



**No. S128887 Vancouver Registry**

**Tercon Investments Ltd. et al**

**TENTH REPORT OF THE RECEIVER**

**December 3, 2013**

No. S128887  
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

**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

**TENTH REPORT TO THE COURT SUBMITTED BY  
FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER**

**INTRODUCTION**

1. On December 14, 2012 (the “**Date of Appointment**”), FTI Consulting Canada Inc. was appointed as receiver (the “**Receiver**”) of all of the assets, undertakings and properties (the “**Property**”) 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, “**Tercon**” or the “**Company**”) pursuant to the order of Mr. Justice Sewell (the “**Receivership Order**”) granted upon the petition of Dumas Holdings Inc. (“**DHI**”) 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*.

2. As described in the First Report, the Asset Purchase and Sale Agreement dated as of December 21, 2012, was entered into, subject to Court approval, between the Receiver as Vendor and Ritchie Bros. Auctioneers (Canada) Ltd. (“**RB Canada**”) and Ritchie Bros. Auctioneers (America) Inc. (“**RB America**”, RB Canada and RB America together being “**Ritchie Bros**”) as Purchasers (the “**APA**”) with respect to the Equipment and Miscellaneous Property of Tercon (as such terms are defined in the APA).
3. On January 15, 2013, Mr. Justice Sewell granted an Order (the “**Approval and Vesting Order**”) *inter alia* approving the APA and the Return Protocol, as defined in the First Report.
4. On January 21, 2013, Mr. Justice Sewell granted the following Orders:
  - (i) An Order, *inter alia*, providing for the setting up of certain reserves by the Receiver from proceeds of realization and authorizing the distribution of funds in excess of the reserves to HSBC (the “**Distribution Order**”; and

- (ii) An Order, *inter alia*, authorizing and directing the Receiver, unless otherwise agreed with HSBC and DHI, to file assignments in bankruptcy for and on behalf of each of the Tercon companies and providing for the co-ordination of the Receivership Proceedings and the bankruptcy proceedings (the “**Bankruptcy Co-Ordination Order**”).
5. On February 28, 2013, Mr. Justice Sewell granted an Order, *inter alia*, authorizing FTI Consulting Canada Inc., in its capacity as receiver of Tercon Construction Ltd. to issue and file an application for a Bankruptcy Order against Tercon Equipment Ltd. (the “**Tercon Bankruptcy Application Order**”).
  6. On March 21, 2013, Mr. Justice Sewell granted an order approving a procedure for the submission, evaluation and adjudication of claims against Tercon or against the bonds issued by Trisura Guarantee Insurance Company (“**Trisura**”) in relation to certain Tercon projects (the “**Claims Procedure Order**”).
  7. To date, the Receiver has filed nine reports on various aspects of the Receivership. Each of the reports, and the orders made in the Receivership proceedings are posted on the Receiver’s website at <http://cfcanada.fticonsulting.com/tercon>. Each of the Receiver’s previous reports has been approved by the Court, other than the Eighth Report, approval of which has not yet been sought by the Receiver. For ease of reference, a copy of the Eighth Report, without Appendices, is attached hereto as **Appendix H**.
  8. The purpose of this, the Receiver’s Tenth Report, is to inform the Court on the following:
    - (i) The status of various aspects of the Receivership Proceedings; and
    - (ii) Receipts and disbursements for the period December 14, 2012 to November 22, 2013;

And to request the granting by this Honourable Court of Orders:

- (iii) Approving the Dividend Assignment Agreement, as hereinafter defined;
- (iv) Approving the Partnership Distribution Assignment Agreement, as hereinafter defined; and
- (v) Discharging the Receiver and terminating the Receivership Proceedings, each effective upon the filing with the Court by the Receiver of a certificate confirming completion of the Receiver's remaining obligations (the "**Receiver's Completion Certificate**").

#### **TERMS OF REFERENCE**

- 9. In preparing this report, the Receiver has relied upon unaudited financial information, other information available to the Receiver and, where appropriate, Tercon's books and records and discussions with various parties (collectively, the "**Information**").
- 10. Except as described in this Report:
  - (i) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
  - (ii) The Receiver has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.
- 11. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.

12. The Receiver has prepared this Report in connection with the motion described in the Receiver's Notice of Application dated December 4, 2013, returnable December 13, 2013. The Report should not be relied on for other purposes.
13. The information and advice described in this Report as being provided to the Receiver by its counsel, Borden Ladner Gervais LLP (the "**Receiver's Canadian Counsel**") and The Law Office of Cabot Christianson, P.C. (the "**Receiver's US Counsel**") and, together with Receiver's Canadian Counsel, the "**Receiver's Counsel**") has been provided to the Receiver to assist it in considering its course of action and is not intended as legal or other advice to, and may not be relied upon by, any other stakeholder.
14. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined are as defined in the Receivership Order, other Order's granted in the Receivership Proceedings or in the Receiver's previous Reports.

## **STATUS OF RECEIVERSHIP MATTERS**

### **ASSET REALIZATIONS**

15. Realization of assets is complete, other than the following:
  - (i) Collection of sales tax refunds;
  - (ii) Collection of Plan Dividends, as defined below; and
  - (iii) Collection of amounts relating to AC&T Limited Partnership ("**AC&T**") and Tahltan-Tercon Limited Partnership ("**TTLP**") and together with the AC&T, the "**Partnerships**", non-filing debtors that are being administered by the Receiver pursuant to the terms of the Receivership Order, the partnership agreements and relevant management agreements.

16. As previously reported, realizations, including additional amounts recoverable from the matters referenced above, will be insufficient to repay the claims of secured creditors in full and there will be no amounts available for unsecured creditors of Tercon.

***Sales Tax Refunds***

17. Sales tax refunds are being held by Canada Revenue Agency pending filing of certain corporate tax returns which the Receiver has engaged Grant Thornton LLP, Tercon's former tax accountant, to complete, and CRA audit.

***Plan Dividends***

18. Tercon Mining PV Limited ("**Tercon Mining PV**") and Tercon Construction Limited ("**TCL**") are proven creditors in the *Companies' Creditors Arrangement Act* (the "**CCAA**") proceedings for a group of companies owned by Pine Valley Mining Corporation ("**PVM**"). As part of the CCAA proceeding, PVM sold one of its assets, the Falls Mountain coal mine, to a third party. As part of that transaction, the purchaser, Cambrian PLC, agreed to pay a royalty on Falls Mountain's coal production which royalty is distributable to PVM's creditors under PVM's CCAA plan of arrangement (the "**PVM CCAA Plan**").
19. The royalty, which started to flow in 2009, is capped at \$26 million, with the actual amount payable being dependent on the mining revenues achieved. The royalty is expected to be fully paid by approximately 2018, subject to a variety of factors including the level of mining activities and coal pricing, among others.
20. Approximately 10.385% of the royalty is payable to Tercon Mining PV on account of its claim in the PVM CCAA Plan. Accordingly, the maximum payable to Tercon Mining PV under the PVM CCAA Plan is approximately \$2.7 million, of which approximately \$0.53 million has been paid to date. In addition, Approximately 0.9% of the royalty is payable to TCL on account of its claim in the PVM CCAA

Plan. Accordingly, the maximum payable to TCL under the PVM CCAA Plan is approximately \$234,000, of which approximately \$45,000 has been paid to date.

21. Tercon Mining PV filed a proposal under the BIA in January 2007 (the “**Tercon Mining PV Proposal**”). Under the Tercon Mining PV Proposal, which was approved by the creditors and sanctioned by the Court, the royalty received by Tercon Mining PV is distributed to the Tercon Mining PV creditors with proven claims in the proposal proceedings. The distributions under the Tercon Mining PV Proposal are handled by the proposal trustee, Boale, Wood and Company (“**Boale Wood**”). The distributions to Tercon Mining PV from the PVM CCAA are paid directly to Boale Wood pursuant to an irrevocable assignment agreement.
22. TCL and Tercon Equipment Limited (“**TEL**”) are each creditors with proven claims in the Tercon Mining PV Proposal and are entitled to distributions under the proposal. In addition, a third party creditor claim was assigned to TCL during the proposal proceedings and prior to the appointment of the Receiver. Accordingly, Tercon Group companies receive three distributions from the Tercon Mining PV Proposal which, in the aggregate, represent approximately 69% of the total proven claims. Based on the maximum payable to Tercon Mining PV under the PVM CCAA Plan, which is in turn distributed under the Tercon Mining PV Proposal and the amounts paid to date, future distributions to the Tercon Group companies under the Tercon Mining PV Proposal would be a maximum of approximately \$1.5 million.
23. Potential future realizations for the Receiver under the PVM CCAA Plan and the Tercon Mining PV Proposal (collectively, the “**Plan Dividends**”) are approximately \$1.7 million in the aggregate.

#### ***Realizations from Partnerships***

24. Realization of assets by AC&T is complete and the wind-up of the limited partnership has been authorized by the partners, including Tercon A.C. Ltd. acting by its receiver. There are certain unresolved issues in respect of amounts owing to



the respective partners that must be resolved before the wind-up can proceed and final partner distributions can be made.

25. TTLP's only asset is the amount owing by Red Chris Development Company Ltd. ("**Red Chris**") for work completed prior to the appointment of the Receiver. The amount owing is in dispute and the parties have to date been unable to reach a mutually acceptable resolution. TCL will be entitled to recoveries from TTLP through the ownership structure.

