

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

Applicants

**MOTION RECORD
(Returnable March 5, 2013)
(Re Transfer of Redundant Assets)**

February 22, 2013

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

Applicants

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**ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

Applicants

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

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**NOTICE OF MOTION
(Returnable March 5, 2013)
(Re Transfer of Redundant Assets)**

Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. ("**BSI**" and, together with Timminco, the "**Timminco Entities**") will make a motion to a judge presiding over the Commercial List on Tuesday, March 5, 2013 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. An order, substantially in the form contained at Tab 3 of the Motion Record:
 - (a) approving the agreement of purchase and sale (the "**Haley Agreement**") between Timminco and Timminco Silicon Holdings Limited ("**TSHL**") providing for the transfer of the Haley Property (defined below);

- (b) approving the deed of sale (the "**Silica Fumes Deed**") between BSI and a company to be incorporated (the "**Silica Fumes Purchaser**") providing for the transfer of the Silica Fumes Property (defined below);
- (c) authorizing and directing the Timminco Entities and the Monitor (defined below) to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transactions contemplated by the Haley Agreement and the Silica Fumes Deed;
- (d) declaring that Russell Hill Advisory Services Inc., in its capacity as Chief Restructuring Officer of the Timminco Entities (the "**CRO**"), has the authority to sign a sole shareholder declaration authorizing the bankruptcy application of any wholly owned subsidiary of the Timminco Entities; and
- (e) such other and further relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. Substantially all of the Timminco Entities' assets have been sold pursuant to sales transactions with Grupo FerroAtlantica, S.A. and QSI Partners Ltd.;
2. The Timminco Entities continue to own real property located in Haley, Ontario (the "**Haley Property**") (including real property located at 962 Magnesium Road (the "**Haley Mining Property**")) and real property located at 5355 Chemin De Fer in Bécancour, Québec (the "**Silica Fumes Property**" and, together with the Haley Property, the "**Redundant Assets**");

3. The Haley Mining Property and the Silica Fumes Property each have significant associated environmental liabilities which involve substantial ongoing costs for the Timminco Entities to manage;
4. The value of the Redundant Assets is considered to be effectively nil (or even of negative value);
5. The Timminco Entities have ceased operations and have no use for the Redundant Assets and no revenue to fund the remediation efforts associated with same;
6. Efforts to sell or otherwise deal with the Redundant Assets have been unsuccessful;
7. The Monitor has indicated that it approves of the process leading to the proposed disposition of the Redundant Assets;

Haley Property Transaction

8. TSHL, the proposed purchaser of the Haley Property, is a wholly owned subsidiary of Timminco;
9. The Haley Agreement contemplates that the sale will be on an "as-is, where-is" basis for a total purchase price of \$20,000, which will be satisfied by the issuance of a non-interest bearing promissory note (the "**Haley Promissory Note**");
10. Once the transaction associated with the Haley Agreement has been completed, steps will be taken to have TSHL assigned into bankruptcy and the Haley Property will be abandoned by the trustee in bankruptcy unless satisfactory arrangements can be made to the contrary;

Silica Fumes Transaction

11. The Silica Fumes Purchaser, the proposed purchaser of the Silica Fumes Property, is a wholly owned subsidiary of BSI;

12. The Silica Fumes Deed contemplates that the sale will be on an "as-is, where-is" basis for a total purchase price of \$20,000, which will be satisfied by the issuance of a non-interest bearing promissory note (the "**Silica Fumes Promissory Note**");

13. A portion of the Silica Fumes Property appears to be located in an agricultural zone and, consequently, falls within the scope of certain Quebec acts restricting the transfer of the Silica Fumes Property. The Timminco Entities, with the assistance of counsel, continue to evaluate the steps needed to effect a valid transfer of the Silica Fumes Property;

14. Once the transaction associated with the Silica Fumes Agreement has been completed, steps will be taken to have the Silica Fumes Purchaser assigned into bankruptcy and the Silica Fumes Property will be abandoned by the trustee in bankruptcy unless satisfactory arrangements can be made to the contrary;

General

15. Section 36 of the CCAA and the other provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

16. The Initial Order granted in respect of the Timminco Entities' CCAA proceedings, dated January 30, 2012;

17. Rules 1.04, 1.05, 2.03, 3.02 and 37 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended;

18. Such further grounds as counsel may advise and this Court may see fit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Affidavit of Sean Dunphy sworn February 22, 2013, and the exhibits attached thereto;
2. The Nineteenth Report of the Monitor, to be filed; and
3. Such further and other materials as counsel may advise and this Court may permit.

February 22, 2013

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Court File No. CV-12-9539-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(RE TRANSFER OF REDUNDANT ASSETS)**

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TAB 2

Court File No. CV-12-9539-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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Applicants

**AFFIDAVIT OF SEAN DUNPHY
(Sworn February 22, 2013 re Transfer of Redundant Assets)**

I, SEAN DUNPHY, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am the President of Russell Hill Advisory Services Inc., the Court-appointed Chief Restructuring Officer (the "**CRO**") of Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. ("**BSI**" and, together with Timminco, the "**Timminco Entities**"), and as such have knowledge of the matters to which I hereinafter depose, except where otherwise stated.

2. This affidavit is sworn in connection with the Timminco Entities' motion for an Order (the "**Transfer Order**"), substantially in the form of the draft order included in the Motion Record at Tab 3:

- (a) approving the agreement of purchase and sale (the "**Haley Agreement**") between Timminco and Timminco Silicon Holdings Limited ("**TSHL**") providing for the transfer of the Haley Property (defined below), and authorizing and directing the Timminco Entities and the Monitor (defined

below) to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transaction contemplated by the Haley Agreement (the "**Haley Transaction**"); and

- (b) approving the deed of sale (the "**Silica Fumes Deed**") between Timminco and a company to be incorporated (the "**Silica Fumes Purchaser**") providing for the transfer of the Silica Fumes Property (defined below), and authorizing and directing the Timminco Entities and the Monitor to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transaction contemplated by the Silica Fumes Deed (the "**Silica Fumes Transaction**" and, together with the Haley Transaction, the "**Transactions**").

3. The Timminco Entities have ceased operations and, as a direct result of such cessation, have no further use for the Silica Fumes Property and the Haley Property (together, the "**Redundant Assets**"). Efforts to sell the Redundant Assets have been unsuccessful. To deal with the Redundant Assets and associated environmental liabilities and to ensure that amounts available to the Timminco Entities' creditors generally are maximized, the Timminco Entities are proposing to transfer the Redundant Assets to TSHL, following which TSHL and the Silica Fumes Purchaser will each make an assignment into bankruptcy, at which time the Redundant Assets will be abandoned by the trustee in bankruptcy unless satisfactory arrangements can be made to the contrary.

BACKGROUND

4. The Timminco Entities' primary business, the production and sale of silicon, was carried on principally through BSI, a Québec-based wholly-owned subsidiary of Timminco. BSI purchased silicon metal produced by Québec Silicon Limited Partnership ("QSLP") for resale to customers in the chemical (silicones), aluminum, and electronics/solar industries. QSLP was a production partnership between BSI (51%) and, indirectly, Dow Corning Corporation (49%).

5. Due to a number of factors, the Timminco Entities were facing severe liquidity issues and were unable to meet their ongoing payment obligations. As such, the Timminco Entities were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Honourable Mr. Justice Morawetz dated January 3, 2012 (the "**Initial Order**"). FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") pursuant to the Initial Order. A copy of the Initial Order is available, together with all other filings in the CCAA proceedings, on the Monitor's website at: <http://cfcanada.fticonsulting.com/timminco>.

REDUNDANT ASSETS

6. Substantially all of the Timminco Entities' assets have been sold pursuant to sales transactions with Grupo FerroAtlantica, S.A. and QSI Partners Ltd (together, the "**Sales Transactions**"). The Timminco Entities continue to own certain assets, including, among others, the following:

- real property located in Haley, Ontario with the parcel identification numbers (“PINs”) of 57217-0079 (LT), 57216-0053 (LT), 57217-0156 (LT), 57216-0076 (LT), 57216-0157 (LT), 57216-0235 (LT), 57216-0158 (R), 57219-0053 (LT), 57219-0054 (LT) and 57219-0036 (LT) (together, the “**Haley Property**”, the last three PINs representing the property located at 925 and 962 Magnesium Road in Haley, Ontario (as such, the “**Haley Mining Property**”); and
- real property located at 5355 Chemin De Fer in Bécancour, Québec (the “**Silica Fumes Property**” and, together with the Haley Property, the “**Redundant Assets**”).

These properties and the associated environmental liabilities are described in further detail below.

The Haley Property

7. Timminco owns and formerly operated a dolomite mine and magnesium manufacturing and extrusion facilities at the Haley Mining Property, which consists of approximately 678 acres of land.¹ The site has been closed since 2008, most of the buildings have been demolished and most of the equipment has been sold.

8. The site has a number of known environmental issues. These may briefly be summarized as follows:

¹ The “main” site where a quarry was located and where mining activities primarily took place was 230 acres which is the acreage of the Haley Mining Property reported in earlier affidavit materials. In addition, the parcels of land adding up to 678 acres that are/were used as part of the effluent treatment plan or the septic system which is still attached to the buildings on the main site.

- (a) Upon demolition of certain mining-related buildings, it was discovered that some of the soil was contaminated with hydrocarbons consistent with leaking or spillage from fuel storage tanks or similar activities – the hydrocarbons have not migrated to a significant degree to date. The CCAA proceedings intervened before Timminco could develop and implement a remediation plan in respect of this issue;
- (b) One of the buildings was the former site of a research and development laboratory during the Second World War and some of the floor materials have been found to contain relatively small amounts of thorium which will need to be disposed of in a safe manner when the building is ultimately demolished; and
- (c) The mining activities left a quarry which fills naturally with water whose alkalinity is elevated due to leaching from the exposed rock and from the nearby tailings pile – pending development of a means of mitigating the run-off issue, Timminco has been pumping water from the quarry and treating it to reduce its alkalinity prior to its discharge into a nearby creek which flows into the Ottawa River.

9. Since my appointment, I have engaged in a series of meetings with personnel from the Ministry of Northern Development and Mines (the “MNDM”) and the Ministry of the Environment (the “MOE” and, collectively with the MNDM, the “Ministry Group”) to develop constructive means of handling the issues associated with the Haley Mining Property. In that regard, we have scheduled and held bi-monthly telephone meetings with the Ministry Group and have facilitated a site visit by Ministry Group personnel.

10. Timminco has provided a deposit to the MNDM in the amount exceeding \$900,000 in respect of these environmental issues well before the commencement of the CCAA proceedings.² However, the costs of monitoring the site, maintaining winter access, conducting testing, filing reports and operating the twice-yearly pumping of the quarry were over \$80,000 per quarter in 2012. With co-operation from the Ministry Group, we have been able to reduce the level of testing and reporting being conducted over the winter months which has reduced Timminco's costs associated with the Haley Mining Property for the time being.

