

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF AN APPLICATION PURSUANT TO
SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED and SECTION 39 OF THE *LAW*
AND EQUITY ACT, R.S.B.C. 1996 C. 253, AS AMENDED

BETWEEN:

DUMAS HOLDINGS INC.

Petitioner

– and –

**TERCON INVESTMENTS LTD., TERCON A.C. LTD., TERCON EQUIPMENT
LTD., TERCON CONSTRUCTION LTD., TERCON MINING LTD., TERCON
ENTERPRISES LTD., TERCON MRC LIMITED, FNP VENTURES INC.,
TERCON MINING PV LTD., TERCON EQUIPMENT ALASKA
PARTNERSHIP and TERCON ALASKA LTD.**

Respondents

PETITION TO THE COURT

ON NOTICE TO:

The Service List,

This proceeding has been started by the petitioner for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

TIME FOR RESPONSE TO PETITION

A response to petition must be filed and served on the petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1) The address of the registry is:	800 Smithe Street, Vancouver, BC
(2) The ADDRESS FOR SERVICE of the petitioner is:	c/o Farris, Vaughan, Wills & Murphy LLP Barristers & Solicitors 2500 - 700 West Georgia Street Vancouver, British Columbia V7Y 1B3
Fax number address for service (if any) of the petitioner	604-661-9349
E-mail address for service (if any) of the petitioner:	
(3) The name and office address of the petitioner's lawyer is:	Farris, Vaughan, Wills & Murphy LLP Barristers & Solicitors 2500 - 700 West Georgia Street Vancouver, British Columbia V7Y 1B3 Attention: David E. Gruber
Fax number address for service of the petitioner's lawyer is:	604-661-9349
E-mail address for service (if any) of the petitioner's lawyer:	

CLAIM OF THE PETITIONER

Part 1: ORDER(S) SOUGHT

1. Attached as Schedule "A".

Part 2: FACTUAL BASIS

PARTIES

2. The Petitioner, Dumas Holdings Inc. ("DHI"), is a corporation established pursuant to the laws of British Columbia with its registered office at #204-166 Oriole Road,

Kamloops, BC V2C 4N7 and its head office at Royal Bank Plaza, South Tower Suite 2301, 200 Bay Street, PO Box 19, Toronto, Ontario M5J 2J1.

3. Tercon Investments Ltd. ("**Tercon**") and the other Respondents are subsidiaries of DHI (collectively, the "**Tercon Group**"). Each of the Respondents, other than Tercon Alaska Ltd. ("**TAL**") and Tercon Enterprises Ltd. ("**Tercon Enterprises**"), is incorporated or formed, as applicable, pursuant to the laws of British Columbia. TAL is a corporation established pursuant to the laws of Alaska and Tercon Enterprises is a corporation established pursuant to the laws of Alberta.

4. The Tercon Group is a Canadian-based provider of heavy civil construction and site development in the mining industry with operations in British Columbia, Alberta and Alaska. The Tercon Group's operations are directed from Tercon's head office in Kamloops, British Columbia, with assistance from DHI's head office in Toronto.

BACKGROUND

5. Tercon is currently indebted to DHI in the amount of approximately \$39 million, together with interest, fees, costs and other allowable charges, pursuant to (i) an Amended and Restated Operating Loan Agreement dated as of August 27, 2010 (as further amended, the "**Loan Agreement**") between Tercon, as borrower, DHI, as lender, and certain of the other Respondents as guarantors, (ii) an Amended and Restated Debenture issued as of August 27, 2010 by Tercon in favour of DHI (the "**Debenture**") and (iii) certain secured intercompany advances (the "**Secured Advances**") from DHI to Tercon from funds obtained from DHI's own senior secured credit facility (the "**DHI Credit Facility**").

