

Court File No. 12-CL- _____

**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)

INITIAL APPLICATION RECORD

January 2, 2012

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(Applicants)

SERVICE LIST

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TAB 1

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(Applicants)

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following page.

THIS APPLICATION will come on for a hearing on Tuesday, January 3, 2011, at 10:00am, at 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date January , 2012

Issued by _____
Local registrar

Address of 330 University Avenue,
court office Toronto, Ontario

TO: **SERVICE LIST**

APPLICATION

1. Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. ("**BSI**" and, together with Timminco, the "**Timminco Entities**") make this application for an Initial Order substantially in the form attached at tab 3 of the Application Record, among other things:

- (a) abridging the time for service of this Notice of Application and dispensing with service on any person other than those served;
- (b) declaring that the Timminco Entities are parties to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") applies;
- (c) appointing FTI Consulting Canada Inc. as an officer of this Court to monitor the assets, businesses and affairs of the Timminco Entities (in such capacity, the "**Monitor**");
- (d) staying all proceedings taken or that might be taken in respect of the Timminco Entities, their directors and officers and the Monitor;
- (e) authorizing the Timminco Entities to file with this Court a plan of compromise or arrangement;
- (f) granting the following priority charges over the property of the Timminco Entities, to rank ahead in priority to the existing security interests of Investissement Quebec ("**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* R.S.O. 1990, c. P.8 or the *Québec Supplemental Pension Plans Act*, R.S.Q. c. R-15.1:

- i. a charge in favour of counsel to the Timminco Entities, the proposed Monitor and the proposed Monitor's counsel in the maximum amount of \$1 million to secure payment of their fees and disbursements incurred in connection with this proceeding; and
 - ii. a charge to protect the directors and officers of the Timminco Entities from certain potential liabilities in the amount of \$400,000.
- (g) granting a stay of proceedings against any former, current or future director or officer of Quebec Silicon General Partner Inc. ("QSGP") also serving as a director or officer of BSI with respect to all claims against the director or officer in his or her capacity as a director or officer of QSGP;
- (h) directing Quebec Silicon Limited Partnership ("QSLP") and QSGP to continue to provide the Timminco Entities access to QSLP's and BSI's books and records;
- (i) staying the exercise of any and all rights, remedies, modifications of existing rights and events deemed to occur on the occurrence of certain other events under the terms of some of the agreements between BSI and QSLP;
- (j) approving the proposed manner of service of the parties likely to be affected by the relief sought on a motion expected to be heard during the week of January 9, 2012; and
- (k) granting such further and other relief as this Court may deem just.

2. The grounds for the application are:

- (a) Timminco is a public company incorporated under the *Canada Business Corporations Act*, R.S.C. 1985 c. C-44 with shares listed on the Toronto Stock Exchange. Timminco's principal office is located at 150 King Street West, Suite 2401 in Toronto, Ontario;
- (b) Timminco produces silicon metal through its 51%-owned production partnership with Dow Corning Corporation and produces solar grade silicon through Timminco Solar, an unincorporated division of BSI;
- (c) the Timminco Entities are facing severe liquidity issues as a result of, among other things, a low profit margin realized on their silicon metal sales, a severe decrease in the demand and market price for solar grade silicon, failure to recoup capital expenditures incurred in connection with development of their solar grade operations, the inability to secure additional funding, significant pension and environmental remediation legacy costs and financial costs related to large outstanding debts and, as a result are unable to meet various financial and other covenants with their secured lenders and do not have the liquidity needed to meet their ongoing payment obligations;
- (d) as at September 30, 2011, the Timminco Entities had short-term and long-term indebtedness totalling approximately \$89 million;
- (e) the Timminco Entities defaulted under their senior secured credit facility by failing to meet certain financial covenants and also failed to make certain payments due on December 31, 2011;
- (f) the Timminco Entities' business is closely intertwined with that of QSLP and BSI is highly dependent on QSLP for its supply of silicon metal required to satisfy BSI's commitments to its customers;

- (g) BSI is also highly dependent on QSLP's operational efficiency for its profitability;
 - (h) the Timminco Entities require a stay of proceedings and the other relief sought herein in order to maintain their operations while giving them the necessary time to consult with their stakeholders regarding the future of their business operations and corporate structure;
 - (i) the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
 - (j) Rules 2.03, 3.02, 14.05(2) 16 and 38 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and sections 106 and 137 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and
 - (k) such further and other grounds as counsel may advise and this court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the Affidavit of Peter A.M. Kalins sworn January 2, 2012, and the exhibits attached thereto; and
 - (b) such further and other evidence as counsel may advise and this Court may permit.

January 2, 2012

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**ONTARIO
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Proceeding commenced at Toronto

NOTICE OF APPLICATION

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TAB 2

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(Applicants)

**AFFIDAVIT OF PETER A.M. KALINS
(Sworn January 2, 2012 in support of Initial CCAA Application)**

I, PETER A.M. KALINS, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the President, General Counsel and Corporate Secretary of the Applicant Timminco Limited ("**Timminco**") and the President, General Counsel and Corporate Secretary, as well as a director, of 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. I have also reviewed the records, press releases, and public filings of the Timminco Entities and have spoken with certain of the directors, officers and/or employees of the Timminco Entities, as necessary, and where I have relied upon such information do verily believe such information to be true.

2. All references to currency in this affidavit are references to Canadian dollars, unless otherwise indicated.

I. INTRODUCTION

3. This affidavit is sworn in support of an application by the Timminco Entities for an order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

4. Timminco produces silicon metal through its 51%-owned production partnership with Dow Corning Corporation ("DCC") for resale to customers in the chemical (silicones), aluminum, and electronics/solar industries. Timminco also produces solar grade silicon through Timminco Solar, an unincorporated division of Timminco's wholly-owned subsidiary BSI ("Timminco Solar"), for customers in the solar photovoltaic industry.

5. As described in greater detail below, the Timminco Entities are facing severe liquidity issues as a result of, among other things, a low profit margin realized on their silicon metal sales due to a high volume long-term supply contract at below market prices, a severe decrease in the demand and market price for solar grade silicon as a result of a collapse in the polysilicon market and overall solar market, failure to recoup their capital expenditures incurred in connection with development of their solar grade operations, and the inability to secure additional funding. The Timminco Entities are also facing significant pension and environmental remediation legacy costs and financial costs related to large outstanding debts. A significant portion of the legacy costs are as a result of discontinued operations relating to Timminco's former magnesium business. As a result, the Timminco Entities are unable to meet various financial and other covenants with their secured lenders and do not have the liquidity needed to meet their ongoing payment obligations.

6. The Timminco Entities have been unable to successfully restructure their operations and capital structure outside of formal insolvency proceedings and are now insolvent and unable to meet their liabilities as they become due. Without the protection of the CCAA, a shut-down of operations is inevitable, which would be extremely detrimental to the Timminco Entities' employees, pensioners, suppliers, and customers. CCAA protection will allow the Timminco Entities to maintain operations while giving them the necessary time to consult with their stakeholders regarding the future of their business operations and corporate structure.

7. The board of directors of Timminco has authorized this Application. Pursuant to a unanimous shareholder declaration which removed the directorial powers from the directors of BSI and consolidated the decision making with Timminco through its board of directors (as described below), the board of directors of Timminco has also authorized this filing on behalf of BSI.

II. THE TIMMINCO ENTITIES

Overview

8. Timminco produces silicon metal through Québec Silicon Limited Partnership (“QSLP”), its 51%-owned production partnership with DCC. Timminco Solar, a division of Timminco’s wholly owned subsidiary BSI, produces solar grade silicon.

9. Silicon metal is used by the chemical, aluminum, electronics and solar industries and is a key raw material in both consumer and industrial products such as cosmetics, solar panels, sealants and computer components. QSLP is one of the largest producers of silicon metal in North America.

10. Solar grade silicon is derived by purifying silicon metal and may be used by the solar photovoltaic industry as an alternative raw material to polysilicon for the production of solar cells.

11. As of November 30, 2011, the Timminco Entities had approximately 23 employees, approximately 346 retirees in their active and wound-up pension plans, and owned operating and non-operating facilities in Ontario and Québec.

Corporate Structure

12. Timminco is a public company incorporated under the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44 (the “CBCA”). Timminco’s common shares are listed and publicly traded on the Toronto Stock Exchange (“TSX”). AMG Advanced Metallurgical Group N.V. (“AMG”) is Timminco’s largest shareholder holding approximately 42% of Timminco’s issued and outstanding common shares. Timminco’s principal office is located at 150 King Street West, Suite 2401 in Toronto, Ontario.

13. Timminco owns 100% of the shares of BSI, a corporation subject to the *Québec Business Corporations Act*, R.S.Q., c S-31.1, with its principal office located at 6500 Rue Yvon-Trudeau in Bécancour, Québec.

14. As described in greater detail below, BSI owns, directly and indirectly, 51% of the limited partnership units of QSLP and directly owns 51% of the shares of Québec Silicon General Partner Inc. ("QSGP"), the general partner of QSLP. Dow Corning Canada, Inc. ("DCC Canada"), an indirect subsidiary of DCC, owns approximately 49% of the limited partnership units of QSLP, and DC Global Holdings S.a.r.l., a subsidiary of DCC, owns approximately 49% of the shares of QSGP. Protection under the CCAA with respect to QSLP or QSGP (collectively, "Québec Silicon") is not being sought on this application.

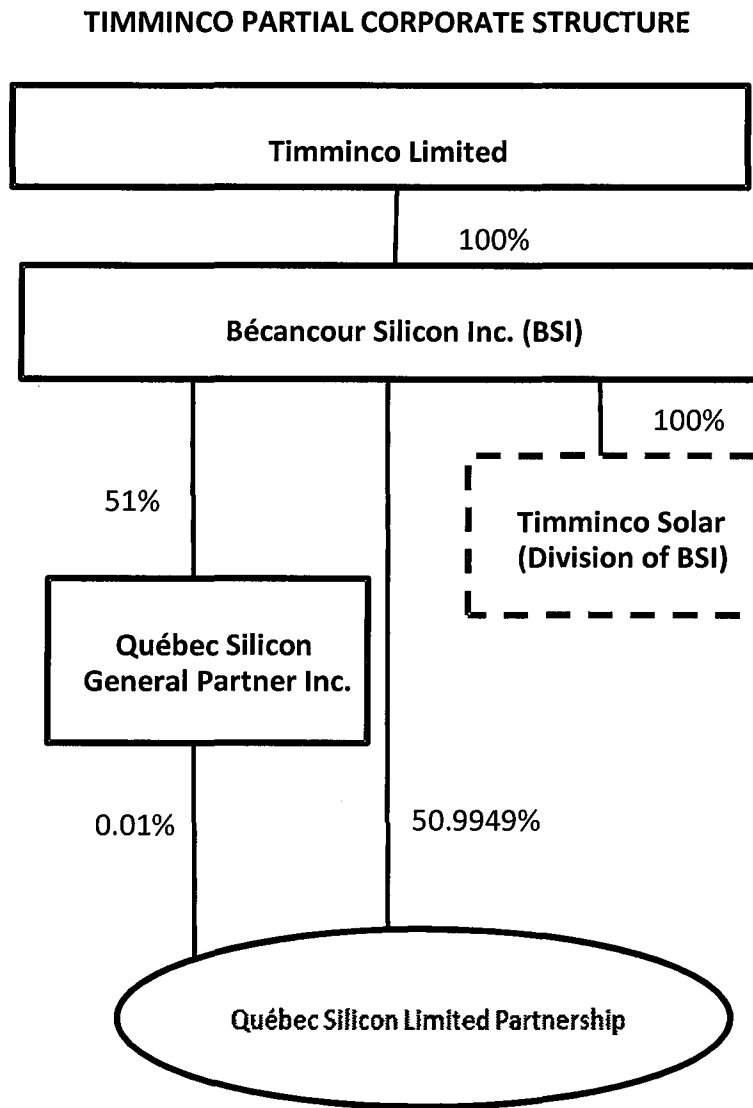
15. Timminco also has the following inactive subsidiaries:

- (a) Timminco Silicon Holdings Limited is a wholly-owned subsidiary of Timminco incorporated under the CBCA and is not carrying on, and has never carried on, any operations;
- (b) Timminco Holdings Corporation, a wholly-owned subsidiary of Timminco, is incorporated under the laws of Delaware and owns 100% of the shares of Timminco Corporation and Timminco Properties Inc., which owns 100% of the shares of Timminco Technologies Inc. and Timminco Adhesives Corporation. These entities operated Timminco's former U.S. specialty metals, chromium smelting, adhesives, magnesium extrusion and other legacy businesses and are no longer carrying on any operations. However, the Timminco Corporation still has some legacy environmental liabilities in the United States, and Timminco Properties still owns certain vacant industrial property in the United States; and
- (c) Timminco S.A., incorporated under the laws of Switzerland, formerly operated as the European sales office for Timminco's former magnesium extrusion and specialty metals business and is no longer carrying on any business. Timminco owns 94% of the shares of Timminco S.A. and the remaining 6% of the shares are held in trust for the benefit of Timminco.

16. Timminco also owns 19.5% of Applied Magnesium International Limited ("AMI"), a corporation incorporated under the laws of the British Virgin Islands. AMI operates Timminco's former magnesium business through various subsidiaries in the United States, Mexico, China and Australia, some of which were formerly subsidiaries of Timminco.

17. No relief is being sought on this application with respect to any of these entities.

18. The following chart demonstrates the corporate structure of the Timminco Entities and Québec Silicon, with the percentages reflecting equity interests. A full corporate chart of the Timminco Entities and all of their subsidiaries is attached hereto as Exhibit "A".



19. In order to consolidate and streamline corporate decision making, Timminco executed a unanimous shareholder declaration on January 2, 2012, which removed the directorial powers from the directors of BSI and consolidated the decision making of the Timminco Entities with Timminco through its board of directors.

The Businesses of the Timminco Entities

Silicon Metal and Production Partnership with DCC

20. BSI formed Québec Silicon for the purpose of acquiring all of BSI's silicon metal assets, excluding the solar grade silicon assets and certain other silicon-related assets. On August 10, 2010, BSI, DCC and Timminco entered into a Framework Agreement (the "**Framework Agreement**") which set out certain key terms of their joint venture and the relationship between them with respect to same. Due to the commercially sensitive nature of the information contained in the Framework Agreement, a redacted copy of the Framework Agreement is attached hereto as **Exhibit "B"**.

21. Pursuant to the Framework Agreement, DCC acquired a 49% equity interest in Québec Silicon and BSI retained a 51% equity interest in Québec Silicon. In exchange for the transfer, BSI received the majority 51,000 limited partnership units in QSLP, 51% of the shares of QSGP, net cash proceeds of approximately US\$40 million on the closing of the transaction contemplated by the Framework Agreement and is also entitled to receive an "earn out" of up to US\$10 million upon the achievement by Québec Silicon of certain performance objectives tied to cost reduction and capacity increases. Based on the performance of Québec Silicon during the last 12-month period, BSI has determined not to invoke its right to receive any payment on account of the earn out at this time.

22. On September 30, 2010, BSI transferred all of the silicon metal production assets (including property, plant, equipment, and certain net working capital items) and related liabilities to Québec Silicon pursuant to the Business Transfer Agreement dated September 30, 2010 (the "**Transfer Agreement**"). The Transfer Agreement is attached hereto as **Exhibit "C"**. None of BSI's solar grade silicon assets nor the Silica Fumes Property (as defined below) were transferred to Québec Silicon. In addition, certain liabilities associated with BSI's silicon metal operations, including certain pension liabilities, were not transferred to Québec Silicon.

23. On October 1, 2010, upon the closing of the transaction contemplated by the Framework Agreement, BSI, DCC Canada, QSGP, QSLP and/or Timminco entered into, among

other things, the following agreements governing the production partnership (collectively, the “QSLP Agreements”):

Limited Partnership Agreement

- (a) An amended and restated limited partnership agreement between BSI, DCC Canada and QSGP dated October 1, 2010 (the “**Limited Partnership Agreement**”). Among other things, the Limited Partnership Agreement provides that profits and losses are allocated between DCC Canada and BSI based on their respective equity interests in QSLP. The Limited Partnership Agreement also (i) sets forth the obligations to BSI and DCC Canada to make capital contributions to QSLP in certain circumstances; (ii) prohibits BSI and DCC Canada from effecting any transfer, sale or assignment of QSLP units until October 1, 2015 without the prior written permission of the non-transferring party; and (iii) provides for certain put and call rights in favour of DCC Canada in respect of BSI’s equity interest in QSLP upon the occurrence of certain events such as a change in control, an act of insolvency or other defaults by BSI. A copy of the Limited Partnership Agreement is attached hereto as **Exhibit “D”**.

Shareholders Agreement

- (b) Shareholders agreement between QSGP and its two shareholders dated October 1, 2010 (the “**Shareholders Agreement**”). Among other things, the Shareholders Agreement provides for the governance and the composition and decision-making of the board of directors of QSGP (as the general partner of QSLP) and prohibits the shareholders from effecting any transfer, sale or assignment of QSGP shares until October 1, 2015 without the prior written permission of the non-transferring party. A copy of the Shareholders Agreement is attached hereto as **Exhibit “E”**.

Supply Agreement

- (c) An output and supply agreement dated October 1, 2010 among BSI, DCC and QSLP (the “**Supply Agreement**”) pursuant to which BSI and DCC are entitled to

a supply allocation of QSLP's silicon metal production that is proportionate to their equity interest in QSLP. In the fourth quarter of 2010 and in 2011, QSLP allocated to BSI more than BSI's 51% allocation entitlement to QSLP's production of silicon metal. As a result, BSI and DCC agreed that DCC would be entitled to receive more than DCC's 49% allocation entitlement in 2012. BSI and DCC purchase silicon metal from QSLP at a price based on the actual full cost of production, plus a fixed margin. Due to the commercially sensitive nature of the information contained in the Supply Agreement, a redacted copy of the Supply Agreement is attached hereto as **Exhibit "F"**.

Other Agreements

- (d) Lease Agreement dated September 30, 2010 between QSLP and BSI (the "**Lease Agreement**") pursuant to which BSI leases from QSLP space located in the administration building located at the Québec Silicon Real Property (as defined below) for use by certain of BSI's management employees.
- (e) Agency Services Agreement dated September 30, 2010 between BSI and QSLP (the "**Agency Agreement**") pursuant to which BSI, as agent, sells silica fumes and other by-products produced from QSLP's silicon metal operations in exchange for commission.
- (f) Shared Expenses Agreement dated October 1, 2010 (as amended) between QSLP and BSI (the "**Shared Expense Agreement**") pursuant to which QSLP allows BSI access to a laboratory located on the Québec Silicon Real Property, which BSI uses for quality control purposes.
- (g) Shared Services Agreement dated September 30, 2010 between BSI and QSLP (the "**Shared Services Agreement**") pursuant to which Québec Silicon must make certain key employees of Québec Silicon available to provide services to BSI including in respect of finance, human resources, maintenance, information technology and logistics.

- (h) Timminco Support Agreement dated September 30, 2010 between Timminco and QSLP (the "Timminco Support Agreement") pursuant to which QSLP is entitled to receive legal, financial and other professional support services of employees of Timminco.
- (i) Bécancour LP Intellectual Property License Agreement dated October 1, 2010 between QSLP, DCC and BSI, and BSI/DCC Intellectual Property License Agreement dated October 1, 2010 between QSLP, DCC and BSI, pursuant to which the parties thereto granted certain rights to other parties thereto regarding the use and ownership of certain intellectual property relating to silicon metal productions and operations.

24. The terms of the above agreements provide that certain events are deemed to occur and purport to entitle DCC Canada, QSLP, and/or QSGP to take certain steps if BSI becomes a Defaulting Special Partner (as defined in the Limited Partnership Agreement) as a result of, among other things, application for an order under the CCAA or becoming insolvent as defined under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA"), including the following:

- (a) Section 16.4 of the Limited Partnership Agreement provides that a Defaulting Special Partner shall lose the right to vote its Partnership Interest and to attend meetings of the Partners (as these terms are defined in the Limited Partnership Agreement).
- (b) Section 16.5 of the Limited Partnership Agreement provides that the Non-Defaulting Special Partner shall have the right to purchase, at its option, the Partnership Interest of the Defaulting Special Partner for a purchase price equal to the fair market value of such Partnership Interest.
- (c) Under Section 9 of the Shareholders Agreement, upon a Shareholder (as defined in the Shareholders Agreement) becoming a Defaulting Partner under the Limited Partnership Agreement: (i) such Shareholder shall cease to nominate directors to the board of directors of QSGP, (ii) each director designated by such Shareholder then in place shall be deemed to have resigned from office, and (iii)

such Shareholder shall not exercise the voting rights attached to its shares and its shares will be disregarded for the purposes of any vote.

- (d) The Lease Agreement, the Agency Agreement, the Shared Services Agreement, the Shared Expenses Agreement, and the Timminco Support Agreement provide that QSLP has the right to terminate these agreements when BSI no longer has the ability to appoint a majority of the board of directors of QSGP or when BSI becomes insolvent or takes the benefit of any legislation for insolvent debtors.

25. Notwithstanding the transfer of the silicon metal assets to Québec Silicon, after the closing of the transaction contemplated by the Framework Agreement, BSI retained its silicon metal customer relationships with the intention of continuing to honour all existing contracts with such customers through its proportional off-take of Québec Silicon's production. BSI purchases substantially all of its silicon metal for re-sale to its customers from Québec Silicon. In addition, Québec Silicon employs certain production technologies to produce certain grades of silicon metal that BSI is required to supply to its customers, and which cannot be purchased from silicon metal suppliers other than Québec Silicon. Therefore, BSI is highly dependent on Québec Silicon for its supply of silicon metal required to satisfy BSI's commitments to its customers. Moreover, as all of BSI's silicon metal purchases from Québec Silicon are on a "cost-plus" basis, whereas BSI's sales to its customers are generally on a "fixed price" basis, BSI is also highly dependent on Québec Silicon's operational efficiency for its profitability.

26. After QSLP completes production of silicon metal to BSI's specifications, which typically occurs on a continuing basis, QSLP transfers the finished product to a warehousing facility located on the Québec Silicon Real Property (as defined below) and adjacent to QSLP's production facility. QSLP loads BSI's finished goods from storage to rail cars, trucks or shipping containers as required by BSI for its customers. Following the transfer into storage and the issuance of the related invoice by QSLP, title to the finished product passes to BSI and forms part of BSI's inventory. The silicon metal product is then shipped to BSI's customers, located in Canada and internationally, via road, railroad or sea (depending on the customer's requirements).

27. Substantially all of the silicon metal that BSI purchases from Québec Silicon is sold to one long standing customer (the “Key Customer”). The remainder of BSI’s allocation is sold to other customers on short-term contracts and into the spot market.

28. In February 2010, prior to the creation of the production partnership with DCC, BSI executed a long-term contract with the Key Customer to supply silicon metal over the next five years. In May 2011, BSI executed a new long-term silicon metal supply contract with the Key Customer which, among other things, replaced the previous contractual relationship, provided for amended pricing and additional silicon metal volumes and extended the supply commitments through to the end of 2015 (as amended, the “Key Customer Agreement”). Pricing for silicon metal under the Key Customer Agreement is fixed, subject to annual negotiations, and denominated in Euros.

29. The base quantity to be delivered under the Key Customer Agreement represents substantially all of BSI’s anticipated allocation of up to 51% of the silicon metal output from Québec Silicon for at least the next three years. Moreover, whereas BSI’s volume of silicon metal supplied by Québec Silicon is based on a percentage of Québec Silicon’s total production, which may fluctuate from year to year, BSI’s volume commitments to the Key Customer are fixed according to the Key Customer Agreement.

30. The Key Customer Agreement contains annual call and put options in respect of the supply commitments starting in 2012 based on the upper and lower limits of the defined price range for annual negotiations. In November 2011, following annual pricing negotiations, the Key Customer exercised its call option for the full volume of silicon metal products in 2012 at the upper limit of such range, which according to the Key Customer Agreement is at a price that is lower than the current fixed price for 2011.

31. In September 2011, with a view to improving the Timminco Entities’ cash position, BSI and the Key Customer amended the Key Customer Agreement to reduce the base quantity for 2012 by an agreed volume which instead will be supplied by BSI to Sudamin Holding S.P.R.L. (“Sudamin”), a wholly-owned subsidiary of AMG. Sudamin concurrently committed to sell such volume to the Key Customer in the third quarter of 2012. BSI received a net pre-payment

from Sudamin of approximately \$4.8 million in September 2011 for such future deliveries in 2012.

Solar Grade Silicon and the Timminco Solar Division

32. Timminco Solar produces solar grade silicon pursuant to a proprietary and patented metallurgical-based process to purify silicon metal into solar grade silicon. The solar grade silicon is expected to have the chemical composition and other characteristics that would allow it to be used for the manufacture of solar photovoltaic cells. A solar panel, comprised of several solar cells, captures energy from sunlight and converts it into electricity by the photovoltaic effect.

33. Traditionally, solar cells are made using polysilicon, which is a highly purified form of silicon metal that is produced through a capital and energy intensive chemical based process. Certain elements (known as dopants) are added to the polysilicon to achieve the desired chemical composition of silicon for the production of solar cells. Timminco Solar's solar grade silicon may be an economic alternative to polysilicon, on the basis that it can be produced in a process that is less capital intensive with lower operating costs than the process that produces polysilicon. However, its profitability is highly dependent on the demand of the solar photovoltaic industry, the price of polysilicon and the receptivity of its customers to use solar grade silicon as an alternative to polysilicon.

34. BSI owns two solar grade silicon manufacturing facilities and an ingoting facility located in Bécancour, Québec (described in greater detail below).

35. BSI holds certain patents with respect to its metallurgical-based processes used to purify silicon metal into solar grade silicon. In particular, patents have been granted in the U.S., Canada, Georgia, Mexico, Malaysia and South Africa in respect of the Solidification Process (the "Solidification Patent") and in Canada, China, Mexico, Egypt, Georgia, South Africa, and the Eurasian Patent Organization in respect of the Rotary Drum Furnace Process (the "Rotary Drum Patent"). On the Rotary Drum Patent, Timminco has applied for a patent in the U.S., which remains outstanding.

36. Following the drastic decrease in the demand for and price of polysilicon (from approximately US\$400 per kilogram in 2008 to approximately US\$45 per kilogram in 2009) and solar grade silicon in 2009 (as described in greater detail below), and the resulting termination of customer commitments to buy Timminco Solar's solar grade silicon, in January 2010, Timminco Solar ceased active production of its solar grade silicon.

37. Since cessation of active production, Timminco Solar has continued to focus on improving the efficiency of the technology through continued research and testing. The Timminco Entities have invested significant funds in solar grade silicon capital equipment, development and expanding new customer markets for solar grade silicon in 2011.

38. Timminco Solar had planned to re-launch production of its solar grade silicon in early 2012, subject to achieving certain quality and cost benchmarks, market demand and customer commitments. However, an oversupply of polysilicon in the market in the latter half of 2011 has resulted in polysilicon prices that are at historical lows of approximately \$27 per kilogram. The result is that the market for Timminco Solar's solar grade silicon continues to be unfavourable and therefore precludes a re-launch of production.

39. Timminco Solar continues its efforts to sell its remaining inventories of solar grade silicon that were produced prior to the curtailment of production in early 2010, and that have been produced since then in connection with ongoing research and testing. Timminco Solar sells such inventory directly to end customers and also through distributors and sales agents. For example, BSI has entered into a sales agency agreement with AMG Conversion Ltd. ("**AMG Conversion**"), a wholly-owned subsidiary of AMG, whereby AMG Conversion acts as BSI's non-exclusive agent for the sale of BSI's existing solar grade inventory in consideration for a commission of 5% of the gross invoice price.

Silica Fumes

40. BSI also sells silica fumes, which are a non-hazardous by-product from the silicon metal manufacturing process. Silica fumes are used by the construction industry as an ingredient in cement for marine structures or bridge foundations and also serve as a thermal insulator.

41. Until 1993, when a market for silica fumes developed, BSI disposed of its silica fumes at its Silicon Fumes Property (as defined below). Starting in 1995, BSI began extracting the silica fumes from its disposal site for sale to third parties. The extraction process is carried out during the spring, summer and fall. Extraction of silica fumes from this site is expected to cease in the second half of 2012.

Supply Chain

42. Québec Silicon is BSI's primary supplier of silicon metal, and sole supplier of certain grades of silicon metal, for resale to BSI's customers. The continued supply of silicon metal from Québec Silicon is critical to the Timminco Entities' silicon metal business. A disruption of such supply could severely impact the Timminco Entities' silicon metal business.

43. BSI is also highly dependent on Québec Silicon for many other services including, among other things, in respect of shared employees, IT systems, quality control and leased premises as described earlier. A disruption of such services would severely impact all of the Timminco Entities' silicon metal, solar grade silicon and silica fume businesses.

44. In addition, the Timminco Entities are highly dependent on other suppliers for the continued operation of the solar grade silicon and silica fumes businesses. These include suppliers of raw materials (including silicon metal, oxygen and electricity for solar grade silicon purification operations), providers of logistics/transport and warehousing services, and providers of ingoting services (including AMG Conversion).

Employees

45. As at November 30, 2011, BSI had approximately 13 employees of which 10 were salaried and three were paid on an hourly basis. BSI's hourly employees are subject to a collective bargaining agreement dated February 28, 2011 (the "Collective Bargaining Agreement") and are represented by the Communication, Energy and Paper Union (the "Union"). The Collective Bargaining Agreement applies to both BSI's and Québec Silicon's unionized employees, and expires April 2013.

46. The Timminco Entities formerly employed approximately 24 hourly employees at their magnesium facility (the disposition of which is described in more detail below) who were subject to a collective bargaining agreement effective from June 1, 2007 to May 31, 2010 and were represented by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the “**United Steelworkers**”). This collective bargaining agreement is no longer in force due to the wind up of the Timminco Entities’ magnesium business in 2009.

47. As at November 30, 2011, Timminco had approximately 10 employees, all of which were salaried.

48. BSI also has employee sharing arrangements with QSLP with respect to approximately 15 designated non-union employees of QSLP pursuant to the Shared Services Agreement. Under the Shared Services Agreement, shared employees allocate a specified percentage of their time to perform services for BSI and BSI must reimburse QSLP for the prorated portion of all salary and benefits paid to such shared employees.

Properties and Facilities

The Bécancour Properties - the Solar Grade Silicon Facilities and the Ingotting Facility

49. BSI owns a 36.7 acre parcel of real property located at 5500 Yvon-Trudeau Street, Bécancour, Québec and owns, as beneficial owner, a 4.6 acre parcel of real property located at 6400 Yvon-Trudeau Street, Bécancour, Québec (together, the “**Bécancour Properties**”) where BSI’s solar grade silicon production facilities, known as “HP1” and “HP2”, respectively, (the “**Solar Grade Silicon Production Facilities**”) and an ingotting facility (the “**Ingotting Facility**”) are located.

50. The Solar Grade Silicon Production Facilities were built between 2007 and 2009 and are currently used for the development of Timminco Solar’s solar grade silicon purification process, with the majority of the equipment being idled pending re-commencement of commercial production.

51. Timminco Solar operates the Ingotting Facility for research and development and quality control purposes. The ingotting equipment located at the Ingotting Facility, which includes crystallization furnaces manufactured by ALD Vacuum Technologies GmbH, a subsidiary of AMG, is owned by AMG Conversion. Timminco Solar uses the ingotting equipment, for a specified fee, pursuant to a memorandum of understanding (as amended and extended) with AMG Conversion. Timminco Solar must continue to have access to and use of the ingotting equipment in order to be able to continue its solar grade silicon research, development and quality control.

52. BSI transferred the property that is adjacent to and surrounding the Bécancour Properties to QSLP (the "**Québec Silicon Real Property**"). The Québec Silicon Real Property includes several large manufacturing buildings, an administrative building and other ancillary buildings. QSLP operates its silicon metal manufacturing facility (the "**Silicon Metal Facility**") on this property and leases a part of the administrative building to BSI for use as administrative offices. Pursuant to the Lease Agreement, BSI pays nominal rent for such leased premises and approximately 20% of the taxes and other operating costs incurred with respect to the administrative building.

53. Since the sale of the Québec Silicon Real Property, access to the Bécancour Properties is only available through the Québec Silicon Real Property. As provided for in the Framework Agreement, BSI is to continue to have, among other things, access to the HP2 facility through the Québec Silicon Real Property, parking, ability to install telephone and other lines, pursuant to an agreement between QSLP and BSI that is currently being negotiated and the form of which had already been agreed upon by the parties. BSI must continue to have access to the HP2 facility via the Québec Silicon Real Property in order to be able to continue its solar grade silicon operations.

The Silica Fumes Property

54. BSI also owns real property located at 5355 Chemin-de-Fer, Bécancour, Québec (the "**Silica Fumes Property**") from which BSI extracts the silica fumes for sale to third parties. There are certain environmental remediation issues with respect to this property (as discussed in greater detail below).

Magnesium Facility - Haley, Ontario

55. Until June 2008, the Timminco Entities operated a dolomite mine and a magnesium manufacturing and extrusion, and special metals manufacturing, facilities located at 962 Magnesium Road in Haley, Ontario (the "**Haley Property**"). This property is owned by Timminco and is currently vacant and undergoing environmental monitoring and mine closure rehabilitation (as described in greater detail below).

Adhesives Facility - Toronto, Ontario

56. Timminco owns an industrial property located at 90 Tycos Drive in Toronto, Ontario (the "**Toronto Property**") that is currently leased to a third party under a long-term lease. Timminco has ongoing environmental monitoring and remediation obligations with respect to the Toronto Property as a result of legacy operations at that site relating to Timminco's former adhesives business (as discussed in greater detail below).

Ferrosilicon Facility - Beauharnois, Québec

57. Timminco also formerly operated a ferrosilicon facility located at 54 Hauts-Fourneaux in Beauharnois, Québec (the "**Beauharnois Property**"). On December 1, 2004, Timminco entered into an agreement of purchase and sale concerning the sale of the Beauharnois Property to a purchaser who agreed to assume all environmental liabilities associated with the Beauharnois Property (described in greater detail below). Timminco received the full purchase price from the purchaser. However, title to the Beauharnois Property is only scheduled to pass to the purchaser in 2013, subject to certain conditions. In the event that the purchaser fails to satisfactorily remediate the Beauharnois Property by October 2013, title will not pass and beneficial ownership of the Beauharnois Property will revert back to Timminco. In such event, Timminco will be entitled to retain the purchase price, but will be responsible for the environmental remediation obligations for the Beauharnois Property.

Cash Management System

58. In the ordinary course of its business Timminco uses a centralized cash management system (the "**Cash Management System**") to, among other things, collect funds and pay expenses associated with their operations.

59. Timminco maintains four bank accounts, one Canadian dollar disbursement account (the "**Canadian Dollar Disbursement Account**"), one Canadian dollar master account, one US dollar account (the "**US Dollar Account**"), and one Euro account with Bank of America.

60. Disbursements are made from the Canadian Dollar Disbursement Account and the US Dollar Account as required to operate the business. The Timminco payroll is funded through the Canadian Dollar Disbursement Account, except for the payroll for the Chief Executive Officer of Timminco and the General Manager of Timminco Solar, which is funded out of the US Dollar Account. Timminco uses ADP Canada Payroll Technologies to disburse payroll directly to employees and to make necessary statutory remittances.

61. Timminco also maintains nine bank accounts, three Canadian dollar accounts, three US dollar accounts and three Euro accounts with Bank of America for BSI consisting of a disbursement account, a receipt account and a master account for each of the three currencies. At the end of each business day, the disbursement accounts and receipt accounts are swept into the master account for each respective currency. Payroll is calculated by BSI and funds are disbursed to individual employees via Caisse Populaires who receives a lump sum transfer from BSI. Statutory remittances are made at the same time directly through the Bank of America Canadian Dollar Disbursement Account.

62. Cash payments from customers are typically received by wire payment and deposited directly into Timminco's primary bank account. Payments that are received in the form of cheques are deposited into a local branch of the Toronto-Dominion Bank and transferred directly to Timminco's accounts at Bank of America.

63. Continued access to the Cash Management System is critical to the ongoing business of the Applicants.

Assets

64. The Timminco Entities' assets, as reflected in the unaudited consolidated financial statements of Timminco Limited¹ for the quarter ended September 30, 2011 ("Q3 2011"), had a net book value of approximately \$126 million and consisted of the following:

Current Assets		
Cash and equivalents	\$ 2,798,000	
Restricted cash	\$ 10,000	
Accounts receivable	\$ 7,315,000	
Due from related companies	\$ 2,244,000	
Inventory	\$ 7,710,000	
Finished goods consigned to related company	\$ -	
Prepaid expenses	\$ 182,000	
Total Current Assets		\$ 20,259,000
Due from related companies	\$ -	
Long term receivables	\$ 2,272,000	
Long term inventories	\$ 2,199,000	
Property, plant and equipment	\$ 57,065,000	
Investments	\$ 43,673,000	
Intangible assets	\$ 1,507,000	
Total Assets		\$125,975,000

65. Property, plant and equipment consist primarily of BSI's interest in the Bécancour Properties and the buildings and equipment located thereon.

66. Investments are comprised of BSI's equity interest in Québec Silicon.

67. The Timminco Entities have also commenced an action in the Southern District of Texas against, among others, Applied Magnesium USA, Inc. and Metrobank N.A., seeking damages in the amount of \$3 million for payment of outstanding receivables.

68. In addition to the foregoing, as at fiscal year ended December 31, 2010, the Timminco Entities had the following tax losses:

¹ The consolidated financial statements include the results of Timminco, BSI and Timminco's US inactive subsidiaries (described above). The assets, liabilities, and financial results of these inactive subsidiaries are negligible and have negligible impact on the results reported in the consolidated financial statements.

- (a) Canadian tax loss carry forwards amounting to \$159.3 million expiring between 2013 and 2029; and
- (b) U.S. federal tax loss carry forwards in the amount of \$22.5 million expiring between 2012 and 2028.

Intercompany Indebtedness

69. Timminco has been extending funds over the years to BSI, on an unsecured basis, to provide capital to BSI to support growth opportunities and fund operating cash flow deficits. These funding activities have resulted in intercompany indebtedness in the approximate amount of \$136 million as at November 30, 2011.

Liabilities

70. As at September 30 2011, the Timminco Entities had liabilities totalling approximately \$89 million. The principal debt obligations of the Timminco Entities are described in more detail below.

Senior Secured Credit Facility

71. BSI has a secured revolving credit facility (the “**Senior Secured Credit Facility**”) with Bank of America, N.A. (“**Bank of America**”) under which BSI could draw up to \$20 million, subject to a borrowing base calculation and \$5 million availability block. The Senior Secured Credit Facility is governed by a loan and security agreement dated December 15, 2010 (the “**Senior Credit Agreement**”) which terminates on December 15, 2013. The Senior Credit Agreement was subsequently amended by five different amendments dated June 13, 2011, July 29, 2011, September 30, 2011, November 4, 2011, and November 30, 2011 (collectively, the “**Senior Credit Amendments**”). Copies of the Senior Credit Agreement and the Senior Credit Amendments are available upon request.

72. Under the Senior Credit Agreement, the Timminco Entities are required to, among other things, meet minimum levels of earnings before interest, taxes, depreciation and amortization (“**EBITDA**”) and restrict capital expenditures to certain maximum levels. The failure to meet these covenants constitutes an event of default. In an event of default, any credit

issued under the Senior Secured Credit Facility may become immediately due and payable and the Senior Credit Agreement may be terminated at Bank of America's option.

73. Timminco has guaranteed BSI's obligations under the Senior Credit Facility. The Timminco Entities' obligations under the Senior Credit Agreement and related guarantee are secured by substantially all of the assets of the Timminco Entities, including BSI's equity interest in QSLP, pursuant to a general security agreement in Ontario and a deed of hypothec in Québec. Copies of the guarantee and security agreements granted by the Timminco Entities are available upon request.

74. As at the time of swearing this affidavit, the Senior Credit Facility is undrawn. Further, Bank of America has notified the Timminco Entities that it has increased the Availability Reserve (as defined in the Senior Credit Agreement) by \$3 million, the immediate consequence of which is that no further borrowing is permitted under the Senior Credit Facility.

Secured Term Loan

75. Pursuant to a term loan agreement dated July 10, 2009 (the "**Term Loan Agreement**"), BSI received a secured term loan from Investissement Québec ("**IQ**") in the principal amount of \$25 million (the "**Secured Term Loan**"). A copy of the Term Loan Agreement is attached hereto as Exhibit "**G**".

76. The Secured Term Loan is secured by a guarantee from Timminco and a charge upon all of BSI's assets, including BSI's equity interest in QSLP, and is subordinated to the obligations of the Timminco Entities under the Senior Credit Agreement. Copies of the guarantee granted by Timminco and of the hypothec granted by BSI are attached hereto collectively as Exhibit "**H**".

77. The Secured Term Loan is interest-bearing at a variable rate of Canada prime plus 9%, which is currently approximately 12% per annum, with interest payable monthly until maturity, which originally was August 31, 2011. In March 2010, IQ agreed to defer interest payments for a six month period in 2010 and in August 2011, IQ agreed to capitalize the deferred interest of \$1.4 million, resulting in the current principal amount of \$26.4 million.

78. In connection with the extension of the Senior Credit Agreement, on December 15, 2010, the Secured Term Loan was amended to, among other things, extend the maturity date by eight years to July 16, 2019. As a result of such amendments, the Secured Term Loan is repayable in 84 fixed, consecutive monthly instalments in the amount of \$175,000 starting on August 12, 2012 and additional annual instalments, due on June 30 of each year starting in June 2013, in amounts based on BSI's defined adjusted cash flow for the preceding year. Copies of these amendments are attached hereto collectively as **Exhibit "I"**.

79. Under the Secured Term Loan, BSI is obligated to maintain certain working capital and debt to equity ratios. Further, a default under either the Senior Credit Agreement or the AMG Note (as defined and discussed below) constitutes a default under the Secured Term Loan upon which the entire amount of the Secured Term Loan is immediately due and payable.

AMG Note

80. In December 2009, BSI issued an unsecured convertible promissory note to AMG, Timminco's largest shareholder, in consideration for a loan of US\$5 million. An amended and restated note (the "**AMG Note**") was executed on December 15, 2010 that extended the maturity date of the loan from January 3, 2011 to January 3, 2014. Beginning January 1, 2011, interest on the AMG Note was set at 14%, payable monthly in arrears. A copy of the AMG Note is available upon request.

81. AMG has the right to convert any outstanding principal amounts owing under the AMG Note into common shares of Timminco at a rate of \$0.26 per common share. AMG has not exercised this right.

82. A default under either the Senior Credit Agreement or the Secured Term Loan constitutes a default under the AMG Note upon which the entire amount of the AMG Note is immediately due and payable.