11. Despite the joint efforts of Timminco and the Ministry Group, the parties have not been able to reach a solution that will bring the carrying costs of the land to a level that a potential purchaser will find to be acceptable relative to potential future uses of the land.

12. I understand that efforts were made to sell the Haley Mining Property prior to the commencement of CCAA proceedings; however, Timminco was unable to find a purchaser at that time. I have reviewed Timminco's files regarding the sales process undertaken in 2009-2011 and am satisfied that extensive efforts to locate buyers were undertaken without success.

² The Timminco Entities have not had access to the deposit to pay environmental costs associated with the Haley Mining Property which have continued to be paid from cash on hand throughout the CCAA proceedings.

13. The Haley Mining Property was among the assets available for sale pursuant to the court approved sales process (the “**Sales Process**”) which led to the Sales Transactions without any offers to purchase the Haley Mining Property emerging.

14. In the course of seeking purchasers for the remaining Timminco assets, further marketing efforts were undertaken. While several expressions of preliminary interest were received and one party executed a non-disclosure agreement and has conducted extensive due diligence with respect to all of the remaining assets, the potential risks associated with ownership of the Haley Mining Property have been cited by one potential purchaser of the attributes as a major stumbling block to proceeding further with a proposed transaction. Discussions with such party are on-going, but no interest has been shown in acquiring Timminco for as long as the Haley Mining Property is owned by it.

15. Inquiries have been made as to the ability to use the property as a quarry for aggregate³ given its proximity both to the TransCanada highway and a major urban area (Ottawa). While dolomite has been mined from the site for years for the purpose of extracting magnesium from the stone, the stone is also potentially suitable for use in many gravel and aggregate applications. Unfortunately, the permit process for a mine extraction process is quite different from the process for aggregate extraction and is supervised by an entirely different governmental branch than the MOE and the

³ Aggregate is a mixture of stone, sand and gravel which is extracted for use in, among other things, cement production.

MNDM. Accordingly, the mining permits presently in place would not permit undertaking the same quarrying activity that were previously undertaken for the purpose of gravel or aggregate extraction and the process for obtaining a new aggregate license is potentially lengthy and uncertain.

16. The Timminco Entities have ceased operations and therefore earn no operating revenue, and have no further use for the Haley Mining Property. What funds remain are finite and are being depleted each month in remediation efforts to the detriment of the general body of creditors.

17. Given the very high carrying costs associated with ownership of the Haley Mining Property, the lack of a clear economic use for the property and the uncertain environmental exposure associated with ownership of the property, I am of the view that there is no prospect for the Haley Mining Property to have any economic value for the creditors of Timminco. To the contrary, each month that Timminco retains ownership of the property entails significant and material expenses. My review of the direct costs from 2012 associated with ownership of the Haley Mining Property reveals expenses of \$295,000 excluding approximately \$35,000 in property taxes which were unpaid in the year and thus represent a lien on the Haley Mining Property. Electricity costs alone added up to \$80,000 for the year.

18. There is some urgency to arriving at a final decision regarding the Haley Mining Property since the semi-annual pumping and treating of the water from the quarry would need to be planned and undertaken soon after the spring melt (March or April)

and will involve incurring material expenses. The above figures include no allocation of professional fees borne by the Estate in the CCAA process (i.e. legal, Monitor and similar fees). Further, Timminco's permit to pump water needs to be renewed in April.

19. As there appears to be no prospect of an economic purchaser of the Haley Mining Property being found, given the excessive costs of ownership and the lack of a present (or future) economic use and given the fact that the three principal parcels of land comprising the Haley Mining Property are all currently in use as part of the remediation process now underway, the only remaining option to deal with the property is through abandonment. It is proposed that Timminco's interest in the Haley Mining Property will be transferred to TSHL pursuant to the Haley Agreement with TSHL being assigned into bankruptcy unless an arrangement can be made to deal with the environmental issues.

20. Apart from the parcels relating directly to the former Haley mining site (roughly speaking comprising 3 corners of the intersection of Magnesium Road and Blind Lane outside Haley Station, Ontario), there are several other smaller parcels which my review indicates are the remnants of a former spur line leading to the main railway line in the village of Haley Station. This narrow strip appears to be non-continuous. It has not been tested for environmental contamination from its years of operation as a railway spur line leading to an active mining site. Timminco does not presently have the resources to test these parcels and, given their relatively remote location and narrow width, there is no reason to believe that they would have sufficient economic value to

warrant the risk of continuing to hold them if they were to be severed from the mining properties with their known environmental issues. As well, property tax continues to accrue on such properties and is unpaid. Accordingly, it is proposed to transfer the totality of Timminco's real property holdings.

The Silica Fumes Property

21. BSI owns the Silica Fumes Property, at which BSI formerly managed the disposal and subsequent extraction of silica fumes. BSI has since ceased operations at the site.

22. From a review of the BSI files available to me, I understand that BSI formerly scrubbed its chimneys and disposed of the resulting silica fumes at the site which had been duly permitted for the purpose. Silica fumes are, in my understanding, similar to fine grain sand or clay and are not an unusually toxic substance. A market was eventually found for the silica fumes, which have use in the manufacture of cement. BSI successfully extracted silica fumes which it had formerly buried at the site over a number of years and it is believed that the site has approximately one to two years of possible production capacity left.

23. Upon cessation of its activities at the site, BSI incurred certain remediation obligations with respect to the Silica Fumes Property. Pursuant to a Certificate of Authorization issued by the Québec Minister of Sustainable Development, Environment and Parks in February 2009, BSI is required to remediate the disposal site in accordance with the requirements set out in the Certificate of Authorization.

24. Following the commencement of CCAA proceedings, some expressions of interest in respect of the Silica Fumes Property were received. However, none of the interested parties was willing to actually purchase the property. Rather, they proposed to operate, or cause BSI to operate, the silica fumes extraction facilities for a further season. These proposals were rejected since: (a) further activities would potentially increase the expense of remediation of the property; (b) it was unclear whether BSI (or the environmental authorities) would have been entitled to the economic benefits of the operations; and (c) following the completion of the sale of BSI's business operations in June 2012, BSI did not have the capacity to continue the operation. In short, the risks of operation did not justify the relatively modest potential rewards.

25. Prior to my appointment, I was aware that the Silica Fumes Property had been marketed as part of the court-approved sales process; however, no potential buyers emerged from that process. Indeed, the successful bidders for BSI effectively bid for all of BSI's assets *except* the Silica Fumes Property. It was and remains my understanding that estimated remediation costs (being the costs necessary to restore the site to its previous state) will be in excess of a million dollars.

26. Following my appointment, I have attempted to determine whether there may be any potential industrial purchasers of the site. The site is located near an established industrial park in Bécancour, across the bridge from Trois Rivières. One potential purchaser initially indicated potential interest to the former CEO of Timminco, but has since indicated that it has no further interest in pursuing further discussions relating to

the site. I have had discussions with an investor looking to establish a new industrial operation nearby, but they too declined to pursue the matter further. The newly elected government in Quebec has determined to close the nearby Gentilly nuclear power station, a step which will likely result in significant further industrial land becoming available and potentially diminishing the attractiveness of Becancour as an industrial location. In short, while the property may ultimately have use for an industrial operator in the area, none have expressed any present interest and it may be several years before a potential buyer can be found. The uncertainty of potential future value combined with the certainty of significant remediation costs associated with the termination of the operation have deterred buyers from purchasing the property.

27. I visited the site in early January in response to a letter from Québec Minister of Sustainable Development, Environment and Parks (the “MSDEP”) regarding potential short-term environmental issues associated with the storage of fuel on site. I discovered that the kiln operation on site (formerly used for drying the silica fumes) had three fuel oil storage tanks on site belonging to the former fuel supplier of the operation, Petroles Deshaies. I arranged for a representative of the supplier to meet with me at the property and arrangements were made to pump out the remaining fuel stored in the tanks (approximately 40,000 litres estimated) immediately and to plough the snow off the access road to permit this to occur. As well, Petroles Deshaies agreed to remove their tanks from the site as soon as the spring thaw permits this to be done safely. To the best of my knowledge, when this latter step has been completed, the site will pose

no imminent threat to the environment and is well fenced off (in addition to being relatively isolated). There will remain some buildings and equipment on site which will ultimately have to be sold for scrap if it is ultimately determined not to resume operations for the extraction of the silica fumes which remain.

28. I have had a lengthy discussion with Mme. Gervais-Cadrin, a lawyer with the MSDEP. I have advised her of the facts as I am aware of them and as summarized above. She requested that we not remove any fixtures from the site that may have economic value including those relating to the possible re-launch of the operation on a limited basis. I assured her that we would not do so (we were not requested to interfere with the removal of the fuel storage tanks which in any event are not owned by BSI).

29. I am informed by Kathryn Esaw of Stikeman Elliott LLP, counsel to the Timminco Entities, that the Silica Fumes Property is subject to an option to purchase in favor of two individuals, Patrick Lavigne and Rolland Morel. The purchase price under this option to purchase is \$1 and it is triggered when the property ceases to be used as a waste disposal site and is remediated in accordance with environmental laws. The option to purchase does not run with the land, nor is there an obligation for BSI to bind subsequent purchasers to this option to purchase. I have attempted to locate Mssrs. Lavigne and Morel to inform them of the upcoming motion and inquire whether they have any interest in acquiring the Silica Fumes Property, but to date, have been unable to locate either of them.

30. The Timminco Entities have ceased operations and have no further use for the Silica Fumes Property. As stated before, the Timminco Entities have finite funds remaining which are depleted by the ongoing costs of remediation to the detriment of their general creditors each month. For the reasons expressed above, I do not believe that there is any reasonable likelihood of the property having any current (or future) value for the creditors of BSI. As a result of the foregoing, the Timminco Entities' only remaining option to deal with the property is through abandonment.

TRANSFER OF THE REDUNDANT ASSETS

31. The Timminco Entities have ceased operations and have no further use for the Redundant Assets. Efforts to sell or otherwise deal with the Redundant Assets, as described above, have been unsuccessful. As such, the Timminco Entities had to develop a plan to deal with the Redundant Assets and associated environmental liabilities while preserving the rights of creditors who may have a claim related to such environmental liabilities.

32. Accordingly, the Timminco Entities are proposing to transfer the Redundant Assets to TSHL and the Silica Fumes Purchaser. Once the Haley Property has been transferred to TSHL, TSHL will make an assignment into bankruptcy, at which point the Haley Property will be abandoned by the trustee in bankruptcy unless satisfactory arrangements can be made to deal with the land with the relevant ministry groups. Once the Silica Fumes Property has been transferred to the Silica Fumes Purchaser, the Silica Fumes Purchaser will make an assignment into bankruptcy, at which point the

Silica Fumes Property will be abandoned by the trustee in bankruptcy unless satisfactory arrangements can be made to deal with the land with the relevant ministry groups.