#### **MoT TERMINATION AGREEMENTS**

26. As previously reported, at the Date of Appointment, Tercon had three contracts with the Ministry of Transport of British Columbia (the "**MoT**"): the MoT Wall Project, the MoT JUVIS Project and the MoT Bearing Project (collectively, the "**MoT Projects**"). Performance Bonds and Labour & Material Bonds were issued by Trisura in respect of each of the MoT Projects.
27. The MoT, the Receiver and Trisura have agreed on the form of a termination and release agreement for each of the MoT Projects, which agreements are in the process of being executed.
28. The key terms of the Termination and Release Agreement, Kicking Horse Canyon 4 KM Wall (the "**Wall Project Termination Agreement**"), an unexecuted copy of which is attached hereto as **Appendix A**, are summarized as follows (capitalized terms not otherwise defined are as defined in the Wall Project Termination Agreement):
  - (i) The MoT will not call on the Performance Bond, other than for any Warranty Claims;
  - (ii) Any Warranty Claim must be asserted by the Warranty Termination Date, being December 1, 2013 (no Warranty Claims had been received by the Receiver by that date);

- (iii) The Receiver will re-pay \$30,000 to the MoT in respect of the MoT's claim for set-off in respect of its Re-tendering Costs;
  - (iv) The Performance Bond and the L&M Bond will be surrendered to Trisura forthwith after the later of the payment of the Re-Tendering Costs , the Warranty Termination Date and the final disposition of any Warranty Claim; and
  - (v) Mutual releases in favour of the Receiver, Trisura, Tercon and the Ministry.
29. The key terms of the Termination and Release Agreement, Joint Use Vehicle (the “**JUVIS Project Termination Agreement**”), an unexecuted copy of which is attached hereto as **Appendix B**, are summarized as follows (capitalized terms not otherwise defined are as defined in the JUVIS Project Termination Agreement):
- (i) The MoT will not call on the Performance Bond, other than for any Warranty Claims;
  - (ii) Any Warranty Claim must be asserted by the Warranty Termination Date, being April 30, 2014;
  - (iii) The L&M Bond will be surrendered to Trisura forthwith;
  - (iv) The Performance Bond will be surrendered to Trisura forthwith after the later of the Warranty Termination Date and the final disposition of any Warranty Claim; and
  - (v) Mutual releases in favour of the Receiver, Trisura, Tercon and the Ministry.
30. The key terms of the Termination and Release Agreement, Mount Hunter Creek Bridge (the “**Bearing Project Termination Agreement**”), an unexecuted copy of which is attached hereto as **Appendix C**, are summarized as follows (capitalized

terms not otherwise defined are as defined in the Bearing Project Termination Agreement):

- (i) The MoT will not call on the Performance Bond;
- (ii) The Performance Bond and the L&M Bond will be surrendered to Trisura forthwith; and
- (iii) Mutual releases in favour of the Receiver, Trisura, Tercon and the Ministry.

31. With respect to the re-payment of \$30,000 to the MoT in respect of the claim for Re-tendering Costs under the Wall Project Termination Agreement, the Receiver notes that when the MoT paid the amounts owing to Tercon in respect of the Wall Project (as required pursuant to the Distribution Order), the MoT expressly reserved its rights of set-off in respect of any claim that it might have for the costs that it might incur in re-tendering the Wall Project (to the extent that such costs would be payable by Tercon under the contract). The Receiver accepted the amounts paid by the MoT with the accompanying reservation of rights. The MoT subsequently submitted a claim for its Re-Tendering Costs in the Claims Procedure.

32. The Receiver, with the concurrence of DHI, has agreed to re-pay \$30,000 of the funds paid by the MoT to the Receiver in respect of the MoT's claim for its Re-tendering Costs. This amount is significantly lower than the amount claimed by the MoT and is a result of negotiations between the parties to settle disputes in respect of the validity of the amounts claimed, the liability of Tercon (if any) for payment of such costs and amounts claimed by the Receiver as owing by the MoT in respect of the Bearing Project. The amount will be reimbursed from and reduce the Bonded Project Reserve held by the Receiver pursuant to the Distribution Order.

33. The Receiver is of the view that, considering the cost of litigating the matters that have been settled and the uncertainty of the results of such litigation, the amount that the Receiver has agreed to re-pay to the MoT in respect of its Re-tendering Costs is fair and reasonable in the circumstances. The Receiver is satisfying its obligation to complete its arrangements with the MoT by returning to the MoT \$30,000 of the funds that were received subject to the rights of set-off.

#### THE CLAIMS PROCEDURE

34. The claims of all creditors claiming priority to the secured claims of HSBC and DHI have all now been finally resolved, other than the lien claim of Fossil EPC Ltd. (“Fossil”), which is discussed below. As previously reported and as provided for in the Claims Procedure Order, the Receiver will not be adjudicating unsecured claims as there is no prospect of a distribution to unsecured creditors.
35. Fossil was a supplier to AC&T in respect of the Krupp Project and asserted lien claims in the aggregate amount of \$307,563.56, of which \$167,389.81 was determined to be valid and \$140,173.75 is in dispute (the “**Disputed Fossil Lien Claim**”). Under agreements with Fossil and Krupp:
- (i) Krupp has paid the amounts owing to AC&T;
  - (ii) The agreed amount of the Fossil lien claim has been paid to Fossil;
  - (iii) The Receiver is holding the amount of the Disputed Fossil Lien Claim; and
  - (iv) Fossil and the Receiver have agreed that the Disputed Fossil Lien Claim will be adjudicated in accordance with the process that is contemplated by the Claims Procedure Order, notwithstanding that AC&T is not subject to to the Claims Procedure Order.
36. The Receiver issued a disallowance of the Disputed Fossil Lien Claim on December 3, 2013 and the deadline for any dispute of that disallowance to be filed

by Fossil is December 24, 2013. If the disallowance of the Disputed Fossil Lien Claim is disputed by Fossil, further steps to resolve or adjudicate the Disputed Fossil Lien Claim will be necessary.

#### **EMPLOYEE MATTERS**

37. Pursuant to the Order of the Honourable Mr. Justice Sewell granted September 12, 2013, the Secured TCL Employee Claims and the Secured MRC Employee Claims have been paid.
38. The Receiver has submitted the employee claim data required under the Wage Earner Protection Program Act (“WEPPA”) and the former employees have been notified of their ability to submit claims under WEPPA.

#### **DISTRIBUTIONS TO CREDITORS**

39. The Receiver has made distributions to creditors in accordance with previous Orders of the Court. Reserves are currently held for the Disputed Fossil Lien Claim, potential Warranty Claims by the MoT which could be subject to the Trisura Performance Bonds and Receivership costs. If any funds remain after the payment of any amounts payable in respect of those matters, such funds will be distributed to DHI on account of its secured claims prior to the discharge of the Receiver. It is currently expected that excess funds will be available for distribution to DHI.

#### **COMPLETION OF CH.15 PROCEEDINGS**

40. All matters in the Ch.15 Proceedings have been completed and on November 13, 2013, the Receiver filed a motion for termination of the Ch.15 Proceedings. The deadline for objections is December 18, 2013, and it is expected that an Order terminating the Ch.15 Proceedings will be issued shortly thereafter unless objections are filed.

## THE PARTNERSHIPS

41. As discussed in previous reports, the Partnerships are being administered by the Receiver pursuant to the terms of the Receivership Order, the partnership agreements and relevant management agreements.
42. It is expected that Tercon will be entitled to amounts from both AC&T and TTLP. Any amounts recovered from the Partnerships by the Receiver would be paid to DHI on account of its secured claims against Tercon.
43. It is possible that the resolution of the remaining matters in the Partnerships and distribution of proceeds could take a considerable period of time. In order to enable the Receivership Proceedings to be completed, for the Receiver to be discharged without the need for the Partnership matters to be first completed and to minimize the costs of administering the Partnerships, DHI and the Receiver agreed that the relevant management agreements would be assigned to DHI with the consent of the parties required under the various agreements. A copy of the AC&T management assignment agreement is attached hereto as **Appendix D** and a copy of the TTLP management assignment agreement is attached hereto as **Appendix E**.

## MATTERS TO BE COMPLETED

44. The following matters remain to be completed in the Receivership Proceedings:
  - (i) Filing of certain statutory returns and collection of sales tax refunds;
  - (ii) Repayment of the Re-Tendering Costs owing to the MoT under the Wall Project Termination Agreement;
  - (iii) Final determination of the Disputed Fossil Lien Claim and payment of valid amount, if any;

- (iv) Determination of Warranty Claims, if any, advanced by the MoT in accordance with the Wall Project Termination Agreement or the JUVIS Project Termination Agreement;
- (v) Completion of statutory and administrative duties;
- (vi) Payment of Receivership expenses; and
- (vii) Final distribution to DHI.

