



This is the 1st Affidavit of  
Susan Wood in this case and  
was made on January 6, 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**

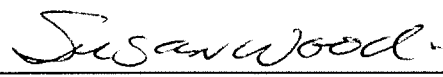
I, **SUSAN WOOD**, legal administrative assistant, of 2800 - 666 Burrard Street, Vancouver British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am a legal administrative assistant with DLA Piper (Canada) LLP, the BC counsel for the Petitioners herein, and as such have personal knowledge of the facts hereinafter deposed to, 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. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a true copy of the revised letter between Walter Energy Canada Holdings, Inc. and Blue Tree Advisors Inc., dated December 30, 2015, regarding the engagement of Blue Tree Advisors Inc. to provide the services of William Aziz as chief restructuring officer.

SWORN BEFORE ME at Vancouver, British Columbia, on this 6<sup>th</sup> day of January, 2016.

  
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A Commissioner for taking Affidavits for British Columbia.

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\_\_\_\_\_  
SUSAN WOOD


**TIJANA GAVRIC**  
*Barrister and Solicitor*  
**DLA Piper (Canada) LLP**  
666 Burrard Street, Suite 2800  
Vancouver, BC V6C 2Z7  
604.643.2941

**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 "A" referred to in the affidavit of **Susan Wood**, sworn before me at Vancouver, in the Province of British Columbia, this 6<sup>th</sup> day of January, 2016.



A Commissioner for taking Affidavits in and for the  
Province of British Columbia



December 30, 2015

Walter Energy Canada Holdings, Inc.  
235 Front Street, Suite 200  
Tumbler Ridge, BC, V0C 2W0

Attention: Mr. William Harvey, Executive Vice President and Chief Financial Officer

**Re: Engagement of BlueTree Advisors Inc.**

This letter agreement ("**Agreement**") sets out the terms and conditions upon which Walter Energy Canada Holdings, Inc. ("**WECH**") hereby engages BlueTree Advisors Inc. ("**BlueTree**") to provide the services of William E. Aziz ("**Aziz**") as an independent contractor to perform the duties set out herein as Chief Restructuring Officer of WECH and its direct and indirect Canadian subsidiaries (collectively "**Walter Canada**" or the "**Company**").

It is my understanding that Walter Canada requires advice in connection with certain *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") proceedings that have been commenced by the Company on December 7, 2015. Walter Canada agrees to seek an order in its CCAA proceedings limiting the liability of BlueTree and Aziz from all claims, damages and losses, including any claims regarding environmental matters and any claims regarding matters for which a director of Walter Canada may be personally liable. In furtherance of the foregoing, Walter Canada agrees to seek to include in such order language that limits the liability of BlueTree and Aziz in a manner consistent with s.11.8(3) of the CCAA or s.14.06(2) of the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**").

**1. The Services**

The services to be provided by BlueTree shall include the following (which are subject to ongoing supervision and direction from the WECH Board of Directors (the "**Board**"), and subject to the terms of any Court order in the CCAA proceedings):

- (a) consulting with the stakeholders of Walter Canada with a view to the development and implementation of a restructuring of the business and operations of Walter Canada and advising on any sales and investments solicitation process in respect of all or part of Walter Canada's business or assets (including its shares of Energybuild Group Limited) (the "**SISP**");
- (a) assisting with the potential SISP with a view to successfully completing a transaction in respect of all or any part of Walter Canada's business or assets (including its shares of Energybuild Group Limited) (a "**Transaction**");

- (b) communicating and negotiating with all stakeholder groups of Walter Canada with a view to successfully implementing a Transaction;
- (c) signing for or on behalf of Walter Canada such documents, instruments, certificates or affidavits as may reasonably be required to commence or implement a Transaction; and
- (d) such other or incidental matters as maybe thought necessary or advisable by BlueTree in consultation with the stakeholders of Walter Canada, while at all times acting with respect to the fiduciary duties required of an officer of Walter Canada.

BlueTree may not provide the services of any person other than Aziz without the prior written approval of Walter Canada. The services of BlueTree do not include any authority for, or charge, management or control of, any sites or facilities at or on which Walter Canada operates (including, without limitation, the Brule Mine, Willow Creek Mine or Wolverine Mine) or for any day-to-day operations or operating activities of any of Walter Canada's business, including, without limitation, any responsibility for environmental matters.

