

**File No. S-1510120
Vancouver Registry**

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

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

AND

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

PETITIONERS

**SUPPLEMENT TO THE
SIXTEENTH REPORT OF THE MONITOR, KPMG INC.**

February 26, 2018

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INTRODUCTION AND PURPOSE OF THE SUPPLEMENTAL MONITOR'S REPORT

1. This is the Monitor's supplement to the Sixteenth Report of the Monitor which was dated February 23, 2018 (the "**Sixteenth Report**") and should be read in conjunction with the Sixteenth Report. Terms not specifically defined herein shall have the meanings as defined in the Sixteenth Report.
2. The purpose of this report is to provide this Honourable Court with information regarding, as well as the Monitor's observations and conclusion in respect of, Walter Canada's motion returnable February 27, 2018 seeking, among other things:
 - a) an Order (the "**Energybuild Sale Approval Order**") authorizing but not directing the execution of the Share Sale Agreement (the "**UK SSA**") between Energybuild Holdings Limited ("**Energybuild Holdings**") and Specialty Carbons Limited ("**Specialty Carbons**"), substantially in the form attached to the 20th confidential affidavit of Mr. William E. Aziz sworn on February 24, 2018 (the "**Confidential UK SSA Aziz Affidavit**"), and approving the sale of the entire issued and authorized share capital of each of the Energybuild Companies (as subsequently defined herein) along with the execution of such additional documents and the taking of any steps as may be necessary or desirable to finalize the UK SSA and consummate the transaction set out therein; and
 - b) an Order sealing the Confidential UK SSA Aziz Affidavit, to which an unredacted copy of the UK SSA is attached.

REPORT RESTRICTIONS AND SCOPE LIMITATIONS

3. In preparing this report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by Old Walter Canada, Walter Canada and/or certain of their respective affiliates, discussions with counsel for Walter Canada, and management and the CRO (collectively, "**Management**") and information from other public third-party sources (collectively, the "**Information**"). Except as described in this report, the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that

would wholly or partially comply with Canadian Auditing Standards pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance in respect of the Information.

4. The information contained in this report is not intended to be relied upon by any prospective purchaser or investor in any transaction with Walter Canada.
5. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

PROCESS LEADING TO ACCEPTANCE OF THE UK SSA

6. In the Eleventh Report of the Monitor dated July 4, 2017, the Monitor included a detailed discussion of the activities, from approximately mid-2015 up to the date of that report, through which Walter Canada (including as Old Walter Canada up until the New Walter Entities were formed on December 8, 2016) and all of its assets, including Walter UK and its anthracite coal mine in South Wales, had been broadly exposed to the market in multiple sale processes. Such processes were conducted both within these CCAA Proceedings pursuant to the SISP, which was approved by this Honourable Court and was supervised by the Monitor, and in the Chapter 11 proceedings of Walter Canada's parent, Walter Energy, Inc. ("WEI"), prior to commencement of these CCAA Proceedings.
7. Specialty Carbons entered into the SISP as a potential bidder during February 2016 and in June 2016 expressed an interest in acquiring the Walter UK assets and paid a small deposit to the Monitor on behalf of Energybuild Holdings at that time. By late 2016, Old Walter Canada had renewed its negotiations with Specialty Carbons, which ultimately resulted in the UK Offer Letter having been delivered to Walter Canada on December 5, 2017.
8. On December 14, 2017, in accordance with the Stay Extension and Energybuild Order, Walter Canada caused Energybuild Holdings to enter into the UK Offer Letter provided by Specialty Carbons, substantially in the form that was attached to the Confidential Seventeenth Aziz Affidavit. Effective on the date of execution of the UK Offer Letter, Specialty Carbons was provided with the Exclusivity Period until no later than February 28, 2018 to continue its due diligence activities.

