



File No. S-1510120
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT
OF NEW WALTER ENERGY CANADA HOLDINGS, INC., NEW WALTER
CANADIAN COAL CORP., NEW BRULE COAL CORP., NEW WILLOW CREEK
COAL CORP., NEW WOLVERINE COAL CORP. AND CAMBRIAN
ENERGYBUILD HOLDINGS ULC

PETITIONERS

ELEVENTH REPORT OF THE MONITOR, KPMG INC.

July 4, 2017

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INTRODUCTION AND PURPOSE OF THE MONITOR'S SPECIAL PURPOSE REPORT

1. This is the eleventh report of the Monitor (the “**Eleventh Report**”) and has been prepared as a special purpose report to provide this Honourable Court with information regarding the following:
 - a) A summary of the marketing activities undertaken to solicit offers for Walter Canada’s 50% interest in Belcourt Saxon Coal Ltd. (“**BSCL**”) and Belcourt Saxon Coal Limited Partnership (“**BSCLP**”), and certain related assets (collectively, the “**Belcourt Interest**”);
 - b) An update to the discussion in the Tenth Report of the Monitor dated May 24, 2017 (the “**Tenth Report**”) regarding the outcome of Walter Canada’s negotiations with both Conuma Coal Resources Limited (“**Conuma**”) and Peace River Coal Inc. (“**PRC**”), a subsidiary of Anglo American plc, in respect of Conuma’s Offer to purchase the Belcourt Interest (the “**Third Party Offer**”) and PRC’s right, as the owner of the other 50% interest in BSCL and BSCLP, of first refusal (“**ROFR**”) over any sale of the Belcourt Interest by Walter Canada; and
 - c) The Monitor’s observations and recommendations in respect of Walter Canada’s motion returnable July 11, 2017 seeking this Honourable Court’s approval of the sale of the Belcourt Interest to PRC (the “**PRC Transaction**”) pursuant to the purchase agreement between New Walter Canadian Coal Corp. (“**New WCCC**”) and PRC dated as of May 31, 2017 (the “**PRC APA**”), as well as an order sealing the twelfth affidavit of William E. Aziz sworn on June 27, 2017 (the “**Confidential Aziz Affidavit**”).
2. Terms not specifically defined herein shall have the meanings as defined in the Tenth Report. For further information in respect of the history of these CCAA Proceedings, please refer to the Tenth Report as well as the Monitor’s other Previous Reports, copies of which are available on the Monitor’s Website at www.kpmg.com/ca/walterenergycanada.

REPORT RESTRICTIONS AND SCOPE LIMITATIONS

3. In preparing this report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by Walter Canada and/or certain of its affiliates, discussions with management of Walter Canada and information from other public third-party sources.
4. The information contained in this report is not intended to be relied upon by any prospective purchaser or investor in any transaction with Walter Canada.
5. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

PROCESS LEADING TO SELECTION OF THE PRC TRANSACTION

6. Walter Canada and all of its assets were originally exposed to the market during the months prior to the commencement of its CCAA Proceedings in December 2015, as part of a sale process (the “**US Sale Process**”) initiated by Walter Energy U.S. (Walter Canada’s parent) in its insolvency proceedings under Chapter 11 of the U.S. Bankruptcy Code during the second half of 2015. Pursuant to that filing all of Walter Energy U.S.’ global assets were marketed by PJT Partners LP (“**PJT**”). PJT was subsequently engaged by Walter Canada as its Financial Advisor.
7. The US Sale Process resulted in a series of transactions being completed for various Walter Energy U.S. assets but excluded the sale of Walter Canada and all of its assets, including the Belcourt Interest.
8. On January 5, 2016, this Honourable Court approved a Sale and Investment Solicitation Process (“**SISP**”) to market all of Walter Canada’s assets for sale and also present the opportunity for parties to make an investment in Walter Canada. As detailed in the Monitor’s Second Report, Third Report and Fourth Report, all of Walter Canada’s assets, including the Belcourt Interest, were broadly marketed by the Financial Advisor, with the support and assistance of the CRO and the Monitor, under the SISP. For ease of reference, the activities undertaken pursuant to the SISP are summarized as follows:

- a) The Monitor published notices in each of the Vancouver Sun, The Globe and Mail (National Edition) and the Wall Street Journal;
 - b) A press release was issued by WECH announcing the SISP;
 - c) The Financial Advisor contacted 82 parties with a teaser letter explaining the opportunity;
 - d) The Financial Advisor, with assistance from the CRO and the Monitor, prepared a Confidential Information Memorandum which was provided to those interested parties who had executed non-disclosure agreements, and also established and populated a dataroom to facilitate due diligence activities of interested parties who entered the process;
 - e) Site visits to the three mine properties in northeastern British Columbia were facilitated; and
 - f) The Financial Advisor, as well as the CRO and the Monitor (and their respective counsel), spent time responding to due diligence requests from bidders and engaging in numerous discussions with bidders to clarify and negotiate terms and conditions of, and to assist in advancing, their bids.
9. Following completion of the SISP, this Honourable Court, on August 16, 2016, approved the sale of the majority of Walter Canada's assets to Conuma (the "**Conuma Transaction**") pursuant to the asset purchase agreement entered into between Old Walter Canada and Conuma (the "**Conuma APA**").
10. Included in the Conuma APA was an offer from Conuma to acquire the Belcourt Interest from Walter Canadian Coal Partnership ("**WCCP**"). Ownership of the Belcourt Interest was subsequently transferred to New WCCC pursuant to the Order of this Honourable Court made December 21, 2016 and the series of transactions which were completed on December 28, 2016 as part of the Amacon Transaction. A specified portion of the sale proceeds (the "**Conuma Deposit**") was allocated as the deposit by Conuma for its offer to acquire the Belcourt Interest. The Conuma Deposit was to be returned to Conuma in the event the Belcourt Interest was not transferred to Conuma. The Monitor has been holding the Conuma Deposit separately in an Estate Account.

11. Conuma's offer for the Belcourt Interest under the Conuma APA was subject to PRC waiving its ROFR and certain tag along rights pursuant to the Belcourt Saxon Coal Limited Partnership Agreement between Western Canadian Coal Corp. (the predecessor-in-interest to WCCP and New WCCC) and NEMI Northern Energy & Mining Inc. (the predecessor-in-interest to PRC) dated March 2, 2005 (the "**BelSax LPA**"). Pursuant to the terms of the Conuma APA, PRC was provided with a window of 60 days following completion of the Conuma Transaction on September 9, 2016 in which to either notify Walter Canada of its decision to permit the sale of the Belcourt Interest to Conuma or exercise its ROFR. PRC did not definitively respond within that time period and Conuma extended its offer.
12. Over the course of approximately seven months following completion of the Conuma Transaction, Walter Canada and the CRO engaged in numerous discussions and negotiations with both Conuma and PRC in an effort to obtain PRC's waiver of the ROFR and tag along rights, and clarify and adequately document the terms of the extension of Conuma's offer for the Belcourt Interest with a view to ultimately completing a transaction with either of these parties.
13. While those ongoing discussions with Conuma and PRC continued, the Belcourt Interest was marketed in the limited supplemental Remaining Asset Sale Process that was conducted by Walter Canada, the CRO and the Monitor in late 2016, although all interested parties were informed that the Belcourt Interest may not be available on account of its potential sale to either Conuma or PRC pursuant to the Conuma APA. The Remaining Asset Sale Process resulted in the completion of the Amacon Transaction, which was approved by this Honourable Court on December 7, 2016, and which did not include the sale of the Belcourt Interest.
14. As discussed in the Tenth Report, Conuma submitted a revised offer in the form of the Third Party Offer on April 24, 2017, which included a significantly higher priced offer and certain other improvements to the offer.
15. Regarding the increase in the offer price, the Monitor understands that the higher price in part reflects the value of the additional \$585,000 of cash calls from the Belcourt Saxon joint venture (relating to funding for the renewal of certain coal licenses and permits)

which Walter Canada funded subsequent to completion of the Conuma Transaction and which, pursuant to the Conuma APA, were to be reimbursed to Walter Canada as part of Conuma's original offer.

16. The CRO, in consultation with Walter Canada's counsel and the Monitor and its counsel, decided that it was prepared to accept the Third Party Offer and, accordingly, signed and delivered to Conuma, New WCCC's Indication of Willingness to Accept Third Party Offer on April 27, 2017. On May 2, 2017, Walter Canada delivered a Notice of Third Party Offer to PRC detailing the Third Party Offer. PRC then had 45 days following receipt of that notice in which to notify Walter Canada of its decision to exercise its ROFR, exercise its tag along right, or waive both rights and permit the sale of the Belcourt Interest to Conuma.
17. On June 5, 2017, prior to the end of PRC's review period, Walter Canada received the executed PRC APA from PRC, along with a letter confirming that PRC had elected to exercise its ROFR and its agreement to purchase the Belcourt Interest from New WCCC at the same price and on substantially the same terms set out in the Third Party Offer
18. The Monitor received a deposit cheque from PRC on June 8, 2017 representing payment of the deposit required pursuant to the PRC APA.
19. The Conuma Deposit was returned to Conuma on June 28, 2017.

KEY TRANSACTION TERMS

20. The eleventh affidavit of William E. Aziz sworn on June 27, 2017 (the "**Eleventh Aziz Affidavit**") includes a detailed discussion of the key terms of the PRC Transaction and the PRC APA, as well as a redacted copy of the PRC APA (attached thereto as Exhibit "B"). For ease of reference, a redacted copy of the PRC APA is also attached hereto as Schedule "A".
21. A brief summary of the key terms of the PRC APA follows. Readers are directed to the Eleventh Aziz Affidavit for a more detailed discussion. All capitalized terms in this section which are not otherwise defined shall have the meaning given to them in the PRC APA.

