumbrances, on the date of closing:

Property sold "as is where is" with exception of all paperwork, computer and accessories, and network data system.

(c) The Seller agrees to inform the Buyer of any leased equipment. In the case of leased equipment, the Buyer may be required to purchase the product from the lessor or assume the existing lease. Current leased equipment is (include lessor name below):

- |                                                |                                                          |
|------------------------------------------------|----------------------------------------------------------|
| <input type="checkbox"/> Hot Water Tank: _____ | <input type="checkbox"/> Furnace / Heating System: _____ |
| <input type="checkbox"/> Propane Tank: _____   | <input type="checkbox"/> Security System: _____          |
| <input type="checkbox"/> Other: _____          |                                                          |

#### 14. SURVEY

The cost of a New Brunswick Land Surveyor's Real Property Report shall be the responsibility of the Buyer. Notwithstanding the foregoing, the Seller is to supply to the Buyer or Buyer's Agent any New Brunswick Land Surveyor's Real Property Report / Subdivision Plan / Survey Plan that may be in the Seller's possession, without warranty.

#### 15. TITLE SEARCH

The Seller or Seller's Agent shall provide the Buyer or Buyer's Agent with a legal description of the Property which is the subject of this Agreement. The Buyer may examine the title of the Property at the Buyer's expense and any valid objection to title which the Buyer wishes to make shall be made in writing to the Seller on or before the day of closing. In the event a valid objection to title is made that the Seller is unable or unwilling to remove prior to closing, and which the Buyer does not waive, this Agreement becomes null and void.

#### 16. CONVEYANCE

The conveyance of the Property shall be by Transfer, Deed, or Bill of Sale drawn at the expense of the Seller, to be delivered on payment of the purchase price on the Closing Date. The Property is to be conveyed free from encumbrances, except utility easements that do not materially affect the enjoyment of the Property, registered restrictions, or covenants that affect the Property.

Acknowledgement of completion of Page 3 - Seller's Initials   a   / Buyer's Initials   JPM  

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#### 17. ADDITIONAL DOCUMENTS

The attached additional documents, if applicable, form part of this contract:

- |                                                         |                                                   |
|---------------------------------------------------------|---------------------------------------------------|
| <input type="checkbox"/> MLS* Listing Information Sheet | <input type="checkbox"/> Sale of Buyer's Property |
| <input type="checkbox"/> Covenants                      | <input type="checkbox"/> Builder's Specifications |
| <input type="checkbox"/> Floor Plans                    | <input type="checkbox"/> House Plans              |
| <input type="checkbox"/> Other: _____                   | <input type="checkbox"/> Other: _____             |

#### Condominiums Only:

- |                                                |
|------------------------------------------------|
| <input type="checkbox"/> Purchaser's Amendment |
| <input type="checkbox"/> Building Inspection   |
| <input type="checkbox"/> Other: _____          |

