

*This is the 1st affidavit
of Steven Chambers in this case
and was made on December 13, 2012*

No. _____
Vancouver Registry

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

**AFFIDAVIT OF STEVEN CHAMBERS
(Sworn December 13, 2012)**

I, Steven Chambers, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am the Chief Financial Officer of the Petitioner Dumas Holdings Inc. (“**DHI**”), formerly 0833824 B.C. Ltd. (“**0833824**”). DHI is the largest shareholder of the respondent Tercon Investments Ltd. (“**Tercon**”), holding approximately 98% of its issued and outstanding shares. DHI is also the largest direct secured creditor of Tercon. More specifically, DHI is the lender under 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 (the “**Loan Guarantors**”). DHI is also the holder of an Amended and Restated Debenture issued as of August 27, 2010 by Tercon in favour of

DHI in the principal amount of \$5 million (the “**Debenture**”), which has also been guaranteed by the Loan Guarantors. Over the past several months, DHI has also made secured intercompany advances (the “**Secured Advances**”) totalling approximately \$31 million to Tercon from funds obtained from DHI’s own senior secured credit facility. In my position as Chief Financial Officer of DHI, I am knowledgeable about the financial situation of DHI and its subsidiaries. As such, I have personal knowledge of the matters deposed to herein. Where I have relied upon other sources for information, I have specifically referred to such sources and verily believe them to be true.

2. I am swearing this affidavit in support of a petition by DHI to appoint FTI Consulting Canada Inc. (“**FTI Consulting**”) as receiver (the “**Receiver**”) over Tercon and the other Respondents (collectively, the “**Tercon Group**”) and their assets.

Overview

3. The Tercon Group is a Canadian-based provider of heavy civil construction and site development services in the mining industry. It principally services the surface (*i.e.*, above-the ground) mining and construction industries and had operations in British Columbia, Alberta, and Alaska. The Tercon Group’s principal assets are its Equipment and its Accounts Receivable (both as defined below). There are currently no active projects and substantially all Equipment has been “demobilized” from customer work sites. As at the date of the swearing of this Affidavit, the Tercon Group has approximately 25 full-time salaried employees and 20 hourly-based employees dealing with the demobilization of Equipment and other assets.

4. At present, Tercon is indebted to DHI in the amount of approximately \$39 million (together with interest, fees, costs and other allowable charges which continue to accrue, the “**Indebtedness**”) pursuant to the Loan Agreement, the Debenture and the Secured Advances. The Indebtedness is secured by, among other things, a general security agreement granted by Tercon in favour of DHI dated as of October 1, 2007 pursuant to which DHI holds comprehensive security over all of the current and after-acquired property, assets and undertaking of Tercon (the “**Collateral**”). All of the Respondents, with the exception of Tercon Alaska Ltd. (“**TAL**”) and Tercon A.C. Ltd. (“**TAC**”), have guaranteed the Indebtedness. TAL and TAC, among other entities, are guarantors under the DHI Credit Facility (as defined below).

5. Over the past twelve months, the Tercon Group's financial performance has significantly declined, largely as a result of unforeseen events, and its long-term prospects are grim. In particular, in early 2012, the Tercon Group began to mobilize a large portion of its production equipment to Alaska in order to perform a new contract that had been awarded to TAL in late 2011. The cost of the mobilization was estimated to be approximately \$3 million and the mobilization was expected to be completed by late March 2012, with the project scheduled to be operating at full capacity by the middle of April 2012. However, the actual cost of the mobilization was approximately \$4.6 million, or \$1.6 million greater than estimated, and the mobilization was significantly delayed with the result that the project did not achieve full operating capacity until the middle of May 2012. As the Tercon Group's core business is capital intensive in nature and its financial results are dependent on achieving high rates of equipment utilization, the delayed mobilization resulted in essentially zero utilization and revenue generation on the equipment while it was in transit. Moreover, the delay in the commencement of the project idled a large portion of the fleet for two and half months. This poor operating performance was exacerbated by the cost overspend on the mobilization and resulted in negative operating income for the Tercon Group of approximately \$3 million in the six months ended June 30, 2012.

6. In addition, the Tercon Group's core business is seasonal. The typical annual cycle involves increasing tendering activity from March to June and increasing contracting revenues from May through October. However, by June 30, 2012, the Tercon Group had not been awarded any substantial new contracts. Moreover, as a result of significant weakness in the surface mining industry, and in particular weakness in the coal and oil sands sectors, target projects were delayed and eventually cancelled throughout the summer. As at the date of the swearing of this Affidavit, there is no work on the Tercon Group's order book.

7. At present, the Tercon Group is experiencing negative cash flow, with net income of approximately -\$7.5 million for the nine month period ended September 2012. Year-to-date operating income is approximately -\$5.4 million and earnings before interest, tax, depreciation and amortization ("**EBITDA**") is -\$1.7 million. As noted above, the Tercon Group does not have any significant contracts in place with its key mining or construction customers for work past November 2012 and little or no prospect of obtaining further contracts in the near future. The Tercon Group's outstanding order book has decreased from an average value of \$100

million in the first two quarters of 2012 to a value of approximately \$6 million at September 30, 2012, with no orders on hand at the date of the swearing of this Affidavit. Excluding work that cannot be completed because of project delays, essentially all of the Tercon Group's contracted surface order book has been completed. As a result, the Tercon Group's large unutilized equipment fleet and other sunk costs will continue to deplete its remaining financial resources.

8. Since acquiring its ownership interest in Tercon in August 2010, DHI has been a significant source of operating capital and financial support for Tercon. In addition to assuming Tercon's existing third party indebtedness in August 2010 as part of its acquisition of the Tercon shares, DHI has also lent the Tercon Group substantial funds to purchase additional units of Equipment necessary to operate the business. This financial support increased significantly following the decision by DHI to merge the operations of the Tercon Group with DHI's other wholly-owned subsidiary, Dumas Contracting Ltd. ("**DCL**"), a leading underground mining and energy services provider, in January 2012. Over the past nine months, DHI has made numerous Secured Advances to Tercon totalling approximately \$31 million from funds obtained through DHI's own senior secured credit facility (the "**DHI Credit Facility**") in order to refinance the Tercon Group and fund its operations.

9. Unfortunately, even after refinancing the Tercon debt and with the advance of additional operating capital and other financial support by DHI, the Tercon Group continues to face financial difficulties and operational challenges. Moreover, the difficulties faced by the Tercon Group are starting to impact DHI's ability to satisfy its own financial obligations. In particular, in September 2012, DHI breached, for the first time, certain financial covenants set out in the DHI Credit Facility. As a result of this breach, DHI has requested that the lenders under the DHI Credit Facility forbear from enforcing their rights and remedies thereunder and under related security to provide financial stability for DHI while a liquidation of the Tercon Group assets is undertaken in order to de-lever the DHI balance sheet and bring the DHI Credit Facility back within covenant terms.