- i) Acquired Assets: PRC shall purchase all of New WCCC's right, title and interest in and to the Belcourt Interest free and clear of all Liens (other than Permitted Encumbrances) pursuant to an Approval and Vesting Order to be granted by this Honourable Court;
- ii) Assumed Liabilities: PRC shall assume certain liabilities, including in respect of any Tax, all post-Closing Liabilities with respect to the Belcourt Interest, all Liabilities under the BelSax LPA and all Environmental Liabilities. Any other liabilities shall not be assumed by PRC and are Excluded Liabilities;
- iii) Closing Date: Shall be no later than 135 days following the execution of the PRC APA (which the Monitor understands to be October 13, 2017) and shall be no later than two Business Days after the satisfaction of certain conditions precedent set out in the PRC APA (the "**Conditions Precedent**"); and
- iv) Monitor's Certificate: The Closing will be deemed to have occurred upon the delivery by the Monitor of a Monitor's Certificate to PRC's counsel and Walter Canada's counsel (a copy of which will also be filed with this Honourable Court), which the Monitor shall issue upon receipt of written confirmation from both PRC and Walter Canada that the Conditions Precedent have been satisfied or waived.

22. The Monitor supports Walter Canada's application to this Honourable Court for an Order sealing the Twelfth Aziz Affidavit to protect certain confidential information contained therein, including the purchase price for the Belcourt Interest as well as certain commercially sensitive details of the Third Party Offer and the BelSax LPA.

THE MONITOR'S OBSERVATIONS AND RECOMMENDATIONS

23. As set out herein and in the Fourth Report, the Monitor is of the view that the Belcourt Interest has been broadly exposed to the market, through both the US Sale Process and the SISP, which was approved by this Honourable Court, and was supervised by the Monitor, with the assistance of its counsel.

24. Completing the PRC Transaction is the culmination of a transaction that was recommended by the Monitor in the Fourth Report and will result in additional funds (including repayment of the recent holding costs for the Belcourt Interests totalling \$585,000) being added to the already significant pool of funds available to Walter Canada's creditors and other stakeholders, except that the sale price for the Belcourt Interest has increased significantly since September 2016.
25. The Monitor is also of the view that the offer price set out in both the PRC APA and the Third Party offer is fair and reasonable in all of the circumstances.
26. For all of these reasons, the Monitor is of the view that approval of the PRC Transaction as presented to this Honourable Court is in the best interests of Walter Canada's stakeholders and, accordingly, the Monitor recommends to this Honourable Court that it approve the PRC Transaction.
27. The Monitor also recommends to this Honourable Court that it grant Walter Canada's requested Order sealing the Twelfth Aziz Affidavit to protect certain confidential information contained therein, including the purchase price for the Belcourt Interest as well as certain commercially sensitive details of the Third Party Offer and the BelSax LPA.

All of which is respectfully submitted this 4th day of July, 2017.

**KPMG INC., in its sole capacity as
Monitor of New Walter Energy Canada Holdings, Inc. et al**



Per: Anthony Tillman
Senior Vice President

Schedule "A"

Peace River Coal Asset Purchase Agreement (redacted)

PURCHASE AGREEMENT
BY AND AMONG
NEW WALTER CANADIAN COAL CORP.
AND
PEACE RIVER COAL INC.
DATED AS OF May 31st, 2017

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PURCHASE AGREEMENT

This Purchase Agreement is dated ~~May 1~~ 2017, among New Walter Canadian Coal Corp. (the "Seller") and Peace River Coal Ltd. (the "Purchaser" and, collectively with the Seller, the "Parties").

WHEREAS

- A. Walter Energy Canada Holdings, Inc. ("Walter Energy Canada"), Walter Canadian Coal Partnership (the "Walter Canadian Coal") and certain of their Affiliates applied for and were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") pursuant to an Initial Order dated December 7, 2015 (as amended and restated from time to time, the "Initial Order") of the Supreme Court of British Columbia (the "Court"). Pursuant to the Initial Order, KPMG Inc. was appointed as Monitor (the "Monitor") in the CCAA proceedings bearing Court File No. S-1510120 (the "CCAA Proceedings");
- B. On January 5, 2016, the Court granted an Order (the "SISP Order") which, among other things, approved the Sale and Investment Solicitation Process in connection with the sale of all or substantially all of the assets or business of Walter Energy Canada and its Affiliates, including the assets of Walter Canadian Coal (the "SISP");
- C. Pursuant to the SISP Order, BlueTree Advisors Inc. was appointed as the Chief Restructuring Officer (the "CRO") to select one or more successful bids for the assets of Walter Energy Canada and its Affiliates, in consultation with the Monitor;
- D. On August 8, 2016, Walter Energy Canada and Conuma Coal Resources Limited ("Conuma") entered into an asset purchase agreement (the "Conuma APA") with respect to the "Assets" and the "Assumed Liabilities" (as those terms are defined in the Conuma APA) of Walter Energy Canada and its Affiliates. The principal transactions contemplated by the Conuma APA closed on September 9, 2016 and Walter Canadian Coal had the right to sell certain BelSax Assets (as defined below) to Conuma pursuant to the Belcourt Put Option as set out in the Conuma APA;
- E. Walter Canadian Coal was a party to the BelSax LPA (as defined below) until December 28, 2016, pursuant to which Walter Canadian Coal held certain partnership interests, marketable shares and securities of the BelSax LP (as defined below) and of BelSax GP (as defined below);
- F. On December 28, 2016, the BelSax Assets were transferred to the Seller and Seller became party to the BelSax LPA pursuant to an order of the Court pronounced December 21, 2016 (the "CCAA Continuity and Vesting Order");
- G. The Purchaser is also a party to the BelSax LPA and pursuant to the terms of the BelSax LPA had the benefit of certain rights of first refusal over any sale by Walter Canadian Coal (and the Seller as successor in interest) of the BelSax Assets;
- H. On April 27, 2017, the Seller indicated its willingness to accept a third party offer from Conuma dated April 24, 2017 (the "Conuma Third Party Offer") for the acquisition of the BelSax Assets, which triggered the Purchaser's rights of first refusal pursuant to the terms of the BelSax LPA in respect of the BelSax Assets;

- I. The Purchaser has informed the Seller that it wishes to exercise its rights of first refusal and acquire all of the Seller's interest in the BelSax Assets on substantially the same relevant terms and conditions as set forth in the Conuma Third Party Offer; and
- J. The Seller has agreed to transfer to the Purchaser, and the Purchaser has agreed to purchase and to assume, the BelSax Assets and the Assumed Liabilities from the Seller upon the terms and conditions set forth hereinafter.

NOW, THEREFORE, in consideration of the respective covenants, representations and warranties made herein, and of the mutual benefits to be derived hereby (the sufficiency of which are acknowledged), the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

Capitalized terms used but not otherwise defined herein shall have the meanings set forth below:

“**Action**” means any Claim, litigation, action, suit, charge, arbitration or other legal, administrative or judicial proceeding.

“**Additional Orders**” has the meaning set forth in Section 5.1.3.

“**Affiliate**” means, as to any Person, any other Person that directly or indirectly through one or more intermediaries Controls, or is under common Control with, or is Controlled by, such Person.

“**Agreement**” means this Purchase Agreement, including the recitals, and all amendments hereto made in accordance with Section 10.7.

“**Approval and Vesting Order**” has the meaning set forth in Section 5.1.2.

“**Assumed Liabilities**” has the meaning set forth in Section 2.1.2.

“**Bankruptcy Law**” means the CCAA, the *Bankruptcy and Insolvency Act* (Canada) and the other applicable insolvency Laws.

“**Belcourt Royalty**” means the “Royalty” reserved to Western Canadian Coal Corp. (a predecessor in interest to the Seller) in paragraph 3.1 of the Belcourt Asset Transfer Agreement between Western Canadian Coal Corp and BelSax LP dated March 2, 2005.

“**BelSax Assets**” means all partnership interests, marketable shares and securities of BelSax LP and BelSax GP in which the Seller has any right, title or interest and the Seller's interest in the Belcourt Royalty.

“**BelSax Purchaser Assets**” means all partnership interests, marketable shares and securities of BelSax LP and BelSax GP in which the Purchaser has any right, title or interest.

“**BelSax Licences**” means the coal licenses issued under the *Coal Act* (British Columbia)

and the applications for coal licenses to be issued thereunder, owned by the BelSax LP as of the date of this Agreement.

"BelSax GP" means Belcourt Saxon Coal Ltd.

"BelSax LP" means Belcourt Saxon Coal Limited Partnership

"BelSax LPA" means the Belcourt Saxon Limited Partnership Agreement dated March 2, 2005, among BelSax GP, Western Canadian Coal Corp. (the predecessor-in-interest to the Seller) and NEMI Northern Energy & Mining Inc. (the predecessor-in-interest to the Purchaser).

"Books and Records" means those books, records, files, catalogues, data, information, other information in any form (tangible or intangible) relating exclusively to the BelSax Assets that are owned by the Seller and not duplicative of such documents owned by the Purchaser and provided further however that the term "Books and Records" shall not include any of the foregoing items that do not relate exclusively to the BelSax Assets.

"Business Day" means a day on which the banks are open for business (Saturdays, Sundays, statutory and civic holidays excluded) in Vancouver, British Columbia, Canada.

"CCAA" has the meaning set forth in the recitals to this Agreement.

"CCAA Continuity and Vesting Order" has the meaning set forth in the recitals to this Agreement.

"CCAA Proceedings" has the meaning set forth in the recitals to this Agreement.

"Claim" has the meaning set forth in Section 2(1) of the CCAA.

"Closing" has the meaning set forth in Section 2.3.1.

"Closing Date" has the meaning set forth in Section 2.3.1.

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

"Conuma Third Party Offer" has the meaning set forth in the recitals to this Agreement.

"Consent" means any approval, authorization, consent, order, license, permission, permit, qualification, exemption or waiver by any Government Entity or other Third Party.

"Contract" means any legally binding contract, agreement, obligation, license, undertaking, instrument, lease, ground lease, commitment or other arrangement, whether written or oral.

"Control", including, with its correlative meanings, **"Controlled by"** and **"under common Control with"**, means, in connection with a given Person, the possession, directly or indirectly, of the power to either (i) elect more than 50% of the directors of such Person; or (ii) direct or cause the direction of the management and policies of such Person, whether through the ownership of securities, Contract or otherwise.

“**Court**” has the meaning set forth in the recitals to this Agreement.

“**CRA**” means the Canada Revenue Agency.

“**CRO**” has the meaning set forth in the recitals to this Agreement.

“**D&O Indemnitees**” has the meaning set forth in section 5.11.1.

“**D&O Indemnitor**” has the meaning set forth in section 5.11.1.

“**Deposit**” has the meaning set forth in Section 2.2.2(a).