#### 18. GENERAL

- (a) Any tender of documents to be delivered or money payable may be made by the Seller, Seller's Agent or Lawyer or the Buyer, Buyer's Agent or Lawyer or any other party acting on their behalf. Money paid, subsequent to the deposit, shall be by Solicitor's trust cheque, certified cheque, or the equivalent, drawn on a chartered Canadian Bank, Trust Company or Credit Union.
- (b) The Buyer shall have the right, upon providing the Seller with reasonable notice, to conduct a pre-closing inspection of the Property to ensure that the Property is in the same state of repair and condition as viewed on the date of this Agreement. If the Property is not in the same state of repair and condition and the Seller is unable or unwilling to make the necessary repairs, then this Agreement may become null and void at the buyer's discretion.
- (c) All warranties and representations contained in this Agreement shall survive the closing unless otherwise stated in this Agreement.
- (d) In all aspects of this Agreement, time shall be of the essence. In the event of a written agreement of extension, time shall continue to be of the essence. This Agreement shall enure to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, successors and assigns.
- (e) This Agreement is to be read with all changes of gender or number as the context requires. This Agreement shall constitute the entire Agreement between the parties and shall be governed by the laws of the Province of New Brunswick.
- (f) The Seller and the Buyer agree to be bound by offers and counter offers and related documentation and/or communication that may be transmitted electronically and that reproductions of the signatures therein will be treated as originals.
- (g) The Buyer and Seller have the right to seek legal counsel with respect to this Agreement.
- (h) If the Buyer defaults in the completion of the sale under the terms of this Agreement, any money, not exceeding 10% of the purchase price, paid hereunder shall be forfeited to the Seller by way of liquidated damages, or the Seller may, at the Seller's option, compel the Buyer to complete the sale. The balance of any money exceeding 10% of the purchase price, and paid hereunder shall be returned to the Buyer without any interest or penalty.
- (i) If this Agreement becomes null and void under the terms of this Agreement, all deposits paid shall be returned to the Buyer in full. By signing this Agreement, the Buyer and Seller consent and irrevocably instruct the Seller's Agent to release all deposits to the Buyer without interest or penalty.
- (j) Once received and accepted, all Schedules and additional documents attached shall form part of this Agreement of Purchase and Sale and shall be deemed acceptable to the Buyer and Seller.
- (k) The Seller warrants that the Property ☐ IS or ☒ IS NOT registered under the Farm Land Identification Program (FLIP).

#### 19. AGENCY RELATIONSHIP

The Seller and the Buyer acknowledge having received, read and understood the "WORKING WITH A REALTOR®" form, as published by The New Brunswick Real Estate Association and acknowledge and confirm as follows:

- (a) The Seller ☐ DOES or ☐ DOES NOT have an Agency relationship with:

\_\_\_\_\_ as represented by \_\_\_\_\_  
NAME OF AGENT (company) NAME OF REALTOR® (please print)

\_\_\_\_\_ as represented by \_\_\_\_\_  
NAME OF AGENT (company) NAME OF REALTOR® (please print)

Acknowledgement of completion of Page 4 - Seller's Initials C / Buyer's Initials VRM

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(b) The Buyer ☐ DOES or ☐ DOES NOT have an Agency relationship with:

\_\_\_\_\_ as represented by \_\_\_\_\_  
NAME OF AGENT (company) NAME OF REALTOR\* (please print)

(c) The Buyer and the Seller acknowledge that by signing this Agreement they have consented to a Dual Agency relationship with:

Remax 3000 Ltd/Ltee as represented by Lisa McCormack  
NAME OF AGENT (company) NAME OF REALTOR\* (please print)

and Lisa McCormack  
NAME OF REALTOR\* (please print)

## 20. TIME FOR ACCEPTANCE

This offer shall be open for acceptance until noon A.M. / P.M. on the 9 day of August, 2013.  
Notification of the acceptance of this offer shall be communicated by the Seller's Agent to the Buyer's Agent prior to the designated time and date or this Agreement becomes null and void.

Dated at Miramichi, this 8 day of August, 2013.

Signed and delivered in the presence of

Don Cormack  
WITNESS

Charles R. Mattheis  
BUYER

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
BUYER

## 21. ACCEPTANCE

I hereby confirm this offer was presented and accepted at 10 A.M. / P.M. on the 13<sup>th</sup> day of August, 2013.

Signed and delivered in the presence of

S. Butler  
WITNESS

ML  
SELLER

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
SELLER

## 22. REJECTION

I hereby confirm this offer was presented and rejected at \_\_\_\_\_ A.M. / P.M. the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed and delivered in the presence of

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
SELLER

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
SELLER

Acknowledgement of completion of Page 5 - Seller's Initials A / Buyer's Initials ML

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**23. COUNTER OFFER**

(a) I confirm having read and understood this Agreement and have ☐ **MODIFIED THE PRICE TO** or ☐ **ACCEPTED THE PRICE OF:**  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

along with the following amendments:

This counter offer shall be open for acceptance until \_\_\_\_\_ A.M. / P.M. the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
Notification of the acceptance of this counter offer shall be communicated by the Buyer's Agent to the Seller's Agent prior to the designated time  
and date or this Agreement becomes null and void.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed and delivered in the presence of