9. As discussed in the Sixteenth Report, two parties contacted Walter Canada and the Monitor during December 2017, subsequent to Energybuild Holdings entering into the UK Offer Letter and providing the Exclusivity Period to Specialty Carbons, expressing interest in potentially acquiring some or all of the Walter UK assets. One of those parties, the Glyncastle Administrator, presented the Unsolicited Offer in late December 2017 which included a higher potential purchase price than in the UK Offer Letter. An unredacted copy of the Unsolicited Offer is attached as an exhibit to the Confidential UK SSA Aziz Affidavit.
10. Following further negotiations between Walter Canada and Specialty Carbons in respect of the terms set out in the UK Offer Letter, the UK SSA was finalized and includes a significantly higher price than was contemplated in the UK Offer Letter (an unredacted copy of which was attached to the Confidential Seventeenth Aziz Affidavit) as well as payment of the full purchase price immediately upon closing instead of at the conclusion of a nine-month period as had been contemplated in the UK Offer Letter.

KEY TERMS OF THE UK SSA

11. The Nineteenth affidavit of William E. Aziz sworn on February 24, 2018 includes a detailed discussion of the key terms of the UK SSA, as well as a redacted copy of the UK SSA attached thereto as Exhibit “A”. As previously noted, an unredacted copy of the UK SSA is attached to the Confidential UK SSA Aziz Affidavit. The following is a summary of the key terms of the UK SSA, a redacted copy of which is attached hereto as Schedule “A” for ease of reference. All capitalized terms in this section which are not otherwise defined herein shall have the meaning given to them in the UK SSA.
 - i) Acquired Shares: Specialty Carbons shall purchase from Energybuild Holdings the entire issued share capital of each of Energybuild Limited, Energybuild Mining Limited and Mineral Extraction and Handling Limited (collectively, the “**Energybuild Companies**”), each of which is incorporated pursuant to the laws of England and Wales. For ease of reference, attached hereto as Schedule “B” is an annotated excerpt from the pre-filing corporate organization chart (the “**Organization Chart Excerpt**”) of WEI, Old Walter Canada and the Walter UK entities (the original version of which was attached as Schedule “B” to the Pre-

Filing Report of the Proposed Monitor dated December 6, 2015), which shows the relationships between Cambrian, Energybuild Holdings and the Energybuild Companies that are to be sold;

- ii) “As Is, Where Is” Sale: The transaction contemplated in the UK SSA will be completed on an “as is, where is” basis, with certain limited representations and warranties from Energybuild Holdings (with none from any Walter Canada entity, the CRO or the Monitor);
- iii) Purchase Price: As previously noted, Walter Canada wishes to keep the Purchase Price confidential until after the proposed transaction has completed. However, the Monitor notes that the Purchase Price is significantly higher than that which was included in the UK Offer Letter and that it is exclusive of any applicable withholding, sales and transfer taxes, which are to be paid by Specialty Carbons. The Purchase Price is to be satisfied in full at Closing by payment to the Monitor, on behalf of Energybuild Holdings. The balance of the required Deposit (which is, in total, approximately ten per cent of the Purchase Price) will be paid to the Monitor, on behalf of Energybuild Holdings, upon execution of the UK SSA by both parties;
- iv) Closing Date: The Closing Date shall be March 2, 2018 or such later date as may be agreed in writing by both parties to the UK SSA;
- v) Resignation of Directors: The incumbent directors of the Energybuild Companies, which includes the current director of each of the Walter Canada entities, shall resign as officers and directors of the Energybuild Companies, each of which shall provide those directors with a release and indemnity;
- vi) Disposition of Purchase Price: The Purchase Price shall be distributed by Energybuild Holdings as follows:
 - Firstly, Energybuild Holdings shall repay from the Purchase Price the full amount of all secured advances which have been made, indirectly, by Cambrian to Walter UK during the CCAA Proceedings, as approved by this Honourable Court, in the total amount of £1,061,000 (plus accrued interest) as at the date of this report (the “**Cambrian Advances**”);