“**Environment**” means the environment or natural environment as defined in any Environmental Laws and includes air, surface water, ground water (including potable water, navigable water and wetlands), land surface, soil, subsurface, subsurface strata, and natural resources.

“**Environmental Law**” means any applicable Law relating to contamination, pollution or protection of the Environment, plant life, animal and fish or other natural resources or human health, including Laws relating to the exposure to, or Releases or threatened Releases of, Hazardous Materials or otherwise relating to the manufacture, presence, processing, distribution, use, treatment, storage, Release, transport, disposal, transfer, discharge, control, recycling, production, generation or handling of Hazardous Materials and all Laws with regard to monitoring, recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Materials, each as amended and as now in effect.

“**Environmental Liabilities**” shall mean any and all Liability arising out of, based on or resulting from (i) the presence, Release, or threatened Release, into the Environment of any Hazardous Materials or substances existing or arising on, beneath or above any area covered by the BelSax Licences and/or emanating or migrating and/or threatening to emanate or migrate from any area covered by the BelSax Licences to other properties; (ii) the storage, disposal, handling or treatment of or the arrangement for the storage, disposal, handling or treatment of Hazardous Materials originating or transported from any area covered by the BelSax Licences to an off- site treatment, storage or disposal facility; (iii) physical disturbance of or harm or injury to the Environment on, beneath or from any area covered by the BelSax Licences, including any reclamation obligations; or (iv) the violation or alleged violation of any Environmental Laws relating to the BelSax Licences or any area covered by the BelSax Licences.

“**Excluded Liabilities**” has the meaning set forth in Section 2.1.3.

“**Final Order**” means an action taken or Order issued by the applicable Government Entity as to which: (i) no request for stay of the action or order is pending, no such stay is in effect, and, if any deadline for filing any such request is designated by statute or regulation, it is passed, including any extensions thereof; (ii) no petition for rehearing or reconsideration of the action or order, or protest of any kind, is pending before the Government Entity and the time for filing any such petition or protest is passed; (iii) the Government Entity does not have the action or order under reconsideration or review on its own motion and the time for such reconsideration or review has passed; and (iv)

the action or order is not then under judicial review, there is no notice of application for leave to appeal, appeal or other application for judicial review pending, and the deadline for filing such notice of appeal or other application for judicial review has passed, including any extensions thereof.

"Government Entity" means any Canadian, foreign, domestic, federal, territorial, provincial, state, municipal or local governmental authority, quasi-governmental authority, instrumentality, court, government or self-regulatory organization, bureau, board, commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing having jurisdiction.

"GST/HST" means goods and services tax, including harmonized sales tax, interest, penalties and fines payable under Part IX of the *Excise Tax Act* (Canada) and the regulations made thereunder.

"Hazardous Materials" means (i) petroleum, petroleum products, asbestos in any form, mold, urea formaldehyde foam insulation, lead based paints, polychlorinated biphenyls or any other material or substance regulated pursuant to Environmental Laws; and (ii) any solid, liquid, gas, sound, vibration, odour, mine tailings, chemical, material or other substance, contaminant or pollutant which is regulated, prohibited, limited, defined, designated or listed or otherwise characterized, alone or in any combination, as "hazardous", "hazardous waste", "solid waste", "radioactive", "deleterious", "effluent", "toxic", "caustic", "dangerous", a "contaminant", a "pollutant", a "waste", a "special waste", a "source of contamination" or "source of pollution", or words of similar meaning, under any Environmental Law.

"Initial Order" has the meaning set forth in the recitals to this Agreement.

"Interest" means any legal or equitable assertion of right in Property, including a royalty, production royalty, restrictive covenant, or assertion of a right or interest in a percentage of income, production, minerals, profit, revenue, payment or sale, or any other right of payment asserted in the nature of a royalty or interest, including any interest.

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

"Knowledge" or **"aware of"** or **"notice of"** or a similar phrase shall mean, with reference to the Seller, the actual knowledge of the CRO after reasonable inquiry, and, with reference to the Purchaser, the actual knowledge of David Lortie after reasonable inquiry.

"Law" means any foreign, domestic, federal, territorial, state, provincial, local, regional or municipal statute, law, common law, ordinance, rule, bylaw, regulation, Order, writ, injunction, directive, judgment, decree, code, policy standard, criteria, condition or guideline having the force of law.

"Liabilities" means any and all debts, liabilities, obligations and Claims, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or undeterminable, including those arising under any Law or Action and those arising under any Contract or otherwise, including any Tax liability, or under Environmental Laws.

"Lien" means, as to all BelSax Assets, any lien, Interests, mortgage, deed of trust,

judgment lien, pledge or security interest, hypothec (including legal hypothecs), encumbrance, floating charge, mechanic's lien, builder's lien, materialmen's lien, servitude, easement, encroachment, right-of-way, restrictive covenant on real or immovable property, real property license, other real property rights in favor of Third Parties, charge, prior claim, lease, statutory or deemed trust or conditional sale arrangement, including the Administration Charge, the Directors' Charge, the KERP Charge, the Success Fee Charge, and the Intercompany Charge (each as defined in the Initial Order and the SISP Order, as applicable).

"Monitor" has the meaning set forth in the recitals to this Agreement.

"Monitor's Certificate" means a certificate signed by the Monitor and confirming that (i) the Purchaser has paid, and the Monitor has received payment of, the Purchase Price, in relation to the purchase by the Purchaser of the BelSax Assets; and (ii) the conditions to be complied with at or prior to the Closing as set out in Article 5 and Article 7, respectively, have been satisfied or waived by the Seller or the Purchaser, as applicable.

"Order" means any order, injunction, judgment, decree, direction, instructions, ruling, writ, assessment, arbitration award or penalties or sanctions issued, filed or imposed by any Government Entity.

"Ordinary Course" means the ordinary course of the business of the BelSax LP consistent with past practice, as such practice is, or may have been, modified as a result of the CCAA proceedings or any transaction completed during, and as part of, the CCAA Proceedings.

"Outside Date" has the meaning set forth in Section 2.3.1.

"Parties" has the meaning set forth in the recitals to this Agreement.

"Permitted Encumbrances" means statutory Liens for Taxes or governmental assessments, charges or claims the payment of which is not yet due, or for Taxes which are being contested in good faith by appropriate proceedings, but excludes the Administration Charge, the Directors' Charge, the KERP Charge, the Success Fee Charge, and the Intercompany Charge.

"Person" means an individual, a partnership, a corporation, an association, a limited or unlimited liability company, a joint stock company, a trust, a joint venture, an unincorporated organization or other legal entity or Government Entity.

"Property" means any interest in any kind of property or asset, whether real (including chattels real), personal or mixed, movable or immovable, tangible or intangible.

"PST" means any tax, interest, penalties and fines payable under the *Provincial Sales Tax Act* (British Columbia) and the regulations made thereunder.

"Purchase Price" has the meaning set forth in Section 2.2.1.

"Purchaser" has the meaning set forth in the preamble to this Agreement.

"Release" means any release, spill, emission, discharge, leaking, pouring, emptying, escaping, pumping, dumping, injection, deposit, disposal, dispersal, leaching, spraying,

abandonment, throwing, placing or migration into the indoor or outdoor Environment or into or out of any Property.

"Review Period" means the forty-five (45) day timeframe commencing on May 2, 2017 referred to in section 15.2 of the BelSax LPA during which period the Purchaser is given the right to purchase from the Seller the BelSax Assets for the price and on the terms of the Conuma Third Party Offer.

"Securities Commissions" means, collectively, the securities commissions or similar securities regulatory authorities of all of the Provinces of Canada.

"Securities Laws" means all securities Laws applicable to either the Seller or the Purchaser or their parent companies.

"Seller" has the meaning set forth in the preamble to this Agreement.

"SISP" has the meaning set forth in the recitals to this Agreement.

"SISP Order" has the meaning set forth in the recitals to this Agreement.

"Tax" means any domestic or foreign federal, state, local, provincial, territorial or municipal taxes or other impositions by any Government Entity, including Transfer Taxes and the following taxes and impositions: net income, gross income, capital, value added, goods and services, capital gains, alternative, net worth, harmonized sales, gross receipts, sales, use, ad valorem, business rates, transfer, franchise, profits, business, environmental, real or immovable property, municipal, school, Canada Pension Plan, withholding, workers' compensation levies, payroll, employment, unemployment, employer health, occupation, social security, excise, stamp, customs, and all other taxes, fees, duties, assessments, deductions, contributions, withholdings or charges of the same or of a similar nature, however denominated, together with any interest and penalties, fines, additions to tax or additional amounts imposed or assessed with respect thereto.

"Tax Act" means the *Income Tax Act* (Canada) and the regulations promulgated thereunder.

"Tax Authority" means any local, municipal, governmental, state, provincial, territorial, federal, including any Canadian or other fiscal, customs or excise authority, body or officials anywhere in the world with responsibility for, and competent to impose, collect or administer, any form of Tax.

"Tax Returns" means all returns, reports (including elections, declarations, disclosures, statements, schedules, estimates and information returns) and other information filed or required to be filed with any Tax Authority relating to Taxes.

"Third Party" means any Person that is neither a Party nor an Affiliate of a Party.

"Transaction Documents" means this Agreement, any agreement that may be necessary for the assignment and assumption of the Assumed Liabilities from the Seller to the Purchaser and all other ancillary agreements to be entered into, or documentation delivered by, any Party pursuant to this Agreement, each in registrable form as may be required.

“Transfer Taxes” means all goods and services, sales, excise, use, transfer, gross receipts, documentary, filing, recordation, value-added, stamp, stamp duty reserve, and all other similar taxes, duties or other like charges, however denominated, in each case including interest, penalties or additions attributable thereto whether or not disputed, arising out of, or in connection with the transactions provided for herein, regardless of whether the Government Entity seeks to collect the Transfer Tax from the Seller or the Purchaser, including GST/ HST and PST.

“Walter Canadian Coal” has the meaning set forth in the recitals to this Agreement.

“Walter Energy Canada” has the meaning set forth in the recitals to this Agreement.

“Walter Nominees” has the meaning set forth in Section 5.11.1.

1.2 Interpretation

1.2.1 Gender and Number

Any reference in this Agreement to gender includes all genders and words importing the singular include the plural and vice versa.