Employee-Related Liabilities

83. As of September 30, 2011, the Timminco Entities owed approximately \$21.9 million in employee future benefits, including pension, post-retirement and termination benefits.

Termination Benefits

84. Timminco owes termination benefits in the approximate amount of \$4.3 million to former employees and certain former officers of Timminco described below.

85. In connection with management changes in the second quarter of 2011, three officers (collectively, the “**Former Officers**”) resigned in August 2011. Timminco finalized agreements with each of the Former Officers for termination benefits pursuant to which Timminco agreed to make cash payments in 2011 and to continue to provide certain post-employment benefits to the Former Officers for up to two years. The total cost of such cash payments and post-employment benefits is approximately \$0.3 million.

86. Timminco also issued non-interest bearing convertible promissory notes in September and October 2011 to two of the Former Officers in the principal amounts of approximately US\$0.4 million and \$0.8 million (collectively, the “**Former Officer Notes**”). The Former Officer Notes are payable in monthly installments in cash or, at the sole option of Timminco, in freely tradable common shares of Timminco, which Timminco can exercise starting in February and March 2012, respectively. Approximately \$0.1 million in monthly cash payments are due under the Former Officer Notes before Timminco is able to exercise its equity settlement options.

87. In connection with Timminco’s decision not to continue its active pursuit of a potential new silicon metal production facility in Iceland, Timminco has also agreed to sell all of its equity interest in its Icelandic majority-owned subsidiary, Thorsil ehf. (“**Thorsil**”) to a Former Officer for nominal consideration. In connection with the sale of Thorsil, Timminco has agreed to provide certain technical support for the project and to pay certain payables of Thorsil and to waive its claims for reimbursement of certain project-related expenses, in the aggregate amounts of approximately \$0.1 million.

88. In addition, Timminco has entered into a consulting agreement (the “**Consulting Agreement**”) with one of the Former Officers, whereby he would provide certain advisory services in respect of silicon metal projects, at the request of Timminco. The Consulting Agreement, which expires on September 30, 2012, provides for the payment of total minimum consulting fees of US\$0.1 million.

89. Pursuant to a consulting agreement dated September 19, 1996, the founder and former Chief Executive Officer of Timminco is entitled to monthly payments of approximately US\$23,000.

Pension Liabilities

90. The Timminco Entities sponsor the following three defined benefit pension plans:

- (a) Timminco sponsors the Retirement Pension Plan for The Haley Plant Hourly Employees of Timminco Metals, A Division of Timminco Limited (Ontario Registration Number 0589648) (the "**Haley Pension Plan**"). The Haley Pension Plan applies to former hourly employees at Timminco's magnesium facility in Haley, Ontario. Timminco is the administrator of the Haley Pension Plan. The Haley Pension Plan was terminated effective as of August 1, 2008. As required by the Ontario *Pension Benefits Act* (the "**PBA**"), a wind-up valuation in respect of the Haley Pension Plan was filed with the Financial Services Commission of Ontario ("**FSCO**") detailing the plan's funded status as of the wind-up date, and each year thereafter. As of August 1, 2008, the Haley Pension Plan was in a deficit position on a wind-up basis of \$5,606,700. The PBA requires that the wind-up deficit be paid down in equal annual installments payable annually in advance over a period of no more than five years. The most recently filed valuation report in respect of the Haley Pension Plan was performed as of August 1, 2010. As of August 1, 2010 the Haley Pension Plan had a wind-up deficit of \$3,922,700. Contributions made in respect of the period from August 1, 2010 to July 31, 2011 totalled \$1,598,500. Contributions in respect of the period from August 1, 2011 to July 31, 2012 were estimated to be \$1,598,500 and have not been remitted to the plan. According to preliminary results calculated by the Haley Pension Plan's actuaries, despite Timminco having made contributions of approximately \$4,712,400 in respect of the period from August 1, 2008 to July 31, 2011, as of August 1, 2011, the deficit remaining the Haley Pension Plan is estimated to be \$3,102,900.

- (b) BSI sponsors the Régime de rentes pour les employés non syndiqués de Silicium Bécancour Inc. (Québec Registration Number 26042) (the “**Bécancour Non-Union Pension Plan**”). The Bécancour Non-Union Pension Plan is an on-going pension plan with both defined benefit (“DB”) and defined contribution (“DC”) provisions. The plan has 6 active members and 32 retired and deferred vested members (including surviving spouses). The most recently filed actuarial valuation performed for funding purposes was performed as of September 30, 2010. As of September 30, 2010, the solvency deficit in the Bécancour Non-Union Pension Plan was \$3,239,600. In 2011, normal cost contributions owing to this plan totaled approximately \$9,525 per month (or 16.8% of payroll) and special payments owing to the plan total approximately \$41,710 per month. All contributions owing to the plan in accordance with the Québec *Supplemental Pension Plans Act* (the “QSPPA”) and regulations thereunder have been paid when due.
- (c) BSI also sponsors the Régime de rentes pour les employés syndiqués de Silicium Bécancour Inc. (Québec Registration Number 32063) (the “**Bécancour Union Pension Plan**”). The Bécancour Union Pension Plan is an on-going DB pension plan with 3 active members and 98 retired and deferred vested members (including surviving spouses). The most recently filed actuarial valuation performed for funding purposes was performed as of September 30, 2010. As of September 30, 2010, the solvency deficit in the Bécancour Union Pension Plan was \$7,939,500. In 2011, normal cost contributions owing to the plan total approximately \$7,083 per month (or 14.7% of payroll) and special payments owing to the plan total approximately \$95,300 per month. All contributions owing to the plan in accordance with the QSPPA and regulations thereunder have been paid when due.

91. The assets of the Haley Pension Plan, the Bécancour Non-Union Pension Plan and the Bécancour Union Pension Plan have been severely impacted by market volatility and decreasing long-term interest rates in the years preceding this application, which led to increases in the deficiencies in these pension plans. As a result, the special payments payable

with respect to the Haley Plan also increased. As at 2010, total annual special payments for the final three years of the wind-up of the Haley Pension Plan were \$1,598,500 for 2010, \$1,397,000 for 2011 and \$1,162,000 for 2012, payable in advance annually every August 1. By contrast, in 2011 total annual special payments to the Haley Pension Plan for the remaining two years of the wind-up increased to \$1,728,700 for 2011 and \$1,492,000 for 2012.

92. Due to the severe liquidity crisis faced by the Timminco Entities, they are unable to make the special payments required to be made with respect to the Haley Pension Plan, the Bécancour Non-Union Pension Plan and the Bécancour Union Pension Plan and intend to seek an order from the Court (on notice to the pension plan committees and the Ontario and Québec pension regulators) permitting the Timminco Entities to suspend these special payments.

93. In addition to the above described pension plans, QSLP sponsors the following two defined benefit pension plans (the “**Québec Silicon Pension Plans**”) with respect to which the Timminco Entities have certain ongoing obligations:

- (a) Régime de rentes pour les employés non syndiqués de Silicium Québec Société en commandite (Québec Registration Number 32159) (the “**Québec Silicon Non-Union Pension Plan**”). The Québec Silicon Non-Union Pension Plan was established as a spinoff plan to the Bécancour Non-Union Pension Plan and coincided with the sale of certain assets to QSLP effective as of October 1, 2010. The Québec Silicon Non-Union Pension Plan is an on-going pension plan with 35 active members as of September 30, 2010. As of September 30, 2010, the solvency deficit in the Québec Silicon Non-Union Pension Plan was \$2,056,300. Normal cost contributions owing to the plan starting January 2012 total approximately \$24,791 per month. Special payments owing to the plan starting January 2012 total approximately \$29,303 per month. All contributions owing to the plan in accordance with the QSPPA and regulations thereunder have been paid when due.
- (b) Régime de rentes pour les employés syndiqués de Silicium Québec Société en commandite (Québec Registration Number 32160) (the “**Québec Silicon Union Pension Plan**”). The Québec Silicon Union Pension Plan was established as a

spinoff plan to the Bécancour Union Pension Plan and coincided with the sale of certain assets to QSLP effective as of October 1, 2010. The Québec Silicon Union Pension Plan is an on-going pension plan with 110 active members as of September 30, 2010. As of September 30, 2010, the solvency deficit in the Québec Silicon Union Pension Plan was \$3,684,100. Normal cost contributions owing to the plan starting January 2012 total approximately \$51,227 per month. Special payments owing to the plan starting January 2012 total approximately \$47,743 per month. All contributions owing to the plan in accordance with the QSPPA and regulations thereunder have been paid when due.

94. The Timminco Entities do not, in the ordinary course, contribute to the Québec Silicon Pension Plans; however, to the extent QSLP is required to make additional payments into these plans that it cannot fund from its cash flows, each of BSI and DCC Canada are obligated to fund its pro rata portion thereof to QSLP pursuant to the Limited Partnership Agreement.

Post-Retirement Benefits

95. Timminco provides medical and dental post-retirement benefits to 13 former hourly and four former salaried employees at Timminco's magnesium facility in Haley, Ontario, who were on disability prior to the closure of that facility. The four salaried employees also receive benefits in the form of RRSP contributions. The monthly cost of such post-retirement benefits to Timminco is approximately \$15,000. BSI also sponsors a non-pension post-retirement plan which provides eligible retirees with life insurance, medical, dental coverage.

96. In addition, as referenced above, pursuant to the Framework Agreement BSI is liable for up to \$5 million in the aggregate in post-retirement benefits of any employees transferred to QSLP who retire on or before September 30, 2016. As at the date of this affidavit, no payments have been made with respect to such benefits.

Mine Rehabilitation Liabilities

97. Timminco has a mine closure plan with respect to the former mining operations at the Haley Property, as set forth in the certified mine closure plan dated September 2003 and acknowledged by the Ministry of Northern Development and Mines (Ontario) ("MNDM") as of

May 1, 2006, as amended by the certified mine closure plan amendment dated May 2011 and acknowledged by the MNDM as of July 27, 2011 (as amended, the “**Haley Mine Closure Plan**”). The Haley Mine Closure Plan sets forth the undertakings of Timminco to rehabilitate the Haley Property. Although Timminco has made significant progress towards achieving the required outcomes pursuant to the Haley Mine Closure Plan, there are several on-going activities and outstanding items that have yet to be fully addressed, and in some cases require further approval or input from the MNDM.

98. Timminco was originally required to provide to the MNDM approximately \$1.68 million as financial assurance, payable in instalments over a five-year period starting in 2006, which amount was the original estimated active closure costs. As at the end of 2010, Timminco had deposited a total of \$1.46 million with the MNDM as financial assurance. In August 2011, the MNDM returned approximately \$0.48 million to Timminco on account of the rehabilitation work that had been completed and the estimated outstanding closure costs to comply with the Haley Mine Closure Plan at that time. Currently the balance of deposits held by the MNDM as financial assurance is approximately \$0.98 million. In the event that any revised estimate of costs to perform the outstanding closure activities under the Haley Mine Closure Plan exceeds such amount, the MNDM may require that Timminco provide additional financial assurance.

Environmental Liabilities

99. As referenced above, there are environmental monitoring and remediation obligations with the relevant Ontario and Québec government agencies with respect to some of the Timminco Entities’ current and former operations.

The Haley Property

100. Timminco performs ongoing monitoring of groundwater and surface water at the Haley Property. Future remediation requirements may be influenced by the results of that monitoring. Similarly, future monitoring requirements may be influenced by the results of ongoing remediation.

The Silica Fumes Property

101. BSI has certain remediation obligations with respect to the Silica Fumes Property resulting from historical silica fumes disposal at this site. 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.

102. As at September 30, 2011, the future costs relating to site restoration and remediation relating to the Silica Fumes Property were estimated to be \$1.3 million.

The Beauharnois Property

103. The Ministry of Sustainable Development, Environment and Parks (Québec) approved a remediation plan in respect of the Beauharnois Property effective October 2003. Such plan includes various activities designed to restore the site to a natural state, and a requirement for an annual environmental follow-up program for groundwater to measure the pace of the remediation work. The plan requires the remediation work to be completed within ten years (by October 2013).

104. Although the purchaser of the Beauharnois Property has agreed to assume responsibility for compliance with the remediation plan, in the event that the purchaser fails to satisfactorily remediate the Beauharnois Property before October 2013, beneficial ownership of the Beauharnois Property will revert to Timminco. Timminco continues to monitor the purchaser's remediation efforts at the Beauharnois Property and has engaged an environmental consultant to monitor progress of the remediation plan. As at the end of 2010, the purchaser's remediation efforts were behind schedule and it was estimated that only 15% of the remediation work was complete. The estimated cost of the remaining remediation work was \$1.4 million as at September 30, 2011.

The Toronto Property

105. An investigation conducted in February 2005 of the groundwater pump-and-treat system at the Toronto Property identified certain environmental risks associated with potential

source areas at the property, arising from historical operations, which had not been addressed by prior remedial activities. The Ministry of the Environment (Ontario) issued an order in October 2007 requiring Timminco to implement the plan that Timminco had developed for further investigations and remedial activities. Pursuant to that plan, Timminco has repaired and upgraded the pump-and-treat system and expects that, with continued operation of the system, active remediation of the groundwater is occurring and contaminant concentrations within the plume will decrease over time. Timminco performs ongoing groundwater monitoring and future remediation requirements will be based on the results of that monitoring. As at September 30, 2011, the present value of estimated future costs relating to the remediation of the Toronto Property were estimated to be \$0.6 million.

BSI's Indemnity With Respect to QSLP's Environmental Undertakings

106. Pursuant to the Framework Agreement, the Timminco Entities have also agreed to indemnify QSLP for all expenditures to comply with certain environmental undertakings included in the Certificate of Authorization granted by the Québec Minister of Sustainable Development, Environment and Parks to QSLP regarding the operation of the silicon metal facilities. The environmental undertakings included in the Certificate of Authorization must be completed by December 31, 2012 and as at September 30, 2011, were estimated to be \$0.7 million.

107. As at September 30, 2011, the Timminco Entities' total liability for all environmental remediation, compliance and monitoring costs (including indemnification to QSLP) was assessed at approximately \$4.0 million. In addition, as at September 30, 2011, the present value of estimated future costs relating to mine rehabilitation liabilities (as discussed in greater detail above) was estimated to be \$4.8 million.

Class Action Litigation against Timminco

108. Timminco, among others, has been named as a defendant in a potential class action lawsuit filed in the Ontario Superior Court of Justice on May 14, 2009. Other defendants include current directors and officers of the Timminco Entities. The claims relate to, among other things, potential contraventions of disclosure obligations under the Ontario *Securities Act*, R.S.O. c. S-5 (the "Securities Act"). The plaintiff, on his behalf and on behalf of the

shareholders he seeks to represent, alleges that Timminco and others made misrepresentations about BSI's (Timminco Solar's) solar grade silicon production process and is claiming damages exceeding \$540 million. The plaintiff has not obtained leave to commence proceeding under Part 23.1 of the Securities Act, nor has the action been certified as a class action. Timminco's insurers have been put on notice with respect to this action. The action is being vigorously defended.

Air Products Settlement

109. In September 2008, BSI and Air Products Canada Limited ("Air Products") entered into an agreement whereby Air Products would install an oxygen production facility on BSI's property and supply oxygen to BSI for a fixed monthly amount. In January 2010, the parties agreed to terminate the agreement and pursuant to a settlement agreement dated December 20, 2010 the total settlement amount agreed was approximately \$4.3 million, subject to an interest rate of 7.8%. The Timminco Entities agreed to make monthly payments to Air Products over 2011-2013 as follows:

- (a) \$78,207 per month starting January 1, 2011,
- (b) \$206,628 per month starting January 1, 2012; and
- (c) \$125,000 per month starting January 1, 2013.

110. The most recent payment was made on December 1, 2011.

Other Liabilities

111. In addition to the foregoing, as at November 30, 2011, the Timminco Entities had approximately \$20.1 million of accrued and unpaid liabilities, including:

	(\$ Million)
Trade Payables	2.0
Accrued Payroll (including statutory liabilities) and Accrued Vacation Pay	0.8
Accrued Audit and Taxes	0.6
Accrued Professional Services	0.7
Accrued Bonus and Accrued Supplementary Executive Retirement Plan	0.3
Accrual for share based payments	0.7
Other Payables and Accrued Liabilities	1.1
Trade Payables to Related Companies	8.9
Trade Finance from Related Companies	5.0
Total Liabilities	20.1

III. FINANCIAL DIFFICULTIES AND THE NEED FOR CCAA PROTECTION

Financial Difficulties

112. As discussed above, demand for solar grade silicon is highly dependent on the demand of the solar energy industry, the price of polysilicon and the receptivity of the Timminco Entities' customers to use its products as an alternative to polysilicon. In the third quarter of 2008, when the credit crisis hit all sectors of the world economy, including the solar energy and silicon industries, the demand for and price of polysilicon decreased dramatically causing the demand for solar grade silicon to virtually disappear and its price to drop drastically. As a result of this drastic reduction in demand and price, many of Timminco Solar's customers cancelled or renegotiated their contracts for supply of solar grade silicon and demanded repayment of the substantial deposits they provided in connection with the supply contracts.

113. As a result, the Timminco Entities have been unable to generate any meaningful revenue from Timminco Solar or to recoup their capital expenditures incurred in connection with these

operations totalling approximately \$117 million, including the construction of the Solar Grade Silicon Production Facilities from 2007 to 2009.

114. In 2009, a slow-down in the chemical, aluminum and steel industries, due to the recession of 2009, caused the demand and spot price of silicon metal to decline. In May 2009, BSI (then owner of all of the silicon metal assets that are currently owned by Québec Silicon) shut down silicon metal operations entirely. As demand for silicon metal began to recover later in 2009, BSI restarted silicon metal production, operating again at full capacity starting in November 2009.

115. In order to generate a base level of demand, in late 2009 BSI procured the commitment of the Key Customer to purchase sufficient volumes of silicon metal. In exchange, BSI agreed to supply a substantial volume of silicon metal to such customer over a five-year term, based on fixed prices and an annual price adjustment mechanism that were established at a time of relatively low silicon metal prices. As a result, even though silicon metal prices rose in 2010 and 2011, BSI has been unable to take full advantage of rising market prices for silicon metal due to its high volume long-term contract with the Key Customer. The price fixed under this contract has been below the spot market prices for the duration of 2011 and the Timminco Entities continue to operate on a very low profit margin with respect to their silicon metal operations.

116. Moreover, the silicon metal pricing agreed upon with the Key Customer in late 2009 was denominated in Euros. As the value of the Euro relative to the Canadian dollar has dropped significantly since then, the revenues earned by BSI from such sales has accordingly decreased.

117. As discussed above, BSI is entitled to 51% of the silicon metal output of Québec Silicon, which as of October 1, 2010, owns all of BSI's former silicon metal operation. Such entitlement represents only approximately half of the silicon metal and related revenues that were available to BSI prior to October 2010.

118. As a result of the poor performance of the solar grade silicon and silicon metal operations as described above, the Timminco Entities have been experiencing increasing net operating losses over the last few years.

119. The Timminco Entities continue to suffer severe strains on their cash flow as a result of the foregoing and their ongoing payment obligations with respect to the settlement agreements, environmental remediation obligations, employee termination arrangements, pension plan funding obligations, financing burdens and other overhead costs discussed above.

Financial Results

120. For all the reasons described above, the Timminco Entities' sales levels decreased from \$160 million in the fiscal year ended December 31, 2007 and \$252.6 million in the fiscal year ended December 31, 2008 ("FY2008") to \$104.6 million in the fiscal year ended December 31, 2009 ("FY2009")². Sales levels increased slightly in the fiscal year ended December 31, 2010 ("FY2010")³, but remained low at \$133 million.

121. At the same time, operating expenses increased from \$141.7 million in FY2009 to \$155.8 million in FY2010.

122. As a result, the Timminco Entities' net operating profit, which was \$12 million in FY2008, has been reduced to net operating losses of \$74.2 million in FY2009 and \$57.8 million in FY2010.

123. Similarly, the Timminco Entities' earnings before interest, taxes, depreciation and amortization ("EBITDA") declined from \$21.3 million in FY2008 to negative \$50.9 million in FY2009 and negative \$38.9 million in FY2010. The Timminco Entities' EBITDA for the first three quarters of 2011 was negative \$4.3 million.

124. The Timminco Entities reported a net loss of \$134.2 million in FY2009, a net loss of \$95.7 million in FY2010, and a net loss of \$15.8 million in the first three quarters of 2011.

125. Between January 1, 2011 and September 30, 2011, the Timminco Entities' cash position decreased 62% from \$7.5 million to \$2.8 million. As at December 31, 2011, the Timminco Entities' cash position was \$2.4 million.

² Commencing in 2007 and ending in 2009, the Timminco Entities disposed of their magnesium business which contributed to the decline in sales levels.

126. Copies of the Timminco Entities' consolidated financial statements for the past 12 months are attached as the following Exhibits:

Exhibit "J" - 2010 Annual Audited Consolidated Financial Statements and Management Discussion and Analysis

Exhibit "K" - First Quarter 2011 Interim Consolidated Financial Statements and Management Discussion and Analysis

Exhibit "L" - Second Quarter 2011 Interim Consolidated Financial Statements and Management Discussion and Analysis

Exhibit "M" - Third Quarter 2011 Interim Consolidated Financial Statements and Management Discussion and Analysis

Responses to Financial Difficulties

127. In response to the financial difficulties described above, the Timminco Entities have undertaken extensive efforts to reorganize their corporate and operating structures and to sell various assets in order to generate operating capital.

128. In 2010, as described above, the Timminco Entities transferred the silicon metal production business to QSLP pursuant to a joint venture with DCC in exchange for, among other things, a 51% interest and a US\$40 million cash payment. Proceeds from the sale were used to repay the then outstanding loan to Bank of America.

129. In 2009, 2010 and 2011, the Timminco Entities attempted to improve their liquidity by completing equity offerings, pursuant to which investors (including AMG) purchased additional common shares of Timminco which resulted in gross proceeds to Timminco of approximately \$47.3 million.

³ As described in greater detail above, on September 30, 2010, BSI transferred all of its silicon metal production assets to QSLP which impacted BSI's sales and expenses levels.

130. In 2009 and 2010, the Timminco Entities also settled the claims for the return of deposits made by certain solar grade silicon customers (as described above) by issuing common shares of Timminco.

131. In addition and as described in greater detail above, with a view to improving the Timminco Entities' cash position, BSI received a net pre-payment of approximately \$4.8 million in September 2011 for future deliveries in 2012 to Sudamin.

132. Since August 2011, Timminco has attempted to reduce its overhead costs through the rationalization of its head office and the termination of several members of the management team, including the management changes announced on August 31, 2011.

133. In October 2011, QSLP extended its trade credit terms to BSI from 30 days after invoice to 45 days. Further extensions of credit by QSLP are unavailable at this time.

134. The Timminco Entities have also sought various forms of financing and financial relief from Bank of America, IQ, and AMG since 2009.

135. Bank of America is unwilling to grant further waivers of EBITDA financial covenants in the Senior Credit Agreement without further financial relief from IQ. As described above Bank of America has effectively precluded any further borrowings under the Senior Secured Credit Facility by increasing the Availability Reserve.

136. IQ has in the past provided relief to the Timminco Entities with respect to their indebtedness to IQ. The Timminco Entities sought further relief from IQ beginning in September 2011; however, further relief has not been forthcoming. On or about December 15, 2011, representatives of the Timminco Entities and IQ met to discuss the Timminco Entities' liquidity crisis and the possibility of the Timminco Entities applying for protection under the CCAA and seeking Court-ordered charges in priority to the security held by IQ. IQ was subsequently advised of the anticipated return date of the within application and provided with a copy of the Timminco Entities' application materials.

137. AMG is unwilling to invest further capital or provide other forms of financial relief to the Timminco Entities.

138. The management of the Timminco Entities are of the view that no additional financing is available to the Timminco Entities (other than the DIP Facility defined and described in greater detail below). In addition, any additional financing will not provide an adequate solution to the Timminco Entities' substantial legacy costs.

The Timminco Entities are Insolvent

139. Since the period ending March 31, 2011 ("Q1 2011"), the Timminco Entities have not met the minimum EBITDA levels required under the terms of the Senior Credit Agreement and did not meet the revised minimum EBIDTA requirements for the year to date period ended November 30, 2011. Although Bank of America has waived or agreed to amend the minimum EBITDA requirements for certain prior periods, Bank of America has not waived the covenant or revised the minimum EBITDA requirement for the period ending November 30, 2011. Accordingly, the Timminco Entities have defaulted under the Senior Credit Agreement.

140. Although no amounts are currently outstanding under the Senior Secured Credit Facility, an event of default under the Senior Credit Agreement triggers a default under the Secured Term Loan and under the AMG Note. A default under the Secured Term Loan entitles IQ to exercise certain remedies, including acceleration of payment of all amounts due under the Secured Term Loan. A default under the AMG Note triggers an automatic acceleration of payment of all amounts under the AMG Note. The Timminco Entities do not have sufficient liquidity to satisfy such accelerated payment obligations arising from an event of default under the Senior Credit Agreement.

141. In addition, the Timminco Entities failed to make various payments due on December 31, 2011, including interest payment payable to IQ under the Secured Term Loan and AMG under the AMG Note.

142. Accordingly, Timminco and BSI are insolvent. The Timminco Entities cannot meet their liabilities as they come due and do not have sufficient cash to fund their operations. Without the protection of the CCAA, a shut-down of operations is inevitable, which would be extremely detrimental to the Timminco Entities' employees, pensioners, suppliers, and customers. CCAA protection will allow the Timminco Entities to maintain operations while

giving them the necessary time to consult with their stakeholders regarding the future of their business operations and structure.

FUNDING OF THESE PROCEEDINGS

143. As at December 31, 2011, the Timminco Entities' consolidated cash balance was approximately \$2.4 million.

144. The Timminco Entities have prepared a 30-day consolidated cash flow forecast for the period of January 3, 2012 to February 3, 2012 (the "Cashflow Forecast") that forecasts the Timminco Entities' receipts, disbursements and financing requirements. A copy of the Cashflow Forecast and a report containing the prescribed representations of the Timminco Entities regarding the preparation of the Cashflow Forecast are attached collectively as Exhibit "N".

145. The Cashflow Forecast estimates that for the period of January 3, 2012 to February 3, 2012, the Timminco Entities will have total receipts of approximately \$5.5 million, total operating disbursements of approximately \$7.7 million for net cash outflow of approximately \$2.2 million.

146. It is anticipated that the Timminco Entities' forecast liquidity requirements during the early stages of the CCAA Proceedings will be met by funds generated from their accounts receivable. However, as the Cashflow Forecast demonstrates, the Timminco Entities' cash position reaches low levels during the Cashflow Forecast period.

147. The Timminco Entities approached their existing stakeholders and third party lenders in an effort to secure a suitable DIP facility. Bank of America, AMG, IQ and two third party lenders declined to advance any funds to the Timminco Entities at this time.

148. The Timminco Entities engaged in negotiations with a third party lender with respect to providing DIP financing, but to date have not completed those negotiations. The Timminco Entities intend to continue to attempt to negotiate an appropriate DIP facility following commencement of these proceedings.

IV. PROPOSED INITIAL ORDER

Administration Charge

149. The Timminco Entities seek a charge on the assets, property and undertakings of the Timminco Entities (the “**Property**”) in the maximum amount of \$1 million to secure the fees and disbursements incurred in connection with services rendered to the Timminco Entities both before and after the commencement of the CCAA proceedings by counsel to the Timminco Entities, the Monitor (if appointed) and the Monitor’s counsel (the “**Administration Charge**”).

150. The Timminco Entities worked with the proposed monitor to estimate the proposed quantum of the Administration Charge and believe it to be reasonable and appropriate in view of the complexities of the Timminco Entities’ CCAA proceedings and the services to be provided by the beneficiaries of the Administration Charge.

151. The Initial Order provides that the Administration Charge 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 Québec *Supplemental Pension Plans Act* (collectively, the “**Encumbrances**”) in favour of any persons that have not been served with notice of this application.

152. I am advised by Kathryn Esaw of Stikeman Elliott LLP, counsel to the Timminco Entities, that IQ was advised of the anticipated return date of this application and has received copies of the Timminco Entities’ Application materials.

153. The Timminco Entities intend to return to Court and seek an Order granting super-priority ranking to the Administration Charge ahead of the Encumbrances including, *inter alia*, any deemed trusts created under provincial pension legislation on the Comeback Motion (as defined below).

Directors’ and Officers’ Provisions

154. To ensure the ongoing stability of the Timminco Entities' business during the CCAA period, the Timminco Entities require the continued participation of their directors, officers, managers and employees.

155. The Timminco Entities are seeking typical provisions staying all proceedings against the directors and officers of Timminco and BSI with respect to all claims against the directors or officers that relate 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 of the Timminco Entities.

156. There are several directors on the board of directors of BSI that also serve on the board of directors of QSGP and several common officers. Due to the intertwined nature of the Timminco Entities' and QSLP's businesses and in order to allow these directors and officers to focus on the restructuring of the Timminco Entities, the Timminco Entities are also seeking to extend the stay of proceedings in favour of those directors and officers in their capacity as directors or officers of QSGP.

157. I am advised by Kathryn Esaw of Stikeman Elliott LLP, counsel to the Timminco Entities, and do verily believe that in certain circumstances directors can be held liable for certain obligations of a company owing to employees and government entities. As of January 2, 2012, the Timminco Entities are potentially liable for accrued but unpaid vacation pay, wages, and source deductions in the aggregate amount of approximately \$240,198.

158. The Timminco Entities maintain directors' and officers' liability insurance (the "D&O Insurance") for the directors and officers of Timminco and BSI. The current D&O Insurance policies provide a total of \$15 million in coverage (plus certain additional amounts in respect of Side A D.I.C. coverage). In addition, there are also contractual indemnities which have been given to the directors and officers by Timminco and BSI. The Timminco Entities do not have sufficient funds to satisfy those indemnities should their directors and officers be found responsible for the full amount of the potential directors' liabilities. In addition, under the D&O Insurance the deductible for certain claims is \$100,000 and the presence of a large number of exclusions creates a degree of uncertainty.

159. The directors and officers of the Timminco Entities have indicated that, due to the significant personal exposure associated with the Timminco Entities' aforementioned liabilities, they cannot continue their service with the Timminco Entities unless the Initial Order grants a charge on the Property in the amount of \$400,000 (the "D&O Charge"). The D&O Charge is proposed to rank immediately after the Administration Charge.

160. The D&O Charge will allow the Timminco Entities to continue to benefit from the expertise and knowledge of their directors and officers. The Timminco Entities believe the D&O Charge is reasonable in the circumstances.

Stay of All Rights, Remedies and Deemed Events under the QSLP Agreements

161. As described in greater detail above, the QSLP Agreements provide for certain deemed events, modification of rights and terminations of the QSLP Agreements in the event BSI becomes insolvent or commences proceedings under the CCAA. Due to the highly intertwined businesses of BSI and QSLP and BSI's high dependence on QSLP, it is imperative for the benefit of its creditors that BSI's rights under the QSLP Agreements are not modified as a result of it seeking protection under the CCAA.

162. Accordingly, in addition to the standard stay of proceedings provisions contained in the model Initial CCAA Order, the Timminco Entities are seeking a provision in the Initial Order staying the exercise of any and all rights, remedies, modifications of existing rights and events deemed to occur under the terms of the QSLP Agreements upon an Act of Insolvency (as defined in the Limited Partnership Agreement) occurring with respect to BSI.

Approval of the Proposed Service of the Comeback Motion

163. The Timminco Entities are also seeking a provision in the Initial Order approving their proposed manner of service of the parties likely to be affected by the relief sought on the Comeback Motion.

164. In particular, the Timminco Entities propose serving all such parties by forwarding a copy of the Initial Order (if granted) and the Motion Record with respect to the relief to be sought on the Comeback Motion by electronic transmission (where available) and by courier at

the parties' respective addresses as last shown on the records of the Timminco Entities as soon as practicable after the granting of the Initial Order.

165. The Timminco Entities propose to serve the Bécancour Non-Union Pension Plan and the Bécancour Union Pension Plan by serving (in the manner described above) the members of the pension plan committees for the Bécancour Non-Union Pension Plan and the Bécancour Union Pension Plan. In addition, the Timminco Entities propose to serve the Financial Services Commission of Ontario, and the Régie Des Rentes Du Québec.

Access to the Books and Records of QSLP and BSI

166. Pursuant to the Limited Partnership Agreement, QSGP maintains the books and records of QSLP. The Limited Partnership Agreement also provides BSI and DCC Canada access to such books and records.

167. Due to the intertwined nature of BSI's and QSLP's businesses and BSI's high dependency on QSLP's operational efficiency for its profitability, the Timminco Entities require uninterrupted access to the books and records of QSLP and QSGP.

168. Accordingly, and in order to ensure such uninterrupted access, the Timminco Entities are requesting that this Court direct QSLP and QSGP to provide the Timminco Entities continuing access to QSLP's books and records.

169. In addition, the books and records of BSI are maintained on the systems operated by QSLP and QSGP. In order to ensure BSI continues to have uninterrupted access to its records, the Timminco Entities are requesting that this Court direct QSLP and QSGP to provide the Timminco Entities continuing access to BSI's books and records.

V. COMEBACK MOTION

170. The Timminco Entities intend to return to Court during the week of January 9, 2012 (the "Comeback Motion") and seek certain relief on notice to the parties to be affected. Among other things, the Timminco Entities intend to seek an Order (a) granting super-priority ranking to the Administration Charge and the D&O Charge; (b) suspending the Timminco Entities' obligations to make special payments with respect to their pension plans; (c) approving the

KERPs; and (d) granting super-priority charges to secure the Timminco Entities' obligations under the KERPs ahead of, *inter alia*, any deemed trusts created under provincial pension legislation.

171. Additional information with respect to the relief to be sought on the Comeback Motion will be provided in advance of same.

VII. MONITOR

172. FTI Consulting Canada Inc. has consented to act as the Court-appointed Monitor (the "Monitor") of the Timminco Entities, subject to Court approval.

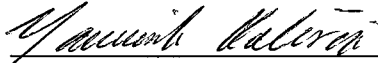
173. FTI Consulting Canada Inc. is a trustee within the meaning of section 2 of the BIA as amended, and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA.

174. I am advised by Nigel Meakin of FTI Consulting Canada Inc. that the proposed monitor is supportive of the relief being sought in favour of the Timminco Entities and the existence and amounts of the Administration Charge and the D&O Charge.

VIII. PURPOSE OF AFFIDAVIT

175. This affidavit is sworn in support of the Timminco Entities' application for protection pursuant to the CCAA and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, Province of Ontario, on January 2, 2012.



Commissioner for Taking Affidavits



Peter A.M. Kalins

**Yusuf Yannick Kafrai, a
Commissioner etc., Province of Ontario,
while a student-at-law.
Expires April 12, 2013.**

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

Court File No: »

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AFFIDAVIT OF PETER A.M. KALINS
(SWORN JANUARY 2, 2012)**

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Lawyers for the Applicants

EXHIBIT "A"

This is Exhibit "A"
to the affidavit of Peter A.M. Kalins,
sworn before me on the 2nd day
of January, 2012

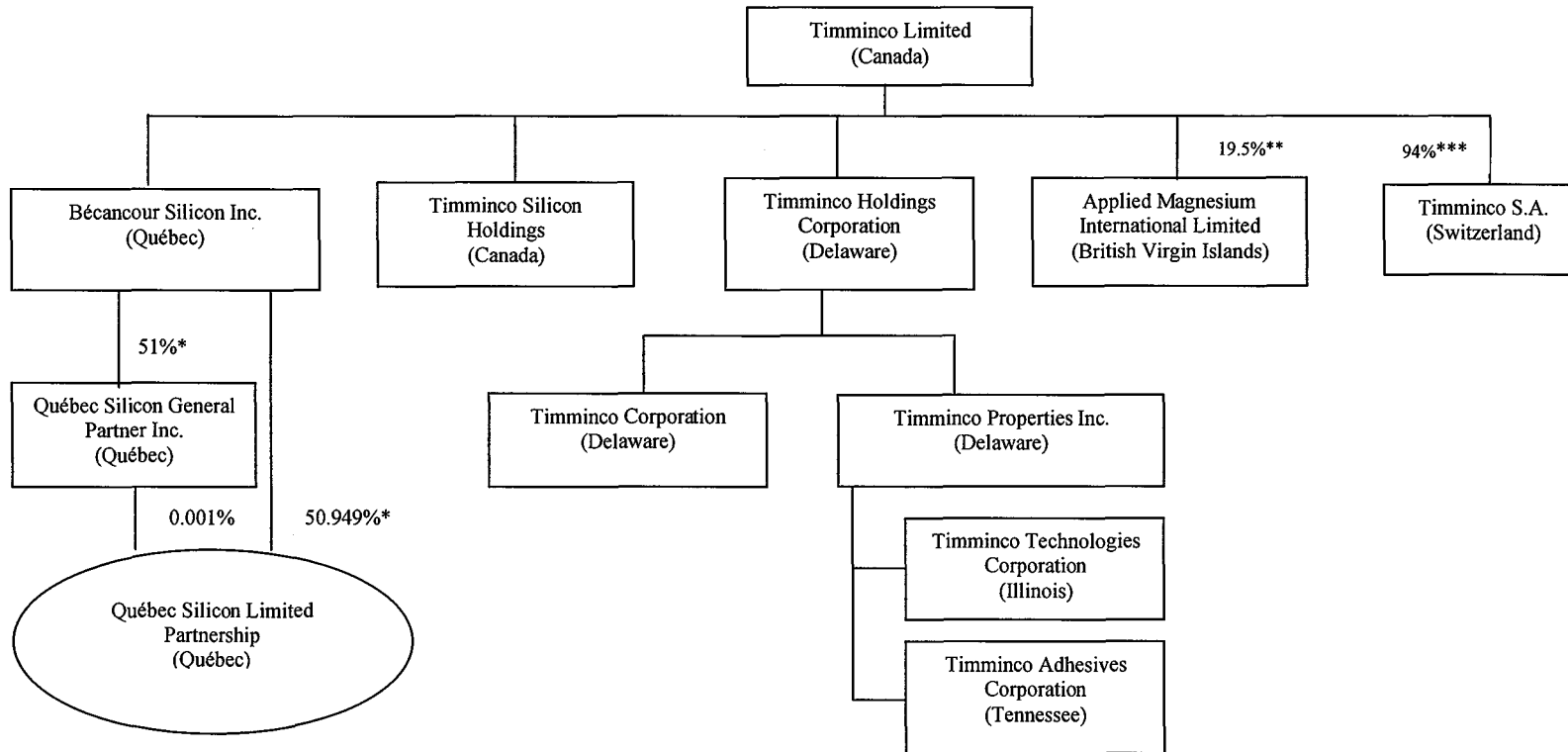


Commissioner for Taking Affidavits

Yusuf Yannick Katirai, a
Commissioner etc., Province of Ontario,
was a student-at-law.
Expires April 12, 2013.

TIMMINCO LIMITED
Legal Entities/Chart of Ownership

Updated: November 28, 2011



Unless otherwise noted ownership is 100%.

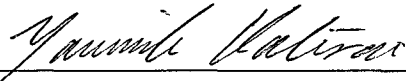
*Remaining 49% is held by Dow Corning Canada, Inc. (limited partnership units) and DC Global Holdings S.a.r.l. (shares of general partner).

**Remaining 80.5% is held by Winca Tech, Maple Davi's and other Chinese entities.

***Remaining 6% is registered in the name of certain individuals and held in trust for the benefit of Timminco Limited.

EXHIBIT "B"

This is Exhibit "B"
to the affidavit of Peter A.M. Kalins,
sworn before me on the 2nd day
of January, 2012



Commissioner for Taking Affidavits

Yusuf Yannick Katiral, a
Commissioner etc., Province of Ontario,
while a student-at-law.
Expires April 12, 2013.

FRAMEWORK AGREEMENT

dated as of

August 10, 2010

by and among

DOW CORNING CORPORATION,

TIMMINCO LIMITED

and

BECANCOUR SILICON INC.

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FRAMEWORK AGREEMENT

THIS FRAMEWORK AGREEMENT (this "Agreement"), dated as of August 10, 2010, is entered into by and among DOW CORNING CORPORATION, a Michigan corporation ("DCC"), TIMMINCO LIMITED, a corporation governed by the laws of Canada ("TL"), and BECANCOUR SILICON INC., a corporation governed by the laws of Québec and a wholly owned subsidiary of TL ("BSI").

WITNESSETH:

WHEREAS, DCC and BSI desire to enter into a joint venture arrangement whereby, among other things, (i) DCC, through DCC GP Company, shall acquire, and BSI shall cause the GP to issue to DCC GP Company, Class B GP Shares representing forty-nine percent (49%) of the GP Shares, (ii) DCC, through DCC LP Company, shall acquire, and BSI shall cause Becancour JV to issue to DCC LP Company, LP Interests representing forty-nine percent (49%) of the LP Interests, (iii) DCC GP Company, BSI and the GP will enter into the GP Shareholders Agreement, (iv) DCC LP Company, BSI and Becancour JV will enter into the Amended and Restated Limited Partnership Agreement, and (v) DCC Customer, BSI and Becancour JV will enter into the Output and Supply Agreement, in each case following the contribution by BSI to Becancour JV of certain assets relating to the Business and all on the terms and conditions set forth herein; and

WHEREAS, DCC, TL and BSI are entering into this Agreement in order to set forth certain key terms of such joint venture arrangement, including the relationship of the parties following the Closing.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. When used in this Agreement, the following terms shall have the respective meanings specified below:

"Adjusted Direct Cost" means, per metric ton of Product manufactured, the Actual Full Cost (as defined in the Output and Supply Agreement), excluding financing and depreciation costs.

"Amended and Restated Limited Partnership Agreement" has the meaning set forth in Section 3.2(e).

"Amended GP Charter" has the meaning set forth in Section 3.2(f).

"Ancillary Agreements" means the Business Transfer Agreement, the Amended and Restated Limited Partnership Agreement, the GP Shareholders Agreement, the Output and Supply Agreement, the Real Property Agreements, the Services Agreements, the Pension Transfer Agreement, if applicable, the Intellectual Property Agreements and Working Capital Facility Agreements.

"Assumed Obligations" means amounts included on the balance sheet of Becancour JV, calculated in accordance with GAAP, as of the Closing Date for long-term indebtedness (including current portion), other long-term liabilities (excluding any pension plan obligations), short-term indebtedness, capital lease obligations, and any other obligation for borrowed money; without restricting the generality of the above, and for the avoidance of doubt, such obligations do not include Total Current Liabilities.

"Balance Sheet" means the pro forma balance sheet of the Business as of June 30, 2010 after giving effect to the Restructuring Transactions.

"Basic Indemnity Cap" means CAD \$17,500,000.