6. The amounts outstanding under the Loan Agreement, the Debenture and the Secured Advances are secured by a security interest in and to all current and after-acquired

undertakings, property and assets of the Respondents (other than TAL and Tercon A.C. Ltd. (“TAC”)), pursuant to various security arrangements, including:

- (a) an irrevocable and unconditional guarantee pursuant to Amended and Restated Guarantees each dated August 27, 2010 (collectively, the “**Guarantees**”) from Tercon Equipment Ltd. (“**TEL**”), Tercon Construction Ltd., Tercon Mining Ltd., Tercon Enterprises, Tercon MRC Limited, FNP Ventures Inc., and Tercon Mining PV Ltd. (collectively, with Tercon Equipment Alaska Partnership (“**TEAP**”), the “**Loan Guarantors**”) in favour of DHI which guarantees the due and punctual payment of all debts, liabilities and obligations, present or future, which are due and owing by Tercon to DHI;
- (b) a Security Agreement from Tercon in favour of WF Fund III Limited Partnership, carrying on business as Wellington Financial LP and Wellington Financial Fund III (collectively, “**Wellington**”) dated October 1, 2007, as later assigned to DHI, granting Wellington (now DHI) a security interest in and to all current and after-acquired undertakings, property and assets of Tercon, including a pledge of all shares or other securities of any subsidiary held by Tercon; and
- (c) Security Agreements granted by each of the Loan Guarantors (other than TEAP) to Wellington, as later assigned to DHI, granting Wellington (now DHI) a security interest in and to all current and after-acquired undertakings, property and assets of each Loan Guarantor, including a pledge of all shares or other securities of any subsidiary held by such Loan Guarantor.

7. Pursuant to a transfer agreement between TEL and TEAP dated December 6, 2012, effective as of March 1, 2012, TEAP agreed to be bound by, observe and perform all of the

terms and conditions to be performed by TEL under its Guarantee and Security Agreement as if it were an original signatory thereto. By virtue of this agreement, TEAP is now a guarantor of the Loan Agreement, Debenture and Secured Advances.

8. TAC and TAL have not guaranteed the Loan Agreement or the Debenture. However, both TAC and TAL, among other entities, are guarantors under the DHI Credit Facility. In addition, TAC is the general partner of AC&T Limited Partnership and is entitled to distributions from such partnership.

9. All of the Respondents, including TAC and TAL, are part of an integrated business enterprise.

10. DHI has been a significant source of operating capital and financial support for the Tercon Group over the past several years. This financial support has increased significantly since January 2012. In particular, DHI has made Secured Advances to Tercon totalling approximately \$31 million from funds obtained through the DHI Credit Facility in order to refinance the Tercon Group and to fund its operations.

11. Over the past twelve months, the Tercon Group's financial performance has significantly declined. It has no further orders and its equipment sits idled. There is no reasonable prospect that the Tercon Group will be able to continue as a going concern after the last project is completed.

12. The financial strain of the deteriorating Tercon Group operations has recently caused DHI to breach certain financial covenants under its own senior secured credit facility (the "**DHI Credit Agreement**").

13. On December 13, 2012, the parties to the DHI Credit Agreement entered into a forbearance agreement (the “**Forbearance Agreement**”) pursuant to which the lenders thereunder (the “**DHI Lenders**”) agreed to forbear from exercising their rights and remedies under the DHI Credit Agreement and related security until January 25, 2013, provided that, *inter alia*:

- (a) DHI will have obtained an order from this Honourable Court appointing a receiver over the Respondents and their assets, properties and undertaking on or before December 18, 2012; and
- (b) a distribution order will be sought by the Receiver concurrently with an order approving a sale agreement with the chosen liquidator, which distribution order shall provide for a distribution to the Agent (as defined in the DHI Credit Agreement) of liquidation proceeds of such sale and shall be satisfactory to DHI, the Agent and the Receiver, each acting reasonably, and such liquidation proceeds of sale shall be applied in permanent repayment and reduction of Outstanding Advances (as defined therein) under the DHI Credit Agreement.

14. In these circumstances, DHI is no longer able or willing to continue supporting the operations of the Tercon Group. Without DHI’s continuing financial support, the Tercon Group is unable to satisfy its liabilities as they become due. This has caused an event of default under the Loan Agreement and the Debenture, which entitles DHI (upon written notice) to declare that the indebtedness thereunder to be immediately due and payable.

15. In furtherance of the foregoing, by letter dated December 13, 2012 (the “**Demand Notice**”), Osler, Hoskin & Harcourt, LLP (“**Osler**”), on behalf of DHI, delivered notice of default under the Loan Agreement and the Debenture to Tercon and the Loan Guarantors.

Pursuant to the Demand Notice, Osler notified Tercon and the Loan Guarantors that events of default had occurred and were continuing.