**RECEIPTS & DISBURSEMENTS PERIOD ENDED NOVEMBER 22, 2013**

45. Receipts and disbursements from the Date of Appointment to November 22, 2013 are summarized as follows:

	CAD\$000	US\$000
<b>Receipts:</b>		
Cash Transferred from Tercon	1,056.1	389.7
Accounts Receivable Collections	1,598.4	2,711.1
Other Collections	65.0	14.5
Sales Taxes	618.5	0.0
Net Proceeds from Equipment Sale	11,208.2	0.0
Net Proceeds from Other Assets Sales	985.5	16.3
Interest	47.1	0.0
Transfer Between CAD and US Accounts	2,500.0	0.0
<b>Total Receipts</b>	<b>18,078.8</b>	<b>3,131.6</b>
<b>Disbursements:</b>		
Independent Contractor Payments	646.3	0.0
Demobilization Costs	545.0	218.7
Office	199.6	1.7
Other Operating	40.6	0.0
Equipment Buy-Outs	170.0	149.0
Legal and Professional Fees	2,603.3	107.1
Sales Taxes	436.7	3.8
Transfer Between CAD and US Accounts	0.0	2,439.0
<b>Total Disbursements</b>	<b>4,641.5</b>	<b>2,919.3</b>
<b>Excess/(Shortfall)</b>	<b>13,437.3</b>	<b>212.3</b>
Payments of Liens and Bond Claims	(794.6)	(185.0)
Distributions to Secured Creditors	(11,513.0)	0.0
<b>Balance</b>	<b>1,129.7</b>	<b>27.3</b>

## REQUEST FOR APPROVAL OF ASSIGNMENT AGREEMENTS

46. Previous Orders have approved the distribution of the proceeds of realization in excess of valid claims of prior ranking creditors to DHI on account of its secured claims.
47. As noted earlier in this report, realizations, including any additional future realizations, will be insufficient to repay the secured claim of DHI in full and there will be no amounts available for unsecured creditors of Tercon.
48. In order to avoid the need to continue the Receivership Proceedings until all Plan Dividends have been collected and all distributions from the Partnerships have been received and to avoid the costs that would necessarily be incurred from such a continuation of the Receivership Proceedings, DHI and the Receiver have entered into the following agreements, subject to Court approval:
- (i) An agreement dated December 3, 2013 assigning to DHI the Plan Dividends (the “**Dividend Assignment Agreement**”), a copy of which is attached hereto as **Appendix F**; and
  - (ii) An agreement dated December 3, 2013 assigning to DHI any distributions payable to Tercon by AC&T, TTLP or TTLP’s general partner, Tahltan-Tercon Projects Ltd, (the “**Partnership Distribution Assignment Agreement**”), a copy of which is attached as **Appendix G**.
49. The Receiver now respectfully seeks approval of the Dividend Assignment Agreement and Partnership Distribution Assignment Agreement.

## TERMINATION OF RECEIVERSHIP PROCEEDINGS

50. As described earlier in this report, the Receivership Proceedings are complete but for a small number matters, which, but for the exception of the adjudication of the Disputed Fossil Lien Claim, are administrative in nature. In order to avoid the costs



of additional Court appearances, and with the support of DHI, the Monitor now seeks an Order terminating the Receivership Proceedings and discharging the Receiver, each effective on filing of the Receiver's Completion Certificate.

51. Paragraph 20 of the Receivership Order states:

“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.”

52. The Receiver has provided the Petitioner, DHI, with copies of all of its accounts and the accounts of its legal counsel for review during the course of the Receivership. As at the date of this report the Petitioner has not requested that the Receiver or its legal counsel pass their accounts.

53. Given the shortfall on account of the secured claims of DHI, the Receiver is of the view that there is no other party in interest. No other party has requested that the Receiver or its legal counsel pass their accounts.


The Receiver respectfully submits to the Court this, its Tenth Report.

Dated this 3<sup>rd</sup> day of December, 2013.

FTI Consulting Canada Inc.  
in its capacity as receiver 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.  
and not in its personal or corporate capacity



Nigel D. Meakin  
Senior Managing Director



Jeff Rosenberg  
Managing Director

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# Appendix A

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## The Wall Project Termination Agreement (Unexecuted)

**TERMINATION AND RELEASE AGREEMENT  
KICKING HORSE CANYON - 4 KM WALL**

THIS AGREEMENT DATED for reference 4 November 2013

BETWEEN:

FTI CONSULTING CANADA LTD. (“**FTI Consulting**”) in its capacity as Receiver 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., and not in its personal or corporate capacity (the “**Receiver**”)

AND:

TRISURA GUARANTEE INSURANCE COMPANY  
 (“**Trisura**”)

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Transportation and Infrastructure (the “**Ministry**”)

WHEREAS:

- A. Pursuant to the terms and condition of Major Works Contract No 22592-0008 dated 28 September 2011 between Tercon Construction Ltd. (“**Tercon**”) and the Ministry, Tercon was engaged by the Ministry to perform certain work and provide certain services for the provincial infrastructure project known as the Kicking Horse Canyon Project - Phase 3 West 4 Kilometre Wall and Approaches, Grading, Retaining Wall, Paving and Drainage Construction (the “**4KM Wall Contract**”);
- B. The Work required under the 4KM Wall Contract has been completed; however GC 36.00 of the 4KM Wall Contract provides for warranty obligations from Tercon to the Ministry (the “**Warranty**”);
- C. Pursuant to the terms and conditions of the Receivership Order dated 14 December 2012 (the “**Receivership Order**”) FTI Consulting was appointed as receiver of all of the assets, undertakings and properties of, *inter alia*, Tercon, for the purposes of winding down, but not operating, the business of Tercon;
- D. Trisura issued Performance Bond No. VCS1089004 dated 28 September 2011 (the “**Performance Bond**”) for the benefit of the Ministry as obligee, pursuant to which Trisura guaranteed the performance of Tercon’s obligations to the Ministry under the 4KM Wall Contract;

- E. Subject to the terms and conditions of Labour and Material Payment Bond No. VCS 1089004 dated 28 September 2011 (the “**L&M Bond**”), Trisura guaranteed payment of certain sums to certain claimants with respect to the 4KM Wall Contract;
- F. Pursuant to the terms and conditions of the Claims Procedure Order dated 21 March 2013 (the “**Claims Procedure Order**”) a Claims Procedure was established to adjudicate certain claims with respect to, *inter alia*, the 4KM Wall Contract; and
- G. The parties hereto have agreed to terminate the 4KM Wall Contract and confirm certain of their rights and obligations under the 4KM Wall Contract, Receivership Order, Claims Procedure Order, Performance Bond and L&M Bond in accordance with the terms hereof.

NOW THEREFORE, in consideration of the covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto acknowledge and agree as follows:

1. The 4KM Wall Contract is hereby terminated effective as of the date of this agreement. The Receiver and Trisura acknowledge, agree and confirm that the Ministry has paid all amounts owing to Tercon and the Receiver with respect to the 4KM Wall Contract and the Ministry has no further obligation, liability or debt to Tercon, the Receiver or Trisura pursuant to the 4KM Wall Contract, the Receivership Order (as such relates to the 4KM Wall Contract), the Claims Procedure Order (as such relates to the 4KM Wall Contract) or the L&M Bond.
2. Subject only to the terms of section 3, below, the Ministry confirms that it will not call on the Performance Bond for completion of the work under the 4KM Wall Contract.
3. Notwithstanding anything to the contrary in this agreement and subject to the terms of the Claims Procedure Order, Trisura and the Receiver acknowledge and agree that the Ministry reserves all of its rights under the Performance Bond with respect to claims, if any, that the Ministry may have pursuant to the Warranty in respect of work completed by Tercon prior to the termination of the 4KM Wall Contract (the “**Warranty Claim**”) and the Receiver and Trisura acknowledge and agree that the right of the Ministry to make such a Warranty Claim under the Performance Bond has not been estopped, prejudiced or compromised by virtue of the termination of the 4KM Wall Contract hereunder. For clarity, the parties hereto agree that nothing in this agreement affects the rights of Trisura, Tercon or the Receiver to dispute any Warranty Claim or raise any defence to a Warranty Claim in accordance with the terms and conditions of the 4KM Wall Contract, the Performance Bond and the general laws of surety applicable to the Performance Bond.
4. The Ministry agrees that the period within which a Warranty Claim may be asserted expires 1 December 2013 (the “**Warranty Termination Date**”). The Ministry confirms that if a Warranty Claim is not made against, and in accordance with, the Performance Bond on or before the Warranty Termination Date, such Warranty Claim shall be deemed to be extinguished and the Ministry will have no further claim on the Performance Bond for the Warranty and Tercon, the Receiver and Trisura shall be released, acquitted and forever discharged automatically from any and all liability, obligations, demands, duties or claims with respect to the Warranty Claim, if any,

without further notice, acknowledgement or formality and on such event this document may be raised as an estoppel to any claim, demand or action commenced, or threatened to be commenced, by the Ministry. The Ministry confirms to the Receiver and Trisura that, as of the date of its execution of this Agreement, it is not aware of any claims against the Warranty.

5. The Receiver and Trisura acknowledge and agree that the Ministry is entitled to a claim of \$30,000 inclusive of all applicable taxes (the “**Re-tendering Costs**”) against Tercon and the Performance Bond for costs incurred by the Ministry in re-tendering the completion of the 4KM Wall Contract, which costs are the sole result of Tercon’s failure to perform its obligations under the 4 KM Wall Contract. The Receiver acknowledges and agrees that, within seven (7) days following the full execution of this agreement, the Receiver shall indefeasibly pay to the Ministry the sum of \$30,000 in full and final payment of the Re-tendering Costs. The Ministry agrees that all claims filed under the Claims Procedure Order are withdrawn effective on payment of the Re-tendering Costs.
6. Forthwith after the later of the indefeasible payment to the Ministry of the Re-tendering Costs, the Warranty Termination Date and final disposition of any Warranty Claim brought forward by the Ministry, the Ministry will surrender the original Performance Bond and the original L&M Bond to Trisura. On the payment to the Ministry of the Re-tendering Costs, each of Tercon, the Receiver, Trisura and the Ministry shall have no further obligation (other than the delivery by the Ministry of the original Performance Bond and original L&M Bond to Trisura), liability or debt to each other and each party hereto shall be deemed to have automatically, without further requirement or formality, released, acquitted and discharged the others forever after from and against any and all manner of actions, causes of action, suits, proceedings, liabilities, debts, sums of money, obligations, duties, contracts, covenants, claims, costs (including legal), damages and demands of any kind, including, without limitation, any such actions, causes of action, suits, proceedings, liabilities, debts, obligations, claims, costs (including legal), damages and demands of any kind relating to the L&M Bond, the 4KM Wall Contract, the Receivership Order (as such relates to the 4KM Wall Contract), the Claims Procedure Order (as such relates to the 4KM Wall Contract) and the Performance Bond. Trisura agrees to advise the Receiver upon receipt of the original Performance Bond and L&M Bond.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date set forth above.

