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Attorney for FTI Consulting Canada Inc.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA**

In re TERCON INVESTMENTS LTD., Debtors in Foreign Proceeds.	CASE NO.: A13-00015-HAR In Chapter 15 [Lead Case of Jointly Administered Cases A13-00015 through A13-00025-HAR]
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**ORDER RECOGNIZING AND APPROVING
APPROVAL AND VESTING ORDER**

FTI Consulting Canada Inc. (“the Receiver”), the Receiver appointed in *Dumas Holdings, Inc. Petitioner, v. Tercon Investments Ltd., et. al.* Case No. S 128887 (“the Canadian Proceedings”) in the Supreme Court of British Columbia, Vancouver Registry, (“the Canadian Court”) filed a *Motion for Recognition and Approval of Approval and Vesting Order* (“the Motion”), Docket No. 10. Adequate notice of the Motion was given pursuant to the affidavits of service on file. Good cause appearing,

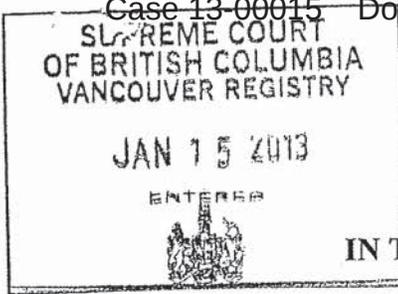
IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Approval and Vesting Order entered January 15, 2013 in the Canadian Proceedings, a copy of which is attached hereto, is hereby given full force and effect in the United States.

Dated: February 19, 2013

By: /s/ Herb Ross
HERB ROSS
United States Bankruptcy Judge

Serve: C. Christianson, Esq.
D. Bundy, Esq.
E. LeRoy, Esq.
T. McKeever, Esq.
W. Courshon, Esq.
U. S. Trustee
Matrix (via BNC)



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.

This is Exhibit " _____ " referred to in the affidavit of _____ Respondents

made before me on _____ 20 _____ EDWARD J.T. WANG
Barrister & Solicitor

A Commissioner for taking Affidavits for British Columbia BORDEN LADNER GERVAIS LLP
1200 Waterfront Centre, 200 Burrard Street
P.O. Box 48600, Vancouver, Canada V7X 1T2
604-640-4191

ORDER MADE AFTER APPLICATION

APPROVAL AND VESTING ORDER

This is Exhibit " C " referred to in the affidavit of Nigel D. Meakin

BEFORE THE HONOURABLE)
MR. JUSTICE SEWELL)

made before me on Jan 15 2013
[Signature]

A Commissioner for taking Affidavits for British Columbia

THE APPLICATION of FTI CONSULTING CANADA INC., in its capacity as Court-appointed Receiver (the "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, the "Debtors") coming on for hearing at Vancouver, British Columbia, on the 15th day of January, 2013; AND ON HEARING Geoffrey Thompson, counsel for the Receiver, and those other counsel listed on

Schedule "A" hereto, AND UPON READING the material filed, including the First Report of the Receiver dated January 8, 2013 (the "First Report");

THIS COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the "Transaction") contemplated by the Asset Purchase and Sale Agreement dated December 21, 2012 (the "Sale Agreement") between the Receiver, as vendor, and Ritchie Bros. Auctioneers (Canada) Ltd. and Ritchie Bros. Auctioneers (America) Inc., as purchasers (the "Purchasers"), a copy of which (without schedules) is attached as Schedule "B" hereto is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved with such minor amendments as the Receiver may deem necessary, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction(s) and for the conveyance to the Purchaser of the Assets described in the Sale Agreement (the "Purchased Assets").
2. Upon delivery by the Receiver to the Purchasers of a certificate substantially in the form attached as Schedule "C" hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets more particularly described in the List of Purchased Assets Certified as Subject to Closing attached as Appendix "1" to the Receiver's Certificate (the "Vested Assets") shall vest absolutely in the Purchasers in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims" including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated December 14, 2012 in this proceeding; (ii) all charges, security interests or claims evidenced by registrations against the Debtors pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system (collectively, "Encumbrances"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Vested Assets are hereby expunged and discharged as against the Vested Assets.
3. For the purposes of determining the nature and priority of Claims, the Net Proceeds (as defined in the First Report) from the sale of any Vested Assets shall stand in the place and stead of the Vested Assets, and from and after the delivery of the Receiver's Certificate all Claims shall, subject to the terms of paragraph 5 of the Receivership Order, attach to the Net Proceeds from the sale of the Vested Assets with the same priority as they had with respect to any Vested Assets immediately prior to, and be determined as of the close of business on the date of the sale, as if the Vested Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

4. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.
5. Subject to the terms of the Sale Agreement, possession of the Vested Assets shall be delivered by the Receiver to the Purchasers as at the Closing (as defined in the Sale Agreement) of the Vested Assets.
6. The Receiver, with the consent of the Purchasers, shall be at liberty to extend any such Closing to such later date as those parties may agree without the necessity of a further Order of this Court.
7. Notwithstanding:
 - (a) these proceedings;
 - (b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made by or in respect of the Debtor,

the vesting of the Vested Assets in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. The Equipment Return Protocol substantially in the form attached as Schedule "D" hereto is approved and the Receiver is authorized to carry out the actions described in the Equipment Return Protocol or otherwise as may be agreed in writing between the Receiver and any Equipment Lessor (as defined in the Equipment Return Protocol).
9. The First Report, and the activities of the Receiver described therein are hereby approved.
10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
11. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

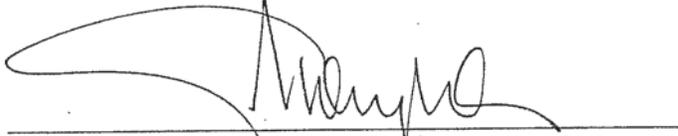
endorsements attached

Case

BY THE COURT


REGISTRAR

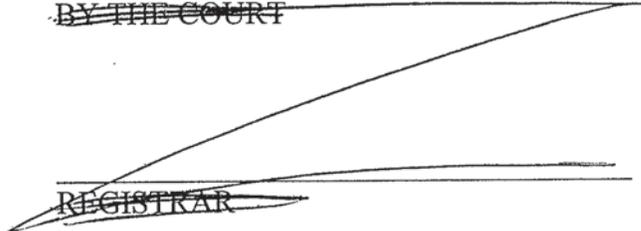
THE APPROVAL OF COUNSEL SET OUT IN SCHEDULE "A" OF THIS ORDER, OTHER THAN COUNSEL FOR FTI CONSULTING CANADA INC., IS HEREBY DISPENSED WITH



Signature of Geoffrey Thompson

Party Lawyer for
FTI Consulting Canada Inc.

~~BY THE COURT~~



~~REGISTRAR~~

Schedule A - List of Counsel

D Wiebe
C Ramsay } HSBC
H Peris NC Machinery Co.
M. Wasserman Dumas
K Rowan Equipment lessor
WAJAX

EXECUTION COPY

ASSET PURCHASE AND SALE AGREEMENT

THIS AGREEMENT made as of the 21st day of December, 2012

BETWEEN:

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 (hereinafter called the "**Vendor**")

OF THE FIRST PART

- and -

RITCHIE BROS. AUCTIONEERS (CANADA) LTD., a body corporate having an its head office at 9500 Glenlyon Parkway, in the City of Burnaby, in the Province of British Columbia, V5J 0C6 (hereinafter called the "**Canadian Purchaser**")

OF THE SECOND PART

RITCHIE BROS. AUCTIONEERS (AMERICA) INC., a body corporate having an its head office at 4000 Pine Lake Road, in the City of Lincoln, in the State of Nebraska, 68516 (hereinafter called "**US Purchaser**")

OF THE THIRD PART

WHEREAS pursuant to an order ("**Receivership Order**") of Justice Sewell of the Supreme Court of British Columbia granted on December 14, 2012, the Vendor was appointed Receiver of Tercon;

AND WHEREAS the Vendor has, subject to the approval of the Court, agreed to the sale of the Assets to the Purchasers and the Purchasers have agreed to purchase the Assets from the Vendor on the terms and conditions set forth herein;

NOW THEREFORE in consideration of the mutual covenants and agreement herein contained, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals the Schedules and this Article 1, the following terms shall have the respective meanings hereby assigned to them:

- (a) **"AC&T Equipment"** means all equipment specifically listed as AC&T Equipment on Schedule "A.1" attached hereto;
- (b) **"Affiliate"** has the meaning attributed thereto in the *Business Corporations Act* (British Columbia);
- (c) **"Agent"** means HSBC Bank Canada ("**HSBC**") as Lead Arranger, Bookrunner and Administrative Agent under the senior secured credit agreement dated as of February 28, 2012, as amended, between, *inter alia*, HSBC, certain lenders from time to time and Tercon;
- (d) **"Agreement"** means this document, together with the Schedules attached hereto and made a part hereof;
- (e) **"Allocated Value"** means the dollar value ascribed to each item of Equipment on Schedule "A.1" attached hereto;
- (f) **"Approval and Vesting Order"** means an order to be granted by the Court that authorizes Vendor's execution and performance of this Agreement and vests the Assets in the Purchasers, substantially in the form of Order attached as Schedule "B" to this Agreement;
- (g) **"Assets"** means the Equipment and the Miscellaneous Property;
- (h) **"Business"** means the business carried out by Tercon prior to the appointment of the Receiver;
- (i) **"Business Day"** means any day, except Saturdays, Sundays and statutory holidays, on which banks are generally open for business in the Province of British Columbia;
- (j) **"Canadian Equipment"** means the equipment listed on Schedule "A.1" attached hereto and delivered to a Delivery Location in Canada;
- (k) **"Canadian Equipment Purchase Price"** means the portion of the Equipment Purchase Price determined from the total of all Allocated Values listed on Schedule "A.1" attached hereto in respect of Canadian Equipment;

