

**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 September 13, 2013)
(Re Approval of the Abandonment of the Silica Fumes Property
and Stay Extension to December 16, 2013)**

September 6, 2013

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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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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(as at July 18, 2013)**

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Applicants

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C.	Exhibit "C" - Amended Memphis Agreement
D.	Exhibit "D" - Right of First Refusal
E.	Exhibit "E" - Silica Fumes Order
F.	Exhibit "F" - Affidavit of Sean Dunphy, sworn February 22, 2013
G.	Exhibit "G" - Draft Deed of Abandonment
3.	Draft Order re: Approval of the Abandonment of the Silica Fumes Property
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TAB 1

**ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

Applicants

**NOTICE OF MOTION
(Returnable September 13, 2013)
(Re Approval of the Abandonment of the Silica Fumes Property and
Extension of the Stay Period to December 16, 2013)**

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 September 13, 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, approving BSI's abandonment of the Silica Fumes Property (as defined below); and
2. An Order, substantially in the form of the draft order included in the Motion Record at Tab 4, extending the Stay Period (as defined below) until

December 16, 2013 (the "Stay Extension") and granting such further; and other relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Abandonment of the Silica Fumes Property

1. The Timminco Entities formerly carried on the business of producing and selling silicon;
2. Pursuant to sales transactions which closed in June 2012, most of the Timminco Entities' operating assets were sold and the Timminco Entities ceased having any active operations;
3. Limited assets remain in the Timminco Entities' estate, including the real property located at 5355 Chemin De Fer in Bécancour, Québec (the "**Silica Fumes Property**"), as which BSI formerly operated a silica fumes site;
4. BSI has incurred remediation obligations related to the Silica Fumes Property and is required to comply with a Certificate of Authorization issued by the Québec Minister of Sustainable Development, Environment and Parks in 2009 (the "**Ministry**");
5. In March 2013, the Timminco Entities sought and received an order (the "**Silica Fumes Order**") approving the transfer of the Silica Fumes Property to a purchaser which would ultimately likely result in a bankruptcy of the purchaser and subsequent abandonment of the Silica Fumes Property by the trustee in bankruptcy;
6. The Timminco Entities were required to get regulatory approval to carry out the transfer, which approval was sought in November 2012 and which remains pending without any indication that the transfer will be approved soon, if at all;

7. The cost of maintaining insurance, continuing with remediation efforts and taking steps to protect assets located at the Silica Fumes Property would be prohibitive considering the Timminco Entities' finite resources;

8. With no information regarding the status of regulatory approval, the Timminco Entities have determined that abandonment of the Silica Fumes Property in accordance with article 934 and following of the Civil Code of Québec is the only viable resolution for dealing with the Silica Fumes Property;

9. Article 934 of the Civil Code of Québec provides that things abandoned by their owners are "things without an owner" and that an immovable without an owner belongs to the State, in this case, the Québec government;

10. The continuing cost of ownership of the Silica Fumes Property is of no benefit to the Estate and negatively affects the Timminco Entities' creditors;

11. As abandonment of the Silica Fumes Property would have occurred as an ultimate consequence of the Silica Fumes Order, abandonment pursuant to article 934 and following of the Civil Code of Québec will have no significant negative impact on environmental remediation efforts that would not have occurred anyway;

12. The Monitor supports the Timminco Entities' motion for approval of the abandonment of the Silica Fumes Property;

Extension of the Stay Period

13. The Initial Order granted a stay of proceedings up to and including February 2, 2012, which has since been extended out to September 16, 2013;

14. The Timminco Entities continue to work diligently to complete the winding down of their businesses within the CCAA proceedings;

15. An extension of the Stay Period to December 16, 2013 is necessary to give the Timminco Entities sufficient time to substantially effect the winding up of their estates;

16. The Timminco Entities have acted and continue to act in good faith and with due diligence;

17. No creditor will suffer any material prejudice if the Stay Period is extended as requested;

18. The Monitor supports the Timminco Entities' request to extend the Stay Period;

General

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

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

21. 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; and

22. 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 September 5, 2013, and the exhibits attached thereto;
2. The Twenty Second Report of the Monitor, to be filed; and
3. Such further and other materials as counsel may advise and this Court may permit.

September 6, 2013

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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.

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

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(RE SILICA FUMES PROPERTY
ABANDONMENT ET AL)**

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TAB 2

**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

**AFFIDAVIT OF SEAN DUNPHY
(Sworn September 5, 2013)
(Re Abandonment of the Silica Fumes Property
and Stay Extension to December 16, 2013)**

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. ("**Russell Hill**"), 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:

- (a) an Order (the "**Abandonment Order**"), substantially in the form of the draft order included in the Motion Record at Tab 3, authorizing BSI's abandonment of the Silica Fumes Property (as defined below); and

- (b) an Order (the “**Stay Extension Order**”), substantially in the form of the draft order included in the Motion Record at Tab 4, extending the Stay Period (as defined below) until December 16, 2013 (the “**Stay Extension**”).

BACKGROUND

3. 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 a joint venture partnership for resale to customers in the chemical (silicones), aluminum, and electronics/solar industries.

4. 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 dated January 3, 2012 (the “**Initial Order**”) of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (the “**Court**”). FTI Consulting Canada Inc. (the “**Monitor**”) was appointed as the monitor pursuant to the Initial Order. A copy of the Initial Order is attached hereto as **Exhibit “A”** and all other filings in the CCAA proceedings are available on the Monitor’s website at: <http://cfcanada.fticonsulting.com/timminco>.

Sales Transactions and Distributions

5. Pursuant to sales transactions with Grupo FerroAtlantica, S.A. (the “**Ferro Transaction**”) and with QSI Partners Ltd. (together with the Ferro Transaction, the

“Sale Transactions”) which were approved by the Court on May 22, 2012 and June 1, 2012, respectively and which closed on June 14, 2012 and June 13, 2012, respectively, substantially all of BSI’s operating assets were sold. Following the closings of the Sale Transactions, the Timminco Entities ceased having any active operations and only limited assets remain in the Timminco Entities’ estate.

6. The net proceeds of the Sale Transactions totalled approximately \$30 million. In order to stop the continuing accrual of interest on amounts owing to the Timminco Entities’ secured term lender, Investissement Québec (“IQ”), a conditional interim distribution was proposed in which an interim distribution would be made to IQ, subject to an agreement (the “**Reimbursement Agreement**”) that should a creditor of BSI assert a claim ranking in priority to IQ that is finally determined to rank in priority to IQ (a “**Priority Claim**”), IQ would reimburse the Monitor in the amount necessary to satisfy the Priority Claim. The interim distribution and Reimbursement Agreement were approved by order of the Court dated August 28, 2012.

Claims Process and Priority Claim Adjudication

7. On June 15, 2012, the Court granted an Order approving a procedure for the solicitation, determination and resolution of claims against the Timminco Entities and the Timminco Entities’ Directors and Officers (the “**Claims Procedure Order**”).

8. The Claims Bar Date (as defined in the Claims Procedure Order) was July 23, 2012. Total claims filed against Timminco’s Directors and Officers was approximately

\$190,000 and total claims filed against BSI's Directors and Officers was approximately \$500,000. Claims filed against Timminco and BSI totalled \$48.5 million and \$235 million, respectively.

9. In accordance with the terms of the Reimbursement Agreement, two claims filed pursuant to the Claims Procedure Order were ultimately determined to be potential Priority Claims. The Timminco Entities, the Monitor and IQ developed a procedure for the adjudication of these claims, which was approved by the Court by Order dated October 18, 2012. One claimant subsequently informed the Monitor that it would not be pursuing its claim and as such, there remains only one potential Priority Claim to be resolved.

10. Adjudication of whether the remaining potential Priority Claim is indeed a Priority Claim is to be determined by the Superior Court of Québec (Commercial Division). The matter was heard on May 27 and 28, 2013 and parties submitted supplemental written materials in July 2013. Mr. Justice Mongeon's decision remains under reserve.

Appointment of the CRO

11. Shortly prior the resignation of all of their directors and officers, the Timminco Entities sought to appoint the CRO, which appointment was approved by order of the Court dated August 17, 2012.

12. Additional powers were granted to the CRO by order of the Court dated November 5, 2012 so that the CRO could settle claims which the Timminco Entities, with the Monitor's consent, deemed appropriate to settle without incurring the costs of seeking court approval.

13. The initial term of the CRO's engagement was originally six months, which has since been extended on a periodic basis. The CRO's engagement is currently set to expire on October 15, 2013 (subject to further renewal before such date).

Motion to Lift the Stay of Proceedings

14. On July 22, 2013, St. Clair Pennyfeather, the Plaintiff in the action *Pennyfeather v. Timminco Limited, et al.*, Court File No. CV-09-378701-00CP (the "Class Action") brought a motion seeking an order to lift the stay of proceedings granted in favour of Timminco in the Initial Order as against the defendants named in the Class Action, including Timminco, although the Plaintiff did not seek any specific relief against Timminco itself.

15. The motion was heard by the Honourable Mr. Justice Morawetz and is currently under reserve pending the release of the Court of Appeal for Ontario's decision regarding the statutory limitation period applicable to securities class actions for secondary market misrepresentations commenced under Part XXIII.1 of the Ontario Securities Act.

STATUS REPORT AND UPDATE

Toronto Maple Leaf Tickets

16. The Timminco Entities owned Maple Leaf season tickets and a related license. By an assignment and consent agreement (the "**Assignment and Consent Agreement**") dated August 1, 2013 between Freedom International Brokerage ("**Freedom**"), Maple Leaf Sports & Entertainment Ltd. and Timminco, the licence was transferred to Freedom. A copy of the Assignment and Consent Agreement is attached hereto as **Exhibit "B"**. The Timminco Entities expect to receive proceeds of approximately \$19,500 prior to the date of the motion.

Corporate Attributes

17. Previously I had been in discussions with several parties regarding a possible sale of one or the other of the corporate entities to a purchaser who may find value in their attributes; however Parliament's latest budget and a downturn in commodity prices has made the purchase of these assets less attractive and reduced the number of interested parties. I am in the process of recommencing communications with parties who previously expressed an interest to ascertain whether the sale of corporate attributes is a reasonable possibility. It is premature to speculate as to what value if any may be received by the Estate in such a transaction.

Memphis Property

18. Timminco Properties Inc. ("**TPI**"), a wholly-owned subsidiary of Timminco Holdings Inc. (a wholly-owned subsidiary of Timminco), owns an approximately 96 acre site on Fite Road in Millington, Shelby County, Tennessee, near Memphis (the

“Memphis Property”). TPI, formerly known as “Chromasco”, once had a chromium smelting operation on the Memphis Property, which is now a vacant lot.

19. Pursuant to a purchase agreement dated April 22, 2013 (the “**Original Memphis Agreement**”) the purchaser, Voight & Schweitzer LLC (“**Voight**”), agreed to purchase approximately 30 acres of the Memphis Property from TPI (following severance of this parcel from the larger lot) for the purchase price of \$525,000. Pursuant to an amending agreement between the parties effective August 20, 2013 (the “**Amending Agreement**” and together with the Original Memphis Agreement, the “**Amended Memphis Agreement**”) the purchase price was amended to \$325,000 to reflect a portion of additional environmental remediation expenses determined to be necessary by Voight in the course of Phase II environmental studies it had performed as part of its due diligence. A copy of the Amended Memphis Agreement is attached hereto as **Exhibit “C”**.

20. The Memphis Property is subject to an agreement of Right of First Refusal in favour of Shelton and Bruce Harrison (collectively, the “**Beneficiary**”). Among other things, the agreement of Right of First Refusal provides that should an offer to purchase the Memphis Property be made, the Beneficiary has ten days to decide to purchase the property on the terms and conditions set out in such an offer. The agreement of Right of First Refusal also provides that, should a sale of the Memphis Property occur, TPI must pay the Beneficiary 25% of net proceeds from the sale. A copy of the Right of First Refusal is attached hereto as **Exhibit “D”**.

21. In accordance with the agreement of Right of First Refusal, notification of the proposed sale was given to the Beneficiary in April 2013 when the Original Memphis Agreement was entered into. In consideration of the revised purchase price, notification was again given to the Beneficiary on August 23, 2013 which notice period expired on Monday, September 2, 2013. The Beneficiary did not exercise its right under the agreement of Right of First Refusal.

22. The Amended Memphis Agreement provides that Voight has satisfied and/or waived the purchaser's conditions set out in the Original Memphis Agreement and that the transaction will close on or before September 19, 2013; the Timminco Entities expect that the transaction will close within this timeframe. The Timminco Entities anticipate realizing proceeds of up to \$200,000 from the completion of the transaction. It is anticipated that this amount will be transferred to Timminco Limited in payment of intercompany claims at or shortly after closing.

Costs Allocation and Distribution

23. To date, the Timminco Entities' CCAA proceedings have been treated as consolidated proceedings for all intents and purposes. As these proceedings wind down, the Timminco Entities and the Monitor have turned their attention to determining an appropriate methodology for the allocation of costs of the Timminco Entities' CCAA proceedings.

24. The Monitor and the Timminco Entities have discussed a methodology for allocating costs to creditors and have come to agreement on a proposed methodology. The Monitor has engaged in preliminary discussions on allocation with certain key stakeholders in the CCAA proceedings with a view to coming to court in the near future to have a cost allocation methodology approved by the Court.

THE SILICA FUMES PROPERTY

Events Leading up to the Attempt to Transfer the Silica Fumes Property

25. As substantially all of the Timminco Entities' assets had been sold pursuant to Sales Transactions described above, the Timminco Entities subsequently undertook to find a solution to deal with certain remaining redundant assets, including the real property located at 5355 Chemin De Fer in Bécancour, Québec (the "**Silica Fumes Property**").

26. BSI formerly managed the disposal and subsequent extraction of silica fumes at the Silica Fumes Property. 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 (the "**Ministry**"), BSI is required to remediate the disposal site in accordance with the requirements set out in the Certificate of Authorization.

27. The Timminco Entities have no further use for the Silica Fumes Property. It is estimated that remediation costs in accordance with the Certificate of Authorization would materially exceed the value of the land as remediated.