1.2.2 Certain Phrases and Calculation of Time

- (a) In this Agreement (i) the words “including” and “includes” mean “including (or includes) without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it; (ii) the terms “hereof”, “herein”, “hereunder” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement and not to any particular provision of this Agreement, and Article, Section, and paragraph references are to the Articles, Sections, and paragraphs to this Agreement unless otherwise specified; and (iii) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”. If the last day of any such period is not a Business Day, such period will end on the next Business Day.
- (b) When calculating the period of time “within” which, “prior to” or “following” which any act or event is required or permitted to be done, notice given or steps taken, the date which is the reference date in calculating such period is excluded from the calculation. If the last day of any such period is not a Business Day, such period will end on the next Business Day.

1.2.3 Headings

The inclusion of a table of contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect or be used in the construction or interpretation of this Agreement. All references in this Agreement to any “Section” are to the corresponding Section of this Agreement unless otherwise specified.

1.2.4 Currency

All monetary amounts in this Agreement, including the symbol "\$", unless otherwise specifically indicated, are stated in Canadian currency. All calculations and estimates to be performed or undertaken, unless otherwise specifically indicated, are to be expressed in Canadian currency. Other than the Purchase Price and the Deposit, any other payments required under this Agreement shall be paid in Canadian currency in immediately available funds, unless otherwise specifically indicated herein.

1.2.5 Statutory References

Unless otherwise specifically indicated, any reference to a statute in this Agreement refers to that statute and to the regulations made under that statute as in force from time to time.

ARTICLE 2 PURCHASE AND SALE OF BELSAX ASSETS

2.1 Purchase and Sale

2.1.1 BelSax Assets

Subject to the terms and conditions of this Agreement, at the Closing, the Purchaser shall purchase and cause to be assigned and assumed from the Seller, and the Seller shall sell, transfer, assign, convey and deliver to the Purchaser all of its right, title and interest in and to all the BelSax Assets free and clear of all Liens (other than Permitted Encumbrances) pursuant to the Approval and Vesting Order, when granted.

2.1.2 Assumed Liabilities

On the terms and subject to the conditions set forth in this Agreement, at the Closing, the Purchaser shall assume and become responsible for, and perform, discharge and pay when due, the following Liabilities (the "Assumed Liabilities"):

- (a) all Liabilities for, or related to any obligation for, any Tax that the Purchaser bears under Article 6 (including, for the avoidance of doubt, Transfer Taxes imposed in connection with this Agreement and the transactions contemplated hereunder or any other Transaction Document and the transactions contemplated thereunder);
- (b) all post-Closing Liabilities with respect to BelSax LP, BelSax GP and the Belcourt Royalty, including in relation to the operation of the BelSax LP and BelSax GP and any cash calls and other obligations whatsoever, whether or not related to the BelSax Licences;
- (c) all Liabilities under the BelSax LPA; and
- (d) all Environmental Liabilities.

2.1.3 Excluded Liabilities

Except for the Assumed Liabilities, the Purchaser shall not assume and shall not be

responsible for any of the Liabilities of the Seller, whether present or future, known or unknown, absolute or contingent and whether or not relating to the BelSax Assets (collectively, the "Excluded Liabilities").

2.2 Purchase Price

2.2.1 Purchase Price

Pursuant to the terms and subject to the conditions set forth in this Agreement, in consideration of the sale of the BelSax Assets pursuant to the terms hereof, the Purchaser shall pay to the Seller an amount equal to [REDACTED] cash on the Closing Date (the "Purchase Price").

2.2.2 Deposit

- (a) Contemporaneously with the execution and delivery of this Agreement by the Seller, the Purchaser shall pay a deposit payable to the order of the Monitor, in an amount equal to [REDACTED] (the "Deposit").
- (b) The Deposit shall be held, pending Closing, by the Monitor in an interest bearing account with a bank.
- (c) If the Closing does not occur by reason of the material uncured default of the Purchaser, the full amount of the Deposit (plus accrued interest), less any applicable withholding Tax, shall become the property of and be retained by the Monitor on behalf of the Seller as liquidated damages and not as a penalty. The Seller's recourse against the Purchaser in such circumstances shall be limited to the right of the Monitor on behalf of the Seller to retain the Deposit and to seek recovery of an additional amount for any actual damages of the Seller resulting from the Purchaser's default (including reasonable legal fees) and provided however that the recovery for such additional damages shall not exceed [REDACTED] incurred as a result of such failure to close.
- (d) If the Closing does not occur for any reason other than the default of the Purchaser, the full amount of the Deposit (plus accrued interest), less any applicable withholding Tax, shall be returned by the Monitor to the Purchaser and the Purchaser shall have no further recourse against the Seller.

2.2.3 Satisfaction of Purchase Price

The Purchaser shall satisfy the Purchase Price at the Closing Date as follows:

- (a) by release of the Deposit by the Monitor to the Seller; and
- (b) by payment to the Monitor on behalf of the Seller by wire transfer of the Cash Purchase Price less the amount of the Deposit to an account specified in writing by the Monitor.

2.2.4 Purchase Price Allocation

On Closing, the Seller and the Purchaser shall agree upon an allocation of the Purchase Price among the BelSax Assets.

2.3 Closing

2.3.1 Place of Closing

The completion of the purchase and sale of the BelSax Assets and the assumption of the Assumed Liabilities (the "Closing") shall take place at the offices of McCarthy Tétrault LLP, Suite 2400, 745 Thurlow Street, Vancouver, British Columbia, commencing at 10:00 a.m. local time on a mutually agreed upon date (which date shall be no later than the day that is one hundred and thirty five (135) days following the execution of this Agreement by the Purchaser, which execution shall occur within the Review Period, (the "Outside Date")) and which shall be no later than two Business Days after the day upon which all of the conditions set forth under Article 7 (other than conditions to be satisfied at the Closing, but subject to the waiver or fulfillment of those conditions) have been satisfied or, if permissible, waived by the Seller and/or the Purchaser (as applicable), or at such other place and on such other date and at such other time as shall be mutually agreed upon in writing by the Purchaser and the Seller (the day on which the Closing takes place being the "Closing Date"). Legal title, equitable title and risk of loss with respect to the BelSax Assets will transfer to the Purchaser, and the Assumed Liabilities will be assumed by the Purchaser at the Closing.

2.3.2 Actions and Deliveries At Closing At

the Closing:

- (a) the Seller and the Purchaser shall deliver duly executed copies of and enter into the Transaction Documents to which it is contemplated that they will be parties, respectively, including any duly executed and registrable transfers for transferring the BelSax Assets into the name of the Purchaser;
- (b) the Seller shall deliver to the Purchaser any BelSax LP certificate representing the Seller's limited partnership interest in the BelSax LP, if any are held by the Seller;
- (c) the Seller shall deliver to the Purchaser any original share certificates representing the shares of BelSax GP, if any are held by the Seller, properly endorsed for transfer to the Purchaser and new share certificates representing the shares of BelSax GP purchased by the Purchaser;
- (d) the Seller shall deliver a copy of the Approval and Vesting Order;
- (e) the Walter Nominees shall resign; and
- (f) each Party shall deliver, or cause to be delivered, to the other any other documents reasonably requested by such other Party in order to effect, or evidence the consummation of, the transactions contemplated herein or otherwise provided for under this Agreement.

2.3.3 Delivery of the Monitor's Certificate

When the conditions set out in Article 5 and Article 7, as applicable, have been satisfied or waived, the Purchaser and Seller will each deliver to the Monitor written confirmation of same (which may be email confirmation), following which the Monitor will deliver an executed copy of the Monitor's Certificate to the Purchaser's counsel and the Seller's counsel. Upon such delivery, the Closing will be deemed to have occurred. The Monitor will file a copy of the Monitor's Certificate with the Court and provide evidence of such filing to the Purchaser and the Seller.

**ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser hereby represents and warrants to the Seller as follows:

3.1 Organization and Corporate Power

3.1.1 The Purchaser is duly organized and validly existing under the Laws of the jurisdiction in which it is organized. The Purchaser has the requisite corporate power and authority to enter into, deliver and perform its obligations pursuant to each of the Transaction Documents to which it is or will become a party.

3.1.2 The Purchaser is qualified to do business as contemplated by this Agreement and the other Transaction Documents and to own or lease and operate its properties and assets, including the BelSax Assets, except to the extent that the failure to be so qualified would not materially hinder, delay or impair the Purchaser's ability to carry out its obligations under, and to consummate the transactions contemplated by, this Agreement and the Transaction Documents to which it is or will become a party.

3.2 Authorization; Binding Effect; No Breach

3.2.1 The execution, delivery and performance of each Transaction Document to which the Purchaser is a party, or is to be a party to, have been, or will be, duly authorized by the Purchaser at the time of its execution and delivery. Assuming due authorization, execution and delivery by the Seller, each Transaction Document to which the Purchaser is a party constitutes, or upon execution thereof will constitute, a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally or general principles of public policy.

3.2.2 The execution, delivery and performance by the Purchaser of the Transaction Documents to which the Purchaser is, or on the Closing Date will be, a party do not and will not conflict with or result in a breach of the terms, conditions or provisions of, constitute a default under, result in a violation of, or require any Consent (other than the any action by or declaration or notice to any Government Entity) pursuant to (i) the articles, charter, by-laws, partnership agreement or operating agreement of the Purchaser; (ii) any material Contract or other document to which the Purchaser is a party or to which any of its assets is subject;

or (iii) any Laws to which the Purchaser or any of its assets is subject, except, in the case of (ii) and (iii) above, for such defaults, violations, actions and notifications that would not individually or in the aggregate materially hinder, delay or impair the performance by the Purchaser of any of its obligations under any Transaction Document.

3.3 No Brokers

The Seller will not be liable for any brokerage commission, finders' fee or other similar payment in connection with the transactions contemplated by this Agreement because of any action taken by, or agreement or understanding reached by, the Purchaser.

3.4 Financing

The Purchaser has now, and at all times from the date hereof through and after the Closing Date, will have, sufficient funds available to pay the Purchase Price, any of the Assumed Liabilities and all other amounts payable under the Transaction Documents and to otherwise consummate the transactions contemplated hereby and thereby. The Purchaser acknowledges that its obligations under this Agreement and the other Transaction Documents are not subject to any conditions regarding its ability to obtain financing for any portion of the foregoing amounts.