- (l) **"Canadian Miscellaneous Property"** means the Miscellaneous Property listed on Schedule **"A.2"** attached hereto that is delivered to a Delivery Location in Canada
- (m) **"Canadian Miscellaneous Property Purchase Price"** means the Miscellaneous Property Purchase Price determined pursuant to Clause 2.2 hereof with respect to Canadian Miscellaneous Property;
- (n) **"Claims"** means any claim of any kind or nature, including any demand, cause of action, suit, default, assessment, litigation, third party action or proceeding asserted by a Third Party;
- (o) **"Closing"** means, with respect to an Asset, the successful completion of the purchase and sale of such Asset as contemplated by this Agreement;
- (p) **"Closing Date"** means (i) with respect to the Canadian Equipment and Canadian Miscellaneous Property to be delivered to a particular Delivery Location, the day that is the later of three (3) Business Days after: (A) the date on which the Approval and Vesting Order is issued by the Court; and (B) the date on which all of the Delivery Location Closing Conditions are satisfied with respect to such Delivery Location and all conditions in Clause 3.2 and Clause 3.3 hereof are satisfied with respect to a Closing on such Assets; and (ii) with respect to the US Equipment and the US Miscellaneous Property to be delivered to a particular Delivery Location, the day that is the later of three (3) Business Days after: (A) the date on which the Recognition Order is issued; and (B) the date on which all of the Delivery Location Closing Conditions are satisfied with respect to such Delivery Location and all conditions in Clause 3.2 and Clause 3.3 hereof are satisfied with respect to a Closing on such Assets;
- (q) **"Closing Time"** means 11:00 a.m. (Vancouver time) on the Closing Date, or such other time as agreed to in writing by the Vendor and the Purchasers;
- (r) **"Court"** means the Supreme Court of British Columbia;
- (s) **"Delivery Location"** shall have the meaning ascribed to it in Clause 6.1 hereof;
- (t) **"Deposit"** means the deposit in the amount of five million dollars (\$5,000,000) paid to the Vendor pursuant to Clause 2.3 of this Agreement;
- (u) **"Dumas Secured Parties"** means Dumas Holdings Inc. (formerly known as 0833824 B.C. Ltd.);
- (v) **"Effective Date"** means 12:01 A.M. Vancouver time as of the date of this Agreement;
- (w) **"Equipment"** means the equipment listed on Schedule **"A.1"** attached hereto, which shall, subject to Clause 2.2 hereof, include all Canadian Equipment, all US Equipment and all AC&T Equipment;

- (x) **"Equipment Auctions"** means the public unreserved auctions to be held by Purchasers, which for greater certainty, shall include any private sales or other transactions pursuant to which the Purchasers may sell the Equipment;
- (y) **"Equipment Closing List"** means the list of Equipment set out on Schedule "A.1" attached hereto, amended only pursuant to Clause 2.2 hereof or with the consent of the Purchasers and the Vendor and, for the purpose of a Closing, includes any list of Equipment Certified as Subject to Closing pursuant to Clause 4.2 hereof;
- (z) **"Equipment Purchase Price"** has the meaning ascribed in Clause 2.2 hereof and, for greater certainty, means the aggregate of the Canadian Equipment Purchase Price and the US Equipment Purchase Price;
- (aa) **"Final Delivery Date"** means February 28, 2013 or such other date as may be agreed to between the Parties;
- (bb) **"Governmental Authority"** means any government or political subdivision thereof, any agency of government appointed pursuant to the Regulations and any other body or agency having, or purporting to have, authority over the Assets or any operation or activity thereon or with respect thereto;
- (cc) **"Gross Proceeds"** means, with respect to any and all articles of Miscellaneous Property:
 - (i) In the event of a sale by public auction, the agreed upon price, excluding any buyer's premium;
 - (ii) In the event of a private sale, the value of the consideration received by the Purchasers in respect of the article; and
 - (iii) In the event of any lost or damaged article, the value of any insurance proceeds paid in respect of such lost or damaged articles.
- (dd) **"Maintenance History"** means all documentation and proof of work order history, component repair and maintenance history for the Assets identified in the attached Schedule "G" and viewed by the Purchasers' representative on December 3, 2012 at Tercon's offices in Kamloops BC;
- (ee) **"Miscellaneous Property"** means the items of equipment used in the Business, described in, and located at the premises set out on, the list attached as Schedule "A.2" hereto, other than any equipment that is subject to a Priority Claim as determined by the Vendor or order of the Court;
- (ff) **"Miscellaneous Property Auction"** means the public unreserved auctions to be held by Purchasers, which for greater certainty, shall include any private sales or other transactions pursuant to which the Purchasers may sell the Miscellaneous Property;

- (gg) **"Miscellaneous Property Purchase Price"** has the meaning ascribed in Clause 2.2. hereof and, for greater certainty, means the aggregate of the Canadian Miscellaneous Property Purchase Price and the US Miscellaneous Property Purchase Price;
- (hh) **"Occupancy Agreement"** means an agreement regarding the occupancy of certain lands leased by Tercon substantially in the form of the agreement attached hereto as Schedule "E";
- (ii) **"Party"** means any Person bound by this Agreement;
- (jj) **"Person"** includes individuals, executors, administrators, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and Governmental Authorities;
- (kk) **"Possession Date"** means, with respect to a Delivery Location that is or becomes owned or controlled by the Purchasers, the date on which the Assets are in the care, custody and control of the Purchasers, or, with respect to a Delivery Location that is not owned, leased or controlled by the Purchasers, the date on which the Purchasers provide notice to the Vendor that the Purchasers are assuming care and control of the said Delivery Location;
- (ll) **"Priority Claim"** means a properly perfected security interest that has, at law, priority to the security interests of the Agent and the Dumas Secured Parties;
- (mm) **"Purchase Price"** means the aggregate of the Canadian Equipment Purchase Price, the US Equipment Purchase Price, the Canadian Miscellaneous Property Purchase Price and the US Miscellaneous Property Purchase Price as determined pursuant to Clause 2.2 hereof;
- (nn) **"Purchasers"** means, collectively, the Canadian Purchaser and the US Purchaser;
- (oo) **"Receiver"** means FTI Consulting Canada Inc. in its capacity as receiver of the assets, undertakings and properties of Tercon appointed pursuant to the Receivership Order and not in its personal or corporate capacity;
- (pp) **"Receivership Order"** means the Order of the Court under Action Number S128887 on December 14, 2012 appointing the Receiver;
- (qq) **"Recognition Order"** means an order of a US court of competent jurisdiction recognizing the Approval and Vesting Order, including without limitation, an order under Chapter 15 of the US Bankruptcy Code;
- (rr) **"Regulations"** means all statutes, laws, rules, orders and regulations in effect from time to time and made by any Governmental Authority;

- (ss) **"Sales Tax"** means all taxes, interest, penalties and fines imposed under Part IX of the *Excise Tax Act* (Canada), and other sales and transaction taxes or transaction fees imposed by provincial, federal or state governments in Canada or the US in respect of the Transaction, depending on the location of the Assets;
- (tt) **"Specific Conveyances"** means the bills of sale for the Equipment and the Miscellaneous Property substantially in the form attached hereto as Schedule "C" and, in the case of any item of Equipment that is a motor vehicle or subject to registration under motor vehicle legislation, the ownership or registration document with respect to such vehicle;
- (uu) **"Tercon"** means 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.;
- (vv) **"Termination Date"** shall have the meaning ascribed in the Occupancy Agreement;
- (ww) **"Third Party"** means a Person other than the Vendor and Purchasers;
- (xx) **"Title Documents"** means, in respect of the Assets, all documents of title (including any permits, purchase and sale agreements, trust agreements and declarations, agreements for the ownership and operation of Equipment, and gathering, transportation and processing agreements) or other agreements that relate to the Assets, and the ownership and location thereof in the possession of the Vendor;
- (yy) **"Transaction"** means the purchase and sale of the Assets contemplated by a Closing pursuant to this Agreement;
- (zz) **"US"** means the United States of America;
- (aaa) **"US Assets"** means the US Equipment and the US Miscellaneous Property;
- (bbb) **"US Equipment"** means the equipment listed on Schedule "A.1" attached hereto which is delivered to a Delivery Location in the US; and
- (ccc) **"US Equipment Purchase Price"** means the portion of the Equipment Purchase Price determined from the total of all Allocated Values listed on Schedule "A.1" attached hereto for US Equipment;
- (ddd) **"US Miscellaneous Property"** means the Miscellaneous Property listed on Schedule "A.2" attached hereto and delivered to a Delivery Location in the US;
- (eee) **"US Miscellaneous Property Purchase Price"** means the Miscellaneous Property Purchase Price determined pursuant to Clause 2.2 hereof with respect to US Miscellaneous Property.