10. 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, Tercon 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 is immediately due and payable. The Tercon Group cannot meet any accelerated payment demand.

11. After considering its strategic options, and following extensive discussions with its lenders, DHI has determined that the most effective way to exit the Tercon business and implement the realization of the Tercon Group's assets is through an orderly and court-supervised liquidation process. DHI does not believe that the prospect of a going concern sale of the Tercon Group business is a viable option as a result of the lack of future work prospects. Neither DHI, nor its shareholders, nor the lenders under the DHI Credit Facility (the "**DHI Lenders**") are prepared to further support the Tercon Group business. Moreover, this assessment is supported by the fact that DHI and its shareholders, with the assistance of Scotia Capital Inc. ("**Scotia Capital**"), conducted an unsuccessful sales solicitation process in relation to the Tercon business in the first half of 2011. DHI will continue to support DCL and its subsidiaries, which remain profitable and have strong prospects going forward. DHI intends to use the proceeds of the Tercon Group liquidation and the collection of Accounts Receivables to pay down DHI's secured indebtedness in accordance with legal rights and priorities, which indebtedness is subject to secured guarantees in favour of the DHI Lenders.

12. Notices under s. 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the "**BIA**") were delivered by DHI to Tercon and the Loan Guarantors on December 13, 2012, together with a demand notice accelerating the Indebtedness owing under the Loan Agreement, the Debenture and the Secured Advances and demanding immediate repayment thereof. This demand has not been satisfied by Tercon or the Loan Guarantors. Tercon and each of the Loan Guarantors have waived the prescribed 10-day notice period.

13. DHI is therefore bringing this petition to have FTI Consulting appointed as Receiver over the Respondents and their assets, property and undertakings in order to protect its interest in the Collateral and obtain the repayment of the Indebtedness owing to it under the Loan Agreement, the Debenture and the Secured Advances. DHI and the lenders under the DHI Credit Facility have agreed that they require the stability and certainty of a court-supervised receivership process to facilitate an orderly liquidation of Tercon and its subsidiaries.

14. The DHI Lenders have agreed to forbear from enforcing their rights and security on the condition, *inter alia*, that 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.

The Petitioner

15. The Petitioner, DHI, is a holding company. It is Tercon's largest shareholder, holding approximately 98% of the issued and outstanding Class A shares of Tercon. WF Fund II LP is Tercon's only other shareholder, holding approximately 2% of its issued and outstanding Class A shares. DHI also holds 100% of the issued and outstanding shares of DCL which is not a party to this proceeding. DCL is a leading provider of underground construction and mining services which is based in Toronto, Ontario and has operations throughout the Americas.

16. DHI itself has two shareholders: Pala Holdco (Luxembourg) II S.a.r.l., which holds approximately 60% of the issued and outstanding shares, and 2147881 Ontario Ltd. ("2147881"), which holds approximately 40% of the issued and outstanding shares.

17. In addition to being the majority shareholder of Tercon, DHI is also the largest direct secured creditor of Tercon with aggregate indebtedness of approximately \$39 million. It is the lender under the Loan Agreement (approximately \$2.8 million) and the holder of the Debenture (\$5 million). Moreover, and as described in greater detail below, since February 2012, DHI has also made various Secured Advances to Tercon totalling approximately \$31 million through funds borrowed under the DHI Credit Facility. One of Tercon's wholly-owned subsidiaries, Tercon Equipment Ltd. ("TEL"), is separately indebted to DHI in the amount of approximately \$3.1 million. DHI is no longer able under the terms of the DHI Credit Facility – or willing – to continue supporting the Tercon Group's operations.

The Business of the Tercon Group

18. The Tercon Group is a provider of surface (*i.e.*, above the ground) construction and site development services in the mining industry. Among other things, it provides contract mining, mine site development, tailings, dikes and dam construction, contract hauling, highway, road and railway construction, quarry, crushing and recreational development.

19. The Tercon Group has been operating since 1981 and has its chief executive office in Kamloops, B.C. It has other offices in Vancouver, B.C., Sparwood, B.C. and Ft

McMurray, Alberta. As at the date of the swearing of this Affidavit, the Tercon Group had 25 full-time salaried employees and approximately 20 hourly-based employees who are dealing with the demobilization of Equipment and other assets (at present, 4 hourly employees are based in Alaska and 16 hourly employees are based in Canada). The hourly employees in Canada are part of temporary employee union agreements (by province); there is no collective bargaining agreement between the Tercon Group and the unions.

20. The Tercon Group currently operates through a series of wholly-owned subsidiaries. In addition, the Tercon Group also holds interests in and conducts business through two First Nation partnerships, namely Tahltan-Tercon Limited Partnership and AC&T Limited Partnership. There is no secured debt held by DHI in respect of these two partnerships and therefore they will not form part of this proceeding. In the case of the Tahltan-Tercon Limited Partnership, the partners have agreed to voluntarily dissolve the partnership. The partnership, acting through its general partner Tahltan-Tercon Projects Ltd., and through Tercon Construction Ltd. (“TCL”), acting pursuant to a management agreement, shall collect all accounts owing, pay all creditors in accordance with dissolution requirements, and thereafter be dissolved. In the case of AC&T Limited Partnership, Tercon A.C. Ltd., the general partner of the AC&T Limited Partnership, is in the process of negotiating a wind-down agreement whereby it will sell all of its interests in the partnership to an affiliate of the sole limited partner of the partnership in exchange for all of the equipment held by AC&T Limited Partnership, together with certain net operating cash flows of the partnership relating to existing projects. If approved, the Receiver intends, subject to any necessary court approvals, to complete the negotiation, and implement the wind-down agreement.

21. Most of the Tercon Group’s revenues are generated through short and medium-term contracts that are entered into with construction or mining customers such as *Teck Resources Ltd.*, *Synchrude Canada Ltd.*, *Husky Energy Inc.*, *Kinross Gold Corporation*, *Suncor Energy*, etc. Due to significant weaknesses in key sectors of the surface mining industry and an increase in competition in the Canadian marketplace, the Tercon Group’s profitability has significantly contracted and its current order book is substantially complete. There are no significant ongoing projects and, once the outstanding billings are completed and the receivables are collected, there will be no future revenues to cover the Tercon Group’s fixed costs.

The Assets of the Tercon Group

22. The Tercon Group's primary assets are its construction and mining-related equipment (the "**Equipment**") and its accounts receivable, including amounts for work completed that is yet to be invoiced (the "**Accounts Receivable**").