The Haley Transaction

TSHL

33. TSHL is a wholly-owned subsidiary of Timminco incorporated under the *Canada Business Corporations Act*. It does not carry and has never carried on operations and has no directors or officers. TSHL is not an applicant in the Timminco Entities' CCAA proceedings.

The Haley Agreement

34. The Haley Agreement contemplates the sale, on an "as-is, where-is" basis, of the Haley Property to TSHL. The purchase price under the Haley Agreement is \$20,000, which will be satisfied by the issuance of a non-interest bearing promissory note (the "**Haley Promissory Note**"). The Haley Promissory Note includes the following features:

- (a) Amounts owing under the Haley Promissory Note shall be repaid out of any proceeds of sale of the Haley Property, if any sale takes place, less the costs of such a sale;
- (b) Recourse for any principal owed under the Haley Promissory Note shall be limited to the Haley Property (or the sale proceeds set out above) and shall be subordinate to:

- (i) the costs of complying with any orders issued by the Ministry of the Environment (Ontario) in respect of the Haley Property, including any orders issued to date;
- (ii) any costs which would have priority pursuant to s. 11.8 of the CCAA or section 14.06(7) of the *Bankruptcy and Insolvency Act*; and
- (iii) the costs of any receiver or trustee in bankruptcy appointed in respect of TSHL or TSHL's interest in the Haley Property.

Copies of the Haley Agreement and the Haley Promissory Note are attached hereto as **Exhibits "A" and "B"**, respectively.

35. The Haley Agreement is structured so that the Timminco Entities will receive proceeds from a sale of the Haley Property only if and when the above-mentioned obligations have been satisfied.

36. The nominal purchase price was arrived at after consideration of the value of the Haley Property and the limited potential for the Haley Property to increase in value without significant remediation costs.

The Silica Fumes Transaction

The Silica Fumes Purchaser

37. The Silica Fumes Purchaser is a wholly-owned subsidiary of Timminco incorporated under the Ontario *Business Corporations Act*. It does not carry and has never carried on operations and has no directors or officers. The Silica Fumes Purchaser is not an applicant in the Timminco Entities' CCAA proceedings.

The Silica Fumes Deed

38. The Silica Fumes Deed contemplates the sale, on an “as-is, where-is” basis, of all the Silica Fumes Property to the Silica Fumes Purchaser. The purchase price under the Silica Fumes Deed is \$20,000, which will be satisfied by the issuance of a non-interest bearing promissory note (the “**Silica Fumes Promissory Note**”). The Silica Fumes Promissory Note includes the following features:

- (a) Amounts owing under the Silica Fumes Promissory Note shall be repaid out of any proceeds of sale of the Silica Fumes Property, if any sale takes place, less the costs of such a sale;
- (b) Recourse for any principal owed under the Silica Fumes Promissory Note shall be limited to the Silica Fumes Property (or the sale proceeds set out above) and shall be subordinate to:
 - (i) the costs of complying with any orders issued by the Québec Minister of Sustainable Development, Environment and Parks in respect of the Redundant Assets, including any orders issued to date;
 - (ii) any costs which would have priority pursuant to s. 11.8 of the CCAA or section 14.06(7) of the *Bankruptcy and Insolvency Act*; and
 - (iii) the costs of any receiver or trustee in bankruptcy appointed in respect of the Silica Fumes Purchaser or the Silica Fumes Purchaser’s interest in the Silica Fumes Property.

Copies of the Silica Fumes Deed and the Silica Fumes Promissory Note are attached hereto as **Exhibits “C”** and **“D”**, respectively.

39. The Silica Fumes Deed is structured so that the Timminco Entities will receive proceeds from a sale of the Silica Fumes Property only if and when the above-mentioned obligations have been satisfied.

40. The nominal purchase price was arrived at after consideration of the value of the Silica Fumes Property and the limited potential for the Silica Fumes Property to increase in value without significant remediation costs.

41. A portion of the Silica Fumes Property appears to be located in an agricultural zone and, consequently, falls within the scope of *An Act Respecting the Preservation of Agricultural Land and Agricultural Activities*, R.S.Q., c. P-41.1 and *An Act Respecting the Acquisition of Farm Land by Non-Residents*, R.S.Q., c. A-4.1. Pursuant to this legislation, approval of the Commission de protection du territoire agricole du Québec is required in order to transfer this part of the property to a non-resident entity. The Timminco Entities, with the assistance of counsel, continue to evaluate the steps needed to effect a valid transfer of the Silica Fumes Property.

Bankruptcy Proceedings

42. Upon completion of each Transaction, steps will be taken to have the relevant purchaser assigned into bankruptcy. I am informed by Ms. Esaw that Grant Thornton Limited has agreed to be named as trustee in the intended bankruptcy proceedings.

43. The Court-approved powers of the CRO include, among others:

- (a) the power to negotiate and enter into agreements on behalf of the Timminco Entities with respect to the sale of the Property;
- (b) the power to apply to Court for an order authorizing and directing the Timminco Entities to abandon any of the Property; and
- (c) the power to exercise such shareholder rights as may be available to the Timminco Entities, including without limitation to appoint any director or officer of any subsidiary of the Timminco Entities;

As such, I believe that it is within the power of the CRO to pass a shareholder resolution authorizing a bankruptcy application in respect of TSHL and the Silica Fumes Purchaser. Out of an abundance of caution, the Timminco Entities are seeking a term in the Transfer Order granting authority to the CRO to sign a sole shareholder declaration authorizing TSHL and the Silica Fumes Purchaser to make an assignment into bankruptcy.

44. Should TSHL and the Silica Fumes Purchaser be assigned into bankruptcy, the Timminco Entities intend to transfer \$15,000 for each of TSHL and the Silica Fumes Purchaser to the trustees in bankruptcy to fund the bankruptcy proceedings as a Third Party Deposit in accordance with OSB Directive 16.

45. Should any trustee in bankruptcy appointed in respect of TSHL or the Silica Fumes Purchaser conclude that it is unable to sell or otherwise deal with the Redundant Assets, it may choose to abandon the Redundant Assets at its sole discretion.

THE TRANSFER SHOULD BE APPROVED

46. As the value of the Redundant Assets is considered to be effectively nil, or even to be of negative value, it is my belief that the proposed sale will have no impact on the Timminco Entities' creditors. Any environmental claims by the relevant Ontario or Quebec ministries can continue to be proven in the Timminco Entities' court-approved claims process.

47. As described above, I have been in communication with the relevant Ontario and Quebec ministries since my appointment as CRO. In discussing the options for dealing with the Redundant Assets, the relevant ministries have known since at least November 2012 that transfer of the assets was a potential option. These ministries have been aware of the Timminco Entities' intention to seek the within motion since February 4, 2013.

48. Paragraph 14 of the initial order made in respect of the Timminco Entities' CCAA proceedings on January 3, 2012 (the "**Initial Order**") permits the Timminco Entities to permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$1,000,000 in the aggregate. While the purchase price for the Redundant Assets falls below this threshold, out of an abundance of caution the Timminco Entities determined it was appropriate to seek court approval of the TSHL Transaction. A copy of the Initial Order is attached hereto as **Exhibit "E"**.

49. The Timminco Entities have no operations and no use for the Redundant Assets. Further, the Timminco Entities have insufficient funds to remediate the Redundant Assets and all such remediation will cease in the near term. As such, the asset transfer will have no negative impact on environmental remediation efforts.

50. The Redundant Assets were included in the Sales Process and failed to garner any bid from prospective purchasers. Since that time, the Timminco Entities and the CRO have attempted to market and/or negotiate a solution to the environmental liabilities that would make the properties marketable without success.

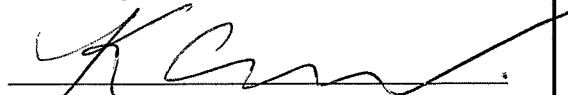
MONITOR'S APPROVAL

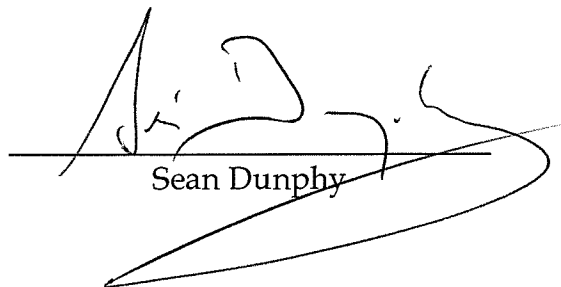
51. I understand that the Monitor approves of the process leading to the proposed disposition of the Redundant Assets and supports the within motion.

PURPOSE OF AFFIDAVIT

52. This Affidavit is sworn in support of the Timminco Entities' motion for the relief described in paragraph 2 above and for no improper purpose.

SWORN BEFORE ME at the City of
Toronto, Province of Ontario on
February 22, 2013.


Kathryn Esaw
Commissioner for Taking Affidavits


Sean Dunphy

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED

Court File No. CV12-9539-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**AFFIDAVIT OF SEAN DUNPHY
(SWORN FEBRUARY 22, 2013)**

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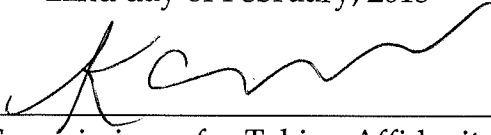
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Lawyers for the Applicants

TAB A

This is Exhibit "A"
to the affidavit of Sean Dunphy,
sworn before me on the
22nd day of February, 2013



Commissioner for Taking Affidavits

AGREEMENT OF PURCHASE AND SALE

Agreement of Purchase and Sale dated February 9, 2013 between Timminco Limited (the "**Vendor**"), as vendor, and Timminco Silicon Holdings Limited (the "**Purchaser**"), as purchaser.

RECITALS:

- (a) The Vendor is the legal and beneficial owner of the properties described in Schedule "A" hereto and located in Haley, Ontario; and
- (b) The Vendor wishes to sell and the Purchaser wishes to purchase the properties referred to above upon the terms and conditions contained in this Agreement.

In consideration of the foregoing and the mutual covenants contained in this Agreement (the receipt and adequacy of which are hereby acknowledged), the parties agree as follows:

Section 1 Defined Terms.

As used in this Agreement, the following terms shall have the following meanings:

"**Buildings**" mean all plants, buildings, structures, erections, improvements, appurtenances and fixtures including fixed machinery and fixed equipment situate on the Lands together with all other structures situate on the Lands, including all improvements thereto and to the Lands and all fixtures forming a part thereof.

"**Closing**" means the completion of the transaction of purchase and sale contemplated in this Agreement.

"**Closing Date**" means the first business day immediately following the date upon which the Approval Order is granted.

"**Environmental Claims**" means any administrative or judicial action, claim, suit, demand, cause of action, order, proceeding or written or oral notice of non-compliance by or from any person, including a governmental entity, alleging environmental liability.