1.2 Schedules

The following Schedules are attached hereto and made part of this Agreement:

- (a) Schedule "A":
 - Schedule "A.1" – Equipment
 - Schedule "A.2" – Miscellaneous Property
- (b) Schedule "B" – Approval and Vesting Order;
- (c) Schedule "C" – Bills of Sale
 - Schedule "C.1" – Bill of Sale for Canadian Equipment;
 - Schedule "C.2" – Bill of Sale for US Equipment;
 - Schedule "C.3" – Bill of Sale for Canadian Miscellaneous Property;
 - Schedule "C.4" – Bill of Sale for US Miscellaneous Property;
- (d) Schedule "D" – Certificates
 - Schedule "D.1" – Purchaser's Certificate;
 - Schedule "D.2" – Vendor's Certificate;
- (e) Schedule "E" – Occupancy Agreement;
- (f) Schedule "F" – Undertaking;
- (g) Schedule "G" – Maintenance History

1.3 References

The references "hereunder", "herein" and "hereof" refer to the provisions of this Agreement, and references to Articles, Clauses, Subclauses, Paragraphs or Subparagraphs herein refer to Articles, Clauses, Subclauses, Paragraphs or Subparagraphs of this Agreement. Any reference to time shall refer to Eastern Standard Time or Eastern Daylight Savings Time during the respective intervals in which each is in force.

1.4 Headings

The headings of the Articles, Clauses, Subclauses, Schedules and any other headings, captions or indices herein are inserted for convenience of reference only and shall not be used in any way in construing or interpreting any provisions hereof.

1.5 Singular/Plural

Whenever the singular or masculine or neuter is used in this Agreement or in the schedules, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires.

1.6 Use of Canadian Funds

All references to "dollars" or "\$" herein shall refer to lawful currency of Canada unless the contrary is specified or provided for elsewhere in this Agreement.

1.7 Derivatives

Where a term is defined herein, a capitalized derivative of such terms shall have a corresponding meaning unless the context otherwise requires.

1.8 Interpretation If Closing Does Not Occur

In the event that Closing does not occur, each provision of this Agreement which presumes that the Purchasers have acquired the Assets hereunder shall be construed as having been contingent upon Closing having occurred.

1.9 Conflicts

If there is any conflict or inconsistency between a provision of the body of this Agreement and that of a Schedule or a Specific Conveyance, the provision of the body of this Agreement shall prevail.

**ARTICLE 2
PURCHASE AND SALE**

2.1 Agreement of Purchase and Sale

Subject to the granting of the Approval and Vesting Order, Vendor hereby agrees to sell, assign, transfer, convey and set over to Purchasers, and Purchasers hereby agree to purchase from the Vendor, all of the right, title, estate and interest (whether absolute or contingent, legal or beneficial), if any, of Tercon in and to the Assets, subject to and in accordance with the terms of this Agreement. Effective as and from the Closing Date, the Purchasers shall assume and bear all obligations associated with the Assets.

2.2 Purchase Price

- (a) The aggregate consideration to be paid by the Purchasers to the Vendor for the Assets shall be as follows:
 - (i) twelve million and forty three thousand dollars (\$12,043,000) in consideration for the Equipment ("Equipment Purchase Price"); and
 - (ii) ninety percent (90%) of the Gross Proceeds from any sale of the Miscellaneous Property by the Purchasers ("Miscellaneous Property Purchase Price") in consideration for the Miscellaneous Property.
- (b) The Purchase Price for the Assets shall be deemed to be allocated to, and paid by, the US Purchaser based upon any Assets located at a Delivery Location in the US

as set forth on Schedule "A.1" or Schedule "A.2" attached hereto and the Canadian Purchaser based upon any Assets located at a Delivery Location in Canada as set forth on Schedule "A.1" or Schedule "A.2" attached hereto.

- (c) Subject to Clause 5.1, to the extent any items of Equipment originally set forth on Schedule "A.1" attached hereto are not delivered to a Delivery Location in Canada by the Final Delivery Date or the Vendor is of the opinion, acting reasonably, that such Equipment cannot be transferred to the Purchasers pursuant to the Approval and Vesting Order, then the applicable item of Canadian Equipment shall be removed from Schedule "A.1" and the Equipment Purchase Price shall be decreased by an amount equal to the "Allocated Value" set forth on Schedule "A.1" attached hereto for such item of Canadian Equipment.
- (d) Subject to Clause 5.1, to the extent any items of Equipment originally set forth on Schedule "A.1" attached hereto are not delivered to a Delivery Location in the US by the Final Delivery Date or the Vendor is of the opinion, acting reasonably, that Recognition Order will not be issued on or before the Final Delivery Date, then the applicable item of US Equipment shall be removed from Schedule "A.1" and the Equipment Purchase Price shall be decreased by an amount equal to the "Allocated Value" set forth on Schedule "A.1" attached hereto for such item of US Equipment.
- (e) Subject to Clause 5.1, to the extent any items of Equipment originally set forth on Schedule "A.1" attached hereto are not delivered to a Delivery Location in accordance with Clause 7.1(f) hereof prior to the Final Delivery Date and the Purchasers have confirmed such failure to the Vendor by delivering a notice in respect of such Equipment in writing at least two (2) Business Days prior to the Final Delivery Date, then the Purchasers and the Vendor may agree to a mutually acceptable adjustment to the Purchase Price (only as it relates to the "Allocated Value" set forth on Schedule "A.1" attached hereto for such item of Equipment), failing which the applicable item of Equipment shall be removed from Schedule "A.1" and the Equipment Purchase Price shall be decreased by an amount equal to the "Allocated Value" set forth on Schedule "A.1" attached hereto for such item of Equipment.
- (f) To the extent any items of Equipment originally set forth on Schedule "A.1" attached hereto are designated as AC&T Equipment and ownership or title to such Equipment has not been transferred to Tercon as of the date on which the Delivery Location Closing Conditions have been satisfied for all other Assets at the Delivery Location where such AC&T Equipment is located, or the Purchasers and Vendor are not satisfied that the transfer of such AC&T Equipment can be made subject to the Approval and Vesting Order, such items of AC&T Equipment shall be removed from Schedule "A.1" and the Equipment Purchase Price shall be decreased by an amount equal to the "Allocated Value" set forth on Schedule "A.1" attached hereto for such item(s) of AC&T Equipment.

- (g) If Vendor and/or Purchasers are unable to restore any Disassembled Equipment (as defined in Clause 6.1(b), below) to working condition prior to the Final Delivery Date, then the Purchasers and the Vendor may agree to a mutually acceptable adjustment to the Purchase Price (only as it relates to the "Allocated Value" set forth on Schedule "A.1" attached hereto for such item of Equipment), failing which the applicable item of Equipment shall be removed from Schedule "A.1" and the Equipment Purchase Price shall be decreased by an amount equal to the "Allocated Value" set forth on Schedule "A.1" attached hereto for such item of Equipment.
- (h) At Closing, the applicable Purchaser shall pay to Vendor: (i) the Equipment Purchase Price, with such adjustments, if any, permitted pursuant to Clause 2.2 hereof; and (ii) all applicable Sales Tax (or comparable taxes) payable in respect of the Equipment Purchase Price, which Vendor shall remit according to law. The Sales Tax registration number of Tercon is [●] and the Sales Tax registration number of the Canadian Purchaser is 877 559 278.
- (i) Within twenty one (21) days of the completion of the sale of any article of the Miscellaneous Property and receipt of the Gross Proceeds in respect thereof, the Purchasers shall: (i) pay the Miscellaneous Property Purchase Price relating to such article of Miscellaneous Property to the Vendor; and (ii) pay any applicable Sales Tax in respect of the Miscellaneous Property Purchase Price to the Vendor, in each case accordance with the Undertaking attached as Schedule "F" hereto (the "Undertaking"). Vendor shall remit Sales Tax according to law.

2.3 Deposit

Purchasers agrees to pay the Deposit to the Vendor within two (2) Business Days of the Effective Date of this Agreement by way of wire transfer of immediately available funds to the account designated by the Vendor. The Deposit shall be held by the Vendor in a segregated account as provided in this Clause. The Deposit shall become part of the Equipment Purchase Price and the Equipment Purchase Price shall be adjusted accordingly at Closing. For greater certainty, in the event that the Deposit has been reduced as a result of any Closing by Delivery Location pursuant to Clause 4.2 hereof, the remaining Deposit (which in any event shall not be less than one million dollars (\$1,000,000)) shall be fully applied to the Purchase Price applicable to the last Closing in respect of the purchase of Assets.

Under no circumstances is the Deposit refundable to Purchasers, except in the event that the Purchasers terminate this Agreement in accordance with Clause 3.2 or if the Approval and Vesting Order is not granted, in which case the Deposit shall be returned to the Purchasers within three (3) Business Days of such termination or confirmation by the Vendor that it is unable to obtain the Approval and Vesting Order.

Notwithstanding the foregoing, the Vendor shall be entitled, to the extent that other funds are not immediately available to the Receiver, to use proceeds of, and deduct from, the Deposit any costs incurred by the Vendor in connection with its appointment as Receiver,

up to a maximum of three million dollars (\$3,000,000) (the "Costs Deduction"). After making a Costs Deduction, the Receiver will pay into the segregated account the first funds that become available to the Receiver to repay any Costs Deduction.