16. The Demand Notice further advised that Osler, on behalf of DHI, demanded payment of the amounts owing under the Loan Agreement, the Debenture and the Secured Advances, together with additional interest, fees, costs and other allowable charges accrued or accruing to the date thereof. Concurrently with the delivery of the Demand Notice, Osler, on behalf of DHI, delivered notices of intention to enforce security to Tercon and the Loan Guarantors pursuant to section 244 of the BIA (the “**244 Notices**”).

17. Tercon and each of the Loan Guarantors have acknowledged receipt of the Demand Notice and the 244 Notices, that the obligations thereunder are due and owing, and that they are unable to make payment of the amount owing, and have consented to the immediate enforcement of the security described in the 244 Notices. In addition, the Agent on behalf of the DHI Lenders and the Respondents have consented to the appointment of a receiver over the assets, properties and undertakings of the Respondents.

Part 3:LEGAL BASIS

1. Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.
2. Section 39 of the *Law and Equity Act*, R.S.B.C., 1996, c. 253, as amended.
3. Rules 2-1(1)(b) & (c), 8-5 and 16-1 of the *Supreme Court Civil Rules*.
4. The inherent jurisdiction of this Honourable Court.
5. Appointment of a receiver is just and convenient in the circumstances.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit No. 1 of Steven Chambers, sworn December 13, 2012; and
2. Such other material as counsel may advise and the Court permit.

The petitioner estimates that the hearing of the petition will take 30 minutes.

Dated: 13/12/2012

Signature

Petitioner

Lawyer for petitioner(s)

David E. Gruber

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____

Signature of

Judge

Master

SCHEDULE "A"

(Attached)

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LTD., TERCON MRC LIMITED, FNP VENTURES INC., TERCON MINING PV LTD.,
TERCON EQUIPMENT ALASKA PARTNERSHIP AND TERCON ALASKA LTD.**

Respondents

ORDER MADE AFTER PETITION

BEFORE THE HONOURABLE) FRI DAY, THE 14th DAY
)
MR. JUSTICE SEWELL) OF DECEMBER, 2012.
)

ON THE PETITION of the Petitioner for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the “**LEA**”) appointing FTI Consulting Canada Inc. as Receiver (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Tercon Investments Ltd., Tercon A.C. Ltd., Tercon Equipment Ltd., Tercon Construction Ltd., Tercon Mining Ltd., Tercon Enterprises Ltd., Tercon MRC Limited, FNP Ventures Inc., Tercon Mining PV Ltd., Tercon Equipment Alaska Partnership and Tercon Alaska Ltd. (collectively, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, coming on for hearing this day at the Courthouse, 800 Smithe Street, Vancouver, British Columbia.

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AND ON READING the Petition dated December 13, 2012, the Affidavit #1 of Steven Chambers sworn December 13, 2012 and the consent of FTI Consulting Canada Inc. to act as the Receiver; AND ON HEARING David E. Gruber, Counsel for the Petitioner and other counsel as listed on Schedule "A" hereto, and no one appearing for the other parties on the Service List, although duly served.

THIS COURT ORDERS AND DECLARES that:

SERVICE

1. The time for service of the Petition and the hearing of the Petition is hereby abridged and validated so that this Petition is properly returnable today and the Court hereby dispenses with further service thereof.

APPOINTMENT

2. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA FTI Consulting Canada Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. 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 of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property provided that any such possession need not be physical possession;
 - (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 wind-down but not operate the business of the Debtors and realize on the Property of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of winding-down the business and realizing on the Property, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
 - (d) subject to paragraph 3(c) of this Order, to undertake such activities as necessary or desirable to prepare for and effect the realization of the Property;

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- (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 facilitate the wind-down of the business of the Debtors and the realization of the Property;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors, including, without limitation, any holdbacks or other reserves held by customers against monies and accounts now owed or hereafter owing to the Debtors, to settle any lien or trust claims relating to such monies, whether contractual, statutory or otherwise, and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (h) to settle, extend or compromise any indebtedness owing to the Debtors provided that no indebtedness in excess of \$50,000 in respect of any one debt, or in excess of \$200,000 in the aggregate, shall be settled, extended or compromised without the prior written consent of HSBC Bank Canada (the "Agent") or further order of the Court;
- (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 the Debtors, for any purpose pursuant to this Order;
- (j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (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 the Debtors, the Property or the Receiver, 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 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;
- (m) 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 but with the prior written consent of the Agent 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

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- (ii) with the approval of this Court and with the prior written consent of the Agent 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 Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;