28. Despite extensive efforts by the Timminco Entities and the CRO to market and sell the Silica Fumes Property in these CCAA proceedings, both during the sales process which resulted in the 2012 asset sales referenced above and thereafter, the Timminco Entities were unable to find a purchaser for the Silica Fumes Property.

29. In consideration of the aforementioned factors, in March 2013, the Timminco Entities sought and received an order (the "**Silica Fumes Order**") approving the transfer of the Silica Fumes Property to a purchaser, 2362896 Ontario Inc. ("**236**"), incorporated for the purpose of the transfer.

30. The Timminco Entities planned to transfer the Silica Fumes Property to 236 via a deed of sale and subsequently have 236 make an assignment into bankruptcy, at which point the Silica Fumes Property would be abandoned by the trustee in bankruptcy unless satisfactory arrangements could be made to deal with the land with the Ministry. A copy of the Silica Fumes Order and my affidavit sworn February 22, 2013 in connection with the Silica Fumes Order (the "**February 22 Affidavit**"), without exhibits, are attached hereto as **Exhibits "E" and "F"**, respectively.¹

¹ Paragraphs 21-30 and 37-45 of the February 22 Affidavit relate specifically to the Silica Fumes Property

31. As reported in the February 22 Affidavit, an outstanding issue at the time the Silica Fumes Order was granted was that certain of the Silica Fumes Property fell within designated agricultural land under *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 was required in order to transfer this part of the property to 236 or any other non-resident of Québec within the meaning of the latter Act, even for the limited purpose of abandonment (ultimately to the Crown).

32. At the time of the Silica Fumes Order, the Timminco Entities, with the assistance of counsel, were in the process of attempting to have the Silica Fumes Property excluded from the designated agricultural region so that no authorization would be required from the Commission de protection du territoire agricole du Québec to transfer the Silica Fumes Property to 236, which process had been commenced by the Timminco Entities in November 2012.

33. In April 2013, the Timminco Entities also commenced preparing an application to authorize the transfer by BSI of the Silica Fumes Property to a non-resident of Québec. The Timminco Entities ultimately decided not to file the application on the basis that 236 had no intention of using the Silica Fumes Property for agricultural purposes and determined that as such, the application was unlikely to be viewed with favour by the Commission de protection du territoire agricole du Québec.

Current Status of the Silica Fumes Property

34. As of the date of this affidavit, the Timminco Entities continue to await a decision with respect to exclusion of the Silica Fumes Property from the designated agricultural region, without any indication from the Commission de protection du territoire agricole du Québec that the exclusion will be granted soon, if at all.

35. I was recently informed by an employee of Québec Silicium that a robbery may have occurred at the Silica Fumes Property between July 29 and August 2, 2013. The employee believes that a welding machine, drill and grinder were removed from the property without the Timminco Entities' knowledge or consent. The cost of taking steps to protect assets located at the Silica Fumes Property is prohibitive considering the Timminco Entities' finite resources and the fact that no net value to the Estate can reasonably be anticipated from them. Maintaining insurance over the Silica Fumes Property and continuing with remediation efforts would also be a significant drain on the Timminco Entities' resources. Liability insurance had been extended to August 31, 2013 to provide time for the transfer to be completed - given the approval delays in Quebec, an extension to September 30 was sought and provisionally approved by underwriters.

36. Therefore, the Timminco Entities and their counsel continued to consider alternatives to transfer the Silica Fumes Property from BSI to stop the unnecessary costs expenditure. The Timminco Entities, with the assistance of counsel, have determined that abandonment of the Silica Fumes Property is the only viable solution. Through a

deed of abandonment, a draft of which is attached hereto as **Exhibit "G"**, and subject to the approval of the Court, BSI will abandon all right, title and interest in and to the Silica Fumes Property in accordance with article 934 and following of the Civil Code of Québec, which articles provide that things abandoned by their owners are "things without an owner" and further provide that an immovable without an owner belongs to the State. Since the State in this case is the Québec government (which is a resident of Québec), the acquisition of the Silica Fumes Property by the State as a result of abandonment will not require the authorization of the Commission de protection du territoire agricole du Québec.

ABANDONMENT OF THE SILICA FUMES PROPERTY SHOULD BE AUTHORIZED

37. As CRO, I recommend that this Court approve the abandonment of the Silica Fumes Property for the following reasons:

- (a) The Timminco Entities have no operations and no use for the Silica Fumes Property;
- (b) Despite efforts to market and sell the Silica Fumes Property, no purchaser has come forward;
- (c) The Timminco Entities have finite funds and cannot pay for the remediation costs of this property without damaging creditor interests;
- (d) The continuing cost of ownership of the Silica Fumes Property, including matters such as insurance, is of no benefit to the Estate;

- (e) Under the Silica Fumes Order, the Silica Fumes Property would have been abandoned by the trustee in bankruptcy. As such, the asset transfer will have no significant negative impact on environmental remediation efforts that would not have ultimately occurred anyway;
- (f) The ongoing depletion of the Timminco Entities' remaining funds are to the detriment of their general body of creditors;
- (g) The value of the Silica Fumes Property is considered to be effectively nil and as such, the abandonment will have no negative impact on the Timminco Entities' creditors;
- (h) The Timminco Entities have been in the process of getting approval for the transfer of the Silica Fumes Property for approximately 10 months without any indication that such approval will be granted in the near future, if at all; and
- (i) I am informed by the Monitor that it supports the Timminco Entities' motion for approval of the abandonment of the Silica Fumes Property.

THE STAY EXTENSION REQUEST SHOULD BE APPROVED

38. The Initial Order granted a stay of proceedings up to and including February 2, 2012, which has been extended from time to time. Most recently the Stay Period was extended to September 16, 2013 by Order dated June 19, 2013 (the "Stay Period").

39. The Timminco Entities have been working diligently to complete the winding down of their businesses within the CCAA proceedings. An extension of the Stay Period to December 16, 2013 is necessary to give the Timminco Entities sufficient time to substantially effect the winding up of their estates, including to allow the Timminco

Entities time to address the outstanding issues discussed herein, including to await a ruling in Québec with respect to the Priority Claims discussed above at paragraphs 9 and 10, to arrange for the completion of the Memphis transaction and the transfer of the net proceeds, and to allow the Timminco Entities and the Monitor to deal with the issues of allocating costs of the CCAA proceedings and distribution to creditors.

40. It is my belief that the Timminco Entities have acted and continue to act in good faith and with due diligence. I do not believe that any creditor will suffer any material prejudice if the Stay Period is extended as requested. The Timminco Entities continue to have sufficient cash on hand and with the Monitor to cover their greatly reduced costs.

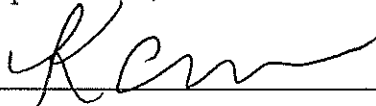
41. The stability provided by the stay of proceedings is critical to the Timminco Entities in order to be able to continue assessing claims for the benefit of their creditors and continue to wind down its business in an orderly manner.

42. I am informed by the Monitor that it supports the Timminco Entities' request to extend the Stay Period.

PURPOSE OF AFFIDAVIT

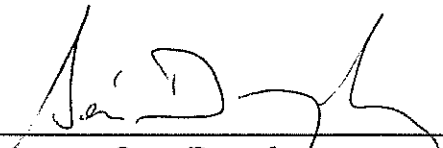
43. This Affidavit is sworn in support of the Timminco Entities' motion for the relief described in paragraph 2 above and for no improper purpose.

SWORN BEFORE ME at the City of
Toronto, Province of Ontario on
September 5, 2013.



Commissioner for Taking Affidavits

K. Esau



Sean Dunphy

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 SEPTEMBER 5, 2013)

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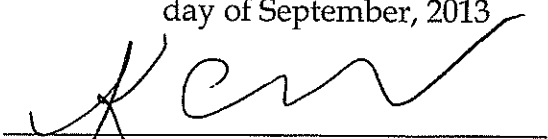
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Lawyers for the Applicants

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



Commissioner for Taking Affidavits

Court File No. 12-CL- 9539-000 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 ~~of~~ ^{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,~~ ^{RT} 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. ^{SR}

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 "Charges") 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 ^{12/1/11} with respect to the comeback motion expected to be heard ~~the week of~~ January ~~8~~, 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.

REGISTERED AT / INSCRIT À TORONTO
BOOK / SOUS NO:
LE / DANS LE REGISTRE NO.:

JAN 3 2012

P. E. PAR:

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)

Court File No. 12-22-9539-0001

ONTARIO
SUPERIOR COURT OF JUSTICE COMMERCIAL
LIST

Proceeding commenced at Toronto

INITIAL ORDER

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

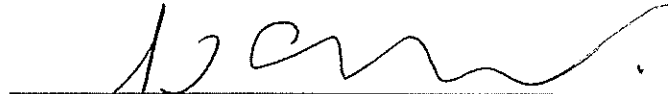
Ashley John Taylor LSUC#: 39932E
Tel: (416) 869-5236

Maria Konyukhova LSUC#: 52880V
Tel: (416) 869-5230

Kathryn Esaw LSUC#: 5826F
Tel: (416) 869-6820
Fax: (416) 861-0445

Lawyers for the Monitor

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



Commissioner for Taking Affidavits

ASSIGNMENT AND CONSENT AGREEMENT ("Assignment Agreement") dated Aug. 1, 2013 among:

TIMMINCO LIMITED (hereinafter referred to as the "Assignor")

- and -

FREEDOM INTERNATIONAL BROKERAGE INC. (hereinafter referred to as the "Assignee")

- and -

MAPLE LEAF SPORTS & ENTERTAINMENT LTD., a corporation amalgamated pursuant to the laws of the Province of Ontario (hereinafter referred to as "MLSE")

WHEREAS:

- A. Assignor and MLSE are parties to a Toronto Maple Leafs Lower Bowl Seat Licence dated June 20, 2013 (the "Licence Agreement") (a copy of which is attached hereto as Schedule "A") relating to the following seats in Air Canada Centre: Section 122, Row 15, Seats 5-6 (the "Seats").
B. Assignor wishes to assign the Licence Agreement to the Assignee.
C. The consent of MLSE is required for any assignment of the Licence Agreement.
D. The parties have agreed to enter into this Assignment Agreement.

NOW THEREFORE in consideration of other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by all parties hereto, the parties agree as follows:

- 1. Defined Terms. Unless otherwise defined herein, all capitalized terms used herein shall have the meaning ascribed to such term in the Licence Agreement.
2. Assignment by Assignor. The Assignor assigns and transfers to the Assignee, effective as of the date set forth above (the "Assignment Date"), all of the Assignor's right, title and interest, both at law and in equity, in and to the Licence Agreement and all rights, benefits and advantages to be derived therefrom, to have and to hold unto the Assignee, his successors and permitted assigns, subject to the performance of the Assignor's obligations in the Licence Agreement to be fully observed and performed by the Assignee on and after the Assignment Date.
3. Assignee's Covenants. The Assignee covenants with the Assignor and MLSE that, from and after the Assignment Date, the Assignee will fully perform all of the obligations of the Assignor under the Licence Agreement.
4. Fee. The Assignor agrees to pay to MLSE a transfer fee in the sum of Five Hundred Dollars (\$500 CDN) plus all applicable taxes. The assignment referred to in Section 2 above will not take effect until receipt of such payment by MLSE.

5. Consent. MLSE hereby consents to the assignment contained in Section 2 of this Assignment Agreement on the basis that this consent does not extend to any further or other assignment or subletting or parting with possession of all or any part of the Licence Agreement and on the basis that the Assignee will continue to fully perform all of the obligations pursuant to the Licence Agreement.


6. Successors and Assigns. This Assignment Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

7. Further Assurances. Each of the parties hereto agrees to do, make and execute all such further documents, agreements, assurances, acts, matters and things and take such further action as may be reasonably required by any other party hereto in order to more effectively carry out the true intent of this Assignment Agreement. The parties hereto acknowledge and agree that, immediately following the execution of this Assignment Agreement, the Assignee will enter into a new Toronto Maple Leafs Lower Bowl Seat Licence Agreement relating to the Seats, which will supersede and replace the Licence Agreement being assigned pursuant hereto.

8. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same document. Signatures by facsimile or other generally accepted electronic means (e.g., portable document format ("PDF")) shall be deemed original signatures.

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


ASSIGNOR:
TIMMINCO LIMITED

Per: 
Name: Sean Dunphy
Title: Chief Restructuring Officer

ASSIGNEE:
FREEDOM INTERNATIONAL BROKERAGE INC.

Per: _____
Name:
Title:

LICENSOR:
MAPLE LEAF SPORTS & ENTERTAINMENT LTD.

Per: 
Name:
Title: Tom Anselmi
Executive Vice President & Chief Operating Officer

5. Consent. MLSE hereby consents to the assignment contained in Section 2 of this Assignment Agreement on the basis that this consent does not extend to any further or other assignment or subletting or parting with possession of all or any part of the Licence Agreement and on the basis that the Assignee will continue to fully perform all of the obligations pursuant to the Licence Agreement.

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7. Further Assurances. Each of the parties hereto agrees to do, make and execute all such further documents, agreements, assurances, acts, matters and things and take such further action as may be reasonably required by any other party hereto in order to more effectively carry out the true intent of this Assignment Agreement. The parties hereto acknowledge and agree that, immediately following the execution of this Assignment Agreement, the Assignee will enter into a new Toronto Maple Leafs Lower Bowl Seat Licence Agreement relating to the Seats, which will supersede and replace the Licence Agreement being assigned pursuant hereto.

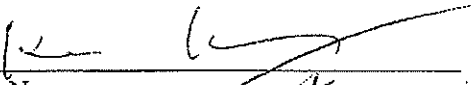
8. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same document. Signatures by facsimile or other generally accepted electronic means (e.g., portable document format ("PDF")) shall be deemed original signatures.