To the extent that, after any adjustment of the Purchase Price pursuant to Clause 2.2 hereof and application of the Deposit to the Purchase Price in respect of all Closings, it is determined by Vendor, acting reasonably, that any amount of the Deposit remains, the Vendor shall account for and pay to the Purchasers the balance of the Deposit within three (3) Business Days of such determination.

ARTICLE 3 CONDITIONS OF CLOSING

3.1 Court Orders

Except as provided in Clause 3.2, it is a condition precedent to Closing for the benefit of both of the Parties that the Court has granted the Approval and Vesting Order on or prior to the Final Delivery Date. Each of the Parties shall fully cooperate in all reasonable efforts to obtain the Approval and Vesting Order.

If the foregoing condition precedent has or have not been satisfied, complied with, or waived by Vendor and Purchasers, at or before the Final Delivery Date, either Party may terminate this Agreement by two (2) Business Days written notice to the other Parties. If this Agreement is terminated in accordance with this Clause 3.1 each of the Vendor and the Purchasers shall be released and discharged from all obligations hereunder except as provided in Article 10 and the Deposit shall be paid to the Purchasers within three (3) business days of such termination.

Further, it is a condition precedent to Closing with respect to the US Assets for the benefit of both of the Parties that the Court has granted the Recognition Order on or prior to the Final Delivery Date. Each of the Parties shall fully cooperate in all reasonable efforts to obtain the Recognition Order. The Recognition Order will be obtained at the Vendor's expense, which for greater certainty is limited to the fees and expenses of the Vendor.

If the condition precedent in the preceding paragraph has not been satisfied, complied with, or waived by Vendor and Purchasers, at or before the Final Delivery Date, this Agreement shall not be terminated and (i) all US Equipment shall be removed from Schedule "A.1" and the Equipment Purchase Price shall be decreased by an amount equal to the "Allocated Value" set forth on Schedule "A.1" attached hereto for such item of US Equipment; and (ii) all US Miscellaneous Property shall be deemed to be removed from Schedule "A.2".

3.2 Purchasers' Conditions.

The obligation of Purchasers to purchase the Assets is subject to the following conditions precedent, which are inserted herein and made part hereof for the exclusive benefit of Purchasers and may be waived by Purchasers:

- (a) the representations and warranties of Vendor herein contained shall be true in all material respects when made and as of the Closing Date;
- (b) all obligations of Vendor contained in this Agreement to be performed prior to or at Closing shall have been duly and timely performed in all material respects; and
- (c) Vendor shall have performed or complied in all material respects with each of the terms, covenants and conditions of this Agreement to be performed or complied with by the Vendor at or prior to the Closing Date.

If any one or more of the foregoing conditions precedent has or have not been satisfied, complied with, or waived by Purchasers, at or before the Closing Date, the Purchasers may terminate this Agreement by two (2) Business Days written notice to Vendor. If Purchasers terminate this Agreement in accordance with this Clause 3.2 each of Purchasers and Vendor shall be released and discharged from all obligations hereunder except as provided in Article 10 and the Deposit shall be paid to the Purchasers within three (3) business days of such termination.

Notwithstanding the preceding terms of this Clause 3.2, any termination of this Agreement shall not affect any Closing with respect to a Delivery Location that has occurred prior to such termination.

3.3 Vendor's Conditions

The obligation of Vendor to sell the Assets is subject to the following conditions precedent, which are inserted herein and made part hereof for the exclusive benefit of Vendor and may be waived by Vendor:

- (a) the representations and warranties of Purchasers herein contained shall be true in all material respects when made and as of the Closing Date;
- (b) all obligations of Purchasers contained in this Agreement to be performed prior to or at Closing shall have been duly and timely performed in all material respects; and
- (c) Purchasers shall have performed or complied in all material respects with each of the terms, covenants and conditions of this Agreement to be performed or complied with by the Purchasers at or prior to the Closing Date.

If any one or more of the foregoing conditions precedent has or have not been satisfied, complied with, or waived by Vendor, at or before the Closing Date, the Vendor may terminate this Agreement with two (2) Business Days written notice to Purchasers. If Vendor terminates this Agreement in accordance with this Clause 3.3 each of Vendor and Purchasers shall be released and discharged from all obligations hereunder except as provided in Article 10.

Notwithstanding the preceding terms of this Clause 3.3, any termination of this Agreement shall not affect any Closing with respect to a Delivery Location that has occurred prior to such termination.

3.4 Efforts to Fulfil Conditions of Closing

The Parties shall proceed diligently and in good faith and use diligent commercial efforts to satisfy and comply with, or assist the other Party in, the satisfaction and compliance with the conditions precedent specified in Clause 3.1, Clause 3.2 and Clause 3.3. If there is a condition precedent that is to be satisfied or complied with prior to the Closing Date, and if, by the time the condition precedent is to be satisfied or complied with by Vendor, the Purchasers have failed to advise Vendor that the condition precedent has not been satisfied or complied with, the condition precedent shall be conclusively deemed to have been waived by the Purchasers.

3.5 Waiver of Conditions

The conditions in Clause 3.2 are for the sole benefit of the Purchasers and the conditions in Clause 3.3 are for the sole benefit of the Vendor. The Party for the benefit of which the condition has been included may waive any of them, in whole or in part, by written notice to the other Party, without prejudice to any of the rights of the other Party including, without limitation, reliance on or enforcement of the representations, warranties or covenants which are preserved and pertain to conditions similar to the condition so waived.

3.6 Failure to Satisfy Conditions

In the event any of the conditions in Clause 3.2 or Clause 3.3 has not been satisfied at or before the Closing Date and such condition has not been waived by the Party for the benefit of which such condition has been included, such Party may terminate this Agreement by written notice to the other Party. However a Party may not terminate this Agreement in such manner after Closing and its remedies thereafter, if any, with respect to the failure to satisfy such condition shall be limited to damages.

ARTICLE 4 CLOSING

4.1 Closing Date

Subject to the conditions set out in this Agreement, the completion of a Transaction shall take place at the Closing Time at the offices of Borden Ladner Gervais LLP, Scotia Plaza, 40 King Street West, Toronto, Ontario, M5H 3Y4, or as otherwise determined by mutual agreement of the Parties in writing.

4.2 Closing by Delivery Location

The Vendor and the Purchasers shall effect a Closing with respect to Equipment at a particular Delivery Location three (3) Business Days after, and only in the event that:

- (a) all Equipment that is intended to be delivered to a Delivery Location has been delivered to the applicable Delivery Location;
- (b) all Equipment delivered to the Delivery Location has been delivered in accordance with Clause 7.1(f); and
- (c) if any of the Equipment delivered to the Delivery Location is Disassembled Equipment (as defined in Clause 6.1(b) hereof), all restoration work conducted pursuant to Clause 6.1(c) hereof has been completed,

(such conditions to be referred to hereinafter as the "Delivery Location Closing Conditions").

In the event that all Delivery Location Closing Conditions are satisfied in the opinion of the Vendor and the Purchasers:

- (a) Vendor and Purchasers shall jointly prepare a list of all of the Equipment in respect of which the Delivery Location Closing Conditions have been satisfied using the information, including Allocated Values, from Equipment listed on Schedule "A.1" attached hereto (the "Equipment Certified as Subject to Closing");
- (b) Purchasers and Vendor will complete a Closing with respect to the Equipment Certified as Subject to Closing at a mutually agreeable time prior to the Closing Date;
- (c) All of the provisions of this Agreement shall apply to the Closing, *mutatis mutandis*, with such modifications as are necessary and appropriate to reflect a Closing only with respect to the Equipment Certified as Subject to Closing, subject to the following:
 - (i) the Purchase Price for the purchase of the Equipment Certified as Subject to Closing shall be determined in accordance with Clause 2.2 hereof;
 - (ii) the Purchasers are entitled to, and the Vendor will, apply a maximum of four million dollars (\$4,000,000) of the Deposit towards the Purchase Price for the purchase of the Equipment Certified as Subject to Closing, to be determined pursuant to the Allocated Values of Equipment Certified as Subject to Closing;

(iii) Vendor will deliver a Receiver's Certificate pursuant to the Approval and Vesting Order only with respect to the Equipment Certified as Subject to Closing;

(iv) all of the provisions of this Agreement relating to the effect of Closing shall be effective, as at the time of the Closing regarding the Equipment Certified as Subject to Closing and only with respect to the Equipment Certified as Subject to Closing; and

(v) all of the provisions of this Agreement remain in full force and effect with respect to any Asset that is not Equipment Certified as Subject to Closing.

