

This is the 19th Affidavit of  
William E. Aziz in this case and  
was made on February 29, 2018

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

**AFFIDAVIT**

I, **WILLIAM E. AZIZ**, Chief Restructuring Officer, of the Town of Oakville, in the Province of Ontario,  
MAKE OATH AND SAY AS FOLLOWS:

1. I am the President of BlueTree Advisors Inc. ("**BlueTree**") which has been retained to provide my services as Chief Restructuring Officer ("**CRO**") to the Petitioners (the "**New Walter Canada Group**"). As such I have personal knowledge of the facts hereinafter deposed, except where such facts are stated to be based upon information and belief, and where so stated I do verily believe the same to be true.
2. This Affidavit is made in support of a motion by the New Walter Canada Group under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") seeking the following relief:
  - (a) An Order (the "**Approval Order**") authorizing but not requiring the execution of a share sale agreement (the "**SSA**") by and among Energybuild Holdings Limited ("**Energybuild Holdings**" or the "**Vendor**") and Speciality Carbons Limited ("**Specialty Carbons**"),

substantially in the form attached hereto as Exhibit "A", and the consummation of the transaction (the "**Transaction**") contemplated by the SSA.

(b) An Order that the confidential affidavit of William E. Aziz sworn the date hereof (to be filed) and the exhibits thereto (the "**Confidential Aziz Affidavit**") be sealed, kept confidential and not form part of the public record.

3. I was initially retained by Walter Energy Canada Holdings, Inc. ("**Walter Energy Canada**") to provide my services as CRO to Walter Energy Canada, its direct and indirect subsidiaries and affiliates, and the partnerships listed on Schedule "C" to the Initial Order (collectively, the "**Old Walter Canada Group**"). I was retained pursuant to an engagement letter dated December 30, 2015, as amended in response to certain requests made by Old Walter Canada Group stakeholders. BlueTree was appointed as CRO of the Old Walter Canada Group pursuant to the Order of this Honourable Court made on January 5, 2016 (the "**SISP Order**").

4. My engagement as CRO of the Old Walter Canada Group, other than as CRO of Cambrian Energybuild Holdings ULC ("**Cambrian**"), was terminated on December 15, 2016, when the entities comprising that group filed for bankruptcy.

5. The companies comprising the New Walter Canada Group (other than Cambrian) were incorporated on December 8, 2016, pursuant to the authorization granted in paragraph 5 of the Order of this Honourable Court made on December 7, 2016 (the "**CCAA Procedure Order**"). Each such company became a Petitioner in these CCAA proceedings and subject to the CCAA Charges (as defined in the CCAA Procedure Order), and I became CRO of each new company in the New Walter Canada Group when the companies were formed.

6. The information in this Affidavit is arranged under the following headings:

<b>I.</b>	<b>The Proposed Transaction.....</b>	<b>2</b>
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**I. THE PROPOSED TRANSACTION**

**A. Background: Efforts to Market the Walter U.K. Assets and the Speciality Carbons Offer**

7. The proposed Transaction contemplates the sale of the entire issued share capital (the "**Shares**") of Energybuild Limited, Energybuild Mining Limited, and Mineral Extraction and Handling Limited (together, the "**Energybuild Companies**"), which are all U.K. companies indirectly owned by New Walter Energy Canada Holdings, Inc.

8. The assets of the New Walter Canada Group's U.K. subsidiaries and operations (the "**Walter U.K. Assets**") have been extensively marketed before and during these CCAA proceedings.
9. Before the commencement of these CCAA proceedings, the Walter U.K. Assets were marketed by Walter Energy, Inc. ("**WEI**"). As noted in my first affidavit sworn in these proceedings on March 22, 2016 (the "**First Aziz Affidavit**"), PJT Partners LP (the Old Walter Canada Group's financial advisor) began canvassing the market in an attempt to find a purchaser for the assets of the Old Walter Canada Group prior to the CCAA filing, including in relation to the Chapter 11 proceedings in respect of certain members of the Walter U.S. Group (as defined in the First Aziz Affidavit).
10. During these CCAA proceedings, both the Old Walter Canada Group and the New Walter Canada Group have taken a number of steps to market the Walter U.K. Assets pursuant to the SISP Order. Initially, the Walter U.K. Assets were marketed as part of the efforts leading to the asset purchase agreement with Conuma Coal Resources Limited (the "**Conuma Transaction**") and, eventually, leading to the purchase agreement with Peace River Coal Inc. in respect of the New Walter Canada Group's 50 percent interest in Belcourt Saxon Limited Partnership and Belcourt Saxon Coal Ltd. (the "**Belcourt Transaction**"). However, as noted in my third affidavit sworn in these proceedings on August 9, 2016 (the "**Third Aziz Affidavit**"), in light of the bids received for the Walter U.K. Assets at the time, it was determined that the Old Walter Canada Group should focus on realizing value from its Canadian operations and undertake further efforts to realize value from the Walter U.K. Assets at a later date.
11. Subsequently, as described in my fifth affidavit sworn in these proceedings on December 2, 2016 (the "**Fifth Aziz Affidavit**"), the Old Walter Canada Group and the Monitor developed and implemented a further sales and investment solicitation process (the "**Remaining Assets Sales Process**") for certain assets remaining within the Old Walter Canada Group, including the Energybuild Companies and the Walter U.K. Assets (the "**Remaining Assets**"). During the Remaining Assets Sales Process, the Monitor took a number of steps to market the Remaining Assets, including providing a confidential information memorandum to parties who had expressed an interest in submitting proposals for purchasing certain remaining assets owned by the Old Walter Canada Group and entering into non-disclosure agreements with potentially interested parties.
12. The Petitioners and the Monitor also engaged with certain additional interested parties in the period following the completion of the Remaining Assets Sales Process and concluding on or about December 14, 2017 with the execution of the Specialty Carbons offer letter in respect of the Energybuild Companies (the "**Offer Letter**") and the commencement of the Exclusivity Period (defined below) contemplated therein.

13. Speciality Carbons expressed an interest in acquiring the Walter U.K. Assets on June 10, 2016, before the bid deadline established pursuant to the SISP Order (as extended in accordance with its terms). However, the transaction could not be finalized at the time because of certain potential claims that may have been made against the Old Walter Canada Group's U.K. subsidiaries. Those potential claims were subsequently addressed in the Settlement Term Sheet (the "**Term Sheet**") between the New Walter Canada Group, the United Mine Workers of America 1974 Pension Plan and Trust, and Warrior Met Coal, Inc. ("**Warrior**"). This Honourable Court approved the Term Sheet on October 6, 2017.
14. On December 5, 2017, the New Walter Canada Group received a draft of the Offer Letter from Speciality Carbons setting out the terms pursuant to which Speciality Carbons proposed to acquire the entire issued share capital of the Energybuild Companies. The Offer Letter provided that the parties would negotiate a conditional share purchase agreement using a previously provided draft share purchase agreement as a basis, with completion targeted for the end of February 2018. The Offer Letter laid out the terms and conditions upon which the proposed transaction was intended to be carried out.
15. The Offer Letter also contained an exclusivity clause that provided Speciality Carbons with exclusive rights to negotiate and enter into the transaction contemplated in the Offer Letter, and which provided that Energybuild Holdings would not solicit any other offers for the sale of the shares or assets of the Energybuild Companies during the period following acceptance of the Offer Letter and until the earlier of (i) the day the Court refused to approve Energybuild Holdings' acceptance of the Offer Letter, (ii) the exchange of the share purchase agreement or confirmation from Speciality Carbons that they no longer wish to proceed with the transaction, or (iii) February 28, 2018 (the "**Exclusivity Period**").
16. On December 13, 2017, this Honourable Court made the Stay Extension & Energybuild Order, following which Energybuild Holdings entered into the Offer Letter with Speciality Carbons.<sup>1</sup>
17. Subsequently, the New Walter Canada Group and Speciality Carbons began negotiating the SSA contemplated by the Offer Letter. During these negotiations, Speciality Carbons materially improved upon its original offer. It significantly increased the purchase price and eliminated the requirement for certain working capital advances that would have involved Energybuild Holdings loaning a portion of the purchase price funds back to Energybuild Limited. These improvements

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<sup>1</sup> As discussed in greater detail in my eighteenth affidavit sworn in these proceedings on February 21, 2018 (the "**Eighteenth Aziz Affidavit**"), the Stay Extension & Energybuild Order contained a typo and mistakenly referred to "Energybuild Ltd." instead of "Energybuild Holdings Limited."

are particularly significant because they will permit the New Walter Canada Group to fully recover all the amounts loaned to the Energybuild entities to date and to wind up the remaining Energybuild entities that are not sold pursuant to the Transaction much earlier than would have been possible under the original transaction structure set out in the Offer Letter.

**B. Unsolicited Alternative Offer for the Shares**

18. The New Walter Canada Group received an unsolicited, non-binding offer for the Shares during the Exclusivity Period from Stephen Cork, in his capacity as the Joint Administrator of Glyncastle plc appointed by its lender group (the "**Glyncastle Administrator**"). A redacted copy of the Glyncastle Administrator's offer is attached as Exhibit "B".
19. Glyncastle indirectly owns a mine located near the Aberpergwm mine owned and operated by the Energybuild Companies.
20. As the Glyncastle Administrator's offer was received during the Exclusivity Period, the New Walter Canada Group was not able to engage with this potential purchaser. In any event, despite this alternative offer for the Shares and even though the Glyncastle Administrator has indicated that it may be prepared to pay a higher purchase price for the Energybuild Companies, the New Walter Canada Group believes that it is in the best interests of all stakeholders to proceed to execute the SSA and conclude the transaction contemplated in the SSA with Speciality Carbons now.
21. Among other things, the Glyncastle Administrator has not conducted any due diligence on the Energybuild Companies or their assets. If the New Walter Canada Group pursued a potential transaction with the Glyncastle Administrator, additional time will be needed to allow the Glyncastle Administrator to conduct due diligence and to negotiate definitive documents regarding a sale. The due diligence and negotiation process may result in a reduction to the indicative purchase price proposed in the Glyncastle Administrator's non-binding offer.
22. Further, additional costs would be incurred by the Energybuild Companies during the diligence and negotiation period. The New Walter Canada Group would have to provide further funding to the Energybuild Companies while negotiations were ongoing. If a transaction with the Glyncastle Administrator cannot be concluded, there is no guarantee that Speciality Carbons would still be prepared to enter into an SSA.
23. As a result, in the exercise of its reasonable business judgment, the New Walter Canada Group has concluded that it is in its best interest and the best interest of all stakeholders to consummate the nearly-finalized transaction with Speciality Carbons rather than to pursue the uncertain possibility of a transaction with the Glyncastle Administrator.

**C. Key Terms of the Transaction**

24. All capitalized terms in this section not otherwise defined have the meaning given to them in the SSA.
25. Speciality Carbons, the purchaser under the SSA, is a company duly incorporated under the laws of England and Wales.
26. Under the SSA, Energybuild Holdings will sell and Speciality Carbons will purchase the Shares with full title guarantee and free from all encumbrances, and Energybuild Holdings will indemnify Speciality Carbons in full for breach of this obligation without any set off or counterclaim.
27. On Closing, Energybuild Holdings will repay all funds advanced to Energybuild Limited, indirectly, by Cambrian (the "**Cambrian Advances**") from the purchase price. In addition, following Closing, Energybuild Holdings and all of its remaining affiliates incorporated under the laws of England and Wales will be wound-up and the remainder of the purchase price after payment of the Cambrian Advances will be distributed by Energybuild Holdings.
28. The Closing Date for the Transaction will be March 2, 2018 or such other date as the parties may agree to in writing. The majority of the covenants and conditions precedent to closing are standard in the CCAA context and are consistent with or more favourable to Energybuild Holdings than those set out in the Offer Letter. The material covenants and conditions precedent include the following:
  - (a) The Transaction is completed on an "as is, where is" basis, with limited representations and warranties from Energybuild Holdings regarding the Energybuild Companies or their business and assets (other than to title as noted in paragraph 26 above).
  - (b) To the knowledge of the Vendor, the Vendor has made provisions for all liabilities of the Energybuild Companies existing as of the Closing Date, other than the following liabilities, which, for greater certainty, shall remain liabilities of the Energybuild Companies and shall not be paid or addressed by the Vendor:
    - (i) any Claims for environmental matters or reclamation obligations, including without limitation (I) Claims of Neath Port Talbot County Borough Council, the Coal Authority and any other Governmental Authority that may arise, whether or not such Claims relate to restoration bonds held by such Governmental Authority, and (II) any Claims relating to the lease for the land upon which the Aberpergwm mine is situated;

- (ii) any Claims related to work to be performed to comply with any planning commission or other obligation imposed by any Governmental Authority;
- (iii) any Claims for Taxes of any kind;
- (iv) any Claims from the Welsh Assembly or any other Governmental Authority that may be in force in relation to loans provided to the Energybuild Companies by the Welsh Assembly or such Governmental Authority, including in connection with equipment financing;
- (v) any Claims or liabilities of any kind, whether pursuant to contract, purchase order or otherwise, arising (I) in the ordinary course of business and not yet due and payable as of the Closing Date, and (II) that apply to goods to be received or services to be provided or other accruals related to the period after the Closing Date;
- (vi) any Claim for ordinary course trade payables, including telephone, internet and other communication services, security, electricity, insurance, real property leases and similar matters;
- (vii) any Claim of UK Methane Limited or its affiliates (collectively, "UK Methane") in respect of UK Methane's petroleum exploration licenses and rights, including in relation to bore holes on the Aberpergwm property or an Interaction Agreement among UK Methane and the Corporation, EML and/or MEHL;
- (viii) any Claim related to the CRC Energy Efficiency Scheme Order; and
- (ix) any Claims of any nature whatsoever that arise or relate to the period after the Closing Date.

The parties acknowledge that the Vendor shall have no liability to the Purchaser for any Claims for breach of the obligations outlined in paragraph (b) above until the aggregate amount of such Claims exceeds £100,000, and in no circumstances shall the Vendor be liable in respect of any Claims for breach of these obligations for any amount in excess of the amount equal to the Purchase Price minus the amount advanced by Cambrian to the members of the Walter U.K Group.

- (c) The Vendor warrants that (i) there have no material adverse change to the financial condition or results of operation of Energybuild Limited taken as a whole after the date of

the SSA but prior to Closing, and (ii) funds received or disbursed by the Energybuild Limited have been collected and paid in the ordinary course of business.

- (d) All intercompany loans and all other balances between the Energybuild Companies and Energybuild Holdings and any of its present or former affiliates other than the Energybuild Companies, except for the Cambrian Advances, shall be converted to a contribution of capital, waived or forgiven in a manner satisfactory to Speciality Carbons that is intended to preserve all available tax losses in the Energybuild Companies and to prevent the creation of additional tax liability.
  - (e) Energybuild Holdings will have delivered and Speciality Carbons will have received the documents identified in Section 7.2 of the SSA in connection with closing.
  - (f) All of the representations and warranties of Energybuild Holdings and of Speciality Carbons shall be true and correct in all material respects on the Closing Date and with the same effect as if made at and as of the Closing Date (except as such representations or warranties may be effected by the occurrence of events or transactions expressly contemplated and permitted by the SSA).
  - (g) Energybuild Holdings and Speciality Carbons shall have performed or complied with, in all material respects, all of their obligations, covenants and agreements under the SSA Agreement.
  - (h) There shall be no Order issued delaying, restricting or preventing, and no pending or threatened Claim or judicial or administrative proceeding, or investigation against any party by any person for the purpose of enjoining or preventing the consummation of the transactions contemplated in the SSA or otherwise claiming that the consummation of such transactions is improper or would give rise to proceedings under any Laws.
  - (i) Walter Energy Canada shall have obtained the Approval Order and, on the Closing Date, the Order shall not have been stayed, suspended, set aside, varied or appealed and no motion to stay, suspend the operation of, set aside, seek leave to appeal or vary the Order shall have been served or threatened.
29. The Purchaser has agreed that at the Closing Date or upon termination of the SSA, the Purchaser releases the CRO, the Monitor, the Vendor, any of their affiliates and any partner, employee, officer, director, accountant, agent, financial, legal or other representative of the Vendor, the Monitor or the CRO, and the directors and officers of the Energybuild Companies, in each case, 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 the SSA, the Transactions and any proceedings commenced with respect to or in connection therewith.

30. Based on the information available at the date of swearing this Affidavit, I anticipate that the closing date will occur shortly following the issuance of the Approval Order. Closing is currently scheduled to occur on March 2, 2018.
31. The SSA is subject to limited termination rights, and may be terminated in the following manner and circumstances:
  - (a) By mutual written consent of the parties.
  - (b) By Speciality Carbons if the conditions in Article 7 to which Energybuild Holdings is subject have not been fulfilled by Energybuild Holdings by Closing, and by Energybuild Holdings if the conditions in Article 8 to which Speciality Carbons is subject have not been fulfilled by Speciality Carbons by Closing.
  - (c) By either party:
    - (i) upon written notice to the other, in the event of a material breach by the other party of that party's representations, warranties, agreements or covenants under the SSA that is not cured within seven days from receipt of a written notice from the non-breaching party, provided, however, that this right to terminate the SSA will not be available to any party whose breach has been the principal cause of, or has directly resulted in, the event or condition purportedly giving rise to a right to terminate the SSA;
    - (ii) upon written notice to the other, if a Governmental Authority issues an Order prohibiting any of the transactions contemplated in the SSA;
    - (iii) if the Approval Order is not granted; or
    - (iv) if the Closing does not take place by March 2, 2018, or such later date as the parties may agree in writing, by reason of any default by the other party.
32. Speciality Carbons has agreed to pay a deposit equal to approximately ten percent of the purchase price contemplated by the SSA.
33. In the SSA, Speciality Carbons has agreed to operate the mine at Aberpergwm and not to sell (directly or indirectly) the Energybuild Companies or any assets of the Energybuild Companies outside of the ordinary course of business for at least one year following the Closing other than to

specific joint venture entities identified in the SSA and the Purchaser has confirmed that neither the joint venture entities nor any of their shareholders, principals or financing sources are creditors of, financing sources to or otherwise involved (directly or indirectly) in the administration proceedings of Glyncastle Plc. If Speciality Carbons sells (directly or indirectly) the Energybuild Companies or any assets of the Energybuild Companies during this period other than as permitted or if the representation and warranty regarding the Glyncastle Administrator and related matters is incorrect or untrue in any material respect, it will pay all proceeds of sale in excess of the purchase price under the SSA to the Monitor on behalf of the Vendor. Speciality Carbons is however permitted to assign its rights under the SSA or to sell (directly or indirectly) the Energybuild Companies to an affiliate with the financial wherewithal to complete the Transaction with the consent of Energybuild Holdings (not to be unreasonably delayed or withheld or made subject to unreasonable conditions).

34. The SSA also provides that both parties have submitted to the exclusive jurisdiction of the Supreme Court of British Columbia in any action, application, reference or other proceeding arising out of or relating to the SSA.

**D. The Transaction Should be Approved**

35. While Energybuild Holdings, the vendor under the SSA, is not insolvent and is not subject to the CCAA Proceedings, it is indirectly owned by Cambrian, a CCAA debtor. For this reason, the factors set out in the CCAA may be instructive as part of the request for this Court's approval of the SSA and the Transaction.

36. The factors listed in section 36 of the CCAA, among others, support the approval of the Transaction as follows:

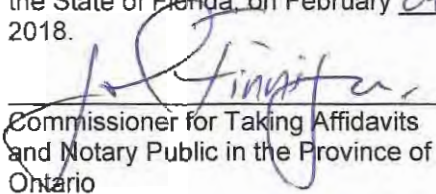
- (a) The sales process leading to the proposed Transaction was reasonable in the circumstances. The Walter U.K. Assets were marketed three times: (i) prior to the commencement of the CCAA proceedings as part of the broad canvassing of the market by WEI and the Old Walter Canada Group's financial advisor; (ii) as part of the marketing process for all of the assets of the Old Walter Canada Group conducted pursuant to the SISF Order and leading to the Conuma Transaction, described in the Third Aziz Affidavit (a copy of the which, without exhibits, is attached hereto as Exhibit "C") as well as the Fourth Report of the Monitor dated August 11, 2016; and (iii) as part of the Remaining Assets Sales Process, described in the Fifth Aziz Affidavit (a copy of which, without exhibits, is attached hereto as Exhibit "D") as well as the Sixth Report of the Monitor dated December 5, 2016. This Honourable Court has previously granted approval and vesting orders for the Conuma Transaction, the Belcourt Transaction and the Remaining Assets Transaction that resulted from these marketing efforts.

- (b) I am informed by the Monitor and believe that it will be filing a Supplement to its Sixteenth Report stating that the Monitor approves of the process leading to the proposed Transaction and that the Monitor supports the Transaction.
- (c) The proposed Transaction will improve creditors' recoveries because it will result in the repayment of the Cambrian Advances and will eliminate any need to provide further funding for the Energybuild Companies, and affected creditors have been consulted regarding the Transaction.
- (d) The consideration to be received in respect of the Shares subject to the Transaction is reasonable and fair, taking into account their market value.
- (e) The New Walter Canada Group has proceeded in good faith and with due diligence throughout the process leading to the SSA, and has received advice from legal and financial advisors and from the Monitor and the CRO.
- (f) Speciality Carbons is not related to any member of the New Walter Canada Group.

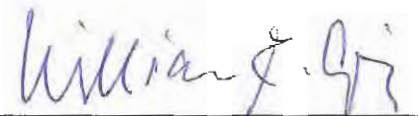
**II. SEALING THE CONFIDENTIAL AZIZ AFFIDAVIT**

- 37. An unredacted copy of the SSA is attached as an exhibit to the Confidential Aziz Affidavit. The purchase price and certain other terms of the SSA are commercially sensitive, and this information would not normally be publicly available and should not be disclosed at any point before the Transaction successfully closes. It is not necessary to disclose the exact price because other terms of the SSA have been disclosed and the Monitor will provide its views on the Transaction.
- 38. In addition, an unredacted copy of the Glyncastle Administrator's offer is also attached as an exhibit to the Confidential Aziz Affidavit. The potential purchase price contained in the Glyncastle Administrator's offer has been redacted because disclosure of that information will provide an indication of the purchase price in the SSA, which is confidential.
- 39. The Confidential Aziz Affidavit should therefore be sealed until further order of this Honourable Court.