**HER MAJESTY THE QUEEN in right of the  
Province of British Columbia as represented by the  
Minister of Transportation and Infrastructure or  
his authorized representative.**

\_\_\_\_\_  
Name:

Title:

**FTI CONSULTING CANADA LTD. in its capacity as Receiver  
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., and  
not in its personal or corporate capacity**

\_\_\_\_\_  
By its authorized signatory

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TRISURA GUARANTEE INSURANCE COMPANY**

\_\_\_\_\_  
By its authorized signatory

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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## **Appendix B**

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**The JUVIS Project Termination Agreement (Unexecuted)**



**TERMINATION AND RELEASE AGREEMENT  
JOINT USE VEHICLE**

THIS AGREEMENT DATED for reference 4 November 2013

BETWEEN:

FTI CONSULTING CANADA LTD. ("**FTI Consulting**") in its capacity as Receiver 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., and not in its personal or corporate capacity (the "**Receiver**")

AND:

TRISURA GUARANTEE INSURANCE COMPANY  
(the "**Trisura**")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Transportation and Infrastructure (the "**Ministry**")

WHEREAS:

- A. Pursuant to the terms and condition of Major Works Contract No 21754-0002 dated 12 December 2011 between Tercon Construction Ltd. ("**Tercon**") and the Ministry, Tercon was engaged by the Ministry to perform certain work and provide certain services for the provincial infrastructure project known as the Highway 1 – Joint Use Vehicle Inspection Station Public Water System (the "**Juvis Contract**");
- B. Pursuant to the terms and conditions of Receivership Order dated 14 December 2012 (the "**Receivership Order**") FTI Consulting was appointed as receiver of all of the assets, undertakings and properties of, *inter alia*, Tercon;
- C. The Work required under the Juvis Contract has been completed; however GC 36.00 of the Juvis Contract provides for warranty obligations from Tercon to the Ministry (the "**Warranty**");
- D. Trisura issued Performance Bond No. VCS0700004 dated 13 December 2011 (the "**Performance Bond**") for the benefit of the Ministry as obligee, in connection with the Juvis Contract;
- E. Subject to the terms and conditions of Labour and Material Payment Bond No. VCS0700004 dated 13 December 2011 (the "**L&M Bond**"), Trisura guaranteed payment of certain sums to certain claimants with respect to the Juvis Contract;

- F. Pursuant to the terms and conditions of the Claims Procedure Order dated 21 March 2013 (the “**Claims Procedure Order**”) a Claims Procedure was established to adjudicate certain claims with respect to, *inter alia*, the Juvis Contract; and
- G. The parties hereto wish to confirm certain of their rights and obligations under the Juvis Contract, Receivership Order, Claims Procedure Order, Performance Bond and L&M Bond in accordance with the terms hereof.

NOW THEREFORE, in consideration of the covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto acknowledge and agree as follows:

1. The parties hereto acknowledge and agree that the Juvis Contract is hereby terminated and the Receiver acknowledges and agrees that no further notice or other formality is required to give effect to such termination. The Receiver and Trisura acknowledge, agree and confirm that the Ministry has paid all amounts owing to Tercon and the Receiver with respect to the Juvis Contract and the Ministry has no further obligation, liability or debt to Tercon, the Receiver or Trisura pursuant to the Juvis Contract, the Receivership Order (as such relates to the Juvis Contract), the Claims Procedure Order (as such relates to the Juvis Contract) or the L&M Bond.
2. Subject only to the terms of section 3, below, the Ministry confirms that it will not call on the Performance Bond for completion of the work under the Juvis Contract.
3. Notwithstanding anything to the contrary in this agreement and subject to the terms of the Claims Procedure Order, Trisura and the Receiver acknowledge and agree that the Ministry reserves all of its rights under the Performance Bond with respect to claims, if any, that the Ministry may have pursuant to the Warranty in respect to work completed by Tercon or the Receiver prior to the termination of the Juvis Contract (the “**Warranty Claim**”) and the Receiver and Trisura acknowledge and agree that the right of the Ministry to make a Warranty Claim under the Performance Bond has not been estopped, prejudiced or compromised by virtue of the termination of the Juvis Contract hereunder. For clarity, the parties hereto agree that nothing in this agreement affects the right of Trisura, Tercon or the Receiver to dispute any Warranty Claim or raise any defence to a Warranty Claim in accordance with the terms and conditions of the Juvis Contract, the Performance Bond and the general laws of surety applicable to the Performance Bond.
4. The Ministry agrees that the period within which a Warranty Claim may be asserted expires 30 April 2014 (the “**Warranty Termination Date**”). The Ministry confirms that if a Warranty Claim is not made against the Performance Bond on or before the Warranty Termination Date, such Warranty Claim shall be deemed to be extinguished and the Ministry will have no further claim on the Performance Bond for the Warranty and each of Tercon, the Receiver and Trisura will be released, acquitted and forever discharged automatically from any and all liability, obligations, demands, duties or claims with respect to the Performance Bond and the Juvis Contract, if any, without further notice, acknowledgement or formality and on such event this document may be raised as an estoppel to any claim, demand or action commenced, or threatened

to be commenced, by the Ministry. In such case, the Ministry agrees to surrender the original Performance Bond to Trisura forthwith after the Warranty Termination Date. The Ministry agrees to surrender the original L&M Bond to Trisura forthwith.

5. If a Warranty Claim is made against, and in accordance with the Performance Bond on or before the Warranty Termination Date, the Ministry agrees to surrender the original Performance Bond to Trisura forthwith after the final disposition of the Warranty Claim. Trisura agrees to advise the Receiver upon receipt of the original Performance Bond and L&M Bond.
6. Each of the Receiver, Trisura and the Ministry agrees to, and does hereby, release, acquit and discharge the others automatically and forever after from and against any and all manner of actions, causes of action, suits, proceedings, liabilities, debts, sums of money, obligations, duties, contracts, covenants, claims, costs (including legal), damages and demands of any or all of Trisura, the Receiver or Tercon pursuant to the Receivership Order (as such relates to the Juvis Contract), the Claims Procedure Order (as such relates to the Juvis Contract), the L&M Bond and, with the exception of any Warranty Claim (and any dispute or defence therefrom), the Performance Bond and the Juvis Contract.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date set forth above.

**HER MAJESTY THE QUEEN in right of the  
Province of British Columbia as represented by the  
Minister of Transportation and Infrastructure or  
his authorized representative.**

\_\_\_\_\_  
Name:

Title:

**FTI CONSULTING CANADA LTD. in its capacity as Receiver  
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., and  
not in its personal or corporate capacity**

\_\_\_\_\_  
By its authorized signatory

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TRISURA GUARANTEE INSURANCE COMPANY**

\_\_\_\_\_  
By its authorized signatory

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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## **Appendix C**

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### **The Bearing Project Termination Agreement (Unexecuted)**

**TERMINATION AND RELEASE AGREEMENT  
MOUNT HUNTER CREEK BRIDGE**

THIS AGREEMENT DATED for reference 4 November 2013

BETWEEN:

FTI CONSULTING CANADA LTD., in its capacity as Receiver 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., and not in its personal or corporate capacity (the “**Receiver**”)

AND:

TRISURA GUARANTEE INSURANCE COMPANY  
(“**Trisura**”)

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Transportation and Infrastructure (the “**Ministry**”)

WHEREAS:

- A. Pursuant to the terms and condition of Minor Works Contract No 22594-0002 dated 24 August 2012 between Tercon Construction Ltd. (“**Tercon**”) and the Ministry, Tercon was engaged by the Ministry to perform certain work and provide certain services for the provincial infrastructure project known as the Kicking Horse Canyon Project: Mount Hunter Creek Bridge, Bearing Replacement and Roof Slab Epoxy Injection (the “**Mount Hunter Contract**”);
- B. Pursuant to the terms and conditions of the Receivership Order dated 14 December 2012 (the “**Receivership Order**”) the Receiver was appointed as receiver of all of the assets, undertakings and properties of, *inter alia*, Tercon, for the purposes of winding down, but not operating, the business of Tercon;
- C. Subject to the terms and conditions of Performance Bond No. VCS0700006 dated 28 August 2012 (the “**Performance Bond**”) from Trisura to the benefit of the Ministry as obligee, Trisura guaranteed the performance of Tercon’s obligations to the Ministry under the Mount Hunter Contract;

- D. Subject to the terms and conditions of Labour and Material Payment Bond No. VCS 070006 dated 28 August 2012 (the “**L&M Bond**”), Trisura guaranteed payment of certain sums to certain claimants with respect to the Mount Hunter Contract;
- E. Pursuant to the terms and conditions of the Claims Procedure Order dated 21 March 2013 (the “**Claims Procedure Order**”) a Claims Procedure was established to adjudicate, *inter alia*, claims made by Claimants pursuant to the L&M Bond; and
- F. The parties hereto have agreed to terminate the Mount Hunter Contract and wish to confirm certain of their rights and obligations under the Receivership Order, Claims Procedure Order, Performance Bond and L&M Bond all in accordance with the terms hereof.

NOW THEREFORE, in consideration of the covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto acknowledge and agree as follows:

1. The Mount Hunter Contract is hereby terminated effective as of the date of this agreement. The Receiver and Trisura acknowledge, agree and confirm that the Ministry has paid all amounts owing to Tercon and the Receiver with respect to the Mount Hunter Contract and the Ministry has no further obligation, liability, or debt to Tercon, the Receiver or Trisura pursuant to the Mount Hunter Contract, the Receivership Order (as such relates to the Mount Hunter Contract) or the Claims Procedure Order (as such relates to the Mount Hunter Contract) or the L&M Bond.
2. The Ministry acknowledges, confirms and agrees that it will not call on the Performance Bond and that the Performance Bond is hereby terminated and released and is of no further force or effect.
3. The Ministry agrees to surrender the original Performance Bond and L&M Bond to Trisura forthwith upon the Ministry’s receipt of a copy of the present Termination and Release Agreement duly executed by the Receiver and Trisura. Trisura agrees to advise the Receiver upon receipt of the original Performance Bond and L&M Bond.
4. Each of the Tercon, the Receiver, Trisura and the Ministry agrees to, and does hereby, release, acquit and discharge the others automatically and forever after from and against any and all manner of actions, causes of action, suits, proceedings, liabilities, debts, sums of money, obligations, duties, contracts, covenants, claims, costs (including legal), damages and demands relating to the Receivership Order (as such relates to the Mount Hunter Contract), the Claims Procedure Order (as such relates to the Mount Hunter Contract), the Performance Bond, the L&M Bond and the Mount Hunter Contract.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date set forth above.