23. The Equipment is held principally through TEL and Tercon Equipment Alaska Partnership ("**TEAP**") and is generally operational and in good working order. Primary brands of the Equipment include *CAT*, *Hitachi* and *Komatsu*. Most of the Equipment is approximately half-way through its useful life and has a history of high reliability. The Tercon Group has employed a comprehensive maintenance program in respect of the Equipment which is currently up-to-date.

24. As at October 31, 2012, the Tercon Group had approximately 290 owned units of Equipment (56 of which are subject to financing arrangements and 10 units of which are held in AC&T Limited Partnership, a non-filing entity). The equipment fleet is segmented between production equipment (93 units; defined primarily as that which is directly involved in earth moving) and support equipment (approximately 200 units; defined as all other units required for service provision). The production fleet consists of the following:

Production Equipment Type	Number of Units
Articulated Truck	5
Coal Hauler	14
Dozer	12
Excavator	16
Grader	5
Loader	8
Rock Truck	23
Trailer	10
Total	93

25. In addition, as at November 27, 2012, the Tercon Group rented an additional 7 units of production equipment, two of which are rented under a Rental with Purchase Option program ("**RPO**"). Under a RPO, rental contracts are typically signed for six to nine months with a fixed payment rate or a sliding payment scale on hourly rental charge based on hours incurred (rate decreases as hours increase). The Tercon Group has the option to purchase these two units following the rental period, with 80-90% of the rental expense amortized towards the purchase price.

26. As described below, through a competitive bidding process conducted in November 2012, “net minimum guarantee” and purchase offers have been obtained from three equipment auction firms covering a significant majority of the Equipment (including the Equipment held in AC&T Limited Partnership), excluding equipment that is subject to third-party financing or RPO arrangements.

27. As at October 31, 2012, Accounts Receivable totalling approximately \$7.4 million was owing from five (5) customers in respect of nine (9) projects. Accounts Receivable include “hold-backs”, common in construction work of the type undertaken by the Tercon Group, of approximately \$1.1 million.

The Capital Structure

28. Tercon was incorporated on September 29, 2005 by articles of incorporation under the laws of British Columbia. Tercon holds all of the issued and outstanding shares of its wholly-owned subsidiaries, namely, TEL, TAC, Tercon Construction Ltd. (“**TCL**”), Tercon Mining Ltd. (“**TML**”), Tercon Mining PV Ltd. (“**TMPV**”), Tercon Enterprises Ltd. (“**Tercon Enterprises**”) and Tercon MRC Limited (“**TMRC**”). A copy of Tercon’s corporate chart dated September 14, 2012 is attached as Exhibit “A” to this Affidavit.

29. As at October 31, 2012, Tercon had 1,202,889 Class A shares issued and outstanding. Tercon is authorized under its articles of incorporation to issue up to 1,155,631 Class B shares; however, none have been issued to date. As noted above, DHI is Tercon’s largest shareholder, holding approximately 98% of the issued and outstanding Class A shares.

(i) TEAP

30. TEAP is a partnership indirectly owned by Tercon which has its registered office in Kamloops, B.C., with operations principally in Alaska, USA. TEAP is 99.9% owned by TEL and was established by the Tercon Group exclusively for projects located in Alaska. As at October 31, 2012, TEAP owned approximately 20 units of production equipment and 28 units of support equipment.

31. The production equipment that is currently owned by TEAP was acquired from TEL in March 2012; although title was not formally transferred at that time. However, TEAP

has been operating as if the title has passed since March 1, 2012. On December 6, 2012, TEAP and TEL executed an agreement of purchase and sale (the “**Purchase and Sale Agreement**”), effective as of March 1, 2012, in which TEAP has agreed to assume all of TEL’s obligations under the applicable general security agreement and Guarantee (as defined below) as if it were an original signatory thereto. By virtue of the Purchase and Sale Agreement, TEAP is now a guarantor of the Tercon Indebtedness. A copy of the Purchase and Sale Agreement is attached as Exhibit “B” to this Affidavit.

(ii) TAL

32. TAL is a wholly-owned subsidiary of Tercon which is incorporated under the laws of Alaska, USA and has its registered office in Juneau, Alaska. TAL provides surface mining services to customers in Alaska. TAL is not a guarantor under the Tercon Indebtedness. However, and as described below, TAL is a guarantor under the DHI Credit Facility. The DHI Lenders have advised DHI that in order to ensure their continued support and forbearance, the proposed Receivership Order must permit the Receiver to take possession and exercise control over the assets, undertakings and property of TAL. A significant majority of the Equipment used by TAL is internally rented from TEAP.

Tercon’s Indebtedness and Security

33. As at October 31, 2012, Tercon and its subsidiaries had aggregate indebtedness to DHI and related parties (excluding accrued and unpaid interest) totalling approximately \$43.5 million and aggregate third-party indebtedness (excluding accrued and unpaid interest) totalling approximately \$5 million. In addition, Tercon, TEL, TCL, TAL, TEAP and TAC have provided a secured guarantee of the DHI Credit Facility:

	Description of Debt	Principal Amount	Principal Outstanding as of October 31, 2012	Maturity
Indebtedness to DHI and its non-Tercon affiliates	Loan Agreement	\$2,839,283	\$2,839,283	August 27, 2013
	Debenture	\$5,000,000	\$5,000,000	Earlier of (i) August 27, 2013, (ii) an Event of Acceleration, and (iii) the date immediately prior to a Change of Control
	Former Finning Debt	\$3,160,779	\$3,160,779	On demand
	Advances from DHI	\$31,150,933.53	\$31,150,933.53	On demand

Indebtedness to 2147881	Promissory Note	\$1,500,000	\$1,500,000	On demand
3 rd Party	Various Third Party Leases Capital	\$5,071,283	\$5,068,153	Terms vary

(i) Amended and Restated Operating Loan Agreement

34. Tercon and DHI are parties to the Loan Agreement.

35. The Loan Agreement was originally made between Tercon, as borrower, and WF Fund III Limited Partnership, carrying on business as Wellington Financial LP and Wellington Financial Fund III (together, “**Wellington**”) on or about October 1, 2007, as amended on September 5, 2008 (the “**Original Loan Agreement**”).

36. DHI took an assignment of the Original Loan Agreement through an Assignment of Debt and Security dated August 27, 2010 (the “**Assignment of Debt and Security**”). The assignment of the Loan Agreement (and the Debenture, as described below) by Wellington to DHI was part of a comprehensive reorganization and recapitalization of Tercon’s corporate structure that was consummated in August 2010 (the “**Tercon Reorganization Transaction**”). DHI made its investment in Tercon through this transaction. As part of the assignment, DHI and Tercon agreed to amend and restate the terms of the Original Loan Agreement (as above, the “**Loan Agreement**”). A copy of the Assignment of Debt and Security is attached as Exhibit “C” to this Affidavit.