3.5 Regulatory and Other Approvals

Except for the entry of the Approval and Vesting Order, no notice, filing, authorization, approval, Order or Consent is required to be given, filed or obtained by the Purchaser to or from any Government Entity or Third Party in connection with the execution, delivery and performance by the Purchaser of this Agreement or the transactions contemplated hereby.

3.6 Investment Canada Act

The Purchaser is a "Canadian" or a "WTO Investor" within the meaning of the *Investment Canada Act*, and the regulations thereunder.

3.7 Partnership Matters

- 3.71 The Purchaser is the successor in interest to NEMI Northern Energy & Mining Inc.'s interest in the BelSax Purchaser Assets.
- 3.72 The Purchaser is, and at the Closing will be, the beneficial owner of record with a good and marketable title to the BelSax Purchaser Assets.
- 3.73 The Purchaser has a 50% limited partnership interest in BelSax LP and owns 50% of all of the shares of BelSax GP.
- 3.74 BelSax GP is the general partner of BelSax LP.
- 3.75 To the knowledge of the Purchaser, since the date of the BelSax LPA, there has been no recalculation of the partnership interests in BelSax GP or BelSax LP, and the Purchaser has no knowledge of any event which has occurred or is likely to occur which has resulted or could result in any such recalculation.
- 3.76 The Purchaser is not indebted to and has no liability whatsoever to BelSax LP,

BelSax GP, the Seller or Walter Canadian Coal, including liability for any cash contributions, cash calls, Cover Payments (as defined in the BelSax LPA), payments of capital to BelSax LP or cost overruns.

- 3.77 There are no cash call requests, including, without limitation, in respect of any requests to contribute to the Costs (as defined in the BelSax LPA) of any Program and Budget (as defined in the BelSax LPA) that have been submitted by BelSax GP to the Purchaser pursuant to Section 6.4 of the BelSax LPA or otherwise, which have not been fully paid and satisfied by the Seller.
- 3.78 To the knowledge of the Purchaser, all Costs (as defined in the BelSax LPA) in respect of each Program and Budget (as defined in the BelSax LPA) prepared and delivered under the BelSax LPA have been funded by each of the partners of BelSax LP in proportion to their respective *pro rata* share.
- 3.79 To the knowledge of the Purchaser, there is no Program and Budget (as defined in the BelSax LPA) that has been prepared by BelSax GP but not delivered to the Seller under the BelSax LPA.

3.8 No Other Representations or Warranties

- 3.8.1 Notwithstanding anything contained in this Agreement to the contrary, the Purchaser acknowledges and agrees that none of the Seller or any other Person (including the CRO, the Monitor or any of their advisors) is making any representations or warranties whatsoever, express or implied, beyond those expressly given by the Seller in Article 4, or with respect to any other information provided to the Purchaser in connection with the transactions contemplated hereby, including as to the probable success or profitability of the ownership of the BelSax Assets, the Assumed Liabilities, or as to the accuracy or completeness of any information regarding any of the foregoing that any Seller, or any other Person, furnished or made available to the Purchaser or its representatives. The Purchaser further represents that none of the Seller or any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding the Seller, or the transactions contemplated by this Agreement not expressly set forth in this Agreement, and none of the Seller or any other Person will have or be subject to liability to the Purchaser or any other Person resulting from the distribution to the Purchaser or its representatives or the Purchaser's use of any such information in connection with the sale of the BelSax Assets. The Purchaser acknowledges that it has conducted to its satisfaction its own independent investigation of the BelSax Assets and, in making the determination to proceed with the transactions contemplated by this Agreement, the Purchaser has relied solely on the results of its own independent investigation.
- 3.8.2 The Purchaser acknowledges and agrees that, in determining whether to enter into this Agreement, Purchaser (i) has had an opportunity to conduct any and all due diligence regarding the BelSax Assets and the Assumed Liabilities prior to the execution of this Agreement and that the obligations of the Purchaser are not conditional upon any additional due diligence; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the BelSax Assets to be acquired and the Assumed Liabilities; and (iii), except for the

representations and warranties set out in Article 4, did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of Law or otherwise) from or by the Seller, the CRO, the Monitor, any of their Affiliates or any partner, employee, officer, director, accountant, agent, financial, legal or other representative of any of the Seller, the CRO, the Monitor or any of their Affiliates, regarding the BelSax Assets to be acquired or the Assumed Liabilities or the completeness of any information provided in connection therewith, except as expressly stated herein.

3.83 The Purchaser acknowledges and agrees that the enforceability of this Agreement against the Seller is subject to entry of the Approval and Vesting Order.

3.9 As Is Where is Transaction

The Purchaser hereby acknowledges and agrees that, except as otherwise expressly provided in Article 4 of this Agreement, the Seller makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the BelSax Assets and Seller's ownership and operation thereof, the BelSax LPA, BelSax GP or the Liabilities, including Environmental Liabilities, associated therewith and the quantity, quality or suitability for mining in respect of any of the BelSax Licences or any area covered by the BelSax Licences. Without in any way limiting the foregoing, the Purchaser acknowledges that the Seller has not given, will not be deemed to have given and hereby disclaims any warranty, representation, covenant, express or implied, of the existence, location, size or quality of any mineral deposit or condition or fitness for any particular purpose of any portion of any portion of the BelSax Assets. Accordingly, the Purchaser shall accept the BelSax Assets at the Closing "as is", "where is" and "with all faults".

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller represents and warrants to the Purchaser the matters set out below. Disclosure of a fact or matter to the Purchaser in any written form shall be sufficient disclosure for all purposes under this Agreement. The disclosure of any such information shall not be deemed to be an acknowledgement, in and of itself, that such information is required to be disclosed, is material to the BelSax Assets, has resulted in or would result in a material adverse effect or is outside the ordinary course of business.

4.1 Organization and Corporate Power

The Seller is duly organized and validly existing under the Laws of the jurisdiction in which it is organized. Subject to the entry of the Approval and Vesting Order in the Court in connection with the transactions contemplated hereby and in the other Transaction Documents, the Seller has the requisite corporate power to enter into, deliver and perform its obligations pursuant to each of the Transaction Documents to which it is or will become a party.

4.2 Authorization; Binding Effect; No Breach

4.21 Subject to the entry of the Approval and Vesting Order in the Court in connection with the transactions contemplated hereby and in the other Transaction Documents, the execution, delivery and performance by the Seller of each Transaction Document to which the Seller is a party, or is to be a party to, have

been, or will be, duly authorized at the time of its execution and delivery.

- 4.22 Subject to the entry of the Approval and Vesting Order in the Court in connection with the transactions contemplated hereby and in the other Transaction Documents, and assuming due authorization, execution and delivery by the Purchaser, each Transaction Document to which the Seller is a party constitutes, or upon execution thereof will constitute, a legal, valid and binding obligation of the Seller, enforceable against it in accordance with its respective terms.

4.3 Regulatory and Other Approvals

Except for the entry of the Approval and Vesting Order, to the best of the Seller's Knowledge, no notice, filing, authorization, approval, Order or Consent is required to be given, filed or obtained by the Seller to or from any Government Entity or Third Party in connection with the execution, delivery and performance by the Seller of this Agreement or the transactions contemplated hereby.

4.4 Tax Act

The Seller is not a non-resident of Canada within the meaning of the Tax Act.

4.5 No Brokers

The Purchaser will not be liable for any brokerage commission, finders' fee or other similar payment in connection with the transactions contemplated by this Agreement because of any action taken by, or agreement or understanding reached by, the Seller.

4.6 No Cultural Business – Investment Canada Act

The BelSax Assets are not a cultural business, and the Seller is not carrying on a cultural business, within the meaning of the Investment Canada Act.

4.7 Partnership Matters

- 4.7.1 The Seller is the successor in interest to Walter Canadian Coal's interest in the BelSax Assets.
- 4.7.2 Pursuant to the CCAA Continuity and Vesting Order, the Seller is, and at the Closing will be, the beneficial owner of record with a good and marketable title to the BelSax Assets.
- 4.7.3 Pursuant to the CCAA Continuity and Vesting Order, the Seller has a 50% limited partnership interest in BelSax LP and owns 50% of all of the shares of BelSax GP.
- 4.7.4 BelSax GP is the general partner of BelSax LP.
- 4.7.5 To the knowledge of the Seller, since the date of the BelSax LPA, there has been no recalculation of the partnership interests in BelSax GP or BelSax LP, and the Seller has no knowledge of any event which has occurred or is likely to occur which has resulted or could result in any such recalculation.

- 4.76 The Seller is not indebted to and has no liability whatsoever to BelSax LP, BelSax GP or the Purchaser, including liability for any cash contributions, cash calls, Cover Payments (as defined in the BelSax LPA), payments of capital to BelSax LP or cost overruns.
- 4.77 There are no cash call requests, including, without limitation, in respect of any requests to contribute to the Costs (as defined in the BelSax LPA) of any Program and Budget (as defined in the BelSax LPA) that have been submitted by BelSax GP to the Seller pursuant to Section 6.4 of the BelSax LPA or otherwise, which have not been fully paid and satisfied by the Seller.
- 4.78 To the knowledge of the Seller, all Costs (as defined in the BelSax LPA) in respect of each Program and Budget (as defined in the BelSax LPA) prepared and delivered under the BelSax LPA have been funded by each of the partners of BelSax LP in proportion to their respective *pro rata* share.
- 4.79 To the knowledge of the Seller, there is no Program and Budget (as defined in the BelSax LPA) that has been prepared by BelSax GP but not delivered to the Seller under the BelSax LPA.

4.8 No Other Representations and Warranties

Except for the representations and warranties of the Seller contained in this Article 4, none of the Seller or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of the Seller, the BelSax Assets or otherwise, including any representation or warranty as to the accuracy or completeness of any information regarding the Seller furnished or made available to Purchaser and its representatives or as to the future revenue, profitability or success of the Seller, the BelSax Assets, or any representation or warranty arising from statute or otherwise in Law.