**HER MAJESTY THE QUEEN in right of the  
Province of British Columbia as represented by the  
Minister of Transportation and Infrastructure or  
his authorized representative.**

\_\_\_\_\_  
Name:

Title:

**FTI CONSULTING CANADA LTD. in its capacity as Receiver  
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., and not  
In its personal or corporate capacity**

\_\_\_\_\_  
By its authorized signatory

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TRISURA GUARANTEE INSURANCE COMPANY**

\_\_\_\_\_  
By its authorized signatory

Name: \_\_\_\_\_

Title: \_\_\_\_\_



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## **Appendix D**

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### **The AC&T Management Assignment Agreement**

## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS AGREEMENT dated the 3<sup>rd</sup> day of December, 2013,

B E T W E E N:

**FTI CONSULTING CANADA INC.**, in its capacity as receiver 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, "**Tercon**") and not in its personal capacity

(hereinafter referred to as "**Assignor**")

– and –

**DUMAS HOLDINGS INC.**, a corporation incorporated under the laws of Ontario,

(hereinafter referred to as "**Assignee**")

### **RECITALS:**

- A. Tercon A.C. Ltd. ("**Tercon A.C.**") is the general partner of AC&T Limited Partnership.
- B. Tercon A.C. and Tercon MRC Limited ("**Tercon MRC**") entered into a contract for management and consulting services dated April 6, 2005 (together with any amendments thereto, the "**Services Agreement**") whereby Tercon MRC agreed to provide certain management and consulting services to Tercon A.C. in respect of AC&T Limited Partnership.
- C. Pursuant to an order of Justice Sewell of the Supreme Court of British Columbia granted on December 14, 2012, the FTI Consulting Canada Inc. was appointed Receiver of Tercon.
- D. Assignor wishes to assign all of the rights and obligations of Tercon MRC under the Services Agreement to Assignee, and Assignee wishes to assume such rights and obligations.


**NOW THEREFORE THIS ASSIGNMENT AND ASSUMPTION AGREEMENT WITNESSES** that in consideration of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency whereof are hereby acknowledged by each of the parties), the parties hereto covenant and agree as follows:

1. **Assignment.** Assignor hereby sells, assigns, transfers, conveys and sets over to Assignee all of the present and future right, title, interest, benefit, entitlement, obligations and liabilities of Tercon MRC in and to, arising under, pursuant to or in connection with the Services Agreement.
2. **Assumption.** Assignee hereby accepts, assumes and agrees to be bound by and hereafter discharge, fulfill and perform all of Assignor's liabilities, duties and obligations of Tercon MRC arising under, pursuant to or in connection with the Services Agreement (the "**Assumed Obligations**"), in accordance with its terms, as if Assignee was an original party thereto.
3. **Consent.** Assignor, for an on behalf of Tercon A.C. and Tercon MRC, irrevocably and unconditionally consents to, and acknowledges, the assignment and assumption described in Sections 1 and 2 hereof, respectively.
4. **Indemnity.** Assignee shall indemnify and save harmless Assignor from and against all claims, demands, actions, causes of action, damage, loss, deficiency, cost, liability and expense which may be made or brought against Assignor or which Assignor may suffer or incur, as a result of, in respect of or arising out of the making of the Assignment (the "**Liability**"), including any Liability arising from the failure of Assignee to satisfy, perform or fulfil the Assumed Obligations.
5. **Further Assurances.** Assignor and Assignee shall each use its best efforts to take such actions and execute and deliver such documents as may be reasonable required or necessary or appropriate to give effect to the terms, provisions and intent of this Assignment and Assumption Agreement and the transactions contemplated hereby.
6. **Benefit of Agreement.** This Assignment and Assumption Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and assigns.
7. **Governing Law.** This Assignment and Assumption Agreement shall be governed by and construed and enforced in accordance with the laws in force in the Province of British Columbia and the federal laws of Canada applicable therein.
8. **Amendment.** This Assignment and Assumption Agreement may only be amended by an instrument in writing signed by all parties. No party may assign all or any portion of this Assignment and Assumption Agreement to any other person without the prior written consent of the parties.
9. **Counterparts.** This Assignment and Assumption Agreement may be executed in several counterparts, each of which, when so executed, shall be deemed to be an original and which counterparts together shall constitute one and the same agreement. This Assignment and Assumption Agreement may be delivered by facsimile or other electronic means, and any signature hereto delivered by facsimile or other electronic means shall be deemed to be equivalent to an original signature for all purposes.


[SIGNATURE PAGE TO IMMEDIATELY FOLLOW]

**IN WITNESS WHEREOF** this Assignment and Assumption Agreement has been executed by the parties hereto on the date first written above.

**FTI CONSULTING CANADA INC.**, in its capacity as receiver 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. and not in its personal capacity

By:   
Name: Nigel D. Macaluso  
Title: Senior Managing Director

**DUMAS HOLDINGS INC.**

By:   
Name: Steven Chambers  
Title: Director

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## **Appendix E**

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### **The TTLP Managament Assignment Agreement**

## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS AGREEMENT dated the 3<sup>rd</sup> day of December, 2013,

B E T W E E N:

**FTI CONSULTING CANADA INC.**, in its capacity as receiver 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, "**Tercon**") and not in its personal capacity

(hereinafter referred to as "**Assignor**")

– and –

**DUMAS HOLDINGS INC.**, a corporation incorporated under the laws of Ontario,

(hereinafter referred to as "**Assignee**")

### RECITALS:

- A. Tahltan-Tercon Projects Ltd. (the "**GP**") is the general partner of Tahltan-Tercon Limited Partnership (the "**Partnership**").
- B. Tahltan Nation Development Corporation holds 51% of the issued and outstanding shares of the GP and Tercon Construction Ltd. ("**Tercon Construction**") holds the remaining 49%.
- C. The Partnership and Tercon Construction entered into a contract for management and consulting services dated April 1, 2007 (the "**Services Agreement**") whereby Tercon Construction agreed to provide certain management and consulting services to the Partnership.
- D. Pursuant to an order of Justice Sewell of the Supreme Court of British Columbia granted on December 14, 2012, FTI Consulting Canada Inc. was appointed Receiver of Tercon Construction.
- E. The Assignor wishes to assign all of the rights and obligations of Tercon Construction under the Services Agreement to Assignee, and Assignee wishes to assume such rights and obligations (the "**Assignment**").
- F. The Partnership has provided the Assignor with its written consent to the Assignment.

**NOW THEREFORE THIS ASSIGNMENT AND ASSUMPTION AGREEMENT WITNESSES** that in consideration of the covenants and agreements herein contained and other


good and valuable consideration (the receipt and sufficiency whereof are hereby acknowledged by each of the parties), the parties hereto covenant and agree as follows:

1. **Assignment.** Assignor hereby sells, assigns, transfers, conveys and sets over to Assignee all of the present and future right, title, interest, benefit, entitlement, obligations and liabilities of Tercon Construction in and to, arising under, pursuant to or in connection with the Services Agreement.
2. **Assumption.** Assignee hereby accepts, assumes and agrees to be bound by and hereafter discharge, fulfill and perform all of the liabilities, duties and obligations of Tercon Construction arising under, pursuant to or in connection with the Services Agreement (the “**Assumed Obligations**”), in accordance with its terms, as if Assignee was an original party thereto.
3. **Indemnity.** Assignee shall indemnify and save harmless Assignor from and against all claims, demands, actions, causes of action, damage, loss, deficiency, cost, liability and expense which may be made or brought against Assignor or which Assignor may suffer or incur, as a result of, in respect of or arising out of the making of the Assignment (the “**Liability**”), including any Liability arising from the failure of Assignee to satisfy, perform or fulfil the Assumed Obligations.
4. **Further Assurances.** Assignor and Assignee shall each use its best efforts to take such actions and execute and deliver such documents as may be reasonable required or necessary or appropriate to give effect to the terms, provisions and intent of this Assignment and Assumption Agreement and the transactions contemplated hereby.
5. **Benefit of Agreement.** This Assignment and Assumption Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and assigns.
6. **Governing Law.** This Assignment and Assumption Agreement shall be governed by and construed and enforced in accordance with the laws in force in the Province of British Columbia and the federal laws of Canada applicable therein.
7. **Amendment.** This Assignment and Assumption Agreement may only be amended by an instrument in writing signed by all parties. No party may assign all or any portion of this Assignment and Assumption Agreement to any other person without the prior written consent of the parties.
8. **Counterparts.** This Assignment and Assumption Agreement may be executed in several counterparts, each of which, when so executed, shall be deemed to be an original and which counterparts together shall constitute one and the same agreement. This Assignment and Assumption Agreement may be delivered by facsimile or other electronic means, and any signature hereto delivered by facsimile or other electronic means shall be deemed to be equivalent to an original signature for all purposes.

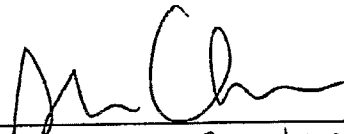
*[SIGNATURE PAGE TO IMMEDIATELY FOLLOW]*

**IN WITNESS WHEREOF** this Assignment and Assumption Agreement has been executed by the parties hereto on the date first written above.