4.3 At Closing

- (a) Vendor shall deliver to the Purchasers:
- (i) the Specific Conveyances relating to the Equipment on the Equipment Closing List, duly executed by the Vendor;
 - (ii) all Title Documents relating to the Equipment on the Equipment Closing List, in the possession of the Vendor;
 - (iii) the Maintenance History relating to the Equipment on the Equipment Closing List;
 - (iv) the Occupancy Agreement duly executed by the Vendor;
 - (v) an executed copy of a certificate, substantially in the form annexed as Schedule "D.2", with respect to Vendor's representations and warranties under this Agreement;
 - (vi) a copy of the Approval and Vesting Order, issued and entered by the Court;
 - (vii) solely with respect to a Closing in respect of the US Assets, a copy of the Recognition Order entered by the US Court;
 - (viii) the Receiver's Certificate (as defined in the Approval and Vesting Order) in respect of the Closing, duly executed by the Vendor pursuant to the Approval and Vesting Order; and
 - (ix) such other documents, instruments or certificates as the Purchasers may reasonably request.
- (b) Purchasers shall deliver to the Vendor:

- (i) payment of the Purchase Price pursuant to Clause 2.2 hereof by way of wire transfer of immediately available funds to the account designated by the Vendor, as adjusted herein with respect to the Deposit (excluding any Costs Deduction);
- (ii) a certificate of status evidencing the due registration and good standing of the Purchasers;
- (iii) the Specific Conveyances relating to the Equipment on the Equipment Closing List, duly executed by the Purchasers;
- (iv) the Occupancy Agreement duly executed by the Purchasers;
- (v) an executed copy of a certificate, substantially in the form annexed as Schedule "D.1", with respect to Purchasers' representations and warranties under this Agreement; and
- (vi) an executed Undertaking.

4.4 Post Closing

Vendor shall deliver to the Purchasers a copy of the Receiver's Certificate filed with the Court with respect to the Closing pursuant to the Approval and Vesting Order, as soon as practicable following the filing of the Receiver's Certificate with the Court.

ARTICLE 5 PROTECTION OF EQUIPMENT

5.1 Equipment to be Protected

The Vendor may use the Assets for purposes ancillary to this Agreement and as necessary to fulfill its duties as Receiver, including its obligations hereunder, which, for greater certainty, includes any action related to the delivery of the Assets to the applicable Delivery Location during the period between the Effective Date and the Closing Date. The Vendor shall not use any of the Assets in relation to any commercial operations or continuation of the Business.

The Assets shall be and remain at the risk of Vendor until Closing. Purchasers shall provide notices with respect to Possession Date of any applicable Delivery Location on or before January 31, 2013. The Purchasers shall ensure the safety and security of all Assets delivered to a Delivery Location, including providing adequate security and/or alarm systems to protect the Assets against any loss, theft or damage commencing on the relevant Possession Date for the applicable Delivery Location until Closing. After Closing, the Purchasers shall maintain insurance respecting the Miscellaneous Property and shall be responsible for the safekeeping and security of all of the Miscellaneous Property until such property has been sold by the Purchasers and the Vendor has been

paid for the Miscellaneous Property pursuant to Clause 2.2 hereof. Purchasers will not release any Miscellaneous Property to a buyer unless Purchasers have received Gross Proceeds. In the event of damage to, or destruction of, any item of Miscellaneous Property after Closing and prior to any Purchasers' sale of such Miscellaneous Property, Purchasers shall file a claim under its insurance relating to such Miscellaneous Property and all insurance proceeds received by Purchasers; shall be held in trust for, and paid to Vendor with 7 days of receipt pursuant to and in accordance with the Undertaking.

All costs of storing and protecting the Assets at the Delivery Locations shall be the sole responsibility of the Purchasers.

During the period between the Effective Date and the Closing Date, the Vendor shall use its best efforts to maintain in force all the policies of property damage insurance under which any of the Assets are insured or obtain comparable insurance. If, before the Closing Date, any of the Equipment is lost, damaged or destroyed and cannot be delivered to the applicable Delivery Location, then the Purchasers at their sole discretion may either:

- (a) Delete the applicable item of Equipment from Schedule "A.1" and the Purchase Price shall be decreased by an amount equal to the Allocated Value set forth on Schedule "A.1" for such item of Equipment; or
- (b) Leave the Equipment on Schedule "A.1", in which case the Purchasers shall be entitled to any proceeds of insurance payable as a result of the occurrence, which proceeds of insurance are to be directed by the Vendor to be paid to the Purchasers.

5.2 Vendor shall not surrender, etc. any of the Equipment

Until Closing, the Vendor shall not (except as otherwise contemplated in this Agreement), without the prior written consent of the Purchasers:

- (i) surrender or abandon any of the Equipment, except in the event that the Vendor determines that any particular item of Equipment is subject to a Priority Claim;
- (ii) sell, transfer or otherwise dispose of any item of Equipment; or
- (iii) grant a security interest or any encumbrance with respect to any of the items of Equipment other than as permitted by the Receivership Order to secure Receiver's borrowings.

However, the Vendor may take such action or exercise any such right without the prior consent of the Purchasers, if the Vendor reasonably determines that such actions are necessary for the protection of life or property, in which case the Vendor shall promptly notify the Purchasers of such intention or actions and the Vendor's estimate of the costs and expenses associated therewith.

Notwithstanding the foregoing, the Vendor shall have the right to move, sell and delete any item of Miscellaneous Property from Schedule "A.2" hereof at any time up to the day that is two (2) Business Days prior to the Closing Date.

ARTICLE 6 DELIVERY

6.1 Delivery of the Assets.

- (a) Vendor shall deliver, at its sole cost and expense, each Asset to the delivery location for such Asset as set out in Schedules "A.1" and "A2" (the "Delivery Location") no later than the Final Delivery Date.
- (b) The Vendor may, at its discretion, disassemble certain items of Equipment that must be disassembled to permit or facilitate delivery ("Disassembled Equipment").
- (c) The Vendor shall restore each item of Disassembled Equipment to working condition at the applicable Delivery Location and Purchasers agree to provide access to the Delivery Location to permit such restoration work to be conducted. Vendor is liable for any damage done to any Equipment during any such restoration work Vendor may conduct. In the event that the Vendor is unable to restore an item of Disassembled Equipment to working condition five (5) Business Days prior to the Final Delivery Date, Vendor shall provide the Purchasers with written notice of such unsuccessful attempt and the Purchasers will thereafter use their reasonable best efforts to cause such item of Disassembled Equipment to be restored to working condition at the sole cost of Vendor; provided, such cost is approved in advance by the Vendor. Vendor's liability to reimburse Purchasers for restoration work on Disassembled Equipment relates only to work conducted prior to the Equipment Auction applicable to the subject Disassembled Equipment, unless specifically approved by the Vendor in writing. Purchasers are liable for any damage done to any Equipment as a result of any such restoration work Purchasers may conduct.
- (d) In the event that any equipment subject to a Priority Claim (a "Third Party Asset") is delivered to Purchasers in accordance with this Clause 6.1, Purchasers shall, until the Termination Date:
 - (i) safeguard and protect such Third Party Asset as would a reasonable and prudent owner; and
 - (ii) assist, as reasonably required and at its expense, such Third Party with a Priority Claim to take possession of the Third Party Asset at the applicable Delivery Location, including, but not limited to, by permitting access to such Third Party Assets during regular business hours.

**ARTICLE 7
REPRESENTATIONS AND WARRANTIES OF PARTIES**

7.1 Vendor's Representations and Warranties

The Vendor represents and warrants to the Purchasers that:

- (a) **Standing:** The Vendor is the duly appointed Receiver of the assets, undertakings and properties of Tercon;
- (b) **Requisite Authority:** The Vendor has, subject to the granting of the Approval and Vesting Order, the requisite capacity, power and authority to execute this Agreement and to perform the obligations to which it thereby becomes subject, provided that Vendor shall have no liability for the discharge by it of any obligation hereunder unless and until the Approval and Vesting Order is granted;
- (c) **Execution and Enforceability:** This Agreement has, subject to the issuance by the Court of the Approval and Vesting Order, been validly executed and delivered by the Vendor, and this Agreement and all other documents executed and delivered on behalf of the Vendor hereunder shall (including, but not limited to, the Specific Conveyances), subject to the jurisdiction of the Court in respect of insolvency, bankruptcy, reorganization and other laws of general application limiting the enforcement of creditor's rights generally, and to the fact that specific performance is an equitable remedy available only in the discretion of the court, constitute valid and binding obligations of the Vendor enforceable in accordance with their respective terms and conditions;
- (d) **Residency for Tax Purposes:** Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (e) **No Finders' Fees:** The Purchasers shall not have any responsibility for any obligation or liability, contingent or otherwise, for brokers' or finders' fees, if any, incurred by the Vendor with respect to the transactions herein;
- (f) **Condition:** The Equipment when delivered to the Purchasers at a Delivery Location shall be in:
 - (i) a condition that is not, in the opinion of the Vendor and the Purchasers, acting reasonably, materially worse than that which existed when such Assets were viewed by Purchasers' representative on or about October 29, 2012; and
 - (ii) working condition and free of material defects, except as may have existed when such Equipment was viewed by Purchasers' representative on or about October 29, 2012.