"**Lands**" mean the lands described in Schedule "A" .

"**Properties**" means collectively, the Lands and the Buildings.

Section 2 Purchase.

Subject to the terms and conditions of this Agreement, the Vendor agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Vendor, the Properties on the Closing Date.

Section 3 Purchase Price and Payment.

The purchase price for the Properties shall be Twenty Thousand Dollars (\$20,000.00) in lawful money of Canada. The purchase price shall be paid by the delivery to the Vendor on the Closing Date of a non-interest bearing promissory note of the Purchaser in the form attached hereto as Schedule "C".

Section 4 Representations and Warranties.

The Vendor represents and warrants to the Purchaser as follows and acknowledges that the Purchaser is relying on such representations and warranties for the purposes of entering into this Agreement:

- (a) the Vendor has the necessary power and authority to execute this Agreement and to perform its obligations hereunder. The execution and delivery of and performance by the Vendor of this Agreement and the transfer of the Properties by the Vendor to the Purchaser have been duly authorized by all necessary corporate action on the part of Vendor; and
- (b) this Agreement has been duly executed and delivered by the Vendor and constitutes a legal, valid and binding agreement of the Vendor enforceable against it in accordance with its terms.

The Purchaser represents and warrants to the Vendor as follows and acknowledges that the Vendor is relying on such representations and warranties for the purposes of entering into this Agreement:

- (a) this Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding agreement of the Purchaser enforceable against it in accordance with its terms.

Section 5 "As-Is" Purchase.

- (1) Except for the representations and warranties of the Vendor expressly set out herein, in entering into this Agreement and completing the transaction contemplated herein, the Purchaser has relied and will continue to rely entirely and solely upon its own inspections and investigations with respect to the Properties.
- (2) Except as otherwise expressly provided for in this Agreement, the Properties are being purchased and assumed by the Purchaser on an "as is, where is" basis as of the date of this Agreement and without any express or implied agreement or representation and warranty of any kind whatsoever or any liability or obligation of the Vendor as to the physical or financial condition, suitability for development, fitness for a particular purpose, merchantability, title, physical characteristics, profitability, use or zoning, environmental condition, existence of latent defects, quality, or any other aspect or characteristic thereof.

- (3) Except as otherwise expressly provided for in this Agreement, the Vendor makes no agreements or representations and warranties concerning any statements made or other information delivered or made available to the Purchaser (whether by the Vendor, the Vendor's solicitors or any other agents, or representatives or advisors of the Vendor or any of its affiliates, or any other person) with respect to the Properties.
- (4) The Purchaser agrees to assume all known and unknown liability with respect to hazardous substances, hazardous materials, hazardous waste, or waste associated in any way with the Properties, including but not limited to soil, groundwater or air contamination, or liability for on-site or off-site disposal or migration of hazardous substances, hazardous materials, hazardous waste, or waste.
- (5) Except as otherwise expressly provided for in this Agreement, the Vendor will have no obligations or responsibility to the Purchaser after Closing with respect to any matter relating to the Properties or the condition thereof.
- (6) The provisions of this Section 5 will survive Closing or the termination of this Agreement.

Section 6 Indemnity and Release.

- (1) The Purchaser shall indemnify, defend and hold the Vendor harmless from any and all losses, liabilities, damages or expenses (including legal and consulting fees and expenses), whether resulting from an Environmental Claim or not, that arise as a result of the environmental condition of the Properties, the presence of contamination and/or hazardous substances on, at or under the Properties, the migration of contamination and/or hazardous substances onto, under, across or from the Properties, or the actions or inactions of the Vendor or any previous owner, operator or third party on, at or with respect to the Properties.
- (2) The Purchaser hereby expressly releases the Vendor, and the Purchaser agrees to waive all rights that it may have to recover or seek contribution from the Vendor, for any costs incurred by the Purchaser or losses, liabilities, damages or expenses (including legal and consulting fees and expenses) suffered by the Purchaser as a result of any Environmental Claim, the environmental condition of the Properties, the presence of contamination and/or hazardous substances on, at or under the Properties, the migration of hazardous substances and/or contamination onto, under, across or from the Properties, or the actions or inactions of the Vendor or any previous owner, operator or third party on, at or with respect to the Properties.

Section 7 Land Transfer Tax.

The Purchaser shall be liable for and shall pay and remit to the relevant tax authorities all applicable land transfer taxes, if any, payable in connection with the conveyance of and transfer of the Properties by the Vendor to the Purchaser hereunder.

Section 8 Court Approval Condition.

This Agreement shall be conditional upon the Vendor obtaining, on or prior to Closing, a court order approving the terms of this Agreement (the "**Approval Order**"). If the Vendor is unable to obtain the Approval Order by April 30, 2013, then the Vendor may, in its sole discretion, terminate this Agreement and the parties will be released from their obligations hereunder.

Section 9 Planning Act Compliance.

All of the mutual covenants, conditions, agreements and payments contained in this Agreement shall be conditional upon compliance with the *Planning Act* (Ontario).

Section 10 Time of the Essence.

Time shall be of the essence of this Agreement.

Section 11 Enurement.

This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by any party hereto without the prior written consent of the other party.

Section 12 Entire Agreement.

This Agreement constitutes the entire agreement between the parties with respect to the transactions contemplated in this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to the subject matter of this Agreement. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement.

Section 13 Waiver.

- (1) No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver be binding unless executed in writing by the party to be bound by the waiver.
- (2) No failure on the part of the Vendor or the Purchaser to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

Section 14 Further Assurances.

Each of the parties covenants and agrees to do such things, to attend such meetings and to execute such further conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively transfer the Properties to, or as directed by, the Purchaser and carry out the terms and conditions of this Agreement in accordance with their true intent.

Section 15 Severability.

If any provision of this Agreement shall be determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction, that provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect.

Section 16 Governing Law.

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Section 17 Counterparts.

This Agreement may be executed in any number of counterparts (including counterparts by facsimile or other electronic transmission) and all such counterparts taken together shall be deemed to constitute one and the same instrument.

[Signature Page Immediately Follows.]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date written above.

TIMMINCO LIMITED

By: _____

Name: ●

Title: ●

I have authority to bind the Corporation.

TIMMINCO SILICON HOLDINGS LIMITED

By: _____

Name: ●

Title: ●

I have authority to bind the Corporation.

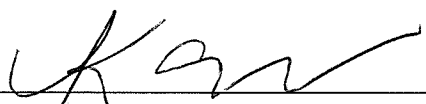
Schedule "A"
LANDS

Schedule "B"
PERMITTED ENCUMBRANCES

Schedule "C"
PROMISSORY NOTE

TAB B

This is Exhibit "B"
to the affidavit of Sean Dunphy,
sworn before me on the
22nd day of February, 2013



Commissioner for Taking Affidavits

TIMMINCO SILICON HOLDINGS LIMITED

PROMISSORY NOTE

\$●

February ●, 2013

WHEREAS, the undersigned, TIMMINCO SILICON HOLDINGS LIMITED (the "Borrower"), has agreed to purchase certain assets (the "Assets") located in the Province of Ontario from Timminco Limited ("Timminco") for an aggregate amount of \$●, pursuant to the terms and conditions of an agreement of purchase and sale between Timminco and the Borrower dated ● (the "Purchase Agreement").

AND WHEREAS the purchase price for the Assets under the Purchase Agreement shall be satisfied by the issuance by the Borrower of this promissory note (the "Note").

ARTICLE 1 PRINCIPAL SUM AND REPAYMENT

Section 1.1 Principal Sum.

For value received the Borrower having its head office at ● shall pay to the order of Timminco the sum of \$● (the "Principal Amount") in the lawful money of Canada at the office of Timminco at ● or such other place as Timminco may designate. The Principal Amount remaining from time to time unpaid and outstanding shall not bear interest.

Section 1.2 Repayment.

The Borrower shall immediately advise Timminco upon receipt by it of any proceeds from the sale of the Assets (the "Proceeds"). The Borrower shall pay to Timminco on the date that is five (5) days after the receipt of such Proceeds, an amount equal to the Proceeds less any costs associated with the sale of the applicable Assets (the "Net Proceeds"). The recording by Timminco in its accounts of the Principal Amount owing by the Borrower, and any repayment made in accordance with this Section 1.2 shall, in the absence of manifest mathematical error, be *prima facie* evidence of the same; provided that the failure of Timminco to record the same shall not affect the obligation of the Borrower to pay such amounts to Timminco.

ARTICLE 2 INTERPRETATION

Section 2.1 Defined Terms.

As used herein the following expressions shall have the following meanings:

"Obligations" means all monies and all obligations now or at any time and from time to time hereafter owing or payable by the Borrower to Timminco under this

Note (whether now existing, presently arising or created in the future), and whether direct or indirect, absolute or contingent, matured or not.

“Priority Payment” means the following: (i) any costs of complying with any orders issued by the Ministry of the Environment (Ontario) in respect of the Assets, included any orders issued as of the date of this Note, (ii) any costs which would have priority pursuant to section 118 of the *Companies Creditors Arrangement Act* or section 14.06(7) of the *Bankruptcy and Insolvency Act*, and (iii) the costs of any receiver or trustee in bankruptcy appointed in respect of Timminco or Timminco’s interest in the Assets.

Section 2.2 Governing Law

This Note shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

ARTICLE 3 RECOURSE

Section 3.1 Limited Recourse.

Notwithstanding the foregoing, Timminco will be limited in recourse under this Note to the amount of any Net Proceeds received by the Borrower less any Priority Payments at any time outstanding. Timminco shall not under any circumstances have any right to any other payment from the Borrower, and no assets of the Borrower, other than the Net Proceeds (less any Priority Payments), shall be subject to any claims of Timminco with respect to this Note.

ARTICLE 4 SUBORDINATION

Section 4.1 Subordination.

- (1) Notwithstanding the foregoing, the Obligations shall for all purposes be, and at all times remain, inferior, junior, postponed and subordinated to the prior indefeasible repayment in full in cash of the Priority Payments and the termination of the obligations of the holders of the Priority Payments, in the manner and to the extent provided in this Note.
- (2) No payments shall be made by the Borrower or received by Timminco on account of, or in respect of, the Obligations (whether as principal, fees or otherwise) prior to indefeasible payment in full in cash of any outstanding Priority Payments and the termination of the obligations of the holders of such Priority Payments.
- (3) All payments or distributions on account of, or in respect of, the Obligations which are received by Timminco contrary to this Article 4 shall be received in trust for the benefit of the holders of any then outstanding Priority Payment, shall be segregated from other funds and property held by Timminco and shall be immediately paid over to the holders of such Priority Payments in the same form as received (with any

necessary endorsement) to be applied to the payment or repayment of such Priority Payments.

**ARTICLE 5
GENERAL**

Section 5.1 Waiver of Presentment.

The Borrower waives presentment for payment and notice of non-payment.