**FTI CONSULTING CANADA INC.**, in its capacity as receiver 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. and not in its personal capacity

By:   
Name: Nigel D. Meakin  
Title: Senior Managing Director

**DUMAS HOLDINGS INC.**

By:   
Name: Steven Chambers  
Title: Director

TOR01: 5362781: v4



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## **Appendix F**

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### **The Dividend Assignment Agreement**

## ASSIGNMENT

BETWEEN:

**FTI CONSULTING CANADA INC.**, in its capacity as Court-appointed receiver ("Receiver") 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. ("Tercon Debtors") and not in its personal capacity

(hereinafter referred to as the "Assignor")

- and -

**DUMAS HOLDINGS INC.**

(hereinafter referred to as the "Assignee")

**WHEREAS:**

- A. By Order of Justice Sewell of the British Columbia Supreme Court (the "Court") dated December 12, 2012, the Assignor was appointed as the Receiver of the Tercon Debtors, including Tercon Equipment Limited ("Tercon Equipment"), Tercon Construction Limited ("Tercon Construction") and Tercon Mining PV Ltd. ("Tercon Mining");
- B. Pine Valley Mining Corporation ("PVMC"), among others, commenced a proceeding under the *Companies' Creditors Arrangement Act* (the "CCAA Proceedings"). As part of the CCAA Proceedings, PVMC sold the Falls Mountain coal mine to Cambrian PLC in consideration for which Cambrian PLC agreed to pay a royalty on Falls Mountain's coal production (the "Royalty"). The Royalty is distributable to PVMC's creditors under its plan of arrangement;
- C. Tercon Construction and Tercon Mining were creditors of PVMC in the CCAA Proceedings and, as such, Tercon Construction is entitled to receive a distribution of a portion of the Royalty (the "TCL Royalty Distribution") and Tercon Mining is entitled to receive a distribution of a portion of the Royalty (the "TM Royalty Distribution") .

- D. Tercon Mining filed a proposal under the *Bankruptcy and Insolvency Act* (the "Proposal"). In connection with the Proposal, Tercon Mining executed an irrevocable direction to pay the TM Royalty Distribution directly to the proposal trustee, Boale, Wood and Company (the "Proposal Trustee");
- E. The TM Royalty Distribution continues to be paid directly to the Proposal Trustee by Western Canadian Coal (as successor to Cambrian PLC);
- F. Tercon Equipment and Tercon Construction are each creditors with proven claims in the Proposal and are entitled to distributions under the Proposal (the "Tercon Equipment Distribution" and the "Tercon Construction Distribution", respectively);
- G. The claim of a third party creditor in connection with the Proposal, Allnorth, was assigned to Tercon Construction and Tercon Construction receives the distribution otherwise payable to Allnorth (the "Allnorth Distribution"). Accordingly, Tercon Debtors are entitled to receive three distributions from the Proposal, namely the Tercon Construction Distribution, the Tercon Equipment Distribution and the Allnorth Distribution and Tercon Construction continues to be entitled to receive the TCL Royalty Distribution (collectively, the "Tercon Distributions"); and
- H. The Receiver has agreed to assign all of its rights to collect the Tercon Distributions to the primary secured creditor of the Tercon Debtors, the Assignee.

**NOW THEREFORE FOR TEN DOLLARS (\$10.00) AND OTHER GOOD AND VALUABLE CONSIDERATION** the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:


1. Subject to the approval of the Court, the Assignor does hereby assign absolutely to the Assignee, any and all estate, right, title, interest, claim, demand and cause of action, both at law and in equity, including any document in support thereof, which the Assignor, Tercon Construction, Tercon Equipment and Tercon Mining have in relation to the TCL Royalty Distribution and the Tercon Distributions, without recourse of any kind whatsoever to the Assignor.


2. The Assignor represents and warrants to the Assignee that it has not previously pledged, assigned or encumbered the TCL Royalty Distribution or the Tercon Distributions.
3. Subject to the representation and warranty in paragraph 2 hereof, the Assignor makes no representation or warranty of any kind whatsoever with respect to the TCL Royalty Distribution and the Tercon Distributions. Without limitation to the foregoing, the Assignor makes no representation or warranty of any kind whatsoever with respect to the validity, enforceability, existence, assignability, collectability or value of the TCL Royalty Distribution or the Tercon Distributions.
4. Until such time as the Assignor is discharged as receiver of the Tercon Debtors, the Assignor agrees to execute and deliver to the Assignee at the Assignee's expense all such further documents and instruments as the Assignee may reasonably require, in furtherance hereof.
5. The Assignee confirms that it will notify the Proposal Trustee and PVMC of this Assignment.
6. This Assignment may be executed in counterparts by the parties hereto with the result that upon such execution it shall be of the same force and effect as if all parties had executed all the same copies of this assignment. The parties hereto agree that the facsimile of signatures and initials on copies of this document that have been delivered by telecopy shall have the same force and effect as original signature.

Dated at Toronto, Ontario this 3<sup>rd</sup> day of December, 2013.

**FTI CONSULTING CANADA INC.**, in its capacity as receiver 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.

("Tercon") and not in its personal capacity

By:   
\_\_\_\_\_  
Nigel D. Meakin  
Senior Managing Director  
DUMAS HOLDINGS INC.

By:   
\_\_\_\_\_  
Steven Chambers  
Director

---

## **Appendix G**

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### **The Plan Distribution Assignment Agreement**

## ASSIGNMENT AGREEMENT

THIS AGREEMENT dated the 3<sup>rd</sup> day of December, 2013,

**B E T W E E N:**

**FTI CONSULTING CANADA INC.**, in its capacity as receiver 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, "**Tercon**") and not in its personal capacity

(hereinafter referred to as "**Assignor**")

– and –

**DUMAS HOLDINGS INC.**, a corporation incorporated under the laws of Ontario,

(hereinafter referred to as "**Assignee**")

### **RECITALS:**

- A. Tercon A.C. Ltd. ("**Tercon A.C.**") is a partner of AC&T Limited Partnership.
- B. The AC&T Limited Partnership is or will become entitled or obliged to make distributions to Tercon A.C. after the date hereof (the "**AC&T Distributions**").
- C. Tercon Construction Limited ("**TCL**") is a partner of Tahltan-Tercon Limited Partnership ("**TTLP**").
- D. TTLP is or will become entitled or obliged to make distributions to TCL after the date hereof (the "**TTLP Distributions**").
- E. Pursuant to an order of Justice Sewell of the Supreme Court of British Columbia granted on December 14, 2012, the FTI Consulting Canada Inc. was appointed Receiver of Tercon.
- F. The Assignor wishes to assign to the Assignee all of the rights of the Assignor and Tercon to the AC&T Distributions and the TTLP Distributions (collectively, the "**Distributions**").

**NOW THEREFORE THIS ASSIGNMENT AGREEMENT WITNESSES** that in consideration of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency whereof are hereby acknowledged by each of the parties), the parties hereto covenant and agree as follows:

1. **Assignment.** Subject to the approval of the Court, Assignor hereby sells, assigns, transfers, conveys and sets over to Assignee all of the present and future right, title, interest, benefit and entitlement of the Assignor and Tercon in and to receive any and all Distributions.

2. **Further Assurances.** Assignor and Assignee shall each use its best efforts to take such actions and execute and deliver such documents as may be reasonable required or necessary or appropriate to give effect to the terms, provisions and intent of this Assignment Agreement and the transactions contemplated hereby.


3. **Benefit of Agreement.** This Assignment Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and assigns.

4. **Governing Law.** This Assignment Agreement shall be governed by and construed and enforced in accordance with the laws in force in the Province of British Columbia and the federal laws of Canada applicable therein.

5. **Counterparts.** This Assignment Agreement may be executed in several counterparts, each of which, when so executed, shall be deemed to be an original and which counterparts together shall constitute one and the same agreement. This Assignment Agreement may be delivered by facsimile or other electronic means, and any signature hereto delivered by facsimile or other electronic means shall be deemed to be equivalent to an original signature for all purposes.

**IN WITNESS WHEREOF** this Assignment Agreement has been executed by the parties hereto on the date first written above.

**FTI CONSULTING CANADA INC.,** in its capacity as receiver 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. and not in its personal capacity

By:   
Name: Nigel D. Meadish  
Title: Senior Managing Director

**DUMAS HOLDINGS INC.**

By: \_\_\_\_\_  
Name:  
Title:



1. **Assignment.** Subject to the approval of the Court, Assignor hereby sells, assigns, transfers, conveys and sets over to Assignee all of the present and future right, title, interest, benefit and entitlement of the Assignor and Tercon in and to receive any and all Distributions.

2. **Further Assurances.** Assignor and Assignee shall each use its best efforts to take such actions and execute and deliver such documents as may be reasonable required or necessary or appropriate to give effect to the terms, provisions and intent of this Assignment Agreement and the transactions contemplated hereby.

3. **Benefit of Agreement.** This Assignment Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and assigns.

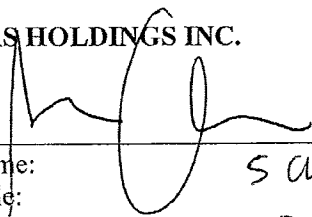
4. **Governing Law.** This Assignment Agreement shall be governed by and construed and enforced in accordance with the laws in force in the Province of British Columbia and the federal laws of Canada applicable therein.

5. **Counterparts.** This Assignment Agreement may be executed in several counterparts, each of which, when so executed, shall be deemed to be an original and which counterparts together shall constitute one and the same agreement. This Assignment Agreement may be delivered by facsimile or other electronic means, and any signature hereto delivered by facsimile or other electronic means shall be deemed to be equivalent to an original signature for all purposes.