37. Pursuant to the Loan Agreement (as further amended on April 26, 2011 through the First Amendment to the Loan Agreement), Tercon acknowledged that it is indebted to DHI in the principal amount of \$2,839,283, plus accrued interest (in the form of default and normal course interest). The material terms of the Loan Agreement are as follows

- Term and Repayment: subject to certain conditions, all indebtedness is immediately due and payable on the Expiry Date (being August 27, 2013).

- Prepayment: upon the written consent of DHI, in its sole discretion, Tercon may prepay the loan in full or in part, provided that partial prepayments are in the amount of \$500,000 or greater, without penalty or payment of additional fees.
- Interest: interest is payable at a rate of 8% per annum.
- Interest upon Default: upon the occurrence of an Event of Default (as defined therein) and thereafter, interest is to be calculated at the rate of 18% per annum as a reasonable pre-estimate of damages and not as a penalty.
- Conversion into Class A Shares: DHI has the right, at its option, at any time to convert the whole or any part of the amount outstanding into 12,255 fully paid and non-assessable Class A shares of Tercon for every \$1,000 of the amount outstanding (such conversion price subject to adjustment from time to time).

38. As at October 31, 2012, the principal outstanding under the Loan Agreement remained \$2,839,283. A copy of the Loan Agreement, without appendices and signature pages, is attached as Exhibit “D” to this Affidavit. A copy of the First Amendment to the Loan Agreement is attached as Exhibit “E” to this Affidavit.

39. The amounts outstanding under the Loan Agreement (and 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 Tercon and the guarantors thereunder (being TMRC, TEL, TML, TMPV, TCL, Tercon Enterprises, Tercon Properties, and FNP Ventures Inc.) (as above, the “**Loan Guarantors**” and each a “**Loan Guarantor**”), pursuant to various security arrangements, including:

- an irrevocable and unconditional guarantee from each Loan Guarantor (each an “**Amended and Restated Guarantee**” and together the “**Guarantees**”) 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;
- a general security agreement dated October 1, 2007 in favour of Wellington from Tercon, 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

- general security agreements each dated October 1, 2007 granted by each of the Loan Guarantors 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.

40. Pursuant to each of these security arrangements, if Tercon fails or refuses to punctually make any payment or perform its obligations under the Loan Agreement, each Loan Guarantor is required to make any such payment or performance upon demand. Each Guarantee is a continuing guarantee and applies to and secures any ultimate balance due or remaining unpaid to DHI. Copies of the general security agreements and Guarantees dated August 27, 2010, without appendices and signature pages, are attached as Exhibit "F" to this Affidavit.

41. An Event of Default (as defined therein) occurs under the Loan Agreement if, *inter alia*:

- (a) Tercon fails to pay in cash any principal amount owing when due and payable;
- (b) Tercon or any of its subsidiaries becomes insolvent, meaning that (i) Tercon or any of its subsidiaries becomes unable to satisfy its liabilities as they become due; and/or (ii) the realizable value of Tercon's assets (taken as a whole) is less than the aggregate sum of its liabilities;
- (c) any creditor of Tercon or its subsidiaries, or any other person, privately appoints a receiver; and
- (d) an Event of Default occurs under the Debenture or the Guarantees.

42. Upon an Event of Default, DHI may provide written notice to Tercon declaring that all amounts outstanding are immediately due and payable, without presentment, demand, protest or further notice of any kind.

(ii) Amended and Restated Debenture

43. Tercon and DHI are also parties to the Debenture.

44. Similar to the Loan Agreement, the Debenture was originally issued by Tercon to Wellington on October 1, 2007 in the aggregate principal amount of \$5 million (the “**Original Debenture**”).

45. DHI took an assignment of the Original Debenture (together with the Original Loan Agreement) through the Assignment of Debt and Security. The assignment was completed as part of the Tercon Reorganization Transaction in August 2010. Pursuant to the assignment, DHI and Tercon agreed to amend and restate the terms of the Original Debenture (as above, the “**Debenture**”).

46. Pursuant to the Debenture, Tercon has promised to repay to DHI the amount of \$5 million plus accrued interest in the amount of \$170,048.76 (as at August 27, 2010) on the Maturity Date and to pay interest, calculated annually and payable monthly (in arrears) at a rate of 8% per annum. Other material terms of the Debenture are as follows:

- Maturity Date: being the earlier of August 27, 2013, an Event of Acceleration (as defined therein), and the date immediately prior to a Change of Control (as defined therein).
- Interest upon Default: upon the occurrence of an Event of Default (as defined therein) and thereafter, interest is to be calculated at the rate of 18% per annum as a reasonable pre-estimate of damages and not as a penalty.
- Prepayment: Tercon may prepay the Debenture, in full or in part, upon the written consent of DHI, in its sole discretion, provided that partial prepayments are in the amount of \$500,000 or greater, without penalty or payment of additional fees.
- Conversion into Class A Shares: DHI has the right, at its option, at any time to convert the whole or any part of the amount outstanding into 12,255 fully paid and non-assessable Class A shares of Tercon for every \$1,000 of the amount outstanding (such conversion price subject to adjustment from time to time).

47. The amounts outstanding under the Debenture are secured in the same manner as amounts owing under the Loan Agreement. In particular, the amounts are secured by a security interest in and to all current and after-acquired undertakings, property and assets of Tercon and the Loan Guarantors through various security arrangements, including the Guarantees and general security agreements described above. Similarly, Events of Default under the Debenture are substantially similar to those contained in the Loan Agreement. A copy of the Debenture is attached as Exhibit "G" to this Affidavit.

(iii) Former Finning Debt

48. As part of the Tercon Reorganization Transaction (described above), DHI also purchased and assumed from Finning International Inc. ("**Finning**"), and Finning assigned, certain indebtedness owing by TEL to Finning, including all security granted to Finning in relation thereto. In particular, DHI assumed indebtedness owing by TEL in the aggregate principal amount of \$3,160,779, plus interest accruing on the principal amount from time to time (the "**Former Finning Debt**"). Under the terms of the assignment, TEL agreed to pay interest on the principal amount outstanding and on all other amounts then and thereafter owing in respect of the Former Finning Debt at a rate of 8% per annum. The interest rate increases to 18% per annum upon default and thereafter, as a reasonable pre-estimate of damages and not as a penalty. Pursuant to the terms of an Assignment of Debt and Security, DHI took assignment of the security, which consisted of a general security agreement between TEL and Finning dated September 11, 2009.