7.2 Purchasers' Representations and Warranties

The Purchasers represent and warrant to the Vendor that:

- (a) **Standing:** Each Purchaser is a corporation, duly organized, valid and substituting under the laws of its jurisdiction of incorporation, and duly registered and authorized to carry on business in the jurisdiction in which the Assets are located;
- (b) **Requisite Authority:** The Purchasers have the requisite capacity, power and authority to execute this Agreement and the Specific Conveyances and to perform the obligations to which each of the Purchasers thereby becomes subject;
- (c) **No Conflict:** The execution and delivery of this Agreement and the completion of the purchase of the Assets in accordance with the terms of this Agreement are not and will not be in violation or breach of, or be in conflict with:
 - (i) any term or provision of the charter, by-laws or other governing documents of the Purchasers; or
 - (ii) the Regulations or any judicial order, award, judgment or decree applicable to the Purchasers;
- (d) **Execution and Enforceability:** The Purchasers have taken all actions necessary to authorize the execution and delivery of this Agreement and, as of the Closing Date, the Purchasers shall have taken all actions necessary to authorize and complete the purchase of the Assets in accordance with the provisions of this Agreement. This Agreement has been validly executed and delivered by the Purchasers, and this Agreement and all other documents executed and delivered on behalf of the Purchasers hereunder shall constitute valid and binding obligations of the Purchasers enforceable in accordance with their respective terms and conditions, subject to the jurisdiction of the court in respect of insolvency, bankruptcy, reorganization and other laws of general application limiting the enforcement of creditor's rights generally, and to the fact that specific performance is an equitable remedy available only in the discretion of the court;
- (e) **Residency for Tax Purposes:** The Canadian Purchaser is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada); and
- (f) **No Sales Commissions:** The Purchasers have not incurred any obligation or liability, contingent or otherwise, for brokers' or finders' fees with respect to the transactions herein for which the Vendor shall have any responsibility.

7.3 Survival of Representations and Warranties

Each Party acknowledges that the other may rely on the representations and warranties made by such Party pursuant to Clause 7.1 or 7.2, as the case may be. The representations and warranties in Clauses 7.1 and 7.2 shall be true on the Effective Date and on the Closing Date, and such representations and warranties shall continue in full force and

effect and shall survive the Closing Date until March 31, 2013, for the benefit of the Party to which such representations and warranties were made. In the absence of fraud, however, no claim or action shall be commenced with respect to a breach of any such representation or warranty, unless, within such period, written notice specifying such breach in reasonable detail has been provided to the Party which made such representation or warranty.

7.4 No Additional Representations or Warranties by Vendor

- (a) The Vendor expressly negates any representations or warranties, whether written or verbal, made by the Vendor, its agents, servants or employees except as expressly stated in Clause 7.1 and in particular, without limiting the generality of the foregoing, the Vendor disclaims all liability and responsibility for any such representation, warranty, statement or information made or communicated (orally or in writing) to the Purchasers or any of their employees, agents, consultants or representatives. The Assets shall be purchased on a strictly "as is, where is", "without recourse", basis and there are no collateral agreements, conditions, representations or warranties of any nature whatsoever made by the Vendor, express or implied, arising at law, by statute or in equity or otherwise with respect to the Assets and in particular, without limiting the generality of the foregoing, there are no collateral agreements, conditions, representations or warranties made by the Vendor, express or implied, arising at law, by statute or in equity or otherwise with respect to:
- (i) Tercon's right, title and interest in and to the Assets or any of them;
 - (ii) the value of the Assets;
 - (iii) the quality, condition, fitness, merchantability or serviceability of the Assets;
 - (iv) the suitability of the Assets use for any purpose; or
 - (v) compliance with Regulations.
- (b) Without restricting the generality of the foregoing, the Purchasers acknowledge that each has made its own independent investigation, analysis, evaluation and inspection of the Vendor's interests in the Assets and the state and condition thereof in connection with submitting this Auction Proposal and that it has relied solely on such investigation, analysis, evaluation and inspection as to its assessment of the condition, quantum and value of the Assets.
- (c) Except with respect to the representations and warranties in Clause 7.1 or in the event of fraud, the Purchasers forever release and discharge the Vendor and its directors, officers, servants, agents and employees from any claims and all liability to the Purchasers or the Purchasers' assigns and successors, as a result of the use or reliance upon advice, information or materials pertaining to the Assets which was delivered or made available to the Purchasers by the Vendor or its

directors, officers, servants, agents or employees prior to or pursuant to this Agreement, including, without limitation, any evaluations, projections, reports and interpretive or non-factual materials prepared by or for the Vendor, or otherwise in the Vendor's possession.

ARTICLE 8 LIABILITY AND INDEMNIFICATION

8.1 Responsibility of Purchasers

Provided that Closing has occurred, the Purchasers shall:

- (a) be liable to the Vendor for all losses, costs, damages and expenses whatsoever which the Vendor may suffer, sustain, pay or incur; and
- (b) indemnify and save the Vendor and its directors, officers, servants, agents and employees harmless from and against all claims, liabilities, actions, proceedings, demands, losses, costs, damages and expenses whatsoever which may be brought against or suffered by the Vendor, its directors, officers, servants, agents or employees or which they may sustain, pay or incur;

as a result of any matter or thing arising out of, resulting from, attributable to or connection with the Assets and occurring or accruing subsequent to the Closing Date or arising from the breach of any representation, warranty or covenant of the Purchasers contained in this Agreement, except any losses, costs, damages, expense, claims, liabilities, actions, proceedings and demands to the extent that the same either are reimbursable by insurance maintained by the Vendor or are caused by the gross negligence or wilful misconduct of the Vendor, its directors, officers, servants, agents, employees or assigns. The responsibility prescribed by this Clause, however, does not provide an additional remedy for the Purchasers' breach of such a representation or warranty.

The Purchasers shall indemnify the Vendor and its directors, officers, servants, agents or employees against all liabilities, losses, costs (including legal costs on a solicitor client basis), claims or damages which the Vendor or its directors, officers, servants, agents or employees may suffer or incur as a result of a Claim against any of them arising in connection with any use or possession of the Equipment or Miscellaneous Property by the Purchasers at any Delivery Location, other than loss or damage to the Equipment or Miscellaneous Property, between the Effective Date and the Closing Date, insofar as such liabilities, losses, costs, claims or damages are not a direct result of the gross negligence or wilful misconduct of the Vendor or its directors, officers, servants, agents or employees. An action or omission of the Vendor or its directors, officers, servants, agents or employees shall not be regarded as gross negligence or wilful misconduct if it was done or omitted to be done in accordance with the instructions of or with the concurrence of the Purchasers.

8.2 Joint Liability

All of the obligations and liabilities of the Purchasers under this Agreement and under any contract, agreement, instrument, certificate or other document delivered pursuant to this Agreement, including the representations and warranties and indemnities contained in this Agreement and in any such other contract, agreement, instrument, certificate or other document, are and are deemed to be joint and several obligations and liabilities of the Purchasers. For greater certainty, notwithstanding Clause 2.2 of this Agreement regarding the allocation of Purchase Price, all obligations to pay the Purchase Price are joint and several obligations of the Purchasers.

8.3 Assets Acquired On "As Is" Basis

The Purchasers acknowledge that each is acquiring the Assets on an "as is, where is" and "without recourse" basis, as of the Closing Date. The Purchasers each acknowledge that it is familiar with the condition of the Assets, that the Vendor has provided the Purchasers with a reasonable opportunity to inspect the Assets at the sole cost, risk and expense of the Purchasers (insofar as the Vendor could reasonably provide such access) and that the Purchasers are not relying upon any representation or warranty of the Vendor as to the condition, environmental or otherwise, of the Assets, except as set out in Clause 7.1. Provided that Closing has occurred, the Purchasers further agree that, as of the Closing Date, each shall:

- (a) be solely liable and responsible for any and all losses, costs, damages and expenses which the Vendor may suffer, sustain, pay or incur; and
- (b) indemnify and save the Vendor and its directors, officers, servants, agents and employees harmless from any and all claims, liabilities, actions, proceedings, demands, losses, costs damages and expenses whatsoever which may be brought against or suffered by the Vendor, its directors, officers, servants, agents or employees or which they may sustain pay or incur;

as a direct result of any matter or thing arising out of, resulting from, attributable to or connected with acts or omissions pertaining to environmental damage or contamination or other environmental problems pertaining to the Assets that occur subsequent to the Possession Date, including any matters relating to:

- (i) surface, underground, air, groundwater or surface contamination; or
- (ii) the breach of any Regulations, as the same relate to the environment, in effect on or after the Possession Date; and
- (c) indemnify and save the Vendor and its directors, officers, servants, agents and employees harmless from any and all claims, liabilities, actions, proceedings, demands, losses, costs damages and expenses whatsoever which may be brought against or suffered by the Vendor, its directors, officers, servants, agents or employees or incur as a result of the removal of or failure to remove any Assets from any land owned or leased by Tercon before the Termination Date.

8.4 No Merger Of Legal Responsibilities

The liabilities and indemnities created in this Article shall be deemed to apply to, and shall not merge in, all and any Specific Conveyances conveying any of the Assets from Tercon to the Purchasers, notwithstanding the terms of such Specific Conveyances, the Regulations or any rule of law or equity to the contrary, and all such rules are hereby waived.

8.5 Substitution and Subrogation

Insofar as is possible, each Party shall have full rights or substitution and subrogation in and to all covenants, representations and warranties by others previously given or made in respect of the Assets or any of them.

8.6 Responsibility Extends to Legal Costs

Notwithstanding any provision to the contrary contained in this Article, references to costs in the liability and indemnification obligations prescribed by Clauses 8.1 and 8.2 shall be deemed to include reasonable legal costs on a solicitor and his own client, full indemnity basis.