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

**ASSIGNOR:
TIMMINCO LIMITED**

Per: _____
Name:
Title:

**ASSIGNEE:
FREEDOM INTERNATIONAL BROKERAGE INC.**

Per:  _____
Name: **KEVIN KIRBY**
Title: **MANAGING DIRECTOR**

**LICENSOR:
MAPLE LEAF SPORTS & ENTERTAINMENT LTD.**

Per: _____
Name:
Title:

SCHEDULE "A"

51

Account No: 133660
To be completed by Licensor

Seat No.: Section 122, Row 15, Seats 5-6
To be completed by Licensor

Licensee: Timminco Limited
Sun Life Financial Tower
130 King Street West
Suite 1800
Toronto, ON
M5X 1E3

Tel: 647-361-9676 Fax: N/A

Corporation
Please indicate whether Licensee is
an individual or a corporation

TORONTO MAPLE LEAFS LOWER BOWL SEAT LICENCE AGREEMENT

TERMS AND CONDITIONS

FOR VALUE RECEIVED, the undersigned (the "Licensee") executing this Toronto Maple Leafs Lower Bowl Seat Licence Agreement (the "Agreement") hereby agrees with Maple Leaf Sports & Entertainment Ltd. (the "Licensor") that the following terms and conditions shall govern the licence granted by Licensor to Licensee to purchase season tickets for National Hockey League ("NHL") preseason, regular season and playoff home games (collectively, the "Games") played by the Toronto Maple Leafs (the "Team") at Air Canada Centre located at 40 Bay Street, Toronto, Ontario (the "Arena"):

1. In consideration of the rights granted by Licensor to Licensee hereunder, the Licensee agrees to pay Licensor a licence fee of \$15,000.00 per seat, together with applicable taxes, including (without limitation) harmonized sales tax (the "Licence Fee"). All rights of the Licensee granted pursuant to this Agreement shall be conditional upon Licensee paying in full the Licence Fee.
2. The seats (the "Seats") subject to this Agreement shall be in the location indicated above.
3. Licensee has the right and obligation to purchase tickets for the Seats for all Games played by the Team in the Arena during the Term at the price and on the other terms and conditions specified by Licensor from time to time.
4. Licensee confirms that it is the real party of interest and that it is not acting for or on behalf of any undisclosed principals, person or third party and Licensor shall be entitled to deal solely and exclusively with the Licensee as to all matters arising out of this Agreement as set forth above and as recorded on the books of Licensor without further investigation or inquiry on its part.
5. The term of this Agreement shall commence on June 20, 2013 (the "Effective Date") until terminated in accordance with Section 9 of this Agreement (the "Term").

6. Provided that Licensee is not in default under this Agreement and subject to the Licensee's payment in full of the License Fee as contemplated in subsection 1 hereof and receipt of Licensor's prior written consent, Licensee may transfer this Agreement (in its entirety) by gift, bequest, assignment, sale or otherwise (a "Transfer") in accordance with the provisions hereof. To effect any Transfer proposed by Licensee, the Licensee, Licensor and the proposed transferee shall execute Licensor's standard form assignment and consent agreement and Licensee shall pay to Licensor the then applicable transfer fee in effect, together with the remainder of the License Fee then outstanding as at the date of the Transfer. No partial Transfers shall be permitted without the express written consent of the Licensor. Upon any Transfer effected in accordance with the procedures hereof, the Licensee will cease to have any rights under this Agreement. This Agreement may not be transferred more than once each season except in the case of the death of a Licensee. No Transfer shall be permitted without Licensor's prior consent, which consent shall not be unreasonably withheld. The parties agree that it shall not be considered unreasonable for Licensor to withhold its consent to a proposed Transfer of this Agreement or part of this Agreement that would result in the Licensee and/or the proposed transferee possessing rights in only one (1) of the Seats referred to herein. Any Transfer that does not comply with this Agreement shall be null and void and Licensee shall remain liable for all obligations hereunder.
7. Licensor may limit the number of seats licensed, directly or indirectly, to any one individual or entity. There will only be one licensee for a given seat at any given time.
8. So long as Licensee observes the terms and conditions of use of the Seats as set forth in this Agreement (as the same may be established, amended, modified, supplemented or restated from time to time) Licensee, upon purchase of its designated Team season tickets, shall have the exclusive right to use the Seats during the Games only. The rights granted to Licensee under this Agreement are rights of personal privilege and do not, under any circumstances, confer upon Licensee any interest or estate in real property, any leasehold interest in the Seats or the Arena or any interest in Licensor or the Team. Licensee's relationship with Licensor is that of licensee and licensor. Licensee acknowledges that this Agreement is not, and should not be viewed or acquired as an investment and that Licensee is entering this Agreement for its own benefit and not with the view or intent to re-sell, transfer or assign this Agreement (or any tickets for which a right of purchase is granted to Licensee hereunder) to others for profit or potential profit. Licensee acknowledges that Licensee does not expect to derive any economic profits as a licensee under this Agreement whether pursuant to any Transfer by Licensee or otherwise.
9. Licensor may, at its option, upon notice to Licensee, terminate this Agreement, without prejudice to any other rights or remedies it may have at law or in equity, on the happening of any one of the following events: (i) Licensee does not purchase Team season tickets related to the Seats for the Games by the specified deadline each year as determined by Licensor; (ii) Licensee fails to pay when due any amounts required to be paid hereunder; (iii) Licensee is in breach of any provision of this Agreement; (iv) Licensee becomes insolvent, bankrupt or is otherwise unable to pay its debts when due; (v) a receiver, trustee or officer of similar authority is appointed for all or part of Licensee's affairs in relation to Licensee's insolvency; (vi) Licensee is wound up; or (vii) Licensee fails to comply with or is in breach of any of the terms and conditions printed on the Game admission tickets issued to Licensee for the Seats.

Upon any such termination by Licensor, Licensee will forfeit any monies paid by Licensee to Licensor prior to the date of termination, together with all rights to purchase Team season tickets for the current and any future seasons. Licensee acknowledges and agrees that upon termination in accordance with the provisions hereof, Licensor shall be free to enter into a new licence agreement relating to the Seats with any other person or entity without further notice or obligation to Licensee.

The foregoing remedies of Licensor shall not exclude any other right or remedy set forth herein or which are otherwise available to Licensor at law or in equity. Licensee shall be responsible for all legal fees and costs incurred by Licensor in the enforcement of its rights under this Agreement. No waiver by Licensor of any default or breach by Licensee of its obligations hereunder shall be construed to be a waiver or release of any other or subsequent default or breach by Licensee hereunder, and no failure or delay by Licensor in the exercise of any remedy provided for herein shall be construed to constitute a forfeiture or waiver thereof or of any other right or remedy available to Licensor.

10. In exercising the rights provided in this Agreement (including the use of the Seats during Games), Licensee shall at all times comply with and abide by all applicable governmental laws, ordinances, orders, directions, rules and regulations (including any Arena rules and regulations), together with the terms and conditions set forth on any Game admission ticket, in each case as the same may be established, enacted, modified, amended, supplemented or restated from time to time.
11. Licensee, on its own behalf and on behalf of Licensee's invitees, assumes all risk of personal injury to, or for, any damage to or any loss of property of, Licensee or Licensee's invitees, arising out of, during or related to their attendance at any and all events held in the Arena including, but not limited to, any events occurring on any Arena grounds.
12. All notices, demands and other communications between the parties under this Agreement shall be in writing and deemed given if either faxed, sent by registered mail (postage prepaid) or delivered. Any notice to Licensor shall be addressed to it at its main business office and any notice to Licensee shall be addressed to Licensee at the address set forth on page 1 hereof.
13. As of the Effective Date of this Agreement, all of the terms and provisions hereof shall be binding upon and enure to the benefit of the parties hereto, and their respective permitted heirs, executors, legal and personal representatives, successors and assigns. This Agreement may be assigned, transferred or pledged by Licensor at its sole discretion but may not be assigned, transferred or pledged by Licensee except in accordance with Section 6 hereof. This Agreement shall not be binding and enforceable until Licensor has received payment in full of the Licence Fee referred to in Section 1 hereof. A fully signed copy of this Agreement will be mailed to Licensee.


- 14. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter contained herein and supersedes all prior agreements and undertakings, whether oral or written, between the parties hereto with respect to such subject matter. There are no representations, warranties or other agreements (whether oral, implied or written) between the parties with respect to the subject matter of this Agreement, except as specifically and expressly set out or incorporated by reference herein.
- 15. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same document. Signatures by facsimile or other generally accepted electronic means (e.g., portable document format ("PDF")) shall be deemed original signatures.

IN WITNESS WHEREOF, Licensor and Licensee have duly executed this Agreement with effect as of the Effective Date.

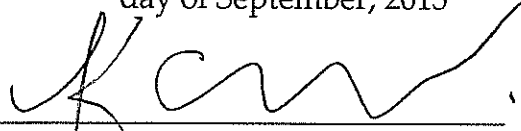
Licensor: Maple Leaf Sports & Entertainment Ltd.
 Suite 500, 50 Bay Street
 Toronto, ON M5J 2L2

Per: 
 Name: _____
 Title: **Tom Anselmi**
 Executive Vice President & Chief Operating Officer

Licensee: Timminco Limited

Per: 
 Name: Sean Dunphy
 Title: Chief Restructuring Officer

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



Commissioner for Taking Affidavits

PURCHASE AGREEMENT

This Purchase Agreement (this "Agreement") is made to be effective the 22nd day of April, 2013 (the "Effective Date"), by and between Timminco Properties Inc., a Delaware corporation with offices at c/o Stikeman Elliott LLP, Attention: A. Taylor, Suite 5300, Commerce Court West, Toronto, Ontario, Canada M5L1B9 ("Seller") and Voigt & Schweitzer LLC, a Delaware limited liability company, with offices at 1000 Buckeye Park Road, Columbus, Ohio 43207 ("Buyer").

WITNESSETH:

In consideration of the mutual covenants and agreements set forth hereinafter, Buyer and Seller agree as follows:

1. **SALE AND PURCHASE:** Seller agrees to sell and convey, and Buyer agrees to purchase and pay for, on the terms and conditions set forth hereinafter, the following described property:

Approximately 30 acres (accurate acreage to be determined by the survey described in Section 5) in Millington, Shelby County, Tennessee, the legal description of which will be added upon preparation of the survey and automatically incorporated as Exhibit A and depiction is shown on Exhibit A-1, together with all structures, and other improvements thereon, and all easements, rights and other appurtenances pertaining thereto and all personal property related thereto (collectively, the "Premises").

2. **PURCHASE PRICE:**

(a) The purchase price to be paid by Buyer to Seller for the Premises shall be \$525,000.00 (the "Purchase Price"). The Purchase Price shall be paid in cash or its equivalent at the Closing (as hereinafter defined) to Seller unless such writing by Seller specifies another payee.

(b) Within two (2) business days following the Effective Date, Buyer shall deposit with Broker or the Title Company (as such terms are hereinafter defined) an earnest money deposit of \$20,000.00 (the "Deposit"), which shall be applicable to the Purchase Price at Closing and shall be refundable to Buyer following any permitted termination of this Agreement by Buyer during the Due Diligence Period

(c) Following the expiration of the Due Diligence Period without Buyer's termination of the Agreement in accordance with the terms and conditions hereof, the Deposit shall be nonrefundable to Buyer (absent Seller's default hereunder), and if Buyer thereafter should fail to close the transaction contemplated by this Agreement in accordance with the terms and conditions hereof, then the Deposit promptly shall be disbursed by the Broker or Title Company, as applicable, to Seller without further action by Seller or Buyer. Seller and Buyer acknowledge that the payment of the Deposit to Seller in the event of Buyer's failure to close following the expiration of the Due Diligence Period without Buyer's termination of this Agreement is not intended as a forfeiture or penalty but is intended to constitute liquidated

damages to Seller due to the difficulty and inconvenience of ascertaining and measuring actual damages of Buyer's default and the uncertainty thereof. In such event, following the payment of the Deposit to Seller, this Agreement shall terminate, and neither Seller nor Buyer shall have any obligations to the other party hereunder except those, if any, that expressly survive termination of this Agreement.

3. **POSSESSION**: Seller shall deliver possession of the Premises to Buyer at the Closing.

4. **BUYER'S CONTINGENCIES**: All obligations of Buyer hereunder are contingent upon the following matters (hereinafter collectively called "**Buyer Contingencies**"):

(a) Buyer's confirming to its sole satisfaction that the current zoning classification and related regulations, the applicable building ordinances, and all other governmental regulations affecting the use and development of the Premises will permit the Premises to be used and developed in the manner ultimately intended by Buyer;

(b) Buyer's confirming to its sole satisfaction, after obtaining, at Buyer's expense, such examinations, inspections and tests, including, without limitation, environmental and geological examinations, inspections and tests (including, without limitation, soils tests and reviews to determine the presence of hazardous materials or substances and the condition of existing soil conditions), as may be necessary or desirable to confirm that the physical condition of the Premises is acceptable to Buyer;

(c) Buyer confirming, to its sole satisfaction, that the condition of and title to the Premises, as disclosed by the survey and title insurance commitment described in Sections 5 and 6 hereof, will not interfere with Buyer's intended use of the Premises;

(d) Buyer's confirming to its sole satisfaction that Buyer has or can obtain any and all permits related to Buyer's ultimate intended use and/or development of the Premises;

(e) Buyer obtaining a survey of the Premises, if desired, at Buyer's sole expense;

(f) Buyer's confirming to its sole satisfaction that the Premises are not located within a flood plain, or if part or all of the Premises are located within a flood plain, the Premises have drainage conditions or other remedial conditions acceptable to Buyer for the intended use and development of the Premises;

(g) Buyer's obtaining any and all easements benefiting the Premises, or the cancellation of any and all easements encumbering the Premises, which may be necessary or desirable for Buyer's intended use and development of the Premises;

(h) Buyer's obtaining of any and all curb cuts or other governmental approvals necessary to provide the requisite vehicular and pedestrian ingress and egress to and from the Premises, which may be necessary or desirable for Buyer's intended use and development of the Premises;

(i) Buyer's obtaining a financing commitment upon terms and conditions acceptable to Buyer in Buyer's sole and absolute discretion;

(j) Buyer obtaining approval of this transaction from Buyer's Board of Directors;

(k) Buyer receiving tax incentives from the state and/or local authority for the intended use and/or development of the Premises, including the Payment-in-Lieu-of-Tax (PILOT) program through the Memphis and Shelby County Office of Economic Development, and/or any other incentives from the State of Tennessee; and

(l) Buyer's determining that the Premises are otherwise acceptable to Buyer, in Buyer's sole and absolute discretion.