49. Under the terms of a confirmation agreement between DHI, Tercon and TEL dated August 27, 2010 (the "**Finning Debt Confirmation Agreement**"), the parties agreed that DHI has the right, at any time, to request that TEL transfer or assign to Tercon, and for Tercon to assume, all or a portion of the Former Finning Debt. To date, such a request has not been made. A copy of the Finning Debt Confirmation Agreement is attached as Exhibit "H" to this Affidavit.

(iv) Promissory Note

50. Tercon issued a promissory note dated November 6, 2009 to 2147881, one of DHI's shareholders, in the amount of \$1.5 million (the "**Promissory Note**"). Under the terms of the Promissory Note, Tercon has promised to pay 2147881 the sum of \$1.5 million together with

interest thereon at a rate equal to the prime rate of interest plus 3% per annum. Tercon is entitled to prepay any amount owing under the Promissory Note without notice, bonus or penalty. TEL, TCL and TAC have covenanted to jointly and severally bind themselves to 2147881 to pay the amounts owing under the Promissory Note to the same extent and on the same terms as if they were primary obligors.

51. The Promissory Note is secured by a general security agreement dated November 5, 2009 (the “**November 2009 GSA**”) granted by Tercon, TEL, TAC and Tercon Construction granting 2147881 a security interest in and to all of their present and after acquired personal property, and all personal property in which they each have rights, of whatever nature or kind and wherever situate. A copy of the November 2009 GSA is attached as Exhibit “I” to this Affidavit.

52. 2147881 executed a postponement and subordination agreement (the “**Postponement and Subordination Agreement**”) dated February 28, 2012 in favour of HSBC (as hereinafter defined) as agent for itself and the DHI Lenders (as hereinafter defined) pursuant to which 2147881 postponed and subordinated all indebtedness and liabilities owing by Tercon to 2147881 (and all security held in respect thereof) to all present and future indebtedness and liabilities owing by Tercon to HSBC and the DHI Lenders (and all security held by HSBC and the DHI Lenders in respect thereof). A copy of the Postponement and Subordination Agreement is attached as Exhibit “J” to this Affidavit.

(v) Various Third Party Capital Leases

53. In addition to the intercompany indebtedness described above, Tercon and certain of its subsidiaries, including TEL, are also party to numerous capital leases which relate to the acquisition and financing of certain specified units of Equipment. In connection with each capital lease, Tercon has entered into lease agreements or granted a security interest in the specific unit of Equipment.

54. The following is a summary of the counterparties to the capital leases and the amounts that are currently outstanding (none of which are subject to a RPO program):

Lender	Amount owing as at October 31, 2012
RBC	3,217,144

JPL	214,647
Emkay	134,369
John Deere	437,633
North Central	612,052
NC Machinery	96,926
Merchant Short-term Solution	297,590
Calmont	37,442
Other	22,061
Total	5,069,865

(vi) Other Indebtedness

55. In addition to the above-noted indebtedness, a search of the British Columbia *Personal Property Security Act* (“**BC PPSA**”) registry on November 13, 2012 reveals that John Deere Limited filed a financing statement against Tercon on September 2, 2011, as amended, relating to a specified piece of Equipment. In addition, financing statements have been registered by various third parties against certain of the other Respondents. Copies of the PPSA search results against Tercon and the other Respondents are attached as Exhibit “K” to this Affidavit.

Advances to Tercon from DHI

56. As noted above, the Petitioner, DHI, is a party to a senior secured credit agreement dated as of February 28, 2012 (as amended) between DHI, as borrower, HSBC Bank Canada (“**HSBC**”) as Lead Arranger, Bookrunner and Administrative Agent, the DHI Lenders, and Tercon and certain Tercon subsidiaries, including TEL, TCL, TAC, TAL, and TEAP, as guarantors (the “**DHI Credit Agreement**”).

57. The DHI Credit Agreement provides DHI with access to the following credit facilities (totalling \$70 million):

- (a) Revolving Credit Facility: a revolving credit facility (including a swingline facility provided exclusively by HSBC as the Swingline Lender in the amount of up to \$2 million (the “**Swingline Facility**”)) for up to \$20 million (the “**Revolving Facility**”);
- (b) Non-Revolving Term Facility: a non-revolving term facility in the amount of up to \$37.5 million (the “**Term Facility**”); and

- (c) Non-Revolver Acquisition Facility: a non-revolving facility in the amount of up to \$12.5 million to be used by DHI only to make Permitted Acquisitions (as defined therein) (the “**Acquisition Facility**”).

A copy of the DHI Credit Agreement, without appendices and signature pages, together with the amending agreement, is attached as Exhibit “L” to this Affidavit.

58. The amounts outstanding under the DHI Credit Agreement, and the payment and performance of all other present and future indebtedness and obligations of DHI to the DHI Lenders, are secured by charges against all of the current and after-acquired property, assets and undertakings of DHI and the guarantors thereto, which includes Tercon and certain of the other Respondents, pursuant to various security arrangements, including:

- A general security and pledge agreement dated as of February 28, 2012 (the “**DHI Security and Pledge Agreement**”) between DHI and HSBC, as Administrative Agent, in respect of all present and future personal and real property, assets and undertaking of DHI. A copy of the DHI Security and Pledge Agreement is attached as Exhibit “M” to this Affidavit.
- A general security and pledge agreement dated as of February 28, 2012 (the “**Tercon Security and Pledge Agreement**”) between Tercon, as guarantor, and HSBC, as Administrative Agent, granting the DHI Lenders a first-ranking security interest in respect of all issued and outstanding shares of Tercon, and a first-ranking security interest in all present and after-acquired property from time to time of Tercon, which is subject to certain conditions set out therein. A copy of the Tercon Security and Pledge Agreement is attached as Exhibit “N” to this Affidavit.
- A guarantee and subordination agreement dated as of February 28, 2012 (the “**Guarantee and Subordination Agreement**”) between Tercon, as guarantor, and HSBC, as Administrative Agent, wherein Tercon has (i) provided an unconditional and irrevocable guarantee to each of the DHI Lenders of the due and punctual payment and performance of DHI’s current and future obligations under the DHI Credit Agreement, and (ii) agreed to fully subordinate and

postpone, in favour of the DHI Credit Agreement, any present or future indebtedness, liabilities and obligations of DHI to Tercon in all circumstances. A copy of the Guarantee and Subordination Agreement is attached as Exhibit "O" to this Affidavit.