ARTICLE 5 COVENANTS AND OTHER AGREEMENTS

5.1 CCAA Proceedings

- 5.1.1 The Seller and the Purchaser acknowledge that this Agreement and the transactions contemplated hereby are subject to the approval of the Court in the CCAA Proceedings.
- 5.1.2 The Seller shall use its commercially reasonable efforts to have the Court enter by the day that is forty five (45) days following the execution and delivery of this Agreement by the Purchaser and the payment of the Deposit, or such other date as may be agreed to by the Parties, an order in form and in substance acceptable to the Purchaser approving the sale of the BelSax Assets to the Purchaser pursuant to this Agreement and vesting in and to the Purchaser the BelSax Assets free and clear of all Liens and Claims (other than Permitted Encumbrances) (the "Approval and Vesting Order").
- 5.1.3 In the event that there are any other Orders required by the Seller in connection with the CCAA Proceedings (the "Additional Orders"), the Seller shall have the

right to seek such Additional Orders at the same time as the Approval and Vesting Order and may delay seeking the Approval and Vesting Order for a reasonable period to facilitate obtaining any Additional Orders.

- 5.1.4 The Purchaser and the Seller will cooperate in obtaining entry of the Approval and Vesting Order, and the Seller will deliver, or will request the Monitor to deliver, as applicable, to the Purchaser prior to service and filing, and as early in advance as is practicable to permit adequate and reasonable time for the Purchaser and its counsel to review and comment upon, copies of all proposed pleadings, motions, notices, statements, schedules, applications, reports and other material papers to be filed by the Seller, as applicable, in connection with such motions and relief requested therein and any objections thereto.
- 5.1.5 The Purchaser, at its own expense, will promptly provide to the Seller and the Monitor all such information within its possession or under its control as the Seller or the Monitor may reasonably require to obtain the Approval and Vesting Order and any other Orders required by the Court in connection with the transactions contemplated hereby. For greater certainty, other than the costs described in the foregoing, all costs related to or arising from obtaining the Approval and Vesting Order or otherwise related to or arising from the CCAA Proceedings shall be for the Seller's sole account.
- 5.1.6 In the event leave to appeal is sought, an appeal is taken or a stay pending appeal is requested with respect to the Approval and Vesting Order or any other Orders required by the Court in connection with the transactions contemplated hereby, the Seller shall promptly notify the Purchaser of such application for leave to appeal, appeal or stay request and shall promptly provide to the Purchaser a copy of the related notice(s) or Order(s). The Seller and the Purchaser acknowledge and agree that, in the event leave to appeal is sought with respect to the Approval and Vesting Order or any other Orders required by the Court in connection with the transactions contemplated hereby, unless the Seller and the Purchaser agree otherwise, the Closing Date shall be extended until two Business Days following dismissal of (i) the application for leave to appeal, or (ii) if leave is granted, the appeal.

5.2 Cooperation

- 5.2.1 Prior to the Closing, upon the terms and subject to the conditions of this Agreement, each of the Parties shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, and cooperate with each other in order to do, all things necessary, proper or advisable under applicable Law to consummate the transactions contemplated by this Agreement as soon as practicable, including the preparation and filing of all forms, registrations and notices required to be filed to consummate the Closing, making witnesses available in the Court or by declaration, as necessary, in obtaining the entry of the Approval and Vesting Order, and the taking of such actions as are necessary to obtain any requisite Consent; provided, however, at no time shall the Seller be obligated to make any payment or deliver anything of value to the Purchaser or any Third Party (other than filing with and payment of any application fees to Government Entities, all of which shall be paid or reimbursed by the Purchaser unless otherwise provided herein) or to the Purchaser in order to

obtain any Consent.

- 5.2.2 The Seller and the Purchaser shall promptly notify the other of the occurrence, to such Party's Knowledge, of any event or condition, or the existence, to such Party's Knowledge, of any fact, that would reasonably be expected to result in (i) any of the conditions set forth in Article 7 not being satisfied; or (ii) any of the representations and warranties in Article 3 or Article 4 not being true and correct.
- 5.2.3 If any objections are asserted with respect to the transactions contemplated hereby under any Law or if any suit is instituted by any Government Entity challenging any of the transactions contemplated hereby as violative of any Law or if the filing pursuant to Section 5.2.1 is reasonably likely to be rejected or conditioned by a Government Entity, each of the Parties shall use commercially reasonable efforts to resolve such objections or challenge as such Government Entity may have to such transactions, including to vacate, lift, reverse or overturn any Action, whether temporary, preliminary or permanent, so as to permit consummation of the transactions contemplated by this Agreement.
- 5.2.4 The Purchaser and the Seller acknowledge and agree that time is of the essence in effecting the Closing and otherwise consummating the transactions contemplated herein, and that it will promptly and timely provide written requests, execute and deliver all required documents and materials and use commercially reasonable efforts to perform all necessary and required actions.
- 5.2.5 The Seller shall, at the reasonable request and the sole expense of the Purchaser, cooperate in the delivery to the Purchaser of any Books and Records following the Closing.
- 5.2.6 Notwithstanding anything in this Agreement to the contrary, Purchaser shall, at its sole cost and expense, reimburse Seller for all out-of-pocket costs and expenses incurred by Seller in connection with any action taken by Seller at Purchaser's request.

5.3 Access to Information

Seller shall not be required to disclose any information, records, files or other data to the Purchaser where prohibited by any Laws or which would result in the disclosure of any trade secrets of Third Parties or violate any obligation of the Seller to any Third Party or that would have the effect of causing the waiver of any solicitor-client privilege or subsisting agreement of confidentiality.

5.4 Confidentiality

After the Closing, the Seller shall keep confidential all information relating to the BelSax LP, the BelSax Assets and the BelSax Licences, except information which:

- (a) is part of the public domain;
- (b) becomes part of the public domain other than as a result of a breach of these provisions by the Seller; or
- (c) was received in good faith after Closing from an independent Person who

was lawfully in possession of such information free of any obligation of confidence.

5.5 Public Announcements

Prior to the Closing and except as necessary for the Party to make any filing with the Court to obtain approval of the transactions contemplated by this Agreement, no Party shall issue any press release or public announcement concerning this Agreement or the transactions contemplated by this Agreement without obtaining the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed, unless, in the reasonable judgment of the Purchaser or the Seller, as the case may be, disclosure is otherwise required by applicable Law (including the Securities Laws), the CCAA or the Court with respect to filings to be made with the Court in connection with this Agreement or by the Securities Laws of the Securities Commissions or any stock exchange on which the Purchaser lists securities, provided that the Party intending to make such release shall use commercially reasonable efforts consistent with such applicable Law and the Court requirement to consult with the other Party with respect to the text thereof.

5.6 Further Actions

From and after the Closing Date, each of the Parties shall execute and deliver such documents and other papers and take such further actions as may reasonably be required to carry out the provisions of this Agreement and the other Transaction Documents and give effect to the transactions contemplated herein and therein, including the execution and delivery of such assignments, deeds and other documents as may be necessary to transfer any BelSax Assets as provided in this Agreement and the other Transaction Documents; provided that the Seller shall not be obligated to make any payment or deliver anything of value to any Third Party (other than filing with and payment of any application fees to Government Entities, all of which shall be paid or reimbursed by the Purchaser unless otherwise specified herein) or the Purchaser in order to obtain any Consent to the transfer of BelSax Assets or the assumption of Assumed Liabilities.

5.7 Transaction Expenses

Except as otherwise provided in this Agreement or the other Transaction Documents, each of the Purchaser and the Seller shall bear its own costs and expenses (including brokerage commissions, finders' fees or similar compensation, and legal fees and expenses) incurred in connection with this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby. Without limiting the foregoing, the Purchaser shall pay all costs associated with any step undertaken by the Seller at the Purchaser's request.

5.8 Notification of Certain Matters

The Seller shall give written notice to the Purchaser and the Purchaser shall give written notice to the Seller, as applicable, promptly after becoming aware of (a) the occurrence of any event, which would be likely to cause any condition set forth in Article 7 to be unsatisfied in any material respect at any time from the date hereof to the Closing Date; or (b) any notice or other communication from (i) any Person alleging that the Consent of such Person is or may be required in connection with any of the transactions contemplated by this Agreement; or (ii) any Government Entity in connection with any of the transactions contemplated by this Agreement; provided, however, that the delivery of any notice pursuant to this Section 5.8 shall not limit or otherwise affect the remedies available hereunder to the Seller or the Purchaser.

5.9 Risk of Loss

Until the Closing, the BelSax Assets will remain at the risk of the Seller. If any or all of the BelSax Assets are appropriated, expropriated or seized by a Government Entity or other lawful authority on or before the Closing, the Seller will give notice thereof to the Purchaser as promptly as practical and the Purchaser will have the option, exercisable by notice to the Seller on or before the Closing:

- (a) to reduce the Purchase Price by an amount equal to the proceeds of insurance or compensation for appropriation, expropriation or seizure with respect thereto (referred to as the "Proceeds"), and to complete the purchase; or
- (b) to complete the purchase without reduction of the Purchase Price, in which event all Proceeds will be payable to the Purchaser and all Claims of the Seller to any such amounts not paid by the Closing will be assigned to the Purchaser.

5.10 Seller Activities

The Seller covenants that, from the date of this Agreement until the Closing, subject to any limitation imposed as a result of being subject to the CCAA Proceedings, the terms of any Court-approved financing arrangements or any Order of the Court, and except as (i) otherwise contemplated by this Agreement; (ii) consented to in writing by the Purchaser; (iii) required by applicable Law; or (iv) relates solely to Excluded Liabilities, the Seller will:

- (a) conduct itself in relation to the BelSax Assets and the BelSax LP in the usual and Ordinary Course;
- (b) comply in all material respects with all applicable Law and the terms and conditions of the BelSax LPA;
- (c) refrain from assigning, transferring, conveying or otherwise disposing of any of the BelSax Assets;
- (d) not waive or release any material right of Seller that constitutes any part of the BelSax Assets;
- (e) be responsible for any cash calls (including, without limitation, in respect of any requests to contribute to the Costs of any Program and Budget (as those terms are defined in the BelSax LPA) that have been submitted by BelSax GP to the Seller pursuant to Section 6.4 of the BelSax LPA or otherwise) and that come due prior to Closing. For greater certainty, the Purchaser shall be responsible for any cash call requests that come due on or after Closing; and
- (f) advise the Purchaser promptly of any cash call requests (pursuant to Section 6.4 of the BelSax LPA or otherwise) which are requested by BelSax GP prior to the Closing, including of any such cash call requests that may fall due after the Closing for which the Purchaser shall be

responsible.