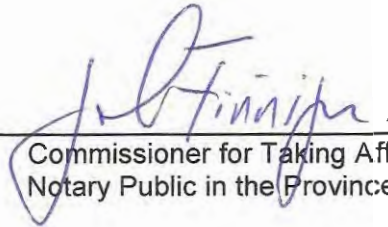
SWORN BEFORE ME at Naples, in  
 the State of Florida, on February 24<sup>th</sup>  
 2018.

  
 Commissioner for Taking Affidavits  
 and Notary Public in the Province of  
 Ontario

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 WILLIAM E. AZIZ

This is Exhibit "A" referred to in Affidavit #19 of **William E. Aziz** sworn February 27<sup>th</sup>, 2018 at Naples, Florida.



A handwritten signature in blue ink, appearing to read "J. Stinson", is written over a horizontal line.

Commissioner for Taking Affidavits and  
Notary Public in the Province of Ontario

**SHARE SALE AGREEMENT**  
**BY AND AMONG**  
**ENERGYBUILD HOLDINGS LIMITED**  
**AND**  
**SPECIALITY CARBONS LIMITED**  
**DATED AS OF ●, 2018**

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## SHARE SALE AGREEMENT

THIS AGREEMENT is made the ● day of ●, 2018.

### BETWEEN:

**ENERGYBUILD HOLDINGS LIMITED**, a private company limited by shares incorporated under the laws of England and Wales under number 04934473

(the “Vendor”)

- and -

**SPECIALITY CARBONS LIMITED**, a company incorporated pursuant to the laws of England and Wales under number 04976188 and whose registered office address is situated in Whitelion House 17 Newmarket Street, Usk, NP15 1AU

(the “Purchaser”)

**WHEREAS** Cambrian Energybuild Holdings ULC (“**Cambrian**”) and its Canadian 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 of Cambrian and its Canadian affiliates (the “**Monitor**”) in the CCAA proceedings bearing Court File No. S-1510120 (the “**CCAA Proceedings**”);

**AND WHEREAS** 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 Cambrian and its Canadian affiliates (the “**SISP**”), including the Shares. The SISP Order and the SISP exclusively govern the process for soliciting and selecting bids for such sale. The SISP Order and the SISP require receipt of non-binding letters of intent by the Monitor on or before March 18, 2016 and, if applicable, receipt of irrevocable bids by the Monitor in respect of such assets on or before May 27, 2016;

**AND WHEREAS** Cambrian and the Vendor are wholly-owned, indirectly, by New Walter Energy Canada Holdings, Inc. (“**Walter Energy Canada**”) pursuant to an Order of the Court dated December 21, 2016;

**AND WHEREAS** pursuant to the SISP Order, BlueTrec Advisors Inc. was appointed as the Chief Restructuring Officer (the “**CRO**”) to select one or more Successful Bids (as defined in the SISP), in consultation with and under the supervision of the Monitor;

**AND WHEREAS** the Vendor owns the entire issued share capital, i.e. 2 ordinary shares of £1 each, of Energybuild Limited, a corporation duly incorporated pursuant to the laws of England and Wales under number 04770293 (the “**Corporation**”), the entire issued share capital, i.e. 2 ordinary shares of £1 each, of Energybuild Mining Limited, a corporation duly incorporated pursuant to the laws of England and Wales under number 04934085 (“**EML**”), and



the entire issued share capital, i.e. 70,102 ordinary shares of £1 each, of Mineral Extraction and Handling Limited, a corporation duly incorporated pursuant to the laws of England and Wales under number 03258359 (“MEHL”, and together with the Corporation and EML, the “**Energybuild Companies**”) (all such shares together being referred to as the “**Shares**”) and wishes to sell the Shares to the Purchaser, and the Purchaser wishes to purchase the Shares from the Vendor;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the covenants, agreements, terms, conditions, warranties, and payments set forth and provided for in this Agreement, the parties agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Agreement, unless there is something inconsistent in the subject matter or context:

“**Agreement**” means this agreement to purchase and sell the Shares;

“**Approval Order**” means an Order of the Court, *inter alia*, approving Cambrian directing the Vendor to enter into and consummate the transactions set out in this Agreement;

“**Business Day**” means any day, other than a Saturday or Sunday, on which banks in the London are open for commercial banking business during normal banking hours;

“**Cambrian**” has the meaning assigned to it in the Recitals;

“**Cambrian Advances**” means all funds advanced to the Corporation, indirectly, by Cambrian;

“**CCAA**” has the meaning assigned to it in the Recitals;

“**CCAA Proceedings**” has the meaning assigned to it in the Recitals;

“**Claims**” means claims, demands, complaints, grievances, actions, suits, Orders, charges, indictments, prosecutions, or other similar processes, assessments or reassessments, including any claims arising out of equitable interests, options, preferential arrangements of any kind or nature, assignments, restrictions, financing statements, deposit arrangements, rights of others, leases, sub-leases, licences, rights of first refusal or similar restrictions, and any judgments, debts, liabilities, reasonable and properly incurred expenses, costs, damages or losses, contingent or otherwise, including loss of value, reasonable and properly incurred professional fees, including fees and disbursements of legal counsel, and all actual and documented costs incurred in investigating or pursuing any of the foregoing or arising out of any proceeding relating to any of the foregoing;

“**Closing**” means the completion of the sale to and purchase by the Purchaser of the Shares;

“**Closing Date**” means 2<sup>nd</sup> March 2018 (or such other date as the Parties may agree in writing);

“**Confidentiality Agreement**” has the meaning assigned to it in Section 9.6(a);

“**Corporation**” has the meaning assigned to it in the Recitals;

“**Court**” has the meaning assigned to it in the Recitals;

“**CRO**” has the meaning assigned to it in the Recitals;

“**Deposit**” has the meaning assigned to it in Section 3.2(a);

“**Governmental Authorities**” means governments, regulatory authorities, governmental departments, agencies, state or agency of a state, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities:

- (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or
- (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

“**Initial Order**” has the meaning assigned to it in the Recitals;

“**Laws**” means currently existing applicable statutes, by-laws, rules, regulations, Orders, ordinances or judgments, in each case of any Governmental Authority having the force of law;

“**Monitor’s Certificate**” means the certificate to be filed with the Court by the Monitor following Closing certifying receipt of confirmation from each relevant Party that all conditions of Closing in its favour contained in Article 7, Article 8 and Article 9 which are for the benefit of such Party have been satisfied or waived;

“**Orders**” means orders, injunctions, judgments, administrative complaints, decrees, rulings, awards, assessments, directions, instructions, penalties or sanctions issued, filed or imposed by any Governmental Authority or arbitrator;

“**Parties**” means the Vendor and the Purchaser collectively, and “**Party**” means any one of them;

“**Person**” means an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability company, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or governmental entity;

“**Personal Information**” means information in the possession or under the control of the Vendor about an identifiable individual;

“**Purchase Price**” has the meaning assigned to it in Section 3.1;

“**Shares**” has the meaning assigned to it in the Recitals;

“**SISP**” has the meaning assigned to it in the Recitals;

“**SISP Order**” has the meaning assigned to it in the Recitals;

“**Tax Returns**” means returns, reports, declarations, elections, notices, filings, forms, statements and other documents (whether in tangible, electronic or other form) and including any amendments, schedules, attachments, supplements, appendices and exhibits thereto, made, prepared, filed or required to be made, prepared or filed by Law in respect of Taxes;

“**Taxes**” means taxes, duties, fees, premiums, assessments, imposts, levies and other similar charges imposed by any Governmental Authority under applicable Law, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees; and

“**Walter Energy Canada**” has the meaning assigned to it in the Recitals.

## 1.2 Certain Rules of Interpretation

In this Agreement:

- (a) **Currency** – Unless otherwise specified, all references to money amounts are to pounds sterling.
- (b) **Governing Law** – This Agreement is a contract made under and shall be governed by and construed in accordance with the laws of England and Wales.
- (c) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (d) **Including** – Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.
- (e) **No Strict Construction** – The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

- (f) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and *vice versa* and words importing gender include all genders.
- (g) **Severability** – If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, the provision shall, as to that jurisdiction, be ineffective only to the extent of the restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction, or without affecting its application to other Parties or circumstances.
- (h) **Statutory References** – A reference to a statute includes all regulations and rules made pursuant to the statute and, unless otherwise specified, the provisions of any statute, regulation or rule which amends, supplements or supersedes any such statute, regulation or rule.
- (i) **Time** – Time is of the essence in the performance of the Parties’ respective obligations.
- (j) **Time Periods** – Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done, shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

### 1.3 Entire Agreement

This Agreement, and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral, whether statutory or otherwise, between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

### 1.4 Appendices

The appendices to this Agreement listed below is an integral part of this Agreement:

<u>Appendix</u>	<u>Description</u>
“1”	Form of Stock Transfer Form
“2”	Form of Power of Attorney

## ARTICLE 2 PURCHASE AND SALE

### 2.1 Action by Vendor and Purchaser

Subject to the provisions of this Agreement, at the Closing Date:

- (a) **Purchase and Sale of Shares** – the Vendor shall sell and the Purchaser shall purchase the Shares with full title guarantee and free from all Encumbrances and the Vendor shall indemnify the Purchaser in full for breach of this section 2.1.(a) without any set off or counterclaim;
- (b) **Payment of Purchase Price** – the Purchaser shall pay the Purchase Price as provided in Article 3;
- (c) **“As Is, Where is” Sale** – the Purchaser acknowledges to and in favour of the Vendor that the Purchaser has conducted its own investigations and inspections in respect of the Shares, the Energybuild Companies, and their respective assets, and that the Purchaser is responsible for conducting its own investigations of all matters and things connected with or in any way related to the Shares, that the Purchaser has relied upon its own investigations and inspections in entering into this Agreement, that the Purchaser is purchasing the Shares on an “as is, where is” basis as at the Closing Date, and that the Purchaser hereby acknowledges that none of the Vendor, the Monitor, the CRO or any of their respective affiliates, representatives, directors, officers or agents have made any representations, warranties, statements or promises with respect to the Shares, the Energybuild Companies, or their respective assets save and except as are contained herein, including as to title;
- (d) **Transfer and Delivery of Shares** – the Vendor shall transfer and deliver at Closing to the Purchaser duly executed stock transfer forms in the forms set out in Appendix “1” and deliver share certificates representing the Shares accompanied a power of attorney duly executed in blank in the form set out in Appendix “2”, in either case by the holders of record;
- (e) **Other Documents** – the Vendor and the Purchaser shall deliver such other documents as may be necessary to complete the transaction provided for in this Agreement; and
- (f) **Directorships** – The incumbent directors of the Energybuild Companies shall resign as officers and employees of their respective companies. The Energybuild Companies shall provide the current directors of the Energybuild Companies with a release and indemnity in form and substance satisfactory to the Vendor effective upon such resignation to release and indemnify the current directors to the fullest extent permitted by Law of all matters related to the Energybuild Companies. The Vendor shall procure a release from the said directors acknowledging that they

have no further claims against any of the Energybuild Companies other than in respect of the aforementioned Energybuild Companies' release and indemnity.

## 2.2 Place of Closing

The Closing shall take place on the Closing Date at the offices of Osler, Hoskin & Harcourt LLP, 1055 W. Hastings St., Suite 1700, Vancouver, British Columbia, Canada or at such other place as may be agreed upon by the Vendor and the Purchaser. The Closing shall be deemed to be effective as of the date and time set out in the Monitor's Certificate and the Monitor's Certificate shall be subsequently filed with the Court.

## ARTICLE 3 PURCHASE PRICE

### 3.1 The Purchase Price

The amount payable by the Purchaser for the Shares, exclusive of all applicable withholding, sales and transfer Taxes (if any), shall be [REDACTED] ("Purchase Price").

### 3.2 Deposit

- (a) Pursuant to the SISP and prior to the execution and delivery of this Agreement by the Purchaser, the Purchaser has paid [REDACTED] and, on execution of this Agreement, the Purchaser shall pay a further [REDACTED] (collectively, the "Deposit") to the order of the Monitor to the stipulated account on behalf of the Vendor.
- (b) The Vendor shall procure that the Monitor shall hold the Deposit, pending Closing, in a separate trust or client account with the Canadian Imperial Bank of Commerce.
- (c) If the Closing does not occur by the Closing Date (or such later date as may be agreed to by the Vendor in writing) by reason of any default by the Purchaser, the full amount of the Deposit plus any accrued interest shall become the property of the Vendor and be retained by the Monitor on behalf of the Vendor as liquidated damages, and not as a penalty, to compensate it for expenses or damages incurred in connection with the transactions contemplated in the Agreement and the delay caused to the Vendor's efforts to sell the Shares or take other action in connection with the Energybuild Companies. The entitlement of the Monitor on behalf of the Vendor to retain the Deposit in such circumstances shall not limit the Vendor's right to exercise any other rights and remedies which the Vendor may have against the Purchaser in respect of such default.
- (d) If the Closing does not occur for any reason other than the default of the Purchaser, the Vendor shall procure that the Monitor shall return to the Purchaser the full amount of the Deposit plus any accrued interest and that the funds shall be returned to such account as the Purchaser shall indicate in writing to the Monitor; the Purchaser shall have no further recourse against the Vendor.

### **3.3 Satisfaction of Purchase Price**

The Purchaser shall satisfy payment of the Purchase Price at Closing by:

- (a) release of the Deposit to the Monitor on behalf of the Vendor; and
- (b) payment to the Monitor, on behalf of the Vendor, of the Purchase Price less the amount of the Deposit, by way of wire or other electronic transfer of immediately available funds to the account specified in writing by the Monitor, and the Vendor agrees that receipt of which sum in such account of the Monitor shall constitute a good and valid discharge to the Purchaser in respect of its Purchase Price obligations to the Vendor.

### **3.4 Cambrian Advances**

On Closing, the Cambrian Advances (which, as of the date of this Agreement consist of £1,061,000 of principal plus accrued interest and may be further increased prior to Closing) shall be repaid in full by the Vendor from the Purchase Price.

### **3.5 Wind-up of Vendor and its Affiliates**

Following Closing but for the avoidance of doubt, not before the expiry of a period of two months following Closing, the Vendor and all of its remaining affiliates incorporated under the laws of England and Wales will be wound-up and the remainder of the Purchase Price after payment of the Cambrian Advances shall be distributed by Vendor.

### **3.6 Transfer Taxes**

The Parties agree that the Purchase Price is exclusive of any transfer Taxes. The Purchaser shall promptly pay directly to the appropriate tax authority, or promptly reimburse the Vendor upon demand and delivery of proof of payment, all applicable stamp or other Taxes that are properly payable by the Purchaser or the Vendor 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 Vendor from and against any Taxes that may be imposed on, claimed from or demanded of the Vendor as a result of the transactions contemplated hereby (other than any capital gains Taxes) or as a result of any elections made or omitted to be made or any refusal of any Governmental Authority to accept any such election.

## **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE VENDOR**

The Vendor represents and warrants to the Purchaser the matters set out below.

### **4.1 Incorporation and Corporate Power**

Each of the Energybuild Companies is duly incorporated and validly existing under the laws of England and Wales and has all necessary corporate power, authority and capacity to own its assets and to carry on its business as presently conducted.

#### **4.2 Status of the Vendor and Right to Sell**

The Vendor is a private limited liability company incorporated pursuant to the laws of England and Wales. The Vendor is the sole registered legal and beneficial owner of the Shares. Subject to the Approval Order, the Vendor has the exclusive right to dispose of the Shares as provided in this Agreement and such disposition will not violate, contravene, breach or offend against or result in any default under any contract, charter or by-law provision, Order, judgment, decree, licence, permit or Law, to which the Vendor is a party or subject or by which the Vendor is bound or affected.

#### **4.3 Due Authorization and Enforceability of Obligations**

Subject to obtaining the Approval Order, this Agreement will constitute a valid and binding obligation of the Vendor enforceable against it in accordance with its terms.

#### **4.4 Absence of Conflicts**

Subject to obtaining the Approval Order, the Vendor is not a party to, bound by or affected by or subject to any material:

- (a) indenture, mortgage, lease, agreement, obligation or instrument;
- (b) charter or by-law provision; or
- (c) Laws;

which would be violated, breached by, or under which material default would occur as a result of the execution and delivery of, or the performance of its obligations under, this Agreement or any other agreement to be entered into under the terms of this Agreement.

#### **4.5 Capitalization**

- (a) The authorized share capital of the Corporation consists of 2 ordinary shares of £1 each, all of which are issued to the Vendor and are issued as fully paid. There are no outstanding subscriptions, options, rights, warrants or other agreements or commitments obligating the Corporation to sell or issue any additional shares of any class or any securities convertible into any class of shares.
- (b) The authorized share capital of EML consists of 2 ordinary shares of £1 each, all of which are issued to the Vendor and are issued as fully paid. There are no outstanding subscriptions, options, rights, warrants or other agreements or commitments obligating the EML to sell or issue any additional shares of any class or any securities convertible into any class of shares.
- (c) The authorized share capital of MEHL consists of 70,102 ordinary shares of £1 each, all of which are issued to the Vendor and are issued as fully paid. There are no outstanding subscriptions, options, rights, warrants or other agreements or commitments obligating the MEHL to sell or issue any additional shares of any class or any securities convertible into any class of shares.



#### 4.6 Corporate Records

Copies of the articles of incorporation/letters patent and any articles of amendment of the Corporation have been provided to the Purchaser. None of the Energybuild Companies has taken any corporate action to dissolve or otherwise terminate its corporate existence.

#### 4.7 Provision

To the knowledge of the Vendor, the Vendor has made provisions for all liabilities of the Corporation, EML and MEHL existing as of the Closing Date, other than the following liabilities, which, for greater certainty, shall remain liabilities of the Energybuild Companies and shall not be paid or addressed by the Vendor:

- (a) any Claims for environmental matters or reclamation obligations, including without limitation (i) Claims of Neath Port Talbot County Borough Council, the Coal Authority and any other Governmental Authority that may arise, whether or not such Claims relate to restoration bonds held by such Governmental Authority, and (ii) any Claims relating to the lease for the land upon which the Aberpergwm mine is situated;
- (b) any Claims related to work to be performed to comply with any planning commission or other obligation imposed by any Governmental Authority;
- (c) any Claims for Taxes of any kind;
- (d) any Claims from the Welsh Assembly or any other Governmental Authority that may be in force in relation to loans provided to the Corporation, EML and/or MEHL by the Welsh Assembly or such Governmental Authority, including in connection with equipment financing;
- (e) any Claims or liabilities of any kind, whether pursuant to contract, purchase order or otherwise, arising (i) in the ordinary course of business and not yet due and payable as of the Closing Date and (ii) that apply to goods to be received or services to be provided or other accruals related to the period after the Closing Date;
- (f) any Claim for ordinary course trade payables, including telephone, internet and other communication services, security, electricity, insurance, real property leases and similar matters;
- (g) any Claim of UK Methane Limited or its affiliates (collectively, "**UK Methane**") in respect of UK Methane's petroleum exploration licenses and rights, including in relation to bore holes on the Aberpergwm property or an Interaction Agreement among UK Methane and the Corporation, EML and/or MEHL;
- (h) any Claim related to the CRC Energy Efficiency Scheme Order; and
- (i) any Claims of any nature whatsoever that arise or relate to the period after the Closing Date.

and the parties hereby acknowledge that the Vendor shall have no liability to the Purchaser for any Claims for breach of this Section 4.7 until the aggregate amount of such Claims exceeds £100,000; and in no circumstances shall the Vendor be liable in respect of any Claims for breach of this Section 4.7 for any amount in excess of the amount equal to the Purchase Price minus the amount of the Cambrian Advances.

#### **4.8 Events prior to Closing**

The Vendor warrants:

- (a) That no agreements have been entered into by the Vendor after the date of this Agreement but prior to Closing which will cause or incur a liability or obligations on the Corporation after Closing which has not already been disclosed to the Purchaser or provided for;
- (b) That there has been no material adverse change to the financial condition or results of operation of the Corporation taken as a whole after the date of this Agreement but prior to Closing, provided that an adverse material change shall not include: (i) a decline in the market price of the products of the Corporation; (ii) an increase in the price of raw materials used by the Corporation; (iii) any adverse change, effect or circumstance relating generally to financial markets or general economic conditions; (iv) any adverse change, effect or circumstance relating to conditions generally affecting the industry in which the Corporation operates, and not affecting it in a disproportionate manner; (v) war, act of terrorism, civil unrest or similar event; (vi) any generally applicable change in Law or interpretation thereof; (vii) any adverse change, effect or circumstance resulting from an action required or permitted by this Agreement; or (viii) any adverse change, effect or circumstance caused by the announcement or pendency of this Agreement or the transactions contemplated by this Agreement;
- (c) That no cash has been or shall be removed from the Corporation other than to pay for salaries, accruals and other payables incurred in the ordinary course of business between December 14, 2017 and Closing; and
- (d) That any proceeds from realising inventory or accounts receivable has been or will be received by the Corporation in the period between December 14, 2017 and Closing.

#### **4.9 Further Undertakings**

The Vendor undertakes:

- (a) to transfer, assign or procure the transfer or assignment of any assets, contracts, licences or leases which relate to the mine at Aberpergwm and are necessary to carry on the existing mining operations at Aberpergwm which are owned, leased, granted or contracted with another subsidiary of Walter Energy Canada to the Corporation as soon as either the Purchaser or the Vendor become aware of such assets, contracts, licences or leases and the Vendor agrees that there shall be no increase to the Purchase Price in connection with such assignment or transfer.

provided, however that the Purchaser undertakes to pay or to cause the Energybuild Companies to pay any and all reasonable out of pocket expenses and any Taxes associated with such transfer or assignment; and

- (b) not to sell any assets of the Energybuild Companies outside of the ordinary course of business without the prior written consent of the Purchaser between the date of this Agreement and the earlier of (i) Closing, or (ii) the date this Agreement is terminated in accordance with Section 10.1.