59. An Event of Default (as defined therein) occurs under the DHI Credit Agreement if, *inter alia*,

- (a) DHI fails to pay in cash any principal amount owing when due and payable;
- (b) DHI has defaulted in the observance or performance of any of the financial covenants set out therein; and
- (c) DHI or any of the guarantors, including Tercon, seek the appointment of a receiver for it or any substantial part of its property;

60. Over the past nine months, DHI has advanced approximately \$31 million to Tercon from funds advanced to DHI under the DHI Credit Agreement to support the operations of the Tercon Group. Of that amount, approximately \$22 million was advanced to Tercon in late February 2012 when the DHI Credit Facility was established to refinance the Tercon Group's indebtedness. Since that time, an additional \$9 million has been advanced to fund operations.

61. The foregoing Secured Advances are secured in the same manner as amounts owing under the Loan Agreement. In particular, the amounts are secured by a security interest in and to all current and after-acquired undertakings, property and assets of Tercon and the Loan Guarantors through various security arrangements, including the Guarantees and general security agreements described above.

Cash Management Arrangements

62. DHI and its North American subsidiaries maintain 13 operating accounts in Canada denominated in CAD at HSBC. Eight of these are in the name of the Respondents. In addition, in order to support operational or treasury related cash management, DHI and certain of its subsidiaries maintain 7 Canadian domiciled USD denominated accounts at HSBC. Five of these are in the name of the Respondents. Operating companies with operations in the U.S. also maintain 4 operating accounts at HSBC which are domiciled in the U.S. and denominated in

USD (one of these is in the name of the Respondent TAL). The accounts are used for both receipts and disbursements.

63. All subsidiary accounts (which includes all the accounts in the name of the Respondents) are zero balanced on a daily basis (*i.e.*, when there is a positive balance in the subsidiary account the cash is swept to the DHI concentration account; when there is an overdraft balance in the subsidiary account due to checks being presented for payment money is swept from the concentration account into the subsidiary account). The net sweep position at each month end is applied as either a repayment of or an additional Secured Advance.

Tercon Group Encounters Financial Difficulties

64. Over the past twelve months, the Tercon Group has encountered considerable financial difficulties and its long-term prospects have significantly worsened. This has been the result of several largely unforeseen events.

65. In particular, in early 2012, the Tercon Group began to mobilize a large portion of its production equipment to Alaska to perform a new contract that had been awarded in late 2011. The cost of the mobilization was estimated to be approximately \$3 million and the mobilization was expected to be completed by late March 2012, with the project scheduled to be operating at full capacity by the middle of April 2012. However, the actual cost of the mobilization was approximately \$4.6 million and the mobilization was significantly delayed. As a result, the project did not achieve full operating capacity until the middle of May 2012. This resulted in essentially zero utilization and revenue on the specific equipment while in transit. Moreover, the delay in the commencement of the project essentially idled a large portion of the equipment fleet for 2.5 months. This poor operating performance resulted in negative operating income for the Tercon Group of approximately \$3 million in the six months ended June 30, 2012.

66. In addition, by June 30, 2012, the Tercon Group had not been awarded any significant new contracts from customers, despite the fact that tendering typically occurs between March and June, with contracts awarded shortly thereafter. Moreover, as a result of significant weakness in the surface mining industry, and in particular weakness in the coal and oil sands sectors, target projects were delayed and eventually cancelled throughout the summer.

As at the date of the swearing of this Affidavit, the Tercon Group has no future work on its order book.

67. The net result is that the Tercon Group's profitability has significantly contracted over the past 12 months. For example, in the nine months ended September 30, 2011, the Tercon Group had gross revenue of approximately \$48.3 million, operating income of approximately \$3.6 million and net income of approximately \$1.6 million. For the comparable nine month period in 2012, the Tercon Group had gross revenue of approximately \$52.9 million, operating loss of approximately \$5.4 million and net loss of approximately \$7.5 million.

68. This, in turn, has had a significantly negative impact on the Tercon Group's cash flow position. At present, the Tercon Group is experiencing negative cash flow, with a year-to-date cash burn of approximately -\$11.7 million and year-to-date EBITDA of -\$1.7. The negative cash flow is composed of -\$5.4 million cash flow from operations, -\$3.5 million cash flow from changes in working capital and debt service (principal and interest) of -\$2.8 million. In addition, the Tercon Group does not have any significant contracts in place with its key mining or construction customers for future work and little or no prospect of obtaining further contracts in the near future. The Tercon Group's outstanding order book has decreased from an average value of approximately \$100 million in the first two quarters of 2012 to a value of approximately \$6 million at September 30, 2012 and as at the date of the swearing of this Affidavit, there is no work on the order book. All of the Tercon Group's contracted surface order book has been completed or terminated. As a result, the Tercon Group's large unutilized equipment fleet and other fixed costs continue to deplete available financial resources. A copy of Tercon's unaudited consolidated financial statements for the year-to-date period ended September 30, 2012 is attached as Exhibit "P" to this Affidavit.

69. DHI has made Secured Advances to the Tercon Group totalling approximately \$31 million since February 2012 to help support the Tercon Group's operations. However, in spite of this support, the Tercon Group continues to face financial difficulties and operational challenges. Moreover, the difficulties faced by the Tercon Group have caused DHI to breach some of its own obligations under the DHI Credit Agreement. In particular, in September 2012, DHI breached, for the first time, certain financial covenants set out in the DHI Credit Agreement.

In addition, certain representations and warranties of the obligors thereto may have no longer been true in all material respects as at September 28, 2012 or thereafter.

Forbearance under DHI Credit Facility

70. Due to the breach of the financial covenants, DHI commenced discussions with the DHI Lenders in or about early November 2012 regarding obtaining forbearance from enforcement action in respect of existing events of default under the DHI Credit Agreement. Forbearance would provide financial stability for DHI while a liquidation of the Tercon Group assets is undertaken in order to de-lever the DHI balance sheet and bring the DHI Credit Facility back within covenant terms.

71. On December 13, 2012, the parties to the DHI Credit Agreement entered into an agreement (the “**Forbearance Agreement**”) pursuant to which the DHI Lenders agreed to forbear from enforcing their rights under the DHI Credit Agreement and related security until January 25, 2013. The forbearance was granted, *inter alia*, on the following basis:

- (a) DHI will have obtained an order from this Honourable Court, substantially in the form attached to the Forbearance Agreement, appointing a receiver over the Respondents and their assets, properties and undertaking on or before December 18, 2012;
- (b) the Acquisition Facility will be terminated effective as of September 15, 2012;
- (c) all Outstanding Advances under the Term Credit (as each such term defined in the DHI Credit Agreement) will be payable on demand as of the date of the Forbearance Agreement, provided that the DHI Lenders will not issue a demand for payment during the forbearance period as long as all conditions described in the Forbearance Agreement are satisfied as and when required to be satisfied (except to the extent waived in writing by HSBC, as Agent, or the DHI Lenders), and all payments of principal and interest under the Term Credit continue to be made as required under the DHI Credit Agreement, subject to the terms of the Forbearance Agreement;

- (d) that US\$2.5 million be transferred from TAL to DHI which will then be applied as a permanent reduction of the Revolving Facility under the DHI Credit Agreement;
- (e) a distribution order will be sought by the Receiver concurrently with an order approving the sale agreement with the chosen liquidator (as described below), which distribution order shall provide for a distribution to the Agent of liquidation proceeds and shall be satisfactory to DHI, the Agent and the Receiver, each acting reasonably, and such liquidation proceeds shall be applied in permanent repayment and reduction of Outstanding Advances under the DHI Credit Agreement; and
- (f) DHI will pay a forbearance fee to HSBC, as Agent, in the amount of \$100,000.