Section 5.2 Invalidity of any Provisions.

Any provision of this Note which is prohibited by the laws of any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining terms and provisions hereof or thereof and no such invalidity shall affect the obligation of the Borrower to repay the Obligations.

Section 5.3 Successors and Assigns, etc.

This Note may be assigned by Timminco. This Note and all its provisions shall enure to the benefit of Timminco, its successors and assigns and shall be binding upon the Borrower, its successors and assigns. Timminco is the person entitled to receive the money payable hereunder and to give a discharge hereof.

IN WITNESS WHEREOF the Borrower has executed this Note.

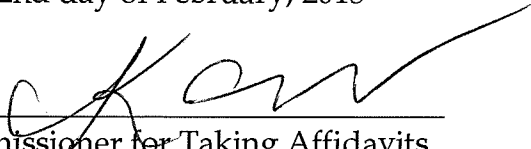
**TIMMINCO SILICON HOLDINGS
LIMITED**

By: _____

Authorized Signing Officer

TAB C

This is Exhibit "C"
to the affidavit of Sean Dunphy,
sworn before me on the
22nd day of February, 2013



Commissioner for Taking Affidavits

DEED OF SALE entered into in _____, on this _____
 _____ (_____) day of _____, 2013.

BETWEEN:

BÉCANCOUR SILICON INC. (French version: SILICIUM BÉCANCOUR INC.), (formerly known as SKW Canada Inc., as hereinafter set forth) a corporation duly constituted in virtue of the laws of the Province of Québec, having its registered office at 6500, Yvon-Trudeau Street, Bécancour, Québec, G9H 2V8, herein acting and represented by Sean Dunphy, President of Russell Hill Advisory Services Inc., in its capacity as Chief Restructuring Officer of, *inter alia*, Bécancour Silicon Inc., duly authorized for the purposes hereof pursuant to: (i) an Order (CRO Appointment) rendered by the Superior Court of Justice of the Province of Ontario, on August 17, 2012, Court file number: CV-12-9539-00CL, appointing Russell Hill Advisory Services Inc. as Chief Restructuring Officer of Bécancour Silicon Inc. (the "**CRO Appointment Order**"); (ii) an Approval Order rendered by the Superior Court of Justice of the Province of Ontario, on February ●, 2013, Court file number: CV-12-9539-00CL, authorizing the transfer contemplated herein (the "**Approval Order**"); and (iii) a Transfer Order rendered by the Superior Court of Justice of the Province of Ontario, on ●, 2013, Court file number: CV-12-9539-00CL (the "**Transfer Order**"); certified copies of which remain annexed hereto (the CRO Appointment Order, the Approval Order and the Transfer Order are hereinafter collectively called the "**Orders**"), (Hereinafter called the "**VENDOR**")

AND

●, a corporation duly constituted pursuant to ● and incorporated on ●, ●, having its head office at ●, herein acting and represented by ●, ●, duly authorized for the purposes hereof pursuant to a resolution of its Board of Directors dated February ●, Two thousand and thirteen (February ●, 2013), a copy thereof remains annexed hereto,

(Hereinafter called the "**PURCHASER**")

WHO AGREED AS FOLLOWS:

OBJECT OF THE CONTRACT

The VENDOR hereby sells to the PURCHASER, hereto present and accepting, all of the VENDOR's right, title and interest in and to the Immovable Property described herein below:

DESCRIPTION

An immovable situated in the City of Bécancour, Province of Québec, known and designated as lot THREE MILLION FIVE HUNDRED THIRTY-NINE THOUSAND FIVE HUNDRED AND THREE (3 539 503), of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2).

With the buildings and all other structures, fixtures, equipment and ancillary improvements located thereon, including the buildings bearing the civic address 5355, du Chemin-de-Fer Street, City of Bécancour, Province of Québec, G9H 2X7.

As the said Immovable Property above described now subsists, with all its rights, members and appurtenances, without exception or reserve of any kind, and together with and subject to all servitudes, continuous or discontinuous, apparent or unapparent, and to all other rights, road permissions or other similar rights, agreements or deeds attached thereto, and also together with any and all of the VENDOR's right, title and interest in and to all (and any portions thereof) buildings, and other improvements, circumstances and dependencies erected in connection with said servitudes and/or lease, and/or other rights, owned by the VENDOR, which are hereby conveyed and transferred by the VENDOR to the PURCHASER, hereto present and accepting.

All the movables located on the premises above-described are included in the sale and in the sale price and are hereby transferred by the VENDOR to the PURCHASER, hereto present and accepting. ("**MOVABLES**")

POSSESSION

The PURCHASER shall become owner of the Immovable Property and of the Movables from this day (the "**Effective Date**"), with immediate possession and

occupancy of the Immovable Property and of the MOVABLES from and as of the Effective Date.

TRANSFER OF THE RISK

Notwithstanding paragraph 2 of article 1456 of the *Civil Code of Québec*, the PURCHASER shall assume the risks attached to the Immovable Property and the MOVABLES, in accordance with article 950 of the *Civil Code of Québec*, as of the Effective Date.

"AS IS, WHERE IS" SALE

The Immovable Property and the MOVABLES are being purchased and assumed by the PURCHASER, and the transactions contemplated herein are being completed, on an "as is, where is" basis, at the PURCHASER's own risk, and without any express or implied agreement or representation and warranty of any kind whatsoever, legal or conventional, as to, without limitation, the physical or financial condition, suitability for development, fitness for a particular purpose, merchantability, title, physical characteristics, profitability, use or zoning, environmental condition, existences of latent defects, quality, or any other aspect or characteristic thereof. For certainty, and without limiting the generality of the foregoing, the Parties hereby agree to exclude altogether the effect of legal warranty provided for by Article 1716 of the *Civil Code of Québec* and that the PURCHASER is purchasing the rights in and to the Immovable Property and the constructions erected on, under and/or over the Immovable Property and the MOVABLES at its own risk within the meaning of Article 1733 of the *Civil Code of Québec*, the PURCHASER hereby recognizing for the purposes hereof that the VENDOR is not a "professional seller" pursuant to Article 1733 of the *Civil Code of Québec*.

Without limiting the generality of the foregoing, it is expressly agreed that the sale of the Immovable Property, and any use or enjoyment of such Immovable Property, as well as the sale of the MOVABLES, shall be at the entire risk of the PURCHASER and its successors and assigns from and after the Effective Date, and the PURCHASER for itself and its successors and assigns agrees to assume and hereby assumes all known and unknown liability with respect to hazardous substances, hazardous materials, hazardous waste, or waste associated in any way with the Immovable Property, including but not limited to soil, groundwater or air contamination, or liability for on-site or off-site disposal or migration of hazardous

substances, hazardous materials, hazardous waste, or waste, any and all responsibilities and liabilities, whether of an environmental nature or otherwise, in any way arising out of or in connection with title (ownership), the state, quality or condition of the Immovable Property and the constructions thereon erected and every part thereof, and the MOVABLES, existing as of or prior to the Effective Date and thereafter, and whether such liabilities or responsibilities arise or are in any manner imposed by law, statute, regulations and/or by any regulatory authorities or parties or official entity in any manner whatsoever.

The PURCHASER agrees and hereby undertakes to indemnify and save the VENDOR completely harmless from any and all losses, injuries, actions, suits, proceedings, responsibilities, liabilities, claims, demands, costs, fines, penalties, judgments, damages or expenses whatsoever (including, without limitation, court costs, legal and consulting fees and disbursements), whether resulting from an environmental claim or not, or relating to, directly or indirectly, the environmental state, quality or condition of the Immovable Property and MOVABLES or of the constructions thereon erected, or of any part thereof, including, without limitation, the presence of contamination and/or hazardous substances on, at or under the Immovable Property, the migration of contamination and/or hazardous substances onto, under, across or from the Immovable Property, or the actions or inactions of the Vendor or any previous owner, operator or third party on, at or with respect to the Immovable Property, as a consequence of any event, fact, accident, occurrence, act, omission, circumstances or established facts having occurred or existing either before or after the Effective Date.

HYPOTHECS

The following hypothecs are currently registered against the Immovable Property, namely:

1. Hypothec on a universality of immovables granted by Silicium Bécancour Inc. in favour of Investissement Québec, registered at the Registry Office for the Registration Division of Nicolet (Nicolet 2), on July 14, 2009, under number 16 368 865; and
2. Legal hypothec against Silicium Bécancour Inc. in favour of Les Excavations Marchand & Fils Inc., registered at the Registry Office for the Registration Division of Nicolet (Nicolet 2), on January 27, 2012, under number 18 799 369;

which shall be radiated/cancelled forthwith by way of the registration, for radiation purposes, of the Orders, together with an original of the Monitor's Certificate and Certificate of Non-Appeal at the Land Register, for the Registration Division of Nicolet (Nicolet 2); in application of Article 3073 of the *Civil Code of Québec*.

VENDOR'S RESIDENCY AND CORPORATE STATUS

The VENDOR is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada) and of the *Taxation Act* (Québec).

Furthermore, the VENDOR declares that it was referred to in its titles of acquisition as "S.K.W. Canada Inc." which corporate name should have read "SKW Canada Inc." and that it is now known as "Béancour Silicon Inc./Silicium Béancour Inc.", pursuant to the following corporate name changes, namely:

- (i) On May twentieth (20th), Nineteen hundred and ninety-nine (1999), SKW Canada Inc. changed its corporate name to become known as Industries Chimiques Béancour Inc./Béancour Silicon Inc.; and
- (ii) On August twenty-seventh (27th), Nineteen hundred and ninety-nine (1999), Industries Chimiques Béancour Inc./Béancour Silicon Inc. changed its corporate name to become known as the Appearer, Silicium Béancour Inc./Béancour Silicon Inc.

Notwithstanding the foregoing declarations, the VENDOR makes no representation nor warranty as to its title to the Immovable Property, the Immovable Property, together with the MOVABLES, being hereby sold, conveyed, assigned, ceded and transferred to the PURCHASER without warranty as to its right of ownership, as set forth in and subject to the hereinabove Section " AS IS, WHERE IS" SALE". The foregoing declarations are not to be considered a representation or warranty of accuracy thereof nor as to validity of title to the Immovable Property.

OBLIGATIONS

The PURCHASER undertakes to:

1. Take the Immovable Property and the MOVABLES in the state and condition in which they are now found, declaring to have seen and examined same to its satisfaction and to have itself verified with the competent authorities that the destination which it wishes to give to the Immovable Property and the MOVABLES conforms to the laws and regulations in force.
2. Pay all real estate taxes due and to become due, including the proportion of those as and from the Effective Date and also to pay, from the same date, all instalments in capital and interest to become due on all special taxes imposed before the Effective Date of which the payment is spread over several years.
3. Pay the fees and expenses of this deed, its publication, and copies for all parties.

ADJUSTMENTS

The Parties hereby declared to have made no adjustment between themselves.