#### **4.10 Disclaimer of Other Representations and Warranties**

Except as expressly set forth in this Article 4 or otherwise expressly set forth in this Agreement, the Vendor makes no representation or warranty, and there is no condition, in each case, express or implied, at law, by statute or in equity, in respect of the Shares or the Energybuild Companies or any of the Energybuild Companies' assets, liabilities or operations, including with respect to merchantability or fitness for any particular purpose, and any such other representations, warranties or conditions are expressly disclaimed.

### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser represents and warrants to the Vendor the matters set out below.

#### **5.1 Incorporation and Corporate Power**

The Purchaser is a corporation incorporated pursuant to the laws of England and Wales and has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement.

#### **5.2 Due Authorization and Enforceability of Obligations**

This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against it in accordance with its terms.

#### **5.3 Absence of Conflicts**

The Purchaser is not a party to, bound by or affected by or subject to any material:

- (a) indenture, mortgage, lease, agreement, obligation or instrument;
- (b) charter or by-law provision; or
- (c) Laws

which would be violated, breached by, or under which default would occur as a result of the execution and delivery of, or the performance of its obligations under, this Agreement or any other agreement to be entered into under the terms of this Agreement.

#### **5.4 No Broker**

The Purchaser has carried on all negotiations relating to this Agreement and the transactions contemplated in this Agreement directly and without intervention on its behalf of any other party in such manner as could give rise to any valid claim for a brokerage commission, finder's fee or other like payment.

#### **5.5 Financial Ability**

The Purchaser has cash on hand and firm commitments from investors, copies of which have been provided to the Vendor prior to the Closing Date in amounts sufficient to allow it to pay the Purchase Price including any adjustments, and all other costs and expenses in connection with the consummation of the transaction contemplated by this Agreement.

#### **5.6 Due Diligence by Purchaser**

The Purchaser acknowledges that it has conducted to its satisfaction an independent investigation of the financial condition, liabilities, results of operations and projected operations of the Energybuild Companies and the nature and condition of its properties and assets and, in making the determination to proceed with the transaction contemplated by this Agreement, has relied solely on the results of its own independent investigation and the representations, warranties, conditions and statements in Article 4 and is purchasing the Shares on an "as-is, where-is" basis.

#### **5.7 Further Undertakings**

The Purchaser undertakes to operate the mine and not to sell (directly or indirectly) the Energybuild Companies or any assets of the Energybuild Companies outside of the ordinary course of business for at least one year following the Closing save for a transfer of the Energybuild Companies at a price not exceeding the Purchase Price plus the cost of the acquisition to BLACK DIAMOND MINING CORPORATION LIMITED incorporated and registered in England and Wales with company number 11091702 whose registered office is at 55 Station Road, Beaconsfield, Bucks, HP9 1QL, a joint venture company to be owned on or prior to completion of the said transfer in equal parts by the Purchaser and DNA (MINING) LIMITED, incorporated and registered in England and Wales with company number 11076097 whose registered office is at 55 Station Road, Beaconsfield, Buckinghamshire, HP9 1QL. Purchaser represents and warrants and will, at the request of the Vendor, procure that Black Diamond Mining Corporation Limited and DNA (Mining) Limited represent and warrant that none of Black Diamond Mining Corporation Limited, DNA (Mining) Limited, or any of their shareholders, principals or financing sources are creditors of, financing sources to or otherwise involved (directly or indirectly) in the administration proceedings of Glynecastle Plc., any of its affiliates or their respective predecessors, successors or assigns or the mine known as the Unity Mine. If the Purchaser sells (directly or indirectly) the Energybuild Companies or any assets of the Energybuild Companies in contravention of this provision or if the foregoing representation regarding Cork Gully LLP, Glynecastle Plc. and the Unity Mine is incorrect or untrue in any material respect, the Purchaser shall pay all proceeds of sale in excess of the Purchase Price to the Monitor on behalf of the Vendor. This provision shall survive Closing.

**ARTICLE 6  
NON-WAIVER; SURVIVAL**

**6.1 Non-Waiver**

No waiver of any condition or other provisions, in whole or in part, shall constitute a waiver of any other condition or provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

**6.2 Nature and Survival**

- (a) 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.
- (b) With respect to Claims against the Vendor, no Claim of any nature whatsoever for breach of such representations, warranties, covenants or agreements may be made, or action instituted, following the Closing Date. With respect to Claims against the Purchaser, no Claim of any nature whatsoever for breach of such representations, warranties, covenants or agreements may be made, or action instituted, following the Closing Date other than a Claim in respect of any breach of Section 5.7.
- (c) 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.

**ARTICLE 7  
PURCHASER'S CONDITIONS PRECEDENT**

The obligation of the Purchaser to complete the purchase of the Shares under this Agreement shall be subject to the satisfaction of, or compliance with, on or before the Closing Date, each of the following conditions precedent (each of which is acknowledged to be inserted for the exclusive benefit of the Purchaser and may be waived by it in whole or in part):

**7.1 Balance Sheet**

- (a) Prior to Closing, all intercompany loans and all other balances between, on the one hand, the Energybuild Companies, and on the other, Vendor and any of its present or former affiliates other than the Energybuild Companies other than the Cambrian Advances, shall be converted to a contribution of capital, waived or forgiven in manner satisfactory to Purchaser that is intended to preserve all available tax losses in the Energybuild Companies and to prevent the creation of additional tax liability resulting from any such action.
- (b) The Vendor shall consult with the Purchaser regarding any steps in respect of Clause 7.1(a) and shall have no liability to the Purchaser for any adverse tax consequences of any steps taken after consultation with the Purchaser. Purchaser shall not be entitled to rely on the Vendor's tax advice regarding these matters and

shall obtain such independent tax advice as it deems necessary in the circumstances.

- (c) Vendor shall provide to Purchaser on or before Closing with satisfactory evidence that the Energybuild Companies have been released from:
  - (i) any intercompany loans made to the Energybuild Companies by Walter Energy, Inc. or any of its US affiliates and assigned to Warrior Met Coal, Inc.; or
  - (ii) any claim made by the United Mine Workers of America 1974 Pension Plan and Trust in relation to liabilities of Walter Energy, Inc. or any of its US affiliates.

## **7.2 Delivery of Documents**

In connection with Closing, the Vendor shall deliver the following documents to the Purchaser to the extent any such documents have not been posted in the electronic data room established in respect of the sale of the Shares:

- (a) the current operating lease between Aberpergwm Estate (Jersey) Limited and the Corporation and all recent correspondence in respect thereof;
- (b) the lease relating to Treforgan between Rhidian Morgan Davies, MEHL and Energybuild Group PLC and all recent correspondence in respect thereof;
- (c) all current planning permissions for Aberpergwm Mine and all recent correspondence with the local Governmental Authorities in respect thereof;
- (d) all current licenses with the UK Coal Authority and all recent correspondence in respect thereof;
- (e) all current licenses or recent correspondence with the UK Environment Agency and all recent correspondence in respect thereof; and
- (f) such other documents that the Purchaser or the Energybuild Companies may reasonably require with reference to permits, licenses, leases or other property titles or contracts to operate the mine at Aberpergwm without interference.

## **7.3 Truth and Accuracy of Representations of Vendor on the Closing Date**

All of the representations and warranties of the Vendor made in or pursuant to this Agreement shall be true and correct in all material respects on the Closing Date and with the same effect as if made at and as of the Closing Date (except as such representations or warranties may be effected by the occurrence of events or transactions expressly contemplated and permitted by this Agreement), and the Purchaser shall have received a certificate from a senior officer of the Vendor confirming to his or her knowledge (after due inquiry), without personal liability (absent fraud or wilful misconduct) the truth and correctness of such representations and warranties.

#### **7.4 Compliance with Vendor Covenants**

The Vendor shall have performed or complied with, in all material respects, all of its obligations, covenants and agreements under this Agreement and the Purchaser shall have received a certificate from a senior officer of the Vendor confirming to his or her knowledge (after due inquiry), without personal liability (absent fraud or wilful misconduct) such performance or compliance, as the case may be.

#### **7.5 Receipt of Closing Documentation**

The Purchaser shall have received copies of the documentation referenced in Section 7.2 or such other evidence as it may have reasonably requested in order to establish the consummation of the transactions contemplated by this Agreement and the taking of all corporate proceedings in connection with such transactions in compliance with these conditions.

#### **7.6 No Proceedings**

There shall be no Order issued delaying, restricting or preventing, and no pending or threatened Claim or judicial or administrative proceeding, or investigation against any Party by any Person for the purpose of enjoining or preventing the consummation of the transactions contemplated in this Agreement or otherwise claiming that the consummation of such transactions is improper or would give rise to proceedings under any Laws.

#### **7.7 Approval Order**

Walter Energy Canada shall have obtained the Approval Order and, on the Closing Date, such Order shall not have been stayed, suspended, set aside, varied or appealed and no motion to stay, suspend the operation of, set aside, seek leave to appeal or vary such Order shall have been served or threatened.

If any of the foregoing conditions in this Article have not been fulfilled by Closing, the Purchaser may terminate this Agreement by notice to the Vendor, in which event the Purchaser shall be released from all obligations under this Agreement (subject to Section 10.2), and unless the Purchaser can show that the condition relied upon could reasonably have been performed by the Vendor, the Vendor and the Monitor shall also be released from all obligations under this Agreement other than the Vendor's obligations pursuant to clause 3.2(d). However, the Purchaser, acting in its sole discretion, may waive compliance with any condition in whole or in part, without prejudice to its rights of termination in the event of non-fulfilment of any other condition.

### **ARTICLE 8 VENDOR'S CONDITIONS PRECEDENT**

The obligation of the Vendor to complete the purchase of the Shares under this Agreement shall be subject to the satisfaction of, or compliance with, on or before the Closing Date, each of the following conditions precedent (each of which is acknowledged to be inserted for the exclusive benefit of the Vendor and may be waived by it in whole or in part):

### **8.1 Truth and Accuracy of Representations of Purchaser on the Closing Date**

All of the representations and warranties of the Purchaser made in or pursuant to this Agreement shall be true and correct in all material respects on the Closing Date and with the same effect as if made at and as of the Closing Date (except as such representations or warranties may be effected by the occurrence of events or transactions expressly contemplated and permitted by this Agreement), and the Vendor shall have received a certificate from a senior officer of the Purchaser confirming to his or her knowledge (after due inquiry), without personal liability the truth and correctness of such representations and warranties.

### **8.2 Compliance with Purchaser Covenants**

The Purchaser shall have, performed or complied with, in all material respects, all of its other obligations, covenants and agreements under this Agreement and the Vendor shall have received a certificate from a senior officer of the Purchaser confirming to his or her knowledge (after due inquiry), without personal liability such performance or compliance, as the case may be.

### **8.3 Receipt of Closing Documentation**

The Vendor shall have received such evidence as it may have reasonably requested in order to establish the consummation of the transactions contemplated by this Agreement and the taking of all corporate proceedings in connection with such transactions in compliance with these conditions.

### **8.4 No Proceedings**

There shall be no Order issued delaying, restricting or preventing, and no pending or threatened Claim or judicial or administrative proceeding, or investigation against any Party by any Person for the purpose of enjoining or preventing the consummation of the transactions contemplated in this Agreement or otherwise claiming that the consummation of such transactions is improper or would give rise to proceedings under any Laws.

### **8.5 Approval Order**

Walter Energy Canada shall have obtained the Approval Order and, on the Closing Date, such Order shall not have been stayed, suspended, set aside, varied or appealed and no motion to stay, suspend the operation of, set aside, seek leave to appeal or vary such Order shall have been served or threatened.

If any of the foregoing conditions in this Article have not been fulfilled by Closing, the Vendor may terminate this Agreement by notice to the Purchaser, in which event the Vendor shall be released from all obligations under this Agreement (subject to Section 10.2), and unless the Vendor can show that the condition relied upon could reasonably have been performed by the Purchaser, the Purchaser shall also be released from all obligations under this Agreement. However, the Vendor, acting in its sole discretion, may waive compliance with any condition in whole or in part, without prejudice to its rights of termination in the event of non-fulfilment of any other condition.



**ARTICLE 9  
OTHER COVENANTS OF THE PARTIES**

**9.1 Actions to Satisfy Closing Conditions**

- (a) Each of the Parties shall use commercially reasonable efforts to take all such actions as are within its power to control, and cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions and covenants set forth in Article 7, Article 8 or Article 9 which are for the benefit of any other Party.
- (b) The Vendor shall cooperate with the Purchaser to determine the Persons for service in connection with the motion for the Approval Order and shall serve all Persons having registered encumbrances on the Shares and such other Persons as the Purchaser may reasonably request.

**9.2 Confirmation of Satisfaction of Conditions**

On or prior to Closing Date, subject to satisfaction or waiver by each relevant Party of the conditions of Closing in its favour contained in Article 7, Article 8 or Article 9 which are for the benefit of such party, each Party shall confirm to the Monitor, in writing in accordance with the provisions of Section 11.4 herein, the satisfaction of all conditions to Closing, whereupon the Monitor shall file the Monitor's Certificate with the Court.

**9.3 Monitor's Certificate**

The Parties hereby acknowledge and agree that the Monitor shall be entitled to file the Monitor's Certificate with the Court without independent investigation upon receiving written confirmation from each relevant Party that all conditions of Closing in its favour contained in Article 7, Article 8 or Article 9 which are for the benefit of such Party have been satisfied or waived, and the Monitor shall have no liability to the Parties or any other person as a result of filing the Monitor's Certificate. The Monitor shall file the Monitor's Certificate upon the Approval Order having been obtained and the Parties having delivered the above-referenced confirmation to the Monitor in the manner set out in Section 9.2.

**9.4 Preservation of Records**

The Purchaser shall take all reasonable steps to preserve and keep the records of the Energybuild Companies 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 Laws or Governmental Authority, and shall make such records available to Walter Energy Canada, the Vendor, and the Monitor on a timely basis, as may be reasonably requested by any of them.

**9.5 Tax Return**

- (a) The Purchaser shall cause to be duly made or prepared and filed, on a timely basis, all Tax Returns required to be made or prepared and filed by the

Corporation for any period which ends on or before the Closing Date and for which Tax Returns have not been filed as of such date.

- (b) The Vendor and the Purchaser shall co-operate fully with each other and make available to each other in a timely fashion such data and other information as may reasonably be required, including providing access to its employees and to financial and other records of the Corporation, for the preparation of any Tax Return of the Corporation for a period ending on or before the Closing Date and the conduct of any disputes relating thereto, and shall preserve such data and other information until the expiration of any applicable limitation period under any applicable Law with respect to Taxes.

## 9.6 Confidentiality

- (a) Prior to the Closing, the Purchaser shall keep confidential all information disclosed to it by the Vendor or its agents relating to the Energybuild Companies or the Shares in accordance with the terms of the confidentiality agreement signed by the Purchaser and Walter Energy Canada Holdings, Inc. (the “**Confidentiality Agreement**”) and assigned to Walter Energy Canada pursuant to the Order of the Court dated December 21, 2016. Such information is confidential and proprietary to the Vendor and the Purchaser shall only disclose such information to those of its employees and representatives of its advisors who need to know such information for the purposes of evaluating and implementing the transaction contemplated in this Agreement and only in accordance with the terms of the Confidentiality Agreement. Notwithstanding the foregoing, the Purchaser shall keep confidential all Personal Information disclosed to it by the Vendor or its agents and will not disclose the Personal Information except in accordance with applicable Law. If this Agreement is terminated without completion of the transactions contemplated by this Agreement, the Purchaser shall promptly return all documents, work papers and other written material (including all copies) obtained from the Vendor in connection with this Agreement, and not previously made public and shall continue to maintain the confidence of all such information.
- (b) After the Closing, the Vendor shall keep confidential all Personal Information it disclosed to the Purchaser and all confidential information relating to the Corporation, except information which:
  - (1) is part of the public domain;
  - (2) becomes part of the public domain other than as a result of a breach of these provisions by the Vendor;
  - (3) 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; or
  - (4) as may be necessary in connection with any litigation commenced by or against the Vendor, Walter Energy Canada, their respective affiliates and permitted assigns, provided however that such persons shall take

commercially reasonable steps to preserve the confidentiality of confidential information relating to the Energybuild Companies and only after prior consultation with the Purchaser.

### **9.7 Public Announcements**

Prior to the Closing and except as necessary for the Vendor to make any filing with the Court to obtain the Approval Order and any other 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 Vendor, disclosure is otherwise required by applicable Law, the CCAA or the Court with respect to filings to be made with the Court in connection with this Agreement, provided that the Party intending to make such release shall use commercially reasonable efforts to consult with the other Party with respect to the text thereof.

### **9.8 Certain Payments or Instruments Received from Third Parties**

To the extent that, after the Closing Date, (a) the Purchaser receives any payment or instrument that is for the account of the Vendor according to the terms of this Agreement, the Purchaser shall promptly deliver such amount or instrument to the Vendor; and (b) the Vendor receives any payment that is for the account of the Purchaser according to the terms of this Agreement or relates to the Corporation, the Vendor shall hold such payment in trust for the Purchaser and promptly deliver such amount or instrument to the Purchaser. All amounts due and payable under this Section shall be due and payable by the applicable Party in the form received, or if payment in such form is not possible, in immediately available funds, by wire transfer to the account designated in writing by the relevant Party. Notwithstanding the foregoing, each Party hereby undertakes to use commercially reasonable efforts to direct or forward all bills, invoices or like instruments to the appropriate Party.

### **9.9 Submission to Jurisdiction**

- (a) Each Party submits to the exclusive jurisdiction of the Court in any action, application, reference or other proceeding arising out of or relating to this Agreement and consents to all Claims in respect of any such action, application, reference or other proceeding being heard and determined in the Court. Each of the parties irrevocably waives, to the fullest extent it may effectively do so, the defence of an inconvenient forum to the maintenance of such action, application, reference or other proceeding.
- (b) The Parties shall not raise any objection to the venue of any action, application, reference or other proceeding arising out of or relating to this Agreement in the Court, including the objection that the proceedings have been brought in an inconvenient forum.
- (c) A final judgment in any such action, application, reference or other proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner specified by law and must not be re-litigated on the merits.

## ARTICLE 10 TERMINATION

### 10.1 Termination

This Agreement may be terminated at any time prior to the Closing:

- (a) by mutual written consent of the Vendor and the Purchaser;
- (b) by the Purchaser in accordance with Article 7, or by the Vendor in accordance with Article 8;
- (c) 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 that is not cured within seven days from receipt of a written notice from the non-breaching Party;
  - (ii) if a Governmental Authority issues an Order prohibiting the transactions contemplated hereby;
- (d) by either Party:
  - (i) if the Approval Order is not granted; or
  - (ii) if the Closing does not take place by the Closing Date by reason of any default by the other Party;

provided, however, that the right to terminate this Agreement pursuant to Section 10.1(c)(i) 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.

### 10.2 Effects of Termination

If this Agreement is terminated pursuant to Section 10.1, 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 (a) Section 1.2 (Interpretation); (b) Section 3.2 (Deposit); (c) Section 9.6 (Confidentiality); (d) Section 9.7 (Public Announcements); (e) Section 10.2 (Effects of Termination); (f) Section 11.1 (Expenses); (g) Section 11.2 (Monitor's Capacity); (h) Section 11.3 (Releases); (i) Section 11.4 (Notices); and (j) Section 11.7 (Enurement).

## ARTICLE 11 GENERAL

### 11.1 Expenses

Each Party shall be responsible for its own legal and accounting fees and other charges incurred in connection with the purchase and sale of the Shares, including without limitation the payment

of any agent or broker fees and the costs incurred in connection with the preparation of this Agreement and all negotiations between the parties and the consummation of the transactions contemplated by this Agreement.

### **11.2 Monitor's Capacity**

The Purchaser acknowledges and agrees that the Monitor, acting in its capacity as the Monitor of Walter Energy Canada and its Canadian affiliates 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.

### **11.3 Releases**

At the Closing Date or upon termination of this Agreement, the Purchaser releases the CRO, the Monitor, the Vendor, any of their affiliates and any partner, employee, officer, director, accountant, agent, financial, legal or other representative of the Vendor, the Monitor or the CRO, and the directors and officers of the Energybuild Companies, in each case, 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.

### **11.4 Notices**

Any notice, consent or approval required or permitted to be given in connection with this Agreement (in this section referred to as a "Notice") shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or e-mail (subject to a transmission receipt or a delivery receipt):

- (a) If to the Vendor at:

Danny L. Stickel  
ENERGYBUILD HOLDINGS LIMITED  
Colliery Engine Cottage Site  
Glynneath, Neath  
West Glamorgan SA11 5AJ  
Email: [cedarhillredangus@frontier.com](mailto:cedarhillredangus@frontier.com)

With a copy to:

William E. Aziz  
CAMBRIAN ENERGYBUILD HOLDINGS ULC.  
1055 West Hastings Street  
Suite 1700, The Guinness Tower  
Vancouver, BC V6E 2E9  
Email: [baziz@bluctreadvisors.com](mailto:baziz@bluctreadvisors.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](mailto:mwasserman@osler.com) and [priesterer@osler.com](mailto:priesterer@osler.com)

And to:

David L. Gray  
Eversheds Sutherland LLP  
Eversheds House  
Manchester, Lancashire, UK M1 5ES  
Email: [davidgray@eversheds-sutherland.com](mailto:davidgray@eversheds-sutherland.com)

(b) If to the Purchaser at:

Keith Calder  
SPECIALITY CARBONS LIMITED  
17 Newmarket Street  
Usk Monmouthshire NP15 1AU  
Email: [keith.calder@caldersitc.com](mailto:keith.calder@caldersitc.com)

With a copy to counsel to the Purchaser:

Marlies Hoecherl  
CAPITAL LAW LLP  
Capital Building, Tyndall Street  
Cardiff CF10 4AZ  
Email: [m.hoecherl@capitallaw.co.uk](mailto:m.hoecherl@capitallaw.co.uk)

(c) If to the Monitor at:

Anthony Tillman  
KPMG INC.  
777 Dunsmuir Street, 11<sup>th</sup> floor  
Vancouver, BC V7Y 1K3  
Facsimile: 604.691.3036  
Email: [atillman@kpmg.ca](mailto:atillman@kpmg.ca)

And a copy to counsel to the Monitor.