- (n) 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;
- (o) 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;
- (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (q) 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 considered necessary or appropriate by the Receiver, in the name of the Debtors;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have, including in respect of the AC&T Limited Partnership and the Tahltan-Tercon Limited Partnership;
- (t) to make disbursements from time to time from funds on hand or proceeds of realization of the Property;
- (u) to cause the Debtors or any of them to continue to provide accounting and other services to AC&T Limited Partnership or Tahltan-Tercon Limited Partnership, or either of them, in accordance with past practice or as otherwise deemed advisable by the Receiver;
- (v) to file assignments in bankruptcy on behalf of any or all of the Debtors pursuant to the provisions of the *Bankruptcy and Insolvency Act* (Canada), only upon the making of a further order (on notice to the affected stakeholders) of this Court addressing transitional matters between the proposed trustee in bankruptcy and the Receiver; and
- (w) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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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 Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. Each of (i) the Debtors, (ii) all of the Debtors' respective 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. All Persons in the possession of Property ("Possessory Claimants") that assert a claim or lien against the Property that is dependent on possession of the Property (a "Possessory Claim") shall forthwith deliver up possession of the Property to the Receiver or permit the Receiver to take possession and control of the Property, and such delivery up of possession shall be without prejudice to the Possessory Claim asserted by such Person and the Possessory Claim shall be determined as if possession of the subject Property remained with the Possessory Claimant asserting the Possessory Claim. Forthwith following the delivery up of possession of the Property, the Possessory Claimant shall provide the Receiver with all documents and records that support the Possessory Claim of the Possessory Claimant.
6. 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 the Debtors, 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 6 or in paragraph 7 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.
7. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an 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

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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, without limitation, 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

8. 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 DEBTORS OR THE PROPERTY

9. No Proceeding against or in respect of the Debtors 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 Debtors or the Property are hereby stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of Proceeding except for service of the initiating documentation on the Debtors and the Receiver.

NO EXERCISE OF RIGHTS OR REMEDIES

10. All rights and remedies (including, without limitation, set-off rights) against the Debtors, 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 nothing in this Order shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. The stay and suspension shall not apply in respect of any “eligible financial contract” as defined in the BIA.

NO INTERFERENCE WITH THE RECEIVER

11. No Person shall discontinue, fail to honour, alter, interfere with (including with respect to the Receiver’s powers pursuant to paragraph 3(s) of this Order), repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

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CONTINUATION OF SERVICES

12. All Persons having oral or written agreements with the Debtors 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 of any kind to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services (including from demanding any deposits relating to the continued 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 the Debtors' 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 Debtors 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.

RECEIVER TO HOLD FUNDS

13. All monies in any bank account(s), including any monies in bank accounts located in the State of Alaska, standing to the credit of any of the Debtors shall be remitted to the Receiver forthwith upon demand to be deposited into a Post-Receivership Account (as defined herein). 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

14. The employment of all of the Debtors' employees be and is hereby terminated without the necessity of any further act or formality. The Receiver shall be at liberty to engage, as consultants, former employees on a day-to-day contract basis to assist with the winding-down of the business of the Debtors and the realization of the Property. The Receiver shall not be liable for any employee-related liabilities of the Debtors, including any successor employer liabilities as provided for in Section 14.06(1.2) of the BIA. The Receiver shall only be liable for amounts that the Receiver has specifically agreed in writing to pay and amounts in respect of obligations imposed specifically on receivers by applicable legislation. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any former employees that may be engaged by the Receiver after the date of this Order other than in accordance with the specific written terms and conditions of such engagement by the Receiver.

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15. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may 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 Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. Nothing in this Order shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “Possession”) of any of the Property that might 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 law relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33, the *Fisheries Act*, R.S.C. 1985, c. F-14, the *Environmental Management Act*, R.S.B.C. 1996, c. 118 and the *Fish Protection Act*, S.B.C. 1997, c. 21 and regulations thereunder (collectively “**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 the Receiver is actually in possession.

LIMITATION ON THE RECEIVER’S LIABILITY

17. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except:
- (a) any gross negligence or wilful misconduct on its part; or
 - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

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.

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18. The Receiver shall not be obligated to make an inventory of the Property, including without limitation, the Debtors' inventory and equipment, and shall incur no liability if no inventory of the Property is made.