"Becancour JV" means a limited partnership to be formed under the laws of the Province of Quebec, Canada, by BSI and the GP and to which certain assets and liabilities of the Business will be transferred, directly or indirectly, by BSI, all as more fully provided herein and which entity shall be owned by the GP, as general partner, and DCC LP Company and BSI, as special partners, as of the Closing and as a result of the Restructuring Transactions and the transactions contemplated hereby.

"Benchmark Net Working Capital" means seven million, two hundred and fifty thousand Canadian dollars (CAD \$7,250,000).

"Books and Records" means the originals or copies of all customer lists, sales records, financial records, compliance records, data files, personnel records and other materials prepared for the Business, Tax records and other books and records, each in the possession or control of BSI or any of its affiliates, whether or not stored in hardcopy form or on magnetic or optical media.

"BSI Knowledge Parties" means those Persons set forth in Exhibit A.

"BSI Material Adverse Effect" means any state of facts, circumstance, change, event, development or effect that, individually or in the aggregate, (A) has or would reasonably be expected to have a material adverse effect on the assets, liabilities, business, results of operations or financial condition of the Business, individually or in the aggregate, other than, in each case, any change, event, development or effect that results from or is related to (i) changes in Law, GAAP or other applicable accounting standards or the interpretations thereof so long as such state of acts, events, circumstances, changes or effects do not have a materially disproportionate effect on the Business as compared to other companies in the industry in which it operates, (ii) changes affecting the industry in which the Business operates so long as such state of acts, events, circumstances, changes or effects do not have a materially disproportionate effect on the Business as compared to other companies in the industry in which it operates, or (iii) the announcement of this Agreement or the taking of any action required by this Agreement and

the Ancillary Agreements, or the not taking of any such action at the request of DCC, including the loss of employees, customers, suppliers or distributors as a result thereof other than as a result of BSI's failure to comply with its obligations under Section 6.1 hereof or (B) materially impairs or delays (or could reasonably be expected to materially impair or delay) the ability of TL or BSI or their affiliates (including the Subject Entities) to consummate the transactions contemplated by this Agreement or any Ancillary Agreement.

"Business" means the silicon metal production operations (excluding solar grade silicon purification operations) currently owned and operated by BSI at the Facility.

"Business Day" means any day other than Saturday, Sunday and any day on which banking institutions in the State of New York or in the Province of Quebec, Canada, are authorized by Law or other governmental action to close.

"Business Employee" has the meaning set forth in Section 4.12.

"Business Transfer Agreement" means the Business Transfer Agreement to be entered into by and among BSI, TL and Becancour JV to reflect the business transfer transactions summarized in Exhibit B hereto and in form reasonably satisfactory to DCC and BSI.

"Cadastral Operation" has the meaning set forth in Section 6.8(g).

"Capacity/Cost Adjustment Amount" has the meaning set forth in Section 2.4(c)(iv).

"Certificate of Location" means a certificate of location prepared by a duly certified Quebec Land Surveyor in compliance with the *Land Surveyors Act* (Quebec) and the regulations adopted thereunder.

"Class B GP Shares" means the Class B shares in the share capital of the GP, all of which shall be issued to DCC GP Company as of the Closing.

"Cleanup" means all actions required under applicable Environmental Laws to: (1) cleanup, remove, treat, reclaim or remediate Hazardous Materials in the Environment; (2) prevent the Release of Hazardous Materials so that they do not migrate, endanger or threaten to endanger public health, safety or welfare or the Environment; (3) perform pre-remedial studies and investigations and post-remedial monitoring; (4) respond to any requests for information or documents in any way relating to cleanup, removal, treatment, reclamation or remediation or potential cleanup, removal, treatment, reclamation or remediation of Hazardous Materials in the Environment; or (5) perform reclamation or remediation of damaged or degraded natural resources.

"Closing Date" means the date and time as of which the Closing actually takes place.

"Code" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

"Competition Act" means the *Competition Act* (Canada).

"Contract" means, with respect to any Person, any legally binding agreement, arrangement, undertaking, contract, commitment, obligation, promise, indenture, deed of trust or other instrument, document or agreement (whether written or oral and whether express or implied) by which that Person, or any amount of its properties or assets, is bound or subject.

"Current Adjusted Direct Cost Amount" means [REDACTED] which is the weighted average Adjusted Direct Cost during the Pre-Closing Measurement Period.

"Current Capacity" means 47,000 metric tons of Product in grades to be purchased by BSI and DCC Customer.

"DCC Customer" means DCC or any affiliate to which DCC from time to time assigns its rights and obligations under the Output and Supply Agreement or otherwise designates to be a party thereto.

"DCC GP Company" means the corporation assigned by DCC immediately prior to the Closing to acquire the Class B GP Shares representing forty-nine percent (49%) of the GP Shares.

"DCC JV Companies" means DCC GP Company and DCC LP Company.

"DCC LP Company" means the Canadian corporation assigned by DCC immediately prior to the Closing to acquire LP Interests representing forty-nine percent (49%) of the LP Interests.

"DCC Material Adverse Effect" means any change, event, development or effect that, individually or in the aggregate, has impaired, hindered, delayed or adversely affected, or would reasonably be expected to impair, hinder, delay or adversely affect, in any material respect the ability of DCC to perform its obligations under this Agreement and the Ancillary Agreements or to consummate the transactions contemplated hereby and thereby.

"Deed of Transfer" means the deed of transfer in form and substance reasonably acceptable to the parties conveying legal title to Lot 3 294 055 to the GP, as nominee for BSI regarding the HP2 Property and as nominee for Becancour JV regarding the Facility.

"End Date" means November 30, 2010, as such date may be amended pursuant to Section 8.1(a)(ii).

"Environment" means the indoor and outdoor environment including without limitation ambient air, atmosphere, surface water, groundwater, soil, land, surface or subsurface strata.

"Environmental Claim" means any notice (written or oral) by any Person alleging potential Liability (including, without limitation, potential Liability for investigatory costs, Cleanup costs, governmental response costs, natural resources damages, illegal or irregular deforestation activities, conservation area damages, property damages, personal injuries, fines or

penalties) arising out of, based on or resulting from (a) the presence, or Release into the Environment, of any Hazardous Material at any location, whether or not owned by a Subject Entity, or (b) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

"Environmental Laws" means all federal, local, provincial, municipal and foreign Laws relating in whole or in part to the Environment or its protection, pollution or protection of human health and occupational safety, including, without limitation, laws and regulations relating to exposure, emissions, discharges, Cleanup, Releases or threatened Releases of Hazardous Materials, Permits, forestry, mining, property transfer or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

"Environmental Liability Cap" means CAD \$20,000,000.

"Estimated Pension Shortfall Adjustment Amount" means [REDACTED] converted to US dollars at a 1.02:1.00 exchange rate).

"Facility" means the immovable property owned by BSI prior to the Restructuring Transactions and Becancour JV following the Restructuring Transactions, located at 6500, Yvon-Trudeau Street, Bécancour, Quebec, consisting of a part of Lot 3 294 055 and being the immovable property shown on the plan set forth in Schedule A of Exhibit G, including all buildings and improvements thereon, less the immovable property outlined in red thereon and labeled as the "HP2 Property," including all buildings and improvements thereon, and which will be known and designated by a separate lot number of the Cadastre of Québec following the completion of the Cadastral Operation. For greater certainty, the term "Facility" shall not include in any way by reference or otherwise (i) the silica fume disposal site, located at 5355, rue du Chemin-de-Fer, Bécancour, Quebec, (ii) the HP1 facility, located at 5500, rue Yvon-Trudeau, Bécancour, Quebec, and (iii) the HP2 Property.

"Final Pension Shortfall Adjustment Amount" means the Estimated Pension Shortfall Adjustment Amount or, if different, the Estimated Pension Shortfall Adjustment Amount as adjusted, applying the same methodologies used to calculate the Estimated Pension Shortfall Adjustment Amount, to reflect any change in the composition of the Transferred Employees between the date as of which the Estimated Pension Shortfall Adjustment Amount was determined and the Closing Date.

"GAAP" means the accounting principles generally accepted in Canada from time to time, including the policies and standards of disclosure recommended by the Canadian Institute of Chartered Accountants from time to time, applied in a consistent manner from period to period.

"Governmental Authority" means any nation or government, any state, province or other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or regulation, including any domestic (federal, state or local), foreign or supranational governmental or regulatory authority, agency, department, board, commission, administration or

instrumentality, any court, tribunal or arbitral body or any self-regulatory or quasi-governmental organization.

"Governmental Order" means any binding order, decision, directive, declaration, writ, judgment, injunction, decree, notice, stipulation, determination or award entered by or with or issued by any Governmental Authority (in each such case whether preliminary or final).

"GP" means a corporation to be formed under the laws of the Province of Quebec, Canada, by BSI, to serve as the general partner of Becancour JV.

"GP Interests" means all of the general partnership interests in Becancour JV.

"GP Shareholders Agreement" has the meaning set forth in Section 3.2(d).

"GP Shares" means all of the equity interests in the GP, including all of the Class A shares and all of the Class B shares in the share capital of the GP.

"Hazardous Materials" means any substance, material, pollutant, contaminant, matter or waste that is regulated by Environmental Laws, including without limitation any material, substance or waste that is defined as a "hazardous waste," "hazardous substance," "hazardous material," "extremely hazardous waste," "dangerous substance," "deleterious substance," "dangerous goods," "explosive," "contaminant," "pollutant," "toxic substances and/or waste," "inhalation hazard," or "industrial residue" or by words of similar meaning under any provision of applicable Environmental Laws, and including but not limited to petroleum, petroleum products, asbestos, asbestos-containing material, urea formaldehyde, polychlorinated biphenyls (PCBs), lubricants, solvents, scrap (including pesticides and associated packaging), incinerator, mining, mineral and foundry waste, toxic mold and carcinogens or suspected carcinogens.

"HP2 Facility" means the HP2 facility, located at 6500, Yvon-Trudeau Street, Becancour, Quebec, which is part of Lot 3 294 055 as of the date hereof.

"HP2 Property" means that portion of Lot 3 294 055 on which the HP2 Facility is located, as more fully shown outlined in red in Schedule A to Exhibit G and labeled as the "HP2 Property," including the HP2 Facility and all other buildings and improvements thereon, and which will be known and designated by a separate lot number of the Cadastre of Québec following the completion of the Cadastral Operation.

"IFRS" means International Financial Reporting Standards, as in effect from time to time.

"Indebtedness" means, with respect to any Person, without duplication, (i) all obligations of such Person for borrowed money (including all accrued and unpaid interest and all prepayment penalties or premiums), (ii) all obligations of such Person evidenced by bonds, debentures, notes or similar debt instruments (including all accrued and unpaid interest and all prepayment penalties or premiums), (iii) all obligations of such Person under capitalized leases, (iv) all obligations of others secured by any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (v) all letters of credit issued

for the account of such Person, (vi) all obligations of such Person under conditional sale, title retention or similar arrangements or other obligations to pay the deferred purchase price for property or services (other than ordinary course trade payables), including earn-out obligations, (vii) all obligations of such Person in respect of interest rate and currency swap obligations, and (viii) all guarantees of or by such Person of any of the matters described in clauses (i) – (vii).

"Intellectual Property" means all intellectual property rights in any jurisdiction including all (i) copyrights, (ii) patents and industrial designs, including all divisionals, continuations, continuations-in-part, or patents issued thereon or reissues thereof, (iii) computer programs, databases, compilations and data, and all documentation related to any of the foregoing, (iv) trade-marks, service marks, trade names, domain names, designs, logos, emblems, signs or insignia, slogans, other similar designations of source or origin and general intangibles of like nature, together with the goodwill of the business symbolized by any of the foregoing, (v) registrations and applications relating to any of the foregoing, and (vi) confidential information and know-how, including trade secrets.

"Intellectual Property Agreements" has the meaning set forth in Section 3.2(p).

"Interests" means, collectively, (i) the Class B GP Shares representing forty-nine percent (49%) of the GP Shares and (ii) the LP Interests representing forty-nine percent (49%) of the LP Interests.

"Knowledge" means the actual knowledge of any specified parties, which includes the knowledge such party reasonably should have known in the reasonable conduct of his or her duties.

"Land Register" means the Québec Land Registry Office for the applicable registration division.

"Law" means any law (including common or civil law), ordinance, writ, directive, guideline, order in council, policy, decision, declaration, judgment, order, code, decree, injunction, statute, treaty, rule, regulation, regulatory requirement or determination of (or an agreement with) a Governmental Authority, each to the extent of having the force of law.

"Lease" means any lease, sublease, license or other occupancy agreement related to the Leased Real Property, together with all amendments, modifications, renewals or supplements thereto.

"Liability" means any debt, liability, penalty, fine, commitment, obligation, claim or cause of action of any kind whatsoever, whether due or to become due, known or unknown, accrued or fixed, absolute or contingent, or otherwise.

"Lien" means any and all liens, easements, servitudes, covenants, rights of way, title defects, encumbrances, options to purchase or lease or otherwise acquire any interest, conditional sales agreements, charges, security interests, options, claims, mortgages, hypothecs, pledges, proxies, voting trusts or agreements, or restrictions on title or transfer of any nature whatsoever and however created.

"Losses" means any and all actual losses, liabilities, damages, judgments, settlements and expenses (including interest and penalties recovered by a Third Party with respect thereto) and reasonable attorneys', consultants' and other experts' (including accountants) fees and expenses incurred in the defense of any of the same or in asserting, preserving or enforcing any of the rights of an Indemnified Person arising under Article IX or Article X, incurred by any Indemnified Person, whether or not involving a Third Party claim.

"Lot 3 294 055" means the immovable property known as lot 3 294 055 of the Cadastre of Quebec, in the Registration of Nicolet (Nicolet 1).

"LP Interests" means all of the interests of the special partners of Becancour JV in Becancour JV.

"Mining Property" means the immovable property located in Charlevoix Region, Province of Quebec, leased by BSI from the Quebec Ministry of Natural Resources and Wildlife pursuant to mining lease #674 renewed on January 13, 2006.

"Net Working Capital" means the Total Current Assets minus the Total Current Liabilities. For the purposes of calculating any adjustment to the Purchase Price as a result of any shortfall or any excess of Net Working Capital, an exchange rate of CAD:USD of 1.02:1.00 shall be used to convert Canadian dollars to U.S. dollars.

"Nominee Agreement" means the nominee agreement, in form and substance reasonably acceptable to the parties, setting out the terms and conditions upon which the GP shall act as nominee for and on behalf of Becancour JV for holding title to the Facility, and for and on behalf of BSI for holding title to the HP2 Property.

"Note" means the promissory note issued by Becancour JV to BSI pursuant to the Business Transfer Agreement.

"Off-the-Shelf Software" means commercially available off-the-shelf software owned by a Third Party that (i) has not been configured or customized for the user and (ii) is licensed to the user for a one-time or annual fee of US \$10,000 or less.

"Off-Title Deed of Transfer" means a deed of transfer, in form and substance reasonably acceptable to the parties, to be executed by the GP, BSI and Becancour JV prior to the Closing Date, conveying beneficial title to the Facility to the GP, which shall not be published in the Land Register.

"Output and Supply Agreement" has the meaning set forth in Section 3.2(l).

"Pension Transfer Agreement" means the Pension Transfer Agreement, if any, to be entered into by and between BSI and Becancour JV to reflect the transfer of assets and liabilities from BSI pension plans to Becancour JV pension plans on the terms set forth in Annex B to Exhibit B and such other terms as are reasonably satisfactory to BSI and DCC.

"Permits" means all licenses, franchises, permits, certificates, certificates of authorization, consents, registrations, approvals, accreditations or other similar authorizations

from any Governmental Authority required for, affecting, or relating in any way to, the Business, the Facility or any business operated or services furnished by the applicable Subject Entity and, where applicable, it includes but it is not limited to all Permits issued under Environmental Laws.

"Permitted Liens" means:

(a) prior claims or Liens for taxes, rates, assessments or governmental charges or levies not at the time due nor delinquent or, if due, the validity of which is being contested diligently at the time by, inter alia, any relevant Person in good faith by appropriate proceedings, and prior claims or legal hypothecs for the excess of the amount of any past due taxes or utilities for which a final assessment or account has not been received over the amount of such taxes or utilities as estimated and paid, inter alia, by such relevant Person, the whole provided that such relevant Person has set aside on its books adequate reserves with respect thereto;

(b) restrictions, easements, rights-of-way, restrictive covenants, licenses, servitudes, watercourse, right of access or user or other similar rights in land (including, without restriction, rights of way and servitudes for railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light and power and telephone or telegraph or cable television conduits, poles, wires and cables) granted to or reserved by other Persons and shown of record or in a current title report for the applicable property and rights reserved to or vested in any municipality or governmental or other public authority by the terms of any lease, license, franchise, grant or permit to terminate or to require annual payments as a condition to the continuance thereof, which do not, either individually or in the aggregate, materially impair the value, use, development, management, ownership or operation of the property subject thereto and do not materially adversely affect the marketability of such property;

(c) reservations in any original grants from the Crown of any land or interest therein and reservations of minerals right (including coal, oil and natural gas) in any grants from the Crown or from any other predecessors in title;

(d) Liens incurred or deposits given to a public utility or any municipality or governmental or other public authority when required by such utility or other authority in connection with the development, management, ownership and operation of property;

(e) any builder's, mechanic's, architect's, engineer's, supplier's of material, labourer's, carrier's, warehousemen's, materialmen's or other similar Liens incidental to the construction or renovation of property or out of the furnishing of materials, supplies or services, where the action to enforce the same has not proceeded to a final judgment, is being defended or contested in good faith by appropriate proceedings within thirty (30) days from the registration of such Liens by any applicable Person and such applicable Person shall have set aside on its books adequate reserves with respect thereto, and provided further that legal hypothecs securing claims of Persons having taken part in the construction or renovation of an immovable or equivalent Liens arising in the ordinary course of business of the applicable Person consistent with past practice in respect of amounts that are not yet due or payable, or, if due or payable, the validation or amount of which is being contested in good faith by appropriate proceedings within thirty (30) days from the registration of such legal hypothecs or Liens, for which adequate

reserves have been reflected in the financial statements of the applicable Person or on the Balance Sheet;

(f) Liens or deposits to secure workers' compensation, unemployment insurance or other similar statutory assessments;

(g) zoning, use and building by-laws and ordinances and federal, provincial or municipal by-laws and regulations and other governmental restrictions as to the use of property that do not either, individually or in the aggregate, materially impair the value, use, development, management, ownership or operation of the property subject thereto and do not materially adversely affect the marketability of such property;

(h) subdivision agreements, site plan control agreements, servicing agreements and other similar agreements with municipalities affecting the development or use of the applicable real property which do not, either individually or in the aggregate, materially impair the value, use, development, management, ownership or operation of the property subject thereto and do not materially adversely affect the marketability of such property;

(i) until the Closing Date, hypothecs in favor of Bank of America, N.A. and of Investissement Québec, as disclosed in Section 4.7(a) of the Disclosure Letter; and

(j) any other Liens on an asset that do not, individually or in the aggregate, affect in more than a de minimis way the value of, or impair the right or ability to use, operate, develop, manage or own such asset in the ordinary course of business of the applicable Person consistent with past practice.

"Person" means and includes an individual, a partnership, a joint venture, a corporation, a limited liability company, a trust, an association, an unincorporated organization, a Governmental Authority and any other entity or group.

"Post-Closing Measurement Period" means the 36-month period commencing on the first day of the first full month following the Closing Date.

"Post-Closing Tax Period" means any Tax period beginning after the Closing Date and the portion of any Straddle Period beginning after the Closing Date.

"Pre-Closing Environmental Liabilities" means any and all Losses relating to BSI, its predecessors and the Subject Entities (collectively, "BSI Affiliated Entities") or with respect to the Business, the Facility or the Mining Property, and arising out of or related to: (i) a violation of or non-compliance with any Environmental Laws by BSI Affiliated Entities, the Business, the Facility or the Mining Property, on or prior to the Closing Date, including, without limitation, a failure to obtain, maintain or comply with any Permits issued under applicable Environmental Laws and required for the Business, the Facility or the Mining Property; (ii) the presence of Hazardous Materials or introduction of Hazardous Materials to the Environment, on or prior to the Closing Date, at, in, on, under or migrating from or to the Facility, the Mining Property or any other real property currently or formerly owned, operated or leased by or under the custody of BSI Affiliated Entities or the Business, including liabilities relating to the investigation, remediation, or monitoring of such Hazardous Materials; (iii) natural resource

damages, property damages, personal or bodily injury or wrongful death relating to the presence of or exposure to Hazardous Materials (including, without limitation, asbestos-containing materials), at, in, on, under or migrating from or to the Facility, the Mining Property or any other real property currently or formerly owned, operated or leased by or under the custody of BSI Affiliated Entities or the Business, on or prior to the Closing Date; (iv) the use, generation, storage, transportation, treatment, sale or other off-site disposal of Hazardous Materials on or prior to the Closing Date by BSI Affiliated Entities or with respect to the Business, the Facility or the Mining Property; and (v) any agreement or operation of law pursuant to which BSI Affiliated Entities or the Business, the Facility or the Mining Property becomes liable for any of the foregoing, including as a successor-in-interest.

"Pre-Closing Measurement Period" means the six-month period from January 1 to June 30, 2010.

"Pre-Closing Tax Period" means any Tax period ending on or before the Closing Date and the portion of any Straddle Period up to and including the Closing Date.

"Product" has the meaning set forth in the Output and Supply Agreement.

"Purchase Price Cap" means an amount equal to the Actual Closing Purchase Price as adjusted in accordance with Article II herein, as converted into Canadian dollars at a 1.02:1.00 CAD:US exchange rate for purposes of determining the cap amount.

"Real Property Agreements" has the meaning set forth in Section 3.2(m).

"Release" means any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, dispersal, leaching or migration into the Environment.

"Representative" means, with respect to any Person, (a) such Person, (b) its respective affiliates and (c) such Person's, and such Person's respective affiliates', respective officers, directors, employees, shareholders, partners, members, controlling persons, auditors, financial advisors, attorneys, accountants, consultants, agents, advisors or representatives.

"Services Agreements" has the meaning set forth in Section 3.2(o).

"Shared Employees" means the employees identified as such in Schedule A to Exhibit H hereto.

"Straddle Period" means any Tax period that includes, but does not end on, the Closing Date.

"Subject Entities" means (i) the GP, and (ii) Becancour JV.

"Tax Audit" means any audit, assessment, claim, levy, proceeding or other examination by any Governmental Authority, or appeal of any of the foregoing relating to Taxes.

"Tax Return" means any federal, state, provincial, local or foreign return, report, election, declaration or similar statement or information in written form (including any

attachment, exhibit, schedule or supplement thereto) relating to Taxes, including any information return, claim for refund and amendment thereof.

"Taxes" means all federal, state, provincial, territorial, county, municipal, local or foreign taxes, duties, imposts, levies, assessments, tariffs and other charges imposed, assessed or collected by a Governmental Authority including (i) any gross income, net income, gross receipts, business, royalty, capital, capital gains, goods and services, harmonized sales, value added, severance, stamp, franchise, occupation, premium, capital stock, sales and use, real property, land transfer, personal property, ad valorem, transfer, licence, profits, windfall profits, environmental, payroll, employment, employer health, pension plan, anti-dumping, countervail, excise, severance, stamp, occupation, or premium tax, (ii) all withholdings on amounts paid to or by the relevant person, (iii) all employment insurance premiums required under any applicable law and any other pension plan contributions or premiums, (iv) any fine, penalty, interest, or addition to tax, (v) any tax imposed, assessed, or collected or payable pursuant to any tax-sharing agreement or any other contract relating to the sharing or payment of any such tax, levy, assessment, tariff, duty, deficiency, or fee, and (vi) any liability for any of the foregoing as a transferee, successor, guarantor, or by contract or by operation of law.

"Third Party" means any Person (or group of Persons), including a Governmental Authority, other than the parties hereto and their respective affiliates.

"Title Commitment" means a title insurance in the form ordinarily used by First Canadian Title Insurance Company or Chicago Title Insurance Company Canada.

"Total Current Assets" means the current assets of Becancour JV calculated in accordance with Section 2.3 hereof, which shall include, without limitation, the following line items: raw materials inventory (including by-products: fines, crusher dust and oxides/slag) and prepaid expenses, and which shall exclude the following line items: cash (to the extent contributed by the GP), finished goods inventory (including by-products: silica fume and SOG80) and accounts receivable.

"Total Current Liabilities" means the current liabilities of Becancour JV calculated in accordance with Section 2.3 hereof, which shall include, without limitation, current liabilities arising since the date of its formation which have not been discharged (including any interest outstanding on the Note), and which shall exclude Taxes or other items the responsibility for which has been retained by BSI.

"Working Capital Facility Agreements" means the revolving credit facility to be entered into by Becancour JV and DCC and the security agreements related thereto on terms substantially consistent with the term sheet attached as Exhibit J hereto and on such other terms as are agreed to by BSI and DCC.

ARTICLE II

PURCHASE AND SALE OF THE INTERESTS

Section 2.1 Sale and Transfer of the Interests. Subject to the terms and conditions of this Agreement, at the Closing and following the contribution of assets and

assumption of certain Liabilities pursuant to the Restructuring Transactions, BSI shall (a) cause the GP to issue to DCC GP Company Class B GP Shares representing forty-nine percent (49%) of the GP Shares, and (b) cause Becancour JV to issue to DCC LP Company LP Interests representing forty-nine percent (49%) of the LP Interests, in each case free and clear of all Liens. Promptly following the Closing, BSI shall cause Becancour JV to pay to BSI an amount equal to the Estimated Closing Purchase Price, together with any interest accrued on the Note, in full satisfaction of all amounts outstanding under the Note.

Section 2.2 The Purchase Price.

(a) Subject to the terms and conditions of this Agreement, in consideration of the aforesaid issuance of Class B GP Shares representing forty-nine percent (49%) of the GP Shares to DCC GP Company, DCC GP Company shall contribute, or cause to be contributed, to the GP, at the Closing, consideration of four thousand, nine hundred Canadian dollars (CAD \$4,900) (the "GP Shares Consideration"). BSI shall cause the GP to contribute the GP Shares Consideration, together with any amounts previously contributed by BSI to the GP, to Becancour JV.

(b) Subject to the terms and conditions of this Agreement, in consideration of the aforesaid issuance of LP Interests representing forty-nine percent (49%) of the LP Interests to DCC LP Company, DCC LP Company shall contribute, or cause to be contributed, to Becancour JV, the sum of (i) consideration of forty-two million, seventy-five thousand and eight hundred and ten U.S. dollars (U.S. \$42,075,810) (the "Base LP Interests Consideration"), (ii) less an amount equal to forty-nine percent (49%) of the Assumed Obligations, (iii) increased by forty-nine percent (49%) of the amount, if any, by which Net Working Capital as of the Closing Date exceeds the Benchmark Net Working Capital, (iv) decreased by forty-nine percent (49%) of the amount, if any, by which Net Working Capital as of the Closing Date is less than the Benchmark Net Working Capital, (v) increased by any Capacity/Cost Adjustment Amount, and (vi) less an amount equal to the Final Pension Shortfall Adjustment Amount (the net of such amounts (i) through (vi), the "Purchase Price").

(c) At the Closing, DCC LP Company shall contribute to Becancour JV a cash amount (the "Estimated Closing Purchase Price") consisting of the sum of (i) the Base LP Interests Consideration, (ii) less an amount equal to forty-nine percent (49%) of the estimated Assumed Obligations, (iii) increased by forty-nine percent (49%) of the amount, if any, by which the estimated Net Working Capital exceeds the Benchmark Net Working Capital, (iv) decreased by forty-nine percent (49%) of the amount, if any, by which estimated Net Working Capital is less than the Benchmark Net Working Capital, and (v) less an amount equal to the Estimated Pension Shortfall Adjustment Amount, as determined in the case of clauses (iii) and (iv) as set forth in Section 2.3. The Estimated Closing Purchase Price shall be paid by wire transfer of immediately available funds to an account or accounts designated in writing by BSI to DCC three (3) Business Days prior to the Closing.

(d) The Estimated Closing Purchase Price shall be further adjusted consistent with the provisions of Section 2.2(b), and any amounts payable in connection therewith shall be paid in the manner set forth in Sections 2.3 and 2.4.

Section 2.3 Closing Purchase Price Adjustment.

(a) Three (3) Business Days prior to the Closing Date, BSI shall prepare and deliver to DCC a calculation showing, in reasonable detail, a good faith estimate of the Estimated Closing Purchase Price expected as of the Closing (the "Pre-Closing Statement"), including a statement of the estimated Net Working Capital and a statement of the estimated Assumed Obligations, in each case as of the Closing. The Pre-Closing Statement shall be prepared in accordance with GAAP applied consistently (but only to the extent consistent with GAAP) with the Balance Sheet. To the extent that DCC has any comments on the amounts reflected on such statement, BSI shall seek in good faith to take into account and adjust, as it deems appropriate, the contents of the Pre-Closing Statement; it being understood, however, that BSI, for the purposes of the Closing, shall ultimately determine such amounts, and the amounts set forth on the Pre-Closing Statement shall not influence or bind the parties with respect to any of the post-Closing adjustment procedures set forth in this Section 2.3.

(b) As promptly as practical, but in no event more than sixty (60) calendar days after the Closing, BSI shall prepare and deliver to DCC a statement of Net Working Capital, a statement of the Assumed Obligations, and a statement of the Final Pension Shortfall Adjustment Amount, together with a statement setting forth the relevant calculations resulting in any proposed adjustment to the Estimated Closing Purchase Price (together, the "Proposed Closing Purchase Price Statement"), which shall show the difference between the actual Assumed Obligations and Net Working Capital, as of the Closing Date, and the Assumed Obligations and Net Working Capital estimated for the purposes of Section 2.2(c) and which shall also show the difference between the Estimated Pension Shortfall Adjustment Amount and the Final Pension Shortfall Adjustment Amount. During the forty-five (45) day period following the delivery by BSI of the Proposed Closing Purchase Price Statement, DCC and its Representatives may review such statement and the working papers of BSI's and/or Becancour JV's auditors relating to the Proposed Closing Purchase Price Statement and shall have such access to BSI's and/or Becancour JV's personnel as may be reasonably necessary to permit DCC and its Representatives to review in detail the manner in which the Proposed Closing Purchase Price Statement was prepared. BSI shall and shall cause Becancour JV, as well as their Representatives, to cooperate with DCC and DCC's Representatives in facilitating such review. Upon completion of such review, DCC shall give any comments or objections it has with respect to the Proposed Closing Purchase Price Statement to BSI in writing within such forty-five (45) day period (the "Objection Letter"). DCC and BSI shall attempt in good faith to resolve any differences and issues as set forth in the Objection Letter. If no Objection Letter is delivered or the matters set forth in the Objection Letter are so resolved, then the Proposed Closing Purchase Price Statement, as adjusted for any changes as are agreed upon by DCC and BSI, shall be final and binding upon DCC and BSI and shall constitute the final Actual Closing Purchase Price (the "Actual Closing Purchase Price"). If the matters raised by DCC in the Objection Letter cannot be resolved between DCC and BSI within thirty (30) days of the date of the Objection Letter, the question or questions in dispute shall then be promptly submitted to (i) Deloitte and Touche LLP or (ii) if Deloitte and Touche LLP is unwilling or unable to serve, then a nationally-recognized accounting firm jointly selected by BSI and DCC not then performing, or that has not performed in the past two (2) years, material services for any of the parties hereto or their respective affiliates (such firm in the case of (i) or (ii), the "Accounting Referee"). The Accounting Referee shall be requested to deliver to BSI and DCC, as promptly as practicable, and within forty-five

(45) calendar days of being referred the matter, a report setting forth its adjustments, if any, to the Proposed Closing Purchase Price Statement, and the calculations supporting such adjustments. The Accounting Referee shall act as an arbitrator to determine, based solely on the provisions of this Agreement and the presentations by DCC and BSI, and not by independent review, only those issues still in dispute. Such report shall be final and binding upon the parties hereto and the Proposed Closing Purchase Price Statement as adjusted pursuant to such report shall be final and binding on the parties hereto and the Actual Closing Purchase Price shall be determined in accordance therewith. The cost of the Accounting Referee's review and report shall be borne one-half by BSI and one-half by DCC. Notwithstanding the foregoing, matters raised by DCC in the Objection Letter relating to the Estimated Pension Shortfall Adjustment Amount or the Final Pension Shortfall Adjustment Amount shall be resolved in a manner consistent with Annex B of Exhibit B.

(c) Within five (5) Business Days of the determination of the Actual Closing Purchase Price in accordance with Section 2.3(b), the applicable party shall contribute to Becancour JV an amount equal to any adjustment to the Estimated Closing Purchase Price by wire transfer of immediately available funds to an account or accounts designated in writing by Becancour JV as follows:

(i) In the event the Actual Closing Purchase Price is greater than the Estimated Purchase Price paid at the Closing by DCC, then DCC shall contribute, or cause to be contributed to, Becancour JV an amount equal to the difference between the Actual Closing Purchase Price and the Estimated Purchase Price.

(ii) In the event the Actual Closing Purchase Price is less than the Estimated Purchase Price paid at the Closing by DCC, then BSI shall contribute, or cause to be contributed to, Becancour JV an amount equal to the difference between the Estimated Purchase Price and the Actual Closing Purchase Price.

(iii) Any adjustment amount contributed under this Section 2.3(c) shall be paid with interest for the period from, and including, the Closing Date to, but excluding, the date of payment, calculated at the lesser of (x) the prime rate under "Money Rates" as reported in The Wall Street Journal on the first Business Day of the month during which interest is payable plus two percent (2%) or (y) the maximum rate of interest permitted to be charged by applicable Laws.

(d) Any amounts so contributed to Becancour JV pursuant to this Section 2.3 by any special partner (or its affiliate) shall be promptly distributed by Becancour JV to the other special partner, as a special distribution to such special partner.

Section 2.4 Post-Closing Purchase Price Adjustments.

(a) Subject to the deductions and limitations set forth in Section 2.4(c), if during the Post-Closing Measurement Period, the rolling average of the Adjusted Direct Cost

during any 12-month period in the Post-Closing Measurement Period is less than the Current Adjusted Direct Cost Amount, then DCC shall contribute, or cause to be contributed to, Becancour JV, as a one-time payment of additional consideration, an amount (the "Cost-Based Adjustment") based on the reduction in Adjusted Direct Cost from the Current Adjusted Direct Cost Amount, for the 12-month period selected by BSI, equal to the sum of: (i) for the first [REDACTED] in reduction per metric ton, [REDACTED] for each [REDACTED] per metric ton reduction and (ii) for each additional [REDACTED] per metric ton in reduction, [REDACTED]. For purposes of the foregoing calculation, the Adjusted Direct Cost for the relevant period will be determined in accordance with the procedures set forth in the Output and Supply Agreement for each Product line produced at the Facility. Then, using those figures, a weighted average will be determined utilizing a breakdown of each Product line as follows [REDACTED] which is the breakdown of each Product line used to determine the Current Adjusted Direct Cost Amount.

(b) Subject to the deductions and limitations set forth in Section 2.4(c), if during any consecutive six-month period in the Post-Closing Measurement Period, the average annual production capacity of Product of the Facility exceeds the Current Capacity, for any reason (whether due to productivity improvements or otherwise), then DCC shall contribute, or cause to be contributed to, Becancour JV, as additional consideration, a one-time payment (the "Capacity-Based Adjustment"), equal to [REDACTED] per metric ton in increased capacity.

(c) The aggregate of any amounts payable as a Cost-Based Adjustment and Capacity-Based Adjustment (together, the "Capacity/Cost Adjustment Amount") shall be reduced and/or limited as follows:

(i) The amount, if any, of capital investments made or expended by Becancour JV (from whatever source) in excess of [REDACTED] during the Post-Closing Measurement Period (subject to pro-ration if the Capacity/Cost Adjustment Amount becomes payable prior to the termination of the Post-Closing Measurement Period pursuant to Section 2.4(e)(ii) and 2.4(h)) shall reduce the Capacity/Cost Adjustment Amount by CAD \$0.49 for each CAD \$1.00 so expended (converted into US Dollars based on the exchange rate in effect at the end of the Post-Closing Measurement Period or such earlier time as any Capacity/Cost Adjustment Amount shall become payable). Notwithstanding the foregoing, amounts expended during the Post-Closing Measurement Period that are expensed during such period, rather than capitalized, in a manner consistent with BSI's historical practices and in accordance with IFRS (to the extent applicable to the item in question) will not reduce the Capacity/Cost Adjustment Amount that would otherwise be payable.

(ii) The Special Capex (as defined in the Output and Supply Agreement) shall not be counted against the above-referred amount of [REDACTED] during the Post-Closing Measurement Period.

(iii) Any additional costs to achieve a Boron level that is less than what is currently contained in the Product produced for DCC shall not be counted against the above-referred amount of [REDACTED] during the Post-Closing Measurement Period.

(iv) The aggregate maximum amount payable as a Capacity/Cost Adjustment Amount shall be US \$10,000,000 (the "Capacity/Cost Adjustment Amount Cap").

(d) All amounts used in the calculation of any Cost-Based Adjustment or Capacity-Based Adjustment shall be determined in accordance with BSI's historical practices and in accordance with IFRS (to the extent applicable to the item in question), and calculations shall assume that the Facility will be operated in the ordinary course of business, including down time for ordinary course maintenance and repairs.

(e) Within sixty (60) calendar days following the earlier of (i) the end of the Post-Closing Measurement Period and (ii) such time between the end of the 12-month period following the Closing Date and the end of the Post-Closing Measurement Period that BSI reasonably believes that Becancour JV shall have achieved cost reductions and/or capacity increases that would result in the Capacity/Cost Adjustment Amount exceeding the Capacity/Cost Adjustment Amount Cap (subject to the terms of Section 2.4(c)(i)), BSI shall prepare and deliver to DCC a statement prepared in good faith and in accordance with the terms of this Section 2.4 setting forth the relevant calculations resulting in any Capacity/Cost Adjustment Amount, as applicable (a "Proposed Adjustment Statement").

(f) During the forty-five (45) day period following the delivery by BSI of the Proposed Adjustment Statement, DCC and its Representatives may review such statement and its supporting materials and shall have such access to BSI's and/or Becancour JV's personnel as may be reasonably necessary to permit DCC and its Representatives to review in detail the manner in which the Proposed Adjustment Statement was prepared. BSI shall and shall cause Becancour JV, as well as their Representatives, to cooperate with DCC and DCC's Representatives in facilitating such review. Upon completion of such review, DCC shall give any comments or objections it has with respect to the Proposed Adjustment Statement to BSI in writing within such forty-five (45) day period (the "Adjustment Objection Letter"). DCC and BSI shall attempt in good faith to resolve any differences and issues as set forth in the Adjustment Objection Letter. If no Adjustment Objection Letter is delivered or the matters set forth in the Adjustment Objection Letter are so resolved, then the Proposed Adjustment Statement, as adjusted for any changes as are agreed upon by DCC and BSI, shall be final and binding upon DCC and BSI.

(g) If the matters raised by DCC in the Adjustment Objection Letter cannot be resolved between DCC and BSI within thirty (30) days of the date of the Adjustment Objection Letter, the question or questions in dispute shall then be promptly submitted to an Accounting Referee or an independent engineering firm jointly selected by BSI and DCC, as appropriate and agreed by the parties. The Accounting Referee or independent engineer shall be requested to deliver to BSI and DCC, as promptly as practicable, and within forty-five (45) calendar days of being referred the matter, a report setting forth its adjustments, if any, to the Proposed Adjustment Statement, and the calculations supporting such adjustments. The Accounting Referee or independent engineer shall act as an arbitrator to determine, based solely on the provisions of this Agreement and the presentations by DCC and BSI, and not by independent review, only those issues still in dispute. Such report shall be final and binding upon the parties hereto and the Proposed Adjustment Statement as adjusted pursuant to such

report shall be final and binding on the parties hereto and any Capacity/Cost Adjustment Amount shall be determined in accordance therewith. The cost of the Accounting Referee's or independent engineer's review and report shall be borne one-half by BSI and one-half by DCC.

(h) Subject to Section 2.4(i), within thirty (30) calendar days of the determination of the amount of any Capacity/Cost Adjustment Amount payable to BSI pursuant to this Section 2.4, DCC shall contribute, or cause to be contributed to, Becancour JV such amount by wire transfer of immediately available funds to an account or accounts designated in writing by BSI or Becancour JV to DCC. Notwithstanding the foregoing, no Capacity/Cost Adjustment Amount shall be payable in connection with a Proposed Adjustment Statement delivered to DCC pursuant to Section 2.4(e)(ii) unless the final and binding Proposed Adjustment Statement with respect thereto shall entitle Becancour JV and BSI to a Capacity/Cost Adjustment Amount equal to the Capacity/Cost Adjustment Amount Cap. If such final and binding Proposed Adjustment Statement would otherwise entitle BSI to a Capacity/Cost Adjustment Amount that is less than the Capacity/Cost Adjustment Amount Cap, then no amount shall be payable at such time. Rather, BSI shall prepare and deliver a new Proposed Adjustment Statement pursuant to Section 2.4(e)(i) and be entitled to any payment only when the statement prepared at that time becomes final, based on the amount set forth on such statement.

(i) Notwithstanding the foregoing, to the extent that any amounts are then due and payable to DCC or any of its Affiliates by Becancour JV or BSI or any of its Affiliates, or by BSI or any of its Affiliates to Becancour JV, DCC shall not be required to contribute, or cause to be contributed to, Becancour JV any Capacity/Cost Adjustment Amount until such past due and payable amounts have been paid to DCC or its applicable Affiliates, or Becancour JV, as the case may be, in full. For the avoidance of doubt, Becancour JV and BSI shall not be entitled to more than one payment under this Section 2.4.

(j) Any amounts so contributed to Becancour JV pursuant to this Section 2.4 shall be promptly distributed by Becancour JV to BSI, as a special distribution to BSI.

(k) An illustrative example of the calculation of the Capacity/Cost Adjustment Amount is set forth in Section 2.4(k) of the Disclosure Letter.

Section 2.5 Further Assurances. After the Closing, BSI and TL shall from time to time, at the reasonable request of DCC, execute and deliver, or cause their affiliates to execute and deliver, such other instruments of conveyance and transfer and take such other actions as DCC may reasonably request, in order to consummate the transactions contemplated hereby and to vest in DCC GP Company the right, title and interest in and to the Class B GP Shares and to vest in DCC LP Company the right, title and interest in and to the LP Interests.

ARTICLE III

THE CLOSING

Section 3.1 The Closing. The closing (the "Closing") of the sale and issuance of the Interests as contemplated by this Agreement shall take place at a location mutually agreed between DCC and BSI, at 10:00 am local time, as soon as reasonably practicable, but in any

event within two (2) Business Days after the satisfaction or waiver of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to satisfaction or waiver thereof), or such other date and time as shall be mutually agreed upon by the parties. The parties agree that September 30, 2010 shall be the target date for the Closing.