Wael Rostom and Peter Reardon  
McMillan LLP  
181 Bay Street, Suite 440  
Toronto, ON M5J 2T3  
Facsimile: 416.865.7048  
Email: [wael.rostom@mcmillan.ca](mailto:wael.rostom@mcmillan.ca) and [peter.reardon@mcmillan.ca](mailto:peter.reardon@mcmillan.ca)

Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given or received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. (Vancouver time). However, if the Notice is delivered or transmitted after 5:00 p.m. (Vancouver time), or if such day is not a Business Day, then the Notice shall be deemed to have been given and received on the next Business Day. Any Party may, from time to time, change its address by giving Notice to the other Parties in accordance with the provisions of this Section.

#### **11.5 Amendment**

No amendment, supplement, modification or waiver of termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, is binding unless executed in writing by the Party to be bound thereby.

#### **11.6 Assignment**

No Party may assign this Agreement or any rights or obligations under this Agreement without the prior written consent of the other Party, provided however that the Vendor's consent to an assignment by the Purchaser to an affiliate with the financial capacity to complete the transactions contemplated herein shall not be unreasonably delayed or withheld or made subject to unreasonable conditions.

#### **11.7 Enurement**

This Agreement enures to the benefit of and is binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns.

#### **11.8 Further Assurances**

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing provided that the costs and expenses of any actions taken after Closing at the request of a Party shall be the responsibility of such Party.

#### **11.9 Execution and Delivery**

This Agreement may be executed by the Parties in counterparts and the counterparts may be executed and delivered by electronic means, with all counterparts together constituting one agreement.

*[Remainder of page intentionally left blank]*

**IN WITNESS OF WHICH** the parties have duly executed this Agreement.

SIGNED, SEALED & DELIVERED

In the presence of:

Witness

**ENERGYBUILD HOLDINGS LIMITED**

By: \_\_\_\_\_  
Name:  
Title:

**SPECIALITY CARBONS LIMITED**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:



**SCHEDULE A**

**Form of Stock Transfer Form**

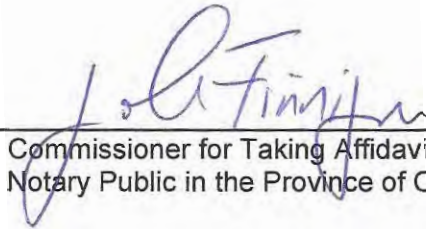
(see attached)

**SCHEDULE B**

**Form of Power of Attorney**

(see attached)

This is Exhibit "B" referred to in Affidavit #19 of **William E. Aziz** sworn February 29<sup>th</sup> 2018 at Naples, Florida.

A handwritten signature in blue ink, appearing to read "J. L. Finigan", is written over a horizontal line.

Commissioner for Taking Affidavits and  
Notary Public in the Province of Ontario

# CORK GULLY

Mr William E Aziz  
Blue Tree Advisors  
Suite 5600  
100 King Street West  
First Canadian Place  
Toronto, Ontario  
Canada

Cork Gully LLP  
52 Brook Street  
London, W1K 5DE  
T +44 (0)20 7268 2150  
F +44 (0)20 7268 2151  
W [www.corkgully.com](http://www.corkgully.com)

Email: [baziz@bluetreeadvisors.com](mailto:baziz@bluetreeadvisors.com)

22nd December 2017

Dear Sirs,

**ACQUISITION OF THE ISSUED SHARE CAPITAL OF ENERGYBUILD LIMITED, ENERGYBUILD MINING LIMITED AND MINERAL EXTRACTION AND HANDLING LIMITED (TOGETHER, THE "COMPANIES")**

You may be aware that I was appointed Joint Administrator of Glyncastle plc (formally known as Unity Power plc) by its lender group. Glyncastle plc owns Glyncastle Resource Limited (formally known as Unity Mine Limited). It has come to my attention that you are offering for sale the entire issued share capital of the Companies. It is of strategic importance for us to buy the share capital.

This letter sets out the terms pursuant to which we, Glyncastle plc ("Buyer") offer to acquire the entire issued share capital of the Companies from Energybuild Holdings Limited ("Seller") pursuant to the Sale and Investment Solicitation Process commenced in respect of Walter Energy Canada Holdings, Inc and its subsidiaries and partnerships.

The purpose of this letter is to set out our preferred proposal ("Proposal"). Except as provided for in the sections of this letter titled Costs, Third Party Rights, and Governing Law and Jurisdiction, the terms of this letter are not legally binding, and neither party shall be legally bound to proceed with the Proposal unless and until (i) a formal written share purchase agreement is entered into, and (ii) the share purchase agreement has been approved by the Supreme Court of British Columbia as part of New Walter Energy Canada Holdings, Inc.'s proceeding under the Companies' Creditors Arrangement Act (Canada).

**1. COMMERCIAL TERMS**

- 1.1 We will purchase the entire share capital of the Companies for a consideration of [REDACTED] ("Purchase Price"). We will be liable for any applicable stamp duty and any taxes falling on the Buyer in respect of the transaction.

1.2 On exchange, the Seller will hand over the following documents to the Buyer:

- a) The current operating lease for Aberpergwn Estate and all recent correspondence;
- b) The lease relating to Treforgan and all recent correspondence;
- c) All current planning permissions and recent correspondence with the local authority;
- d) All current licenses and recent correspondence with the Coal Authority;
- e) All current licences and recent correspondence with the Environmental Agency; and
- f) Any other documents with reference to permits, licences, leases or other property titles or contracts required for the Buyer to operate the mine without interference
- g) And completion of the share purchase agreement will be conditional inter alia of the Buyer being satisfied with the status of these documents.

1.3 The following provisions shall also apply to this offer:

- a) The Seller will sell the shares in the Companies with full title and free from all encumbrances, claims, liens, equities, charges and adverse rights of any description;
- b) Unless otherwise set out herein, the sale of the shares in the Companies shall be on an "as is, where is basis";
- c) The Seller will give a full indemnity to the Buyer in respect of any claims arising contrary to the representations and warranties that the shares in the Companies are being sold with full title and free from all encumbrances, claims, liens, equities, charges and adverse rights of any description;
- d) The Seller shall make provision for all liabilities of the Companies existing as of the Closing Date, other than the following liabilities, which, for greater certainty, shall remain liabilities of the Companies and shall not be paid or addressed by the Seller:-
  - a. any claims for environmental matter or reclamation obligations, including without limitation (i) claims of Neath Port Talbot County Borough Council, the Coal Authority and any other governmental authority that may arise, whether or not such claims relate to restoration bonds held by such governmental authority, and (ii) any claims relating to the lease for the land upon which the Aberpergwn mine is situated;
  - b. any claims related to work to be performed to comply with any planning commission or other obligation imposed by any governmental authority;
  - c. any claims for taxes of any kind;
  - d. any claims from the Welsh Assembly or any other governmental authority that may be in force in relation to loans provided to the Companies by the Welsh Assembly or such governmental authority, including in connection with equipment financing;
  - e. any claims or liabilities of any kind, whether pursuant to contract, purchase order or otherwise, arising (i) in the ordinary course of business and not yet due and payable as of the Closing Date and (ii) that apply to goods to be received or services to be provided or other accruals related to the period after the Closing Date;
  - f. any claim for ordinary course trade payables, including telephone, internet and other communication services, security, electricity, insurance, real property leases and similar matters;

- g. any claim of UK Methane Limited or its affiliates ("UK Methane") in respect of UK Methane's petroleum exploration licences and rights, including in relation to bore holes on the Aberpergwm property or an interaction Agreement among UK Methane and the Companies;
- h. any claim related to the CRC Energy Efficiency Scheme Order; and
- i. any claims that arise or relate to the period after the Closing Date.
- j. and provided further that (i) the Seller shall have no liability to the Buyer for any claims until the aggregate amount of such claims exceed £100,000; and (ii) in no circumstances shall the Seller be liable for any amount in excess of the Purchase Price.

1.4 Notwithstanding the limit of liability contained in paragraph 1.3, completion of the transaction will be conditional on the Seller proving to the Buyer's satisfaction that there are no outstanding liabilities to the Companies in respect of:-

- a) any intercompany loans made to the Companies by Walter Energy, Inc. or any of its US affiliates and assigned to Warrior Met Coal LLC ; and
- b) any claim made by the United Mine Workers of America 1974 Pension Plan and Trust in relation to liabilities of Walter Energy, Inc. or any of its US affiliates .

1.5 Prior to completion, all intercompany loans and all other balances between, on the one hand, the Companies, and on the other, Seller and any of its present or former affiliates other than the Companies shall be converted to a contribution of capital, waived or forgiven in manner satisfactory to Buyer that is intended to preserve all available tax losses in Energybuild Limited and to prevent the creation of additional tax liability resulting from any such action. The Seller shall consult with the Buyer regarding any such steps and shall have no liability to the Buyer for any adverse tax consequences of any steps taken after such consultation with the Buyer provided that the Buyer acted in accordance with the steps agreed and not otherwise.

1.6 Prior to the acquisition by the Buyer the directors of Energybuild Limited, Energybuild Mining Limited and Mineral Extraction and Handling Limited shall resign as directors and employees, without any liability to the Buyer or to any of the Companies. The Companies shall provide the current directors of the Companies with a release and indemnity in form and substance satisfactory to the Seller effective upon such resignation. The Companies shall indemnify the Buyer in full in relation to any claims, losses, damages or liabilities howsoever arising out of the employment and/or directorship of Chris Daniels with any of the Companies.

## **2 COSTS**

2.1 Each party shall pay its own costs incurred in connection with the proposed transaction, whether or not it proceeds (including without limitation the preparation and negotiation of this letter, the formal agreement and any documents contemplated by it).

**3 THIRD PARTY RIGHTS**

- 3.1 No person that is not a party to the proposed transaction contemplated by this letter shall be able to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

**4 GOVERNING LAW**

- 4.1 This letter, and the negotiations between the parties in connection with the proposed transaction and all disputes or claims arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**5 JURISDICTION**

- 5.1 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

We reserve the right to bring this letter to the attention of the court and the creditors should our offer be rejected without due process.

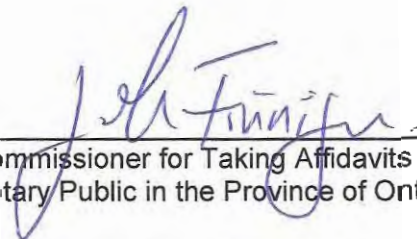
Yours faithfully  
For and on behalf Glyncastle plc



**Stephen Cork**  
**Joint Administrator**

Stephen Cork and Andrew Beckingham were appointed as Joint Administrators on 30 October 2013. The affairs, business and property of the Company are being managed by the Joint Administrators who act as the Company's agent and without personal liability. Stephen Cork and Andrew Beckingham are both authorised to act as Insolvency Practitioners in the United Kingdom by the Institute of Chartered Accountants in England and Wales.

This is Exhibit "C" referred to in Affidavit #19 of  
**William E. Aziz** sworn February 24<sup>th</sup>, 2018 at  
Naples, Florida.



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Commissioner for Taking Affidavits and  
Notary Public in the Province of Ontario





This is the 3rd Affidavit of William E. Aziz in this case and was made on August 9, 2016

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 A PLAN OF COMPROMISE OR ARRANGEMENT OF  
WALTER ENERGY CANADA HOLDINGS, INC. AND THE OTHER  
PETITIONERS LISTED ON SCHEDULE "A"

PETITIONERS

**AFFIDAVIT**

I, **WILLIAM E. AZIZ**, Chief Restructuring Officer, of the Town of Oakville, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the President of BlueTree Advisors Inc. ("**BlueTree**"), which has been retained by Walter Energy Canada Holdings, Inc. ("**Walter Energy Canada**") to provide my services as Chief Restructuring Officer ("**CRO**") to Walter Energy Canada, its direct and indirect subsidiaries and affiliates listed on Schedule "A" (collectively with Walter Energy Canada, the "**Canadian Petitioners**") and the partnerships listed on Schedule "C" to the Order of this Honourable Court made on December 7, 2015 (the "**Initial Order**") (collectively with the Canadian Petitioners, the "**Walter Canada Group**"). As such I have personal knowledge of the facts hereinafter deposed, except where such facts are stated to be based upon information and belief and where so stated I do verily believe the same to be true.
2. This Affidavit is made in support of a motion by the Canadian Petitioners for:
  - (a) An Order under the *Companies' Creditors Arrangement Act*, 1985, c. C-36, as amended (the "**CCAA**") (the "**Approval and Vesting Order**");

- (i) Approving the proposed sale transaction (the "Transaction") contemplated by the Asset Purchase Agreement among the Walter Canada Group, as vendors, and Conuma Coal Resources Limited, as purchaser (the "Purchaser"), and certain guarantors (the "Guarantors") made August 8, 2016 (the "Asset Purchase Agreement");
    - (ii) Upon delivery to the Purchaser of the Monitor's Certificate attached to the proposed Approval and Vesting Order as Schedule "A" (the "Monitor's Certificate"), vesting in the Purchaser the Applicants' right, title and interest in and to the Assets (as defined in the Asset Purchase Agreement) free and clear of any and all Claims and Encumbrances other than Permitted Encumbrances (all as defined in the Asset Purchase Agreement); and
    - (iii) Granting the Walter Canada Group the benefit of a charge over the Real Property (including the coal leases) and the Mineral Tenures (each as defined in the Asset Purchase Agreement) to secure certain post-closing obligations of the Purchaser and the Guarantors to the Walter Canada Group;
  - (b) An Order under the CCAA approving the proposed claims process to identify and determine claims of creditors of the Walter Canada Group (the "Claims Process") and authorizing, directing and empowering the Monitor to take such actions as are contemplated by the Claims Process (the "Claims Process Order");
  - (c) An Order under the CCAA extending the stay of proceedings in respect of the Walter Canada Group to January 17, 2017, approving the PJT Engagement Letter (defined below) and granting certain heightened powers to the Monitor; and
  - (d) An Order that the confidential affidavit of William E. Aziz sworn the date hereof and the exhibits thereto (the "Confidential Affidavit") and the Confidential Supplemental Report of the Monitor and the appendices thereto, to be filed, (the "Confidential Report" and, collectively with the Confidential Affidavit, the "Confidential SISP Materials") be sealed, kept confidential and not form part of the public record.
3. I was retained pursuant to an engagement letter dated December 30, 2015 (the "BlueTree Engagement Letter"), as amended in response to certain requests made by Walter Canada Group stakeholders. BlueTree was appointed as CRO of the Walter Canada Group pursuant to paragraph 9 of the January 5<sup>th</sup> Order.
  4. As the CRO of the Walter Canada Group, in accordance with the January 5<sup>th</sup> Order, I have the authority to direct the Walter Canada Group's Sales and Investment Solicitation Process ("SISP"), to engage in consultation and negotiation with stakeholders regarding the SISP, and to engage in such other matters as are set out in the BlueTree Engagement Letter.
  5. Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the SISP, the January 5<sup>th</sup> Order, the first affidavit of William G. Harvey, sworn December 4, 2015 (the "First Harvey Affidavit") and the other pleadings filed herein.

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I. THE PROPOSED TRANSACTION

A. The SISP

7. As described in my first affidavit sworn on March 22, 2016 in these proceedings (the "First Aziz Affidavit"), the Walter Canada Group's financial advisor, PJT Partners LP, began canvassing the market in an attempt to find a purchaser for the assets of the Walter Canada Group prior to the CCAA filing, including as part of its broad canvassing of the market in respect of all the assets of the Walter Group in relation to the Chapter 11 proceedings underway in respect of certain members of the Walter U.S. Group.
8. The SISP was approved pursuant to paragraph 14 of the January 5<sup>th</sup> Order.
9. The SISP provides for Prospective Bidders to submit an LOI or a Bid Involving an Investment Proposal and/or a Sale Proposal.
10. In accordance with the terms of the SISP, PJT Partners LP launched Phase 1 of the SISP on January 18, 2016. Commencing on January 18, 2016, PJT Partners LP began sending a teaser letter and a draft non-disclosure agreement ("NDA") to interested parties to solicit indications of interest in the business and assets of the Walter Canada Group in the form of non-binding letters of intent from various potential bidders. 83 interested parties received a teaser and NDA.
11. PJT Partners LP contacted both financial buyers and strategic buyers based in Canada, the United States and internationally. Financial buyers were selected based on their past experience in the mining sector, previous investments in turnaround situations and ability and willingness to

deploy capital quickly. Strategic buyers included companies in the mining sector and the steel sector.

12. Ten of the parties who were contacted executed NDAs, received the Confidential Information Memorandum and conducted due diligence on the Walter Canada Group.
13. The Phase 1 LOI Deadline was March 18, 2016. On or before the Phase 1 LOI Deadline, the Walter Canada Group received multiple LOIs. In accordance with the SISP, I reviewed the LOIs with PJT Partners LP and the Monitor, determined that certain of the LOIs were Qualified LOIs and concluded that there was a reasonable prospect of obtaining a binding Bid.
14. As described in my second affidavit sworn on June 17, 2016 in these proceedings (the "Second Aziz Affidavit"), commencing on March 30, 2016, PJT Partners LP began notifying certain of the Prospective Bidders that the SISP would progress to Phase 2. A form of asset purchase agreement was also posted to the Due Diligence Access site.
15. Since the commencement of Phase 2 of the SISP, the Walter Canada Group, its counsel, the Monitor and I have been involved with PJT Partners LP in negotiating with Bidders and assisting Bidders with due diligence. The Walter Canada Group has taken, among others, the following steps:
  - (a) The dataroom was populated with further due diligence information;
  - (b) PJT Partners LP had multiple calls and conversations with all of the Bidders who submitted LOIs;
  - (c) The Walter Canada Group facilitated a number of discussions among Bidders and the Walter Canada Group's stakeholders, including the USW (defined below);
  - (d) The Walter Canada Group arranged for Bidders to tour of the Walter Canada Group's mines in Northeastern British Columbia and facilitated discussions among key staff members and representatives of the Bidders;
  - (e) The Walter Canada Group facilitated arrangements for certain Bidders to tour the Aberpergwm mine operated by the Walter Canada Group's subsidiary Energybuild Ltd., located in Wales; and
  - (f) The Walter Canada Group engaged in extensive negotiations with certain of the Bidders regarding the terms of a potential transaction.
16. The SISP provides that in order for a bid to be considered a Qualified Bid, it must satisfy certain conditions and be submitted by May 27, 2016 (the "Phase 2 Bid Deadline"), unless the CRO, in consultation with PJT Partners LP and the Monitor, in its discretion, deems a Bid to be a Qualified Bid despite such Bid not satisfying all the conditions required of a Qualified Bid set out in the SISP, including being received after the Phase 2 Bid Deadline. The SISP provided that the Phase

2 Bid Deadline may be extended by the CRO, in consultation with PJT Partners LP and the Monitor. In response to feedback from Bidders, I determined, in consultation with PJT Partners LP and the Monitor, to extend the Phase 2 Bid Deadline to June 10, 2016 and to extend the Outside Termination Date to July 30, 2016.

17. On or before June 10, 2016, the Walter Canada Group received a number of bids for its assets. In accordance with the SISP, I reviewed the bids with PJT Partners LP and the Monitor. I instructed PJT Partners LP to have discussions with certain of the Bidders to clarify aspects of their bids in order to identify whether there is a bid or combination of bids that can lead to an outcome that is most advantageous to the Walter Canada Group and its stakeholders.
18. In light of the bids received for the Walter U.K. assets, it was determined that the Walter Canada Group should focus on realizing value from the Canadian assets and address the Walter U.K. assets at a later time. It is anticipated that further efforts regarding realizing value from the Walter U.K. assets will be undertaken at a later date.
19. Similarly, the Walter Canada Group intends to seek to obtain value from any remaining assets of the Walter Canada Group at a later date.
20. On July 9, 2016, PJT Partners LP sent a further letter to the Bidders for the Canadian assets requesting that the bidders satisfy a number of conditions. The Bidders were given until July 21, 2016, subject to discretion of the CRO, in consultation with the Monitor and PJT Partners LP, to provide final, binding bids and to satisfy certain other conditions precedent to the acceptance of such bids as the Successful Bid (as defined in the SISP). The Outside Termination Date was extended to July 31, 2016 and thereafter to September 15, 2016.
21. On or before July 21, 2016, the Walter Canada Group received a number of revised proposals for the Canadian assets. Since that date, the Walter Canada Group has been engaged in extensive further negotiations regarding those proposals in an effort to select a final bid to bring before this Honourable Court for approval.

**B. Selecting the Successful Bid**

22. I reviewed the bids received with PJT Partners LP and the Monitor, to assess which bid or bids would maximize value for Walter Canada Group's stakeholders. In my opinion, and that of PJT Partners LP, after consultation with the Monitor, the bid submitted by the Purchaser (the "Successful Bid") is the best bid received for the assets of the Walter Canada Group. The proposed Transaction, if consummated, will provide the maximum value for the Walter Canada Group's stakeholders available in the circumstances.