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
SELLER

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
SELLER

(b) The Buyer hereby agrees to the above price of \$ \_\_\_\_\_ and all other amendments contained in this  
counter offer.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed and delivered in the presence of

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
BUYER

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
BUYER

Seller's Solicitor: Harry Williamson

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Buyer's Solicitor: Al Haynes

Phone: 507-0091

Fax: \_\_\_\_\_

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Acknowledgement of completion of Page 6 - Seller's Initials a / Buyer's Initials WM /

Agreement of Purchase & Sale

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THE NORTHERN NEW BRUNSWICK REAL ESTATE BOARD INC.  
L'ASSOCIATION IMMOBILIÈRE DU NORD DU NOUVEAU-BRUNSWICK INC.



## WORKING WITH A REALTOR®

AN EXPLANATION OF THE RELATIONSHIP BETWEEN YOU AND A REALTOR®

### AGENCY DISCLOSURE

Members of The Canadian Real Estate Association abide by a strict Code of Ethics and Standards of Business Practice, which serves to protect the buying and selling public alike.

One of the ethical obligations embodied in the Code requires that the REALTOR® disclose who they are representing in a real estate transaction.

#### ARTICLE 2

A REALTOR® shall fully disclose in writing to, and is advised to seek written acknowledgement from, his or her Clients and those Customers who are not represented by other Registrants regarding the role and nature of the service the REALTOR® will be providing. This disclosure shall be made at the earliest possible opportunity and in any event prior to the REALTOR® providing professional services which go beyond providing information as a result of incidental contact by a consumer.

If you have any questions about the contents of this form, contact your local real estate board/association or talk to the REALTOR with whom you are dealing.

When working with a real estate agent in buying or selling real estate, it is important that you understand who the agent is representing in the transaction.

Is the agent representing the seller, the buyer, or both? Who is the agent's client? Who is the customer?

**The difference between RECEIVING INFORMATION AND SERVICES FROM AN AGENT and BEING REPRESENTED BY AN AGENT is the difference between a CUSTOMER and being a CLIENT.**

The person who is represented by an agent is a CLIENT. The agent owes the client the duties of utmost care, integrity, confidentiality and loyalty. A CUSTOMER, on the other hand can also receive valuable information and assistance from an agent, but is not represented by that agent.

Regardless of who the agent represents, however, the agent is obliged to treat all parties to a transaction honestly and fairly. The agent must:

- respond honestly and accurately to questions concerning the property;
- disclose material facts which the agent knows or reasonably ought to know about the property;
- promptly present all offers to the seller;
- market the property without regard to race, creed, sex, handicap, religion or national origin.

### SELLER'S AGENT

A SELLER'S AGENT represents the seller - either as a LISTING AGENT under a listing agreement with the seller OR by cooperating as a SUB-AGENT, typically through the Multiple Listing Service®.

In dealing with prospective buyers (customers), a SELLER'S AGENT can provide a variety of information and services to assist the buyer in his/her decision making, but the SELLER'S AGENT is not the agent for the buyer.

♦ Seller's Initials   a   / Buyer's Initials   MM  

Working with a REALTOR®

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A BUYER'S AGENT represents the buyer, preferably pursuant to a Buyer Agreement. A BUYER'S AGENT'S primary allegiance is to the buyer.

DUAL AGENCY occurs when a real estate agent is representing both buyer and seller in the same transaction. Since the agent has promised a duty of confidentiality, loyalty, and full disclosure to both parties simultaneously, it is necessary to limit these duties in this situation, if both parties consent.

A DUAL AGENT may not represent both parties without their informed consent, and must ensure that the parties understand the possible effects of the dual representation including, for example, that no information received in connection with the transaction can be treated as confidential unless an agreement in writing limiting the transfer of information exists.

This form does not create an agency relationship. Its purpose is to ensure that all parties understand who is representing whom and to acknowledge that disclosure of this representation has occurred.