CONSIDERATION

This sale is made for the consideration of **TWENTY THOUSAND DOLLARS (\$20,000.00)**, which will be satisfied by the issuance by the PURCHASER of a non-interest bearing promissory note (the "Promissory Note").

DECLARATIONS OF THE PARTIES CONCERNING THE GOODS AND SERVICES TAX (GST) AND QUEBEC SALE TAX (QST)

The VENDOR and the PURCHASER declare that the present sale of the Immovable Property and of the MOVABLES above described is a "taxable supply" subject to the payment of the tax commonly referred to as the "Goods and Services

Tax" (the "GST") under the *Excise Tax Act* R.S.C. 1985, c. E-15, as amended, (the "ETA") and the "Québec Sales Tax" (the "QST") under an *Act respecting the Québec Sales Tax* R.S.Q., c.T-0.1, as amended, (the "QSTA"). Moreover, the VENDOR and the PURCHASER declare that the sale price hereinabove referred to does not include any amount in respect of such taxes.

The PURCHASER shall be liable for and shall pay all transfer, sales, use, GST, QST, value added, documentary, stamp duty, gross receipts, excise and conveyance taxes and other similar taxes, duties, registration and other fees or charge.

Notwithstanding the foregoing, each of the VENDOR and the PURCHASER declares that: the Immovable Property is not a residential complex; the GST and QST payable in respect of the present sale of the Immovable Property is subject to subsections 221(2), 228(4) and 228(6) of the ETA and to sections 423, 438 and 441 of the QSTA; and, consequently, the VENDOR is not required to collect the GST and QST payable in respect thereof.

The PURCHASER declares that it is registered under subdivision d of Division V of Part IX of the ETA, and that its registration number thereunder is RT●, and that it is registered under Division I of Chapter VIII of Title I of the QSTA and that its registration number thereunder is ● TQ●.

Accordingly, responsibility for collection of the GST and the QST with respect to the taxable portion of this sale is assumed by the PURCHASER at the VENDOR's exoneration. The PURCHASER shall file returns and remit such GST and QST to the applicable government when and to the extent required by the Acts.

The PURCHASER hereby agrees to indemnify the VENDOR and hold the VENDOR harmless from any liability under the Acts arising because of breach of the obligations of the PURCHASER set out in this section or arising under the Acts, together with all loss, costs and expenses resulting from such breach.

DECLARATIONS CONCERNING AN ACT RESPECTING THE PRESERVATION OF AGRICULTURAL LAND AND AGRICULTURAL ACTIVITIES
(R.S.Q., c. P-41.1)

1. Without limiting the generality of the exclusion of warranty set forth in and subject to the hereinabove Section " AS IS, WHERE IS" SALE", the VENDOR

declares and the PURCHASER acknowledges that a portion of the Immovable Property, corresponding to former lots 233-1 and 235-1 of the Cadastre of the Parish of Saint-Édouard-de-Gentilly, Registration Division of Nicolet (Nicolet 2) are located within an agricultural zone established by the *Act Respecting the Preservation of Agricultural Land and Agricultural Activities*;

2. The remainder of the Immovable Property, namely former lots 252-1 and 253-1, of the Cadastre of the Parish of Notre-Dame-de-la-Nativité-de-Bécancour, Registration Division of Nicolet (Nicolet 2) are not located within an agricultural zone established by the said Act;

3. The VENDOR does not retain any right of alienation on a contiguous lot within the meaning of the Act; consequently, the present sale does not constitute a derogation to Section 29 of the Act;

4. a) The buildings erected on the portion of the Immovable Property located within an agricultural zone, were erected and said use for a purpose other than agriculture (commercial, industrial) were already existing prior to the application of the Act and said use for industrial purposes was pursued on a continuous and uninterrupted basis since; consequently, the VENDOR and its predecessors in title may take advantage of its acquired rights provided in Articles 101 and 103 of the Act;

OR

b) The buildings erected on the portion of the Immovable Property located within an agricultural zone, were erected and said use for a purpose other than agriculture (commercial, industrial) were permitted/authorized pursuant to an authorization granted by the "Commission de Protection du Territoire Agricole du Québec", as appears by a decision dated April 24, 1978 (record number ●) annexed hereto after having been acknowledged true and signed for identification by the Parties hereto in the presence of the undersigned Notary and said use for industrial purpose was pursued on a continuous and uninterrupted basis since;

5. The PURCHASER acknowledges that a part of the Immovable Property herein sold is situated within a designated agricultural region/zone, that this portion of the Immovable Property, corresponding to former lots 233-1 and 235-1 of the Cadastre of the Parish of Saint-Édouard-de-Gentilly, Registration Division of Nicolet (Nicolet 2), is subject to certain provisions of the Act, that it may not be used for a purpose other than agriculture, unless it obtains the authorization of the

"Commission de Protection du Territoire Agricole du Québec" or unless it can avail itself of the rights provided for in the Act;

6. Moreover, the PURCHASER acknowledges that it is considered a "non-resident" within the meaning of *An Act Respecting the Acquisition of Farm Land by Non-Residents*, R.S.Q., c. A-4.1. Consequently, the present sale of the Immovable Property, insofar as it concerns the portion thereof situated within a designated agricultural region/zone has been duly authorized by the "Commission de Protection du Territoire Agricole du Québec", as appears by a decision dated ●, 2013 (record number ●) annexed hereto after having been acknowledged true and signed for identification by the Parties hereto in the presence of the undersigned Notary.

PARTICULARS REQUIRED UNDER SECTION 9 OF AN ACT RESPECTING DUTIES ON TRANSFERS OF IMMOVABLES (THE "ACT")

The Transferor and Transferee hereto do hereby declare that:-

- 1) The names, and principal residences of the transferor and transferee are mentioned in the appearances hereto;
- 2) The immovable herein transferred is situated in the City of Bécancour;
- 3) The total value of the consideration for the transfer of the Immovable Property is the amount of TWENTY THOUSAND DOLLARS (\$20,000.00);
- 4) The municipal evaluation of the Immovable Property at the time of the transfer of the Immovable Property is an amount of THREE HUNDRED FIFTY-SIX THOUSAND AND ONE HUNDRED DOLLARS (\$356,100.00);
- 5) The value of the basis of imposition is the amount of THREE HUNDRED FIFTY-SIX THOUSAND AND ONE HUNDRED DOLLARS (\$356,100.00) and the transfer duties are the sum of THREE THOUSAND EIGHT HUNDRED FORTY-ONE DOLLARS AND FIFTY-CENTS (\$3,841.50);
- 6) The present transfer of the Immovable Property is exempt from the payment of transfer duties pursuant to Section 19(d) of the Act, the transfer of the Immovable Property is between two (2) closely related legal persons, within the meaning of said Section 19(d) of the Act.

7) According to the VENDOR and the PURCHASER, there is a transfer, at the same time, of corporeal immovables and movables as provided for at Section 1.0.1 of the Act, the consideration and basis of imposition with respect to said MOVABLES are being included in the consideration and basis of imposition respectively specified at the above paragraphs 3 and 5, the transfer duties applicable to said MOVABLES are being included in the amount of transfer duties indicated at the above paragraph 5 and the exemption of transfer duties applicable to said MOVABLES are being included in the exemption referred to at the above paragraph 6.

[Signature and attestation page for Vendor follows]

Signature and attestation of the Vendor to this Deed of Sale executed between **BÉCANCOUR SILICON INC.**, as Vendor, and ●, as Purchaser, at the place and on the date above mentioned.

BÉCANCOUR SILICON INC.

By: _____
 Name: Sean Dunphy
 Title: Authorized Representative

ATTESTATION

I, the undersigned, ●, Advocate, practicing at 1155 René-Lévesque Blvd. West, 40th Floor, City of Montréal (Québec) H3B 3V2, certify that:

1. I have verified the identity, quality and capacity of the Vendor to the present Deed of Sale;
2. The document is valid as to its form; and
3. The present Deed of Sale represents the will expressed by the Vendor.

CERTIFIED at the City of Montréal, Province of Québec, this _____ day of _____, 2013.

 ●, Advocate

[Signature and attestation page for Purchaser follows]

Signature and attestation of the Purchaser to this Deed of Sale executed between **BÉCANCOUR SILICON INC.**, as Vendor, and ●, as Purchaser, at the place and on the date above mentioned.

●

By: _____

Name: ●

Title: ●

ATTESTATION

I, the undersigned, _____, Advocate, practicing at 1155 René-Lévesque Blvd. West, 40th Floor, City of Montréal (Québec) H3B 3V2, certify that:

1. I have verified the identity, quality and capacity of the Purchaser to the present Deed of Sale;
2. The document is valid as to its form; and
3. The present Deed of Sale represents the will expressed by the Purchaser thereto.

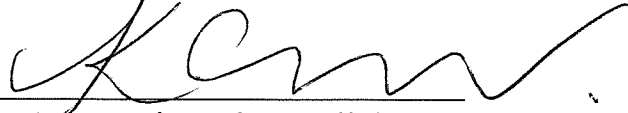
CERTIFIED at the City of Montréal, Province of Québec, this _____ day of _____, 2013.

●

_____, Advocate

TAB D

This is Exhibit "D"
to the affidavit of Sean Dunphy,
sworn before me on the
22nd day of February, 2013

A handwritten signature in black ink, appearing to be 'K. C. M.', written over a horizontal line.

Commissioner for Taking Affidavits

●

PROMISSORY NOTE

\$●

February ●, 2013

WHEREAS, the undersigned, ● (the “**Borrower**”), has agreed to purchase certain assets located in the Province of Québec (the “**Assets**”) from Bécancour Silicon Inc. (“**BSI**”) for an aggregate amount of \$●, pursuant to the terms and conditions of a deed of sale between BSI and the Borrower dated ● (the “**Deed of Sale**”).

AND WHEREAS the purchase price for the Assets under the Purchase Agreement shall be satisfied by the issuance by the Borrower of this promissory note (the “**Note**”).

ARTICLE 1 PRINCIPAL SUM AND REPAYMENT

Section 1.1 Principal Sum.

For value received the Borrower having its head office at ● shall pay to the order of BSI the sum of \$● (the “**Principal Amount**”) in the lawful money of Canada at the office of BSI at ● or such other place as BSI may designate. The Principal Amount remaining from time to time unpaid and outstanding shall not bear interest.

Section 1.2 Repayment.

The Borrower shall immediately advise BSI upon receipt by it of any proceeds from the sale of the Assets (the “**Proceeds**”). The Borrower shall pay to BSI on the date that is five (5) days after the receipt of such Proceeds, an amount equal to the Proceeds less any costs associated with the sale of the applicable Assets (the “**Net Proceeds**”). The recording by BSI in its accounts of the Principal Amount owing by the Borrower, and any repayment made in accordance with this Section 1.2 shall, in the absence of manifest mathematical error, be *prima facie* evidence of the same; provided that the failure of BSI to record the same shall not affect the obligation of the Borrower to pay such amounts to BSI.