- Secondly, the Purchase Price shall be used to fund the costs of winding-up the three entities which will remain in Walter UK following Closing (as shown in the Organization Chart Excerpt), consisting of Energybuild Holdings, its parent Energybuild Group Limited and Energybuild Opencast Ltd. (collectively, the “**Remaining UK Entities**”); and
 - Lastly, any funds remaining from the Purchase Price shall be distributed by Energybuild Holdings (either to Energybuild Group Limited or otherwise).
- vii) Treatment of Intercompany Loans: Other than the Cambrian Advances, which will be repaid in full, all intercompany loans and other balances between the Energybuild Companies and Energybuild Holdings and any of its present or former affiliates shall be converted to a contribution of capital, waived or forgiven;
- viii) Treatment of Other Claims: The claims, or potential claims, of Warrior Met Coal, Inc. (“**Warrior**”) and the United Mine Workers of America 1974 Pension Plan and Trust are to be released in accordance with the terms of the Settlement Term Sheet Re Plan of Compromise and Arrangement among those parties and Walter Canada (the “**Term Sheet**”);
- ix) Court Approval: A key condition of both parties to the UK SSA is that an Order shall have been obtained from this Honourable Court approving Cambrian directing Energybuild Holdings to enter into and consummate the transactions set out in the UK SSA; and
- x) Monitor’s Certificate: The Monitor shall file a Monitor’s Certificate with this Honourable Court following Closing to certify its receipt of written confirmation from both parties to the UK SSA that all conditions of closing in respect of each party have been satisfied or waived, including receipt by the Monitor, on behalf of Energybuild Holdings, of the Purchase Price. The Closing shall be deemed to be effective as of the date and time set out in the Monitor’s Certificate.

THE MONITOR'S OBSERVATIONS AND RECOMMENDATIONS

12. As set out herein, the Monitor is of the view that Walter UK and its assets have been broadly exposed to the market in multiple sale processes. The offer from Specialty Carbons, as set out in the UK Offer Letter and the UK SSA, represents the most favourable formal offer that has been received by Walter Canada (or Old Walter Canada) during the CCAA Proceedings to date, and is the culmination of in excess of one year of negotiations between Walter Canada (and Old Walter Canada) and Specialty Carbons.
13. Based on its observations, the Monitor understands that Specialty Carbons has engaged a number of legal and other advisors to assist it in, and has expended a significant amount of time on, completing its due diligence activities and desires to complete the transaction set out in the UK SSA as quickly as reasonably possible. Specialty Carbons has confirmed to Walter Canada that it has the financial wherewithal to complete the proposed transaction, although it has not provided evidence to support that assertion.
14. Completing the proposed transaction with Specialty Carbons will result in generating sufficient sale proceeds for Walter UK to repay, in full, the Cambrian Advances which have been made during the CCAA Proceedings as well as providing Walter UK with funds to be used to fund the costs to wind-up the Remaining UK Entities, thereby reducing or possibly eliminating the requirement for Walter Canada to fund such costs. There is a restriction in the UK SSA stipulating that this process cannot be completed until after a period of at least two months following Closing. A related primary benefit of completing the proposed transaction is that Walter Canada would not be required to make any additional advances to Walter UK to fund the costs of its operations, which have exceeded £100,000 per month in recent months.
15. Although not specifically stated in the UK SSA, the other potential beneficiary of the proposed transaction is Warrior, to which Energybuild Holdings will (on behalf of Energybuild Group Limited) pay or Energybuild Group Limited will pay any surplus sale proceeds after repayment of the Cambrian Advances, the costs of winding-up the Remaining UK Entities, the satisfaction of any director and officer liabilities and the purchase of director and officer insurance, in respect of the approximately £4.7 million owing to it from Walter UK. This potential payment is in accordance with terms of the release that Warrior provided pursuant to the Term Sheet.

