

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) TUESDAY, THE 14<sup>TH</sup>  
 )  
JUSTICE MORAWETZ ) DAY OF MAY, 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**

**ORDER  
(Re Approval of the Tycos Agreement  
and Vesting of the Tycos Property)**

**THIS MOTION**, made by Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. (together with Timminco, the "**Timminco Entities**"), for an order approving the Tycos Agreement (as defined below) providing for the transfer of the Tycos Property (as defined below), and vesting the Tycos Property in MANDELBITES INC., as to a 33% undivided interest, EHRLICH (90 TYCOS) INC., as to a 34% undivided interest, and SKB (90 TYCOS) INC., as to a 33% undivided interest (collectively, the "**Purchaser**"), and authorizing and directing the Timminco Entities and the Monitor (as defined below) to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Tycos Transaction (as defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Sean Dunphy sworn May 7, 2013 (the "**May 7 Affidavit**"), and the Twentieth Report of FTI Consulting Canada Inc. in its capacity as the

court appointed monitor of the Timminco Entities (the “**Monitor**”) dated May 9, 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 Maria Konyukhova sworn May 7, 2013, filed:

#### **APPROVAL OF THE TYCOS TRANSFER**

1. **THIS COURT ORDERS AND DECLARES** that the agreement of purchase and sale (the “**Tycos Agreement**”) between Timminco and Ehrlich Samuel Properties Inc., providing for the transfer of the real property listed in Schedule “B” hereto (the “**Tycos Property**”) to the Purchaser, is hereby approved. The Timminco Entities and the Monitor are authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transaction contemplated by the Tycos Agreement (the “**Tycos Transaction**”) and for the conveyance of the rights, title and interest of Timminco in and to the Tycos Property to the Purchaser pursuant to the Tycos Agreement.

#### **VESTING OF THE TYCOS PROPERTY**

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of Timminco’s right, title and interest in and to the Tycos Property shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by the Court, including without limitation those created by the Initial Order of the Honourable Mr. Justice Morawetz dated January 3, 2012, the Order (Re Special Payments, KERPs and Super-Priority of Administration Charge and

D&O Charge) of the Honourable Mr. Justice Morawetz dated January 16, 2012, and the DIP Order of the Honourable Mr. Justice Morawetz dated February 8, 2012; and (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (c) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**" which term shall not include the permitted encumbrances listed at **Schedule "D"** to this Order, being the "**Permitted Encumbrances**").

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division (No. 66) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject Tycos Property identified in **Schedule "B"** hereto in fee simple, and is hereby directed to delete and expunge from title to the Tycos Property all of the Claims but for the Permitted Encumbrances.

4. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Timminco and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Timminco;

the vesting of the Tycos Property in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Timminco and shall not be void or voidable by creditors of Timminco, nor shall it constitute nor be deemed to be a ~~settlement~~, fraudulent preference, assignment, fraudulent conveyance, transfer at

13)

undervalue, or ~~other reviewable transaction~~ under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Tycos Property shall stand in the place and stead of the Tycos Property, and that from and after the closing of the Tycos Transaction all Claims and Encumbrances shall attach to the net proceeds from the sale of the Tycos Property with the same priority as they had with respect to the Tycos Property immediately prior to the sale, as if the Tycos Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

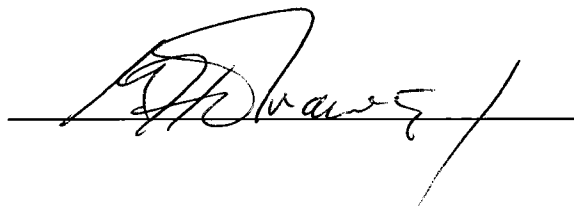
#### **GENERAL**

6. **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 Timminco, 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.

ENTERED AT / INSCRIT A TORONTO  
CN / BOOK NO:  
LE / DANS LE REGISTRE NO.:



MAY 14 2013



**Schedule "A"**

**Schedule A - Form of Monitor's Certificate**

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**

**MONITOR'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (the "**Court**") dated January 3, 2012, FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") of Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. (together with Timminco, the "**Timminco Entities**"); and

B. Pursuant to an Order of the Court dated May 14, 2013, the Court approved the sale agreement (the "**Tycos Agreement**") providing for the transfer of the Tycos Property, and vesting the Tycos Property in MANDELBITES INC., as to a 33% undivided interest, EHRlich (90 TYCOS) INC., as to a 34% undivided interest, and SKB (90 TYCOS) INC., as to a 33% undivided interest (collectively, the "**Purchaser**"), which vesting is to be effective upon the delivery by the Monitor to the Purchaser of a certificate certifying that the Monitor has (a) received \$250,000 from the Purchaser and (b) received written confirmation in form and substance satisfactory to the

Monitor from the Parties that the conditions precedent contained in the Purchase Agreement have been satisfied or waived by the applicable Parties (the “**Closing Certificates**”).

**THE MONITOR CERTIFIES** the following:

1. The Monitor has received from the Purchaser the sum of \$250,000;
2. The Monitor has received the Closing Certificates and the transactions under the Tycos Agreement have been completed to the satisfaction of the Monitor;
3. This Certificate was delivered by the Monitor to the Timminco Entities at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**FTI Consulting Canada Inc., in its capacity  
as the Court-appointed Monitor of the  
Timminco Entities and not in its personal  
capacity**

Per: \_\_\_\_\_

Name:

Title:

## **Schedule "B"**

### **Real Property Description**

The property located at the municipal address 90 Tycos Drive, North York, Ontario, legally described as

**Pin 10339-0132(LT) being LT 23 PL 4069 North York; LT 24 PL 4069 North York; S/T & T/W TB562569; S/T NY 119687; Toronto (N York), City of Toronto**

**Schedule "C"**

**Encumbrances**

None



## Schedule "D"

### Permitted Encumbrances

#### General

1. Encumbrances, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including charges, levies or imposts for sewers, electricity, power, gas, water and other services and utilities) not yet due and owing or, if due and owing, that are adjusted for pursuant to Section 7 of Schedule "A" of the Tycos Agreement, or the validity of which is being contested in good faith, and encumbrances or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by Timminco.
2. Inchoate or statutory encumbrances in respect of construction, renovations or current operations, in respect of which Timminco has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts and of the *Construction Lien Act* (Ontario) and (i) for which no claim has been registered against the Tycos Property and of which no notice in writing has been given to Timminco pursuant to the *Construction Lien Act* (Ontario) or otherwise, or (ii) that relate to obligations not yet due.
3. Statutory liens and levies and other rights conferred upon, reserved to or vested in the Crown, the public or any municipality or governmental or other public authority by any statutory provision including rights of expropriation, access or user.
4. Subsisting reservations, limitations, provisos, conditions or exceptions contained in any grant of the Tycos Property or any portion thereof or interest therein from the Crown
5. Unregistered liens, charges, adverse claims, security interests or other encumbrances of any nature claimed or held by any governmental entity.
6. The right reserved to or vested in any governmental entity by any statutory provision or by the terms of any lease, licence, franchise, grant or permit of the person, to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof.

7. Restrictions, by-laws, regulations, ordinances and similar instruments affecting the use of land or the nature of any structures which may be erected on the Tycos Property, including zoning, land-use and building by-laws and ordinances.

**Specific**

8. Instrument No. AT2010088
9. Instrument No. NY119687.
10. Instrument No. 64BA277.
11. Instrument No. 64R12142.
12. Instrument No. TB703663.
13. Instrument No. TB776552.

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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  
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(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**ORDER  
(Re Approval of the Tycos Agreement  
and Vesting of the Tycos Property)**

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