Section 3.2 Deliveries by BSI and TL. Subject to the conditions set forth in this Agreement, at the Closing, and simultaneously with DCC's deliveries hereunder, BSI and TL shall deliver, or cause to be delivered, to DCC, the following:

- (a) the share certificates representing the Class B GP Shares, and evidence of the recordation of the issuance of the Class B GP Shares in the corporate register, in each case sufficient to vest in DCC GP Company good and marketable title to such Class B GP Shares;
- (b) the certificates evidencing units of LP Interests representing forty-nine percent (49%) of the LP Interests, and evidence of the recordation of the issuance of such LP Interests in the register, in each case sufficient to vest in DCC LP Company good and marketable title to such LP Interests;
- (c) copies of the certificates for Class A GP Shares, and LP Interests, previously issued to BSI and evidence of cancellation of the Note;
- (d) the General Partner Shareholders Agreement in the form set forth on Exhibit C (the "GP Shareholders Agreement"), duly executed by BSI and the GP;
- (e) the Amended and Restated Limited Partnership Agreement of Becancour JV in the form set forth on Exhibit D hereto (the "Amended and Restated Limited Partnership Agreement"), duly executed by BSI and the GP, together with evidence of its immatriculation in the Province of Quebec;
- (f) evidence of the filing of an instrument of amendment to the articles of incorporation of the GP, amending and restating such articles of incorporation to include the terms set forth on Exhibit E hereto and such other terms reasonably satisfactory to DCC (the "Amended GP Charter");
- (g) evidence of the election/replacement of the directors and officers of the GP and Becancour JV consistent with Section 3.2(g) of the Disclosure Letter;
- (h) executed copies of the consents referred to in Sections 7.2(e) and 7.2(f);
- (i) the officer's certificate referred to in Section 7.2(c);
- (j) the opinion of Stikeman Elliott LLP referred to in Section 7.2(g);
- (k) the Output and Supply Agreement in the form set forth on Exhibit F hereto (the "Output and Supply Agreement"), duly executed by BSI and Becancour JV;

(l) the Business Transfer Agreement, duly executed by BSI and Becancour JV, and, where required, evidence of registration at the proper movable or immovable register;

(m) the real property agreements reflecting the terms set forth in Exhibit G hereto and such other terms as are reasonably satisfactory to DCC and BSI (the "Real Property Agreements"), duly executed by BSI and Becancour JV;

(n) the Pension Transfer Agreement, duly executed by BSI and Becancour JV;

(o) the services agreements reflecting the terms set forth in Exhibit H hereto and such other terms as are reasonably satisfactory to DCC and BSI (the "Services Agreements"), duly executed by Becancour JV, BSI and TL, as applicable;

(p) the intellectual property agreements reflecting the terms set forth in Exhibit I hereto and such other terms as are reasonably satisfactory to DCC and BSI (the "Intellectual Property Agreements"), duly executed by Becancour JV and BSI;

(q) the Working Capital Facility Agreements, duly executed by Becancour JV;

(r) other Ancillary Agreements, if any, to which TL, BSI, and/or Becancour JV is a party, duly executed by TL, BSI, and/or Becancour JV, as applicable;

(s) evidence of the completion of the Restructuring Transactions as referred to in Section 7.2(o) hereof;

(t) evidence of the prior execution of the Deed of Transfer, by BSI and the GP as nominee for and on behalf of Becancour JV and evidence of registration, subject to the provisions of Section 6.8(f);

(u) evidence of the prior execution of the Off-Title Deed of Transfer, by BSI, the GP and Becancour JV;

(v) evidence of the prior execution of the Nominee Agreement, by BSI, the GP and Becancour JV;

(w) evidence of the prior execution of the deed of transfer of the mining lease for the Mining Property, by BSI and Becancour JV, and evidence of registration in the proper applicable registers;

(x) a copy of the pay-off letter or irrevocable undertaking evidencing that Bank of America, N.A. and Investissement Québec have undertaken to promptly discharge the hypothecs, as disclosed in Section 4.7(a) of the Disclosure Letter; and

(y) all other previously undelivered documents reasonably required to be delivered by BSI or TL to DCC or one of its affiliates at or prior to the Closing in connection with the consummation of the transactions contemplated hereby.

Section 3.3 Deliveries by DCC. Subject to the conditions set forth in this Agreement, at the Closing, and simultaneously with BSI's and TL's deliveries hereunder, DCC shall deliver or cause to be delivered to BSI, TL or Becancour JV, as applicable, the following:

- (a) the GP Shares Consideration;
- (b) the Estimated Closing Purchase Price;
- (c) the GP Shareholders Agreement, duly executed by DCC GP Company;
- (d) the Amended and Restated Limited Partnership Agreement, duly executed by DCC LP Company;
- (e) the Output and Supply Agreement, duly executed by DCC Customer;
- (f) the Working Capital Facility Agreements, duly executed by DCC or its applicable affiliates;
- (g) other Ancillary Agreements, if any, to which DCC or one of its affiliates is a party, duly executed by DCC or one or more of its affiliates, as applicable;
- (h) the officer's certificate referred to in Section 7.3(c); and
- (i) all other previously undelivered documents required to be delivered by DCC to BSI or TL, as applicable, at or prior to the Closing in connection with the consummation of the transactions contemplated hereby.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BSI

BSI represents and warrants to DCC as follows:

Section 4.1 Organization and Qualification. BSI is duly organized, validly existing and in good standing, or the equivalent thereof, under the Laws of its jurisdiction of incorporation. BSI has the requisite corporate power and authority (or the equivalent thereof) and any necessary Permits to own, operate and lease the properties that it purports to own, operate or lease and to carry on its business as it is now being conducted, and is duly qualified to do business, and is in good standing in each jurisdiction where the character of its properties owned, operated or leased or the nature of its activities makes such qualification necessary, except as may be otherwise indicated in Section 4.1 of the disclosure letter delivered by BSI to DCC simultaneously with the execution of this Agreement (the "Disclosure Letter"). Each of the Subject Entities is, or upon its formation and organization will be, duly organized, validly

existing and in good standing, or the equivalent thereof, under the Laws of its jurisdiction of incorporation or organization. Each of the Subject Entities is, or upon its formation and organization will be, duly qualified to do business, and is, or upon its formation and organization will be, in good standing in each jurisdiction where the character of the properties to be owned, operated or leased by it, or the nature of its activities, following completion of the Restructuring Transactions makes such qualification necessary. Except for the Subject Entities, BSI does not have any subsidiaries. Section 4.1 of the Disclosure Letter sets forth a complete list of the jurisdictions in which BSI is, and each Subject Entity is or will be upon its formation and organization, qualified to do business. Neither of the Subject Entities has conducted or will conduct any business prior to the consummation of the Restructuring Transactions other than in connection with its formation and organization or in connection with giving effect to the Restructuring Transactions.

Section 4.2 Capitalization.

(a) All of the outstanding shares in the share capital of BSI are held by TL and there is no other Person who has any rights to acquire equity in BSI other than TL. Immediately prior to the Closing, all of the outstanding LP Interests will be owned beneficially and of record by BSI. Immediately prior to the Closing, all of the outstanding GP Shares will be owned beneficially and of record by BSI. At the Closing, following the issuance of GP Shares and LP Interests to the DCC JV Companies as contemplated hereby, all of the outstanding Class A GP Shares, Class B GP Shares and LP Interests will be duly authorized, validly issued, fully paid, non-assessable and free of preemptive rights or Liens (other than pursuant to this Agreement, the Amended and Restated Limited Partnership Agreement and the GP Shareholders Agreement).

(b) Except as may be provided for in the Amended and Restated Limited Partnership Agreement and the GP Shareholders Agreement or as set forth on Section 4.2(b) of the Disclosure Letter, (i) no subscription, warrant, option, convertible security or other right to purchase or acquire any shares in the share capital of BSI or other equity interest issuable by BSI or either of the Subject Entities is authorized or outstanding, (ii) none of BSI or the Subject Entities has any obligation to issue any subscription, warrant, option, restricted share award, convertible security or other such right, (iii) there are no agreements, options, warrants or other Contracts, rights or arrangements existing or outstanding that provide for the purchase, sale, issuance or transfer of any shares in the share capital of BSI or other equity interest of BSI or either of the Subject Entities or interests therein (other than this Agreement), and (iv) there are no outstanding or authorized share appreciation, phantom share or similar rights with respect to BSI or either of the Subject Entities.

(c) Except as may be provided for in the Amended and Restated Limited Partnership Agreement and the GP Shareholders Agreement, (i) there are no voting trusts or other agreements or understandings to which BSI, any shareholder of BSI, or either Subject Entity is a party with respect to the voting of the shares in the share capital of BSI or other equity interests of BSI or either Subject Entity, and (ii) neither BSI nor either Subject Entity is required to redeem, repurchase or otherwise acquire shares or other equity interests of BSI or either Subject Entity as a result of the transactions contemplated by this Agreement.

(d) At or prior to the Closing, BSI will cause the GP to contribute CAD \$10,000 to Becancour JV, including the GP Shares Consideration contributed to the GP by DCC or one of its affiliates.

Section 4.3 Corporate Authorization; Enforceability; Board Action.

(a) Each of BSI and TL have, and the applicable Subject Entities will have at the relevant time prior to the Closing, the requisite power and authority to enter into this Agreement and/or the applicable Ancillary Agreements and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the applicable Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of BSI and TL and shall be duly authorized at the relevant time prior to the Closing by the applicable Subject Entities, and no other proceedings on the part of BSI, TL and the applicable Subject Entities or their respective shareholders are or shall be necessary to authorize the execution and delivery of this Agreement and/or the applicable Ancillary Agreements or to consummate the transactions contemplated hereby or thereby. This Agreement has been duly executed and delivered by each of BSI and TL and, assuming due authorization, execution and delivery of this Agreement by the other parties hereto, constitutes a valid and binding agreement of BSI and TL enforceable against BSI and TL in accordance with its terms, except to the extent that such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws, now or hereafter in effect, affecting creditors' rights generally, and to general equity principles. When executed and delivered, the applicable Ancillary Agreements will have been duly executed and delivered by each of BSI, TL and the applicable Subject Entities, and, assuming due authorization, execution and delivery of such Ancillary Agreements by the other parties thereto, will constitute valid and binding agreements of each of BSI, TL and the applicable Subject Entities enforceable against each of BSI, TL and the applicable Subject Entities in accordance with their terms, except to the extent that such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws, now or hereafter in effect, affecting creditors' rights generally, and to general equity principles.

(b) Each of the Boards of Directors of BSI and TL, at meetings duly called and held or by unanimous written consent, has (i) approved and adopted this Agreement and the Ancillary Agreements, and the transactions contemplated hereby and thereby and (ii) determined that the consideration to be received hereunder reflects fair value for the Interests. No other corporate or shareholder approvals are required by BSI or TL to authorize the transactions contemplated by this Agreement or the Ancillary Agreements.

Section 4.4 Consents and Approvals; No Violations.

(a) Except as set forth in Section 4.4(a) of the Disclosure Letter, the execution, delivery and performance by BSI, TL and the applicable Subject Entities of this Agreement and/or the applicable Ancillary Agreements, and the consummation by BSI, TL and the applicable Subject Entities of the transactions contemplated hereby and thereby, require no action by or in respect of, or notice to or filing with, any Governmental Authority other than compliance with any applicable requirements of the antitrust, competition, foreign investment, securities or similar Laws set forth on Section 7.1(a) of the Disclosure Letter.

(b) Except as set forth in Section 4.4(b) of the Disclosure Letter, none of the execution, delivery or performance by BSI, TL or the applicable Subject Entities of this Agreement and/or the applicable Ancillary Agreements, or the consummation by BSI, TL or the applicable Subject Entities of the transactions contemplated hereby or thereby or compliance by BSI, TL or the applicable Subject Entities with any of the provisions hereof or thereof will (i) conflict with or result in any breach of any provisions of the articles of incorporation or bylaws or similar organizational and governing documents of BSI or TL or the similar organizational and governing documents of any of the Subject Entities, (ii) assuming compliance with the matters referred to in Section 4.4(a), conflict with or result in any violation of any provision of any Law binding upon or applicable to BSI, TL or any of the Subject Entities, (iii) require the consent, approval or authorization of, or notice to or filing with, any Third Party with respect to, result in any violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation, amendment, or acceleration of any right or obligation of BSI, TL or any Subject Entity or to a loss of any benefit to which BSI, TL or any Subject Entity is entitled) under, any provision of any Contract or any Permit, (iv) result in the creation or imposition of any Lien (other than a Permitted Lien) on any asset of the Business (except as may be provided for in the Amended and Restated Limited Partnership Agreement and the GP Shareholders Agreement) or (v) result in a fraudulent act or preference contemplated in Art. 1631 of the Civil Code of Quebec. In furtherance thereof, BSI hereby confirms that, both before and immediately after the Closing, (a) each of BSI and TL will have sufficient capital with which to conduct its business, (b) the aggregate property of each of BSI and TL, at a fair valuation (including if disposed of at a fairly conducted sale under legal process), is sufficient to enable payment by it of all obligations, due and accruing, and (c) each of BSI and TL will be able generally to meet its obligations as they come due.

Section 4.5 Financial Statements.

(a) Section 4.5(a) of the Disclosure Letter sets forth a true and complete copy of BSI's unaudited financial statements, which include a balance sheet of BSI as of December 31 for each of the fiscal years ended 2007 to 2009, together with the related statements of operations and retained earnings and of cash flows for each of the fiscal years then ended, all of which have been reviewed by TL's auditors as part of their review of TL's financial statements (the "Year-End Financial Statements"). Section 4.5(a) of the Disclosure Letter sets forth a true and complete copy of BSI's unaudited interim Balance Sheet as of June 30, 2010 and the related unaudited interim statements of operations and retained earnings for the six (6) months ended June 30, 2010 (the "Interim Unaudited Financial Statements" and, together with the Year-End Financial Statements, the "Financial Statements"). The Financial Statements have been prepared from, and are in accordance with, the Books and Records of BSI, comply in all material respects with applicable accounting requirements, have been prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the financial position and the results of operations and cash flows (and changes in financial position, if any) of BSI as at the dates thereof or for the periods presented therein (subject, in the case of the Interim Unaudited Financial Statements, to normal year-end adjustments and the absence of footnotes), in each case in conformity with GAAP applied on a consistent basis (except as may be indicated in the notes thereto).

(b) The Balance Sheet has been prepared from, and is in accordance with, the Books and Records of BSI and fairly presents, on a pro forma basis, the Business as at the date thereof and after giving effect to the Restructuring Transactions.

(c) As of December 31, 2009, the assets of BSI in the United States did not equal or exceed a fair market value of US \$63.4 million. In addition, BSI's sales in or into the United States (whether to Third Parties in the United States or to BSI or its affiliates in the United States) during the 12-month period ended December 31, 2009 did not equal or exceed US \$63.4 million. BSI does not have any subsidiaries with any assets or sales in or into the United States.

(d) Except as set forth on Section 4.5(d) of the Disclosure Letter, there are no significant deficiencies or material weaknesses (as such terms are defined in the rules promulgated under applicable securities Laws) relating to the internal accounting processes of BSI.

(e) None of BSI, TL or, to the Knowledge of the BSI Knowledge Parties, any of their Representatives has received or otherwise had or obtained Knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting practices, procedures, methodologies or methods of BSI or any Subject Entity, including any complaint, allegation, assertion or claim that BSI has engaged in questionable accounting practices.

Section 4.6 Absence of Certain Changes; Conduct of the Business.

(a) Since June 30, 2010, (i) there has occurred no change, effect, event, occurrence, circumstance, state of facts or development that, individually or in the aggregate, has had or would reasonably be expected to have a BSI Material Adverse Effect and (ii) BSI has conducted the Business only in the ordinary course of business consistent with past practice, subject to the Restructuring Transactions. Except for the Restructuring Transactions and as set forth in Section 4.6 of the Disclosure Letter, from June 30, 2010 through the date of this Agreement, neither BSI nor any Subject Entity has taken any action that, if taken after the date of this Agreement, would violate any of the provisions set forth in Section 6.1 hereof.

(b) BSI has engaged only in the Business, together with (i) the manufacture of solar grade silicon, (ii) the trading of silicon metal products, and (iii) the recovery and sale of silica fumes, and BSI has not owned and does not own any other business.

Section 4.7 Undisclosed Liabilities.

(a) Except for Liabilities (i) set forth on the face of the Financial Statements, (ii) incurred in the ordinary course of business and consistent with past practice and since the date of the most recent Financial Statements, (iii) that are not, individually or in the aggregate, material to BSI, or (iv) incurred in connection with this Agreement or the transactions contemplated hereby, none of BSI or any Subject Entity has incurred any Liabilities related to the Business of any nature. Section 4.7(a) of the Disclosure Letter sets forth a (x) description of the aggregate Indebtedness of BSI outstanding as of the date hereof and (y) list of all guarantees,

sureties, letters of credit or similar arrangements entered into by BSI, TL or any of their affiliates on behalf of the Business.

(b) Except as set forth on Section 4.7(b) of the Disclosure Letter, since January 1, 2008, there have been no warranty or similar claims or Liabilities arising from the sale, distribution or use of silicon or any other material or product produced by the Business.

Section 4.8 Litigation.

(a) Section 4.8 of the Disclosure Letter sets forth a complete list of each litigation, suit, action, claim, charge, arbitration, complaint or other proceeding (each, an "Action") that has been instituted or, to the Knowledge of the BSI Knowledge Parties, threatened against or by BSI or any Subject Entity, the outcome of which, if determined adversely to BSI or any Subject Entity, would be reasonably expected to individually involve Liabilities of CAD \$200,000 or more or, in the aggregate, have a BSI Material Adverse Effect. Except as set forth in Section 4.8(a) of the Disclosure Letter, (i) there is no Action by or before any Governmental Authority pending or, to the Knowledge of the BSI Knowledge Parties, threatened against or by BSI or any Subject Entity, except for such Actions as would not, individually or in the aggregate, reasonably be expected to have a BSI Material Adverse Effect and (ii) no investigation or inquiry by or before any Governmental Authority is pending or, to the Knowledge of the BSI Knowledge Parties, threatened against any Subject Entity or the Business.

(b) There are no material Government Orders outstanding against BSI or any Subject Entity, other than Governmental Orders applying generally to the industry in which BSI and the Subject Entities operate.

Section 4.9 Compliance with Laws.

(a) Except as disclosed in Section 4.9 of the Disclosure Schedule, BSI is, and has been at all times since January 1, 2007, and the Subject Entities will be, and will have been at all times since January 1, 2007, in compliance in all material respects with all applicable Laws as they relate to the Business.

(b) Except as would not reasonably be expected to have a BSI Material Adverse Effect, (i) all Permits are valid and in full force and effect, (ii) there is no default under, nor any violation of, any Permit, and no event has occurred or condition exists that constitutes or, that with notice or lapse of time or both, could constitute, a default under, or violation of, any Permit, (iii) none of the Permits shall be terminated or impaired or become terminable, in whole or in part, as a result of the transactions contemplated hereby, and (iv) all applications required to have been filed for the renewal of any Permits have been duly filed, and all legal and technical information has been duly presented, on a timely basis with the appropriate Governmental Authorities. All such Permits are set forth in Section 4.9(b) of the Disclosure Letter.

(c) Since January 1, 2007, except as set forth in Section 4.9(c) of the Disclosure Letter, with respect to the Business, neither BSI nor TL has received, and no BSI Knowledge Party has any Knowledge of, any written or oral notice from any Governmental Authority that alleges any material non-compliance by BSI (or that BSI is under investigation or

the subject of an inquiry by any such Governmental Authority for such alleged noncompliance) with any applicable Law.

(d) Except as set forth on Section 4.9(d) of the Disclosure Schedule, BSI owns or possesses, and, following the Closing, Becancour JV will own or possess, all right, title and interest in and to all of the Permits and governmental approvals that are necessary to conduct the Business as conducted on the date of this Agreement (collectively, the "Governmental Approvals"). Section 4.9(d) of the Disclosure Letter sets forth a true and complete list, as of the date hereof, of all material Governmental Approvals. Each such Governmental Approval is valid and in full force and effect as of the date hereof, and BSI is in material compliance with the terms and conditions of its Governmental Approvals and neither BSI nor TL has received written notice that BSI is in violation of any of the terms or conditions of such Governmental Approvals. BSI has taken all actions to maintain such Governmental Approvals, and there has been no decision by BSI not to renew any material Governmental Approval. To the Knowledge of the BSI Knowledge Parties, there is no investigation or proceeding, including a survey report indicating deficiencies that have not been deemed corrected by the applicable Governmental Authority, pending or threatened that could result in the suspension, cancellation, termination, limitation, restriction, loss, expiration, or impairment of any Governmental Approval, other than expiration in accordance with the terms thereof. To the Knowledge of the BSI Knowledge Parties, no event has occurred that, with the giving of notice, the passage of time, or both, would (i) constitute grounds for a material violation, order or deficiency with respect to any Governmental Approval or (ii) revoke, withdraw or suspend any Governmental Approval. Except as set forth in Section 4.9(f) of the Disclosure Letter, all Governmental Approvals relating to the Business shall survive the transactions contemplated by this Agreement and shall be available for use by the Subject Entities immediately following the Closing.

(e) (i) No payment has been made by or on behalf of BSI, with respect to the Business, or any Subject Entity with the understanding that any part of such payment is to be used for any purpose other than that described in the documents supporting such payment, and (ii) none of BSI or, to the Knowledge of the BSI Knowledge Parties, its Representatives or any other Person associated with or acting for or on behalf of BSI has, directly or indirectly, made, with respect to the Business, any illegal contribution, gift, bribe, rebate, payoff, influence payment, kickback or other illegal payment to any Person, private or public, regardless of form, whether in money, property or services, (A) to obtain favorable treatment for BSI or any of its Representatives in securing business, (B) to pay for favorable treatment for business secured for BSI or any of its Representatives, (C) to obtain special concessions, or for special concessions already obtained, for or in respect of BSI or any of its Representatives, or (D) otherwise for the benefit of BSI or any of its Representatives in violation of any Law. Neither BSI nor any Representative or Person acting on behalf of BSI has knowingly and with corrupt intent accepted or received any unlawful contribution, payment, gift, kickback, expenditure or other item of value in connection with the Business.

(f) Except as set forth in Section 4.9(f) of the Disclosure Letter, all regulatory reports, schedules, statements, documents, filings, submissions, forms, registrations and other documents, together with any amendments required to be made with respect thereto, with respect to the Business required to have been filed with any Governmental Authority (the

"Business Documents") have been filed, and all applicable Taxes, fees and assessments due and payable in connection therewith have been timely paid. All Business Documents were true, correct and complete when filed, complied with applicable Law in effect when filed, did not contain any untrue statement of a fact or omit to state a fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, and no deficiencies have been asserted by any such Governmental Authority with respect to Business Documents that have not been satisfied except, in each case, as would not reasonably be expected to have a BSI Material Adverse Effect. There is no unresolved violation or exception by any such Governmental Authority with respect to any of the Business Documents .

(g) BSI has been and is in material compliance with (i) all applicable Laws concerning security, and (ii) all of its internal policies and/or agreements with other Persons concerning security, in each case as they relate to the Business except, in each case, as would not reasonably be expected to have a BSI Material Adverse Effect.

Section 4.10 Books and Records. The Books and Records of BSI and the Subject Entities (i) are complete and accurate in all material respects and (ii) have been maintained in accordance with BSI's customary business practices and in material compliance with applicable Law.

Section 4.11 Employee Benefit Plans.

(a) Section 4.11(a) of the Disclosure Letter sets forth a true and complete list of each deferred compensation, bonus, incentive compensation, share purchase, stock option, share appreciation, phantom share or other equity compensation, savings, profit sharing, severance or termination pay, medical, surgical, hospitalization, life or other insurance (whether insured or self-insured), employee loan, employee assistance, supplementary unemployment benefit, termination, retention or severance agreement, pension, retirement, supplementary retirement and other benefit plan, fund, program, agreement or arrangement, in each case, that is sponsored, maintained or contributed to or required to be contributed to by TL, BSI or any Subject Entity or any affiliate of BSI or any Subject Entity (excluding the Canada Pension Plan, the Quebec Pension Plan, any health or drug plan established and administered by a Province and workers' compensation insurance provided by federal or provincial legislation or a comparable program established and administered outside Canada), or to which TL, BSI or any Subject Entity or any affiliate of BSI or any Subject Entity is party, or is for the benefit of any Business Employee (collectively, the "Employee Plans").

(b) With respect to each Employee Plan, TL, BSI and/or a Subject Entity has heretofore made available or caused to be made available to DCC true and complete copies of the most recent version of the Employee Plan and any amendments thereto, any related custodial or other funding vehicle, the most recent actuarial report and annual information return, the financial statements, if any, and all material contracts relating to Employee Plans with respect to which TL, BSI or a Subject Entity may have any liability, including insurance contracts, investment management contracts, record keeping agreements and other services agreements. Except as set forth in Section 4.11(b) of the Disclosure Letter, there have not been

any amendments, modifications, terminations or any other changes to the most recent version of any Employee Plans.

(c) No promises or commitments have been made to amend any Employee Plan or to provide increased benefits thereunder, except as required by applicable Law.

(d) Each Employee Plan is, and has been since its establishment, duly registered where required by applicable Law and is in good standing thereunder (including registration with the relevant tax authorities where such registration is required to qualify for tax exemption or other beneficial tax status), and has been administered in material compliance with its terms and all applicable Law.

(e) All employer and employee obligations in respect of the Employee Plans, including payments, contributions and premiums required under applicable Law and their terms have been satisfied (or if applicable, accrued in accordance with normal accounting practices), and there are no outstanding defaults or violations in respect thereof.

(f) Except as set forth in Section 4.11(f) of the Disclosure Letter, no Employee Plan provides medical, surgical, hospitalization, death or similar benefits (whether or not insured) for periods extending beyond retirement or other termination of service.

(g) No Employee Plan is a multi-employer pension plan and there is no obligation with respect to a Business Employee under a multi-employer pension plan.

(h) Except as set forth in Section 4.11(h) of the Disclosure Letter, the consummation of the transactions contemplated by this Agreement will not, either alone or in combination with another event, accelerate the time of payment or vesting, or increase the amount of compensation or benefits due any such Business Employee.

(i) There are no pending or, to the Knowledge of the BSI Knowledge Parties, threatened actions, suits, claims, trials, demands, investigations, arbitrations or other proceedings with respect to the Employee Plans against TL, BSI or any Subject Entity, or the administrators, trustees, custodians, insurers or funds of such Employee Plans, by or on behalf of any Employee Plan, by any Person or beneficiary covered under any such Employee Plan, or otherwise involving any such Employee Plan (other than routine claims for benefits).

(j) No order has been made or notice given pursuant to any applicable Law requiring (or proposing to require) any Person to take (or refrain from taking) any action in respect of any Employee Plan, and no event has occurred and no condition or circumstance exists that has resulted or could reasonably result in any Employee Plan (i) being ordered or required to be terminated or wound-up, (ii) have its registration under any applicable Law refused or revoked, (iii) being placed under the administration of any trustee or any regulatory authority or (iv) being required to pay any Tax or penalty under any applicable Law.

(k) Except as set forth in Section 4.11(k) of the Disclosure Letter, no Business Employee holds any equity compensation awards (including, without limitation, stock options, restricted stock, or phantom stock awards) of TL, BSI or any Subject Entity.

Section 4.12 Employee Matters.

(a) Set forth on Section 4.12(a) of the Disclosure Letter is a list of all employees of BSI, TL or any of their affiliates (other than the Shared Employees) on a no-name basis who are dedicated to the Business (the "Business Employees"), and setting out, for each Business Employee, their position or title; their status (i.e., full time, part time, temporary, casual, seasonal, co-op student); whether they are employed for an indeterminate term or a fixed term and, in the latter case, the duration and expiry date of the term; their total annual remuneration, including a breakdown of salary and bonus or other incentive compensation, if any; whether the employee is a member of a collective bargaining union or agency; their total length of employment including any prior employment that would affect calculation of years of service for any purpose, including statutory entitlements, contractual entitlements, benefit entitlements or pension entitlements; and whether any employees are on any approved or statutory leave of absence, and, if so, the nature of such absence and the expected date of return. No Subject Entity employs any individual other than the Business Employees and the Shared Employees.

(b) Except as set forth in Section 4.12(b) of the Disclosure Letter:

(i) BSI is not a party to or bound by any collective bargaining agreement, labor agreement or work rules, or any other similar agreement with any labor union or labor organization;

(ii) There is no collective bargaining agreement with any labor union or labor organization in respect of any of the Business Employees or Shared Employees. Set forth on Section 4.12(b) of the Disclosure Letter is a true and correct list of the current expiration dates of each collective bargaining agreement;

(iii) No trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent:

(1) holds bargaining rights with respect to any Business Employees or Shared Employees by way of certification, interim certification, voluntary recognition, designation or successor rights;

(2) has applied to be certified as the bargaining agent of any Business Employees or Shared Employees; or

(3) has applied to have BSI or a Subject Entity declared a related employer or successor employer pursuant to applicable labor legislation with respect to any Business Employees or Shared Employees.

(iv) There are no actual, threatened to the Knowledge of the BSI Knowledge Parties or pending organizing activities of any trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent or any actual, threatened to the Knowledge of the BSI Knowledge Parties or pending unfair labor practice complaints, strikes, work stoppages, picketing, lock-outs, slowdowns, boycotts or similar labor related disputes or proceedings

pertaining to the Business Employees or Shared Employees, and there have not been any such activities or disputes or proceedings within the last three (3) years.

(c) There are no Actions against BSI pending or, to the Knowledge of the BSI Knowledge Parties, threatened to be brought or filed with any Governmental Authority in connection with the employment of any Business Employee or Shared Employee.

(d) All vacation pay for Business Employees and Shared Employees is properly reflected and accrued in the Books and Records.

(e) Since the date of the Balance Sheet, except in the ordinary course of business or as required by Law and consistent with BSI's past practices, there have been no increases or decreases in staffing levels in relation to the Business and there have been no material changes in the terms and conditions of employment of any Business Employees or Shared Employees, including their salaries, remuneration and any other payments to them, and there have been no material changes in any remuneration payable or benefits provided to any officer, director, consultant, independent or dependent contractor or agent engaged in relation to the Business, and there have been no agreements, promises or commitments made with respect thereto.

(f) BSI and the Subject Entities are in compliance in all material respects with applicable employment equity Laws in relation to the Business Employees or the Shared Employees and, to the extent required pursuant to such Laws, have prepared and posted an employment equity plan for all Business Employees and Shared Employees.

(g) BSI and the Subject Entities are in compliance in all material respects with applicable pay equity Laws in relation to the Business Employees and Shared Employees and have prepared and posted a pay equity plan for all Business Employees and Shared Employees and made all necessary adjustments pursuant to such pay equity plan in full compliance with applicable Laws, and BSI has fully disclosed to DCC the terms pertaining thereto.

(h) No material disputes or proceedings are pending or, to the Knowledge of the BSI Knowledge Parties, threatened against BSI or a Subject Entity in relation to the employment of any current or former employee or consultant employed or engaged in relation to the Business. To the Knowledge of the BSI Knowledge Parties, BSI has not received notice of the intent of any Governmental Authority responsible for the enforcement of labor or employment Laws to conduct an investigation with respect to or relating to any current or former employee or consultant employed or engaged in relation to the Business, and no such investigation is in progress.

(i) To the Knowledge of the BSI Knowledge Parties, BSI has at all times within the past five (5) years, as it relates to the Business, properly classified, under applicable Law, each of its employees as employees, and each of its independent contractors as independent contractors, and has treated each person classified by it as an employee or independent contractor consistently with such status. There is no proceeding pending or, to the Knowledge of the BSI Knowledge Parties, threatened against BSI challenging the classification

of any person as an employee or an independent contractor, including any claim for unpaid benefits, for or on behalf of, any such person.

(j) BSI is not, in relation to the Business: (i) delinquent in payments to any current or former employees or consultants, including, without limitation, outsourced employees, temporary employees, sales agents, and self-employed workers, for any services or amounts required to be reimbursed or otherwise paid, including, without limitation, all severance payments and other labor rights pursuant to any Contract between such employee or consultant and BSI or pursuant to applicable Law; or (ii) liable for any material payment to any trust or other fund or to any Governmental Authority with respect to employment insurance benefits, withholding Taxes, social security contributions, or other benefits or obligations for employees (other than routine payments to be made in the ordinary course of business consistent with past practice).

(k) To the Knowledge of the BSI Knowledge Parties, no Business Employee or Shared Employee, and no current or former employee or consultant of BSI employed or engaged in relation to the Business, is in violation of any material term of any employment agreement, consulting agreement, nondisclosure agreement, fiduciary duty, duty of loyalty, noncompetition agreement, restrictive covenant or other obligation of any such employee or consultant.

Section 4.13 Taxes. Except as set forth in Section 4.13 of the Disclosure Letter:

(a) BSI has (i) duly and timely filed (or has had duly and timely filed on its behalf) with the appropriate Governmental Authority all Tax Returns required to be filed by it and all such Tax Returns are true, correct and complete, (ii) duly and timely paid in full (or has had duly and timely paid in full on its behalf) all Taxes required to be paid by it (whether or not shown on any Tax Return), and (iii) made (or has had made on its behalf) adequate provision in accordance with GAAP for all accrued Taxes not yet due and payable, where, in each case, a failure to do so has resulted in, or will result in, a Lien on the assets of Becancour JV.

(b) There are no proceedings, investigations, audits or claims now pending or threatened in writing against BSI in respect of Taxes relating to the assets of Becancour JV, and there are no matters under audit or appeal with any Governmental Authority relating to such Taxes, which, in either case, would result in a Lien on the assets of Becancour JV.

(c) Neither BSI nor any of the BSI Knowledge Parties (or other Employees responsible for Tax matters) expects any Governmental Authority to assess any additional Taxes for any period for which Tax Returns have been filed which would result in a Lien on the assets of Becancour JV.

(d) There are no Liens for Taxes upon any of the assets of Becancour JV.

(e) Neither BSI nor any BSI affiliate that transferred assets to Becancour JV is a non-resident of Canada, or a partnership other than a Canadian Partnership, within the meaning of section 116 of the *Income Tax Act (Canada)*.

(f) Each of BSI and any BSI affiliate that transferred assets to Becancour JV that carries on commercial activities in Canada is duly registered under subdivision (d) of Division V of Part IX of the *Excise Tax Act* (Canada) with respect to the goods and services tax and harmonized sales tax.

(g) Each of BSI and any BSI affiliate that transferred assets to Becancour JV that carries on commercial activities in Quebec is duly registered under Division I of Chapter VIII of Title I of the *Quebec Sales Tax Act* with respect to the Quebec sales tax, and their registration numbers are set forth in Section 4.13 of the Disclosure Letter.

(h) Neither BSI nor Becancour JV is or has been engaged in a trade or business within the United States for United States federal income Tax purposes or otherwise is or has been subject to Tax in the United States.

(i) None of the assets owned by Becancour JV constitutes "United States real property interest" within the meaning of Section 897(c)(1) of the Code.

(j) No Governmental Authority in a jurisdiction in which BSI or any BSI affiliate does or did not file Tax Returns with respect to the Business or the assets transferred to Becancour JV has made a written claim that BSI or such BSI affiliate is or may be required to file Tax Returns in, or is or may be subject to Tax by, that jurisdiction with respect to the Business or such assets.

Section 4.14 Certain Contracts.

(a) Section 4.14(a) of the Disclosure Letter sets forth a true and correct list, as of the date hereof, of all of the material Contracts relating to the Business to which BSI or either of the Subject Entities is a party or by which its assets are bound, including all Contracts relating to the Business in the following categories (the "Material Contracts"):

(i) any Contract with any affiliate, current or former officer, director, employee, shareholder or other Representative of BSI or with a family member of any of the foregoing or with an entity in which any of the foregoing is a controlling Person;

(ii) any Lease;

(iii) any Contract entered into during the last three (3) years relating to the disposition or acquisition by BSI of any material assets other than in the ordinary course of business;

(iv) any indenture, mortgage, note, promissory note, bond, loan, guaranty, surety or credit agreement or other Contract relating to Indebtedness, including any letters of credit issued on behalf of the Business;

(v) any Contract (including vendor contracts) that is reasonably anticipated to involve aggregate payments or consideration furnished

by or to BSI or any Subject Entity of more than U.S. \$500,000 in any year or that expires more than a year after the date of this Agreement;

(vi) any Contract relating to the supply of vegetal charcoal, sawmill leftovers or quartz;

(vii) any Contract which could reasonably be expected to affect the ability of Becancour JV to fulfill its commitments pursuant to the Output and Supply Agreement;

(viii) any Contract relating to (i) the provision of power, energy or other natural resources or (ii) mining or other land-usage rights or restrictions;

(ix) any management, consulting, advertising, marketing, sales, distribution or promotion Contract that (A) involves annual payments in excess of U.S. \$100,000 or (B) is not cancelable on 30 days' notice without payment or penalty;

(x) any Contract for capital expenditures in excess of U.S. \$100,000 in the aggregate;

(xi) any Contract with any Governmental Authority;

(xii) any Contract (A) pursuant to which BSI grants any right to use any material Intellectual Property owned by BSI, (B) pursuant to which BSI receives the right to use any material Intellectual Property owned by any Third Party, including any affiliate of BSI (other than Contracts granting rights to use Off-the-Shelf Software), or (C) restricting BSI's right to use any material Intellectual Property that is owned by BSI;

(xiii) any Contract having a duration in excess of one year and not terminable without penalty or payment in excess of U.S. \$50,000 upon 90 days or less prior notice to BSI; and

(xiv) any Contract containing covenants not to compete in any line of business or with any other Person in any geographical area, covenants of any other Person not to compete with BSI in any line of business or in any geographical area, or covenants that in any way purport to or would limit the ability of any Subject Entity, DCC or any of their respective affiliates (after the Closing Date) to compete with any Person.

(b) Copies of all such Material Contracts referred to in Section 4.14(a) have been previously delivered to or made available for inspection by DCC, and such copies are complete and correct. Except as set forth in Section 4.14(b) of the Disclosure Letter, (i) each Material Contract is a valid, binding and enforceable obligation of BSI, and, to the Knowledge of the BSI Knowledge Parties, the other parties thereto, and is in full force and effect, (ii) except as would not reasonably be expected to have a Material Adverse Effect, BSI has performed in all

material respects all obligations required to be performed by it to date under each Material Contract and is not (with or without the lapse of time or the giving of notice, or both) in breach or default thereunder, (iii) to the Knowledge of the BSI Knowledge Parties, each of the other parties to each Material Contract has performed in all material respects all obligations required to be performed by it under such Material Contract and is not (with or without the lapse of time or the giving of notice, or both) in breach or default thereunder, and (iv) BSI has not received notice of an intention to cancel, not renew, terminate, materially modify or challenge the validity or enforceability of any Material Contract.

Section 4.15 Intellectual Property.

(a) Section 4.15(a) of the Disclosure Letter sets forth a complete and accurate list of all Intellectual Property relating to the Business owned by (i) BSI or (ii) any other Person and used in the conduct of the Business, in each case, that is the subject of a registration or an application for registration and lists, in each case, the owner, the jurisdiction and the application or registration number thereof (collectively, "Registered Intellectual Property"). BSI is the record owner of all Registered Intellectual Property free and clear of all Liens (except Permitted Liens), all Registered Intellectual Property is valid and in force, and all application, renewal and maintenance fees and filings in relation to all Registered Intellectual Property have been paid and maintained to date.

(b) The applicable Subject Entity shall own as of the Closing, free and clear of all Liens (except Permitted Liens), or shall have valid and enforceable rights or licenses to use, free and clear of all Liens (except Permitted Liens), all of the Intellectual Property that is used in, or necessary to carry on, the Business as conducted on the date of this Agreement.

(c) To the Knowledge of the BSI Knowledge Parties, the conduct of the Business does not infringe or otherwise violate the Intellectual Property of any Third Party. Neither BSI nor TL has received any written notice and no claim is pending or, to the Knowledge of the BSI Knowledge Parties, threatened alleging any of the foregoing or challenging the ownership, use, validity, enforceability or registrability of any Intellectual Property owned by BSI, TL or any of their respective affiliates and used in the Business (collectively, "Business Intellectual Property"). To the Knowledge of the BSI Knowledge Parties, no Third Party is infringing or otherwise violating any of the Business Intellectual Property. Neither BSI nor TL has made or threatened any claim against any Third Party alleging infringement or other violation of any Business Intellectual Property and no such claim is currently pending.

(d) BSI has taken commercially reasonable efforts to protect the confidentiality of its trade secrets, and none of its trade secrets has been disclosed or authorized to be disclosed to any Third Party other than pursuant to a written non-disclosure agreement.

(e) Each employee and consultant who has developed Intellectual Property on behalf of BSI or for use in the Business has executed an agreement with BSI (or affiliate thereof) that conveys on an exclusive basis to BSI (or affiliate thereof) any and all right, title and interest in and to such Intellectual Property.

(f) Except as set forth on Section 4.15(f) of the Disclosure Letter, the solar grade silicon purification operations of BSI do not share any Intellectual Property with the Business.

(g) None of the software licenses set forth on Section 4.15(a) of the Disclosure Letter contains any provision that, following the Restructuring Transactions, will be binding on DCC or its affiliates.

Section 4.16 Properties and Assets.

(a) Section 4.16(a) of the Disclosure Letter sets forth a true, correct and complete description of the immovable properties (the "Owned Real Property"), which are the only immovable properties owned by BSI. The Facility is the only immovable property required in connection with the Business and will be beneficially owned by Becancour JV immediately before the Closing Date. BSI or the applicable affiliate has, and the applicable Subject Entity will have at the Closing, good and valid title to or other legal right to use all properties and assets (real and personal and tangible and intangible), including all such properties and assets that it purports to own or has legal right to use as reflected on the Balance Sheet (except for properties and assets disposed of in the ordinary course of business and consistent with past practice and in compliance with this Agreement). None of such properties or assets reflected on the Balance Sheet is subject, or at the Closing will be subject, to any Liens except Permitted Liens. BSI has delivered or made available to DCC true and correct copies of all title reports and title policies (including all exception documents referenced therein) and certificates of location regarding the Owned Real Property in its possession.