ARTICLE 2 INTERPRETATION

Section 2.1 Defined Terms.

As used herein the following expressions shall have the following meanings:

“**Obligations**” means all monies and all obligations now or at any time and from time to time hereafter owing or payable by the Borrower to BSI under this Note (whether now existing, presently arising or created in the future), and whether direct or indirect, absolute or contingent, matured or not.

“Priority Payment” means the following: (i) any costs of complying with any orders issued by the Québec Minister of Sustainable Development, Environment and Parks in respect of the Assets, included any orders issued as of the date of this Note, (ii) any costs which would have priority pursuant to section 118 of the *Companies Creditors Arrangement Act* or section 14.06(7) of the *Bankruptcy and Insolvency Act*, and (iii) the costs of any receiver or trustee in bankruptcy appointed in respect of BSI or BSI’s interest in the Assets.

Section 2.2 Governing Law

This Note shall be governed by and interpreted and enforced in accordance with the laws of the Province of Québec and the federal laws of Canada applicable therein.

ARTICLE 3 RECOURSE

Section 3.1 Limited Recourse.

Notwithstanding the foregoing, BSI will be limited in recourse under this Note to the amount of any Net Proceeds received by the Borrower less any Priority Payments at any time outstanding. BSI shall not under any circumstances have any right to any other payment from the Borrower, and no assets of the Borrower, other than the Net Proceeds (less any Priority Payments), shall be subject to any claims of BSI with respect to this Note.

ARTICLE 4 SUBORDINATION

Section 4.1 Subordination.

- (1) Notwithstanding the foregoing, the Obligations shall for all purposes be, and at all times remain, inferior, junior, postponed and subordinated to the prior indefeasible repayment in full in cash of the Priority Payments and the termination of the obligations of the holders of the Priority Payments, in the manner and to the extent provided in this Note.
- (2) No payments shall be made by the Borrower or received by BSI on account of, or in respect of, the Obligations (whether as principal, fees or otherwise) prior to indefeasible payment in full in cash of any outstanding Priority Payments and the termination of the obligations of the holders of such Priority Payments.
- (3) All payments or distributions on account of, or in respect of, the Obligations which are received by BSI contrary to this Article 4 shall be received in trust for the benefit of the holders of any then outstanding Priority Payment, shall be segregated from other funds and property held by BSI and shall be immediately paid over to the holders of such Priority Payments in the same form as received (with any necessary endorsement) to be applied to the payment or repayment of such Priority Payments.

**ARTICLE 5
GENERAL**

Section 5.1 Waiver of Presentment.

The Borrower waives presentment for payment and notice of non-payment.

Section 5.2 Invalidity of any Provisions.

Any provision of this Note which is prohibited by the laws of any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining terms and provisions hereof or thereof and no such invalidity shall affect the obligation of the Borrower to repay the Obligations.

Section 5.3 Successors and Assigns, etc.

This Note may be assigned by BSI. This Note and all its provisions shall enure to the benefit of BSI, its successors and assigns and shall be binding upon the Borrower, its successors and assigns. BSI is the person entitled to receive the money payable hereunder and to give a discharge hereof.

IN WITNESS WHEREOF the Borrower has executed this Note.

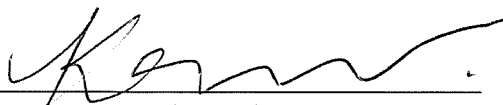
●

By: _____

Authorized Signing Officer

TAB E

This is Exhibit "E"
to the affidavit of Sean Dunphy,
sworn before me on the
22nd day of February, 2013

A handwritten signature in black ink, appearing to be 'K. ...', written over a horizontal line.

Commissioner for Taking Affidavits

Court File No. 12-CL- 9539-004 L

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	TUESDAY, THE 3RD
)	
JUSTICE MORAWETZ)	DAY OF JANUARY, 2012

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

Applicants

INITIAL ORDER

THIS APPLICATION, made by Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. ("**BSI**" and, together with Timminco, the "**Timminco Entities**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Peter A.M. Kalins sworn January 2, 2012 and the Exhibits attached thereto (the "**Kalins Affidavit**"), and on being advised that Investissement Québec ("**IQ**") was given notice of this application, and on hearing the submissions of counsel for the Timminco Entities and FTI Consulting Canada Inc. and on reading the consent of FTI Consulting Canada Inc. to act as the Monitor (the "**Monitor**"),

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Timminco Entities are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that one or both of the Timminco Entities shall have the authority to file and may, subject to further order of this Court, file with this Court a plan or plans of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Timminco Entities shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Timminco Entities shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Timminco Entities shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, the "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Timminco Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the

Kalins Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Timminco Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Timminco Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that, notwithstanding anything to the contrary contained herein, the Timminco Entities are authorized and empowered to continue to negotiate discounts on their invoices with customers in exchange for early payment at discount rates consistent with rates previously provided by the Timminco Entities ~~as~~ ^{and} as approved by the Monitor or the Court and is authorized and empowered to continue to accept such discounted amounts in full satisfaction of the associated gross amount owing by such customer.

7. **THIS COURT ORDERS** that the Timminco Entities shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses, and similar amounts owed to any Assistants, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- b) the fees and disbursements of any Assistants retained or employed by the Timminco Entities in respect of these proceedings, at their standard rates and charges.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Timminco Entities shall be entitled but not required to pay all reasonable expenses incurred by the Timminco Entities in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- b) payment for goods or services actually supplied to the Timminco Entities following the date of this Order.

9. **THIS COURT ORDERS** that the Timminco Entities shall remit, in accordance with legal requirements, or pay:

- a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Québec Pension Plan, and (iv) income taxes;
- b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Timminco Entities in connection with the sale of goods and services by the Timminco Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the

date of this Order but not required to be remitted until on or after the date of this Order, and

- c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Timminco Entities.

10. **THIS COURT ORDERS** that until a real property lease or a lease with respect to use of a portable structure is assigned, disclaimed or resiliated in accordance with the CCAA, the Timminco Entities shall pay all amounts constituting rent or payable as rent under real property leases or a lease with respect to use of portable structure (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Timminco Entities and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, the Timminco Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Timminco Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

12. **THIS COURT ORDERS** that Québec Silicon Limited Partnership ("**QSLP**") and Québec Silicon General Partner Inc. ("**QSGP**") shall provide access to the Timminco Entities or permit the Timminco Entities to make, retain and take away copies of books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of QSLP, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**QSLP Records**") and grant to the Timminco Entities unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 12 or in paragraph 13 of this Order shall require the delivery of QSLP Records, or the granting of access to QSLP Records, which may not be disclosed or provided to the Timminco Entities due to privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

13. **THIS COURT ORDERS** that QSLP and QSGP shall provide access to the Timminco Entities or permit the Timminco Entities to make, retain and take away copies of books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of BSI, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**BSI Records**") and grant to the Timminco Entities unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 13 or in paragraph 12 of this Order shall require the delivery of BSI Records, or the granting of access to BSI Records, which may not be disclosed or provided to the Timminco Entities due to privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

14. **THIS COURT ORDERS** that if any QSLP Records or BSI Records are stored or otherwise contained on a computer or other electronic system of information storage,

whether by independent service provider or otherwise, all individuals, firms, corporations, or any other entities in possession or control of such QSLP Records or BSI Records shall forthwith give unfettered access to the Timminco Entities for the purpose of allowing the Timminco Entities to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Timminco Entities deem expedient, and shall not alter, erase or destroy any QSLP Records or BSI Records without the prior written consent of the Timminco Entities. Further, for the purposes of this paragraph, all Persons shall provide the Timminco Entities with all such assistance in gaining immediate access to the information in the records as the Timminco Entities may require including providing the Timminco Entities with instructions on the use of any computer or other system and providing the Timminco Entities with any and all access codes, account names and account numbers that may be required to gain access to the information.

RESTRUCTURING

15. **THIS COURT ORDERS** that the Timminco Entities shall, subject to such requirements as are imposed by the CCAA, have the right to:

- a) permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$1,000,000 in the aggregate,
- b) terminate the employment of such of its employees or Assistants or temporarily lay off such of its employees or Assistants as it deems appropriate, and
- c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

- d) all of the foregoing to permit the Timminco Entities to proceed with an orderly restructuring of the Business (the "**Restructuring**").

16. **THIS COURT ORDERS** that the Timminco Entities shall provide each of the relevant landlords with notice of the Timminco Entities' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Timminco Entities' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Timminco Entities, or by further Order of this Court upon application by the Timminco Entities on at least two (2) days' notice to such landlord and any such secured creditors. If the Timminco Entities disclaim or resiliate the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Timminco Entities' claim to the fixtures in dispute.

17. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Timminco Entities and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Timminco Entities in respect of such lease or leased premises and such landlord shall be entitled to notify the Timminco Entities of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers

advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE TIMMINCO ENTITIES OR THE PROPERTY

18. **THIS COURT ORDERS** that until and including February 2, 2012, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Timminco Entities or the Monitor, or affecting the Business or the Property, except with the written consent of the Timminco Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Timminco Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

19. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Timminco Entities or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Timminco Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Timminco Entities to carry on any business which the Timminco Entities are not lawfully entitled to carry on, (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

20. **THIS COURT ORDERS** that, without limiting anything contained in paragraphs 19 and 21 hereof, any and all rights, remedies, modifications of existing rights and events deemed to occur pursuant to the QSLP Agreements (as defined in the paragraph 23 of the Kalins Affidavit) upon or as a result of (a) an Act of Insolvency (as

that term is used in the Kalins Affidavit) occurring with respect to BSI, (b) any default or non-performance by the Timminco Entities, (c) the making or filing of these proceedings, or (d) any allegation, admission or evidence in these proceedings, are hereby stayed and suspended except with the written consent of the Timminco Entities and the Monitor, or leave of this Court. Without limiting the foregoing, the operation of any provision of any QSLP Agreement that purports to (y) effect or cause a cessation of any rights of the Timminco Entities, or (z) to accelerate, terminate, discontinue, alter, interfere with, repudiate, cancel, suspend or modify such agreement or arrangement as a result of any default or non-performance by or the insolvency of the Timminco Entities, the making or filing of these proceedings, or any allegation, admission or evidence in these proceedings, is hereby stayed and restrained and any steps or actions purported to be taken by any counterparty to any of the QSLP Agreements and any event that is deemed to have occurred in respect of the QSLP Agreements shall be null and void and of no effect.

NO INTERFERENCE WITH RIGHTS

21. **THIS COURT ORDERS** that during the Stay Period, no Person having oral or written agreements with the Timminco Entities shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform or provide any right, renewal right, contract, agreement, licence, permit or access right in favour of or held by the Timminco Entities, including without limitation, access rights held by BSI with respect to the Quebec Silicon Real Property and the Becancour Properties (as these terms are defined in the Kalins Affidavit), except with the written consent of the Timminco Entities and the Monitor, or leave of this Court.