23. In selecting the Successful Bid, we considered:
- (a) the purchase price and net value of the bids (including all assumed liabilities and other obligations to be performed by the bidder);
  - (b) planned treatment of stakeholders, including employees;
  - (c) the continued environmental stewardship of the properties and the requirements of the Province of British Columbia in that regard;
  - (d) the impact on First Nations people connected to the mine properties;
  - (e) factors affecting the speed, certainty and value of the transaction, including evidence of financial wherewithal; and
  - (f) the likelihood and timing of the consummation of the transaction.
24. After extensive arms'-length negotiations, the parties finalized the Asset Purchase Agreement on August 8, 2016. On behalf of the Walter Canada Group, I have executed the Asset Purchase Agreement, which is subject to approval by this Honourable Court. A redacted copy of the Asset Purchase Agreement is attached to this affidavit without exhibits as Exhibit "A". An unredacted copy of the Asset Purchase Agreement is attached as an Exhibit to the Confidential Affidavit. Also attached as an Exhibit to the Confidential Affidavit is a copy of the PJT Partners LP report on the SISP and the Successful Bid. Finally, the Monitor's assessment of the SISP and a copy of information related to the Liquidation Alternative will be included as the Confidential Report, to be filed. The Confidential SISP Materials will also contain more information about the other bids received in the SISP. As discussed below, to preserve the integrity of the SISP as well as certain commercially sensitive information in the Asset Purchase Agreement, it is proposed that the Confidential SISP Materials should be sealed and remain sealed until further order of this Court.
25. The Successful Bid is superior to the other bids received in a number of ways, including but not limited to:
- (a) The overall Purchase Price set out in the Asset Purchase Agreement was the highest total price offered by any participant in the SISP.
  - (b) The net cash proceeds available to the estate will be the highest of the transactions proposed by bidders.
  - (c) The Successful Bid contemplates the assumption of a number of liabilities that would otherwise remain liabilities of the Walter Canada Group, including, among others:
    - (i) the reclamation obligations of the Walter Canada Group;
    - (ii) the Walter Canada Group's obligations to a number of its employees; and
    - (iii) the Walter Canada Group's commitments to the First Nations.

- (d) The Successful Bid contemplates the continued employment of the Walter Canada Group's current, active employees.
- (e) The Successful Bid contemplates that certain of the Walter Canada Group's Mines may resume operations in the reasonably foreseeable near term.
- (f) The Successful Bid contemplates an infusion of activity in the local communities where Walter Canada Group's Mines are located and, if operating, provide employment in the community and revenue to local suppliers and others.
- (g) The Successful Bid is likely to close soon.
- (h) The guarantees given in respect of the obligations in respect of the Successful Bid.
- (i) The Successful Bid is superior to the Liquidation Alternative.

**C. Key Terms of the Transaction**

- 26. The Purchaser is a British Columbia limited liability corporation and a member of the ERP Compliant Fuels, LLC ("ERP") group of companies. The ERP group of companies have been engaged in a number of transactions in the coal market over the last year, including the acquisition of certain of the Walter U.S. Group's coal assets in West Virginia and Alabama (the "Non-Core Assets"). The Non-Core Assets were purchased by Seminole Coal Resources, LLC ("Seminole") and certain other members of the ERP group of companies.
- 27. The Purchaser's obligations under the Asset Purchase Agreement are guaranteed and the Purchaser's obligations under certain ancillary agreements to be executed are to be guaranteed by ERP Compliant Fuels, LLC, a Delaware limited liability company; ERP Compliant Coke, LLC, a Delaware limited liability company; Seneca Coal Resources, LLC, a Delaware limited liability company; and Seminole, a Delaware limited liability company. Each of these guarantors is part of the ERP group of companies.
- 28. The Closing Date for the Transaction is no later than two Business Days after the conditions precedent to closing are satisfied and also no later than September 15, 2016, unless extended by the parties. The conditions precedent to closing are standard in the CCAA context and include:
  - (a) the Approval and Vesting Order shall have been entered, in form and substance acceptable to the Purchaser and the Seller, and shall have become a Final Order;
  - (b) a process to obtain the Transfer Approvals shall have been commenced;
  - (c) the Purchaser and the Walter Canada Group shall have entered into a mutually satisfactory Contract Mining Agreement to allow the Purchaser to operate the Brule Mine under the Walter Canada Group's permits for a period of time while the Purchaser obtains appropriate permits;

- (d) the Purchaser and the Walter Canada Group shall have entered into a mutually satisfactory Cash Collateral Transfer Agreement to address the transfer of certain cash collateral more fully described below;
  - (e) the Purchaser and the Walter Canada Group shall have entered into a mutually satisfactory transition services agreement pursuant to which the Purchaser will make certain key employees available to the Walter Canada Group at no cost to facilitate outstanding issues in the CCAA proceeding, including in respect of the Claims Process;
  - (f) the Purchaser shall have provided a certificate confirming that its representations and warranties remain true and that it has complied with all of its covenants, obligations and agreements; and
  - (g) the Seller shall have provided a certificate confirming that its representations and warranties remain true and that it has complied with all of its covenants, obligations and agreements.
29. Based on the information available on the date this affidavit is sworn, I anticipate that the Closing Date for the Transaction will be in September, 2016.
30. The Asset Purchase Agreement is subject to limited termination rights. The parties can terminate the Transaction on mutual consent. In addition, a party can unilaterally terminate the Transaction if there is a material breach of the representations, warranties or covenants under the Asset Purchase Agreement. Finally, the Transaction will terminate if a Government Entity issues an Order prohibiting the Transaction, if the Approval and Vesting Order is not entered by August 25, 2016, or if the Closing does not occur before September 15, 2016.
31. The Purchaser has paid to the Monitor a deposit that is greater than 10% of the Cash Purchase Price contemplated by the Asset Purchase Agreement.

**D. The Purchased Assets and Assigned Contracts**

32. It is the intention of the parties that the Purchaser acquire, lease or sublease substantially all Assets, properties and rights of the Walter Canada Group, including all mining, processing, loading, transporting, marketing, and selling of coal and all reclamation activities, but excluding the Excluded Assets. The Purchased Assets include:
- (a) the Mineral Tenures;
  - (b) the Business Information;
  - (c) the Consents of Government Entities to the extent transferable at Law including specified Permits and all pending applications for Permits;
  - (d) all Current Assets (other than excluded current assets);
  - (e) all Books and Records, including copies of Tax records related to the Assets and the Business;



- (f) all water rights, permits, Consents and other riparian rights of any kind relating to the Business, the Mines, or the Mineral Tenures;
  - (g) if the Walter Canada Group exercises the Belcourt Put Option, all partnership interests, marketable shares and securities of Belcourt Saxon Coal Limited Partnership and Belcourt Saxon Coal Ltd.;
  - (h) property and casualty insurance policies and such other specified insurance policies (excluding any director and officer insurance policies) and the right to receive insurance recoveries under such policies in respect of losses after the Closing;
  - (l) all Assigned Contracts;
  - (j) the Buildings;
  - (k) the Equipment;
  - (i) the Owned Intellectual Property and the Licensed Intellectual Property;
  - (m) the Owned Real Property and the Leased Real Property; and
  - (n) the Cash Collateral.
33. The Purchased Assets do not include, among other things:
- (a) deposits associated with Contracts that are not Assigned Contracts and deposits held in trust accounts to secure payment of the reasonable fees and disbursements of the Monitor, the Financial Advisor and any professional advisors of the Seller and of the Monitor, and deposits provided to any Government Entity in respect of Tax Liabilities (other than in respect of real property Taxes);
  - (b) securities of or issued by corporations and all shares in other Affiliate corporations or partnership units of Affiliate partnerships (other than any interests in Belcourt Saxon Coal Limited Partnership and Belcourt Saxon Coal Ltd. if the Belcourt Put Option is not exercised);
  - (c) extra-provincial, sales, excise or other licences or registrations issued to or held by the Seller, whether relating to the Business or otherwise to the extent not transferable;
  - (d) any known or unknown Claims any Seller may have against any Person other than a Claim for Accounts Receivable;
  - (e) refunds in respect of reassessments for Taxes relating to the Business or Assets paid prior to the Closing and refundable Taxes;
  - (f) any letters of credit posted by or on behalf of the Seller;
  - (g) all cash, cash equivalents, bank balances, and moneys in possession of banks, the Monitor and other depositories, but excluding the Cash Collateral;
  - (h) any equity or other interest in the Wales operations or assets of Cambrian Energybuild Holdings ULC;
  - (i) Excluded Contracts; and

- (j) those assets not owned by the Walter Canada Group, including the assets owned by Pelly Construction Ltd.
34. The Transaction contemplates the assignment of certain Assigned Contracts on consent. If consent is not provided, the Walter Canada Group may return to court to seek the assignment of the Assigned Contracts pursuant to Section 11.3 of the CCAA notwithstanding any restriction or prohibition contained in such Assigned Contracts relating to the assignment thereof, including any provisions requiring consent of any counterparty.
  35. The Assigned Contracts include all Real Property Leases, utility contracts and intellectual property and software licenses, all Mineral Tenures, all written agreements with First Nations groups, certain contracts related to the repair and maintenance of the Brule Mine biochemical reactor and a royalty agreement with Pine Valley Mining Corporation related to the Brule and Willow Creek mines. The Purchaser retains the right, up to the Closing Date, to add or remove certain of the Assigned Contracts, provided that the removal of any Assigned Contract will not decrease and may increase the Cash Purchase Price.
  36. A royalty agreement related to the Wolverine Mine is not being assumed.
  37. One of the Assigned Contracts is the Walter Canada Group's interest in Belcourt Saxon. As discussed in the First Harvey Affidavit, Walter Canada owns a 50% interest in Belcourt Saxon Limited Partnership. Belcourt Saxon owns two multi-deposit coal properties located approximately 40 to 80 miles south of the Wolverine Mine in northeast B.C. The other 50% interest in Belcourt Saxon is owned by Peace River Coal Limited Partnership. The Peace River Coal Limited Partnership is a third party not affiliated with the Walter Group. It is affiliated with Anglo American Exploration (Canada) Ltd. There are certain rights of first refusal and tag along rights defined in the Belcourt Saxon Limited Partnership Agreement. The Purchaser is willing to acquire the Walter Canada Group's interest in Belcourt Saxon and contains the Belcourt Put Right, pursuant to which the Purchaser will acquire the Walter Canada Group's interest in Belcourt Saxon if the Walter Canada Group is able to satisfy or obtain the waiver of any such rights prior to the date that is 60 days following the Closing Date. The Cash Purchase Price is subject to adjustment depending on whether or not the Belcourt Put Right is exercised by the Walter Canada Group.
  38. The completion of the Transaction, which includes the assignment of the Assigned Contracts, will help fulfill the objectives of this CCAA proceeding. The Transaction represents the highest price and net cash proceeds realizable through the SISF and the best transaction in the circumstances for the benefit of the Walter Canada Group and its stakeholders.

**E. Employees**

39. No less than ten (10) Business Days prior to the Closing Date, the Purchaser shall offer employment in writing to certain specified Employees who are entitled to offers pursuant to the Collective Agreements or applicable Law and, subject to any amendments to existing Collective Agreements, on terms and conditions of employment which are substantially similar in the aggregate for each such individual Employee as those currently available to such individual Employee.
40. The Purchaser intends to negotiate amendments to the existing Collective Agreements prior to or following the Closing Date. The Collective Agreements are the Agreements with the Construction and Allied Workers' Union, Local 68 for the Willow Creek Mine and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-424 ("USW") for the Wolverine Mine (collectively, the "Unions"). The Purchaser has committed, prior to the Closing Date, to use reasonable efforts to enter into amended or new collective bargaining agreements with the Unions, in each case on terms that are mutually acceptable to the parties and the applicable Employees. The negotiation of such amended or new collective bargaining agreements is not to be a condition to the Closing.
41. Furthermore, the Purchaser shall recognize all past service of each Employee who becomes a Transferred Employee for all purposes, including participation in any benefit plan, vacation, any other service entitlements and any required notice of termination, termination or severance pay (whether contractual, statutory or at common law).
42. The Walter Canada Group shall be responsible for all Employee Costs for any Employees other than Transferred Employees to the extent required under applicable Law (including all unpaid wages, salary, incentive compensation, benefits and vacation pay up for each such Employee).
43. The Purchaser has agreed it shall become the successor employer for the Walter Canada Group's past and present unionized employees for purposes of applicable Laws and, accordingly, shall be bound by and comply with the terms of such Collective Agreements (as such may be amended) including continuing the employment after the Closing Date of the Employees covered by such Collective Agreements effective from the Closing Date.
44. The Purchaser has indicated that it intends to make offers of employment to all of the Walter Canada Group's current, active Employees.

**F. Assumed Liabilities**

45. As part of the consideration provided by the Purchaser, at the Closing, the Purchaser shall assume certain liabilities, including:

- (a) all Liabilities of the Seller in respect of the Mineral Tenures which are assumed and assigned pursuant to the Approval and Vesting Order arising from and after the Closing;
- (b) certain Transfer Tax, Tax election, Tax characterization and Real Property Tax liabilities;
- (c) all Liabilities with respect to the post-Closing operation of the Business or ownership of the Assets;
- (d) all Liabilities under the Assigned Contracts arising from and after the Closing Date;
- (e) all amounts payable or Liabilities that must be assumed to obtain the Consents or Transfer Approvals, including filing and other fees related thereto, but excluding (i) any penalties or interest and (ii) any expenses incurred by Seller other than those expenses of the Seller that are to be paid, reimburse or otherwise satisfied by the Purchaser;
- (f) all Environmental Liabilities, other than Excluded Pre-Closing Fines;
- (g) all Liabilities arising from and after the Closing Date with respect to the Purchaser's employment or termination of employment of any Transferred Employees; and
- (h) all Accounts Payable and Accrued Liabilities.

**G. Contract Mining Agreement**

- 46. It is not a condition to the Closing that the Purchaser obtain all necessary permits and other approvals necessary for the operation of the Mines. It is contemplated that the Transfer Approvals will be obtained after the Closing. The Walter Canada Group has had discussions with the British Columbia Ministry of Energy and Mines in preparation for an approved transaction and the Ministry has indicated that they will move quickly to address the necessary approvals.
- 47. In the meantime, the Purchaser and the Walter Canada Group have agreed to enter into an agreement (the "Contract Mining Agreement") pursuant to which the Purchaser will be granted the right to conduct, at the sole cost and expense of Purchaser, mining operations at the Brule Mine (in accordance with the mine plan for the Brule Mine currently in effect) and related processing and loading operations at the Willow Creek Mine following the Closing on the applicable Real Property under the applicable Permits.
- 48. The Contract Mining Agreement shall provide, at a minimum, that Purchaser and the Guarantors shall indemnify and hold harmless the Seller from any and all Liabilities arising out of or resulting from the Purchaser's operations of the Mines or any other activities occurring at the Mines, including in respect of operations conducted under Seller's applicable Permits. The Contract Mining Agreement shall have a term of three months after the Closing Date and shall be extended month to month in the event one or more Transfer Approvals have not been obtained through no fault of the Purchaser for a maximum of six additional months from the Closing Date, provided that any extension of the Contract Mining Agreement in excess of six months after the Closing Date shall only be granted upon the payment by the Purchaser of certain amounts to the

Walter Canada Group, including a reimbursement for a portion of the fees incurred and potential costs of these CCAA proceedings if, in the opinion of the Monitor, the CCAA proceedings could be terminated but for the requirement of the Purchaser to obtain the necessary mine permits and approvals .

49. To secure the indemnification obligations of the Purchaser to the Walter Canada Group, it is proposed that the Walter Canada Group be granted a Court-ordered first ranking charge over the Real Property (including any coal leases) and all Mineral Tenures including all accretions, substitutions, replacements, additions and accessions to any of them and all proceeds of any of the foregoing (the "Indemnification Security Interest"). It is contemplated that, upon the Walter Canada Group's and the Monitor's receipt from the Purchaser of a certificate certifying that (i) all Transfer Approvals and Permits contemplated under the Asset Purchase Agreement and under any Ancillary Agreements have been transferred or issued, as applicable, to the Purchaser, and (ii) there have been no incidents, violations or occurrences during the term of the Contract Mining Agreement that give rise to an unresolved Claim against the Seller (the "Purchaser's Certificate"), the Monitor shall thereafter deliver a second Monitor's certificate to the Purchaser certifying that it received the Purchaser's Certificate and it is contemplated that the Indemnification Security Interest shall be extinguished upon delivery of the second Monitor's certificate.
  50. The proposed Court-ordered charge in respect of the Indemnification Security Interest and the method of extinguishing such charge is comparable to the charge granted in favour of the Walter Canada Group to facilitate the bulldozer equipment transaction described in the First Affidavit of William G. Harvey dated December 4, 2015, in this proceeding (the "Bulldozer Transaction"). Pursuant to the Bulldozer Transaction, to secure the purchaser of the bulldozer equipment's payment of the purchase price to certain members of the Walter Canada Group, this Honourable Court granted certain members of the Walter Canada Group a first-ranking charge on the equipment sold, which charge was extinguished automatically upon the delivery of a certificate to the Monitor certifying that the purchase price had been paid.
- H. **Cash Collateral Transfer Agreement**
51. The Purchaser's willingness to enter into the Asset Purchase Agreement is premised on the Walter Canada Group's agreement to remit the Cash Collateral posted in respect of the letters of credit either (x) to the applicable Government Entity to replace the existing letters of credit or (y) to the Purchaser or its surety providers. This obligation arises following the delivery of evidence satisfactory to the Walter Canada Group that appropriate financial assurance has been delivered by or on behalf of the Purchaser to the applicable Government Entity and that such financial assurance is acceptable to such Government Entity in respect of the Permits and Transfer

Approvals. In addition, the Walter Canada Group must be satisfied that the existing letters of credit have been released and that the LOC Issuers have no further right to retain the Cash Collateral under the Cash Collateral Agreement dated January 5, 2016 among the LOC Issuer, Morgan Stanley Senior Funding, Inc., Walter Energy Canada and Brule Coal Partnership. Walter Canada does not anticipate any material issues in the obtaining the release of the Cash Collateral relating to a released letter of credit. Out of an abundance of caution, the Purchaser has required that if a letter of credit has been released and the Walter Canada Group asserts that the LOC Issuer has a right to retain the Cash Collateral other than by reason of an act or omission of the Purchaser, then Walter Canada Group must remit cash equal to the amount of the applicable letter of credit to the Purchaser or as directed by the Purchaser. The Purchaser and the Walter Canada Group intend to enter into a Cash Collateral Transfer Agreement to fully document the terms of the arrangements regarding the Cash Collateral (the "Cash Collateral Transfer Agreement").

I. **Transition Services Agreement**

52. The Purchaser has agreed to make available to the Walter Canada Group, at no cost, certain key Transferred Employees as are reasonably necessary to assist the Seller and the Monitor from time to time in the performance of their respective duties and responsibilities under the CCAA proceedings, including in respect of the Claims Process and other incidental matters, pursuant to and in accordance with a mutually acceptable transition services agreement to be entered into prior to the Closing Date with a term of one year, which may be extended by the parties.

J. **The Liquidation Alternative**

53. In conjunction with the SISF, the Walter Canada Group with the assistance of the Monitor launched a separate process to solicit liquidation proposals for its assets (the "Liquidation Alternative"). The Liquidation Alternative was intended to assist with the assessment of the value of any LOIs or Bids received under the SISF and to address circumstances where no executable Bid was obtained under the SISF for one or more of the mines at comparable or greater value. On the liquidation proposal deadline, the Monitor, on behalf of the Walter Canada Group, received a number of liquidation proposals. In my view, the Successful Bid is a better alternative than the Liquidation Alternative for a number of reasons, including:

- (a) the ultimate value that is likely to be available to the creditors of the Walter Canada Group under the Successful Bid is greater than under the Liquidation Alternative;
- (b) there are extensive additional holding costs associated with completing the Liquidation Alternative that will reduce the recovery available to the Walter Canada Group's creditors;
- (c) there are a large number of additional claims will arise under the Liquidation Alternative that will not arise if a going concern outcome is achieved; and

(d) there are a number of other benefits to a going concern outcome, including the potential for employment and business opportunities in the local communities.

54. Although it is no longer likely that the Liquidation Alternative will be pursued, I understand that the Monitor is requesting from liquidators that the remaining liquidation proposals remain open for acceptance until August 31, 2016.

**K. The Proposed Transaction Should Be Approved**

55. The factors listed in Section 36 of the CCAA, among others, support the approval of the Transaction as follows:

(a) The sales process leading to the proposed Transaction was reasonable, including the efforts made by the Walter Group and PJT Partners LP prior to the commencement of the CCAA proceedings and the efforts of the Walter Canada Group and its advisors under the Court-approved SISP;

(b) The board of directors and management of the Walter Canada Group have proceeded in good faith and with due diligence throughout the process and have received advice from the Company's legal and financial advisors, in the exercise of their business judgement, that the Transaction is the best outcome available to the Walter Canada Group in the circumstances;

(c) Stakeholders, including USW, have been consulted regarding the Transaction;

(d) The Monitor was consulted extensively in connection with the SISP and will comment on the SISP in the Monitor's Fourth Report to the Court (the "4th Report"), to be filed;

(e) I am informed by the Monitor and believe that it will be filing its 4th Report stating that the Monitor supports the Transaction and that the Transaction would be more beneficial to the Walter Canada Group's creditors than a sale or disposition under a bankruptcy;

(f) The Successful Bidder is not related to any member of the Walter Canada Group;

(g) The proposed Transaction will monetize the vast majority of the Walter Canada Group's remaining assets for the benefit of its creditors while providing for the continued employment of the Transferred Employees;

(h) The Purchase Price from the Transaction was the highest price out of all of the SISP bids;

(i) A number of liabilities are being assumed by the Purchaser and a number of claims will not arise as a result of a going concern outcome; and

(j) The consideration to be received in respect of the assets subject to the Transaction is reasonable and fair, taking into account their market value.