72. A copy of the Forbearance Agreement (with certain commercially sensitive information redacted and without schedules) is attached as Exhibit "Q" to this Affidavit.

Delivery of Demand Notices and Notice of Intention to Enforce Security

73. Without DHI's continuing financial support, including providing further Secured Advances from funds obtained under the DHI Credit Facility, Tercon is unable to satisfy its liabilities as they become due. As noted above, this is an Event of Default under both the Loan Agreement and the Debenture, which entitles DHI (upon written notice) to declare that all amounts outstanding are immediately due and payable. The Tercon Group cannot meet the accelerated payment demand.

74. 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.

75. The Demand Notice further advised that Osler, on behalf of DHI, demanded payment of the amounts 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. A copy of the Demand Notice is attached as Exhibit "R" to this Affidavit.

76. 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**"). Copies of the 244 Notices are attached as Exhibit "S" to this Affidavit.

77. 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.

Proposed Appointed of a Receiver

78. In view of the Tercon Group's current circumstances, and in particular the financial difficulties that Tercon and its subsidiaries are facing, combined with the absence of any committed orders, DHI has concluded, with the consent of the Agent on behalf of the DHI Lenders, that the preferred course of action is to make a petition to this Honourable Court for the appointment of a Receiver that will immediately commence an orderly liquidation of the Tercon Group's assets. As described herein, DHI believes that there is no prospect of a going concern sale of the Tercon business.

79. It is proposed that FTI Consulting be appointed as Receiver over the Respondents and their assets. FTI Consulting is a licensed trustee in bankruptcy and a reputable corporate restructuring, financial advisory and consulting firm with extensive experience in Canadian insolvency proceedings. FTI Consulting is also familiar with the business and operations of the Tercon Group, having been engaged by DHI to provide restructuring and financial advice, primarily in respect of the Tercon Group, on October 19, 2012. FTI Consulting has consented to act as Receiver if appointed by this Honourable Court. It is intended that FTI Consulting would, following the appointment of the Receiver, continue to provide advice and assistance to DHI in respect of its Dumas business and subsidiaries; such advice and assistance will not relate to or impact on the receivership proceedings. A copy of FTI Consulting's consent to act is attached as Exhibit "T" to this Affidavit.

80. At present, it is contemplated that the receivership proceeding will not directly impact the Tahltan-Tercon Limited Partnership and the AC&T Limited Partnership.

Bonded Projects

81. The Tercon Group currently has four projects in which a construction surety bond has been posted. A surety bond is a type of guarantee, in which the surety, in this case Trisura Guarantee Insurance Company (“**Trisura**”), guarantees that the contractor, in this case the Tercon Group, will perform the obligations stated in the bond. If the Tercon Group fails to perform the obligation stated in the bond, both the Tercon Group and Trisura are liable to the customer on the bond on a “joint and several” basis. Under the terms of specific performance bonds issued by Trisura, DHI has also indemnified the bond holder.

82. Below is a summary of the outstanding performance bonds (none of which are cash collateralized):

Bond Holder	Trisura Guarantee Insurance Company	Trisura Guarantee Insurance Company	Trisura Guarantee Insurance Company	Trisura Guarantee Insurance Company	Trisura Guarantee Insurance Company
Size of Bond	\$723,716	\$87,136	\$2,788,240	\$2,718,570	\$50,000
Date of Bond	12/13/2011	08/28/2012	09/28/2011	05/07/2012	05/21/2011
Type of Bond	Surety Bond	Surety Bond	Surety Bond	Surety Bond	Environmental Bond
Tercon Company	Tercon Construction Ltd.	Tercon Construction Ltd.	Tercon Construction Ltd.	Tahltan-Tercon Limited Partnership	Tercon Construction Ltd.
Bond Terms - Performance	On default, Surety undertakes to complete the work outlined in the Contract. Amount Surety is liable for and eligible to draw upon is not greater than the amount of the bond.	On default, Surety undertakes to complete the work outlined in the Contract. Amount Surety is liable for and eligible to draw upon is not greater than the amount of the bond.	On default, Surety undertakes to complete the work outlined in the Contract. Amount Surety is liable for and eligible to draw upon is not greater than the amount of the bond.	On default, Surety undertakes to complete the work outlined in the Contract. Amount Surety is liable for and eligible to draw upon is not greater than the amount of the bond.	Surety undertakes to restore the leased property at the conclusion of the lease to a condition similar to the commencement of the lease. Amount Surety is liable for and eligible to draw upon is not greater than the amount of the bond.

Bond Terms – Labour & Material	Any claimant not paid within 90 days after the claimant has performed work many sue on the Bond under the terms of their contract.	Any claimant not paid within 90 days after the claimant has performed work many sue on the Bond under the terms of their contract.	Any claimant not paid within 90 days after the claimant has performed work many sue on the Bond under the terms of their contract.	Any claimant not paid within 90 days after the claimant has performed work many sue on the Bond under the terms of their contract.	N/A
Project Scope	Project # 21754 - 0002: Joint Use Vehicle Inspection Station Public Water System	Project # 22594 - 0002: Mount Hunter Creek Bridge, Bearing Replacement and Roof Slab Epoxy Injection	Project # 22592 - 0008: 4 Kilometre Wall and Approaches, Grading, Retaining Wall, Paving and Drainage Construction	Contract # RC101: Excavation and Earthworks	Leased storage yard on client
Estimated Project completion Date	11/30/2012	11/30/2012	11/30/2012	11/30/2012	N/A
Estimated Hold Back Release Date	01/14/2013	01/14/2013	01/14/2013	01/14/2013	N/A
Estimated Bond Termination Date	01/14/2015	01/14/2015	01/14/2015	11/30/2014	05/21/2013

Unsuccessful Tercon Sales Process

83. The determination that there is no viable prospect of a going concern sale of the Tercon Group business and the decision to exit the Tercon Group business and monetize its assets through an orderly liquidation has been informed, in large part, by the lack of future orders and an unsuccessful sales process that was conducted by DHI and its two shareholders, with the assistance of Scotia Capital, in the first quarter of 2011.