## 2. Information

Walter Canada represents and warrants to BlueTree, and will use its best efforts to ensure, that all information provided to BlueTree, directly or indirectly, orally or in writing, in connection with the BlueTree engagement hereunder will be accurate and complete in all material respects, will not be misleading in any material way and will not omit to state any fact or information which might reasonably be considered material to BlueTree performing its services hereunder. BlueTree shall be under no obligation to verify independently any such information provided to or otherwise obtained by it. BlueTree shall also be under no obligation to determine whether there have been any changes in such information or to investigate any change in such information occurring after the date any of the same were provided to or obtained by BlueTree.

## 3. Fees and Expenses

BlueTree's compensation for services referred to above will be as follows:

- (a) a work fee (the "**Work Fee**") of USD\$75,000 per month payable in advance by wire on the fifth day of each month commencing January 5, 2016, or when the fifth day falls on a non-business day, on the first business day thereafter.
- (b) a fee (the "**Success Fee**") payable in cash, which payment shall be triggered on the occurrence of a Triggering Event, of USD\$1,000,000.

As used herein, the term "**Triggering Event**" shall mean any one or more of the following:

- (i) Any merger, consolidation, reorganization, recapitalization, refinancing, business combination or other transaction (including for greater certainty a credit bid) pursuant to which a substantial portion of Walter Canada is acquired by, or combined with, any person, group of persons, partnership, corporation or other entity (including, without limitation, existing creditors, employees, affiliates, and/or shareholders of Walter Canada) (collectively, a “Purchaser”);
  - (ii) Any acquisition, directly or indirectly, by a Purchaser (or by one or more persons acting together with a Purchaser pursuant to a written agreement or otherwise), in a single transaction or a series of transactions (including for greater certainty a credit bid), of (x) all or substantially all of the assets or operations of any entity comprising Walter Canada; or (y) all or substantially all of the outstanding or newly-issued shares or units of equity securities of any entity comprising Walter Canada (or any securities convertible into, or options, warrants or other rights to acquire such equity securities);
  - (iii) Any other sale, transfer or assumption of a substantial portion of the assets or liabilities of Walter Canada (including, without limitation, any consolidation or merger involving any entity comprising Walter Canada), provided however that a liquidation of Walter Canada’s assets by auctioneers or other liquidators shall not be a Triggering Event unless BlueTree is actively involved in providing the services of Aziz throughout the course of such auction or liquidation and until the proceeds of such auction or liquidation are received;
  - (iv) Except with respect to any interim and / or court-approved debtor-in-possession financing, the issuance, whether public or private, of substantial financing to and/or equity securities of any entity comprising Walter Canada; and
  - (v) The confirmation of any plan of compromise or arrangement with respect to any entity comprising Walter Canada;
- (c) BlueTree shall be entitled to a Work Fee for a minimum period of two (2) months if this Agreement is terminated by Walter Canada (other than as a result of a default by BlueTree hereunder) before a Transaction. BlueTree acknowledges that Walter Canada may require the services of BlueTree even if a Transaction is completed prior to the period ending on the two (2) month anniversary of this Agreement.

The Success Fee will be payable if the events in paragraph 3(b) are completed or implemented (as the case may be) during the term of this engagement or within a period of six (6) months following: (i) the termination of this engagement by Walter Canada other than as a result of a breach of this Agreement by BlueTree or (ii) the termination of the Agreement by BlueTree as a result of the breach of this Agreement by Walter Canada. However, no Success Fee will be payable if BlueTree terminates this Agreement in accordance with Section 6.

In addition to the foregoing Walter Canada shall reimburse BlueTree for its reasonable out-of-pocket expenses including, but not limited to, legal fees, travel and communications expenses, courier charges and accommodation expenses, any of which may be incurred by BlueTree without prior written consent. Such reimbursable expenses will be payable on receipt of BlueTree's invoices by Walter Canada.

All or part of the foregoing may be subject to federal Goods and Services Tax, Harmonized Sales Tax, British Columbia Provincial Sales Tax or other taxes ("GST/HST"). Where such tax is applicable, an additional amount equal to the amount of tax owing thereon will be charged to and payable by Walter Canada, in addition to the fees of BlueTree. BlueTree shall provide its GST/HST registration number to Walter Canada upon execution of this Agreement.