I have read and understood this form and acknowledge that LISA MCCORMACK  
(name of salesperson)  
of RE/MAX 3000 Ltd/Ltée disclosed he/she is representing:  
(name of company)

☐ Seller, as listing agent or sub-agent     ☐ Buyer, as buyer's agent     ☒ Both, Seller and Buyer, with the full knowledge and consent of all parties

Seller HL     Date Aug 13, 2013     Buyer [Signature]     Date Aug 8/13

Seller \_\_\_\_\_     Date \_\_\_\_\_     Buyer \_\_\_\_\_     Date \_\_\_\_\_



REALTOR, REALTORS and the REALTOR logo are trademarks that identify real estate professionals in Canada who are members of The Canadian Real Estate Association and as such, subscribe to a high standard of professional service and to a strict Code of Ethics.

(February 2008)

◆ Seller's Initials                      / Buyer's Initials                     

Working with a REALTOR®

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THE NORTHERN NEW BRUNSWICK REAL ESTATE BOARD INC.  
L'ASSOCIATION IMMOBILIERE DU NORD DU NOUVEAU-BRUNSWICK INC.



### LIMITED DUAL AGENCY AGREEMENT

(consent to agent acting for both Buyer and Seller and to limiting the scope of the agency)

BETWEEN: RE/MAX 3000 Ltd/Ltée  
(Agent)  
AND: Delway Enterprises Ltd.  
(Buyer)  
AND: Ernst & Young Inc. in its capacity as Receiver & Receiver Manager for Atcon Group Inc. et. al  
(Seller)  
RE: 114 WHALEN ST MIRAMICHI E1V 2L3  
(Property)

In order to facilitate the purchase and sale of the property, the Buyer, the Seller, and Agent agree as follows:

1. The Buyer and the Seller acknowledge and agree that it is not a breach of duty to either of them for the Agent to act as agent for both the Buyer and the Seller and they consent to the Agent acting for both the Buyer and the Seller as a limited dual agent with respect to the purchase and sale of the property.
2. Any previous agreements between the Agent and either the Buyer or the Seller modified shall continue in full force and effect except as modified by this Agreement. In the event of conflict, the provisions of this Agreement shall apply.
3. The Buyer and the Seller acknowledge and agree that with respect to the purchase and sale of the property, the Agent and its salespersons will be the agent for both the Buyer and the Seller and will represent both parties as a limited dual agent with the following changes and limitations to its duties as agent:
  - a) the Agent will deal with the Buyer and the Seller impartially;
  - b) the Agent will have a duty of disclosure to both the Buyer and the Seller except that:
    - i) the Agent will not disclose that the Buyer is willing to pay a price or agree to terms other than those contained in the Agreement of Purchase and Sale, or that the Seller is willing to accept a price or terms other than those contained in the Listing Agreement;
    - ii) the Agent will not disclose the motivation of the Buyer to buy or the Seller to sell unless authorized by the Buyer or the Seller;
    - iii) the Agent will not disclose personal information about either the Buyer or the Seller unless authorized in writing.
  - c) without limiting 3(b) the Agent will disclose to the Buyer defects about the physical condition of the property known to the Agent.
4. By signing this contract, the Buyer and the Seller acknowledge having read and understood the attached form entitled Working With A REALTOR®.

Signed, sealed and delivered this 8 day of August, year 2013

LISA MCCORMACK  
Agent's Salesperson

LISA MCCORMACK  
Agent's Salesperson

*Lisa McCormack*  
Witness to Buyer

Witness to Buyer

*[Signature]*  
Witness to Seller

Witness to Seller

*[Signature]*  
Buyer

Buyer

*[Signature]*  
Seller

Seller



**Twenty-Sixth Report of the Receiver**  
**18 September 2013**  
**Appendix B**

**Form 47  
Formule 47**

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

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

**Parcel Identifier | Numéro d'identification de parcelle :**

**40179798**

**Owner | Propriétaire :**

|                                             |            |            |
|---------------------------------------------|------------|------------|
| Atcon Property Holdings Inc.                |            |            |
| 626 Newcastle BLVD                          |            |            |
| Miramichi NB                                |            |            |
| E1V 2L3                                     |            |            |
| Deed/Transfer   Acte de transfert/Transfert |            |            |
| Northumberland                              | 2006-11-06 | - 23029839 |