5.11 Walter Nominee Directors' and Officers' Indemnification

- 5.11.1 The provisions of any document, including any insurance policy maintained by either of BelSax LP or BelSax GP, concerning the elimination of liability and indemnification of directors and officers in existence as of the date hereof shall not be amended in any manner that would adversely affect the rights thereunder of any officer or director of BelSax LP or BelSax GP appointed by Seller, Walter Canadian Coal or any of their Affiliates (the "Walter Nominees").
- 5.11.2 From and after the Closing, the Purchaser (the "D&O Indemnitor") shall indemnify, hold harmless and defend each of the Walter Nominees (the "D&O Indemnitees") against any and all claims of any nature or kind arising out of or relating to, whether directly or indirectly, any acts or omissions (or alleged acts or omissions) of any of the D&O Indemnitees in their capacities as such, which acts or omissions occurred prior to the Closing. The Purchaser shall promptly advance expenses in connection with such indemnifications. The Seller confirms that it holds the benefit of the foregoing indemnity in trust for the D&O Indemnitees.
- 5.11.3 Effective on the Closing, each of the Walter Nominees and each of their respective representatives, successors and assigns, on the one hand, and BelSax LP and BelSax GP and each of their respective representatives, successors and assigns, on the other hand, shall be deemed to have mutually remised, released and forever discharged the other of and from any and all Claims which such parties, or any of them, now has or ever had, or hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatsoever, against the other and each of them, to the Closing Date. For greater certainty, the Seller and the D&O Indemnitees do not release any Claims the Seller or the D&O Indemnitees may have under this Section 5.11.

ARTICLE 6 TAX MATTERS

6.1 Transfer Taxes

- 6.1.1 The Parties agree that the Purchase Price is exclusive of any Transfer Taxes. Subject to Section 5.7, the Purchaser shall promptly pay directly to the appropriate Tax Authority, or promptly reimburse the Seller upon demand and delivery of proof of payment, all applicable Transfer Taxes that are properly payable by the Purchaser or the Seller under applicable Law in connection with this Agreement and the transactions contemplated herein and the other Transaction Documents and the transactions contemplated therein. The Purchaser shall indemnify and save harmless the Seller from and against any Transfer Taxes that may be imposed on, claimed from or demanded of the Seller, including as a result of the transactions contemplated hereby or as a result of any elections made or omitted to be made or any refusal of any Government Entity to accept any such election.
- 6.1.2 If the Purchaser wishes to claim any exemption relating to, or a reduced rate of, Transfer Taxes, in connection with this Agreement or the transactions

contemplated herein or the other Transaction Documents and the transactions contemplated therein, the Purchaser shall be solely responsible for ensuring that such exemption or election applies and, in that regard, shall provide the Seller prior to Closing with its permit number, GST/HST number, or other similar registration numbers and/or any appropriate certificate of exemption, election and/or other document or evidence to support the claimed entitlement to such exemption or reduced rate by the Purchaser. The Seller shall make commercially reasonable efforts to cooperate to the extent necessary to obtain any such exemption or reduced rate. Purchaser shall pay all costs associated with obtaining any such exemption or reduced rate.

6.2 Tax Characterization of Payments Under This Agreement

The Seller and the Purchaser agree to treat all payments made either to or for the benefit of the other Party under this Agreement as adjustments to the Purchase Price for Tax purposes and that such treatment shall govern for purposes hereof to the extent permitted under applicable Tax Law.

6.3 Records

- 63.1 After the Closing Date, the Purchaser and the Seller will make available to the other, as reasonably requested, and to any Tax Authority, all information, records or documents relating to Liability for Taxes with respect to the BelSax Assets and the Assumed Liabilities for all periods prior to or including the Closing Date, and will preserve such information, records or documents until the expiration of any applicable statute of limitations or extensions thereof. In the event that one Party needs access to records in the possession of the other Party relating to any of the BelSax Assets or the Assumed Liabilities for purposes of preparing Tax Returns or complying with any Tax audit request, subpoena or other investigative demand by any Tax Authority, or for any other legitimate Tax-related purpose not injurious to the other Party, the other Party will allow representatives of the first Party, at the first Party's sole expense, access to such records during regular business hours at the other Party's place of business for the sole purpose of obtaining information for use as aforesaid and will permit the other Party to make extracts and copies thereof as may be necessary or convenient.
- 63.2 The Purchaser shall take all reasonable steps to preserve and keep any Books and Records delivered to it in connection with the completion of the transactions contemplated by this Agreement for a period of six years from the Closing Date, or for any longer period as may be required by any Law or Government Entity, and shall make such records available to the Seller, the Monitor, the CRO or any trustee in bankruptcy of the Seller on a timely basis, as may be required by it, including in connection with any administrative or legal proceeding that may be initiated by, on behalf of, or against the Seller.

ARTICLE 7 CONDITIONS TO THE CLOSING

7.1 Conditions to Each Party's Obligation

The Parties' obligation to effect the Closing is subject to the satisfaction or the express

written waiver of the Parties, at or prior to the Closing, of each of the following conditions:

- (a) there shall be in effect no Law or Order prohibiting the consummation of the transactions contemplated hereby that has not been withdrawn or terminated; and
- (b) none of the Parties nor any of their respective directors, officers, employees or agents, will be a defendant or third party to or threatened with any litigation or proceedings before any Government Entity which could prevent or restrict that Party from performing any of its obligations in this Agreement or any Transaction Document.

7.2 Conditions to the Seller's Obligation

The Seller's obligation to effect the Closing shall be subject to the fulfillment (or express written waiver by the Seller), at or prior to the Closing, of each of the following additional conditions:

- (a) except for any failure to be true and correct that has not had a material adverse effect on the ability of the Purchaser to consummate the transactions contemplated by this Agreement, each representation and warranty contained in Article 3 shall be true and correct (i) as if restated on and as of the Closing Date; or (ii) if made as of a date specified therein, as of such date;
- (b) the covenants, obligations, and agreements contained in this Agreement to be complied with by the Purchaser on or before the Closing shall have been complied with in all material respects;
- (c) each of the deliveries required to be made to the Seller pursuant to Section 2.3.2 shall have been so delivered; and
- (d) the Approval and Vesting Order shall have been entered in a form and substance acceptable to the Seller and shall have become a Final Order.

7.3 Conditions to Purchaser's Obligation

The Purchaser's obligation to effect the Closing shall be subject to the fulfillment (or express written waiver by the Purchaser), at or prior to the Closing, of each of the following additional conditions:

- (a) except for any failure to be true and correct that has not had a material adverse effect on the ability of the Seller to consummate the transactions contemplated by this Agreement, each representation and warranty contained in Article 4 shall be true and correct (i) as if restated on and as of the Closing Date; or (ii) if made as of a date specified therein, as of such date;
- (b) the covenants, obligations and agreements contained in this Agreement to be complied with by the Seller on or before the Closing shall have been complied with in all material respects;

- (c) each of the deliveries required to be made to the Purchaser pursuant to Section 2.3.2 shall have been so delivered;
- (d) the Approval and Vesting Order shall have been entered in a form and substance acceptable to the Purchaser and shall have become a final order;
- (e) since December 28, 2016, the Seller has not taken any step that is inconsistent with the BelSax LPA that has resulted in the BelSax LP and BelSax GP ceasing to carry on the Business (as defined in the BelSax LPA) in the ordinary course, consistent with past practice or that has caused any changes in the Business, the Belcourt Royalty or any of the assets (including, without limitation, the Belcourt Assets (as defined in the BelSax LPA) and the Saxon Assets (as defined in the BelSax LPA)), operations, affairs, or condition (financial or otherwise) of BelSax LP or BelSax GP, in each case other than changes in the ordinary course of the Business, which do not, individually or in the aggregate, constitute a material adverse change; and
- (f) since December 28, 2016, there have been no distributions (including, without limitation, any distributions of cash by BelSax LP or returns of Capital (as defined in the BelSax LPA)) declared or paid by BelSax LP or BelSax GP to the Seller that have not also been paid to the Purchaser.

ARTICLE 8 TERMINATION

8.1 Termination

This Agreement may be terminated at any time prior to the Closing (or in the case of clause (c) below, within the time period prescribed therein):

- (a) by mutual written consent of the Seller and the Purchaser;
- (b) by either Party, upon written notice to the other:
 - (i) in the event of a material breach by such other Party of such other Party's representations, warranties, agreements or covenants set forth in this Agreement, which breach (A) would result in a failure of the conditions to Closing set forth in Section 7.2 or Section 7.3, as applicable; and (B) is not cured within seven days from receipt of a written notice from the non-breaching Party;
 - (ii) if a Government Entity issues an Order prohibiting the transactions contemplated hereby;
 - (iii) if the Closing does not take place by the Outside Date; or
- (c) by the Seller, if this Agreement is executed by the Purchaser after the conclusion of the Review Period,

provided, however, that the right to terminate this Agreement pursuant to Section 8.1(b)(ii) shall not be available to any Party whose breach hereof has been the principal cause of, or has directly resulted in, the event or condition purportedly giving rise to a right to terminate this Agreement under such clauses.

8.2 Effects of Termination

If this Agreement is terminated pursuant to Section 8.1, all further obligations of the Parties under or pursuant to this Agreement shall terminate without further Liability of any Party to the other except for the provisions of Section 1.1 (Definitions), Section 1.2 (Interpretation), Section 2.2.2 (Deposit), Sections 3.3 & 4.5 (No Brokers) Section 5.3 (Confidentiality), Section 5.5 (Public Announcements), Section 5.7 (Transaction Expenses), Section 8.2 (Effects of Termination), Section 10.1 (Monitor's Capacity), Section 10.2 (Chief Restructuring Officer), Section 10.3 (Releases), Section 10.5 (Remedies) Section 10.6 (No Third-Party Beneficiaries) Section 10.8 (Successors and Assigns), Section 10.9 (Governing Law; Submission to Jurisdiction), Section 10.10 (Notices) and Section 10.14 (Entire Agreement).

ARTICLE 9 POST-CLOSING ACTIVITIES AND AGREEMENTS

9.1 General Post-Closing Access to the BelSax Assets

The Parties agree that upon reasonable prior notice to Purchaser, the Seller will be given reasonable access to the BelSax Assets during normal business hours as necessary to enable the Seller to carry out or respond to reporting requirements of Government Entities, ongoing tax and accounting functions and obligations, and other activities of the Seller with respect to the sale of the BelSax Assets. All such activities of the Seller will be conducted in a manner which complies with Purchaser's safety and operating procedures and in a manner which will not interfere unreasonably with the activities of Purchaser. All such activities of the Seller shall only be conducted in the presence of a representative of the Purchaser.