(b) Section 4.16(b) of the Disclosure Letter sets forth a true, correct and complete description of the Mining Property (the "Leased Real Property" and, together with the Owned Real Property, the "Real Property"), which is the only immovable property leased by BSI in connection with, and required by, the Business and which will be leased by Becancour JV immediately before the Closing Date. BSI has delivered or made available to DCC true, correct and complete copies of all Leases relating to the Leased Real Property, together with all title reports and title policies (including all exception documents referenced therein) and certificates of location, if any, relating to the Leased Real Property in its possession. No consents of any landlord under the Lease are required in connection with the transactions contemplated by this Agreement and the Ancillary Agreements. Except as set forth in Section 4.16(b) of the Disclosure Letter, there are no leases, subleases, ground leases, licenses or other occupancy agreements affecting the use or occupancy of the Leased Real Property by BSI or any affiliate or to which BSI or any affiliate is a party or bound with respect to the Leased Real Property. All Leases with respect to the Leased Real Property of BSI or its affiliate are in good standing and in full force and effect, and all Contracts evidencing such Leased Real Property have been registered with the applicable Governmental Authority (including, without limitation, the applicable recording office for real property records), as applicable, in order to provide constructive notice of and/or enforce such Contract in the case of a sale of such Leased Real Property to a Third Party.

(c) There are no (i) to the Knowledge of the BSI Knowledge Parties, plans by any Governmental Authority that may result in the imposition of any general or special

assessment relating to any of the Real Property, (ii) written notices from any Governmental Authority that have been received by BSI or TL indicating that any of the Real Property or any Improvements (as defined below) is currently not in compliance with applicable zoning laws or regulations or that the Governmental Authority will be seeking modification of any variances, special exceptions, conditions or agreements pertaining to such Real Property or that such Governmental Authority intends to modify other governmental rules or restrictions applicable to the Real Property or the use thereof or (iii) outstanding written notices from any Governmental Authority that have been received by BSI or TL requiring or calling attention to the need for any work, repair, construction, alteration or installation on, or in connection with, any of the Real Property, except where the failure to perform such work, repair, construction, alteration or installation has not resulted and would not reasonably be expected to result, individually or in the aggregate, in a BSI Material Adverse Effect. There is no pending or, to the Knowledge of the BSI Knowledge Parties, threatened change in the zoning classification of any parcel of the Real Property. No expropriation proceedings against any Real Property is pending or, to the Knowledge of the BSI Knowledge Parties, threatened. All of the properties and assets of BSI and its affiliates consisting of buildings, fixtures, building systems and equipment (whether owned or leased) currently used in the normal operations of the Business (the "Improvements") have been maintained and are in good operating condition, subject to normal wear and tear, and are free from material defects, except where such defects would not reasonably be expected to have a BSI Material Adverse Effect.

(d) Section 4.16(d) of the Disclosure Letter sets forth all Contracts relating to the leasing of personal property involving annual payments in excess of U.S. \$100,000 relating to personal property used in the Business. BSI has delivered or made available to DCC true, correct and complete copies of such Contracts, together with all amendments, modifications or supplements thereto. All Contracts under which BSI is a lessee are in good standing and in full force and effect. BSI has, and the applicable Subject Entity will have at the Closing, good and marketable title to all of the items of personal property reflected on the Balance Sheet, free and clear of any and all Liens other than the Permitted Liens. All such items of personal property that are used in the normal operation of the Business are in good condition and in a state of good maintenance and repair (ordinary wear and tear excepted) and are suitable for the purposes used, in all cases, in all material respects. None of the personal property that is used in the normal operation of the Business is located outside of the Real Property, except on a temporary basis for repair or maintenance, and all of the personal property located on the Real Property is owned or leased by BSI or the Subject Entities, save for such personal (movable) property owned by any tenant or leased by BSI or the Subject Entities.

(e) BSI has not granted, and no BSI Knowledge Party has any Knowledge of, any outstanding options, rights of first offer, rights of refusal or similar preemptive rights to purchase or lease any of the Real Property, or any portion thereof or interest therein (other than any such rights in favor of BSI or a Subject Entity). Except as contemplated by this Agreement and the Restructuring Transactions, BSI has not entered into any Contract or other obligation (including options), and no BSI Knowledge Party has any Knowledge of any Contract or other obligation (including options), that is currently in effect for the sale, exchange, encumbrance or transfer of any of the Real Property.

(f) The present use of the Real Property (including the Improvements) is, and the Improvements themselves are, in substantial conformity with all applicable Laws and with all recorded deeds, restrictions of record and other agreements affecting such Real Property other than any violations or failures to conform that do not materially and adversely affect the use and operation of the Real Property, and neither BSI nor TL has received any written notice of any violation thereof currently outstanding, and the BSI Knowledge Parties have no Knowledge of any violation thereof currently outstanding. The Real Property includes all land, Improvements, easements and other rights and interests appurtenant thereto materially necessary for use by BSI in the conduct of the Business as presently conducted. To the Knowledge of the BSI Knowledge Parties, none of the items set forth in Section 4.16 of the Disclosure Letter have or have had a material adverse effect, individually or in the aggregate, on the use of the Real Property.

(g) Other than the Real Property Agreements, there are no leases, subleases, licenses or agreements, written or oral, granting to any party or parties (other than BSI or a Subject Entity) the right of use or occupancy of any portion of any Real Property.

(h) No portion of the Real Property has suffered any damage by fire or other casualty loss which has not heretofore been repaired and restored to its condition before such loss or casualty, except as would not, individually or in the aggregate, reasonably be expected to interfere in any material respect with the use of such Real Property, or with respect to any Leased Real Property, which has not heretofore been repaired and restored in accordance with the terms of the applicable Lease.

(i) Each Real Property has direct vehicular and pedestrian access to a public street adjoining such Real Property or has vehicular and pedestrian access to a public street via (i) a permanent, irrevocable and appurtenant easement benefiting such parcel of Real Property or (ii) an adjacent parcel that is included in the Real Property, and such access is not dependent on any land or other real property interest that is not included in the Real Property.

(j) Subject to the provisions of the Real Property Agreements, the parcels constituting the Owned Real Property are assessed separately from all other adjacent property not constituting Owned Real Property for purposes of real property Taxes, and each of the parcels of the Owned Real Property complies with all applicable subdivision, land parcelization and local governmental taxation or separate assessment requirements, without reliance on property not constituting Owned Real Property.

(k) Subject to the provisions of the Real Property Agreements, all services and utilities required for the use of the Real Property (including, without limitation, water, steam, sewage, fluids, gas and electricity supply lines and conduits, heating, ventilation and air flow and treatment systems, cables, fiber optics, wiring and other physical waves and aerial conduits conveying and connecting devices related to communications, telecommunications and data systems, spur lines and shipping/receiving doors and gates) have been installed, completed and paid for in full, are in good operating condition, except for normal wear and tear, and are sufficient for the operations of the Business as currently conducted.

(l) All Taxes in respect of the Owned Real Property have been paid without subrogation as of the date of this Agreement and no land transfer duties in respect of the Owned Real Property are due or payable as of the date of this Agreement. All Taxes related to the occupancy of the Leased Real Property have been paid without subrogation as of the date of this Agreement.

(m) No portion of the Real Property is a recognized or a classified cultural property or situated in a historic or natural zone, within a classified historic site or in a protected area, in each case pursuant to the *Cultural Property Act* (Québec). No portion of the Real Property is situated in an agricultural zone within the meaning of the *Act respecting the Preservation of Agricultural Land and Agricultural Activities* (Québec).

Section 4.17 Environmental Matters.

(a) Except as set forth in Section 4.17(a) of the Disclosure Letter, with respect to the Business, the Facility, or to the Knowledge of the BSI Knowledge Parties, with respect to the Mining Property, (i) BSI is, and following the Restructuring Transactions the Subject Entities will be, in compliance, in all material respects, with all applicable Environmental Laws, including, without limitation, holding and complying with the terms of all material Permits required by applicable Environmental Laws for the operation of the Business and the Facility, and no event has occurred or condition exists that constitutes or, that with notice or lapse of time or both, could constitute, a material default under, or violation of, any Environmental Laws or Permit held or required pursuant to applicable Environmental Law, and (ii) none of BSI, TL or either Subject Entity has received any Governmental Order or other written communication, whether from a Governmental Authority, citizens group, employee, former employee or otherwise, that alleges that BSI is not in such compliance with all applicable Environmental Laws, and, to the Knowledge of the BSI Knowledge Parties, there are no circumstances that may prevent or interfere with such full compliance in the future. All Permits currently held or in the process of being obtained by BSI or its affiliates related to the Business pursuant to applicable Environmental Laws are identified in Section 4.17(a) of the Disclosure Letter.

(b) Except as set forth in Section 4.17(b) of the Disclosure Letter, with respect to the Business, the Facility or the Mining Property, there is no Environmental Claim pending or, to the Knowledge of the BSI Knowledge Parties, threatened against BSI or any Subject Entity or, to the Knowledge of the BSI Knowledge Parties, against any Person whose Liability for any such Environmental Claim BSI has or may have retained or assumed either contractually or by operation of Law.

(c) Except as set forth in Section 4.17(c) of the Disclosure Letter or as would not, individually or in the aggregate, reasonably be expected to have a BSI Material Adverse Effect, (i) there are no past or present actions, activities, circumstances, conditions, events or incidents, including, without limitation, the Release of any Hazardous Material, particulates, vapors or smoke at the Facility, the HP2 Property, any other location currently or formerly operated by BSI in connection with the Business (other than the silica fume disposal site) or, to the Knowledge of the BSI Knowledge Parties, at the Mining Property, that could reasonably be expected to form the basis of any Environmental Claim against BSI or any Subject

Entity or, to the Knowledge of the BSI Knowledge Parties, against any Person whose Liability for any such Environmental Claim BSI or any Subject Entity has or may have retained or assumed either contractually or by operation of Law; (ii) there have been no Releases of Hazardous Materials at the Facility, the HP2 Property, any other location currently or formerly operated by BSI in connection with the Business (other than the silica fume disposal site) or, to the Knowledge of the BSI Knowledge Parties, at the Mining Property that could reasonably be expected to require Cleanup or which could reasonably be expected to create a threat to human health, worker safety or the Environment; and (iii) there are no past or present damages, degradation or other irregular interferences at the Facility, the HP2 Property, any other location currently or formerly operated by BSI in connection with the Business (other than the silica fume disposal site) or, to the Knowledge of the BSI Knowledge Parties, at the Mining Property regarding any natural resources including environmental reserves, legal reserves, conservation units and areas of permanent conservation.

(d) Without in any way limiting the generality of the foregoing, (i) all on-site landfills at the Facility or the HP2 Property and, to the Knowledge of the BSI Knowledge Parties, off-site locations, where BSI, on behalf of the Business, has stored, disposed or arranged for the disposal of Hazardous Materials, mining tailings and debris, are identified in Section 4.17(d) of the Disclosure Letter, (ii) all underground storage tanks, and, if available, the age, capacity and contents of such tanks, located on the Facility are identified in Section 4.17(d) of the Disclosure Letter, (iii) except as set forth in Section 4.17(d) of the Disclosure Letter, there is no asbestos contained in or forming part of any building, building component, structure or office space at the Facility, and (iv) except as set forth in Section 4.17(d) of the Disclosure Letter, no polychlorinated biphenyls (PCBs) are used or stored at the Facility.

(e) Except as set forth in Section 4.17(e) of the Disclosure Letter, BSI is not, and following the Restructuring Transactions the Subject Entities will not be, a party to any Contract, with respect to the Business, the Facility or the Mining Property, pursuant to which it would be obligated to indemnify any other Person with respect to, or be responsible for any Liability pursuant to any Environmental Law.

(f) Except as set forth in Section 4.17(f) of the Disclosure Letter, BSI is not, and following the Restructuring Transactions the Subject Entities will not be, a party to any Contract or has any other obligation pursuant to which it would be or is required to maintain financial assurances, post a bond, provide escrow or collateral in relation to reclamation, recovery of degraded areas, remediation or Cleanup under any Environmental Law.

(g) Except as set forth in Section 4.17(g) of the Disclosure Letter, BSI does not have, and following the Restructuring Transactions the Subject Entities will not have, any outstanding or future obligations under current applicable Environmental Laws to Cleanup, restore or reclaim the Facility, the HP2 Property, the Mining Property or any other property that has been mined for quartz on behalf of the Business.

(h) Except as set forth in Section 4.17(h) of the Disclosure Letter, with respect to the Facility, the Mining Property or the Business, BSI does not have any known or reasonably foreseeable asset retirement obligations (AROs) as described by the Financial Accounting Standards Board (FASB) Interpretation No. 47 (FIN 47).

(i) To the Knowledge of the BSI Knowledge Parties, BSI has lawfully secured access, approvals, permissions or similar authorizations from all applicable Persons for the use of any natural resource (including but not limited to water, land, vegetation and forest products) at the Mining Property, and no current or reasonably foreseeable condition exists that could, with notice or lapse of time or both, cause the lawful use of such natural resource to be reduced, eliminated or denied.

(j) Except as set forth on Section 4.17(j) of the Disclosure Letter, BSI has provided or made available to DCC complete copies of all material environmental site assessments, reports, studies, documents, investigations, audit reviews, analyses, tests or monitoring data possessed by or in the control of BSI or TL pertaining to (i) Releases of Hazardous Materials at the Facility or the Mining Property, (ii) the environmental condition of the Facility, the Business or the Mining Property, or (iii) BSI's or the Business's compliance with applicable Environmental Laws.

(k) To the Knowledge of the BSI Knowledge Parties, all suppliers of raw materials to BSI with respect to the Business (including, without limitation, suppliers of vegetal charcoal, natural resources, sawmill leftovers and quartz), are and always have been in compliance with all applicable Environmental Laws, except as would not reasonably be expected to result, individually or in the aggregate, in a BSI Material Adverse Effect.

(l) To the Knowledge of the BSI Knowledge Parties, Sitec S.E.C. is in compliance with (i) all applicable Environmental Laws relating to the operation of the Mining Property and related activities and (ii) the Lac Malbaie Operating Agreement, dated April 30, 2007, between Sitec S.E.C. and BSI.

Section 4.18 Transactions with Affiliates.

(a) Except as set forth in Section 4.18(a) of the Disclosure Letter, there are no outstanding amounts payable to or receivable from, or advances by, BSI to, and BSI is not otherwise a creditor or debtor to, or party to any Contract or any other arrangement with, any equityholder, director, officer, employee, affiliate or associate of BSI, or any relative of any of the foregoing other than intercompany receivables and payables that will be settled prior to the Closing. Set forth on Section 4.18(a) of the Disclosure Letter is a true and correct list of all material services performed or products supplied by affiliates of BSI to or on behalf of the Business, as well as a true and correct description thereof.

(b) Section 4.18(b) of the Disclosure Letter sets forth a true and correct list of all Contracts to which BSI, TL, or any of their affiliates is a party which are related, but not exclusively related to, the Business (the "Shared Contracts").

(c) Immediately following the Closing and after taking into account the transactions contemplated by the Restructuring Transactions and the Ancillary Agreements, the Subject Entities will have all assets, properties, licenses, employees and rights necessary for the normal operation of the Business in the same manner as conducted immediately prior to the date hereof.

Section 4.19 Insurance. Section 4.19 of the Disclosure Letter sets forth a list of all insurance policies and fidelity bonds relating to the assets, business, operations, employees, officers or directors of BSI (including, for the sake of clarity, all such insurance policies and fidelity bonds held by any affiliate of BSI) and BSI has provided or made available to DCC true and complete copies of all insurance policies and fidelity bonds covering the Business. There is no claim by BSI or any of its affiliates pending under any of such policies or bonds as to which coverage has been, to the Knowledge of the BSI Knowledge Parties, questioned, denied or disputed by the underwriters of such policies or bonds or in respect of which such underwriters have reserved their rights. All premiums that are due with respect thereto covering all periods up to and including the Closing Date have been or will be paid or accrued, no notice of cancellation or termination has been received with respect to such policies or bonds or other form of insurance, such policies or bonds will not terminate or lapse by reason of the consummation of the transactions contemplated by this Agreement, and BSI and its affiliates have otherwise complied fully with the terms and conditions of all such policies and bonds. Such policies of insurance and bonds (or other policies and bonds providing substantially similar insurance coverage) are in full force and effect. BSI maintains insurance policies and fidelity bonds (including financial institutions bonds, property and casualty insurance, general liability insurance, professional liability insurance and workers' compensation insurance) of the type and in amounts customarily carried by Persons conducting businesses similar to the Business. The BSI Knowledge Parties have no Knowledge of any threatened termination of, premium increase with respect to, or alteration of coverage under, any of such policies or bonds.

Section 4.20 Value of Assets and Revenues. BSI, together with its affiliates (as defined in the Competition Act), does not have assets in Canada that exceed CAD \$300 million or annual gross revenues from sales in, from or into Canada that exceed CAD \$200 million, in either case, as determined pursuant to section 109 of the Competition Act.

Section 4.21 Finders' or Advisors' Fees. There is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of BSI, TL, the Subject Entities or any of their affiliates who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

Section 4.22 No Other Representations or Warranties. Except for the representations and warranties contained in this Article IV, none of BSI, TL nor any other Person makes any other express or implied representations and warranties with respect to BSI, TL, the Subject Entities, any of their respective Subsidiaries or the Business. BSI and TL disclaim any representations or warranties, whether made by BSI, TL or any of their affiliates, Representatives or other agents that is not contained in this Article IV. None of BSI, TL, any of their respective affiliates or any Person acting on behalf of BSI, TL or their affiliates makes any representations or warranties with respect to any estimates, projections and other forecasts or plans (including the reasonableness of the assumptions or the accuracy of the information underlying such estimates, projections and other forecasts or plans) except to the extent set forth in this Article IV.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF DCC

DCC represents and warrants to BSI and TL that:

Section 5.1 Organization and Qualification. DCC is a corporation duly organized, validly existing and in good standing under the Laws of Michigan. DCC has the requisite corporate power and corporate authority and any necessary Governmental Authority, franchise, license, certificate, or permit to own, operate and lease the properties that it purports to own, operate or lease and to carry on its business as it is now being conducted, and is duly qualified as a foreign corporation to do business, and is in good standing in each jurisdiction where the character of its properties owned, operated or leased or the nature of its activities makes such qualification necessary. Each of the DCC JV Companies is, or upon its formation or organization will be, duly organized, validly existing and in good standing, or the equivalent thereof, under the Laws of its jurisdiction of incorporation or organization. Each of the DCC JV Companies is, or upon its formation or organization will be, in good standing in each jurisdiction where the character of the properties to be owned, operated or leased by it, or the nature of its activities, make such qualification necessary.

Section 5.2 Corporate Authorization; Board Action. DCC has, and the DCC JV Companies will have prior to the Closing, the requisite corporate power and authority to enter into this Agreement and the Ancillary Agreements, as applicable, and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the applicable Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of DCC and shall be duly authorized prior to the Closing by the DCC JV Companies and no other corporate proceedings on the part of DCC or the DCC JV Companies are or shall be necessary to authorize the execution and delivery of this Agreement or the applicable Ancillary Agreements or to consummate the transactions contemplated hereby or thereby. This Agreement has been duly executed and delivered by DCC and, assuming due authorization, execution and delivery of this Agreement by the other parties hereto, constitutes a valid and binding agreement of DCC enforceable against it in accordance with its terms, except to the extent that such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws, now or hereafter in effect, affecting creditors' rights generally, and to general equity principles. When executed and delivered, the Ancillary Agreements will have been duly executed and delivered by DCC and the DCC JV Companies, as applicable, and, assuming due authorization, execution and delivery of such Ancillary Agreements by the other parties thereto, will constitute valid and binding agreements of each of DCC and the DCC JV Companies, as applicable, enforceable against it in accordance with their terms, except to the extent that such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws, now or hereafter in effect, affecting creditors' rights generally, and to general equity principles.

Section 5.3 Consents and Approvals; No Violations.

(a) The execution, delivery and performance by each of DCC and the DCC JV Companies of this Agreement and/or the applicable Ancillary Agreements, and the consummation by DCC and the DCC JV Companies of the transactions contemplated hereby and thereby, require no action by or in respect of, or notice to or filing with, any Governmental Authority other than compliance with any applicable requirements of any antitrust, competition, foreign investment or similar Laws.

(b) None of the execution, delivery or performance by DCC or the DCC JV Companies of this Agreement and/or the applicable Ancillary Agreements, or the consummation by DCC or the DCC JV Companies of the transactions contemplated hereby or thereby or compliance by DCC and the DCC JV Companies with any of the provisions hereof or thereof will (i) conflict with or result in any breach of any provisions of the organizational and governing documents of DCC or the DCC JV Companies, (ii) conflict with or result in any violation of any provision of any Law binding upon or applicable to DCC or the DCC JV Companies, (iii) require the consent, approval or authorization of, or notice to or filing with, any Third Party with respect to, result in any violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation, amendment, or acceleration of any right or obligation of DCC or the DCC JV Companies or to a loss of any benefit to DCC or the DCC JV Companies) under any provision of any Contract binding upon DCC or the DCC JV Companies, or (iv) result in the creation or imposition of any Lien (other than Permitted Liens) on any asset of DCC or the DCC JV Companies, except in the case of (ii), (iii) and (iv) for such conflicts, violations, breaches, defaults, rights or losses, or the failure to obtain any such consents or approvals or to provide such notices or make such filings, that would not reasonably be expected to have, individually or in the aggregate, a DCC Material Adverse Effect.

Section 5.4 Value of Assets and Revenues. DCC, together with its affiliates (as defined in the Competition Act), does not have assets in Canada that exceed CAD \$100 million or annual gross revenues from sales in, from or into Canada that exceed CAD \$200 million, in either case, as determined pursuant to section 109 of the Competition Act.

Section 5.5 Investment Representation. DCC is causing the DCC JV Companies to acquire the Interests for investment for its own account, not as a nominee or agent, and not with a view to, or for resale in connection with, any distribution thereof in violation of applicable securities Laws.

Section 5.6 Adequacy of Funds. DCC has access to, and will have at the Closing, adequate immediately available funds on hand to satisfy its and the DCC JV Companies' monetary and other obligations under this Agreement and the Ancillary Agreements without recourse to any new outside financing.

ARTICLE VI

COVENANTS

Section 6.1 Conduct of BSI.

(a) BSI and TL covenant and agree that, from and after the date of this Agreement and prior to the Closing or, if earlier, the termination of this Agreement in accordance with its terms, they will cause the Business to be conducted in all respects only in the ordinary course of business and consistent with past practice and, to the extent consistent therewith, shall use their respective reasonable best efforts to preserve the Business's organization intact and maintain the existing relations with suppliers, employees, creditors and business partners of the Business.

(b) Without limiting the provisions of Section 6.1(a), except as set forth in Section 6.1(b) of the Disclosure Letter and as contemplated by the Restructuring Transactions, BSI and TL covenant and agree that, except as expressly provided in this Agreement, or as required to comply with applicable Law, or with the prior written consent of DCC (which shall not be unreasonably withheld or delayed), from and after the date of this Agreement and prior to the Closing or, if earlier, the termination of this Agreement in accordance with its terms, BSI and TL shall not, and shall not permit the Subject Entities to:

(i) amend or propose to amend the articles of incorporation or bylaws or similar organizational documents of BSI;

(ii) issue, sell, transfer, pledge, dispose of or encumber any additional shares of, or securities convertible into or exchangeable for, or options, warrants, calls, commitments or rights of any kind to acquire, any shares of capital stock of any class or other equity interests of BSI or any Subject Entity;

(iii) adopt a plan of complete or partial liquidation or dissolution;

(iv) (A) increase the compensation or benefits payable to any Employee or consultant of BSI involved in the Business other than increases in the ordinary course of business, consistent with past practice to non-officer Business Employees; (B) grant any severance or termination pay to (or amend any such existing arrangement with) any Business Employee or consultant of BSI involved in the Business; (C) enter into any employment, deferred compensation or other similar agreement (or amend any such existing agreement) with any Business Employee or consultant of BSI involved in the Business other than in the ordinary course of business, consistent with past practices; (D) increase any benefits payable under any existing severance or termination pay policies or agreements or employment agreements affecting any Business Employee or consultant involved in the Business; or (E) permit any Business Employee or consultant of BSI involved in the Business who is not already a party to an agreement or a participant in a plan providing benefits upon or following a

"change in control" to become a party to any such agreement or a participant in any such plan, other than pursuant to a pre-existing contractual commitment or as required by applicable Law;

(v) enter into or amend any collective bargaining agreement with respect to the Business, except as may be required in connection with this Agreement;

(vi) adopt any new benefit plan, terminate any Employee Plan or modify any Employee Plan in a way that could result in additional cost to BSI other than non-material modifications required under the terms of an existing collective bargaining agreement;

(vii) take any action to cause any employee who would be considered to be a Business Employee as of the date hereof not to be a Business Employee; or, take any action to cause any employee of BSI, TL, or any of their affiliates who would not be considered a Business Employee as of the date hereof to become a Business Employee (other than any employees with annual compensation of less than US \$90,000 who are hired and transferred in the ordinary course of business, consistent with past practice);

(viii) sell, transfer, pledge, dispose of, or permit to exist any Lien on, any of the GP Shares or the LP Interests;

(ix) enter into, modify, amend or terminate any Contract providing energy for the Business or waive any material rights or claims pursuant thereto;

(x) enter into, modify, amend or terminate any Material Contract or waive, release or assign any material rights or claims, except in the ordinary course of business and consistent with past practice;

(xi) enter into any material transaction affecting the Business other than in the ordinary course of business and consistent with past practice;

(xii) permit (by failing to use its reasonable best efforts) any material insurance policy covering BSI or the Business to be cancelled or terminated or fail to use its reasonable best efforts to renew coverage under any such policy;

(xiii) with respect to BSI, enter into any material commitment or transaction (including any borrowing, capital expenditure or purchase, sale or lease of assets) requiring a capital expenditure by BSI, other than capital expenditures that do not exceed U.S. \$100,000 in the aggregate;

(xiv) grant any Lien (other than any Permitted Lien) on any asset or property of the Business (including Real Property);

(xv) with respect to Becancour JV make, amend or revoke any Tax accounting method or material Tax election, in a manner that is inconsistent with the past practice of the Business while owned and operated by BSI;

(xvi) change any of the accounting principles used by BSI unless required by GAAP or other applicable Laws;

(xvii) pay, discharge or satisfy any Liabilities of the Business other than the payment, discharge or satisfaction of any such Liabilities in the ordinary course of business and consistent with past practice and in accordance with their terms as in effect on the date of this Agreement;

(xviii) take, or agree to commit to take, or omit to take, any action that would make any representation or warranty set forth in Article IV hereof inaccurate in any respect at, or as of any time prior to, the Closing; or

(xix) enter into a Contract to do any of the foregoing, or authorize, recommend, propose or announce an intention to do any of the foregoing.

Section 6.2 Access to Information; Confidentiality.

(a) From the date of this Agreement to the Closing or, if earlier, the termination of this Agreement in accordance with its terms, BSI shall, and shall cause its affiliates to, give DCC and its Representatives reasonable access to the offices, Representatives, and properties of BSI and the Business give access to Books and Records of BSI and each Subject Entity during normal business hours, furnish to DCC and its Representatives such financial and operating data and all other information as such Persons may request and shall instruct its own Representatives to cooperate with DCC in its investigation of the Business; provided, that BSI shall have no obligation, prior to the Closing, to provide access to or furnish to DCC any such lists, information and records that are prohibited from being disclosed or transferred by applicable Law, or that would result in the waiver of any applicable attorney-client privilege or the violation of any confidentiality or non-disclosure agreement; provided, further, that BSI shall have no obligation at any time, either prior to the Closing or after the Closing, to disclose any information concerning its customers; provided, further, that in exercising its rights under this Section 6.2, DCC shall not be permitted to interfere unreasonably with the conduct of the business of BSI, TL or their Subsidiaries; and provided, further, that no investigation of BSI or the Business shall affect any representation or warranty given by any party hereunder.

(b) All information provided or obtained in connection with the transactions contemplated by this Agreement shall be held by DCC and its affiliates and Representatives in accordance with the Confidentiality Agreement, dated as of May 3, 2010, between TL and DCC (as amended to date, the "Confidentiality Agreement"). In the event of a conflict or inconsistency between the terms of this Agreement and the Confidentiality Agreement, the terms of this Agreement shall govern. The parties hereto agree that the Confidentiality Agreement shall terminate and be of no further force or effect as of the Closing.

Section 6.3 Regulatory Filings: Reasonable Best Efforts.

(a) To the extent required by Law, each of BSI and DCC shall, and shall cause their respective Representatives to, prior to and following the Closing, as applicable, (i) promptly make or cause to be made the filings required of such party or any of its respective Representatives, under any antitrust, competition, foreign investment or similar Laws with respect to the sale of the Interests and the other transactions contemplated by this Agreement and the Ancillary Agreements, (ii) use its reasonable best efforts to comply with any request under any such antitrust, competition, or foreign investment Laws for additional information, documents, or other material received by such party or any of its Representatives from any Governmental Authority in respect of such filings, the sale of the Interests or any other transactions contemplated by this Agreement or the Ancillary Agreements, (iii) cooperate with the other parties and their affiliates and Representatives in connection with any such filing and in connection with resolving any investigation or other inquiry of any such agency or other Governmental Authority under any antitrust, competition, or foreign investment Laws with respect to any such filing, the sale of the Interests or any other transactions contemplated by this Agreement or the Ancillary Agreements, and (iv) use reasonable best efforts to resolve such objections, if any, as may be asserted by any Governmental Authority with respect to the sale of the Interests or any other transactions contemplated by this Agreement or the Ancillary Agreements under any antitrust, competition, or foreign investment Laws. None of BSI, TL or any of their affiliates shall propose to enter into, or enter into, any agreement, arrangement or understanding with any Governmental Authority with respect to any Governmental Authority's review of the sale of the Interests or any other transactions contemplated by this Agreement without the prior written consent of DCC.

(b) Each of the parties hereto agrees to use reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the sale of the Interests and the other transactions contemplated by this Agreement, including (i) the obtaining of all other necessary actions or non-actions, waivers, consents and approvals from Governmental Authorities and the making of all other necessary registrations, declarations and filings with all Governmental Authorities, if any, (ii) the obtaining of all necessary consents, approvals or waivers from Third Parties, (iii) the transfer of all Permits and (iv) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement.

(c) Notwithstanding anything to the contrary in this Section 6.3 or otherwise, (i) neither DCC nor any of its respective affiliates shall be required to divest or hold separate any of their or the Subject Entities' respective businesses, or assets, (ii) neither DCC nor any of its respective affiliates shall be required to enter into arrangements with respect to or license or conduct their business (or the business of the Subject Entities) in a specified manner, or agree to sell, hold separate, otherwise dispose of or license or conduct their business (or the business of the Subject Entities) in a specified manner, or take or agree to take any other action or agree to any limitation that could reasonably be expected to have an adverse effect, in either the short-term or the long-term, on the business, assets, properties, liabilities, financial condition or results of operations of DCC, the Subject Entities or any of their respective affiliates

(including any of the Subject Entities) or on the expected benefits of the transactions contemplated by this Agreement or the Ancillary Agreements, (iii) DCC shall not be required to waive any of the conditions set forth in Article VII, and (iv) no party shall be required to pursue or defend any administrative or judicial action or proceeding that may be instituted or threatened. BSI shall not enter into any such arrangements regarding the Business without DCC's consent.

(d) Each of BSI and TL shall use its reasonable best efforts to obtain, prior to the Closing, the unconditional consent, approval or waiver to the Closing and the other transactions contemplated hereby of each Third Party as required under any Contract relating to the Business to which BSI is then a party; provided that with respect to the foregoing, neither BSI nor TL shall make any material change to the underlying agreement or incur any cost for the account of Becancour JV or DCC or any of its respective affiliates in fulfilling its obligations in this Section 6.3(d).

Section 6.4 Notification of Certain Matters.

(a) BSI and TL shall notify DCC, and DCC shall notify BSI and TL, of (i) any fact, event, circumstance, change, condition, or effect that has had, or would reasonably be expected to have had, individually or in the aggregate, a BSI Material Adverse Effect or DCC Material Adverse Effect, (ii) any representation or warranty made by it contained in this Agreement becoming untrue or inaccurate in any material respect, and (iii) the failure by it to comply with or satisfy, in any material respect, any covenant, condition or agreement to be complied with or satisfied by it under this Agreement, in each case within three (3) Business Days of such Person becoming aware of the occurrence of such development.

(b) BSI and TL shall give prompt notice to DCC, and DCC shall give prompt notice to BSI and TL, of: (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement and (ii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement.

(c) If, to the Knowledge of the BSI Knowledge Parties or DCC, as applicable, any event or matter arises after the date of this Agreement that, if existing or occurring at the date of this Agreement, (i) would have been required to be set forth or described by a party hereto in the Disclosure Letter or (ii) would have caused a representation or warranty or covenant in this Agreement to be violated in any material respect as of such date, then BSI and TL, on the one hand, or DCC, on the other hand, as applicable, shall, for informational purposes only, deliver to DCC, on the one hand, or BSI and TL, on the other hand, as applicable, a notice to reflect such event or matter two (2) Business Days prior to the Closing Date; provided, however, that such supplemental disclosure shall not be required to disclose any such event or matter with respect to representations or warranties that are expressly made as of a specific date.

(d) The parties' obligations under this Section 6.4 and the disclosure of any matter in accordance with the provisions of this Section 6.4 shall not limit or otherwise affect the remedies available hereunder to the party receiving such disclosure (including the remedies described in Article IX and Article X) and shall not be deemed to cure any breach or inaccuracy of any representation or warranty or covenant made in this Agreement.

Section 6.5 No Solicitation; Unsolicited Proposals. From the date of this Agreement until the Closing or, if earlier, the termination of this Agreement in accordance with its terms, neither BSI nor TL shall, and each shall cause its Representatives not to, directly or indirectly, (i) encourage, engage in, solicit or initiate any discussions or negotiate with, or provide any information to, or negotiate or enter into any agreement or agreement in principle with, any Person with respect to a sale, merger or business combination of BSI or any Subject Entity, the sale or encumbrance of any of their respective material assets (including all or any portion of the Interests or the Business) or any similar transaction (each, an "Alternative Transaction") or (ii) enter into any Contract (including any agreement in principle, letter of intent, or understanding) with respect to or contemplating any Alternative Transaction or enter into any agreement, arrangement or understanding requiring BSI, TL or any Subject Entity to abandon, terminate or fail to consummate the transactions contemplated by this Agreement or the Ancillary Agreements. BSI and TL also agree that they shall promptly request that each Third Party that has heretofore executed a confidentiality or similar agreement within the twelve (12) months prior to the date of this Agreement in connection with any Third Party's consideration of any Alternative Transaction return or destroy all confidential information heretofore furnished to any Third Party by or on behalf of TL or BSI or any of their affiliates.

Section 6.6 Subsequent Actions. If at any time after the Closing DCC shall consider or be advised that any deeds, bills of sale, instruments of conveyance, assignments, assurances or any other actions or things are necessary or desirable (i) to vest, perfect or confirm ownership (of record or otherwise) in the DCC JV Companies their respective right, title or interest in, to or under any or all of the Interests, (ii) to vest, perfect or confirm ownership (of record or otherwise) in any Subject Entity any of its rights, properties or assets, or (iii) otherwise to carry out this Agreement or any of the Ancillary Agreements, BSI and TL shall each execute and deliver all deeds, bills of sale, instruments of conveyance, powers of attorney, assignments and assurances and take and do all such other actions and things as may be requested by DCC in order to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the DCC JV Companies or any Subject Entity, as applicable, or otherwise to carry out this Agreement or the Ancillary Agreements.

Section 6.7 Employees and Employee Benefits.

(a) Prior to the Closing, BSI shall, and shall cause its affiliates to, take all actions necessary such that all Business Employees and the Shared Employees, and only Business Employees and Shared Employees, are employed by the Subject Entities as of the Closing.

(b) DCC and BSI agree that, effective as of the date of the Restructuring Transactions and, if applicable, subject to the Pension Transfer Agreement, Becancour JV shall (i) continue the employment of non-unionized Transferred Employees, with compensation and employee benefits (excluding any equity-based or incentive compensation) that are, in the aggregate, substantially comparable to the compensation and employee benefits provided to Transferred Employees immediately prior to the Closing, and (ii) continue the employment of all unionized Transferred Employees in accordance with applicable Law and assume all related obligations under the union certificates and any collective bargaining agreement. "Transferred

Employees" means all Business Employees and Shared Employees employed by BSI or its subsidiaries immediately prior to the Closing.

(c) Subject to applicable Law and Section 6.7(b) above, DCC and BSI agree that Becancour JV, in the welfare benefit plans to be established by it, shall (i) waive all limitations as to preexisting conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to the Transferred Employees under any such welfare benefit plans of the Subject Entities that such employees may be eligible to participate in after the Closing, other than limitations or waiting periods that were in effect with respect to such employees as of the Closing under any welfare plan maintained by BSI or a Subject Entity for the Transferred Employees immediately prior to the Closing, and (ii) provide each Transferred Employee with credit for any co-payments and deductibles paid prior to the Closing in satisfying any applicable deductible or out-of-pocket requirements under any such welfare benefit plans that such employees are eligible to participate in after the Closing during the same plan year in which such co-payments and deductibles were paid.

(d) Notwithstanding anything to the contrary in this Agreement, DCC and BSI agree that Becancour JV shall continue to honor the terms of any applicable collective bargaining agreement as it relates to Transferred Employees.

(e) Notwithstanding anything in this Agreement to the contrary, no provision of this Agreement shall be deemed to (i) guarantee employment for any period of time for, or preclude the ability of Becancour JV or the GP, on behalf of Becancour JV, to terminate, any employee for any reason, (ii) create any Third Party beneficiary rights for any employee or (iii) except as expressly provided herein, require any Subject Entity to continue any benefit plan or prevent the amendment, modification or termination thereof after the Effective Time.

(f) BSI shall pay, up to a maximum aggregate amount of CAD \$5,000,000 in claims paid, and shall hold Becancour JV harmless for such amount, and Becancour JV shall reimburse BSI for any amounts in excess of CAD \$5,000,000 in claims paid, for post-retirement benefits of any Business Employee or Shared Employee who retires on or before September 30, 2016, with age and service credits qualifying such employee for benefits under the BSI post-retirement benefit plan in accordance with the terms of such plan as in effect as of the date hereof. Payments in this regard shall be made by BSI as they are incurred, and DCC acknowledges and agrees that the liability of BSI in this regard shall be unsecured, and shall not be the subject of any Purchase Price adjustment.

(g) BSI, and its relevant welfare benefit plans, shall retain responsibility for all covered medical and dental claims with respect to the Business Employees, payable to any Business Employees (or any covered dependent of any such Business Employees) under the terms of such plans to the extent such claims are incurred prior to the Closing or during a continuous period of hospitalization commencing prior to and ending after the Closing, and in each case Becancour JV shall not assume, nor shall Becancour JV or any Business Employee be responsible for payment of, such claims and expenses. Becancour JV, and its relevant welfare benefit plans, shall retain responsibility for all covered medical and dental claims with respect to Business Employees (or any covered dependent of any such Business Employees) under the terms of such plans to the extent such claims are incurred on or after the Closing, and in each

case BSI shall not assume, nor shall BSI be responsible for payment of, such claims and expenses. For these purposes, medical and dental claims shall be deemed to have been incurred on the date of treatment, other than claims for drugs or medical devices which shall be deemed to have been incurred on the date the prescription is filled or the medical device is ordered, as the case may be.

(h) Claims of Transferred Employees for disability benefits incurred on or after the Closing shall be the responsibility of Becancour JV under its welfare benefit plans. Claims of Business Employees for disability benefits incurred on or prior to the Closing shall be dealt with as follows:

(i) BSI, and the relevant welfare benefit plan, shall retain responsibility for any short-term disability benefits for each Business Employee who, on or prior to the Closing, qualified for such short-term disability benefits under the terms of the applicable BSI welfare benefit plan;

(ii) BSI, and the relevant welfare benefit plan, shall retain responsibility for any long-term disability benefits for each Business Employee who, on or prior to the Closing, qualified for such long-term disability benefits under the terms of the applicable BSI welfare benefit plan; and

(iii) BSI, and the relevant welfare benefit plan, shall retain responsibility for any long-term disability benefits for each Business Employee described in (i) above where such long-term disability benefits arise as a consequence of, and immediately following, the short-term disability period referenced therein and is applicable to the same injury or disease.

Section 6.8 Restructuring Transactions.

(a) Prior to the Closing, BSI and TL shall take, and shall cause their affiliates to take, all actions, and do, or cause to be done, all things reasonably necessary, under applicable Law, so as to consummate, prior to the Closing Date, the transactions described in Exhibit B (such transactions referred to herein as the "Restructuring Transactions").

(b) On or prior to the Closing Date, BSI shall cause the GP to adopt and file the Amended GP Charter and take any other actions required to give effect to the Amended GP Charter as of no later than the Closing.

(c) On or prior to the Closing Date, BSI shall cause Becancour JV to enter into the Amended and Restated Limited Partnership Agreement.

(d) On or prior to the Closing Date, BSI shall take all appropriate action to cause (i) either First Canadian Title Insurance Company or Chicago Title Insurance Company Canada (as applicable, the "Title Insurance Company") to issue an owner's policy of title insurance insuring good and valid title to the entirety of Lot 3 294 055 in the GP and rights, title and interest under the lease for the Mining Property in Becancour JV, subject only to Permitted Liens, in form and substance reasonably acceptable to DCC and including such endorsements (including, without limitation, a marketability endorsement) as reasonably required by DCC,

(ii) a subsearch or any other title matters report to be prepared by a lawyer or a notary practicing in the Province of Québec, covering all matters as required by the Title Insurance Company in order for it to permit the issuance of such owner's policy of title insurance, and (iii) a Certificate of Location of the entirety of Lot 3 294 055 to be prepared, which shall be in form and substance reasonably acceptable to DCC, shall be dated not earlier than sixty (60) days prior to the Closing Date, and on which Becancour JV and DCC shall be authorized to rely upon. The costs of any premiums in respect of such policy and any other costs in connection with the issuance thereof and such Certificate of Location shall be borne fifty-one percent (51%) by BSI and forty-nine percent (49%) by DCC.

(e) Prior to the Closing, BSI and TL shall take, and shall cause their affiliates to take, all actions, and do, or cause to be done, all things reasonably necessary under applicable Laws, including but not limited to Environmental Laws, to obtain the transfer, modification or re-issuance, prior to the Closing Date, of all Permits, including but not limited to Permits issued under Environmental Laws, for the operation of the Facility and the Business to Becancour JV.