56. The completion of the Transaction is subject to few Closing conditions. Taking into account the Purchase Price and factors affecting the speed and certainty of closing, including the conditions to Closing, the Transaction represents the best transaction in the circumstances for the benefit of the Walter Canada Group and its stakeholders. The Purchaser has provided evidence that it will

have sufficient funds on Closing to complete the Transaction and satisfy all of the obligations of the Purchaser under the Asset Purchase Agreement.

**II. SEALING THE CONFIDENTIAL SISP MATERIALS**

57. The Purchase Price and certain other terms of the Asset Purchase Agreement are commercially sensitive and should not be disclosed at any point before the Transaction successfully closes. It is not necessary to disclose the exact price because other terms of the Asset Purchase Agreement have been disclosed and the Purchase Price is the highest price possible out of all of the SISP participants.
58. Similarly, the terms of the remaining bids and of the bids received in respect of the Liquidation Alternative are commercially sensitive, and it is not necessary to disclose the details of those bids because the fact that the Purchase Price is the highest value potential bid received has been disclosed. In my view, the sealing order requested is necessary to protect the integrity of the SISP, particularly if the Transaction does not close.
59. The Confidential SISP Materials which contain the foregoing information should therefore be sealed until further order of this Honourable Court.

**III. PROPOSED CLAIMS PROCESS ORDER**

60. In this section, all capitalized terms not defined elsewhere have the meaning ascribed to them in the draft Claims Process Order. In this affidavit, I summarize but do not replicate the precise terms of the proposed Claims Process Order.
61. For the convenience of the Court and all stakeholders, a timetable setting out key dates in the Claims Process the draft Claims Process Order has attached to it as Schedule "J". The key dates are as follows:

<u>Event</u>	<u>Date</u>
Issuance of the Claims Process Order	August 15, 2016
Monitor to post on its Website a copy of the Claims Process Order, a blank Proof of Claim form, the Instruction Letter and a blank Notice of Dispute form.	August 22, 2016
Monitor to send Claims Packages to known Claimants	August 24, 2016
Monitor to have Newspaper Notice published for one Business Day in the Globe and Mail (National Edition), the Vancouver Sun, the Tumbler Ridge News and the Chetwynd Echo	August 29, 2016



Claims Bar Date	October 5, 2016
Employee Notices of Dispute of Employee Claims	October 5, 2016
Filing of the Intercompany Claims Report	October 5, 2016
Deadline for 1974 Plan to serve materials seeking to prove the enforceability of the 1974 Pension Plan Claim	October 5, 2016
Monitor to seek a scheduling appointment before the Court for a hearing of a motion to determine the validity of the 1974 Pension Plan Claim, if applicable	Following service by 1974 Pension Plan to prove the enforceability of its Claim
Monitor to send Notices of Revision or Disallowance in respect of Pre-Commencement Claims or Employee Claims	November 7, 2016
Claimants to send Notices of Dispute to the Monitor in respect of Pre-Commencement Claims or Employee Claims	December 6, 2016
Disputing party to bring a motion to the Court to resolve a disputed Claim in respect of Pre-Commencement Claims or Employee Claims	January 9, 2017

**A. Affected and Unaffected Claims**

62. The Claims Process will seek to identify and quantify five types of claims:
- (a) *Pre-Commencement Claims*, which are claims that may be asserted against the Walter Canada Group and that existed before the Commencement Date. Pre-Commencement Claims include Tax Claims in respect of a period before the Commencement Date, but do not include Employee Claims or Unaffected Claims, including Intercompany Claims;
  - (b) *Restructuring Claims*, which are claims that may be asserted against the Walter Canada Group arising out of the restructuring, disclaimer, rescission, termination or breach of any agreement or arrangement on or after the Commencement Date. Restructuring Claims do not include Employee Claims, 1974 Pension Plan Claim, or Unaffected Claims;
  - (c) *Directors/Officers Claims*, which are claims against one or more Directors or Officers that relate to a Pre-Commencement Claim or a Restructuring Claim;
  - (d) *Employee Claims*, which are claims held by people who were active or inactive employees of the Walter Canada Group at the Commencement Date; and
  - (e) *1974 Pension Plan Claims*, which are claims alleged by or on behalf of the United Mine Workers of America 1974 Pension Plan and Trust (the "1974 Plan") against any member of the Walter Canada Group.
63. The Claims Process will also seek sufficient information to identify and quantify any Intercompany Claims. The Intercompany Claims are treated as Unaffected Claims under the Claims Process and include (i) claims of a member of the Walter Canada Group against another member of the Walter Canada Group or any Walter Canada Group subsidiary, including claims secured by a

Court-ordered Charge; and (ii) claims of Walter Energy, Inc. and any of its non-Canadian affiliates against the Walter Canada Group.

64. With respect to Intercompany Claims, the Monitor will prepare a report detailing the nature and quantum of such Claims, which will be served on the Service List on or before the Claims Bar Date.
65. The Claims Process will leave unaffected the following Unaffected Claims:
- (a) Intercompany Claims;
  - (b) Claims that arose after the Commencement Date (other than Restructuring Claims and Directors/Officers Claims);
  - (c) Claims by banks in respect of the Cash Management System as described in the Initial Order;
  - (d) Claims secured by any CCAA Charge;
  - (e) Claims or portions of claims arising from a cause of action for which the Walter Canada Group entities are covered by insurance, but only to the extent of such coverage;
  - (f) Claims referred to in sections 6(3), 6(5) and 6(6) of the CCAA; and
  - (g) Claims with respect to reasonable fees and disbursements of the CRO, the Financial Advisor, counsel of the Walter Canada Group and the Monitor or any Assistant (as defined in paragraph 4 of the Initial Order).
66. The Claims Process Order is expected to permit the Walter Canada Group to identify and quantify all of the Claims that must be identified and quantified to permit the development of a Plan of Arrangement ("Plan") or other distribution mechanism that would conclude these CCAA Proceedings.
- B. Claims Bar Date**
67. The proposed claims bar date for all affected claims other than Restructuring Claims is 5:00 p.m. (Vancouver Time) on October 5, 2016 or such other date ordered by the Court (the "Claims Bar Date"). By this time, any Claimant must have submitted to the Monitor the applicable Proof of Claim documentation.
68. The proposed claims bar date for Restructuring Claims is the later of the Claims Bar Date and 5:00 p.m. (Vancouver Time) on the day that is twenty Business Days after the date of the applicable Notice of Disclaimer or Resiliation (the "Restructuring Claims Bar Date"). The Claims Process Order also requires members of the Walter Canada Group to issue any Notices of Disclaimer or Resiliation at least fifteen days before a scheduled meeting date (or adjournment thereof) in respect of any Plan.

69. In respect of both the Claims Bar Date and the Restructuring Claims Bar Date, the Claims Process Order specifically states that the date may be changed by the Court.
70. If a Claimant (other than an Employee) fails to file required Proof of Claim documentation before the applicable Claims Bar Date, then such Claimant is barred from asserting its Claim, is not permitted to vote on any Plan on account of such Claim, is not entitled to participate in any distribution under any such Plan, and is not entitled to receive notice in respect of the Claims Process, the CCAA Proceedings or any Meeting Dates.
71. In addition, Claims described in any Proof of Claim filed after the applicable Claims Bar Date are deemed to be disallowed.
72. A Claims Bar Date of October 5, 2016 is reasonable in that it provides sufficient time from the date of this application for potential Claimants to evaluate and submit any Claim they may have against the Walter Canada Group or its Directors or Officers. It is my understanding that the Monitor is also of the opinion that the Claims Bar Date is reasonable.

**C. Notice**

73. The Draft Claims Process Order sets out the following methods of providing notice about the proposed Claims Process and the applicable Claims Bar Date:
  - (a) The Monitor shall, no later than five Business Days following the making of the Claims Process Order, post on the Monitor's website a copy of the Claims Process Order, a blank Proof of Claim Form, the Instruction Letter and a blank Notice of Dispute Form;
  - (b) The Monitor shall, no later than seven Business Days following the making of the Claims Process Order, cause a Claims Package to be sent to each known Claimant based on the books and records of the Walter Canada Group as well as to each party that provided contact information to the Service List;
  - (c) The Monitor shall, no later than ten Business Days following the making of the Claims Process Order, cause the Newspaper Notice to be published for one Business Day in the Globe and Mail (National Edition), the Vancouver Sun, the Chetwynd Echo, and the Tumbler Ridge News; and
  - (d) From the date of the making of the Claims Process Order, any Notice of Disclaimer or Resiliation that is delivered shall be accompanied by a Claims Package.
74. In my experience, these methods of providing notice are consistent with approaches taken in other CCAA Proceedings. In addition, the CCAA Proceedings have been underway since late 2015 and have been well-publicized in the marketplace. Finally, the Monitor and the Walter Canada Group have been highly engaged with the broader group of stakeholders and have taken information gleaned from that engagement into account in designing the notice provisions.

**D. Procedure for Making and Adjudicating Claims Other than Employee Claims and 1974 Pension Plan Claims**

75. The Claims Process Order includes the proposed forms of Instruction Letter, Notice of Revision or Disallowance, Notice of Dispute and Newspaper Notice, all of which apply to all Claims that will be affected by this Claims Process. The Claims Process Order also includes the proposed form of Proof of Claim, which will apply to all Claims other than Employee Claims and 1974 Pension Plan Claims. The processes applicable to Employee Claimants and 1974 Pension Plan Claimants are described under separate headings below.
76. All Claimants, other than Employee Claimants and 1974 Plan, are required to file a Proof of Claim with the Monitor by prepaid registered mail, courier, personal delivery or email on or before the Claims Bar Date or the Restructuring Claims Bar Date, as applicable.
77. Claimants are permitted to make the claim in the currency in which the claim arose. The Claims Process Order sets out the method the Monitor shall use to convert non-Canadian currency claims to Canadian currency claims.
78. The Monitor shall give the Walter Canada Group copies of all documentation filed with the Monitor or provided by the Monitor to Claimants. Where the Claims Process Order requires the Monitor to consult with the Walter Canada Group, that obligation is satisfied by consultation with the CRO.
79. The Monitor, in consultation with the Walter Canada Group, is authorized by the Claims Process Order to use reasonable discretion in assessing the adequacy of compliance with the content and timing requirements for the forms attached to the Claims Process Order. In addition, where the Monitor, in consultation with the Walter Canada Group, is satisfied that a Claim has been adequately proven, the Monitor may waive strict compliance with the Claims Process Order.
80. The Claims Process Order also permits the Monitor, in consultation with the Walter Canada Group, to request further documentation from a Claimant to assist in determining the validity of a Claim.
81. By no later than November 7, 2016 or thirty Business Days after the Restructuring Claims Bar Date, as applicable, the Monitor, in consultation with the Walter Canada Group, shall send a Notice of Revision or Disallowance to all Claimants who filed documentation with the Monitor before the applicable Claims Bar Date where the Monitor, in consultation with the Walter Canada Group, is of the view that the applicable Claim should not be accepted. If no Notice of Revision or Disallowance is sent to a Claimant, that Claimant's Claim is deemed to be an Allowed Claim for voting and distribution purposes.

82. Claimants who receive Notices of Revision or Disallowance with which they disagree must file with the Monitor a completed Notice of Dispute by the later of December 6, 2016 or twenty Business Days from delivery of the Notice of Revision or Disallowance. Should a Claimant fail to deliver a Notice of Dispute, then the Claim set out in the Notice of Revision or Disallowance shall be deemed to be an Allowed Claim for voting and distribution purposes.
83. The Monitor, in consultation with the Walter Canada Group, may attempt to resolve a disputed Claim consensually. If a consensual resolution is reached, such Claim, as resolved, shall be an Allowed Claim.
84. The Claims Process Order permits the Monitor to schedule a motion with the Court to resolve any disputes, including related to discovery of documents or examinations for discovery in the course of resolving Claims.
85. If a disputed Claim cannot be resolved on consent, the disputing Claimant may bring a motion on a *de novo* basis before the Court in these proceedings. Such motion shall be brought by the later of January 9, 2017, or within twenty Business Days of delivery of the Notice of Dispute or at such time as may be agreed between the Claimant and the Monitor.
86. The proposed Claims Process Order provides sufficient flexibility and time to the Monitor and the Walter Canada Group to evaluate and resolve claims.

**E. Procedure for Making and Adjudicating Employee Claims**

87. The vast majority of Employees who will have claims against the Walter Canada Group are members of the USW. The Walter Canada Group and the Monitor have consulted with the USW and its advisors regarding the proposed Claims Process, including the dates and the manner of providing notice of the Employee Claims to the Employees. The USW has indicated that it supports the proposed Claims Process as set out in the Claims Process Order. The Walter Canada Group and the Monitor intend to continue to consult with the USW and its advisors regarding the quantum of the Employee Claims to be included in the Employee Claim Amount Notices.
88. Employees are not required to file Proofs of Claim. Rather, the Monitor shall include with the Claims Package an Employee Claim Amount Notice, which sets out the amount of such Employee Claimant's Claim as determined by the Monitor, in consultation with the Walter Canada Group, based on the Walter Canada Group's books and records. The Claims Process Order provides that where an Employee Claimant is represented by USW, a copy of the Employee Claim Amount Notice will be provided to USW. The Monitor shall also include a blank Notice of Dispute of Employee Claim form in the Claims Package.

89. If Employees agree with the Employee Claim Amount Notice included in the Claims Package sent to them by the Monitor, then they do not need to take any steps; the Claims Process Order states that in the absence of the Employee taking any step, the Employee Claim shall be an Allowed Claim for voting and distribution purposes.
  90. If an Employee disputes the Employee Claim as set out in the Employee Claim Amount Notice, then the Employee must file a Notice of Dispute of Employee Claim with the Monitor by prepaid registered mail, courier, personal delivery or email on or before the Claims Bar Date.
  91. The Monitor and the Walter Canada Group will then apply the same process for reviewing and adjudicating the Employee Claims as for other claims for which a Proof of Claim is filed. In addition, the Claims Process Order provides that where an Employee Claimant is represented by USW, a Notice of Dispute may be filed by USW and USW may represent the employee in the resolution of the disputed Claim.
- F. Procedure for Making and Adjudicating United Mines Workers of America 1974 Pension Plan Claims**
92. As described in the Second Aziz Affidavit, the 1974 Plan notified the Walter Canada Group that the 1974 Plan asserts a claim against the Walter Canada Group based on the provisions of the United States statute titled Employee Retirement and Income Security Act of 1974 ("ERISA") and on the language in the Plan Document. The Walter Canada Group has taken the position that ERISA was not intended to and does not have extra-territorial effect such that a Canadian Court should not impose on the Walter Canada Group liability based on ERISA. Furthermore, the Walter Canada Group has taken the position that it was not a party to the Plan Document and is not bound by its terms. Attached hereto as Exhibit "B" are copies of correspondence among the Walter Canada Group and the advisors to the 1974 Plan.
  93. The Monitor and the Walter Canada Group have designed the claims adjudication process to efficiently address the 1974 Plan's claim with the assistance of this Court. In particular, the 1974 Plan is not required to file a Proof of Claim. Rather, the 1974 Plan is permitted to assert the 1974 Pension Plan Claim by serving materials asserting and providing an evidentiary foundation for such Claims on the Walter Canada Group, the Monitor and the Service List before the Claims Bar Date. The advisors to the 1974 Plan have been informed of the proposed treatment of the 1974 Pension Plan Claims and have not objected to the proposed approach.
  94. If the 1974 Plan serves such materials before the Claims Bar Date, then the Monitor shall seek a scheduling appointment with the Court on notice to the Service List to set a schedule for delivery of materials and the hearing of a motion to determine the validity and quantum, if any, of the 1974

Pension Plan Claims. The Claims Process Order makes it clear that only the Court can accept or determine that the 1974 Pension Plan Claim is an Allowed Claim.

**G. Role of the Monitor**

95. In summary, the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA, the Initial Order and any other Orders of the Court in the CCAA Proceeding, shall administer the Claims Process, including, without limitation, by:

- (a) Publishing notice of the Claims Process;
- (b) Making minor changes to the forms attached to the Claims Process Order, in consultation with the Walter Canada Group, as necessary;
- (c) Sending Claims Packages to known Claimants and to Persons requesting Claims Packages; and
- (d) Reviewing, allowing, disputing, consensually resolving, or facilitating the litigation of disputed Claims, all in consultation with the Walter Canada Group.

96. It is my understanding that the Monitor supports the proposed Claims Process Order.

**IV. SELENIUM BIOCHEMICAL REACTOR**

97. As explained in the First Harvey Affidavit, the Walter Canada Group has experienced some difficulties meeting the revised provincial water quality guidelines relating to selenium levels at the Brule Mine. The Walter Canada Group has constructed a biochemical reactor (or bioreactor) at the Brule Mine to treat selenium as contemplated by the relevant permits and the selenium management plan associated with the Brule Mine.

98. As explained in the First Aziz Affidavit, the bioreactor is not functioning as intended due to consistently low water levels in the bioreactor. Certain repairs are needed to address this issue. The Walter Canada Group negotiated and entered into a contract with a consulting firm to design a repair to the biochemical reactor. The repair design is complete and the Walter Canada Group has retained a construction company to complete the repairs. Repairs are commencing shortly and are expected to be completed in August 2016.

99. As previously reported, Representatives of the Walter Canada Group who are responsible for environmental and other regulatory matters have provided updates regarding the difficulties associated with the bioreactor as well as the plans for repairs to the Ministry of Environment and the Ministry of Energy and Mines.

**V. SEVERE RAINSTORM IN NORTHEASTERN BRITISH COLUMBIA**

100. As reported in the Second Aziz Affidavit, the cities of Tumbler Ridge and Chetwynd and the surrounding areas, including the Walter Canada Group mines located in that area, were affected by a severe rainstorm in June 2016. Certain roads in the area were washed out. There was some damage to property owned or controlled by the Walter Canada Group, including to one of the railway lines servicing the Willow Creek Mine. The damage to the railway line was material and the Walter Canada Group is in the process of assessing and addressing the damage. The Walter Canada Group has informed its insurers of these matters.

**VI. ENHANCED MONITOR'S POWERS**

101. Following the Closing of the Asset Purchase Agreement, it is anticipated that members of the Walter Canada Group will no longer have any employees and all current employees will become employees of the Purchaser. Accordingly, the accounting and other personnel who normally attend to banking and other accounting and administrative matters, including the preparation of various required tax filings for some or all members of the Walter Canada Group, will be employed by the Purchaser. The transition services agreement discussed above will address some of these matters.

102. Certain matters are better handled by persons with duties to the Walter Canada Group. As such, The Walter Canada Group is requesting that this Honourable Court grant certain additional powers to the Monitor to facilitate the collection of monies owed or owing to the Walter Canada Group and to facilitate the control of the Walter Canada Group's bank accounts (and the opening of new accounts).

**VII. PJT ENGAGEMENT LETTER**

103. As described in the Second Aziz Affidavit, the Walter Canada Group agreed to amend the PJT Engagement Letter to address the fact that there will be no Chapter 7 proceedings in respect of the Walter U.S. Group. Accordingly, the payment of the work fee by the Walter Canada Group commenced upon closing of the sale of the assets of the Walter U.S. Group. No other material changes to the PJT Engagement Letter were made. A copy of the amended and restated PJT Engagement Letter dated April 1, 2016 (the "Amended and Restated PJT Engagement Letter") is attached as Exhibit "C" to this Affidavit and a blackline showing the changes made to the Amended and Restated PJT Engagement Letter is attached as Exhibit "D" to this Affidavit.



VIII. STAY EXTENSION

104. The Walter Canada Group was granted protection from their creditors under the CCAA pursuant to the Initial Order. The Initial Order granted, *inter alia*, a stay of proceedings until January 6, 2016, or such later date as this Honourable Court may order (the "Stay Period"). On January 5, 2016, this Honourable Court extended the Stay Period until and including April 5, 2016. On March 30, 2016, this Honourable Court extended the Stay Period until and including June 24, 2016. On June 24, 2016, this Honourable Court extended the Stay Period until and including August 19, 2016.
105. The Walter Canada Group has been proceeding in good faith and with due diligence to effect a restructuring under the CCAA, including by completing a sale pursuant to the SISP. In addition to the activities outlined above and in my previous affidavits, since my appointment as CRO I have, among other things:
- (a) Met with representatives of the Ministry of Energy and Mines and other government representatives to discuss the status of the CCAA proceedings and the SISP and engaged in further discussions and correspondence with government representatives regarding various matters, including regarding the Successful Bid and the transfer of certain permits to the Purchaser;
  - (b) Met with other creditors and interested parties to discuss the status of the CCAA proceedings and the SISP and certain outstanding claims;
  - (c) Facilitated discussions between the Purchaser and key stakeholders, including USW;
  - (d) Consulted with stakeholders in the course of developing the proposed Claims Process Order, including the USW and its advisors;
  - (e) Obtained new insurance policies for the Walter Canada Group;
  - (f) Attended to governance matters relating to the Walter U.K. Group (as defined in the January 5<sup>th</sup> Order);
  - (g) Continued to examine options to maximize the value of the Walter U.K. assets;
  - (h) Attended to various ongoing monitoring and other activities to preserve the mine sites in care and maintenance;
  - (i) Engaged with representatives of certain First Nations regarding certain matters;
  - (j) Attended to Canada Revenue Agency audits; and
  - (k) Negotiated the Asset Purchase Agreement;

- 106. The extension of the Stay Period to January 17, 2017, is requested to allow the Walter Canada Group to complete both the Transaction and also all steps contemplated by the Claims Process Order, with the exception of responding to and litigating any disputed Claims.
- 107. From my review of the current cash flow projections, I do verily believe that the Walter Canada Group will have sufficient operating cash to continue operations during the proposed extended Stay Period.
- 108. It is my understanding that the Monitor supports the extension of the Stay Period and will file a report attaching cash flow forecasts that demonstrate, subject to the assumptions more fully set out in the report, that the Walter Canada Group has sufficient liquidity to continue its operations as currently conducted through to the end of the proposed extended stay period, including the ongoing care and maintenance of the mines.
- 109. The Walter Canada Group has been acting in good faith and with due diligence in these proceedings.
- 110. It is in the best interests of the Walter Canada Group and all their stakeholders that the Stay Period be extended to January 17, 2017, to enable the Walter Canada Group to complete the Transaction and substantially complete the steps contemplated in the Claims Process Order.