#### 4. Other Services

If BlueTree is required to perform services in addition to those described above or to provide services of individuals other than Aziz, then the terms and conditions relating to such services will be outlined in a separate agreement and the fees for such services will be in addition to the fees payable hereunder and will be negotiated separately and in good faith.

#### 5. Indemnity

Walter Canada agree to indemnify BlueTree (the "**Indemnity**"). The Indemnity shall be in addition to and not in substitution for any other liability which Walter Canada or any other person may have to BlueTree or any other persons indemnified pursuant to indemnities apart from such Indemnity.

Walter Canada has represented that Walter Energy, Inc. currently maintains director and officer insurance coverage for its subsidiaries, including Walter Canada. Walter Canada will continue to benefit from, to the extent possible or practicable, the director and officer insurance coverage that was in place as at the date of execution of this Agreement, or coverage substantially comparable to that insurance, that includes confirmation from the underwriters that Aziz is fully covered by the insurance as an "Insured Person" within the meaning of any such policy.

In connection with this Agreement, Walter Canada agrees to indemnify and hold harmless BlueTree and Aziz from and against any and all losses, expenses, claims, actions, damages and liabilities, joint or several, including the aggregate amount paid in reasonable settlement of any actions, suits, proceedings, investigations or claims and the reasonable fees and expenses of legal counsel on a solicitor and its or his own client basis that may be incurred in advising with respect to and/or defending any action, suit, proceeding, investigation or claim that may be made or threatened against either of BlueTree or Aziz or in enforcing this indemnity (collectively, the "**Claims**") to which BlueTree and/or Aziz may become subject to or otherwise involved in any capacity insofar as the Claims relate to, are caused by, result from, arise in respect of or are based upon, directly or indirectly, this engagement; provided however that Walter Canada shall not be required to indemnify BlueTree or Aziz for such Claims to the extent that any such Claims are determined by a court of competent jurisdiction in a final



judgment that has become non-appealable to have resulted from the gross negligence or willful misconduct of BlueTree or Aziz.

Walter Canada also agrees that BlueTree and Aziz shall not have any liability (whether directly or indirectly in contract or tort or otherwise) to Walter Canada or any person asserting claims on behalf of or in right of Walter Canada for or in connection with this engagement except to the extent any losses, expenses, claims, actions, damages or liabilities incurred by Walter Canada are determined by a court of competent jurisdiction in a final judgment that has become non-appealable to have resulted from the gross negligence or wilful misconduct of BlueTree or Aziz. In no event shall BlueTree's or Aziz's liability exceed the aggregate amount of fees actually received by BlueTree or Aziz under this Agreement.

In no event shall Walter Canada will not, without BlueTree and/or Aziz's written consent, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, suit, proceeding, investigation or claim in respect of which indemnification may be sought hereunder (whether or not BlueTree and/or Aziz is a party thereto) unless such settlement, compromise, consent or termination includes a release of BlueTree and Aziz from any liabilities arising out of such action, suit, proceeding, investigation or claim. This indemnity can only be varied by the mutual agreement of Walter Canada, BlueTree and Aziz.

Promptly after receiving notice of any action, suit, proceeding or claim against either of BlueTree or Aziz or receipt of notice of the commencement of any investigation which is based, directly or indirectly, upon any matter in respect of which indemnification may be sought in accordance with the terms of this Agreement from Walter Canada, BlueTree and/or Aziz will notify Walter Canada in writing of the particulars thereof. The omission to notify Walter Canada shall not relieve WEI or Walter Canada of any liability which WEI or Walter Canada may have to either of BlueTree and/or Aziz except to the extent such failure materially prejudices Walter Canada's rights.

Walter Canada also agrees to reimburse BlueTree and/or Aziz for the time spent by BlueTree and/or Aziz in connection with any claim at any time following the end of the engagement at the hourly rate of \$750.00 plus applicable taxes. BlueTree and Aziz may retain counsel to separately represent it or him in the defence of a claim, which shall be at the expense of Walter Canada on a solicitor and its or his own client basis if (i) Walter Canada does not assume the defence of a claim, (ii) Walter Canada agrees to separate representation or (iii) BlueTree and/or Aziz is advised by legal counsel that there is an actual or potential conflict in Walter Canada's, BlueTree's and/or Aziz's respective interests or additional defences are available to BlueTree and/or Aziz which make representation by the same counsel inappropriate.