16. Pursuant to certain terms of the UK SSA (under section 4.7), there is the potential that Specialty Carbons could claim, during the period between Closing of the transaction and the date that Energybuild Holdings is wound-up, that Energybuild Holdings is liable to pay out of the Purchase Price any Claims that arise during that period that were to be provided for by Energybuild Holdings (as specified in the UK SSA). This potential claim against the Purchase Price is limited, pursuant to the UK SSA, to the amount of between £100,000 and the full Purchase Price less the Cambrian Advances. Therefore, in the worst case scenario, it is possible that there may ultimately be insufficient funds remaining from the Purchase Price after repayment of the Cambrian Advances to pay the costs of winding up the Remaining UK Entities, in which case Cambrian or another Walter Canada entity may have to fund those costs. Walter Canada does not have an estimate for the wind-up costs of these entities at this time.
17. The Monitor is of the view that, although the Unsolicited Offer included a higher potential purchase price than that which is set out in the UK SSA with Specialty Carbons, there is a high level of uncertainty as to whether the Glyncastle Administrator could complete its proposed transaction as presented. The Glyncastle Administrator has not participated in the sale process to date and, accordingly, likely has not been able to complete due diligence. The Glyncastle Administrator has not had access to Walter UK's financial information or the other information contained in the data room maintained by the Monitor. It is also unclear who the ultimate acquirer (and funder) would be given that the Unsolicited Offer was submitted by an insolvency administrator who did not identify any other interested parties.
18. The Monitor expects that the Glyncastle Administrator would, if it were permitted to enter into the sale process following expiry of the Exclusivity Period on February 28, 2016, require additional time to complete its due diligence before it would be willing to negotiate a binding share sale agreement with Walter Canada. This delay would result in any sale proceeds being eroded as Walter UK would have to fund its operations for a longer period to facilitate the Glyncastle Administrator's due diligence, including seeking additional advances from Cambrian to fund same. As the Unsolicited Offer is non-binding, there is also a risk that the Glyncastle Administrator may reduce its offer price prior to finalizing transaction terms with Walter Canada. The Monitor is also concerned that, if Walter

Canada were to engage in discussions with the Glyncastle Administrator, there may be a risk of losing the deal with Specialty Carbons should it be unwilling to engage in a newly-expanded competitive process. This could, in the worst case scenario, leave Walter Canada with no offers for Walter UK if negotiations with the Glyncastle Administrator were ultimately unsuccessful.

19. For all of the reasons set out above, the Monitor is of the view that completing the proposed transaction with Specialty Carbons, as contemplated in the UK SSA and presented to this Honourable Court, would be in the best interests of Walter Canada's stakeholders as it is the transaction which appears to have the highest likelihood of being capable of completing at a price that is fair and reasonable in the circumstances and, notably, is significantly higher than that which was contemplated in the UK Offer Letter. Accordingly, the Monitor recommends to this Honourable Court that it grant the Energybuild Sale Approval Order being sought by Walter Canada.
20. The Monitor also recommends to this Honourable Court that it grant Walter Canada's requested Order sealing the Confidential UK SSA Aziz Affidavit to protect certain confidential information contained therein, including the Purchase Price to be paid by Specialty Carbons as well as the offer price contained in the Unsolicited Offer.

All of which is respectfully submitted this 26th day of February, 2018.

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



Per: Anthony Tillman
Senior Vice President

Schedule “A”

Redacted Copy of the UK Share Sale Agreement

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 2nd 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):

**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

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

And to:

Marc Wasserman and Patrick Riesterer
OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, M5X 1B8
Facsimile: 416.862.6666
Email: mwasserman@osler.com and priesterer@osler.com

And to:

David L. Gray
Eversheds Sutherland LLP
Eversheds House
Manchester, Lancashire, UK M1 5ES
Email: 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

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

(c) If to the Monitor at:

Anthony Tillman
KPMG INC.
777 Dunsmuir Street, 11th floor
Vancouver, BC V7Y 1K3
Facsimile: 604.691.3036
Email: 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 and 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)

Schedule “B”

**Annotated Excerpt from the
Pre-Filing Corporate Organization Chart**

Annotated Excerpt from the Pre-Filing Corporate Organization Chart