Except as otherwise set forth herein, Buyer shall have unlimited right to conduct any inspection, examination and test that Buyer may desire to make in order to satisfy Buyer's Contingencies. Buyer agrees, however, that it will indemnify and hold harmless Seller from and against any and all liability and causes of damage to the Premises occurring solely as a result of the conducting of any such inspections, examinations and tests by Buyer (but not any liability arising from the mere discovery or disclosure of existing conditions of the Premises). The foregoing indemnity obligations will survive any termination of this Agreement. Seller agrees that it will make use commercially reasonable efforts, at no out-of-pocket expense to Seller, to facilitate Buyer's access to the Premises for the purpose of conducting inspections, examinations and tests. Notwithstanding the foregoing and except as set forth in Section 10 hereof, Buyer shall not conduct any intrusive investigations without Seller's written consent, not to be unreasonably withheld, conditioned or delayed. Buyer will not disclose the results of reports to third parties except as may be required by applicable law, and then only after giving Seller written notice of the same and affording Seller a reasonable opportunity to review and comment on the same.

Buyer shall complete all of the activities described in paragraphs (a) through (l) above within one hundred twenty (120) days of the Effective Date (the "Due Diligence Period"). On or before the end of the Due Diligence Period, Buyer shall notify Seller in writing that Buyer has satisfied and/or waives all of the Buyer's Contingencies, in which event this Agreement shall continue in full force and effect subject to the other terms and conditions of this Agreement. If Buyer has been unable to satisfy or is not willing to waive some of Buyer's Contingencies, this Agreement shall automatically be terminated as of the end of the Due Diligence Period, and be of no further force or effect, and all parties shall be released from further liability or responsibility hereunder, except any obligations hereunder that expressly survive termination. If Buyer fails to give such notice to Seller, it shall be deemed that Buyer has given written notice that Buyer has been unable to satisfy or is not willing to waive all of Buyer's Contingencies. If, however, Buyer gives Seller written notice that Buyer has satisfied and/or waives all of the Buyer's Contingencies, then the Deposit shall become nonrefundable except as otherwise set forth in Section 2(c) above, and Buyer shall not have any right to terminate the Agreement unless a material adverse change in the condition of the Premises occurs following the expiration of the Due Diligence Period, including, without limitation, any additional matter of record arising after the expiration of the Due Diligence Period pursuant to Section 6, below.

Buyer expressly agrees that it is purchasing the Property "AS-IS, WHERE-IS, WITH ALL FAULTS." At Closing, and except as otherwise set forth herein, Buyer shall have relied solely upon Buyer's judgment regarding the Property without reliance upon any representations or warranties of Seller except as may be expressly set forth herein or in the deed or bill of sale to be delivered by Seller at Closing, and Buyer (i) accepts the Property as it shall be delivered at Closing in its then-present condition, subject, however, to Buyer's right expressly set forth herein to object to any material adverse change in the condition or title thereof after the expiration of the Due Diligence Period, (ii) has had, or will have during the Due Diligence Period, full opportunity to investigate the condition of the Property, and (iii) hereby affirms that the Property is, and at Closing will be, of the condition, function, character, capacity, durability and suitability as desired by Buyer for its purposes. EXCEPT AS PROVIDED HEREIN, SELLER HEREBY DISCLAIMS, AND BUYER WAIVES THE BENEFIT OF, ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE. BUYER HEREBY AFFIRMS THAT SELLER HAS NOT MADE, AND PURCHASER MAY NOT RELY ON, ANY REPRESENTATIONS OR WARRANTIES WITH REGARD TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE CONDITION, FUNCTION, CHARACTER, CAPACITY, DURABILITY, OR SUITABILITY OF THE PROPERTY, OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, OR OTHERWISE, EXPRESS OR IMPLIED. The terms and conditions of this paragraph will expressly survive the Closing and will not merge with the deed.

5. SURVEY. Buyer may, at Buyer's sole cost and expense, obtain a survey, drawing and legal description of the Premises prepared by a surveyor registered and licensed in the State of Tennessee.

6. EVIDENCE OF TITLE: Seller shall provide a commitment for owner's title insurance (the "Title Commitment") during the Due Diligence Period issued by a title company mutually agreeable to both Buyer and Seller (the "Title Company") and showing that Seller has good and sufficient marketable, merchantable, indefeasible and insurable fee simple title to the Premises, free and clear of all liens and encumbrances except: (a) those created or assumed by Buyer, provided, however, that Buyer shall have no right to incur any lien against or otherwise encumber the Premises prior to Closing; (b) those specifically set forth in this Agreement; (c) zoning and building laws, ordinances and regulations; (d) legal streets and highways; (e) easements, conditions and restrictions of record, if any; and (f) real estate taxes that are a lien upon the Premises as of the Closing but are not then due and payable (hereinafter collectively called the "Permitted Encumbrances").

Seller shall request that the Title Company cause the Title Commitment to provide that any policy of title insurance issued to Buyer thereunder shall state affirmatively that all parcels of land, if the Premises are comprised of more than one tax parcel, are contiguous, without gaps or gores; that on the date of Closing, the Premises shall have direct access to physically open a public dedicated highway that abuts the Premises, and any other coverage or endorsements which Buyer may reasonably require. Seller shall use commercially reasonable efforts, at no out-of-pocket expense, to cause the Title Commitment to fully and completely disclose all easements, negative or affirmative, rights-of-way, ingress or egress and any other

appurtenances to the Premises and to provide insurance coverage in respect of all such appurtenant rights. The Title Commitment shall include the results of a special tax search and examination for any financing statements filed of record in the Register's Office of Shelby County, Tennessee which affect the Premises.

In the event there are matters of record which Buyer finds objectionable, Buyer shall provide written notice of such objection to Seller during the Due Diligence Period. Not earlier than ten (10) nor later than five (5) days prior to the Closing, Buyer will obtain an endorsement to the Title Commitment (the "Date Down") and deliver a copy thereof to Seller. Upon Seller's receipt of a title objection letter during the Due Diligence Period or in the event the Date Down of the Title Commitment prior to Closing shows any exception to title not previously set forth in the Title Commitment and regarding which Buyer delivers to Seller a title objection letter no later than five (5) business days following Buyer's receipt of the Date Down, Seller shall give Buyer written notice within five (5) business days after receipt of any such title objection regarding Seller's election, if at all, to take any action with respect to any such objections, but Seller shall have no obligation to take any such action. If Seller does not give Buyer written notice within five (5) business days after receipt of any such title objection, it shall be deemed that Seller has given written notice that Seller is unwilling to take any such action. If Seller is unable or unwilling to remedy, remove or obtain title insurance against any such exception, Buyer shall have the option of either terminating this Agreement by written notice to Seller within five (5) business days thereafter, in which event Buyer shall be released from further liability and responsibility hereunder, or taking title to the Premises subject to said title exception(s). If Buyer does not give written notice of termination to Seller within such five (5) business days, it shall be deemed that Buyer has elected to take title to the Premises subject to said title exception(s), which shall be Permitted Encumbrances for all purposes hereunder.

Seller shall pay the customary cost of the Title Commitment (including any requisite commitment fees, search fees and attorney's certification fees), and Buyer shall pay for the premiums and any and all other costs of an Owner's Policy of Title Insurance in the amount of the Purchase Price to be issued to Buyer pursuant to the Title Commitment. Buyer also shall pay the cost of any additional endorsements to such Owner's Policy and the cost of any mortgagee's policy which Buyer's lender may require. In the event Buyer fails to deliver to Seller a title objection letter during the Due Diligence Period, Buyer shall be deemed to have waived its right to do so, provided, however, Buyer retains its rights provided in this Section for additional matters of record which arise after the expiration of the Due Diligence Period (which are not caused by or consented to by Buyer).

7. **DEED:** At the Closing, Seller shall convey to Buyer good, merchantable, marketable and indefeasible title in fee simple to the Premises by transferable and recordable special warranty deed, free and clear of all liens and encumbrances arising by, through or under Seller except the Permitted Encumbrances. Prior to the Closing, Seller shall obtain all necessary approvals for the legal description of the Premises set forth in said deed. In accordance with Tennessee Code Annotated Section 67-4-409(a)(6), Buyer shall pay all real property transfer, conveyance or recording fees charged in connection with the transaction contemplated by this Agreement.

8. **OTHER CLOSING DOCUMENTS:** In addition to the above-described deed, Seller shall execute (where necessary) and deliver to Buyer at the Closing the following documents and instruments in a form reasonably satisfactory to counsel for Buyer:

(a) A bill of sale, with special warranty of title against all persons claiming by, through or under Seller, but without any other representations or warranties, for the conveyance and transfer of the personal property, if any, to Buyer in its as-is, where-is, with all faults condition;

(b) Copies of all books and records in Seller's possession or control which relate to the operation and maintenance of the Premises;

(c) An affidavit from Seller reaffirming that as of the Closing, all representations and warranties made by Seller to Buyer in this Agreement in Section 14 hereof continue to be true and correct in all material respects;

(d) An IRS Form 1099-B report of proceeds from a real estate transaction, a nonforeign person certificate [Section 1445, IRC, FIRPTA], if required, and any other document which is customarily executed and delivered by a seller at a real estate closing in Shelby County, Tennessee, which may be reasonably requested by Buyer, the title company or Buyer's counsel;

(e) An affidavit from Seller in such form and content as may be reasonably necessary to enable the title company to delete the standard exceptions listed in the Title Commitment from the owner's and, if applicable, mortgagee's title policy; and

(f) Such evidence of partnership authority as Buyer or the title insurance company issuing the Title Commitment reasonably may deem necessary to evidence the authority of Seller to enter into this Agreement and to consummate the transactions contemplated hereby.

9. **PRORATIONS AND PAYMENTS:** As of the date of the Closing, Seller shall pay or credit on the Purchase Price all delinquent taxes attributable to the Premises together with penalties and interest thereon, and all special assessments, including agricultural recoupments that are a lien thereon on the date of the Closing. Taxes and other assessments not yet due and payable shall be prorated through the date of Closing. The proration of any undetermined taxes shall be based on a 365-day year and on the most recently available information on tax rate and valuation.

10. **ENVIRONMENTAL SITE ASSESSMENT:**

(a) During the Due Diligence Period, Buyer, at Buyer's expense, may cause to be conducted an Environmental Audit (as defined in subsection (b) below) of the Premises, such Environmental Audit shall be of such scope, duration and detail as Buyer, in its sole discretion, shall determine. Buyer will not disclose the results of the Environmental Audit to third parties except as may be required by applicable law, and then only after giving Seller written notice of the same and affording Seller a reasonable opportunity to review and comment on the same.

(b) "Environmental Audit" includes without limitation, Phase I Site Assessment and Phase II Site Assessment, investigations into Seller's and previous owners' environmental practices, past and present, tests of soils (including soil borings, surface waters, ground waters, air and particulate matter on the Premises and on real property near the Premises, interviews with past and present employees of owners, and residents or property owners of real property near the Premises, and reviews of all documents related to Seller's and the previous owner's environmental practices, whether in the possession of Seller, governmental bodies, or third parties; and

(c) Buyer may, at its sole discretion, terminate this Agreement at any time prior to the end of the Due Diligence Period if Buyer determines, based upon any portion of the Environmental Audit, or information obtained from other sources concerning environmental or geotechnical conditions, that the environmental or geotechnical conditions of the Premises are unacceptable to Buyer in its sole discretion, such termination shall be final and binding upon all parties to this Agreement and terminate any rights and obligations created by this Agreement except those obligations hereunder that expressly survive termination, including, without limitation, Buyer's indemnity obligations under Section 4 hereof.

11. Reserved.

12. DAMAGE OR DESTRUCTION OF THE PREMISES: Risk of loss to the Premises from fire or other casualty shall be borne by Seller until the Closing.

13. EMINENT DOMAIN: If prior to the Closing any part of the Premises is taken or threatened to be taken by any governmental authority under the power of eminent domain, Seller shall promptly send written notice thereof to Buyer and Buyer shall have the option of terminating this Agreement by giving written notice of that termination to Seller prior to the Closing. If Buyer elects to proceed with this transaction, the Purchase Price shall be reduced by the total of any awards or other proceeds received by Seller at or prior to the Closing with respect to any such taking, and at the Closing Seller shall assign to Buyer all rights of Seller in and to any awards or other proceeds payable thereafter by reason of any taking relating to the Premises. Otherwise, the risk of any condemnation or taking of any part of the Premises under the power of eminent domain shall be on Seller until the Closing.

14. SELLER'S WARRANTIES AND REPRESENTATIONS: Seller covenants and agrees that the warranties and representations made in this Agreement shall remain true and correct in all material respects as of the Closing, that Seller will reaffirm the same at the time of the Closing by virtue of the affidavit required by Section 8(c) hereof and they shall survive the Closing for a period of ninety (90) days. Notwithstanding anything herein to the contrary, Seller's representations and warranties set forth in this Agreement shall be limited to Seller's knowledge. As used herein, Seller's "knowledge" shall mean the actual knowledge of Sean Dunphy, court-appointed restructuring officer of the sole shareholder of the sole shareholder of Seller, without inquiry or investigation.