SWORN BEFORE ME at the town of  
Bayville  
in the Province of Ontario, on August 9, 2016.  
[Signature]  
Commissioner for Taking Affidavits and Notary  
Public in the Province of Ontario

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)  
)  
)  
)  
William E. Aziz  
WILLIAM E. AZIZ



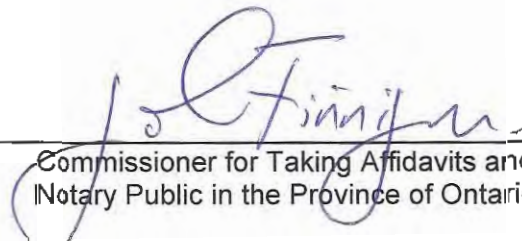
Patrick Riesters  
Lawyer & Notary Public  
Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8  
416-862-5947

**SCHEDULE "A"**

**Petitioners**

1. Walter Canadian Coal ULC
2. Wolverine Coal ULC
3. Brule Coal ULC
4. Cambrian Energybuild Holdings ULC
5. Willow Creek Coal ULC
6. Pine Valley Coal, Ltd.
7. 0541237 B.C. Ltd.

This is Exhibit "D" referred to in Affidavit #19 of  
**William E. Aziz** sworn February <sup>29<sup>th</sup></sup> 2018 at  
Naples, Florida.



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Commissioner for Taking Affidavits and  
Notary Public in the Province of Ontario



This is the 5th Affidavit of  
William E. Aziz in this case and  
was made on December 2, 2016

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 A PLAN OF COMPROMISE OR ARRANGEMENT OF  
WALTER ENERGY CANADA HOLDINGS, INC. AND THE OTHER  
PETITIONERS LISTED ON SCHEDULE "A"

PETITIONERS

**AFFIDAVIT**

I, **WILLIAM E. AZIZ**, Chief Restructuring Officer, of the Town of Oakville, in the Province of Ontario,  
MAKE OATH AND SAY AS FOLLOWS:

1. I am the President of BlueTree Advisors Inc. ("**BlueTree**"), which has been retained by Walter Energy Canada Holdings, Inc. ("**Walter Energy Canada**") to provide my services as Chief Restructuring Officer ("**CRO**") to Walter Energy Canada, its direct and indirect subsidiaries and affiliates listed on Schedule "A" (collectively with Walter Energy Canada, the "**Canadian Petitioners**") and the partnerships listed on Schedule "C" to the Order of this Honourable Court made on December 7, 2015 (the "**Initial Order**") (collectively with the Canadian Petitioners, the "**Walter Canada Group**"). As such I have personal knowledge of the facts hereinafter deposed, except where such facts are stated to be based upon information and belief and where so stated I do verily believe the same to be true.
2. This Affidavit is made in support of a motion by the Canadian Petitioners under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") seeking (i) the approval of this Honourable Court for an agreement to sell the Walter Canada Group as part of a series of

transactions that would (a) transfer all but certain Residual Assets (defined below) of the Walter Canada Group to new entities established to substantially replicate the Walter Canada Group corporate structure and (b) deem substantially all claims against the Walter Canada Group to be claims against the new entities; and (ii) permission to take steps necessary to give effect to that agreement. Specifically, the Canadian Petitioners request the following (collectively the "**New Walter Group Procedure Order**"):

- (a) An Order abridging the time for service of the notice of application and the materials referred to therein;
- (b) An Order approving the proposed sale (the "**Transaction**") contemplated by the Term Sheet among Walter Energy Canada for and on behalf of the Walter Canada Group, as subject, 1098138 B.C. Ltd., as purchaser (the "**Purchaser**"), and Amacon Land Corporation, as guarantor (the "**Purchaser Guarantor**"), made November 28, 2016 (the "**Term Sheet**"), a redacted copy of which is attached hereto as **Exhibit "A"**;
- (c) An Order
  - (i) authorizing the incorporation of new entities under the British Columbia *Business Corporations Act*, S.B.C. 2002, c. 57, to consist of a new corporation ("**New Walter**") as a wholly owned subsidiary of Walter Energy, Inc. ("**WEI**"), a new corporation ("**New WCCP**") as a wholly owned subsidiary of New Walter, and new corporations ("**New Wolverine**", "**New Brule**", and "**New Willow**") as wholly owned subsidiaries of New WCCP (these five new corporations collectively comprising the "**New Walter Group**");
  - (ii) from and after the date of the formation of the members of the New Walter Group,
    - A. deeming each member of the New Walter Group to be a debtor company as defined in the CCAA,
    - B. to be subject to these CCAA proceedings, and
    - C. to be added as a Petitioner in these CCAA proceedings;
  - (iii) from and after the date of the formation of the members of the New Walter Group, extending all the provisions of the Initial Order and the Order of this Honourable Court made on January 5, 2016 (the "**SISP Order**") to the members of the New Walter Group and extending the appointment of the Monitor to the New Walter Group;
  - (iv) appointing BlueTree as CRO of the New Walter Group and providing that the powers, responsibilities and protections set out in the SISP Order shall apply and continue to apply in respect of such appointment; and
  - (v) causing the Administration Charge, the Directors' Charge, and the Success Fee Charge to attach to all property of the New Walter Group (including for greater certainty any after acquired property);
- (d) An Order authorizing but not directing the members of the Walter Canada Group to make an assignment in bankruptcy at such time as the Walter Canada Group determines, in its sole discretion, that it is necessary or advisable to do so;

- (e) An Order terminating the engagement of the CRO with respect to a member of the Walter Canada Group at the last moment of time before the assignment in bankruptcy of such member of the Walter Canada Group becomes effective; and
  - (f) An Order that the confidential affidavit of William E. Aziz sworn the date hereof (to be filed) and the exhibits thereto (the "**Confidential Affidavit**") and the Confidential Supplemental Report of the Monitor and the appendices thereto, to be filed, (the "**Confidential Report**" and, collectively with the Confidential Affidavit, the "**Confidential SISP Materials**") be sealed, kept confidential and not form part of the public record.
3. If this Honourable Court grants the New Walter Group Procedure Order outlined above, the proposed Transaction contemplates that the following steps will be taken:
- (a) Assignment into bankruptcy by all members of the Walter Canada Group, currently anticipated to occur on or before December 12, 2016.
  - (b) An application to the Court (in bankruptcy and insolvency) for an Order, among other things, abridging certain time, notice and other formalities required under the Bankruptcy and Insolvency Act ("**BIA**"), each to be more fully set out in an Order served on the service list in advance (the "**Bankruptcy Procedural Order**"). The application is currently anticipated to be heard on or about December 12, 2016.
  - (c) Filing a joint proposal (the "**Proposal**") for the Walter Canada Group under s. 50 of the BIA as soon as possible following the issuance of the Bankruptcy Procedural Order.
  - (d) A meeting of creditors of the Walter Canada Group to approve the Proposal to occur immediately following the filing of the Proposal. The meeting is currently expected to be held on or about December 13, 2016.
  - (e) An application to the Court for an Order under the BIA approving the Proposal (the "**Proposal Approval Order**"). The application is currently anticipated to be heard on or about December 14, 2016.
  - (f) An application to the Court for an approval and vesting order to compliment the provisions of the Proposal and the Proposal Approval Order, to be heard on the same day as the application for the Proposal Approval Order.
4. I was retained pursuant to an engagement letter dated December 30, 2015 (the "**BlueTree Engagement Letter**"), as amended in response to certain requests made by Walter Canada Group stakeholders. BlueTree was appointed as CRO of the Walter Canada Group pursuant to paragraph 9 of the SISP Order.
5. As the CRO of the Walter Canada Group, in accordance with the SISP Order, I have the authority to direct the Walter Canada Group's Sales and Investment Solicitation Process ("**SISP**"), to engage in consultation and negotiation with stakeholders regarding the SISP, and to engage in such other matters as are set out in the BlueTree Engagement Letter.

6. Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Term Sheet, the SISP, the SISP Order, the first affidavit of William G. Harvey, sworn December 4, 2015 (the "**First Harvey Affidavit**") and the other pleadings filed herein.

7. The information in this affidavit is arranged under the following headings:

I.	<b>Introduction – Overview Of The Restructuring Process</b> .....	4
II.	<b>Structure of the New Walter Group</b> .....	5
III.	<b>The Proposed Transaction</b> .....	6
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V.	<b>Proposed Bankruptcy Proceedings</b> .....	14
VI.	<b>Other Matters</b> .....	17

I. **INTRODUCTION – OVERVIEW OF THE RESTRUCTURING PROCESS**

8. The New Walter Group Procedure Order is being sought as the first step in a process to facilitate a restructuring of the Walter Canada Group required to implement the Transaction. This restructuring will preserve all Claims against the Walter Canada Group (other than a very limited number of claims, as described below) by causing the members of the New Walter Group to become liable for all such claims. If approved and consummated, the Transaction will permit the monetization of the remaining value in the Walter Canada Group for the benefit of all persons with Claims in the CCAA proceedings and, potentially, other stakeholders of the Walter Canada Group.

9. To achieve this goal, the Transaction will be completed by way of a Proposal made on behalf of the Walter Canada Group to cause the transfer of substantially all of the assets of the Walter Canada Group (as more fully set out in the Term Sheet, the "**Transferred Assets**"), including cash and sale proceeds, to the New Walter Group and to cause all of the Claims against the Walter Canada Group, with some exceptions, to be deemed claims against the New Walter Group (the "**Deemed Claims**"). The Deemed Claims will not include (i) claims that have already been barred under the terms of the order of the Court granted August 16, 2016 (the "**Claims Process Order**"), and (ii) claims against Walter Energy Canada under the secured promissory note issued April 1, 2011 by Walter Energy Canada to WEI (the "**Promissory Note**").

10. The transfer of the Transferred Assets to the New Walter Group and the creation of the Deemed Claims against the New Walter Group will preserve the claims and the interests of other stakeholders in and to the Transferred Assets and permit the resolution of such claims and interests pursuant to the CCAA. Among other things, the New Walter Group will continue the adjudication of

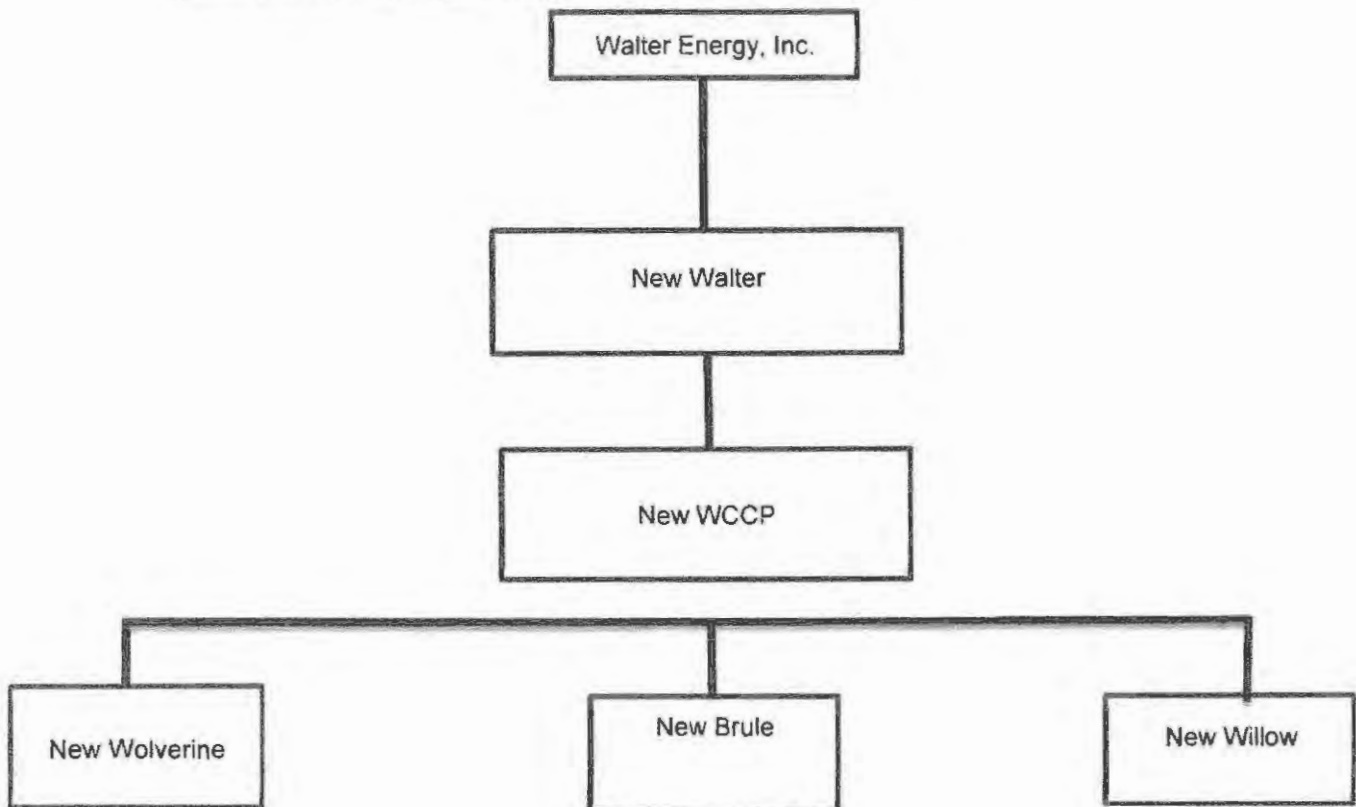


the UMWA 1974 Pension Plan Claim pursuant to the Claims Process Order and subsequent orders of the Court.

11. The Transaction contemplates each member of the Walter Canada Group other than Cambrian Energybuild Holdings ULC making an assignment into bankruptcy and subsequently completing the Proposal. For greater certainty, Belcourt Saxon Coal Ltd. and Belcourt Saxon Coal Limited Partnership, which are not members of the Walter Canada Group, will not be making an assignment in bankruptcy. All claims against the Walter Canada Group (other than the Residual Liabilities (defined below)) shall be compromised, extinguished and released pursuant to the terms of the Proposal, but the claims will be preserved because each member of the New Walter Group will become liable for the Deemed Claims and such Deemed Claims will continue against the New Walter Group, unaffected by the Proposal.
12. If the Transaction is consummated, creditors and other stakeholders of the Walter Canada Group will be able to seek recovery from the Purchase Price as well as from the other Transferred Assets. If the Transaction is not consummated, the Purchase Price will not be available and there will be significantly less value available for distribution to the creditors of the Walter Canada Group when their claims are finally determined pursuant to the Claims Process Order.

**II. STRUCTURE OF THE NEW WALTER GROUP**

13. The New Walter Group is proposed to be formed to replicate (in a slightly simplified manner) the existing Walter Canada Group structure. The following chart is the proposed organizational structure of the New Walter Group:



14. Cambrian Energybuild Holdings ULC, Belcourt Saxon Coal Ltd. and Belcourt Saxon Coal Limited Partnership will be owned by New WCCP.

### III. THE PROPOSED TRANSACTION

#### A. The SISP

15. As described in my third affidavit sworn on August 9, 2016 in these proceedings (the "**Third Aziz Affidavit**"), following approval by the SISP Order, the Walter Canada Group, as vendors, and Conuma Coal Resources Limited, as purchaser, entered into an agreement for the sale of a majority of Walter Energy Canada's assets (the "**Conuma Transaction**").
16. That agreement and the transaction contemplated therein was approved by an Order of this Honourable Court made on August 16, 2016, and the transaction closed on September 9, 2016. After that transaction closed, the mandate of the Walter Canada Group's financial advisor, PJT Partners LP, was completed and PJT's engagement was terminated (with the exception of the Success Fee as defined in the engagement letter among PJT and the Walter Canada Group dated April 1, 2015).
17. It was determined that substantial value could be generated, leading to greater recoveries for creditors, by selling certain assets remaining within the Walter Canada Group (the "**Remaining Assets**"). In particular, it became evident that it was possible to monetize the Remaining Assets by marketing the financial attributes that would benefit a potential purchaser by permitting a potential purchaser to acquire all of the shares of Walter Energy Canada and its interests in any other members of the Walter Canada Group.
18. The Monitor and I, in consultation with our advisors, concluded that the SISP Order permitted the adoption of ancillary rules for a SISP for the Remaining Assets. Paragraph 9(b) of the SISP Order provides that I "shall be responsible for directing the SISP." The SISP also provides that the Monitor and I can amend the procedures approved in the SISP Order: paragraph 49 states that the SISP can be amended if both the Monitor and I, acting reasonably, give our written consent, and paragraph 39 provides that I, after consulting with the Financial Advisor and Monitor, can "adopt such ancillary and procedural rules not otherwise set out herein (*including rules that may depart from those set out herein*) that in the [my] judgment will better promote the goals of the SISP" (emphasis added).
19. In consultation with the Monitor and our respective advisors, I determined that the ancillary rules adopted under the SISP for sale of the Remaining Assets, described below, were consistent with and would advance the goals of the SISP Order. The ancillary rules were a commercially

reasonable method to generate interest in and to obtain value from the Remaining Assets. The ancillary rules were also based on and consistent with Phase 1 of the original SISP which, as this Honourable Court noted when approving the Conuma Transaction, was "a comprehensive process" and included substantial steps taken to invite potential bidders. I did not consult with the Financial Advisor because the Financial Advisor's engagement had come to an end.

20. Further, as noted in paragraph 19 of the Third Aziz Affidavit, the Walter Canada Group intended to obtain value from the Remaining Assets when going through the SISP, and this Honourable Court, when approving the Conuma Transaction, anticipated that I would remain involved to "arrange for the sale of assets that are not being purchased by Conuma."
21. The Monitor organized a sales process for the Remaining Assets and established the following deadlines:
  - (a) Restarting of SISP Process: October 26, 2016.
  - (b) Deadline for submitting Letter of Intent ("LOI"): November 7, 2016.
  - (c) Deadline for submitting a definitive bid: November 16, 2016.
  - (d) Completion of SISP: December 31, 2016.
22. I am advised by the Monitor of the following facts regarding the SISP:
  - (a) The Monitor contacted 18 potentially interested parties between October 26 and October 28, 2016. A targeted approach was appropriate in the circumstances because the market for the Remaining Assets was a small and sophisticated one.
  - (b) 15 potential bidders executed a non-disclosure agreement ("NDA"). These potential bidders were provided with a confidential information memorandum (the "CIM") inviting them to submit an LOI, and were given access to a data room.
  - (c) 8 LOIs were received by the November 7, 2016 submission deadline. One party submitted its LOI shortly after the time of day at which LOIs were due. Pursuant to paragraphs 33 and 39 of the SISP, as CRO, I have the discretion to, after consulting with the Monitor, consider LOIs submitted after the deadline. In this case, I decided to consider the LOI submitted after the submission deadline.
  - (d) All 8 parties who submitted an LOI were invited to participate in Phase 2 of the SISP, which commenced on November 8, 2016. During Phase 2, the Monitor, the Walter Canada Group, I, and our collective advisors negotiated with potential bidders and assisted them with due diligence. We engaged in numerous calls, meetings and email exchanges with bidders to respond to their inquiries. In addition, the Monitor collected and posted many additional documents to the data room in response to requests from the bidders.
  - (e) The interested parties were asked to remove any diligence conditions and provide a binding bid by November 15, 2016 (which was earlier than the deadline originally set out in the CIM).

- (f) 4 bids were received on or before the November 15, 2016, deadline. I reviewed the bids with the Monitor.
- (g) The 3 highest bidders were selected to move on to the next phase of the process. On November 17, 2016, they were provided with the steps of the proposed Transaction and, on November 18, 2016, they were given a draft of the binding term sheet setting out the principal terms. They were asked to provide a definitive mark-up of the proposed term sheet by November 22, 2016.
- (h) Two of the bidders provided revised term sheets by the November 22, 2016 deadline. The third bidder did not provide a term sheet by the deadline, but advised that it was still interested and provided its mark-up of the term sheet after close of business on November 24, 2016.

**B. Selecting the Successful Bid**

23. The Monitor and I reviewed the bids received for the Remaining Assets to assess which bid or bids would maximize value for the Walter Canada Group's stakeholders. In my opinion, and that of the Monitor, the bid submitted by the Purchaser (the "**Successful Bid**") is the most executable bid received for the Remaining Assets. Although the Successful Bid did not provide the highest value, it provides significant value for the Residual Assets (defined below) that are the subject of the Transaction. In addition, in this case it is crucial that the proposed transaction be completed before December 31, 2016, and, in my opinion, and that of the Monitor, the Successful Bid is the most likely to be successfully consummated by December 31, 2016.
24. In selecting the Successful Bid, we considered the following factors:
- (a) the purchase price and net value of the bids (including all assumed liabilities and other obligations to be performed by the bidder);
  - (b) the guarantee given in respect of the obligations in respect of the Transaction;
  - (c) factors affecting the speed, certainty and value of the transaction, including evidence of financial wherewithal; and
  - (d) the likelihood and timing of the consummation of the transaction.
25. After extensive arms-length negotiations, the parties finalized the Term Sheet on November 28, 2016. A redacted copy of the Term Sheet is attached to this affidavit as **Exhibit "A"**. An unredacted copy of the Term Sheet is attached as an Exhibit to the Confidential Affidavit. As discussed below, to maximize the value obtained for the Residual Assets as well as to protect certain commercially sensitive information in the Term Sheet, it is proposed that the Confidential SISP Materials should be sealed and remain sealed until further order of this Court.
26. The successful bid is superior to the other bids received in a number of ways, including but not limited to:

- (a) The overall purchase price in the Successful Bid provides significant value for the Residual Assets. Although the Successful Bid was not the highest of the three bid we received, it contemplates payment of significant proceeds to the estate.
- (b) The obligations of the Purchaser under the Term Sheet are guaranteed by the Purchaser Guarantor.
- (c) A transaction with the Purchaser was viewed as being the most likely to be consummated by December 31, 2016. That factor was particularly significant as the proposed Transaction must be completed by December 31, 2016; otherwise, much of the value of the financial attributes of the Residual Assets will be lost.
- (d) The Successful Bid was not highly conditional.