**Manner of Tenure | Mode de tenure :**

Not Applicable | Sans objet

**Encumbrances | Charges :**

|                                             |            |              |
|---------------------------------------------|------------|--------------|
| Aliant Telecom Inc.                         |            |              |
| 1 Brunswick SQ                              |            |              |
| PO BOX 1430                                 |            |              |
| Saint John NB                               |            |              |
| E2L 4K2                                     |            |              |
| Easement Holder   Titulaire de la servitude |            |              |
| Agreement   Convention                      |            |              |
| Northumberland                              | 1978-10-05 | 352 - 252 65 |

|                                             |            |              |
|---------------------------------------------|------------|--------------|
| New Brunswick Power Corporation             |            |              |
| 515 King ST                                 |            |              |
| PO BOX 2000                                 |            |              |
| Fredericton NB                              |            |              |
| E3B 4X1                                     |            |              |
| Easement Holder   Titulaire de la servitude |            |              |
| Agreement   Convention                      |            |              |
| Northumberland                              | 1978-10-05 | 352 - 252 65 |

|                                        |            |            |
|----------------------------------------|------------|------------|
| Caterpillar Financial Services Limited |            |            |
| 570 Queen ST SUITE 502                 |            |            |
| Fredericton NB                         |            |            |
| E3B 5E3                                |            |            |
| Mortgagee   Créancier hypothécaire     |            |            |
| Mortgage   Hypothèque                  |            |            |
| Northumberland                         | 2005-06-17 | - 20442696 |

Bank of Nova Scotia  
 Business Service Centre  
 5251 Duke ST Floor 7th Floor  
 Halifax NS  
 B3J 1P3  
 Debenture Holder | Titulaire de la débenture  
 Debenture or Other Voluntary Charge | Débenture ou autre charge facultative  
 Northumberland 2006-04-04 - 21917902

Bank of Nova Scotia  
 Business Service Centre  
 5251 Duke ST Floor 7th Floor  
 Halifax NS  
 B3J 1P3  
 Debenture Holder | Titulaire de la débenture  
 Debenture or Other Voluntary Charge | Débenture ou autre charge facultative  
 Northumberland 2006-04-04 - 21918173

Bank of Nova Scotia  
 Business Service Centre  
 5251 Duke ST Floor 7th Floor  
 Halifax NS  
 B3J 1P3  
 Debenture Holder | Titulaire de la débenture  
 Assignment of Charge | Cession de charge  
 Northumberland 2009-07-07 - 27394502

Bank of Nova Scotia  
 Business Service Centre  
 5251 Duke ST Floor 7th Floor  
 Halifax NS  
 B3J 1P3  
 Debenture Holder | Titulaire de la débenture  
 Assignment of Charge | Cession de charge  
 Northumberland 2009-07-07 - 27394528

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

NONE | AUCUN

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

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

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

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

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

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

**Date & Time | Date et heure :** 2013-09-16 13:34:37

Registrar of Land Titles for the District of New Brunswick

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

**Report ID | Rapport ID :** 4247107

**Schedule A | Annexe A**

**PID | NID :** 40179798

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

**Status | État de la demande :** Current | Courant

**Effective Date/Time | Date et heure de prise d'effet :** 2004-02-20 11:26:46

**Legal Description | Description officielle :**

That parcel of land and premises being in:

Place Name: City of Miramichi

Parish: Newcastle

County: Northumberland

Label of Parcel on Plan: Lot 77-17

Title of Plan: Miramichi Region Development Corporation Subdivision Phase 1 Plan 3 First Amendment

Registration County: Northumberland

Registration Number of Plan: 1212

Registration Date of Plan: February 6, 1978