CONTINUATION OF SUPPLY

22. **THIS COURT ORDERS** that during the Stay Period, all Persons, including QSLP and QSGP, having oral or written agreements with the Timminco Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services,

centralized banking services, payroll services, insurance, transportation services, utility, customs clearing or other services to the Business or the Timminco Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Timminco Entities, and that the Timminco Entities shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Timminco Entities in accordance with normal payment practices of the Timminco Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Timminco Entities and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

23. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Timminco Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

24. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Timminco Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Timminco Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or

arrangement in respect of the Timminco Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Timminco Entities or this Court.

25. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors of QSGP serving as BSI's nominated or appointed representatives on the Board of Directors of QSGP or any of the former, current or future officers of the Timminco Entities also serving as officers of QSGP (collectively, the "QSGP/BSI Directors") with respect to any claim against the QSGP/BSI Directors that arose before the date hereof and that relates to any obligations of QSGP or QSLP whereby the QSGP/BSI Directors are alleged under any law to be liable in their capacity as directors or officers of QSGP for the payment or performance of such obligations, until a compromise or arrangement in respect of the Timminco Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Timminco Entities or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

26. **THIS COURT ORDERS** that the Timminco Entities shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Timminco Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

27. **THIS COURT ORDERS** that the directors and officers of the Timminco Entities shall be entitled to the benefit of and are hereby granted a charge (the "D&O Charge") on the Property, which charge shall not exceed an aggregate amount of \$400,000, as security for the indemnity provided in paragraph 26 of this Order. The D&O Charge shall have the priority set out in paragraphs 38 and 40 herein.

28. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Timminco Entities' directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 26 of this Order.

APPOINTMENT OF MONITOR

29. **THIS COURT ORDERS** that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Timminco Entities with the powers and obligations set out in the CCAA or set forth herein and that the Timminco Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Timminco Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

30. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Timminco Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Timminco Entities in the development of the Plan and any amendments to the Plan;

- (d) assist the Timminco Entities, to the extent required by the Timminco Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Timminco Entities, to the extent that is necessary to adequately assess the Timminco Entities' business and financial affairs or to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (g) hold and administer funds in connection with arrangements made among the Timminco Entities, any counter-parties, and the Monitor, or by Order of this Court; and
- (h) perform such other duties as are required by this Order or by this Court from time to time.

31. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or

other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Civil Code of Québec, the Québec *Environment Quality Act*, the Ontario *Mining Act*, the Ontario *Environmental Protection Act*, the Ontario *Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Timminco Entities with information provided by the Timminco Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Timminco Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Timminco Entities may agree.

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Timminco Entities shall be paid their reasonable fees and disbursements, in each

case at their standard rates and charges, by the Timminco Entities as part of the costs of these proceedings. The Timminco Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Timminco Entities on a weekly basis and, in addition, the Timminco Entities are hereby authorized and directed to pay to the Monitor, counsel to the Monitor, and counsel to the Timminco Entities, retainers in the amounts of \$75,000, \$30,000 and \$100,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. ~~THIS COURT ORDERS that at the request of the Timminco Entities, any party of interest, or this Court,~~ the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, if any, and the Timminco Entities' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

38. **THIS COURT ORDERS** that the priorities of the Administration Charge and the D&O Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – the Administration Charge (to the maximum amount of \$500,000);

Second – the D&O Charge (to the maximum amount of \$400,000); and

Third – the Administration Charge (to the maximum amount of \$500,000) ranking behind all Encumbrances (as defined below) pending return of the Comeback Motion (as defined below).

39. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. **THIS COURT ORDERS** that, the Charges shall constitute a charge on the Property and the D&O Charge and the Administration Charge to a maximum amount of \$500,000 shall rank ahead in priority to the existing security interests of IQ, but behind all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, including any deemed trust created under the *Ontario Pension Benefits Act* or the *Quebec Supplemental Pension Plans Act* (collectively, the “**Encumbrances**”) in favour of any Persons that have not been served with notice of this application. The Applicants and the beneficiaries of the Charges shall be entitled to seek priority ahead of the Encumbrances on notice to those parties likely to be affected by such priority (it being the intention of the Timminco Entities to seek priority for the Charges ahead of all such Encumbrances at the Comeback Motion).

41. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Timminco Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Timminco Entities also obtain the prior written consent of the Monitor and the beneficiaries of the D&O Charge and the Administration Charge, or further Order of this Court.

42. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the

Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Timminco Entities, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Timminco Entities of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Timminco Entities pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Timminco Entities' interest in such real property leases.

SERVICE AND NOTICE

44. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in *The Globe and Mail*, National Edition, and *La Presse*, in French, once a week for two weeks a notice containing the information prescribed under the CCAA, and (b) within five

business days after the date of this Order (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Timminco Entities of more than \$1,000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the names and addresses of individuals who are creditors publicly available.

45. **THIS COURT ORDERS** that the Timminco Entities and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Timminco Entities' creditors or other interested parties at their respective addresses as last shown on the records of the Timminco Entities and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

46. **THIS COURT ORDERS** that the Timminco Entities, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at <http://cfcanada.fticonsulting.com/timminco>.

47. **THIS COURT ORDERS** that the Timminco Entities are authorized ~~to serve~~ their court materials ^{12/17/11} with respect to the comeback motion expected to be heard ~~the week of~~ January 9, 2012 (the "Comeback Motion") by forwarding a copy of this Order and any additional materials to be filed with respect to the Comeback Motion by electronic transmission, where available, or by courier to the parties likely to be affected by the

relief to be sought on the Comeback Motion at such parties' respective addresses as last shown on the records of the Timminco Entities as soon as practicable. The Timminco Entities shall serve the beneficiaries of the BSI Non-Union Pension Plan, the BSI Union Pension Plan and the Haley Pension Plan by serving in the manner described above the pension plan committees for the BSI Non-Union Pension Plan and the BSI Union Pension Plan, Financial Services Commission of Ontario, and the Régie Des Rentes Du Québec.

GENERAL

48. **THIS COURT ORDERS** that the Timminco Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

49. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Timminco Entities, the Business or the Property.

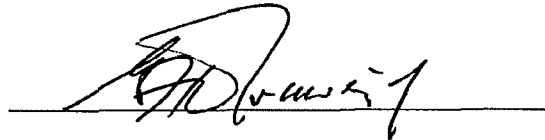
50. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Timminco Entities, the Monitor and their respective agents in carrying out the terms 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 Timminco Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Timminco Entities and the Monitor and their respective agents in carrying out the terms of this Order.

51. **THIS COURT ORDERS** that each of the Timminco Entities and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order

and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

52. **THIS COURT ORDERS** that any interested party (including the Timminco Entities and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

53. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



ENTERED AT / INS. AT TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JAN 3 2012

P. J. PATE



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

Court File No. 12-CL-9539-0001

(Applicants)

ONTARIO
SUPERIOR COURT OF JUSTICE COMMERCIAL
LIST

Proceeding commenced at Toronto

INITIAL ORDER

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Lawyers for the Monitor

TAB 3

Court File No. CV-12-9539-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	TUESDAY, THE 5 TH
)	
JUSTICE MORAWETZ)	DAY OF MARCH, 2013

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

Applicants

O R D E R
(Re Approval of TSHL Agreement)

THIS MOTION, made by Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. (and together with Timminco, the "**Timminco Entities**"), for an order approving the Haley Agreement (defined below and substantially in the form contained at Tab 2A of the Motion Record dated February 22, 2013) and the Silica Fumes Deed (defined below and substantially in the form contained at Tab 2C of the Motion Record dated February 22, 2013), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Sean Dunphy sworn February 22, 2013 (the "**February 22 Affidavit**"), and the Nineteenth Report of FTI Consulting Canada Inc. in its capacity as the court appointed monitor of the Timminco Entities (the "**Monitor**") dated February ●, 2013 and on hearing the submissions of counsel for the Timminco Entities and the Monitor, no one appearing for any other person on the

service list, although duly served as appears from the affidavit of service of Kathryn Esaw sworn February 25, 2013, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF THE HALEY TRANSACTION

2. **THIS COURT ORDERS AND DECLARES** that the agreement of purchase and sale (the "**Haley Agreement**") between Timminco and Timminco Silicon Holdings Limited providing for the transfer of the Haley Property (described at Schedule "**A**" to this Order) and the transaction contemplated therein (the "**Haley Transaction**") are hereby approved. The Timminco Entities and the Monitor are 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 Haley Transaction and for the conveyance of the rights, title and interest in and to the Haley Property pursuant to the Haley Agreement.

APPROVAL OF THE SILICA FUMES TRANSACTION

3. **THIS COURT ORDERS AND DECLARES** that the deed of sale (the "**Silica Fumes Deed**") between Timminco and ● providing for the transfer of the Silica Fumes Property (described at Schedule "**B**" to this Order) and the transaction contemplated therein (the "**Silica Fumes Transaction**") are hereby approved. The Timminco Entities and the Monitor are 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 Silica Fumes Transaction and for the conveyance of the rights, title and interest in and to the Silica Fumes Property pursuant to the Silica Fumes Deed.

ACTIONS BY THE CRO

4. **THIS COURT DECLARES** that Russell Hill Advisory Services Inc. ("**Russell Hill**"), in its capacity as Chief Restructuring Officer of the Timminco Entities (the "**CRO**"), has the authority to sign sole shareholder declarations authorizing the filing of assignments in bankruptcy of Timminco Silicon Holdings Limited and ●. Russell Hill further has the power to sign any documents necessary for Timminco Silicon Holdings Limited and ● to make assignments in bankruptcy, including but not limited to Form 21 of the Bankruptcy Forms (an Assignment for the General Benefit of Creditors).

5. **THIS COURT ORDERS** that Russell Hill has the authority to sign any documents necessary to effect the incorporation of ● and that such incorporation is hereby approved *nunc pro tunc*.

DEPOSIT PAYMENT

6. **THIS COURT ORDERS** that the Timminco Entities are authorized to pay to the proposed Trustee in Bankruptcy to be named in the assignment in bankruptcy of Timminco Silicon Holdings Limited a third party deposit in the amount of \$15,000 (the "**TSHL Deposit**"), such TSHL Deposit to be in accordance with Directive 16 issued by the Superintendent of Bankruptcy.

7. **THIS COURT ORDERS** that the Timminco Entities are authorized to pay to the proposed Trustee in Bankruptcy to be named in the assignment in bankruptcy of ● a third party deposit in the amount of \$15,000 (the "**● Deposit**"), such ● Deposit to be in accordance with Directive 16 issued by the Superintendent of Bankruptcy.

GENERAL

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the

United States to give effect to this Order and to assist the Monitor, the CRO, and their respective 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 Monitor and to the CRO, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

Schedule "A"

Schedule "B"

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**ORDER
(Re Approval of the Redundant Assets Transfer)**

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