## 6. Survival of Terms and Termination

This engagement shall take effect upon the execution of this Agreement and may be terminated by a written notice to that effect:

- (a) by Walter Canada; or

(b) by BlueTree;

in each case upon not less than ten (10) days' written notice to that effect to the other persons mentioned in this section and to the Monitor provided that the obligations of Walter Canada to indemnify BlueTree, to pay any amounts due to BlueTree pursuant to this Agreement, including fees, expenses and tax, and the representations and warranties provided by Walter Canada in connection with this Agreement shall survive the completion of the BlueTree engagement hereunder or other termination of this Agreement.

#### **7. Confidentiality**

It is BlueTree's policy to hold in confidence the affairs of its clients. Therefore, BlueTree will not use confidential information obtained from Walter Canada and any of its representatives except in connection with the services to be provided hereunder and will not disclose such confidential information to any third party or to any of its affiliates, employees or advisors except in connection with the services to be provided hereunder and will not use or make available to Walter Canada or any of its representatives confidential information that BlueTree has obtained from any other client or that BlueTree may have developed or obtained in connection with its other activities.

#### **8. Other Activities**

Walter Canada acknowledge that Aziz serves as a director of a number of other corporations which are not directly competitive with Walter Canada or its affiliates and that BlueTree provides services to other clients, including in the role as chief restructuring officer. BlueTree confirms that these other activities will not interfere with the ability of BlueTree or Aziz to provide the services contemplated by this Agreement.

#### **9. Other Matters**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This Agreement shall be governed by and construed in accordance the laws of the Province of Ontario and the parties hereby irrevocably attorn to the jurisdiction of the courts of the Province of Ontario. If any provision hereof shall be determined to be invalid or unenforceable in any respect, such determination shall not affect such provision in any other respect or any other provision hereof. Headings are used for convenience of reference only and shall not affect the interpretation hereof.

#### **10. Notices**

All notices or other communications under this letter shall be in writing and e-mailed or faxed or delivered by personal delivery, if to WEI or the Company at:

Walter Energy Canada Holdings, Inc.  
235 Front Street, Suite 200  
Tumbler Ridge, BC, V0C 2W0

Attention: William Harvey and Dan Stickel  
Email: [bill.harvey@walterenergy.com](mailto:bill.harvey@walterenergy.com) /  
[dan.stickel@walterenergy.com](mailto:dan.stickel@walterenergy.com)

And if to BlueTree:

BlueTree Advisors Inc.  
32 Shorewood Place  
Oakville, ON L6K 3Y4


Attention: William E. Aziz  
Fax: 905-849-4248  
Email: [baziz@bluetreadvisors.com](mailto:baziz@bluetreadvisors.com)

or as each party may specify in written notice to the other party. Its notices and communications shall be effective when faxed, e-mailed or delivered as the case may be or, if such day is not a business day, on the first business day thereafter.

Please confirm that the foregoing is in accordance with your understanding by signing and returning the attached duplicate copy of the letter which will thereupon become a binding agreement. This Agreement may be executed in counterparts and delivered by email or telecopy.

Yours very truly,

**BLUETREE ADVISORS INC.**

by   
William E. Aziz

For consideration received, the above terms and conditions are accepted and agreed to on behalf of Walter Canada as of \_\_\_\_\_, 2015.

**WALTER ENERGY CANADA HOLDINGS, INC.**

by \_\_\_\_\_

For consideration received, the above terms and conditions are accepted and agreed to on behalf of Walter Canada as of December 31, 2015

WALTER ENERGY CANADA HOLDINGS, INC.

by  \_\_\_\_\_  
MANAGING DIRECTOR

I/We have the authority to bind the Company

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

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

PETITIONERS

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**AFFIDAVIT #1 OF SUSAN WOOD**

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**DLA Piper (Canada) LLP**  
Barristers & Solicitors  
2800 Park Place  
666 Burrard Street  
Vancouver, BC V6C 2Z7

Tel. No. 604.687.9444  
Fax No. 604.687.1612

Client Matter No. 15375-00001

TAG/sxl