(a) Neither Seller nor any agent, employee or representative of Seller, has received any notice relating to the Premises, either orally or in writing, from any municipal, county, state or any other governmental agency or body, of any zoning, fire, health,

environmental violation, or violation of any laws, ordinances, statutes or regulations relating to pollution or environmental standards except as may be provided to Buyer during the Due Diligence Period;

(b) The execution, delivery and performance of this Agreement, and the consummation of the transaction contemplated hereby, will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance against the Premises as a result of Seller's organizational documents or any permit, license, order or decree or under any agreement or other instrument to which Seller is a party or by which Seller or the Premises, is or might be bound;

(c) All taxes payable with respect to the operation, ownership or control of the Premises and which relate to any period prior to the date of Closing, shall have been paid by Seller, and Seller shall be responsible for the timely filing of all returns or other documents required by any taxing authority claiming jurisdiction with respect to any such taxes;

(d) Seller shall not, without the prior written consent of Buyer, alter the natural topography or vegetation currently existing on, in or about the Premises, including, but not limited to the cutting, burning or removal of any trees, removing any minerals or topsoil, dumping of any soil, fill or other matter, grading, excavating, or altering the natural flow of any water courses located on the Premises;

(e) Seller is wholly owned by a Delaware corporation that is wholly owned by a Canadian corporation and, accordingly, may constitute a "Foreign Person" as that term is defined in the Foreign Investment in Real Property Tax Act, 26 U.S.C. §1445; Seller acknowledges that Seller's net proceeds of the Purchase Price may be subject to certain withholding requirements at Closing under applicable law;

(f) All labor and work performed and materials and fuel delivered or furnished to the Premises for the improvement thereof requested by Seller within the ninety (90) day period immediately preceding the Effective Date (or date of Closing, as the case may be) have been or will be paid for, and no unpaid improvements which might ripen into and form the basis of a mechanics' lien have been or will be made to the Premises within said ninety (90) day period;

(g) Seller has not been notified within the two (2) year period immediately preceding the Effective Date of this Agreement (or date of Closing, as the case may be) of any condemnation proceedings against the Premises or of any contemplated improvements to the Premises by public or governmental authority, the cost of which is to be assessed as special taxes against the Premises in the future, provided, however, that a portion of Seller's Premises, which may or may not be adjacent to the Premises, was conveyed to Shelby County, Tennessee in 2012 for the Fite Road Improvement Project - SR-3 (US-51) to Woodstock Road - State Project No. 79946-2455-54;

(h) There are no rights of possession, use or otherwise outstanding in third persons by reason of unrecorded leases, land contracts, sales contracts, options or other comparable instruments;

(i) Seller has good, marketable and indefeasible fee simple title to the Premises and has no knowledge of any off-record or undisclosed legal or equitable interest in any part of the Premises owned by any other person other than the ROFR Holder as more particularly described in Section 26, below;

(j) No actions or proceedings involving the individuals comprising Seller which will or might affect title to the Premises or any part thereof, or cause a lien or encumbrance to attach thereto, or otherwise affect this Agreement or Seller's ability to perform the same in any way, are pending in any court or administrative agency, and to Seller's knowledge no such actions or proceedings are threatened;

(k) Seller is duly organized, validly existing and in good standing under the laws of the state of its organization. Seller has full authority to enter into this Agreement and consummate the transactions contemplated hereby and the persons executing this Agreement have the requisite authority to bind the Seller;

(l) There are no obligations in connection with the Premises or any so-called "recapture agreement" involving refund for sewer extension, oversizing utility lines, lighting or like expense or charge for work or services done upon or relating to the Premises which will bind Buyer or the Premises from and after the Closing and in no event shall Buyer be required to pay to Seller any monies in order to connect to or tap into any water or sewer system serving the Premises and Seller shall grant any and all consents, without cost to Buyer, for any such connection or tap; and

(m) Seller (i) is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, group, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Seller shall provide to Buyer, upon request, identifying information and other information reasonably requested by Buyer in its efforts to comply with such laws, orders, rules or regulations.

15. **BUYER'S WARRANTIES AND REPRESENTATIONS.** In order to induce Seller to enter into this Agreement and to complete the Closing, and in addition to other representations and warranties of Buyer stated herein, Buyer represents and warrants to and with Seller as follows:

(a) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with all legal power and authority to undertake, observe and perform all of Buyer's agreements and obligations hereunder;

(b) Buyer's entry into this Agreement and the observance and performance of each of Buyer's agreements and obligations hereunder have been duly authorized by all necessary action of Buyer; and

(c) This Agreement constitutes the valid and binding obligation of Buyer, enforceable in accordance with its terms.

16. Reserved.

17. **CLOSING:** This transaction shall be closed (the "Closing") within thirty (30) days following expiration of the Due Diligence Period. The Closing shall take place at such time during regular business hours and at such place, or by such method, as may be reasonably acceptable to Buyer and Seller.

18. **COMMISSION:** Buyer hereby warrants and represents to Seller that no broker or agent other than Edward Saig of NAI Saig Company ("Broker"), whose commission shall be eight percent (8%) of the Purchase Price and shall be paid by Buyer, is or will be owed any fee or commission in connection with this transaction as a result of any act or omission of Buyer. Seller hereby warrants and represents to Buyer that no broker or agent is or will be owed any fee or commission in connection with this transaction as a result of any act or omission of Seller. Buyer and Seller further agree to indemnify and hold each other harmless from and against any and all liability, causes of action, claims, demands, costs and expenses (including reasonable attorneys' fees) arising from or accruing in connection with any fee or commission sought, claimed or recovered by any broker or agent, as a result of the act or omission of the indemnifying party.

19. **NOTICES:** Any notice required or intended to be given to Buyer under this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or if deposited in the United States mail, marked certified or registered, return receipt requested, with postage prepaid, when the return receipt is signed or refused, and addressed to Buyer as follows: Voigt & Schweitzer LLC, 1000 Buckeye Park Road, Columbus, Ohio 43207, Attention: Brian Miller, or to such other address as Buyer may designate from time to time in a written notice to Seller, with a copy to Daniel J. Minor, Esq., Vorys, Sater, Seymour and Pease LLP, 52 East Gay Street, Columbus, Ohio 43215.

Any notice required or intended to be given to Seller under this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or if deposited in the United States mail, marked certified or registered, return receipt requested, with postage prepaid, when the return receipt is signed or refused, and addressed to Seller, Timminco Properties Inc. c/o Stikeman Elliott LLP, Attention: A. Taylor, Suite 5300, Commerce Court West, Toronto, Ontario, Canada M5L1B9, with a copy to Bass, Berry & Sims PLC, Attention: B. Taylor Gray, 100 Peabody Place, Suite 900, Memphis, Tennessee 38103-3672.

20. **ASSIGNMENT:** Buyer shall have the right to assign this Agreement to an entity affiliated with or controlled by Buyer. Except for the foregoing right of Buyer to assign this Agreement, neither Buyer nor Seller may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. No such assignment, with or without such consent, shall relieve the assignor from its continuing obligations and liabilities hereunder.

21. **ENTIRE AGREEMENT; AUTHORITY:** This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous discussions, representations or agreements relating to the subject matter. No amendments, modifications or additions to this Agreement shall be made or be binding on any party unless made in writing and signed by each party. Seller and Buyer represent and warrant they have authority to execute this Agreement and complete the transactions described in this Agreement.

22. **GOVERNING LAW, SEPARABILITY OF PROVISIONS:** This Agreement shall be construed in accordance with the laws of the State of Tennessee. If any part of this Agreement is held to be invalid or unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect.

23. **HEADINGS AND PRONOUNS:** The headings to the sections hereof have been inserted for convenience of reference only and shall in no way modify or restrict any provision hereof or be used to construe any of such provisions. Any pronoun used herein shall include all other numbers and genders, as the context or the number and gender or its antecedent may require.

24. **NO MERGER:** Only those warranties, representations, obligations, covenants or agreements contained herein, if any, that expressly provide for their survival for any period following the Closing shall survive the Closing and shall not be merged with any instruments delivered by Seller to Buyer at the Closing.

25. **PERSONS BOUND:** This Agreement shall inure to the benefit of and bind the parties hereto and their respective heirs, personal representatives, successors and assigns.

26. **NONBINDING PENDING RIGHT OF FIRST REFUSAL.** Seller hereby discloses and Buyer hereby acknowledges that the Premises is subject to a right of first refusal in favor of Seller's predecessor in title, Shelton and Bruce Harrison (collectively, the "ROFR Holder"), that is exercisable by the ROFR Holder within ten (10) days following written notice from Seller of a written, bona fide offer that Seller wishes to accept. Following the full execution and delivery of this Agreement, Seller will give the ROFR Holder written notice of this Agreement, along with a copy hereof, and notwithstanding anything herein to the contrary, this Agreement shall not be binding upon Seller unless and until the ROFR Holder declines to exercise its rights in connection herewith within ten (10) days following such notice from Seller or the expiration of such period without action by the ROFR Holder. During such period, this Agreement shall constitute a binding offer of Buyer, which may not be withdrawn.

27. **CONFIDENTIALITY:** Buyer and Seller and their respective counsel agree that the terms, conditions and provisions of this Agreement are strictly confidential and mutually agree that they shall not disclose the terms, conditions and provisions of this Agreement to persons, individuals or entities who are not parties to this Agreement except for counsel, tax preparers and accountants, the ROFR Holder, or as may be required by law.

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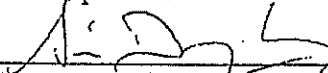
IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their duly authorized officers to be effective on the date set forth above.

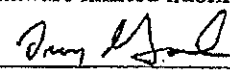
SELLER:

BUYER:

TIMMINCO PROPERTIES INC.,
a Delaware corporation

VOIGT & SCHWEITZER LLC,
a Delaware limited liability company

By: 

By: 

Printed Name: Sean Dunphy President of

Printed Name: TRACY GAERKE

Title: Authorized Signatory Russell Holt Advisory Services Inc.

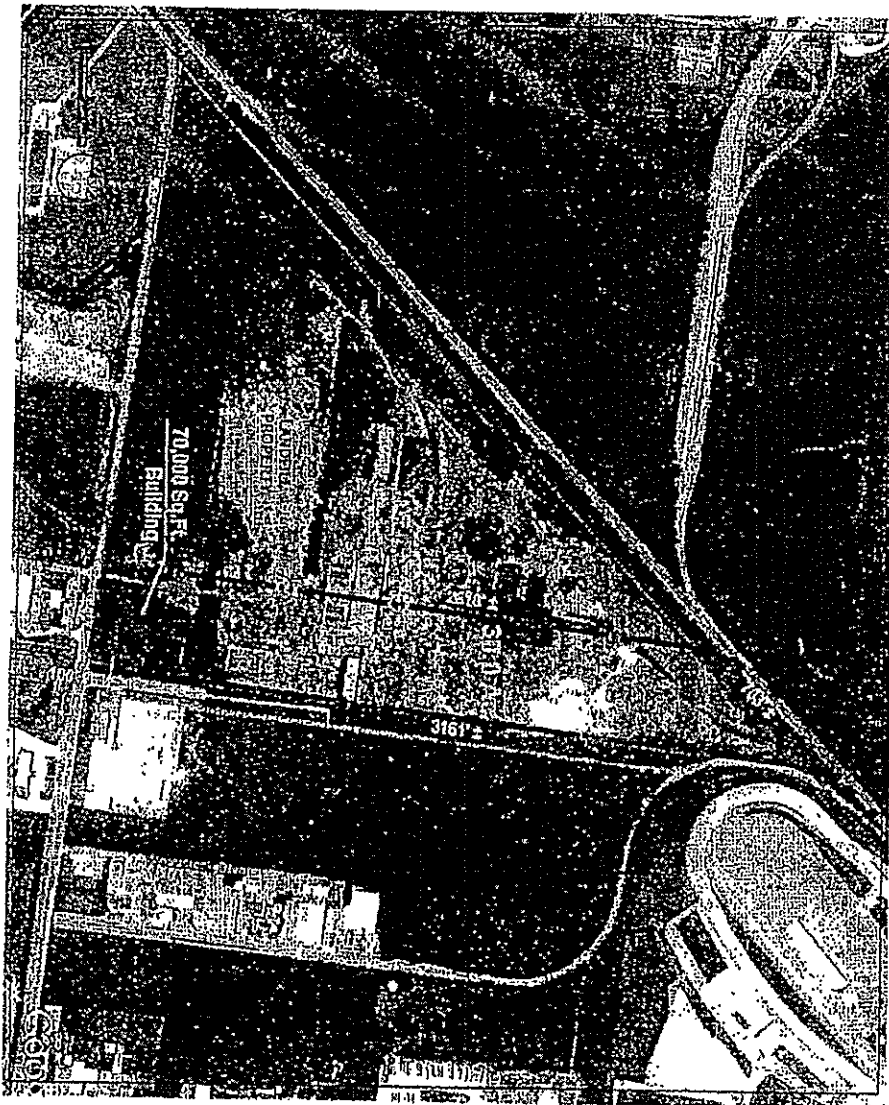
Title: CFO

EXHIBIT A

Legal Description

[to be attached when available]

EXHIBIT A-1
Depiction of the Premises



FIRST AMENDMENT TO PURCHASE AGREEMENT

This First Amendment to Purchase Agreement (this "Amendment") is made to be effective as of the 20th day of August, 2013 (the "Effective Date") subject to the ROFR Contingency (defined below), by and between Timminco Properties Inc., a Delaware corporation with offices at c/o Stikeman Elliott LLP, Attention: A. Taylor, Suite 5300, Commerce Court West, Toronto, Ontario, Canada M5L1B9 ("Seller") and Voigt & Schweitzer LLC, a Delaware limited liability company, with offices at 1000 Buckeye Park Road, Columbus, Ohio 43207 ("Buyer").

WITNESSETH:

WHEREAS, Seller and Buyer entered into that certain Purchase Agreement dated as of April 22, 2013 for the purchase and sale of certain property consisting of approximately 30 acres in Millington, Shelby County, Tennessee, all as more particularly set forth therein (the "Agreement"); and

WHEREAS, Seller and Buyer wish to modify certain terms and conditions of the Agreement, all as more particularly hereinafter set forth.

In consideration of the mutual covenants and agreements set forth hereinafter, Buyer and Seller agree, and the Agreement is amended, as follows:

1. REAFFIRMATION OF AGREEMENT; DEFINED TERMS. The Agreement remains in full force and effect, subject to the modifications thereto expressly set forth herein. Any capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

2. PURCHASE PRICE. Subject to the terms and conditions of the Agreement, as amended hereby, the Purchase Price is hereby reduced to \$325,000.00.

3. WAIVER OF CONTINGENCIES. Buyer hereby notifies Seller pursuant to Section 4 of the Agreement that Buyer has satisfied and/or waives all of the Buyer's Contingencies set forth in, and subject to the terms and conditions of, the Agreement.

4. CLOSING: Seller and Buyer acknowledge that Closing shall occur on or before September 19, 2013 at such time during regular business hours and at such place, or by such method, as may be reasonably acceptable to Buyer and Seller.