84. More specifically, in early 2011, Scotia Capital contacted 29 parties to inquire whether they would be interested in purchasing the Tercon Group. The list of potential buyers included both strategic and financial investors and was generated by Scotia Capital through its own internal sources and in consultation with DHI and the Tercon Group. The potential buyers were sent a “teaser” document which provided a high-level overview of the investment opportunity and a non-disclosure agreement (“NDA”). Ultimately, 13 potential buyers executed NDAs and received access to an internet-based data room containing further confidential information including financial models and operational information.

85. Interested parties who executed NDAs were invited to submit non-binding proposals. Ultimately, of the 13 potential buyers who had executed NDAs, only one party submitted a non-binding “expression of interest” (“EOI”). The other parties who elected not to submit proposals indicated that they were dissuaded from pursuing the investment by the weak internal performance at the Tercon Group, with many of those parties questioning the Tercon Group’s ability to meet its forecasts. A number of those parties did, however, indicate that they might be interested in considering an investment at a later date if the Tercon Group’s financial performance improved. As described above, rather than improving, the Tercon Group’s financial performance has continued to deteriorate.

86. The second phase of the sales process commenced shortly after the receipt of the EOI. The Tercon Group’s senior management team, together with Scotia Capital, met with and provided the interested buyer with a detailed management presentation as well as further detailed and confidential information regarding the investment opportunity. The interested party also conducted a site visit in July 2011.

87. Unfortunately, before any offer was made or received, the EOI was terminated by the interested buyer. The interested buyer indicated to Scotia Capital that the Tercon Group’s financial performance was simply not strong enough to support an investment at that time. No other EOIs or formal offers were made or received by DHI. DHI and Scotia Capital terminated the sales process in the fall of 2011. Since that time, the financial performance of the Tercon Group has continued to decline.

TAL and TAC

88. One of the conditions of continued forbearance under the DHI Credit Agreement is that the proposed Receivership Order permit the Receiver to take possession and exercise control over the assets, undertakings and property of TAL and TAC. DHI is also of the view that it is necessary to extend the receivership to TAL and TAC in order to maximize recoveries in the proposed liquidation.

89. As noted above, TAL is incorporated under the laws of Alaska, has its registered head office in Juneau, Alaska and conducts substantially all of its operations in Alaska. Specifically, TAL provides surface mining services to customers in Alaska as part of the overall

Tercon Group operations. Most of the Equipment owned and operated by TAL is currently located in Alaska and is proposed to be included in the liquidation. TAL is a guarantor under the DHI Credit Facility.

90. TAC is also a guarantor 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

91. All of the Respondents, including TAL and TAC, are part of an integrated business enterprise with primary operations located in Canada. The Tercon Group has had substantial operations in British Columbia and Alberta, with significant integrated management and administrative functions in Ontario, notwithstanding that TAL has operations and units of Equipment in Alaska:

- (a) all of the Respondents, including TAL, have assets in Canada;
- (b) the operations of all of the Respondents, including TAL and TAC, are directed from Tercon's head office in Kamloops, British Columbia, with assistance from DHI from DHI's head office in Toronto;
- (c) key policy and strategic decisions and corporate governance for the Tercon Group is directed from Ontario, Canada;
- (d) key operating decisions for the Tercon Group are made by Tercon Group staff located in British Columbia;
- (e) Tercon Group's tax, treasury and cash management functions are managed from Ontario;
- (f) Tercon Group's human resources functions are administered from British Columbia; and
- (g) Tercon Group's information technology and systems are directed from Ontario.

Selection and Role of the Liquidator

92. During November 2012, a competitive process was undertaken, with the assistance of FTI Consulting, to obtain proposals for the auction liquidation or *en bloc* sale of the Equipment. Three liquidators were invited to participate and were provided with an opportunity to conduct due diligence and attend site visits. This process resulted in proposals being provided by each of the three liquidators.

93. After reviewing the proposals that were received, DHI and FTI Consulting provided comments to each of the liquidators and identified any specific areas of concern. All of the liquidators were invited to make further revised proposals, which they did. DHI, together with FTI Consulting, then reviewed the revised proposals and the costs associated with each and selected the highest and best proposal. The consent of the DHI Lenders to proceed with the proposal submitted was sought and obtained.

94. It is contemplated that, if appointed, the Receiver will file a motion for authorization to enter into a sale agreement with the chosen liquidator shortly after the Receiver's appointment. I am informed by Mr. Nigel Meakin of FTI Consulting and believe that if appointed, the Receiver would file, in support of that motion, a detailed report on the process that has been undertaken.

Statement of Estimated Realizations

95. Utilizing the proposals obtained from the liquidators, together with estimates for collections of Accounts Receivable and costs of realization, it is expected that there will be a shortfall on the secured indebtedness and that there will be no monies available to unsecured creditors of the Respondents.

Funding Tercon's Obligations During the Receivership

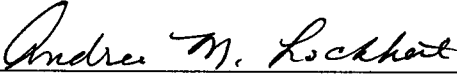
96. According to the Tercon Group's short term cash flow projections, the Tercon Group is projected to be able to continue to pay its suppliers and employees in the ordinary course over the short term as the business is being wound-down. The proposed receivership order contemplates that all monies that are held in any of the Tercon Group's bank accounts as at the date of the receivership order will be remitted to the Receiver and deposited into a separate post-receivership account (the "**Post-Receivership Account**") to fund the proceeding. In

addition, all proceeds received from any source during the course of the receivership proceeding, including proceeds received from the sale of any of the Tercon Group's assets, will be deposited by the Receiver into the Post-Receivership Account. To the extent that additional funding is required, DHI is prepared to fund the Tercon Group's operations on an as needed basis, which the DHI Lenders will support through a continued forbearance, but only on a priority basis in the context of a receivership proceeding. Specific terms of any such borrowing have not yet been agreed upon. In this regard, the proposed receivership order contemplates that any advances made by DHI to the Receiver may be afforded a priority pursuant to the Receiver's Borrowings Charge (as defined in the draft Receivership Order).

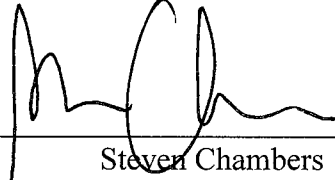
97. All of the Respondents and the Agent on behalf of the DHI Lenders have consented to the appointment of the Receiver.

98. I have reviewed an unfiled copy of the Petition and that the facts stated therein are true.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, on
December 13, 2012.



Commissioner for Taking Affidavits



Steven Chambers