**C. Key Terms of the Transaction**

- 27 The Purchaser is an acquisition vehicle that is affiliated with the Purchaser Guarantor, one of Canada's leading real estate development and construction firms. The obligations of the Purchaser under the Term Sheet are fully guaranteed by the Purchaser Guarantor.
28. The conditions precedent to closing include the following.
- (a) no evidence of Walter Energy Canada not owning directly or indirectly 100% of the other entities in the Walter Canada Group;
  - (b) along with the equity interests (shares and partnership interests) in the Walter Canada Group, the Residual Assets shall include the Retained Business Assets (as defined in the Term Sheet), consisting of certain investments with a value of approximately \$200,000,
  - (c) from the date of the Term Sheet until the earlier of the date the Proposal is implemented and the date the Term Sheet is terminated in accordance with its terms:
    - (i) no special resolution to dissolve any of Walter Canadian Coal Partnership, Wolverine Coal Partnership, Brule Coal Partnership or Willow Creek Coal Partnership (the "**Partnerships**") shall be passed, and
    - (ii) no steps shall be taken to change the membership of the Partnerships nor any member's interest in any of the Partnerships;
  - (d) no jurisprudence or change in law from the date of the Term Sheet until the date the Transaction is completed that would have a material adverse effect on the tax attributes of the Walter Canada Group or tax impact of the Transaction;
  - (e) the closing date for the Transaction is no later than December 30, 2016,
  - (f) on or before December 28, 2016, the Court shall have granted the BIA Proposal Approval Order and no motion to set aside, vary or stay such order shall be outstanding; and
  - (g) The Proposal shall have been accepted by the requisite majority of affected creditors present in person or by proxy and voting at the meeting convened pursuant to the Bankruptcy Procedural Order.

29. In the Term Sheet, the parties had also agreed to and provided conditions based on the Walter Canada Group putting forth a joint plan of arrangement under the CCAA. Subsequent to the signing of the Term Sheet, the parties agreed not to pursue that plan of arrangement, notwithstanding those provisions of the Term Sheet, in light of the time constraints under which the Transaction must be completed.
30. Based on the information available on the date this affidavit is sworn, I anticipate that the closing date for the Transaction will be before December 30, 2016.
31. The Term Sheet is subject to limited termination rights. The parties can terminate the Term Sheet by giving mutual written consent. In addition, the Term Sheet may be terminated if either party breaches any material covenant in the Term Sheet or in a Definitive Document (as defined in the Term Sheet).
32. The Purchaser has paid a deposit that is slightly greater than 15% of the purchase price contemplated in the Term Sheet.

**D. The Purchased Assets and Proposed Transaction**

33. It is the intention of the parties that the Purchaser acquire all of the shares of Walter Energy Canada, and its interests in Wolverine Coal Partnership, Walter Canadian Coal ULC, Wolverine Coal Partnership, Wolverine Coal ULC, Brule Coal ULC, Brule Coal Partnership, Willow Creek Coal ULC, Willow Creek Coal Partnership, Pine Valley Coal Ltd. and 0541237 B.C. Ltd.
34. The Purchaser will not acquire Walter Energy Canada's interests in Cambrian Energybuild Holdings ULC, Belcourt Saxon Coal Ltd. and Belcourt Saxon Coal Limited Partnership.
35. To effect the transfer of the assets being acquired by the Purchaser, the Proposal will provide that the following steps shall occur in the following order:
  - (a) BlueTree's engagement as CRO of the Walter Canada Group is deemed terminated
  - (b) Each entity in the Walter Canada Group makes an assignment into bankruptcy.
  - (c) The directors and officers of all of the entities in the Walter Canada Group resign.
  - (d) The Trustee of each entity in the Walter Canada Group files a joint Proposal.
  - (e) The Purchaser subscribes for 200,000,000 common shares in the capital of Walter Energy Canada for a subscription price equal to the purchase price in the Term Sheet and the Purchaser pays that purchase price.
  - (f) All equity (shares) of Walter Energy Canada held by WEI are repurchased, but not cancelled, for no consideration and such shares shall continue to be held by Walter Energy Canada.

- (g) Any issued and outstanding shares of Walter Energy Canada not recorded on the Central Securities Register of Walter Energy Canada shall be repurchased for no consideration and cancelled, and any option or other right to acquire shares or securities of Walter Energy Canada held by any person shall be cancelled for no consideration.
- (h) The Purchaser shall become the sole shareholder of Walter Energy Canada.
- (i) All obligations under the Promissory Note, pursuant to which Walter Energy Canada promised to pay WEI \$2 billion, are released, extinguished and discharged.
- (j) All known priority claims that must be paid under the BIA are paid in full and in cash.
- (k) Each entity in the New Walter Group shall be deemed liable for all Deemed Claims (which, for greater certainty, exclude the Residual Liabilities) of the corresponding Walter Canada Group entity, as follows (which is designed to reflect the fact that most of the members of the Walter Canada Group are general partnerships):
  - (i) All Claims against Wolverine Coal ULC and Wolverine Coal Partnership (other than the Residual Liabilities) are deemed to be Deemed Claims against New Wolverine, New WCCP, and New Walter;
  - (ii) All Claims against Brule Coal ULC and Brule Coal Partnership (other than the Residual Liabilities) are deemed to be Deemed Claims against New Brule, New WCCP, and New Walter;
  - (iii) All Claims against Willow Creek Coal ULC, Willow Creek Coal Partnership, and Pine Valley Coal Ltd. (other than the Residual Liabilities) are deemed to be Deemed Claims against New Willow, New WCCP, and New Walter;
  - (iv) All Claims against Walter Canadian Coal Partnership, Walter Canadian Coal ULC, and 0541237 B.C. Ltd. (other than the Residual Liabilities) are deemed to be Deemed Claims against New WCCP and New Walter; and
  - (v) All Claims against Walter Energy Canada (other than the Residual Liabilities and any liabilities in respect of the and the obligations under the Promissory Note released, extinguished and discharged in paragraph (i) above) are deemed to be Deemed Claims against New Walter.
- (l) The Transferred Assets, including the purchase price and any other cash, but excluding the Residual Assets, shall be deemed transferred as follows:
  - (i) All Transferred Assets of Wolverine Coal ULC and Wolverine Coal Partnership (other than the Residual Assets) are transferred to New Wolverine;
  - (ii) All Transferred Assets of Brule Coal ULC and Brule Coal Partnership (other than the Residual Assets) are transferred to New Brule;
  - (iii) All Transferred Assets of Willow Creek Coal ULC, Willow Creek Coal Partnership, and Pine Valley Coal Ltd. (other than the Residual Assets) are transferred to New Willow;
  - (iv) All Transferred Assets of Walter Canadian Coal Partnership, Walter Canadian Coal ULC, and 0541237 BC Ltd. (other than the Residual Assets) are transferred to New WCCP;

- (v) All Transferred Assets of Walter Energy Canada (other than the Residual Assets) are transferred to New Walter; and
  - (vi) The shares of Cambrian Energybuild Holdings ULC and Walter Canadian Coal Partnership's interests (if any) in Belcourt Saxon Coal Ltd. and Belcourt Saxon Coal Limited Partnership shall transfer to New WCCP.
- (m) The following assets are retained by the applicable Walter Canada Group entity and do not transfer to New Walter or its subsidiaries (collectively, the "**Residual Assets**");
- (i) The shares of Walter Canadian Coal ULC, Wolverine Coal ULC, Brule Coal ULC, Willow Creek Coal ULC, Pine Valley Coal Ltd., and 0541237 B.C. Ltd.;
  - (ii) The partnership interests in Walter Canadian Coal Partnership, Brule Coal Partnership, Wolverine Coal Partnership and Willow Creek Coal Partnership;
  - (iii) Securities of mining and/or mining related businesses held by Walter Canadian Coal Partnership having a value of approximately \$50,000 to be acquired after the date of the Term Sheet and prior to the day the Proposal is completed and which, for greater certainty, shall not include the capital stock of Cambrian Energybuild Holdings ULC or Belcourt Saxon Coal Ltd., or any partnership interest in Belcourt Saxon Coal Limited Partnership;
  - (iv) All short term liquid investments affording an appropriate safety of principal held by Wolverine Coal Partnership having a value of approximately \$50,000;
  - (v) All short term liquid investments affording an appropriate safety of principal held by Brule Coal Partnership having a value of approximately \$50,000;
  - (vi) All short term liquid investments affording an appropriate safety of principal held by Willow Creek Coal Partnership having a value of approximately \$50,000; and
  - (vii) The Walter Canada Group's corporate and partnership minute books, financial and accounting records, taxation records and such other documents (including banking records and other evidence of fund transfers) as may be necessary to substantiate the share capital of Walter Energy Canada.
- (n) The following liabilities are retained by the applicable Walter Canada Group entity and do not become Deemed Claims against New Walter or its subsidiaries (collectively, the "**Residual Liabilities**");
- (i) All liabilities for any taxes due or accruing due from and after the Plan Implementation Date (as defined in the Term Sheet); and
  - (ii) All liabilities and claims that are not claims that can be compromised pursuant to the CCAA or the BIA.
- (o) All directors and officers of Walter Energy Canada and each of its direct and indirect subsidiaries are deemed to resign (unless such directors have already resigned).
- (p) New Purchaser appointee director appointed.
- (q) All debts, liabilities, obligations and contracts of the Walter Canada Group of any kind (other than those that cannot be compromised under the CCAA/BIA) are released,



extinguished and discharged, including those of any present or former directors and officers.

- (r) The bankruptcies of all applicable entities of the Walter Canada Group are annulled.

**E. The Proposed Transaction Should Be Approved**

36. The Transaction is similar to a transaction that would be completed pursuant to an approval and vesting order, and will result in the New Walter Group acquiring all of the Transferred Assets and being deemed liable for all of the Deemed Claims.
37. The factors listed in Section 36 of the CCAA, among others, support the approval of the Transaction as follows:
- (a) The sales process leading to the proposed Transaction was reasonable in the circumstances. It included exposing the Residual Assets to the market as part of the initial SISP and, in a more targeted way, as part of the ancillary rules adopted pursuant to the SISP.
  - (b) The Walter Canada Group has proceeded in good faith and with due diligence throughout the process and has received advice from legal and financial advisors and from the Monitor and the CRO.
  - (c) The Transaction has been approved by the Board of Directors of the members of the Walter Canada Group in exercising their business judgement, that the Transaction is the best outcome available to the Walter Canada Group in the circumstances.
  - (d) The Monitor conducted the SISP in accordance with the ancillary rules that were adopted by the Monitor and the CRO, and will comment on the SISP in the Monitor's Sixth report, to be filed.
  - (e) I am informed by the Monitor and believe that it will be filing its Sixth Report stating that the Monitor supports the Transaction and that the Transaction would be more beneficial to the Walter Canada Group's creditors than a sale or disposition under a bankruptcy.
  - (f) The Purchaser is not related to any member of the Walter Canada Group
  - (g) The proposed Transaction will monetize the Residual Assets and improve creditors' recoveries.
  - (h) The consideration to be received in respect of the assets subject to the Transaction is reasonable and fair, taking into account their market value.
38. For the purposes of determining the nature and priority of any Deemed Claims, the applicable member of the New Walter Group (and the Transferred Assets transferred to such member) are proposed to stand in the place and stead of the member of the Walter Canada Group formerly liable for such claim. From and after the day the Proposal is completed, all claims against such member of the Walter Canada Group and any encumbrances in respect of such claims are proposed to be Deemed Claims against the corresponding member of the New Walter Group and be deemed encumbrances on the applicable Transferred Assets. Such Deemed Claims and deemed

encumbrances shall have the same priority with respect to the applicable member of the New Walter Canada Group and the applicable Transferred Assets as they had with respect to the corresponding member of the Walter Canada Group and the Transferred Assets immediately prior to the day the Proposal is completed, as if the applicable member of the New Walter Canada Group was in all respects the corresponding member of the Walter Canada Group and as if the Transferred Assets had not been transferred and had remained in the possession or control of the member of the Walter Canada Group having that possession or control immediately prior to the implementation of the Proposal.

39. As such, all the claims (other than certain limited claims described above) against the Walter Canada Group are arranged under the Transaction, but they are not compromised. They are preserved as claims against the New Walter Group and the stakeholders will have the right to seek recovery from the Transferred Assets, which includes additional value consisting of the Purchase Price.

#### **IV. SEALING THE CONFIDENTIAL SISP MATERIALS**

40. The Purchase Price and certain other terms of the Term Sheet are commercially sensitive and should not be disclosed at any point before the Transaction successfully closes.
41. Similarly, the terms of the remaining bids are commercially sensitive, and it is not necessary to disclose the details of those bids. But for the CCAA proceedings, the remaining bids would not be filed with the Court or otherwise made public. In my view, the sealing order requested is necessary to maximize recoveries for creditors, particularly if the Transaction does not close.
42. The Confidential SISP Materials, which contain the foregoing information, should be sealed until further order of this Court.

#### **V. PROPOSED BANKRUPTCY PROCEEDINGS**

43. The Walter Canada Group, as part of the steps contemplated in the Transaction and the Proposal, will be seeking the procedural (but not substantive) consolidation of the bankruptcies of the members of the Walter Canada Group.
44. The Proposal, which gives effect to the Transaction, contemplates identical steps, which have been conceived and will be implemented on a group-wide basis, in respect of the entities in the Walter Canada Group. In the absence of the requested order, each of the entities in the Walter Canada Group would be required to prepare and file materials and carry out processes that would be largely identical. Permitting a joint Proposal would reduce the expenditure incurred by the Walter Canada Group.

45. In addition, the Walter Canada Group will be seeking an order exempting the Bankruptcy Trustee or the Proposal Trustee from certain requirements imposed by the BIA, abridging the manner in which those requirements need to be satisfied, and/or providing that the requirements have been satisfied as a result of steps taken in the CCAA proceeding.
46. In particular the Walter Canada Group will be seeking an Order providing (among other things) for the following:
- (a) The Posting of the Bankruptcy Procedural Order and all notices given in the CCAA proceedings (collectively with the Bankruptcy Procedural Order, the "**Notices**") will be deemed sufficient notice for holding the first meeting of the creditors and the holding of the meeting to consider the Proposal.
  - (b) The requirements that the Trustee publish a notice of the first meeting of creditors under s. 104(2) of the BIA, report on the affairs of the debtors under ss. 50(5) and (10) of the BIA, file a statement of affairs under s. 50(2) of the BIA, and file a cash flow statement under s. 50(6) of the BIA will be satisfied by
    - (i) the Notices; and
    - (ii) the Trustee making available on its website and providing a copy to the Superintendent of Bankruptcy/Official Receiver of the certificates of appointment issued by the Superintendent of Bankruptcy in respect of the Debtors, all reports issued in the CCAA Proceedings, a copy of the Bankruptcy Procedural Order, and a copy of a consolidated statement of all claims in the CCAA Proceeding and all assets.
  - (c) Abridging and amending the requirement under s. 51(1) of the BIA that the Trustee send the documents listed in that section, and instead providing that that the posting by the Trustee of the Proposal, the Trustee's report on the Proposal and a voting letter and proxy form on the Trustee's website (the "**Proposal Materials**") and delivery of the Proposal Materials by e-mail or fax to the creditors of the Debtors for which the Trustee has e-mail addresses or fax numbers will be good and sufficient delivery and notice of the documents to be provided pursuant to s. 51(1) of the BIA.
  - (d) Dispensing with the requirement of approval of the Proposal by inspectors of the Debtors pursuant to s. 50(3) of the BIA.
  - (e) Abridging the time for holding the application for the Court's approval of the Proposal such that the application would be heard by the Court on or about December 14, 2016.
  - (f) Abridging the requirement under s. 58 of the BIA that the Trustee send a notice of the hearing of the application to sanction the Proposal at least 15 days before the date of such hearing to the Debtors and to every creditor of the Debtors. Instead, the Trustee would be required to post the notice on the Trustee's website on the day prior to the hearing, and deliver such notice of application and report by e-mail or fax to the creditors of the Debtors for which the Trustee has e-mail addresses or fax numbers.
47. These formal steps simply duplicate the work and reporting KPMG has already completed in its capacity as Monitor in these CCAA proceedings. For example, as a part of the Claims Process in these CCAA proceedings, the Monitor has provided a claims package to all known creditors of the

Walter Canada Group, and has provided information about the CCAA proceedings on the Monitor's website and through notices in a number of newspapers. Creditors of the Walter Canada Group have been identified through that Claims Process.

48. Similarly, under ss. 50(5) and 50(6) of the BIA, the Proposed Trustee would be required to prepare a report on the Walter Canada Group's business and prepare a cash-flow statement. However, the Monitor provided information about the Walter Canada Group's business in its Pre-filing Report, dated December 6, 2015. That report included information such as an overview of the Walter Canada Group's business, its ownership structure, the Group's Canadian operations, and its financial position at the time of the report. The Pre-filing report also contained a cash-flow forecast, which has been updated with information based on the actual receipts and disbursements in subsequent reports. In addition, an updated cash flow forecast was contained in the Monitor's Fourth Report, made on August 11, 2016.
49. In addition, the Monitor and the Walter Canada Group have been taking active steps to ensure that no prejudice will result to the creditors as a result of the abridged timelines and exemptions contemplated in the Bankruptcy Procedural Order:
  - (a) The Monitor sent a notice on November 29, 2016 to all creditors of the Walter Canada Group who had not previously provided the Monitor with email addresses: (i) advising the creditors that the Walter Canada Group may be entering into a transaction in the near future, and that the transaction may be of interest to the claimants; (ii) informing the creditors that the transaction would likely proceed quickly and that any steps would occur as expeditiously as possible; (iii) asking the creditors to provide the Monitor with an email address or fax number at which they could be reached by December 5, 2016, to ensure that the Monitor was able to provide timely notice of any transaction; (iv) warning the creditors that the transaction may proceed without any further notice to them if they chose not to provide their contact information before December 5, 2016; and (v) encouraging all creditors to regularly check the Monitor's website, where the details of any transaction would be posted. A copy of this notice is attached as **Exhibit "B"**.
  - (b) The Monitor intends to send another notice early in the week of December 5, 2016 to provide creditors notice of the transaction and orders being sought, the date that (if the attached order is granted) the meetings will be held and the proposal approval application, where to find materials and a contact person at the Monitor's office, and again reminding people to get an email and fax number to the Monitor if they want to receive the materials.
  - (c) The Walter Canada Group, Monitor and the Monitor's counsel have engaged in discussions with representatives of the Superintendent of Bankruptcy to ensure that it does not have any material objections regarding the Bankruptcy Procedural Order. A draft of the Bankruptcy Procedural Order was provided to the representatives of the Superintendent of Bankruptcy in advance. A copy of an email sent to the representatives of the Superintendent of Bankruptcy on December 2, 2016 is attached as **Exhibit "C"**.
50. The requested relief would preserve the resources of the Walter Canada Group and avoid expending resources or time duplicating efforts already completed and notices already provided.

51. In these unusual circumstances, dispensing with the requirements noted above will not prejudice creditors as the information at issue has been provided on other occasions. Instead, their claims will be transferred to a new entity but preserved in every other way. In addition, by conserving the resources and efforts of both the Walter Canada Group and the creditors, the Order requested will ultimately benefit the creditors by conserving the resources of the debtor estates.

**VI. OTHER MATTERS**

52. The Walter Canada Group has been proceeding in good faith and with due diligence to effect a restructuring under the CCAA, including by continuing the SISP to maximize value for all stakeholders. In addition to the activities outlined above and in my previous affidavits, since my appointment as CRO I have, among other things:
- (a) Continued to engage with representatives of the Ministry of Energy and Mines and other government representatives to discuss the ongoing transfer of the Water Canada Group's permits to Conuma. It is currently anticipated that the permit transfer will be complete in mid-December 2016;
  - (b) Attended to other post-closing matters in respect of the sale of the principal assets of the Walter Canada Group to Conuma, including regarding the transfer of the Walter Canada Group's interests in Belcourt Saxon Coal Ltd. and Belcourt Saxon Coal Limited Partnership;
  - (c) Met with other creditors and interested parties to discuss the status of the CCAA proceedings and the sale of the Residual Assets and certain outstanding claims;
  - (d) Oversaw the conduct of the claims process established pursuant to the Claims Process Order, including the issuance of various notices of revision or disallowance pursuant to the terms thereof;
  - (e) Instructed counsel regarding the dispute with the UMWA 1974 Pension Plan in the Court proceedings established pursuant to the Claims Process Order and subsequent orders of the Court;
  - (f) Attended to governance matters relating to the Walter U.K. Group (as defined in the SISP Order);
  - (g) Continued to examine options to maximize the value of the Walter U.K. assets; and
  - (h) Negotiated the Term Sheet.

53. The Walter Canada Group has been acting in good faith and with due diligence in these proceedings.

SWORN BEFORE ME at the City of Toronto, in  
the Province of Ontario, on December 2, 2016.

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Commissioner for Taking Affidavits and Notary  
Public in the Province of Ontario

*Patrick Piester*

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**WILLIAM E. AZIZ**

*William E. Aziz*

**SCHEDULE "A"**  
**Petitioners**

1. Walter Canadian Coal ULC
2. Wolverine Coal ULC
3. Brule Coal ULC
4. Cambrian Energybuild Holdings ULC
5. Willow Creek Coal ULC
6. Pine Valley Coal, Ltd.
7. 0541237 B.C. Ltd.

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 OR  
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

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**AFFIDAVIT #19 OF WILLIAM E. AZIZ**

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Client Matter No. 1164807