5. NONBINDING PENDING RIGHT OF FIRST REFUSAL. Buyer acknowledges that the Premises remains subject to a right of first refusal in favor of the ROFR Holder, that is exercisable by the ROFR Holder within ten (10) days following written notice from Seller of a written, bona fide offer that Seller wishes to accept. Buyer previously gave the ROFR Holder written notice of the Agreement, but the right of first refusal was not exercised by the ROFR Holder. Due to the reduction in the Purchase Price set forth in this Amendment, Seller will give the ROFR Holder written notice of this Amendment, along with a copy hereof, following the full execution and delivery hereof. Notwithstanding anything herein to the

contrary, this Amendment shall not be binding upon Seller unless and until the ROFR Holder declines to exercise its rights in connection herewith within ten (10) days following such notice from Seller or the expiration of such period without action by the ROFR Holder (the "ROFR Contingency"). During such period, this Amendment shall constitute a binding offer of Buyer, which may not be withdrawn.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, Seller and Buyer have caused this Amendment to be executed by their duly authorized officers to be effective on the date set forth above.

SELLER:

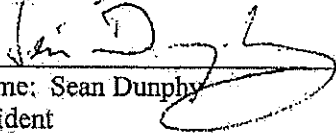
BUYER:

TIMMINCO PROPERTIES INC.,
a Delaware corporation

VOIGT & SCHWEITZER LLC,
a Delaware limited liability company

By: Russell Hill Advisory Services Inc.
Its: Authorized Party

By: _____
Printed Name: _____
Title: _____

By: 
Printed Name: Sean Dunphy
Title: President

IN WITNESS WHEREOF, Seller and Buyer have caused this Amendment to be executed by their duly authorized officers to be effective on the date set forth above.

SELLER:

BUYER:

TIMMINCO PROPERTIES INC.,
a Delaware corporation

VOIGT & SCHWEITZER LLC,
a Delaware limited liability company

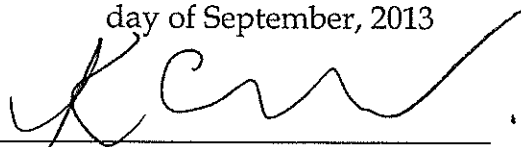
By: Russell Hill Advisory Services Inc.
Its: Authorized Party

By: _____
Printed Name: BRIAN M. ILLIEN
Title: PRESIDENT

By: _____
Printed Name: Sean Dunphy
Title: President

12281575.1

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



Commissioner for Taking Affidavits

This Instrument Prepared By:
BASS, BERRY & SIMS PLC (JAG)
2700 First American Center
Nashville, TN 37238

CONTRACT OF SALE

THIS CONTRACT OF SALE ("Contract") is made and entered into as of the 5th day of September, 1997, by and between SHELTON HARRISON and wife, BRUCENE HARRISON, both individuals (together, "Seller"), having an address for purposes of this Contract of c/o Wolff Ardis, P.C., 6055 Primacy Parkway, Suite 360, Memphis, Tennessee 38119-5776, Attn: Robert A. McLean, Esq., fax: 901-763-3376, and TIMMINCO CORPORATION, a Delaware corporation ("Purchaser"), having an address for purposes of this Contract of c/o Bass, Berry & Sims PLC, 2700 First American Center, Nashville, Tennessee 37238-2700, Attn: J. Andrew Goddard, Esq., fax: 615-742-2724

1. **Property.** Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase, for the price and upon the terms and conditions set forth below, that certain parcel of land described in the form of deed attached hereto as Exhibit A, together with the improvements thereon (the "Property", which term from and after any sale of the portion of the Property by Purchaser to a third party pursuant to Section 8 hereof shall refer only to the remaining portion of the Property owned by Purchaser).

2. **Purchase Price.** The purchase price of the Property is \$335,000 and shall be payable as follows:

a. \$100,000 (the "Initial Payment"), which shall be paid by Purchaser to Seller by cashier's check payable to Seller as described in Section 4 below; and

b. \$235,000 at closing, as provided in Section 4 below.

3. **Escrow.** Seller and Purchaser shall promptly engage Lawyers Title Insurance Company, Memphis, Tennessee (or, if it declines to so serve, another escrow agent acceptable to Seller and purchaser) to serve as escrow agent hereunder (the "Escrow Agent"). Upon the Escrow Agent agreeing to serve hereunder, (i) Seller shall deliver in escrow to the Escrow Agent a good and valid special warranty deed in the form attached hereto as Exhibit A (the "Deed"), fully executed and notarized and ready for recording, which when delivered pursuant to Section 4 hereof shall convey fee simple title to the Property to Purchaser, and (ii) Purchaser shall deliver in escrow to the Escrow Agent the Initial Payment and a release (the "Timminco Release") in the form attached hereto as Exhibit B, fully executed and notarized. Seller shall promptly deliver in escrow to the Escrow Agent a Confirmation in the form attached hereto as Exhibit C (the "Jermakian Confirmation"), fully executed and notarized. No document or check delivered to the Escrow Agent shall be effective unless and until delivered by the Escrow Agent as provided herein.

4. **Initial Payment; Closing.** The Escrow Agent shall deliver the Initial Payment to Seller upon receipt by the Escrow Agent of the Deed and the Jermakian Confirmation pursuant to Section 3 hereof. Subject to Section 13 the closing shall take place by the date ninety (90) days after the date hereof (the "Required Closing Date"), at such specific time and place in Memphis, Tennessee, as is specified by

Purchaser. Time is of the essence with respect to this contract and all obligations of the parties hereunder. At closing, the following shall occur:

a. Purchaser shall deliver to the Escrow Agent the balance (\$235,000) of the cash portion of the purchase price, adjusted by the real estate tax pro-ration to the date of closing, in the form of a cashiers check payable to the Seller;

b. Escrow Agent shall deliver (i) said cashiers check and the Timminco Release to Seller, and (ii) the Deed and the Jermakian Confirmation to Purchaser; and

c. Seller shall deliver possession of the Property to Purchaser.

5. **Costs and Expenses; No Title Insurance; Release.** Costs and expenses of the sale of the Property to Purchaser hereunder, and of any sale to Seller pursuant to Section 7 or 8 hereof, shall be apportioned in the following manner:

a. The purchaser in the transaction shall pay all transfer taxes and recording costs related to the transaction.

b. Real estate taxes shall be pro-rated to the date of closing; and

c. Each party shall pay its own attorneys fees in connection with the transaction.

No title insurance is required to be provided by the seller in any transaction hereunder. In connection with any sale by Purchaser to Seller pursuant to this Contract, Seller shall deliver to purchaser a fully executed and notarized release in the form of Exhibit B hereto, with the parties reversed.

6. **Duties and Fees of Escrow Agent.** In the event any dispute should arise with regard to any item tendered to Escrow Agent, Escrow Agent shall be entitled to deposit the same with a court of competent jurisdiction in Shelby County, Tennessee, and thereafter be relieved of all obligations under this Contract. In performing any of its duties hereunder, Escrow Agent shall not incur any liability to any party for any damage, loss or expense, except for fraudulent breach of trust. Purchaser and Seller shall jointly and severally indemnify and hold Escrow Agent harmless against any and all other losses, claims, damages, liabilities and expenses including without limitation, reasonable attorneys' fees, which may be imposed upon Escrow Agent or incurred by Escrow Agent in connection with performance of its duties hereunder. Purchaser shall pay all fees of the Escrow Agent.

7. **Option to Purchase.** Subject to Section 19 hereof, as additional consideration for the transfer of the Property to Purchaser, Purchaser hereby grants to Seller an option (the "Option to Purchase"), whereby Seller has the right to purchase the Property for a purchase price of Seven Hundred Fifty Thousand and No/100ths Dollars (\$750,000.00); provided, however, that such purchase price shall be reduced by the net purchase price (sales price less sales commissions and closing costs) of any portion of the Property previously sold by Purchaser. The Option to Purchase may not be exercised (i) until Purchaser has received written confirmation from the Tennessee Division of Superfund ("TDSF") that no further action would be required by the Purchaser at the Property, and (ii) within forty-five (45) days after Seller's receipt of any Right of First Refusal Notice (as hereinafter defined). No Equity Participation (as

defined in Section 9 below) shall be owed in connection with any such purchase. Purchaser shall promptly notify Seller of Purchaser's receipt of such confirmation from TDSF. From and after receipt of such confirmation from TDSF, and until this option expires pursuant to Section 19, Purchaser shall permit Seller and/or Seller's agent to visit and inspect the Property with any *bona fide* prospective purchaser by appointment at reasonable times upon reasonable notice to Purchaser.

The Option to Purchase shall expire if Purchaser sells the entire Property pursuant to an offer described in Section 8 below. If said Option to Purchase is exercised (i) the purchase price shall be paid in full at closing, which shall take place within thirty (30) days after the exercise of the option by Seller; and (ii) the deed shall be a special warranty deed in the form attached hereto as Exhibit B, except that (a) Purchaser and Seller shall be reversed, (b) Purchaser may exclude from the warranty in the deed any sales, leases and restrictions entered into in accordance with this Contract, and (c) Purchaser may exclude from the Property description any portion of the Property previously sold by Purchaser to a third party pursuant to Section 8 hereof.

8. **Right of First Refusal.** Subject to Section 19 hereof, as additional consideration for the transfer of the Property to Purchaser, Purchaser hereby grants to Seller a Right of First Refusal (the "Right of First Refusal"), whereby Purchaser agrees that if Purchaser receives a written, *bona fide* offer to purchase the Property from a third party that Purchaser wishes to accept, Purchaser shall give written notice (a "Right of First Refusal Notice") of such offer to Seller. Such notice shall specify the purchase price, the terms of payment and all other material terms relating to such purchase and sale. Seller shall have ten (10) days after receipt of said offer to purchase the Property upon the terms and conditions contained therein. If Seller fails to purchase the Property within such period of time, Purchaser thereafter shall be free to sell the Property to the prospective purchaser, upon the terms specified in such offer. If Seller purchases the property pursuant to this Section 8, then payment of the purchase price and the form and delivery of the deed shall be as provided in the last sentence of Section 7 above.

9. **Equity Participation.** Subject to Section 19 hereof, as additional consideration for the transfer of the property to Purchaser, Purchaser grants to Seller an equity participation (the "Equity Participation"), whereby Purchaser agrees to pay to Seller twenty-five percent (25%) of the net consideration (sales price or base rent, as applicable, less ordinary and necessary expenses for brokerage commissions, title insurance, surety, and attorney's fees relating to sale), when and as received by Purchaser from any sale or rental of the Property or any portion thereof during the term of this Contract, including a sale to Seller pursuant to the Right of First Refusal in Section 8 hereof but not including a sale to Seller pursuant to the Option to Purchase in Section 7 hereof. Timminco shall be under no obligation to attempt to sell or lease the Property or, except for a sale to Seller as provided herein, to sell or lease the Property.

10. **Notice of Lease.** Purchaser shall give Seller at least ten (10) days prior written notice of any proposed leasing by Purchaser of all or any portion of the Property. Any transfer of the Property by Purchaser to Seller pursuant to Section 7 or 8 hereof shall be subject to any such lease, unless prior to Purchaser's entering into such lease Seller exercises its Option to Purchase pursuant to Section 7.

11. **Restrictive Covenants, Etc.** From and after its purchase of the Property hereunder, Purchaser may impose or consent to any restrictive covenants, land use restrictions, and other restrictions on the Property, all at such time and upon such terms and conditions as it may desire; provided that such

restrictive covenants, land use restrictions and other restrictions do not unreasonably interfere with the use of the Property for industrial purposes, except to the extent required by law.

12. **Sale or Lease** From and after the purchase of the Property by Purchaser, (i) subject to the Right of First Refusal and the Equity Participation payments required hereunder, Purchaser may at any time sell all or any portion of the Property at such time and upon such terms and conditions as it may desire, (ii) subject to the notice requirement pursuant to Section 10 hereof and the Equity Participation payments required hereunder, Purchaser may at any time lease all or any portion of the Property and upon such terms and conditions, as Purchaser may desire, and (iii) notwithstanding the foregoing, Purchaser may not lease all or any portion of the Property to a related person or entity except at market rent (or greater) as demonstrated by a current appraisal by a qualified real estate appraiser in Shelby County, Tennessee. Purchaser shall promptly give Seller written notice of any such sale or lease, which notice shall include a description of the payment terms thereunder.

13. **Conditions of Purchaser's Obligations**. The obligations of Purchaser to complete the transactions contemplated herein, other than its obligations pursuant to Section 3 hereof, are conditioned upon (i) Purchaser obtaining prior to the closing, a written agreement with TDSF, in form and substance satisfactory to Purchaser in its sole discretion, regarding the Purchaser's liabilities with respect to the Property, (the "Superfund Agreement"), and (ii) delivery of the Jermakian Confirmation and the Deed to the Escrow Agent pursuant to Section 3 hereof. If either of these conditions is not timely met, Purchaser may terminate this Contract by written notice to Seller and the Escrow Agent, in which case the Escrow Agent shall return each check and document then held by it hereunder to the party that delivered that check or document to the Escrow Agent.

14. **Notices**. Any notice required to be given hereunder shall be in writing and delivered personally or sent by certified or registered mail, return receipt requested, addressed to the parties at the addresses set forth above, or to such other address as either party may hereafter give the other. Notices sent by mail shall be deemed given three days after mailing.

15. **Brokers**. Seller and Purchaser represent and warrant that neither has dealt with any broker in connection with this transaction. If any claim is made or brought by any broker in connection with this transaction, the party whose agreement gave rise to such claim shall indemnify the other for any damage or expenses sustained in connection therewith including, without limitation, reasonable attorney's fees.

16. **Confidentiality** Prior to the earlier of receipt by Purchaser of the no further action letter from TDSF referred to in Section 7 hereof or termination of this Contract, and except as required by law, Seller agrees that it will not, nor will it direct or permit any attorney or agent acting for Seller to, discuss with or disclose to any person or entity other than Purchaser any aspects of the past, present or expected future condition of the Property, any aspects of the past, present or expected future operations or activities at the Property, or any other matters directly or indirectly relating to the Property.