**IN WITNESS WHEREOF** this Assignment Agreement has been executed by the parties hereto on the date first written above.

**FTI CONSULTING CANADA INC.**, in its capacity as receiver 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. and not in its personal capacity

By: \_\_\_\_\_  
Name:  
Title:

**DUMAS HOLDINGS INC.**  
By:  \_\_\_\_\_  
Name: S Chambers  
Title: Director

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## **Appendix H**

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### **The Receiver's Eighth Report (without Appendices)**

**No. S128887 Vancouver Registry**

**Tercon Investments Ltd. et al**

**EIGHTH REPORT OF THE RECEIVER**

**April 4, 2013**

No. S128887  
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

**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

**EIGHTH REPORT TO THE COURT SUBMITTED BY  
FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER**

## INTRODUCTION

1. On December 14, 2012 (the “**Date of Appointment**”), FTI Consulting Canada Inc. was appointed as receiver (the “**Receiver**”) of all of the assets, undertakings and properties (the “**Property**”) 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, “**Tercon**” or the “**Company**”) pursuant to the order of Mr. Justice Sewell (the “**Receivership Order**”) granted upon the petition of Dumas Holdings Inc. (“**DHI**”) 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*.
2. As described in the First Report, the Asset Purchase and Sale Agreement dated as of December 21, 2012, was entered into, subject to Court approval, between the Receiver as Vendor and Ritchie Bros. Auctioneers (Canada) Ltd. (“**RB Canada**”) and Ritchie Bros. Auctioneers (America) Inc. (“**RB America**”, RB Canada and RB America together being “**Ritchie Bros**”) as Purchasers (the “**APA**”) with respect to the Equipment and Miscellaneous Property of Tercon (as such terms are defined in the APA).
3. On January 15, 2013, Mr. Justice Sewell granted an Order (the “**Approval and Vesting Order**”) *inter alia* approving the APA and the Return Protocol, as defined in the First Report.
4. On January 21, 2013, Mr. Justice Sewell granted the following Orders:
  - (i) An Order, *inter alia*, providing for the setting up of certain reserves by the Receiver from proceeds of realization and authorizing the distribution of funds in excess of the reserves to HSBC (the “**Distribution Order**”; and

- (ii) An Order, *inter alia*, authorizing and directing the Receiver, unless otherwise agreed with HSBC and DHI, to file assignments in bankruptcy for and on behalf of each of the Tercon companies and providing for the co-ordination of the Receivership Proceedings and the bankruptcy proceedings (the “**Bankruptcy Co-Ordination Order**”).
- 5. On February 28, 2013, Mr. Justice Sewell granted an Order, *inter alia*, authorizing FTI Consulting Canada Inc., in its capacity as receiver of Tercon Construction Ltd. to issue and file an application for a Bankruptcy Order against Tercon Equipment Ltd. (the “**Tercon Bankruptcy Application Order**”).
- 6. On March 21, 2013, Mr. Justice Sewell granted an order approving a procedure for the submission, evaluation and adjudication of claims against Tercon or against the bonds issued by Trisura Guarantee Insurance Company (“**Trisura**”) in relation to certain Tercon projects (the “**Claims Procedure Order**”).
- 7. To date, the Receiver has filed seven reports on various aspects of the Receivership. Each of the reports, and the orders made in the Receivership proceedings are posted on the Receiver’s website at <http://cfcanada.fticonsulting.com/tercon>.
- 8. The purpose of this, the Receiver’s Eighth Report, is to provide information to the Court to support the Receiver’s request for the granting by the Court of an Order:
  - (i) that the Receiver is not required to continue to hold the TEAP Reserve established pursuant to paragraph 3(h) of the Distribution Order and that the Receiver is authorized to make payments to HSBC from monies previously held as the TEAP Reserve in accordance with the provisions of the Distribution Order; and

- (ii) authorizing the Receiver to pay, once the Alaskan Lien Claimant's Lien Claim is adequately proven in accordance with the Claims Procedure Order, the Accepted Lien Amount to each of the Alaska Lien Claimants from the FGMI Receivable upon receipt of a certificate of discharge of the Alaskan Lien Claimant's Alaska Lien Claim (all capitalized terms as hereinafter defined).

#### **TERMS OF REFERENCE**

- 9. In preparing this report, the Receiver has relied upon unaudited financial information of Tercon, Tercon's books and records, certain financial information prepared by Tercon and discussions with Tercon personnel and others. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
- 10. The information and advice described in this Report as being provided to the Receiver by its counsel, Borden Ladner Gervais LLP (the "**Receiver's Canadian Counsel**") and The Law Office of Cabot Christianson, P.C. (the "**Receiver's US Counsel**") and, together with Receiver's Canadian Counsel, the "**Receiver's Counsel**") has been provided to the Receiver to assist it in considering its course of action and is not intended as legal or other advice to, and may not be relied upon by, any other stakeholder.
- 11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined are as defined in the Receivership Order or in the Receiver's previous Reports.

#### **THE TEAP RESERVE**

#### **BACKGROUND**

- 12. Paragraph 3(h) of the Distribution Order states:

“3. The Receiver is authorized and directed to establish reserves in respect of the following proceeds of Property in the Receiver's possession ("**Proceeds**"), which Proceeds, notwithstanding the creation of such reserves, shall continue to be "Property" pursuant to the Receivership Order:

...

(h) An amount equal to: (i) the proceeds received by the Receiver, determined pursuant to the terms of the APA, from the sale of any Property (as defined in the Receivership Order dated Dec 14, 2012) that was transferred from Tercon Equipment Ltd. to Tercon Equipment Alaska Partnership (the "**Alaska Property**") pursuant to the Purchase and Sale Agreement dated December 6, 2012 that is referred to in paragraph 31 of the Affidavit of Steven Chambers, sworn December 13, 2012 and filed in support of the application for the Receivership Order, less (ii) the amount of the Equipment Lien Reserve held in respect of Registered Liens that have been registered against Alaska Property ( the "**TEAP Reserve**");”

13. Paragraph 7 of the Distribution Order states:

“7. Notwithstanding anything set out in paragraph 5 and 6 above, no money from the TEAP Reserve shall be paid to HSBC without further order of the Court.”



14. The TEAP Reserve was established to protect the potential interests of creditors pending investigation of the transfer of the Alaska Property from Tercon Equipment Ltd. (“**TEL**”) to Tercon Equipment Alaska Partnership (“**TEAP**”) pursuant to the Purchase and Sale Agreement dated December 6, 2012 (the “**Alaskan Property Transfer**”) and an assessment of whether the proceeds of realization of the Alaska Property may be available to the unsecured creditors of the estate of TEL if the Alaskan Property Transfer could be voided by a trustee in bankruptcy.
15. The Alaskan Property Transfer and the TEAP Reserve are not relevant to the parties with Registered Liens registered against the Alaska Property, as reserves for those claims are provided for within the Equipment Lien Reserve.

#### **INVESTIGATION INTO THE ALASKAN PROPERTY TRANSFER**

16. The results of the Receiver’s investigation into the Alaskan Property Transfer were set out in a Memorandum Regarding Transfer of Assets to TEAP attached as Appendix A to the Receiver’s Third Report (the “**Transfer Memo**”). A copy of the Transfer Memo is attached hereto as Appendix A for ease of reference. In summary:
  - (i) TEAP was established in a manner that was consistent with the tax advice of PricewaterhouseCoopers LLP for a tax efficient structure for equipment to be used on the Kinross project based in the US;
  - (ii) Internal documents are consistent with the creation of TEAP for the purpose of leasing the equipment to Tercon Alaska Limited (“**TAL**”) and the transfer of the Alaska Property to facilitate that process;
  - (iii) Mr. Chambers, a person with direct knowledge of the transfer who the Receiver questioned regarding the transfer, was able to explain all aspects of the transfer and locate documentation relating to inquiries regarding the transfer;

- (iv) TEAP carried on business in Alaska and is the Tercon entity that issued purchase orders, was named in supplier invoices and, prior to the receivership, was paying its accounts from its own bank account;
- (v) No documents have been located that suggest that TEL was carrying on business in Alaska or holding itself out as the owner of the Alaska Property. On the contrary, it explicitly represented to its primary secured creditor that it did not have operations or property in Alaska;
- (vi) The Purchase and Sale Agreement between TEL and TEAP (the “**TEAP APA**”) was dated December 6, 2012 with an effective date of March 1, 2012. The books and records of TEL and TEAP support the proposition that the Alaskan Property Transfer took place in March 2012;
- (vii) The TEAP APA defines the purchase price for the transfer of the Alaska Property as:

“In consideration for the transfer of the Purchased Assets to the Purchaser pursuant to this Agreement, the Purchaser hereby assumes all such rights and obligations and agrees to be bound by, observe and perform all of the terms and conditions to be observed and performed by the Vendor under each of the Guarantee and Security Agreement as if it were an original signatory thereto (the “**Purchase Price**”).”
- (viii) There appears to be no reasonable basis for a position that a transfer of the Alaska Property from TEL to TEAP was done to hinder, defeat, delay or defraud creditors.