(f) On or prior to the Closing Date, the Deed of Transfer shall have conveyed to the GP legal title to the entirety of Lot 3 294 055, and such Deed of Transfer shall have been published at the Land Register. In addition, the Off-Title Deed of Transfer shall have conveyed to Becancour JV the beneficial ownership of the Facility using the technical description corresponding to the Facility prepared by a Quebec Land Surveyor pursuant to clause (g) below, while the beneficial ownership of the HP2 Property shall be retained by BSI. All liabilities of every kind and nature attributable to the legal ownership of the HP2 Property being held by the GP as nominee for BSI shall be for the account of BSI and shall constitute Excluded Liabilities. Without limitation of the foregoing, the GP, as nominee of Becancour JV, shall have no liability whatsoever by virtue of being the registered owner of the HP2 Property, and BSI shall indemnify, defend and hold harmless the GP, as nominee of Becancour JV, and Becancour JV, for any actions, claims, causes of action, demands, losses attributable to the HP2 Property. BSI shall, at its own cost, (i) be solely responsible for the maintenance and repair of the HP2 Property in good working order, (ii) pay all property taxes attributable to the HP2 Property, (iii) maintain in full force and effect property and liability insurance with respect to the same (and shall name the GP and Becancour JV as additional insureds on its liability insurance for the HP2 Property), and (iv) not cause or permit any waste or nuisance to exist with respect to the HP2 Property. In the event that costs and expenses on account or regarding the Facility for post-Closing periods are invoiced to BSI, such costs and expenses shall be reimbursed by Becancour JV to BSI or, as the case may be, paid directly by Becancour JV to the relevant supplier or creditor. In the event that costs and expenses on account or regarding the HP2 Property for post-Closing periods are invoiced to Becancour JV or the GP as its nominee, such costs and expenses shall be reimbursed by BSI to Becancour JV or, as the case may be, paid directly by BSI to the relevant supplier or creditor. For purposes of the foregoing, the Servitude Agreements (as defined in Exhibit G) shall be treated as if they were in effect from and after the Closing Date. In addition, the terms of the Servitude Agreements shall not limit, modify or in any way affect the indemnification obligations of BSI or TL under this Agreement.

(g) With respect to certain matters subject to the Real Property Agreements, BSI covenants and agrees that, from the date of execution of this Agreement, BSI

shall use its best efforts to cause to be completed a cadastral operation (the "Cadastral Operation"), to be registered with the Land Register, to divide Lot 3 294 055 into two (2) separate and distinct lots corresponding to the Facility and the HP2 Property, respectively, and to attribute separate lot numbers thereto, subject to the terms and provisions hereinafter set forth. To this end, BSI shall allow any act or intervention as well as sign any documents or agreements, with appropriate corporate resolutions, authorizing the creation of the distinct lots for the purposes of the Cadastral Operation. The costs related to the Cadastral Operation shall be borne by BSI. The Cadastral Operation shall be completed no later than the six-month anniversary of the Closing Date. BSI shall cause to be prepared by a Québec Land Surveyor technical descriptions of the portions of Lot 3 294 055 corresponding to the Facility and the HP2 Property, respectively, together with diagrams of the same, which shall be consistent with the plan set forth in Schedule A to Exhibit G. Such descriptions, diagrams, and all other documents to be submitted to the appropriate Governmental Authorities in connection with the Cadastral Operation shall be provided to DCC for its written approval, not to be unreasonably withheld, prior to submission of the same to the appropriate Governmental Authorities. As soon as the Cadastral Operation is completed and in force, as evidenced by the opening of the land files corresponding to the Facility and the HP2 Property at the Land Register, BSI shall inform DCC in writing of the new lot numbers created pursuant to the Cadastral Operation designating the Facility and the HP2 Property as separate and distinct legal lots, together with copies of documentation evidencing the creation of such lots.

(h) Upon the written request of DCC or BSI at any time following the completion of the Cadastral Operation, the parties shall, or shall cause their respective affiliates to, take all actions required to convey to BSI or its designee legal title to the HP2 Property, the costs of which conveyance shall be borne solely by BSI.

Section 6.9 Ancillary Agreements.

(a) On or prior to the Closing, (i) DCC shall, and shall cause its respective affiliates to, execute and deliver to BSI copies of the applicable Ancillary Agreements to which such Person is a party and (ii) BSI shall, and shall cause its affiliates (including the Subject Entities) to, execute and deliver to DCC copies of the Ancillary Agreements to which such Person is a party.

(b) DCC and TL agree that they shall honor, and shall cause their respective affiliates to honor, the terms of the Ancillary Agreements, including, but not limited to, the provisions set forth in the GP Shareholders Agreement, the Amended GP Charter and the Amended and Restated Limited Partnership Agreement governing direct or indirect transfers of their interests in Becancour JV and the GP and other governance matters set forth therein.

Section 6.10 Intercompany Agreements and Accounts; Existing DCC Supply Agreement.

(a) Except for the Ancillary Agreements and the agreements set forth on Section 6.10 of the Disclosure Letter, all intercompany arrangements and Contracts between BSI, on the one hand, and TL or any of its affiliates other than BSI, on the other hand, relating to the Business shall be terminated and of no further force and effect after the Closing. Prior to the

Closing, BSI shall use its reasonable best efforts to settle (whether in the ordinary course of business or, in BSI's discretion, by way of capital contribution, dividend or otherwise) at or prior to the Closing, all intercompany receivables or payables and loans existing and outstanding at any time prior to the Closing between BSI, on the one hand, and TL or any of its affiliates other than BSI, on the other hand, relating to the Business. Notwithstanding the foregoing, all such intercompany receivables or payables and loans that are not settled as of the Closing that remain outstanding as of the Closing shall continue in full force and effect from and after the Closing and shall be paid in accordance with the terms thereof, or, if no such terms are specified, then in accordance with the normal commercial practices between unrelated Third Parties. Any such intercompany trade receivables or payables outstanding as of the Closing shall be taken into account in determining the Net Working Capital.

(b) The Purchase Agreement effective as of January 1, 2010, and as amended from time to time, by and between BSI and DCC shall continue in full force and effect in accordance with its terms.

Section 6.11 Insurance. BSI shall maintain or cause to be maintained in full force and effect the insurance policies covering the employees and the assets of the Business until the Closing. If any claims are actually made prior to the Closing Date under any liability insurance policy for the Business, then TL and BSI shall cause the applicable Person to file, notice and otherwise continue to pursue such claims and recover proceeds under the terms of such policies, and BSI will pay over to the applicable Subject Entity any proceeds of any insurance recovery under any such policy. If any casualty loss occurs prior to the Closing that is insured under any property or casualty insurance policy for any of the Subject Entities or the Business and claims associated with such losses have been made prior to the Closing, then BSI shall cause the applicable Subject Entity (or other affiliate) to file, notice and otherwise continue to pursue such claims and recover proceeds under the terms of such policies, and BSI will pay over to the applicable Subject Entity any proceeds of any insurance recovery under any such policy by BSI or its affiliates, other than any such proceeds that have been or will be applied to repair or replace the property subject to such claim. With respect to any occurrence-based insurance policies retained by BSI or any of its affiliates other than either of the Subject Entities after the Closing and covering the assets of the Business, BSI and TL shall, or shall cause their applicable affiliates to, continue to provide Becancour JV with access to and coverage under such policies. For claims that arise thereunder after the Closing out of occurrences that occurred prior to the Closing, BSI and TL shall, or shall cause their applicable affiliates to, reasonably cooperate with Becancour JV in submitting such claims, and recovering proceeds, under the applicable insurance policy, and BSI will pay over to Becancour JV any proceeds of any insurance recovery under any such policy by BSI or any of its affiliates; provided that Becancour JV shall be responsible for its portion of any deductible or co-payments legally due and owing relating to such claims and neither BSI nor any applicable affiliate shall be required to maintain any such policy beyond its current terms.

Section 6.12 Shared Contracts. Unless otherwise agreed to by the parties, BSI and TL, on the one hand, and DCC, on the other hand, shall use commercially reasonable efforts to cause the Shared Contracts to be split into separate contracts between the appropriate Third Party and BSI or TL (with respect to the portion of the Shared Contracts that does not relate to the Business) or applicable Subject Entity (with respect to the portion of the Shared Contracts

that relates to the Business). BSI, TL, and DCC agree to cooperate and provide reasonable assistance prior to and for a period of six (6) months following the Closing to effect such separation. In the event and to the extent BSI, TL, and DCC are unable to obtain required consent, approval or amendment required to separate the Shared Contracts, (i) BSI, TL, and DCC shall use their reasonable best efforts in good faith to separate such Shared Contracts as promptly as practicable and (ii) if such separation is not obtained, the parties shall use reasonable best efforts in good faith to effect any lawful arrangement designed to provide for the applicable Subject Entity, at no additional cost to DCC, the benefits after Closing that it would have received, and to subject the applicable Subject Entity directly to the liabilities thereunder, as if such Shared Contracts had been separated and acquired by the applicable Subject Entity.

Section 6.13 Parent Guarantees.

(a) TL hereby irrevocably, absolutely and unconditionally guarantees to DCC the following (collectively, the "TL Guaranteed Obligations"): (i) full, faithful and timely payment and performance by BSI and its affiliates (who may be a party to the Guaranteed Documents (as defined) from time to time) of all of their covenants, agreements and obligations under this Agreement, the Ancillary Agreements and each of the documents and instruments delivered in connection therewith (collectively, the "Guaranteed Documents"), (ii) the prompt payment, when due, of any and all of BSI's and its affiliates' indebtedness, obligations and liabilities of every kind and nature now or hereafter existing, due or to become due, pursuant to any of the Guaranteed Documents, and (iii) the prompt payment of any and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by DCC in collecting or obtaining payment or performance of, or enforcing, this guaranty or any of the TL Guaranteed Obligations and interest thereon. In the event BSI or any of its affiliates becomes obligated to pay any TL Guaranteed Obligations and fails to timely pay such obligations in accordance with the terms of the Guaranteed Documents, then DCC may provide written notice to TL demanding that TL either cause BSI or its applicable affiliate to pay the TL Guaranteed Obligations or to pay such TL Guaranteed Obligations in the place and stead of BSI or its applicable affiliate.

(b) DCC hereby irrevocably, absolutely and unconditionally guarantees to BSI the following (collectively, the "DCC Guaranteed Obligations"): (i) full, faithful and timely payment and performance by DCC and its affiliates (who may be a party to the Guaranteed Documents from time to time) of all of their covenants, agreements and obligations under the Guaranteed Documents, (ii) the prompt payment, when due, of any and all of DCC's and its affiliates' indebtedness, obligations and liabilities of every kind and nature now or hereafter existing, due or to become due, pursuant to any of the Guaranteed Documents, and (iii) the prompt payment of any and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by BSI in collecting or obtaining payment or performance of, or enforcing, this guaranty or any of the DCC Guaranteed Obligations and interest thereon. In the event DCC or any of its affiliates becomes obligated to pay any DCC Guaranteed Obligations and fails to timely pay such obligations in accordance with the terms of the Guaranteed Documents, then BSI may provide written notice to DCC demanding that DCC either cause its applicable affiliate to pay the DCC Guaranteed Obligations or to pay such DCC Guaranteed Obligations in the place and stead of its applicable affiliate.

Section 6.14 Environmental Compliance.

(a) Prior to the Closing, BSI shall take all commercially reasonable actions to complete the following: (i) remove and dispose at an authorized facility, in accordance with applicable Environmental Law, all equipment not in use at the Facility that contains PCBs in excess of 500 parts per million (ppm), and to replace said equipment as may be necessary; and (ii) BSI shall take all commercially reasonable actions to remove and dispose at an authorized facility, in accordance with applicable Environmental Law, all residual materials currently stored or deposited at the Facility in violation of or non-compliance with section 66 of the Environmental Quality Act (Quebec). In the event that any of the foregoing shall not occur prior to the Closing, BSI shall cause Becancour JV, at BSI's sole cost and expense, to complete such actions as promptly as reasonably practicable after the Closing, taking into account scheduled downtime for the respective furnaces. In connection with all equipment in use at the Facility after the Closing that contains PCBs in excess of 500 parts per million (ppm), in order to avoid production disruption, the parties acknowledge and agree that BSI shall cause Becancour JV, at BSI's sole cost and expense, to remove and dispose at an authorized facility, in accordance with applicable Environmental Law, any such equipment and replace any such equipment as may be necessary at the scheduled downtime for the respective furnaces; provided that, notwithstanding the foregoing, all such equipment shall be removed and replaced any time sooner required by Environment Canada.

(b) Prior to the Closing, BSI shall take all commercially reasonable actions to obtain a new Certificate of Authorization, to be issued in the name of Becancour JV, including submitting an appropriate application for a new Certificate of Authorization covering the activities of Becancour JV and correcting any non-compliance with applicable Environmental Law that is necessary for the issuance of a new Certificate of Authorization. BSI shall also cause an air emissions survey to be completed, as previously discussed with the Ministère du Développement durable, de l'Environnement et des Parcs.

(c) The parties acknowledge and agree that "Pre-Closing Environmental Liabilities" shall include, without limitation: (1) all Losses incurred in connection with the removal and disposal at an authorized facility, in accordance with applicable Environmental Law, of all equipment at the Facility that contains PCBs in excess of 500 parts per million (ppm), and the acquisition and installation of replacement equipment for the same as may be necessary; (2) all Losses incurred in connection with the removal and disposal at an authorized facility, in accordance with applicable Environmental Law, of all residual materials currently stored or deposited at the Facility in violation or non-compliance with section 66 of the Environmental Quality Act (Quebec); (3) all Losses incurred in connection with actions required to be undertaken in order for necessary Permits to be issued to Becancour JV, but, notwithstanding any provisions of this Agreement to the contrary, shall not include Losses incurred in connection with actions that may be required to obtain the Depollution Attestation that are in addition to those actions required to bring the Business into compliance with applicable Environmental Law as of the Closing Date; (4) all Losses incurred to remedy any noncompliance with applicable Environmental Law identified as a result of air emissions surveys to be undertaken in connection with obtaining a new Certificate of Authorization; and (5) all Losses incurred with respect to matters identified on Schedule 4.17 of the Disclosure Letter.

ARTICLE VII

CONDITIONS

Section 7.1 Conditions to the Obligations of Each Party. The obligations of BSI, TL, and DCC to effect the Closing are subject to the satisfaction (or, to the extent legally permissible, waiver) of the following conditions:

(a) *Antitrust.* Any approvals or waiting period (including any extension thereof) under any antitrust, competition, foreign investment or similar Laws required to have been obtained or expired (as the case may be) prior to the Closing shall have been obtained or expired, provided that no party may avail itself of this condition, except to the extent that a Governmental Authority has following the date hereof notified any party in writing that a filing or approval is so required by Law;

(b) *No Injunctions or Restraints.* No provision of any applicable Law and no judgment, injunction, order or decree that makes illegal or otherwise prohibits the Closing or any of the other transactions contemplated by this Agreement shall be in effect; and

(c) *Regulatory Matters.* The authorizations, consents, orders, permits or approvals of, or declarations or filings with, and all expirations of waiting periods imposed by, any Governmental Authority (other than the expiration of the applicable waiting period under the antitrust, competition, foreign investment or similar Laws that are addressed in Section 7.1(a)) set forth in Section 7.1(c) of the Disclosure Letter shall have been filed, have occurred or have been obtained (all of the foregoing, the "Requisite Regulatory Approvals") and all such Requisite Regulatory Approvals shall be in full force and effect; provided, however, that a Requisite Regulatory Approval shall not be deemed to have been obtained if in connection with the grant thereof there shall have been an imposition by any Governmental Authority of any condition, requirement, restriction or change of regulation, or any other action directly or indirectly related to such grant taken by such Governmental Authority, which could (or if implemented could) have more than an immaterial effect on DCC's anticipated benefits of the transactions contemplated hereby; provided, further, that this condition shall be deemed satisfied for any party that does not satisfy its obligations under Section 6.3.

Section 7.2 Conditions to the Obligations of DCC. The obligations of DCC to effect the Closing are subject to the satisfaction (or, to the extent legally permissible, waiver) of the following further conditions:

(a) *Representations and Warranties of BSI and TL.* (i) The representations and warranties set forth in Article IV of this Agreement (other than the BSI Fundamental Representations) shall be true and correct (without giving effect to any limitation as to "materiality" or "BSI Material Adverse Effect" set forth therein) as of the date of this Agreement and at and as of the Closing as if made at and as of such time (except to the extent expressly by its terms made as of an earlier date, in which case as of such earlier date) except where the failure of such representations and warranties to be so true and correct (giving effect to the applicable exceptions set forth in the Disclosure Letter but without giving effect to any limitations as to "materiality" or "BSI Material Adverse Effect" set forth therein) would not,

individually or in the aggregate, have a BSI Material Adverse Effect, and (ii) the BSI Fundamental Representations shall be true and correct in all respects on the date of this Agreement and at and as of the Closing as if made at and as of such time (except to the extent expressly by its terms made as of an earlier date, in which case as of such earlier date);

(b) *Performances of Obligations.* BSI and TL shall have performed in all material respects all of their respective covenants, agreements and obligations pursuant to this Agreement required to be performed by them at or prior to the Closing;

(c) *Officer's Certificate.* DCC shall have received a certificate signed by an executive officer of each of BSI and TL stating that each of the conditions set forth in Section 7.2(a) and (b) have been satisfied;

(d) *No Litigation.* No proceeding or litigation shall have been commenced by any Governmental Authority seeking to restrain or prohibit the consummation of the transaction contemplated by this Agreement, except for such proceedings or litigation as would not reasonably be expected to have a BSI Material Adverse Effect or a material adverse effect on the expected benefits of the transactions contemplated by this Agreement, including the Ancillary Agreements;

(e) *Third Party Consents.* All Third Party consents and approvals set forth in Section 7.2(e) of the Disclosure Letter shall have been obtained;

(f) *No BSI Material Adverse Effect.* Since the date hereof, there shall not have occurred a BSI Material Adverse Effect;

(g) *Legal Opinion.* BSI shall have delivered to DCC a legal opinion under the laws of the Province of Quebec and the federal laws of Canada applicable therein, dealing with the capacity, power and due authorization of BSI, the GP and Becancour JV, the legality, validity and enforceability of this Agreement and the Ancillary Documents, and the valid issuance of the Interests, to the reasonable satisfaction of DCC;

(h) *Amended and Restated Limited Partnership Agreement.* BSI and Becancour JV shall have executed and delivered to DCC a copy of the Amended and Restated Limited Partnership Agreement;

(i) *GP Shareholders Agreement.* BSI and the GP shall have executed and delivered to DCC a copy of the GP Shareholders Agreement;

(j) *Output and Supply Agreement.* BSI and Becancour JV shall have each executed and delivered to DCC a copy of the Output and Supply Agreement;

(k) *Real Property Agreements.* BSI and Becancour JV shall have executed and delivered to DCC copies of the Real Property Agreements;

(l) *Other Ancillary Agreements.* BSI, TL and its affiliates (including the Subject Entities), as applicable, shall have executed and delivered to DCC the Services Agreements, the Intellectual Property Agreements and the Working Capital Facility Agreements;

(m) *Restructuring Transactions.* The Restructuring Transactions described in Section 6.8, together with all other transactions and actions described in Section 6.8 required to be completed on or before the Closing Date, shall have been effectuated substantially as set forth therein and BSI and TL shall have delivered to DCC executed documents effectuating such transactions, together with evidence of registration as applicable;

(n) *Permit Transfers.* All Permits required to operate the Business and the Facility, including without limitation all Permits required under Environmental Laws, have been transferred or issued, as the case may be, to Becancour JV.

Section 7.3 Conditions to the Obligations of BSI and TL. The obligation of BSI and TL to effect the Closing is subject to the satisfaction (or, to the extent legally permissible, waiver) of the following further conditions:

(a) *Representations and Warranties of DCC.* (i) The representations and warranties contained in Article V of this Agreement (other than the DCC Fundamental Representations) shall be true and correct (without giving effect to any limitation as to "materiality" or "DCC Material Adverse Effect" set forth therein) as of the date of this Agreement and at and as of the Closing as if made at and as of such time (except to the extent expressly by its terms made as of an earlier date, in which case as of such earlier date) except where the failure of such representations and warranties to be so true and correct (giving effect to the applicable exceptions set forth in the Disclosure Letter but without giving effect to any limitations as to "materiality" or "DCC Material Adverse Effect" set forth therein) would not, individually or in the aggregate, have a DCC Material Adverse Effect, and (ii) the DCC Fundamental Representations shall be true and correct in all respects on the date of this Agreement and at and as of the Closing as if made at and as of such time (except to the extent expressly by its terms made as of an earlier date, in which case as of such earlier date);

(b) *Performance of Obligations.* DCC shall have performed in all material respects all of its covenants, agreements and obligations pursuant to this Agreement required to be performed by it at or prior to the Closing;

(c) *Officer's Certificate.* BSI and TL shall have received a certificate signed by an executive officer of DCC stating that each of the conditions set forth in Section 7.3(a) and (b) have been satisfied;

(d) *Amended and Restated Limited Partnership Agreement.* DCC LP Company shall have executed and delivered to BSI a copy of the Amended and Restated Limited Partnership Agreement;

(e) *GP Shareholders Agreement.* DCC GP Company shall have executed and delivered to BSI a copy of the GP Shareholders Agreement;

(f) *Output and Supply Agreement.* DCC Customer shall have executed and delivered to BSI and Becancour JV a copy of the Output and Supply Agreement; and

(g) *Other Ancillary Agreements.* DCC and its affiliates, as applicable, shall have executed and delivered to BSI and TL such agreements reasonably necessary or useful to fulfill the transactions contemplated in this Agreement.

Section 7.4 Frustration of Closing Conditions. No party hereto may rely, either as a basis for not consummating the transactions contemplated hereby or terminating this Agreement and the transactions contemplated hereby, on the failure of any condition set forth in Sections 7.1, 7.2 or 7.3, as the case may be, to be satisfied if such failure was caused by such party's breach of any provision of this Agreement or failure to use its reasonable best efforts to consummate the transactions contemplated hereby, as required by and subject to Section 6.3.

ARTICLE VIII

TERMINATION

Section 8.1 Termination.

(a) This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing Date:

(i) by mutual written consent of BSI and DCC;

(ii) by either BSI or DCC, if the Closing has not been consummated as of the End Date; provided, however, that at the End Date the right to terminate this Agreement under this Section 8.1(a)(ii) shall not be available to any party whose failure to fulfill in any material respect any obligation under this Agreement has caused or resulted in the failure of the Closing to occur on or before the End Date;

(iii) by either BSI or DCC if there shall be any Law that makes effecting the Closing illegal or otherwise prohibited or if any judgment, injunction, order or decree enjoining BSI and TL, on the one hand, or DCC, on the other hand, from effecting the Closing is entered and such judgment, injunction, order or decree shall become final and nonappealable; provided, however, that the right to terminate this Agreement under this Section 8.1(a)(iii) is not available to a party that has not fulfilled its obligations under Section 6.3; or

(iv) by either BSI or DCC if there shall have been a breach by the other of any of its representations, warranties, covenants or obligations contained in this Agreement, which breach would result in the failure to satisfy one or more of the conditions set forth in Section 7.2(a), (b) or (c) (in the case of a breach by BSI or TL) or Section 7.3(a), (b) or (c) (in the case of a breach by DCC), and in any such case such breach shall be incapable of being cured or, if capable of being cured, shall not have been cured within thirty (30) days after written notice thereof shall have been received by the party alleged to be in breach.

(b) The party desiring to terminate this Agreement pursuant to clause (ii), (iii), or (iv) of Section 8.1(a) shall give written notice of such termination to the other party in accordance with Section 11.3, specifying the provision hereof pursuant to which such termination is effected.

Section 8.2 Effect of Termination. If this Agreement is terminated pursuant to Section 8.1, this Agreement shall become void and of no effect with no Liability on the part of any party hereto, except (i) that the provisions of this Agreement set forth in this Section 8.2 and Article XI and the agreements contained in the Confidentiality Agreement (to the extent set forth therein), shall survive the termination hereof and (ii) that no such termination shall relieve any party of any Liability or damages resulting from any breach by that party of this Agreement prior to such termination.

Section 8.3 Fees and Expenses.

(a) If the transactions contemplated by this Agreement are not consummated, all costs and expenses incurred by any party to this Agreement in connection with this Agreement or the transactions contemplated hereby shall be paid by the party incurring such cost or expense. If the transactions contemplated by this Agreement are consummated, except as otherwise provided herein, prior to the Closing, BSI shall pay or reimburse all of the costs, fees and related expenses incurred by any Subject Entity in connection with this Agreement and the transactions contemplated hereby (whether relating to legal, accounting, actuarial, financial advisory or other fees and expenses) to the extent not fully reflected on the Proposed Closing Purchase Price Statement, as it may have been adjusted pursuant to Section 2.3(b).

(b) In furtherance of the foregoing, BSI will be responsible for all expenses incurred by or on behalf of any Subject Entity, including but not limited to the fees, expenses, and disbursements of its investment bankers, accountants, actuaries and counsel. BSI agrees to indemnify DCC and its affiliates and each Subject Entity against all claims for fees, expenses and disbursements by any Person that BSI is responsible for pursuant to the foregoing, to the extent not fully reflected on the Proposed Closing Purchase Price Statement, as it may have been adjusted pursuant to Section 2.3(b).

ARTICLE IX

INDEMNIFICATION

Section 9.1 Indemnification by BSI and TL.

(a) Subject to the limitations set forth in this Article IX and except for Taxes which are governed by Article X hereof, BSI and TL shall, from and after the Closing, jointly and severally indemnify, defend and hold harmless DCC and its affiliates (including, after the Closing, the Subject Entities), and each of their respective Representatives (and the respective heirs, successors and assigns of each of the foregoing) (the "DCC Indemnified Persons"), in each case, without duplication, from and against and in respect of all Losses incurred by any of the DCC Indemnified Persons, whether or not involving a Third-Party claim, that are caused by, arise from or are related to:

(i) any breach of any representation or warranty made by BSI or TL pursuant to this Agreement (after taking into account the provisions of Section 11.15 hereof); provided, however, that, in the case of any representation or warranty that is limited by "material," "BSI Material Adverse Effect" or by any similar term or limitation, the occurrence of a breach or inaccuracy of such representation or warranty, as the case may be, and the amount of Losses subject to indemnification hereunder shall be determined as if "material," "BSI Material Adverse Effect" or any similar term or limitation were not included therein;

(ii) any breach of any covenant or agreement of BSI or TL in this Agreement other than Section 6.4(c) hereof;

(iii) [Reserved];

(iv) all Liabilities (other than, for greater certainty, Liabilities that are the subject matter of Paragraph 12 of Annex B to Exhibit B hereto), to the extent not reflected on the Proposed Closing Purchase Price Statement, as it may have been adjusted pursuant to Section 2.3(b), relating to (A) operations of BSI or its predecessors, successors, affiliates or suppliers other than the Business (including, without limitation, any Pre-Closing Environmental Liabilities or Liabilities relating to natural resources), and (B) the Business, to the extent such Liabilities relate to pre-Closing matters and/or conditions (including, without limitation, any Pre-Closing Environmental Liabilities or Liabilities relating to natural resources), irrespective of when a party first becomes aware of any such Liabilities; and

(v) all Liabilities that constitute Excluded Liabilities (as defined in Exhibit B to this Agreement), including, without limitation, any Liabilities associated with the HP2 Property, the HP1 facility and the silica fume disposal site (as described in the Real Property Agreements), as well as operations conducted thereat, and all Liabilities associated with silica fume disposal, recovery or sale activities performed by or for BSI at any time.

(b) BSI's and TL's indemnification obligations arising from Section 9.1(a)(i) shall survive only until the eighteen-month anniversary of the Closing Date; provided, however, that the indemnification obligations related to the representations and warranties contained in (i) Sections 4.2, 4.3, 4.21 (collectively, the "BSI Fundamental Representations") and 4.22 shall survive without limitation and (ii) Sections 4.11, 4.12, 4.13 (as related to the indemnification obligations arising from Section 10.1(a)(ii)) and 4.17 shall survive until the expiration of the applicable statute of limitations plus a period of six (6) months. BSI's and TL's indemnification obligations arising under Sections 9.1(a)(ii) (but only if the applicable covenant by its terms has expired prior to then) and 9.1(a)(iv) (other than clause (A) thereof) shall survive only until the seventh (7th) anniversary of the Closing Date. No claim for the recovery of any Losses may be asserted by any DCC Indemnified Person after the termination of the applicable period as set forth in this Section 9.1(b); provided, however, that claims asserted in writing by any DCC Indemnified Person prior to the termination of the applicable period as set forth in this Section 9.1(b) shall not thereafter be barred.

(c) BSI and TL's obligations to indemnify the DCC Indemnified Persons for Losses pursuant to Section 9.1(a)(i) (except for BSI Fundamental Representations) is subject to the limitation that no indemnification shall be made by BSI with respect to any claim unless the aggregate amount of Losses exceeds CAD \$1,000,000; however, if such aggregate amount exceeds CAD \$1,000,000, then in such event, indemnification shall be made by BSI for the full amount of Losses (including the first CAD \$1,000,000). In no event shall BSI and TL's aggregate obligations to indemnify the DCC Indemnified Persons:

(i) exceed the Basic Indemnity Cap for Losses pursuant to Section 9.1(a)(i) (except for BSI Fundamental Representations), Section 9.1(a)(ii) (other than for intentional breaches) or Section 9.1(a)(iv) (except for Liabilities covered by the Environmental Liability Cap and Liabilities referred to in clause (A) thereof); and

(ii) exceed the Environmental Liability Cap for Losses for Pre-Closing Environmental Liabilities relating to the Business and Liabilities of the Business for natural resources pursuant to Section 9.1(a).

BSI's obligations to indemnify the DCC Indemnified Persons for Losses resulting from or arising out of (I) a breach of a BSI Fundamental Representation pursuant to Section 9.1(a)(i) or (II) Tax matters (including breaches of representations and warranties relating thereto), which are governed by Article X, or (III) Section 9.1(a)(v) shall not be subject to the limitations contained in this Section 9.1(c) except that, notwithstanding anything to the contrary in this Agreement, the Parties agree that to the fullest extent permitted by law, the total aggregate liability of BSI and TL for the matters described in this Article IX (other than Losses incurred in connection with the HP2 Property, Tax matters, and intentional breaches) shall be limited to the Purchase Price Cap. For the avoidance of doubt, a reserve for any Liability for interim Taxes, matters arising under Environmental Laws or for other matters reflected in the Net Working Capital shall not excuse BSI's indemnification obligations with respect to such matters in excess of such reserve amounts.

(d) For the avoidance of doubt, whether or not the Basic Indemnity Cap, the Environmental Liability Cap and/or the Purchase Price Cap have been reached shall be measured in relation to the Losses actually incurred by a DCC Indemnified Person pursuant to Section 9.1, (i.e., 49% of the aggregate Losses in the case of Becancour JV) irrespective of whether the amounts owed for such Losses are settled by payment to such DCC Indemnified Person (other than Becancour JV) or contributed to Becancour JV pursuant to Section 9.4.

Section 9.2 Indemnification by DCC.

(a) Subject to the limitations set forth in this Article IX, DCC shall indemnify, defend and hold harmless BSI, TL and each of their respective affiliates and Representatives (and the respective heirs, successors and assigns of each of the foregoing) (the "BSI Indemnified Persons") from and against and in respect of all Losses, whether or not involving a Third Party claim, which are caused by, arise from or are related to:

(i) any breach of any representation or warranty made by or pursuant to Article V; or

(ii) any breach of any covenant or other agreement of DCC contained in this Agreement.

(b) DCC indemnification obligations arising from Section 9.2(a)(i) shall survive only until the eighteen-month anniversary of the Closing Date. No claim for the recovery of any Losses may be asserted by any BSI Indemnified Person after the termination of the applicable period as set forth in this Section 9.2(b); provided, however, that claims asserted in writing by any BSI Indemnified Person prior to the termination of the applicable period as set forth in this Section 9.2(b) shall not thereafter be barred; provided, further, however, that the limitations set forth in this Section 9.2(b) shall not apply to any covenant or agreement to be performed by any party hereto.

(c) DCC's obligations to indemnify the BSI Indemnified Persons for Losses pursuant to Section 9.2(a)(i) is subject to the limitation that no indemnification shall be made by DCC with respect to any claim unless the aggregate amount of Losses exceeds CAD \$1,000,000; however, if such aggregate amount exceeds CAD \$1,000,000, then in such event, indemnification shall be made by DCC for the full amount of Losses (including the first CAD \$1,000,000). In no event shall DCC aggregate obligations to indemnify the BSI Indemnified Persons for Losses pursuant to Section 9.2(a) (other than for intentional breaches of covenants) exceed the Purchase Price Cap.

Section 9.3 Notice of Claim; Defense.

(a) A DCC Indemnified Person or a BSI Indemnified Person that desires to seek indemnification under any part of this Article IX (each, an "Indemnified Person") shall give to each party responsible or alleged to be responsible for indemnification hereunder (an "Indemnitor") prompt notice of any Indemnified Person or Third Party claim that may give rise to any indemnification obligation under this Article IX, together with the estimated amount of such claim (if then estimable). Failure to give such notice shall not affect the indemnification obligations hereunder in the absence of actual and material prejudice and, in such case, only to the extent of such prejudice.

(b) The Indemnitor shall have the right to assume the defense (at its expense) of any such claim through counsel of such Indemnitor's own choosing by so notifying the Indemnified Persons within fifteen (15) Business Days of the first receipt by such Indemnitor of such notice from the Indemnified Persons; provided, however, that any such counsel shall be reasonably satisfactory to the Indemnified Persons. In addition, if under applicable standards of professional conduct, a conflict between any Indemnified Persons and any Indemnitor exists in respect of such Third Party claim, the Indemnitor shall pay the reasonable fees and expenses of such additional counsel as may be required to be retained in order to resolve such conflict (but not more than one firm of counsel). The Indemnitor shall be liable for the fees and expenses of counsel employed by the Indemnified Persons for any period during which the Indemnitor has not assumed the defense of any such Third Party claim. If the Indemnitor assumes such defense, the Indemnified Persons shall have the right to participate in the defense thereof, including

meeting with applicable Governmental Authorities and other Third Party claimants and to employ counsel, at its own expense, separate from the counsel employed by the Indemnitor. If the Indemnitor chooses to defend or prosecute any Third Party claim, the Indemnified Persons shall agree to any settlement, compromise or discharge of such Third Party claim that the Indemnitor may recommend and that, by its terms, discharges the Indemnified Persons from any Liability in connection with such Third Party claim; provided, however, that, without the consent of the Indemnified Persons, the Indemnitor shall not consent to, and the Indemnified Persons shall not be required to agree to, the entry of any judgment or enter into any settlement that (i) provides for injunctive or other non-monetary relief affecting the Indemnified Persons or any affiliate of the Indemnified Persons, (ii) requires actions that interfere with or limit the operations of the Business or (iii) does not include as an unconditional term thereof the giving of a release from all Liability with respect to such claim by each claimant or plaintiff for the benefit of each Indemnified Person.

Section 9.4 Settlement of Indemnification Obligations. Following the determination of any amounts owed to an Indemnified Person pursuant to Section 9.1 or 9.2, the indemnification obligation shall be satisfied, in each case, by payment of such amount in immediately available funds to an account designated by:

(a) DCC, in the case such indemnification obligation arises under Section 9.1 as the result of a breach of any BSI Fundamental Representations solely with respect to BSI;

(b) Becancour JV, in the case such indemnification obligation arises under Section 9.1 and relates to BSI (except for breaches of any BSI Fundamental Representations) or the Business, unless DCC elects to receive the payment directly, in which event, DCC shall receive an amount equal to forty-nine percent (49%) of such Losses; and

(c) BSI, in the case such indemnification obligation arises under Section 9.2.

Section 9.5 Characterization of Indemnification Payments. Any payments made pursuant to this Article IX or Article X shall be treated for all Tax purposes as adjustments to (i) the Purchase Price contributed to Becancour JV pursuant to Section 2.2(b) and (ii) the special distributions to BSI or DCC LP Company, as the case may be, pursuant to Section 12.4 of the Amended and Restated Limited Partnership Agreement.

Section 9.6 Effect of Investigation. The right to indemnification and all other remedies based on any representation, warranty, covenant or obligation contained in or made pursuant to this Agreement shall not be affected by any investigation conducted with respect to, or any Knowledge by any party acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the date the Closing occurs, with respect to the accuracy or inaccuracy of, or compliance with, any such representation, warranty, covenant or obligation. The waiver of any condition to the obligation of any party hereto to consummate the transactions contemplated hereby, where such condition is based on the accuracy of any representation or warranty, or on the performance of or compliance with any

covenant or obligation, shall not affect the right to indemnification or other remedy based on such representation, warranty, covenant or obligation.

Section 9.7 Limitations on Indemnification.

(a) Notwithstanding the other provisions of this Article IX or Article X, the amount by which an Indemnitor is or may be required to pay to an Indemnified Person in respect of Losses for which indemnification is provided under this Article IX or Article X shall be reduced by any amounts actually received (including amounts actually received under insurance policies, which such Indemnified Person shall use its reasonable best efforts to collect) by the Indemnified Person from Third Parties in respect of such loss (such amounts are referred to herein as "Indemnity Reduction Amounts"). If any Indemnified Person receives any Indemnity Reduction Amounts in respect of a claim for which indemnification is provided under this Agreement after the full or partial amount of such claim has been paid by an Indemnitor, then the Indemnified Person shall promptly remit to the Indemnitor an amount equal to the excess, if any, of (i) the amount theretofore paid by the Indemnitor in respect of such claim, over (ii) the amount of the indemnity payment that would have been due if such Indemnity Reduction Amounts in respect thereof had been received before the indemnity payment was made.

(b) EXCEPT WITH RESPECT TO AMOUNTS PAID OR PAYABLE BY AN INDEMNIFIED PERSON IN CONNECTION WITH THIRD PARTY CLAIMS AND EXCEPT IN THE CASE OF FRAUD OR WILLFUL MISREPRESENTATION, AN INDEMNITOR SHALL NOT HAVE ANY LIABILITY TO ANY INDEMNIFIED PERSON FOR ANY LOSS OF PROFITS, SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), WHETHER OR NOT THE INDEMNITOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) Notwithstanding anything contained in this Agreement to the contrary, in the case of fraud or willful misrepresentation, the limitations on indemnification (including as to duration) contained in Sections 9.1(b) or 9.2(b) shall not apply to any claim for indemnification under this Article IX or Article X by an Indemnified Person.

Section 9.8 Exclusive Remedy.

(a) Except in the case of fraud or willful misrepresentation or as provided in Section 9.8(b), BSI, TL, and DCC agree that the indemnification provisions of this Article IX and Article X shall be the exclusive monetary remedy of the Indemnified Persons with respect to breaches of representations, warranties, covenants, obligations or other provisions of this Agreement.

(b) DCC, BSI and TL acknowledge and agree that irreparable damage would occur and DCC would not have any adequate remedy at law in the event that any of the provisions of Sections 6.3(a), 6.3(b), 6.5, 6.10, 6.11, 6.12 or 6.13 of this Agreement were not performed in accordance with their specific terms or were otherwise breached by BSI, TL or their affiliates. It is accordingly agreed that DCC shall be entitled to an injunction or injunctions

to prevent breaches of Sections 6.3(a), 6.3(b), 6.5, 6.10, 6.11, or 6.12 of this Agreement and to enforce specifically the terms and provisions of Sections 6.3(a), 6.3(b), 6.10, 6.11, or 6.12 of this Agreement, this being in addition to the remedies to which the Indemnified Persons are entitled pursuant to Section 9.1(a)(ii) above.

Section 9.9 Tax Indemnification. Notwithstanding anything to the contrary in this Agreement, the rights and obligations of the parties with respect to indemnification for any and all Tax matters, including for breaches of the representations and warranties set forth in Section 4.13, shall be governed by Article X hereof, and shall not be subject to this Article IX, except as set forth in Section 10.8 hereof.

ARTICLE X

TAX MATTERS

Section 10.1 Tax Indemnification.

(a) From and after the Closing, BSI and TL shall indemnify, defend and hold harmless the DCC Indemnified Persons from and against and in respect of all Losses incurred by any of the DCC Indemnified Persons, whether or not involving a Third-Party claim, which are caused by, arise from or are related to (i) all Taxes (or the non-payment thereof) of the Subject Entities for any Pre-Closing Tax Period (determined in accordance with Section 10.1(b) hereof), (ii) the breach or inaccuracy of any representation or warranty set forth in Section 4.13 hereof (it being agreed that for purposes of this Section 10.1(a)(ii) the representations and warranties set forth in Section 4.13 shall not be deemed to be qualified by any references therein to "materiality"), (iii) the breach or nonperformance of any covenant or agreement set forth in Section 6.1(b)(xv), (iv) all payments made by the Subject Entities to any Governmental Authority or any other Person pursuant to any Tax sharing, Tax indemnification or Tax allocation agreement or arrangement to which any of the Subject Entities is or was a party, or to which the Business or any of the Subject Entities' assets is or was subject, on or prior to the Closing Date, and (v) all Taxes (or the non-payment thereof) of BSI.

(b) For purposes of this Agreement, in the case of any Straddle Period:

(i) the Taxes of the Subject Entities that are imposed on a periodic basis and not based on income or receipts (e.g., property taxes) attributable to the Pre-Closing Tax Period shall be equal to the product of such Taxes attributable to the entire Tax period and a fraction, the numerator of which is the number of days in such period that elapsed through the Closing Date and the denominator of which is the number of days in such Tax period; provided, however, that, if the amount of periodic Taxes imposed for such Tax period reflects different rates of Tax imposed for different periods within such Tax period, the formula described in the preceding clause shall be applied separately with respect to each such period within the Tax period; and

(ii) the Taxes of the Subject Entities (other than those described in clause (i)) attributable to the Pre-Closing Tax Period shall be equal to

the amount computed as if such Tax period ended as of the close of the Closing Date.

Section 10.2 Tax Filings.

(a) BSI shall prepare, or cause to be prepared, consistent with past practice, and file, or cause to be filed, all Tax Returns of the Subject Entities that are due on or before the Closing Date.

(b) All Tax Returns of the Subject Entities that are due after the Closing Date shall be prepared and filed in the manner set forth in the Amended and Restated Limited Partnership Agreement and the GP Shareholders Agreement, as applicable.

Section 10.3 Cooperation on Tax Matters. DCC and BSI shall cooperate, as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns pursuant to Section 10.2 and any Tax Audit relating to the Business. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such Tax Audit. To the extent not delivered to Becancour JV pursuant to this Agreement, BSI agrees to retain all Books and Records with respect to Tax matters pertinent to the Business relating to any Pre-Closing Tax Period until the expiration of the statute of limitations (and, to the extent notified by DCC, any extensions thereof) of the respective Tax periods, and to give DCC reasonable written notice prior to transferring, destroying or discarding any such Books and Records and, if DCC so requests, BSI shall allow DCC to take possession of such Books and Records.