RECEIVER'S ACCOUNTS

19. The reasonable fees and disbursements of the Receiver and its legal counsel, in each case at their standard rates and charges, shall be entitled to and are hereby granted a charge (the "**Receiver's 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 Receiver's 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. At the request of the Petitioner, any other party in interest or this Court, the Receiver and its legal counsel shall pass their 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 Supreme Court of British Columbia and may be heard on a summary basis.
21. Prior to any 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 and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements, if a passing of accounts is requested, when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. 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 with the prior written consent of the Agent, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. 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 Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
23. 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.

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24. 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.
25. 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.

ALLOCATION

26. That any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the proceeds of realization of the various assets comprising the Property.

AGENT'S RIGHTS

27. Notwithstanding any other provision of this Order, upon the occurrence of a default under the Forbearance Agreement between the Petitioner, the Agent, the lenders party thereto (the "**Lenders**") and the Respondents party thereto dated December 13, 2012, upon three (3) business days' notice to the Debtors and the Receiver, the Agent may exercise any and all of its rights and remedies against the Debtors or the Property under or pursuant to the Credit Agreement (as defined in the Forbearance Agreement) and ancillary credit and security documentation, including without limitation, to set off and/or consolidate any amounts owing by the Agent or any of the Lenders to the Debtors against the obligations of the Debtors to the Agent and the Lenders under the Credit Agreement and ancillary credit and security documentation, to make demand, accelerate payment and give other notices, or to apply to this Court for a bankruptcy order against the Debtors and for the appointment of a trustee in bankruptcy of the Debtors.
28. The Receiver shall provide updates to the Agent weekly, or at such other intervals as the Receiver and the Agent may agree, as to the status of the receivership proceedings and the Receiver's activities, receipts and disbursements relating thereto, subject to such terms as to confidentiality as the Receiver deems advisable.

GENERAL

29. Notwithstanding any other provision of this Order, the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
30. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.
31. This Court requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and 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 or to assist the Receiver and its agents in carrying out the terms of this Order.

- 32. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver is authorized and empowered to act as a foreign representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
- 33. The Petitioner shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Petitioner's security or, if not so provided by the Petitioner's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estates with such priority and at such time as this Court may determine.
- 34. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Receiver 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.
- 35. This Order and all of its provisions are effective as of 8:59 a.m. Pacific Time on the date of this Order.
- 36. Endorsement of this Order by counsel appearing on this Petition other than the Petitioner is hereby dispensed.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

APPROVED BY:

Signature of David E. Gruber
lawyer for Petitioner

BY THE COURT

DISTRICT REGISTRAR

Draft

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT

\$ _____

1. THIS IS TO CERTIFY that FTI Consulting Canada Inc., the Receiver (the "**Receiver**") of all of the assets, undertakings and properties of Tercon Investments Ltd., Tercon A.C. Ltd., Tercon Equipment Ltd., Tercon Construction Ltd., Tercon Mining Ltd., Tercon Enterprises Ltd., Tercon MRC Limited, FNP Ventures Inc., Tercon Mining PV Ltd., Tercon Equipment Alaska Partnership and Tercon Alaska Ltd. (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "**Court**") dated the ____ day of _____, 2012 (the "**Order**") made in SCBC Action No. _____ and/or SCBC Action No. _____/Estate No. _____ 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 _____ 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, 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 the 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 _____, British Columbia.
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.

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6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property 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 under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 201__.

FTI CONSULTING CANADA INC., solely
in its capacity as Receiver of the Property, and
not in its personal capacity

Per:
Name:
Title:

Draft

Draft

Action No. _____

IN THE SUPREME COURT OF BRITISH
COLUMBIA

IN THE MATTER OF AN APPLICATION
PURSUANT TO
SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED AND SECTION 39 OF THE *LAW AND
EQUITY ACT*, R.S.B.C. 1996 C. 253, AS AMENDED

BETWEEN:

DUMAS HOLDINGS INC.

Petitioner

- and -

**TERCON INVESTMENTS LTD., TERCON A.C.
LTD., TERCON EQUIPMENT LTD., TERCON
CONSTRUCTION LTD., TERCON MINING LTD.,
TERCON ENTERPRISES LTD., TERCON MRC
LIMITED, FNP VENTURES INC., TERCON
MINING PV LTD., TERCON EQUIPMENT
ALASKA PARTNERSHIP AND TERCON
ALASKA LTD.**

Respondents

RECEIVERSHIP ORDER