ARTICLE 9 PURCHASER'S REVIEW

9.1 Vendor to Provide Access

The Vendor shall, subject to the contractual and fiduciary obligations and limits:

- (a) provide the Purchasers and their nominees with reasonable access to Tercon's records, files and documents directly relating to the Assets between the Effective Date and the Closing Date, for the purpose of the Purchasers' review of the Assets and Tercon's title thereto; and
- (b) provide the Purchasers and their nominees with a reasonable opportunity to inspect the Assets at the Purchasers' sole cost, risk and expense, insofar as the Vendor can reasonably provide such access to the Assets between the Effective Date and the Closing Date.

ARTICLE 10 CONFIDENTIALITY

10.1 Purchasers' Obligation to Maintain Information as Confidential

Information respecting the Assets shall be retained in confidence and used only for the purposes of this Agreement and shall not be disclosed, used, dealt with or exploited by Purchasers for any other purpose, provided that upon Closing, the Purchasers' rights to use or disclose such information shall be subject only to any operating, unit or other agreements that may apply thereto. Any additional information obtained as a result of such

access which does not relate to the Assets shall continue to be treated as confidential and shall not be disclosed, used, dealt with or exploited by the Purchasers without the prior written consent of the Vendor. However, the restrictions on disclosure and use of information in this Agreement shall not apply to information to the extent it:

- (a) is or becomes publicly available through no act or omission of the Purchasers or their consultants or advisors;
- (b) is subsequently obtained lawfully from a Third Party, which, after reasonable inquiry, the Purchasers do not know to be bound to the Vendor to restrict the use or disclosure of such information; or
- (c) is already in the Purchasers' possession at the time of disclosure, without restriction on disclosure.

However, specific items of information shall not be considered to be in the public domain merely because more general information respecting the Assets is in the public domain. Notwithstanding the foregoing, Purchasers shall be entitled to commence advertising the Equipment and any sale in respect of the Miscellaneous Property after the issuance of the Approval and Vesting Order.

10.2 Consultants and Advisors Bound

If the Purchasers employ consultants, advisors or agents to assist in its review of the Assets, the Purchasers shall be responsible to the Vendor for ensuring that such consultants, advisors and agents comply with the restrictions on the use and disclosure of information set forth in this Article 10.

ARTICLE 11 WAIVER

11.1 Waiver Must be in Writing

No waiver by any Party of any breach (whether actual or anticipated) or any of the terms, conditions, representations or warranties contained herein shall take effect or be binding upon that Party unless the waiver is expressed in writing under the authority of that Party. Any waiver so given shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to any other future breach.

ARTICLE 12 ASSIGNMENT

12.1 Assignments Before Closing

Prior to Closing, neither Party may assign its interest in or under this Agreement or to the Assets without the prior written consent of the other Party, with the exception of the US Purchaser, which may assign its interest in or under this Agreement or to the Assets to the Canadian Purchaser.

12.2 Assignments by Purchasers After Closing

No assignment, transfer or other disposition of this Agreement or all or any portion of the Assets by the Purchasers after Closing shall relieve the Purchasers from their obligations to the Vendor herein. The Vendor shall have the option to claim payment or performance of such obligations from the Purchasers or their respective assignees or transferees, and to bring proceedings in the event of default against either or all of them, provided that nothing herein shall entitle the Vendor to receive duplicate payment or performance of the same obligation.

ARTICLE 13 NOTICE

13.1 Service of Notice

Notwithstanding anything to the contrary contained herein, all notices required or permitted hereunder shall be in writing. Any notice to be given hereunder shall be deemed to be served properly if served in any of the following modes:

- (a) personally, by delivering the notice to the Party on which it is to be served at that Party's address for service. Personally served notices shall be deemed to be received by the addressee when actually delivered as aforesaid, provided that such delivery shall be during normal business hours on any Business Day. If a notice is not delivered on such a Business Day or is delivered after the addressee's normal business hours, such notice shall be deemed to have been received by such Party at the commencement of the addressee's first Business Day next following the time of the delivery;
- (b) by telecopier or facsimile (or by any other like method by which a written message may be sent) directed to the Party on which it is to be served at that Party's address for service. A notice so served shall be deemed to be received by the addressee when actually received by it, if received within normal business hours on any Business Day or at the commencement of the next ensuing Business Day following transmission if such notice is not received during such normal business hours;
- (c) by mailing its first class (air mail if to or from a location outside of Canada) registered post, postage prepaid, directed to the Party on which it is to be served at that Party's address for service. Notices so served shall be deemed to be received by the addressee at noon, local time, on the earlier of the actual date of receipt of the fourth (4th) Business Day following the mailing thereof. However, if postal service is (or is reasonably anticipated to be) interrupted or operating with unusual delay, notice shall not be served by such means during such interruption or period of delay; or
- (d) by email directed to the Party on which it is to be served at that Party's email address set out below. A notice so served shall be deemed to be received by the addressee when actually received by it, if received within normal business hours

on any Business Day or at the commencement of the next ensuing Business Day following transmission if such notice is not received during such normal business hours.

13.2 Addresses for Notices

The address for service of notices hereunder of each of the Parties shall be as follows:

Vendor: FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West, Suite 2010
P. O. Box 104
Toronto, ON M5K 1G8

Attn: Nigel Meakin
Fax: 416-679-8101
Email: Nigel.Meakin@fticonsulting.com

with a copy to: Borden Ladner Gervais LLP
Scotia Plaza
40 King Street West
Toronto, Ontario
M5H 3Y4

Attn: Craig J. Hill
Fax: (416) 361-7301
Email: chill@blg.com

Purchasers: Ritchie Bros. Auctioneers (Canada) Ltd.
Ritchie Bros. Auctioneers (America) Inc.
3 Manchester Court
Bolton, ON
L7E 2Y1

Attn: Jake Lawson
Fax: (905) 857-5195
Email: jlawson@rbauktion.com

with a copy to: Ritchie Bros. Auctioneers
9500 Glenlyon Parkway
Burnaby, British Columbia
V5J 0C6

Attn: Ranj Sangra
Fax: (778) 331-4629
Email: rsangra@rbauktion.com

13.3 Right to Change Address

A Party may change its address for service by notice to the other Parties, and such changed address for service thereafter shall be effective for all purposes of this Agreement.

ARTICLE 14 PUBLIC ANNOUNCEMENTS

14.1 Approval Required for Press Releases

- (a) The Parties shall cooperate with each other in relaying to Third Parties information concerning this Agreement and shall receive written approval from the other Party of all press releases and other releases of information prior to publication which approval may not be unreasonably withheld. However, nothing in this Clause shall prevent a Party from furnishing any information to any Governmental Authority or to the public, insofar only as is required by the Regulations or securities laws applicable to such Party, provided that a Party which proposes to make such a public disclosure shall, to the extent reasonably possible, provide an officer of the other Party with a draft of such statement a sufficient time prior to its release to enable such other Party to review such draft and advise that Party of any comments it may have with respect thereto.
- (b) Notwithstanding Subclause 14.1(a), the Vendor shall be permitted to disclose information pertaining to this Agreement and the identity of the Purchasers, to the extent required to enable the Vendor to fulfill its duties and obligations as Receiver and such disclosure as Vendor believes is necessary or advisable to obtain the Approval and Vesting Order or the Recognition Order.

14.2 Signs and Notification to Governmental Authorities

Following Closing, the Purchasers may remove any signs which indicate Tercon's ownership or operation of the Assets.

ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 Further Assurances

At the Closing Date and thereafter as may be necessary, the Parties shall execute, acknowledge and deliver such instruments and take such other actions as may be reasonably necessary to fulfil their respective obligations under this Agreement.

Purchasers shall provide Vendor with reasonable access to, and Vendor may retain or subsequently obtain from Purchasers copies or photocopies of, any of the documents comprised in Miscellaneous Property that Vendor considers necessary to enable it to

comply with any laws or the requirements of any authority or to conduct audits relating to the period prior to the Closing Date. Such right of access shall terminate on the Termination Date.

15.2 Governing Law

This Agreement shall be subject to and be interpreted, construed and enforced in accordance with the laws in effect in the Province of British Columbia (excluding any conflict of laws rule or principle which might refer such construction to the laws of another jurisdiction). Each Party accepts the exclusive jurisdiction of the courts of the Province of British Columbia and all courts of appeal therefrom.

15.3 Time

Time shall be of the essence in this Agreement.

15.4 No Amendment Except in Writing

This Agreement may be amended only by written instrument executed by the Vendor and the Purchasers.

15.5 Consequences of Termination

If this Agreement is terminated in accordance with its terms prior to a Closing with respect to all of the Assets, then except for the provisions of Article 10 and the covenants, warranties, representations or other obligations breached prior to the time at which such termination occurs, the Parties shall be released from all of their obligations under this Agreement in relation to any Assets on which a Closing may not have occurred (the "Unclosed Assets"). If this Agreement is so terminated, the Purchasers shall promptly return to the Vendor all materials delivered to the Purchasers by the Vendor hereunder, together with all copies of them that may have been made by or for the Purchasers, with respect to any Unclosed Assets.

Notwithstanding any other provision of this Agreement, the termination of this Agreement shall not affect any Transaction with respect to Assets that have been subject to a Closing prior to such termination.

15.6 Supersedes Earlier Agreements

This Agreement supersedes all other agreements between the Parties with respect to the Assets and expresses the entire agreement of the Parties with respect to the transactions contained herein.