17. **Default**. If Seller defaults hereunder, including without limitation a default by Seller of its obligations under Section 16 hereof, Purchaser may (i) obtain specific performance, or (ii) terminate this Contract by written notice to Seller and/or recover damages. In the case of a termination because of a default by Seller under Section 16 hereof, Seller shall promptly repay the full Initial Payment to Purchaser. If Purchaser defaults hereunder, Seller may terminate this Contract by written notice to

Purchaser and/or recover damages. In the event either party brings suit to enforce any provision of this Contract or for breach hereof, the prevailing party shall have as an element of its damages its litigation costs, including reasonable attorneys fees, which shall be paid by the losing party.

18. **No Further Encumbrances.** Seller represents and warrants that it has not, and will not prior to the transfer of the Property to Purchaser, sell assign, transfer, convey, mortgage, encumber or otherwise change the title to all or any portion of the Property, or any interest therein, without the prior written consent of Purchaser.

Purchaser reaffirms that the Seller's representations, covenants, and warranties regarding the sale, assignment, transfer, conveyance, mortgage or encumbrance of the Property were critical, material factors inducing Purchaser to execute this Contract. Therefore, Purchaser shall consider any party placing a lien on the Property, or otherwise participating with Seller in the sale, assignment, transfer, conveyance, mortgage or encumbrance of the Property in violation of the Seller's covenants in this contract regarding these matters, as an improper and tortious interference with Purchaser's material contract rights with Seller.

Any lien, transfer, security interest or other conveyance of all or a portion of the Property or any interest therein occurring after the recording of this Contract shall be subject and subordinate in all respect to this Contract and the Deed thereafter recorded pursuant to the provisions hereof.

If any lien, transfer, security interest or other conveyance of all or any portion of the property has occurred or attached after acquisition of the Property by Seller but before transfer of the Property to Purchaser, then Purchaser may by written notice to Seller terminate this Contract and Seller shall promptly repay the full Initial Payment to Purchaser.

19. **Termination.** This Contract, including without limitation Sellers rights under Sections 7, 8 and 9 hereof, shall terminate upon the earliest of (i) termination as provided in any other section of this Contract; (ii) the day after the Required Closing Date if Purchaser has not performed all of its obligations with respect to closing on or prior to the Required Closing Date, (iii) purchase of the Property pursuant to Section 7 or 8 hereof; or (iv) the date Twenty (20) years after the date hereof. The foregoing notwithstanding, Seller's rights under Section 7 (but only Section 7) hereof shall terminate upon the earlier of Contract termination or the date five (5) years after receipt by Purchaser of the confirmation from TDSF referred to in Section 3. In the event of any termination of this Contract, Escrow Agent shall return the Deed and the Jermakian Confirmation to Seller, and the Timminco Release to Purchaser. Except as provided in Sections 17 and 18 hereof, Seller shall retain the Initial Payment upon termination of this Contract.

20. **Offer and Acceptance.** This Contract as executed by the Purchaser shall constitute an offer to the Seller. The Seller shall accept the same, if at all, by delivering a fully executed and notarized original of this Contract to the Purchaser on or before 5:00 p.m. C.D.T., on September 5,

1997. The notice provisions hereof notwithstanding, acceptance of this offer shall be effective only upon the actual receipt by the Purchaser of the fully executed original. This offer, if not timely accepted as aforesaid, shall expire and be of no further force and effect at the time and date set forth in this Section. Except as provided in Sections 17 and 18 hereof, Seller shall retain the Initial Payment upon termination of this Contract.

21. Headings. The Section headings are inserted for convenience only and are not intended to describe, interpret, define, or limit the scope or content of this Contract or any provision hereof.

22. Miscellaneous. All prior understandings and agreements between the parties are deemed merged herein. This Contract may be modified only by an agreement in writing signed by the parties. This Contract shall apply to, bind, and inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of the parties. Neither Seller nor Purchaser may assign this Contract or any right hereunder without the written consent of the other. The effective date of this Contract shall be the day it is last executed by Seller or Purchaser. This Contract shall be governed by Tennessee law.

23. Recording. This Contract may be recorded in the Register's Office for Shelby County, Tennessee, at the option of either party hereto.

IN WITNESS WHEREOF Seller and Purchaser have executed, or caused to be executed, this Contract as of the day and year set forth above.

SELLER:

Shelton Harrison
SHELTON HARRISON, individually
Bruce Harrison
BRUCENE HARRISON, individually

PURCHASER:

TIMMINCO CORPORATION
By: [Signature]
Title: Vice President - Finance

STATE OF TENNESSEE)

COUNTY OF SHELBY)

Personally appeared before me, Alison D. Poindexter a Notary Public, SHELTON HARRISON, with whom I am personally acquainted, who acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this 8th day of September 1997.

Alison D. Poindexter
Notary Public

My Commission Expires:
My Commission Expires Jan. 28, 1998

STATE OF TENNESSEE)

COUNTY OF SHELBY)

Personally appeared before me, Alison D. Poindexter a Notary Public, BRUCENE HARRISON, with whom I am personally acquainted, who acknowledged that she executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this 8th day of September 1997.

Alison D. Poindexter
Notary Public

My Commission Expires:
My Commission Expires Jan. 28, 1998

PROVINCE OF ONTARIO)

Municipality OF Metropolitan Toronto

Personally appeared before me, ELIZABETH J FOESTER a Notary Public, EDWARD V REESER with whom I am personally acquainted, who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the Vice-President of TIMMINCO CORPORATION, a corporation, and is authorized by the corporation to execute this instrument on behalf of the corporation.

WITNESS my hand, at office, this 27 day of August, 1997.

Elizabeth J Foester
Notary Public

My Commission Expires:

n/a

EXHIBIT A
Form of Deed

THIS INSTRUMENT PREPARED BY:
BASS, BERRY & SIMS (JAG)
2700 First American Center
Nashville, Tennessee 37238

SPECIAL WARRANTY DEED

Address New owner(s)	Send Tax Bills To	Map-Parcel Number(s)
Timminco Corporation c/o P. O. Box 1160, Station A Toronto, Ontario M5W 1G5 Canada	same	

FOR AND IN CONSIDERATION of the sum of TEN AND NO/100 DOLLARS (\$10.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SHELTON HARRISON and wife, BRUCENE HARRISON, both residents of Shelby County, Tennessee ("Grantor") has bargained and sold, and hereby transfers and conveys, to TIMMINCO CORPORATION, a Delaware corporation, ("Grantee"), its successors and assigns, certain real property in Shelby County, Tennessee, described on Exhibit A attached hereto and incorporated herein by this reference thereto.

This is improved property known as 3328 Fite Road, Memphis, Tennessee.

TO HAVE AND TO HOLD said property, together with the appurtenances, hereditaments, estate, title and interest thereto belonging, to Grantee, its successors and assigns, forever.

Grantor covenants and binds itself and its heirs and representatives to warrant specially and defend forever the title to said property to Grantee, its successors and assigns, against the lawful claims of all persons claiming through or under Grantor, but no further or otherwise. Except as provided in the previous sentence, Grantor transfers said property "as is" and makes no representations or warranties in connection therewith.

Whenever used herein, the singular shall include the plural and the plural the singular and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument or has caused same to be executed as of the 8th day of September, 1997.

Shelton Harrison
SHELTON HARRISON, individually

Brucene Harrison
BRUCENE HARRISON, individually

STATE OF TENNESSEE)

COUNTY OF SHELBY)

Personally appeared before me, Alison D. Pindexter, a Notary Public, SHELTON HARRISON, with whom I am personally acquainted, who acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this 8th day of September, 1997.

Alison D. Pindexter
Notary Public

My Commission Expires:

My Commission Expires Jan. 28, 1998

STATE OF TENNESSEE)

COUNTY OF SHELBY)

Personally appeared before me, Alison D. Poindexter, a Notary Public, BRUCENE HARRISON, with whom I am personally acquainted, who acknowledged that she executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this 5th day of September 1997.

Alison D. Poindexter
Notary Public

My Commission Expires:

My Commission Expires Jan. 28, 1998

EXHIBIT A
To Specialty Warranty Deed

Real Estate Description

The following described real estate located in the 1st Civil District, County of Shelby, State of Tennessee, to-wit:

Lot 9 of a partition of the lands of B.F. Hawkins, deceased, in the Henry Rembert 100 acres of the William Alston 2000 Acre Grant no. 107 and in Lot 3 of the subdivision of the J. W. Ward Estate, a plat of survey of the partition of the said B.F. Hawkins Estate being of record in Book 948, Page 540 in the Register's Office of Shelby County, Tennessee, said Lot 9 being particularly described as follows:

Beginning at an iron pin in the south line of the right-of-way of the Illinois Central Railroad Company, being the northeast corner of Lot 10 of the partition of the said B.F. Hawkins Estate allotted to Mrs. Permelia Blackshire in deed of partition recorded in Book 948, Page 535 in the Register's Office of said Shelby County; thence south 2 degrees 50 minutes west along the east line of said Lot 10, 2311 feet to an iron pin in the north line of the Woodstock Road, now known as Fite Road, (formerly called Hawkins Avenue); thence eastwardly along the north line of the said Woodstock Road 774.3 feet to the east line of said Lot 9, as shown on said recorded plat of survey; thence north 2 degrees 50 minutes east along the east line of said Lot 9, 3254 feet to the south line of the right-of-way of the said Illinois Central Railroad Company; thence southwestwardly along the south line of said right-of-way to the beginning point;

ALSO:

Lot 10 of the partition of the lands of B.F. Hawkins, deceased, as described in and shown on plat of said partition in deed of record in Book 948, page 535 in the Register's Office of Shelby County, said lot being particularly described as follows:

Beginning at an iron pin in the south line of the right-of-way of the Illinois Central Railroad Company, said point of beginning being the northwest corner of Lot 9 of the partition of the said B.F. Hawkins land allotted to Lou Don Hawkins Payne in said partition deed; thence south 2 degrees 50 minutes west along the west line of said Lot 9, 2311 feet to an iron pin in the north line of Hawkins Avenue, now known as the Fite Road; thence north 87 degrees 30 minutes west along the north line of said Hawkins Avenue, or Fite Road, 1009.7 feet to a point; thence north 86 degrees 45 minutes west continuing along the north line of said Road 886 feet to a stake in the south line of the right-of-way of the said Illinois Central Railroad Company; thence northeastwardly along the south line of said right-of way to the point of beginning;

LESS AND EXCEPT THE FOLLOWING:

Part of Lot 10 of the Subdivision of part of the estate of B. F. and Mannie Hawkins, being more particularly described as follows:

Beginning at a point in the north line of Fite Road where the said north line of Fite Road intersects with the east right-of-way line of Illinois Central Railroad; thence south 82 degrees 47 minutes east along the north line of Fite Road 937.0 feet to a point; thence north 6 degrees 36 minutes east 300.0 feet to a point; thence north 82 degrees 47 minutes west 391.05 feet to a point; thence south 80 degrees 54 minutes west 401.58 feet to a point in the east right-of-way line of Illinois Central Railroad; thence south 47 degrees 16 minutes west along the east right-of-way line of Illinois Central Railroad 244.5 feet to the point of beginning; being the same property described in Warranty Deed of record in Book 3216, Page 153 in the Register's Office of Shelby County, Tennessee.

THE FOREGOING PROPERTY being the same property transferred to Grantor by deed dated _____, 19 ____; of record in Book _____, page _____, in the Register's Office for Shelby County, Tennessee.

EXHIBIT B

Form of Timminco Release

RELEASE OF ENVIRONMENTAL CLAIMS

This Release is executed by TIMMINCO CORPORATION, a Delaware Corporation, ("Timminco") in favor of SHELTON HARRISON and wife, BRUCENE HARRISON, both residents of Shelby County (together, the "Harrisons"), and is executed pursuant to that Contract of Sale between Timminco and the Harrisons dated as of August _____, 1997 (the "Contract"), and in consideration of the obligations therein contained.

Timminco hereby fully and forever releases and discharges the Harrisons from, and agrees not to sue the Harrisons with respect to, any claim or cause of action with respect to the Property (as defined in the Contract) that is based in whole or in part on or relates to toxic or hazardous wastes, materials or substances at, or released from, the Property or costs of investigation, removal, remediation, or monitoring thereof or oversight costs related thereto, including without limitation any such claims based on the federal CERCLA statute, the Tennessee Hazardous Waste Management Act of 1983, or any other federal, state or local environmental law.

This Release shall be binding upon Timminco, its successors and assigns, and inure to the benefit of the Harrisons, their heirs, successors and assigns.

IN WITNESS WHEREOF, Timminco Corporation has caused this Release to be executed as of _____, 1997, by its duly authorized officer.

TIMMINCO CORPORATION

By: _____
Title: _____

PROVINCE OF ONTARIO)

_____ OF _____)

Personally appeared before me, _____, a Notary Public, _____, with whom I am personally acquainted, who acknowledged that _____ executed the within instrument for the purposes therein contained, and who further acknowledged that _____ is the _____ of TIMMINCO CORPORATION, a corporation, and is authorized by the corporation to execute this instrument on behalf of the corporation.

WITNESS my hand, at office, this _____ day of _____, 1997.

Notary Public

My Commission Expires:

EXHIBIT C

Form of Jermakian Confirmation

CONFIRMATION

Each of the undersigned hereby confirms to TIMMINCO CORPORATION, a Delaware Corporation, that (i) the undersigned understands that the property located at 3328 Fite Road, Memphis, Shelby County, Tennessee (the "Property"), is being sold by Shelton Harrison and wife, Bruce Harrison to Timminco Corporation, a Delaware corporation ("Timminco"); (ii) the undersigned understands that Timminco will rely upon this confirmation in purchasing the Property; (iii) the undersigned has no contractual arrangement or other arrangement or relationship with Timminco, either in connection with the Property, any recycling of steel, slag, other materials located on the property, or otherwise; (iv) the undersigned understands that Timminco may recycle steel and /or slag located on the Property, and confirms that Timminco is not and will not be obligated to employ or contract for the services of the undersigned in connection therewith, nor is otherwise obligated in any way to the undersigned; and (v) the undersigned agrees that it will not, nor will it direct or permit any attorney or agent acting for it to, discuss with or disclose to any person or entity other than Timminco any aspects of the past, present or expected future condition of the Property, any aspects of the past, present or expected future operations or activities at the Property, or any other matters directly or indirectly relating to the Property.