## **PERFECTION OF HSBC SECURITY AGAINST TEAP AND TEL**

17. As reported in the Receiver's First Report, the Receiver's US Counsel has reviewed the security granted by TAL and TEAP to HSBC and has confirmed to the Receiver that the said security is properly registered under the Uniform Commercial Code ("UCC") in the State of Alaska. Accordingly, HSBC has a validly perfected security interest in assets owned by TAL or TEAP located in Alaska.
18. The Receiver's Canadian Counsel has reviewed the security granted by TEL to HSBC (the "**TEL Security**") and has confirmed that the said security is properly registered under the *Personal Property Security Act* of British Columbia (the "**BC PPSA**") and that HSBC has a validly perfected security interest in assets of TEL pursuant to the TEL Security. The Receiver's Canadian Counsel has advised the Receiver that the TEL Security had attached to the Alaska Property prior to the time of the transfer of the Alaska Property from TEL to TEAP pursuant to the Alaskan Property Transfer.
19. The question as to whether the proceeds of realization of the Alaska Property may be available to the unsecured creditors of the estate of TEL if the Alaskan Property Transfer could be voided by a trustee in bankruptcy is therefore dependent on:
  - (i) Whether the Alaskan Property Transfer could be successfully challenged and declared void as against a trustee in bankruptcy of TEL pursuant to the provisions of the BIA (as, for example, a preference that is voided pursuant to section 95 of the BIA or a transfer at undervalue that is voided pursuant to section 96 of the BIA); and
  - (ii) If the Alaskan Property Transfer was declared void, such that the proceeds from the sale of the Alaska Property were returned to the estate of TEL, would such proceeds be available for the unsecured creditors of TEL or would the proceeds be subject to the TEL Security.

20. The Receiver takes no position on the likelihood of success of any challenge to attempt to void the Alaskan Property Transfer. However, given (i) the Receiver's understanding regarding the reasons of Justice Morawetz in *Tucker v. Aero Inventory (UK) Ltd.* (2011), 80 C.B.R. (5<sup>th</sup>) (O.S.C.J.); (ii) the application of those principles to this matter, which indicate that any proceeds returned to the estate of TEL as a result of voiding the Alaskan Property Transfer would be subject to the TEL Security; and (iii) the matters noted below, there is no apparent reason for the Receiver to assess the potential rights of a trustee to challenge the Alaskan Property Transfer because the benefit of the proceeds would in any event be paid to HSBC.

21. As noted in the Fifth Report, HSBC did not register a security interest in the assets of TEL under the UCC in Alaska. However, the Receiver's US Counsel has informed the Receiver that:

(i) *Alaska Statute 45.29.301* governs perfection and priority of security interests and the section provides:

“Except as otherwise provided in AS 45.29.303 - 45.29.306, the following rules determine the law governing perfection, the effect of perfection or non-perfection, and the priority of a security interest in collateral:

(1) except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral;

...

(3) except as otherwise provided in (4) of this section, while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs

...

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral;

...

(4) the local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection.”

- (ii) As a result, section *AS 45.29.301* provides that the local law of the location of the debtor determines whether a secured creditor is perfected and the local law of the location of the collateral determines the priorities of security interests;
- (iii) The proper law to determine whether the security interest of HSBC is perfected in respect of the property of TEL (including property of TEL located in Alaska), is the law of British Columbia;
- (iv) As noted above, the Receiver’s Canadian Counsel has confirmed that HSBC has a validly perfected security interest in assets of TEL pursuant to the TEL Security and the BC PPSA;
- (v) As a result, a registration by HSBC in Alaska under the UCC against TEL is unnecessary; and

- (vi) If a challenge to the Alaskan Property Transfer was successfully undertaken by the trustee in bankruptcy of TEL, any proceeds of the Alaska Property returned to the estate of TEL would be subject to the TEL Security and the benefits of any such challenge would therefore accrue solely to HSBC.

#### **CONCLUSION AND REQUEST FOR RELEASE OF TEAP RESERVE**

- 22. Accordingly, it is the Receiver's view that, subject only to the interests of a creditor with a Registered Lien against the Alaska Property that had priority to the security of HSBC, the proceeds of the Alaska Property are payable to HSBC.
- 23. Paragraph 4 of the Distribution Order provides:
  - “4. For greater certainty, to the extent that the Receiver holds proceeds in respect of any item of Alaska Property in the Equipment Lien Reserve, it shall not be required to hold an amount in the TEAP Reserve in respect of a Registered Lien filed against the same item of the Alaska Property.”
- 24. As a result of the fact that the Receiver has made a provision for all Registered Liens in the Equipment Lien Reserve, HSBC has a priority interest in all of the proceeds in the TEAP Reserve. Except for the prohibition set out in paragraph 7 of the Distribution Order, the Receiver would be permitted to distribute the proceeds of the Alaska Property pursuant to the provisions of the Distribution Order.
- 25. Accordingly, the Receiver seeks an Order that the Receiver is not required to continue to hold the TEAP Reserve established pursuant to paragraph 3(h) of the Distribution Order and that the Receiver is authorized to make payments to HSBC from monies previously held as the TEAP Reserve in accordance with the provisions of the Distribution Order.

26. If the Order is granted, the Receiver intends to forthwith make an interim distribution of proceeds to HSBC in accordance with the provisions of the Distribution Order.

#### **PAYMENT OF LIEN CLAIMS**

27. Paragraph 3(e) of the Distribution Order states:

“3. The Receiver is authorized and directed to establish reserves in respect of the following proceeds of Property in the Receiver's possession ("**Proceeds**"), which Proceeds, notwithstanding the creation of such reserves, shall continue to be "Property" pursuant to the Receivership Order:

...

(e) Out of any funds received by the Receiver in respect of any Tercon Project, the aggregate of the amounts of all claims for lien that have been preserved in accordance with applicable lien legislation or that may constitute trust funds pursuant to applicable lien legislation (the "**Lien and Trust Reserve**");”

28. Paragraph 22 of the Distribution Order states:

“22. No disbursements from the Bonded Project Reserve or the Lien and Trust Reserve shall be made without further Order of the Court, on notice to all affected parties.”

29. Pursuant to the provisions of the Claims Procedure Order, any party with a Lien Claim is required to prove its claim prior to the Claims Bar Date.

30. The statutory period for the registration of liens under *Alaska Statute 34.35* has now expired. As reported in the Receiver's Seventh Report, the following Lien Claims (collectively, the "**Alaskan Lien Claims**") have been registered against the Fort Knox property in Alaska where Tercon undertook the Fort Knox Project:

Lien Claimant	Registration No.	Unpaid Amount	Interest & Fees	Total Lien Claim
		US\$	US\$	US\$
North Central Rental & Leasing, LLC <sup>1</sup>	2013-001804-0	317,087.00	20,037.00	314,412.00
Midstate Equipment Inc.	2012-026532-0	148,781.25	12,191.41	160,972.66
Stutzman Engineering	2012-026286-0	13,440.00	1,130.00	14,570.00
N.C. Machinery Co.	2013-003074-4	929,798.16	TBC	TBC
<b>Total</b>		<b>1,409,106.41</b>	<b>33,358.41</b>	<b>TBC</b>

<sup>1</sup>Registration for \$317,087.00. Total Lien Claim subsequently confirmed as \$314,412.00 by counsel to the Lien Claimant

31. As noted above, each of these Lien Claimants (collectively, the "**Alaskan Lien Claimants**") is required to prove its Lien Claim in accordance with the provisions of the Claims Procedure Order. The Receiver has reviewed the documents provided to by the Alaskan Lien Claims and is satisfied that the quantum of each of the Alaskan Lien Claims, including interest and fees (each an "**Accepted Lien Amount**") is valid and has been adequately proven in accordance with the Claims Procedure Order other than the Lien Claim of N.C. Machinery Co. which is yet to provide documentation supporting the entire amount claimed.
32. The Receiver's US Counsel has reviewed the Alaskan Lien Claims and has informed the Receiver that in each case (subject to review of the documentation yet to be submitted by N.C. Machinery Co.):
- (i) the goods and/or supplied are of the nature that can be validly liened under *Alaska Statute 34.35*;



- (ii) the Lien Claim has been validly registered in accordance with the provisions of *Alaska Statute 34.35*;
  - (iii) that the Alaskan Lien Claimant is entitled to claim legal fees and interest in connection with the Lien Claims; and
  - (iv) the Lien Claim ranks in priority to the security interests of HSBC and DHI against the accounts receivable owing by Fairbanks Gold Mining Inc. (“**FGMI**”) in respect of the Fort Knox Project.
33. Accordingly, it is the Receiver’s view that, subject to reviewing the documentation yet to be provided by N.C. Machinery Co., the Alaskan Lien Claims are valid and enforceable Claims ranking in priority to the security interests of HSBC and DHI against the accounts receivable owing in respect of the Fort Knox Project. The Receiver has reviewed the matter with both HSBC and DHI who have both informed the Receiver that they concur with the Receiver’s assessment.
34. As noted in the Seventh Report, FGMI has acknowledged that the amount of US\$4,176,581.31 is payable to the Receiver (the “**FGMI Receivable**”).
35. FGMI has not, at the date of this report, paid the FGMI Receivable. The Receiver has discussed arrangements for payment with counsel to FGMI, as follows:
- (i) FGMI will pay the FGMI Receivable, less \$1.5 million, to the Receiver;
  - (ii) FGMI will pay \$1.5 million to the Receiver’s US Counsel which funds will be held escrow, to be released to pay each of the Accepted Lien Amounts once:
    - (a) An Order authorizing payment of the Alaskan Lien Claims has been granted;

- (b) The Alaskan Lien Claimant has delivered in escrow a lien discharge certificate which will be released from escrow once the Alaskan Lien Claimant's Accepted Lien Amount has been paid; and
  - (c) In the case of N.C. Machinery Co., the Receiver is satisfied that the Lien Claim is adequately proven.
36. Accordingly, the Receiver seeks an order authorizing the Receiver to pay, once adequately proven, each of the Accepted Lien Amounts from the FGMI Receivable upon the Alaskan Lien Claimant providing to the Receiver or its Counsel a certificate of discharge for the Alaskan Lien Claimant's Alaska Lien Claim.


The Receiver respectfully submits to the Court this, its Eighth Report.

Dated this 4<sup>th</sup> day of April, 2013.

FTI Consulting Canada Inc.  
in its capacity as receiver 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.  
and not in its personal or corporate capacity



Nigel D. Meakin  
Senior Managing Director



Jeff Rosenberg  
Managing Director