Section 10.4 Transfer Taxes. All sales, use, gross receipts, transfer, value added, intangible, recordation, documentary stamp or similar Taxes or charges of any nature whatsoever (together with any interest thereon, penalties, fines, fees, additions to tax or additional amounts with respect thereto) (collectively, "Transfer Taxes"), applicable to, or resulting from, the transactions contemplated by this Agreement, if any, shall be borne by BSI. BSI shall be responsible for preparing and timely filing (and DCC shall cooperate with BSI in preparing and filing) any Tax Returns with respect to any such Transfer Taxes. BSI shall provide DCC with a true copy of each such Tax Return as filed and evidence of the timely filing thereof.

Section 10.5 Tax Proceedings.

(a) If any Third Party shall notify any DCC Indemnified Person of any Tax Audit with respect to Taxes or other payments which may give rise to a claim for indemnification against BSI and TL under this Article X (each, a "Tax Proceeding"), DCC shall promptly notify BSI and TL thereof in writing; provided that the failure so to notify shall not relieve BSI or TL of its indemnification obligation provided under this Article X except to the extent BSI or TL, as applicable, shall have been materially prejudiced as a result of such failure.

(b) If any Tax Proceeding involves solely Taxes, or other payments, of BSI, one or more of which give rise to indemnity under this Article X (a "BSI Tax Proceeding"), BSI shall control the conduct of such BSI Tax Proceeding, employing counsel at BSI's own expense, and shall keep DCC informed regarding the progress and substantive aspects of such Tax Proceeding. If the result of a BSI Tax Proceeding could reasonably be expected to affect the

Tax liability of a DCC Indemnified Person in a period that ends after the Closing Date, BSI shall (i) employ counsel reasonably acceptable to DCC, (ii) allow DCC to attend the BSI Tax Proceeding and take part in all discussions and meetings with the relevant Governmental Authority in connection with the BSI Tax Proceeding that might adversely affect the DCC Indemnified Persons, (iii) consult in good faith with DCC before taking any significant action in connection with the BSI Tax Proceeding that might adversely affect the DCC Indemnified Persons, (iv) consult in good faith with DCC and afford DCC a reasonable opportunity to comment before submitting any written materials prepared or furnished in connection with such BSI Tax Proceeding (including, to the extent practicable, any documents furnished to the applicable Governmental Authority in connection with any discovery request) to the extent such materials concern matters in the BSI Tax Proceeding that might adversely affect the DCC Indemnified Persons, (v) conduct the BSI Tax Proceeding diligently and in good faith, and (vi) not pay, discharge, settle, compromise, litigate, or otherwise dispose (collectively, "dispose") of any item subject to such BSI Pre-Closing Tax Proceeding without obtaining the prior written consent of DCC, which consent shall not be unreasonably withheld, conditioned, or delayed.

(c) If a Tax Proceeding involves solely Taxes, or other payments, of the Subject Entities, such Tax Proceeding shall be controlled and conducted in the manner set forth in the Amended and Restated Limited Partnership Agreement or the GP Shareholders Agreement, as applicable.

(d) If a Tax Proceeding involves both Taxes, or other payments, of BSI, giving rise to indemnity under this Article X, and Taxes, or other payments, of the Subject Entities, BSI and DCC shall attempt in good faith to sever the Tax Proceeding to (I) a BSI Tax Proceeding, which shall be subject to subsection (b) above, and (II) all other Tax Proceedings, which shall be subject to subsection (c) above. If the attempt to sever the Tax Proceeding fails, the Tax Proceeding shall be subject to subsection (c) above.

Section 10.6 Tax Sharing Agreements. All Tax sharing agreements or similar agreements with respect to or involving the Subject Entities, the Business or their assets, written or oral, shall be terminated as of the Closing Date and, after the Closing Date, the Subject Entities, the Business or their assets, as the case may be, shall not be bound thereby or have any Liability or obligation thereunder.

Section 10.7 Tax Refunds and Credits. Any refunds or credits of Taxes of Becancour JV for any Post-Closing Tax Period shall be apportioned between BSI and DCC as set forth in the Amended and Restated Limited Partnership Agreement. Any refunds or credits of Taxes of Becancour JV for any Straddle Period shall be apportioned between a Pre-Closing Tax Period and a Post-Closing Tax Period in the same manner as the Liability for such Taxes is apportioned pursuant to Section 10.1.

Section 10.8 Exclusivity. Except as otherwise provided in this Article X, and except with respect to Sections 9.1(b), 9.5, 9.6, 9.7, 9.8 and 9.9, this Article X shall exclusively govern all matters related to Taxes under this Agreement and Article IX shall not apply to such matters.

ARTICLE XI

MISCELLANEOUS

Section 11.1 Survival of Covenants, Representations and Warranties. Each of the covenants, representations and warranties of BSI and TL and DCC in this Agreement shall survive the Closing Date and shall continue in force thereafter, except as limited with respect to representations and warranties by Section 9.1(b) and Section 9.2(b); provided, that nothing in Articles IX or X or this Section 11.1 shall relieve the parties or their respective Representatives of any Liability following the Closing Date for any willful or fraudulent misrepresentations contained herein or in any other certificate or writing delivered pursuant hereto.

Section 11.2 Amendments; No Waivers.

(a) Any provision of this Agreement (including the Disclosure Letter and the Exhibits hereto) may be amended or waived at any time prior to the Closing if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by all of the parties hereto or, in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

Section 11.3 Notices. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile or similar writing) and shall be deemed to have been duly given upon receipt when delivered in person, by facsimile or email (receipt confirmed) or by overnight courier or registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified by like notice):

if to BSI or TL, to:

Becancour Silicon Inc.
 c/o Timminco Limited
 Sun Life Financial Tower
 150 King Street West
 Suite 2401
 Toronto ON M5H 1J9
 Attention: General Counsel and Corporate Secretary
 Fax: (416) 364-3451
 E-mail: pkalins@timminco.com

a copy (which shall not constitute notice) to:

Stikeman Elliott LLP
 5300 Commerce Court West
 199 Bay Street
 Toronto, ON M5L 1B9
 Attention: Jay C. Kellerman
 Fax: (416) 947-0866
 E-mail: jkellerman@stikeman.com

if to DCC to:

Dow Corning Corporation
 2200 W. Salzburg Road
 Midland, Michigan 48686-0994
 Attention: Sue K. McDonnell
 Senior Vice President, General Counsel & Secretary
 Fax: (989) 496-8307
 E-mail: sue.mcdonnell@dowcorning.com

with a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP
 Four Times Square
 New York, New York 10036
 Attention: David J. Friedman
 Fax: (212) 735-2000
 E-mail: David.Friedman@skadden.com

Section 11.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns; provided, that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the other parties hereto, except that DCC may transfer or assign, in whole or from time to time in part, to one or more of its affiliates, its rights or obligations under this Agreement, but any such transfer or assignment shall not relieve DCC of its obligations hereunder.

Section 11.5 Governing Law. This Agreement, including all matters of construction, validity and performance, shall be construed in accordance with and governed by the law of the Province of Quebec (without regard to principles of conflicts or choice of laws) as to all matters, including but not limited to, matters of validity, construction, effect, performance and remedies.

Section 11.6 Jurisdiction. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby may be brought in any court located in the Judicial District of Montreal, and each of the parties hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably

waives, to the fullest extent permitted by Law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 11.3 shall be deemed effective service of process on such party.

Section 11.7 Counterparts; Effectiveness. This Agreement may be executed and delivered in one or more counterparts, included by facsimile, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 11.8 Entire Agreement. This Agreement (including the Disclosure Letter and the Exhibits hereto) and the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersede and cancel all prior agreements, negotiations, correspondence, undertakings, understandings and communications of the parties, oral and written, with respect to the subject matter hereof and thereof.

Section 11.9 Third Party Beneficiaries. Nothing contained in this Agreement or in any instrument or document executed by any party in connection with the transactions contemplated hereby shall create any rights in, or be deemed to have been executed for the benefit of, any Person that is not a party hereto or thereto or a permitted successor or assign of such a party.

Section 11.10 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the fullest extent possible.

Section 11.11 Construction; Interpretation.

(a) The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement. As used in this Agreement, (i) unless otherwise specified herein, the term "affiliate," with respect to any Person, shall mean and include any Person controlling, controlled by or under common control with such Person, (ii) the term "including" shall mean "including, without limitation," (iii) words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other genders as the context requires, (iv) the words "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including the Disclosure Letter and the Exhibits hereto) and not to any particular

provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement, unless otherwise specified, (v) the word "or" shall not be exclusive, and (vi) each of BSI, TL, and DCC will be referred to herein individually as a "party" and collectively as "parties" (except where the context otherwise requires). Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning. A reference to any party to this Agreement or any other agreement or document shall include such party's successors and permitted assigns. Any payment required to be made by any party hereto pursuant to this Agreement shall be made without setoff in United States Dollars, unless otherwise specified, and all references in this Agreement to "\$" are expressed in Canadian currency, unless otherwise specified.

(b) The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

(c) Any reference to any federal, state, local or non-United States statute or Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context otherwise requires.

Section 11.12 Changes in Equity Interests. For all purposes of this Agreement, the Interests shall include any securities issued or exchanged with respect thereto upon any recapitalization, reclassification, merger, consolidation, spin-off, partial or complete liquidation, stock dividend, split-up or combination of the securities of the applicable Subject Entity or any other change in the applicable Subject Entity's capital structure.

Section 11.13 Obligations of the Subject Entities. Whenever this Agreement requires a Subject Entity to take any action or to fail to take any action at or prior to the Closing, that requirement shall be deemed to include an agreement and undertaking on the part of BSI and TL to cause the applicable Subject Entity to take that action or to fail to take that action, as applicable.

Section 11.14 Publicity. The parties hereto shall coordinate all publicity relating to this Agreement, the Ancillary Agreements, and the transactions contemplated by this Agreement, and no party hereto shall issue any press release, publicity statement, or other public notice relating to this Agreement, the Ancillary Agreements, or the transactions contemplated by this Agreement, without the prior consent of the other parties hereto except to the extent that a particular action is required by applicable Law.

Section 11.15 Disclosure Letter. The Disclosure Letter shall be arranged to correspond to the representations and warranties in Article IV of this Agreement, and the disclosure in any portion of the Disclosure Letter shall qualify the corresponding provision in Article IV and any other provision or section of Article IV to which it is reasonably apparent on its face that such disclosure relates. In the Disclosure Letter, (a) all capitalized terms used but not defined therein shall have the meanings assigned to them in this Agreement, (b) the section numbers correspond to the section numbers in this Agreement and (c) inclusion of any item in a

Disclosure Letter (i) does not represent a determination that such item is material or establish a standard of materiality, (ii) does not represent a determination that such item did not arise in the ordinary course of business, (iii) does not represent a determination that the transactions contemplated hereby require the consent of Third Parties and (iv) shall not constitute, or be deemed to be, an admission to any Third Party concerning such item.

[Signature page follows]

IN WITNESS WHEREOF, BSI, TL and DCC have caused this Agreement to be executed by their respective duly authorized officers as of the date first written above.

BECANCOUR SILICON INC.

By: Peter A. M. Kalins
Name: Peter A. M. Kalins
Title: General Counsel and Corporate Secretary

TIMMINCO LIMITED

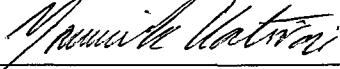
By: Heinz Schimmelbusch
Name: Heinz Schimmelbusch
Title: Chairman of the Board and Chief Executive Officer

DOW CORNING CORPORATION

By: Robert D. Hansen
Name: Robert D. Hansen
Title: Executive Vice President

EXHIBIT "C"

This is Exhibit "C"
to the affidavit of Peter A.M. Kalins,
sworn before me on the 2nd day
of January, 2012



Commissioner for Taking Affidavits

Yusuf Yannick Katirai, a
Commissioner etc., Province of Ontario,
while a student-at-law.
Expires April 12, 2013.

BUSINESS TRANSFER AGREEMENT

Business transfer agreement dated September 30, 2010 (this "Agreement") among Bécancour Silicon Inc. ("BSI") and Québec Silicon Limited Partnership ("Becancour JV"), by its general partner Québec Silicon General Partner Inc. ("Becancour GP").

RECITALS

- (a) BSI, Timminco Limited, and Dow Corning Corporation ("DCC") are parties to a framework agreement dated August 10, 2010 (the "Framework Agreement").
- (b) It is a condition under the Framework Agreement that the parties enter into this agreement in order to, among other things, consummate, prior to the Closing Date, the Restructuring Transactions contemplated in Exhibit B of the Framework Agreement.
- (c) BSI is the legal and beneficial owner of the Contributed Assets.
- (d) BSI wishes to sell and Becancour JV wishes to purchase the Contributed Assets upon, and subject to, the terms and conditions contained in this Agreement in consideration for 51,000 limited partnership units in Becancour JV, a promissory note issued by Becancour JV in favour of BSI in a principal amount equal to US\$40,254,751 and the assumption of the Assumed Liabilities.
- (e) BSI and Becancour JV acknowledge and agree that the Contributed Assets are intended to be transferred to Becancour JV pursuant to subsection 97(2) of the *Income Tax Act* (Canada) (the "ITA") and any corresponding provisions of any provincial law.

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

Section 1 Defined Terms

Capitalized terms used but not defined herein shall have the meanings given to them in the Framework Agreement.

Section 2 Purchase and Sale.

- (1) Subject to the terms and conditions of this Agreement, BSI hereby sells, assigns and transfers to Becancour JV and Becancour JV hereby purchases from BSI all of BSI's right, title and interest in and to all of the assets that are held by BSI as of the date hereof and used primarily in connection with the

Business (as defined in the Framework Agreement), in each case wherever located and free and clear of all liens other than Permitted Liens, including furniture, fixtures, equipment, contracts, licenses, Leases, permits, authorizations, current assets, Real Property (and improvements thereon, including the Facility, but excluding the HP2 Property, in each case as more fully described in Schedule "A" attached hereto) and related rights, rights to insurance claims for losses related to the Business (other than losses related to Excluded Assets (as defined below) or the assets transferred pursuant to this Agreement and copies of books and records to the extent they concern the assets transferred pursuant to this Agreement, except for any Excluded Assets (collectively, the "Contributed Assets").

- (2) Without limiting the generality of the foregoing, Contributed Assets held by BSI as of the date hereof relating to:
 - (a) intellectual property matters shall also be governed by the intellectual property transfer agreement to be entered into among BSI, all of BSI's affiliates, and Becancour JV (the "Transfer Agreement"), as described in Exhibit I to the Framework Agreement; and
 - (b) Real Property shall also be subject to (i) the Deed of Transfer, (ii) the nominee agreements relating to the Facility and the HP2 Property, (iii) the lease agreement to be entered into between Becancour GP, as landlord, and BSI, as tenant, and (iv) BSI's right of occupancy in the laboratory granted by Becancour GP, all as described in Exhibit G to the Framework Agreement and/or in the provisions of Section 6.8 of the Framework Agreement (collectively, the "Real Estate Documents").
- (3) The Contributed Assets shall not include any of the assets listed in the definition of "Excluded Assets" in Annex A to Exhibit B of the Framework Agreement (the "Excluded Assets").

Section 3 Liabilities.

- (1) BSI shall transfer and Becancour JV shall assume and agree to pay for, perform, or otherwise discharge when due, at Becancour JV's sole expense, the current liabilities and the pension liabilities relating to the Business (the "Assumed Liabilities") and obligations under contracts assumed by Becancour JV relating to actions or activities occurring after the date hereof (the "Other Liabilities"). The Assumed Liabilities shall not include any liability listed in the definition of "Excluded Liabilities" in Annex A to Exhibit B of the Framework Agreement (the "Excluded Liabilities").

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- (2) BSI acknowledges and agrees that Becancour JV shall not be obligated to assume, pay for or otherwise discharge, and that Becancour JV is not assuming, and that BSI shall be solely responsible for paying, performing or otherwise discharging, at its sole expense, and without liability, cost, loss or expense of Becancour JV, any of the Excluded Liabilities.
- (3) Pension plan matters shall be governed by the Pension Transfer Agreement, as described in Annex B to Exhibit B of the Framework Agreement.

Section 4 Contracts.

Nothing in this Agreement shall be construed as an attempt to assign to Becancour JV any contract or agreement which, as a matter of law or by its terms, is not assignable in whole or in part without the consent of the other party or parties to such contract or agreement, unless such consent has been given. In order that Becancour JV may receive and realize the full benefit of the non-assigned contracts and agreements, BSI shall hold such contracts and agreements in trust for Becancour JV and all benefits derived from such contracts and agreements shall be for the account of Becancour JV. BSI shall take such action and do or cause to be done such things as are necessary or proper to ensure that the obligations of BSI under the non-assigned contracts and agreements are performed and that the value of all of such contracts and agreements are preserved and enure to the benefit of Becancour JV. BSI shall use its reasonable best efforts to obtain all consents necessary to assign such contracts and agreements to Becancour JV as soon as reasonably possible.

Section 5 Purchase Price.

The purchase price payable by Becancour JV to BSI for the Contributed Assets is C\$92,980,389, which purchase price may be adjusted by an amount equal to the adjustments of the purchase price payable to Becancour JV pursuant to Section 2.(3) and 2.4 of the Framework Agreement. The purchase price shall be paid by Becancour JV (i) issuing to BSI 51,000 limited partnership units in Becancour JV, (ii) issuing a promissory note in favour of BSI in a principal amount equal to US \$40,254,751, (iii) assuming the Assumed Liabilities, and (iv) as the case may be, distributing to BSI, in the event of adjustment of the purchase price as mentioned above, amounts so received by Becancour JV. BSI shall be liable for and shall pay all applicable federal and provincial sales taxes and all other taxes, duties, registration charges or other like charges payable in connection with the sale of the Contributed Assets by BSI to Becancour JV.

The purchase price shall be allocated in accordance with the election described in Section 9(1) hereof.

Section 6 Deliveries.

- (1) In connection with the consummation of the transactions contemplated herein, BSI shall make all deliveries to Becancour JV required pursuant to the Framework Agreement, including, but not limited to, the following:
 - (a) A certified copy of the resolution of the directors of BSI approving the transfer of the Contributed Assets to Becancour JV;
 - (b) Copies of all consents, approvals and waivers required to transfer the Contributed Assets to Becancour JV on terms acceptable to Becancour JV, acting reasonably; and
 - (c) Actual possession of the Contributed Assets and all deeds, conveyances, assurances, transfers and assignments and other instruments, in form and substance satisfactory to Becancour JV, necessary or reasonably required to transfer the Contributed Assets to Becancour JV with a good title, free and clear of all liens, charges, pledges, security interests and other encumbrances.

- (2) In connection with the consummation of the transactions contemplated herein, Becancour JV shall make all deliveries to BSI required pursuant to the Framework Agreement, including, but not limited to, the following:
 - (a) A certified copy of the resolutions of the directors of Becancour GP approving, on behalf of Becancour JV, the issuance of limited partnership units to BSI;
 - (b) limited partnership unit certificate(s) representing 51,000 limited partnership units in Becancour JV registered in the name of BSI; and
 - (c) a promissory note issued by Becancour JV in favour of BSI in a principal amount equal to US\$40,254,751 substantially in the form attached hereto as Schedule "B".

Section 7 Other Deliverables.

- (1) In connection with the consummation of the transactions contemplated herein, BSI and Becancour JV shall execute, or cause to be executed all of the documents required to complete the Restructuring Transactions that constitute conditions precedent to the Closing contemplated in the Framework Agreement, including, but not limited to, the following:
 - (a) the Transfer Agreement;
 - (b) the Real Estate Documents;

- (c) the Pension Transfer Agreement; and
- (d) the Services Agreements.

Section 8 Acknowledgement.

BSI and Becancour JV acknowledge that:

- (a) to the extent that any asset of BSI or its affiliates is used in, but not primarily used in, the Business, and such asset is not transferred under this Agreement by BSI to Becancour JV, BSI agrees to assist Becancour JV, to the extent permitted by law, in making sure that the benefits of such assets (including any related information) are made available to Becancour JV; and
- (b) the transfer of Contributed Assets and Assumed Liabilities from BSI to Becancour JV shall not affect any rights of DCC or BSI under the Framework Agreement, including, without limitation, Articles IX and X thereof.

Section 9 Elections

- (1) BSI, Becancour JV and Becancour GP each covenant and agree to elect jointly under subsection 97(2) of the ITA in respect of the transfer of the Contributed Assets that are determined by BSI and that are property eligible for such election as described in subsection 97(2) of the ITA, in the prescribed form and within the prescribed time for purposes of the ITA, and shall therein specify an amount in respect of each Contributed Asset as determined by BSI in its sole discretion within the limits of subsection 97(2) of the ITA. For the purposes of subsection 97(2) and paragraph 85(1)(e.1) of the ITA, the properties shall be deemed to be disposed of in the order designated by Becancour JV. BSI and Becancour JV agree to jointly file corresponding elections under the provisions of applicable provincial or territorial tax legislation and the foregoing provisions will apply to the making of any such elections, with necessary changes. All elections shall be prepared and filed by BSI.
- (2) BSI, Becancour JV and Becancour GP have jointly elected, under section 156 of the ETA and the corresponding provision of the QSTA such that no GST or QST is payable with respect to the sale of the Contributed Assets by BSI. Such elections shall be retained by both BSI and Becancour in their respective books and records. Moreover, BSI and Becancour JV shall jointly execute and file an election under section 167 of the ETA and section 75 of the QSTA within the prescribed time limits and in the prescribed forms for such purposes such that the sale of the Contributed Assets by BSI will take place without payment of GST or QST. Becancour

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JV will file the election form referred to herein with the appropriate taxation authorities, together with its GST and QST returns for its GST and QST reporting period during which the transaction of purchase and sale of the Contributed Assets contemplated herein occurs and, promptly thereafter, Becancour JV will confirm to BSI in writing that such election form has been so filed.

Section 10 Time of the Essence.

Time shall be of the essence of this Agreement.

Section 11 Enurement.

This Agreement shall become effective when executed by BSI and Becancour JV and after that time shall be binding upon and enure to the benefit of the parties and their respective, successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by either party without the consent of the other party.

Section 12 Waiver.

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

Section 13 Further Assurances.

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

Section 14 Severability.

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

Section 15 Governing Law.

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


Section 16 Counterparts.

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


[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF the parties have executed this Business Transfer Agreement.

BÉCANCOUR SILICON INC.

By: 
Name: Peter Kalins
Title: General Counsel and
Corporate Secretary
Authorized Signing Officer

**QUÉBEC SILICON LIMITED
PARTNERSHIP, by its general
partner, QUÉBEC SILICON
GENERAL PARTNER INC.**

By: 
Name: Peter Kalins
Title: General Counsel and
Corporate Secretary
Authorized Signing Officer

[signature page to the Business Transfer Agreement]

SCHEDULE "A"

Legal Description of the Facility

An immovable situated in the City of Bécancour, Province of Québec, known and designated as being lot number THREE MILLION TWO HUNDRED NINETY-FOUR THOUSAND AND FIFTY-FIVE (3 294 055) 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 building bearing the civic address 6500 Yvon-Trudeau Street, City of Bécancour, Province of Québec, G9H 2V8.

As said immovable now subsists, with all its rights, members and appurtenances, without exception or reserve of any kind, and together with and subject to any servitudes, rights-of-way or privileges appurtenant or belonging thereto,

SAVE AND EXCEPT:

A parcel of land of irregular figure, situated in the City of Bécancour, Province of Québec, known and designated as being a part of lot THREE MILLION TWO HUNDRED NINETY-FOUR THOUSAND AND FIFTY-FIVE (Pt. 3 294 055) of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2), which land can be described as follows:

Attachment:

Starting at point 851, which point is located at the intersection of the division lines between the Yvon-Trudeau Street (lot 3 417 006 of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2)) and Arthur-Sicard Boulevard (lot 3 416 998 of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2)); from said point 851, following a direction of 56°13'45" for a distance of 444,00 meters to point 875; from point 875, following a direction of 326°13'45" for a distance of 190,72 meters to point 868, which is the starting point of said parcel of land which can be described as follows:

Boundaries and measurements:

Bounded towards the South-West by another part of said lot 3 294 055;
 Bounded towards the North-West by another part of said lot 3 294 055;
 Bounded towards the North by another part of said lot 3 294 055;
 Bounded towards the North-East by another part of said lot 3 294 055;
 Bounded towards the South-East by another part of said lot 3 294 055; and

Measuring:

Boundaries	Pts	Pts	Line	Direction	Distance (meters)
South-West	868	857	Straight	326°13'45"	65,38
North-West	857	858	Straight	56°13'45"	169,53
North	858	859	Straight	101°15'37"	4,27
North-East	859	860	Straight	146°16'28"	81,33
South-East	860	861	Straight	236°16'28"	2,27
North-East	861	862	Straight	146°13'45"	22,27
South-East	862	863	Straight	236°13'45"	18,32
North-East	863	649	Straight	146°13'45"	22,96
South-East	649	505	Straight	236°13'45"	11,53
North-East	505	864	Straight	146°13'45"	18,47
South-East	864	865	Straight	236°13'45"	54,16
South-West	865	866	Straight	326°13'45"	23,78
South-West	866	867	Straight	293°18'04"	70,17
South-East	867	868	Straight	236°13'45"	48,10

Having a superficial area of 18 412,8 square meters.

As shown on a plan bearing number D-5111-3 prepared by René Beaudoin, Québec Land Surveyor, on September 27, 2010, under number 3870 of his minutes and B-5111 of his files.

With the buildings and all other structures, fixtures, equipment and ancillary improvements located thereon, including the building bearing the civic address 6500 Yvon-Trudeau Street, City of Bécancour, Province of Québec, G9H 2V8.

As said immovable now subsists, with all its rights, members and appurtenances, without exception or reserve of any kind, and together with and subject to any servitudes, rights-of-way or privileges appurtenant or belonging thereto.

Legal Description of the HP2 Property

A parcel of land of irregular figure, situated in the City of Bécancour, Province of Québec, known and designated as being a part of lot THREE MILLION TWO HUNDRED NINETY-FOUR THOUSAND AND FIFTY-FIVE (Pt. 3 294 055) of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2), which land can be described as follows:

Attachment:

Starting at point 851, which point is located at the intersection of the division lines between the Yvon-Trudeau Street (lot 3 417 006 of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2)) and Arthur-Sicard Boulevard (lot 3 416 998 of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2)); from said point 851, following a direction of 56°13'45" for a distance of 444,00 meters to point 875; from point 875, following a direction of 326°13'45" for a distance of 190,72 meters to point 868, which is the starting point of said parcel of land which can be described as follows:

Boundaries and measurements:

Bounded towards the South-West by another part of said lot 3 294 055;
 Bounded towards the North-West by another part of said lot 3 294 055;
 Bounded towards the North by another part of said lot 3 294 055;
 Bounded towards the North-East by another part of said lot 3 294 055;
 Bounded towards the South-East by another part of said lot 3 294 055; and

Measuring :

Boundaries	Pts	Pts	Line	Direction	Distance (meters)
South-West	868	857	Straight	326°13'45"	65,38
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South-East	860	861	Straight	236°16'28"	2,27
North-East	861	862	Straight	146°13'45"	22,27
South-East	862	863	Straight	236°13'45"	18,32
North-East	863	649	Straight	146°13'45"	22,96
South-East	649	505	Straight	236°13'45"	11,53

North-East	505	864	Straight	146°13'45"	18,47
South-East	864	865	Straight	236°13'45"	54,16
South-West	865	866	Straight	326°13'45"	23,78
South-West	866	867	Straight	293°18'04"	70,17
South-East	867	868	Straight	236°13'45"	48,10

Having a superficial area of 18 412,8 square meters.

As shown on a plan bearing number D-5111-3 prepared by René Beaudoin, Québec Land Surveyor, on September 27, 2010, under number 3870 of his minutes and B-5111 of his files.

With the buildings and all other structures, fixtures, equipment and ancillary improvements located thereon, including the building bearing the civic address 6500 Yvon-Trudeau Street, City of Bécancour, Province of Québec, G9H 2V8.

As said immovable now subsists, with all its rights, members and appurtenances, without exception or reserve of any kind, and together with and subject to any servitudes, rights-of-way or privileges appurtenant or belonging thereto.

SCHEDULE "B"
FORM OF PROMISSORY NOTE

QUÉBEC SILICON LIMITED PARTNERSHIP
PROMISSORY NOTE

Amount: US\$40,254,751

Date: September 30, 2010

FOR VALUE RECEIVED, the undersigned, Québec Silicon Limited Partnership (the "**Borrower**"), a limited partnership formed under the laws of Québec with its principal office and place of business at 6500, Yvon-Trudeau Street, Bécancour, Québec, **PROMISES TO PAY** to or to the order of Bécancour Silicon Inc. (the "**Lender**"), at its offices at 6500, rue Yvon-Trudeau, Bécancour, QC or such other place as the Lender may designate, the principal amount of Forty Million, Two Hundred and Fifty-Four Thousand, Seven Hundred and Fifty-One US DOLLARS (US\$40,254,751) **ON DEMAND**, with interest on such amount at the rate, calculated in the manner and payable at the times specified in this Note.

The principal amount remaining from time to time unpaid and outstanding shall bear interest, both before and after demand and judgment to the date of the repayment in full of the principal amount, at the rate of Five per cent (5%) per annum. Interest at such rate shall accrue daily and be calculated on the basis of the actual number of days elapsed in a year of 365 days or 366 days, as the case may be, and shall be payable monthly, in arrears, on the first business day of each and every month commencing November 1, 2010. Overdue interest shall bear interest at a rate per annum equal to the same rate, calculated as aforesaid.

The Borrower shall have the right and privilege of paying the whole or any portion of the principal amount of this Note from time to time remaining unpaid and outstanding at any time or times.

The recording by the Lender in its accounts of principal amounts owing by the Borrower, accrued interest and repayments shall, in the absence of manifest mathematical error, be *prima facie* evidence of the same; provided that the failure of the Lender to record the same shall not affect the obligation of the Borrower to pay such amounts to the Lender.

The Borrower and all endorsers of this Note waive presentment for payment and notice of non-payment and agree and consent to all extensions or renewals of this Note without notice.

This Note shall be governed by and interpreted and enforced in accordance with the laws of the Province of Québec and the federal laws of Canada applicable therein. The Borrower irrevocably attorns and submits to the non-exclusive jurisdiction of the Québec courts situated in the City of Montreal, and waives objection to the venue of any proceeding in such court or that such court provides an inconvenient forum.

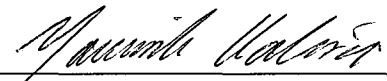
IN WITNESS WHEREOF the Borrower has executed this Note.

**QUÉBEC SILICON LIMITED
PARTNERSHIP, BY ITS GENERAL
PARTNER, QUÉBEC SILICON
GENERAL PARTNER INC.**

By: _____
Authorized Signing Officer

EXHIBIT "D"

This is Exhibit "D"
to the affidavit of Peter A.M. Kalins,
sworn before me on the 2nd day
of January, 2012



Commissioner for Taking Affidavits

Yusuf Yannick Katirai, a
Commissioner etc., Province of Ontario,
while a student-at-law.
Expires April 12, 2013.

AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT

**SILICIUM QUÉBEC SOCIÉTÉ EN COMMANDITE/
QUÉBEC SILICON LIMITED PARTNERSHIP**

October 1, 2010

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AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT

THIS AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT dated October 1, 2010,

BY AND BETWEEN: **BÉCANCOUR SILICON INC.**, a company governed by the laws of Québec;

(hereinafter called "BSI")

AND: **DOW CORNING CANADA, INC.**, a corporation governed by the laws of Canada;

(hereinafter called "DCC LP Canco")

AND: **QUÉBEC SILICON GENERAL PARTNER INC.**, a company governed by the laws of Québec;

(hereinafter called "GP")

WHEREAS Silicium Québec Société en commandite / Québec Silicon Limited Partnership (the "**Partnership**") is a limited partnership that has been formed according to the laws of the Province of Québec to operate the Business (as defined below) and is governed by a limited partnership agreement entered into on August 18, 2010 between BSI, as special partner, and GP, as general partner, as amended by the Intermediate Agreement of Limited Partnership dated September 30, 2010 (collectively, the "**Original Limited Partnership Agreement**");

WHEREAS (i) concurrently with the entering into of the above-referred Intermediate Agreement of Limited Partnership, BSI transferred to the Partnership its silicon metal production operations (excluding solar grade silicon purification operations) that it owned and operated at the Facility (as defined below) (the "**Business**") pursuant to the Business Transfer Agreement (as defined below) in exchange for the issuance by the Partnership to BSI of 51,000 Units (as defined below) and the Note in the principal amount of US \$40,254,751 and (ii) GP has contributed CAD \$10,000 to the capital of the Partnership in exchange for the issuance by the Partnership to GP of 10 Units;

WHEREAS BSI Parent (as defined below) owns all of the issued and outstanding shares in the share capital of BSI;

WHEREAS on the date hereof, pursuant to the Framework Agreement (as defined below), DCC LP Canco contributed US \$40,254,751, which amount will be subject to adjustment in accordance with the Framework Agreement, to the capital of the Partnership in exchange for the issuance by the Partnership to DCC LP Canco of 49,000 Units (the "**DCC LP Canco Unit Acquisition**");

WHEREAS Dow Corning Corporation, a corporation organized under the laws of the State of Michigan ("**DCC LP Canco Parent**"), owns, directly or indirectly, all of the issued and outstanding shares in the share capital of DCC LP Canco;

WHEREAS BSI, DCC LP Canco and GP desire to amend, supplement and restate the Original Limited Partnership Agreement to, inter alia, introduce DCC LP Canco as a special partner of the Partnership;

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto hereby agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, the following expressions shall have the following meanings, unless there is something in the context inconsistent therewith:

"AAA" has the meaning attributed thereto in Section 19.3(a);

"Absolute Control" means:

- (i) in relation to a Person that is a corporation, the ownership, directly or indirectly, of voting securities of such Person carrying all of the voting rights attaching to all voting securities of such Person (other than Qualifying Shares) and which are sufficient, if exercised, to elect the entirety of its board of directors; and
- (ii) in relation to a Person that is a partnership, limited partnership, mutual fund trust, trust or other similar unincorporated entity or association of any nature, the ownership, directly or indirectly, of voting securities of such Person (including the general partner thereof, as the case may be) carrying all of the voting rights attaching to all voting securities of such Person (including the general partner thereof, as the case may be) or the ownership of all of the other interests or rights entitling the holder thereof to exercise exclusive control and direction over the management and policies of such Person, as the case may be; and "Absolutely Controls" and "Absolutely Controlled" shall have similar meanings;

"Absolutely Controlled Affiliate" means, in relation to any Person, any other Person that is Absolutely Controlled by the first-mentioned Person;

"Accounting Firm" has the meaning ascribed thereto in Section (b);

"Act of Insolvency" has the meaning ascribed thereto in Section 16.3;

"Affiliate" means, in relation to any Person, any other Person that, directly or indirectly, (i) Absolutely Controls the first-mentioned Person, (ii) is an Absolutely Controlled Affiliate of the first-mentioned Person or (iii) is under common Absolute Control with the first-mentioned Person;

"**Affiliated Person**" means, in relation to any Person, any other Person that, directly or indirectly, Controls or is Controlled by or under common Control with the first-mentioned Person;

"**Agreement**" means this Amended and Restated Limited Partnership Agreement, all schedules attached hereto and any agreement or schedule amending this Agreement; the words "hereto", "herein", "hereinabove", "hereinafter", "hereof", "hereby" and "hereunder" and similar expressions refer to this Agreement and not to any particular section, clause or part of it;

"**applicable Law**" has the meaning ascribed thereto in the definition of Laws;

"**arm's length**" has the meaning ascribed thereto in the *Income Tax Act*;

"**BSI**" means Becancour Silicon Inc.;

"**BSI Parent**" means Timminco Limited, a corporation organized under the laws of Canada, including any successor thereto;

"**Business**" has the meaning ascribed thereto in the preamble;

"**Business Day**" means any day of the year, other than a Saturday, Sunday or other day on which banks are closed for business in Montreal, Québec or in New York, New York;

"**Call Rights**" has the meaning ascribed thereto in Section 10.7.;

"**Called Interests**" has the meaning ascribed thereto in Section 10.7;

"**Called Interests Valuation Price**" has the meaning ascribed thereto in Section 10.7(d);

"**Calling Partner**" has the meaning ascribed thereto in Section 10.7;

"**Canadian Dollar**", "CAD" or "\$" means, unless otherwise indicated, dollars in the lawful currency of Canada;

"**Capital Contribution**" means any contributions of cash, assets or property made to the capital of the Partnership by the Partners or any one Partner, as the case may be, (including the predecessor holders of a Partnership Interest of such Partners, as applicable) net of any liabilities secured by such contributed assets or property assumed by the Partnership or subject to which the Partnership takes or has taken the contributed assets or properties;

"**Cash Call Notice**" has the meaning ascribed thereto in Section 15.1;

"**Change of Control Event**" means the occurrence of any of the following: (a) the direct or indirect transfer, conveyance or other disposition (other than by way of merger, amalgamation or other consolidation), in one or a series of related transactions, of all or substantially all of the properties and assets of: (i) BSI Parent and its subsidiaries, or (ii) the Change of Control Member and its subsidiaries, taken as a whole, to any Person

or group of Persons acting together for the purpose of acquiring such properties and assets; (b) the consummation of any transaction or series of related transactions (including, without limitation, any merger, amalgamation or other consolidation) the result of which is that any Person or group of Persons acting together for the purpose of acquiring, holding or disposing of the securities of BSI Parent or the Change of Control Member acquires Control of BSI Parent or the Change of Control Member, as applicable, other than an Affiliated Person of BSI Parent or the Change of Control Member on the date hereof (but including any holding company formed by BSI Parent subsequent to the date hereof as part of an internal restructuring); (c) the consummation of any transaction or series of related transactions (including, without limitation, any merger, amalgamation or other consolidation) the result of which is that the beneficial owners of the share capital or other equity interests of BSI Parent or the Change of Control Member, as applicable, immediately prior to such transaction or transactions cease to be the beneficial owners, in the aggregate, of at least such number of voting securities sufficient to Control the surviving or resulting entity of such transaction or transactions; or (d) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of BSI Parent (together with any new directors whose election by the Board of Directors or whose nomination for election by the shareholders of BSI Parent was approved by a vote of a majority of the directors then still in office who were directors at the beginning of such period or whose election or nomination for election was previously approved) cease to constitute a majority of the directors then in office; *provided*, that in the case of any of clauses (a)(ii), (b) or (c) above, if the Partnership Interests held by the Change of Control Member constitute all or substantially all of the assets of the Change of Control Member, then such event shall not constitute a Change of Control Event, but rather shall be deemed a Transfer. Notwithstanding the above, (x) no purchase of securities of BSI Parent by Advanced Metallurgical Group N.V. or its Affiliated Persons (collectively, "AMG") shall constitute a Change of Control Event and a public sale of equity interests in BSI Parent shall not, in and of itself, represent a Change of Control Event, and (y) the acquisition of beneficial ownership of 40% or more of the outstanding shares of BSI Parent by any Person or group of related Persons shall constitute a Change of Control Event if said position is greater than that held by AMG. The Special Partners agree and acknowledge that, as of the date hereof, the sale or other transfer of the securities of BSI to any Person or group of Persons other than an Affiliate of BSI constitutes a Transfer rather than a Change of Control Event and that any such sale or transfer at a future date would be a Change of Control Event or Transfer, as the case may be, depending on the circumstances at such time;

"Change of Control Member" means any affiliate of BSI Parent that, directly or indirectly, owns Partnership Interests or GP Shares, so long as Partnership Interests and/or GP Shares do not constitute all or substantially all of its assets;

"Civil Code" means the *Civil Code of Québec*, as the same may be amended, supplemented or restated from time to time;

"Code" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder;

"**Confidential Information**" has the meaning ascribed thereto in Section 18.1;

"**Contribution Deadline**" has the meaning ascribed thereto in Section 15.1;

"**Control**" means:

- (i) in relation to a Person that is a corporation, the ownership, directly or indirectly, of voting securities of such Person carrying more than 50% of the voting rights attaching to all voting securities of such Person (Qualifying Shares in the capital of such Person being deemed to be owned by the largest shareholder of such Person) or which are sufficient, if exercised, to elect the majority of its board of directors; and
- (ii) in relation to a Person that is a partnership, limited partnership, mutual fund trust, trust or other similar unincorporated entity or association of any nature, the ownership, directly or indirectly, of voting securities of such Person (including the general partner thereof, as the case may be) carrying more than 50% of the voting rights attaching to all voting securities of such Person (including the general partner thereof, as the case may be) or the ownership of more than 50% of other interests or rights entitling the holder thereof to exercise, control and direction over the management and policies of such Person, as the case may be; and "**Controls**", "**Controlled**" and "**Controlling**" shall have similar meanings; *provided* that Dow Chemical Company and Corning Incorporated each shall be deemed to be a Person in Control of DCC LP Canco Parent so long as it owns at least 50% of the outstanding share capital of DCC LP Canco Parent and AMG shall be deemed to be a Person in Control of BSI Parent so long as it owns at least 40% of the outstanding share capital of BSI Parent;

"**Controlled Affiliated Person**" means, in relation to any Person, any other Person that is Controlled by the first-mentioned Person;

"**DCC Customer**" means DCC LP Canco Parent or any Affiliate thereof to which DCC LP Canco Parent from time to time assigns its rights and obligations under the Supply Agreement or otherwise designates to be a party thereto;

"**DCC GP Co**" means Dow Corning Netherlands, B.V., a corporation organized under the laws of the Netherlands;

"**DCC LP Canco**" has the meaning ascribed to it in the preamble;

"**DCC LP Canco Parent**" has the meaning ascribed to it in the preamble, including any successor thereto;

"**DCC LP Canco Unit Acquisition**" has the meaning ascribed thereto in the preamble;

"**Default**" has the meaning ascribed thereto in Section 16.1;

"**Default Payments**" has the meaning ascribed thereto in Section 16.6;

"Defaulting Special Partner" has the meaning ascribed thereto in Section 16.1, *in fine*;

"Dispute" has the meaning ascribed thereto in Section 20.1;

"Distributable Cash" means, at the time of determination, the positive cash balances available in excess of anticipated working capital needs (including, as working capital needs, any funds necessary to satisfy any payment obligations under working capital and other debt facilities and, if payable by the Partnership, for taxes), anticipated capital requirements and reasonable reserves established, from time to time, to meet anticipated expenses and unforeseen costs; it being understood that draw downs on working capital and other debt facilities are not intended to increase the amount of Distributable Cash (other than to provide funds for the payment of taxes by the Partnership, if any), as determined by the GP in respect of a Fiscal Quarter or a Fiscal Year;

"Distribution" means: (i) any distribution of the income of the Partnership to any Partner; or (ii) any distribution or payment made by the Partnership to or at the direction of a Partner in connection with the purchase, redemption or retirement by the Partnership of any outstanding Units, including in each case any distribution made from Distributable Cash;