ARTICLE 10 MISCELLANEOUS

10.1 Monitor's Capacity

The Purchaser acknowledges and agrees that the Monitor, acting in its capacity as the Monitor of the Seller in the CCAA Proceedings, will have no Liability in connection with this Agreement whatsoever in its capacity as Monitor, in its personal capacity or otherwise.

10.2 Chief Restructuring Officer

In executing this Agreement and making any representation, warranty or certification hereunder, the CRO has inquired of the Seller's senior management and has informed himself through and relied upon the results of such inquiry. The CRO has not examined any other Person, reviewed any other document, or otherwise attempted to verify the accuracy or completeness of the information that has been provided to the CRO through the inquiries made of senior management. All representations, warranties and certifications made in respect of this Agreement are expressly qualified by the actual knowledge of the CRO based on the inquiries made to date by the CRO, and it is acknowledged by the Purchaser that the CRO shall have no personal Liability whatsoever for the execution of this Agreement, any matter contained in this

Agreement or any of the representations, warranties, covenants or certifications made herein; provided however that the CRO shall exercise the powers granted to the CRO under the SISP Order and any other Order in the CCAA Proceedings, as applicable, to cause the Seller to perform the Seller's obligations under this Agreement.

10.3 Releases

At the Closing Date or upon termination of this Agreement, the Purchaser releases the CRO, the Monitor, any of their Affiliates and any partner, employee, officer, director, accountant, agent, financial, legal or other representative of any of the Seller, the Monitor or the CRO, from any and all Claims, known or unknown, that the Purchaser may have against such Person relating to, arising out of, or in connection with the negotiation and execution of this Agreement, the transactions contemplated hereunder and any proceedings commenced with respect to or in connection therewith.

10.4 No Survival of Representations and Warranties or Covenants

- 10.4.1 No representations or warranties, covenants or agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive beyond the Closing Date unless expressly provided for herein or therein.
- 10.4.2 With respect to Claims against the Seller or the Purchaser, no Claim of any nature whatsoever for breach of representations or warranties hereunder may be made, or Action instituted with respect thereto, after the Closing Date.
- 10.4.3 Notwithstanding the foregoing, the covenants and agreements that by their terms are to be satisfied after the Closing Date shall survive until satisfied in accordance with their terms.

10.5 Remedies

No failure to exercise, and no delay in exercising, any right, remedy, power or privilege under this Agreement by any Party will operate as a waiver of such right, remedy, power or privilege, nor will any single or partial exercise of any right, remedy, power or privilege under this Agreement preclude any other or further exercise of such right, remedy, power or privilege or the exercise of any other right, remedy, power or privilege.

10.6 No Third-Party Beneficiaries

This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

10.7 Consent to Amendments; Waivers

No Party shall be deemed to have waived any provision of this Agreement or any of the other Transaction Documents unless such waiver is in writing, and then such waiver shall be limited to the circumstances set forth in such written waiver. This Agreement and the other Transaction Documents shall not be amended, altered or qualified except by an instrument in writing signed by all the Parties hereto or thereto, as the case may be.

10.8 Successors and Assigns

Except as otherwise expressly provided in this Agreement, all representations, warranties, covenants and agreements set forth in the Transaction Documents by or on behalf of the Parties thereto will be binding upon and inure to the benefit of such Parties and their respective successors and permitted assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by any Party without the prior written consent of the other Parties, which consent may be withheld in such Party's sole discretion, except for assignment by the Purchaser to an Affiliate of the Purchaser (provided that the Purchaser remains liable jointly and severally with its assignee Affiliate for the assigned obligations to the Seller).

10.9 Governing Law; Submission to Jurisdiction

10.9.1 Any questions, claims, disputes, remedies or Actions arising from or related to this Agreement, and any relief or remedies sought by any Parties, shall be governed exclusively by the Laws of the Province of British Columbia and the federal laws of Canada applicable therein without regard to the rules of conflict of laws applied therein or any other jurisdiction.

10.9.2 To the fullest extent permitted by applicable Law, each Party (i) agrees that any Claim, Action or proceeding by such Party seeking any relief whatsoever arising out of, or in connection with, this Agreement or the transactions contemplated hereby shall be brought only in the Court; (ii) agrees to submit to the nonexclusive jurisdiction of the Court for purposes of all legal proceedings arising out of, or in connection with, this Agreement or the transactions contemplated hereby; (iii) waives and agrees not to assert any objection that it may now or hereafter have to the laying of the venue of any such Action brought in such a Court or any Claim that any such Action brought in such a Court has been brought in an inconvenient forum; (iv) agrees that mailing of process or other papers in connection with any such Action or proceeding in the manner provided in Section 10.10 or any other manner as may be permitted by Law shall be valid and sufficient service thereof; and (v) agrees that a judgment in any such Action or proceeding, once finally determined, settled or adjudicated, and all rights to appeal, if any, have been exhausted or have expired, shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

10.10 Notices

All demands, notices, communications and reports provided for in this Agreement shall be deemed given if in writing and delivered, if sent by facsimile, electronic mail, courier or sent by reputable overnight courier service (delivery charges prepaid) to any Party at the address specified below, or at such other address, to the attention of such other Person, and with such other copy, as the recipient Party has specified by prior written notice to the sending Party pursuant to the provisions of this Section 10.10.

(a) If to the Purchaser, to:

PEACE RIVER COAL INC.
c/o Anglo American

Level 11
201 Charlotte Street
Brisbane Queensland
4000 Australia
Attention: Carlos Davila

Facsimile: 604-688-5210
Email: carlos.davila@angloamerican.com

with copies (which shall not constitute notice) to:

McCarthy Tétrault LLP
Suite 2400, 745 Thurlow Street
Vancouver BC V6E 0C5
Attention: Roger Taplin

Facsimile: 604-643-7900 Email:
rtaplin@mccarthy.ca

(b) If to the Seller, to:

NEW WALTER CANADIAN COAL CORP.
1055 West Hastings Street
Suite 1700, The Guinness Tower
Vancouver, BC V6E 2E9

Email: baziz@bluetreadvisors.com

And to:

Marc Wasserman and Patrick Riesterer
OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, M5X 1B8

Facsimile: 416.862.6666
Email: mwasserman@osler.com and priesterer@osler.com

with a copy to the Monitor:

Philip J. Reynolds and Anthony Tillman
KPMG INC.
Bay Adelaide Centre
333 Bay Street, Suite 4600
Toronto, ON M5H 2S5

Facsimile: 416.777.3364 and 604.691.3036
Email: pireynolds@kpm.ca and atillman@kpmg.ca

and a copy to counsel to the Monitor:

Wael Rostom and Caitlin Fell
McMillan LLP
181 Bay Street, Suite 440
Toronto, ON M5J 2T3

Facsimile: 416.865.7048
Email: wael.rostom@mcmillan.ca and caitlin.fell@mcmillan.ca

Any such demand, notice, communication or report shall be deemed to have been given pursuant to this Agreement when delivered personally, when confirmed if by facsimile transmission or electronic mail, or on the calendar day after deposit with a reputable overnight courier service, as applicable.

10.11 Counterparts

The Parties may execute and deliver this Agreement in two or more counterparts (no one of which need contain the signatures of all Parties), including facsimile or scanned PDF document, with the same effect as if all Parties had executed and delivered the same copy, each of which will be deemed an original and all of which together will constitute one and the same instrument.

10.12 No Presumption

The Parties agree that this Agreement was negotiated fairly among them at arm's length and that the final terms of this Agreement are the product of the Parties' negotiations. Each Party represents and warrants that it has sought and received experienced legal counsel of its own choosing with regard to the contents of this Agreement and the rights and obligations affected hereby. The Parties agree that this Agreement shall be deemed to have been jointly and equally drafted by them, and that the provisions of this Agreement therefore should not be construed against a Party on the grounds that such Party drafted or was more responsible for drafting the provisions.

10.13 Severability

If any provision, clause, or part of this Agreement, or the application thereof under certain circumstances, is held invalid, illegal or incapable of being enforced in any jurisdiction, (i) as to such jurisdiction, the remainder of this Agreement or the application of such provision, clause or part under other circumstances; and (ii) as for any other jurisdiction, any provision of this Agreement, shall not be affected and shall remain in full force and effect, unless, in each case, such invalidity, illegality or unenforceability in such jurisdiction materially impairs the ability of the Parties to consummate the transactions contemplated by this Agreement or to carry out the intent of this Agreement. Upon such determination that any clause or other provision is invalid, illegal or incapable of being enforced in such jurisdiction, 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 a mutually acceptable manner in order that the transactions contemplated hereby be consummated or carried out as originally contemplated to the greatest extent legally possible including in such jurisdiction.

10.14 Entire Agreement

The Transaction Documents set forth the entire understanding of the Parties relating to

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the subject matter thereof, and all prior or contemporaneous understandings, agreements, representations and warranties, whether written or oral, are superseded by the Transaction Documents, and all such prior or contemporaneous understandings, agreements, representations and warranties are hereby terminated. In the event of any irreconcilable conflict between this Agreement and any of the other Transaction Documents, the provisions of this Agreement shall prevail (unless the other Transaction Documents expressly provides otherwise).

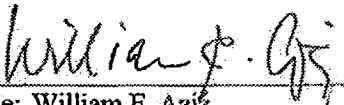
[Signature page follows]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first written above.

SELLER:

NEW WALTER CANADIAN COAL CORP.

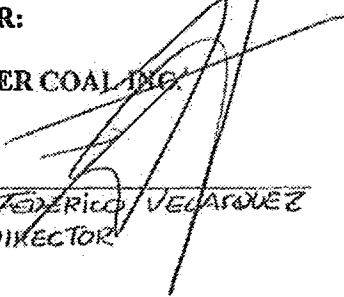
By:


Name: William E. Aziz
Title: Chief Restructuring Advisor

PURCHASER:

PEACE RIVER COAL INC.

By:


Name: FEDERICO VELAZQUEZ
Title: DIRECTOR