15.7 Enurement

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

[SIGNATURE PAGE TO IMMEDIATELY FOLLOW]

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

FTI CONSULTING CANADA INC., in its capacity as receiver of the assets, undertakings and properties of **Tercon Investments, Inc., 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

RITCHIE BROS. AUCTIONEERS (CANADA) LTD.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

RITCHIE BROS. AUCTIONEERS (AMERICAN) INC.

Per: _____
Name:
Title:

Schedule "C" – Receiver's Certificate

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

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Sewell of the Supreme Court of British Columbia (the "Court") dated December 14, 2012, FTI Consulting Canada Inc. was appointed as the receiver (the "Receiver") of all the assets, undertakings, properties of Tercon Investments Ltd., Tercon A.C. Ltd., Tercon Equipment Ltd., Tercon Construction Ltd., Tercon Mining Ltd., Tercon Enterprises Ltd., Tercon MRC Limited, FNP Ventures Inc., Tercon Mining PV Ltd., Tercon Equipment Alaska Partnership and Tercon Alaska Ltd. (collectively, the "Debtors").

B. Pursuant to an Approval and Vesting Order of the Court dated January •, 2013, the Court approved the Asset Purchase and Sale Agreement made as of December •, 2012 (the "Sale Agreement") between the Receiver, Ritchie Bros. Auctioneers (Canada) Ltd. and Ritchie Bros. Auctioneers (America) Inc. (the "Purchasers") and provided for the vesting in the Purchasers of the Debtors' right, title and interest, if any, in and to the Purchased Assets, which vesting is to be effective with respect to the List of Purchased Assets Certified as Subject to Closing (the "Vested Assets") upon the delivery by the Receiver to the Purchasers of a Receiver's Certificate confirming (i) the payment by the Purchasers of the Purchase Price for the Vested Assets; (ii) that the conditions to Closing as set out in section • of the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers with respect to the Vested Assets; and (iii) the Transaction has been completed to the satisfaction of the Receiver with respect to the Vested Assets.

C. The Sale Agreement provides that the Receiver and the Purchasers will effect Closings in respect of Purchased Assets at particular Delivery Locations and, in connection therewith, for the Receiver to deliver Receiver's Certificates in respect of the Purchased Assets on a List of Purchased Assets Certified as Subject to Closing in accordance with the terms of the Sale Agreement (described in the Approval and Vesting Order as "Vested Assets").

D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchasers have paid and the Receiver has received the Purchase Price for the Vested Assets pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section • of the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers with respect to the Vested Assets; and
3. The Transaction with respect to the Vested Assets has been completed to the satisfaction of the Receiver.

4. This Certificate was delivered by the Receiver with respect to the Vested Assets at _____ [TIME]
on _____ [DATE].

FTI CONSULTING CANADA INC., in its capacity as receiver of the assets, undertakings and properties of **Tercon Investments, Inc., 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

Per: _____

Name:

Title:

Appendix "1" – List of Purchased Assets Certified as Subject to Closing

[List of Purchased Assets Certified as Subject to Closing]

Return Protocol for Equipment Lessors (“Equipment Return Protocol”)

Arrangements with Equipment Lessors

1. To the extent not already provided, all third-party lessors or financiers of specific pieces of equipment currently in the possession of Tercon (“**Equipment Lessors**”) will provide the Receiver with copies of the leases, security agreements, financing arrangements and other supporting documents, including particulars of all registrations made under the applicable *Personal Property Security Act* or *Uniform Commercial Code* (the “**Equipment Documentation**”) for all personal property in the possession of the Receiver that the Equipment Lessor claims (the “**Claimed Equipment**”), forthwith upon the request of the Receiver. Not more than ten (10) days of the later of (i) the date of the approval of this Equipment Return Protocol (the “**Approval Date**”) and (ii) the date of receipt of the Equipment Documentation, the Receiver will advise each Equipment Lessor whether (a) it is satisfied with the validity and enforceability of the security held by the Equipment Lessor (each an “**Accepted Claim**”) or (b) whether the Receiver requires further information from the Equipment Lessor. The Receiver shall provide HSBC Bank Canada, as Agent (the “**Agent**”) with copies of all documentation it receives from Equipment Lessors in relation to Claimed Equipment.
2. The Receiver shall notify the Agent of any claim to Claimed Equipment that is, in the opinion of the Receiver, an Accepted Claim, and the Agent shall have three (3) business days after such notice to advise the Receiver if the Agent objects to the return of the Claimed Equipment to the Equipment Lessor for any reason, including that the claim of the Equipment Lessor is not valid, enforceable or a priority claim against the Claimed Equipment (the “**Objection**”).
3. In the absence of an Objection from the Agent, the Receiver will notify the Equipment Lessor that the Receiver will release the Claimed Equipment for collection by the relevant Equipment Lessor or whether the Receiver will exercise any buy-out or redemption option.
4. The Receiver shall have no liability to any Equipment Lessor with respect to any of the Claimed Equipment, other than to provide storage of the Claimed Equipment during the Storage Period (as defined below), subject only to gross negligence or wilful misconduct.
5. Equipment Lessors that have received a notice that the Receiver will release Claimed Equipment pursuant to an Accepted Claim (and no Objection has been delivered pursuant to paragraph 2 hereof) shall have ten (10) days from the date of notification of their Accepted Claim from the Receiver to enter into arrangements in writing that are satisfactory to the Receiver and the Equipment Lessor, each acting reasonably, with respect to: (i) the sale of the Claimed Equipment and the entitlement to any proceeds of sale of the Claimed Equipment if the Equipment Lessor wishes the Receiver to arrange sale of the Claimed Equipment; (ii) the temporary storage of the Claimed Equipment, including the period of storage, if any, after the Approval Date (the “**Storage Period**”); or (iii) the removal of the Claimed Equipment from the Delivery Location (“**Removal**”). In the event that satisfactory arrangements are not made within such time, the Equipment

Lessor shall be deemed to have elected for the Removal of all such the Claimed Equipment.

Removal of Claimed Equipment

6. In the event that any Claimed Equipment is subject to a Removal, such Removal shall be completed by the Equipment Lessor in accordance with applicable law within ten (10) days of the agreement, or the deemed election, with respect to the Removal, unless otherwise agreed by the Receiver (the "**Removal Period**"). All Removals must be completed during the Removal Period and carried out during regular business hours for the Delivery Location in accordance with a schedule agreed with the Receiver.

7. In the event that Claimed Equipment is not removed from the Delivery Location within the Removal Period and satisfactory arrangements are not made with the Receiver for the continued storage of the Claimed Equipment for a Storage Period, the Equipment Lessor shall be liable to the Receiver for a *per diem* storage fee of \$[250]/day for each piece of equipment for each and every calendar day, commencing with the date after Removal Period and continuing as long as the Claimed Equipment remains at the Delivery Location (the "**Storage Fees**"). The Storage Fees shall be a claim against the Claimed Equipment, enforceable as a lien at common law and pursuant to the *Repairers Lien Act* (BC).

8. All lien claims against any Claimed Equipment that is returned to an Equipment Lessor pursuant to an Accepted Claim shall be unaffected by the return of the Claimed Equipment. However, such lien claims shall not be entitled to any claim against any proceeds of the Property in the hands of the Receiver and the Receiver shall have no liability to any party asserting a lien against any Claimed Equipment that is returned to an Equipment Lessor pursuant to an Accepted Claim.

9. Where any Claimed Equipment has been returned to, or recovered by, an Equipment Lessor, the Equipment Lessor will forthwith amend any motor vehicle or other registrations made with respect to the Claimed Equipment to delete any reference to the Tercon Debtors.

Sale of Claimed Equipment

10. In the event that the Equipment Lessor and the Receiver agree to the terms of sale of the Claimed Equipment, the Receiver may apply for vesting orders, at the expense of the Equipment Lessor, in respect of such sale to provide that the Claimed Equipment is sold free and clear of any claims, liens or encumbrances.

Miscellaneous Provisions

11. The Receiver shall provide notice to Equipment Lessors and the Agent of any accessions or attachments to the Claimed Equipment that are the property of the Tercon Debtors and which the Receiver intends to remove from the Claimed Equipment. Equipment Lessors shall advise Receiver, forthwith after the release of any Claimed Equipment, of the particulars of any property that is attached to the Claimed Equipment that is not the property of the Equipment Lessor (the "**Third Party Property**"). Any Equipment Lessor that intends to remove or recover any Claimed Equipment shall execute and deliver to the Receiver an undertaking to return any Third Party Property that

is attached to any Claimed Equipment that is returned to the Equipment Lessor, forthwith upon the demand of the Receiver.

12. Any dispute between the Equipment Lessor, and the Receiver or the Agent regarding the implementation of the terms of this Protocol or the validity of any claim to Claimed Equipment shall be determined by the British Columbia Supreme Court (the "**Court**") in the Receivership Proceedings, upon application of the Receiver, the Agent or the applicable Equipment Lessor.

11. The Receiver shall be entitled to seek the direction of the Court in the Receivership Proceedings in connection with the enforcement of its rights, or the determination of its obligations, pursuant to this Protocol.

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

- and -

**TERCON INVESTMENTS LTD., TERCON A.C. LTD.,
TERECON 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

APPROVAL AND VESTING ORDER