IN WITNESS WHEREOF, David A. Jermakian has executed this Confirmation, and the other undersigns have caused this Confirmation to be executed by their duly authorized officers, all as of _____, 1997.

DAVID A. JERMAKIAN, Individually

DYNAMIC ENVIRONMENTAL ASSOCIATES, INC.

By: _____
Title: _____

ENVIROCONSTRUCTION, INC.

By: _____

STATE OF _____) Title: _____
COUNTY OF _____)

Personally appeared before me, _____, a Notary Public, DAVID A. JERMAKIAN, with whom I am personally acquainted, who acknowledged that she executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this _____ day of _____, 1997.

Notary Public

My Commission Expires:

STATE OF _____)
COUNTY OF _____)

Personally appeared before me, _____, a Notary Public, _____, with whom I am personally acquainted, who acknowledged that _____ executed the within instrument for the purposes therein contained, and who further acknowledged that _____ is the _____ of DYNAMIC ENVIRONMENTAL ASSOCIATES, INC., a corporation, and is authorized by the corporation to execute this instrument on behalf of the corporation.

WITNESS my hand, at office, this _____ day of _____, 1997.

Notary Public

My Commission Expires:

STATE OF _____)

COUNTY OF _____)

Personally appeared before me, _____, a Notary Public, _____, with whom I am personally acquainted, who acknowledged that _____ executed the within instrument for the purposes therein contained, and who further acknowledged that _____ is the _____ of ENVIROCONSTRUCTION, INC., a corporation, and is authorized by the corporation to execute this instrument on behalf of the corporation.

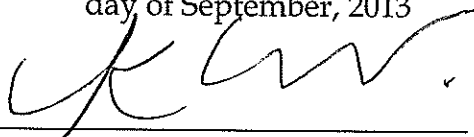
WITNESS my hand, at office, this _____ day of _____, 1997.

Notary Public

My Commission Expires:

[0544658.WPD]

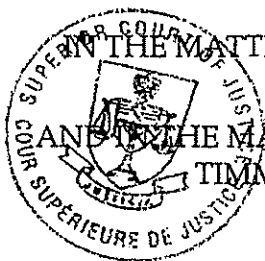
This is Exhibit "E"
to the affidavit of Sean Dunphy,
sworn before me on the
day of September, 2013



Commissioner for Taking Affidavits

**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

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

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"), the Affidavit of Sean Dunphy sworn March 4, 2013 (the "March 4 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 March 4, 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,

SR to, the BSI Pension Committees, Mercer Canada,
Ministry of Northern Mines and Development, *SR*

although duly served as appears from the affidavits of service of Kathryn Esaw sworn February 25, 2013 and March 4, 2013, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Supplemental 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 2362896 Ontario Inc. 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 2362896 Ontario Inc. Russell Hill further has the power to sign any documents necessary for Timminco Silicon Holdings Limited and 2362896 Ontario Inc. 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 or take any other action relating to 2362896 Ontario Inc. and that such incorporation or other action is hereby approved *nunc pro tunc*.

6. **THIS COURT ORDERS** that Russell Hill has the authority to transfer the shares of 2362896 Ontario Inc. from Timminco to BSI and that such transfer is hereby approved *nunc pro tunc*.

DEPOSIT PAYMENT

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 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.

8. **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 2362896 Ontario Inc. a third party deposit in the amount of \$15,000 (the "2362896 Deposit"), such 2362896 Deposit to be in accordance with Directive 16 issued by the Superintendent of Bankruptcy.

GENERAL

9. **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.



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



MAR 5 - 2013

Schedule "A"

Haley Property

1. PIN 57219-0053 (LT) being PT LT 19, CON 5, PTS 1 & 2, 49R10275; T/W R331262; PT LT 20, CON 5 AS IN RS9949, RS9419 & RS10244 LYING NORTH OF COUNTY ROAD #7; EXCEPT PTS 1 & 2, 49R6847; S/T & T/W RS9949, ROSS; S/T R133145 & RS9271 ; TOWNSHIP OF WHITEWATER REGION (DESCRIPTION CORRECTED 2001/02/23 BY MOB, DEP. REGR.
2. PIN 57219-0054 (LT) being PT LT 20, CON 5, PTS 1-3, 49R6916; S/T R246515, ROSS ; S/T R132602,RS9255 ROSS
3. PIN 57219-0036 (LT) being PT LT 19, CON 6 AS IN RS9040, RS8994 & RS9847 EXCEPT PT 1, 49R6693; PT LT 20, CON 6 AS IN RS8990 EXCEPT R267236; S/T & T/W RS9040, ROSS ; ROSS
4. PIN 57217-0079 (LT) being PT LT 23, CON 2 AS IN RS9419 (FIRSTLY) ; ROSS
5. PIN 57216-0053 (LT) being PT LT 23, CON 3 AS IN RS9419 LYING E OF THE ELY LIMIT OF THE KING'S HWY NO. 17 & W OF THE WLY LIMIT OF HWY NO. 653 ; ROSS
6. PIN 57217-0156 (LT) being PT LT 23, CON 3 AS IN RS9419 (SECONDLY), LYING W OF HWY NO. 17 & E OF THE SLY EXT OF THE WLY LIMIT OF PT 1, 498399 ; ROSS
7. PIN 57216-0076 (LT) being PT LTS 21-23, CON 4 AS IN RS9419 LYING E OF THE ELY LIMIT OF HWY NO. 653 & W OF THE WLY LIMIT OF THE RDAL BTN CONS 4&5 ; ROSS
8. PIN 57216-0157 (LT) being LT 21, CON 5 EXCEPT 49R547, 49R4755, 49R12111, R9440, R132705, R142326, PTS 3, 5 & 6, 49R6847 ; S/T R133145,R267237,RS9882 ROSS
9. PIN 57216-0235 (LT) being PT LT 20, CON 5 AS IN RS9949 & RS9419 LYING S OF THE SLY LIMIT OF PT 2, 49R6847, S/T R133145 ROSS
10. PIN 57216-0158 (LT) being PT LT 21-22 CON 5 ROSS AS IN R132705 ; S/T R134851 ; RENFREW

Schedule "B"

Silica Fumes Property

1. 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).

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 TMINCO LIMITED AND BÉCANCOUR SILICON INC.

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

Proceeding commenced at Toronto

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

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

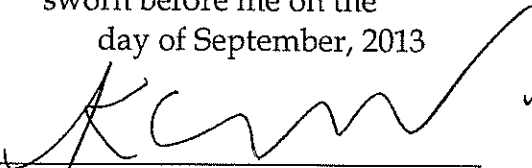
Ashley John Taylor LSUC#: 39932E
Tel: (416) 869-5236

Maria Konyukhova LSUC#: 52880V
Tel: (416) 869-5230

Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-5230
Fax: (416) 947-0866

Lawyers for the Applicants

This is Exhibit "F"
to the affidavit of Sean Dunphy,
sworn before me on the
day of September, 2013



Commissioner for Taking Affidavits

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

**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

**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 Gently 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 Msrs. 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.

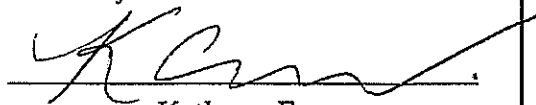
MONITOR'S APPROVAL

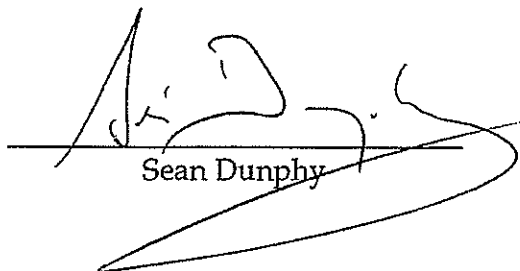
51. I understand that the Monitor approves of the process leading to the proposed disposition of the Redundant Assets and supports the within motion.

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)

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

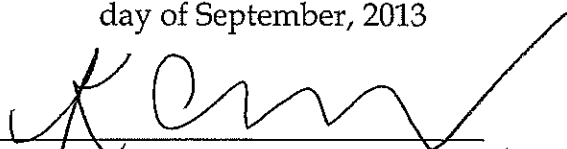
Ashley John Taylor LSUC#: 39932E
Tel: (416) 869-5236

Maria Konyukhova LSUC#: 52880V
Tel: (416) 869-5230

Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-5230
Fax: (416) 947-0866

Lawyers for the Applicants

This is Exhibit "G"
to the affidavit of Sean Dunphy,
sworn before me on the
day of September, 2013



Commissioner for Taking Affidavits

ACT OF ABANDONMENT OF OWNERSHIP

IN THE YEAR TWO THOUSAND AND THIRTEEN (2013)

On this _____ (___) day of August

BEFORE Me _____, notary at Montréal, Province of Québec.

CAME AND APPEARED:

BÉCANCOUR SILICON INC., a corporation duly constituted under the laws of the Province of Québec, having its registered office at 6500 Yvon-Trudeau Street, Bécancour, Québec, G9H 2V8 (the "**Company**"), by Russell Hill Advisory Services Inc. ("**Russell Hill**"), in its capacity as Chief Restructuring Officer of, *inter alia*, the Company, and not in its personal or corporate capacity, duly authorized for the purposes hereof pursuant to an Order (CRO Appointment) rendered by the Superior Court of Justice of the Province of Ontario (Commercial List) on August 17, 2012, Court file number: CV-12-9539-00CL, appointing Russell Hill as Chief Restructuring Officer of the Company (the "**CRO Appointment Order**") and Russell Hill being itself herein acting and represented by Sean Dunphy, its President duly authorized for the purposes hereof pursuant to a resolution of its Board of Directors dated _____ authorizing Sean Dunphy to act on its behalf, photocopies of which remain annexed hereto after having been acknowledged as true and signed for identification by the said representatives in the presence of the undersigned notary.

WHEREAS Timminco Limited ("**Timminco**") and the Company (together with Timminco, the "**Timminco Entities**") were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended pursuant to the initial order of the Ontario Superior Court of Justice dated January 3, 2012, Court file number: CV-12-9539-00CL in which FTI Consulting Canada Inc. was appointed as monitor of the Timminco Entities (the "**Monitor**");

WHEREAS, pursuant to the CRO Appointment Order, Russell Hill was granted the powers and obligations set out in the engagement letter dated July 24, 2012 in the form attached to the Twelfth Report of the Monitor, including the power to plan and oversee the orderly wind-down and disposition of the remaining assets of the Timminco Entities;

WHEREAS the Company is the registered owner of the immovable property located at 5355 Chemin De Fer, Bécancour, Québec and all movables located on the premises (collectively, the "**Property**") more specifically described in the DESCRIPTION below;

WHEREAS the Company has no further use for the Property and wishes to unequivocally abandon all right, title and interest in and to the Property since the Property has no value to the Company;

WHEREFORE the Company, declares as follows:

1. As of _____, 2013, in accordance with articles 934 ff. of the *Civil Code of Québec*, the Company unequivocally abandons all right, title and interest in and to the Property.
2. The Property may be more fully described as follows:

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.

WHEREOF ACTE, at Montréal, Province of Québec, under number _____ of the minutes of the undersigned notary.

AND AFTER DUE READING HEREOF, the parties have signed in the presence of the undersigned notary.

**BÉCANCOUR SILICON INC. by
Russell Hill Advisory Services Inc., in
its capacity as court-appointed Chief
Restructuring Officer of Bécancour
Silicon Inc. and not in its personal or
corporate capacity**

Name: Sean Dunphy
Title: Authorized Representative

, notary

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM)	FRIDAY, THE 13 TH DAY
)	OF SEPTEMBER, 2013
JUSTICE MESBUR)	

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 Abandonment of the Silica Fumes Property)**

THIS MOTION, made by Timminco Limited and Bécancour Silicon Inc. (together, the "**Timminco Entities**"), for an order approving the abandonment of the Silica Fumes Property by BSI, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Sean Dunphy sworn September 5, 2013, and the Twenty Second Report of FTI Consulting Canada Inc. in its capacity as the court appointed monitor of the Timminco Entities (the "**Monitor**") dated ●, 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 ●, 2013, filed:

ABANDONMENT OF THE SILICA FUMES PROPERTY

1. **THIS COURT ORDERS** that, notwithstanding the provisions of the Order of the Honourable Mr. Justice Morawetz dated March 5, 2013, the Chief Restructuring Officer of the Timminco Entities BSI is hereby authorized to execute the deed of abandonment substantially in the form as contained in Schedule "A" to this Order.

2. **THIS COURT ORDERS** that the Timminco Entities and the Monitor are hereby authorized to take any additional steps and execute such additional documents as may be necessary or desirable for the completion of the abandonment of the Silica Fumes Property.

GENERAL

3. **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.

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 Abandonment of the
Silica Fumes Property)**

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Ashley John Taylor LSUC#: 39932E
Tel: (416) 869-5236

Maria Konyukhova LSUC#: 52880V
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Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-5230
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Lawyers for the Applicants

TAB 4

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM)	FRIDAY, THE 13 TH DAY
)	OF SEPTEMBER, 2013
JUSTICE MESBUR)	

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 Stay Extension to December 16, 2013)

THIS MOTION, made by Timminco Limited and Bécancour Silicon Inc. (together, the "Timminco Entities"), for an order extending the Stay Period (as defined below) until December 16, 2013, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Sean Dunphy sworn September 5, 2013, and the Twenty Second Report of FTI Consulting Canada Inc. in its capacity as the court appointed monitor of the Timminco Entities (the "Monitor") dated ●, 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 ●, 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.

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 18 of the Initial Order of the Honourable Mr. Justice Morawetz dated January 3, 2012) is hereby extended until and including December 16, 2013.

GENERAL

3. **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.

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 Stay Extension to December 16, 2013)

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Lawyers for the Applicants

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 BECANCOUR SILICON INC.

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

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

Proceeding commenced at Toronto

**MOTION RECORD
(RETURNABLE SEPTEMBER 13, 2013)
(RE APPROVAL OF THE ABANDONMENT
OF THE SILICA FUMES PROPERTY AND
STAY EXTENSION TO DECEMBER 16, 2013)**

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