"Facility" means the silicon metal facility located at 6500 Rue Yvon-Trudeau, Bécancour, Québec (as more fully defined in the Framework Agreement);

"Fiscal Quarter" means each of the three-month periods ending on March 31, June 30 and September 30 in each Fiscal Year;

"Fiscal Year" has the meaning ascribed thereto in Section 4.3;

"Framework Agreement" means that certain Framework Agreement, dated as of August 10, 2010, by and among DCC LP Canco Parent, BSI Parent and BSI, as the same may be amended from time to time;

"GAAP" means the accounting principles generally accepted in Canada from time to time, including the policies and standards of disclosure recommended by the Canadian Institute of Chartered Accountants from time to time, applied in a consistent manner from period to period;

"General Partner" means GP, acting in its capacity as a general partner of the Partnership under this Agreement, or any successor or other Person admitted to the Partnership as a successor to the General Partner in accordance with the provisions of this Agreement;

"Governmental Authority" means any: (i) federal, provincial, regional, local, municipal, foreign, international, multinational, territorial, state or other government, governmental or public department, central bank, court, tribunal, arbitral body, statutory body, commission, board, bureau or agency, domestic or foreign; (ii) subdivision, agent, commission, board or authority of any of the foregoing; or (iii) quasi-governmental, private body or regulatory entity exercising any regulatory, expropriation or taxing

authority under, or for the account of, any of the foregoing, including any stock exchange;

"GP" means Québec Silicon General Partner Inc., a company organized under the laws of Québec;

"GP Board" means the board of directors of GP;

"GP Class A Shares" means the class A shares in the share capital of GP;

"GP Class B Shares" means the class B shares in the share capital of GP;

"GP Organizational Documents" means the Articles of Incorporation of GP in effect from time to time;

"GP Shares" means the shares in the share capital of GP;

"IFRS" means International Financial Reporting Standards, as in effect from time to time;

"including", "include" and words of similar import when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation", or "but not limited to", or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;

"Income Tax Act" means the *Income Tax Act* (Canada) as the same may be amended, supplemented or restated from time to time, and includes all regulations promulgated thereunder, and any reference to the Income Tax Act also refers to any successor or replacement federal legislation;

"Insolvent" means, with respect to the applicable Person on any date of determination, satisfying the definition of an "insolvent person" contained in Section 2 of the *Bankruptcy and Insolvency Act* (Canada), and "Insolvency" means the condition of being Insolvent;

"Laws" means all statutes, codes, treaties, directives, ordinances, decrees, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, terms and conditions of any grant, approval, permission, authority or license, rulings or awards, policies, voluntary restraints, guidelines, or any provisions of the foregoing, of any Governmental Authority or self-regulatory entity, in each case which have the force of law, including any interpretation thereof and any decision, doctrine or recommendations from any Governmental Authority or self-regulatory entity, in each case which have the force of law, and general principles of common and civil law and equity, in each case which have the force of law; and "Law" means any one of the foregoing, and the term "applicable" with respect to such Law and in the context that refers to one or more Persons, means that such Law applies to such Person or Persons or its or their business,

undertaking, property, assets or securities and emanates from a Governmental Authority or self-regulatory entity having jurisdiction over the Person or Persons or its or their business, undertaking, property, assets or securities;

"**Mandatory Contribution**" has the meaning ascribed thereto in Section 15.1;

"**Negative Distributable Cash**" means, at the time of determination, the negative cash balances short of anticipated working capital needs (including, as working capital needs, any funds necessary to satisfy any payment obligations under working capital and other debt facilities and, if payable by the Partnership, for taxes), anticipated capital requirements and reasonable reserves established, from time to time, to meet anticipated expenses and unforeseen costs; it being understood that draw downs on working capital and other debt facilities are not intended to increase the amount of Distributable Cash (other than to provide funds for the payment of taxes), as determined by the GP in respect of a Fiscal Quarter or a Fiscal Year;

"**New Shareholders Agreement**" has the meaning ascribed thereto in Section 11.5;

"**Non-Defaulting Special Partners**" has the meaning ascribed thereto in Section 16.1, *in fine*;

"**Note**" means the promissory note issued by the Partnership to BSI pursuant to the Business Transfer Agreement;

"**Offer Notice**" has the meaning ascribed thereto in Section 10.4(a);

"**Original Limited Partnership Agreement**" has the meaning ascribed thereto in the preamble;

"**Partners**" means the General Partner and the Special Partners, and "**Partner**" means any one of them;

"**Partnership**" has the meaning ascribed thereto in the preamble;

"**Partnership Interest**" means the interest of a Partner in the Partnership consisting of: (i) such Partner's interest and share in profits, losses, reserves, holdbacks, allocations and distributions of the Partnership and its common stock (as referred to in the Civil Code); (ii) such Partner's capital account maintained on the books of the Partnership; (iii) such Partner's right to vote or grant or withhold consents or approvals with respect to Partnership matters (if any) as provided herein or in the Civil Code; and (iv) such Partner's other rights, obligations and privileges as provided herein or in the Civil Code, and includes Units;

"**Partnership Property**" means the assets and property (including monies) of the Partnership, from time to time;

"**Partnership Publicity Act**" means the *Act respecting the legal publicity of sole proprietorships, partnerships and legal persons* (Québec) as the same may be amended,

supplemented or restated from time to time, and includes all regulations promulgated thereunder; and any reference to the Partnership Publicity Act also refers to any successor or replacement legislation of the Province of Québec;

"**Paying Non-Default Special Partner**" has the meaning ascribed thereto in Section 16.6;

"**Person**" means any individual, sole proprietorship, partnership, corporation or company, with or without share capital, trust, foundation, joint venture or any other incorporated or unincorporated entity or association of any nature;

"**Prime Rate**" means, in respect of any day, the annual rate of interest established from time to time by the Royal Bank of Canada or its successor as being its reference rate then in effect for determining interest rates on commercial loans in Canadian Dollars made in Canada by Royal Bank of Canada or its successors;

"**Pro-Rata Share**" means, with respect to any Partner, (i) the percentage determined by dividing the number of Units held by such Partner by the total number of issued and outstanding Units at such time, and (ii) as of the date of this Agreement, the percentage set forth next to such Partner's name as its Pro-Rata Share in Section 8.5; provided that the total of all Pro-Rata Shares shall always be equal to 100%;

"**Put Notice**" has the meaning ascribed thereto in Section 10.6(b);

"**Put Trigger Date**" has the meaning ascribed thereto in Section 10.6(c);

"**Qualifying Shares**" means shares that a Person must hold to qualify as a director of the issuing corporation under applicable Law, or shares held by a Person or Persons (equal to no more than 1% of the issued and outstanding share capital of the issuing corporation) so that the issuing corporation has the minimum number of shareholders or members required under applicable Law;

"**Register**" means the register of, inter alia, the names and domicile of each of the Special Partners, the number of Units held by each of the Special Partners, any information concerning their contributions to the common stock of the Partnership, and such other information which the General Partner is required to keep under the Civil Code;

"**Rules**" has the meaning ascribed thereto in Section 19.3(a);

"**Schedules**" means the Schedules attached hereto;

"**Security Interest**" means any mortgage, pledge, assignment by way of security, security granted under the *Bank Act* (Canada), hypothec (legal or conventional, immovable or movable, with or without delivery), pledge, security agreement, financing or any other security interest on any property and any and all similar arrangements, conditions or encumbrances on any property that in substance secure payment or performance of an obligation, including any and all similar arrangements, conditions or encumbrances on any property under any Law applicable to any Partner;

"**Selling Partner**" has the meaning ascribed thereto in Section 10.7;

"**Series A Partner**" means the Special Partner that holds, or whose Affiliate holds, the GP Class A Shares (being BSI as at the date of this Agreement);

"**Series B Partner**" means the Special Partner that holds, or whose Affiliate holds, the GP Class B Shares (being DCC LP Canco as at the date of this Agreement);

"**Shareholders Agreement**" means the shareholders agreement with respect to GP entered into concurrently with this Agreement between BSI, DCC GP Co and GP, as the same may be amended from time to time;

"**Special Partner**" means the special partners of the Partnership as at the date of this Agreement, namely BSI and DCC LP Canco, for so long as they remain special partners of the Partnership, and any other Person which becomes and remains a special partner of the Partnership in accordance with the provisions of this Agreement; and "**Special Partners**" is the collective reference to all such parties;

"**Supply Agreement**" means the agreement between the Partnership, DCC Customer and BSI entered into on the date hereof, as the same may be amended from time to time, regarding the supply and allocation of silicon metal output from the Business;

"**Tagging Partner**" has the meaning ascribed thereto in Section 10.5;

"**Taxation Act**" means the *Taxation Act* (Québec) as the same may be amended, supplemented or restated from time to time, and includes all regulations promulgated thereunder; and any reference to the Taxation Act also refers to any successor or replacement legislation of the Province of Québec;

"**Third Party Offer**" has the meaning ascribed thereto in Section 10.4;

"**Transfer**" means, in respect of a Partnership Interest or GP Shares, a transfer, sale, exchange, assignment, creation of a Security Interest or other encumbrance or disposition, including the grant of an option or other right, whether directly or indirectly through the transfer of equity interests of an Affiliate substantially all of whose assets are comprised of a Partnership Interest or GP Shares, whether voluntarily, involuntarily, by operation of law or pursuant to a merger, amalgamation, consolidation or similar business combination, of or in relation to such Partnership Interest and/or GP Shares; *provided*, that (i) a transfer of equity interests in BSI Parent shall not be deemed a Transfer (although may represent a Change of Control Event), (ii) a transfer of the equity interests of DCC LP Canco Parent shall not be deemed a Transfer, (iii) a reorganization involving BSI and BSI Parent whereby BSI is merged or wound-up into BSI Parent shall not be deemed a Transfer and a reorganization of DCC LP Canco and DCC LP Canco Parent (or one of its Affiliates) whereby DCC LP Canco is merged or wound-up into DCC LP Canco Parent (or one of its Affiliates) shall not be deemed a Transfer and (iv) "**Transferred**", "**transferred**", "**Transferee**", and "**transferee**" each have a correlative meaning. The foregoing notwithstanding, the grant of a Security Interest in a Partnership Interest or GP Shares to a financial institution in connection with any bona

vide loan to a Partner or its Affiliates from such financial institution in which such financial institution does not have the power to vote or dispose of such Partnership Interest or GP Shares other than in case of a default caused by the action or inaction of such Partner, and, in such case, such financial institution holds the Partnership Interest or GP Shares subject to the terms and conditions of this Agreement and the Shareholders Agreement (including, without limitation, subject to the provisions of Article 10 hereof), and which Security Interest shall be automatically released upon a Special Partner's exercise of any call rights under Sections 10.7 and 16.5, shall not be deemed a Transfer;

"**Unanimous Resolution**" means:

- (i) a resolution passed by the votes of both Special Partners at a duly constituted meeting of the Partners or any adjournment thereof; or
- (ii) a written resolution signed in one or more counterparts by both Special Partners;

"**Units**" means the units evidencing the Partnership Interest of a Partner; and

"**Valuation Price**" has the meaning ascribed thereto in Section 10.6(d).

ARTICLE 2 TERM

2.1 Effective date and Term

This Agreement will be effective from the date hereof and, unless it is terminated earlier in accordance with the terms of this Agreement, will continue for a period of 99 years commencing as and from October 1, 2010. To the fullest extent permitted under applicable Law, each of the Partners hereby waives its rights under Article 2228 of the Civil Code with respect to withdrawal from the Partnership.

ARTICLE 3 THE PARTNERSHIP

3.1 Formation of Partnership.

GP, as general partner, and BSI, as special partner, constituted themselves as a limited partnership under the Civil Code and the Partnership Publicity Act on August 18, 2010 and subject to the terms and conditions of the Original Limited Partnership Agreement. Each of GP and BSI hereby acknowledge and agree that it has executed such declarations, certificates, statements and other documents, and has done such filings, registrations and recordings and performed such other acts that were required in order to comply with the requirements of Laws applicable in the Province of Québec for the formation and maintenance of the Partnership as a limited partnership. The Partners hereby acknowledge and agree that henceforth they shall execute such other declarations, certificates, statements and other documents, and do such further filings, registrations and recordings and perform such further acts that shall be required in order to comply with the requirements of Laws applicable in the Province of Québec for the maintenance of the Partnership as a limited partnership.

3.2 Name

The Partnership shall carry on business under the name of "*Silicium Québec Société en commandite*" in its French language version and "*Québec Silicon Limited Partnership*" in its English language version or such other name as may, from time to time, be designated by all the Partners. Subject to applicable Law, the French and English language versions may be used alone or together.

3.3 United States Tax Classification

It is the intention of the parties hereto that the Partnership be treated as a partnership for United States federal, state and local income tax purposes. The Partnership shall not elect to be treated as other than a partnership under Treasury Regulations Section 301.7701-3(c) (or any corresponding applicable provisions of United States state or local law) unless the Series B Partner instructs the Partnership otherwise, in which case the Partnership shall make such election and timely file any required Internal Revenue Service Forms, as instructed by the Series B Partner. Subject to such election, neither the Partnership nor any Partner shall take any other action that may cause the Partnership to be treated as other than a partnership for United States federal, state and local income tax purposes.

ARTICLE 4 BUSINESS OF THE PARTNERSHIP

4.1 Business

The Partnership was formed and is hereby continued for the purpose of carrying out the Business. Except as otherwise provided in this Agreement, the Partnership will have the power to do any and every act necessary, proper, convenient or incidental to the pursuit or accomplishment of the Business under this Agreement. The Partnership shall carry on business in such a manner as to ensure, to the greatest extent possible, the limited liability of the Special Partners, and the General Partner shall register the Partnership in any jurisdiction where the General Partner considers it appropriate or is required to do so.

4.2 Registered domicile and principal executive office

The registered domicile of the Partnership shall be located at 6500, Yvon-Trudeau Street, Bécancour, Québec, or at such other location approved by all the Partners.

4.3 Fiscal Year

The fiscal year of the Partnership will end on December 31 of each year, subject to amendment by the GP Board in accordance with the Shareholders Agreement (the "Fiscal Year").

**ARTICLE 5
MANAGEMENT OF THE PARTNERSHIP**

5.1 General

Subject to the provisions of the Civil Code, the business and affairs of the Partnership will be managed solely by the General Partner. Subject to the terms of this Agreement, the Shareholders Agreement and the GP Organizational Documents, the General Partner shall have exclusive authority to manage, control and administer the business, affairs and undertaking of the Partnership and, subject to decisions of the Special Partners under this Agreement (when required), to make all decisions regarding the business, affairs and undertaking of the Partnership. Pursuant to the foregoing, the General Partner shall have all of the rights and powers of a general partner as provided in the Civil Code and as otherwise provided by applicable Law, and, subject to the foregoing, any action taken by the General Partner shall constitute the act of, and serve to bind, the Partnership.

5.2 Restrictions on Special Partners

Subject to the provisions of the Civil Code, no Special Partner shall have any right or authority to:

- (a) borrow or use the funds of the Partnership; or
- (b) except as permitted or contemplated under this Agreement, compel or seek a partition or sale, judicial or otherwise, of any Partnership Property, or otherwise require any Partnership Property to be distributed to any Partner in kind.

5.3 Restrictions on General Partner

Notwithstanding the provisions of Section 5.1, the General Partner shall not, without the prior written consent of all of the Special Partners:

- (a) do any act in contravention of this Agreement;
- (b) do any act which makes it impossible to carry on the business, affairs and undertaking of the Partnership; or
- (c) carry-on any business, affairs and undertaking other than the Business.

5.4 Limited Liability of a Special Partner

Subject to the provisions of the Civil Code, the liability of a Special Partner for the debts, liabilities and other obligations of the Partnership is limited to its agreed contribution to the Partnership pursuant to this Agreement and a Special Partner will not as such or otherwise be liable for any further assessment, claim or contribution to the Partnership. For greater certainty, the approval, whether express or implied, if any, by any Special Partner of any cash call forecast presented to the Special Partners shall in no event constitute or be construed as an amount which such Special Partner has agreed to contribute to the Partnership.

**ARTICLE 6
THE GENERAL PARTNER**

6.1 Power of Attorney

Each Special Partner hereby constitutes and appoints the General Partner, with, subject to the Civil Code, full power and authority to delegate, without however in any way relieving the General Partner from any of its obligations and liabilities hereunder or under any applicable Law, its true and lawful attorney, agent and mandatary, with full power and authority, in its name, place and stead, and for its use and benefit, to:

- (a) execute, swear to, record and file in the appropriate public offices any and all of the following:
 - (i) all declarations, including declarations of change, and other instruments necessary to form, qualify, continue and keep in good standing the Partnership as a valid and subsisting limited partnership under Laws applicable in the Province of Québec and in all jurisdictions where it carries on business;
 - (ii) all declarations, including declarations of change, and other instruments necessary to reflect any amendment to this Agreement, provided, that such amendments were duly authorized pursuant to this Agreement; and
 - (iii) any elections under the Income Tax Act, the Taxation Act, and under any analogous legislation on behalf of the Partnership as may be necessary, prudent or advisable in connection with the business, assets, properties, affairs and undertaking of the Partnership, including its dissolution, winding-up, liquidation and termination (if such dissolution, winding-up, liquidation or termination is authorized pursuant to this Agreement), as the case may be, *provided*, that the General Partner does not exceed its authority, in executing any such elections;
- (b) execute and file with any governmental authority any documents necessary to be filed in connection with the business, assets, properties, affairs and undertaking of the Partnership as authorized in this Agreement;
- (c) subject to the provisions of this Agreement, execute and deliver such documents for, on behalf of and in the name of the Partnership as may be necessary to carry on the Business;
- (d) execute and deliver such documents as are necessary to give effect to any duly authorized amendment to this Agreement; and
- (e) execute and deliver such instruments, documents, conveyances and other instruments as may be necessary in the discretion of the General Partner to give effect to any dissolution, winding-up, liquidation or termination of the Partnership authorized pursuant to this Agreement. The authority granted to the General Partner pursuant to this Section 6.1(e) shall not cease on the dissolution, winding-up, liquidation or

termination of the Partnership, but shall continue in full force and effect thereafter. The provisions of this Section 6.1, however, shall not permit the General Partner to delegate authority for matters requiring a special vote of the GP Board pursuant to the GP Organizational Documents or the Shareholders Agreement, unless any such approval is obtained.

6.2 General Provisions Concerning Power of Attorney

The grant of power and authority contained in Section 6.1:

- (a) has been granted in connection with the performance of a specific obligation, namely the obligation to administer and manage the business, assets, properties, affairs and undertaking of the Partnership;
- (b) may be exercised by the General Partner on behalf of each Special Partner by a facsimile signature or by listing all of the Special Partners executing any instrument with a single signature as attorney and agent for all of them; and
- (c) will extend to and be binding upon the heirs, executors, administrators, legal representatives, successors and assigns of the Special Partners.

Notwithstanding Section 6.1(e), the power of attorney shall continue only as long as the attorney, agent and mandatary is the general partner of the Partnership, and shall terminate thereafter with respect to that attorney, agent and mandatary upon substitution therefor of a replacement general partner of the Partnership, and shall also terminate with respect to a Special Partner on any Transfer by the Special Partner of all of its Partnership Interest except with respect to such actions as are necessary to effect substitution of the transferee or assignee as a Special Partner in the Partnership.

6.3 Specific Power and Authority of the General Partner

- (a) Subject to the terms and conditions of this Agreement and subject to obtaining any requisite approval of the GP Board in accordance with the GP Organizational Documents and/or Shareholders Agreement, it is hereby acknowledged and agreed that the General Partner has been authorized to do for or on behalf of or in the name of the Partnership all things which, in its sole judgment, are necessary, proper or desirable to manage and carry on the Business (including the day-to-day business, affairs and undertaking of the Partnership), with the right, power and authority for and on behalf of and in the name of the Partnership, and responsibility and obligation, to:
 - (i) maintain proper and complete accounting records for the Partnership, including as required by the Partnership and/or by applicable Law;
 - (ii) authorize the payment of operating expenses incurred on behalf of the Partnership in connection with the Business;
 - (iii) calculate the amount of allocations and distributions by the Partnership;

- (iv) prepare financial statements, regulatory filings, income tax returns, information returns, compliance reports and financial and accounting information as required by the Partnership and/or by applicable Law;
- (v) ensure that the Partners are provided with financial statements and other reports as are required from time to time by applicable Law or under this Agreement;
- (vi) ensure that the Partnership is operated at a level commensurate with industry standards and, in all cases, complies with all applicable regulatory requirements and applicable Laws (including, without limitation, those related to labour, safety and environmental matters);
- (vii) ensure that the Partnership adopts, and adheres to, the code of conduct governing the operations of BSI (including the portions of such code relating to laws comparable to the *United States Foreign Corrupt Practices Act*);
- (viii) negotiate and enter into contracts and agreements with third-party providers of services, including attorneys, auditors, contractors and engineers, with respect to the Business;
- (ix) negotiate, execute and perform all agreements which require execution by the Partnership involving matters or transactions with respect to the Business;
- (x) open and manage bank accounts in the name of the Partnership and spend the capital of the Partnership in the exercise of any right or power exercisable by the General Partner hereunder, in connection with the Business;
- (xi) except as expressly limited in this Agreement, incur such liabilities in the name of the Partnership from time to time as the General Partner may determine without limitation with regard to amount, cost or conditions of reimbursement of such liabilities, in connection with the Business;
- (xii) purchase, lease, or otherwise deal with assets and properties for the Business;
- (xiii) transfer, assign, encumber, hypothecate or pledge all or any of the Partnership Property now owned or hereafter acquired, to secure any present and future liabilities and related expenses of the Partnership and to sell all or any of such Partnership Property pursuant to a foreclosure or other realization upon the foregoing transfers, assignments, encumbrances, hypothecations and pledges;
- (xiv) establish cash reserves that are determined to be necessary or appropriate for the proper management and operation of the Partnership;
- (xv) see to the sound management of the Partnership, and manage, control and develop all the activities of the Partnership and take all measures necessary or appropriate for the Business or ancillary thereto;

- (xvi) incur costs and expenses in the name of or for the account of the Partnership, provided, that such costs and expenses are incurred in connection with the Business;
- (xvii) employ, retain, engage or dismiss from employment personnel, counsel, auditors, agents, contractors, subcontractors, engineers, representatives or professionals with the powers and duties, as may be necessary, prudent or advisable in the carrying on of the Business (including, without limitation, pursuant to any services agreement which may be in effect from time to time);
- (xviii) invest cash assets of the Partnership that are not immediately required for the Business in investments which the General Partner considers appropriate;
- (xix) act as attorney in fact or agent and mandatary of the Partnership in disbursing and collecting monies for the Partnership and fulfilling the obligations of the Partnership and handling and settling any claims of the Partnership;
- (xx) commence or defend any act or proceeding in connection with the Partnership (including, subject to Section 19, defend any action taken against the directors and officers of the General Partner);
- (xxi) file returns or other documents required by any governmental, regulatory or like authority;
- (xxii) do anything that is in furtherance or incidental to the Business or that is provided for in this Agreement;
- (xxiii) obtain and maintain insurance coverage (including directors and officers insurance) commensurate with industry standards;
- (xxiv) execute, acknowledge and deliver the documents necessary to effect any or all of the foregoing or otherwise in connection with the Business;
- (xxv) generally carry out the objects, purposes, business and undertaking of the Partnership; and
- (xxvi) provide office facilities and personnel to carry out any of the foregoing acts, functions or services.

6.4 Duty of Care

The General Partner shall exercise the powers and authorities and discharge its duties under this Agreement honestly and in good faith, and in the best interests of the Special Partners, and in connection therewith, exercise the degree of care, diligence and skill that a reasonable prudent general partner of a partnership, the principal business and undertaking of which is the Business, would exercise in comparable circumstances. The General Partner shall manage and operate the Partnership in such a manner as to ensure that the limited liability of the Special Partners is retained.

6.5 Limitation of Liability

- (a) Neither the General Partner nor any Affiliated Persons thereof nor their respective shareholders, officers, directors, or employees shall be liable, responsible or accountable in damages or otherwise to the Partnership or any Special Partner for any action taken or failure to act on behalf of the Partnership within the scope of the power and authority conferred on the General Partner by this Agreement or by applicable Law unless such action or omission was performed or omitted fraudulently or constituted an intentional or gross fault.
- (b) The General Partner is not personally liable for the return of any Capital Contribution made by a Partner to the Partnership.
- (c) The General Partner may exercise any of the powers or authority granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its mandataries and agents, and the General Partner shall not be responsible for any misconduct or negligence on the part of any such mandatary or agent appointed by the General Partner honestly, in good faith and in the best interests of the Special Partners.

6.6 Payments to the General Partner of Expenses

All expenses incurred by the General Partner in managing and operating the Partnership, including the cost of such professional, technical, administrative and other services and advice as it shall deem necessary, shall be paid by the Partnership.

6.7 Other Matters Concerning the General Partner

- (a) The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document believed by it to be genuine and to have been signed, delivered or presented by the proper Person.
- (b) The General Partner may consult with reputable legal counsel, accountants, investment bankers and other consultants, experts and advisers selected by it, and any act taken or omitted in reliance upon the opinion of such Persons as to matters that the General Partner reasonably believes to be within such Person's professional or expert competence shall be conclusively presumed to have been done or omitted in good faith.

6.8 Status and Capacity of the General Partner and the Partnership

The General Partner hereby represents and warrants to and covenants with each Special Partner that:

- (a) *Subsistence (General Partner)*. The General Partner is and will continue to be a valid and subsisting company under the *Companies Act* (Québec) or such other jurisdiction under which the General Partner may be continued or under which a successor to the General

Partner may be formed, incorporated, amalgamated or continued, and has the capacity to own its assets and properties;

- (b) *Subsistence (Partnership)*. The Partnership is, and subject to the provisions of this Agreement, will continue to be, a valid and subsisting limited partnership under the Laws applicable in the Province of Québec or such other jurisdiction under which the Partnership may become registered;
- (c) *Capacity (General Partner)*. The General Partner has the full capacity and authority to act as the general partner of the Partnership, to perform its obligations under this Agreement and to enter into and be bound by this Agreement;
- (d) *Capacity (Partnership)*. The Partnership has the full capacity and authority to perform its obligations under this Agreement and to be bound by this Agreement;
- (e) *Residency (General Partner)*. The General Partner is and will continue to be a "corporation deemed resident" in Canada for the purposes of the Income Tax Act;
- (f) *Activities*. The General Partner has not conducted and will not conduct any business or activities other than business or activities related to the business, affairs and undertaking of the Partnership and has no assets or liabilities of any nature other than assets or liabilities acquired in connection with the business, affairs and undertaking of the Partnership (which assets may include Partnership Interest); and the General Partner, while the general partner of the Partnership, will carry on no business and incur no liabilities other than for the purposes set forth in this Agreement or resulting, directly or indirectly, from it being the General Partner;
- (g) *Extra-Jurisdictional Registration (Partnership)*. The Partnership is, and will continue to be, qualified to carry on business in any jurisdiction in which the Partnership carries on business if such qualification is required under the laws of that jurisdiction;
- (h) *Extra-Jurisdictional Registration (General Partner)*. The General Partner holds and will maintain the registrations necessary for the conduct of its business and has and will continue to have all licenses and permits necessary to carry on its business as the general partner of the Partnership in all jurisdictions where the activities of the General Partner or the Partnership require licensing or some other form of registration of the General Partner;
- (i) *Authorizations*. This Agreement has been duly authorized, executed and delivered by the General Partner;
- (j) *No Conflict*. The signing, delivery and performance by the General Partner of this Agreement do not violate any of the articles, by-laws or other constating documents of the General Partner, or any agreements to which it is a party or any applicable Law, except for such violations which would not have a material adverse effect on the Partners or the Partnership;

- (k) *Legally Binding.* This Agreement constitutes legal, valid and binding obligations of the General Partner, enforceable against it in accordance with its terms;
- (l) *No Bankruptcy or Insolvency.* The General Partner is not bankrupt or Insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt or Insolvent; and
- (m) *Legal Proceedings.* There is not pending against the General Partner or, to its knowledge, threatened against it any legal proceedings that could have a material adverse effect on the Partners or the Partnership.

The General Partner hereby covenants and agrees that it will not change its status as represented and warranted herein and shall promptly provide evidence of such status to any Special Partner that may reasonably request such evidence.

6.9 Insurance

The General Partner, at the expense of the Partnership, shall, subject to any requisite approval of the GP Board under the GP Organizational Documents and/or Shareholders Agreement, at all times maintain or cause to be maintained public liability insurance and "all risks" physical loss or damage insurance against all Partnership Property and such other insurance, in such amount and type as is customary for a business similar to the Business and as is otherwise deemed by the General Partner to be prudent in the circumstances.

6.10 Transactions Involving the General Partner and its Controlled Affiliated Persons

Subject to the other provisions of this Agreement and the Shareholders Agreement, the validity of a transaction, agreement or payment involving the Partnership, on the one hand, and the General Partner and/or its Controlled Affiliated Persons, on the other hand, shall not be affected by reason of the relationship between the Partnership, the General Partner and its Controlled Affiliated Persons, including by reason of the approval of the transaction, agreement or payment by the directors of the General Partner, all of whom may be officers or directors of or otherwise interested in or related to the Controlled Affiliated Person.

6.11 Safekeeping of Assets

The General Partner is responsible for the safekeeping and use of all Partnership Property, whether or not in its immediate possession or control, and will not employ or permit another Person to employ or use Partnership Property except for the exclusive benefit of the Partnership.

6.12 Payments

The General Partner shall pay or cause to be paid out of the funds of the Partnership, on hand or borrowed for the purpose of the Business, costs or expenses as and when they become due.

6.13 Restrictions upon the General Partner

The General Partner's power and authority does not extend to any matter, power, action or authority set forth in Section 7.8 of the Shareholders Agreement, unless and until the requisite approval of the GP Board is obtained in accordance with the Shareholders Agreement and/or the GP Organizational Documents.

6.14 Prohibition from Commingling Funds

The funds of the Partnership shall not be commingled with the funds of the General Partner or any other Person.

ARTICLE 7 THE SPECIAL PARTNERS

7.1 Status and Capacity of the Special Partners

Each Special Partner hereby represents and warrants to and covenants with the General Partner and each other Special Partner that, as of the date hereof:

- (a) *Subsistence.* It is duly formed, constituted, created, incorporated, amalgamated or continued, as the case may be, and validly existing under the laws of its jurisdiction of formation, constitution, creation, incorporation, amalgamation or continuation, as the case may be, and it has the capacity to own its assets and properties;
- (b) *Capacity.* It has the capacity and authority to enter into and be bound by this Agreement;
- (c) *Residency.* It is and will continue to be (i) "resident" in Canada for the purposes of the Income Tax Act or (ii) a "Canadian partnership" within the meaning of the Income Tax Act;
- (d) *Authorizations.* This Agreement has been duly authorized, executed and delivered by it;
- (e) *No Conflict.* The signing, delivery and performance by it of this Agreement do not violate any of its articles, by-laws or other constating documents, or any agreements to which it is a party or any applicable Law, except for such violations which would not have a material adverse effect on the Partnership or the Partners;
- (f) *Legally Binding.* This Agreement constitutes legal, valid and binding obligations of such Special Partner, enforceable against it in accordance with its terms;
- (g) *No Bankruptcy or Insolvency.* It is neither bankrupt nor Insolvent, and there are no proceedings pending or being contemplated by it, and/or to its knowledge, threatened against it, which would result in it being or becoming bankrupt or Insolvent;
- (h) *Legal Proceedings.* There is not pending or, to its knowledge, threatened against it any legal proceedings that could have a material adverse effect on the Partnership or the Partners; and

- (i) *Title to Partnership Interest.* It owns the Partnership Interest registered in its name free and clear of any Security Interest other than Security Interest permitted by Section 9.1.

Each Special Partner hereby covenants and agrees that it shall not change its status under Sections 7.1(b) and 7.1(g) as represented and warranted herein, shall promptly provide evidence of its status under Section 7.1(b) to the General Partner upon reasonable request and shall not Transfer its Partnership Interest or any part thereof to any Person which would be unable to make the representations and warranties set forth in this Section 7.1.

7.2 Competing Businesses

Each Special Partner agrees that, except as expressly provided in this Agreement, the Framework Agreement, the Shareholders Agreement or the Supply Agreement, no Special Partner shall have any duty to disclose any information to the Partnership or permit the Partnership to participate in any projects or investments or any other opportunity that may be of interest to the Partnership if it were aware of such information or opportunity, and GP hereby waives, on behalf of the Partnership to the extent permitted by law, any claim based on the corporate opportunity doctrine or any similar legal doctrine. The Special Partners agree that, subject to fulfillment of their obligations in this Agreement, the Framework Agreement, the Shareholders Agreement and the Supply Agreement, any Special Partner may compete or engage in activities that are competitive, directly or indirectly, with the Partnership or any other Special Partner. Notwithstanding the foregoing, whenever this Agreement requires any Person (including GP and the GP Board) to make any determination or take any action in "good faith", such requirement shall include the obligation to not favour any Special Partner over any other Special Partner.

ARTICLE 8 CAPITAL

8.1 Capital

The Partnership may issue an unlimited number of Units. The interests of the Partners in the assets, profits and losses of the Partnership shall be divided into and represented by Units issued in accordance with this Agreement, each representing a proportionate share of the aggregate interests of the Partners in the assets, profits and losses of the Partnership.

8.2 Attributes of the Units

Except as otherwise expressly provided herein, each Unit shall be non-transferable and non-redeemable. To the fullest extent permitted under applicable Law, each of the Special Partners hereby waives its rights under Article 2241 of the Civil Code with respect to the withdrawal of capital contributions. Each Unit shall be identical to all other Units in all respects and, accordingly, shall entitle the holder to the same rights and obligations as a holder of any other Unit; *provided, however,* that each Partner hereby acknowledges and agrees that the ownership of Units by the Special Partners shall not in any event affect the status and rights and obligations pursuant to this Agreement of the Special Partners as special partners of the Partnership, notwithstanding the fact that the Units held by the Special Partners have the same

attributes as the Units held by the General Partner. Each Unit is a security for the purposes of *An Act respecting the transfer of securities and the establishment of security entitlements* (Québec).

For greater certainty and subject to and without limiting any other provisions of this Agreement, each Unit shall have equal voting, distribution, liquidation and other rights and shall have no preference, conversion, exchange, pre-emptive or redemption rights.

8.3 Units Fully-Paid and Non-Assessable

The Partnership shall issue Units only as fully-paid and non-assessable.

8.4 [Reserved]

8.5 Individual Capital Accounts

An individual capital account shall be maintained for each Partner and shall be credited with the amount of its Capital Contribution to the Partnership. Each capital account shall be maintained in Canadian currency for tax, accounting and any other purpose. Any Capital Contribution in United States currency by DCC LP Canco is to be converted to Canadian currency in its capital account on the date hereof using a United States dollar/Canadian dollar exchange rate equal to the internal rate of Dow Corning Corporation as at September 30, 2010. No Partner shall be entitled to withdraw any part of its capital account or to receive any Distribution except as provided or permitted in this Agreement. The Partnership Interest of a Partner shall not terminate by reason of there being a negative or a zero balance in its capital account. The Partners shall not be entitled to interest on any amounts standing to their credit in the capital accounts of the Partnership.

8.6 Units Issued and Outstanding

The following table sets out the name of the holder of Units, the number of Units held by each such Person and the Pro Rata Share held by each such Person, as at the date hereof following the DCC LP Canco Unit Acquisition:

Name of holder of Units	Number of Units held by each such Partner	Pro Rata Share held by each such Partner
GP	10	.01%
BSI	51,000	50.9949%
DCC LP Canco	49,000	48.9951%
TOTAL	100,010	100%

8.7 Admission of Additional Partners

No Person shall be admitted to the Partnership as either a Special Partner or a General Partner without approval by a Unanimous Resolution or otherwise as expressly permitted under this Agreement or the Shareholders Agreement.

8.8 Additional Units

No additional Units may be issued without approval by a Unanimous Resolution or otherwise as expressly provided in this Agreement or the Shareholders Agreement.

8.9 Registrar and Transfer Agent; and Amendments to the Register

The General Partner shall act as registrar and transfer agent for the Partnership and shall maintain such books and records as are necessary and appropriate to record the names and domicile of the Special Partners, the number of Units held by each Special Partner, any information concerning their contributions to the common stock of the Partnership, any advances made by the Special Partners to the Partnership, particulars of any transfers of Units, and such other information which the General Partner is required to keep under the Civil Code. Without limiting the generality of the foregoing, the General Partner shall promptly register and give effect to all Transfers which are permitted under this Agreement (including additions, removals and amendments required to be made to the Register and the Declaration which result therefrom), proceed with the issuance of all Units resulting therefrom and ensure that a Register is maintained in accordance with the Civil Code and the Partnership Publicity Act. The said registrar and transfer agent shall perform all duties usually and customarily performed by transfer agents and registrars of certificates of shares in a corporation, except as the same may be modified or adapted to take into consideration the existence of units, instead of shares, and a partnership instead of a corporation.

8.10 Inspection of Register

The General Partner shall permit any Special Partner or its agent duly appointed in writing at the expense of the Special Partner to inspect the Register at any reasonable time during normal business hours.

8.11 Certificates

The form of certificate evidencing a Unit shall be in such form as is from time to time approved by the General Partner and shall be signed by the General Partner. Every Partner shall be entitled to receive a certificate evidencing the Units of such Partner. Each certificate shall be endorsed with a legend to the effect that the Units evidenced thereby may not be sold, exchanged, transferred, assigned, donated, encumbered, hypothecated, mortgaged, pledged, alienated or monetized except as permitted under this Agreement.

8.12 Lost Certificates

Where a Partner claims that the certificate for its Units has been defaced, lost, destroyed or wrongly taken, the registrar and transfer agent shall cause a new certificate to be issued in substitution for the original certificate if the Partner satisfies such other reasonable requirements imposed by the registrar and transfer agent including a requirement to deliver a form of proof of loss and an indemnity.

8.13 Effect of Registration

The receipt by the Person in whose name any Unit is recorded on the Register shall be a sufficient discharge for all monies, securities and other property payable, issuable or deliverable in respect of such Unit and from all liability therefor. The Partnership and the General Partner are entitled to treat the Person in whose name a Unit is registered as the absolute owner thereof.

8.14 Retirement of Note

Promptly following the execution of this Agreement and the issuance of LP Interests to DCC LP Company, the Partnership shall pay to BSI US \$40,254,751, in full satisfaction of the Note.

ARTICLE 9 SECURITY INTERESTS

9.1 Limitation on Security Interests

Except (i) for Security Interests created in favour of Affiliates, (ii) as otherwise provided in Section 9.2, (iii) with approval by Unanimous Resolution or (iv) for Security Interests the creation of which would not constitute a Transfer pursuant to the definition thereof, no Partner shall create or suffer to be created any Security Interest on any of its Partnership Interest, its rights under this Agreement, the Shareholders Agreement or the Supply Agreement. Any purported Security Interest that is not in compliance with this Section 9.1 shall be void as between the Partners and the Partnership.

9.2 Security Interest by Operation of Law

Section 9.1 shall not apply to any Security Interest on the Partnership Interests or the rights under this Agreement or the Shareholders Agreement or the Supply Agreement arising from or imposed by any applicable Law which secures payment or performance by any Partner of any obligations that are not overdue, delinquent or payable.

ARTICLE 10 TRANSFER OF PARTNERSHIP INTEREST

10.1 Prohibition on Transfer

Notwithstanding Article 2243 of the Civil Code, for a period of five years after the date hereof, no Partner shall Transfer all or any part of its Partnership Interest except with the prior written agreement of all of the other Partners (which consent may be withheld for any or no reason), except as provided in Section 10.8. In addition, no Partner may at any time Transfer less than all of its Partnership Interest. All permitted Transfers (other than Transfers contemplated by Section 10.8) are subject to a corresponding Transfer of all of a Partner's (or, as applicable, one of its Affiliate's) GP Shares and, except as otherwise expressly provided, its (or, as applicable, one of its Affiliate's) rights and obligations under the Supply Agreement.

10.2 No Violation of Applicable Laws

Notwithstanding anything herein to the contrary, no Partner shall be entitled to Transfer any Partnership Interest at any time if such Transfer would violate applicable Laws.

10.3 Transfers in Violation of this Agreement

Any purported Transfer by a Partner of all or any part of its Partnership Interest (and its, or, as applicable, an Affiliate's, rights under the Supply Agreement) other than in accordance with this Agreement shall be null and void, and the General Partner shall refuse to recognize any such Transfer of such Partnership Interest (and rights under the Supply Agreement) for any purpose and shall not reflect in the Register any change in ownership of such Partnership Interest pursuant to any such Transfer. Any Partner purporting to make a Transfer of all or any part of its Partnership Interest which is null and void pursuant to this Agreement shall (until such time as such Partner agrees in a writing executed by such Partner and delivered to the Partnership that such purported Transfer is rescinded and shall have no force or effect) cease to have any rights and powers otherwise provided to such Partner pursuant to this Agreement with respect to the Partnership, except that such Partner shall have the right to share in such profits and losses, to receive such Distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which such Partner is otherwise entitled pursuant to this Agreement. Any purported Transferee of a Transfer which is null and void pursuant to this Agreement shall have no rights or powers with respect to the Partnership pursuant to this Agreement.

10.4 Rights of First Refusal

Following the five-year period immediately following the date hereof, if a Special Partner desires to Transfer all (but not less than all) of its Partnership Interest and all (but not less than all) of its (or one of its Affiliate's) GP Shares and such Partner shall have received a bona fide written proposal from a third party to acquire its Partnership Interest and its (or one of its Affiliate's) GP Shares and its rights under the Supply Agreement which otherwise complies with the terms of this Agreement (a "Third Party Offer"), then the Transfer shall be permitted as provided herein, subject to a right of first refusal in favor of the other Special Partner in accordance with the following provisions:

- (a) The transferring Special Partner shall provide the other Special Partner having a right of first refusal under this Section 10.4 with written notice (an "Offer Notice") of its desire to Transfer its Partnership Interest. The Offer Notice shall state that such Special Partner wishes to Transfer its Partnership Interest, the name and identity of the transferees, the proposed purchase price for its Partnership Interest and any other terms and conditions material to the sale set forth in the bona fide offer and contain a copy of the bona fide offer.
- (b) The other Special Partner shall have a period of up to 30 days following receipt of an Offer Notice from the transferring Special Partner to elect to purchase (or to cause one of its Affiliates to elect to purchase) all of such transferring Special Partner's Partnership Interest and to acquire all of the transferring Special Partner's (or, if applicable, its Affiliate's) related rights under the Supply Agreement on the terms and conditions set